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## I. INTRODUCTION

In June 2014, the Organization for Security and Co-operation in Europe (OSCE) published its *Guidelines on the Legal Personality of Religious or Belief Communities* (OSCE Guidelines), a document that addressed how governments grant legal status to religious or belief organisations<sup>1</sup>. Dispensed were a set of principles about how governments should structure their registration procedures in respect of freedom of religion or belief (FoRB). The OSCE Guidelines emphasised the principle that an organisation representing a religion or belief and a community of followers should not be barred from or otherwise treated discriminately during any process of registration. Despite this seminal effort by the OSCE almost a decade ago, infringements of FoRB stemming from applications of registration policy persist while it seems these violations worsen when recognition issues intersect with them.<sup>2</sup>

Despite the misuse of recognition and registration by states, this article aims to reconcile both of these mechanisms to FoRB by suggesting that a body of standards be created to regulate state uses of these mechanisms on the basis that these kinds of state interactions with religious or belief organisations are inevitable. The OSCE Guidelines brought to international attention the series of concerns involving registration issues including how some governments limit access to registration by instituting onerous procedures. Moreover,

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<sup>1</sup> ODIHR, 'Guidelines on the Legal Personality of Religious or Belief Communities', OSCE (2014) <<https://www.osce.org/files/f/documents/9/9/139046.pdf>> accessed 22 December 2022.

<sup>2</sup> Roger Finke, Jonathan Fox, Dane R. Mataic, 'Assessing the Impact of Religious Registration' (2017) 56 Journal for the Scientific Study of Religion 720-736.

the severity of how registration is used as a restriction tool seems to correlate with the degree to which a government interferes in the social and cultural process of recognition.

## II. DISTINGUISHING RECOGNITION FROM REGISTRATION

To preface the discussion and to address the lack of international consensus on how recognition and registration are categorised, they are presented herein as distinct processes.

- Recognition is the process of a religion or belief, its community of adherents, and any affiliate organisations receiving social and cultural acknowledgement<sup>3</sup>.
- Registration is the process of a religious or belief organisation qualifying for legal personality and submitting documentation to a competent authority.

From this perspective, registration is an administrative procedure for a religious or belief organisation while recognition is a status that a religion or belief may pursue in various forms and is granted by society over time. Examples of recognition include inviting a religious or belief group to participate in interfaith dialogue, the degree of public awareness and accurate perception of the religion or belief, or whether the religion or belief is taught in schools, among others. A key concern for FoRB is whenever a government interferes in recognition by showing favour to one religion or belief as an attempt to influence society.

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<sup>3</sup> The act of acknowledgement that seemingly underlies recognition involves recognising the legitimate existence of a religion or belief and the legitimate right of both its community of followers to practice and express and the organisations affiliating themselves with it to operate and manage the religion or belief as protected under FoRB.

This can result in excluding unfavoured religions or beliefs from receiving recognition. On the other hand, registration itself is concerning to FoRB when a state's interference in recognition overlaps into restricting access to registration to unrecognised groups or when registration becomes mandatory to conduct activities that are already protected under FoRB and are not at the discretion of the state to regulate. However, there are instances in which recognition and registration interrelate positively for instance achieving registration can be a means to receiving greater social and cultural recognition in the long-term while greater recognition may improve how a religious or belief organisation fares during registration procedures.

This alludes to the reason why an approach based on the distinction between recognition and registration is necessary, namely because there is a persistent issue of recognition being either intentionally or incidentally combined with the legal process of registration. This issue has become especially common in secular states that could be seen as confining recognition to the legal process of registration perhaps to avoid religious favouritism. This has caused some confusion over the exact legal meaning of the terms recognition and registration and has in some cases resulted in a lack of procedures for one or the other<sup>4</sup>. One example is that recognition and registration are sometimes referred to under different headings in national legislation which may lack congruity with international guidelines<sup>5</sup>.

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<sup>4</sup> Cometan, '2022 Global Religious Recognition Report' *The Religious Recognition Project* (14 June 2022) <[https://www.cometan.org/\\_files/ugd/86ca95\\_b73937e188f84a5e8a957071b6421a31.pdf](https://www.cometan.org/_files/ugd/86ca95_b73937e188f84a5e8a957071b6421a31.pdf)> accessed 22 December 2022.

<sup>5</sup> Heiner Bielefeldt, 'Misperceptions of Freedom of Religion or Belief' (2013) 35 *Human Rights Quarterly* 33-68.

Through registration, a religious or belief organisation is granted legal personality under some designation that comes with certain rights and benefits as a registered organisation distinct from its community of followers and the religion or belief it represents. Recognition is a general approach of society in its various components to a religion or belief that may be inconspicuous or may result in a religion or belief being deemed unfavourable by a government if perceived to be at variance with the ideal social order as determined by national history or the sociocultural, political, or religious landscape. This has sometimes resulted in a government limiting the ability of disfavoured groups to operate freely while reserving certain financial and legal privileges for religions it does favour<sup>6</sup>. This type of favouritism in some countries is contrasted in others with a government consciously distancing itself from religious institutions as a response to secularisation in society. This tentative separation can range from moderate to strict with the former embodied by standard secularism in which the state is meant to be neutral on matters of religion while in the stricter form there may manifest a policy of state atheism or a general hostility to religion<sup>7</sup>.

While the publication of the OSCE Guidelines represented a step forward in achieving higher standards for registration procedures, their implementation is restricted to the OSCE Area and the document itself failed to sufficiently emphasise the distinctions between recognition and registration as well as how the former significantly influences the latter.

Moreover, recognition exists as an innate and permanent aspect of how states interact with

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<sup>6</sup> Kurt J. Werthmuller, 'A Global Overview of Official and Favored Religions and Legal Implications for Religious Freedom', *USCIRF* (17 November 2022) <<https://www.uscifr.gov/sites/default/files/2022-11/2022%20Official%20Religions%20and%20Government%20Laws%20Based%20on%20Religion%20Issue%20Update.pdf>> accessed 22 December 2022.

<sup>7</sup> A state's advocacy for irreligion.

religions. While observers might blame recognition as being inherent to FoRB violations, this article instead views recognition as a key tool in rectifying and preventing such violations. As recognition is apparently integral to the state-religion relationship then it may be more appropriate to work towards its reform rather than its abolition. An analysis of case law reveals how recognition can exacerbate registration issues to justify that reforming the ways states use recognition is necessary to resolving issues endemic to registration.

To take this notion a step further, recognition may be an indispensable mode of state-religion relations as an alternative to cooperation, accommodation and toleration<sup>8</sup>. In turn, recognition could be used to facilitate FoRB in contrast to how it is widely used today to inhibit this right<sup>9</sup>. This approach, called recognitionism, advocates using recognition to advance cultural and religious pluralism as aspirational democratic principles. To this effect, the concept of recognition of religion or belief (RoRB) is introduced as an acronym for expressing recognition and registration issues as a distinct area of concern that requires special attention in the discourse on FoRB. RoRB involves stimulating dialogue on how best to accord the complexity of recognition and registration issues with a clearer international standard and to encourage greater compliance with it. Developing RoRB is part of an attempt to conceptualise recognition and registration as being compatible with international human rights principles of equality and non-discrimination.

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<sup>8</sup> Philip Alston, Ryan Goodman, Henry J. Steiner, *International Human Rights in Context: Law, Politics, Morals* (3rd edn, OUP 2008) 570-577.

<sup>9</sup> Roger Finke, Dane R. Mataic, 'Promises, Practices, and Consequences of Religious Freedom: A Global Overview' (2019) 15 University of St. Thomas Law Journal 587-606.

It is hoped this FoRB-compliant conceptualisation of recognition will evolve into facilitationism. This aims to shape both state recognition and registration in ways that are compliant to FoRB by facilitating religious activity through these two mechanisms. The facilitationist approach consists of a set of indications for what constitutes an inclusive and FoRB-compliant version of recognition and registration. These reimagined conceptions of recognition and registration will inform a set of international standards that this article recommends be established. These standards would go beyond existing guidelines to address each recognition and registration issue individually and how they manifest uniquely in each country. Before this, however, it is important to provide an up-to-date survey of the range of registration issues to reiterate their impacts on FoRB. These issues are presented according to three categories, each of which correspond to a stage of registration: preregistration, registration procedures and postregistration.

### III. REGISTRATION ISSUES

From analysing case law at the European Court of Human Rights (ECtHR), there are three main issues endemic to registration policy that violate FoRB<sup>10</sup>. These are the ‘mandatoriness’ of registration, limited access to registration and onerous procedures that groups must undergo to have their applications processed.<sup>11</sup> In light of this range of issues, it may be useful to consider religious registration temporally as different issues impact each

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<sup>10</sup> Roger Finke, Jonathan Fox, Dane R. Mataic, ‘Assessing the Impact of Religious Registration’ (2017) 56 *Journal for the Scientific Study of Religion* 720-736.

<sup>11</sup> Kirsten Lavery, ‘Legislation Factsheet: Registration Laws’, *USCIRF* (2019) <<https://www.uscifr.gov/sites/default/files/Legislation%20Factsheet%20-%20Registration%20Laws.pdf>> accessed 22 December 2022.

stage of the overall process, namely before registration procedures have commenced (preregistration), during procedures (registration), and after registration has been granted (postregistration). Exploring issues found at each stage will clarify how registration is used to violate FoRB and what role recognition plays in exacerbating such violations<sup>12</sup>.

### **A. Preregistration issues**

Issues during preregistration are split between how the registration system is oriented (i.e. the degree to which it is made obligatory) and how it is structured (i.e. the degree to which it is accessible to a diverse range of religions or beliefs). The most concerning registration issue is when states impose mandatory registration orders onto religious or belief organisations; these orders may be explicit or implicit<sup>13</sup>. The explicit form is when a state issues an official policy that makes registration a requirement for all groups to operate legally. The 2022 Global Religious Recognition Report<sup>14</sup> (GRR Report) found that 76 countries and territories currently impose mandatory registration orders in which choosing to remain unregistered is a criminal offence<sup>15</sup>.

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<sup>12</sup> Sergej Flere, 'Registration of Religious Communities in European Countries' (2010) 4 Politics and Religion Journal 99-117.

<sup>13</sup> Dustin Gamza, Pauline Jones, 'The evolution of religious regulation in Central Asia, 1991–2018' (2021) 40 Central Asian Survey 197-221.

<sup>14</sup> The Global Religious Recognition Report is an overview of recognition and registration laws and their impacts on FoRB in each country and territory that is intended to be published annually and is compiled by Brandon Reece Taylorian, one of the authors of this paper.

<sup>15</sup> *ibid.*



Whenever registration is made a prerequisite for a group to operate legally, a dichotomy forms between the registered (legal) and the unregistered (illegal). Registration comes into conflict with international human rights law when it is made a precondition for accessing the body of individual and collective rights protected by FoRB. By making registration a necessary legal process, the state indicates that the right to FoRB is at its discretion. Similar to other registration issues, mandatory registration is made more complicated whenever recognition intersects with it. For instance, groups affiliating with a religion or belief that is favoured by the state are sometimes made exempt from mandatory registration<sup>16</sup>.

The implicit form of mandatory registration is when governments do not officially impose a mandatory registration order but nonetheless include as benefits of registration one or more activities so central to religious practice that it would be contrary to FoRB for the state to subject groups to registration before they may freely and legally conduct such activities<sup>17</sup>. This could be labelled a ‘pseudo-mandatory’ policy. Determining what activities are so central to religion or belief that a government should not be able to subject them to registration is the core issue. Although the OSCE Guidelines do list a ranges of activities protected under FoRB, they do not definitively address what a state can and cannot include as a benefit of registration to remain FoRB-compliant.

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<sup>16</sup> *Uzbekistan Joint Opinion on the Draft Law “On Freedom of Conscience and Religious Organizations”* (12 October 2020) no 988/2020, Venice Commission Opinion, no FORB-UZB/387/2020, OSCE/ODIHR Opinion <[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2020\)002-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)002-e)> accessed 19 February 2023

<sup>17</sup> Office of International Religious Freedom, ‘Romania 2021 International Religious Freedom Report’, (United States Department of State, 2022) 6.

Across both the broad and pseudo-mandatory categories, the 2022 GRR Report found that 58% of all countries and territories impose either mandatory, pseudo-mandatory registration or non-registration<sup>18</sup> policies. The gravity of mandatory registration emerges when it escalates every other issue endemic to registration procedures because it forces groups to endure discrimination or mistreatment both before, during and after registration so they may legally conduct activities that should, according to FoRB, be exempt from registration.

Just as the way registration systems are oriented can be problematic so can the way they are structured. Some governments have imposed eligibility criteria for example that limits access to registration for certain religious or belief organisations. Furthermore, a religious or belief organisation's ability to undergo registration without hassle may be dependent on whether the religion or belief with which the group affiliates has already been recognised in the national constitution which subjects the provision of equal treatment to recognition<sup>19</sup>.

Otherwise, limiting access to registration typically centres on judging the superficial characteristics of a religious or belief organisation, i.e. how long it has existed<sup>20</sup>, how many

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<sup>18</sup> When no procedures are established to handle legal registration.

<sup>19</sup> Jeroen Temperman, 'Recognition, Registration and Autonomy of Religious Groups: European Approaches and their Human Rights Implications' in David Kirkham (ed), *State Responses to Minority Religions* (Routledge, 2016) 151-166.

<sup>20</sup> Office of International Religious Freedom, 'Japan 2021 International Religious Freedom Report', (United States Department of State, 2022) 3.

members it can prove it has<sup>21</sup>, how much money<sup>22</sup> or property<sup>23</sup> it owns, or the similarity of its name to organisations already registered<sup>24</sup>. Criteria such as these often serve to deny disfavoured groups from accessing legal entity status<sup>25</sup> which in countries where mandatory registration orders are imposed is essential to avoid criminal conviction<sup>26</sup>. These cases indicate how mandatory registration escalates other registration issues and proves that when a state practices favouritism and uses registration to express its bias, the social and legal mobility of disfavoured groups become paralysed as a result.

## **B. Procedural issues**

Beyond the immediate issues of mandatory registration and limited access to registration, some governments have created cumbersome procedures that religious or belief organisations must endure to obtain legal entity status. Registration procedures often involve a group's submission of a body of documents to a designated competent authority — often a government ministry — that handles either the registration of religious or belief

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<sup>21</sup> Office of International Religious Freedom, 'Angola 2021 International Religious Freedom Report', (United States Department of State, 2022) 3.

<sup>22</sup> Office of International Religious Freedom, 'Taiwan 2021 International Religious Freedom Report', (United States Department of State, 2022) 3.

<sup>23</sup> Office of International Religious Freedom, 'Argentina 2021 International Religious Freedom Report', (United States Department of State, 2022) 3.

<sup>24</sup> *Bulgarian Orthodox Old Calendar Church and Others v. Bulgaria* (20 April 2021) no 56751/13, ECHR <<https://hudoc.echr.coe.int/eng?i=001-209327>> accessed 19 February 2023.

<sup>25</sup> *Ancient Baltic Religious Association Romuva v. Lithuania* (8 June 2021) no 48329/19, ECHR <<https://hudoc.echr.coe.int/eng?i=001-210282>> accessed 19 February 2023.

<sup>26</sup> *Church of Scientology of St Petersburg and Others v. Russia* (2 October 2014) no 47191/06, ECHR <<https://hudoc.echr.coe.int/eng?i=001-146703>> accessed 19 February 2023

organisations specifically or all businesses and charities<sup>27</sup>. Although this process is straightforward in principle, it is made more complex by introducing multiple steps and by involving more than one government ministry that may have the power to veto an application<sup>28</sup>. Matters are complicated further if the competent authority is not independent of political bias or when its decisions are subject to a majority ruling in parliament. The Hungarian government's 2011 registration law, for example, subjected religious or belief organisations to reregistration via parliamentary vote that led to the deregistration of some religious organisations. This exemplifies how discriminatory intent within a competent authority and basing registration on acts of parliament contravene FoRB<sup>29</sup>.

Crucial to enabling registration to restrict the activities of religious or belief organisations is the information a state requests of applicant groups during registration<sup>30</sup>. These are called 'informational requirements' and can include units of information as general as the name of the organisations or contact details of a representative yet may escalate to personal information, such as the names and addresses of some or all group members or details about the lives of group leaders<sup>31</sup>. Some governments have used the information provided during

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<sup>27</sup> Kammarkollegiet, 'Registration of religious communities' *Kammarkollegiet* (5 July 2022) <<https://www.kammarkollegiet.se/engelska/start/all-services/religious-communities-and-marriage-ceremonies/registration-of-religious-communities>> accessed 22 December 2022.

<sup>28</sup> Office of International Religious Freedom, 'Senegal 2021 International Religious Freedom Report', (United States Department of State, 2022) 2-3.

<sup>29</sup> H. David Baer, Aaron Rhodes, 'Hungary: Amended Church Law Remains at Variance with OSCE Standards and the European Convention on Human Rights' (2015) 35 *Occasional Papers on Religion in Eastern Europe* 67-70.

<sup>30</sup> W. Cole Durham Jr., 'Legal Status of Religious Organisations: A Comparative Overview' (2010) 8 *The Review of Faith & International Affairs* 3-14.

<sup>31</sup> Office of International Religious Freedom, 'Algeria 2021 International Religious Freedom Report', (United States Department of State, 2022) 4.

registration against groups at a later stage to inhibit their religious activities<sup>32</sup>. Such information can help the state to conduct police raids on places of worship, to arrest group members or to surveil religious services to ensure compliance with government-approved sermons. Registration is thereby a crucial tool that allows for the broader persecution of unfavoured religious groups. To complicate registration further, differences in terminology used from country to country can make procedures more cumbersome<sup>33</sup>. Among other onerous policies<sup>34</sup> is the misuse of labels such as ‘cult’, ‘sect’ or ‘extremist’ against groups perhaps simply because they hold beliefs incongruous to the dominant religious orthodoxy<sup>35</sup>. The misuse of terms in this way constitutes a form of state misrecognition<sup>36</sup>.

### **C. Postregistration issues**

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<sup>32</sup> Emily B. Baran, ‘Life Under Ban: Jehovah’s Witnesses in Russia Since 2017’ (2021) 41 Occasional Papers on Religion in Eastern Europe 35-50.

<sup>33</sup> In Tajikistan, registration is referred to as certification while in Senegal, it is referred to as authorisation. These subtle changes in language can in some cases significantly alter what registration means. If registration entails having to submit one’s religious texts and to defend the legitimacy of one’s beliefs, this is a significantly different form of registration than simply filing a registration application for legal status. The use of alternative terms like approval, authorisation, certification or licensing has escalated to religious groups being examined for the legitimacy of their beliefs according to a state’s definition of religion.

<sup>34</sup> Excessive fees and either stringent or ambiguous qualifications such as the necessity to engage in the worship of a deity, that an applicant group must not share the same or similar name to a group that already exists, that a group must have a presence in a certain number of provinces to qualify for legal entity status, or that a group must adopt a specific legal structure regardless of how it prefers to organise itself.

<sup>35</sup> *Taganrog LRO v. Russia* (7 June 2022) no 32401/10, ECHR <<https://hudoc.echr.coe.int/eng?i=001-217535>> accessed 19 February 2023

<sup>36</sup> Active misrepresentation of a religion or belief by a government can include attributing labels and categorising a group in a way that does not correspond with how that group self-identifies.

Postregistration issues centre on the struggle of religious groups to retain their legal entity status, to facilitate their members in practicing their religion and to expand the group's activities following registration. The principal concern for FoRB at this stage are monitorial requirements, namely the tasks registered groups must perform and the information they must regularly provide to the state to maintain their registered status. The most common monitorial requirement is a state's request that a registered group produce an annual or quarterly report of its activities<sup>37</sup>.

Deregistration is the looming threat to registered groups if they fail to cooperate with monitorial requirements. This is concerning when some governments have been found to work against disfavoured groups by actively finding reasons to deregister them which reiterates how favouritism exacerbates registration issues<sup>38</sup>. A related key issue during postregistration are reregistration orders which involve states mandating that a religious or belief organisation has to register periodically to retain its legal status which can involve further fees, having to undergo cumbersome procedures again, or having to provide further excessive information to the state. For example, in 2014, Russian forces in Occupied Crimea ordered a mandatory mass reregistration of religious organisations that drastically reduced the number of legally registered groups and made illegal all those deregistered<sup>39</sup>.

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<sup>37</sup> Home Office, 'Country Policy and Information Note China: Non-Christian religious groups', *Independent Advisory Group on Country Information* (2021) <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1007296/China-\\_Non\\_Christian\\_religious\\_groups\\_-\\_V2.0\\_\\_July\\_2021.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1007296/China-_Non_Christian_religious_groups_-_V2.0__July_2021.pdf)> accessed 22 December 2022.

<sup>38</sup> *Bryansk-Tula Diocese of the Russian Orthodox Free Church v. Russia* (12 July 2022) no 32895/13, ECHR <<https://hudoc.echr.coe.int/eng?i=001-218300>> accessed 19 February 2023

<sup>39</sup> Felix Corley, 'Crimea: Only one percent of religious organisations re-registered', *Forum 18* (2015) <[https://www.forum18.org/archive.php?article\\_id=2050](https://www.forum18.org/archive.php?article_id=2050)> accessed 22 December 2022.

Postregistration issues also include how registration enables the state to restrict religious activity after registration procedures. Through the framework of registration, states can establish policies that limit what registered organisations can do and where they can operate. For example, a policy of confinement is the geographic limitation of a religious or belief organisation to a certain province, a limitation enforced during the registration process<sup>40</sup>. A second policy type is preapproval in which the state may demand that a registered group submit requests before it can perform all or certain religious activities legally<sup>41</sup>. Policies of preapproval can vary widely in their severity; some may be deemed permissible such as for large pilgrimages that could disturb members of the public but other requests are obviously impermissible to FoRB such as those imposed on worship services or proselytising<sup>42</sup>. The OSCE Guidelines were insufficient at addressing when a preapproval policy is compliant or non-compliant with FoRB which suggests the need for more definitive standards. Whatever a state's intent in establishing strict registration laws, the impact these laws have on FoRB conditions can be severe nonetheless. This severity warrants that registration issues become the subject of more consistent reporting and whenever such issues contravene FoRB, should trigger an international response.

#### IV. RECOGNITION ISSUES

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<sup>40</sup> Office of International Religious Freedom, 'Belarus 2021 International Religious Freedom Report', (United States Department of State, 2022) 6.

<sup>41</sup> Office of International Religious Freedom, 'Bhutan 2021 International Religious Freedom Report', (United States Department of State, 2022) 3.

<sup>42</sup> *ibid.*

In surveying the range of issues found in registration procedures, a pattern emerges in which a state's interference with recognition tends to exacerbate those issues<sup>43</sup>. The matter of religious recognition often emerges at the very founding of the state. A crucial part of state-building, for instance, is establishing an ideal social order that the government is tasked with maintaining. Religion is either given an integral role in achieving this social order — perhaps to the degree that the social order is conceived on the basis of a particular religion — or in the other extreme, religion may be completely removed and considered antithetical to creating the ideal society. As such, how religion in general and how specific religions and beliefs are treated by a state seems dependent on how it envisions the ideal society<sup>44</sup>. A crucial tool in this pursuit is a state's power to influence how the society views a certain religion or belief or all religion. State recognition begins to contravene FoRB when bias and prejudice infiltrate what religions or beliefs the state is willing to acknowledge. This leads to the extremes of state affirmation and state delegitimisation of a religion or belief.

Where the religion or belief sits along this spectrum is reflected in the degree of freedom the state grants organisations and individuals professing that religion or belief. For instance, although a religion may not be officially recognised, its members may still be able to practice relatively freely as long as the state continues to believe they are not a threat to its social order. A clear example of this can be seen in China in which Protestant churches have fared relatively better in terms of their freedoms than Catholics on the basis that the Chinese

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<sup>43</sup> James R. Lewis, *Legitimizing New Religions* (Rutgers University Press 2003) 15-16.

<sup>44</sup> Hollis Ashman, Nicholas Burden, Julian W. Fernando, Madeline Judge, Yoshihisa Kashima, Léan V. O'Brien, Angela Paladino, 'Profiles of an Ideal Society' (2022) 54 *Journal of Cross-Cultural Psychology* 43-60.



government has a particular dislike<sup>45</sup> for the consolidated power the Pope in Rome has to direct the Catholic population in faith and morals while Protestant churches have no universal head<sup>46</sup>. The Chinese government sees that it can control Protestant churches more easily than it can the Catholic Church and so the latter must be more heavily controlled as a result to mitigate any potential risks of a foreign leader encouraging his/her followers to subvert the communist order.

Revealed is a pattern found in government behaviour, especially in authoritarian regimes<sup>47</sup>: that underlying state misuses of recognition is a fear that were the state to give greater freedom to religious groups, revolution would ensue. Moreover, recognition can be used as a political tool to maintain the regime and its corresponding social order. From this perspective on recognition, any attempt to fix registration issues is futile without first addressing the recognition issues rooted in state bias, prejudice, fear of regime collapse, and a longing to maintain social ideals. Sometimes state misuses of recognition can be shrouded in cultural and historical sensitivities which give it more opportunity to weave narratives to justify its hyper-recognition<sup>48</sup> of favoured groups and its misrecognition of unfavoured

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<sup>45</sup> Article 36 of the Chinese constitution explicitly states that “religious groups and religious affairs shall not be subject to the power of foreign domination”.

<sup>46</sup> Rachel Xiaohong Zhu, ‘The Division of the Roman Catholic Church in Mainland China: History and Challenges’ (2017) 8 Religions 1-14.

<sup>47</sup> UN Human Rights Committee, ‘Concluding observations on the second periodic report of Turkmenistan CCPR/C/TKM/CO/2’ (2017) <<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsu%2BQCGi7BpU%2ByFnbJWmpGrXBJ9PuCb9M8GpDSwbQzcz4pw3zHlpCs2CaW%2FWqz9%2B7pqXYPYFIn%2BaX19pfqT%2FMv7Y5BDlxuhXrZeKv7iUojTEg>> accessed 19 February 2023.

<sup>48</sup> The practice of a state granting significant degrees of recognition to a religion or belief, an example being the establishment of a religion or belief as the state religion.

groups<sup>49</sup>. The following subsections will address each of the major recognition issues individually to reiterate how they exacerbate registration issues.

### **A. State definition of religion**

A state's acknowledgement or 'disacknowledgement' of religions and beliefs manifests in a range of ways, principal among these is how the state initially defines religion<sup>50</sup>. A state may establish a definite and narrow conception of religion based on its own biases and ideals which is then likely to influence its treatment of religious or belief organisations. While there is no universal agreement on a definition for religion<sup>51</sup>, many states have still defined religion which has lead to the establishment of norms of religious behaviour that are predisposed to exclude. This misuse of recognition holds consequences for registration in that any religious or belief organisation that falls out of the confines of the state definition may be barred from accessing registration or may be treated discriminately during the registration process, possibly leading to the denial of the group's application<sup>52</sup>.

For instance, China narrows its definition of 'normal religious activity' to religions that have received official government approval, namely those that come under the auspices of one of the five government-sanctioned religious bodies so as to indicate their subservience to the

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<sup>49</sup> Andrea Pin, 'Why does religious establishment need to justify itself?' (2018) 33 Journal of Law and Religion 134-136.

<sup>50</sup> Syed Hussein Alatas, 'Problems of defining religion' (1977) 29 International Social Science Journal 213-234.

<sup>51</sup> Daniel Dubuisson, *The Invention of Religions* (Equinox Publishing 2019) 29-43.

<sup>52</sup> *Church of Real Orthodox Christians and Ivanovski v. The Former Yugoslav Republic of Macedonia* (29 November 2018) no 35700/11, ECHR <<https://hudoc.echr.coe.int/eng?i=001-187820>> accessed 19 February 2023

Chinese Communist Party<sup>53</sup>. A state's definition of religion confines what types of religious activity and expression are allowed and is therefore a key component in how recognition is misused to maintain state control. The state uses this form of recognition to infiltrate registration procedures by setting out certain characteristics that a religion or belief must possess in its doctrines or practices for organisations affiliated with it to qualify for registered status. Overall, a pattern emerges in which state definitions of religion influence how the state will acknowledge some religions, will be indifferent to others and will actively delegitimise those it views as unfavourable<sup>54</sup>.

## **B. Religious favouritism**

FoRB advocates and documents like the OSCE Guidelines seek to encourage states to equally acknowledge all religions and beliefs which secularisation is meant to facilitate. Secularism, however, does not guarantee a state's equal treatment of religions if state privilege is at work<sup>55</sup>. State privilege involves secular states officially espousing neutrality on matters of religion yet in practice continuing treating some religions or beliefs more favourably than others<sup>56</sup>. State privilege has consequences for registration because religions

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<sup>53</sup> Magdaléna Masláková, 'The New Regulation on Religious Affairs and Its Possible Impact on the Catholic Church in China' (2020) 62 *Journal of Church and State* 421-442.

<sup>54</sup> *Church of Scientology Moscow and Others v. Russia* (14 December 2021) no 37508/12, ECHR <<https://hudoc.echr.coe.int/eng?i=001-214023>> accessed 19 February 2023

<sup>55</sup> *Independent Orthodox Church and Zahariev v. Bulgaria* (20 April 2021) no 76620/14, ECHR <<https://hudoc.echr.coe.int/eng?i=001-209351>> accessed 19 February 2023

<sup>56</sup> Katayoun Kishi, 'Many Countries Favor Specific Religions, Officially or Unofficially' Pew Research Center (2017) <<https://www.pewresearch.org/religion/2017/10/03/many-countries-favor-specific-religions-officially-or-unofficially/>> accessed 22 December 2022.

with privilege may have registration requirements waived. For example, in Equatorial Guinea, the privileged Catholic and Reformed churches do not need to reregister annually while all other religions are legally required to do so<sup>57</sup>. Another consequence is that religions with state privilege might have their doctrines less heavily scrutinised by authorities during registration which can stall and make more onerous the procedures for obtaining legal personality.

Perhaps the most obvious form of religious favouritism, however, is when a state explicitly establishes a religion or denomination which, whether purely ceremonial or not, has the ultimate function of endorsing a certain identity for the society framed through a particular religion or belief which results in exclusion<sup>58</sup>. Firstly, a state religion is when the government officially espouses a belief system (e.g. Christianity, Islam) while a state denomination is when the government espouses a certain denomination (e.g. Sunni Islam in Saudi Arabia, Evangelical-Lutheran Church in Denmark). Beyond these, this research identifies two contemporary forms of establishment and labels them ceremonial and integrative.

The ceremonial form resembles a claim rather than a definite reality, but nonetheless centres on the idea that the establishment of religion involves no bearing on the nation's respect for FoRB because the country uses a secular legal code that is competent in protecting

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<sup>57</sup> Office of International Religious Freedom, 'Equatorial Guinea 2021 International Religious Freedom Report', (United States Department of State, 2022) 2-3.

<sup>58</sup> Dawood Ahmed, 'Religion-State Relations', (International IDEA, 2014) 8-14.

minorities despite the state's continued official endorsement of one religion or belief<sup>59</sup>, examples of which include the state churches of Denmark and Iceland. The second form of integrative establishment is the classical model that intertwines religious doctrine into the legal code and either highly influences or is itself the embodiment of the ideal social order<sup>60</sup>. Particularly impactful to FoRB is the integrative form as this has wide-ranging legal implications that disenfranchise some or all unestablished religions, including either restricting access to registration or abolishing registration procedures altogether.

Just as there are nation states whose vision of the ideal social order corresponds to the application of particular religious doctrines in government and society, there are other states whose ideal order corresponds to the removal of religion from public life. This process of religious removal has historically devolved into religious persecution<sup>61</sup>. While states following a hard secularism may be classified into this category, the epitome are countries that espouse state atheism. This is a government's active advocacy for irreligion which often pervades every part of society and state policy on education, the military, the media as well as marriage and family life<sup>62</sup>. Historical examples of the impacts of state atheism are

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<sup>59</sup> Cécile Laborde, *Liberalism's Religion* (Harvard University Press 2017) 153.

<sup>60</sup> Aernout J. Nieuwenhuis, 'State and religion, a multidimensional relationship: some comparative law remarks' (2012) 10 *International Journal of Constitutional Law* 153-174.

<sup>61</sup> Christopher Marsh, 'From Atheism to Establishment? The Evolution of Church-State Relations in Russia' in Ted G. Jelen, Mehran Tamadonfar (eds), *Religion and Regimes: Support, Separation, and Opposition* (Lexington Books, 2013) 20-36.

<sup>62</sup> Feinian Chen, Weixiang Luo, 'The Salience of Religion Under an Atheist State: Implications for Subjective Well-Being in Contemporary China' (2021) 100 *Social Forces* 852-878.

abundant in the Soviet Union, its satellite states or in the case of the Khmer Rouge regime, while contemporary examples include China<sup>63</sup>, Cuba, North Korea and Vietnam.

These different forms of religious or irreligious establishment demonstrate that governments have sometimes ignored the principles of equality and non-discrimination in their pursuit for a social ideal. This warped perspective has in turn created spaces for both state and social suppression of any religious activity deemed incongruous to the religious or irreligious norm, a theme underlying many FoRB violation cases that have reached the ECtHR<sup>64</sup>. There are several byproducts of religious favouritism which include the ways a state may express its favour for one religion or belief, an example being how a particular religion may be referred to as the ‘national religion’ or ‘national church’<sup>65</sup> while in the Muslim world, the government or constitution may describe the country as Islamic.

Another byproduct of religious favouritism is the misuse of constitutional recognition to exclude, namely to inscribe only those religions the state officially approves of or is willing to tolerate<sup>66</sup>. This form of recognition has various social, legal and financial consequences, some of which can be obvious while others are more subtle. For instance, recognition in the

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<sup>63</sup> Songfeng Li, ‘Freedom in handcuffs: religious freedom in the constitution of China’ (2020) 35 Journal of Law and Religion 113-137.

<sup>64</sup> *Christian Religious Organization of Jehovah’s Witnesses in the NKR v. Armenia* (22 March 2022) no 41817/10, ECHR <<https://hudoc.echr.coe.int/eng?i=001-216366>> accessed 19 February 2023

<sup>65</sup> Paul-André Turcotte, ‘The national Church as a historical form of Church-type. Elements of a configurative theorization’ (2012) 59 Social Compass 525-538.

<sup>66</sup> Robert C. Blitt, Tad Stahnke, ‘The Religion-State Relationship and the Right to Freedom of Religion or Belief: A Comparative Textual Analysis of the Constitutions of Predominantly Muslim Countries’ (2005) 36 Georgetown Journal of International Law 1-106.

national constitution might give easier access to legal registration any organisation that affiliates with one of the constitutionally-recognised religions or beliefs<sup>67</sup>. This raises an important point about state attitudes; some states are more blatant about their bias for certain religions and beliefs than others, a blatancy evident in the language of state policy and legislation<sup>68</sup>. Meanwhile, other states are more discreet, choosing instead to prove their preference for a certain religion or belief in ways less noticeable such as giving financial support to favoured religions even while maintaining a guise of secularism<sup>69</sup>.

### **C. Misrecognition**

Another way recognition is misused is by weaponising terms. In its active pursuit for an ideal social order, a state might use labels to contrast itself or the religions it favours from the religions it disfavors. For instance, the Russian Federation has consistently labelled the Jehovah's Witnesses an extremist organisation and has used its anti-extremism legislation to prosecute Witnesses<sup>70</sup>. This shows how a state's disacknowledgement of a religion can escalate into an active persecution of the religion's members, another example being the

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<sup>67</sup> Sergej Flere, Miran Lavrič, 'Divergent Trends in Legal Recognition of Religious Entities in Europe: The Cases of Slovenia and Hungary' (2015) 8 *Politics and Religion* 286-304.

<sup>68</sup> Elizabeth Clark, 'Liberalism in Decline: Legislative Trends Limiting Religious Freedom in Russia and Central Asia' (2013) 22 *Transnational Law & Contemporary Problems* 297-338.

<sup>69</sup> Jori Breslawski, Jonathan Fox, 'State Support for Religion and Government Legitimacy in Christian-Majority Countries' (2023) *FirstView American Political Science Review* 1-15.

<sup>70</sup> Willy Fautré, 'Opposition to Jehovah's Witnesses in Russia: Legal Measures' (2020) 4 *The Journal of CESNUR* 41-57.

weaponisation of the term ‘cult’ which may manifest in anti-cult legislation<sup>71</sup>. The point to emphasise is that weaponising terms against disfavoured religions and beliefs is in essence a type of misrecognition. This practice is common to any process bent on delegitimising religions or beliefs if they fail to correspond to a state’s ideals, especially if their doctrines include revolutionary language or call for the transformation of society<sup>72</sup>.

Deterrents against alternatives to the mainstream, the most common examples of which are blasphemy and apostasy laws, whether active or dormant, constitute further forms of misrecognition, namely blasphemy as a misrecognition of freedom to change one’s own religion or belief<sup>73</sup>. These deterrents are used to establish and maintain normative religious behaviour which serves to protect a state’s affirmation of a religion or belief to which all other groups are subordinate. This subordination serves to guarantee the social ideal the state is pursuing which can in some extreme cases result in the ambition of total societal control. In essence, deterrents reveal a breakdown in a nation’s recognition system because not only do they show a disregard to FoRB but also reveal a state’s systemic bias for a certain religion or belief<sup>74</sup>.

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<sup>71</sup> Sergey Ivanenko, ‘Opposition to Jehovah’s Witnesses in Russia: The Anti-Cult Context. The Role of Anti-Cult Myths About Jehovah’s Witnesses in the Increasing Persecution of This Denomination in the Russian Federation’ (2020) 4 *The Journal of CESNUR* 25-40.

<sup>72</sup> Emily B. Baran, ‘Dissent on the Margins: How Soviet Jehovah’s Witnesses Defied Communism and Lived to Preach About It’ (OUP, 2014) xviii-13.

<sup>73</sup> Joelle Fiss, Jocelyn Getgen Kestenbaum, ‘Respecting Rights? Measuring the World’s Blasphemy Laws’, (United States Commission on International Religious Freedom, 2017) 2-12.

<sup>74</sup> Abdullah Saeed, ‘Freedom of Expression in Islam: Challenging Apostasy and Blasphemy Laws’ (I.B. Tauris, 2021) 17-32.



## D. Citizenship and hierarchisation

There are ongoing concerns in certain nations regarding the misuse of citizenship to violate FoRB. For example, in Afghanistan, Maldives, Mauritania and Saudi Arabia<sup>75</sup>, to be recognised as a full citizen, a person must be a Muslim. In their pursuit for what they see as the ideal Islamic social order, these countries have chosen to exclude any non-Muslim from the right to citizenship which is an egregious violation of the rights of all non-Muslims. Elsewhere, in 2019, the Indian parliament passed its Citizenship Amendment Bill, part of which involves granting amnesty to only non-Muslim immigrants fleeing Afghanistan, Bangladesh and Pakistan, a bill which has been described as anti-Muslim<sup>76</sup>. Additionally, some Islamic countries continue to indicate a preference for citizens to be Muslims even if this does not make its way into formal legislation, including Kuwait and Qatar.

A misuse of recognition also emerges in a state's creation of a hierarchy of recognised religions in which the recognition granted to one religion or belief does not correspond to that of another either in terms of the financial and legal benefits bestowed to it or its social and cultural visibility<sup>77</sup>. For instance, while the Iranian government grants recognition to four Recognised Religious Minorities — Jews, Christians, Sunni Muslims, Zoroastrians —

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<sup>75</sup> Office of International Religious Freedom, 'Saudi Arabia 2021 International Religious Freedom Report', (United States Department of State, 2022) 3.

<sup>76</sup> Monish Bhatia, 'State Violence in India: From Border Killings to the National Register of Citizens and the Citizenship Amendment Act' in Monish Bhatia, Victoria Canning (eds), *Stealing Time: Migration, Temporalities and State Violence* (Palgrave Macmillan, 2021) 171-196.

<sup>77</sup> Office of International Religious Freedom, 'Hungary 2021 International Religious Freedom Report', (United States Department of State, 2022) 3-4.

it also elevates Shia Islam to the position of state denomination<sup>78</sup>. In essence, the recognition granted to religious minorities in Iran, which still excludes many minorities (e.g. Baha'is), does not correspond to the same level of recognition granted to Shia Islam. This hierarchisation forms a vertical recognition system in contrast to a horizontal form in which recognition means the same whenever it is bestowed.

The issue of states hierarchising recognition is also apparent in the practice of bilateral cooperation agreements (BCA). BCAs are formal agreements established between a religious or belief organisation and a government that address issues of particular concern to the organisation, grant it specific rights and provide it with benefits and privileges<sup>79</sup>. BCAs represent the culmination of extended communications between a religious or belief organisation and a government and so embody a productive tool to normalise and facilitate state-religion relations. However, they can be used discriminately as a government might bar certain religions from establishing BCAs with the intent to undermine their freedom of religion or belief which demonstrates how religious favouritism can affect the relations of disfavoured religious or belief organisations with the state.

## **E. Narrative tools**

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<sup>78</sup> Office of International Religious Freedom, 'Iran 2021 International Religious Freedom Report', (United States Department of State, 2022) 6-7.

<sup>79</sup> Office of International Religious Freedom, 'Croatia 2021 International Religious Freedom Report', (United States Department of State, 2022) 4.

An essential part of a state's use of recognition to maintain the social order are the ways it justifies its bias or suppression of religions and beliefs that it deems not to correspond to its social ideal. These justifications may be called narrative tools which, either when used singularly or in coordination, have the effect of quelling national and international criticism towards a state's religious policies. These narratives most often take advantage of the cultural sensitivities surrounding religious history or state security such as Russia's 'spiritual security' law.<sup>80</sup> Other examples include narratives that invoke cultural heritage, national culture or similar ideas related to the historical lineage of one religion in the country to justify it being granted special privileges, rights or benefits that other religions are deprived of<sup>81</sup>. This narrative in particular employs cultural relativism to indicate that the international human rights system, especially when presented as possessing a Western bias, should not impose its cultural norms onto other nations that differ in their outlook especially regarding the role of religion in society or lack thereof<sup>82</sup>. A similar example is the narrative tool of national identity or sovereignty principle which may be invoked to justify the establishment or preferential treatment of one religion or belief.

Another category of narrative tools are those applied to limit the activities of all religion or certain religions deemed unfavourable. These narratives are made broad enough so they can be applied to restrict any aspect of religious activity the state disapproves of such as the

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<sup>80</sup> Kristina Stoeckl, 'Russia's Spiritual Security Doctrine as a Challenge to European Comprehensive Security Approaches' (2022) 20 *The Review of Faith & International Affairs* 37-44.

<sup>81</sup> Hranush Kharatyan, 'Religion and the Secular State in Armenia' *International Center for Law and Religion Studies* (2010) <<https://original.religlaw.org/content/blurb/files/Armenia.pdf>> accessed 19 February 2023.

<sup>82</sup> T. Jeremy Gunn, 'Do Human Rights Have a Secular, Individualistic & Anti-Islamic Bias?' (2020) 149 *Daedalus* 148-169.

narrative of public order which can be used to limit any kind of religious activity whether public or private<sup>83</sup>. This tool works particularly well in impacting religious expression that is naturally public and unabashed such as pilgrimages, religious processions and proselytising. In this scenario, the state halts such activities or prevents them from occurring under the guise that they disrupt public life. Other narratives with similar effect that have a history of being invoked include moral decency, a threat to state security or that displaying certain religious symbols is a safety hazard, thus distorting legitimate grounds for permissible restrictions of freedom of religion or belief under international human rights law<sup>84</sup>. The emergent pattern is that the broader and more vague the narrative, the more useful it becomes to restrict religious activity.

It is more difficult for the inauthentic application of this set of narrative tools to be determined because at their core, these narratives may be justified and in their literal meaning, may not immediately violate FoRB. For example, a public religious procession may need to be limited for the purposes of managing traffic and ensuring public safety without there existing any underlying discrimination. However, it is when narratives are either applied broadly or discriminately to limit basic religious activities that they begin to contravene FoRB. This corresponds to a misuse of recognition because the state would not as easily succeed in mistreating certain religious or belief groups if it had not first set up a

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<sup>83</sup> Office of International Religious Freedom, 'Greece 2021 International Religious Freedom Report', (United States Department of State, 2022) 4.

<sup>84</sup> Nanlai Cao, 'Spatial Modernity, Party Building, and Local Governance: Putting the Christian Cross-Removal Campaign in Context' (2017) 17 *China Review* 29-52.

system of laws and narratives to delegitimise unfavoured groups. Moreover, this type of misuse of recognition serves to perpetuate the religious or political hegemony.

## V. CONTEXTUALISING FACILITATION

Despite the range of ways recognition and registration are misused sometimes with severe consequences for FoRB, these mechanisms still have the potential to be applied productively to facilitate FoRB. Attitudes towards state facilitation of religions and beliefs have shifted over time and there have emerged several competing modes of state-religion relations. Any discussion of contemporary religious recognition necessitates the context that the 20th century saw a wave of religious disestablishments brought about by decolonisation and increasing efforts to secularise on the basis that a secular state was thought to be better positioned to guarantee FoRB<sup>85</sup>. As such, notions of state recognition have been met with hesitation and there have been calls for its abolition in the name of separation due to its association with the inevitable infringement of equality and non-discrimination. However, recognition need not go as far as establishment and can have a positive, facilitative outcome for FoRB. Moreover, recognition has a role to play in religious policy for the following reasons:

- Inevitability of recognition: state-religion contact is bound to lead to the state conveying some type of recognition to religions and beliefs because it remains the authority and the religious members are its subjects.

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<sup>85</sup> Marco Ventura, 'From Your Gods to Our Gods. A History of Religion in Indian, South African, and British Courts' (Cascade Books, 2014) 1-20.

- Promotion and protection: although recognition can be applied negatively to impede FoRB via exclusion, it can equally be applied in a positive manner to advance FoRB via inclusion, an example being a state arranging interfaith dialogue.
- Inadequate alternatives: the alternative to recognition is toleration which is not ideal in the context of FoRB-compliance as it implies that a state holds a preference for one religion or belief yet this preference is restrained; recognition occupies a middle way between the two extremes of establishment and separation.
- Persistence of regulation: it is only realistic that a state would wish to retain some regulatory power over religious activity, especially in matters related to state security, but through an inclusive application of recognition and registration to instead facilitate, regulation is limited as is a state's potential to restrict.

These key arguments point out the essence of facilitation which is the attempt to strike a balance between state affirmation and state hostility to religion yet this is not always straightforward. Unsuccessful attempts to facilitate have, for instance, led to public policy prioritising the facilitation of majority religions over minorities and the irreligious<sup>86</sup>. Facilitation may also be accused of moving dangerously close to compromising state

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<sup>86</sup> *Magyarországi Evangéliumi Testvérközösség v. Hungary* (25 April 2017) no 54977/12, ECHR <<https://hudoc.echr.coe.int/eng?i=001-173104>> accessed 21 February 2023.

secularity. The challenge of facilitation, which some states have repeatedly failed<sup>87</sup>, is to maintain the principles of neutrality and equality while making religious activity easier to conduct such as by removing unnecessary legal and administrative hurdles<sup>88</sup>. One might argue, however, that circumstances have gradually changed in the last three decades. For instance a secularised, multi-religious European society, combined with reshaped state sovereignties, has re-legitimised religious actors as key civil society agents and as providers of services the state is no longer able or willing to offer<sup>89</sup>.

These changes caused a greater diversity of religious actors to be accepted or tolerated in society and to receive legal sanction in various ways, including new religious movements and irreligious, philosophical and non-denominational actors<sup>90</sup>. This new social landscape in Europe and beyond is encapsulated by five dimensions: reflectivity of secular modernities and religious traditions; co-existence of secular and religious worldviews; de-privatisation of religions; religious pluralism in contrast to religious monopoly; and the sacred understood as a heteronomous transcendent force opposed to a merely immanent understanding of life<sup>91</sup>. In this environment, freedom and equality-based arguments against

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<sup>87</sup> *Bektashi Community and Others v. the former Yugoslav Republic of Macedonia* (12 April 2018) no 348044/10; 75722/12; 25176/13, ECHR <<https://hudoc.echr.coe.int/eng?i=001-182170>> accessed 21 February 2023.

<sup>88</sup> *Orthodox Ohrid Archdiocese (Greek-Orthodox Ohrid Archdiocese of the Peć Patriarchy) v. the former Yugoslav Republic of Macedonia* (16 November 2017) no 3532/07, ECHR <<https://hudoc.echr.coe.int/eng?i=001-178890>> accessed 21 February 2023.

<sup>89</sup> Marco Ventura, 'The State's Understanding of the Role and Value of Religion: Political Perspectives' in Balázs Schanda (ed), *The Mutual Roles of Religion and State in Europe – Interférences mutuelles des religions et de l'état dans l'Union Européenne* (2nd edn, Institute for European Constitutional Law, 2014) 301-313.

<sup>90</sup> Norman Doe, Frank Cranmer, 'Religion and Law in the European Union' in Grace Davie, Lucian N. Leustean (eds), *The Oxford Handbook of Religion and Europe* (OUP 2021) 307-322.

<sup>91</sup> Massimo Rosati, Kristina Stoeckl, 'Multiple Modernities and Postsecular Societies' (Ashgate 2012) 1-20.

state facilitation of religion sound weaker while public policy can promote not only religious or belief communities as valuable social actors, but as a source of values, meaning and wellbeing. As a result, a state's commitment to facilitation upgrades its relationship with religious institutions from one of mere survival to encouraging a diversity of religions and beliefs to thrive.

### **A. Between cooperationism and accommodationism**

In the context of Cole Durham's diagram (see Figure 1), facilitation stems from the combination of the modes of cooperation (i.e. emphasising dialogue between the state and religious or belief communities) and accommodation (i.e. emphasising state respect for religious or belief communities' needs)<sup>92</sup>. Combining these modes extends Durham's diagram between the accommodationist and cooperationist approaches to form facilitationism. Moreover, facilitationism differs in its ability to support a diverse range of religious activity without affirming any one religion or belief, such as in the following ways:

- Freedom: facilitation indicates the direction of religious freedom and strives for a transition from 'absent' freedom to the ideal of 'total' freedom.
- Religious economy: facilitation advances the ideal of a free and plural market of religious and philosophical beliefs devoid of state interference<sup>93</sup>.

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<sup>92</sup> *ibid.*

<sup>93</sup> *ibid.*



- Separation: facilitation coincides with ‘benign’ separation rather than ‘rigid’ separation which resembles conditions of state neutrality on religious matters.
- Identification: facilitation entails some degree of ‘religion and state identification’, yet does not embrace any kind of state establishment or endorsement of religion.
- Self-awareness: facilitation is conscious of its own implications and risks, and purports to avoid ‘inadvertent insensitivity’ towards religion or irreligion.
- Equality: facilitation emphasises appropriate responses to equality-related claims and sees ‘equal treatment’ as best achieved by affirming the legitimacy of all groups.

## **B. The added value of facilitationism**

Facilitationism is distinguished by its vocation to go beyond legal formalism to demand a practical approach to realising FoRB while still offering legal technicalities and standards. This is perhaps best reflected in Werner Menski’s kite model (see Figure 2)<sup>94</sup>. Through his model, Menski promotes a framework of legal pluralism comprising four dimensions, as in a kite-like shape, to allow the law to function. The first dimension is ‘religion, ethics and morality’, the second is society, third is the state and fourth is ‘modernism, globalisation and

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<sup>94</sup> Werner Menski, ‘Accommodating religious needs in relation to marriage: flying kites and navigating state law and other forms of law’ (2008) 13 *Stato, chiesa e pluralismo confessionale* 1-25.

international law’<sup>95</sup>. By analogy, facilitationism needs the same four dimensions to ‘fly’.

The ‘religion, ethics and morality’ dimension embodies the fundamental challenge claimed to be answered by facilitationism, namely that the state and law cannot practically refrain from recognising religion and that society cannot be God-free or belief-free without leading to discrimination and persecution. Simultaneously, it also urges individuals and communities to engage with the government to facilitate a plural, positive encounter of religion, ethics and morality, including their integration with the other dimensions of the model.

The second dimension of society indicates the role of facilitationism as a response to not only governmental restrictions but social hostilities. Stemming from a holistic approach to recognition both in the law and in culture and society, facilitationism takes stock of the crucial place of society, and promotes religious or belief communities in the local, national and global social context. Through the dimension of the state, facilitationism develops the monitoring function of recognition into a proactive, creative mobilisation of state resources. Finally, the dimension of ‘modernism, globalisation and international law’ enables facilitationism to operate through projects of reform, benefiting from global networks and the progress of international law. Based as it is on the dialogue between multiple dimensions of law and society, Menski’s approach is an invitation to see recognition as a facilitator of both state-religion interaction and interfaith dialogue. From this perspective, facilitation strengthens relations in at least three ways:

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<sup>95</sup> Werner Menski has presented and published several versions of his kite model, in response to different contexts and methodological discussions. While taking inspiration from the model, we are aware of falling very short of fully presenting and exploiting its rich, evolving heuristic.

- Protection and recourse: states can use recognition to strengthen protections afforded to religious or belief organisations by establishing options to appeal to national and international courts.
- Simplification: states can simplify registration procedures to facilitate religious or belief organisations when setting up their operations and to reduce institutional hurdles to allow for greater parity among religions and beliefs seeking recognition.
- Channel: recognition offers a channel between religion and state that need not affirm beliefs but instead encourage mutual respect for religious diversity.

By viewing facilitation through Durham's and Menski's models, the codependent relationship between recognition and facilitation becomes clear, a relationship that is crucial to achieving the more advanced conceptualisation of FoRB. On one hand, recognition needs facilitation lest its negative, restrictive form dominates its positive, promotional side. On the other hand, facilitation needs recognition as its vehicle to remove state bias and to reduce the onerousness of registration. In essence, to have any positive impact on FoRB, state recognition needs to be driven by facilitation while to have any authority or significant outcome, facilitation needs state recognition.

## VI. INCLUSIVE RECOGNITION AND ACCESSIBLE REGISTRATION

By proposing recognition and registration as necessary elements of state religious policy<sup>96</sup>, the onus rests on establishing conceptions of these mechanisms that will work to facilitate FoRB: these are inclusive recognition and accessible registration. Underpinning these FoRB-compliant applications are two key measures, the first is equal opportunity to receive recognition and the second is the ease of registration procedures. The topic of concern is what functions the state should reasonably have in intervening in the cultural and social process of recognising religions and beliefs while for registration, the focus turns to what limits should be placed on registration to avoid it becoming onerous and discriminatory.

### **A. Inclusive recognition**

The emerging pattern of how states misuse recognition to the detriment of FoRB centres on exclusivism in the form of the state actively seeking ways to reject religions and beliefs from gaining greater social and cultural acceptance<sup>97</sup>. The first method a state can adopt is using terminology that is inclusive of a range of religions and beliefs. Examples of the harm done to FoRB resulting from exclusive terminology are the use of state definitions of religion to establish norms to exclude and the weaponisation of terms to stigmatise<sup>98</sup>. Although recognition is used in conjunction with language to exclude, conversely it may be applied to include all types of religions and beliefs. On the basis that recognition can be

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<sup>96</sup> Bouke de Vries, 'Five arguments against single state religions' (2021) 21 *Ethnicities* 192-210.

<sup>97</sup> *Biblical Centre of the Chuvash Republic v. Russia* (12 June 2014) no 33203/08, ECHR <<https://hudoc.echr.coe.int/eng?i=001-144677>> accessed 21 February 2023.

<sup>98</sup> Roger Finke, Jonathan Fox, 'Ensuring Individual Rights through Institutional Freedoms: The Role of Religious Institutions in Securing Religious Rights' (2021) 12 *Religions* 273-296.

applied inclusively, there are three further methods of how recognition can be used to promote and protect FoRB:

- Acknowledgement: granting recognition to all religious or belief communities shows that a state acknowledges their legitimate existence which reinforces its own national and international commitments to protect those of all beliefs and none.
- Legalisation: states can structure their legislation in ways that recognise a plurality of religions and beliefs and can create procedures that both protect against as well as remediate and prevent FoRB violations.
- Benefits: states have the opportunity to use recognition to encourage social and cultural acceptance and to use registration to offer financial and legal benefits to all religious and belief organisations instead of only favoured groups.

These ways of applying recognition in an inclusive manner attribute an underlying value to recognition. Essentially, that in spite of the historical background of suppressive recognition policies, recognition itself possesses sociopolitical value and secondly, that it possesses legal value through its ability to help protect and promote FoRB. With this, a set of responsibilities emerge, the first resting with the international human rights system to exert normative pressure on states to apply recognition in a FoRB-compliant manner. The second responsibility rests with states themselves to remain consistent with human rights

instruments by complying with international standards and applying recognition in FoRB-compliant ways.

## **B. Accessible registration**

Although considerable problems exist with contemporary applications of registration, this mechanism should remain part of an approach seeking to facilitate FoRB precisely because the functions of registration to facilitate are distinct from those of recognition<sup>99</sup>. Outlined below are the reasons why registration still has potential as a suitable mechanism for the promotion and protection of FoRB:

- Initiator of relations: it is often in the context of registration that state-religion communications commence which provides an opportunity to set up registration to be accessible and inclusive in ways that help build further relations; in essence, registration offers a navigable avenue for religious or belief organisations to establish relations with the state.
- Legal acknowledgement: to distinguish it from the social and cultural acknowledgement granted through recognition, the main provision of registration is the acknowledgement of a religious or belief organisation in the national legal system which facilitates by allowing an organisation to conduct transactions in its own name and by giving the organisation legal recourse if required.

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<sup>99</sup> Alexander Ignatenko, Yaroslav Kotylko, 'State Registration of Religious Organizations in Ukraine' (2022) 50 Scientific Journal of Polonia University 171-179.

- Facilitative benefits: successful registration often leads to legal and financial benefits (e.g. tax exemption) that can help with funding the operations of a religious or belief organisation or may at least reduce the financial burdens on such organisations which can only have a positive effect on their practical capacity to provide facilities for practicing religion or belief.
- Efficient indicator: although the national constitution may make a claim to FoRB and legislation sets out registration procedures, any disparity in how registration is applied in practice and how a state responds to issues identified in its registration procedures is a good indicator of a state's overall commitment to FoRB.

For these methods to be successfully applied, however, the underlying approach to registration must be inclusive and FoRB-compliant by reflecting certain attributes. Firstly, for registration procedures to be inclusive, they need to welcome a plurality of religions and beliefs. Registration should account for the nominal and practical needs of religious or belief communities to facilitate them. For instance, this would require states to establish mechanisms that register groups as 'belief-based'<sup>100</sup> if this is the preference of the applicant group otherwise they should be offered registration under a secular designation<sup>101</sup>. Making this kind of distinction between religious and secular organisations is essential to prove that the needs specific to religious or belief organisations are catered for which advances an approach that values free choice.

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<sup>100</sup> Not merely as companies or civil associations which are secular designations.

<sup>101</sup> Phil Lord, 'Religious Legitimacy' (2021) 90 UMKC Law Review 347-396.

Secondly, accessible registration means neither discriminating between religions or beliefs during registration procedures nor making registration a mandatory requirement for religious or belief organisations and their members to conduct the full range of ‘basic religious activities’ as outlined in the OSCE Guidelines<sup>102</sup>. Moreover, groups that choose to refrain from registration should be protected and have their fundamental rights to FoRB respected and upheld in spite of their choice to remain unregistered. However, the OSCE Guidelines are insufficient in definitively stating what is reasonable for a state to deprive an unregistered religious or belief organisation of without violating FoRB. It is suggested that the only two conditions that remain congruous to FoRB is that a state can deny some financial privileges (e.g. tax-exemption) or the legal right to perform activities labelled ‘registrable’ (a criterion outlined in Subsection C). However, depriving such privileges or activities must not devolve into unregistered organisations being penalised for choosing to remain unregistered.

The third aspect of a FoRB-compliant registration is that it should comprise the three ideal attributes of accessibility, equitability and visibility. The accessibility of registration measures the degree to which a diverse range of religious or belief groups are given the opportunity to undergo procedures to receive registration. To measure this, registration rates of religious or belief organisations are a useful indicator as are analyses of issues arising at the preregistration stage but more monitoring is necessary to gain reliable data on these matters. The equitability of registration concerns whether or not and to what degree

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<sup>102</sup> *ibid.*



religious or belief organisations are treated discriminately before, during and after registration procedures. This attribute is asserted in the OSCE Guidelines when it states that religious or belief organisations should neither be deprived of registration nor should have it forced upon them under the threat of being made illegal<sup>103</sup>.

The third attribute visibility scrutinises whether the state's bestowal of registered status is authentic, meaning whether a group actually receives the benefits and rights that the state claims registration provides. For example, in Vietnam, although a religious or belief organisation may successfully register and abide by its charter, it must still seek preapproval from the state or at the very least notify the state of some or most of its activities which undermines the reason for which registration had originally been obtained and indicates that the rights and benefits claimed to be granted through registration were to a degree inauthentic<sup>104</sup>.

Although this outline of accessible registration has shown concern for individual, collective and institutional rights as being equally essential to FoRB<sup>105</sup>, there may be some legitimate concerns over giving recognition and registration this kind of special value. One such concern is that by giving state recognition a central focus, this might provide the state excessive power to wield its discretion over how FoRB is granted. It is conceded that a

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<sup>103</sup> W. Cole Durham Jr., 'Facilitating Freedom of Religion or Belief through Religious Association Laws' (2004) in W. Cole Durham Jr., Lena Larsen, Tore Lindholm, Elizabeth A. Sewell, Bahia G. Tahzib-Lie (eds), *Facilitating Freedom of Religion or Belief: A Deskbook* (Springer Netherlands 2004) 321-405.

<sup>104</sup> Office of International Religious Freedom, 'Vietnam 2021 International Religious Freedom Report', (United States Department of State, 2022) 7.

<sup>105</sup> *ibid.*

recognitionist approach maintains a state's role in regulating religious activity<sup>106</sup>. However, the ideal that a state could or would refrain from all involvement in religion is grossly disconnected from the reality of how states and religions interact<sup>107</sup>. The key difference is that applying inclusive recognition and accessible registration would prevent state regulation from devolving into forms of state restriction impermissible to international human rights law. Hence, the ideal outcome is to use recognition and registration to satisfy a state's appetite to regulate religion while limiting its ability to restrict religion to avoid FoRB violations.

### **C. Recognition and registration criteria**

Necessary to any approach that seeks to use recognition and registration to facilitate FoRB is the need for a criterion to clearly distinguish between permissible and impermissible applications of both of these mechanisms. This is because applications of recognition and registration can sometimes initially appear permissible to FoRB but may later violate this right. In response, a recommendation is that a set of standards be developed to address the various RoRB issues. However, it is prudent to establish some criteria to act as a framework to support any future standards. The first set of criteria are the categories of 'basic religious activities' and 'registrable religious activities'. These are important because they work in conjunction to delineate which types of activities of religious or belief organisations are permissible for a state to regulate using registration. For any religious rights or activities labelled 'basic', it would be impermissible for a state to restrict due to them being so

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<sup>106</sup> Jonathan Seglow, 'What are the criteria for religious recognition?' (2021) 21 *Ethnicities* 211-215.

<sup>107</sup> Geoffrey Brahm Levey, 'How not to think about the state and religious recognition' (2021) 21 *Ethnicities* 221-225.

integral to the practice of religion or belief. On the other hand, the ‘registrable’ category includes activities and benefits either deemed less crucial to religious practice or that a state may reasonably regulate through registration without this constituting a violation of FoRB.

To avoid repeating OSCE Guidelines, a list of only ‘registrable religious activities’ is provided here and so the assumption should be that any religious activity not included is classified in the ‘basic’ category. ‘Registrable religious activities’ include planning and constructing a religious building, owning property or land used for religious purposes in the name of the organisation rather than a leader or administrator, performing a legal marriage ceremony, the legal ability to sign contracts in the name of the organisation, the legal ability to bring into the country foreign missionaries, to establish private religious schools, to receive tax-exempt status, to receive non-monetary donations, to receive state funding, and to open a bank account in the name of the organisation.

One of the ongoing issues in the field is the difficulty of determining the boundary between permissible and impermissible state limitations on religious activity in the context of FoRB-compliance which is further complicated when narratives such as social order, public decency, national security and the rights and freedoms of non-members are invoked. One might argue that human rights instruments sufficiently protect ‘basic religious activities’ but this does not explain how registration can be consistently used to inhibit these activities. Furthermore, there are a range of activities that may not be as central to religious belief and practice but may nonetheless support those ‘basic religious activities’. In essence, such criteria views FoRB in the context of the complexities of recognition and registration issues

in an attempt to clarify at what point a state's application of recognition or registration becomes incongruous to FoRB, a measure that is not precisely addressed in the OSCE Guidelines. Although the OSCE does make clear what religious activities are protected under FoRB, its Guidelines are less clear on the margin of appreciation states have in applying recognition and registration without violating FoRB. This points to why standards are needed that are more definitive and provide both limits and leeway within which states can act.

The second criterion involves the principle that registration leads to recognition. As outlined at the beginning of this article, recognition differs from registration in that it is not simply gained by processing a legal document but is instead earned over time as a religion or belief establishes its visibility in society which naturally makes recognition less straightforward in achieving. This highlights why it is essential that recognition is applied so that it has no negative bearing on a group's access to registration. States should therefore practice giving religions and beliefs equal opportunity to become socially and culturally visible. It should be acknowledged, however, that a certain degree of struggle is necessary for the recognition a religion or belief receives to be authentic and deserved<sup>108</sup>.

## VII. RORB STANDARDS

Issues involving the recognition and registration of religious or belief organisations remain widespread and do arise in both democratic and authoritarian states, albeit in different forms

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<sup>108</sup> Axel Honneth, 'The Struggle for Recognition: The Moral Grammar of Social Conflicts' (MIT Press 1992) 1-20

and to various degrees of severity<sup>109</sup>. Although an issue-by-issue delineation of standards on recognition and registration is needed in the field, such an extensive task goes beyond the scope of this article. However, what is established here is a need for RoRB standards that are more specific and definitive than the current OSCE Guidelines. Below is an outline of the nine necessary attributes any prospective standards would need to include to be sufficiently distinguished from existent guidelines:

- Issue-specific approach: standards would mainly differ from the OSCE guidelines by addressing each type of recognition and registration issue individually, would categorise registration issues according to the stage of registration to which they pertain and acknowledge the differences between recognition and registration.
- Reconciling with local customs: standards would support reconciling local traditions and language with an international terminology on recognition and registration issues to support religious or belief organisations in understanding the legal meaning of terms used and how their use differs from state to state.
- Institutional, collective and individual rights: standards would satisfy the concerns of group members, both individually and collectively, in exercising their right to FoRB and the concerns of organisations in having the legal rights and practical freedoms necessary to provide members with the facilities to practice their religion or belief.

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<sup>109</sup> Samirah Majumdar, 'A Closer Look at How Religious Restrictions Have Risen Around the World' *Pew Research Center* (2019) <<https://www.pewresearch.org/religion/2019/07/15/a-closer-look-at-how-religious-restrictions-have-risen-around-the-world/>> accessed 22 December 2022.

- **Definitiveness:** standards would be more proactive in establishing norms of state behaviour which is needed when disparity exists between government approaches and standards would be written in a way that gives states a margin of appreciation<sup>110</sup> to act within rather than made too narrow that their implementation is inhibited.
- **Adaptability:** standards would be able to adapt to changing issues in the field, especially if some issues become more pertinent than others over time. Standards and the systems tasked with overseeing their application need to be receptive to alteration to reflect changing approaches to human rights as well as events in the field.
- **Universal values:** standards and the language used to create them would reflect the same set of values, aspirations and responsibilities found in international human rights instruments but with a focus placed on recognition and registration. These values include non-discrimination, universality, accountability and pluralism.
- **Country-specific standards:** standards would be responsible for providing technical guidance and expert knowledge tailored to cultural and political situations to ensure that any persistent issues or challenges unique to a nation are sufficiently addressed with country-specific standards.

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<sup>110</sup> Konstantina Alexopoulou, 'The Margin of Appreciation in Freedom of Thought, Conscience, and Religion under Article 9 of ECHR' (2022) Oxford Journal of Law and Religion 1-26.

- Interoperability: international standards would initiate a dialogue on recognition and registration issues and would encourage governments to share clear and transparent information on issues they are facing in establishing and maintaining their recognition and registration system to encourage international cooperation<sup>111</sup>.
- Monitoring: standards would monitor national and international progression and regression of RoRB conditions. These monitorial activities would be split across six variables of state policy, state practice, cases and violations, state-religion relations, RoRB literacy and the international attention given to RoRB issues<sup>112</sup>.

On reflection, the process of standardisation will combat RoRB issues both in the field and at the advocacy level. OSCE Guidelines were created to address concerns over the legal registration of religious organisations and although the Guidelines still hold utility, they have limitations when greater specificity is required<sup>113</sup>. Other entities have also struggled with specific standards, including the ECtHR which has so far failed to develop clearer guidance on how states can maintain pluralism<sup>114</sup>. Guidelines are indeed helpful in

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<sup>111</sup> Jason Pielemeier, 'The Advantages of Applying the International Human Rights Framework to Artificial Intelligence' United Nations University (2019) <<https://cpr.unu.edu/publications/articles/ai-global-governance-the-advantages-of-applying-the-international-human-rights-framework-to-artificial-intelligence.html>> accessed 22 December 2022.

<sup>112</sup> Michael Hertzberg, 'Monitoring Religious Freedom: persecution, documentation and the role of political facts' in Marius Timmann Mjaaland (ed), *Formatting Religion: Across Politics, Education, Media, and Law* (Routledge India, 2019) 55-76.

<sup>113</sup> *Bryansk-Tula Diocese of the Russian Orthodox Free Church v. Russia* (12 July 2022) no 32895/13, ECHR <<https://ips.ligazakon.net/document/ES073102>> accessed 19 February 2023.

<sup>114</sup> Pamela McCormick, Clare Ovey, Bernadette Rainey, 'The European Convention on Human Rights' (8th edn, OUP 2004) 478-487.

establishing general principles but are insufficient when taking into account the theoretical challenges and practical complexities caused by RoRB issues. Instituting RoRB standards that incorporate the nine attributes outlined above would serve to expand and make more definite the loose parameters already set out by the OSCE. Lastly, creating specifications for each country by each issue will support advocates in discussing issues more precisely than is currently possible.

## VIII. CONCLUSION

In conclusion, recognition is a powerful tool that although is widely used to the detriment of FoRB, equally has not only the potential to protect it but to advance what FoRB entails. This article has proposed ways states can use recognition and registration to facilitate religious activity to demonstrate a FoRB-compliant application of these mechanisms. Highlighting how some of the most persistent violations of FoRB emerge from the ways states use recognition and registration has shown that the OSCE Guidelines remain insufficient and that more definitive, country-specific and issue-specific international standards are required.

Hence, the aim of any state in remaining congruous to FoRB should involve carefully applying these mechanisms so that they advance FoRB. This points to why standards rather than guidelines are needed in this area to achieve the aims of facilitationism, namely to support states in navigating how they intervene in the sociocultural process of recognition as well as how they establish and manage their recognition and registration systems. This



support from standards would reduce the scale and severity of restrictions imposed on religious activity. In turn, the ways recognition and registration are sometimes used as hindrances to the operations of religious or belief organisations would see reform, instead using such mechanisms to encourage the state to ease its regulation of these organisations albeit without affirming any religion or belief.

Overall, the facilitationist approach views recognition as an irremovable and inevitable part of how states and religious or belief organisations interact which is used as the main justification for promoting the reform of recognition. The task at hand is to guide states in applying recognition and registration to the advantage of FoRB. There are a variety of ways in which this could take place and perhaps it will be a case of trial and error to decipher a midway between state affirmation and state restriction. A pluralisation is taking place in the world that is causing individual believers and religious or belief organisations from different traditions to interact in new and profound ways. States, although fearful of religious pluralism, must ultimately respect the full breadth of FoRB as it has been proclaimed in international human rights instruments. States can demonstrate their commitment to these instruments by taking an inclusive approach to recognition and an accessible approach to registration so that their power could be mobilised to advance and facilitate the basic right to religious freedom.