

ICRF White Paper

The Schengen Treaty and the Case of
Rev. and Mrs. Sun Myung Moon

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The Reverend and Mrs. Sun Myung Moon, founders of the international Unification Church, are currently listed as “dangerous persons” under the European Schengen Information System. As a result, the Moons are forbidden entry into the twelve Schengen Convention states, including all major continental western European countries.¹ The International Coalition for Religious Freedom considers this ban against the Moons to be a serious violation of their rights and the rights of thousands of European Unificationists who are deprived of the ability to meet their religious leaders in person and have their leaders conduct religious ceremonies in their nations. The purpose of this paper is to give the background and history of this issue, to demonstrate how this abuse of the Schengen Convention violates international standards of human rights, and to explore ways and means of remedying the situation.

Background

The Schengen Convention emerged from an agreement by several European countries in the town of Schengen, Luxembourg, on June 14, 1985 providing for the “ultimate abolition of all border controls of persons within this area.” The agreement was adopted as a formal convention in June 1990 and “fully implemented” on July 1, 1995.² Original members of the agreement were Belgium, France, Germany, Luxembourg, and the Netherlands. Other signatories now include Spain, Italy, Portugal, Austria, Finland, Sweden, and Norway.

Although the primary purpose of the Schengen agreement is to achieve “the gradual abolition of controls at [the] common frontiers” of the member nations, the agreement naturally provides for measures “to be adopted on security matters and the prevention of illegal immigration.” Thus was born the Schengen Information System, and the so-called “Schengen List.” Under terms of the Convention, persons considered security risks by any member nation (such as suspected terrorists, drug dealers, smugglers, and other dangerous international criminals) should be placed on the Schengen List to prevent them from freely traveling among the Schengen countries. Once a person is listed by one member country, he or she is banned from entering any of the other Schengen countries as well.

Origin of the Moon Case

Shortly after the “full implementation” of the Schengen system, in the autumn of 1995, Rev. and Mrs. Moon conducted an international speaking tour that took them to several European countries and Africa to deliver a religious speech entitled “The True Family and I.”³ Earlier that year Rev. Moon had delivered this speech in 16 Latin American nations and 16 states of the US. All of the events had been carried out without incident and with no hint of a threat to public order. In November 1995, Rev. Moon delivered his

¹ The Netherlands has granted an exception, as will be discussed later.

² The text of the convention is available at: <http://www.ifi.uio.no/~hennings/schengen/>

³ Text available at: <http://unification.net/1995/950625.html>

speech in Paris, again with no public order disturbance. The Moons were scheduled to speak in Germany but newspaper reports, later confirmed, alerted them to the fact that they had been banned from entering that country. Rev. and Mrs. Moon then traveled to Budapest for the next leg of the speaking tour and were scheduled next to speak in Madrid. However, while changing planes in Paris en route to Madrid, they were arrested by French authorities, separated from each other, and held in custody for several hours. Rev. Moon, without benefit of attorney or translator, was pressured unsuccessfully to sign a document in French promising never again to set foot on French soil. The French immigration authorities forbade the Moons from continuing their itinerary and forced them against their will to return to Budapest. Their European tour was now at an end, and the Moons were forbidden entry to virtually all of Western Europe.

Why are the Moons less free to travel in Western Europe—normally a bastion of liberty—than in Eastern Europe, Latin America, Africa, the Middle East, Russia and China? The answer is that they have been improperly blacklisted under the Schengen Information System. A convention originally designed to provide for liberalized travel in Europe—and to prevent terrorists and drug dealers from abusing the system—has itself been abused to prevent these two spiritual leaders from sharing their religious message.

The Role of Germany and France

Without warning, Germany and France placed Rev. and Mrs. Moon's names on the Schengen List as "dangerous persons." European members of the Unification Church who longed to see and hear their aging leader (Rev. Moon was then 75; he is now 82) were deprived of this right. Young couples seeking their leader's blessing on their marriages were forced to travel overseas to participate in the Unification Church's well known large wedding ceremonies.⁴ The founders' blessing of Church sanctuaries and other ceremonies that can only be conducted on site could no longer be performed. Western Europe, usually thought to be a paragon of freedom and democracy, had now effectively treated Rev. Moon the same way the government of China treats the Pope and the Dalai Lama.

A number of legal and administrative actions have been instituted to rectify this situation. In France, a court action was brought by Rev. and Mrs. Moon to overturn their being listed by France in the Schengen Information System. In Germany, the Unification Church brought a case arguing that the rights of its members had been infringed by the government's action of banning the Moons from Germany. In Holland, the church successfully petitioned the government for an exception to the Schengen ban on the grounds of human rights, and Mrs. Moon eventually did travel and speak in that country as a result. Several other actions are also contemplated or in progress. Let us look at these now in greater detail.

⁴ The Unification Church traditionally holds large marriage blessing ceremonies presided over jointly by Rev. and Mrs. Moon. To participate in the marriage blessing, officiated by the Moons, is considered an essential element of the a Unification believer's life of faith. Thus, to prevent the Moons access to their European followers is not only a violation of the Moons' right to travel for religious purposes, but also creates a serious spiritual and financial hardship on their followers.

The Charges Against the Moons

Since the ban against the Moons is an administrative action related to security issues, it has not always been easy to clarify the charges against them. France, for example, does not allow a listee or his attorney even to see his file or know the precise nature of the charges against him. A case brought in 1996 challenging the listing initially resulted in a judge simply informing the Moons' attorney that he considered the file to be in order. However, the French *Counsel D'Etat* (the highest court of France) has now intervened to take this case out of the lower court's hands. It should also be noted that it is not entirely clear whether France still lists the Moons under the Schengen System or has allowed the listing to lapse.⁵ Despite repeated inquiries by the Moons' French attorneys, even this simple and crucial item of information has been withheld.

The reasons for the German ban against the Moons are more clear than in the French case because the German procedures allow for the listed party to know the charges against him/her in order to effectively answer them. However, the case has been drawn out for years. First, after hearing the case for approximately three years, the original court abruptly transferred it to a court in a rural jurisdiction. Then the government argued that only the Moons themselves and not the Unification Church could bring such a case. This issue, after another two years, has now been resolved in favor of the church.

The German ban against the Moons was instigated by the German Federal Ministry for Family, Senior Citizens, Women and Youth (hereafter "Family Ministry"). However, the actual Schengen listing was executed by the Ministry of the Interior. The Family Ministry appears to be acting on information supplied by anti-"cult" activists and church-affiliated "sect-watchers" affiliated with the Luther and Catholic churches⁶ The rationale for the ban is that Rev. and Mrs. Moon constitute a "threat to public order" by the following actions:

- Promoting a worldwide totalitarian theocracy under Korean influence opposed to German democracy
- Undermining the family by causing young adults to leave their parents and devote themselves to the Unification Church
- Creating a bad influence on the nation's youth through "mental manipulation" and "brainwashing."⁷

⁵ A listing must be renewed every three years to remain in effect. It is clear that Germany renewed its listing but not clear whether France has done so.

⁶ Under the German system of church-state relations, the government collects taxes on behalf of the Catholic and Evangelical (Lutheran) churches, who in turn maintain "sect-watchers." Some, though not all, of these sect-watchers maintain contacts in the German Congress (*Bundestag*) and the Family Ministry and actively campaign against new religious movements.

⁷ The German appeals court summarized the government's rationale as follows: "In the opinion of the German government, the Moon movement is one of the so-called youth sects and psycho groups whose activities could represent possible risks for the social relations and personality development of young people. In addition to this, the aim of all activities of the Moon movement was to establish a world governed by Korea under the leadership of the 'Moon Family.' A public appearance of Mr. and Mrs. Moon

Not specifically mentioned in legal briefs but certainly influencing the Family Ministry's decision are factors such as a climate of anti-cult hysteria generated by the apparent Solar Temple suicides in 1995 and German reaction against other new religious movements, especially the Church of Scientology.

Are the Charges True?

Of course, the Moons and their church deny the charges. Moreover, a German appeals court, in deciding that the Unification Church (and not necessarily the Moons themselves) could bring an action on this issue, has rejected at several of them. Ruling against the government, which had argued that the Unification Church of Germany was not a legitimate religion but a "psycho-group" bent on world domination, the court stated:

The teachings supported by the plaintiff [Unification Church] constitute a statement on the world in its entirety and on the origin and purpose of mankind based on a transcendental reality. The plaintiff is therefore a religious community within the meaning of Article 4 of the German Constitution. It is of no relevance here that Moon and/or his followers also operate to a considerable extent in political and economic fields... Something different would only apply if the religious teachings of Moon were only to serve him and his followers as a pretext for political and economic activities and if these were merely "embellished" with religious goals. Only in this case could Moon and his followers be accused of abusing the right to cultivate a religion which would lift the protection afforded by Article 4 of the German Constitution (cf. BVerwG, judgement dated 27 March 1992, loc. cit. P. 118). The court division is unable to recognize anything of this kind. Moon, who was born and grew up in a Japan-occupied Korea, started to preach his religious teachings back in 1945 or 1946 before he personally encountered difficulties with communism. Following Moon's torture and imprisonment by the North Korean communists from 1947 to 1950 he was not reported to have engaged primarily in political agitation, but rather in daily worship. Furthermore, he was barred from the Presbyterian Church as early as 1948 owing to his different religious teachings. These facts alone prove that Moon's teachings have a religious foundation and do not result solely from his personal experience with communism. As far as the economic activities of Moon and his followers are concerned, it must be seen that the "Divine Principles" were written between December 1950 and May 1952 and were published in 1957... It was not until December 1959, however, that Moon set up his first commercial enterprise.

would encourage the spread of this movement and lead to strong public reaction. It would therefore be detrimental to public order and national security and to significant interests of the Federal Republic of Germany, thus providing sufficient reason to order refusal of entry pursuant to Article 96 para. 2 of the Schengen Convention. (*Unification Church vs. Federal Republic of Germany*, case number 11 A 10349/99.OVG3 K 938/98.KO)

While the court did not rule on the specific merits of this case (as to whether or not the government had acted properly in banning the Moons), this finding and the related decision that the church had the right to bring the case were sufficiently challenging to the government's case that it appealed the decision to the German High Administrative Court. This court, which is equivalent to the US Supreme Court for cases of this type, ruled against the government on July 10, 2001. It stated:

In November 1995 while on a speaking tour in Europe, [Rev. Moon] was invited by the Unification Church to deliver a speech on the theme "True Family and I" in Frankfurt/Main. To prevent this, the Frontier Protection Headquarters (Grenzschutzdirektion) in Koblenz listed Mr. and Mrs. Moon in the information system of the Schengen Convention, refusing permission to enter. This was based on the assumption of the Federal Government that the Moon Movement counts among the so-called youth sects and psycho groups which may possibly hold dangers for young people...

The Federal Administrative Court has affirmed the decision of the Higher Administrative Court... The Unification Church is to be regarded as a religious association and is therefore entitled to the fundamental right of religious freedom. The interest of the Unification Church in the entry of its religious leader can be protected by Article 4 par. 1 and 2 of the Basic Law, especially if the presence of its leader is of significant meaning for the religious practice of its community.⁸

The Unification Church is recognized as a bona fide religion in most countries. Most recently, the Constitutional Court of Spain (the highest court) overturned two lower courts in ordering that the UC must be allowed to register officially as a religious organization. In other countries, such as the United Kingdom and the United States, where the legitimacy of the UC as a religious organization has been challenged, the church has won consistently in court.⁹

As to the charges of brainwashing and breaking up families, the record is similarly clear. US courts have found that the church uses evangelization techniques that do not differ significantly from traditional Christian organizations, and that its members do not show evidence of having been mentally coerced, robbed of their free will, brainwashed or otherwise deprived of their ability to think and choose for themselves.¹⁰ With regard to breaking up families, the church has argued successfully in several courts that it does no such thing. Family tensions are sometimes created when family members cannot accept the right of their adult members to decide to join a new religion. However adults, whether young or old, have a right to adhere to any religious faith or philosophical belief they choose.

⁸ Federal Administrative Court Press Release No. 22/2001 in relation to: BverwG 1 C 35.00 – Judgement of 10 July, 2001.

⁹ For a bibliography of legal cases, see John Biermans, *The Odyssey of New Religious Movements*, Edwin Mellen Press, New York, 1986, pp. 208-209.

¹⁰ Ibid.

With regard to the charge of totalitarianism and working for a world government under Korean dominance, the charges are patently ridiculous. In fact, the Unification Church supports representative democracy as the ideal form of government and opposes all forms of totalitarianism.¹¹

The Schengen Ban and International Law

A reading of the Schengen Convention reveals that its security provisions were designed to keep out drug dealers, arms smugglers, terrorists and other dangerous criminals, not leaders of religious groups—even controversial religious groups.¹² Moreover, Germany, France, and all members of the Schengen System are also members of the United Nations. Therefore they are adherents to the UN's Universal Declaration on Human Rights, which says in its Article 18:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, alone or in community with others, and, in public or private, to manifest his religion or belief in teaching, practice, worship and observance.¹³

The UN's Human Rights Committee has specifically stated that this right to freedom of religion applies especially to new religions, not just traditional ones:

Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reasons, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility by a predominant religious community.¹⁴

The action of Germany and France to ban Rev. and Mrs. Moon also violates Section 32 of the Vienna Concluding Document of the Organization for Security and Cooperation (the Helsinki Accords), which requires signatory states to:

...allow believers, religious faiths and their representatives, in groups or on an individual basis, to establish and maintain direct personal contacts and communication with each other, in their own and other countries, *inter alia*, through travel, pilgrimages, and participation in assemblies and other religious events.

¹¹ See *Exposition of the Divine Principle*, Section II.5.3, HSA-UWC, New York, 1996 at <http://www.unification.net/dp96>.

¹² While articles 70-91 deal in detail with firearms, narcotics and the smuggling of these items, nothing in the Schengen Convention mentions sects, cults, mind control, psycho groups, brainwashing, breaking up families, or the spreading of controversial religious or political teachings.

¹³ Similar language has been incorporated in the European Convention on Human Rights, which has also been signed by every Schengen nation.

¹⁴ UN Human Rights Committee, Comment 22 (1993).

Thus it is clear that, far from being a measure carried out within the legitimate scope of the Schengen Convention, the blacklisting of Rev. and Mrs. Moon is in fact a gross abuse of that Agreement, in violation of fundamental human rights which the Schengen countries themselves are legally bound to uphold.

The Netherlands

The Schengen Convention provides for member nations to issue an exception to a Schengen ban under certain conditions. The government of the Netherlands has issued such an exception to the Moons, and indeed Mrs. Moon was well received when she visited that nation in 1999 and again in 2000 to give public speeches.

It is interesting to note that neither Germany nor France objected to the exception when consulted by the Netherlands as required in the Convention. This suggests that neither of these nations truly feels a threat to public order from Rev. and Mrs. Moon. Rather, they have attempted to use “public order” as an excuse for their harassment of a small religious community and its leaders.

The German Case

As mentioned above, the highest German courts have ruled that the Unification Church does have standing in the case because the rights of its members are affected as well as the rights of the Moons themselves. The court also ruled that the UC must be treated as a religion under the German Constitution. This ruling goes to the heart of the government’s position, namely that the UC is not a bona fide religion but a “youth sect” that breaks up families. The case was returned to the lower court for a decision on the merits. That court ordered the Interior Ministry to decide whether it intended to renew the ban against the Moons and if so, to give its current reasons by late November 2001. The Interior Ministry asked for and received an extension of this order until January 31, 2002. In the meantime it renewed the Schengen listing of the Moons provisionally for six months instead of the normal three-year period.

It should also be mentioned that since the listing of the Moons as “dangerous persons” by the German government, the Bundestag’s Commission on Sects and Psychogroups, after a two-year investigation that included the Unification Church, found that “for the time being, new religious and ideological communities and psychogroups do not pose any danger for the state, society or socially relevant areas.”¹⁵ The report also stated that:

The state has to respect the decision and confession of each individual in matters of faith in accordance with the neutrality and tolerance requested in Article 4 of the Basic Law... Group structure, activities and goals that were subject to the investigation according to its original intention are primarily and basically not different from religions, religious movements, ideological groups and other groups of society... The assumption of a “sect-conversion” based on “psycho-

¹⁵ Final Report of the German Enquete-Commission on So-called Sects and Psychogroups, June 9, 1998, p. 149.

techniques,” such as “brainwashing” or “psycho-mutation” has to be rejected and replaced with more broadly perceived models. (p.149)... The word “sect” should especially be avoided in statements made by governmental organisations, be it in educational booklets, verdicts or laws. (p.154)

In the meantime, prominent current and former government officials of the United States expressed concern to the Government of Germany concerning Rev. Moon’s treatment. Congressman Tom Davis and former Secretary of State Al Haig each wrote the German government to express their opinion that they knew of no good reason to ban Rev. and Mrs. Moon. In December, 2001, the US State Department issued a formal demarche to the Ministry of the Interior stating the opinion of the United States, religious freedom being a fundamental right, the German government should allow the ban against the Moons to lapse.

The response of Interior Ministry Schily to these developments was to harden his stance and hire an outside attorney to argue the Ministry’s case before the Court. A suggestion that by the presiding judge that the parties settle the matter by agreeing that Rev. and Mrs. Moon could enter for a brief time to give a speech to invited guests only was accepted by the UC side but rejected by the Government. The Court then ruled that although the UC must be acknowledged as a genuine religious community, the Court does not consider a meeting between Rev. Moon and church members in Germany to be essential or important enough to warrant declaring the ban against the Moons inappropriate. The UC of Germany is challenging this verdict by appealing to the next higher court.¹⁶

The French Case

The French ban against the Moons currently stands before the *Counsel D’Etat*, the French Supreme Court. This court took the unusual step of removing the case from a lower court rather than waiting to review the lower court’s decision. As noted above, it is not clear, in the meantime, whether France has renewed its Schengen listing of the Moons. However the national-level ban on their entering France remains intact.

Other Legal Strategies

An action in the Netherlands is currently being formulated to challenge the Schengen listing of the Moons under the provision of the Schengen Convention. If successful, this proceeding could overturn both the German and the French listing of the Moons and pave the way for their entry into all Schengen nations except those that have banned them individually.

Conclusion

¹⁶ The church argues that the right of the members of the church to receive a visit from their founders is already established both by the German courts and by international law, and that it is therefore incumbent on the Government to prove that the Moons’ entry would pose real threat to security, which it has patently failed to do.

The Schengen ban is a serious violation of the religious freedom of Rev. and Mrs. Moon and the members of their church. It is an abuse of the Schengen Treaty, which was intended to deal with international criminals such as arms smugglers, terrorists and drug dealers, not religious leaders. Furthermore there is no basis for the charges, even if they were relevant to the Schengen agreement, that a visit to Europe by the Moons would harm families, brainwash youth, disrupt public order, or otherwise harm the countries involved. The Schengen ban against the Moons—affecting virtually all of Western Continental Europe—should be lifted immediately, and the governments of France and Germany should also lift their own national bans against them.

What Can Be Done?

- **United Nations**

The Rapporteur on Religious Intolerance has reported the Schengen ban against the Moons as a violation of religious freedom in his 1998 Report on Religious Intolerance in Germany. The UN Commission on Human Rights should do likewise and should issue a resolution condemning Germany and France for their violation of Article 18.

- **European Nations**

Schengen nations should follow the Dutch example by responding favorably to applications for an exception that would allow the Moons to enter their countries.

- **US State Department**

The Office of International Religious Freedom, in its yearly report, has included the Schengen ban against the Moons as a restriction of religious freedom in Germany. (However, it does not yet mention the ban with regard to France or the other Schengen nations.) The Ambassador At Large for International Religious Freedom together with the Embassies to Germany and France should work to encourage those countries to remove both the Schengen listing of the Moons and the German and French national bans against them.

- **US Congress**

Hearings on religious freedom in Europe should give attention to the Schengen ban against the Moons. The issue should be included in any Joint Resolutions or other statements of the Congress regarding religious freedom in Europe. Congressional delegations visiting Germany and France, or receiving visits from their representatives, should raise the issue as a human rights violation.

- **Human Rights Groups and Religious Organizations**

Such groups should mention the Schengen ban against the Moons in any statements or publications regarding religious freedom and the right to international travel. Such groups should consider filing *amicus curae* briefs in pending legal cases and writing to appropriate officials in Germany and France regarding the issue.

- **General Public**

If in a Schengen country, write to public officials in France and Germany to support overturning the Schengen ban. If in the US, write your Congressman, Senators, President and the State Department to encourage US action on this issue under its commitments as outlined in the International Religious Freedom Act of 1998.