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DEFINING AWAY RELIGIOUS FREEDOM IN EUROPE: HOW FOUR DEMOCRACIES GET AWAY WITH DISCRIMINATING AGAINST MINORITY RELIGIONS

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Abstract: Despite multiple international and regional prohibitions against religious discrimination, many European Democracies continue to discriminate against minority religions. In particular, this discrimination often occurs due to definitional ambiguity surrounding the term “religion.” Using the examples of Russian, Belgian, French, and German law, this Note reveals how many countries violate the international treaties to which they are signatories by defining many religious groups as “sects,” “cults,” or groups otherwise unworthy of official “religion” status. After discussing the necessary components of a successful definition of “religion,” this Note argues that the most effective way to protect freedom of religion is to abandon the term “religion” altogether and adopt a polythetic approach that protects a list of various religious practices, not religion, from discriminatory treatment.

INTRODUCTION

Article 18 of the Universal Declaration of Human Rights (Universal Declaration) succinctly enshrines religious freedom, stating “[e]veryone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”¹ Other international agreements even legally oblige the vast majority of the world’s nations to respect religious freedom; nevertheless, the right to religious freedom continues to be restricted throughout the world.²

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¹ Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. GAOR, 3d Sess., art. 18, U.N. Doc. A/810 (1948), *reprinted in* Basic Documents on Human Rights (Ian Brownlie ed., 3d ed. 1993) [hereinafter Universal Declaration].

² Bureau of Democracy, Human Rights, and Labor, U.S. Dep’t of State, International Religious Freedom Report 2002: Executive Summary, ¶¶ 2–3 (October 7, 2002), *available*

Although totalitarian and authoritarian regimes are often the worst enemies of religious freedom, their persecution of religious minorities is usually blatant, well-publicized, and clearly denounced by the rest of the world.³ What often goes unreported is that many of the world's democracies are just as guilty of restricting religious freedom as the totalitarian regimes that they so often denounce.⁴ In particular, some European democracies create official religious hierarchies or discriminate against minority religions by categorizing them as "sects" or "cults."⁵ These categorizations not only render such "cults" ineligible for certain government benefits and protections, but also often stigmatize religious minorities in such a way that they are subject to abuse within their communities.⁶ Furthermore, non-democratic nations often copy these "anti-cult" laws, using them as a basis for outright discrimination and persecution.⁷

So many countries slip through the legal loopholes of religious freedom for two basic reasons: (1) "religion" is almost impossible to define; and (2) a group's freedom of religion is always measured against the State's need to maintain public order.⁸ This Note focuses on how best to close the definitional loopholes and ensure that freedom of thought, conscience, and religion are rights enjoyed by every individual, regardless of the spiritual community to which he or she belongs. First, I discuss the ways in which four European democracies restrict the freedom of minority and non-traditional religions; second, I show how the applicable international law, while explicitly forbidding such restrictions, is riddled with loopholes; third, I describe why there is no acceptable legal definition of religion; and fourth, I argue that group-oriented legal distinctions should be abandoned for a balance between individual freedoms and maintaining public order.

at <http://www.state.gov/g/drl/rls/irf/2002/13608.htm> [hereinafter State Dep't, Executive Summary].

³ *Id.* pt. I, ¶¶ 1-7.

⁴ *Id.* ¶¶ 4-5.

⁵ *Id.* ¶ 5.

⁶ State Dep't, Executive Summary, *supra* note 2, ¶¶ 4-6.

⁷ *Id.* ¶ 5.

⁸ See Anne S.Y. Cheung, *In Search of a Theory of Cult and Freedom of Religion in China: The Case of Falun Gong*, 13 PAC. RIM L. & POL'Y J. 1, 4-8 (2004).

I. FOUR COUNTRIES: FOUR EXAMPLES OF RESTRICTING THE FREEDOM OF MINORITY RELIGIONS

It was largely in response to a series of religiously-inspired mass suicides during the mid-1990s, that many European governments began to restrict the freedoms of certain minority religions.⁹ In particular, from 1995–1997, members of the Order of the Solar Temple committed numerous murder-suicides in France and Switzerland resulting in the deaths of over sixty people.¹⁰ France and Belgium explicitly characterized their “anti-cult” legislation and practices as a reaction to the Solar Temple suicides,¹¹ whereas Germany and Russia have simply stated a desire to target “totalitarian sects” or groups that are dangerous to the democratic order.¹² Regardless of the motivating incidents behind the discriminatory legislation of various European countries, most governments are consistent in that they justify such restrictions of religious freedom in the name of tradition, culture, and maintaining public safety.¹³

Although the impetus behind such anti-cult legislation is to prevent the many societal dangers that spring from religious groups, the result has been the creation of two-tiered societies, where certain religions enjoy far more rights and freedom than do others.¹⁴ Although many European countries have passed some sort of anti-cult legislation, I have chosen to highlight the paths taken by the Russian Federation (Russia), Belgium, France, and Germany.¹⁵ I concentrate on these four countries largely because they each contain examples of

⁹ See Bureau of Democracy, Human Rights, and Labor, U.S. Dep’t of State, International Religious Freedom Report 2002: France, § II, ¶ 13, (October 7, 2002) *available at* <http://www.state.gov/g/drl/rls/irf/2002/13938.htm> [hereinafter State Dep’t, France Report]; *see also* State Dep’t, Executive Summary, *supra* note 2, ¶ 5.

¹⁰ Am. Fam. Found., *Cult Mass Suicide Timeline*, at <http://www.csj.org/studvindex/studycult/suicides.htm> (last visited May 11, 2005).

¹¹ State Dep’t, France Report, *supra* note 9, § II, ¶ 13; Bureau of Democracy, Human Rights, and Labor, U.S. Dep’t of State, International Religious Freedom Report 2002: Belgium, § II, ¶ 6 (October 7, 2002), *available at* <http://www.state.gov/g/drl/rls/irf/2002/13924.htm> [hereinafter State Dep’t, Belgium Report].

¹² Bureau of Democracy, Human Rights, and Labor, U.S. Dep’t of State, International Religious Freedom Report 2002: Russia, § II, ¶ 4 (October 7, 2002), *available at* <http://www.state.gov/g/drl/rls/irf/2002/13958.htm> [hereinafter State Dep’t, Russia Report]; Bureau of Democracy, Human Rights, and Labor, U.S. Dep’t of State, International Religious Freedom Report 2002: Germany, ¶ 4 (October 7, 2002), *available at* <http://www.state.gov/g/drl/rls/irf/2002/13936.htm> [hereinafter State Dep’t, Germany Report].

¹³ See State Dep’t, Executive Summary, *supra* note 2, ¶¶ 6–7.

¹⁴ *Id.* ¶¶ 4–7.

¹⁵ *Id.* ¶ 5

relatively “innocent” religious organizations that have been harmed by anti-cult laws.¹⁶

A. *Russia*

After the fall of the Soviet Union, Russia incorporated into its legal code a 1990 Soviet law known as “On Freedom of Religious Confession” (FRC).¹⁷ The FRC declared all religions equal under the law, mandated the separation of church and state, and established voluntary registration procedures for religious groups so that they could gain tax exemptions and establish official places of worship.¹⁸ Since its ratification on December 12, 1993, the Russian Constitution has also guaranteed freedom of religious expression, equality of religions, and separation of church and state.¹⁹ Unfortunately, practice does not always follow principle, and federal and local governments often do not respect the Constitution’s provision for equality of religions.²⁰

Perhaps the most egregious example of the Russian government’s explicit discrimination against certain religious groups can be found in the 1997 law known as “On Freedom of Conscience and on Religious Associations” (FCA).²¹ The FCA categorizes all religious communities either as “groups” or “organizations,” with the rights and activities of those designated as “groups” being severely limited.²² Only after existing within Russia for fifteen years with at least ten citizen members, may a religious congregation register and qualify for “organization” status, thereby gaining the legal status of a juridical person.²³ Juridical person status is extraordinarily important since it permits the “organization” to enjoy certain tax benefits, proselytize, open a bank account, own property, conduct worship services in prisons and state-owned hospitals, publish literature, and issue invitations to foreigners.²⁴ Furthermore, representative offices of foreign reli-

¹⁶ *Id.* pt. I, ¶¶ 35, 38–40.

¹⁷ State Dep’t, Russia Report, *supra* note 12, § II, ¶ 3.

¹⁸ *Id.*

¹⁹ Konstitutsiia RF, art. 28, available at <http://www.departments.bucknell.edu/russian/const/ch2.html> (last visited May 11, 2005).

²⁰ State Dep’t, Russia Report, *supra* note 12, ¶ 1.

²¹ See Grazhdanskii Kodeks RF (“On Freedom of Conscience and on Religious Associations”), chs. II–III, (1997), available at <http://www.law.emory.edu/EILR/special/97law.html> (last visited May 11, 2005) [hereinafter FCA].

²² State Dep’t, Russia Report, *supra* note 12, § II, ¶ 4; FCA, *supra* note 21, chs. II–III.

²³ FCA, *supra* note 21, art. 9.1.

²⁴ State Dep’t, Russia Report, *supra* note 12, § II, ¶ 5; FCA, *supra* note 21, chs. II–III.

gious organizations must obtain “organization” status simply to conduct liturgical services and other religious activities.²⁵

Although the FCA gives no explicit rationale for creating this two-tiered system, article 3.2 of the law does state that religious freedom may be curtailed to defend “the constitutional system, morality, health, or the rights and legal interests of man and citizen . . . ,” or to secure “the defense of the country and the security of the state.”²⁶ However, the U.S. Department of State has characterized the FCA in another manner, claiming that the intent of some of the FCA’s sponsors “appears to have been to discriminate against members of foreign and less established religions by making it difficult for them to manifest their beliefs through organized religious institutions.”²⁷

Indeed, the FCA’s discriminatory registration and classification processes have effectively disenfranchised thousands of minority religious associations, many of which are foreign, and few (if any) of which pose any threat to Russian society.²⁸ Those religious associations that had previously registered under the more liberal FRC had to re-register under the FCA regime by December 31, 2000 or face deprivation of juridical status by a process known as “liquidation.”²⁹ By the 2000 deadline, the time and expense of the FCA’s registration process had proven onerous enough that an estimated 2,095 previously registered organizations were subject to liquidation.³⁰ However, time and expense are not the only barriers of the registration, re-registration, and liquidation processes; the FCA often is used as a blatant tool of discrimination even against well-funded, international organizations.³¹ The Salvation Army was liquidated for years because it was described as a paramilitary organization; many Jehova’s Witnesses congregations have been deemed “a threat to society”; and local governments often simply forbid Muslims from even trying to register at all.³² In a few instances (such as with the Salvation Army), the Constitutional Court eventually rules that such

²⁵ FCA, *supra* note 21, art. 13. Article 13.1 of the FCA defines foreign religious organizations as those which have been “created outside the confines of the Russian Federation and according to the laws of a foreign state.” *Id.*

²⁶ *Id.* art. 3.2.

²⁷ State Dep’t, Russia Report, *supra* note 12, § II, ¶ 4.

²⁸ *Id.* § II, ¶ 8.

²⁹ FCA, *supra* note 21, art. 27.4.; State Dep’t, Russia Report, *supra* note 12, § II, ¶ 8 (noting that the liquidation date of the 1999 amended version of the FCA was postponed one year).

³⁰ State Dep’t, Russia Report, *supra* note 12, § II, ¶ 8.

³¹ *Id.* § II, ¶ 9.

³² *Id.* § II, ¶¶ 23, 26, 28.

liquidations are improper, but often times City Courts continue to delay or obstruct the rescinding of liquidation orders.³³

B. *Belgium*

Much like Russia, Belgium has established a two-tiered society, where certain religions are officially recognized, while others are not.³⁴ Roman Catholicism, Protestantism, Judaism, Anglicanism, Islam, Orthodox Christianity (Greek and Russian), and the Council of Non-Religious Philosophical Communities of Belgium all make up the seven officially recognized religious groupings.³⁵ Only these seven official groups have access to certain legal rights and government subsidies for everything from ministers and teachers to the renovation of church buildings.³⁶ Although the Belgian government does not condemn unrecognized religious groups, such groups are clearly discriminated against in that they are not eligible for government subsidies.³⁷

For those religions that wish to join this group of seven, their recognition process is fraught with vague and subjective criteria, applied by political decision-making bodies.³⁸ In order to qualify for government recognition, a religion must (1) have a structure or hierarchy, (2) have a sufficient number of members, (3) have existed in the country for a long period of time, (4) offer a social value to the public, and (5) abide by the State's laws and respect the public order.³⁹ The ambiguity of these criteria is further clouded by a lack of any definitions for the phrases "sufficient," "a long period of time," or "social value."⁴⁰ Finally, although the Ministry of Justice recommends approval or rejection of all applications, the Parliament has final approval over all recognized status proceedings.⁴¹ In short, representatives of the majority go through a vague and arbitrary process for deciding whether to recognize minority religions.⁴²

To further complicate matters, the Belgian government even has begun discriminating among unrecognized religious groups.⁴³ In

³³ *Id.* § II, ¶ 26.

³⁴ State Dep't, Belgium Report, *supra* note 11, § II, ¶ 2.

³⁵ *Id.*

³⁶ *Id.* § II, ¶¶ 2-3.

³⁷ *Id.* § II, ¶ 5.

³⁸ *Id.* § II, ¶ 4.

³⁹ State Dep't, Belgium Report, *supra* note 11, § II, ¶ 4.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* § II, ¶ 6.

1996, the Belgian Parliament established a special commission to evaluate the potential dangers that religious sects may represent to society.⁴⁴ The commission's 1997 report classified sects into two broad categories: those that are respectable (defined as "organized groups of individuals espousing the same doctrine with a religion") and those that are "harmful sectarian organizations."⁴⁵ "Harmful sectarian organizations" were defined as "groups having or claiming to have a philosophical or religious purpose whose organization or practice involves illegal or injurious activities, harms individuals or society, or impairs human dignity."⁴⁶

Attached to the commission's report was a list of religious groups such as Jehova's Witnesses, the Church of Jesus Christ of Latter-Day Saints, the Church of Scientology, and the Young Women's Christian Association.⁴⁷ This list quickly became known as the "Dangerous Sects List" and, although the report's introduction clearly stated that the list merely consisted of those groups that had been mentioned during testimony, the damage was already done.⁴⁸ When the Parliament adopted several of the report's recommendations, it chose not to adopt the list itself; nevertheless, the groups have since been subject to discriminatory treatment by courts, banks, and the general public.⁴⁹

C. France

The French Constitution guarantees freedom of religion, and France's Law of Separation (often referred to as the "1905 Law") forbids discrimination on the basis of faith.⁵⁰ Although the 1905 Law requires religious communities to register with the government, the registration process does not seem to be exclusionary, and communities may be simultaneously registered in both of the available categories: (1) "*associations cultuelles*" (tax-exempt worship associations) or (2) "*associations culturelles*" (non-tax-exempt cultural associations).⁵¹ In order to qualify for tax-exempt status, a group's sole purpose must be the practice of religious rituals; therefore, most religious groups separate into both

⁴⁴ State Dep't, Belgium Report, *supra* note 11, § II, ¶ 6.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ State Dep't, Belgium Report, *supra* note 11, § II, ¶ 6-7.

⁵⁰ Law of Dec. 9, 1905, arts. 1-2, J.O., Dec. 11, 1905, p. 7205, *excerpts available at* <http://www.justice.gouv.fr/anglais/textfond/cure.html> [hereinafter Law of 1905].

⁵¹ State Dep't, France Report, *supra* note 9, § II, ¶ 2.

associations cultuelles and *associations culturelles*, with the latter taking charge of publicity, running schools, and other non-ritualistic duties.⁵²

Although the French government does not create an explicit hierarchy of religions, the French Parliament did follow Belgium's lead by commissioning a Board of Inquiry into Cults in 1996 (1996 Commission).⁵³ The 1996 Commission's report admitted the difficulty of defining the concept of a cult, yet it did mention the following cult-like characteristics:

Mental destabilization; exorbitant character of the financial requirements; isolation from society; danger to physical health; embrigadement [forced conscription] of the children; the more or less antisocial speech; disorders with the law and order; importance of the legal contentions; the possible diversion of the traditional economic circuits; [and] attempts at infiltration of the public authorities.⁵⁴

Astonishingly, the report of the 1996 Commission proceeded to identify 173 groups as cults, including the Mormons, Jehovah's Witnesses, the Church of Scientology, and the Theological Institute of Nimes (an evangelical Christian Bible College).⁵⁵ None of these "cults" were banned, but many have since claimed to be the victims of intolerance and discrimination.⁵⁶ Following this report in 1998, the government also established the "Interministerial Mission in the Fight against Sects/Cults" to analyze the "phenomenon of cults" and coordinate the government's response to cult activities.⁵⁷

Finally, the June 2001 About-Picard Law lists criminal activities for which religious associations could be subject to complete dissolution, among which are such vague activities as violating a person's freedom, dignity, or identity; false advertising; and creating or exploiting a psy-

⁵² *Id.*

⁵³ Assemblée Nationale, Rapport fait au Nom de la Commission d'Enquête (1) sur les Sectes, (Dec. 22, 1995), available at http://ciff.com/french/Les_Sectes_en_France/cults.html [hereinafter French Cult Commission].

⁵⁴ French Cult Commission, *supra* note 53, § I, A(2d).

⁵⁵ *Id.* § I, B(1); State Dep't, France Report, *supra* note 9, § II, ¶ 13. Both the Belgian and French parliamentary commissions were formed in response to a number of highly publicized mass suicides in the mid-1990s by the Order of the Solar Temple, a religious organization with significant membership in France, Switzerland, and Canada. State Dep't, France Report, *supra* note 9, § II, ¶ 13; State Dep't, Belgium Report, *supra* note 11, § II, ¶ 6.

⁵⁶ State Dep't, France Report, *supra* note 9, § II, ¶ 13.

⁵⁷ *Id.* § II, ¶ 14.

chological or physical dependence.⁵⁸ Although, as of 2002, no cases had been brought under the About-Picard Law, French religious leaders have raised serious concerns about the law's ambiguity and reach.⁵⁹

D. Germany

Germany's Constitution provides for freedom of religion and the separation of church and state.⁶⁰ Furthermore, the federal government may recognize a religious community by granting it the status of "corporation under public law," so long as the organization can assure the government of its permanence and size and that it contributes socially, spiritually, or materially to society.⁶¹ Becoming a "corporation under public law" is highly desirable because it not only confers tax-exempt status upon religions but also entitles them to levy taxes on their own members (collected by the State).⁶² Until recently, religious communities also had to prove their loyalty to the State for tax-exempt status, but under a 2000 Constitutional Court case brought by Jehovah's Witnesses, the "loyalty to the state" provision was struck down.⁶³

Despite these encouraging federal developments, several *lander* (states) have published pamphlets harmful to the reputations of various religious groups.⁶⁴ In particular, many such pamphlets focus upon the Church of Scientology, a favorite target of both the federal and state Offices for the Protection of the Constitution (OPCs).⁶⁵ For example, in 1998, the Hamberg OPC published "The Intelligence Service of the Scientology Organization," a pamphlet claiming that Scientology's spies were infiltrating workplaces and governments to prepare for their final destruction.⁶⁶ Furthermore, until March 2001, federal and state governments required all firms bidding on govern-

⁵⁸ A Bill Directed to the Reinforcement of Prevention and Repression of Cultic Movements which Undermine Human Rights and Fundamental Freedoms (May 30, 2001), available at <http://www.antisectes.net/law2001-cesnur.htm>; State Dep't, France Report, *supra* note 9, § II, ¶ 14.

⁵⁹ State Dep't, France Report, *supra* note 9, § II, ¶ 15.

⁶⁰ Grundgesetz, arts. 3, 4, 7, available at <http://www.lib.byu.edu/~rdh/eurodocs/germ/ggeng.html> (last visited May 11, 2005) [hereinafter German Constitution].

⁶¹ State Dep't, Germany Report, *supra* note 12, § II, ¶ 2.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* § II, ¶ 10.

⁶⁵ *Id.* § II, ¶¶ 10–11.

⁶⁶ Bundesamt für Verfassungsschutz- Hamburg, Der Geheimdienst der Scientology-Organisation—Grundlagen, Aufgaben, Strukturen, Methoden und Ziele—Zweite Auflage, Stand, (May 6, 1998), §§ I, IV, available at <http://cisar.org/books/trn1050.htm> (last visited May 11, 2005).

ment contracts to sign contracts stating that none of the firm's employees were Scientologists.⁶⁷ Although the federal government has since limited the scope of this "sect filter," Scientologists continue to report wide-spread official discrimination throughout Germany.⁶⁸

II. EUROPEAN AND INTERNATIONAL STANDARDS OF RELIGIOUS FREEDOM AND HOW THEY DEFINE RELIGION

The many international legal standards that apply to Belgium, France, Germany, and Russia clearly guarantee freedom of religion, while often balancing that freedom with States' rights to secure the public safety and rights of individuals.⁶⁹ Unfortunately, these instruments rarely define "religion" in a clear and definitive way,⁷⁰ often because "religion" is very difficult to define in legal terms.⁷¹ Indeed, in an attempt to overcome this difficulty, international legal instruments often refer to "freedom of thought, conscience, and religion" *in toto* and sometimes even resort to cataloguing specific rights and practices rather than bothering to define any of these three freedoms.⁷² The result is an impressive body of international law supporting freedom of religion, with little hint as to which religious groupings qualify for these guarantees of freedom.⁷³

A. *The Universal Declaration of Human Rights*

Truly a landmark document, the Universal Declaration was passed by the United Nations in 1948, shortly after the horrors of World War II had subsided.⁷⁴ Although the Universal Declaration imposes no legally-binding obligations, it has since lived up to its claim as "a common standard of achievement for all peoples and all nations . . .," serving as the basis for all human rights instruments that have followed it.⁷⁵ In particular, the language of article 18's guarantee of

⁶⁷ State Dep't, Germany Report, *supra* note 12, § II, ¶ 15.

⁶⁸ *Id.* § II, ¶¶ 15–16.

⁶⁹ See State Dep't, Executive Summary, *supra* note 2, ¶ 4.

⁷⁰ *Id.*; Natan Lerner, *The Nature and Minimum Standards of Freedom of Religion or Belief*, 2000 BYU L. REV. 905, 907–08.

⁷¹ See Lerner, *supra* note 70, at 907.

⁷² *Id.* at 907–08. Freedom of "belief" is also often inserted after "religion," so as to include atheistic, agnostic, and rationalistic world views. *Id.*

⁷³ *Id.* at 931–32.

⁷⁴ Derek H. Davis, *The Evolution of Religious Freedom as a Universal Human Right: Examining the Role of the 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, 2002 BYU L. REV. 217, 224–25.

⁷⁵ Universal Declaration, *supra* note 1, ¶ 1.

“the right to freedom of thought, conscience and religion . . .” for all humankind has been mimicked time and again when defining the legal parameters of religious freedom.⁷⁶ Unfortunately, broad moral aspirations do not always translate into concise legal documents, and international law has yet to define “freedom of religion” in the years since the Universal Declaration’s passage.⁷⁷

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

Since being signed in Rome on November 4, 1950, the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention) has been ratified by forty-five countries, including Belgium, France, Germany, and Russia.⁷⁸ Article 9 of the European Convention not only guarantees “freedom of thought, conscience and religion,” but also that the

[f]reedom 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.⁷⁹

Article 9, like the rest of the European Convention, is subject to the interpretation of the European Court of Human Rights (ECHR), and the ECHR has clearly read article 9 to protect religions from discriminatory treatment.⁸⁰

In 1993, the ECHR first interpreted article 9 in the case of *Kokkinakas v. Greece*, where Mr. Kokkinakas had been convicted under a Greek law that restricted proselytizing by Jehovah’s Witnesses.⁸¹ The ECHR held that the Greek law violated article 9, in part, because the

⁷⁶ *Id.*, art. 18; Davis, *supra* note 74, at 225–26.

⁷⁷ See Lerner, *supra* note 70, at 930–32.

⁷⁸ Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, Member States of the Council of Europe, available at <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=005&CM=8&DF+05/04/04&CL=EN> G.htm (last visited May 11, 2005).

⁷⁹ European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 222, art. 9 (entered into force Sept. 3, 1953), reprinted in Basic Documents on Human Rights (Ian Brownlie ed., 3d ed. 1993) [hereinafter European Convention].

⁸⁰ *Id.* art. 19; Christopher J. Miner, *Losing My Religion: Austria’s New Religion Law in Light of International and European Standards of Religions Freedom*, 1998 BYU L. REV. 607, 623–26.

⁸¹ *Kokkinakas v. Greece*, 260 Eur. Ct. H.R. (ser. A) (1993); Miner, *supra* note 80, at 624.

restrictions upon Jehovah's Witnesses were neither "proportionate," nor "necessary . . . for the protection of the rights and freedoms of others."⁸² Also in 1993, the ECHR decided *Hoffman v. Austria*, a case in which an Austrian woman had been denied custody of her children because, as a Jehovah's Witness, her beliefs would endanger her children's well-being.⁸³ In finding that Austria had violated the European Convention, the ECHR admitted that Austria's aim had been legitimate (protecting children), but also held that Austria had impermissibly discriminated against Mrs. Hoffman because she was a Jehovah's Witness.⁸⁴ In short, the ECHR stated that the European Convention affords "protection against different treatment, without an objective and reasonable justification, of persons in similar situations."⁸⁵

Taken together, *Kokkinakas* and *Hoffman* stand for the distinct notion that the European Convention "may not always protect particular religious beliefs, but it does protect religions from distinctions and unequal protection based solely upon membership in that religion."⁸⁶ Unfortunately, the European Convention does not clearly define the terms "religion" and "belief."⁸⁷ And although the ECHR has stated in *Manoussakis v. Greece* that a State may not "determine whether religious beliefs or the means used to express such beliefs are legitimate," Belgium, France, Germany, and Russia clearly still decide what is, or is not, a bona fide religion.⁸⁸

C. *The International Covenant on Civil and Political Rights*

Belgium, France, Germany, and Russia are also parties to the International Covenant on Civil and Political Rights (International Cove-

⁸² Miner, *supra* note 80, at 624 (citing *Kokkinakas*, 260 Eur. Ct. H.R. (ser. A) (1993), quoting article 9 of the European Convention).

⁸³ *Hoffman v. Austria*, 255 Eur. Ct. H.R. (ser. A) at 45 (1993). In denying custody, the Austrian court feared that the mother might refuse her children blood transfusions on religious grounds and that the mother's religious beliefs would make the children social outcasts. Miner, *supra* note 80, at 625-26.

⁸⁴ *Hoffman*, 255 Eur. Ct. H.R. (ser. A) at 59-60; Miner, *supra* note 80, at 625-26.

⁸⁵ *Hoffman*, 255 Eur. Ct. H.R. (ser. A) at 158.

⁸⁶ Miner, *supra* note 80, at 626.

⁸⁷ European Convention, *supra* note 79, art. 9.

⁸⁸ *Manoussakis v. Greece*, 260 Eur. Ct. H.R. (Ser. A) (1996). As is pointed out in Section IV of this paper, it is unrealistic for the ECHR to prohibit certain interpretations of "religious beliefs" effectively, when the European Convention itself does not define "religious beliefs." See *infra* notes 148-166 and accompanying text.

nant).⁸⁹ Much like the European Convention, the International Covenant guarantees freedom of religion,⁹⁰ but it also explicitly provides that each country's laws must "prohibit any discrimination" for religious reasons.⁹¹ In a clearer fashion than the ECHR's *Kokkinakas* and *Hoffman* interpretations of the European Convention, the International Covenant simply and explicitly prohibits religious discrimination.⁹²

Although broadly granting protection to freedom of thought, conscience, religion, and belief, the International Covenant also fails the definition test in that nowhere does it define these frustrating, but obviously important, terms.⁹³ Recognizing this failure, the Human Rights Committee, established under the International Covenant, has stated:

[t]he 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 reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community.⁹⁴

In light of the legal environments in Belgium, France, Germany, and Russia, it certainly seems that these countries have not complied with the Human Rights Committee's broad construction of "belief" and "religion" within the International Convention.⁹⁵

⁸⁹ Office of the UN High Commissioner for Human Rights—Status of Ratifications of the Principal International Human Rights Treaties, (as of Nov. 2, 2003), available at <http://www.cohre.org/downloads/report.pdf>.

⁹⁰ See International Covenant on Civil and Political Rights, adopted Dec. 16, 1966, 999 U.N.T.S. 171, arts. 18–19 (entered into force Mar. 23, 1976), reprinted in Basic Documents on Human Rights (Ian Brownlie ed., 3d ed. 1993) [hereinafter International Covenant].

⁹¹ International Covenant, *supra* note 90, art. 26.

⁹² Compare International Covenant, *supra* note 90, art. 26, with *Miner*, *supra* note 80, at 626.

⁹³ International Covenant, *supra* note 90, arts. 18, 19, 26.

⁹⁴ Human Rights Committee, General Comment No. 22, Article 18, 48th Sess., Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies (CCPR/C/21/Rev.1/Add. 4, Sept. 27, 1993), available at www1.umn.edu/humanrts/gencomm/hrcom22.htm (last visited May 11, 2005) [hereinafter Human Rights Committee].

⁹⁵ *Id.*; State Dep't, Executive Summary, *supra* note 2, pt. II, ¶¶ 35, 38–40.

D. *Non-binding Documents*

The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981 Declaration) was adopted by the General Assembly of the United Nations on November 25, 1981.⁹⁶ Although it is not a binding treaty obligation, the 1981 Declaration “is generally regarded throughout the world as enumerating the fundamental rights of freedom of religion and belief that belong to all persons”⁹⁷ Furthermore, the 1981 Declaration creates an affirmative duty among States to “take effective measures to prevent and eliminate discrimination on the grounds of religion.”⁹⁸ Continuing the unfortunate struggle to define religion and belief, the 1981 Declaration states:

the expression “intolerance and discrimination based on religion or belief” means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.⁹⁹

The product of over two year’s of meetings, the Concluding Document of the Vienna Meeting 1986 of the Representatives of the Participating States of the Conference on Security and Co-operation in Europe (Concluding Document) also represents a step toward ensuring religious freedom within the signatory countries.¹⁰⁰ Much like the Universal Declaration, European Convention, International Covenant, and 1981 Declaration, the Concluding Document ensures “the freedom of the individual to profess and practice religion or belief,” and it seeks “to prevent and eliminate discrimination against individuals or

⁹⁶ Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, adopted Nov. 25, 1981, G.A. Res. 36/55, 36 GAOR Supp. (No. 51) at 171, U.N. Doc. A/36/51 (1982), *reprinted in* Basic Documents on Human Rights (Ian Brownlie ed., 3d ed. 1993) [hereinafter 1981 Declaration].

⁹⁷ Miner, *supra* note 80, at 628.

⁹⁸ 1981 Declaration, *supra* note 96, art. 4(1).

⁹⁹ *Id.* art. 2(2).

¹⁰⁰ Conference on Security and Co-operation in Europe, Concluding Document of the Vienna Meeting 1986 of Representatives of the Participating States of the Conference on Security and Co-operation in Europe, Held on the Basis of the Provisions of the Final Act Relating to the Follow-up to the Conference, 28 I.L.M. 527 (1989), *available at* http://www.osce.org/docs/english/1973-1990/follow_ups/vienn89e.htm (last visited May 11, 2005) [hereinafter Concluding Document].

communities, on the grounds of religion or belief”¹⁰¹ The Concluding Document is not a self-executing or binding instrument, nor does it define religion or belief.¹⁰² Therefore, although Belgium, France, Germany, and Russia are all signatories to the Concluding Document, none of these countries would be legally bound to the Concluding Document’s precepts even if those precepts were better defined.¹⁰³

III. RELIGIONS AND CULTS: HOW TO DISTINGUISH BETWEEN TWO UNDEFINABLE TERMS?

A. *Why Is It So Difficult to Define Freedom of Religion?*

Not only do the previously discussed human rights instruments fail to define “religion,” but the term remains completely undefined across the entire spectrum of international law.¹⁰⁴ And although legal rights often go undefined, freedom of religion is a right fraught with unique definitional difficulties.¹⁰⁵

T. Jeremy Gunn has explained that the difficulty in defining religion often lies in both the underlying assumptions about the nature of religion and the linguistic form in which its definitions are presented.¹⁰⁶ Gunn suggests that definitions of religion usually begin by presuming one of three principal theories about the nature of religion:

first, religion in its metaphysical or theological sense (e.g., the underlying truth of the existence of God, the dharma, etc.); second, religion as it is psychologically experienced by people (e.g., the feelings of the religious believer about divinity or ultimate concerns, the holy, etc.); and third, religion as a cultural or social force (e.g., symbolism that binds a community together or separates it from other communities).¹⁰⁷

¹⁰¹ *Id.* principles 16, 16.1; Davis, *supra* note 74, at 227.

¹⁰² See Concluding Document, *supra* note 100, principles 16, 16.1; Davis, *supra* note 74, at 227.

¹⁰³ See Concluding Document, *supra* note 100, ¶ 1.

¹⁰⁴ T. Jeremy Gunn, *The Complexity of Religion and the Definition of “Religion” in International Law*, 16 HARV. HUM. RTS. J. 189, 189–90 (2003).

¹⁰⁵ *Id.* at 190–92.

¹⁰⁶ *Id.* at 193–95.

¹⁰⁷ *Id.* at 193–94.

Furthermore, each definition of religion will take either an “essentialist” or a “polythetic” linguistic form.¹⁰⁸ An essentialist definition of religion assumes that each religion shares certain common elements with other religions, and so identifies those common elements within an all-inclusive definition of religion.¹⁰⁹ Conversely, polythetic definitions of religion assume no specific common element, and therefore describe religious practices and thoughts with the hope that a family resemblance might be detected.¹¹⁰

In addition to these methodological difficulties, when creating a set of rules that will regulate every day life, those who craft legal definitions of religion often stumble upon the practical difficulties of religions interacting with established social and cultural norms.¹¹¹ For instance, many statutory and judicial characterizations of religion may contain historical biases in favor of traditional or familiar faiths, “[t]hus legal systems may explicitly or implicitly evaluate (or rank) religions.”¹¹²

B. *The Definitional Problems Encountered by Russia, Belgium, France, and Germany*

Although Russia makes no explicit statutory or judicial attempt to define religion (thereby avoiding any linguistic difficulties), the FCA’s two-tiered categorization of religious communities reveals many of the methodological and practical flaws discussed by Gunn.¹¹³ First, by concentrating solely upon a community’s size and permanence within Russia, the FCA’s approach neglects two of the three principal theories of the nature of religion (the metaphysical and psychological aspects of religion), in favor of an approach that views religion purely as a cultural or social force.¹¹⁴ Second, the FCA is a perfect example of how legal definitions of religion often founder upon the rocks of practical social and historical biases.¹¹⁵ The two dominant spiritual forces in recent Russian history have been the Soviet atheistic legacy and the previous (and secretly concurrent) hegemony of Russian Or-

¹⁰⁸ *Id.* at 194.

¹⁰⁹ Gunn, *supra* note 104, at 194.

¹¹⁰ *Id.* at 194–95 (citing Ludwig Wittgenstein, *Philosophical Investigations* 32e (G. E. M. Anscombe trans., Blackwell 3d ed. 1958)).

¹¹¹ *Id.* at 195–96.

¹¹² *Id.* at 196.

¹¹³ FCA, *supra* note 21, chs. II–III; see Gunn, *supra* note 104, at 190–95.

¹¹⁴ FCA, *supra* note 21, art. 9.1; see Gunn, *supra* note 104, at 193–94.

¹¹⁵ State Dep’t, *Russia Report*, *supra* note 12, § II, ¶ 2; Gunn, *supra* note 104, at 195–97.

thodoxy.¹¹⁶ Indeed, the FCA even explicitly recognizes the “special contribution of Orthodoxy to the history of Russia and to the establishment and development of Russia’s spirituality and culture.”¹¹⁷ Judged against these social considerations, it should come as no surprise that Russian laws on religious freedom test a spiritual community’s legitimacy by its size and permanence.¹¹⁸

Like Russia, Belgium’s process for officially recognizing a religion depends upon an exclusively “cultural force” view of the nature of religion, excluding the more personal metaphysical and psychological aspects of religion.¹¹⁹ Although Belgium does not have Russia’s history of hegemonic spiritual dominance, practical social concerns have clearly led the Belgian government to establish criteria that define religion in a way that (like Russia) stresses structure, size, and permanence.¹²⁰ Indeed, the very fact that the Belgian Parliament retains final approval of all recognition proceedings further emphasizes the majoritarian social pressure upon deciding which religions shall be deemed legitimate.¹²¹

Like Russia and Belgium, France does not offer an explicit legal definition of religion, yet the French system of dividing communities into *associations cultuelles* and *associations culturelles* reveals a distinctly different view of the nature of religion.¹²² Whether a group qualifies for tax-exempt, *associations cultuelles* status depends upon the existence of ritualism and the absence of more secular concerns such as publicity and education.¹²³ Although this view acknowledges the social aspects of religion (a group’s unique symbolism and activities), the French approach also recognizes the metaphysical aspect of religion as something that is divorced from every-day, secular activities.¹²⁴ This unique approach must surely stem from the practical difficulties of fitting a legal definition of religion into an historically secularist political society.¹²⁵

¹¹⁶ State Dep’t, Russia Report, *supra* note 12, § II, ¶ 2.

¹¹⁷ FCA, *supra* note 21, ¶ 2.

¹¹⁸ *See id.* art. 9.

¹¹⁹ *See* State Dep’t, Belgium Report, *supra* note 11, § II, ¶ 4.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *See generally* Law of 1905, *supra* note 50; State Dep’t, France Report, *supra* note 9, § II, ¶ 2.

¹²³ State Dep’t, France Report, *supra* note 9, § II, ¶ 2.

¹²⁴ *Id.*; Gunn, *supra* note 104, at 193–94.

¹²⁵ *See generally* Jacques Robert, *Religious Liberty and French Secularism*, 2003 BYU L. REV. 637 (describing the historical and cultural roots of Germany’s attitudes toward religion).

Finally, German law also avoids explicitly defining religion, yet its system for granting public corporation status (with factors including a group's permanence, size, and contribution to society) shows a now familiar bias toward viewing religion as a social or cultural phenomenon.¹²⁶ A hint of the public's social concerns can also be seen in the need for religious communities to contribute to society; perhaps, this social contribution element stems from the country's history and resulting fear of anti-social, ideologically totalitarian groups.¹²⁷

C. *The Definitional Problems Encountered in International Instruments*

The Universal Declaration, the European Convention, the International Covenant, the 1981 Declaration, and the Concluding Document all fail to define "religion," perhaps implicitly recognizing the impossibility of an adequate definition.¹²⁸ Yet, despite any definitional deficits, these instruments often use such broad and inclusive language to list their protected freedoms that many of Gunn's theoretical and linguistic challenges are almost met.¹²⁹

The Universal Declaration satisfies two of the three theoretical approaches to defining religion by recognizing it both as an individual psychological experience (guaranteeing the right to change religions or beliefs) and/or a cultural or social experience (guaranteeing the right to practice alone or in a community).¹³⁰ Likewise, the Universal Declaration fully embraces an inclusive, polythetic linguistic approach to defining its freedoms.¹³¹ By not only including freedom of "thought" and "conscience" with freedom of religion, but also listing the various actions and manifestations of spiritual belief, the Universal Declaration rejects an essentialist approach and recognizes that there may not be any one element that is common to all religions or systems of belief.¹³² In these ways, the Universal Declaration manages

¹²⁶ German Constitution, *supra* note 60, art. 4; State Dep't, Germany Report, *supra* note 12, § II, ¶ 2; Gunn, *supra* note 104, at 193–94.

¹²⁷ Gerhard Robbers, *Religious Freedom in Germany*, 2001 BYU L. REV. 634, 661.

¹²⁸ Gunn, *supra* note 104, at 189–90.

¹²⁹ Lerner, *supra* note 70, at 907–08; Gunn, *supra* note 104, at 193–97.

¹³⁰ Universal Declaration, *supra* note 1, art. 18 (stating "[e]veryone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance"); Gunn, *supra* note 104, at 193–94.

¹³¹ See Universal Declaration, *supra* note 1, art. 18.

¹³² *Id.*

to combat many of the deficiencies of definitions of “religion” without actually having to define the term.¹³³

Article 9, section 1 of the European Convention copies the exact language of article 18 of the Universal Declaration in its guarantee of “freedom of thought, conscience and religion” and its polythetic approach to protecting the various manifestations of religion or belief.¹³⁴ Furthermore, the *Kokkinakas*, *Hoffman*, and *Manoussakis* line of cases reveals that the ECHR’s interpretation of the European Convention prohibits state discrimination among various religions.¹³⁵ Therefore, the European Convention combines the Universal Declaration’s polythetic structure and its recognition of religion as both a psychological and a cultural experience with an ECHR interpretation that recognizes the practical discriminatory consequences of applying laws to peoples with established cultural biases.¹³⁶ Yet, as is discussed in Section V of this paper, even instruments with language as broad and inclusive as that found in the European Convention can suffer from their neglecting to define religion.¹³⁷

As previously discussed, the ramifications of the International Covenant’s failure to define “religion” and “belief” have been recognized by its own Human Rights Committee.¹³⁸ The Committee bravely tried to reverse the failings of these definitional problems by stating that the terms should be broadly construed and the rights of traditional religions should also extend to “religions and beliefs with institutional characteristics or practices analogous to those of traditional religions.”¹³⁹ The Committee even went on to explicitly denounce the use of definitional niceties to discriminate against minority religions.¹⁴⁰ Nevertheless, the combined International Covenant/Human Rights Committee approach simply addresses the practical concerns of defining religion without addressing any of Gunn’s methodological problems.¹⁴¹ In order to stop discrimination against minority religions

¹³³ See *id.*; Gunn, *supra* note 104, at 193–97.

¹³⁴ Compare European Convention, *supra* note 79, art. 9 with Universal Declaration, *supra* note 1, art. 18.

¹³⁵ Miner, *supra* note 80, at 623–26.

¹³⁶ European Convention, *supra* note 79, art. 9; Miner, *supra* note 80, at 623–26.

¹³⁷ See European Convention, *supra* note 79, art. 9.

¹³⁸ International Covenant, *supra* note 90, art. 18; Human Rights Committee, *supra* note 94, general comment 22.

¹³⁹ Human Rights Committee, *supra* note 94, general comment 22.

¹⁴⁰ *Id.*

¹⁴¹ See International Covenant, *supra* note 90, art. 18; Human Rights Committee, *supra* note 94, general comment 22; Gunn, *supra* note 104, at 193–94.

and beliefs, as well as their analogues, it is still necessary to define “religion.”¹⁴²

As one might expect, since the 1981 Declaration and the Concluding Document are non-binding instruments, they have the leeway to go even further than the European Convention and the International Covenant in denouncing discrimination against minority religions and beliefs.¹⁴³ Nevertheless, these documents’ strength of language is still fundamentally weakened by a lack of definitional certainty.¹⁴⁴ For instance, in clarifying its definition of “intolerance and discrimination based on religion or belief,” the 1981 Declaration seems to abandon any hope of defining either “religion” or “belief,” and rather concentrates on a polythetic approach to defining the various types of intolerance and discrimination that may occur.¹⁴⁵ As was the case with the European Convention and the International Covenant, the 1981 Declaration’s attempt to broaden the protection for minority religions is laudable, but this broadening ignores the practical difficulties of protecting any right that remains undefined.¹⁴⁶ Similarly, the Concluding Document bravely seeks the prevention and elimination of all “discrimination against individuals or communities on the grounds of religion or belief . . .”, yet neither of these grounds are defined.¹⁴⁷

IV. ABANDON DEFINITIONS AND CLASSIFICATIONS OF RELIGION AND RELY UPON PUBLIC ORDER DOCTRINES

The European legal environment of religious freedom is now quite polarized.¹⁴⁸ International law seems to strive for an ever-broadening protection of religious freedom, and is therefore unable to define religion in a way that does not omit certain spiritual communities.¹⁴⁹ On the other hand, knowingly or unknowingly, Russia, Belgium, France, and

¹⁴² See Lerner, *supra* note 70, 907–08.

¹⁴³ Compare European Convention, *supra* note 79, art. 9, with Lerner, *supra* note 70, 913–21.

¹⁴⁴ See Concluding Document, *supra* note 100, principles 16–16.11; see also 1981 Declaration, *supra* note 96, art. 2.

¹⁴⁵ 1981 Declaration, *supra* note 96, art. 2(2) (stating “the expression ‘intolerance and discrimination based on religion or belief’ means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis”).

¹⁴⁶ See Gunn, *supra* note 104, 195–99 (commenting on how societal biases can lead to definitional stretching when deciding what is legally regarded as a “religion”).

¹⁴⁷ Concluding Document, *supra* note 100, principle 16.1.

¹⁴⁸ Compare Davis, *supra* note 74, 225–32 with Gunn, *supra* note 104, 193–97.

¹⁴⁹ Compare Davis, *supra* note 74, 225–32 with Gunn, *supra* note 104, 193–97.

Germany evade the reach of these international instruments by establishing a definitional hierarchy of spiritual communities that clearly places certain groups outside the definition of “religion.”¹⁵⁰ Sometimes these countries’ definitions of religion are restrictive because of cultural biases or preconceptions about the very nature of religion, but other times they simply stumble upon the linguistic difficulties of defining a word that means many things to many people.¹⁵¹

The preferred solution lies in a polythetic definition of religion that avoids discussing the nature of religion in favor of a list of its possible manifestations.¹⁵² In practical linguistic terms, this would not only enshrine freedoms “of” certain things (religion, belief, thought, and conscience), but also freedoms “to do” certain things in accordance with any system of beliefs (teach, practice, worship, and observe).¹⁵³

This language, and these concepts, are not new; in fact, in 1948, the Universal Declaration called for everyone to have the right “to manifest his religion or belief in teaching, practice, worship and observance”, and this exact language has been copied by the legally binding European Convention.¹⁵⁴ However, the freedom “to do” lists found in these instruments are clearly and explicitly linked to manifestations of “religion.”¹⁵⁵ By tying these freedoms to the word “religion” without defining it, the Universal Declaration and European Convention allow states to define the term in ways that may contravene the instruments’ very purpose.¹⁵⁶

A. What Term Should Replace “Religion”?

It is tempting to consider phrases, such as “system of belief” or “faith-based community,” that might possibly serve as substitutions for “religion” in international instruments. Nevertheless, it is important to realize that any analogues of “religion” would fall into the same definitional pitfalls of the original term.¹⁵⁷ Indeed, by its very nature, religion is (among other things) a practice that contemplates that

¹⁵⁰ State Dep’t, Executive Summary, *supra* note 2, pt. II, ¶¶ 35, 38–40.

¹⁵¹ See State Dep’t, Russia Report, *supra* note 12, § II; State Dep’t, France Report, *supra* note 9, § II; State Dep’t, Germany Report, *supra* note 12, § II; State Dep’t, Belgium Report, *supra* note 11, § II; Gunn, *supra* note 104, at 193–97.

¹⁵² See Gunn, *supra* note 104, at 193–95.

¹⁵³ Universal Declaration, *supra* note 1, art. 18.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*; European Convention, *supra* note 79, art. 9.

¹⁵⁶ See State Dep’t, Executive Summary, *supra* note 2, ¶¶ 4–6.

¹⁵⁷ See Gunn, *supra* note 104, at 193–97.

which cannot be readily explained by ordinary perceptions of reality.¹⁵⁸ It is this very feature that makes the term inherently impossible to define.¹⁵⁹ Any attempt at an essentialist definition of religion through analogous terminology would almost, by necessity, rob the term of its intended meaning.¹⁶⁰

The preferred, although counter-intuitive, approach would be to guarantee religious freedom without even defining religion or attempting to find analogous terminology.¹⁶¹ By protecting the manifestations (teaching, practice, worship, and observance) of any belief system, international human rights instruments would protect religions from discriminatory treatment without even mentioning the word "religion."¹⁶² Admittedly, such a definitional scheme would certainly challenge the cultural biases of many countries, as many non-traditional systems of belief would gain the same protection from discrimination as traditional religions.¹⁶³ Indeed, under such a scheme it might even be difficult to differentiate certain political or economic movements from spiritual ones; yet, it is perhaps easier to deal with such problems by defining political and economic terminology, rather than struggling with spiritual terminology.¹⁶⁴

Furthermore, as is stated in the European Convention, each State will (and should) always retain the right to limit manifestations of religious freedom as is "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."¹⁶⁵ Reliance upon such public order doctrines would protect states from dangerous individuals, while respecting and protecting the rights of any particular group of people.¹⁶⁶

¹⁵⁸ See *id.*

¹⁵⁹ See *id.*

¹⁶⁰ See *id.*

¹⁶¹ Cf. Lerner, *supra* note 70, 907–21 (outlining the evolution of international instruments that define and protect religious freedom).

¹⁶² Universal Declaration, *supra* note 1, art. 18. The terminology "teaching, practice, worship, and observance" is that which is used by the Universal Declaration. *Id.*

¹⁶³ See Gunn, *supra* note 104, 195–97.

¹⁶⁴ See State Dep't, Germany Report, *supra* note 12, ¶ 2 (explaining Germany's refusal to recognize the Church of Scientology as a religion because it is actually an economic enterprise).

¹⁶⁵ European Convention, *supra* note 79, art. 9(1–2).

¹⁶⁶ See *id.* art. 9(2).

CONCLUSION

Although it lacks a definition of religion, international law clearly does not accept the limitation of religious freedom due to definitional niceties. A country may not shirk its duty to assure each individual citizen equal freedoms of thought, conscience, religion, and belief. Nevertheless, even democratic countries with freedom of religion enshrined in their own constitutions continue to restrict religious freedom by discriminating against individuals, simply due to the traits of the spiritual communities to which those individuals belong.

Although certain cultural and social biases often contribute to these discriminatory definitional schemes, public safety is the overwhelming legal justification for treating “cults” and minority religions differently. Understanding this to be the case and recognizing their status as supposed paragons of human rights, Western democracies (such as Belgium, France, Germany, and Russia) ought to abandon preferential schemes for certain religious communities and rely upon currently existing public order doctrines. In other words, crack down on dangerous activities and individuals, not on religious groups that may or may not be prone to certain dangerous activities.