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## Liberte, Egalite, et Fraternite at Risk for New Religious Movements in France

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## *Liberté, Egalité, et Fraternité* at Risk for New Religious Movements in France\*

### I. INTRODUCTION

During the past several years, the French government has systematically targeted the freedoms of new religious movements (“NRMs”)<sup>1</sup> with legislative initiatives.<sup>2</sup> On June 22, 2000, the

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\* My interest in this topic stems from my experience as a volunteer missionary for the Church of Jesus Christ of Latter-day Saints in France beginning in the fall of 1995. While the LDS Church has not been officially listed as a *secte*, I encountered first-hand as a missionary the effects of anti-sect sentiment, specifically those arising out of the tragic *Ordre du Temple Solaire* deaths in southeastern France in the fall of 1995. Notwithstanding my affection for the French people and French culture, this Comment attempts to objectively critique French legislative initiatives from a legal standpoint. I thank my husband and classmate John M. Smith for his many insightful suggestions at various stages of this work. I also thank Professor W. Cole Durham, Jr., without whose interest and advocacy this Comment may never have been written. The author takes sole responsibility for any errors in this Comment.

1. Scholars prefer to use the term “new religious movement” rather than “cult” because of the latter’s pejorative cast. *See, e.g.*, ELISABETH ARWECK & PETER B. CLARKE, *NEW RELIGIOUS MOVEMENTS IN WESTERN EUROPE* (1997); W. Cole Durham, Jr., *The United States’ Experience with New Religious Movements*, in *NEW RELIGIOUS MOVEMENTS IN THE USA* 213, 213 n.1 (1998); Pierre-Henri Prelot, *Les nouveaux mouvements religieux et le droit; la situation française*, in *NEW RELIGIOUS MOVEMENTS AND THE LAW IN THE EUROPEAN UNION* 159 (European Consortium for Church-State Research ed., 1999); JOHN A. SALIBA, *UNDERSTANDING NEW RELIGIOUS MOVEMENTS* (1995); James T. Richardson & Barend van Driel, *New Religious Movements in Europe: Developments and Reactions*, in *ANTI-CULT MOVEMENTS IN CROSS-CULTURAL PERSPECTIVE* (Anson Shupe & David G. Bromley eds., 1994). The term, new religious movement, is itself difficult to define because of the broad array of religious groups that find themselves lumped into this category. The tendency has been to regard religious movements that emerged in the West after the 1960s as “new.” *See* JAMES A. BECKFORD, *CULT CONTROVERSIES: THE SOCIETAL RESPONSE TO NEW RELIGIOUS MOVEMENTS* 13-14 (1985). Technically, of course, many groups, including the Church of Scientology and the Unification Church, were founded before the 1960s, and thus would claim that they are anything but “new.” *See id.* Practically speaking, within a culture where one or two churches have historically and traditionally dominated the religious landscape, a new religious movement generally includes religious groups that enjoy a minority status both historically and, most certainly, politically. For a discussion of the definition of new religious movements, see *id.* at 12-17.

2. *See, e.g.*, Sénat, Proposed Law No. 131, Dec. 14, 1999, “Proposition de loi tendant à renforcer le dispositif pénal à l’encontre des associations ou groupements constituant, par leurs agissements délictueux, un trouble à l’ordre public ou un péril majeur pour la personne humaine” [“A Law Proposal Aimed at Reinforcing the Criminal System Against Associations or Groups which Constitute, by their Criminal Schemes, a Threat to the Public Order or a Major Danger to Human Dignity”] [hereinafter Senate Proposed Law] (visited Sept. 20, 2000)

French National Assembly unanimously approved a Proposed Law<sup>3</sup> (“Proposed Law”) designed to facilitate the dissolution of *sectes*<sup>4</sup> within France. In addition to creating a civil mechanism for the dissolution of religious entities, the Proposed Law, among other things, creates restrictions on the location of specified NRMs, prohibits the dissemination of information regarding NRMs, and criminalizes “mental manipulation.”<sup>5</sup> Having passed the National Assembly, the

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<<http://www.senat.fr/leg/tas99-52.html>>; Assemblée Nationale, Report No. 1687, June 10, 1999, “Rapport fait au nom de la commission d’enquête sur la situation financière, patrimoniale et fiscale des sectes, ainsi que sur leurs activités économiques et leurs relations avec les milieux économiques et financiers” [“Report by the Inquiry Commission on the Financial Situation of Sects, as well as their Economic Activities and their Relations with the Economic and Financial Realms”] [hereinafter *Finances of Sects Report*] (visited Sept. 20, 2000) <<http://www.assemblee-nationale.fr/2/2dossiers.html>>; Assemblée Nationale, Report No. 2468, Dec. 22, 1995, “Rapport fait au nom de la commission d’enquête sur les sectes” [“Report by the Inquiry Commission on Sects”] [hereinafter *Sects in France Report*] (visited Sept. 20, 2000) <<http://www.assemblee-nationale.fr/2/2dossiers.html>>.

3. Assemblée Nationale, Proposed Law No. 2435, May 30, 2000, “Proposition de loi tendant à renforcer la prévention et la répression à l’encontre des groupements à caractère sectaire” [“A Law Proposal Aimed at Reinforcing the Prevention and the Repression Against Groups with a Sectarian Character”] [hereinafter Proposed Law] (visited Sept. 20, 2000) <<http://www.assemblee-nationale.fr/2/2dossiers.html>>.

4. A clarification of terms is necessary. In English, the term “sect” generally refers neutrally to a branch or division within an established religious tradition. The term “cult” carries a universally pejorative connotation. See *Discrimination on the Basis of Religion and Belief in Western Europe: Testimony Before the House Comm. on Int’l Relations*, 106th Cong., at n.6 (visited July 7, 2000) <[http://www.house.gov/international\\_relations/full/reminor/gunn.htm](http://www.house.gov/international_relations/full/reminor/gunn.htm)> (statement of Dr. T. Jeremy Gunn) [hereinafter *Gunn Testimony*]. Conversely, in French, *culte* carries a neutral meaning and denotes a recognized religious tradition. See *id.* at n.6. The French word *secte* can be interpreted in two very different ways. Books by sociologists of the late 19th and early 20th centuries use the word *secte* with no derogatory meaning to refer to small denominations or groups that are not yet regarded as mainstream churches. See *Religious Liberty in Western Europe: Deterioration of Religious Liberty in Europe Briefing Before the Comm’n on Sec. and Cooperation in Europe of the United States Congress*, 105th Cong. (1998) (statement of Dr. Massimo Introvigne, Managing Director, Center for Studies of New Religions (“CESNUR”)) [hereinafter *1998 Introvigne Statement*]. Today, when used by francophone governments, *secte* reflects a pejorative label for minority groups, usually of a spiritual, religious, or philosophical nature. See *Gunn Testimony, supra*. Notwithstanding this usage, there is no formal legal or technical definition of the term *secte*. See Prelot, *supra* note 1, at 159. But see discussion *infra* Part II.B (discussing the French government’s *de facto* definition of a *secte*). For the reasons discussed *supra* note 1, this Comment will refer to groups that the French government labels as *sectes* as new religious movements or “NRMs.”

5. “Mental manipulation,” as defined within the text of the law, is synonymous with brainwashing. See Proposed Law, *supra* note 3, art. 10 (defining mental manipulation as “activities which have the purpose or effect to create or exploit the psychological or physical dependence of those who participate and, . . . to exert on a person serious and repeated pressure to create or exploit such a state of dependence and to lead the person, against his will or not,

Proposed Law will be introduced into the Senate in the coming months.

The Proposed Law is France's latest major attempt to restrict religious liberties for members of minority religious faiths.<sup>6</sup> However, both the Proposed Law and other recent actions by the French government targeting NRMs violate international and European covenants upholding religious freedom.<sup>7</sup> It is unsettling that these discriminatory actions should emanate from France. An influential Western European country with a tradition of respecting human rights,<sup>8</sup> France is home to many international human rights organizations, including the European Court of Human Rights in Strasbourg. In addition to the discriminatory effects that these restrictive measures have on members of NRMs within France, the possible precedential effects of France's actions on its European neighbors, especially the fledgling democracies of Eastern Europe, warrants concern.

This Comment argues that the Proposed Law and other measures taken by the French government violate the religious liberty protections enshrined in numerous international instruments and pan-European court decisions; the French government should therefore reject the Proposed Law and alter its other anti-sect actions so as to provide minority religious faiths with greater protections. In Part II, this Comment surveys the historical, cultural, and political pressures behind France's anti-sect policy as well as the specific provisions of the Proposed Law. Part III details France's international and European commitments to uphold religious liberty and how recent French anti-sect measures and the Proposed Law violate these gov-

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to an act or to abstention from an act which is heavily detrimental to that person") (translation by author).

6. For a chronology of France's recent attempts to restrict the religious liberties of NRMs in France, see discussion *infra* Part II.B-C.

7. For an analysis of the validity of the Proposed Law under international and European conventions, see discussion *infra* Part III.B.

8. See, e.g., BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEPARTMENT OF STATE, FRANCE COUNTRY REPORT ON HUMAN RIGHTS PRACTICES FOR 1996 (1997) (stating that the French government has respected in practice the law of separation of church and state and generally respected human rights) [hereinafter FRANCE COUNTRY REPORT 1996]. *But cf.* BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEPARTMENT OF STATE, FRANCE COUNTRY REPORT ON HUMAN RIGHTS PRACTICES FOR 1998 (1999) (documenting the rise in human rights violations with regard to religious liberties and chronicling the government's anti-sect initiatives) [hereinafter FRANCE COUNTRY REPORT 1998]; see also *infra* note 58 (noting a history of prejudice against Muslims in France).

erning international and European instruments. Finally, Part IV analyzes the interplay between France's actions and Europe's response: recommendations by pan-European institutions (the European Parliament and the Council of Europe) and multiple rulings by pan-European courts that uphold religious liberty for NRMs.

## II. BACKGROUND

A survey of the history of religious liberty in France is a prerequisite to understanding the National Assembly's Proposed Law and the current cultural and political milieu of anti-sect sentiment. Part II.A presents a brief history of church-state relations in France,<sup>9</sup> roughly divided into five periods: (1) pre-Revolutionary France: 1562-1789; (2) the French Revolution and the Declaration of the Rights of Man and of the Citizen: 1789-1799; (3) Emperor Napoleon Bonaparte's Concordat with Pope Pius VII: 1799-1804; (4) Republican *anticléricalisme*<sup>10</sup> and the Law of 1905: 1875-1940; and (5) the modern approach to *laïcité*<sup>11</sup> as embodied in the 1958 Constitution: 1940-

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9. For this historical synopsis, I have relied upon information presented in RELIGION AND HUMAN RIGHTS: BASIC DOCUMENTS 5 (Tad Stahnke & J. Paul Martin eds., 1998) [hereinafter BASIC DOCUMENTS]; Brigitte Basdevant-Gaudemet, *State and Church in France*, in STATE AND CHURCH IN THE EUROPEAN UNION 119, 120-22 (Gerhard Robbers ed., 1996); and Rik Torfs, *Church and State in France, Belgium, and the Netherlands: Unexpected Similarities and Hidden Differences*, 1996 BYU L. REV. 945, 947-48.

10. With its origins in the Enlightenment, *anticléricalisme* emerged as a movement during the middle of the 19th century in many Catholic nations; France was the center of the anticlerical movement. See GINO RAYMOND, HISTORICAL DICTIONARY OF FRANCE 23 (1998); J. SALWYN SCHAPIRO, ANTICLERICALISM: CONFLICT BETWEEN CHURCH AND STATE IN FRANCE, ITALY, AND SPAIN 32, 34 (Louis L. Snyder ed., 1967). A movement directed against the Catholic Church, *anticléricalisme* was the counterpart to *cléricalisme*, a position taken by the Catholic Church wherein the Church could "interven[e] . . . in the formulation and direction of public policies through the exercise of special powers conferred on its clergy by the state. These special powers rested on three pillars: union of Church and state; Church control of education; and Church control of family relations." *Id.* at 25. The anticlerical ideology centered on the basic tenet of secularism, and the anticlerical agenda, therefore, included the separation of church and state, the secularization of public education, and the secularization of marital union (i.e., creating a civil marriage alternative to religious marriage). See *id.* at 32-33.

11. Translated literally from the French, *laïcité* means "secularism." See Torfs, *supra* note 9, at 950 n.16. Others have translated *laïcité* to mean the French idea of "secular humanism," which embodies a set of political, philosophical, and, often, antireligious principles. See 1998 *Introvigne Statement*, *supra* note 4. In a more benign translation, *laïcité* has been defined to encapsulate the concept of separation of church and state: "in all acceptable definitions [*laïcité*] includes the separation of spiritual matters from the competence of the state . . ." and "an affirmation of the sovereign authority of the state in its domain of the temporal order." WILLIAM BOSWORTH, CATHOLICISM AND CRISIS IN MODERN FRANCE 40 (1962). This definition of *laïcité* "resembles the philosophy of relations between equal states in the interna-

present. Part II.B sets forth France's current religious demography and chronologically details France's recent actions limiting religious liberty. Part II.C surveys the provisions of France's most recent anti-sect endeavor, the Proposed Law.

*A. A Brief History of Church-State Relations in France*

*1. Pre-Revolutionary France: 1562-1789*

Prior to the French Revolution of 1789, the French government and the Catholic Church were intricately enmeshed entities that relied heavily upon each other for their authority.<sup>12</sup> Because the Catholic Church was the only legally recognized faith,<sup>13</sup> religious freedoms for other religious groups were granted and revoked at will by the State.<sup>14</sup> At the end of the period known as the Religious Wars (1562-1598), Henry IV issued the Edict of Nantes, granting to Calvinists certain civil liberties and the right to worship in designated places.<sup>15</sup> These liberties were short-lived, however; Louis XIV revoked the Edict of Nantes in 1685.<sup>16</sup> In addition, Louis XIV ordered the destruction of all Calvinist temples and punished with penal servitude those Calvinists who attempted to flee the country.<sup>17</sup>

Approximately 100 years later, the reformist government of Louis XVI promulgated the "Edict of Toleration" in 1787, which returned most individual civil rights to Calvinists.<sup>18</sup> Nonetheless,

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tional realm: complete freedom of each in its own realm and noninterference in the internal affairs of the other." *Id.* at 41.

12. See SCHAPIRO, *supra* note 10, at 17-18.

13. See *id.* at 17.

14. See BASIC DOCUMENTS, *supra* note 9, at 5.

15. See *id.*; see also NORMAN RAVITCH, THE CATHOLIC CHURCH AND THE FRENCH NATION 1589-1989, at 9, 22-25 (1990) (describing the Edict of Nantes as "more a unique interim solution to the problem of religious diversity than a true policy of toleration" and discussing the religious liberties for Protestants that attended the Edict of Nantes).

16. See BASIC DOCUMENTS, *supra* note 9, at 5; see also RAVITCH, *supra* note 15, at 25-27 (outlining the foreign and domestic policy rationales behind the revocation of the Edict of Nantes).

17. See BASIC DOCUMENTS, *supra* note 9, at 5.

18. See *id.*; see also RAVITCH, *supra* note 15, at 28, 36 (enumerating the privileges granted to Protestants under the "Edict of Toleration" as including the rights to live in France and practice a profession, to contract marriage legally before a magistrate, to have their births registered before a judge, and to receive dignified burial).

Calvinists were still denied the freedom to worship in public and to organize as a religious group until the French Revolution.<sup>19</sup>

## 2. *The French Revolution: 1789-1799*

The second period of modern significance centers on the French Revolution of 1789, which sought to dismantle the Old Regime and along with it the control of the Catholic Church in matters of public life.<sup>20</sup> The French Revolution, even during the more moderate phases,

deprived the Catholic Church of the tithe, nationalized its property, and ended its corporate independence, unilaterally redrew ecclesiastical boundaries, all but abolished the regular clergy, demoted the secular clergy to the status of elected and salaried state servants, and persecuted clergymen who refused to swear loyalty to these and other peremptorily imposed “reforms.”<sup>21</sup>

Through these and other more drastic means, the revolutionary republicans sought to eradicate the influence of the Catholic Church from civil society.<sup>22</sup> At the same time that revolutionaries persecuted the Catholic Church, the French government granted full civil and political rights to Protestants and Jews.<sup>23</sup>

The republican revolutionaries’ antipathy towards the Catholic establishment was transparent in the two primary documents of this period—the Declaration of the Rights of Man and of the Citizen (“Declaration of the Rights of Man”)<sup>24</sup> and the Constitution of

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19. See BASIC DOCUMENTS, *supra* note 9, at 5.

20. See SCHAPIRO, *supra* note 10, at 21.

21. DALE K. VAN KLEY, *THE RELIGIOUS ORIGINS OF THE FRENCH REVOLUTION: FROM CALVIN TO THE CIVIL CONSTITUTION, 1560-1791*, at 1 (1996). Van Kley notes that during the more severe phases of the Revolution, Catholic clergy were massacred, and churches were converted into “Temples of Reason.” See *id.*

22. See RAYMOND, *supra* note 10, at 23.

23. See ALAN PALMER, *AN ENCYCLOPAEDIA OF NAPOLEON’S EUROPE* (1984); SCHAPIRO, *supra* note 10, at 21. Prior to the French Revolution, the government granted Protestants limited civil rights in the Edict of Toleration. See *supra* note 18 and accompanying text.

24. LA DÉCLARATION DES DROITS DE L’HOMME ET DU CITOYEN DE 1789, at art. X [THE DECLARATION OF THE RIGHTS OF MAN AND OF THE CITIZEN OF 1789] (Fr.), reprinted in C. ADM. 18 (Fr.) (23rd ed. 1994) [hereinafter DECLARATION OF THE RIGHTS OF MAN]. See generally P. Dawson, *Declaration of the Rights of Man and of the Citizen*, in 1 HISTORICAL DICTIONARY OF THE FRENCH REVOLUTION, 1789-1799, at 301, 301-04 (Samuel F. Scott & Barry Rothaus eds., 1985) [hereinafter HISTORICAL DICTIONARY].

1791.<sup>25</sup> Both guaranteed religious liberties. The Declaration of the Rights of Man secured freedom of belief,<sup>26</sup> and the Constitution of 1791 provided for freedom of religious observance.<sup>27</sup>

### 3. *The Concordat of 1801: 1799-1804*

The third period commenced with Emperor Napoleon Bonaparte's negotiation of the Concordat of 1801 with Pope Pius VII.<sup>28</sup> This Concordat reestablished peace between the Catholic Church and the French government by guaranteeing the public practice of religion and reestablishing public financial support of parish priests.<sup>29</sup> The Concordat was supplemented by the Seventy-Seven Organic Articles—a unilateral act of the French government never recognized by the Catholic Church—which allowed civil authorities to exercise significant control over ministers of religion and religious life.<sup>30</sup>

25. CONST. de 1791 [Constitution of 1791] (Fr.). For discussions of the Constitution of 1791, see Dawson, *supra* note 24, at 236-38; FRANCE: A COMPANION TO FRENCH STUDIES 130 (D.G. Charlton ed., 2d ed. 1979) [hereinafter FRENCH STUDIES]; and PALMER, *supra* note 23, at 94.

26. See DECLARATION OF THE RIGHTS OF MAN, *supra* note 24, at art. X (“No-one may be troubled due to his opinions, whether or not they are on religious issues[,] provided that the expression of these opinions does not disturb the peace.”) (translation by the French Ministry of Justice <<http://www.justice.gouv.fr/anglais/addhc.htm>>).

27. See Basdevant-Gaudemet, *supra* note 9, at 120.

28. Concordat de 1801 [Concordat of 1801] (Fr.), reprinted in SCHAPIRO, *supra* note 10, at 121-24 [hereinafter Concordat of 1801]. See also FRENCH STUDIES, *supra* note 25, at 278; JOHN McMANNERS, CHURCH AND STATE IN FRANCE, 1870-1914, at 4-12 (1972) (quoting the Concordat, which referred to Catholicism as “the religion of the great majority of French citizens” and stating that both the Church and the French government had an interest in making the agreement work); PALMER, *supra* note 23, at 91; RAYMOND, *supra* note 10, at 23; SCHAPIRO, *supra* note 10, at 22-23. See generally HENRY H. WALSH, THE CONCORDAT OF 1801: A STUDY OF THE PROBLEM OF NATIONALISM IN THE RELATIONS OF CHURCH AND STATE (1967) (exploring the influence that nationalism had on the French statesmen who negotiated the Concordat).

29. See Concordat of 1801, reprinted in SCHAPIRO, *supra* note 10, at 121-24. At least one scholar has noted that the Concordat retained ambiguities with respect to church-state relations. For example, using ambiguous language, Article 1 guaranteed the public practice of religion “in accordance with such regulations as the Government deems necessary for the public peace.” Basdevant-Gaudemet, *supra* note 9, at 121 & n.2 (quoting Concordat of 1801).

30. See Basdevant-Gaudemet, *supra* note 9, at 121.

4. Anticléricalisme *and the Third Republic: 1875-1940*

Laws promulgated during the Third Republic<sup>31</sup> (1875-1940) are perhaps the most significant in understanding contemporary French notions of secularism. During the early years of the Third Republic, the goals of *anticléricalisme*<sup>32</sup> were achieved;<sup>33</sup> a series of laws were passed that significantly reduced the Catholic Church's influence in public life, especially in education.<sup>34</sup> In 1881, 1882, and 1886, the government passed legislation that provided for a universal system of primary education that was secular, public, free, and completely devoid of the Catholic Church's influence.<sup>35</sup> The most extreme example of anticlerical dominance in education took place in 1902, when more than 3,000 Catholic educational institutions were shut down.<sup>36</sup> The triumph of *anticléricalisme* eventually led France to officially break diplomatic ties with the Papacy in Rome in 1904.<sup>37</sup> Finally, the Law of 1905<sup>38</sup> officially implemented the separation of church and state<sup>39</sup> and formalized republican notions of *laïcité*.<sup>40</sup> While Article 1

31. See RAYMOND, *supra* note 10, at 231-32.

32. See *supra* note 10 (defining *anticléricalisme*).

33. See RAYMOND, *supra* note 10, at 23. See, e.g., ROBERT GILDEA, THE PAST IN FRENCH HISTORY 214-17 (1994); JUDITH F. STONE, THE SEARCH FOR SOCIAL PEACE: REFORM LEGISLATION IN FRANCE, 1890-1914, at 77 (1985); 1 THEODORE ZELDIN, FRANCE 1848-1945, at 683-98 (1973).

34. See RAYMOND, *supra* note 10, at 23; see also MCMANNERS, *supra* note 28, at 45-54 (explaining that the Republicans actively pursued a "policy of 'laicization' of education [as] an insurance for the future of the Republic," meaning that the Republicans feared that so long as the Church maintained significant control of French schools, Republican notions of secularism would not be indoctrinated in future generations).

35. See RAYMOND, *supra* note 10, at 23.

36. See *id.* at 23, 66-67. For a further discussion of the anticlerical governments of Waldeck-Rousseau (1899-1902) and Combes (1902-1905), see MALCOLM O. PARTIN, WALDECK-ROUSSEAU, COMBES, AND THE CHURCH: THE POLITICS OF ANTICLERICISM, 1899-1905 (1969). See also MCMANNERS, *supra* note 28, at 118-39 (discussing the anticlerical government policies of Waldeck-Rousseau and Combes); RAYMOND, *supra* note 10, at 66-67, 277 (briefly describing the anticlerical governments of Waldeck-Rousseau and Combes).

37. See Basdevant-Gaudemet, *supra* note 9, at 122.

38. Loi du 9 décembre 1905 [Law of Dec. 9, 1905] reprinted in C. ADM. 787 (Fr.) (23rd ed. 1994) [hereinafter Law of 1905]. The Law of 1905 does not apply in three *départements* ("departments") in eastern France, namely, Haut-Rhin, Bas-Rhin, and Moselle, which were under German rule during its promulgation. See Basdevant-Gaudemet, *supra* note 9, at 122. When Germany eventually returned these departments to France in 1918, they retained the law as it existed prior to the 1905 promulgation. See *id.* For a brief discussion of the Law of 1905, see JAMES J. COOKE, FRANCE 1789-1962, at 158 (1975). See *infra* note 82 (describing the function of *départements* in French local government).

of the Law of 1905 guaranteed freedom of conscience and public worship to all religions,<sup>41</sup> Article 2 discontinued the recognition of any official church, any legal establishment of a religion, and any public financial assistance of religion.<sup>42</sup> The combination of these two articles resulted in official government neutrality towards religion,<sup>43</sup> which remains the regime in France today.<sup>44</sup>

Moreover, the Law of 1905, in conjunction with the Law of 1901,<sup>45</sup> is the most significant statute in the French legal framework whereby religious organizations may register for legal status and state benefits.<sup>46</sup> The Law of 1905 established the status of *association cul-*

39. See Law of 1905, *supra* note 38, arts. 1 & 2. For the full text of these articles, see *infra* notes 41 & 42.

40. See *supra* note 11 (defining *laïcité*).

41. See Law of 1905, *supra* note 38, art. 1 (“The Republic ensures freedom of conscience. It guarantees the free exercise of religion subject to the sole restrictions established in the interest of public policy.”) (translation by the French Ministry of Justice <<http://www.justice.gouv.fr/anglais/acure.htm>>).

42. See *id.* art. 2 (“The Republic does not recognize, remunerate, or subsidize any religion. In consequence, starting on the 1st of January which follows the publication of this Law, all expenses concerning the practice of religions shall be abolished from the budgets of the State, departments, and townships. However, expenses concerning the services of the chaplain and destined to ensure the free practice of religion in public establishments such as high schools, hospices, asylums, and prisons, may be included in these budgets. The publicly formed or financed establishments of religion are abolished subject to the conditions stipulated in Article 3.”) (translation by the French Ministry of Justice <<http://www.justice.gouv.fr/anglais/acure.htm>>).

43. See Basdevant-Gaudemet, *supra* note 9, at 122.

44. See *id.*

45. Loi du 1er juillet 1901 [Law of July 1, 1901] *reprinted in* C. ADM. 695 (Fr.) (23rd ed. 1994) [hereinafter Law of 1901]. While the Law of 1905 permits registration for a religious group as an *association cultuelle* (“association of worship”), the Law of 1901 permits registration as an *association culturelle* (“cultural association” or “non-profit association”) for both religious and non-religious groups. See BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEPARTMENT OF STATE, 2000 ANNUAL REPORT ON INTERNATIONAL RELIGIOUS FREEDOM: FRANCE (Sept. 5, 2000) [hereinafter FRANCE COUNTRY REPORT 2000]. An association of worship must only engage in liturgical practices, while a cultural association may engage in a broad array of activities that advance the culture of a certain group. See *id.*

46. Recognition as a worship association under the Law of 1905 translates into significant benefits from the state, including tax exemptions from donations. See *id.* Registration solely under the Law of 1901 does not afford these same benefits. See *id.* Because few denominations are officially recognized by the Ministry of the Interior as religious organizations under the Law of 1905, few are entitled to these exemptions: “According to statistics published in 1993 by the Ministry of Interior, only 109 out of 1,138 Protestant associations, 15 out of 147 Jewish associations, and two out of more than 1,000 Muslim associations are currently entitled to benefit from legacies and exemption on donations.” *Deterioration of Religious Liberty in Europe Briefing Before the Comm’n on Sec. and Cooperation in Europe of the United States Con-*

*tuelle* or “association of worship,”<sup>47</sup> under which groups with exclusively religious purposes may be legally registered and recognized.<sup>48</sup> Organizations seeking registration as an *association cultuelle* under the Law of 1905 must satisfy its requirements and comply with the general provisions of the Law of 1901 governing all non-profit associations.<sup>49</sup>

While French legal principles ensure freedom of conscience and freedom of association generally, clauses within the above-mentioned laws limit these freedoms. For example, the Law of 1901 requires that associations must not have “an illicit purpose, contrary to law, and good morals”<sup>50</sup> and, more generally, must not contravene the public order.<sup>51</sup> Given these limitations, the status of *association cultuelle* has been allocated sparingly and has regularly been denied to NRMs who seek registration under the Law of 1905.<sup>52</sup>

##### 5. Modern period: 1940-present

Official government neutrality has characterized the fifth modern period (1940-present). While the official separation of church and state enacted by the Law of 1905 grew out of hostile anticlerical sentiment, contemporary notions of separation of church and state emphasize a more benign form of *laïcité*.<sup>53</sup> Reinforcing the prior commitment to freedom of religion, the modern Republic’s Constitution of 1958 contained two provisions protecting the same. The Pream-

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*gress*, 105th Cong. (1998) (statement of Willy Fautré, Chairman, Human Rights Without Frontiers) [hereinafter *1998 Fautré Statement*].

47. See Law of 1905, *supra* note 38, art. 4 (providing for the formation of *associations cultuelles*).

48. See Basdevant-Gaudemet, *supra* note 9, at 124-25.

49. See *id.*

50. See Law of 1901, *supra* note 45, art. 3.

51. See Basdevant-Gaudemet, *supra* note 9, at 128.

52. See *id.* at 128-29. It should be noted that the Catholic Church in France rejected the designation of *association cultuelle* “fear[ing] the emergence of a multitude of different associations, all claiming to be of the Catholic Church but which the hierarchy could not control and in which the laity would have the power of decision-making.” Basdevant-Gaudemet, *supra* note 9, at 125. Thus, the Catholic Church is governed by a completely separate set of laws. See *id.*

53. See *id.* at 123 (describing *laïcité positive*, which requires frequent state intervention to ensure the necessary practical conditions for all religious public worship). For a discussion of the tensions in the modern approach to French *laïcité*, see *id.* at 123 (explaining the difficulties that accompany the practical application of the principle *laïcité positive*) and Torfs, *supra* note 9, at 950-55 (describing several different notions of modern French *laïcité*).

ble reaffirmed the Declaration of the Rights of Man,<sup>54</sup> and Article 2 pronounced that France “guarantees the equality of all citizens before the law, without regard to origin, race or religion. It respects all beliefs.”<sup>55</sup>

*B. The Religious, Cultural, and Political Milieu of France’s  
Anti-Sect Policy*

France has traditionally been a single-faith country with Roman Catholicism at the core of its religious past.<sup>56</sup> Recent estimates place Roman Catholic membership at almost eighty percent of the French population, though less than fifteen percent of Catholics regularly attend Sunday Mass.<sup>57</sup> The second largest religion in France is Islam, which claims almost four million adherents.<sup>58</sup> Additionally, there are approximately 750,000 Protestants and 650,000 Jews.<sup>59</sup> By contrast,

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54. See CONST. DE 1958 [Constitution of 1958] preamble (Fr.), translated in GEORGE A. BERMAN ET AL., FRENCH LAW: CONSTITUTION AND SELECTIVE LEGISLATION 2-9 (Parker School of Foreign and Comparative Law, Columbia University ed., 1998) [hereinafter Constitution of 1958] (“The French people hereby solemnly proclaim their attachment to the Rights of Man and the principles of national sovereignty as defined by the Declaration of 1789, reaffirmed and complemented by the Preamble of the Constitution of 1946.”).

55. *Id.* art. 2, reprinted in Jean-Paul Durand, *Droit civil ecclésiastique français en 1995-1996*, 3 EUR. J. FOR CHURCH & ST. RES. 41, 45 (1996) (“[La France] assure l’égalité devant la loi de tous les citoyens sans distinction d’origine, de race ou de religion. Elle respecte toutes les croyances.”).

56. See Basdevant-Gaudemet, *supra* note 9, at 119 (noting that while “France is a country in the Catholic tradition,” religious observance is “less wide-spread” today than it once was).

57. See *id.* at 119 n.1. The French government does not keep statistics on religious affiliation.

58. See *id.* It should be noted that the Muslim population in France has faced significant prejudice due to religious and cultural differences. The Council of Europe’s European Commission against Racism and Intolerance (“ECRI”) recently reported that “[p]rejudice against Muslim communities (Islamophobia) is a disturbing trend, manifested in violence, harassment, discrimination, and general negative attitudes and stereotypes.” *Annual Report on ECRI’s Activities Covering the Period from 1 January to 31 December 1999*, Eur. Comm’n Against Racism & Intolerance (April 27, 2000). Intolerance towards Muslims has manifested itself in France particularly with regard to employment discrimination, accommodating Muslim religious practices at school and work, discrimination against Muslim girls wearing headscarves at school, and the inability to obtain legal recognition for religious purposes. See *Gunn Testimony*, *supra* note 4, at n.7 and accompanying text; see also FRANCE COUNTRY REPORT 1996, *supra* note 8, Part 2.c.

59. See Basdevant-Gaudemet, *supra* note 9, at 119. Just as Muslims have experienced religious intolerance in France, so too has anti-Semitism afflicted French Jews. The most prominent example of anti-Semitism in French history is the Dreyfus affair. See 2 ADRIEN DANSETTE, RELIGIOUS HISTORY OF MODERN FRANCE 166-84 (1961) (discussing the impact

NRMs in France—those of native and foreign origin<sup>60</sup>—claim far fewer members.<sup>61</sup> Those NRMs with the largest presence in France include the Jehovah's Witnesses (approximately 130,000 members)<sup>62</sup> and the Church of Scientology (approximately 10,000 members).<sup>63</sup> Most NRMs, however, claim fewer than 10,000 adherents each.<sup>64</sup>

Even though NRMs' membership rosters are negligible compared to those of traditional religions, the rise of NRMs in France has been met with opposition and hostility, stemming from certain cultural factors.<sup>65</sup> The French government's monitoring of NRMs

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of the Dreyfus Affair upon the religious climate in France during 1898-99). *But cf.* FRANCE COUNTRY REPORT 1996, *supra* note 8, § 2.c (reporting that the highest French administrative court ruled that Jewish students could be excused from attending classes on the Jewish Sabbath).

60. For listings of NRMs of both origins, see Prelot, *supra* note 1, Annexes 1 & 2. It is interesting to note that some of the French government's rhetoric regarding NRMs has focused on their foreign status. However, as Prelot's list illustrates, many NRMs in France are not foreign at all but have their origins in French-speaking European countries. *See, e.g.*, Prelot, *supra* note 1, at 169-72 (listing, among others, the Geneva-based *Ordre du Temple Solaire* or "Order of the Solar Temple"). While several of the more high-profile NRMs in France originated in foreign countries, NRMs are no more uniform in origin than they are in belief or practice.

61. The French police estimate that there are some 250 NRMs in France with 160,000 members and approximately 100,000 "sympathizers." Gail Russell Chaddock, *With New Zeal, France Screens Religious "Sects"*, CHRISTIAN SCI. MONITOR, Nov. 18, 1996, at 1.

62. *See Sects in France* Report, *supra* note 2, at Part I.B.1 (listing Jehovah's Witnesses as the largest NRM in France with 130,000 members).

63. *See id.*

64. *See id.*

65. Willy Fautré, the Chairman of Human Rights Without Frontiers, has suggested that several factors foster adverse government policies towards NRMs, including: (1) a historical monopoly of one or two dominant religions within a country; (2) an increasing secularism in society; (3) the regression of established religions; and (4) the agitation of private-sector anti-sect groups. *See* Willy Fautré, Human Rights Without Frontiers, (last modified Oct. 19, 1999) <<http://www.hrwf.net>>.

Many of these factors pertain in varying degrees to French society. First, as discussed *supra* Part II.A-B, France is a nation in the Catholic tradition, and, while the modern practice of the Catholic faith has decreased, French religious culture and tradition is still very much tied to Catholicism. Second, since the French Revolution and the triumph of *anticléricalisme* during the Third Republic, secularism in France has been on the rise. The rise of secularism is reinforced when one considers the third point: the decline of religiosity and regression of established religions in France is well documented. Norman Ravitch noted that in the years following the Second Vatican Council in 1965 the Catholic Church in France has "seen a striking decline of religious practice," "a crisis in vocations," "the decline of the parish as the center of Catholic activity," and has, in short, "lost its *unity*." RAVITCH, *supra* note 15, at 153-65. Finally, the influence of anti-sect organizations, such as the UNADFI and the CCMM, *see infra* notes 68 & 69 and accompanying text, on the French government relating to its measures against NRMs is pervasive. *See, e.g.*, Debats du Sénat [Senate Debates] No. 40, Dec. 16, 1999,

at para. 36 (statement of Mme. Derycke) (honoring members of the UNADFI and the CCMM as “the two principal associations that fight against *sectes*” during the course of Senate debates concerning the passage of the 1999 Senate bill aimed at dissolving NRMs); Observatoire inter-ministériel sur les sectes [Inter-ministerial Observatory on Sects], Rapport annuel 1997 [1997 Annual Report] [hereinafter Observatory on Sects 1997 Annual Report] (visited on Oct. 29, 1999) <<http://www.cesnur.org/testi/OBSERV.htm>> (specifically attributing one of the Observatory’s proposals to advocacy by the CCMM).

U.S. Congressman Christopher H. Smith, Chairman of the Commission on Security and Cooperation in Europe, has concluded, based on testimony of expert witnesses before the Commission, that two specifically French factors tend towards religious intolerance. See *Religious Freedom in Western Europe: Religious Minorities and Growing Government Intolerance Hearings Before the Comm’n on Sec. and Cooperation in Europe of the United States Congress*, 106th Cong. (June 8, 1999) (statement of Representative Christopher H. Smith). The first French-specific factor is the anti-sect and anti-religious lobbying efforts of continental Freemasonry, a secular-humanist strand of Freemasonry that is unconnected to the mainstream United States and British Lodges. Freemasonry spread to the Continent from London in the 18th century and became associated with deism and the rationalistic ideas of the Encyclopaedists. See PALMER, *supra* note 23. As early as 1738, the hostility of French Freemasons towards the Catholic Church led to papal condemnation. The French Revolution later embraced Freemasonry. Continental Freemasonry rejects the influence of the Catholic Church specifically, and religion generally, in favor of rationalistic discourse.

The second French-specific factor is a strong residual presence in French-speaking cultures of socialist and communist movements, which tend to be both anti-religious and anti-American. As evidence of this, it should be noted that the Assembly’s Socialist party members as a group presented the Proposed Law before the Assembly for a vote, and the Senate bill that passed in December 1999 was also largely forwarded by Socialist Senators.

The anti-religious tendency of socialist and communist movements not only affects NRMs but all religious traditions, including majority faiths. Notably, leaders of majority faiths have in recent months expressed concern over France’s restrictive measures. During his formal acceptance of the new French ambassador to the Holy See, Pope John Paul II stated:

To discriminate religious beliefs, or to discredit one or another form of religious practice is a form of exclusion contrary to the respect of fundamental human values and will eventually destabilise [sic] society, where a certain pluralism of thought and action should exist, as well as a benevolent and brotherly attitude. This will necessarily create a climate of tension, intolerance, opposition and suspect, not conducive to social peace.

Pope John Paul II, Speech at the Formal Acceptance of the New French Ambassador, Mr. Alain Dejammet, to the Holy See (June 10, 2000) (visited July 13, 2000) <[http://www.cesnur.org/testi/fr2K\\_june1.htm](http://www.cesnur.org/testi/fr2K_june1.htm)> (translation by CESNUR).

Finally, anti-American sentiment by French officials has been highly public. Mr. Alain Vivien, President of MILS, has openly attacked American efforts to ensure the religious liberties of NRMs. In one such statement, he claimed that American efforts are motivated by “nefarious interests” and based on American notions of religious liberty embodied in the First Amendment that are wholly inapplicable to France:

The First Amendment to the United States Constitution of 1791 prohibits legislators from making laws on proselytization [sic]—while *this should be the very field legislators should regulate!* The fathers of the French Constitution adopted a different attitude in 1789 when they included in the Constitution, under Article 4 of the 1789 Declaration of Human Rights, that ‘Freedom consists in doing what does not cause damage to another (. . .) and limits may only be determined by law.’ . . . That

began as early as 1981 with the Senate Law Commission's "Information Mission on Sects" and was later followed by the 1985 Vivien Report.<sup>66</sup> These reports, however, went largely unnoticed until anti-sect sentiment resurged in the wake of the suicide-homicide of members of the Geneva-based *Ordre du Temple Solaire* in Switzerland and Canada in 1994, followed by similar events in southeastern France in 1995.<sup>67</sup>

What followed was a coordinated response from the French government and at least two private anti-sect organizations: the National Union of Associations in Defense of the Family and the Individual ("UNADFI")<sup>68</sup> and the Center Against Mental Manipulation

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[Americans] may have revised the First Amendment is understandable because the first pioneers, who were persecuted in Europe for religious reasons, had the idea of securing religious peace. But today, vast and often very nefarious interests hide themselves behind an allegedly religious cultism. In this, we have a good fight to pick up with our U.S. friends!

Claudine Castelnaud, *Une liberté sous contrôle*, RÉFORME, Nov. 19, 1998, at 7 (translation by CESNUR) (emphasis added). See also *Sectes: la France épinglée par les USA au nom de la liberté religieuse*, AGENCE FRANCE PRESSE, June 14, 1999 (quoting Vivien who called religious liberties in the United States "crazy"). Vivien's attack ignores the fact that U.S. State Department officials utilize international treaties and European conventions to which France has committed, not the First Amendment, in their efforts to secure religious liberties for NRMs.

The anti-American sentiment among socialist and communist movements in France has resulted in systematic resistance to and prejudiced attacks of American officials. In one well-documented incident, a French official refused to meet with the State Department delegation because, as the French official stated, a member of the delegation was a Scientologist. See *Gunn Testimony*, *supra* note 4. While the French official finally consented, he refused to speak to the delegation member at the meeting. See *id.* The French official's facts were inaccurate; the delegation member was not a Scientologist. See *id.* Notwithstanding this inaccuracy, it is clear that such prejudiced actions are not below the tactics of some French officials, and that these tactics create an atmosphere of intolerance and reluctance to defend those who have been black-listed for fear that one will be seen as a "sympathizer." See *id.* As a consequence, discussions regarding religious liberty have been removed from the official State Department agenda with France, a status that France shares with only one other country—China. See Dr. T. Jeremy Gunn, Remarks at the Capitol Hill Briefing Sponsored by The Institute on Religion and Public Policy (July 13, 2000).

66. For a discussion of the 1985 Vivien Report, see Alain Garay, French Policy Against Sects 5 (Jan. 25, 1999) (unpublished manuscript, on file with author) (describing the 1985 Vivien Report, entitled "Sects in France: Expression of Moral Freedom or Causes of Manipulation," as recommending increased surveillance of *sectes*).

67. See Chaddock, *supra* note 61, at 1; *France Gets List of Sect Members Liable to Commit Suicide*, AGENCE FRANCE PRESSE, Feb. 2, 1996; *French Judge Concludes Order of Solar Temple Investigation*, AGENCE FRANCE PRESSE, Nov. 1, 1999; *Police Meet over Solar Temple Deaths*, AGENCE FRANCE PRESSE, Dec. 27, 1995; *Police Probe Other Sects over Death Cult*, AGENCE FRANCE PRESSE, Dec. 29, 1995; *Ritual Suicide or Mass Murder in France?*, THE CHRISTIAN CENTURY, Feb. 7, 1996, at 126(1).

(“CCMM”).<sup>69</sup> The French government, in coordination with these organizations, has advanced numerous proposals restricting NRMs in France.<sup>70</sup> On June 29, 1995, the French National Assembly established a Parliamentary Inquiry Commission, also known as the Gest (or Guyard) Commission (after the chairman or rapporteur, respectively).<sup>71</sup> The Commission was charged with “studying the sect phenomenon” and with “proposing, if necessary, the adaptation of existing laws.”<sup>72</sup> While finding that a legal definition of *sectes* was elusive, the Commission’s January 1996 *Sects in France* Report listed several factors indicating a group’s sectarian character: “mental destabilization; exorbitant financial demands; induced rupture between adher-

68. UNADFI derives from the French: *Union nationale des associations de défense de la famille et de l’individu*. For a general discussion of the UNADFI, see BECKFORD, *supra* note 1, at 268-69. For a description of the organization’s mission, see the UNADFI’s web site at <<http://pages.infinet.net/unadfi>> (visited Oct. 19, 1999).

69. CCMM derives from the French: *Centre contre les manipulations mentales*. The UNADFI and the CCMM are both private anti-sect organizations with strong alliances in the French government. See BECKFORD, *supra* note 1, at 268-69. While the UNADFI at one time was critical of the French government for ignoring the alleged dangers presented by *sectes*, its relationship with the French government warmed significantly in 1979 when the Parliament agreed to conduct its first enquiry into NRMs in France. See BECKFORD, *supra* note 1, at 269. Since that time, the French government has relied on both organizations to provide information and guidance in its policy against NRMs. The UNADFI and the CCMM were influential in identifying NRMs for the Gest Commission 1996 black-list, and both continue to play an important role in monitoring NRM activity, albeit unofficially, for the French government. See ALAIN GARAY, L’ACTIVISME ANTI-SECTES DE L’ASSISTANCE À L’AMALGAME 13-34 (1999) (detailing French anti-sect associations’ activism against NRMs); Alain Garay, *Réflexions sur les lobbies associatifs: le cas des associations dites anti-sectes*, GAZETTE DU PALAIS, Apr. 28-30, 1996, at 2 (discussing the lobbying efforts of French anti-sect organizations). Finally, both organizations, which enjoy state-approved status as *utilités publiques*, gained legal standing as real parties in interest when an amended version of a National Assembly private bill became law in June 2000; given this new law, both organizations would have legal standing to bring suit against NRMs under the Proposed Law. See FRANCE COUNTRY REPORT 2000, *supra* note 45; see also *infra* text accompanying notes 80 (listing the recommendation of legal standing for anti-sect associations as emanating from the Observatory on Sect’s 1997 Annual Report) & 117 (quoting the text of the Proposed Law that references prior passage of the legal standing provision).

70. See *supra* notes 2 & 3 (listing various legislative measures).

71. See *Sects in France* Report, *supra* note 2, at Introduction (“[L]’Assemblée nationale a-t-elle, en adoptant à l’unanimité le 29 juin dernier la proposition de résolution présentée par M. Jacques Guyard et les membres socialiste, créé une commission d’enquête ‘chargée d’étudier le phénomène des sectes et de proposer, s’il y a lieu, l’adaptation des textes en vigueur.’” “[T]he National Assembly, in unanimously adopting the June 29th proposed resolution presented by M. Jacques Guyard and the socialist members, created an inquiry commission, ‘charged with studying the sect phenomenon and proposing, if necessary, the adaptation of existing laws.’”) (translation by author).

72. *Id.*

ents and their families; attacks on members; recruitment of children; anti-social discourse; disturbance of the public order; numerous legal battles; dishonest economic practices; and/or attempts to infiltrate organs of the State.”<sup>73</sup> Using these factors, the Report black-listed 172 NRMs deemed to be *sectes*, including Southern Baptists, Opus Dei, Seventh-Day Adventists, Jehovah’s Witnesses, and the Church of Scientology.<sup>74</sup>

To coordinate its NRM-monitoring activities, the Prime Minister in 1996 created an interministerial working group known as the “Observatory on Sects.”<sup>75</sup> The Observatory’s 1997 Annual Report<sup>76</sup> recommended the following measures:<sup>77</sup> (1) amend the law to give anti-sect organizations (like the UNADFI<sup>78</sup> and the CCMM<sup>79</sup>) legal standing to initiate legal proceedings against NRMs;<sup>80</sup> (2) modify the Law of 1901 regarding tax-exempt status for nonprofit associations by requiring heightened disclosures of monetary sources and financial management;<sup>81</sup> (3) create a resource representative position in each of the ninety-five French departments<sup>82</sup> to gather and relay in-

73. *Id.* at Part I.A.2.d. (“la déstabilisation mentale; le caractère exorbitant des exigences financières; la rupture induite avec l’environnement d’origine; les atteintes à l’intégrité physique; l’embrigadement des enfants; le discours plus ou moins anti-social; les troubles à l’ordre public; l’importance des démêlés judiciaires; l’éventuel détournement des circuits économiques traditionnels; les tentatives d’infiltration des pouvoirs publics”).

74. *See id.* at Part I.B.1 (listing all 172 NRMs that qualified as *sectes* according to the Commission). For a critique of the *Sects in France* Report, see POUR EN FINIR AVEC LES SECTES: LE DÉBAT SUR LA RAPPORT DE LA COMMISSION PARLEMENTAIRE (Massimo Introvigne & J. Gordon Melton eds., 1996).

75. *See* Observatory on Sects 1997 Annual Report, *supra* note 65.

76. While the Observatory’s 1997 Annual Report is not an official government document because it lacks certain signatures, it has been published to the Internet by an anti-sect group and has been widely quoted in subsequent French government discourse on the topic. *See* 1998 Introvigne Statement, *supra* note 4.

77. *See id.* at Part III.

78. *See supra* notes 65, 68 & 69 (describing the UNADFI and the CCMM and their relationship to the French government’s fight against *sectes*).

79. *See supra* notes 65 & 69.

80. Since this recommendation was made, a private bill became law in June 2000 that allows these groups standing as a *partie civile* to bring suit against NRMs. *See* FRANCE COUNTRY REPORT 2000, *supra* note 45; *see also supra* note 69 & *infra* note 117.

81. *See supra* notes 45-52 and accompanying text (describing the interrelationship between the Laws of 1901 and 1905 for the registration of religious entities). *See also supra* note 65 (listing this proposal—one forwarded by the CCMM—as evidence of this anti-sect organization’s intimate involvement in French initiatives targeting NRMs).

82. Currently, continental France is subdivided into 96 *départements* (“departments”). *See* CENTRAL INTELLIGENCE AGENCY, THE WORLD FACTBOOK (1999) (visited Oct. 19,

formation regarding NRMs to local governmental officials;<sup>83</sup> (4) enact measures that would restrict NRM members' entry into professional training programs; and (5) create a permanent commission at the European Union level to enhance cooperation among European nations.<sup>84</sup>

In 1998, the "Observatory on Sects" was replaced by the "Interministerial Mission to Fight Against Sects" ("MILS").<sup>85</sup> MILS is presently headed by M. Alain Vivien, a socialist, former president of the anti-sect organization CCMM,<sup>86</sup> former French foreign minister, and author of the 1985 Vivien Report.<sup>87</sup> MILS was tasked with analyzing the sect phenomenon, informing the public of the danger of *sectes*, and coordinating all government meetings concerning the same.<sup>88</sup> In late 1998, the French Minister of Justice issued a second circular<sup>89</sup> urging state prosecutors to cooperate with MILS in bringing more legal actions against *sectes* and encouraging local magistrates to form "institutional ties" with the UNADFI and the CCMM.<sup>90</sup> At the same time, the National Assembly initiated a new

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1999) <<http://www.odci.gov/cia/publications/factbook/fr.html>>. Four departments exist overseas in Guyana, Guadeloupe, Martinique, and Réunion. RAYMOND, *supra* note 10, at 91. *Départements* are the main units of administration in France. *See id.*

83. Currently, each department in France, *see supra* note 82, has a "Mr. Cult" employed by the Ministry of Youth and Sport to make presentations to local cultural and sport organizations about the dangers of *sectes*. *See 1998 Introvigne Statement, supra* note 4.

84. *See* Observatory on Sects 1997 Annual Report, *supra* note 65, at Part III.

85. *See* Decree No. 98.890 of Oct. 7, 1998 (visited Oct. 29, 1999) <<http://www.hrwf.net/english/france01.html>> [hereinafter MILS decree]. MILS derives from the French: *Mission Interministérielle de Lutte Contre les Sectes*. *See id.*

86. *See supra* note 69 (describing CCMM).

87. *See supra* note 66 and accompanying text.

88. *See* MILS decree, *supra* note 85.

89. The Ministry of Justice issued its first *circulaire* ("circular") in 1996 immediately following the issuance of the *Sects in France* Report; it similarly encouraged local prosecutors to cooperate in bringing charges against NRMs. *See* Garay, *supra* note 66, at 7. The circular's annex contained a copy of the black-listed 172 *sectes* as defined in the *Sects in France* Report. *See id.* *See generally* GARAY, *supra* note 69, at 77-81 (discussing the impact of 1996 circular). An administrative *circulaire* is usually deemed to have the status of a regulation if it contains directives to civil servants. *See* MARTIN WESTON, AN ENGLISH READER'S GUIDE TO THE FRENCH LEGAL SYSTEM 65 (1991).

90. *See* *Circulaire contre les sectes du Ministre de la Justice français* (visited Oct. 29, 1999) <<http://www.cesnur.org/testi/guigou.htm>> (republishing the full text of the 1998 circular). The Ministry of Justice's second circular urged local magistrates to establish and "maintain institutional contact with 'associations judged to be serious, such as the UNADFI and the CCMM, that combat sects. There can only be benefits from State prosecutors establishing ties with these associations, in order to discuss the schemes of cult movements that fall within their competence.'" Garay, *supra* note 66, at 12.

parliamentary inquiry commission to investigate the finances of NRMs, appointing two MILS members, Jacques Guyard<sup>91</sup> and Jean-Pierre Brard,<sup>92</sup> as president and rapporteur respectively.<sup>93</sup> The Commission's 1999 *Finances of Sects* Report detailed the finances of selected NRMs and proposed various mechanisms to more closely scrutinize the financial management of NRMs.<sup>94</sup>

The effect that these anti-sect initiatives has had on members of NRMs within France cannot be overstated. The effects include: harassment in the workplace,<sup>95</sup> harassment at school,<sup>96</sup> heightened investigations of religious organization's financial management systems,<sup>97</sup> imposition of excessive taxes on donations to religious organiza-

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91. Mr. Guyard is a member of the French Socialist Party. See 1998 *Fautré Statement*, *supra* note 46.

92. Mr. Brard is a member of the French Communist Party. See *id.*

93. See *Finances of Sects* Report, *supra* note 2.

94. See *id.* See *infra* notes 97 & 98 and accompanying text (describing the increased scrutiny of religious organizations' financial management and the taxation of donations against certain NRMs as a result of the recommendations of the *Finances of Sects* Report).

95. See *Religious Freedom in Western Europe: Religious Minorities and Growing Government Intolerance Hearing Before the Comm'n on Sec. and Cooperation in Europe of the United States Congress*, 106th Cong. (1999) (statement of Willy Fautré, Chairman, Human Rights Without Frontiers) [hereinafter 1999 *Fautré Statement*]; *Jehovah's Witnesses in France: Deterioration of Religious Liberty in Europe Briefing Before the Comm'n on Sec. and Cooperation in Europe of the United States Congress*, 105th Cong. (1998) (statement of James M. McCabe, Associate General Counsel, Watch Tower Bible & Tract Society of Pennsylvania) [hereinafter 1998 *McCabe Statement*]; Bruce Casino, Remarks at the Capitol Hill Briefing Sponsored by The Institute on Religion and Public Policy (July 13, 2000) (transcript on file with author) (detailing discrimination in the workplace against members of the Unification Church); Rev. Heber C. Jentsch, Remarks at the Capitol Hill Briefing Sponsored by The Institute on Religion and Public Policy (July 13, 2000) (transcript on file with author) (detailing harassment of Scientologists in the workplace).

96. See 1998 *Fautré Statement*, *supra* note 46 (describing stigmatization of children at school). Apart from harassment because of one's membership in an NRM, anti-sect fervor has reached French public school curriculum. See *Anti-Cult Propaganda in French Public Schools*, (visited Oct. 29, 1999) <<http://www.cesnur.org/testi/feuillard.htm>> (reprinting sections of DANY FEUILLARD ET AL., *EDUCATION CIVIQUE* (4th ed. 1998)) (translation by CESNUR). A fourth-grade civic education manual contains a section entitled the "Danger of Cults," with subsections including the following: (1) Attracting and Luring, (2) Brainwashing Members, (3) The Guru, (4) Children in Cults, and (5) Cult Money. See *id.* at 18-19. Each section contains a description of alleged *secte* activity with supporting testimonials from former members of various NRMs. See *id.*

97. See 1998 *Fautré Statement*, *supra* note 46; 1998 *McCabe Statement*, *supra* note 95 (describing a parent-teacher organization meeting to discuss the fact that their child's teacher—who had taught at the school for 18 years—was a member of a black-listed *secte*. The teacher was eventually transferred to another school).

tions,<sup>98</sup> denial by local government leaders of rental facilities to hold meetings,<sup>99</sup> denial by city officials to extend building permits for places of worship,<sup>100</sup> and denial of child custody to a parent because of religion.<sup>101</sup> Although the nature of these effects defies quantitative measurement, the anecdotal evidence is nonetheless chilling.

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98. See 1998 Fauré Statement, *supra* note 46; 1998 McCabe Statement, *supra* note 95 (describing an official audit of the Jehovah's Witnesses by French tax authorities, which determined that the organization engaged in no commercial activity; nevertheless, French tax authorities imposed a 60% tax on all donations received during the period from January 1, 1993, to August 31, 1996, a figure, after adding penalties and interest, which totaled in excess of 300 million French francs or \$50 million); see also *Jehovah's Witnesses in France Hit with 50 Million Dollar Tax Bill*, AGENCE FRANCE PRESSE, June 29, 1998 (reporting that this was the first time the fiscal reform of 1992 on donations, *infra*, had been applied to a religious group). In June 2000, the French *Conseil d'État*, see *infra* note 260, decided in the church's favor, holding that the two congregations at issue could be recognized as religious organizations according to the Law of 1905 and therefore not subject to the application of the tax. See *id.*

While religious organizations are by law allowed exemptions to the tax on manual donations (*dons manuels*) (*Loi des finances pour 1992*), because the Ministry of the Interior refuses to recognize most NRMs as religious organizations under the Law of 1905, most NRMs are subject to the tax.

[T]he law on manual donations, or [the] transfer tax, is normally applied only to estates or is comparable to what we have in the United States known as a gift tax. [T]he law simply provides that any deeds containing either a declaration by the donee or his representatives, or a judicial acknowledgement of a manual donation, are liable to the donation tax. Article 795 of the same law provides an exemption from the tax for donations and bequests made to religious corporations, unions or religious corporations and recognized congregations, and that's where the problem comes in because the Ministry of Interior refuses to recognize the Jehovah's Witnesses and many of the other 172 listed organizations as religious, so the Ministry of Finance has determined the tax applies.

1998 McCabe Statement, *supra* note 95. Even if an association is recognized as a religious organization under the Law of 1905, local administrative discretion often determines whether or not such organization will be subject to the tax. See FRANCE COUNTRY REPORT 2000, *supra* note 45. Local government officials may review a religious group's status if tax authorities become aware of a large gift to the organization. See *id.* If officials determine that the association is no longer in compliance with the Law of 1905, the religious organization's status will be revoked and it will be subject to the 60% tax. See *id.*

99. See 1998 McCabe Statement, *supra* note 95 (describing the refusal by city officials in Lyon, France, to rent a facility to members of an NRM).

100. See *id.* (describing the denial of building permits for centers of religious worship for an NRM).

101. See *id.* (noting at least 11 cases where mothers were denied custody of their children in divorce proceedings because they were members of an NRM).

*C. The National Assembly's Proposed Law*

In May 2000, the French National Assembly's Proposed Law<sup>102</sup> introduced into France's arsenal potent legal weapons to fight NRMs.<sup>103</sup> The preamble states the objectives of the Proposed Law: "[t]his bill intends to provide individuals and public authorities alike with new causes of action which will allow them to paralyze the activities of cult organizations and render them harmless."<sup>104</sup> While many countries in the European Union have concluded that existing criminal sanctions suffice to punish dangerous *conduct*,<sup>105</sup> France's Proposed Law creates new causes of action designed to facilitate the dissolution of entire religious entities.<sup>106</sup> In addition to creating a civil mechanism for dissolution, the Proposed Law severely restricts the physical establishment and proselytism of NRMs<sup>107</sup> and creates a new cause of action for a suspect psychological theory: "mental manipulation."<sup>108</sup>

The Proposed Law would establish procedures whereby (1) a civil court may order the dissolution of an organization convicted

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102. See Proposed Law, *supra* note 3. The author thanks the Church of Scientology for its Executive Summary of the Proposed Law's provisions. See Bill Walsh, France: Discriminatory and Repressive Legislation to Ban Targeted Religious Minorities (July 13, 2000) (unpublished manuscript, on file with author).

103. The 11 articles comprising the National Assembly's Proposed Law derive from three previous legislative proposals, including the legislation introduced by Senator About and unanimously approved by the French Senate on December 16, 1999. See Senate Proposed Law, *supra* note 2. Senator About's bill amended the Law of 1936, which permitted the dissolution of private militia groups and anti-government associations by presidential decree. See *id.* Senator About's bill added NRMs to the list of groups that would be deemed against the public order and thereby subject to dissolution by presidential decree. See *id.* The Assembly's Proposed Law has the same goal of dissolving NRMs but utilizes the judicial process rather than a political remedy. See *id.* If there is any redeeming value in the Assembly's Proposed Law as compared to the Senate bill, it is that the dissolution procedure does not bypass normal legal and judicial procedures.

104. Proposed Law, *supra* note 3, preamble ("C'est pourquoi cette proposition de loi vise à apporter de nouveaux moyens d'agir pour les particuliers comme pour les pouvoirs publics, en vue de leur permettre de paralyser l'activité des organismes à caractère sectaire et de les mettre hors d'état de nuire.").

105. See *infra* text accompanying notes 211, 221 & 222.

106. The notion that criminal law could be used to eradicate whole organizations based upon the individual actions of some of its members or officers contradicts fundamental principles of criminal law. These fundamental principles hold that criminal sanctions punish unlawful behavior rather than target entire institutions.

107. See Proposed Law, *supra* note 3, arts. 8 & 9.

108. *Id.* art. 10. See *infra* text accompanying note 129 (quoting the text of the Proposed Law that defines "mental manipulation").

more than once of various enumerated offenses by a court of law; (2) a religious organization's criminal liability would be increased when individual freedoms are jeopardized; (3) any attempts to reincorporate or recreate a religious entity that had been dissolved would be punished; (4) the establishment and proselytism of NRMs would be restricted so that minors, the elderly, and the ill would be protected from such groups; and (5) the act of "mental manipulation" would be punishable as a misdemeanor.<sup>109</sup> The following sections discuss these specific provisions of the Proposed Law.

### *1. Chapter I: Civil dissolution*

Chapter I, Article 1 provides a mechanism whereby any religious corporation pursuing activities "having the goal or effect to create or to exploit psychological or physical dependency of the individuals participating in its activities" may be dissolved by a civil court.<sup>110</sup> The court of first instance will have discretion to order the dissolution of a religious corporation if two conditions are met: first, if more than one conviction<sup>111</sup> has been entered against the corporation or its directors or officers<sup>112</sup> for any of the criminal offenses<sup>113</sup> enumerated in the bill;<sup>114</sup> and second, if the corporation engages in activities that

109. See Proposed Law, *supra* note 3, preamble.

110. *Id.* art. 1. ("ayant pour but or pour effet de créer ou d'exploiter la dépendance psychologique ou physique des personnes qui participent à ces activités . . .").

111. The text of Article 1 of the Proposed Law uses the phrase "plusieurs reprises," which translated means "several times." It is unclear from this text exactly when an NRM would become "eligible" for a dissolution action. At least one conviction is certainly required by the text; however, the term "several convictions" is vague. See *id.*

112. The text of the Proposed Law includes both *de jure* and *de facto* directors. See *id.* ("dirigeants de droit ou de fait"). Thus, a dissolution action could be brought against a group with no formal officers or directors when those individuals were nonetheless "leaders in fact" of an NRM and met the above-mentioned criteria.

113. The criminal offenses for which convictions may subject groups to dissolution include violations for: (1) false advertisement, fraud, and falsification according to French Consumer Code articles L. 121-6 and L. 213-1 to L. 213-4; (2) illegal practice of medicine or illegal pharmaceutical practice according to French Public Health Code articles L.376 and L.517; and (3) voluntary or involuntary harm done to the physical or psychological integrity of an individual; the endangerment of an individual; undermining the freedom of an individual; or taking advantage of minors, the elderly, or the ill, according to French Penal Code articles 221-1 to 221-6, 222-1 to 222-40, 223-1 to 223-15, 224-1 to 224-4, 225-5 to 225-15, 225-17 to 225-18, 226-1 to 226-23, 227-1 to 227-27, 311-1 to 311-13, 312-1 to 312-12, 313-1 to 313-4, 314-1 to 314-4, and 324-1 to 324-6. See *id.* art. 1.

114. See Proposed Law, *supra* note 3, art. 1. At this point, the author would like to acknowledge that there are some individuals who use religion as a front for criminal conduct;

undermine the human rights or basic freedoms of individuals with the intent to exploit their physical or psychological well-being.<sup>115</sup> Procedurally, Article 1 allows a dissolution action to be initiated by a local prosecutor<sup>116</sup> or at the request of any interested party<sup>117</sup> and creates an expedited dissolution proceeding according to the French Code of Civil Procedure.<sup>118</sup>

*2. Chapter II: Extension of criminal liability to corporations*

Chapter II, Articles 3 through 5 extend criminal liability to corporations that meet Article 1's two dissolution conditions.<sup>119</sup> One possible penalty is the permanent prohibition of the religious activity that gave rise to the criminal liability.<sup>120</sup> Thus, in addition to organizational dissolution, Chapter II provides a mechanism whereby specific minority religious activities may be permanently prohibited.

*3. Chapter III: Increased penalties for re-creating a group that has been dissolved*

Chapter III, Article 6 makes the re-creation or reorganization of a dissolved religious group a criminal offense. It is punishable by a three-year jail sentence and a 300,000 FF fine for the first offense and a five-year jail sentence and a 500,000 FF fine for repeat

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those individuals should be punished to the full extent of the law using existing criminal sanctions.

115. *See id.*

116. *See id.* *See supra* note 89 and accompanying text (describing the 1998 Ministry of Justice circular encouraging local prosecutors to accelerate charges against NRMs thereby cooperating with the Ministry's fight against NRMs).

117. *See* Proposed Law, *supra* note 3, art. 1. Anti-sect associations have been granted legal standing to sue as a party in interest alongside victims and their families. *See* FRANCE COUNTRY REPORT 2000, *supra* note 45; *see also id.* preamble ("Accorder aux associations le droit de se porter partie civile aux côtés des victimes constitue déjà un progrès important.") ("Granting associations the right to sue as a 'partie civile' alongside the victims is already a considerable step forward.") (translation by author). Thus, under the text of this Proposed Law, interested parties would include private associations, like the UNADFI and the CCMM. *See supra* notes 68 & 69.

118. *See* Proposed Law, *supra* note 3, art. 1.

119. *See id.* arts. 3-5.

120. *See id.* art. 2 (referring to French Penal Code art. 131-39[1]2). *See also* 31 THE AMERICAN SERIES OF FOREIGN PENAL CODES: THE FRENCH PENAL CODE OF 1994, at 57 (1999).

offenses.<sup>121</sup> Article 7 calls for the dissolution of any illegally reconstituted religious entities.<sup>122</sup>

*4. Chapter IV: Restrictions on the location and communications of NRMs*

Chapter IV, Article 8 prohibits NRMs from establishing any physical presence within 100 meters of a hospital, retirement home, poor people's home, kindergarten, or primary or secondary school, among other places.<sup>123</sup> The Mayor (and in Paris, the Chief of Police) may forbid the establishment of NRMs who meet the two dissolution conditions established in Article 1.<sup>124</sup> If such an order is violated, the penalty is a two-year jail sentence and a fine of 200,000 FF.<sup>125</sup> Article 9 prohibits groups deemed to satisfy Article 1's dissolution conditions from disseminating information by any means that is aimed at young people and that promotes their religious movement.<sup>126</sup> Such dissemination of information is punishable by a fine of 50,000 FF that is applicable to both organizations and individuals.<sup>127</sup>

*5. Chapter V: Criminalization of mental manipulation*

Chapter V, Articles 10 and 11 create the misdemeanor of "mental manipulation,"<sup>128</sup> which is defined as any activity

with the goal or the effect to create or to exploit the psychological or physical dependence of those who participate in these activities and that undermines human rights or fundamental liberties; to exert on a person heavy and repeated pressure to create or exploit a state of dependency and drive a person, against his will or not, to an act or to abstention from an act the result of which is heavily detrimental.<sup>129</sup>

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121. See Proposed Law, *supra* note 3, art. 6.

122. See *id.* art. 7.

123. See *id.* art. 8. The text of the Proposed Law was amended to read "200 meters" as a result of the Assembly debates.

124. See *id.*

125. See *id.*

126. See *id.* art. 9.

127. See *id.*

128. See *id.* art. 10.

129. *Id.*

This act is punishable by a two-year jail sentence and a fine of 200,000 FF.<sup>130</sup> The penalty increases to a five-year jail sentence and a fine of 500,000 FF if the individual allegedly victimized is someone with a particular vulnerability due to their age, illness, or infirmity.<sup>131</sup> The penalty applies to both corporations and individuals.<sup>132</sup>

### III. THE INVALIDITY OF FRANCE'S PROPOSED LAW AND ITS ANTI-SECT POLICY UNDER FRANCE'S INTERNATIONAL AND EUROPEAN COMMITMENTS TO RELIGIOUS LIBERTY

France's Proposed Law and its anti-sect policy violate its obligations to religious liberty. Part III.A outlines the international and European treaties and covenants protecting religious liberty to which France has committed. Part III.B argues that France's Proposed Law, specifically, and its anti-sect policy, generally, contravene these international and European obligations.

#### *A. France's International and European Commitments to Religious Liberty*

As a member of the United Nations, the Organization for Security and Cooperation in Europe, the Council of Europe, and the European Parliament, France has committed itself to numerous international and European treaties and covenants that protect religious freedom. This part sets forth the pertinent language contained in these covenants and also the authoritative interpretations of these protections.

##### *1. International instruments*

France is committed to several significant international instruments, the most relevant of which are the International Covenant on Civil and Political Rights ("ICCPR")<sup>133</sup> and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief ("1981 Declaration").<sup>134</sup>

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130. *See id.*

131. *See id.* art. 11.

132. *See id.* art. 10.

133. *See* BASIC DOCUMENTS, *supra* note 9, at 69-82 (International Covenant on Civil and Political Rights) [hereinafter ICCPR].

134. *See* BASIC DOCUMENTS, *supra* note 9, at 102-04 (United Nations Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief)

*a. The ICCPR.* The United Nations adopted and opened for signature the ICCPR as United Nations General Assembly Resolution 2200A (XXI) on December 16, 1966.<sup>135</sup> It entered into force on March 23, 1976.<sup>136</sup> France, as a party to the covenant,<sup>137</sup> affirmed the right to freedom of religion and freedom of expression as enshrined in Articles 18 and 19. Article 18 reads:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others.<sup>138</sup>

Article 18 thus ensures, among other things, freedom of religion and freedom to manifest one's religion both individually and in concert with others. This broad guarantee of religious liberty is furthered by Subsection 2, which forbids any state coercion that would impede individual choice of religious belief. According to the text, these religious freedoms may only be limited by state action "necessary" to preserve public safety, order, health, and so forth.

Some interpret Article 18 as a provision that both giveth and taketh away, reading Subsection 3 to authorize government to restrict religious freedom by liberally construing what constitutes a breach of public safety, order, health, or morals. However, the United Nations Human Rights Committee has noted that unequal treatment of religious groups in the name of public order is only legitimate if the

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[hereinafter 1981 Declaration].

135. See ICCPR, BASIC DOCUMENTS, *supra* note 9, at 69.

136. See *id.*

137. See BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEPARTMENT OF STATE, ANNUAL REPORT ON INTERNATIONAL RELIGIOUS FREEDOM FOR 1999 Appendix A (1999) (listing each country's status as a party or signatory to various international religious freedom conventions) [hereinafter STATE DEPARTMENT REPORT 1999].

138. ICCPR, BASIC DOCUMENTS, *supra* note 9, at 74.

treatment serves objective and reasonable purposes and the inequality is proportionate to accomplishing those purposes.<sup>139</sup> This limitation is necessary to ensure that the grants of Subsection 1 are not swallowed up by exceptions justified under Subsection 3.

Finally, Articles 2 and 26 prohibit any form of discrimination based on religion, stating that all persons shall be guaranteed the “equal and effective” protection of the law.<sup>140</sup> This guarantee is particularly important in the context of NRMs, which often are defined out of guarantees of religious liberties by governments because of NRMs’ nontraditional status.<sup>141</sup> Addressing this precise issue, the United Nations Human Rights Committee interpreted Article 18 in its General Comment No. 22(48) by stating:

The terms belief and religion are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reasons, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility by a predominant religious community.<sup>142</sup>

The Human Rights Committee defines NRMs as within the scope of religions protected under Article 18, thus viewing any state attempts to discriminate against NRMs as suspect under the Covenant.

*b. The 1981 Declaration.* The United Nations General Assembly promulgated the 1981 Declaration as Resolution 36/55 on November 25, 1981,<sup>143</sup> and France is a signatory.<sup>144</sup> The 1981 Declaration is considered to be one of the most complete statements of interna-

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139. See BASIC DOCUMENTS, *supra* 9, at 92 (United Nations Human Rights Committee General Comment No. 22 (48)) [hereinafter U.N. Hum. Rts. Comm. General Comment No. 22].

140. ICCPR, BASIC DOCUMENTS, *supra* note 9, at 75; see also *id.* at 69.

141. See *supra* text accompanying notes 45-52. By defining NRMs as automatically dangerous and therefore against the public order, the French government has attempted to circumvent the application of these principles to minority religions. The Human Rights Committee has clearly condemned this practice as violative of these international principles.

142. U.N. Hum. Rts. Comm. General Comment No. 22, BASIC DOCUMENTS, *supra* note 9, at 92.

143. See 1981 Declaration, BASIC DOCUMENTS, *supra* note 9, at 102.

144. See STATE DEPARTMENT REPORT 1999, *supra* note 137.

tional religious freedoms.<sup>145</sup> While Article 1 echoes a guarantee of religious freedom very similar to that found in Article 18 of the ICCPR,<sup>146</sup> successive portions of the 1981 Declaration are unique in several ways.

First, in Article 2, the Declaration defines “intolerance and discrimination based on religion or belief,”<sup>147</sup> as “any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.”<sup>148</sup>

Second, Article 2 provides that “[n]o one shall be subject to discrimination by any State, institution, group of persons or person on the grounds of religion or other beliefs.”<sup>149</sup> This provision is unique in that it prohibits not only states but also private institutions and private persons from engaging in discrimination based on religion.

Third, Article 4 requires that states take *affirmative* measures to “prevent and eliminate discrimination on the grounds of religion.”<sup>150</sup> Furthermore, the Article obligates states to “make all efforts to enact or rescind legislation where necessary to prohibit any such

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145. 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, 488 (1988).

146. Compare 1981 Declaration, BASIC DOCUMENTS, *supra* note 9, at 103 (“Article 1[:] 1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. 2. No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice. 3. Freedom to manifest one’s religion or belief 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 freedom of others.”), with ICCPR, BASIC DOCUMENTS, *supra* note 9, at 74 (“Article 18[:] 1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have *or to adopt* a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice. 3. Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.”) (emphasis added).

147. 1981 Declaration, BASIC DOCUMENTS, *supra* note 9, at 103.

148. *Id.*

149. *Id.*

150. *Id.*

discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter.”<sup>151</sup>

Finally, Article 6 enumerates the specific guarantees under the broad notion of religious freedom.<sup>152</sup> These guarantees are subject to limitations “necessary to protect public safety, order, health or morals or freedoms . . . of others.”<sup>153</sup> Among the enumerated guarantees are the rights:

- (a) To worship or assemble in connexion [sic] with a religion or belief, and to establish and maintain places for these purposes;
- (b) To establish and maintain appropriate charitable or humanitarian institutions;
- (c) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;
- (d) To write, issue and disseminate relevant publications in these areas;
- (e) To teach a religion or belief in places suitable for these purposes;
- (f) To solicit and receive voluntary financial and other contributions from individuals and institutions;
- (g) To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;
- (h) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one’s religion or belief;
- (i) To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.<sup>154</sup>

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151. *Id.*

152. *See id.* at 104.

153. *Id.*

154. *Id.*

## 2. *European commitments*

France has committed itself to two major European instruments protecting religious freedom: the European Convention for the Protection of Human Rights and Fundamental Freedoms (“European Convention”)<sup>155</sup> and the Concluding Document of the Vienna Meeting of Representatives of the Participating States of the Conference on Security and Cooperation in Europe (“Vienna Concluding Document”).<sup>156</sup> These two instruments’ provisions will be discussed in turn, demonstrating France’s obligation: not only to uphold a set of religious freedoms, but also to foster a cultural climate that is tolerant towards religion.

*a. The European Convention.* Opened for signature by the Council of Europe on November 4, 1950, the European Convention entered into force on September 3, 1953,<sup>157</sup> and was ratified by France on May 3, 1974.<sup>158</sup> In addition to establishing the European Commission of Human Rights and European Court of Human Rights,<sup>159</sup> the European Convention protects various rights related to religion and belief.<sup>160</sup> The pertinent portions of the European Convention include Articles 9, 11, and 14. Article 9 explicitly protects freedom of religion and belief:

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in pub-

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155. See BASIC DOCUMENTS, *supra* note 9, at 140 (European Convention for the Protection of Human Rights and Fundamental Freedoms) [hereinafter European Convention].

156. See BASIC DOCUMENTS, *supra* note 9, at 154 (Concluding Document of the Vienna Meeting of Representatives of the Participating States of the Conference on Security and Cooperation in Europe) [hereinafter Vienna Concluding Document].

157. See *id.*

158. See *Treaties of the Council of Europe Ratified by France* (visited Mar. 18, 2000) <<http://www.coe.fr/eng/legaltxt/ratstates/eratfra.htm>>.

159. See *The European Court of Human Rights* (visited Mar. 15, 2000) <<http://www.echr.coe.int/eng/INFORM>> at Part I.A.2 (“In addition to laying down a catalogue of civil and political rights and freedoms, the Convention set up a system of enforcement of the obligations entered into by Contracting States. Three institutions were entrusted with this responsibility: the European Commission of Human Rights (set up in 1954), the European Court of Human Rights (set up in 1959) and the Committee of Ministers of the Council of Europe, the latter organ being composed of the Ministers of Foreign Affairs of the member States or their representatives.”). The ECHR has the power to interpret and enforce the European Convention. See discussion *infra* Part IV.C. for an analysis of the ECHR’s recent judgments interpreting the European Convention’s religious liberty-related provisions.

160. See European Convention, BASIC DOCUMENTS, *supra* note 9, at 140-41.

lic or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.<sup>161</sup>

Article 11 ensures the rights to assemble peacefully and to form minority associations:

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

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedom of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the state.<sup>162</sup>

Similarly, Article 14 prevents discrimination based on religion, guaranteeing that "[t]he enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, [sic] language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."<sup>163</sup>

*b. Vienna Concluding Document.* France is also committed to the Helsinki Process by the Vienna Concluding Document.<sup>164</sup> Adopted

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161. See *id.* at 140. For a general discussion of the ECHR's interpretation of Article 9, see MALCOLM D. EVANS, RELIGIOUS LIBERTY AND INTERNATIONAL LAW IN EUROPE 262-341 (1997); Malcolm N. Shaw, *Freedom of Thought, Conscience and Religion*, in THE EUROPEAN SYSTEM FOR THE PROTECTION OF HUMAN RIGHTS 445 (R. St. F. Macdonald et al. eds., 1993); W. Cole Durham, Jr. et al., *The Future of Religious Liberty in Russia: Report of the De Burcht Conference on Pending Russian Legislation Restricting Religious Liberty*, 8 EMORY INT'L L. REV. 1 (1994).

162. See European Convention, BASIC DOCUMENTS, *supra* note 9, at 141.

163. See *id.* For further interpretation of Article 9 by the European Court of Human Rights, see discussion *infra* Part IV.C.

in 1989,<sup>165</sup> it elaborates specific principles regarding the freedom to profess and to practice religion or belief. France, as a participating member state of the Council for Security and Cooperation in Europe (“CSCE”), committed itself to the following principles:

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

16a. take effective measures to *prevent and eliminate discrimination* against individuals or communities, on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, political, economic, social and cultural life, and *ensure the effective equality* between believers and non-believers;

16b. *foster a climate of mutual tolerance and respect* between believers of different communities as well as between believers and non-believers . . . .

17. The participating States recognize that the exercise of the above-mentioned rights relating to the freedom of religion or belief *may be subject only to such limitations as are provided by law and consistent with their obligations under international law and with their international commitments*. They will ensure in their laws and regulations and in their application the full and effective implementation of the freedom of thought, conscience, religion or belief.<sup>166</sup>

The Vienna Concluding Document thus has several significant features. First, the instrument suggests that its signatory states have a moral duty to ensure the prevention and elimination of discrimination based on religion. Second, the document emphasizes tolerance towards and between religious groups. Finally, any restriction placed on religious freedom must be provided for by *domestic* law (rather than administrative whim) and comply with *international* law and other international obligations. This means that limiting legislation

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164. The Conference on Security and Cooperation in Europe (“CSCE”) was formed in July 1973 by 35 nations from Western and Eastern Europe, the USSR, the United States, and Canada. See BASIC DOCUMENTS, *supra* note 9, at 151. Pursuant to the Helsinki Final Act adopted at the CSCE’s initial conference in 1975, representatives of the participating CSCE States met in Vienna from November 4, 1986, through January 17, 1989. See Vienna Concluding Document, BASIC DOCUMENTS, *supra* note 9, at 154.

165. See *id.*

166. See *id.* at 155-56 (emphasis added).

passed to protect the domestic public order cannot directly contravene enumerated principles of international law.

### 3. *Conclusion*

The international and European treaties and covenants that France has signed explicitly commit France to protecting the religious liberty of all its citizens, not simply those of majority or traditional faiths. Indeed, the term “religion or belief” in these provisions has been authoritatively construed broadly, precisely to prevent states from simply defining out minority religious faiths. These protections not only forbid the enactment of discriminatory legislation by the state. They also mandate that the state implement affirmative measures to ensure a climate of tolerance for all religious believers and nonbelievers alike. Moreover, interpretations of these provisions declare that tolerance and respect for diverse religious traditions build healthy democracies. Finally, any legislation justified by limitation clauses within these instruments must ensure that religious liberty principles are not circumvented under a pretext of protecting the public order.

#### *B. France’s Proposed Law and its Anti-Sect Policy Against its International and European Commitments*

##### *1. France’s Proposed Law contravenes international law*

As previously indicated, the Proposed Law creates civil and criminal legal mechanisms that specifically target NRMs and would dissolve religious entities or impose serious burdens on the exercise of minority religious practices in France.<sup>167</sup> These provisions violate established principles of international law in multiple ways.

Article 1’s dissolution provision violates the rights of assembly and nondiscrimination. It sets a vague, apparently low threshold for the government to dissolve religious entities. More than one conviction of a church’s leader(s) and an alleged intent to exploit the physical or psychological well-being of others makes an organization “dissolvable.” The nature of the convictions necessary to trigger dissolution is unclear; they could include practices that are inherently controversial in the religious context, such as the illegal practice of

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167. See discussion *supra* Part II.C.

medicine (by faith-healers), false advertising, and financial solicitations. The open-ended number of convictions that trigger dissolution allows for much arbitrary administrative action.<sup>168</sup> A determination that an organization is dissolvable places it in legal limbo. Even if it is not actually dissolved, its rights are limited by Articles 3, 4, 5, 8, and 9 of the Proposed Law.

The imminent threat of dissolution so burdens the operations of religious organizations that it violates Articles 6(a) and (b) of the 1981 Declaration, Article 18 of the ICCPR, and Article 9 of the European Convention, which all guarantee the freedom to manifest religion or belief in community with others. By imposing the dissolution criteria to create a separate class of religious organizations, the Proposed Law violates the nondiscrimination principle embodied in Article 2 of the 1981 Declaration, Articles 2 and 26 of the ICCPR, and Article 16(a) of the Vienna Concluding Document. These guarantees reach beyond a formal equality to require “effective equality”<sup>169</sup> and to prohibit any discriminatory purpose or effect based on religious preference.<sup>170</sup> The term “religion or belief” as used in Article 18 of the ICCPR has been broadly interpreted to embrace minority religions in order to prevent governments from doing precisely what the Proposed Law would do: create a separate category of religious organizations as a basis for differential treatment under the law.

Articles 6 and 7 of the Proposed Law, which forbid and penalize the reconstitution of dissolved religious entities, violate the same provisions as Article 1. They serve to make permanent the deprivation of religious rights resulting from dissolution. For a dissolved organization, the Proposed Law provides no avenue for reform and redemption because any reconstitution is similarly forbidden.

Articles 2 through 5 of the Proposed Law, by extending criminal liability to a dissolvable organization and then penalizing that organization with a permanent ban on those religious activities that gave rise to the liability, directly attacks a range of religious practices. Under this regime, none of the rights explicitly guaranteed in Article 6 of the 1981 Declaration is safe from permanent ban. As long as the

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168. See *supra* note 111 (discussing the textual ambiguity in the Proposed Law).

169. Vienna Concluding Document, BASIC DOCUMENTS, *supra* note 9, at 155.

170. Article 2 of the 1981 Declaration prohibits “any distinction” based on religious preference whose purpose or effect impairs the equal exercise of religious freedom. See 1981 Declaration, BASIC DOCUMENTS, *supra* note 9, at 103.

government can link religious practices to criminal liability, it can effectively control what religious practices survive. This invasive regulation by the state—chilling controversial religious practices—violates Article 18.2 of the ICCPR, which prohibits government coercion in the religious marketplace.

By granting city officials the discretion to substantially circumscribe the placement of dissolvable religious organizations, Article 8 of the Proposed Law severely limits a central guarantee in the 1981 Declaration: the right to establish and “maintain places” for assembly, enumerated in Article 6(a). Thus, access limitations to various community institutions is not “prescribed by law,” as required by Article 11.2 of the European Convention, but by the whim of city officials.

Article 9 of the Proposed Law similarly restricts the rights of dissolvable religious corporations by prohibiting any dissemination of any message, by whatever means, to youth. This flatly violates Article 6(d) of the 1981 Declaration, which protects the right to disseminate religious publications as a manifestation of one’s religious belief. Article 9 also contradicts Article 6(e) of the 1981 Declaration and 18.1 of the ICCPR, which both protect the right to teach one’s religion or belief.

Articles 10 and 11 of the Proposed Law—which create the misdemeanor of mental manipulation—restrict potentially all NRMs, not merely those who qualify as dissolvable under Article 1. Therefore, any NRM whose proselytism or teaching could be deemed to create a state of psychological or physical dependence in a follower could be liable under this provision. A suspect psychological theory that has been discredited by the American Psychological Association,<sup>171</sup> the “crime” of mental manipulation would cast the pall of illegality over most forms of religious proselytism and teaching, the lifeblood of NRMs. These provisions violate Articles 6(d) and (e) of the 1981 Declaration, which protect the rights of teaching and dis-

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171. See 1998 *Introvigne Statement*, *supra* note 4. For a discussion of the discrediting of the brainwashing theory within the context of new religious movements, see J. Gordon Melton, *The Rise of the Study of New Religions* 8-10 (unpublished manuscript, on file with author) (documenting the discrediting of brainwashing theory by American academic associations and courts). See also GARAY, *supra* note 69, at 107-29 (arguing against the legal validity of mental manipulation claims); James T. Richardson, “*Brainwashing*” *Claims and Minority Religions Outside the United States: Cultural Diffusion of a Questionable Concept in the Legal Arena*, 1996 BYU L. REV. 873.

semination of religious information. The silencing of those NRMs convicted of mental manipulation—and the chilling effect on other NRMs—effectively impairs the public’s freedom to learn about or adopt a religion or belief. This coercive muting is explicitly forbidden by Article 18.2 of ICCPR. Significantly, mental manipulation reaches situations in which adherents *willingly* follow their religious leaders in acts or abstentions dictated by faith but which the state deems “heavily detrimental.” Thus, the state punishes religious leaders who exhort the faithful to live their religion.

As a whole, the Proposed Law violates international law by overtly discriminating against NRMs, by punishing status rather than conduct, and by creating a climate of intolerance towards NRMs. First, the Proposed Law specifically targets NRMs in direct defiance of international instruments that bind states to prevent discrimination based on religion.<sup>172</sup> Its very title—“A Law Proposal Aimed at Reinforcing the Prevention and the Repression against Groups with a Sectarian Character”<sup>173</sup>—trumpets its discriminatory thrust. This violates Articles 2 and 4 of the 1981 Declaration, which forbid discrimination based on religion and require states to foster tolerance of different religious beliefs.<sup>174</sup> Similarly, this targeting of NRMs contravenes Article 18 of the ICCPR,<sup>175</sup> particularly in light of its authoritative interpretation by the United Nations Human Rights Committee: any religiously-based discrimination is particularly suspect when the targets “are newly established, or represent religious minorities that may be the subject of hostility by a predominant religious community.”<sup>176</sup>

Second, international treaties allow the state to limit religious liberties only when “necessary.”<sup>177</sup> The French government has made

172. See *supra* text accompanying notes 147-51, 163 & 166 (outlining nondiscrimination principles in Articles 2 and 4 of the 1981 Declaration, Article 14 of the European Convention, and Article 16 of the Vienna Concluding Document).

173. See Proposed Law, *supra* note 3.

174. See *supra* text accompanying notes 147-51 (discussing Articles 2 and 4 of the 1981 Declaration).

175. See *supra* text accompanying note 163 (discussing Article 18 of the ICCPR).

176. U.N. Hum. Rts. Comm. General Comment No. 22, BASIC DOCUMENTS, *supra* note 9, at 92.

177. Compare European Convention, BASIC DOCUMENTS, *supra* note 9, at 141 (“Article 9[ : ]2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are *necessary* in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”) (emphasis added) *with* European Convention, BASIC DOCUMENTS, *su-*

no showing that its Penal and Civil Code, without the Proposed Law, is insufficient to penalize unlawful conduct. Punishing unlawful behavior, rather than dissolving an entire religious entity, sufficiently deters similar unlawful conduct. The dissolution of an entire religious entity because of an individual member's unlawful behavior violates the principle of proportionality central to Article 18.3 of the ICCPR.<sup>178</sup> Such disproportional punishment reveals that the legislators aim not merely to penalize unlawful *actions* but to eliminate specific *entities*.

Finally, the Proposed Law neglects France's legal obligation to create an atmosphere of tolerance towards NRMs. Rather than follow the Vienna Concluding Document's mandate to take effective measures to "prevent and eliminate discrimination" against individuals or groups based on religion, the Proposed Law incites such discrimination.<sup>179</sup> In sum, the Proposed Law tears at a web of protected human rights that span international law.

## 2. French anti-sect policy contravenes international law

The violations of international treaties threatened by the Proposed Law are only the latest manifestations of a disturbing pattern of religious discrimination in French policy towards NRMs. The French government has demonstrated a callous disregard for its international commitments: refraining from state coercion as mandated by the ICCPR, taking affirmative measures to combat intolerance as required by the 1981 Declaration, and fostering a climate of tolerance as stipulated by the Vienna Concluding Document.

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*pra* note 9, at 141 ("Article 11[: ]2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are *necessary* in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.") (emphasis added) *with* ICCPR, BASIC DOCUMENTS, *supra* note 9, at 74 ("Article 18[: ]3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are *necessary* to protect public safety, order, health or morals or the fundamental rights and freedoms of others.") (emphasis added).

178. The United Nations Human Rights Committee has interpreted public order limitations to be legitimate only if they serve objective and reasonable purposes and the inequality is proportionate to accomplishing those purposes. *See* U.N. Hum. Rts. Comm. General Comment No. 22, BASIC DOCUMENTS, *supra* note 9, at 92.

179. Vienna Concluding Document, BASIC DOCUMENTS, *supra* note 9, at 155-56. *See supra* text accompanying notes 164-66 (discussing Article 16 of the Vienna Concluding Document).

The most troubling aspect in the preparation of the 1996 *Sects in France* Report was the lack of procedural safeguards. NRMs were black-listed without receiving a full and fair hearing and the list branded groups without giving any reason for their inclusion.<sup>180</sup> Furthermore, the French government has denied black-listed NRMs any recourse. There is no amendment procedure to remove groups from the list, short of a new Commission and Report.<sup>181</sup> Articles 2 and 26 of the ICCPR prohibit precisely this kind of state discrimination based on religion, which deprives citizens of “equal and effective” protection of the law.<sup>182</sup> The significance of the 1996 list cannot be overstated: all subsequent reports have relied upon it as the baseline for segregating suspect religions. Due to the difficulty of defining what constitutes a *secte*, the 1996 list, by default, acts as a *de facto* definition of targeted NRMs.<sup>183</sup> The creation of this list and subsequent measures have fostered a climate of intolerance towards NRMs, whose members have suffered significant marginalization and harassment.<sup>184</sup>

In essence, France’s anti-sect policy offends international law because the policy is an attempt to regulate the choices of French citizens with regard to their religious preferences. Article 18.2 of the ICCPR prohibits any attempts by the State to coerce individuals in their choice of religious belief and practice.<sup>185</sup> At least one other legal scholar has suggested that the “protection of consumers in the religious marketplace” is riddled with dangerous difficulties.<sup>186</sup> When the state seeks to protect the choices of its citizens from the influence of ignorance, misrepresentation, and fraud, it engages in a particularly sensitive activity for several reasons. First, the regulation of a group because of its activities, rather than the regulation of the activities themselves, is usually less effective and more threatening to religious freedom.<sup>187</sup> Second, the determination of fraud or misrepre-

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180. See FRANCE COUNTRY REPORT 2000, *supra* note 45; see also *supra* text accompanying notes 68-70.

181. See *id.*

182. See *supra* text accompanying notes 140-42.

183. See *supra* text accompanying notes 73-74.

184. See *supra* text accompanying notes 95-101 (detailing incidents of discrimination resulting from NRM status).

185. See ICCPR, BASIC DOCUMENTS, *supra* note 9, at 74.

186. Tad Stahnke, *Proselytism and the Freedom to Change Religion in International Human Rights Law*, 1999 BYU L. REV. 251, 321.

187. See *id.*

sentation could potentially place the state in the position of determining the truth or falsity of religious beliefs, which is undesirable in a system based on the separation of church and state.<sup>188</sup> Third, an attempt to provide information to ensure “informed” decisions as to religious belief may often simply be an attempt to influence the actual results of those decisions.<sup>189</sup>

Given these concerns, the state should not be involved in the gathering or disseminating of religious information, particularly when the state is committed to an agenda of “unveiling the truth” with respect to minority religious faiths. If the state does enter into the business of gathering or disseminating religious information, it must do so in an objective and neutral manner. This seems impossible given the strong anti-sect political forces in France and the French government’s alliance with the UNADFI and the CCMM, which both bear clear biases against NRMs.<sup>190</sup>

#### IV. THE PROTECTION OF RELIGIOUS LIBERTIES BY PAN-EUROPEAN LEGISLATIVE AND JUDICIAL INSTITUTIONS

As discussed in Part III, France’s anti-sect policy is disturbing because it runs contrary to the spirit and letter of its international obligations to protect religious freedom.<sup>191</sup> More troubling, however, is the precedential influence that France’s anti-sect measures could have on pan-European institutions, most notably the Council of Europe, and on Eastern European countries looking for new models as they reinvent their governments. If France’s policy of selective religious pluralism prevails as a leading model, these countries in transition will likely adopt increasingly restrictive laws, justified as emulations of the model of a western liberal democracy.<sup>192</sup>

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188. *See id.*

189. *See id.*

190. *See supra* notes 68 & 69 and accompanying text.

191. *See* discussion *supra* Part III.

192. *See Religious Freedom in Western Europe: Religious Minorities and Growing Government Intolerance Hearings Before the Comm’n on Sec. and Cooperation in Europe of the United States Congress*, 106th Cong. 19 (June 8, 1999) (statement of Representative Christopher H. Smith) (“I was amazed how often people [in Russia] used the justification for disenfranchising certain religious denominations. They just pointed to Europe. They pointed to France. They just pointed to Austria and said, ‘Well, why don’t you bring your argument to these countries that have been around and have very settled jurisprudence?’”); Durham, *supra* note 1, at 216 (arguing that developments in Western Europe regarding NRMs are often used as “justifications for even harsher legal provisions in Eastern Europe”).

While the Parliamentary Assembly of the Council of Europe seems to have been somewhat influenced in recent years by France's anti-sect policy,<sup>193</sup> other pan-European legislative and judicial institutions have more successfully withstood the influence. The Parliament of the European Union has stated that democratic institutions based on the rule of law have no need to fear NRMs.<sup>194</sup> However, some commentators express concern that France will use its position as the next president pro tempore of the European Union to advance its anti-sect policy.<sup>195</sup> Whatever the vicissitudes of pan-European legislative bodies, decisions in pan-European courts—the Court of Justice for the European Communities and the European Court of Human Rights—have consistently reinforced principles of religious liberty and encouraged religious pluralism in democratic society.

*A. A Restrictive Shift in the Council of Europe's Response to NRMs*

In the wake of France's anti-sect policy, the Council of Europe's ("COE") Parliamentary Assembly<sup>196</sup> has shifted somewhat its position on appropriate responses toward NRMs. In the late 1980s, at the suggestion of the European Union Parliament, the Parliamentary Assembly considered the issue for the first time, a process that concluded with the original draft of the COE's Hunt Report, submitted in June 1991.<sup>197</sup>

Notably, the Hunt Report explicitly stated that Article 9 of the European Convention made the passage of major legislation prohibiting *sectes* an "undesirable" option.<sup>198</sup> This statement indicates recognition that legislation prohibiting *sectes* interferes with freedom of conscience and religion guaranteed under the Convention. The Re-

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193. See *infra* text accompanying notes 205-08 (describing the influence of French anti-sect reports on the Council of Europe's Natase Report).

194. See *infra* text accompanying notes 219-24.

195. See Dr. T. Jeremy Gunn, Remarks at the Capitol Hill Briefing Sponsored by The Institute on Religion and Public Policy (July 13, 2000).

196. The Parliamentary Assembly—which is made up of 286 representatives from the parliaments of the member states—is the deliberative body of the Council of Europe and makes policy recommendations to the Committee of Ministers. See *About the Council of Europe* (visited Mar. 16, 2000) <<http://www.coe.fr/eng/present/about.htm>>. Comprised of the ministers of foreign affairs of the 41 member states, the Committee of Ministers has the discretion and responsibility to execute the recommendations of the Parliamentary Assembly. See *id.*

197. See *Sects and New Religious Movements*, Eur. Consult. Ass., Doc. No. 6535 (Nov. 29, 1991).

198. See *id.*

port was eventually approved in 1992 as Recommendation 1178.<sup>199</sup> No action was taken to implement the Recommendation by the Committee of Ministers, the COE's executive body.

The conclusion of Recommendation 1178—that major legislation regarding NRMs was undesirable—has received only lip service in the wake of recent anti-sect fervor. On June 22, 1999, the Parliamentary Assembly passed Recommendation 1412, entitled *Illegal Activities of Sects*.<sup>200</sup> The Recommendation, largely a product of the COE's Natase Report,<sup>201</sup> acknowledged the prior recommendation against major legislation<sup>202</sup> but went on to recommend serious legislative measures aimed at NRMs both at the national and European level. The Assembly called on COE member states:

- (i) where necessary, to set up or support independent national or regional information centres on groups of a religious, esoteric or spiritual nature;
- (ii) to include information on the history and philosophy of important schools of thought and of religion in general school curricula;
- (iii) to use the *normal* procedures of criminal and civil law against illegal practices carried out in the name of groups of a religious, esoteric or spiritual nature;
- (iv) to ensure that legislation on the obligation to enroll children at school is rigorously applied, and that appropriate authorities intervene in the event of non-compliance;
- (v) where necessary, to encourage the setting-up of non-governmental organisations for the victims, or the families of victims, of religious, esoteric or spiritual groups, *particularly in eastern and central European countries*;
- (vi) to encourage an approach to religious groups which will bring about understanding, tolerance, dialogue and resolution of conflicts;
- (vii) to take firm steps against any action which is discriminatory or which marginalises [sic] religious or spiritual minority groups.<sup>203</sup>

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199. *Sects and New Religious Movements*, Eur. Consult. Ass., 23rd Sess., Recommendation No. 1178 (1992) (visited Mar. 16, 2000) <<http://stars.coe.fr/ta/ta92/erec1178.htm>> [hereinafter Recommendation No. 1178].

200. *Illegal Activities of Sects*, Eur. Consult. Ass., 18th Sess., Recommendation No. 1412 (1999) (visited Mar. 16, 2000) <<http://stars.coe.fr/ta/ta99/erec1412.htm>> [hereinafter Recommendation No. 1412].

201. *Illegal Activities of Sects*, Eur. Consult. Ass., Doc. No. 8373 (1999) (visited Mar. 16, 2000) <<http://stars.coe.fr/doc/doc99/edoc8373.htm>> [hereinafter Natase Report].

202. See Recommendation No. 1178, *supra* note 199, ¶ 5.

203. See Recommendation No. 1412, *supra* note 200, ¶ 10. The main concern with the establishment of observatories is their structure. If observatories collect and disseminate neutral and unbiased information regarding religious groups, then they may have a legitimate role in religious education. The author would still question whether the government should be in-

The Assembly then recommended that the Committee of Ministers:

- (i) . . . provide for specific action to set up information centres [sic] on groups of a religious, esoteric or spiritual nature in the countries of *central and eastern Europe* in its aid programmes [sic] for those countries; [and] (ii) set up a European observatory on groups of a religious, esoteric or spiritual nature to make it easier for national centres [sic] to exchange information.<sup>204</sup>

The influence of the French model is apparent in the above provisions. First, in drafting its recommendations, the COE's Natase Report relied heavily upon the national legislative reports of France and Belgium that argued for restrictive legislation regarding NRMs.<sup>205</sup> Indeed, the explanatory memorandum included with the Assembly's draft recommendations referenced and reprinted selections from the French and Belgian reports.<sup>206</sup> Second, the French

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involved in religious education at all. However, observatories either financially subsidized by anti-sect organizations or largely informed by them that disseminate anti-sect propaganda would be highly problematic. *See infra* note 211 (quoting the COE Swedish delegate's concerns with objectivity in information centers).

204. Recommendation No. 1412, *supra* note 200, ¶ 11.

205. *See* Natase Report, *supra* note 201.

206. *See id.* at Part II.B.6 (stating the COE Parliamentary Assembly's reliance on the 1995 French National Assembly Report); *id.* at Part II.E.1 (reprinting in the COE Parliamentary Assembly's Report recommendations made by the French Guyard Report). In addition to references to French legislative reports, it is significant to note that the same French Senator, Mr. About, who sponsored the French Senate bill of December 1999 upon which the Proposed Law is based, is a deputy of the COE's Parliamentary Assembly. Indeed, Mr. About actively participated in the debates over official adoption of the Natase Report; his contribution is translated and paraphrased in the Parliamentary Assembly's transcript of the June 22, 1999, debates as follows:

[I]llegal acts [a]re the defining feature of sects and so there [i]s no relation between sects and religions. It [i]s not the sects' beliefs which [a]re in question but their activities, which [a]re illegal and contravene[] human rights. Council of Europe member states need[] to intensify their exchange of information to combat the problem, particularly because sects [a]re often organised [sic] across national frontiers. They also need[] to identify ways of tackling the problem at an international level and to ensure that sects d[o] not have a voice in the international arena. It was wrong that France had been condemned for speaking out against sects in the OSCE [Organization for Security and Cooperation in Europe]. In this respect, parliamentary control of non-governmental organisations [sic] [i]s needed to ensure that the organisations [sic] d[o] not have to operate to promote the activities of sects. It [i]s particularly important to protect the weaker members of society, and the French Parliament ha[s] just passed a resolution about the schooling of children in order to strengthen this protection.

EUR. PARL. ASS. DEB. 18th Sess. (June 22, 1999) (visited Mar. 16, 2000) <<http://stars.coe.fr>

model of government cooperation with private anti-sect organizations (like the UNADFI and the CCMM)<sup>207</sup> is reflected in the Assembly's recommendations. By stressing that member states' governments encourage the establishment of anti-sect organizations in Eastern Europe, the Assembly writes a recipe to repeat French repressive policy towards NRMs in Eastern Europe.<sup>208</sup>

The stated organizational aims of the COE are to strengthen democracy, human rights, and the rule of law throughout its member states and to harmonize member states' laws in furtherance of these human rights protections.<sup>209</sup> None of these goals is furthered by the Assembly's recommendation. The Assembly's demonstrated reliance on French policy in the COE's Natase Report will likely be imitated in the fledgling democracies of Eastern Europe. There is a danger that the French model will be transported to societies that do not have long histories of religious tolerance and that are attempting to reform their government structures away from discredited authoritarianism. Harmonization towards this model of selective religious pluralism warrants concern.

*B. The Response of the European Parliament and its Member States to the Anti-Sect Phenomenon*

Responses to the anti-sect phenomenon by individual Member States of the European Union have varied dramatically.<sup>210</sup> The Swed-

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[/verbatim/9906/e/9909221000e.htm](#)> (statement of Mr. About) [hereinafter Natase Report Debates].

207. See *supra* notes 62-64 and accompanying text.

208. Quite contrary to the French model, the Assembly should be lauded for including points six and seven, which reaffirm tolerance towards minority religions and admonish states to take affirmative steps to eliminate discrimination. It is clear from the Assembly's debates that many representatives felt that the inclusion of these two points provided balance to the recommendation. See Natase Report Debates, *supra* note 206. Other committees forwarded proposed amendments that would have eliminated points six and seven. See *Illegal Activities of Sects*, Eur. Consult. Ass., Doc. No. 8379 (Apr. 20, 1999) (visited Mar. 16, 2000) <<http://stars.coe.fr/doc/doc99/edoc8379.htm>> (amendments forwarded by the Social, Health, and Family Affairs Committee, Rapporteur Mr. Hegyu, Socialist group, Hungary); *Illegal Activities of Sects*, Eur. Consult. Ass., Doc. No. 8383 (Apr. 21, 1999) (visited Mar. 16, 2000) <<http://stars.coe.fr/doc/doc99/edoc8383.htm>> (amendments forwarded by the Committee on Culture and Education, Rapporteur Mr. de Puig, Socialist group, Spain). These amendments were rejected during Assembly debate because they would have imbalanced the recommendation. See Natase Report Debates, *supra* note 206.

209. See *About the Council of Europe*, *supra* note 196.

210. See Willy Fautré, Address delivered at the Center for the Study of Religion in Public Life, Trinity College, Hartford, Connecticut (Sept. 26-27, 1999) (transcript available at *Re-*

ish government's response has been among the more tolerant. It authorized a parliamentary commission and report on *sectes* and, after criticizing anti-sect inquiries elsewhere on methodological grounds, concluded that existing legislative and criminal sanctions were sufficient for any illegal activity.<sup>211</sup>

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*pression of Minority and Non-conventional Religions in Western Europe: Human Rights Implications* (last modified Oct. 19, 1999) <<http://www.hrwf.net/html/Hartford99.html>> (noting that 11 out of the 15 Member States of the European Union have concluded that *sectes* do not pose a sufficient threat to merit the creation of new institutions to combat their influence). See generally Richardson & Van Driel, *supra* note 1.

211. See Willy Fautré, Address delivered at the OSCE Implementation Meeting in Warsaw (Oct. 26, 1998) (transcript available at *OSCE Implementation Meeting in Warsaw: Speech delivered by "Human Rights Without Frontiers"* (last modified Oct. 19, 1999) <<http://www.hrwf.net/html/warsaw.html>>) (documenting the Swedish report's reproach of France for "mak[ing] common cause with the anti-cult movement" against NRMs); Willy Fautré, *The Cult Issue in Western Europe and Religious Intolerance: Policies of the 15 Member States of the European Union with Regard to the Sect Issue* (last modified Oct. 19, 1999) <<http://www.hrwf.net/html/CSCE99.html>> (listing the Swedish Parliamentary Commission's response that existing legislative and penal sanctions are sufficient to counteract any illegal activity by members of *sectes*.)

It should be noted that the Swedish delegate to the Parliamentary Assembly of the Council of Europe issued the most protective statement of religious liberties for NRMs. Mrs. Näslund expressed concern over the still-vague definition of *sectes* and questioned whether the Council of Europe had taken seriously enough its task to protect human rights. With respect to information centers on *sectes*, Mrs. Näslund stated:

The proposed information centers should be completely independent of states. Information should be balanced and unbiased and research should be undertaken by academics who have studied these matters in depth. Douwe Korff [an international human rights lawyer, course director of the European Convention on Human Rights program at the University of Essex in the United Kingdom and a fellow at the Human Rights Center at the same university has stated:]

It is also clearly confirmed in established international legal principles that any information disseminated on minority religious groups or movements should be objective, non- emotive and based on tolerance and understanding. Different groups should not all be tarred with the same brush. On the contrary, information on any particular group should relate to specific activities of the group concerned and not based on generalised [sic] judgements based on selective examples taken from different groups.

Any attempts by the state (or by state bodies such as the proposed information centres [sic]) to indoctrinate individuals (including children) against new or minority religions in general or against specific groups, for example [sic] by issuing biased, subjective or generalised [sic] negative information, which could engender hatred towards the minority groups in question, would not just contravene the principles of openness and tolerance on which the Council of Europe is founded and the right to freedom of religion and belief in particular, but could even constitute offences under international criminal law.

Natase Report Debates, *supra* note 206 (statement of Mrs. Näslund).

At the other extreme, the most drastic responses have emanated from France, Belgium, Germany, and Austria.<sup>212</sup> Belgium, for example, established a parliamentary commission to investigate NRMs, created a list of *sectes*, authorized an observatory to monitor their activities, funded a mass distribution of brochures notifying the public of *secte* dangers, and created a specific government agency to combat *sectes*.<sup>213</sup> Germany's response included the creation of a parliamentary commission to investigate NRMs, heightened monitoring of NRMs (particularly the Church of Scientology), and the mass distribution of anti-sect brochures by the Ministries of Religious Affairs.<sup>214</sup> Likewise, Austria funded the mass distribution of a brochure that black-listed various groups as *sectes* and established an information center on *sectes*.<sup>215</sup>

While these Member States have targeted NRMs on a national level, the European Parliament in recent years generally has acted as a calming influence against the wave of anti-sect sentiment. The tolerance of the 1990s represents an improvement over the more restrictive 1980s. The highly controversial 1984 Cottrell Report,<sup>216</sup> which passed the Parliament after considerable modifications, urged

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212. See Willy Fautré, Address delivered at the Center for the Study of Religion in Public Life, Trinity College, Hartford, Connecticut (Sept. 26-27, 1999) (transcript available at *Repression of Minority and Non-conventional Religions in Western Europe: Human Rights Implications* (last modified Oct. 19, 1999) <<http://www.hrwf.net/html/Hartford99.html>>) (listing the government responses in France, Belgium, Germany, and Austria as the most severe against NRMs).

213. See 1998 Fautré Statement, *supra* note 46 (Belgium); 1998 Introvigne Statement, *supra* note 4 (Belgium). For a discussion of church-state relations in Belgium, see generally Rik Torfs, *State and Church in Belgium*, in STATE AND CHURCH IN THE EUROPEAN UNION, *supra* note 9, at 15.

214. See 1998 Fautré Statement, *supra* note 46 (Germany); 1998 Introvigne Statement, *supra* note 4 (Germany). For a discussion of church-state relations in Germany, see generally Gerhard Robbers, *State and Church in Germany*, in STATE AND CHURCH IN THE EUROPEAN UNION, *supra* note 9, at 57.

215. See *The Treatment of Religious Minorities in Western Europe Hearing Before the House Comm. on Int'l Relations of the United States Congress*, 106th Cong. (2000) (statement of Philip Brumley, General Counsel for Jehovah's Witnesses). For a discussion of restrictive registration laws recently passed in Austria that adversely affect NRMs, see generally Christopher J. Miner, Comment, *Losing My Religion: Austria's New Religion Law in Light of International and European Standards of Religious Freedom*, 1998 BYU L. REV. 607. For a discussion of church-state relations in Austria, see generally Richard Potz, *State and Church in Austria*, in STATE AND CHURCH IN THE EUROPEAN UNION, *supra* note 9, at 229.

216. For a general discussion of the 1984 Cottrell Report, see James T. Richardson, *Minority Religions, Religious Freedom, and the New Pan-European Political and Judicial Institutions*, 37 J. CHURCH & ST. 39, 49-52 (1995).

Member States to exchange information “with particular reference to procedures for conferring charitable status; compliance with the law; attempts to find missing persons; infringements of personal freedoms; creation of centers to assist defectors; and legal loopholes permitting NRMs to transfer activities proscribed in one country to another.”<sup>217</sup> More importantly, the Cottrell Report called for a common approach to the problem by all European states, including a call for the Council of Europe to pass resolutions on the issue.<sup>218</sup> The Council of Ministers did not act on the recommendations of the Cottrell Report.<sup>219</sup>

The 1997 Civil Liberties Committee’s *Report on Sects* (“Berger Report”)<sup>220</sup> reversed the Parliament’s course. The Berger Report called on Member States to apply existing legal provisions and instruments effectively and to ascertain whether there were sufficient provisions—particularly in the areas of the law on associations, corporation law, tax and social security law, and criminal law—to protect the public from *sectes*’ unlawful activities.<sup>221</sup> The Berger Report reaffirmed the inappropriateness of any specific legislation against *sectes* by affirming that existing legal actions were a sufficient sanction against any possible unlawful activity by NRMs.<sup>222</sup>

Notwithstanding this more moderate approach, the Berger Report was rejected for a second time by plenary session in 1998 and sent back to the Civil Liberties Committee for further consideration.<sup>223</sup> The rejection may be explained by the opinion of many European Union Parliament representatives who considered the *secte* danger a non-issue: “[t]here is no reason to fear that the firmly-established democratic institutions based on the rule of law in all the members states are in immediate danger.”<sup>224</sup>

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217. *Id.* at 51.

218. *See id.*

219. *See id.*

220. Report on Sects in the European Union, EUR. PARL. DOC. (A4-0408/97) (1997) (visited Sept. 20, 2000) <<http://www.europarl.eu.int>> [hereinafter Berger Report].

221. *See id.*

222. *See id.*

223. The Berger Report has not been resubmitted to the entire body of the European Parliament.

224. *See 1998 Fautré Statement, supra* note 46. For a general discussion on the application of existing criminal sanctions as opposed to additional punitive measure, see Rik Torfs, *Les nouveaux mouvements religieux et le droit dans l’union européenne: rapport general*, in NEW

While anti-sect sentiment continues to foment at the national level in some European Union Member States, the prevailing sentiment among representatives in political bodies of the European Union is thus one of confidence in existing legal remedies for potential infractions by groups or individual members of *sectes*. This more considered, rational approach—demonstrated through the European Union’s *inaction* on the issue—encourages Member States to have confidence in the rule of law and the judicial process to punish any illegal activity involving NRMs.

*C. Recent Pan-European Court Rulings Upholding Religious Liberty*

Despite the reversals of pan-European legislative bodies,<sup>225</sup> pan-European judicial systems have adamantly upheld principles of religious liberty in the face of rising anti-sect sentiment. The principal pan-European courts are the European Court of Human Rights (“ECHR”) and the Court of Justice of the European Communities (“ECJ”). The rulings of both courts have consistently recognized specific NRMs as religious and legal entities, fully deserving of protection under applicable international treaties. The courts have upheld NRMs’ rights to exercise a full range of religious liberties without repressive interference by the state.

*1. ECHR rulings*

The ECHR has primary authority to interpret and enforce the European Convention.<sup>226</sup> While it is beyond the scope of this Comment to address all of the ECHR’s cases involving violations of Article 9 of the European Convention, this subsection will briefly outline how the ECHR has upheld freedom of religion under Article 9, specifically within the context of NRMs.

The ECHR determined the scope of Article 9 protections in *Kokkinakis v. Greece*.<sup>227</sup> In that case, Mr. Kokkinakis, a Jehovah’s Witness, had been sentenced to imprisonment under a Greek law

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RELIGIOUS MOVEMENTS AND THE LAW IN THE EUROPEAN UNION, *supra* note 1, at 37-66 (presenting three models of responses to the *secte* phenomenon).

225. See discussion *supra* Part IV.B.

226. See European Convention, BASIC DOCUMENTS, *supra* note 9, at 140. See discussion *supra* Part III.A.2.a. (outlining the relevant religious-liberty provisions of the European Convention).

227. *Kokkinakis v. Greece*, 260 Eur. Ct. H.R. (ser. A) (1993).

that made proselytizing an offense.<sup>228</sup> Mr. Kokkinakis claimed that his conviction breached his religious liberties protected under Article 9 of the European Convention. The ECHR held that the Greek law as applied to Mr. Kokkinakis violated Article 9, but the court did not explicitly hold whether the legislation on its face was similarly violative.<sup>229</sup>

In its reasoning, the court outlined the general principles enshrined in Article 9, including both internal and external components. The court first discussed the internal component:

Freedom of thought, conscience and religion is one of the foundations of a “democratic society” within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics [sic] and the unconcerned. The pluralism indissociable [sic] from a democratic society, which has been so dearly won over the centuries, depends on it.<sup>230</sup>

Apart from this internal freedom, the court recognized the external manifestation of one’s religious beliefs as integral to Article 9 protections. “Bearing witness in words and deeds is bound up with the existence of religious convictions.”<sup>231</sup> According to the court, such bearing witness “includes in principle the right to try to convince one’s neighbor”<sup>232</sup> without which, the court noted, the freedom to change one’s religion or belief, as enshrined in Article 9, would be “a dead letter.”<sup>233</sup> Finally, the court stressed that Article 9’s limitation clause applied only to the external component or manifestations of one’s religious belief, recognizing that “in democratic societies, in which several religions coexist within one and the same population, it may be necessary to place restrictions on this freedom in order to reconcile the interests of the various groups and ensure that everyone’s beliefs are respected.”<sup>234</sup>

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228. *See id.* ¶¶ 6-7.

229. *See* P. VAN DIJK & G.H.J. VAN HOOF, *THEORY AND PRACTICE OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS* 555 (3d. ed. 1998).

230. *Kokkinakis*, ¶ 31.

231. *Id.*

232. *Id.*

233. *Id.*

234. *Id.* ¶ 33.

Applying these general principles to Mr. Kokkinakis's conviction, the court engaged in a three-part analysis to determine if the application of the Greek law had violated Article 9. An interference with the right to manifest one's belief was contrary to Article 9 unless it was: (1) "prescribed by law," (2) directed at one or more of the legitimate aims articulated in the limitation clause of Article 9, and (3) "necessary in a democratic society" for achieving those aims.<sup>235</sup> First, the ECHR, deferring to prior Greek court precedent, held that the measure under which Mr. Kokkinakis had been convicted was "prescribed by law" within the meaning of Article 9.<sup>236</sup> Second, the court held that, given the circumstances of the case, the state's purpose "to protect a person's religious beliefs and dignity from attempts to influence them by immoral and deceitful means"<sup>237</sup> was sufficiently directed at a legitimate aim, "namely the protection of the rights and freedoms of others."<sup>238</sup>

On the third prong of its analysis, the court found a violation. The court was careful to give the Contracting States due deference, which the court referred to as a "margin of appreciation," wherein the Contracting States must assess the "existence and extent of the necessity of an interference" with protected manifestations of religious belief.<sup>239</sup> But the court recognized its role as determining "whether the measures taken at a national level were justified in principle and [were] proportionate."<sup>240</sup> Ultimately, the court held that the Greek government had not shown that Mr. Kokkinakis's conviction was justified by a "pressing social need."<sup>241</sup> Moreover, the court determined that the harsh penalty imposed for proselytizing was not proportionate to the legitimate aim pursued<sup>242</sup> and was consequently

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235. *Id.* ¶ 36.

236. *Id.* ¶¶ 40-41.

237. *Id.* ¶ 42.

238. *Id.* ¶ 44.

239. *Id.* ¶ 47.

240. *Id.* ¶ 47. See W. Cole Durham, Jr., *The Distinctive Roles of Church and State*, 1998 *FIDES ET LIBERTAS* 39, 41 ("In modern legal systems this proportionality test is now crucial to determine whether state action that burdens religious freedom is legitimate or not. Note that while the sphere of freedom provided by this approach is smaller, the protection it provides is larger and stronger.").

241. *Kokkinakis*, ¶ 49.

242. See *id.*

not “necessary in a democratic society . . . for the protection of the rights and freedoms of others.”<sup>243</sup>

In 1996, the ECHR was confronted with a second case involving a claim under Article 9 of the Convention, *Manoussakis and Others v. Greece*,<sup>244</sup> which involved “a clear tendency on the part of the [Greek] administrative and ecclesiastical authorities to use [certain legal provisions] to restrict the activities of faiths outside of the Orthodox church.”<sup>245</sup> Mr. Manoussakis, also a Jehovah’s Witness, was convicted for operating a place of worship in violation of a Greek law requiring the prior authorization of the Minister of Education and Religious Affairs in consultation with authorities of the Greek Orthodox Church.<sup>246</sup> The court found a violation of Article 9 of the Convention.<sup>247</sup> Again, the court did not decide the case on the first two prongs of analysis, finding it unnecessary to determine if the interference was “prescribed by law”<sup>248</sup> and determining that the government measure was legitimately aimed at the protection of the public order.<sup>249</sup>

In the third-prong analysis of whether the government measures were “necessary in a democratic society,” the ECHR reiterated the margin of appreciation given to Contracting States, but reminded the government that true religious pluralism was at stake in this calculus.<sup>250</sup> At bottom, the court was uncomfortable with the “far-reaching interference by the political, administrative and ecclesiastical authorities with the exercise of religious freedom.”<sup>251</sup> Not only did the formal provisions of the law confer wide discretion on local officials to deny authorizations, but in practice, the possibility for abuse of discretion was highly probable.<sup>252</sup> The court emphatically con-

243. *Id.*

244. *Manoussakis and Others v. Greece*, 1996-IV Eur. Ct. H.R. Rep. Judgments & Dec. 1346 (1996).

245. LEADING CASES OF THE EUROPEAN COURT OF HUMAN RIGHTS 536 n.11 (R.A. Lawson & H.G. Schermers eds., 1997).

246. *See Manoussakis*, ¶¶ 6-15.

247. *See id.* ¶ 53.

248. *See id.* ¶ 38.

249. *See id.* ¶ 40. Significantly, in the court’s discussion of whether the regulation sought a legitimate aim, the court affirmed that the Jehovah’s Witnesses fall within the definition of a “known religion.” *Id.* ¶ 40.

250. *See id.* ¶ 44.

251. *Id.* ¶ 45.

252. *See id.*

cluded that the right to freedom of religion as guaranteed under the Convention “excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate.”<sup>253</sup> Because of significant evidence that the state had “tended to use the possibilities afforded by the above-mentioned provisions to impose rigid, or indeed prohibitive, conditions on practice of religious beliefs by certain non-Orthodox movements, in particular Jehovah’s Witnesses,”<sup>254</sup> the court held that the law as applied violated Article 9 of the Convention.<sup>255</sup>

While some scholars suggest that the ECHR is reluctant to decide freedom of religion cases under Article 9,<sup>256</sup> the court has provided significant precedent that upholds NRMs’ religious freedoms under the European Convention.

## 2. ECJ ruling

A recent ECJ<sup>257</sup> determination bodes well for the rights of NRMs under the European Union Treaty as well.<sup>258</sup> In *Association Église de Scientologie de Paris & Scientology International Reserves Trust v. The Prime Minister*,<sup>259</sup> the Church of Scientology brought suit against

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253. *Id.* ¶ 47.

254. *Id.* ¶ 48.

255. *See id.* ¶ 53. As in *Kokkinakis*, the court declined to decide whether this type of legislation is *per se* incompatible with Article 9. *See* VAN DIJK & VAN HOOFF, *supra* note 229, at 555.

256. *See, e.g.*, C.A. Gearty, *The European Court of Human Rights and the Protection of Civil Liberties: An Overview*, 52 CAMBRIDGE L.J. 89-127 (1993); Richardson, *supra* note 216, at 41-49.

257. The ECJ is the highest court of appeal for the fifteen Member States of the European Union. *See* K.P.E. LASOK, *THE EUROPEAN COURT OF JUSTICE: PRACTICE AND PROCEDURE* 1, 94-97 (2d. ed. 1994); Catherine Turner, *Human Rights Protection in the European Community: Resolving Conflict and Overlap Between the European Court of Justice and the European Court of Human Rights*, 5 EUR. PUB. L. 453, 459 (1999). Because the ECJ deals mainly with trade and economic matters under the European Treaty, it decides cases involving religious liberties less often than does the ECHR. *See* Turner, *supra*, at 459-60. For a discussion of the two courts overlapping jurisdictions in protecting human rights, see generally Turner, *supra*.

258. *See La scientologie aidée par le droit européen*, LIBÉRATION, Mar. 15, 2000; *La scientologie gagne contre la France devant la Cour européenne de justice*, LA CROIX, Mar. 15, 2000; *L’Eglise de scientologie emporte un succès contre Paris*, LE MONDE, Mar. 16, 2000; *Un point pour la Scientologie*, FRANCE SOIR, Mar. 15, 2000.

259. Case 54/99, *Association Église de Scientologie de Paris & Scientology International Reserves Trust v. Prime Minister*, 2000 E.C.R. \_\_ (visited Mar. 17, 2000) <<http://europa.eu.int/jurisp>>.

the Prime Minister in the French *Conseil d'État*.<sup>260</sup> The Church of Scientology requested that the court repeal a system of prior authorizations for direct foreign investment to NRMs, which investments were considered by the French law to “represent a threat to public policy . . . or public security.”<sup>261</sup> Under the system of prior authorizations, the government refused to authorize the Church of Scientology in Paris to import foreign funds to pay sixty percent taxes levied by the French government on manual donations (*dons manuels*) to the church.<sup>262</sup> As a result, the system of requiring prior authorizations threatened the very existence of the Paris church.

The *Conseil d'État* referred to the ECJ the question of whether the system of prior authorizations was compatible with the Community-law principle of the free movement of capital under the Treaty. The ECJ, in its March 14, 2000, determination, held that the system was not compatible with this standard. The ECJ explained that a system of prior restraints that restricts movement of capital can only be justified by public policy or public security concerns. But, the court explained, such concerns must be strictly construed and must be made subject to review by the Community institutions. Therefore, the public policy grounds used to justify restricting the free movement of capital must be genuine, sufficiently serious, and address a fundamental interest of society. Applying this standard, the court held that the foreign investors were given “no indication whatever as to the specific circumstances in which prior authorization is required.”<sup>263</sup> Thus, the ECJ held that the regulation was “contrary to

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260. The *Conseil d'État* (“Council of State”) is the supreme administrative tribunal of the French administrative courts, located within the executive branch. See RENÉ DAVID, FRENCH LAW: ITS STRUCTURE, SOURCES, AND METHODOLOGY 24 (Michael Kindred trans., 1972). The administrative courts generally have jurisdiction to determine the legality of administrative actions and have power to afford monetary redress to those injured as a result of a public servant’s wrongful action. See WESTON, *supra* note 89, at 87. The *Conseil d'État* statutorily retains original and final jurisdiction over cases concerning the legality of decrees and ministerial regulations, among other things. See *id.* at 88.

261. See *Case 54/99*, ¶ 7. The challenged system of prior authorizations consists of a set of laws that govern financial relations with foreign countries. The pertinent articles quoted by the ECJ included the following: Articles 1, 3(1)(c), and 5-1(1)(1) of Law No. 66-1008 of 28 December 1966 on financial relations with foreign countries; Articles 11, 11(a), 12, and 13 of Decree No. 89-938 of 29 December 1989. See *Case 54/99*, ¶¶ 5-11.

262. See *supra* note 98 and accompanying text (describing *dons manuels* and relevant taxes on the same).

263. *Case 54/99*, ¶ 21.

the principle of legal certainty” because it did not apprise individuals of the extent of their rights and obligations under the Treaty.<sup>264</sup>

The case then returned to the *Conseil d'État* where the tax assessment was overturned.<sup>265</sup> These combined rulings are of monumental significance for NRMs in France, some of which are branches of international churches with coordinated financial management systems. Without these rulings, NRMs would have been restricted from importing foreign funds to satisfy taxes imposed by the French government based on their NRM status, which could threaten their very existence in France.

#### V. CONCLUSION

The French National Assembly's Proposed Law and France's anti-sect policy explicitly target NRMs in direct contravention of international and European treaties and conventions. The Proposed Law is France's most recent attempt—and perhaps its most lethal—to eliminate those new religious movements that the French government deems to be a threat to the public order. The French government should reject the Proposed Law and alter its other anti-sect measures so as to afford minority religious faiths greater protections.

If France persists in its anti-sect campaign, apart from the burdensome effects of these restrictive legislative measures on NRM members in France, the French model threatens to have highly detrimental precedential effects upon Eastern European countries. Indeed, the French model may have already influenced the Parliamentary Assembly of the Council of Europe's recommendation which urged member states, specifically Eastern European countries, to support the establishment of private anti-sect organizations and information centers.

Notwithstanding the Council of Europe's recommendations, the French model appears to have had less influence on numerous other pan-European organizations. The Parliament of the European Union has repeatedly affirmed a more reasoned approach by emphasizing the use of existing national legal sanctions for illegal conduct. The European Court of Human Rights has defended fundamental international principles of religious liberty, ruling in cases that specifically deal with NRMs in European countries, that various restrictive regu-

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264. *Id.* ¶ 22.

265. *See* FRANCE COUNTRY REPORT 2000, *supra* note 45.

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lations violate Article 9 of the European Convention. Finally, the Court of Justice for the European Communities' recent holding favoring an NRM under the European Treaty could dampen future French anti-sect measures. These judicial pronouncements by pan-European courts send a signal to France that its anti-sect policy cannot stand against governing international principles of religious liberty.

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