

**CHINA'S NATIONAL AND LOCAL REGULATIONS ON
RELIGION: RECENT DEVELOPMENTS IN
LEGISLATION AND IMPLEMENTATION**

ROUNDTABLE

BEFORE THE

**CONGRESSIONAL-EXECUTIVE
COMMISSION ON CHINA**

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CONTENTS

	Page
STATEMENTS	
Carlson, Eric R., attorney, Covington & Burling, LLP, Washington, DC, and Fellow of the International Center for Law and Religion Studies, J. Reuben Clark Law School, Brigham Young University, Provo, UT	2
Fu, Xiqu "Bob," President, China Aid Association, Midland, TX	5
Tong, James W., associate professor of comparative politics, University of California-Los Angeles, Los Angeles, CA	9
APPENDIX	
PREPARED STATEMENTS	
Carlson, Eric, R	26
Fu, Xiqu "Bob"	34
Tong, James W	40

CHINA'S NATIONAL AND LOCAL REGULATIONS ON RELIGION: RECENT DEVELOPMENTS IN LEGISLATION AND IMPLEMENTATION

MONDAY, NOVEMBER 20, 2006

CONGRESSIONAL-EXECUTIVE
COMMISSION ON CHINA,
Washington, DC.

The Roundtable was convened, pursuant to notice, at 2 p.m., in room 2200, Rayburn House Office Building, David Dorman (Senate Staff Director) presiding.

Also present: John Foarde, House Staff Director; Kara Abramson, Senior Counsel; Lawrence Liu, Counsel; Mark S. Milosch, Special Advisor; Diana Wang, Senior Research Associate; and Susan O'Sullivan, Office of Hon. Barry Lowenkron, Assistant Secretary of State for Democracy, Human Rights, and Labor.

Mr. DORMAN. Let's get started. Today's Congressional-Executive Commission on China staff-led roundtable will address China's national and local regulations on religion, and their impact on freedom of religion in China.

On behalf of our Chairman, Senator Chuck Hagel, and our Co-Chairman, Representative Jim Leach, I would like to welcome all of you to our roundtable today, and in particular, thank our very distinguished panelists who are with us today to share their knowledge, experience, and wisdom on a very complex set of issues.

As has been past practice, I will begin the roundtable by making a short statement on behalf of the Commission. Following that, I will introduce each of our witnesses and give each 10 minutes to make an opening statement.

Once each of the witnesses has made a 10-minute statement, we will begin a question and answer period. Each person on the dais will have five minutes to ask a question of one or all the witnesses and hear an answer, and we will continue asking questions and hearing answers until we reach 3:30, or run out of questions.

To date, we have never run out of questions during a roundtable, so I think we will be all right. In fact, we have often found it necessary, unfortunately, to end roundtables before all the questions have been asked.

So if our witnesses would take their seats, we will get started.

I noticed that Mr. Harry Wu is in the audience. A special welcome to you, Harry, a real champion for human rights in China. We are glad that you were able to join us today. Thanks. And thanks for all your good work.

On March 1, 2005, the State Council's Regulation on Religious Affairs entered into force, representing the first comprehensive national regulation devoted to religious issues. Since then, some provincial level governments in China have amended or issued new regulations on religion, while others continue to use older regulations.

The Regulation on Religious Affairs and related local regulations introduced some transparency to China's system of religious regulation, but inconsistencies among regulations and ambiguities within them persist.

Although Chinese Government officials and some scholars have stated that the Regulation on Religious Affairs represents a paradigm shift by limiting state control over religion, in the past year the Commission and other human rights groups have reported continued government repression of some unregistered groups and tight controls over registered communities.

This roundtable will examine the interplay between the National Regulation on Religious Affairs and local regulations, and discuss the practical impact of such regulations on freedom of religion in China.

With that, as is standard practice, we will introduce the witnesses in alphabetical order, beginning with Mr. Eric R. Carlson. Mr. Carlson is an attorney with Covington & Burling LLP in Washington. He is the author of "China's New Religious Regulations: A Small Step, Not a Great Leap, Forward" and co-author of the book "Religious Freedom on China: Policy, Administration, and Regulation." Mr. Carlson also serves as a Fellow of the International Center for Law and Religion Studies at the J. Reuben Clark Law School at Brigham Young University.

Mr. Carlson, you have 10 minutes for an opening statement. I would ask that you would speak into the microphone so we can get a clear recording for the record. Thank you.

STATEMENT OF ERIC R. CARLSON, ATTORNEY, COVINGTON & BURLING LLP, WASHINGTON, DC, AND FELLOW OF THE INTERNATIONAL CENTER FOR LAW AND RELIGION STUDIES, J. REUBEN CLARK LAW SCHOOL, BRIGHAM YOUNG UNIVERSITY, PROVO, UT

Mr. CARLSON. Thank you very much.

Good afternoon.

My name is Eric Carlson, and I am an attorney with Covington & Burling LLP. These remarks reflect my personal viewpoints and not those of the firm or any of its clients.

As a lawyer by training and trade, I hope to offer a few thoughts from a legal perspective on China's national and regional regulations, with the full realization that the situation on the ground does not always comport with legal requirements.

In late 2004, China's State Council indicated that it would issue a new Regulation on Religious Affairs, or RRA, that would be a paradigm shift in religion administration.

At the time, many observers, including myself, expressed cautious optimism that, while the RRA did not represent a fundamental reordering of state supervision over religion, it might result in a small step toward greater religious freedom in China.

The RRA omitted several restrictions contained in prior national and regional regulations and left several provisions vague, possibly indicating a gradual shift toward more flexibility in religious administration, and perhaps allowing space for unregistered groups to flourish. Further, the RRA provided additional legal protections in several areas.

In the two years since the announcement of the RRA, this optimism has been tempered by actual events. The RRA offered few unrestricted rights. Most contained qualifications, provisos, and restrictions. The omissions that were thought perhaps to signal a new openness did not grant any new rights, and religious groups are not fundamentally on more solid legal ground than before.

The vagueness in the RRA cuts both ways, allowing for inconsistent interpretation and the possibility of abuse of discretion by less sophisticated local officials. Scholars cautioned that much would depend on implementing guidelines issued subsequent to the RRA. The practical implementation of the RRA indicates that the rights set forth in the RRA could be viewed as a ceiling rather than a floor.

Since the promulgation of the RRA, one national-level regulation and eight regional regulations affecting religious administration have been promulgated. While the overall scheme of state supervision over religion remains constant, inconsistencies among these regulations raise practical questions for both registered and unregistered religious groups.

Six weeks after the RRA took effect, the State Administration for Religious Affairs [SARA] promulgated the Measures on the Examination, Approval, and Registration of Venues for Religious Activity [Measures]. Similar to the RRA, the Measures do not provide any new rights per se, but do represent a more sophisticated effort to give clarity to the registration process. Specific procedures give both religious organizations and bureaucrats a clear process to follow.

The Measures also provide for decentralized decisionmaking, moving approval down to provincial and lower levels, which then report their decisions to SARA. While this decentralization may result in faster decisionmaking, it could also be prone to abuse by provincial and lower level officials who are often less sophisticated than their national counterparts.

Article 2 of the Measures includes “other fixed venues for religious activities” in the definition of permitted religious venues, rather than limiting religious venues to those of the five traditional religions. The term “religious groups” is not defined in the Measures.

Article 5 of the Measures requires, among other things, a list of the members of the preparatory committee, which is better than previous rules requiring a list of all members, but still reflects a seeming mistrust of religion.

Article 11 clarifies that previously registered venues need not apply for registration, and Article 15 clearly repeals the supplemental registration regulations promulgated by SARA in 1994. These clarifying provisions are helpful in giving more legal certainty to religious groups.

The largest problem with the Measures, though, is that no clear approval standard exists. Article 6 requires religious cadres to “solicit” the opinions of local leaders.

The question arises: do these local leaders exercise a veto over approval of religious venues? If not, how much weight is given to their opinions? If an application is denied, can it be appealed to the provincial religious affairs bureau [RAB] or to SARA? The Measures do provide additional clarity in the registration procedures, but like many of the post-RRA regional regulations, leave many unanswered questions.

Despite the efforts of the RRA and the Measures to establish clear standards for religious administration, they have not systemized the application of laws in ways that some scholars had envisioned.

The patchwork of municipal, provincial, and national regulations remains, and from a legal perspective the events following the promulgation of the RRA pose conundrums for religious groups and their leaders.

China’s Legislation Law indicates that national-level regulations have a “higher” legal authority than provincial or local regulations. The Legislation Law provides that, where a national-level regulation has come into force, contravening provisions and regional regulations are invalid and the issuing regional body “shall amend or repeal such provision on a timely basis.” But the Legislation Law also provides that a regional regulation can be used to “implement a national law or administrative regulation in light of the actual situation of the jurisdiction.”

From a legal point of view; then, the drafters of the post-RRA regional regulations seem to believe either: (1) that the preexisting provisions of provincial regulations do not conflict with the RRA and therefore do not need to be changed or (2) that the provincial regulations do in fact conflict with the RRA, but these regional regulations serve to implement religious administration in light of the actual situation in that province.

For the provinces that have not amended their regulations after the RRA, it could be either because, first, they believe that the RRA implicitly repealed all provincial-level regulations on religious administration and thus there is no need to repeal the prior regulations; or, second, that they are in the process of drafting an amended or new regulation.

While these preemption issues pose interesting theoretical legal issues, they also have real consequences for religious believers. Because religious organizations exist and operate in towns, counties, and provinces, what set of laws should religious believers and their leaders follow?

If a provincial regulation conflicts with the RRA, which provisions should a religious body follow? If the RRA provides rights that a provincial or local regulation does not, can a religious body successfully assert these rights?

What significance does the absence of new or amended regulations in other provinces have? Does the RRA apply in place of preexisting provincial regulations as a supplement, or neither? For instance, should a religious body in, say, Xinjiang, assume that the RRA is applicable to the province, the preexisting provincial-level

regulation is applicable, or parts of both? If the venue registration provision of the regional regulations is not the same as the relevant provision of the Measures, which procedures should a religious group follow?

Can religious groups avail themselves of rights contained in regional regulations and not in the RRA, and vice versa? Is a group subject to penalties contained in the RRA, but not in regional regulations?

If regional cadres applied a penalty that was more restrictive than that provided for under the RRA, would any administrative appeal be possible under Article 46 of the RRA? If so, to which body would this appeal be presented? Do unregistered groups fit into this legislative morass?

Some provinces do recognize groups outside the traditional five authorized religions. Can one of these groups leverage registration in one province to obtain registration in another?

Do religious groups, which are essentially unauthorized in provinces or post-RRA regulations, limit the definition of religion to the traditional five? As you can see, there are a number of interesting and very practical questions for religious bodies.

With so many variations in the eight regional regulations that have been issued subsequent to the RRA, it is difficult to draw broad conclusions on these different regulations. Nevertheless, a few trends emerge.

First, no regional regulation significantly curtails religious freedom further, but also no provincial regulation attempts to expand significantly the scope of protections beyond that of the RRA.

In this regard, the post-RRA regional regulations can be seen as a codification and entrenchment of religious policies rather than a significant advance past the basic policies and principles enshrined in the RRA.

Second, several provinces restate the traditional five religions in the definition of religious organizations, but also add another category that, in the end, could be potentially used in the long term to register groups outside the traditional five.

Third, several provinces permit religious observance within the home, but with various limits, such as limiting observance to only “normal” religious activities—still undefined—or so long as the observance does not influence the “normal lives” of others, also undefined.

Fourth, provisions requiring annual inspections have been eliminated. Fifth, legal liability provisions in many regional regulations parallel the relevant RRA provisions. Sixth, several new regulations provide incremental improvements to existing regulations.

All the previous analysis applies to the five traditional belief systems long recognized in China, that is Buddhism, Catholicism, Daoism, Islam, and Protestantism.

Groups and belief systems outside these five remain in an uncertain position. Some groups have received tacit consent from the government to carry on some sort of religious observance, despite having no legal existence or personal rights.

Some groups have attempted to register as religious groups or associate groups, but have not been successful. The religious affairs authorities have shown some willingness to accommodate these

groups outside the traditional five, but there are theoretical and practical problems related to the patriotic religious associations that traditionally have served as the supervising authority over religious groups.

At least five possible scenarios have arisen for dealing with these new belief systems:

Option 1: fit the religious group into an existing patriotic religious association.

Option 2: establish a new patriotic religious association for the new group.

Option 3: register the new group as a religious group directly with SARA outside the context of any patriotic religious association.

Option 4: register as a social organization but not as a religion.

Option 5: continue with the status quo.

How groups outside the traditional five are integrated in China's system of religious administration may be indicative of the future of religious freedom in China.

In conclusion, as indicated above, this analysis has been focused somewhat narrowly on the legal structures affecting religious administration in China. The basic policies of continued state supervision over religion, with the marginal improvements that were outlined in the RRA, have not been altered by subsequent national or regional regulations.

Conflicts between provisions in the RRA and regional regulations leave religious groups in a state of legal and practical uncertainty. Furthermore, the system of national and regional regulations does not address religious groups that are not firmly recognized or registered by the government.

China's religious and administrative policies and laws must make additional efforts to resolve these questions. While a call for unfettered religious freedom will likely go unheeded, it would be a step in the right direction for the Chinese Government to enact laws that comply with international standards that provide basic rights for all religious believers and groups.

China's WTO accession and growing interactions with other countries amplify the need for China to hasten its transition from a rule-by-law to a rule-of-law nation, and the need for all of its laws, including those governing religious freedoms, to provide clarity, transparency, and predictability.

Thank you.

[The prepared statement of Mr. Carlson appears in the Appendix.]

Mr. DORMAN. Mr. Carlson, thank you very much.

Next, I would like to introduce Pastor Bob Fu, who is president of the China Aid Association in Midland, TX.

Pastor Fu was born and raised in mainland China. As a house church pastor in Beijing and English lecturer at the Beijing Administrative College and Beijing Party School, he was arrested in 1996, along with his wife, as an illegal evangelist. After his release, Mr. Fu escaped to Hong Kong and came to the United States in 1997.

Mr. Fu is presently a Ph.D. candidate at Westminster Theological Seminary in Philadelphia, and is a visiting professor in religion and philosophy at Oklahoma Wesleyan University. In addition, he is the Editor-in-Chief of the China Law and Religion Monitor

and the Religious Freedom in China Web site. He has served as a guest editor of China Law and Government and has written articles on religion and public security in China, and religious freedom and the rule of law.

On a personal note, we are always pleased when we meet new contacts who bring additional points of reference on issues as complex as this one, and Professor Tong and Mr. Carlson are new and much appreciated contacts for the Commission.

But Pastor Bob Fu is not. He has testified here before and is a good friend of the Commission. We, over the past couple of years, have become very aware of his work and his selfless dedication to religious freedom in China. So Pastor Fu, I would like to thank you for your important work.

Pastor Fu, you have 10 minutes for an opening statement. Thank you.

**STATEMENT OF XIQIU "BOB" FU, PRESIDENT, CHINA AID
ASSOCIATION, MIDLAND, TX**

Mr. FU. Thank you very much.

Before the promulgation of the national RRA, the various provincial RRAs were very comprehensive regional regulations, basically embracing all aspects of religious organizations, religious faculty, religious activities sites, religious publications, religious activities or external affairs, religious properties, legal liabilities, et cetera.

Judging from a comparative observation of the textual framework and content, my testimony will argue that the national RRA, in its six-year history of research, investigation, and promulgation, has absorbed in its legislative format and content certain religious legislation and enforcement provisions taken from various provinces and reached legislative definitions with a higher level of generalization and greater directness.

The following is a selective analysis of the emphasis of the religious administration legislation in China, based on examples of changes in the content of the RRA provisions of Beijing and Shanghai municipalities and Zhejiang province before and after the amendments.

So I will do a comparison. First, with respect to changes in the Beijing RRA before and after the amendments. I would particularly highlight the comprehensive inspection process in the Beijing regulation. Following the text of Article 18 of the national RRA, the Beijing RRA amended Article 20 to read: "Religious activities sites shall establish sound administrative organizations and regulations and accept the guidance, supervision, and inspection of the Administrative Department of Religious Affairs and other departments concerned with the People's local district or county government."

Although such wording as "annual inspections" have disappeared, the departments with the authority over "guidance, supervision, and inspection" of religious activities sites have been expanded from "Administration of Religious Affairs" to all "departments concerned" in order to implement integrated supervision and control by the public security, state security, industrial and commercial, urban construction, and other government departments. So this is one of the changes.

And pursuant to Article 22 of the national RRA, Article 26 of the Beijing RRA has been amended to read as follows: Clause 1, “Anyone who intends to organize a large-scale religious event that crosses provincial, autonomous regions, or directly administered municipality boundaries and exceeds the capacity of religious activities sites, or if it intends to hold a large-scale religious event outside of the religious activity site, shall undergo application and approval procedures, according to the State Council ‘Regulation on Religious Affairs.’” Clause 2 says, “Organizers of other types of large-scale religious events shall obtain consent from the religious group of the municipality and first report to the religious affairs department of the People’s Government of the district or county in which the religious event is to be held. The Religious Affairs Department and other departments concerned with the People’s government of the district or county in which the religious event is to be held shall, in accordance with their respective official responsibilities, provide management as needed.”

This type of amendment actually requires not only that large-scale religious events crossing provincial boundaries obtain approval from the provincial Administration of Religious Affairs—the County Administration of Religious Affairs has lost its authority of approval in this case—but also the local Administration of Religious Affairs, the Public Security Bureau, and even the State Security Bureau will coordinate to provide supervision. As a result, this arrangement actually has strengthened control over large-scale religious events.

In Beijing, I know there is a very large house church that actually wants to register. The congregation, after debate and making a resolution saying they wanted to register, and after six or eight months of filing all the papers, and processing, instead of being registered—they submitted the pastor’s name, the names of the elders, their accounting process—their pastor was interrogated and their elders were taken away and also interrogated. So, that happened last Christmas as the result of these changes.

I also want to emphasize the changes in the Zhejiang provincial RRA, before and after the amendments, because many things happened, and are happening now, in Zhejiang on these religious persecution events, so I want to analyze the Zhejiang amendment.

Let me emphasize in the case of the new Zhejiang RRA, provisions governing the control of and on the registration process for religious sites. The previous Zhejiang RRA passed on December 11, 1997, and stipulated a clause on “abnormal religious activity,” which was not found in the previous Beijing and Shanghai RRAs, to regulate cross-regional religious activities. Therefore, I argue that Article 22, Clause 1 of the national RRA, originates from Article 32 of the previous Zhejiang RRA.

Article 38 of the current amended Zhejiang RRA inherits the original legislative principle of the clause on so-called “abnormal” religious activity and sets down a more formal procedural definition modeled on the formal legislative language of Article 22, Clause 1 of the national RRA.

The regulation has four conditions for holding these types of activities. Simultaneously, in accordance with the requirement of Article 2 of the national RRA, adding Article 38, Clause 3: “Religious

groups or religious activity sites holding an abnormal religious activity shall adopt effective measures to prevent unexpected emergencies. The People's Government in a rural or urban township in the location where the activity takes place, and departments concerned with the People's Government at the county level and above shall implement the necessary management techniques, according to their respective duties and responsibilities, to guarantee the safe and orderly conduct of the abnormal religious activities."

So as a result of these restrictions, the last chapter under "Legal Liabilities," the amended Zhejiang RRA describes abnormal religious activities in further detail, adding two new types of religious activities.

For example, those "presided over by non-religious personnel" and "unauthorized cross-regional" that are included within the range of activities potentially liable to administrative penalty. Article 46 is also stipulated according to the principle of Article 43, Clause 1 of the national RRA.

So in the RRA of Zhejiang province, it first proposes the clause of imposing an administrative penalty on so-called "illegal religious buildings."

It actually means to forcibly demolish unauthorized meeting places. I think as a result of that, in Zhejiang province alone, more unregistered religious buildings were destroyed in the past year than in all other provinces combined.

The latest one that I know of occurred on July 29. Several thousand military policemen, hired by government workers, destroyed a building, and 60 laborers and pastors were arrested and beaten. Six senior leaders of that church are still being held and are facing trial, probably next month.

At this point, I want to recognize some of the distinguished Chinese human rights lawyers who are sitting in the audience today that we invited to come here. They are some of the legal representatives for these six pastors in Zhejiang.

Among them are Mr. Li Jianqiang, who is in the audience today, who is the legal representative for one of the six pastors. Also, Mr. Zan Aizong, who is a journalist who lost his job for just reporting about this event. So we are very glad they are here.

Also, Mr. Li Jingsong, and Mr. Li Subin, who are the two attorneys for the imprisoned blind activist, Mr. Chen Guangcheng, are also here today.

Now, a comment about the local RRA changes in Shanghai. Let me finish this quickly. I want to emphasize that in the regulation on publishing religious materials in Shanghai, that is, the government amendment, before the promulgation of the previous Beijing RRA, the revised "Regulations Governing Printing" and "Regulations Governing Publication" were promulgated and took effect.

The new "Regulations Governing Printing" specifically prescribes that internal religious publications must undergo a dual review and approval procedure to obtain authorization from both the Administration of Religious Affairs at the provincial level and be issued a "print permit" from the Administration of Press and Publications at the provincial level, while other types of internal publications need only be issued a "print permit" from the Administration of Press and Publications only at the provincial level.

The design of the “authorization by provincial level departments” is intended to have a psychological effect in that regulation by a higher authority is a more intense level of public policy implementation.

This type of legal procedural discrimination is without explanation or plausible rationale; it violates the constitutional principle of equal treatment, at the same time violating the rights of equality, religious freedom, and freedom of the press. So it is based precisely on the unfair treatment of religious publications.

The new Regulations Governing Publications adds a new Chapter 5 called “Importation of Publications: Establishment of a Special Operations and Review System on Imported Publications.”

The previous Beijing RRA had a special chapter on religious publications that categorizes them by three criteria: “open publications,” “internal material publications,” and “overseas publications,” with emphasis on regulating, publishing, printing, and distributing of religious “internal publications” and “overseas publications.” This chapter has been preserved intact in the new RRA.

Based on these new regulations, we see a number of cases that have happened since last year, with the suppression and arrest of those who are either house church leaders, or Buddhist workers who publish and distribute their internal religious literature, including Bibles and Buddhist literature.

Of course, we heard this from Pastor Cai Zhuohua’s case last year, and then to the Anhui Wang Zaiqing case, who was sentenced to four years, and was fined for 100,000 yuan because of the publication of Bibles and other Christian literature.

In April of this year, a Buddhist monk, Mr. Lei Daying, was sentenced to four years in Beijing by the Beijing Intermediate Court for publishing and distributing Buddhist literature. So, that is a direct result of these new restrictions.

In conclusion, from analyzing the content changes in legal clauses among the RRAs of Beijing, Zhejiang, and Shanghai before and after the amendments, I would argue that the Chinese Government, at the central and local levels, has shifted its regulatory emphasis on religious activities from the singular target of religious activities sites to more comprehensive regulation of religious undertakings. The more comprehensive regulatory system includes the new system of integrated regulation of religious activities; the qualification system for religious faculty; the review and approval system of establishing, expanding, relocating, and constructing religious activity sites; the review and approval of religious publications, especially internal material publications; the permission mechanisms for cross-regional religious activities; the system of integrated regulation of religious activity sites, the system of application, approval, and preventive measures regarding large-scale religious activities, and so on. All these changes result in more comprehensive, rigid, and diverse set of regulatory measures.

Although this regulation is merely an “administrative and regional law,” the promulgation of the unconstitutional national RRA and the amendment or establishment of regional RRAs symbolize the formal establishment of the system of “legally regulating religion” because Chinese citizens do not enjoy freedom of assembly, the judicial system is not independent, the people’s congresses do

not have adequate representation, and there is no judicial review of constitutionality or system for private citizens to litigate questions of constitutionality.

Of course, given what international law mandates and how it defines religious freedom, including not only the freedom of religious belief but also the manifestation of such belief both in private and in public, it is certainly a violation of international law in that sense.

Thank you very much.

[The prepared statement of Mr. Fu appears in the Appendix.]

Mr. DORMAN. Pastor Fu, thank you very much. I would like to second what Pastor Fu said about the Chinese human rights defenders who are visiting here today. We are, of course, honored that they were able to join us. These are men of tremendous courage and commitment and we would like to publicly thank them for their tremendous work. So, thank you.

Third, testifying today is Professor James W. Tong. Professor Tong is Associate Professor of Comparative Politics at the University of California-Los Angeles, and editor of the journal Chinese Law and Government.

Professor Tong served as the Vice Chairman of UCLA's Department of Political Science and its Director of the Center for East Asian Studies from 1996 to 2002. His publications include a book on peasant revolts from the 14th to the 17th century in China, three journal articles on the Falun Gong, and articles on the 1989 Democracy Movement in Beijing.

In addition, he has edited or co-edited three journal issues on central and provincial religious policy documents in China. He has served as a World Bank consultant on fiscal policy in China, briefed the U.S. Commission on International Religious Freedom on religious policy in China, and hosted two visits of delegations from China's State Administration for Religious Affairs to UCLA.

Professor Tong received his Ph.D. from the University of Michigan, and M.A. from the University of Washington, and has held teaching positions at Michigan State University and the California Institute of Technology.

Thank you, Professor Tong, very much for joining us today. You have 10 minutes for an opening statement. Thank you.

STATEMENT OF JAMES W. TONG, ASSOCIATE PROFESSOR OF COMPARATIVE POLITICS, UNIVERSITY OF CALIFORNIA-LOS ANGELES, EDITOR, CHINESE LAW AND GOVERNMENT, LOS ANGELES, CA

Mr. TONG. Thanks for inviting me.

Let me begin with the observation that religion in China is managed religion. It has a Religious Affairs Bureau at the national, provincial, city, and county levels.

Religious organizations and religious venues need to be registered and can be de-registered. Schools of religion must meet the approval of the state. The state claims the right to order religious organizations to remove the administering officials of religious organizations, and also religious venues. Foreigners cannot proselytize, and also there cannot be all-male religious congregations in the Catholic Church.

It is also the case that, since at least March 1982, a number of laws, and also Party documents at both the national and also provincial levels, have granted religious organizations greater autonomy in protecting religious freedom at both the national and local levels.

At the local level, there are 55 provincial and municipal regulations that have been promulgated since March 1982. I see the significance of the national Regulation of Religious Affairs that was promulgated on November 30, 2004, in the following ways.

First, it provides greater ideological and administrative autonomy for religious organizations. For instance, religious organizations are no longer required to demonstrate patriotism, support the leadership of the Chinese Communist Party, and also socialism.

Also, the number and type of requirements for prior approval by the Religious Affairs Bureau has been reduced, and in the place of prior approval for these religious activities, only notification after the fact, or reports for the record, or simply inclusion in the annual report, would suffice.

Second, in terms of religious formation, it is now the religious organizations, and not the Religious Affairs Bureau, that approve candidates for schools of religious studies. Also, it is the religious organizations and not the Religious Affairs Bureau that examine, certify, and re-certify religious personnel.

Third, the government has also broadened the definition of religious activities to include, for instance, social services, that religious organizations now can undertake.

There is much more rigorous protection of religious properties, so land use departments need to consult with the local Religious Affairs Bureau before they can change the designation of a property for religious use. Also, if a local government wants to remove or demolish religious buildings, they also need to compensate the religious organizations by "assessed market value."

There is also much more latitude given to local churches in relations with foreign churches, so the schools of religious studies can now send students to religious schools outside the Chinese territory, not only, for example, to the United States and Europe, but also to Hong Kong, Macau, and Taiwan.

In reverse, religious schools outside China can also send students to Chinese schools of religious studies, and these schools can also invite theologians to lecture in Chinese schools of religious studies.

Finally, the RRA also provides for administrative appeals, and also judicial challenges. That is, if a local religious organization disagrees with the local Religious Affairs Bureau's decision or ruling on a religious affairs issue, they can appeal that decision. Even if the appeal is not decided in their favor, they can also challenge it in court.

Now, since the RRA took effect on March 1, 2005, I have counted seven provinces that have also promulgated their own religious affairs regulations. So what is the difference between the National RRA and the provincial regulations?

In several important regulations, the provincial regulations have not incorporated the National RRA. So, for instance, the RRA provision for administrative appeal, and also judicial challenge, is

omitted in all the provincial regulations, except the regulations in Shanghai.

Also, the stipulation that land use departments need to consult the local Religious Affairs Bureau before they change the designated use of religious property is omitted in all the seven provincial regulations. In addition, the provision to use “assessed market value” as a principle to compensate religious organizations if religious properties are demolished or removed for urban development projects this principle is also omitted in all of the seven provincial regulations, except the one in Zhejiang province.

On the other hand, provincial regulations have also provided other stipulations that go beyond the RRA in providing religious freedom, so, for example, all seven provincial regulations stipulate the right of the believers to practice religion and observe religion in their own residences, and three provinces—Shanghai, Xinjiang, and Henan—stipulate that religious personnel can participate in social security programs. Some of these programs are very generous, and the ability of a cleric to participate, of course, depends on the city, county, or province where the program is running.

In Shanghai, for example, religious personnel can contribute 3 percent of their monthly salary, and upon retirement can get a pension of up to 90 percent of their pre-retirement monthly salary. In addition, the Shanghai regulations also stipulate that religious personnel who are from outside Shanghai can be eligible for local residence—*hukou*—in Shanghai after three years of continuous service in the Shanghai municipality.

So far I have only covered the legislation at the national and provincial levels. What about implementation of certain policies? Probably the greatest variation, and the most problematic, is in the area of religious property.

The category that is not as problematic is religious property for religious use, meaning churches, temples, rectories, et cetera. As a general rule, when these types of properties have been seized, they are returned to the religious organization.

What is problematic, however, is the following categories. First, properties housing religious social services, for example, the schools, the hospitals, the orphanages that were once owned and managed by the religious organizations.

After the Communists took over in 1949, they also managed these schools, orphanages, clinics, and hospitals. So what has happened to the ownership, management, and rights to use these properties that support social services that the State and local governments have been managing for four decades or more?

Second, there is also the issue of investment properties. Before the Communists took over, many religious organizations owned houses, apartments, et cetera, as investment properties.

When the Communists took over, they allocated many of these houses and apartments, et cetera, to the employees of different government and Party agencies who were entitled to low-cost rental. So what has happened to the investment properties? Right now in a number of cities, many negotiations are underway. In one city in Henan province the Religious Affairs Bureau manages the investment income of RMB4 million, but only 40,000, or 1 percent is given to the Catholic diocese.

If the Catholic diocese would manage these investment properties, however, it is unlikely that it would be able to collect all the rents from both the private occupants and the government agencies that also are occupants of these properties.

Probably the greatest improvement in the local regulations is in the area of social services, so both the Protestant and the Catholic churches may now operate homes for the aged, clinics, and hospitals. The Protestant church also manages a thriving network of YMCAs that provide English classes, computer classes, and also sports facilities.

In the area of religious formation, both the Protestant and Catholic church manage the selection of students that they would send to schools of religious affairs outside China. The Protestant church, in 2006, held a nationwide exam and selected more than 10 students out of an applicant pool of 30 that they would send abroad, and also the Catholic church has also had their own selection process whereby they interviewed candidates to be sent abroad.

Right now, there are about 300 Roman Catholic priests, nuns, and other seminarians that are enrolled in religious studies programs outside China. In addition, this year the national Protestant seminary in Nanjiang has six visiting theologians from four countries lecturing national seminary students. Catholic theologates are also hosting 20 theology professors from seven countries.

So in conclusion, the overall trend since the promulgation of the Religious Affairs Regulation in November 2004, is that there is both real and substantial progress in the area of autonomy of the religious organizations and religious activities, in the certification of personnel, and in the relationship with the church outside China. The actual implementation varies from city to city, and also depends on the type of religious activity.

Thank you.

[The prepared statement of Mr. Tong appears in the Appendix.]

Mr. DORMAN. Well, good. Thank you very much for three excellent statements. We all recognize on the dais, and I am sure everyone in the audience recognizes after hearing your testimony, that this is a very complex issue.

I would like to begin with a question that might help us to better understand the topic of this roundtable, regulation of religious freedom, by breaking the issue down into a few more manageable components.

This is a point that you raised, Professor Tong, but I want to pose the question in a slightly different way and ask each of our panelists to address it.

As we look at the practice of religion in China, I think we would all agree that we see inconsistency in the degree of religious freedom or religious repression from place to place. This results from a number of factors, among these: Party policy regarding religion, government implementation or lack of implementation of law and regulation, and the actions of local officials.

There will certainly be questions from the dais on Party policy, and on implementation of national and local regulations.

But to start, I wanted to take a step back and try to disassociate the national regulation from Party policy and from implementation

to give us a better understanding for how all these pieces fit together.

The first question is—and there will be two parts—as you all look at this regulation, setting aside the degree of implementation, and setting aside the fact of an often hostile Party policy toward religion, if the regulation was implemented as written, would it represent a step forward? Although this may be a difficult question to address in isolation, it may be useful to think about these issues separately, before we recombine them again.

The second part of the question is this: as you look at the regulation as written, what does it tell you about the intentions of the Chinese leadership in terms of religious freedom in China? There has been a change. A new regulation is in effect. But do we see China moving closer to international human rights standards regarding religion or do we see China moving away from these standards? I hope all of you could share your knowledge, experience, and thoughts regarding this question. Anyone can begin.

Mr. CARLSON. I will comment very briefly, then defer to my fellow panelists.

With regard to the first point, I assume you are referring to the RRA?

Mr. DORMAN. Yes. I am sorry, I should have made that clear.

Mr. CARLSON. I published a paper about a year and a half ago entitled “China’s New Regulations on Religion: A Small Step, Not a Great Leap Forward,” which contains my conclusions on the RRA. I think I would stand by most of those conclusions.

I think that the RRA and subsequent regulations are a small step forward in providing standardization, providing codification, proving more clarity, and attempting to resolve a lot of the patchwork quilt that had previously existed among the regional regulations.

So if you analyze the RRA outside that scope of implementation, I would say, yes, it is a small step forward. I do not think it is the paradigm shift that the government would have us believe.

As China tries to move from rule by law to rule of law, it is a small but important step. I think the decision to make it an administrative regulation rather than a law on religion passed by the National People’s Congress. My understanding is that that option was considered, but rejected.

Relating to your second question of whether this means that China is moving closer to international human rights standards: In terms of freedom of religious belief, yes, China continues to provide for freedom of religious belief. In terms of freedom of religious practice, however, it largely turns on what a bureaucrat at the national, provincial, or municipal level decides is a “normal” religious activity or “normal” religious behavior, as opposed to what is “abnormal” or “atypical.”

On their face, the regulations provide a great deal of vagueness, which could be used in the long term to give more flexibility, especially to unregistered groups, but the fact that many of these very key terms are left undefined still leaves a lot to be desired.

Mr. FU. I think I agree with what Mr. Carlson said on the overall picture. I think at one point I observed, if it is fully implemented, it could be real progress. For the first time, you see in the

regulation it imposed sort of a deadline, like in 30 days you have to have a response.

If it is really implemented—I mean, just imagine if tens of thousands of house churches just showed up at the registration buildings and wanted to register. If they had the paper and they really seriously considered their application, and they need to have a 30-day deadline to give approval or disapproval, that should be regarded as real progress, if it is seriously implemented.

In regard to the overall tone or the attitude, I think it is still premature to say that the intention of the current top leadership is to relax the rules to permit true international religious freedom, as defined in Article 18 of the Universal Declaration of Human Rights. In particular I want to point out how, in Zhejiang province, the new RRA, the add-on Chapter 7, reflects the four duties of government at various levels in that regulation.

The government still has the four duties of safeguarding rights, hearing, and coordination and guidance. Among the descriptions of these duties there is an alarming clause that remains in the text: “guiding religion to become compatible with socialism.” You can translate that into “become compatible with a socialist society,” in the more accurate form.

But that clause can be clearly translated into some radical negative actions against those religions who are regarded as not compatible in any sense with the national socialism doctrines.

That would discourage those really qualified religious doctrines, and those people who want to serve in a church or diocese, but who maybe in some sense do not fully agree with the national political doctrine.

For example, one Buddhist monk who was a former political dissident, was dismissed just because he performed a religious service for the victims of the government. This purely religious service—of course, can be interpreted by the political body as non-conforming to the socialist doctrine. So, that’s my opinion and my concern.

Mr. TONG. I would also agree with the previous two presenters, that the implementation is a step forward. If you look at both the national, and also provincial regulations, there are no new restrictions on any type of religious activities. The previous restrictions have been dropped. There are still cities and provinces that have restrictions, and it is because they were there before.

It is also, I think, the intent of the Central Government of China that these be implemented, so since its promulgation in November 2004, there has been a nationwide campaign just to publicize the RRA to different cadres of the Religious Affairs Bureau at four different levels.

First of all, there is a national-level seminar. Second, there are six regional seminars where five or six provinces are grouped, and then all the leading religious cadres have to be trained in the RRA. Third, at the provincial level there are also such seminars conducted. Then the different religious organizations also have training seminars to brief their own religious personnel on the new RRA.

There is also a rather significant event that has not been reported: SARA, the State Administration of Religious Affairs, has

launched a Web site where it has publicized all of the religious regulations, religious affairs circulars, et cetera with links to the different provincial Religious Affairs Bureaus, as well as national organizations.

About seven or eight provincial religious affairs bureaus also have their own Web sites. These are rather user-friendly ones, so to take on one of the facts that were reported by Pastor Fu, there are about 17 or 18 types of religious activities that require permission by the local religious affairs bureau, and these are listed in many of the religious affairs' Web sites.

Not only that, but there are also downloadable forms where the religious organizations and religious venues can apply for this permission online. So I think, this is progress in the right direction, where they tried to be more friendly to the religious organizations, religious personnel, and also religious venues.

Mr. DORMAN. Good. Thank you very much.

I would like to turn the questioning over to my colleague, John Foarde, who serves as Staff Director for our Co-Chairman, Representative Jim Leach.

John.

Mr. FOARDE. Thank you, Dave. Thanks to all three of our distinguished panelists. Thank you for coming and sharing your expertise with us this afternoon.

I know that all my colleagues want to ask questions, so I will try to ask a couple of very quick ones.

Eric Carlson, I was particularly taken by your series of sort of rhetorical questions about whether new religious groups that wanted to be approved might need to have, for example, a patriotic national association to affiliate with, or the very intriguing concept that such groups might try to leverage a local registration and bootstrap themselves to a national registration.

But I would like to actually ask you first, and then maybe the others could comment briefly, on your views of the chance that any new religious groups will be approved under this sort of rubric, or any other, let us say, in the next couple of years.

Mr. CARLSON. I would answer that in two ways. For groups that the government is not otherwise inclined to register, I would say that the chances are almost zero. For groups where the government is perhaps more inclined to register, for instance, the Orthodox Church, the options I presented are ways that the government could fit these existing organizations the government understands as being non-problematic.

For instance, if the Orthodox Church is registered in Xinjiang or Zhejiang, could they go to a different province, perhaps in Beijing, and say: "We are registered in this other location, can we also register here?" It seems like there's at least the possibility that this could happen. But for organizations the government has clearly disfavored—for instance, some of the more radical house church movements—I would say the chance of using some of these options is near impossible.

Mr. FOARDE. Either of the other panelists? Really briefly, because I want to go on.

Mr. FU. Yes. I, myself, I do not think there will be a chance to recognize a new religion in the next two years. I could be stoned to death if I am wrong. [Laughter.]

Mr. TONG. There are signs that new religious groups will be recognized and registered. So in SARA, the State Administration of Religious Affairs, there used to be only five offices dealing with each of the five recognized religions: Catholicism, Protestantism, Islam, Buddhism, and Daoism. But lately, there is a new office that deals with new religious groups. That is the authority to prepare for eventual recognition and also registration of other religions.

So I asked SARA whether there was any religious group that they have that they would approve registration for, et cetera, and they said that they deal with only national-level groups. For local-level groups, it would be up to the provincial Religious Affairs Bureaus. I was told indirectly that, in Fujian, they have approved the registration of some local folk religions, like the Mazu.

Mr. FOARDE. Useful. Thank you very much.

Thank you.

Mr. DORMAN. Good. Thank you, John.

I would like to recognize, next, Susan O'Sullivan, who represents Assistant Secretary of State for Democracy, Human Rights, and Labor, Barry Lowenkron, who is one of our Executive Branch Commissioners.

Susan.

Ms. O'SULLIVAN. Thank you, Dave.

I wanted, first of all, to thank all of you for your presentations. But I want to take advantage of Professor Tong's work on the Falun Gong to ask a question. You seem to be somewhat optimistic, or cautiously optimistic, about the trends for religious freedom for recognized religions in China.

But at least in our discussions with the Chinese over the past seven years since the Falun Gong has been banned, there just seems to be zero tolerance. I am wondering what you see going forward in terms of government policy, and whether you anticipate any changes.

I admit up front that I have not read your articles, but I would be interested in your thinking about what might happen there, given that tens of thousands of practitioners are currently in custody.

Mr. TONG. For the Falun Gong, I do not see any signs that the Chinese Government would be more tolerant. The Falun Gong has been driven underground, certainly, and they still survive as an underground organization.

They not only practice Falun Gong at home, but also they build cells in cities and they have been also going out, putting up posters, protesting Chinese Government policies, et cetera.

But if you look at the more overt defiance of the Falun Gong, there used to be a time in 2003 that they would insert Falun Gong propaganda—videos, et cetera—in provincial, and also city television stations' programs. That has not been repeated more recently.

In 2003, there were many public demonstrations by Falun Gong practitioners. They would demonstrate outside the State Labor Reform Schools. I have not read reports that that has been the case

in 2005 and 2006. So, it is a two-way street. That is, Falun Gong would not stage this overt defiance of the Chinese state and the government, and there are isolated reports that they have been actually releasing Falun Gong practitioners from the labor reformatories before their term has expired. So, they may be releasing them early.

Mr. FU. After talking with our Chinese guests, some of them still working within the government system, I got some new information. I am not completely sure whether that it represents a new trend or a new policy, but I heard from them that there is some sort of relaxed attitude toward Falun Gong practitioners, especially those who serve in the government. In the past, there was almost zero tolerance: either deny or go to the labor camp.

Now, I was told that in many cases, they said, if you are known as a Falun Gong practitioner, as long as you are not putting up posters or doing work on the street, you are tolerated, and in some cases you are getting some better, even preferential, treatment because of maybe some media or international pressure. So, that might represent something where there is more tolerance, but I do not know whether this represents a major trend.

Mr. DORMAN. Good. Thank you, Susan.

Next, I would like to recognize Commission Senior Counsel, Kara Abramson. As you all know, Kara did the important work of organizing this roundtable. So, thank you for that, Kara. Kara also looks at issues of religious regulation for the Commission and has the very difficult task of explaining to her staff directors what this all means.

So, Kara, questioning over to you. Thanks.

Ms. ABRAMSON. Thank you. I would like to thank each of you for participating today.

My question involves worship at home. As you know, the Chinese Government has said in its White Paper on religion that citizens do not need to register with the government to hold worship services in private homes “mainly attended by relatives and friends for religious activities such as praying and Bible reading.”

Indeed, religious groups that have fewer than 50 people would not even qualify as a religious organization that could then apply to register an outside site of worship.

The national RRA is silent on this issue of worship at home. So I am curious to what extent the government does protect such worship at home, if it does so to any extent, and I wonder how we are to interpret provincial regulations that include provisions that say that individuals, and in some cases members of a family, can “live a religious life” or hold religious activities at home.

Mr. TONG. The provincial regulations say that believers can practice religious life in their own homes. But I do not know the interpretation of that. Does that mean that they cannot invite other believers to also come to their own homes?

Can only members of the immediate family practice religion in their own homes? But this is what the provincial regulation says, that is, the believers can practice religious life in their own residences.

Mr. FU. We should give credit to Ambassador John Hanford’s persistent efforts after some negotiations. At least we know, on the

Web site, in written form, they said in one provision “friends and relatives.”

I think law enforcement officials had difficulty defining who are “friends.” With relatives, that can be easily defined, but the friends clause is very difficult. They should issue definitions for who should be regarded as friends.

Also, I learned today, actually, when we had a meeting with one of our Chinese guests, Mr. Li Jingsong, said that he read a new document recently released by the government that said as long as there are fewer than 25 people in the household who are friends or relatives, they should not be required to register. I have not personally read or known this document before, so this is a new thing.

Mr. DORMAN. Good. Thank you.

Next, I would like to recognize Lawrence Liu, who is a Counsel on the Commission and looks at freedom of expression.

Lawrence.

Mr. LIU. I would like to thank the witnesses also for your excellent presentations and providing us with so much useful information.

My question relates to the content-based restrictions on publishing that are provided for in the Regulation on Religious Affairs.

Article 7 of the RRA stipulates that publications with religious content may not include content that—and I am paraphrasing—upsets the harmony between religious citizens and non-religious citizens, upsets the harmony between different religions or within a religion, insults or discriminates against religious or non-religious citizens, spreads religious extremism, or violates the principles of religion’s independence and self-governance.

So I have a few questions. The first is, has anyone been punished for violating this provision of the regulations? If so, what did they publish and how did it violate this provision? Then my second question is, how do these content-based restrictions affect the substantive content of what religious organizations publish in China? I address this question to each of the panelists.

Mr. TONG. I have no specific information on whether people are actually penalized for breaching these stipulations. If you read Article 7, it says that religious publications have to also be in conformity with the central government’s rules governing publications.

So there is a national law governing publications, and also news and information media, in television, and printed newspapers and magazines, et cetera. There is a list of what can be published and what cannot be published. Part of it is the list of the restrictions that you referred to. But beyond that, I do not have specific information.

Mr. FU. I think the definition of “religious literature” should be more clear. Let me say it this way to address the content issue. Two years ago, there was a couple in either Anhui or Hunan province. They were found to be duplicating and selling DVDs or CDs published by Yuan Zhiming, who is a former political dissident but who became a Christian evangelist based in California. He published a DVD series called “The Cross.”

It is basically a history of the Chinese church, especially Chinese house churches. We got a hold of all the indictment papers when the couple was originally arrested and charged with a crime like subverting the national government, but the evidence was that he

owned this DVD series and was duplicating them and distributing them to the people, and then the government said it contains “June 4th contents.” That is, it mentions the Tiananmen Square massacre on June 4, 1989, which the government says is harmful to the society.

I think that is an example of how that clause could be used to punish people for distributing religious literature that is regarded overseas as nonreligious or that might be labeled of a political nature by some overzealous political figures and then the publishers or distributors could be punished.

Mr. CARLSON. I will add two points. First, my understanding is that when people are punished for a publication, it is normally done under the Criminal Law rather than under the provisions of RRA.

Second, I agree that the list of the prohibitions you read clearly can serve as a chilling effect. I am not sure whether that actually happens in practice, but at least on a theoretical basis, these are people who want to print something, but when they look at the regulations, they may see that their publication is potentially problematic, so therefore they will err on the side of not publishing something versus publishing something that could potentially get them into trouble.

Mr. DORMAN. Thank you.

Next, I would like to recognize Commission Special Advisor, Dr. Mark Milosch, who looks at religious freedom.

Mark.

Mr. MILOSCH. I would like to second my colleagues’ thanks. I observe that you all agreed that the RRA would have been a step forward if it had been implemented. I would like to ask you what you think it was a step forward toward.

Was it a step toward a genuine liberalization which would have the state getting out of the business of managing religion, or is it a step more toward a kinder and gentler management which would be, for all that, and all the more encompassing and more effective control of religion?

Reading the regulations and observing recent events—including the beating on four occasions last year of registered Catholic priests—I have my own suspicion that it represents a move toward more effective control and not toward less control. I would be interested to hear your observations.

Mr. FU. Let me see. I at least observed one very overt element. In Zhejiang province, it is called “*Qian Hu Tiao Kuan*.” It relates to the household. In order to be qualified to move from one province to another province as a religious leader, Article 19 imposes one requirement and four procedures on any given religious leader or teacher who wants to move into a province, or even within a province.

For employment in the province, you have to be there for three years or more, have recommendations by religious groups, approval by the Administration for Religious Affairs of the county, the city, and the province. This requirement is a direct violation of the Chinese Constitution, which guarantees equal treatment.

Even the floating population does not have to comply with these sort of restrictions. For example, if you want to do a building

project, you are an expert worker on building, you do not need to go through these types of complicated procedures in order to be qualified, especially from one province to another province.

Even within the province itself, it is certainly a step backward and puts so much burden even on the government-approved religious leaders who only wish to perform their religious services. It is even more difficult for those accused of being self-proclaimed evangelists or other religious figures.

I think if everything is implemented, at least we can see that it is toward the rule of law instead of rule of religion by secret documents, regulations, or files. It has more transparent rules that people can go to. Even those government-sanctioned religious figures can have more rules, guidance, and an appeals process.

That, I think, is progress. In the past, religion was primarily managed by secret documents. There is now, of course, number 19, number 6. In the past, they were all secret documents. And, of course, behind the scenes there are more top secret documents to manage these types of affairs, but at least we have a document at the national level to follow.

Mr. TONG. I think that is certainly true. There is also the rule of law, transparency. If you look at the RRA, there is a list of stipulations for the constituted authority of both SARA and provincial, city, and county religious affairs bureaus what the national religious organizations can and cannot do, and also what the religious venues can and cannot do. In addition, the various procedures on religious activity and the process, how to register it, what kind of permission is required. So, definitely it is codification of regulations related to religious activities.

At the same time, I also think that it is not only kinder and gentler management of religion, but I think it is also a step toward greater liberalization. You can see it by the number of restrictions, previous restrictions and requirements, that used to be asked for religious organizations and many of these have been dropped or watered down.

Mr. DORMAN. Good. Thank you very much. Remarkably, we are almost out of time. We have about two minutes left. So, taking that into consideration, I am going to give Kara Abramson our last question, and apologize to our witnesses, because we might go two or three minutes over, if that is all right. Thank you.

Ms. ABRAMSON. Thank you.

As you have all noted, the national RRA is written in broad language and includes some vague terminology. It also leaves out some language found in other regulations. It does not, for example, mention the five main religions by name. As Professor Tong has noted, it also has left out some restrictions that have been found in older regulations.

My question is, first, does leaving out mention of a restriction necessarily mean it is no longer in place? Second, what are we to make of the RRA's ambiguous language? Does it reflect political compromise, sloppy drafting, the intent to have provincial governments clarify meaning through their own legislation, or something else? What are we to make of vague language and various omissions, including the omission of previously stated restrictions?

Mr. CARLSON. From a legal perspective, the absence of a restriction that previously existed would imply that the restriction, at least on a national level, would no longer exist. The fact that there have been provincial-level regulations that have been passed since, also without these provisions, would also imply at least a trend toward omitting those restrictions.

Of course, the absence of restrictions does not necessarily guarantee affirmative rights. It merely guarantees the absence of the restrictions.

Your second question was?

Ms. ABRAMSON. What are the reasons behind this vague language? That is the million-dollar question.

Mr. CARLSON. That is the million-dollar question which I, unfortunately, do not have an answer to. I would defer to my co-panelists on that.

Mr. TONG. I think it is a question of legal jurisdiction. The RRA is on a national level. You can see that several national- and international-level religious affairs provisions would stipulate, for example, what to do with the consecration of Catholic bishops, with a successor to the Dalai Lama. That is not mentioned in all of the provincial ones.

At the same time, the national-level regulations do not stipulate many religious activities at the local level. For instance, the registration of the religious venues, and also the training seminars at the local level, the RRA did not mention those, but these are in the provincial regulations. So, that is the first point, the legal restriction.

The other one is that in the hierarchy of legislation in China, the higher level is usually a statement of general principles that are necessarily abstract, and then they would need the provincial and the local ones to make it more concrete and specific and apply to the local circumstances.

Mr. DORMAN. Our time is up, unfortunately. Obviously, the conversation on this regulation specifically, and religion in China generally, is not over. We hope that we can invite our witnesses back in the future to continue the conversation, because their knowledge and expertise has certainly helped illuminate the issue for us.

So on behalf of our Chairman and Co-Chairman, I would like to thank all of our witnesses and everyone in the audience for coming today. On that, I will bring this roundtable to a close. Thank you.

[Whereupon, at 3:33 p.m. the roundtable was concluded.]

A P P E N D I X

PREPARED STATEMENTS

PREPARED STATEMENT OF ERIC R. CARLSON¹

NOVEMBER 20, 2006

I. Introduction

As a lawyer by training and trade, I hope to offer a few thoughts from a legal perspective on China's national and regional regulations, with the full realization that the situation on the ground does not always comport with legal requirements.

The Chinese government promulgated the Regulation on Religious Affairs (RRA) in an attempt to standardize religious administration and practice. New and amended regional regulations issued after the RRA, however, are sometimes at odds with the RRA and pose questions for religious groups. While these regulations reveal some tinkering around the edges, these regulations can be seen as more of a codification and reaffirmation of existing policies established under the RRA than a radical departure from the RRA framework. Groups outside of the regulatory regime continue to have an uncertain legal status. How these groups are integrated into the religious administration may be indicative of the future of religious freedom in China.

II. Reflections on the RRA

In late 2004, China's State Council announced that it was issuing a new Regulation on Religious Affairs (RRA) that would be a "paradigm shift" in religious administration. At the time, many observers, including myself,² expressed cautious optimism that, while the RRA did not represent a fundamental reordering of state supervision over religion, it might result in a small step toward greater religious freedom in China. The RRA omitted several restrictions contained in prior national and regional regulations and left several provisions vague, possibly indicating a gradual shift toward more flexibility in religious administration and perhaps allow space for unregistered groups to flourish. Further, the RRA provided additional legal protections in several areas.

In the two years since the announcement of the RRA, this optimism has been tempered by actual events. The RRA offered few unrestricted rights—most contained qualifications, provisos, and restrictions. The omissions that were thought perhaps to signal a new openness did not grant any new rights, and religious groups are not fundamentally on more solid legal ground than before. Further, the vagueness in the RRA cuts both ways, allowing for inconsistent interpretations and the possibility of abuse of discretion by less sophisticated local officials. Scholars cautioned that much would depend on implementing guidelines issued subsequent to the RRA. To date, these guidelines have not been publicly issued.³ The practical implementation of the RRA, however, indicates that the rights set forth in the RRA may be viewed as a ceiling rather than a floor.

III. The Interrelationship of National and Regional Regulations

Since the promulgation of the RRA, one national-level regulation and eight regional regulations affecting religious administration have been issued. The overall scheme of state supervision over religion remains constant. Inconsistencies among these regulations pose practical questions for both registered and unregistered religious groups.

A. MEASURES FOR REGISTRATION OF RELIGIOUS VENUES

Six weeks after the RRA took effect, the State Administration for Religious Affairs (SARA) promulgated the "Measures on the Examination, Approval, and Registration of Venues for Religious Activity" ("Measures").⁴ Like the RRA, the Measures do not provide any new rights per se, but do represent a more sophisticated effort to give clarity to the registration process. Specific procedures give both religious organizations and bureaucrats a clearer process to follow. The Measures also provide for decentralized decisionmaking, pushing approval down to the regional and lower levels, which then report their decisions to SARA. Decentralization may result in faster decisionmaking and possibly abuse by regional and lower-level officials, who are often less sophisticated than their national counterparts. Article 2 of the Measures includes "other fixed venues for religious activities" in the definition of permitted religious venues, rather than limiting religious venues to those of the five tradi-

tional religions. The term “religious groups” is not defined in the Measures.⁵ Article 5 of the Measures requires, among other things, a list of the members of the preparatory committee. While a list of only the preparatory members is better than previous provisions requiring a list of all members, it still reflects an underlying mistrust of religions and implies that only “good” citizens should be able to establish religious groups. Two clarifying provisions help in giving more legal certainty: Article 11 clarifies that previously registered venues need not re-apply for registration, and Article 15 clearly repeals the supplemental registration regulations promulgated by SARA in 1994. The largest problem with the Measures is that no clear approval standard exists. Article 6 requires religious cadres to “solicit the opinions” of local leaders. Do these local leaders exercise a veto over approval of a religious venue? If not, how much weight is given their “opinions”? If an application is denied, can it be appealed to the regional RAB or to SARA? The Measures provide additional clarity in registration procedures but, like many of the post-RRA regional regulations, leave many unanswered questions.

B. NEW AND AMENDED REGIONAL REGULATIONS

Despite the efforts of the RRA and the Measures to establish clear standards for religious administration, they have not systematized the application of laws in ways some scholars had envisioned. The patchwork of municipal, regional,⁶ and national regulations remains, and from a legal perspective, the events following the RRA pose conundrums for religious groups and their leaders. Eight regions have issued new or amended regulations on religious affairs following the RRA’s entry into force in March 2005 and the enactment of the Measures in April 2005. In April 2005, Shanghai was the first to amend its regulation.⁷ Henan and Shanxi issued new regulations in July 2005. Zhejiang amended its regulation in March 2006, as did Anhui in June 2006. Beijing amended its regulation in July 2006, and Hunan and Chongqing did so in September 2006.⁸ Some of these regulations bring the provincial law in conformity with the RRA, but others retain and re-enumerate provisions that are at odds with the RRA and the Measures.

1. Preemption issues

China’s Legislation Law indicates that national-level regulations have a “higher legal authority” than regional or local regulations.⁹ The Legislation Law provides that where a national-level regulation has come into force, contravening provisions in regional regulations are invalid, and the issuing regional body “shall amend or repeal such provision on a timely basis.”¹⁰ But the Legislation Law also provides that a regional regulation can be used to “implement a national law or administrative regulation in light of the actual situation of the jurisdiction.”¹¹

From a legal point of view, the drafters of the post-RRA regional regulations seem to believe either: (1) the pre-existing provisions of regional regulations do not conflict with the RRA and therefore do not need to be changed; or (2) the regional regulations do in fact conflict with the RRA but serve to implement religious administration “in light of the actual situation” in that province.¹² For the provinces that have not acted after the RRA, it could be because either (1) they believe that the RRA implicitly repealed all regional-level regulations on religious administration, and thus there is no need to repeal the prior regulations; (2) they are in the process of drafting an amended or new regulation; or (3) they have chosen to ignore the RRA and continue to pursue religious administration as before. The disparate reactions among the provinces following issuance of the RRA indicate that all of these situations are possible.¹³

While these preemption issues pose interesting theoretical legal issues, they also have real consequences for religious believers. Because religious organizations exist and operate in towns, counties, and provinces whose regulations sometimes conflict with national regulations, what set of laws should religious believers and their leaders follow? If a regional regulation conflicts with the RRA, which provision should a religious body follow? If the RRA provides rights that a regional or local regulation does not provide, can a religious body successfully assert these rights? What significance does the absence of new or amended regulations in other provinces have? Does the RRA apply in place of the preexisting regional regulation, as a supplement, or neither?¹⁴ For instance, should a religious body in, say, Xinjiang assume that the RRA is applicable in the province, the preexisting regional regulation, or parts of both? If the venue registration provisions of a regional regulation are not the same as the Measures, which procedures should a religious group follow to register a venue? Can religious groups avail themselves of rights contained in regional regulations but not the RRA, and vice versa? Are groups subject to penalties contained in the RRA but not in regional regulations? If regional RAB cadres applied a penalty that was more restrictive than that provided for under the RRA, would an

administrative appeal be possible under Article 46 of the RRA?¹⁵ If so, to what body? What should groups make of deletions from new/amended regulations? How do unregistered groups fit in to this legislative morass? Some provinces recognize groups outside the traditional five—can these groups “leverage” registration in one province to obtain registration in another?¹⁶ Are religious groups outside the traditional five presumptively unauthorized in provinces where post-RRA regulations still limit the definition of “religion” to the traditional five?

2. Key changes in the new and amended regional regulations

The drafters of the new and amended regional regulations seem to have been closely examining the RRA when drafting but made a conscious decision not to simply copy and paste provisions. Rather, it appears that regional regulations adopted some provisions of the RRA and Measures, modified other provisions, omitted some provisions in the Measures, and added new provisions not contained in the RRA or Measures. At times, it appears that the drafters sought to salvage the existing regional regulation and only make changes where the regulation’s provisions were in direct conflict with national policy. Even then, as the table below shows, many disparities remain.

Location, Date, and Type	Key Changes
Shanghai—April 2005 (amended)	<p>Expands definition of “religious affairs” beyond five traditional religions, but still within legal confines—established and registered according to law (old art. 3; new art. 3)</p> <p>Eliminates requirement that national agencies within city abide by these regulations (old art. 8)</p> <p>Religious groups and venues enjoy preferential tax treatment (new art. 11; cf. RRA art. 36) [no corresponding requirement to report income and expenditures]</p> <p>Deletes list of permitted titles for religious officials (old art. 15)</p> <p>Religious personnel can participate in city’s social security program (new art. 13)</p> <p>Detailed registration requirements and procedures for religious venues (new arts. 17—19; cf. RRA art. 13)</p> <p>New provisions on large outdoor statutes (new art. 23; cf. RRA art. 24)</p> <p>Religious believers may have a “religious life” within their homes (old art. 30; new art. 27)</p> <p>Eliminates enumerated list of permitted religious activities, potentially broadening scope (old art. 30)</p> <p>Amends prior prohibition on various activities: (1) deletes references to fortune telling, palm reading, and casting of lots; (2) maintains prohibition on divination, exorcism, and healings, (3) limits the prohibitions to those activities that “are in opposition to the public morality or church teachings” (old art. 28; new art. 24)</p> <p>Specific requirements for approval of large-scale religious activities (new art. 26)</p> <p>Provisions on religious institutes modified to come closer to RRA provisions (old arts. 35—39; new arts. 32—37; cf. RRA arts. 8—9)</p> <p>Prohibits transfer of religious relics and property (new art. 39; cf. RRA art. 32)</p> <p>Chapter title changed from “Foreign Contacts” to “Foreign-Related Religious Affairs” (old ch. 8; new ch. 8)</p> <p>Deletes approval process for foreigners to apply for approval for filming at religious venues (old art. 50; but see RRA art. 25)</p> <p>Eliminates permission for foreigners to bring in religious articles for personal use (old art. 51)</p> <p>Significantly restructures “Legal Responsibilities” (i.e., penalties) section with more specific requirements and penalties for violations (old arts. 54—59; new arts. 51—61; cf. RRA arts. 38—46)</p> <p>Eliminates authorization for Shanghai RAB to bear responsibility for interpretation and to implement detailed rules (old arts. 61—62)</p> <p>Apparently effective upon promulgation (new art. 63 retains March 1, 1996 effective date)</p>
Shanxi—July 2005 (new)	<p>No previous provincial-level regulation</p> <p>Defines “religious groups” as the patriotic religious associations governing the five traditional religions, plus “other religious organizations established in accordance with law” (new art. 7)</p>

Location, Date, and Type	Key Changes
	<p>Specific requirements for registration of religious groups: (1) name, residence, and responsible person; (2) does not violate the Constitution, laws, regulations, or rules; (3) has a legitimate source of income; (4) is textually researchable, conforms to the country's modern evolution of religious history, and does not violate classic scriptures, doctrine, or canon; and (5) the organizational structure must be representative (new art. 8)</p> <p>Includes in the definition of religious venues "Buddhist temples, Daoist temples, mosques, churches, and other fixed locations for religious activities that have been legally registered" (new art. 11; cf. Measures art. 2)</p> <p>Detailed requirements for registration of religious venues (new art. 12) somewhat track requirements in Measures arts. 5, but not entirely</p> <p>Enumerates a list of religious personnel from traditional five religions "and so on," but no real provision for those outside traditional five religions (new art. 16)</p> <p>Defines "religious activities" via an enumerated list (new art. 20)</p> <p>Religious citizens can perform "normal" religious customs within their own homes (new art. 22)</p> <p>Authorization procedures for religious activities somewhat parallel RRA provisions, but with shorter time windows (new arts. 23—24; cf. RRA 22)</p> <p>"Legal liability" chapter (new arts. 28—34) somewhat parallels RRA provisions (RRA arts. 38—46) but with inconsistent provisions</p> <p>Two-month window between enactment and effective date (new art. 35)</p> <p>No chapter on religious property</p>
Henan—July 2005 (new)	<p>Defines "religion" as five traditional religions (new art. 2)</p> <p>Special provisions for registering a Catholic diocese (new art. 8)</p> <p>Specific requirements for training of religious personnel (including "patriotic education" and "conforming religion to socialist society") and approval procedures (new arts. 9—10) ["conforming religion to socialist society" often found in religious policy documents but not usually in law]</p> <p>List of requirements for registering religious venues (new art. 17) largely parallel Measures but adds requirement to submit a building plan</p> <p>Religious citizens can practice religious customs within their homes (new art. 21)</p> <p>Approval requirements for multiprovincial activities largely parallel RRA provisions (new art. 23; cf. RRA art. 22)</p> <p>Publication requirements (new art. 25) parallel RRA provisions (RRA art. 7) but add sentence that organizations and individuals cannot ship, sell, distribute, or post any illegally printed or imported religious publications or materials</p> <p>Legal liability chapter (arts. 26—31) parallels in condensed form the provisions of the RRA (RRA arts. 38—46)</p> <p>Explicitly repeals 1991 regulation (new art. 32)</p>
Zhejiang—March 2006 (amended)	<p>Deletes references to five traditional religions (old art. 2)</p> <p>Emphasis on rule of law (new arts. 7, 21)</p> <p>Expanded chapter on religious personnel (new arts. 9—15)</p> <p>Specific requirements for training of religious personnel and approval procedures (new art. 9)</p> <p>Eliminates specific list of religious personnel (old art. 13)</p> <p>"Encourages" religious organizations and venues to undertake social welfare projects (new art. 13)</p> <p>Specific requirement for Catholics to obtain approval from provincial Catholic body for religious activities; more onerous registration requirements (new arts. 18, 19)</p> <p>Expands approval procedures for new and remodeled venues (new arts. 22, 24; cf. RRA art. 13)</p> <p>Prohibits individuals or unapproved groups from establishing religious venues (new art. 23)</p> <p>Detailed requirements for "democratic management" (new art. 25; cf. RRA art. 18)</p> <p>Slightly broadens the types of acceptable donations (but retains prohibition on unapproved groups accepting religious donations) (new art. 28; cf. RRA art. 20)</p> <p>New provisions for religious sites with tourist implications and statutes (new arts. 29—31; cf. RRA arts. 24, 26)</p> <p>Requires preapproval for filming at religious sites (new art. 32; cf. RRA art. 25)</p>

Location, Date, and Type	Key Changes
	<p>Allows permission to hold religious services in one's own home retained but limited: "[such worship services] cannot influence other people's normal lives" (new art. 36)</p> <p>Additional requirements for approval of "atypical" activities: (1) conformity to religious doctrine and custom; (2) necessity of holding the atypical activity; (3) has an actionable plan, including an emergency plan; and (4) "other must-have conditions" (new art. 38) [undefined and therefore susceptible to abuse]</p> <p>Scaled-back provisions on religious interference in foreign affairs (old arts. 34—39; new art. 39)</p> <p>Religious groups and venues enjoy preferential tax treatment; required to make donation information public (new art. 42; cf. RRA 36)</p> <p>Eliminates permission to rent religious real estate (old art. 44)</p> <p>Restructured penalty section with more specific requirements and penalties for violations (new arts. 44—50; cf. RRA arts. 38—46)</p> <p>Two-month window between enactment and effective date (new art. 51)</p>
Anhui—June 2006 (amended)	<p>Very minor amendments rather than a wholesale revision to conform with RRA provisions</p> <p>Requires invitations for religious personnel from outside the province and approval by city religious organizations and city religious affairs officials (art. 14)</p> <p>Requires religious colleges and universities to obtain the approval of the provincial religious body (art. 34)</p>
Beijing—July 2006 (amended)	<p>Stated goal is to bring regulation in conformity with the RRA¹⁷</p> <p>Relatively minor amendments rather than a wholesale revision</p> <p>Removes requirement for annual inspections (art. 20)</p> <p>Advance consent of management group requested before new construction or expansion (art. 25)</p> <p>Expands procedures for large-scale or cross-provincial religious activities (art. 26)</p> <p>Precludes transferring, mortgaging, or investing in buildings and structures used for religious activities (art. 34; cf. RRA art. 32)</p> <p>Modifies "legal liabilities" section, though still differs from RRA provisions (arts. 47—48)</p>
Hunan—Sept 2006 (new)	<p>Regulations are a hybrid of prior Hunan provisions, amended Shanghai regulations, and RRA</p> <p>Specifically cites the RRA and several RRA provisions (new arts. 1, 13); also cites national "Law on Accounting" (new art. 40)</p> <p>Eliminates references to five traditional religions in definition of "religion" (old art. 2; new art. 2)</p> <p>Retains references to resisting foreign influences (old art. 5; new art. 5)</p> <p>Adds "other religious organizations" to the definition of "religious groups," which previously included only the patriotic religious associations governing the five traditional religions (old art. 7; new art. 8)</p> <p>Includes "other fixed venues" in the definition of permitted religious venues (new art. 12; cf. Measures art. 2)</p> <p>Allows for designation of temporary religious venues according to need (new art. 12)</p> <p>Specific responsibilities outlined for "democratic management organization," including annual reports (new art. 16; RRA art. 17)</p> <p>Provisions for management of religious tourist destinations (new art. 23; cf. RRA art. 26)</p> <p>Religious personnel can participate in city's social security program (new art. 28)</p> <p>Specific approval provisions for cross-provincial activities (new art. 32; RRA art. 22)</p> <p>Permits home worship (new art. 29)</p> <p>Provisions for religious education (arts. 33—36; RRA arts. 8—10)</p> <p>"Religious property" chapter, including tax preferences (new arts. 37—42) roughly mirrors RRA provisions (RRA arts. 30—37)</p> <p>Religious organizations can accept donations from abroad (new art. 38)</p>

Location, Date, and Type	Key Changes
	<p>“Legal Liability” chapter (new arts. 43—47) is abbreviated version of RRA provisions (RRA arts. 38—46); includes provision for administrative and criminal penalties for dereliction of duties (new art. 47)</p> <p>Separate provision for registration of venues for folk beliefs (new art. 48)</p> <p>Retains provision deferring to the national government religious involvement in foreign affairs and religious exchanges with Taiwan, Hong Kong, and Macau (old art. 42; new art. 49)</p> <p>Three-month window between enactment and effective date (new art. 50)</p> <p>Specifically repeals Hunan’s 2000 regulation governing religious affairs (new art. 50)</p>
Chongqing—Sept 2006 (new)	<p>Somewhat parallels new Hunan regulations¹⁸</p> <p>Specifically cites the RRA and several RRA provisions (new arts. 1, 13)</p> <p>Requirement that People’s Government at all levels “listen” to the ideas of religious groups, venues, and citizen-believers (new art. 7)</p> <p>Retains list of patriotic religious associations, including “other religious organizations” (old art. 26; new art. 8)</p> <p>Special provisions for registering a Catholic diocese (new art. 9)</p> <p>Specific requirements for registration of religious groups: (1) name, residence, and responsible person; (2) does not violate the Constitution, laws, regulations, or rules; (3) has a legitimate source of income; (4) is textually researchable, conforms to the country’s modern evolution of religious history, and does not violate classic scriptures, doctrine, or canon; and (5) the organizational structure must be representative (new art. 8) [parallels article 8 of new Shanxi regulation]</p> <p>Disapproval of applications requires written explanation (new arts. 11, 31)</p> <p>Includes “other fixed venues” in the definition of permitted religious venues (new art. 14; cf. Measures art. 2)</p> <p>Provisions for religious venues roughly parallel RRA (new arts. 14—27; cf. RRA arts. 12—26)</p> <p>“Normal” religious activities within the home permitted (new art. 29)</p> <p>Eliminates enumerated list of permitted religious activities (old art. 31)</p> <p>Eliminates prohibition on proselytizing outside of religious venues (old art. 33)</p> <p>Special provisions for approval of Catholic bishops (new art. 32)</p> <p>Retains separate chapter for “Religious Publications” (old and new ch. 6, new arts. 35—37) somewhat parallels RRA provisions (new art. 7)</p> <p>Detailed provisions for “Foreign-Related Religious Affairs” (new arts. 38—41), including specific permission for foreigners to attend religious services in the city and to hold religious activities upon registration</p> <p>Eliminates restriction on overseas religious organizations sending instructions and funding (old art. 45); modifies requirement that interactions with foreigners must follow principles of independent governance, mutual respect, reciprocal non-interference, and equality (new art. 38)</p> <p>“Legal Liability” chapter (new arts. 42—47) is abbreviated version of RRA provisions (RRA arts. 38—46)</p> <p>Provision for administrative and criminal penalties for dereliction of duties (new art. 42)</p> <p>Penalties for foreigners who violate regulation (new art. 45)</p> <p>Provides for administrative appeal of unfavorable decision (new art. 47)</p> <p>Two-month window between enactment and effective date (new art. 49)</p>

Numerous variations make it difficult to draw broad conclusions from the amended regional regulations. Nevertheless, a few trends emerge:

- No regional regulation significantly curtails religious freedom further, but no provincial regulation attempts to expand significantly the scope of protections beyond that of the RRA. In this regard, the post-RRA regional regulations can be seen as a codification and entrenchment of religious policies rather than a significant advance beyond the basic policies and principles enshrined in the RRA.
- Many of the amendments and new regulations bring the regional administrative requirements closer to that set forth in the RRA, but many provisions still conflict.
- Several regional regulations restate the traditional five religions in the definition of “religious organizations” but add an “other” category that in the end could potentially be used to register groups outside the traditional five.

- Several provinces permit religious observance within the home but with various limits (limited to only “normal” religious activities, or observance permitted so long as it does not influence the “normal lives” of others).
- Provisions requiring annual inspections have been eliminated.
- Legal liability provisions in many regional regulations parallel RRA provisions.
- Several new regulations provide incremental improvements (e.g., separate provision in Hunan regulations for registration of venues for folk beliefs; preferential tax treatment in several regulations; additional administrative protections in several regulations).

IV. Groups Outside the Regulatory Regime

All of the analysis above applies to the five traditional religious belief systems long recognized in China: Buddhism, Catholicism, Daoism, Islam, and Protestantism. Groups and belief systems outside of these five remain in an uncertain position.¹⁹ Some groups have received tacit consent from the government to carry on some form of religious observance despite having no legal existence or enforceable rights. Some groups have attempted to register as religious groups or as social groups but have not been successful. The religious affairs authorities have shown some willingness to accommodate these groups outside the traditional five, but there are theoretical and practical problems related to the patriotic religious associations (PRAs), which traditionally have served as the supervising authority over religious groups. At least five possible scenarios exist for dealing with these new belief systems.

1. *Fit the religious group into an existing PRA.* The government could lump the group into the PRA that most closely resembles the group. But fundamental doctrinal differences (e.g., Judaism, Bahá’í) might make this unpalatable to both the group and the PRA.²⁰

2. *Establish a new PRA for the new group.* This solution would presumably satisfy the government’s desire for continued close supervision of religious practice, but may be undesirable to organizations which may prefer to decline close government supervision. Additionally, once additional PRAs are established beyond the original five, the government might fear opening a Pandora’s Box to a number of less desirable religious groups. If the government seeks to apply the law fairly, it also would face the tricky question of defining “religion.”

3. *Register as a religious group directly with SARA outside the context of the PRAs.* SARA may be amenable to have religious groups register outside the context of the PRAs. Indeed, SARA’s establishment of a new Section to supervise folk beliefs and “religions outside the five main religions” may indicate SARA’s flexibility. Bureaucratic politics may hamper such an option. SARA, a state organ, is under the supervision of the State Council; the PRAs are under the supervision of the United Front Work Department, a party organ, which might resist efforts to place religious groups outside its jurisdiction.

4. *Register as a social organization but not as a religion.* The government could permit religious groups to register as a social organization under the applicable regulations but not have any formal religious status. While such a scenario might be acceptable to some groups, others may insist on being treated as a religion rather than merely a social organization. The government may also feel that religious groups need additional supervision, though this may be a soluble issue.

5. *Continue the status quo.* Because of the shortcomings of the above options, the most likely outcome is to continue the status quo. The government could continue to permit meetings of some unobjectionable religious groups, particularly those that seem to pose no threat to the government. The government has tolerated such an arrangement for several groups of expatriates with established followings outside China.

The Orthodox community in China poses an interesting case study exemplifying these issues. Both Heilongjiang and Inner Mongolia have recognized the Orthodox Church in their regulations,²¹ and the Orthodox Church also is registered in Xinjiang. After the announcement of the RRA, the Orthodox community announced its intention to apply for registration with SARA. SARA has not registered the Orthodox church, though SARA has cooperated with the Orthodox community to rebuild Orthodox churches in China and in other ways.²² How groups outside the traditional five, such as the Orthodox Church, are integrated into China’s system of religious administration may be indicative of the future of religious freedom in China.

V. Conclusion

As indicated above, this analysis has focused somewhat narrowly on the legal structures affecting religious administration in China.²³ The basic policies of continued state supervision over religion with marginal improvements that were outlined in the RRA have not been altered by subsequent national and regional regulations. Conflicts between provisions in the RRA and regional regulations leave religious groups in a state of legal and practical uncertainty. Further, the system of national and regional regulations does not address religious groups that are not formally recognized by the government. China's religious administration policies and laws must make additional efforts to resolve these questions. While a call for unfettered religious freedom will likely go unheeded, it would be a step in the right direction for China to enact laws that comply with international standards that provide basic rights for all religious believers and groups. China's WTO accession and growing interactions with other countries amplify the need to hasten its transition from a rule-by-law to a rule-of-law nation and the need for all of its laws, including those governing religious freedom, to provide clarity, transparency, and predictability.

ENDNOTES

¹ Attorney, Covington & Burling LLP. These remarks reflect my personal viewpoints and not those of the firm or any of its clients.

² See Eric R. Carlson, "China's New Regulations on Religion: A Small Step, Not a Great Leap Forward," 2005 *BYU L. Rev.* 747; see also Kim-Kwong Chan & Eric R. Carlson, *Religious Freedom in China: Policy, Administration, and Regulation* (2005).

³ Sources indicate that many local Religious Affairs Bureaus (RABs) are awaiting clearer guidelines from SARA in order to implement the RRA. Several jurisdictions may be used as pilot projects for these additional guidelines.

⁴ A good English translation can be found at <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingle=38682>.

⁵ Presumably, the term "religious groups" (zongjiao tuanti, sometimes translated as "religious organizations") refers to the patriotic religious associations, but regional regulations promulgated after the Measures leave open the possibility that groups apart from patriotic religious associations may be able to register.

⁶ I use "regions" synonymously with "provinces" to describe provinces, provincial-level municipalities, and provincial-level autonomous regions.

⁷ In 1995, Shanghai also was the first province to issue a comprehensive religious regulation. Shanghai issued its amended regulation on the same day as SARA issued the Measures. Interestingly, the amended Shanghai regulation is the only regional regulations posted on the SARA website. This may be due more to timing (the Shanghai regulation was the only one in effect when SARA uploaded most of its website content in July and August 2005) than an indication of SARA's approval of the Shanghai regulation.

⁸ Liaoning and Jiangxi also are expected to issue new or amended regulations. See James Tong, *Testimony Presented at the Issues Roundtable, Congressional-Executive Commission on China*, Nov. 20, 2006, available at <http://www.cecc.gov/pages/roundtables/2006/20061120/Tong.php>.

⁹ See *Legislation Law of the People's Republic of China*, art. 79 ("The effect of administrative regulations is higher than that of local regulations and rules."); cf. art. 80.

¹⁰ See *id.* art. 64: "Where a national law or administrative regulation enacted by the state has come into force, any provision in the local decree which contravenes it shall be invalid, and the enacting body shall amend or repeal such provision on a timely basis."

¹¹ See *id.* art. 64: "A local decree may provide for the following: (i) matters for which enactment of a local decree is required in order to implement a national law or administrative regulation in light of the actual situation of the jurisdiction; (ii) matters which are local in nature and require the enactment of a local decree." Cf. Article 63.

¹² Article 88 of the *Legislation Law* permits the National People's Congress to repeal any local regulations conflict with the Constitution, laws, or administration.

¹³ Of course, a political explanation is also possible: provincial authorities, without a strong push from the central government, do not feel compelled to obey strictly Beijing's commands. As long as the provincial regulations are not unreasonable, this explanation continues, the provincial authorities do not fear meddling by Beijing.

¹⁴ Some of these preemption issues could be resolved if the National People's Congress passed a law, rather than the State Council issuing administrative regulations. In practice, however, such a law (which had been previously considered) may not affect the reality of religious practice in China. See Magda Hornemann, "Would a Religion Law Help Promote Religious Freedom?," *F18News*, Sept. 11, 2006, available at <http://www.forum18.org/Archive.php?article—id=840>.

¹⁵ In other words, do the RRA's administrative appeal provisions apply only to decisions taken with regard to the RRA, or to all decisions taken in relation to religious affairs?

¹⁶ See *infra* Section IV (discussing the Orthodox Church).

¹⁷ Beijing is apparently the only province to make conformity with the RRA an explicit goal, though other regulations (e.g., Hunan, Chongqing) explicitly reference the RRA.

¹⁸ Because the Hunan and Chongqing were issued at the same time (and given Hunan and Chongqing's geographical proximity), they may have been developed concurrently.

¹⁹ For these unregistered groups, it is unclear whether they can rely on the RRA provisions (art. 38) imposing penalties on state functionaries for abuse of power, neglect of duty, or illegal

action for personal gain. A failure to register a group that should otherwise be registered could at least in theory be seen as neglecting one's duty.

²⁰Other religious groups are similarly situated, such as Seventh-day Adventists, Jehovah's Witnesses, the Church of Jesus Christ of Latter-day Saints, Sikhism and Hinduism, not to mention a host of home-grown Chinese religious organizations. See Hans Petersen, "Despite New Regulations, Religious Policy Still Under Strain," F18News, March 8, 2006, available at <http://www.forum18.org/Archive.php?article—id=740>.

²¹See 1997 Heilongjiang regulation, arts. 2, 24, and 31; Inner Mongolia 1996 regulation, art. 2.

²²See various stories at www.orthodoxy.cn.

²³Many NGOs and other groups track the actual reality of the status of religious freedom in China. Many of these reports provide troubling evidence that what laws and protections do exist are being unevenly enforced.

PREPARED STATEMENT OF XIQIU "BOB" FU

NOVEMBER 20, 2006

CHANGES IN RELIGIOUS LEGISLATION AS SEEN THROUGH THE PROMULGATION AND AMENDMENT OF THE REGULATION ON RELIGIOUS AFFAIRS

I. PREFACE

The State Council "Regulation on Religious Affairs" (Hereafter abridged as National RRA) was implemented March 1, 2005. This regulation replaces two prior regulations: the "Regulations Governing Religious Activities Sites" and the "Regulations Governing Religious Activities of Foreigners in China." The former was annulled after the comprehensive administrative law, the National RRA, took effect. The Standing Committee of the People's Congress in the following provinces and directly administered municipalities amended and promulgated the "Regulation on Religious Affairs" (Hereafter abridged as Regional RRA) as regional regulations: Shanghai (April 21, 2005), Zhejiang (March 29, 2006), Anhui (June 29, 2006) and Beijing (July 28, 2006). Henan RRA was promulgated July 30, 2005 and enforced January 1, 2006; Shanxi RRA was promulgated July 29, 2005 and enforced October 1, 2005.

Before the promulgation of the National RRA, the various provincial RRA's were themselves comprehensive regional regulations, basically embracing all aspects of religious organizations, religious faculty, religious activities sites, religious publications, religious activities or external affairs, religious properties, legal liabilities, etc. Judging from a comparative observation of the textual framework and content, this article argues that the National RRA in its six year history of research, investigation, and promulgation, has absorbed in its legislative format and content certain religious legislation and enforcement from various provinces, and reached legislative definitions with a higher level of generalization and greater directness.

In view of the fact that the administrative regulation is higher than regional regulations in terms of effect, and that the content of the latter must not contradict the former, therefore relevant provisions of the Regional RRA's must be amended to comply with the National RRA. Following is an analysis of the emphasis of the religious administrative legislation of China, based upon examples of changes in the content of the RRA provisions of Beijing, Zhejiang, and Shanghai before and after amendments.

II. CHANGES IN THE BEIJING RRA BEFORE AND AFTER AMENDMENT

Corresponding changes have been made in religious organizations, religious faculties, religious activities sites, religious publications, religious activities or external affairs, religious properties and legal liabilities.

According to Article 8 Clause 1 of the National RRA, the Beijing RRA amended Article 9 Clause 1 as follows: Establishment of religious academies and schools will not be reported by the Municipal Government but by the Municipal Administration of Religious Affairs to the State Council Administration of Religious Affairs for approval.

Although Article 14 Clause 1¹ has removed the phrase "religious activities sites," the provision in Article 22 that "the collective religious activities of believers shall be conducted in religious activities sites," and the procedural design that cross-regional religious activities must be approved² implies that the change does not mean "free" space, but merely more concise wording and rigidity of logic. This is also reflected in the changes in Article 14 Clause 2.³

According to Article 18⁴ of the National RRA, the Beijing RRA amended Article 20⁵ to read: "Religious activities sites shall establish sound administrative organizations and regulations and accept the guidance, supervision and inspection of the Ad-

ministrative Department of Religious Affairs and other departments concerned with the People's local district or county government." Although such wording as "annual inspections" have disappeared, the departments with the authority of "guidance, supervision and inspection" over religious activity sites have been expanded from "Administration of Religious Affairs" to all "departments concerned" in order to implement integrated supervision and control by the public security, state security, industrial and commercial, urban construction and other government departments.

According to Article 25⁶ of the National RRA, Article 25⁷ of the Beijing RRA has been amended the word "or" to "and" requiring that adding a new structure, building conversion or extension at a religious activity site must obtain prior approval from the administrative organization of the place, i.e., the local Administration of Religious Affairs, and undergo proper procedures. This amendment is intended to prevent evasion of control over religious buildings by the Administration of Religious Affairs. Yet this dual approval has already been regulated in Article 11 of the 1994 "Regulations Governing Places of Religious Activities," and this Beijing amendment is only a correction of the mistake in the 2002 RRA.

According to Article 22⁸ of the National RRA, Article 26⁹ of the Beijing RRA has been amended to read as follows: Article 1: "Anyone who intends to organize a large-scale religious event that crosses provincial, autonomous regions, or directly administered municipality boundaries and exceeds the capacity of the religious activity site, or if intends to hold a large-scale religious event outside of a religious activity site shall undergo application and approval procedures according to the State Council "Regulation on Religious Affairs." Article 2: "Organizers of other types of large-scale religious events shall obtain consent from the religious group of the municipality and first report to the religious affairs department of the People's Government of the district or county in which the religious event is to be held. The Religious Affairs Department and other departments concerned with the People's Government of the district or county in which the religious event is to be held shall, in accordance with their respective official responsibilities, provide management as needed." This type of amendment actually requires that not only large-scale religious events crossing provincial boundaries obtain approval from the provincial Administration of Religious Affairs (the County Administration of Religious Affairs has lost its authority of approval), but the local Administration of Religious Affairs, the Public Security Bureau, and even State Security will coordinate to provide supervision. As a result, this arrangement actually has strengthened control over large-scale religious events.

According to Article 32¹⁰ of the National RRA, Article 34¹¹ of the Beijing RRA has been amended to prohibit the assignment, mortgaging, or use as an investment in kind of religious properties.

The amendments to Articles 47 and 48¹² of the previous regulation merely amount to adjustments in the format of expression regarding categorization of legal penalties: The essence has not changed, i.e., penalties are exercised on religious activities (setting up religious activities sites, establishment of religious academies and schools and training classes) in violation of the policy of "three fixes" of "fixed location," "fixed personnel," and "fixed section" that evade the regulatory order of administrative permission, including annulment or order to stop an activity, warning, seizure of illegal earnings, bulldozing of illegal buildings, administrative detention or fines. However, what is worth noticing is that this application of systematic penalties targeting the religious professional faculty—religious buildings—academies and schools (training classes)—donations—across region evangelization and location is the first time that the National RRA is cited as its basis.

III. CHANGES IN THE ZHEJIANG RRA BEFORE AND AFTER AMENDMENT

The previous regulation of Zhejiang, like that of Beijing, had already set forth a clear definition of "religious affairs." The amended RRA,¹³ in reference to Article 5 Clause 1 of the National RRA, has changed the definition to "Affairs that exist between religion and state, society and citizens, and involve state interests or social public welfare." This formality has provided a plausible cause for regulating religion. However, "state interests," "social public welfare," or "public affairs" are all uncertain concepts. If the administrative authorities alone have the arbitrate power to determine at will what constitutes "public interests" and use administrative logic to govern "public affairs," then the religious system may possibly fall into the system "pyramid" permissible by administrative orders and become one of its subsystems losing its religious independence and due functions.

Article 7¹⁴ was added to the amended RRA to reflect the four duties of government at various levels in the regulation of religion: safeguarding rights, hearing, coordination, and guidance. Among these, "guiding religion to be in conformity with the socialist society"¹⁵ originates from the No.6 Directive jointly issued by the Cen-

tral Committee of the Chinese Communist Party and the State Council on the requirement of “strengthening the Party’s leadership of religious work.” This Directive, against the background of the June 4, 1989 Incident and the dramatic transformation of Eastern Europe, signified the transition of religious policy from “soft” to “hard.”

Zhejiang, in its attempt to embody the legislative principle of Article 5 of the National RRA concerning the “united defense and coordinated regulation” of religious affairs by government administrative departments, takes a path similar to that of Shanghai¹⁶ but different to RRA from Beijing, has made more refined and specific provisions in its amendments. One example is the duty designed for such “self-governing organizations by the masses” as neighborhood committees and village committees¹⁷ to “assist the government in the administration of religion.” Against the background that Christian house churches in China refuse to register but worship in dispersed family gatherings, this type of system design extends the network of “united defense” against religion to the living quarters of citizens and enables stricter surveillance and more convenient regulation.

Article 11 Clause 2 of the amended Zhejiang RRA is a newly added clause which specifically sets forth terms and conditions of establishing religious training classes, amounting to virtual restrictions on the scale of training.¹⁸

Article 17 of the amended Zhejiang RRA is similar to the previously mentioned Article 14 of Beijing RRA, only with more concise language. The newly added Article 19, i.e., “household movement” Article imposes one requirement and four procedures on the religious faculty moving into the province or within the province: employment in the province for three years or more, recommendations by religious groups, and approval by the administration of religious affairs of the county, the city (within the district), and the province.¹⁹ Although the Chinese Constitution does not prescribe “freedom of movement,” it does contain the clause “right of equality.” Why are there such strict requirements and cumbersome application approval procedures for the movement of religious faculty households? Where is the legislative cause to justify the restrictions on the right to move a religious faculty? Is religious evangelization presenting such an obvious threat or detriment to “public interests” that it warrants strict restricted freedom of movement of religious faculty engaged in evangelization? This unique, “innovative” clause of Zhejiang Province actually smacks of the most wanton violation of the Constitution.

The amended Zhejiang RRA sets down more detailed and concrete procedural specifications than before on the building of new structures, expansion, relocation, and construction of religious activity sites according to Articles 13 and 15 of the National RRA: Activity sites are divided into temples/churches and other fixed locations, and the approval procedures are classified as approval by the county, city (with districts), and provincial Administration of Religious Affairs. The terms of establishing religious activity sites not only requires approval of the administrative department in charge, but also entails review and approval from at least two levels, in contrast to places of commercial services which do not require approval from the Administration of Industry and Commerce at various levels. This procedural requirement imposes unreasonable prior restrictions on the right of religious freedom. The newly added Article 31 concerning the “construction of outdoor large religious statues”²⁰ also requires gradual approval from the Administration of Religious Affairs of the city (with districts) and province.

Chapter 5 “religious activity” of the amended Zhejiang RRA differs from the previous regulation by setting forth an explicit separation between “collective religious activity” and “family religious life.”²¹ The “collective religious activity” is limited to those held in legally registered religious activity sites or those permitted by the Administration of Religious Affairs at the county level or above, thus correcting the ambiguity in the previous regulation.²² Although “family religious life” has been acknowledged, the scale of a family gathering has been regulated by the newly added restrictive clause of “not affecting normal daily life of others,”²³ thus providing a pretext for outlawing house churches on the basis of “interfering in people’s lives” or “disturbing public order,” etc.

The previous Zhejiang RRA (December 11, 1997) stipulated the clause on “abnormal religious activity” which was not found in the previous Beijing and Shanghai RRA’s to regulate cross-regional religious activity. Therefore, this paper argues that Article 22 Clause 1 of the National RRA (March 1, 2005) originates from Article 32 of the previous Zhejiang RRA.²⁴ Article 38 of the current amended Zhejiang RRA inherits the original legislative principle of the clause on “abnormal religious activity” and sets down more formal procedural definitions modeled on the formal legislative language of Article 22 Clause 1 of the National RRA and the Requirement of Four Conditions on holding this type of activity.²⁵ Simultaneously in accordance with the requirement of Article 2 of the National RRA,²⁶ adding Article 38 Clause

3: “religious groups or religious activity sites holding an abnormal religious activity shall adopt effective measures to prevent unexpected emergencies. The People’s government of a rural or urban township in the location where the activity takes place and departments concerned with the people’s government at the county level and above shall implement necessary management techniques according to their respective duties and responsibilities to guarantee the safe and orderly conduct of the abnormal religious activity.”

In its last chapter “Legal Liabilities” the amended Zhejiang RRA describes “abnormal religious activity” in further detail, adding two new types of religious activity, i.e., those “presided over by non-religious personnel” and “unauthorized cross-regional” that are included within the range of administrative penalty.²⁷ Article 46 is also stipulated according to the principle of Article 43 Clause 1 of the National RRA.²⁸ In the RRA of this province it first proposes the clause of inflicting an administrative penalty against an “illegal religious building.”²⁹ It actually means to forcefully demolish unauthorized meeting places.

IV. CHANGES IN SHANGHAI RRA BEFORE AND AFTER AMENDMENT

The emphasis of the Shanghai RRA is basically identical to that of Zhejiang; the uniqueness of the amended Shanghai RRA lies in its specific definitions on “religious publications.” Article 12 Clause 2 of its previous RRA stipulated “printing, publishing, and distribution of religious books and periodicals, religious printed matters, and religious audio-visual products shall be conducted according to relevant provisions.” This clause has been changed by the amended RRA to: “printing, publishing, and distribution of religious newspapers, religious periodicals, religious books, religious electronic publications, and religious audio-visual products and so on (hereinafter termed “religious publications”) shall be handled according to provisions of the state and this municipality concerning publication regulations.” Also a new clause has been added reading “any religious groups and religious activity sites (hereafter termed “religious organizations”) that are in need of producing printed religious material out of the range of religious publications shall precede according to relevant regulations of the state and this municipality.” This amendment seems, on the surface, to categorize religious publications, yet in reality it is requiring all religious publications (especially internal materials) be controlled by the licensing authorities of administrative departments.

Before the promulgation of the previous Beijing RRA,³⁰ the revised “Regulations Governing Printing” and “Regulations Governing Publication” were promulgated and took effect.³¹ The new “Regulations Governing Printing” specifically prescribes that internal religious publications must undergo a dual review and approval procedure to obtain authorization from the Administration of Religious Affairs at the provincial level and issued a “print permit” from the Administration of the Press at the provincial level. While other types of internal publications need only be issued a “print permit” from the Administration of the Press at the county level.³² The design of the “authorization by provincial level departments” is intended to have a psychological effect in that regulation by a higher authority is a more intense level of policy implementation.³³ This type of legal procedural discrimination is without explanation or plausible cause; it violates the constitutional principle of equal treatment at the same time violates the rights of equality, religious freedom and freedom of the press. It is based precisely on the unfair treatment of religious publications. The new Regulations Governing Publications adds a new chapter 5 “Importation of Publications: establishment of a special operations and review system on imported publications.” The previous Beijing RRA has a special chapter on religious publications which categorizes them by three criteria: “open publications,” “internal material publications,” and “overseas publications,” with emphasis on regulating publishing, printing and distribution of religious “internal publications” and “overseas publications.” And this chapter has been reserved intact in the new RRA.

Article 12 of the previous Zhejiang RRA before the promulgation of the new “Regulations Governing Printing” and “Regulations Governing Publication” states, “printing, publishing, and distribution of religious books and periodicals, religious printed materials, and religious audio-visual products shall obtain authorization from the Department of Religious Affairs of the province and approval from the Department of the Press of the province” has been amended to Article 5 Clause 1: “publication of openly circulated religious publications shall be conducted according to regulations by the Publishing Administration of the state,” and Clause 2 states: “internal religious materials compiled by religious groups and temples/churches shall obtain authorization from the Administration of Religious Affairs of the province and issuance of a “printing permit” from the Administration of the Press of the province.” This amendment has similarly divided religious publications into “open

circulation publications” and “internal material publications,” and the latter needs to undergo dual authorization from both the Administration of Religious Affairs and the Administration of the Press of the province.

It can be seen that religious publications, especially internal material publications, have become the emphasis of religious regulation; this is precisely the newly formulated regulative measure targeting independent Christian house churches that print and produce in quantities larger than the publishing regulation order in China.³⁴

V. CONCLUSION

From analyzing the content changes in legal clauses of the RRA’s of Beijing, Zhejiang, and Shanghai before and after their amendments, this paper argues that the Chinese government, at the central and local levels, has shifted the regulative emphasis on religious activities from the singular target of religious activities sites to more comprehensive religious undertakings: the system of integrated regulation of religious activities, the identity qualification system of a religious faculty, the review and approval system of establishing, expanding, relocating, or constructing religious activities sites, the review and approval of religious publications especially internal material publications, the permission mechanisms of cross-regional religious activities, the system of integrated regulation of religious activities sites, the system of application and approval and preventive measures regarding large scale religious activities, the permission procedures for large outdoor religious statues, legal liabilities especially the formal provision allowing forceful demolition of unauthorized religious buildings, etc. All these result in more comprehensive, rigid and diverse regulation measures.³⁵ Although this regulation is merely an “administrative and regional law,” the promulgation of the unconstitutional National RRA and the amendment or establishment of Regional RRA’s symbolize the formal establishment of the system of “legally regulating religion” due to the fact that Chinese citizens do not enjoy freedom of assembly, the judicial system is not independent, the People’s Congress does not have adequate representation, and there is no review or litigation system for unconstitutionality.

ENDNOTES

¹“Certified religious professionals can preside over religious activities in venues of religious activities.”

²Article 16: “Religious professionals registered on record of this municipality going to other places to preside over religious activities, or religious professionals from other locations coming into this municipality to preside over religious activities, shall obtain prior approval of the municipal religious organizations and report to the religious affairs administrative departments of the People’s Government of the Municipality, or District or County for record keeping.” Also see amendments to Article 26 below.

³“Personnel who are not certified and registered on records or who have been removed from the status of religious professionals shall not preside over religious activities,” has been changed to “personnel who are unqualified to be religious professionals or whose credentials do not fit the specifications of the religion shall not preside over religious activities.”

⁴“Places of religious activity shall strengthen internal management and shall, in accordance with the provisions of relevant laws and regulations, establish sound systems of management in the areas of personnel, finance, accounting, security, fire control, cultural relics protection, health, and epidemic prevention. They shall accept guidance, supervision, and inspection from concerned departments of the People’s Government.”

⁵“Venues of religious activities shall establish sound administrative organizations and systems and accept the annual inspection from the administrative department of religious affairs of the people’s government of the local district or county.”

⁶“If a unit or individual intends to remodel or build a new structure at a place of religious activity, or intends to establish a site for commercial services, to hold an exhibition, or to shoot film or television footage, it shall first obtain consent from said place of religious activity and from the department of religious affairs of the local People’s Government at the county level or higher.”

⁷Adding a new structure, conversion or extension of buildings, establishing a site for commercial services, holding an exhibition, or shooting film or television footage within the range of management of a place of religious activity must obtain consent from the administrative organization of the place, and the Administration of Religious Affairs of the Municipality or District and County, and undergo necessary procedures at the department concerned.

⁸Article 1: The religious group or temple/church which intends to organize a large-scale religious event that crosses provincial, autonomous region, or directly administered municipality boundaries and exceeds the capacity of the place of religious activity, or intends to hold a large-scale religious event outside of a place of religious activity, shall submit an application to the religious affairs department of the People’s Government of the province, autonomous region, or directly administered municipality in which the religious event is to be held at least 30 days prior to the date when the event is to be held. The religious affairs department of the provincial, autonomous region or directly administered municipality People’s Government shall make a decision to approve or not to approve within 15 days of receipt of said application. Article 2: The

large-scale religious event shall be conducted pursuant to the requirements recorded on the notice of approval and without deviation from religious ritual. It shall not contravene the provisions of articles 3 and 4 of these regulations. The organizing religious group or temple/church shall take effective measures to prevent accidents. The departments concerned of the township People's Government and county and higher-level local People's Governments for the area in which the large-scale religious event is to be held shall, in accordance with their respective official responsibilities, provide management as needed to ensure the safety and orderly progress of the large-scale religious event.

⁹Organizing large-scale religious event shall obtain consent from religious groups of the municipality and report to and obtain approval from the religious affairs department of the People's Government of the Municipality or District or County according to relevant regulations of the Municipality, and fulfill relevant procedures.

¹⁰"Buildings and structures used by places of religious activity for religious activity and the appurtenant living quarters of religious instructors may not be assigned to another party, mortgaged, or used as investment in kind."

¹¹"Religious organizations and places of religious activity can lease and assign religious real estate or utilize religious real estate for other business purposes according to relevant regulations of the state and this municipality."

¹²Article 47 has been amended to read: "violation of provisions in Articles 9, 14, 16, 18 and 27 of this Regulation and falls within any one of the following situations, shall be annulled or ordered to stop activity, or be given a warning, or have illegal earnings seized if any, or have unlawful buildings or structures dealt with according to relevant laws and regulations, or be inflicted with security administrative penalty if any, by the religious affairs department of the People's Government of the this municipality or district or county, and other departments concerned: (1) Establishment of religious academies or schools or holding training classes without authorization; (2) Having personnel unqualified for religious faculty or non conforming with requirements of the religion to preside over religious activities; (3) religious faculty from outside of the region coming to this municipality to preside over religious activities or religious faculty of this municipality coming to other regions to preside over religious activities without obtaining consent from religious groups of this municipality and reporting to the religious affairs department of the People's Government of the municipality or of district or county for record keeping; (4) establishment of place of on religious activities without authorization; and (5) conducting evangelization outside of places of religious activities, or erecting religious stand or statue at public places without authorization." Article 48 has been amended to read: "Violation of provisions in Article 36 of this Regulation, non-religious organizations or places of non-religious activities receiving offerings, donations or other religious contributions, shall be ordered by the religious affairs department of the People's Government of the municipality or of the district or county; and have unlawful earnings seized if any; and be inflicted fines of three times of unlawful earnings."

¹³Article 2 Clause 2: "The religious affairs mentioned in this regulation refer to the social public affairs that exist between religion and the state, society, and citizens."

¹⁴Article 7 "People's Government at various levels shall safeguard the legal rights and interests of religious groups, places of religious activities, religious faculty, and religious citizens, hear the opinions from religious groups, places of religious activities, religious faculty, and religious citizens, coordinate administration of religious affairs, and guide religion to be in conformity with the socialist society"

¹⁵Article 8 of the amended Shanghai RRA has similar statement.

¹⁶See amended Shanghai RRA Article 6 Clause 4.

¹⁷Amended Zhejiang RRA Article 8 Clause 3.

¹⁸Amended Zhejiang RRA Article 11 Clause 2.

¹⁹Amended Zhejiang RRA Article 19 Clause 1, Clause 2.

²⁰Clause 1, Clause 2, Clause 3.

²¹Amended Zhejiang RRA Article 35. Article 36 Clause 1, Clause 2.

²²Old Regulation Article 28. This statement may be interpreted as meaning citizens cannot carry out personal religious activities in their homes.

²³Amended Zhejiang RRA Article 36 Clause 2.

²⁴Original Zhejiang RRA Article 32. National RRA Article 22 Clause 1.

²⁵Amended Zhejiang RRA Article 38 Clause 1, Clause 2, Clause 3.

²⁶National RRA Article 22 Clause 2.

²⁷Amended Zhejiang RRA Article 45.

²⁸National RRA Article 43 Clause 1.

²⁹Amended Zhejiang RRA Article 46.

³⁰The previous RRA of Beijing was promulgated July 18, 2002 and enforced November 1 the same year.

³¹"Regulations Governing Printing" (promulgated 19970308, enforced 19970501, annulled); "Regulations Governing Printing (State Council Order No.15, promulgated and enforced August 2, 2001) "Regulations Governing Publication" (promulgated 19970102, enforced 19970201, annulled); "Regulations Governing Publication," (enforced 20020201)

³²"Regulations Governing Printing" (State Council Order No.315, promulgated and enforced August 2, 2001) Article 18 Clause 1: "Printing enterprises accepting orders for printing internal material publications must verify the presence of the print permit issued by the administration of the press of the local people's government at the county level or above." Clause 2: "Printing enterprises accepting orders for printing internal material publications with religious content must verify the presence of the authorization paper from the religious affairs administration of the People's Government of the province, autonomous region or directly administered municipality and the print permit issued by the administration of the press of the people's government of the province, autonomous region or directly administered municipality." Clause 3: "the administration of the press shall decide, within 30 days of receipt of the application for printing of

internal material publications or for printing internal material publications with religious content, on whether it will grant the print permit or not, and notify the applicant; No decision beyond the period shall be deemed consenting to the application.”

³³For example, “State Council-Transmitted Report of the General Administration of Press and Publication and Other Work Units’ Work on the Prevention of Abuse in Compiling and Printing of Books and Magazines and Strengthening Publishing Management Work”(1980–06–22) stipulates that “printing of calendars and hanging calendars must be approved by the competent departments at the provincial level or higher.” “No printing house may make printing plates for or publish books or magazines not authorized by publishing units without approval from top-level provincial publishing administration organs.”

³⁴See National RRA Article 7 Clause 1: “religious groups may, in accordance with relevant state regulations, compile and print publications for internal religious use. The publication of publicly distributed religious publications shall be subject to regulations governing publications.” Clause 2: “Published materials that contain religious information shall comply with the Regulations Governing Publication and shall not contain the following: (1) That which would upset harmonious relations between religious citizens and non-religious citizens; (2) that which would upset harmony between different religions or within a religion; (3) that which discriminates against or insults religious citizens or non-religious citizens; (4) that which propagates religious extremism; and (5) that which violates the principle of religious autonomy and independence.”

³⁵The case of Cai Zhuohua “unlawful business operations crime” in 2005, the case of Wang Zaiqing “unlawful business operations crime” in 2006, and the case of forceful removal of Dangshan church building of Xiaoshan, Zhejiang—believers suspected of “violent resistance of law enforcement” arrested, are all proofs.

PREPARED STATEMENT OF JAMES TONG

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THE REGULATIONS ON RELIGIOUS AFFAIRS IN CHINA: PROVINCIAL REGULATIONS AND IMPLEMENTATION—NOVEMBER 2004—NOVEMBER 2006

In the post-Mao reform era, regulations on religion has been a balancing act between the Chinese regime’s felt need to control religious activities on the one hand and to provide religious freedom on the other. While religion remains under state management where all religious organizations (RO) and religious venues (RV) need to be registered, schools of religious affairs approved, foreigners cannot proselytize, and the state can order RO’s to remove heads of RV it deems to have breached its laws, the overall trend has been incremental relaxation of the state’s restriction on religion, at least since March 1982, when the Central Committee issued the historic Document 19 on religious policy.¹ In the past two decades since then, the gentler and kinder policy enunciated in that document has resulted in widening ideological and administrative autonomy of RO’s, fewer limitations on religious activities and venues, more rigorous protection of religious property, increasing latitude for RO’s to interact with their overseas counterparts, and greater circumscription of the power of government agencies to rule of law.

I. NATIONAL AND PROVINCIAL RELIGIOUS REGULATIONS

These benign developments are codified in the “Regulations on Religious Affairs” (hereafter “Regulations”) promulgated by the State Council on November 30, 2004. As the first comprehensive set of central government statutes on religion in the reform period, the Regulations stipulate clear administrative norms to manage religious affairs, place the latter in the system of existing laws in China, and introduce provisions for administrative appeal and judicial challenge. They replace the existing micro-management system by Religious Affairs Bureau’s (RAB) toward macro supervision by rule of law through reducing the number and type of religious activities that require prior official approval, omitting requirements for religious organizations to support Communist and state ideology, granting the right of RO’s to certify its religious personnel, permitting RO’s to receive contributions from domestic and extra-territorial donors, and stipulating more rigorous protection of religious property.

Comparison of national vs. provincial regulations

Since the promulgation of the “Regulations” in November 2004, six provincial-level units (hereafter provinces, viz, Beijing, Shanghai, Zhejiang, Henan, Shanxi, Hunan) have promulgated new or amended religious regulations, efforts for an additional four (Chongqing, Hebei, Jiangxi, Liaoning) have also been underway.² The six new provincial religious regulations have generally left out the State Council Regulations on international and national level policies, omitting those that govern religious exchange among the mainland, Taiwan, Hong Kong and Macau (Art. 47), those on the selection of the Dalai Lama and Catholic bishops (Art. 27), those regu-

lating the activities of national level religious organizations (The Three-Self Church organizations), national level policies relating to organizing pilgrimages for Chinese Muslims (Art. 11), as well as the sending and receiving students of religious schools to and from China and overseas RO's (Art. 10).

But provincial omissions go beyond issues of jurisdictional authority. Most provincial regulations also omit the State Council stipulations that undercut their political and economic power. Of the six provinces, only Shanghai echoes the State Council regulation stating the right of RO's and individuals to contest the decisions of the local RAB's through administrative appeal and judicial challenge in courts (Art. 46). Only Beijing legislates against the encroachment of the legal rights of RO's, RV's and citizen believers at the pain of civil and criminal liability (Art. 39). Provincial omissions of State Council regulations are also conspicuous in issues on protecting religious property. The State Council stipulation that local land management bureaus need to consult the local RAB's in proposed changes over the land use of RV's (Art. 31) are omitted in all the provincial regulations. The entire section of the SARA document on protecting religious property is totally omitted in the Henan and Shanxi regulations. Only Zhejiang incorporates the State Council stipulation that "assessed market value" be used as the criteria for compensating religious property removed for urban development and major construction projects (Art. 43).

On the other hand, provincial regulations also include provisions protecting religious rights not in the State Council regulations. All six provinces legislate the right for believers to practice religions in their homes. Shanghai, Zhejiang and Hunan stipulate that religious personnel are eligible to participate in the social security program. In addition, Shanghai also entitles students of religious schools after three years of local service to apply for local residence in the metropolis, a much coveted status (Art. 36). Zhejiang requires local authorities to consult with religious organizations in determining the price of admissions of tourist sites related to religious venues (Art. 30), while Hunan stipulates occupational discounts for religious personnel visiting tourist sites related to their own RO's (Art. 23).

Comparison of old vs. new provincial regulations

To what extent has the new set of provincial regulations amended obsolete provisions and adopted the new regulations of the State document? Of the six provinces which have promulgated religious affairs regulations since March, 2005, four (Beijing, Shanghai, Zhejiang, Hunan) have also an earlier set of regulations with which we can make the comparison. The overall trend is one of relaxation of state control of religious organizations, regulation by rule of law rather than by local religious affairs bureaus, and recognition of the rights of religious organizations. Compared to the earlier set of regulations, there is not a single provision in these four provinces where new limits on religious rights and freedoms are imposed and tighter control over religious organizations are decreed.

First, state power is more circumscribed in the new provincial regulations. The powers of the local religious affairs bureau over religious organizations are defined as those of "directing, coordinating, managing, and oversight" in the new Shanghai regulations (Art. 6). Two other sets of more interventionist powers (inspecting, supervise and urge [ducu]) in the 1995 Shanghai regulations were dropped in the definition. The requirement that religious organizations need to educate religious personnel and believers in "patriotism, socialism and rule of law" in Zhejiang's 1997 regulations (Art. 11) has been reduced to those of "patriotism and rule of law" in its 2006 version (Art. 14).

At the same time, some rights of religious organizations have received greater recognition in the new regulations. Zhejiang province adds a reference to the new right of religious organizations to construct large-scale, outdoor religious icons in its 2006 statutes (Art. 31) that was not in its 1997 version. Those of Hunan province introduces a new provision that religious organizations can accept extra-territorial donations (Art. 38), that was absent in its old version. Those of Shanghai adds the stipulation that infringements on the legal rights of religious organizations, venues and believers will receive administrative penalty or civil liability (Art. 51).

There is more positive recognition of the good deeds of religious personnel and their social service programs. Hunan adds the provision that religious organizations, venues, and personnel that have made significant contributions to the national and public interests should receive official commendation and encouragement (Art. 7). Instead of stating minimally that RO's "should be allowed to establish social services", the new version in Zhejiang province now states in more positive terms that "they should be encouraged" to undertake such activities (Art. 13).

Two poles of provincial regulations: Shanxi vs. Shanghai

Of the six sets of provincial regulations, those of Shanxi are more restrictive than those of the State Council and other provinces. Shanxi is the only province of the six that did not have any set of provincial regulations on religious affairs prior to the promulgation of the State Council document. It is one of the two provinces (with Henan) that does not have a section on protection of religious property. While the RAB's of the other five provinces have user-friendly websites listing policies and regulations, on-line applications and downloadable forms, the Shanxi RAB does not have a website. On the process of certifying religious personnel and appointing important positions in religious organizations, the State Council stipulates that the power to make those decisions rests with the RO, which are required only to notify the local RAB's to report to record [bei an] their decisions (Art. 28). Thus only post-hoc notification is required, as also minimally stipulated in the five other provinces. Shanxi, however, stipulates that their certification would be determined by the regulations set by the Provincial RAB, and that the RO's need to notify the local RAB's before they can issue the certificate. The power of local RO's in certifying religious personnel is thus encumbered and there are additional regulatory hurdles for the RO's to complete the process. On important positions in religious organizations, Shanxi further requires that the RO's need to notify the local RAB's before they can appoint or remove these positions, while other provinces do not have this restriction. On local religious personnel being invited to officiate religious functions outside the province, the State Council document does not impose any condition, but all provinces stipulate that the provincial religious organizations need to approve such invitation. Shanxi requires further that local religious organizations need to inform the local religious affairs bureau 15 days before the visits take place (Art. 19). Neither the State Council nor the five provinces stipulate restrictions on religious, cultural, or academic exchange activities organized by local religious organizations, but Shanxi requires the latter to inform the local RAB's on the time, location, and content of the planned activities (Art. 24). For activities involving religious organizations outside China, Shanxi is the only province that requires a 15-day advance notice on the time, location, content, size, participating organizations, and description of the extra-territorial religious organization (Art. 24). It is also one of only two provinces (with Zhejiang) that stipulate rules for cross-county religious activities (Arts. 23), and one of three provinces (with Henan and Zhejiang) that requires prior permission of the local religious affairs bureau to organize training sessions for religious personnel and believers (Art. 25).

In contrast, the Shanghai regulations incorporate most provisions in the State Council document that protect religious organizations, even including some that are unique in the national and provincial regulations. It is the only province that provides for administrative appeal and judicial challenge against the local religious affairs bureau (Art. 59). It is also the only province stipulating protection and control areas for religious buildings designated as national or important municipal historical buildings (Art. 41). When the national and four of the six provincial regulations do not have a section on foreign religious relations, Shanghai and Beijing have such sections (Chap. 8). Shanghai is the only set of provincial regulations that states that foreign nationals can participate in religious activities in local religious venues, that the latter can also perform religious activities at the request of foreign nationals, that foreign religious professionals visiting China in that capacity can preach and give homilies in local religious venues, that foreign nationals (not necessarily religious personnel) can engage in cultural and academic activities with local religious organizations (Arts. 45, 46, 48). It is not clear whether State Administration for Religious Affairs (SARA) would consider Shanghai or Shanxi be the norm for provincial regulations, but of the six, it only lists the Shanghai regulations and in full text in its website.

II. IMPLEMENTATION

In implementation, both the central and provincial governments have issued supplementary regulations. In the two years since the promulgation of the "Regulations", SARA has issued the "Methods for approving and registering Religious Venues" (April, 2005), while six provinces have promulgated their own religious affairs regulations as noted earlier. Aside from legislative activities, three issues have engaged the attention of religious affairs authorities. First, close to half of the provinces have proposed local regulations for registering RV's, in particular, those on distinguishing the traditional established religious venues from other fixed places of worship.³ Second, both central and provincial agencies have to create new policy instruments to implement the "Regulations". To standardize the procedures for registering RV's, SARA has to design the registration certificate and companion forms.

To codify the local RAB approval procedures, it has also proposed tentative regulations on the conditions, process, and bureaucratic time-lines for approving the establishment of religious schools, training seminars for the “Regulations”, the sending and receiving students of religious schools, and the convening of cross-county religious activities.⁴ At the province level, religious venues are required to create its financial control and accounting system to be eligible for registration. In Jiangsu province in 2006 alone, more than 600 person-classes were organized to train the staff in religious organizations to learn such systems. The RAB and the Provincial Finance Bureau of Liaoning have jointly developed and tested a pilot project on “Accounting System for the Private, Non-Profit Sector” for adoption by RAB’s of the entire province.⁵

Third, several central and provincial agencies have adopted measures to protect the economic interests of the religious communities. Shanghai is working on its draft regulation on “Methods for the participation of religious personnel in social security programs”, while Jiangsu has produced its “Opinions on the living standards and social security of religious personnel”. Chongqing Municipality has reportedly resolved the problem of social security for religious personnel. Beyond social security, several State Council ministries have resolved to provide half-fare for students of religious schools for home visits during the Chinese New Year, and to offer discount admissions for religious personnel at religious tourist sites.⁶ How two provinces managed the problem of religious property will be discussed in the following section on Challenges.

Increasing autonomy in religious education

In addition, religious organizations have reported increasing autonomy in religious education. The Religious Affairs Regulations have legitimized the process of Chinese religious organizations sending religious students for training abroad, a process that used to be done covertly. For the first time, the Protestant Church organized its own nation-wide examination, selecting over 10 religious students from more than 30 candidates to be trained overseas in 2006, while the Catholic Church also chose its own religious students by interviewing for overseas training. Both Christian churches report that SARA had no role in the selection process, and only provided assistance to get their passports. In the 2006 academic year, there are around 300 Catholic priests, nuns, and seminarians from China enrolled in religious studies programs in the Philippines, Korea, Germany, Italy, Belgium and the United States. Conversely, both the Protestant and Catholic seminaries have invited foreign theologians to lecture in their institutions. Also in the current academic year, the Protestant Nanjing Seminary has theology faculty visiting from Germany (2), Canada (2), the United States (1), and Finland (1); while Catholic seminaries have hosted over 20 visiting theologians from the United States, Germany, Korea, Spain, Ireland, Malta and Thailand. At least the Catholic Church reports that there was no prior screening by SARA, and neither the national Patriotic Church nor RAB sent representatives to observe the classes. At a more institutionalized level, the Protestant National Seminary in Nanjing has established a program of pastoral counseling with the Fuller Seminary of Pasadena, California. A related development is the substantial support the central and local governments provided to the Christian churches in constructing their seminaries. The Protestant National Seminary in Nanjing has received a new land grant from the Jiangsu provincial government for its new seminary that can house 1,000 religious students. Inaugurated in September, 2006, the new Catholic Seminary at the Daxing County in the outskirts of Beijing is a four building campus with 200,000 sq. ft. of floor space constructed with a land grant of 12 acres and monetary gift of Y73 million from the Beijing municipality.

In contrast to the Maoist policy of restricting religious activities to worship inside religious venues, the Christian churches are not only allowed but encouraged to undertake social services, as stated in the Zhejiang regulations. Both the Protestant and Catholic churches have revived their traditional charitable works in establishing and operating orphanages, homes for the elderly, medical clinics and kindergartens. Presently, the Catholics manage 22 kindergartens, 20 orphanages, 10 homes for the aged, 4 hospitals, 174 health clinics, and co-managed 2 leprosy institutions. In addition to operating 150 health clinics and close to 100 homes for the elderly, the Protestants have been managing a thriving network of YMCA’s in Beijing, Tianjin, Hangzhou, Nanjing, Guangzhou, Chengdu and Wuhan offering English, computer classes and exercise facilities, some of which have been in operation for over 20 years. While religious organizations are still not permitted to establish their own elementary to graduate schools, the Protestant church has established vocational schools, and a boarding school for Autism in Qingdao that uses the Christian Bible as part of the official curriculum. Both Protestant and Catholic

educational institutions outside China have established joint partnerships with China's leading colleges. A consortium of Jesuit Business Schools has a joint program with the Guanghua School of Management at Beijing University for many years. In September, 2005, the Baptist University of Hong Kong and the Beijing Normal University inaugurated an International College in its Zhuhai campus that enrolls both Chinese and Hong Kong students. Unlike all other colleges in China, the International College does not have organizations of the Chinese Communist Party, and political education is not a required subject.⁷

III. CHALLENGES

Central vs. local authority

As evident in the substantial variations of provincial regulations, the first challenge to the new regulatory regime for religion is one of local compliance, where local RAB cadres may be unwilling or unable to implement the new regulations. The issue is more than simply local active opposition or passive resistance to central policy objectives. In the constitutional framework of China, provincial and municipal legislatures are vested with legislative powers to enact local laws and regulations, provided these are not in contradiction to the state constitution, state laws and administrative regulations.⁸ In the realm of religious affairs, SARA, as a central government agency, has jurisdiction over national and international religious policy, and manages the national-level religious organizations. Local religious affairs, including the registration of religious organizations and venues, falls within the jurisdiction of the local RAB's. As administrative law promulgated by the State Council, the Religious Affairs Regulations is more authoritative than provincial regulations in China's hierarchy of laws when one contradicts the other,⁹ but much of the variations noted earlier do not pertain to direct statutory conflict. Shanxi and Henan are not breaching China's Legislative Law if their religious regulations do not stipulate the "Regulations" protection of religious property, as are all six provinces if they do not include the provision for administrative appeal and judicial challenge in their regulations. When cases arise, religious organizations can still base their legal claims on the State Council regulations. The absence of these provisions in provincial regulations does suggest that local authorities maybe predisposed to safeguard their own power and interest when these conflict with those of religious organizations that the "Regulations" aim to protect.

Bureaucratic conflict

Second, religious policy in China is no longer only an issue between the RAB's and the RO's, but has become increasingly entangled in a complicated bureaucratic web at both the central and local levels where benefits and burdens have to be bargained and turf wars fought. To illustrate the need for multi-agency coordination, the training seminar on "Regulations", convened in Beijing in late January, 2005 for religious affairs cadres, was jointly organized by the United Front Department, the National Public Administration College, the Organizational Department, the Legal Affairs Office of the State Council and SARA,¹⁰ while the five regional seminars were organized by the last three agencies.¹¹ The policy to provide half-fare for religious students in home visit train-rides during the Chinese New Year was negotiated among SARA, the Ministry of Railway and the Ministry of Education. The notice to offer discount admission for religious personnel at religious tourist sites was not issued by SARA, but by the State Development and Reform Commission.¹² As will be seen in the paragraph that follows, bureaucratic warfare among RAB and other local government agencies were even more vicious in cases involving religious properties.

Protection of religious property

Third, the challenge in protecting religious property involves not only RAB's and RO's but also local government agencies with strong vested economic interests. Religious revival combined with growing affluence has increased tourism and temple traffic, while the new authorization for religious venues to receive donations has made temples a lucrative source of revenue. At the same time, urban development has aggravated the need to relocate temples and churches, while the red-hot property market has attracted predators to covet religious real-estate. The problem is complicated by three decades of dogmatic Communist rule which legitimized the seizure of religious property for government use, when de facto occupation trumped de jure ownership. For many religious shrines, the question of property rights is further exacerbated by investments of local park services and tourist bureaus to build on and renovate these properties. It is thus difficult to sort out ownership, management and user rights, as well as the equity shares of the religious organizations and their new government and non-government tenants.

Recent efforts to resolve conflicts over religious property have been reported in Guangdong province, where three cases of ownership of religious property languishing for more than two decades have been settled in favor of the RO's.¹³ Jiangxi Province has also reportedly resolved the problems of five prominent Daoist and Buddhist temples, in a two-pronged solution on the ownership, management, and financial problems. For ownership and management, the local township, cultural relics and tourist departments were ordered to return the premises to the local religious organizations. In terms of financial revenue from tourist admissions, the local government is allowed to collect all gate receipts until its total investments are repaid, after which these receipts become the revenue of religious organizations. Religious organizations will collect all religious donations. In cases where local government agencies have currently recovered all its investments, they are permitted to wean their dependence on temple gate receipts gradually, beginning with 50 percent share in the first year of the arrangement, decreasing their annual shares until the religious organizations will get the total amount.¹⁴

In one of the three Guangdong cases, relocation of religious property presents a special knotty problem. The case involves the two hundred year old Fusheng Convent in Guangzhou which was ordered by the city's urban development, state land administration, and housing agencies to be demolished for urban redevelopment. Contrary to what is stipulated in the "Regulations", the municipal agencies offered only to replace the land in a site where real-estate prices were much lower. As plaintiff, the local Buddhist association solicited the assistance of the municipal RAB, which insisted that the new religious regulations stipulate that the developer should also pay for the reconstruction cost of the convent in a land parcel of equivalent size of the RO's choice. After protracted negotiations, the developer finally agreed to the terms of the local RAB and the Buddhist Association.¹⁵

For both local RAB and religious organizations, the new Religious Affairs Regulations present a great challenge in implementation. For RAB, the task of registering the RV's, in addition to the many new requests for permission to be processed according to new criteria, pose a new set of administrative burden for the local bureaucracy. To meet these new tasks, the RAB's of nine provinces (Guangdong, Jiangsu, Guizhou, Shandong, Hubei, Chongqing, Jiangxi, Hunan, Fujian) receive higher budget and staff personnel allocations. To illustrate the new work load, Jiangsu established a new office of policy and regulations in each of its 13 municipal RAB's, and created the position of office assistants in 1,200 out of 1,400 townships, villages and housing blocks, in effect quadrupling the religious affairs agents from under 500 to close to 2,000 in these basic units. Shanghai seconded 350 local cadres to receive basic seminar training on the new religious regulations and to become certified religious affairs agents.¹⁶

IV. CONCLUSION

The "Regulations on Religious Affairs" (November 30, 2004) is a major landmark in religious policy in China in the reform period. It is most comprehensive in scope among the preceding set of national-level government and party documents on religious policy issued in 1982, 1985, 1991, and 1994.¹⁷ It integrates the reform features in provincial religious regulations in the past decade and broadens the scope of liberalization. In terms of specific stipulations, the Regulations provide, for the first time, the rights of the religious organizations to: (1) accept financial contributions from extraterritorial organizations or individuals; (2) produce and print religious publications for internal distribution; and (3) construct large, outdoor religious icons. Going beyond specific stipulations, the Regulations move toward a new regulatory framework that sheds much of the requirements for prior approval by the local Religious Affairs Bureau governing activities on religious venues, religious personnel, and contact with extraterritorial religious organizations. Instead, the new regulatory framework is built on a much softer set of requirements for religious organizations and venues to inform and report to local Religious Affairs Bureaus, and for the latter to supervise and oversee, rather than to approve and rule on specific religious activities.

As shown in the foregoing pages, there has been substantial progress in enacting supplementary regulations at both the central and provincial government levels. Progress has been more notable at the central government level, where national religious organizations are given land and monetary grants to construct national seminaries, authorized to select religious students to receive theological training abroad, inviting foreign theologians to lecture at Chinese seminaries. Religious organizations are also permitted to re-establish their traditional works of charity like orphanages, homes for the aged, medical clinics and YMCA's, as well as venture into new apostolates like caring for autism children. With no Communist Party orga-

nized presence or required political education courses, the International College in Zhuhai represents a breakthrough in joint partnerships between Chinese universities and an outside Christian college. The picture is less clear at the local level, where local officials have jurisdiction over local religious affairs, and where both more authoritarian and liberal provincial regulations have been promulgated.

It is too early to decipher the magnitude of the impact of the new Regulations. But the direction is clear. In both statutory enactment as well as policy implementation, and at both the central and provincial levels, the overall trend has been one of the increasing institutional autonomy of religious organizations, greater protection of religious organizations, venues and personnel. Even for the more authoritarian provinces, no retrogression toward greater restriction on religious freedom is evident either in the legislative stipulations or policy enforcement of its new provincial regulations. To date, a great majority of provinces has not enacted new religious affairs regulations, but for the six that have, they promise an even more benign milieu for religion in China.

ENDNOTES

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¹ Central Committee of the Chinese Communist Party, "The Basic Viewpoint and Policy on the Religious Question during our country's socialist period," Document 19 (March 31, 1982), in Mickey Spiegel and James Tong eds., *Chinese Law and Government* (March-April, 2000), pp. 17-34.

² "Xin Fagui, Xin Jinzhan—"Zongjiao shiwu tiaoli" shisi yinianban zongshu" [New Regulations, New Progress—General report on the implementation of the "Religious Affairs Regulations" after one and a half years], SARA, unpublished memo, circa June 2006 (hereafter SARA, 2006), p. 2.

³ SARA (2006), p. 2.

⁴ SARA (2006), p. 2.

⁵ *Ibid.*, p. 6.

⁶ *Ibid.*, pp. 2-3.

⁷ Personal communications with the Executive Vice President of the International College, August, 2005.

⁸ "The Legislative Law of the People's Republic of China", Art. 33.

⁹ *Ibid.*, Art. 79.

¹⁰ Xinhua, Beijing, January 26, 2005.

¹¹ Zhongshan ribao, January 14, 2005; Shaanxi ribao, January 30, 2005.

¹² SARA (2006), pp. 2-3.

¹³ SARA (2006), p. 3.

¹⁴ SARA (2006), p. 5.

¹⁵ SARA (2006), p. 10-12.

¹⁶ SARA (2006), pp. 6-7.

¹⁷ James Tong, "A New Framework for State-Religious Relations: the Regulations on Religious Affairs in China, March 2005", presented at the Forum on China's Regulations of Religious Affairs, Fuller Seminary, Pasadena, California, March 2, 2005, p. 19.

