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CHINA'S NEW REGULATIONS ON RELIGIOUS AFFAIRS: A PARADIGM SHIFT?

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ROUNDTABLE

before the

CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

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MARCH 14, 2005

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CHINA'S NEW REGULATIONS ON RELIGIOUS AFFAIRS: A PARADIGM SHIFT?

MONDAY, MARCH 14, 2005

Congressional-Executive
Commission on China,
Washington, DC.

The roundtable was convened, pursuant to notice, at 2 p.m., in room 2255, Rayburn House Office Building, John Foarde (staff director) presiding.

Also present: Susan Weld, general counsel; Carl Minzner, senior counsel; Keith Hand, senior counsel; Steve Marshall, senior advisor; Kate Kaup, special advisor; Mark Milosch, special advisor; Rana Siu, U.S. Department of State; and Laura Mitchell, research associate.

Mr. Foarde. Good afternoon, everyone. Welcome to this issues roundtable of the Congressional-Executive Commission on China.

Since we gathered on Thursday last for our issues roundtable on public intellectuals in China, the Majority Leader of the Senate has chosen our Chairman for the 109th Congress and the Senate members of the Commission. The chairman is Senator Chuck Hagel of Nebraska, who was our co-chairman in the last Congress. So we are delighted to welcome our three panelists on behalf of Senator Hagel and the members of the CECC so far appointed, and to welcome all in the audience today to this issues roundtable, in which we are going to examine China's new regulation on religious affairs.

This new regulation is important to the Commission because I think it is fair to say that every Member who has been appointed so far to the CECC has had among his or her priorities for membership on this Commission the monitoring of religious freedom in China and advocacy on these issues. So over three and a half years, we have done quite a number of not only full hearings of the Commission, but also roundtables on various aspects of China's legal and political regime to control religious belief and practice.

This new regulation on religion, which became effective on March 1, has been hailed by Chinese officials and Chinese experts as something of a paradigm shift in the way that the government treats religion. One official was quoted in materials that we have seen in the Chinese language that the ``new regulation sets clear limits on official exercise of power over religion, safeguards religious freedom, and moves from direct administrative control to a system of permitting self-government by religious groups.''

But religious believers and practitioners and human rights organizations dispute these claims, arguing that the more detailed new regulation will in fact further limit the ability of religious believers to worship freely in China. Some critics charge that the government's goal really was a more efficient ``rule by law'' rather than a protection of the right to religious belief and practice of the ``rule of law'' approach. They have also suggested that the details of the new regulation are less significant than some of the very unhelpful simultaneous acts of the government, such as the arrest of dozens of house church leaders right after the new rules were announced, and a generally harsher Communist Party policy, particularly in ethnic regions.

To help us examine this new regulation and what it might mean, we have three distinguished panelists--two of them have been our guests in the past--to share their expertise with us, and one of them is new to testifying here at one of our staff panels. We are delighted to have all three of you, both the old friends and the new friend.

I will introduce each, briefly, before they speak. Just as we have done over the last three and a half years at these issues roundtables, each panelist will have 10 minutes to make an opening presentation. I will let you know when you have about two minutes left. That is your signal to wrap things up. Inevitably, you will not get to all the points that you wish to make, but we hope that there will be time during the subsequent question and answer session for you to catch up any points that you did not get to discuss.

Our first panelist this afternoon is Mickey Spiegel, a

senior researcher at Human Rights Watch in New York, and an old friend and frequent contact of ours. Mickey has been working on China for Human Rights Watch since 1990. Trained as an anthropologist, she holds a Masters of Philosophy degree in anthropology from Columbia University. Among her recent writings are a chapter entitled, ``Control and Containment in the Reform Era'' in God and Caesar in China: Policy Implications of Church-State Tensions, 2004, edited by Jason Kindopp and Carol Hamrin. Mickey co-edited the March-April 2000 Documents on Religion in China, 1980-1997: Central Government Policy (1), which is part of the Chinese Law & Government Series. Mickey has researched and written an enormous number of reports for Human Rights Watch on topics relating to religion in China, including, most recently, ``Trials of a Tibetan Monk: The Case of Tenzin Deleg'' as well as ``Dangerous Meditation,'' a report on repression of the Falun Gong. Her nine reports on religious regulation include the major work, ``China: State Control of Religion,'' published by Human Rights Watch in 1997.

Mickey Spiegel, welcome. Over to you for 10 minutes.

STATEMENT OF MICKEY SPIEGEL, SENIOR RESEARCHER, HUMAN RIGHTS WATCH, NEW YORK, NY

Ms. Spiegel. As a senior researcher for Human Rights Watch, a private, independent human rights monitoring organization, I appreciate the opportunity to appear today before the Congressional-Executive Commission on China to present our perspective on the evolution of religious policy in China following the end of the Cultural Revolution from 1966-1997.

From the time the Chinese Government rescinded the Mao-imposed ban on all religious belief, it has steadily reinforced the structure of laws and regulations directing religious practice. The regulations that went into effect on March 1, 2005 do not appear to be a break with tradition, but an attempt to tighten the state's control, codify Party policies, and strengthen the bureaucracy established to enforce them. The aim is twofold: stricter control and less arbitrariness.

In 1982, the Central Committee of the Chinese Communist Party promulgated Document 19, ``The Basic Viewpoint and Policy on the Religious Question during Our Country's Socialist Period.'' Its principles continue to underlie religious policy in the People's Republic of China even today as we meet to consider the implications of the new State Council Decree, ``Regulations on Religious Affairs,'' effective since March 1, 2005.

Document 19's original formulation was sparse: ``respect

for and promotion of the freedom of religious belief,'' but it signaled a sea change. Promotion of freedom to choose to believe signaled an end to policies of repression which alienated believers and interfered with the state's ability to turn its full attention to, and to direct the attention of believers to, the mutual goal of rapid modernization. Respect for a variety of beliefs spoke to the state's determination to curb cadres who had been able, with impunity, to intimidate, harass, arrest, and torture believers.

However, with the promulgation of the 1982 Chinese Constitution which followed hard on the heels of Document 19, the potential for limiting the full flowering of religious belief and practice became immediately obvious. Document 19 limited freedom to believe to five major religions: Buddhism, Daoism, Islam, Catholicism, and post-denominational Protestantism. Article 36 of the Constitution limited state protection only to ``normal'' religious activities.

The ambiguity of the term ``normal'' permitted a plethora of limits on religious freedom. What developing regulations implicitly allowed was considered normal; any other activity could be deemed abnormal, even by a local bureaucrat. As a Chinese official said some months ago, what was illegal was abnormal; what was abnormal was illegal. It did not get us very far. But such a formulation continued to make possible arbitrary rule by local fiat, something the central government was determined to disallow, even as it strengthened control over religious practice. At the same time, prohibition on the use of religion to disrupt public order signaled a concern, one that continues to this day, that hostile forces would use religion as a cover for fomenting subversion.

Guidelines, such as those making ``patriotic'' organizations responsible for monitoring compliance with state policy, establishing a ``three-fix'' policy that limited evangelical practices and the use of lay religious leaders, and instituting a ``three-self'' policy that barred organizational ties to world religious bodies, gave way to emphasis on a ``rule of law.'' That new emphasis culminated in 1991 in a policy directive that carried Document 19 a step further and is still the centerpiece of religious control. Document 6, ``Circular on Some Problems Concerning the Further Improvement of Work on Religion'' mandated that every congregation, temple,

monastery, mosque, and church had to register with the authorities. An unregistered group was, by definition, illegal, and its members subject to arrest. A group deemed ``legal'' opened itself to control of its personnel, religious materials, activities, membership, and finances.

Jiang Zemin extended the impetus toward regulation of religious activity through law when, in 1993, he stated that religion must adapt itself to a socialist society. The imperative has been interpreted to mean that everything from the organization of rights and rituals, to underlying theology, to day-to-day management of personnel, materials, and activities, must meet the changing needs of society, as interpreted by its rulers.

By 1994, regulations codified by the State Council specified the steps required to properly register and the right of rejection reserved to those bodies charged with monitoring compliance. Local regulations made still more explicit what legally registered organizations could or could not do. There was, however, still room for small groups operating discreetly in the shadows to continue to meet and worship. That small space, though still in existence in 1994, narrowed again in 1999 when the Chinese Government, in response to the emergence of Falun Gong, further reserved for itself the right to determine, in the religions it recognized, what constituted orthodox belief and what was heterodox, and thus, illegal, and to further determine what belief structures could be classified as cults and thus, ipso facto, illegal.

The regulations that went into effect on March 1, 2005, further codify the rules restraining religious practice in China and the bureaucratic mechanism used to reinforce those rules. That bureaucracy consists, in part, of the national-level State Administration of Religious Affairs; a hierarchy of religious affairs bureaus in all administrative units such as provinces, townships, and counties; the Ministry of Public Security; and local police units.

Several immediate problems assert themselves. The usual twin problems of undefined terminology and vaguely worded regulatory articles make it difficult to understand precisely what compliance requires and leave considerable leeway for national and local interpretation. For example, the problem remains of what is ``normal'' and what is not; nowhere is there an explanation of ``the lawful rights and interests of religious bodies, sites for religious activities and religious citizens;'' and the requirement that those same actors ``safeguard unification of the country, unity of all nationalities, and stability of society'' (Article 3) leaves the state free to re-interpret the provision as the need arises and leaves religious practitioners no redress should they be charged with a violation. In addition, other than the specific requirement in Article 48 of the new regulations that the ``Regulations on Administration of Sites for Religious

Activities'' be repealed, laws and regulations remain in place that do not specifically target religious activities, but nevertheless have serious implications for religious expression. The 2005 regulations make no comments on these pre-existing laws and regulations, nor do they suggest how their implementation will affect provincial regulations. The usual practice had been for provinces and other administrative areas to follow national templates in crafting regulations specific to their jurisdiction.

The most problematic addition to prior regulatory regimes, and one that I believe clearly signals an increase in state control, is the requirement that a religious body--nowhere defined--``shall be registered in accordance with the provisions of the Regulations on Registration Administration of Associations.'' The change signals the need for the religious body to satisfy two bureaucracies, the Civil Affairs Ministry and the State Administration of Religious Affairs. The requirement not only adds to bureaucratic oversight, but in theory it requires inter alia a religious organization to have a government agency ``as a professional leading unit,'' 50 members, full-time personnel, and if local, have ``activity funds totaling in excess of 30,000 yuan.'' Most important, the regulations state in Article 13(2), that an application may be rejected because one with a ``similar operational scope exists in the same administrative area.'' In other words, the state is given the power to decide how many mosques are enough.

Several other provisions speak directly to an increase in state control: the requirement that the religious affairs department of the State Council approve educational institutes, which may reject an application on the grounds that sufficient institutes exist in a given locale; involvement of a national religious body in the selection of students who may go abroad for religious study; the obligatory involvement of three administrative levels before an application to prepare to establish a site for religious activities can be approved and the additional requirement that no application for registration can be made until construction is complete; apparent elimination of any gray area through which small local groups without a structure could use someone's home or shop as a meeting place where like-minded believers could quietly congregate; acceptance of ``guidance, supervision and inspection'' by ``relevant departments of the local people's government''; and restrictions on large-scale religious activities.

An added worry grows out of the requirement in Article 27 that religious personnel be ``determined qualified as such by a religious body.'' The stipulation brings to mind the ongoing

``patriotic'' campaigns in Tibet and Xinjiang, during which clergy are compelled to examine themselves and their colleagues for inappropriate behavior or thought.

One omission may--but only may--signal a positive policy change. Nowhere in the regulations is there reference to what belief systems qualify as religions. The omission may signal that additional belief systems will be added to the short list as apparently has been the case for some aspects of popular religion. Conversely, it may signal only that the government will continue to be the sole arbiter of what is a religion and what is not.

I am reluctant to consider regularizing religious belief, practice, or organization as a positive development. The premise seems to be that communities of believers have the potential to challenge Beijing's rule throughout China, though more so in Tibet and Xinjiang, where religion serves as an identity marker and supports independence sentiment.

I believe the hope is that the new regulations will lay the groundwork for religious organizations to perform necessary social welfare functions that the state itself cannot support--hospitals, clinics, old-age homes, senior centers. But I suspect that China's leadership has crafted the regulations in a way intended to further isolate religious belief and practice from life's day-to-day minutiae. That emphatically is not freedom of religious belief, even as defined in the dry language of international human rights doctrines.

No, the March 1, 2005 regulations are, at best, a cosmetic cover-up.

[The prepared statement of Ms. Spiegel appears in the appendix.]

Mr. Foarde. You were remarkably disciplined, and I appreciate it very much. We will have a chance to reach some of the material that you did not cover during the Q&A.

Next, I would like to go on and recognize this afternoon a new friend, Professor Daniel Bays, Professor of History and the head of the Asian Studies Program at Calvin College. Professor Bays is the former chair of the History Department at the University of Kansas at Lawrence. He has directed major research projects, funded by the Henry Luce Foundation and the Pew Charitable Trusts, on the history of Christianity in China and American missionary movements. He is the editor of ``Christianity in China: From the Eighteenth Century to the Present,'' a 1996 volume published by Stanford University Press; with Grant Wacker, he also was the editor of the book, ``The Foreign Missionary Enterprise at Home: Explorations in North American Cultural History,'' a 2003 volume published by

the University of Alabama Press; and is also the author of ``Chinese Protestant Christianity Today,'' an article in The China Quarterly, No. 174, 2003.

Professor Bays, thanks very much for being with us.

STATEMENT OF DANIEL H. BAYS, PROFESSOR OF HISTORY, HEAD OF THE ASIAN STUDIES PROGRAM, CALVIN COLLEGE, GRAND RAPIDS, MI

Mr. Bays. Thank you very much. I am honored to be here to participate.

As I look at them and read them over, these regulations do not constitute a ``paradigm shift,'' especially when, at the same time, as you point out in your introduction, there are major cases of persecution continuing.

In late February in Harbin, Heilongjiang province, there was a raid by several different types of security personnel, and Chinese officials ultimately kicked several foreigners out of the country and temporarily detained 150 or so Chinese pastors and church workers.

Carol Hamrin mentions near the end of her paper some things that have been going on since last fall as well, or last summer: a purge from the Party of people who are discovered to be religious believers; a tightening of campus Christian activities at colleges and universities; and a freeze on the creation of what up until recently was the rapidly expanding number of university-level study centers that looked at Christianity or other religions. That is going on at the same time that these new regulations are going into effect.

Like Mickey Spiegel, I believe that the purpose is not to enhance believers' rights or their security to practice their religion. There might be a side effect, some side effect which is not all bad, for believers to know what the state is going to do if it regularizes its supervisory behavior. But I think that the regularization of control is to enhance state and Party control. So, the purpose is to reduce arbitrariness, but for the purpose of better total control.

Like Mickey, I noted, as in the past with such laws, great problems of vagueness of terms, no definition of them. For example what is ``normal religious behavior,'' or ``religious extremism? '' Still, I found some interesting features, interesting to me as an historian. For example, Article 38 talks about how state functionaries can be disciplined for abuse of power, but it does not indicate whether that could include Party members. Does ``state functionaries'' include Party members? We are not told.

Article 33 makes it clear that believers are entitled to fair compensation for confiscated property when their old

church has to be demolished. In the past, there have been some cases of real exploitation and unfairness of the compensation. This Article 33 makes it clear that that should not be done.

There is a reference in the regulations that relates to religious groups carrying out social service activities. And foreign donations can be used for social service as well. That may indicate that the state is not doing very well in these responsibilities, which we know is the case. The state is not doing well in social service activities for its own population.

I notice that there runs through the document a consistent thread of concern about religious groups coming under the sway of foreign forces. That could be, of course, Muslims, Tibetans, Catholics, and even Protestants. It applies to anybody.

Overall, my conclusion, in general, is that this is not a ``paradigm shift.'' This is sort of a clean-up by bureaucrats. I always think of a comment from someone that Chan Kim-Kwong and Allan Hunter interviewed. I think it was Chan who interviewed a fairly high-ranking bureaucrat before their book came out in 1993 on Protestantism in contemporary China. He said, ``These people who are always at us for more rights--reporters, political organizers, and religious believers--they have all kinds of claims, but we just see them as an administrative problem.''

As a historian, this document reminds me a lot of the behavior and assumptions of pre-Communist Chinese political regimes, e.g., the compulsion on registration of venues and licensing of clerics, a deep fear of heterodoxy which then, as now, is xiejiao. It was translated as ``heterodoxy'' in the old days; now it is ``evil cult.'' Absolute paranoia about religious forces becoming politically subversive, as in Falun Gong.

Actually, there are some Protestant-related groups, sort of offshoots of Protestantism, who are pretty off-the-wall and are potential candidates for anti-state rebellious behavior. That is one of the weaknesses of the Protestant scene, I think, in China today.

I have a few other related observations, some along the lines of religious believers dealing with state control. Thinking of laws that affect religion and religious believers, at some point one would think that people will start to realize that the laws should, and can, protect citizens as well as being instruments of the state. There were a few cases in the last years starting to show this.

John Pomfret, who was for a few years the correspondent for the Washington Post in Beijing, had an interesting article a couple of years ago on how some of the local lawyers who are

believers--I think it was in Fuzhou--sued the state for not letting their churches have Sunday schools for kids, and making the legal argument that the regulations against that were not laws, but simply guidelines. In Ian Buruma's book, ``Bad Elements,'' there are a couple of cases of very brave Chinese lawyers trying to push the envelope on protecting citizens, including some religious believers.

Other aspects which come to mind from recent reading are all the Web sites being shut down by the state, and the state itself says some of those are religious. We are not sure how many of them, but there must be quite a few if some are being shut down.

Protestant groups in particular, about which I know the most, continue to refuse to register with authorities and continue to create their own non-state-sanctioned training schools and programs for their leaders, and print material that they are not supposed to, and often have extensive, unauthorized contacts with Christian groups outside of China.

A few comments just to conclude this part of it, just laying out some ideas. Laws aside, overall, where are we headed in terms of religious groups, especially, say, Protestants, in terms of the future? I have a hunch that the growth of an urban and better-educated, better-off class of religious believers, urban Protestants, may result in more security for the church. It is harder to beat up on better-off urban residents than it is on rural people. Will that result in elements of a Chinese civil society, with believers showing a sense of civic duty and responsibility and a desire to participate in local decisionmaking? That is possible, I think. I think that intellectuals can play a role in this, too.

It is possible that, in the future, there will be these people who are referred to as ``culture Christians,'' some of them religious believers, others simply appreciative of what they think Christianity might do by way of public social values to address the problems of corruption and ineffectiveness of government, and that sort of thing. They might play a role in establishing an urban Christianity.

Looking far ahead and making a wild guess about the future, there may be in effect now a long-term pattern of the state's gradually and selectively declining control over society, because it just cannot control everything, and some elements of society gradually growing more assertive and claiming their rights if they can conceive of law as giving them rights, as well as the law giving the state a tool. It might be easier for religious believers to do that, to be more assertive and to try to claim their rights with this new religion law or that may be wishful thinking, because it is possible that the

interpretation and implementation of this law, or these regulations, rather, might keep us right where we are in terms of practical freedom of religious belief.

So, with that I will conclude and wait for our discussion later.

[The prepared statement of Mr. Bays appears in the appendix.]

Mr. Foarde. Excellent. Thank you, Mr. Bays.

Our third panelist today is also an old friend, Dr. Carol Lee Hamrin, currently a consultant and Research Professor at George Mason University here in the area. Carol's long career in public service includes 25 years in the U.S. State Department, where I had the privilege of being her colleague and benefited very much from her work as Senior China Research Specialist. Dr. Hamrin currently is a Chinese affairs consultant and, as I said, a Research Professor at George Mason University in Fairfax, VA. She is also a senior associate with the Global China Center in Charlottesville, VA, and advises other nonprofit organizations supporting social services in China. Her current research interests include research and training projects for the development of the nonprofit sector in China, and cultural change, human rights, and religious policy. Recent publications include ``Advancing Freedom of Religion and Belief in a Global China: A New Framework,'' which is a report that she put together for the China Task Force of the Council on Faith & International Affairs in 2004. We are looking forward to reading ``God and Caesar in China: Policy Implications of Church-State Tensions,'' which she co-edited with Jason Kindopp from Brookings.

Carol, over to you.

STATEMENT OF CAROL LEE HAMRIN, CONSULTANT AND RESEARCH PROFESSOR, GEORGE MASON UNIVERSITY, FAIRFAX, VA

Ms. Hamrin. Thank you, John. I am always happy if I can be of help to the Commission. I think your work is very important. I think you have done a remarkable job of giving Washington a deeper, more complex understanding of the change going on in China, so keep it up.

I view trends in religious affairs as part of a broader trajectory in state-society relations that might be called ``outgrowing socialism.'' Following a pattern set by the economic reforms, the state still protects and gives special support to select social institutions that are granted a monopoly for certain functions--what we might call state-organized institutions [SOIs], to reflect similarities to the

state-owned enterprises [SOEs]--while also allowing small-scale, private, civic institutions to spring up in order to meet demand. These smaller and weaker organizations, nonetheless, just like private businesses in China, have greater vitality and flexibility, and gradually put competitive pressure on the state agencies. I think that kind of competition is good.

Thus, the unregistered religious organizations, through steady, positive resistance, have greatly outpaced, in growth and popularity, those belonging to the five official monopolies, the so-called ``patriotic'' religious associations; this, despite the state's unwillingness to grant them legitimacy and its periodic efforts to force them to register through the monopoly associations. Similarly, more than half of the three million nonprofit organizations of other types in China do not register or find loopholes for registering in some other way to gain maximum autonomy.

The lack of legitimacy for the old state-run social system and this widespread passive resistance to it is evidence to me of a more equal relationship developing between the state and society in general as the state is forced to down-size and a pluralistic society develops.

So the state can no longer easily suppress or control social organizations, and even finds them quite useful to lighten its burden at various levels in providing social services; thus, they have to begin to address their concerns in order to get compliance with the regulations.

I am just setting that forth as a comparative context for analyzing these new state regulations on religious affairs. I should emphasize, all of us feel like we are just taking a first cut at understanding these and their implications. This is not the final word, by any means.

Compared with previous regulations that focused on the registration and operation of religious sites, these new regulations are an improvement in the sense that they are both comprehensive and transparent. One reason I think this is important, is that the central government can no longer say, ``Well, those abuses are due to those local officials who do not know what they are doing.'' I mean, these are now State Council level, not just Religious Affairs Bureau level, regulations, so the central government is accountable for enforcing them.

The new rules are detailed, with 48 articles, and systematic in addressing religious affairs. I would say that they do go a ways toward defining what is ``normal'' by listing

all the things that are legal and approved. They do not define clearly the demarcation point, of course, between ``normal'' and ``abnormal,'' other than registered or not registered.

I think there is a discernible trend in the regulations for the state to step back from micro-management of religious affairs to a more general oversight position, giving somewhat greater autonomy and authority to authorized religious associations. This is true of other regulations for other social organizations. But I would say that this ``paradigm shift,'' if we want to call it that, took place in the 1990s, not with these regulations. There was a round of regulations in the early and late 1990s, and now there is another round of regulations for social organizations, including religious organizations, that is sort of an update. They are more detailed, more
systematic, and they are an update, basically, on the rules. These regulations now have the highest level, State Council, legitimation for certain kinds of practices that have actually been won through the perseverance of religious adherents who started doing things, and that became a de facto part of the rules. Now they are endorsed at the highest level. For example, inter-provincial meetings. I mean, I did not even know there were such things allowed, but they have taken place, so now they are just slipped in here as things that are now listed as normal. So, there are a few things like that that are improvements.

However, most of these practices could already have been found scattered in pre-existing provincial regulations or the implementing guidelines, as Mickey and Dan have pointed out. So, in a sense, these regulations are more of a snapshot of de facto practices in this area than any step toward more democratic practices that would meet international standards. They fall far short of the type of legislation required to protect constitutional rights, or even improve constitutional rights, that would be expected of China after signing the U.N. Covenant for Civil and Political Rights. I think everybody can be disappointed they did not go much further toward where they need to be.

Note, the full meaning and import of these regulations will not be clear until the implementing guidelines are available. Usually that takes months, but since there is a lot of training already under way of religious affairs officials, perhaps they already do have those guidelines, and we just have not read them. Mickey has heard about the handbook that was prepared for religious affairs officials, so maybe when we see a copy of that we will know more.

However, I do think that legal status still will only be granted to religious groups, not local bodies of believers, through membership in official religious associations. These regulations all talk about religious organizations, and by that they mean social organizations, membership organizations, not the local, independent congregations. So, I think that is something we need to really watch closely.

The most important unknown, perhaps, is whether the state will allow new religious associations to develop and be registered and operate or whether they are going to stick with their current five, or maybe add a couple more. That will be important to watch for.

The cautious nature of these regulations is similar to others recently implemented, and regulations being reviewed for updates in the social sector. There are a lot more regulations that now apply, tax and auditing rules, the donation law, and so forth, so it is a much more complex situation.

But I would say we then have the good news. There is an intent to treat religious organizations equally with other social organizations as a normal part of Chinese society and culture instead of a special kind of ideological, political threat that needs to be eliminated. So, we are on the right track that way.

The bad news is that all social organizations are still highly restricted under the dual management system, which this regulation echoes. I will not go into all of those onerous requirements for registration, the quotas that Mickey has mentioned, and so forth. But I would say that, even though there is suspicion of foreign involvement with all social organizations, there still is even more such suspicion for religious organizations. So, there is still no level playing field there. Religious affairs are required to be independent and self-governing, prohibiting any foreign domination, ``domination'' being undefined; and it seems to me that these kinds of barricades are anachronistic at a time when foreign-invested and foreign-run companies are generating more than half the value of all Chinese exports.

But in any case, I would say, too, that we need to see whether the current patriotic organizations revise their constitutions and rules to comply with the somewhat more moderate language in these regulations, because there are a lot of internal requirements for members of these associations that are even less close to international norms.

So I would say the most welcome part of these regulations--which is their intent, apparently--is to reduce arbitrariness and abuses by local implementing officials. If this nationwide training includes the police as well as religious officials and

legal officials, I think that something good can come of that. Hopefully the content is positive and provides more constraints on their arbitrariness.

The most important bottom-line concluding thought that I would offer is that I think these regulations, along with those for other social organizations, show that the state is under both internal and external pressure to regularize or normalize its relations with religious believers. Now, of course, they would prefer to achieve that via a relationship of control and top-down edict, but they know it is not going to happen. They had to take into account wide consultations, at least of the official religious groups. There are no longer just purely bureaucratic interest groups drafting and giving ideas and doing research in this area. There are academic groups and the grassroots religious organizations and international players who make their views known as we are today, and all of that is starting to get into the hopper, putting pressure on the government to keep moving in the direction of recognizing the rights of believers.

So I think maybe this is the beginning rather than the end. There is hard bargaining ahead, perhaps eventually leading to more equal negotiating to protect the rights of the people at the grassroots.

[The prepared statement of Ms. Hamrin appears in the appendix.]

Mr. Foarde. Carol, thank you very much. Thanks to all three of our panelists for presentations rich in themes and material for us to take up in the next few minutes in our question and answer session.

Before we begin that, I would just say to those of you in our audience this afternoon who have not signed up for our information list on our Web site, to please visit our Web site at www.cecc.gov and sign yourself up for the periodic e-mail announcements about our hearings and roundtables, press releases, and other materials related to the Commission's mandate.

I would like to go on now to the question and answer session. We have been conducting these roundtables over the last three and a half years pretty much in the same way. Each member of our staff panel will get about five minutes to ask a question and hear the answer. Normally, we ask our staff panel to address the question either to a specific panelist, or to the group in general. Then if any of the other panelists have a comment to make on it, we are glad to hear their views. We will keep going until we run out of steam, or until 3:30, whichever comes first.

So let me exercise the prerogative of the chair and begin the questioning by addressing a question really to all three of you.

It strikes me from what you have said, that given the huge growth that we have seen in religious belief and practice, both in registered churches and in unregistered groups of both Protestants, Catholics, and others over the last, say, 10 years, 15 years, or longer, why would the government and the Party bother with a new religious regulation, given that the dynamism, it seems to me, is very much in the unregistered groups? Why try to control them at all? What is the motive for doing that?

Ms. Hamrin. I have been thinking about this recently and was struck by a clause in something I read, the term ``the zone of indifference.'' I think maybe in the 1980s the state was retreating from its total involvement in every aspect of the economy and society because it cannot possibly run everything, manage everything, administer everything. With the decentralization to lower levels of government, a lot of responsibilities and authority were just hived off and sent down, and so the central government did not have to worry about it.

The problem is, however, that local governments have started to pursue their own interests, not complying with national interests. I think that we are seeing, since the 1990s, a recentralization of central authority in many sectors, including the economy. But the government is trying to use new mechanisms, such as fiscal and monetary policy rather than the state planning agency in the economy, and for social organizations, an effort to use these regulations rather than just policies sent down to cadres to apply as they wish. So with the concern about corruption in the last few years and the new, younger leadership clearly making an effort to get a handle on it, or at least to slow down the growth of it, we have got anti-corruption efforts of a number of different types.

I would say that perhaps these regulations, and the others for foundations and social organizations, are part of that effort--to try to get better implementation of policy at lower levels to reduce the levels of corruption and abuse that are arousing widespread social outbursts. I mean, there has been massive social unrest in certain cities over small incidents, really, but it shows the pent-up anger in the populace.

Mr. Foarde. Useful. Thank you. Somebody else? Mickey.

Ms. Spiegel. I think another piece of it has to do partly with what Carol said, but partly with the need of the central government to insist that there is a rule of law in China.

In almost every realm, in terms of publications, in terms of religion, in terms of social organization, there is a need to craft something that will appear to be a rule of law that will partly will solve some of the central leadership's internal problems, but will also be crafted in a way that international organizations will buy. I think that is a big piece of what is happening here.

I also think that in other fields there is tension between people within the ranks, not necessarily of the central leadership, but within the ranks of people involved in crafting policy and in creating policy in China. The tension has been between those who are trying to push the envelope and those who are basically hard-liners. I think one of the things that the government is trying to do here, is to integrate these two, or to monitor the tension. The leadership needs to pay attention to both wings or both extremes. I think, that accounts in part for why the regulations are, in many respects, as vague as they are. How do you satisfy both constituencies? So, I think that is another piece of what is happening here. But there is, clearly--and I agree with Carol--a felt need on the part of the central government to solidify its hold over the whole issue.

If you look at some of the local regulations--and I admit, I have looked at them over the years but I have not gone back and looked at them in the last couple of weeks--there is a major difference. There is a template, and that template is adhered to in many respects. But there is a major difference in the regulations promulgated for certain areas.

The obvious ones, of course, are Tibet and Xinjiang, where the regulations are much stricter and where there has been a concerted effort to re-educate cadres, re-educate believers, and re-educate religious leaders.

So, I think, but I cannot be certain, that some of what has been tried out in those areas is going to find its way, maybe, into these new regulations when they are eventually put into practice. Maybe the terms will be a little bit softer, but I think the practices will be there.

Mr. Foarde. Good. Thank you. Let me now recognize Susan Roosevelt Weld, the general counsel of the Commission staff, to pick up the questioning. Susan.

Ms. Weld. Thanks a lot, John.

When I think about the actual impact of the new religious legislation that is coming out of China, I wonder whether the legislation might say one thing while Party policy might say something entirely different.

Do these regulations add significant predictability to believers' lives so they will now know what will happen if they

worship in certain places and in certain ways? Do they add significant predictability as to how the religious affairs officials and local police will treat them? This is an important part of what ``rule of law'' means, in one sense?

Mr. Bays. I think it might. I think it is Article 38 that says state functionaries can be punished or disciplined if they abuse or mistreat religious believers. If that actually happened a few times, it might help some local religious believers' confidence. Of course, they might then step out and do something that they think they have the right to do and get clobbered in their local area. But if that provision, that Article 38 were to be extensively implemented and publicized by the higher levels of government and a few cadres actually punished for beating up on believers or arresting them, fining them, extorting money from them, that might make believers' lives a little more predictable and a little more pleasant.

Ms. Hamrin. That is a really good question. It just made me think that we should remember, from a Chinese perspective, these are rules for a certain sector. These are rules for religious believers and religious officials. They are not rules for everybody. This is not a law to protect religious belief for everybody in China. Therefore, you will have other things going on in other sectors of society that contradict the moderate tone, at least, of these rules. So for example, if you have a Propaganda Department campaign to foster atheism and materialism in the media and the school system, well, that is for everybody else, but it is discriminatory against religious belief. It privileges atheism over religious belief. If you have an Organization Department campaign to winnow out religious believers from Communist Party membership roles, these rules are not for them. If you have the Education Department instructions to put a freeze on the development of the religious study centers and the more careful attention and reporting on materials that you are translating, publishing, or people that you are interacting with, well, most of these people are Party members. So, again, these are religious researchers, they are not religious believers, so these rules are not for them. I think we have to keep that compartmentalization in mind in Chinese culture.

Mr. Foarde. Let me now pass the questioning on to our colleague, Kate Kaup, who joins us this year as a special advisor during her sabbatical year from her associate professorship at Furman University in Greenville, SC.

Ms. Kaup. Thanks, John. Thank you very much to all the panelists for being here.

As you all have noted, these regulations, in many ways, are not brand new and represent a systemization of existing

regulations, or as Carol called them, a ``snapshot of existing regulations.'' Since these newest regulations have not really been tested yet over the last two weeks, I was wondering if you could very briefly--I know it is a big question--talk about how well religious freedoms that have already been provided for in earlier regulations have been observed by the authorities. Particularly, maybe you could mention how well freedom of religious belief has been protected in Xinjiang and Tibet. I said it was a big question.

Ms. Spiegel. It is difficult in Xinjiang and Tibet. There has definitely been a hardening of attitudes in both areas. In many ways, I think the Chinese Government, the Communist Party, have succeeded in winning some of those battles. The problem is, of course, that you have religious belief and religious identity intertwined with movements toward more autonomy or independence.

Now in Xinjiang government officials use the term ``religious extremism,'' which is simply a way of saying, ``if you are a devout Muslim you are probably a terrorist,'' so we had better be careful. Really, it has gone that far. The Chinese Government just made another statement about the issues.

What has happened in both areas--and, again, slightly differently in each because you have a monastic situation in one and mosques in the other--is total secular control of religion: the organization, the finances, the personnel, the materials, educational systems, can children receive religious instruction. There are very specific regulations. It is not simply left to reading between the lines.

In Tibet and in Xinjiang, there are very specific regulations about what might happen to a child who somehow advertises that he or she is a religious believer. As I have said already, I think a part of what has been tried in Tibet and Xinjiang may find its way into other provinces. While you do not have the same situation, this push for autonomy or independence, maybe there was a testing out of ways to control religion. I see some of that reflected in the new regulations, certainly in training of personnel.

For example, in Xinjiang, there was a two-year campaign, imams--I cannot remember the numbers off-hand--were subject to very intense patriotic education campaigns. They were reminiscent of the old criticism, self-criticism method where you had to think about your own thoughts and your own activities and criticize what somebody else did. You had to write a critique of yourself and a critique of the process. It was a very intense process. I would not be surprised to see

more of that happening in other areas.

The way I read the new regulations, that is implied. It is certainly not set out, but it is implied. That is, I think, one of the problems with these regulations. A lot is implied and we do not know how it is going to play out.

We are still seeing, from recent testimony of people from Tibetan areas, not simply in the TAR, the same kinds of intense pressure on believers. People are leaving because, as they say, what is left is not religion. Monks say, ``we are told what to believe, we are told what to say, we are told how to say it, and if we do not do it in that way, we are out--expelled from the monastery--and we cannot go anyplace else to practice our religion the way we want.''

Mr. Foarde. Would either of the other panelists like to address that? Yes. Please, Carol, go ahead.

Ms. Hamrin. I would say, among the Han Chinese, that the further down in the system you go, the further away from the emperor you are, the more there has been a remarkable amount of freedom for the registered groups. They have been growing by leaps and bounds. They have been building new churches and having larger scale meetings, and having foreigners coming in, preaching and teaching, sending people overseas for study, and more and more materials being published, not just scriptures, but other materials. They have also been opening bookstores. Someone recently sent me the catalogue of a couple of Christian bookstores in small-sized cities, which of course are still large to us, like Hangzhou or elsewhere, where these were bookstores not connected to a church, but just had a lot of material available.

So, I think that regulations at the top and personnel appointed at the top by the government is one thing, and we should always look at the bottom up perspective as well. I do think that the recentralization, though, this effort to try to get a handle on what had been a larger and larger zone of indifference, has rolled back earlier progress in certain areas.

Personnel is one of the big problem areas, and theology and doctrine, is another. I think in the past, the government was paying the most attention to organizational structure, registration of worship sites. But more and more, the government has been promoting certain kinds of theological changes and campaigns, even in the Protestant circle, that are clearly intended to try to get rid of ``supernatural'' elements, ``superstitious'' beliefs, and focus on ethics and social service, to do something useful to society and forget the rest of it. I do think that is not a good trend.

Ms. Spiegel. I think one other thing that has been

mentioned in passing, but that is very important, is concern about large meetings and meetings that go across discrete administrative boundaries.

That, interestingly enough, was a piece of what Tenzin Deleg was charged with--not necessarily charged with, because we do not know what the charges were; nobody has ever seen the indictment or the verdict--but that was something that he had done that he had been warned about.

We are seeing that in other places, too, this need to get permission to come together, to have a religious rally. That is something that I never saw before--in any of the regulations, that you had to get permission to go beyond a discrete small administrative area. Maybe you did, Carol.

I think that is an area to watch because I think it speaks to the fear of religion. It speaks to the fear that I think the Chinese Government and the Communist Party have, that another organization somehow is going to co-opt--and I think that would be their words--the hearts and minds of the Chinese population. I personally do not see it that way. I think you can be a vey good Chinese citizen and still be a fervent religious believer.

Mr. Foarde. Certainly we have heard that from some of the Chinese pastors that have come to visit us over the last year or longer, so I agree.

Let me go on and continue our questioning this afternoon with our colleague from the Bureau of Democracy, Human Rights, and Labor, at the U.S. Department of State, Rana Siu. Rana, please.

Ms. Siu. Thanks, John. Thanks to the panelists for your presentations.

Compared to the last question, my question is much more specific. I would like you to talk about there being a shift from focusing on sites to groups? Do the new regulations give legal protections to activities of officially recognized religious groups to hold religious services in places other than at an officially-recognized church? When I mention this, I am wondering, could an official church sponsor ``house church'' services?

Ms. Spiegel. That is a very good question. I personally do not have any answer. I think that is one of the most confusing aspects of these regulations, what is a group or an organization.

At one point, reading it--we were discussing this before the roundtable, and I do not think anybody agrees with me--it seems that an organization has to have a physical structure, that it actually has to have a building, has to have a church, or a mosque, or a temple, a structure.

It was not clear how venues or sites relate to organizations. It was not clear if they have to have a structure. It was not clear if there is room for the house church. If somebody knows the answer to that or has other thoughts on it, I would be very interested to hear them because I think that is the most confusing part of the regulations.

Mr. Foarde. Let us give Dan Bays a try.

Mr. Bays. My conclusion is that what freedoms are guaranteed are still for the venue. A floating house church would not be acceptable as coming under this regulation. If the house church were to formally affiliate with a registered church, then of course it would become a meeting point of that registered church and that would probably be all right. I think it would have to self-register and become a meeting point of a registered church, I think. But we were talking about this at lunch as well, and it is difficult to figure out.

Ms. Hamrin. In looking through these regulations and comparing the social organization regulations with these religious organization regulations, I became more aware that when they talk about religious organizations, they mean membership associations.

So only the associations, not the local individual group or congregation, can be a legal personage and can do any of these things. The sites that are registered as part of an association can do certain things, but there is no independent way to become a legal personage to do these things on your own. That is my understanding, that we can all test out.

I do think that the shift of focus to talk about these religious organizations does suggest that, once they are registered, once they are legal, that they could then apply for special kinds of meetings, large-scale meetings that cannot fit into a specific churchground. This would be possible if you are registered, you are legal, and you go to the police and you can apply.

But this is the biggest challenge that the urban house church people face. They cannot just go meet in a field. They really have trouble finding places to meet, certainly in large numbers. I think there may be a shrinking zone of indifference here. I was told by friends about a couple thousand people who had rented a hall in an auditorium, for a Christmas Eve service. That has been going on for a number of years.

This time, though, the security people cutoff all the electricity and there was no heat and no light, and they were sitting there in the dark and people were nervous that it was going to have a bad ending if there was disruption of social order, and so forth.

But actually, they stayed and continued with flashlights,

and left peacefully and kind of made a statement, saying in effect ``We will not be intimidated.'' But I do think that is a critical concern.

Mr. Foarde. Thank you.

Let me recognize Steve Marshall, who is our colleague who handles Tibet issues and works on political prisoner issues for us. Steve.

Mr. Marshall. I would like to thank each of you for insightful observations on a very complex subject. I would like to return to the Tibetan Buddhism question. I will direct this, first, to Mickey, but I would appreciate anything that I can hear from the other panelists.

Tibetan Buddhism is based very much on the monastic community, and that community is essentially about association, assembly, and education. The lay community looks to the monastic community for guidance, and the contact between them is, again, all about association, assembly, and education.

These new regulations appear to be more finely drawn with respect to association, assembly, and education. Mickey, what impact do you think that might have on the already delicate situation between the lay and monastic community with respect to Tibetan Buddhism? Thanks.

Ms. Spiegel. First of all, I think, Steve, you probably have a better answer to that question than I have, but I will try to answer it. It is hard for me to envision the regulations pertaining to religion in Tibet, to Buddhism in Tibet, to the organization of a monastery or a nunnery becoming any worse than they are now. But I have said the same about other issues, and time and time again I have had to say, ``Well, why didn't I think about that? '' It probably can get worse.

From what we are hearing, the monastic community, whether it is 200 people in a monastery or 20 people in a monastery, the
attempt really is to cordon it off. The monastery is here and lay people are elsewhere.

There is certainly no interaction between children and the monastic community. If anything, there is probably a tightening of
restrictions on visiting a monastery. Monasteries, more and more, as you know, have become tourist sites. For many people, there is no recognition of it as a sacred place.

One of the changes that has happened in the monastic community is that education even for those who are members of a monastery has become watered down. This is one of the complaints you hear over and over again, that, yes, I am a monk and I am associated with this particular monastery, but there

is nobody to teach me. There has been such a crack-down on the teachers, therefore, there is a real need to try to go someplace else to get a religious education. So if you have that kind of situation, how does the religion spread to the lay community? Then, there are very specific rules for the lay community.

It is a unclear whether it is simple cadres who obviously cannot have pictures of the Dalai Lama and cannot have a place of worship in their houses. How far that restriction extends to the lay population, is unclear. The rules appear fuzzy and nobody is exactly clear what they are.

I would refer back to the Tenzin Deleg case. From the research that we did, one of the major problems at the authorities faced in relation to him, was the extent of his influence in the community. I believe, that kind of influence is something the Chinese Government and Communist Party does not want. They want lay control. More than lay control, lay rather than monastic influence within a community. That came up fairly recently in an odd way.

I believe it was in Golog Prefecture in Qinghai that a monk was killed. There was a lot of confusion about who, what, when, and where, but nevertheless, somebody was killed and there was unrest within the community. Despite the government's attempt to resolve the situation, officials finally called in a lama to calm things down.

In other words, they were admitting that there was monastic influence within the community. But my guess is they are going to continue to try to narrow the areas of monastic influence.

Mr. Foarde. Let me now pass the questioning on to our colleague, Mark Milosch, a senior advisor who has been working these last couple of years on Catholic issues and Protestant issues. Mark.

Mr. Milosch. Thank you very much.

This question is for anyone who might be able to help answer it. I am interested in Article 8 of the new regulations, the article on schools. Could you give us an idea how far Article 8 represents a change from previous regulations and practice and what you think the authorities may have in mind, and what might be the effect of this article. Will there be a sudden movement by the faiths to create schools? What do the authorities expect? What do you expect? How do you think the authorities might react to various likely developments? I should say, I am talking about religious schools here.

Ms. Spiegel. As I understand it, there has always been a two-tier system. You have those seminaries that are recognized by the Religious Affairs Bureau, and then you have underground seminaries. I think the new regulations simply make explicit

that officials are going to see to it that does not happen any more.

It also is very clear that you cannot have a school on every corner any more than you can have a mosque on every corner. Officials are very definitely going to limit the number.

Obviously, they have tried to control the curriculum, control which students are admitted, that they are patriotic students, and so on.

I believe this is a codification of what they have been trying to do for years, and just further tightens control. I do not see any particular difference, but maybe someone else does.

Ms. Hamrin. This tends to look like recentralization for authorization at the national level for any religious institute, whereas, my understanding is, up until now, provincial-level religious associations were able to set up, not necessarily seminaries, which do seem to have sort of a quota, one for the northeast, one for the southwest, but rather Bible schools. By this I mean a school that would be less than a full seminary, but something that could be more local, smaller scale, maybe two years instead of four years. Or perhaps some just lay training institutes of all sorts, some for six months, some for six weeks. I mean, there has been a lot more going on. So this could be an effort to recentralize approval over all such activities. We do not know what is a religious institute, all of the above or just the few that are regional or national in scope. We do not know.

Mr. Foarde. Professor Bays.

Mr. Bays. I think the highlighting of the role of the State Council here--it is mentioned specifically twice in that one paragraph--may well indicate a recentralization, an intent to have closer monitoring and permission from Beijing.

Mr. Milosch. It sounds like none of you see any doors opening here.

Mr. Bays. If anything, maybe the opposite, because of the role of the State Council, both in the initial stage and having the final say-so. Although the regulation does ask the lower level administrative unit to indicate whether it intends to accept the application or not before officials send it up to the State Council.

Mr. Foarde. Good. Thank you.

Let us hand the questioning now to our colleague, Carl Minzner, another senior counsel on the Commission staff. Carl.

Mr. Minzner. Thank you very much, John.

This question is directed to Professor Hamrin, but I will invite the other participants to answer the question as well.

I was interested in the comparison that you made in the beginning of your statement about the resemblance of Chinese religious policy to economic policy, particularly with the idea that there were state-sponsored institutions that the government had been long involved in supporting, and they were gradually opening up the realm for some more civic associations to challenge the power of the long-established state religious organizations. One aspect of this economic context is that, while the Chinese Government may open up an area for more private associations, it frequently pursues a strategy of co-option with respect to those associations that demonstrate particular strength or popular appeal. In the economic context, you could cite the example of the ``Three Represents'' strategy in bringing private entrepreneurs into the Party.

So my question is: in the religious context, is there any evidence of this co-option strategy as well? Is the government making an effort to bring in those particular Protestant or Catholic leaders who are part of these newly-emerging, non-state organizations that might be in opposition to the state-sponsored church or the state-sponsored Catholic groups? Is the government making active efforts to bring those people into the patriotic church associations?

Ms. Hamrin. I would just say that I think the government's intention in the civic sector is not necessarily to promote the competition. I think they did see that was valuable in the economic sector.

But co-option is intrinsic to the whole ``united front'' strategy, and so all along I do think the government and Party's intention has been to resurrect these monopoly religious associations and allow them to develop and set up local churches, even in some areas that never had churches before. At the beginning, the associations did not intend to do that, but the government wants to allow them gradually to do enough that they can attract people into the fold, and then that would take care of the problem: everybody would register, everybody would be part of this one group, and then you can just put the squeeze on the people at the top of the group to be responsible for the behavior of all others.

But it just has not worked out that way. So I view these regulations as yet one more effort to make the system function, and again we will have to wait and see whether it is going to work any better than previous efforts.

These efforts at co-option always have a carrot and a stick, so we are seeing both here. I mean, we are seeing the stick--they are going after unregistered groups rather than ignoring and winking at their activities--in an effort to put the pressure on them to either come above ground or just

disappear.

So, I am sorry--did I answer the question? I wanted to say at some point, and maybe I could just say it here, I was talking to someone from the Religious Affairs sector and learned, to my surprise, that considering religious organizations as social organizations and registering them with Civil Affairs is not new. Now, I did not know that any religious associations were registered with Civil Affairs, but they are. I asked, ``Why does nobody know about this? '' He said, ``Well, it is just all very automatic.''

If you were already one of these mass organizations, once the regulations were put out in 1994, which were government regulations, not Party policies, then these Party mass organizations were just automatically registered, and all the members, all the churches that were part of these associations, were just considered registered. So it was ``we are going to shift this whole system from party control to government control through regulations, and so register everybody.'' That was news to me, and maybe needs to be tested out and further investigated.

That is the standard system. All social organizations have to register with Civil Affairs and be supervised by, or administered by, the functional agency in the government that controls that sector.

Mr. Foarde. So, for example, the Health Ministry or something like that.

Ms. Hamrin. There was huge debate about this in recent years. Reformers in the State Council Legislative Office and the Ministry of Civil Affairs, plus the organizations themselves, were saying that this is just really onerous. In fact, one of the reasons so many social organizations do not register, or register instead as businesses, is because they cannot find a government agency that will sponsor them, probably because the government agency cannot make money off of them and they are just a pain.

So in the debates going into the drafting of the foundation regulations, they debated, ``Should we just do away with this? '' One earlier draft did, but then when you came down to the bargaining at the end, to a consensus that everybody can accept, you put that off for the next round, knowing there will be a next round. This is continually in negotiation, like any good Chinese contract.

Ms. Spiegel. There was a meeting in December 2003, to discuss NGOs. There were Chinese participants; the EU was the other partner. The Chinese participants said at that time that the need to have government sponsorship of an organization was

on its way out.

For awhile, it looked like that was going to happen, but it seems not to be happening now. However, I still see a difference between the fact that there is some kind of oversight by a sponsoring organization and the fact that you have at the whole bureaucracy set-up to oversee religious organizations. I may be dead wrong.

Mr. Foarde. Dan, do you have a comment?

Ms. Hamrin. One important difference is that Religious Affairs Bureaus have a vested interest in keeping this system, because they do not do anything else.

Ms. Spiegel. Agreed.

Ms. Hamrin. Whereas, most other government agencies do have other business.

Mr. Foarde. Or at least have another function. Right. A comment, Dan?

Mr. Bays. I just wanted to point out that in 2002, something happened which has implications for the future and relates to what Carl was mentioning. Frank Ching, who was writing then for the Far Eastern Economic Review, had a column in the first half of 2002 where he stated very confidently that, at the upcoming 16th Party Congress later that year, not only businessmen, but also religious believers, would be allowed to join the Party.

Nothing came of that, but I think that this perhaps indicates very well how trial balloons can get shot down maybe by conservative people in the Party. It also indicates that a substantial part of the Party at that time was willing to contemplate having religious believers as Party members instead of going through and purging all the Party members who were discovered to have
theistic beliefs. So that indicates some flexibility for the future, perhaps. What it would mean for a believer to become a Party member, it is a little anomalous, but who knows?

Mr. Foarde. Interesting. Thank you.

Let me recognize Laura Mitchell, our research associate on the Commission staff, who is also a member of our Religion Working Group. Laura.

Ms. Mitchell. Thank you. Thank you all for being here.

I would like to know more about how the new regulations will affect membership of religious groups. I read that the regulations stipulate that legal action can be taken against anyone who attempts to compel others to believe in certain religions. How will this affect the ability of religious groups to meet with potential new members or discuss their religion and encourage new membership?

Ms. Spiegel. When I read that clause, I think in terms of

religious officials not being allowed to force people to disbelieve or
believe in atheism. I would have to go back and look again to understand the implication for ordinary recruitment. I never thought of the clause from that perspective. There may well be some intent to find an additional way to counter proselytizing. I did not see that, but I will have to look again.

Mr. Foarde. Dan.

Mr. Bays. Eastern Lightning, of course, would fall under this provision. It is already a xiejiao, already an evil cult.

Mr. Foarde. Both organizations and individuals, according to the thing. How interesting. Laura, do you have another question? You have a couple of minutes left.

Ms. Mitchell. How do you think the regulations might impact local traditional religious practices? Do you think that local officials will now be more likely to stop traditional folk religious practices?

Ms. Spiegel. Carol and I were at a meeting--Carol was one of the speakers--and one of the other people who spoke talked particularly about that issue. What it seems to be is that local traditional religion is going to be incorporated into the system. Originally there were only five recognized religions. I would guess that, unless there is real pressure on them, local officials would tend to let it remain as it was. I think traditional religion is so much a part of the culture in certain provinces. From what I understand, in some areas many local officials, if not the leaders, play a big part in traditional religion I do not imagine there is going to be a lot of change, but I do not know enough about it to do anything more than make a guess at this point.

Mr. Foarde. Go ahead, Carol.

Ms. Hamrin. You saved all the good questions for me.

Mr. Foarde. That is right. That is right. We want to keep you awake. [Laughter.]

Ms. Hamrin. I just think this is an issue to watch very closely, and it is related to what Dan Bays was talking about earlier about Party membership. At the local level in areas where folk religion--or folk faith, which is less organized but more cultural--is really prominent, and it is not just the southeast, but around Beijing, and it is growing all over, you have got Party members and Party officials who are involved in these local practices, if not some organized religion.

So, just like earlier, when you have so many Party members leaving the Party and government and going into business, but still they were Party members, what do you do with them? It is not a matter of recruiting businessmen. It is, what do you do

with these businessmen who are already in the Party?

It is the same thing here. What about all these Party people who have joined, or are practicing, religion, or whose families are? Do you just say, ``all right, that is fine? '' Do you try to purge them, to somehow roll that back? That is what they have decided to do, for now, at least. Maybe the next round will be a different decision.

Ms. Spiegel. They did roll it back in Tibet and Xinjiang. Whether that reflects the difference in the way religion in those two provinces is viewed and the way other religions are viewed, is hard to know. Whether they will be a model is hard to know.

Mr. Foarde. Thank you. Let us give the last set of questions for this afternoon to Keith Hand, our senior counsel. Keith.

Mr. Hand. Those of us who are lawyers like to say there is no right without a remedy. Professor Bays, you mentioned that one of the goals of the new regulation is to control arbitrariness, and also to discipline officials if they do not follow the rules. Do the rules give the religious believers themselves any legal cause of action through which to enforce them?

The second question is should we make anything of the fact that this was passed as a State Council regulation as opposed to a national law?

Mr. Bays. For the first, there is nothing in the regulations that indicates who can bring suit. It sort of implies that the official's supervisor would know about this and take action, which is probably not very realistic. But the legal profession in China is expanding and there are lawyers doing all kinds of daring things. I can imagine an adventuresome local religious leader being a lawyer and bringing suit against a cadre. Of course, he might get beat up for it by thugs. Anyway, that is probably the area of remedy.

The other question. It probably is significant that it is a State Council regulation, because maybe that is easier to change in the future. This is, perhaps, somewhat experimental.

Ms. Hamrin. I was a little surprised when I read that, explicitly, religious believers are told that they can take these laws on administrative wrongful action and use those if they feel local officials have abused their authority, because I thought, they are citizens of the PRC, of course they can do that for any kind of administrative wrongful action. But in the Chinese culture, unless it is spelled out, it will not happen. It is not like here in the United States, where we assume,''Well, of course they can, even if they did not say so.''

I think it is important that they spelled out that people can take officials to court if there is a problem, or they can get a second opinion, so to speak, if they disagree with the administrative opinion. It is important both because they are more likely to do so in fact, and because officials then know that and may think twice when they make decisions.

Mr. Foarde. I appreciate that answer, and all the profound answers we have gotten to the questions this afternoon, as well the statements from our panelists.

For the first time in several weeks of doing these roundtables this year, we actually have sunshine streaming in the windows from outside, and I see now that the shadows are growing long. So, on behalf of Chairman Chuck Hagel and the Members of the Congressional-Executive Commission on China, let me thank our three panelists, Carol Hamrin, Mickey Spiegel, Dan Bays, and all of you who came this afternoon to hear them share their expertise with us.

Please watch our Web site and your e-mail for announcements about the series of roundtables and hearings that we will have throughout the spring. Announcements will be coming up soon.

Thank you all, and we will adjourn this roundtable. Thank you.

A P P E N D I X

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Prepared Statements

Prepared Statement fo Mickey Spiegel

March 14, 2005

As a senior researcher for Human Rights Watch, a private, independent human rights monitoring organization, I appreciate the opportunity to appear today before the Congressional Executive Commission on China to present my/our perspective on the evolution of religious policy in China following the end of the Cultural Revolution (1966-1997).

From the time the Chinese government rescinded the Maoist imposed ban on all religious belief, it has steadily reinforced the structure

of laws and regulations directing religious practice. The regulations that went into effect on March 1, 2005 do not appear to be a break with tradition, but an attempt to tighten the state's control, codify Party policies, and strengthen the bureaucracy established to enforce them. The aim is two-fold: stricter control, less arbitrariness.

In 1982, the Central Committee of the Chinese Communist Party promulgated Document 19, ``The Basic Viewpoint and Policy on the Religious Question during Our County's Socialist Period.'' Its principles continue to underlie religious policy in the People's Republic of China even as we meet to consider the implications of the new State Council Decree, ``Regulations on Religious Affairs,'' in effect since March 1, 2005.

Document 19's original formulation was sparse: ``respect for and promotion of the freedom of religious belief,'' \1\ but it signaled a sea change. Promotion of freedom to choose to believe signaled an end to policies of repression which alienated believers and interfered with the State's ability to turn its full attention to and to direct the attention of believers to a mutual goal of rapid modernization. Respect for a variety of beliefs spoke to the State's determination to curb cadres who had been able with impunity to intimidate, harass, arrest, and torture believers.

\1\ Chinese Law and Government, vol. 33 (March-April 2000) p. 22.

However, with the promulgation of the 1982 Chinese constitution which followed hard on the heels of Document 19,\2\ the potential for limiting the full flowering of religious belief and practice became immediately obvious. Document 19 limited freedom to believe to five major religions, Buddhism, Daoism, Islam, Catholicism and post-denominational Protestantism; article 36 of the constitution limited state protection only to ``normal'' religious activities.

\2\ Constitution of the People's Republic of China, adopted at the Fifth Session of the Fifth National People's Congress and promulgated for implementation by the proclamation of the National People's Congress on December 4, 1982.

The ambiguity of the term ``normal'' permitted a plethora of limits on religious expression. What developing regulations explicitly allowed was considered normal; any other activity could be deemed abnormal even by a local bureaucrat. As a Chinese official said some months ago, what was illegal was abnormal; what was abnormal was illegal. But such a formulation continued to make possible arbitrary rule by local fiat, something the central leadership was determined to disallow even as it strengthened control over religious practice. At the same time, prohibition on the use of religion to disrupt public order signaled a concern, one that continues to this day, that ``hostile forces'' would

use religion as a cover for fomenting subversion.

Guidelines, such as those making ``patriotic'' organizations responsible for monitoring compliance with state policy, establishing a ``three-fix'' policy that limited evangelism and the use of lay religious leaders, and instituting a ``three-self'' policy that barred organizational ties to world religious bodies, gave way to emphasis on a ``rule of law.'' That new emphasis culminated in 1991 in a policy directive that carried Document 19 a step further and is still the centerpiece of religious control. Document 6, ``Circular on Some Problems Concerning the Further Improvement of Work on Religion,'' \3\ mandated that every congregation, temple, monastery, mosque, and church had to register with the authorities. An unregistered group was by definition illegal and its members subject to arrest; a group deemed legal opened itself to control of its personnel, religious materials, activities, membership, and finances.

\3\ Chinese Law and Government, vol. 33 (March-April 2000) pp. 56-63.

Jiang Zemin extended the impetus toward regulation of religious activity through law when, in 1993, he stated that religion must adapt itself to a socialist society. The imperative has been interpreted to mean that everything from organization of rites and rituals to underlying theology to the day to day management of personnel, materials, and activities must meet the changing needs of society as interpreted by its rulers.

By 1994, regulations codified by the State Council specified the steps required to properly register and the right of rejection reserved to those bodies charged with monitoring compliance. Local regulations made still more explicit what legally registered organizations could or could not do. There was, however, still room for small groups, operating discreetly in the shadows, to continue to meet and worship.

That small space, though still in existence in 1994, narrowed again in 1999, when the Chinese government, in response to the emergence of Falun Gong, further reserved for itself the right to determine what in the religions it recognized constituted orthodox belief and what was heterodox and thus illegal, and to further determine what belief structures could be classified as cults and thus ipso facto illegal.

The regulations that went into effect on March 1, 2005 further codify the rules restraining religious practice in China and the bureaucratic mechanism used to enforce those rules. That bureaucracy consists in part of the national State Administration of Religious Affairs; a hierarchy of religious affairs bureaus in all administrative units such as provinces, townships, and counties; the Ministry of Public

Security; and local police units.

Several immediate problems assert themselves. The usual twin problems of undefined terminology and vaguely worded regulatory articles make it difficult to understand precisely what compliance requires and leave considerable leeway for national and local interpretation. For example, the problem of what is ``normal'' and what is not remains; nowhere is there an explanation of ``the lawful rights and interests of religious bodies, sites for religious activities and religious citizens;'' and the requirement that those same actors ``safeguard unification of the country, unity of all nationalities and stability of society'' (article 3) leaves the state free to re-interpret the provision as the need arises and leaves religious practitioners no redress should they be charged with a violation.

In addition, other than the specific requirement in Article 48 of the new regulations that the ``Regulations on Administration of Sites for Religious Activities,'' be repealed, laws and regulations remain in place that do not specifically target religious activities, but nevertheless have serious implications for religious expression. The 2005 regulations make no comment on these pre-existing laws and regulations, nor do they suggest how their implementation will affect provincial regulations. The usual practice has been for provinces and other administrative areas to follow national templates in crafting regulations specific to their jurisdiction.

The most problematic addition to prior regulatory regimes, and one that I believe clearly signals an increase in State control, is the requirement that a religious body (nowhere defined) ``shall be registered in accordance with the provisions of the Regulations on Registration Administration of Associations.'' The change signals the need for a religious body to satisfy two bureaucracies, the Civil Affairs Ministry and the State Administration of Religious Affairs. The requirement not only adds to bureaucratic oversight but in theory it requires, inter alia, a religious organization to have a government agency ``as a professional leading unit,'' 50 members, full time personnel, and if local, have ``activity funds totaling in excess of 30,000 yuan.'' Most importantly, the regulations state, in article 13(2), that an application may be rejected because one with a ``similar operational scope exists in the same administrative area.'' In other words, the state is given the power to decide how many mosques are enough.

Several other provisions speak directly to an increase in state control:

<bullet> the requirement that the religious affairs department of the State Council approve educational institutes, which may reject an application on the grounds that sufficient institutes exist in a given locale;

<bullet> involvement of a national religious body in the selection of

students who may go abroad for religious study;
<bullet> the obligatory involvement of three administrative levels before an application to prepare to establish a site for religious activities can be approved and the additional requirement that no application for registration can be made until construction is complete;
<bullet> apparent elimination of any gray area through which small local groups without a structure could use someone's home or shop as a meeting place where like-minded believers could quietly congregate;
<bullet> acceptance of ``guidance, supervision and inspection'' by ``relevant departments of the local people's government;''
<bullet> restrictions on large-scale religious activities.

An added worry grows out of the requirement (article 27) that religious personnel be ``determined qualified as such by a religious body.'' The stipulation brings to mind the on-going ``patriotic'' campaigns in Tibet and Xinjiang during which clergy are compelled to examine themselves and their colleagues for inappropriate behavior or thought.

One omission may--but only may--signal a positive policy change. Nowhere in the regulations is reference made to what belief systems qualify as religions. The omission may signal that additional belief systems will be added to the short list as apparently has been the case for some aspects of popular religion. Conversely, it may signify only that the government will continue to be the sole arbiter of what is a religion and what is not.

I am reluctant to consider regularizing religious belief, practice, or organization a positive development. The premise seems to be that communities of believers have the potential to challenge Beijing's rule throughout China, though more so in Tibet and Xinjiang where religion serves as an identity marker and supports independence sentiment.

I believe, the hope is that the new regulations will lay the groundwork for religious organizations to perform necessary social welfare functions that the state itself cannot support--think hospitals, clinics, old-age homes, senior centers. But I suspect that China's leadership has crafted the regulations in a way intended to further isolate religious belief and practice from life's day to day minutiae. That emphatically is not freedom of religious belief, even as defined in the dry language of international human rights doctrines.

No, the March 1, 2005 regulations are at best, a cosmetic cover up.

Prepared Statement of Daniel H. Bays

March 14, 2005

Summary of main points:

1. These regulations do not seem to constitute a ``paradigm shift.'' Especially when at the same time on the broader stage major cases of persecution continue.

2. Purpose is not (except perhaps as a side effect) to enhance believers' rights or security to practice their religion. It is rather to regularize, and thus enhance, state and party control. I.e., the purpose is to reduce arbitrariness in managing religious affairs (which would be positive for believers), but in pursuit of better total control.

3. Notorious problems of vagueness of terms and no definition, e.g. ``normal activity,'' ``religious extremism,'' even ``religion'' itself, continue from past documents.

4. Nevertheless some interesting features, e.g. art. 38 where ``state functionaries'' (but does this mean party members as well?) can be disciplined for abuse of power, or art. 33 which makes clear that believers are entitled to fair compensation for confiscated property.

5. Several mentions of aspects relating to religious groups carrying out social service activities, including use of foreign donations to do so. Seems almost a tacit admission that the state isn't doing very well in meeting these responsibilities.

6. There runs through the document a consistent thread of concern that religious groups might ``come under the sway of foreign forces.'' Not entirely clear who is main target here, Muslims, Tibetans, or Catholics; or even Protestants.

7. Overall, again not a paradigm shift, just a cleanup by bureaucrats?

8. This document reminds me a lot of the behavior and assumptions of pre-Communist Chinese political regimes going back a couple of millennia: insistence on registration and licensing, deep fear of heterodoxy, paranoia about religious forces becoming politically subversive, etc. Note that some groups are in fact candidates for rebellion.

Some other related observations, some of them along lines of religious believers ``resisting'' state control:

1. At some point people will start to realize that laws should protect citizens as well as being instruments of the state. A few cases starting to show this.

2. Technology and religion's resistance to or evasion of the state. Web sites being constantly shut down by the state, including many religious ones, indicating a lot of them are in existence.

3. Continued pattern of, e.g., Protestant groups refusing to register with authorities, and many of them creating their own non-

state sanctioned training schools and programs for leaders.

4. Will more growth of an urban, better educated, wealthier class of believers (thinking of Protestants here) result in more security for the church? Will it result in elements of a Chinese civil society, with believers manifesting a sense of civic duty and responsibility and desire to participate in local decisionmaking?

5. Possible role for intellectuals here? E.g. ``culture Christians.''

6. It seems we may be in a long-term pattern of the state's declining control over society and elements of society gradually growing more assertive in claiming their ``rights;'' perhaps it will be easier to do so with this new religion law. (Or that may be wishful thinking).

Prepared Statement of Carol Lee Hamrin\1\

march 14, 2005

New State Regulations on Religion: The Bargaining Begins

Trends in religious affairs are part of a broader trajectory in state-society relations that might be called ``outgrowing socialism.'' Following a pattern set by the economic reforms, the state still protects and gives special support to its monopoly institutions--what we might call state-organized institutions (``SOIs'') to echo state-owned enterprises (``SOEs'')--while allowing non-state civic institutions to spring up in order to meet demand. These smaller and weaker organizations nonetheless have greater vitality and flexibility and gradually put competitive pressure on the state agencies.

\1\ From commentary presented at ``Religion and Cultural Change in China,'' a seminar at the Brookings Institution, Washington DC, February 1, 2005.

Thus, the unregistered religious organizations have greatly outpaced in growth and popularity the five official monopolies--the so-called ``patriotic'' religious associations. This, despite the state's unwillingness to grant them legitimacy--and periodic efforts to force them to register through the monopoly agencies. This adds to evidence of a more equal relationship developing between the state and society in general, as the state downsizes and a pluralistic society develops. The state can no longer easily suppress or control social organizations, and also finds them useful to lighten the state's burden in providing social services in ever greater demand.

This is the comparative context for analyzing the new State Council regulations on religious affairs that went into effect on March 1, 2005, in the place of the national regulations of 1994. (Note that the 1994 rules for foreign nationals still apply). Compared with the previous regulations, which focused on the registration and operation of religious sites, there is some improvement in both comprehensiveness and transparency. The new rules are detailed--48 articles--and systematic in addressing the establishment and registration of religious associations, religious activities, personnel, property and liability. The content of the regulations, however, contains little that could not be found scattered in existing provincial regulations or implementing guidelines. It is more of a ``snapshot'' of current practice than a step toward more democratic practices, including legislation to protect constitutional rights, that would be expected of China at this stage of development. Nonetheless, the regulations now provide the highest level (State Council) legitimation for existing practices such as large-scale or inter-provincial meetings, publication of religious materials circulated ``within religious circles,'' acceptance of donations from overseas, and provision of social services to the community. Note that the full meaning and import of these regulations cannot be known until the implementing guidelines are hammered out among contending parties.

The cautious and conservative nature of these regulations is reflected in other regulations and implementing guidelines under review for the social sector--such as the June 2004 set of rules for public and private foundations and the rules for social (membership) organizations and non-commercial institutions. There are also changes underway in the donation law and tax and audit rules that will affect all these various types of social organizations. The application of new rules on property ownership will be critical to all of them, and perhaps the most important will be a law on association reportedly being drafted.

So the good news is that there is a stated intent to treat religious organizations equally with other social organizations rather than as some special kind of threat to the polity. For example, in the model constitution drafted by the China Christian Council to be used as a template for the constitutions of all registered Protestant churches, the Council specifically states that churches in China have a dual nature--that of a spiritual organization and that of a social organization. As social organizations, churches should ``abide by China's constitution, laws, regulations, and policies and should foster social progress, national construction, and the cause of world peace.'' \2\

\2\ Church Order for Chinese Protestant Christian Churches, December 28, 1996, translation 2001 M.E. Sharpe, Inc., from the Chinese text, ``Zhongguo jidujiao jiaohui guizhang,'' Tianfeng

(Heavenly Wind), No. 2 (1997).

However, the bad news is that all social organizations are still tightly restricted by intrusive state supervision, including strict quotas for those with national or provincial scope and restrictions about foreign ties. For example, the new foundation regulations require that foundations ``must not endanger national security, national unity or the unity of nationalities,'' reflecting suspicion about foreign involvement. The new regulations on religious affairs are less subtle, requiring ``independence and self-governance'' and prohibiting any ``foreign domination.'' Such warnings seem anachronistic, at a time when foreign-invested companies in China are generating more than half of the value of all Chinese exports.

The intent of the current regulatory approach seems to be reducing the arbitrariness and abuses of local implementing officials while retaining the final authority for defining and applying the rules in the hands of government. Thus, the state alone will define case by case such key terms that were left quite vague in the regulations such as ``religious belief'' or ``normal'' religious activities that deserve government protection, on the one hand, or the ``state or public interests'' or ``foreign domination'' that would require government intervention on the other hand.

Moreover, there is no requirement to harmonize the new regulations with previous laws, regulations or policy directives that may contradict them, to guarantee constitutional rights. So existing restrictions, including rules set by the monopoly religious associations such as not converting or baptizing minors, very likely will continue. The importance of this lack of coherence can be illustrated by mentioning just a few current policies that impact negatively on free religious practice--ongoing security campaigns against ``religious extremism'' (the new term for cults, terrorism, and separatism) and ``foreign infiltration'' (undefined); a propaganda department campaign to foster ``atheism and materialism'' in the media and education systems (maintaining the privilege of atheism over theistic belief); an organization department campaign to winnow out religious believers from Chinese Communist Party membership rolls; and education department instructions to stop religious activities on university campuses and put a freeze on the development of religious study centers. Thus, the actual environment for religious affairs is highly complex, confusing and intimidating, while implementation is heavily dependent on the locality in question.

The adoption of these regulations on religious affairs may be most important as evidence that the state is under internal and external pressure to regularize or normalize its relations with religious believers. As with other regulations, we are dealing with a moving target; the drafters and implementers are well aware that they will be

engaged in ongoing negotiations and hard bargaining with the various interest groups affected. And no longer are these purely the bureaucratic interest groups, but include the grass-roots religious organizations and international players as well.

It seems that religious believers have won some grudging acceptance by the authorities that they are here to stay and have legitimate interests that must be taken into account. A lot of hard bargaining lies ahead, but having established the necessity of negotiating is a step toward the eventual free exercise of the right of association. In sum, the new regulations offer no guarantees or even probabilities of progress but signal some important possibilities.

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