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BEFORE THE CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

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,<sup>[2]</sup> 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.<sup>[3]</sup> 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”).<sup>[4]</sup> 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 traditional religions. The term “religious groups” is not defined in the Measures.<sup>[5]</sup> 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,<sup>[6]</sup> 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.<sup>[7]</sup> 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.<sup>[8]</sup> 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.<sup>[9]</sup> 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.”<sup>[10]</sup> 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.”<sup>[11]</sup>

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.<sup>[12]</sup> 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.

<b>Location</b>	<b>Key Changes</b>
Date	
Type	
<b>Shanghai</b>  April 2005  (amended)	<ul style="list-style-type: none"> <li>- 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)</li> <li>- Eliminates requirement that national agencies within city abide by these regulations (old art. 8)</li> <li>- Religious groups and venues enjoy preferential tax treatment (new art. 11; <i>cf.</i> RRA art. 36) [no corresponding requirement to report income and expenditures]</li> <li>- Deletes list of permitted titles for religious officials (old art. 15)</li> </ul>

	<ul style="list-style-type: none"> <li>- Religious personnel can participate in city’s social security program (new art. 13)</li> <li>- Detailed registration requirements and procedures for religious venues (new arts. 17–19; <i>cf.</i> RRA art. 13)</li> <li>- New provisions on large outdoor statutes (new art. 23; <i>cf.</i> RRA art. 24)</li> <li>- Religious believers may have a “religious life” within their homes (old art. 30; new art. 27)</li> <li>- Eliminates enumerated list of permitted religious activities, potentially broadening scope (old art. 30)</li> <li>- 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)</li> <li>- Specific requirements for approval of large-scale religious activities (new art. 26)</li> <li>- Provisions on religious institutes modified to come closer to RRA provisions (old arts. 35–39; new arts. 32–37; <i>cf.</i> RRA arts. 8–9)</li> <li>- Prohibits transfer of religious relics and property (new art. 39; <i>cf.</i> RRA art. 32)</li> <li>- Chapter title changed from “Foreign Contacts” to “Foreign-Related Religious Affairs” (old ch. 8; new ch. 8)</li> <li>- Deletes approval process for foreigners to apply for approval for filming at religious venues (old art. 50; <i>but see</i> RRA art. 25)</li> <li>- Eliminates permission for foreigners to bring in religious articles for personal use (old art. 51)</li> <li>- Significantly restructures “Legal Responsibilities” (i.e., penalties) section with more specific requirements and penalties for violations (old arts. 54–59; new arts. 51–61; <i>cf.</i> RRA arts. 38–46)</li> <li>- Eliminates authorization for Shanghai RAB to bear responsibility for interpretation and to implement detailed rules (old arts. 61–62)</li> <li>- Apparently effective upon promulgation (new art. 63 retains March 1, 1996 effective date)</li> </ul>
<p><b>Shanxi</b></p> <p>July 2005 (new)</p>	<ul style="list-style-type: none"> <li>- No previous provincial-level regulation</li> <li>- 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)</li> <li>- Specific requirements for registration of religious groups: (1) name, residence, and</li> </ul>

	<p>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> <ul style="list-style-type: none"> <li>- 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; <i>cf.</i> Measures art. 2)</li> <li>- Detailed requirements for registration of religious venues (new art. 12) somewhat track requirements in Measures arts. 5, but not entirely</li> <li>- 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)</li> <li>- Defines “religious activities” via an enumerated list (new art. 20)</li> <li>- Religious citizens can perform “normal” religious customs within their own homes (new art. 22)</li> <li>- Authorization procedures for religious activities somewhat parallel RRA provisions, but with shorter time windows (new arts. 23–24; <i>cf.</i> RRA 22)</li> <li>- “Legal liability” chapter (new arts. 28–34) somewhat parallels RRA provisions (RRA arts. 38–46) but with inconsistent provisions</li> <li>- Two-month window between enactment and effective date (new art. 35)</li> <li>- No chapter on religious property</li> </ul>
<p><b>Henan</b>  July 2005  (new)</p>	<ul style="list-style-type: none"> <li>- Defines “religion” as five traditional religions (new art. 2)</li> <li>- Special provisions for registering a Catholic diocese (new art. 8)</li> <li>- 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]</li> <li>- List of requirements for registering religious venues (new art. 17) largely parallel Measures but adds requirement to submit a building plan</li> <li>- Religious citizens can practice religious customs within their homes (new art. 21)</li> <li>- Approval requirements for multiprovincial activities largely parallel RRA provisions (new art. 23; <i>cf.</i> RRA art. 22)</li> <li>- 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</li> </ul>

	<ul style="list-style-type: none"> <li>- Legal liability chapter (arts. 26–31) parallels in condensed form the provisions of the RRA (RRA arts. 38–46)</li> <li>- Explicitly repeals 1991 regulation (new art. 32)</li> </ul>
<b>Zhejiang</b>	<ul style="list-style-type: none"> <li>- Deletes references to five traditional religions (old art. 2)</li> </ul>
March 2006 (amended)	<ul style="list-style-type: none"> <li>- Emphasis on rule of law (new arts. 7, 21)</li> <li>- Expanded chapter on religious personnel (new arts. 9–15)</li> <li>- Specific requirements for training of religious personnel and approval procedures (new art. 9)</li> <li>- Eliminates specific list of religious personnel (old art. 13)</li> <li>- “Encourages” religious organizations and venues to undertake social welfare projects (new art. 13)</li> <li>- Specific requirement for Catholics to obtain approval from provincial Catholic body for religious activities; more onerous registration requirements (new arts. 18, 19)</li> <li>- Expands approval procedures for new and remodeled venues (new arts. 22, 24; <i>cf.</i> RRA art. 13)</li> <li>- Prohibits individuals or unapproved groups from establishing religious venues (new art. 23)</li> <li>- Detailed requirements for “democratic management” (new art. 25; <i>cf.</i> RRA art. 18)</li> <li>- Slightly broadens the types of acceptable donations (but retains prohibition on unapproved groups accepting religious donations) (new art. 28; <i>cf.</i> RRA art. 20)</li> <li>- New provisions for religious sites with tourist implications and statutes (new arts. 29–31; <i>cf.</i> RRA arts. 24, 26)</li> <li>- Requires preapproval for filming at religious sites (new art. 32; <i>cf.</i> RRA art. 25)</li> <li>- 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)</li> <li>- 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]</li> <li>- Scaled-back provisions on religious interference in foreign affairs (old arts. 34–39; new art. 39)</li> <li>- Religious groups and venues enjoy preferential tax treatment; required to make donation</li> </ul>

	<p>information public (new art. 42; <i>cf.</i> RRA 36)</p> <ul style="list-style-type: none"> <li>- Eliminates permission to rent religious real estate (old art. 44)</li> <li>- Restructured penalty section with more specific requirements and penalties for violations (new arts. 44–50; <i>cf.</i> RRA arts. 38–46)</li> <li>- Two-month window between enactment and effective date (new art. 51)</li> </ul>
<p><b>Anhui</b> June 2006 (amended)</p>	<ul style="list-style-type: none"> <li>- Very minor amendments rather than a wholesale revision to conform with RRA provisions</li> <li>- Requires invitations for religious personnel from outside the province and approval by city religious organizations and city religious affairs officials (art. 14)</li> <li>- Requires religious colleges and universities to obtain the approval of the provincial religious body (art. 34)</li> </ul>
<p><b>Beijing</b> July 2006 (amended)</p>	<ul style="list-style-type: none"> <li>- Stated goal is to bring regulation in conformity with the RRA<sup>[17]</sup></li> <li>- Relatively minor amendments rather than a wholesale revision</li> <li>- Removes requirement for annual inspections (art. 20)</li> <li>- Advance consent of management group requested before new construction or expansion (art. 25)</li> <li>- Expands procedures for large-scale or cross-provincial religious activities (art. 26)</li> <li>- Precludes transferring, mortgaging, or investing in buildings and structures used for religious activities (art. 34; <i>cf.</i> RRA art. 32)</li> <li>- Modifies “legal liabilities” section, though still differs from RRA provisions (arts. 47–48)</li> </ul>
<p><b>Hunan</b> Sept 2006 (new)</p>	<ul style="list-style-type: none"> <li>- Regulations are a hybrid of prior Hunan provisions, amended Shanghai regulations, and RRA</li> <li>- Specifically cites the RRA and several RRA provisions (new arts. 1, 13); also cites national “Law on Accounting” (new art. 40)</li> <li>- Eliminates references to five traditional religions in definition of “religion” (old art. 2; new art. 2)</li> <li>- Retains references to resisting foreign influences (old art. 5; new art. 5)</li> <li>- 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)</li> <li>- Includes “other fixed venues” in the definition of permitted religious venues (new art. 12;</li> </ul>

	<p><i>cf.</i> Measures art. 2)</p> <ul style="list-style-type: none"> <li>- Allows for designation of temporary religious venues according to need (new art. 12)</li> <li>- Specific responsibilities outlined for “democratic management organization,” including annual reports (new art. 16; RRA art. 17)</li> <li>- Provisions for management of religious tourist destinations (new art. 23; <i>cf.</i> RRA art. 26)</li> <li>- Religious personnel can participate in city’s social security program (new art. 28)</li> <li>- Specific approval provisions for cross-provincial activities (new art. 32; RRA art. 22)</li> <li>- Permits home worship (new art. 29)</li> <li>- Provisions for religious education (arts. 33–36; RRA arts. 8–10)</li> <li>- “Religious property” chapter, including tax preferences (new arts. 37–42) roughly mirrors RRA provisions (RRA arts. 30–37)</li> <li>- Religious organizations can accept donations from abroad (new art. 38)</li> <li>- “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)</li> <li>- Separate provision for registration of venues for folk beliefs (new art. 48)</li> <li>- 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)</li> <li>- Three-month window between enactment and effective date (new art. 50)</li> <li>- Specifically repeals Hunan’s 2000 regulation governing religious affairs (new art. 50)</li> </ul>
<p><b>Chongqing</b> Sept 2006 (new)</p>	<ul style="list-style-type: none"> <li>- Somewhat parallels new Hunan regulations <a href="#">[18]</a></li> <li>- Specifically cites the RRA and several RRA provisions (new arts. 1, 13)</li> <li>- Requirement that People’s Government at all levels “listen” to the ideas of religious groups, venues, and citizen-believers (new art. 7)</li> <li>- Retains list of patriotic religious associations, including “other religious organizations” (old art. 26; new art. 8)</li> <li>- Special provisions for registering a Catholic diocese (new art. 9)</li> <li>- Specific requirements for registration of religious groups: (1) name, residence, and responsible person; (2) does not violate the Constitution, laws, regulations, or rules; (3)</li> </ul>

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]

- Disapproval of applications requires written explanation (new arts. 11, 31)
- Includes "other fixed venues" in the definition of permitted religious venues (new art. 14; *cf.* Measures art. 2)
- Provisions for religious venues roughly parallel RRA (new arts. 14–27; *cf.* RRA arts. 12–26)
- "Normal" religious activities within the home permitted (new art. 29)
- Eliminates enumerated list of permitted religious activities (old art. 31)
- Eliminates prohibition on proselytizing outside of religious venues (old art. 33)
- Special provisions for approval of Catholic bishops (new art. 32)
- Retains separate chapter for "Religious Publications" (old and new ch. 6, new arts. 35–37) somewhat parallels RRA provisions (new art. 7)
- 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
- 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)
- "Legal Liability" chapter (new arts. 42–47) is abbreviated version of RRA provisions (RRA arts. 38–46)
- Provision for administrative and criminal penalties for dereliction of duties (new art. 42)
- Penalties for foreigners who violate regulation (new art. 45)
- Provides for administrative appeal of unfavorable decision (new art. 47)
- Two-month window between enactment and effective date (new art. 49)

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.<sup>[19]</sup> 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.<sup>[20]</sup>

**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,<sup>[21]</sup> 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.<sup>[22]</sup> 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.<sup>[23]</sup> 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.

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

<sup>[2]</sup> 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).

<sup>[3]</sup> 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.

<sup>[4]</sup> A good English translation can be found at <http://www.cecc.gov/pages/virtualAcad/index.php?showsingl=38682>.

<sup>[5]</sup> Presumably, the term "religious groups" (宗教团体, 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.

<sup>[6]</sup> 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: 在国家制定的法律或者行政法规生效后，地方性法规同法律或者行政法规相抵触的规定无效，制定机关应当及时予以修改或者废止。（“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: 地方性法规可以就下列事项作出规定：（一）为执行法律、行政法规的规定，

需要根据本行政区域的实际情况作具体规定的事项；（二）属于地方性事务需要制定地方性

法规的事项。属于地方性事务需要制定地方性法规的事项。（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?,” *FI8News*, Sept. 11, 2006, available at [http://www.forum18.org/Archive.php?article\\_id=840](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.

[20] Other 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](http://www.forum18.org/Archive.php?article_id=740).

[21] *See* 1997 Heilongjiang regulation, arts. 2, 24, & 31; Inner Mongolia 1996 regulation, art. 2.

[22] *See* various stories at [www.orthodoxy.cn](http://www.orthodoxy.cn).

[23] Many 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.