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# EXTREME POLICY MAKEOVER: RE-EVALUATING CURRENT U.S.-VIETNAM RELATIONS UNDER THE INTERNATIONAL RELIGIOUS FREEDOM ACT

Kevin V. Tu<sup>†</sup>

*Abstract:* Following the signing of the Paris Peace Accord in 1973, the relationship between the United States and Vietnam remained essentially frozen. In 2000, the signing of the United States-Vietnam Bilateral Trade Agreement was an epic step in the normalization of relations. In addition, the BTA was hailed as a means of effectuating positive change in the area of Vietnam's human rights. Unfortunately, the state of religious freedom in Vietnam has deteriorated while economic ties with the United States have strengthened. Despite Vietnam's purported respect for religious freedom, violations continue. Vietnam restricts the practice of religion, detains religious leaders, and tolerates forced renunciations of faith by local officials.

These acts violate the International Covenant on Civil and Political Rights, to which Vietnam has acceded. Vietnam's violations of the right to religious freedom have also drawn the concern of the international community. Specifically, the United States has called for improvements in Vietnam's religious rights record, utilizing diplomatic means coupled with continued engagement in the hopes that Vietnam will voluntarily enact changes. However, this approach has failed to yield concrete progress. In 2004, the U.S. Department of State designated Vietnam a Country of Particular Concern as provided in the International Religious Freedom Act.

Because the IRFA mandates affirmative action against violators of religious freedom, the United States must abandon constructive engagement in Vietnam. Instead, the IRFA provides the framework for opposing violations under the responsible engagement doctrine. In doing so, the United States may employ economic pressure to narrowly target violators, while allowing the liberalizing effect of engagement to continue where it does not sustain violations. By fully implementing the IRFA in accordance with the tenets of responsible engagement, the United States would actively oppose violations rather than engaging Vietnam with the hope that improvements will occur. Moreover, this extreme makeover of current policy would balance the dual interests of improved religious freedom and bilateral relations.

## I. INTRODUCTION

The government of Vietnam purports to fully protect its citizens' rights to freedom of belief and religion.<sup>1</sup> However, this promise of religious

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<sup>1</sup> See *infra* Part III.A; *Vietnam Condemns Human Rights Watch's Report on Religion*, VIETNAM NEWS BRIEF SERVICE, Oct. 25, 2004, available at 2004 WLNR 12187610.

freedom does not translate into protection of religious rights in practice. Many Vietnamese laws are hollow with exceptions that threaten to entirely swallow the right to religious freedom.<sup>2</sup> Religious rights violations in Vietnam include the arbitrary detention of religious leaders<sup>3</sup> and forced renunciation of Christian faith.<sup>4</sup>

Despite international scrutiny, Vietnam refuses to acknowledge violations or make improvements. In response to resolutions denouncing Vietnam's religious practices, officials deny any abuse and claim that international pressure constitutes interference with Vietnam's internal affairs.<sup>5</sup> Moreover, Vietnam's "progress" with respect to religious rights amounts to little more than specific attempts to alleviate international scrutiny without committing to lasting change. An example of this behavior is the government's release of religious dissidents in the face of international pressure followed by renewed harassment soon thereafter.<sup>6</sup>

To date, United States foreign policy toward Vietnam has been characterized by constructive engagement,<sup>7</sup> the theory that increased trade and economic relations will expose the target country to democratic ideals, thus effecting improvements in human rights.<sup>8</sup> However, Vietnam's already poor human rights record has deteriorated in recent years.<sup>9</sup> This deterioration indicates that constructive engagement, as a means of advancing religious rights, is ineffective in Vietnam. As such, current United States policy toward religious violations in Vietnam must be re-evaluated to ensure the protection of religious rights.

This Comment proposes that rather than continuing to follow a policy of constructive engagement, the United States should address violations of religious freedom in Vietnam by implementing the International Religious Freedom Act ("IRFA")<sup>10</sup> in accordance with the tenets of responsible

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<sup>2</sup> See *infra* Part III.B.

<sup>3</sup> See *infra* Part IV.A.

<sup>4</sup> See *infra* Part IV.B.

<sup>5</sup> See, e.g., *Vietnam Condemns U.S. Report on Human Rights*, VIETNAM NEWS BRIEF SERVICE, Mar. 2, 2005, available at 2005 WLNR 3188219; *Vietnam Condemns European Parliament's Religious Resolution*, VIETNAM NEWS BRIEF SERVICE, Nov. 24, 2003.

<sup>6</sup> See *infra* Part IV.A.

<sup>7</sup> Christy Cutbill McCormick, *Exporting the First Amendment: America's Response to Religious Persecution Abroad*, 4 J. INT'L LEGAL STUD. 283, 298 (1998).

<sup>8</sup> See Craig Forcece, *Globalizing Decency: Responsible Engagement in an Era of Economic Integration*, 5 YALE HUM. RTS. & DEV. L.J. 1, 4-7 (2002).

<sup>9</sup> See U.S. Dep't of State, *Religious Freedom Commission Cites Countries of Particular Concern: Feb. 18 FPC Briefing by U.S. Commission on International Religious Freedom*, Feb. 19, 2004, available at <http://usinfo.state.gov/eap/Archive/2004/Jun/29-559613.html> (last visited May 29, 2005) [hereinafter FPC Briefing].

<sup>10</sup> International Religious Freedom Act of 1998, 22 U.S.C. §§ 6401-6481 (2000); see also Statement

engagement.<sup>11</sup> Specifically, the United States should narrowly tailor economic sanctions<sup>12</sup> against Vietnam pursuant to the IRFA.<sup>13</sup> Additionally, the United States should continue engagement that does not contribute to continued violations.<sup>14</sup> Part II of this Comment provides background on the evolving relationship between the United States and Vietnam following the Vietnam War. Part III demonstrates that the protection afforded to religious freedom under Vietnam's Constitution and laws is rendered illusory by exceptions that allow for violations of religious rights to flourish. Part IV discusses examples of the deteriorating conditions of religious rights in Vietnam. Part V argues that the United States' policy of constructive engagement with Vietnam has been ineffective in achieving substantive rights improvements. Finally, Part VI proposes that implementing the IRFA in accordance with a responsible engagement policy offers the best solution for addressing the dual interests of promoting religious rights while maintaining bilateral relations between the United States and Vietnam.

## II. BACKGROUND

The historically unstable diplomatic relations between the United States and Vietnam stem from a number of categorical differences of opinion. In recent years, violations of religious freedom emerged as a serious point of contention and slowed efforts at normalization between the two countries.

### A. *The Paris Peace Accord of 1973 Ended Hostilities, But Ushered in the Economic Isolation of Vietnam by the United States*

In order to end hostilities, the United States and Vietnam agreed to the

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by President William J. Clinton Upon Signing H.R. 2431, 34 WEEKLY COMP. PRES. DOC. 2149 (Oct. 27, 1998) (IRFA provides the flexibility needed to advance religious freedom worldwide) [hereinafter President's Statement].

<sup>11</sup> Forcese, *supra* note 8, at 38.

<sup>12</sup> Economic sanctions have been defined as the "deliberate, government-inspired withdrawal, or threat of withdrawal, of customary trade or financial relations." GARY CLYDE HUFBAUER & JEFFREY J. SCHOTT, ECONOMIC SANCTIONS RECONSIDERED: HISTORY AND CURRENT POLICY 2 (1985); *see also* MICHAEL P. MALLOY, UNITED STATES ECONOMIC SANCTIONS: THEORY AND PRACTICE 9-14 (2001) (discussing the coercive nature of economic sanctions as a tool for forcing change in policies).

<sup>13</sup> If a binding agreement setting substantive standards and enforcement mechanisms cannot be negotiated with Vietnam, the IRFA allows the imposition of one or more of seven listed economic sanctions as a method of affecting substantive policy change. *See* 22 U.S.C. §§ 6442(a)-(c), 6445(a)(9)-(15). Additionally, a commensurate action may be taken, whereby a uniquely tailored response may be achieved that best addresses U.S.-Vietnam relations. *See id.* §§ 6442(c)(1)(B), 6445(b).

<sup>14</sup> Responsible engagement recognizes that engagement is beneficial only insofar as it does not contribute to continued violations. Forcese, *supra* note 8, at 38.

Paris Peace Accord of 1973,<sup>15</sup> which included the Vietnamese people's right to "freedom of belief."<sup>16</sup> However, the signing of the Paris Peace Accord did not improve respect for religious rights. After North Vietnam's victory over South Vietnam in 1975,<sup>17</sup> the new government established a number of repressive social policies.<sup>18</sup> The new regime placed severe restrictions on religious groups, essentially eviscerating rights guaranteed in Article 11 of the Paris Peace Accord.<sup>19</sup> Those protesting against the restrictions were imprisoned, and international actors who objected were accused of "intervening in Vietnam's internal affairs."<sup>20</sup> In response, the United States ended virtually all economic interchange with Vietnam.<sup>21</sup>

### B. *Normalized Trade Relations Have Paved the Way for Incremental Improvements in U.S.-Vietnamese Relations*

Although diplomatic and economic relations between the two countries "remained frozen for over a decade,"<sup>22</sup> U.S.-Vietnamese relations took a major step forward when President William Clinton ordered an end to the United States' trade embargo against Vietnam.<sup>23</sup> Thereafter, the United States re-established formal diplomatic relations in 1995.<sup>24</sup> In 1998, President Clinton granted a waiver of the Jackson-Vanik Amendment,<sup>25</sup>

<sup>15</sup> Agreement on Ending the War and Restoring Peace in Viet-Nam, Jan. 27, 1973, U.S.-Vietnam, 24 U.S.T. 1 [hereinafter Paris Peace Accord].

<sup>16</sup> *Id.* art. 11.

<sup>17</sup> MARK E. MANYIN, THE VIETNAM—U.S. BILATERAL TRADE AGREEMENT, CONG. RESEARCH SERVICE ISSUE REPORT RL30416, at 1 (June 20, 2001).

<sup>18</sup> Stephen Denney, *The Paris Agreements and Human Rights in Vietnam Today*, THE INDOCHINA NEWSLETTER, Oct. 1979, at 4, available at [http://www.ocf.berkeley.edu/~sdenney/Paris\\_Accords\\_&\\_Human\\_Rights](http://www.ocf.berkeley.edu/~sdenney/Paris_Accords_&_Human_Rights) (last visited May 29, 2005).

<sup>19</sup> Stephen Denney, *The Official Policy of Repression in the Socialist Republic of Vietnam*, THE INDOCHINA NEWSLETTER, Oct.-Nov. 1981, at 2, available at <http://www.ocf.berkeley.edu/~sdenney/SRV-Repression-1982> (last visited May 29, 2005); See also Stephen Denney, *Religion and State in the Socialist Republic of Vietnam*, in RENDER UNTO CAESAR: THE RELIGION SPHERE IN WORLD POLITICS, 357-58 (Sabrina Petra Ramet & Donald W. Tregold eds., 1995) (new regime used legislation as an instrument to further religious repression).

<sup>20</sup> Denney, *supra* note 18, at 5.

<sup>21</sup> MANYIN, *supra* note 17, at 1.

<sup>22</sup> MARK E. MANYIN, THE VIETNAM—U.S. NORMALIZATION PROCESS, CONG. RESEARCH SERVICE ISSUE BRIEF IB98033, at 1 (Nov. 28, 2001).

<sup>23</sup> *Id.* at 4.

<sup>24</sup> See Phong Tran, *Vietnam's Economic Liberalization and Outreach: Legal Reform*, LAW & BUS. REV. AM. 139, 161 (2003); 147 CONG. REC. S10105-06 (2001) (statement of Sen. Baucus) [hereinafter Record]; ASSOC. FOREIGN PRESS, *Risking New Row with Vietnam, U.S. Condemns "Harsh" Jailing of Dissidents*, (Sept. 11, 2003), available at <http://www.wwrn.org/parse.php?idd=9458&c=80> (last visited May 29, 2005).

<sup>25</sup> The Jackson-Vanik Amendment is an amendment to the Trade Act of 1974, conditioning the restoration of economic benefits to non-market economies on free emigration. See VLADIMIR N. PREGELI, THE JACKSON-VANIK AMENDMENT: A SURVEY, CONG. RESEARCH SERVICE REPORT, at 2, (Sept. 22, 2000),

which prohibited normal trade relations with Vietnam.<sup>26</sup> On July 13, 2000, the United States and Vietnam continued to normalize relations<sup>27</sup> by agreeing to the Bilateral Trade Agreement (“BTA”).<sup>28</sup> After receiving President Bush’s signature, the BTA was congressionally approved in 2001.<sup>29</sup> Each step taken to improve bilateral ties, however, was met with resistance from opponents in the United States. Those protesting argued that Vietnam maintained a poor record on human, religious, and labor rights, and was therefore not entitled to engagement with the United States.<sup>30</sup>

A 2001 issue brief on U.S.-Vietnamese relations noted that Congress should consider calling attention to Vietnam’s record on human and religious rights, and consider linking these issues to approval of the BTA or the Jackson-Vanik waiver.<sup>31</sup> However, such a connection never occurred. A joint resolution ratifying the BTA was signed into law<sup>32</sup> without explicitly conditioning normal trade relations upon human rights improvements.<sup>33</sup> Nonetheless, the hope remained that engagement with Vietnam would have a liberalizing effect, improving the lives of the Vietnamese people.<sup>34</sup> Despite the hope that the BTA would improve human rights,<sup>35</sup> and assurances of

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available at <http://www.aiipowmia.com/sea/jacksonvanikrpt.html> (last visited May 29, 2005).

<sup>26</sup> MANYIN, *supra* note 17, at 2.

<sup>27</sup> Under the BTA, the United States extended normal trade relations to Vietnam in return for an agreement to trade liberalization measures and market oriented reforms. MANYIN, *supra* note 22, at 5-6.

<sup>28</sup> Agreement Between the United States and the Socialist Republic of Vietnam on Trade Relations, July 13, 2000, U.S.-Vietnam, Hein’s No. KAV 5968, State Department No. 02-9. The full text of the BTA can be found online at the Office of the United States Trade Representative, Text of the Vietnam Trade Agreement, at [http://www.ustr.gov/World\\_Regions/Southeast\\_Asia\\_Pacific/Vietnam/Section\\_Index.html](http://www.ustr.gov/World_Regions/Southeast_Asia_Pacific/Vietnam/Section_Index.html) (last visited May 29, 2005).

<sup>29</sup> MANYIN, *supra* note 22, at 5.

<sup>30</sup> *Id.* at 1-5. For example, those opposing the ratification of the BTA argued that unconditional ratification of the BTA is inappropriate given continued religious persecution in Vietnam. 147 CONG. REC. H5427-02, H5436-37 (Sept. 6, 2001) (statement of Rep. Lofgren) [hereinafter Record II].

<sup>31</sup> MANYIN, *supra* note 22, at 14. The belief that ratification of the BTA should hinge on human rights improvements was also shared by others. See, e.g., Record, *supra* note 24, at S10106-7 (letter from UCIRF) (noting that the United States should demand improvements in religious freedom as it considers ratification of the BTA); *Religious Persecution in Vietnam and China: Hearing on H.R. 2833 Before the House Comm. on Int’l Relations Subcomm. on Int’l Operations and Human Rights*, 107th Cong. (2002) (testimony of Michael K. Young, Chair, UCIRF) (noting the Commission’s recommendation approval of the BTA without U.S. actions on religious freedom will lead to continued deterioration of such rights) [hereinafter Testimony]; MANYIN, *supra* note 17, at 7 (arguing that the BTA lacks human rights safeguards).

<sup>32</sup> H.R.J. Res. 51, 107th Cong., P.L. 107-52 (2001) (enacted).

<sup>33</sup> See MANYIN, *supra* note 22, at 5.

<sup>34</sup> Jared Genser, *The Real Scandal About Vietnam*, WASH. POST, Aug. 25, 2004, at A17; see also Press Release, U.S. Dep’t of State, Vietnam Increasingly Suppresses Religious Freedom, Young Says—Religious Freedom Commission Chairman’s Feb. 12 Remarks to Congress (Feb. 12, 2004) (noting the great hope that expanded economic ties upon passage of the BTA would lead to human rights improvements) [hereinafter Genser, *Scandal*].

<sup>35</sup> Press Release Feb. 12, 2004, *supra* note 34. For example, Senator Kerry noted that while religious

accelerated reform from the General Secretary of the Vietnamese Communist Party (“VCP”),<sup>36</sup> Vietnam’s human rights record has continued to decline.<sup>37</sup>

### C. *Religious Rights Are at the Forefront of Continued U.S.-Vietnam Bilateral Relations*

While U.S.-Vietnamese economic relations continue to grow, improvements in Vietnam’s religious policy have not developed at the same pace. The United States has often utilized diplomatic means such as human rights dialogues and diplomatic talks to encourage Vietnam to increase religious freedoms for its citizens.<sup>38</sup> Such efforts have been largely unsuccessful. Recently, the United States has taken formal steps to display its displeasure over Vietnam’s religious rights violations and indicate the importance of religious rights.<sup>39</sup>

Trade with Vietnam has increased rapidly since the signing of the BTA, exceeding US\$ 6 billion in 2004.<sup>40</sup> This ever-increasing figure is indicative of a deepening economic relationship between the United States and Vietnam. Although economic relations between the United States and Vietnam are rapidly improving, Vietnam continues to fail in satisfactorily advancing religious rights.<sup>41</sup> Because violations of religious freedom

restrictions remained, the situation had changed for the better and would continue to do so. *See* Record, *supra* note 24, at S10115 (statement of Sen. Kerry).

<sup>36</sup> HUMAN RIGHTS WATCH, WORLD REPORT 2003: VIETNAM (2003), at <http://hrw.org/lwr2k3/asia9.html> (last visited May 29, 2005) [hereinafter HRW Report 2003].

<sup>37</sup> *Id.* Vietnam’s human rights conditions worsened again during 2004-2005. *See* HUMAN RIGHTS WATCH 2005 WORLD REPORT: VIETNAM (2005), at <http://hrw.org/english/docs/2005/01/13/vietna9828.htm> (last visited May 29, 2005). The deterioration in human rights has been particularly disappointing because of great hopes that expanded U.S.-Vietnamese ties would improve the human rights dialogue. UNITED STATES COMM’N ON INT’L RELIGIOUS FREEDOM, TESTIMONY BEFORE THE CONGRESSIONAL CAUCUS ON VIETNAM A PEOPLE SILENCED: THE VIETNAMESE GOVERNMENT’S ASSAULT ON THE MEDIA AND ACCESS TO INFORMATION (2003) [hereinafter Congressional Caucus Testimony] (on file with Journal).

<sup>38</sup> *See infra* Part V.B.

<sup>39</sup> *See* U.S. Dep’t of State, *On the Record Briefing: Release of the 2004 Annual Report on Religious Freedom*, Sept. 15, 2004, <http://www.state.gov/g/drl/rls/rm/36208.htm> (last visited May 29, 2005) (remarks of John Hanford, Ambassador-at-Large for International Religious Freedom). The State Department formally designated Vietnam a CPC as one of the worst offenders of religious freedom. *Id.*

<sup>40</sup> *See* U.S. Census Bureau, Foreign Trade Statistics—Trade (Imports, Exports and Trade Balance) with Vietnam, <http://www.census.gov/foreign-trade/balance/c5520.html> (last visited May 29, 2005). The United States is now Vietnam’s largest trading partner. Vietnam Embassy, *Deputy PM Stresses Long-Term Framework for VN-US Relationship*, Dec. 12, 2003, <http://www.vietnamembassy-usa.org/news/newsitemprint.php3?datestamp=20031212170622> (last visited May 29, 2005).

<sup>41</sup> *See* Press Release Feb. 12, 2004, *supra* note 34. The State Department “in a report to Congress admitted to being disappointed by the lack of concrete results in the U.S.-Vietnam bilateral human rights dialogue,” and cited the Vietnamese government’s failure to respond to concerns over religious freedom as a reason for canceling the fall 2003 dialogue. *Id.*

continue, the U.S. Commission on International Religious Freedom (“UCIRF”)<sup>42</sup> recommend more than once<sup>43</sup> that Vietnam be designated a Country of Particular Concern (“CPC”) under the IRFA.<sup>44</sup> Congress finally heeded this advice in September 2004.<sup>45</sup> Absent a binding agreement, the IRFA provides for economic sanctions or commensurate actions to be imposed upon CPCs.<sup>46</sup> Nonetheless, the United States has declined to levy economic sanctions, instead choosing to exclusively utilize diplomacy as a tool with Vietnam in order to maintain bilateral relations.<sup>47</sup> Even so, some members of Congress have called for more active responses in opposition to violations of religious rights.<sup>48</sup>

### III. VIETNAM PROTECTS RELIGIOUS FREEDOM IN NAME, BUT VIOLATES RELIGIOUS RIGHTS IN PRACTICE

Vietnam has pledged to protect basic human rights, including the right to religious freedom, through the International Covenant on Civil and Political Rights (“ICCPR”)<sup>49</sup> and its own Constitution.<sup>50</sup> While these

<sup>42</sup> The Commission is an independent body created by the IRFA, with the responsibility of conducting reviews of religious freedom violations and advising on how to utilize foreign policy to prevent abuses. See FPC Briefing, *supra* note 9; K. Connie Wang, *Beliefs; U.S. Panel Encourages Religious Freedom Worldwide: The Commission Monitors Abuses Abroad and Advises Congress and the White House on Using Foreign Policy to Prevent Such Violations*, L.A. TIMES, Jan. 31, 2004, at B2.

<sup>43</sup> FPC Briefing, *supra* note 9. The Commission has been “deeply disappointed” by the Secretary of State’s failure to designate Vietnam a CPC. U.S. COMM’N ON INT’L RELIGIOUS FREEDOM, ANN. REP. U.S. COMMISSION INT’L RELIGIOUS FREEDOM (2003), available at <http://uscirf.gov/countries/publications/currentreport/2005annualRpt.pdf#page=1> (last visited May 29, 2005). UCIRF expressed disappointment that Vietnam was not designated a CPC in its 2003 Report and urged the State Department to continue to monitor the countries and make CPC designations throughout the year. *Id.*

<sup>44</sup> Under the IRFA, the President shall review the status of religious freedom in each foreign country and if that country has engaged in or tolerated particularly severe violations of religious freedom, the country shall be designated a CPC. 22 U.S.C. § 6442(b).

<sup>45</sup> See Press Release, U.S. State Dep’t, U.S. Releases 2004 International Religious Freedom Report (Sept. 15, 2004), available at 2004 WLNR 2630433 [hereinafter U.S. Releases 2004 Report]; *Asia Dominates U.S. Blacklist of Top Religious Freedom Violators*, AGENCE FRANCE PRESSE, Sept. 16, 2004.

<sup>46</sup> See 22 U.S.C. §§ 6442(a)(2), 6442(c)(1), 6445(a)(9)-(15).

<sup>47</sup> See *Asia Dominates U.S. Blacklist of Top Religious Freedom Violators*, *supra* note 45.

<sup>48</sup> See, e.g., Vietnam Human Rights Act of 2004, H.R. 1587, 108th Cong. (2004) [hereinafter H.R. 1587]; 150 CONG. REC. H5741-04, H5744-5, H5748 (2004) (statements of Reps. Rohrabacher, Lofgren, and Smith) [hereinafter Record III]; Vietnam Human Rights Act, H.R. 2833, 107th Cong. (2001) [hereinafter H.R. 2833]; 147 CONG. REC. H5413-07, H5417, H5420-21, (2001) (statements of Reps. Davis, Rohrabacher, Lantos, and Smith) [hereinafter Record IV].

<sup>49</sup> International Covenant on Civil and Political Rights, Oct. 5, 1977, art. 18, 999 U.N.T.S. 171 [hereinafter ICCPR].

<sup>50</sup> VIETNAM CONST. [CONSTITUTION OF THE SOCIALIST REPUBLIC OF VIETNAM (1992)], translated in XX CONSTITUTIONS OF THE COUNTRIES OF THE WORLD (Albert P. Blaustein & Gisbert H. Flanz eds., 1992) [hereinafter CONSTITUTION]. The full text of Vietnam’s Constitution is available online at Vietnam Embassy, Constitution of the S.R. of Vietnam, <http://www.vietnamembassy-usa.org/learn/gov-constitution.php3> (last visited May 29, 2005).



documents enshrine the right to religious freedom, and officials often refer to Vietnam's practice of religious tolerance, the Vietnamese government allows violations to continue.<sup>51</sup> Most notably, vaguely written laws allow for far-reaching exceptions to the right of religious freedom, which perpetuates barriers to the free practice of religion in Vietnam.

#### A. *Vietnam Purports to Protect Religious Freedom*

Vietnam maintains that it fully respects religious freedom.<sup>52</sup> Accordingly, Vietnam is a party to the ICCPR, which requires state parties to grant their citizens the right to freely practice their chosen religions.<sup>53</sup> Moreover, Vietnam's own Constitution and ordinances provide for the protection of religious freedom.<sup>54</sup> Government officials also claim that the citizens of Vietnam enjoy true religious freedom.<sup>55</sup> However, these facial promises lack true substance.

Vietnam acceded to the ICCPR in 1982<sup>56</sup> and is therefore bound by its terms.<sup>57</sup> Among the rights protected by the ICCPR, Article 18 specifically ensures the right to freedom of thought, conscience, and religion.<sup>58</sup> This right is not subject to coercion,<sup>59</sup> and may be limited only as necessary to protect public safety, order, and health interests.<sup>60</sup> Each party to the ICCPR is responsible for respecting and ensuring that all individuals subject to its jurisdiction receive the rights recognized therein.<sup>61</sup> While Vietnam entered a reservation upon acceding to the ICCPR, the provisions respecting religious

<sup>51</sup> See *infra* Part IV.

<sup>52</sup> See *Vietnam Condemns Human Rights Watch's Report on Religion*, *supra* note 1.

<sup>53</sup> See ICCPR, *supra* note 49.

<sup>54</sup> See CONSTITUTION art. 70; Ordinance of the Standing Committee of the National Assembly, No. 21/2004/PL-UBTVQH11 of June 18, 2004, Regarding Religious Belief and Religious Organizations, art. 8, sec. 2. An unofficial English translation of the ordinance is available from the website of Human Rights Watch at <http://hrw.org/english/docs/2004/10/21/vietna9551.htm> (last visited May 29, 2005) [hereinafter Ordinance].

<sup>55</sup> See *Vietnam Agency Cites Official on Religious Freedom, US "Biased" Stance*, BBC MONITORING ASIA PACIFIC, Sept. 28, 2004; *Vietnam Condemns Human Rights Watch's Report on Religion*, *supra* note 1.

<sup>56</sup> Office of the United Nations High Commissioner for Human Rights, Status of Ratifications—International Covenant on Civil and Political Rights, <http://www.ohchr.org/english/countries/ratification/3.htm> (last visited May 29, 2005) [hereinafter Status of Ratifications].

<sup>57</sup> See SIR IAN SINCLAIR, *THE VIENNA CONVENTION ON THE LAW OF TREATIES* 42 (2d ed. 1984).

<sup>58</sup> ICCPR, *supra* note 49, at art. 18(1). This right includes the freedom to have or adopt a religion or belief of choice, and to manifest that religion in public or private, through worship, observance, and practice. *Id.*

<sup>59</sup> *Id.* art. 18(2).

<sup>60</sup> *Id.* art. 18(3).

<sup>61</sup> *Id.* Each State party to the ICCPR undertakes to adopt such laws and measures as necessary to give effect to the rights recognized in the Covenant. *Id.* art. 2(1)-(2). Each State party must also ensure that any person whose rights are violated shall have an effective remedy. *Id.* art. 2(3).

rights were unaffected.<sup>62</sup> Therefore, Vietnam has pledged to provide its citizens with religious rights as stated in the ICCPR.

The right to religious freedom and belief is also enshrined in Vietnam's Constitution, which states in relevant part:

The citizen shall enjoy freedom of belief and of religion; he can follow any religion or follow none. All religions are equal before the law. The places of worship of all faiths and religions are protected by the law. No one can violate freedom of belief and of religion . . . .<sup>63</sup>

On its face, therefore, Vietnam's Constitution provides for the right to freedom of belief.

Vietnamese ordinances also protect freedom of religion on their face. According to Vietnamese officials, the State Ordinance on Beliefs and Religions<sup>64</sup> institutionalized the government's religious policies.<sup>65</sup> Article I of the ordinance reaffirms that Vietnam "guarantees freedom of religious belief and religion for its citizens," and that "[n]obody is permitted to violate these freedoms."<sup>66</sup>

Hiding behind these declarations, Vietnam maintains that its citizens enjoy true religious freedom. Government officials often refer to these written statements as proof of Vietnam's commitment to freedom of religion.<sup>67</sup> In practice, the permissive laws and the lack of transparency of the legal system allow for continued violations of religious freedom to occur.

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<sup>62</sup> See Netherlands Institute of Human Rights, *Declarations and Reservations by Viet Nam Made upon Ratification, Accession or Succession of the CCPR*, <http://sim.law.uu.nl/SIM/Library/RATIF.nsf/0/058fe36999cc1ad8c12568b700535ad6?OpenDocument> (last visited May 29, 2005). Vietnam declared that Article 48, Paragraph 1 of the ICCPR was discriminatory because certain states were denied the opportunity to become parties to the covenant, and noted Vietnam's belief that the covenant should be open for participation by all parties. *Id.*

<sup>63</sup> CONSTITUTION art. 70.

<sup>64</sup> Ordinance, *supra* note 54, art. 1.

<sup>65</sup> *Vietnam Condemns Human Rights Watch's Report on Religion*, *supra* note 1.

<sup>66</sup> Ordinance, *supra* note 54, art. 8, sec. 2.

<sup>67</sup> Dr. Nguyen Thanh Xuan, Deputy Head of the Government Religion Committee, notes Vietnam's "consistent policy" of allowing religious freedom as evidenced by the right to religious belief and freedom in the Constitution of Vietnam. *Vietnam Agency Cites Official on Religious Freedom, U.S. "Biased" Stance*, *supra* note 55. Similarly, a spokesman for the Ministry of Foreign Affairs, Le Dzung, claims that Vietnam has a "consistent policy of respecting religious freedom . . ." *Vietnam Condemns Human Rights Watch's Report on Religion*, *supra* note 1.

*B. Despite Vietnam's Purported Protection of Religious Freedom, Statutory Vagueness Hobbles Any True Ability to Practice Religion Freely*

Although Vietnam provides for the right to religious freedom, the many constraints placed upon that right threaten the efficacy of religious freedom in practice. For example, the Transnational Radical Party's<sup>68</sup> report to the United Nations Human Rights Committee ("UNHRC")<sup>69</sup> focused on the fact that "despite Vietnam's ratification of the ICCPR and of seven other international Human Rights [sic] instruments . . . Vietnamese citizens, as a matter of fact, do not enjoy any of the rights contained in the ICCPR."<sup>70</sup> The report further analyzed Vietnamese legislation concerning religious tolerance. It noted that the U.N. Special Rapporteur was particularly concerned with Article 70 of the Vietnamese Constitution, which prioritized State policies over the right to religious freedom.<sup>71</sup> While Article 70 grants citizens the freedom of belief, no religious practice may "contravene . . . State policies."<sup>72</sup> Accordingly, the Special Rapporteur characterized the provision as "a vague and extendable concept that could be potentially restrictive of religious freedom."<sup>73</sup> Because Article 70 subjugates the right of religious freedom to State laws and policies, the possibility remains that the right will be rendered meaningless, particularly where the government itself tolerates or implements oppressive religious policies.

Additionally, Vietnamese legislation allegedly protecting the freedom of religious belief is filled with substantial restrictions. A prime example is the State Ordinance on Beliefs and Religions,<sup>74</sup> which subjects religious liberty to exceptions that reduce freedom of religion to little more than an

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<sup>68</sup> The Transnational Radical Party is an international association that seeks to create an effective body of international law with respect for individuals and affirmation of democracy and freedom throughout the world. RADICALPARTY.ORG, THE PARTY, <http://www.radicalparty.org/welcome2.html> (last visited May 29, 2005).

<sup>69</sup> The U.N.H.R.C. is a body of independent experts that monitors the implementation of the ICCPR by State parties. Office of the United Nations High Commissioner for Human Rights, Human Rights Committee, <http://www.ohchr.org/english/bodies/hrc/index.htm> (last visited May 29, 2005).

<sup>70</sup> Transnational Radical Party, Report on Vietnam's Compliance with the International Covenant on Civil and Political Rights Prepared by the Transnational Radical Party for the Human Rights Committee on the Occasion of the Review of the Country's 2nd Report to the Committee, at iii (2002) [hereinafter TRP Report] (on file with Journal).

<sup>71</sup> *Id.* at 9.

<sup>72</sup> CONSTITUTION art. 70.

<sup>73</sup> TRP Report, *supra* note 70, at 9; *see also* Testimony, *supra* note 31, para. XI(C)(1) (Vietnam's Constitution permits restrictions on freedom of religion when furthering "vaguely defined interests of the State and the Vietnamese Communist Party").

<sup>74</sup> Ordinance, *supra* note 54.

illusory right. While the right to religious belief is protected by the ordinance,<sup>75</sup> citizens are

forbidden to abuse the right to freedom of religious belief and religion to undermine peace, independence and national unity; to incite violence or to wage war; to disseminate information against the State's prevailing laws and policies, to sow division among the people, ethnic groups, and religions; to cause public disorder; to do harm to other people's lives . . . ; to hinder people from exercising their rights and public obligations . . . ; and to commit any other acts which breach the law.<sup>76</sup>

The ordinance also allows for the suspension of religious beliefs and activities when they threaten national security and when they negatively affect public order, unity of the people, or cultural traditions.<sup>77</sup> In addition to the many exceptions to the right of religious freedom, the ordinance reiterates the requirement of government oversight and approval. Religious organizations must be recognized by and registered with an appropriate State agency,<sup>78</sup> and receive approval for many activities, including the training of clergy, construction of religious facilities, preaching outside a recognized facility, and evangelizing.<sup>79</sup>

Parties in both the United States and Vietnam have disparaged the Ordinance for paying mere lip service to the protection of religious freedom. Human Rights Watch criticized the ordinance,<sup>80</sup> and noted that the new law reflects the government's increasing unwillingness "to tolerate religious practice outside its strict control."<sup>81</sup> The Vietnam Evangelical Fellowship, an organization of approximately thirty unregistered church organizations

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<sup>75</sup> *Id.* art. 1.

<sup>76</sup> *Id.* art. 8(2).

<sup>77</sup> *Id.* art. 15.

<sup>78</sup> *Id.* art. 16, 19.

<sup>79</sup> U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, VIETNAM INT'L RELIGIOUS FREEDOM REP. 2004, <http://www.state.gov/g/drl/rls/irf/2004/35433.htm> (last visited May 29, 2005) [hereinafter 2004 Report]. Religious organizations must register their regular activities with the authorities annually, and must obtain permission to hold training seminars, conventions, and celebrations outside the regular religious calendar; to build or remodel places of worship; to engage in charitable activities or operate religious schools; to train, ordain, promote, or transfer clergy; and to hold large gatherings. *Id.*

<sup>80</sup> See *Human Rights Watch Slams Vietnam Over Religious Repression*, AGENCE FRANCE PRESSE, Oct. 22, 2004.

<sup>81</sup> *Christian Leader Jailed in Vietnam Amid Concern Over Crackdown*, AGENCE FRANCE PRESSE, Nov. 12, 2004.

representing hundreds of house-churches, fears that the legislation will result in further persecution of its followers.<sup>82</sup> U.S. Congressional Representative Chris Smith (R-N.J.) calls the ordinance an “anti-religious law” that will increase religious persecution in Vietnam.<sup>83</sup> Representative Smith contends that the new law is a capricious and arbitrary policy designed to incarcerate believers for any number of reasons, which generally amount to disagreeing with the government.<sup>84</sup> As such, the ordinance, which professes to protect freedom of religion, eliminates much of that right and places religious freedom at the whim of the government.

### C. *Violations of Religious Freedom in Vietnam Are Not Subject to Consequences*

In practice, there are few effective legal remedies for violations of religious freedom committed by Vietnamese government officials.<sup>85</sup> Moreover, vaguely defined crimes and broad discretion to implement administrative probation compounds the problem by creating a permissive environment where violations go unpunished.<sup>86</sup>

The Vietnamese penal code establishes penalties for vaguely defined offenses such as “attempting to undermine national unity,” by promoting “division between religious believers and nonbelievers.”<sup>87</sup> Additionally, a 1997 directive on administrative probation gives national and local security officials broad powers to detain and monitor citizens and control where they live and work for up to two years if they are believed to threaten “national security.”<sup>88</sup> Ongoing complaints allege that officials fabricate evidence and apply laws in contravention of the right to religious freedom in order to

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<sup>82</sup> *Id.*

<sup>83</sup> Press Release, Representative Chris Smith, House Passes Smith Vietnam Human Rights Act (July 19, 2004), [http://www.house.gov/apps/list/press/nj04\\_smith/Vietnam.html](http://www.house.gov/apps/list/press/nj04_smith/Vietnam.html) (last visited May 29, 2005).

<sup>84</sup> *Id.*

<sup>85</sup> 2004 Report, *supra* note 79. The Constitution’s national security and solidarity provisions override guarantees of religious freedom, and these provisions have been used to impede the religious activities of certain ethnic groups. *Id.*

<sup>86</sup> See Record IV, *supra* note 48, at H5423 (statement of Rep. Ros-Lehtinen): “Vietnam uses a maze of laws, decrees and regulations to prohibit religious worship and to justify the arbitrary arrest, detention, harassment, abuse and censorship of those seeking to exert their religious liberty and their right to free association.”

<sup>87</sup> See 2004 Report, *supra* note 79. When charging an individual with practicing religion illegally, authorities have utilized Article 258 of the Penal Code, which permits a maximum three-year jail term for abusing freedom of belief or religion “to infringe upon the interests of the State.” *Id.*

<sup>88</sup> *Id.*; see also Regulation on Administrative Detention, Decree No. 31-CP, art. 1-2 (1997), translated in 10 Cong Bao [Official Gazette] 21 (May 31, 1997) (authorities may levy up to two years of administrative probation for offenses against national security); TRP Report, *supra* note 70, at 5-6 (Decree No. CP/31 grants officials the discretionary power to deprive citizens of freedom, without judicial intervention, for religious activities that are legitimate under international law).

impede the rights of those practicing unrecognized religions.<sup>89</sup> While serving administrative probation sentences, religious believers remain in conditions comparable to house arrest.<sup>90</sup>

Given the fact that Vietnam's legal system lacks meaningful due process, authorities generally exercise unfettered discretion over local religious practices.<sup>91</sup> Furthermore, there are no significant punishments for officials who disregard laws protecting religious practice.<sup>92</sup> Therefore, an environment exists in Vietnam where violations of religious freedom can and do occur without redress.<sup>93</sup>

#### IV. VIOLATIONS OF RELIGIOUS FREEDOM CONTINUE TO OCCUR IN VIETNAM

In addition to creating a permissive environment for religious rights violations, Vietnam bans and actively discourages participation in independent religious associations.<sup>94</sup> As a threshold requirement, the government mandates that religious organizations obtain official recognition to operate.<sup>95</sup> Moreover, Vietnam limits religious activities by officially-recognized churches whose governing boards are approved and controlled by the government.<sup>96</sup> When the government withholds official recognition, religious organizations face severe impediments if they choose to practice their faith.<sup>97</sup> Moreover, religious bodies are confined to spiritual matters, and are restricted in other activities such as charitable programs.<sup>98</sup>

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<sup>89</sup> See 2004 Report, *supra* note 79.

<sup>90</sup> *Id.* (noting the use of administrative probation as a tool to control those holding independent opinions); see also Testimony, *supra* note 31 (discussing the use of administrative detention to harass religious believers).

<sup>91</sup> See 2004 Report, *supra* note 79.

<sup>92</sup> *Id.*

<sup>93</sup> See *infra* Part IV.

<sup>94</sup> See Human Rights Watch Slams Vietnam over Religious Repression, *supra* note 80.

<sup>95</sup> 2004 Report, *supra* note 79.

<sup>96</sup> Human Rights Watch Slams Vietnam over Religious Repression, *supra* note 80; see also TRP Report, *supra* note 70, at 9-10 (noting the requirement of government authorization for religious practices such as religious education and training); Testimony, *supra* note 31 (describing the need to obtain government approval for the "nomination, ordination, or transfer of clergy").

<sup>97</sup> See 2004 Report, *supra* note 79.

<sup>98</sup> *Id.*

The United Nations,<sup>99</sup> foreign governments,<sup>100</sup> and human rights groups<sup>101</sup> have expressed concerns regarding Vietnam's policy toward freedom of religion. Nonetheless, the government continues to significantly restrict public religious activities by unrecognized groups,<sup>102</sup> and believers continue to experience harassment when operating without legal recognition.<sup>103</sup> Examples of persecution based on religious belief and impediments to freedom of religion include arbitrary detention and imprisonment of religious leaders and followers,<sup>104</sup> forced renunciations of faith,<sup>105</sup> acts of violence or reprisal,<sup>106</sup> and heavy governmental control of religious activities and organizations.<sup>107</sup> While it is not possible to determine the exact number of religious detainees,<sup>108</sup> Vietnam's disparate treatment of unrecognized religious groups such as the Unified Buddhist Church of Vietnam ("UBCV") and ethnic Protestants is well documented.

#### A. *Vietnam's Treatment of Unrecognized Buddhists Exemplifies Its Intolerance for Religious Liberties*

Wary of popular support for the UBCV, the Vietnamese government banned the church in 1981.<sup>109</sup> In its place, the Vietnamese Buddhist Sangha

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<sup>99</sup> See, e.g., HRW Report 2003, *supra* note 36 (The U.N. Commission on Human Rights expressed concerns about reports of harassment and detention of religious leaders in Vietnam).

<sup>100</sup> See, e.g., *id.* (noting Australia's concerns over Vietnam's rights during its first human rights dialogue); *Vietnam Human Rights*, NSW Leg. Assembly (Jun. 21, 2001) (statement of Ms. Meagher, Cabramatta—Parliamentary Secretary) ("disturbing escalation of human rights breaches in recent times" in Vietnam); Ben Rowse, *EU Urges Vietnam to Improve Its Human Rights Record*, AGENCE FRANCE PRESSE, Nov. 26, 2003 (noting the European Union's call on Vietnam to improve human rights after a European Union troika expressed concerns); *EU Voices Concern over Easter Clashes in Vietnam's Central Highlands*, AGENCE FRANCE PRESSE, Apr. 20, 2004 (discussing the European Union's request for Vietnam to improve rights following protests in the Central Highlands).

<sup>101</sup> *U.S. Votes to Cap Vietnam Aid*, BBC NEWS, Jul. 7, 2004, available at <http://news.bbc.co.uk/1/hi/world/asia-pacific/3909013.stm> (last visited May 29, 2005); see also Amnesty International, INT'L REP. 2002 VIETNAM, available at <http://web.amnesty.org/web/ar2002.nsf/asa/viet+nam?Open> (last visited May 29, 2005) (discussing Amnesty International's finding of continued repression of religious rights in Vietnam).

<sup>102</sup> U.S. Releases 2004 Report, *supra* note 45.

<sup>103</sup> See 2004 Report, *supra* note 79 (listing the abuses of religious freedom suffered by unrecognized churches); HRW Report 2003, *supra* note 36 (increasing repression and control over the activities of banned churches).

<sup>104</sup> See generally 2004 Report, *supra* note 79.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.* Lack of transparency in the justice system, difficulty confirming detention or release, and the prevalence of de facto house arrest make ascertaining the number of religious detainees nearly impossible.

*Id.*

<sup>109</sup> Ben Rowse, *Vietnamese Buddhist Dissident Calls for Release of Kidnapped Monk*, AGENCE FRANCE PRESSE, Aug. 13, 2003.

("VBS") was created.<sup>110</sup> The government requires all Buddhist monks to be approved by and work under the officially recognized VBS.<sup>111</sup> Moreover, the government influenced the selection of the leadership of the VBS, excluding many members of the UBCV.<sup>112</sup>

Persecution of the now unrecognized UBCV monks has persisted for decades. In February 1982, Thich Huyen Quang ("Quang") and Thich Quang Do ("Do"), the leaders of the UBCV, were arrested and banished to internal exile.<sup>113</sup> Since that time, Quang has been kept under effective house arrest without charge or trial.<sup>114</sup> While Do was eventually released, he continued to face harassment from the authorities. In 1995, Do was sentenced to a five-year prison term for sending overseas faxes accusing the government of obstructing a church-sponsored flood relief mission.<sup>115</sup> Heavy international criticism in 2003 prompted the Vietnamese government to release Do from a 2001 probationary house arrest two months earlier than expected.<sup>116</sup> However, human rights groups met Do's release with skepticism,<sup>117</sup> characterizing it as an attempt by the government to deflect external criticism over abuses of religious freedom.<sup>118</sup>

This skepticism appears well-founded, as restrictions on the UBCV have intensified. Following an unauthorized organizational meeting in 2003,<sup>119</sup> Vietnam placed many leaders of the UBCV under house arrest<sup>120</sup>

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<sup>110</sup> *Id.*

<sup>111</sup> 2004 Report, *supra* note 79.

<sup>112</sup> *Id.*

<sup>113</sup> Didier Lauras, *Police in Vietnam Obstruct Assembly of Banned Buddhist Church—UBCV*, AGENCE FRANCE PRESSE, Sept. 19, 2003.

<sup>114</sup> *Id.* See also Record IV, *supra* note 48, at H5416 (statement of Rep. Smith) (noting that Quang has been held under house arrest for over 20 years); *Religious Persecution in Vietnam and China, Hearing on H.R. 2833 Before the Subcomm. of Int'l Operations and Human Rights of the House Comm. on Int'l Relations*, 107th Cong. (2002) (statement of Dan Duy-Tu Hoang, Vice President or Public Relations, Vietnamese-American Public Affairs Committee) (testifying that Quang has remained under house arrest because he is the leader of an unrecognized religious organization).

<sup>115</sup> Tini Tran, *Monk in Vietnam Presses for Human Rights*, AP ONLINE, July 10, 2003.

<sup>116</sup> Margie Mason, *Vietnam Releases Dissident Monk After Years Under House Arrest*, CONTRA COSTA TIMES, June 30, 2003, at 4; see also *Euro MPs Urge Vietnam to Release Aging Buddhist Leaders*, AGENCE FRANCE PRESSE, Mar. 18, 2003 (noting that thirty-one members of the European Parliament and the European Union's External Relations Commissioner had pressed Vietnam to release the detained Buddhist leaders).

<sup>117</sup> Mason, *supra* note 116; see also Tini Tran, *Freeing of Monk Sign of Times? Vietnam's Policies Under Microscope*, HOUSTON CHRON., July 11, 2003, at 25.

<sup>118</sup> See Mason, *supra* note 116; Tini Tran, *Freed Vietnamese Monk Still Feisty: Longtime Dissident Speaks Out After Unexpected Release*, SAN JOSE MERCURY NEWS, July 11, 2003, at 3 (speculating that the Vietnamese government temporarily eased repression of religious freedom in order to secure WTO membership).

<sup>119</sup> See Lauras, *supra* note 113; Associated Press, *Faith Briefs—Monks Charge Harassment*, THE KANSAS CITY STAR, Sept. 27, 2003; *Vietnamese Dissident Buddhist Protests Over Assembly Curbs*, AGENCE FRANCE PRESSE, Sept. 30, 2003.



and initiated a renewed crackdown on the UBCV.<sup>121</sup> Less than a year after his early release, Do was also detained after the organizational meeting, and has been held under de facto house arrest since that time.<sup>122</sup> In response to international queries, Vietnamese officials denied forcing monks to boycott the meeting, and reiterated that the UBCV no longer exists.<sup>123</sup>

Although the UBCV monks have struggled against religious repression in order to practice their faith, the plight of the UBCV pales in comparison to the unrelenting and sometimes violent persecution that ethnic Protestants face by virtue of their religious beliefs.

*B. The Vietnamese Government Also Targets Ethnic Minorities Because of Their Religious Beliefs*

Ethnic minorities have often been the target of Vietnam's intolerance. Most notably, ethnic Protestants have faced harassment due to their religious beliefs.<sup>124</sup> Vietnamese authorities have harassed Protestants in the Central Highlands since 1975,<sup>125</sup> sometimes forcing them to renounce Christianity and perform traditional rites such as drinking rice wine mixed with animal blood.<sup>126</sup> In 2001, the Vietnamese government ordered almost all unrecognized Protestant congregations in the Central Highlands to close.<sup>127</sup> In April 2001, approximately 20,000 ethnic minorities from the Central Highlands protested the restrictions on their faith.<sup>128</sup> Over 1,000 ethnic minorities then sought asylum in Cambodia after security forces forcibly put down their protests.<sup>129</sup> The asylum seekers emerged under U.N. protection and recounted incidents of police repression following the demonstrations.<sup>130</sup>

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<sup>120</sup> See 2004 Report, *supra* note 79.

<sup>121</sup> Ben Rowse, *Head of Outlawed Vietnamese Buddhist Says Repression Will Never Work*, AGENCE FRANCE PRESSE, Jan. 23, 2004; see also *Patriarch of Outlawed Vietnamese Buddhist Church Gravely Ill*, AGENCE FRANCE PRESSE, Nov. 19, 2004 (police commenced a widespread campaign against the UBCV by placing senior monks under house arrest and hundreds of pagodas under surveillance).

<sup>122</sup> *US Ambassador Meets Vietnamese Buddhist Dissident*, AGENCE FRANCE PRESSE, Apr. 28, 2004; see also *Prominent Buddhist Dissident Slams Vietnam for Arbitrary Detention*, AGENCE FRANCE PRESSE, Oct. 28, 2004 (Vietnam's Foreign Ministry Spokesman contends that the monks were not arrested).

<sup>123</sup> See Luras, *supra* note 113.

<sup>124</sup> See Record IV, *supra* note 48, at H5416 (statement of Rep. Smith).

<sup>125</sup> *Id.* at H5423 (statement of Rep. Ballenger).

<sup>126</sup> 2004 Report, *supra* note 79.

<sup>127</sup> *Id.*

<sup>128</sup> *Vietnam Security Forces Patrol Central Highlands After Protests*, AGENCE FRANCE PRESSE, Apr. 11, 2004; see also Record IV, *supra* note 48, at H5423 (statement of Rep. Ballenger) (participants protested peacefully).

<sup>129</sup> *Tension Remains in Vietnam Central Highlands After Protests*, AGENCE FRANCE PRESSE, Apr. 12, 2004; see also Record IV, *supra* note 48, at H5423 (statement of Rep. Ballenger) (the government forcibly responded to protests by dispatching military forces, tanks, and helicopters).

<sup>130</sup> Kevin Doyle, *After Flight from Vietnam, the Brutal Jungle*, INT'L HERALD TRIB., July 16, 2004, at

Vietnamese authorities launched a renewed campaign against ethnic Protestants in 2003. On April 10, 2003, protests by ethnic minorities in the Central Highlands were again violently suppressed by police and government authorities.<sup>131</sup> Following the protests, minority Protestants appealed for international assistance after seeking refuge in Cambodia.<sup>132</sup> In response, the Vietnamese government blocked foreign observers from the Central Highlands area for two weeks.<sup>133</sup> Even after the area was reopened, strict oversight by the government made the honest assessment of the state of affairs extremely difficult to obtain.<sup>134</sup> Although the Vietnam News Service reported that Australian Foreign Ministry officials “acknowledged that there were no signs of violations of human rights and discrimination” in the Central Highlands, Australian embassy officials deny that its diplomats have made public comments about the visit.<sup>135</sup>

To date, the majority of the several hundred Protestant house-churches closed in 2001 remain officially closed and unrecognized.<sup>136</sup> Moreover, the U.S. State Department continues to receive persistent reports of officials pressuring ethnic Protestants to recant their faith, arbitrarily detaining and sometimes beating religious believers.<sup>137</sup> Local officials have also harassed unregistered Protestants by forcing church gatherings to cease and demolishing or closing house-churches.<sup>138</sup>

To address the recurring violations of religious freedom in Vietnam, the United States has made several attempts to achieve substantive improvements in religious rights. However, these methods have been largely ineffective in obtaining concrete results.

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<sup>131</sup> See 2004 Report, *supra* note 79; see also *Human Rights Watch Slams Vietnam Over “Repression” of Montagnards*, AGENCE FRANCE PRESSE, Apr. 14, 2004 (during the first full scale protests since 2001 security forces once again violently clashed with participants); *Vietnam Ethnic Groups Hold Rally, Confront Police*, BBC MONITORING NEWSFILE, Apr. 12, 2004 (Vietnamese officials rejected claims of religious discrimination when questioned about the protests).

<sup>132</sup> Doyle, *supra* note 130; see also 2004 Report, *supra* note 79; Elizabeth Mills, *U.N. Begins Assessing Needs of Vietnamese Ethnic Group Forced to Flee to Cambodia*, WMRC DAILY ANALYSIS, July 27, 2004.

<sup>133</sup> 2004 Report, *supra* note 79; see also *Ethnic Minority Protests in Vietnam Could Force Washington’s Hand*, AGENCE FRANCE PRESSE, Apr. 14, 2004.

<sup>134</sup> 2004 Report, *supra* note 79.

<sup>135</sup> *Diplomats Deny Praising Vietnam’s Human Rights*, ABC NEWS ONLINE, June 29, 2004, <http://www.abc.net.au/news/newsitems/200406/s1143012.htm> (last visited Mar. 31, 2005). For the second time in 2004, diplomats openly disagreed with state media reports on visits to the region. *Id.*

<sup>136</sup> 2004 Report, *supra* note 79.

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

## V. THE UNITED STATES' POLICY OF CONSTRUCTIVE ENGAGEMENT HAS FAILED TO IMPROVE RELIGIOUS FREEDOM IN VIETNAM

President Bush declared that the United States will “take special efforts to promote freedom of religion and conscience and defend it from encroachment by repressive governments.”<sup>139</sup> The United States, however, has failed to stand firmly in support of religious freedom in Vietnam.

Current United States policy toward Vietnam can best be categorized as constructive engagement.<sup>140</sup> In subscribing to constructive engagement, the United States posits that a strong bilateral relationship and continued investment, trade, and dialogue with Vietnam will have an overall liberalizing effect, resulting in the improvement of religious freedom.<sup>141</sup> In accordance with this policy, the United States normalized relations with Vietnam in 1995 and agreed to the BTA in 2000.<sup>142</sup> Since that time, engagement has failed to improve the human rights situation in Vietnam, and religious rights have degenerated.<sup>143</sup> Attempts at diplomacy have also failed to achieve substantive policy improvements for religious freedom.<sup>144</sup> In addition, legislative attempts to adopt a more proactive policy in Vietnam have stalled in the Senate despite overwhelming support by the House of Representatives.<sup>145</sup> As it stands, the United States policy of engagement has failed in both achieving substantive improvements and protecting religious rights in Vietnam.

<sup>139</sup> U.S. Releases 2004 Report, *supra* note 45.

<sup>140</sup> McCormick, *supra* note 7, at 298; *see also* THE DICTIONARY OF 20TH-CENTURY WORLD POLITICS 173 (Jay M. Shafritz et al. eds. 1993) (defining constructive engagement as “the continuation of political and economic ties with regimes with which a state has severe disagreements in the expectation that ties will eventually lead to changes in the objectionable policies and practices”); Forcese, *supra* note 8, at 4 (defining constructive engagement as involving dialogue rather than isolation); RICHARD N. HAASS AND MEGHAN L. O’SULLIVAN, HONEY AND VINEGAR 1-2 (Richard N. Haass & Meghan L. O’Sullivan eds., 2000) (defining engagement as the use of incentives alongside foreign policy to persuade governments to change).

<sup>141</sup> *See generally* Record II, *supra* note 30, at H5435 (statement of Rep. Evans) (arguing the progress in human rights can be achieved through engagement and encouraging Vietnam’s cooperation); Record, *supra* note 24, at S10108, S10110 (statements of Sens. Baucus & Grassley) (arguing that the establishment of normal trade relations with Vietnam complements human rights efforts).

<sup>142</sup> *See* FACT SHEET, U.S. DEP’T OF STATE, VIETNAM BILATERAL TRADE AGREEMENT—HISTORIC STRENGTHENING OF THE U.S. VIETNAM RELATIONSHIP (July 13, 2000), *available at* <http://www.clintonfoundation.org/legacy/071300-fact-sheet-on-vietnam-bilateral-trade-agreement.htm> (last visited May 29, 2005).

<sup>143</sup> U.S. Dep’t of State, *Vietnam Increasingly Suppresses Religious Freedom, Young Says—Religious Freedom Commission Chairman’s Feb. 12 Remarks to Congress*, Feb. 13, 2004, *available at* <http://usinfo.state.gov/dhr/Archive/2004/Feb/18-682123.html> (last visited May 29, 2005).

<sup>144</sup> *See infra* Part V.C.

<sup>145</sup> *Id.*

A. *The United States-Vietnam Bilateral Trade Agreement Has Not Improved Religious Freedom*

According to Michael Young, chairman of the UCIRF, “increased trade has not led to progress in the area of protecting human rights and basic liberties. More dollars have not [led] to democratization. And quiet diplomacy alone has not produced tangible results.”<sup>146</sup> There is incontrovertible evidence that since the passage of the BTA, the Vietnamese government continues to pursue suppressive religious policies.<sup>147</sup> Freedom Now<sup>148</sup> recently noted that the U.S. “policy of engagement with Vietnam as implemented is not working and must be tailored to acknowledge deficiencies in the performance of the Vietnamese government.”<sup>149</sup> Even the U.S. Department of State admitted to being “disappointed” by the lack of “concrete results” from increased U.S.-Vietnamese trade and continued bilateral human rights dialogue.<sup>150</sup> Despite promises that the BTA and increased trade would result in improvements,<sup>151</sup> the state of religious freedom has deteriorated in recent years.<sup>152</sup> Moreover, diplomatic talks in conjunction with increased engagement have similarly failed to generate lasting policy changes.

B. *U.S. Diplomatic Attempts to Improve Religious Rights Have Secured Few Concrete Commitments*

In addition to increased trade and normalization of relations, the United States has made attenuated efforts to address Vietnam’s violations of religious freedom. Despite ongoing diplomatic efforts, few improvements have been secured. During the annual U.S.-Vietnamese human rights dialogue, the United States proposed that Vietnam open access to the Central

<sup>146</sup> Genser, *Scandal*, *supra* note 34.

<sup>147</sup> *Id.* See also Congressional Caucus Testimony, *supra* note 37 (listing the pattern of human rights abuses since the passage of the BTA).

<sup>148</sup> Freedom Now is an organization that seeks to represent and secure the release of individuals who are arbitrarily deprived of their liberty. FREEDOM NOW, OVERVIEW, <http://www.freedom-now.org/over.php> (last visited May 29, 2005).

<sup>149</sup> *Vietnam Lacking in Human Rights*, BATON ROUGE ADVOCATE, Sept. 3, 2004, at 10B.

<sup>150</sup> U.S. DEP’T OF STATE, *supra* note 143.

<sup>151</sup> See, e.g. Record II, *supra* note 30, at H5437 (statement of Administration Policy) (U.S. engagement gives hope of gains in respecting human rights in Vietnam).

<sup>152</sup> See HRW Report 2003, *supra* note 36; see also *Religious Persecution in Vietnam and China: Hearing on “Communist Entrenchment: Religious Persecution in China and Vietnam” Before the Subcommittee on International Operations and Human Rights*, 107th Cong. (2002) (opening statement of Ileana Ros-Lehtinen, Chair) (according to the State Department, Human Rights Watch, Amnesty International, and others, Vietnam has regressed in the realm of religious freedom and tolerance); Testimony, *supra* note 31 (noting deteriorating religious freedom conditions).

Highlands, release political prisoners and authorize return visits by U.N. Special Rapporteur, but Vietnam made few concrete commitments.<sup>153</sup> In previous meetings, the United States urged recognition of a broad spectrum of religious groups, sought greater freedom for recognized groups, and focused on curbing specific abuses, such as forced renunciations of faith and the re-opening of closed house churches.<sup>154</sup> In order to signify displeasure over the limited progress, the U.S. Department of State elected to withdraw from a human rights dialogue with the Vietnamese government in 2003.<sup>155</sup>

In the 2004 International Religious Freedom Report (“2004 Report”), the U.S. Department of State chronicled the many diplomatic attempts aimed at addressing religious freedom in Vietnam over the course of the year.<sup>156</sup> These attempts included: (1) visits from the United States Ambassador at Large for International Religious Freedom to Vietnam to press for greater religious freedom,<sup>157</sup> (2) three visits to Vietnam from the Office of International Religious Freedom,<sup>158</sup> (3) consistent pressure by United States officials for the release of religious prisoners, a ban on forced renunciations of faith, an end to physical abuse of religious believers, and the re-opening of hundreds of closed churches in the Central Highlands;<sup>159</sup> (4) regularly raised concerns with Vietnamese leaders by Embassy and Consulate officials regarding religious freedom concerns;<sup>160</sup> (5) discussion of religious rights issues by the Assistant Secretary for East Asia and Pacific Affairs at the annual bilateral political dialogue in Hanoi;<sup>161</sup> and (6) regular meetings with religious leaders and travels throughout Vietnam to investigate reports of religious freedom violations by the Embassy and Consulates.<sup>162</sup>

In spite of many diplomatic overtures, the 2004 Report indicated only isolated and specific successes, as opposed to substantive policy changes. The 2004 Report noted that, in response to United States dialogue, Vietnamese authorities withdrew threats of demolishing a single church and also permitted access to imprisoned religious leaders Nguyen Van Ly and UBCV patriarch Quang.<sup>163</sup> In spite of these isolated successes, the Report

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<sup>153</sup> HRW Report 2003, *supra* note 36.

<sup>154</sup> 2004 Report, *supra* note 79.

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> U.S. Releases 2004 Report, *supra* note 45.

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> *See* 2004 Report, *supra* note 79.

declared Vietnam one of the world's worst offenders of religious freedom,<sup>164</sup> and downgraded Vietnam's status to a CPC.<sup>165</sup> Despite the admitted diplomatic failures, former Secretary of State Powell affirmed that the United States would continue to use diplomacy with Vietnam to encourage policy changes.<sup>166</sup> Secretary Powell noted that existing partnerships are "one of the best methods . . . to encourage . . . friends to adopt tolerant practices."<sup>167</sup> While the United States continues to pursue constructive engagement despite less than satisfactory results, members of Congress have introduced legislation that specifically targets Vietnam's human rights situation and requires affirmative action on the part of the United States.

*C. Legislative Attempts Seeking Affirmative U.S. Action to Oppose the Violations of Religious Freedom in Vietnam Have Stalled*

The House of Representatives passed the Vietnam Human Rights Act ("H.R. 2833") in 2001 to send a clear message to the government of Vietnam that the "United States is serious about its commitment to the principles of free speech, freedom of expression, and the freedom of religious exercise."<sup>168</sup> Section 201 of the Act limits non-humanitarian aid to current levels unless the government of Vietnam makes substantial progress in releasing religious prisoners, respecting the right to freedom of religion, returning property of the churches, and respecting the rights of ethnic minorities.<sup>169</sup> As such, H.R. 2833 seeks to link economic repercussions to Vietnam's continued violations of human rights, rather than continuing the policy of constructive engagement. The U.S. President, however, maintains authority to waive these provisions upon determining that doing so will promote the interests of the Act or is otherwise in the United States' national interest.<sup>170</sup>

H.R. 2833 received an overwhelming 410-1 vote in passing the House,<sup>171</sup> but was subsequently blocked in the Senate.<sup>172</sup> Senator John

<sup>164</sup> See U.S. Releases 2004 Report, *supra* note 45.

<sup>165</sup> *Id.* (designating Vietnam a CPC for the first time); see also Assistant Secretary of State Department Paul V. Kelly letter to Congressman Lane Evans regarding designation of Vietnam as a CPC, Oct. 12, 2004 (Vietnam was designated a CPC because diplomatic attempts had failed) (on file with Journal).

<sup>166</sup> *Asia Dominates U.S. Blacklist of Top Religious Freedom Violators*, *supra* note 45.

<sup>167</sup> *Id.*

<sup>168</sup> Record IV, *supra* note 48, at H5417 (statement of Rep. Davis).

<sup>169</sup> See H.R. 2833, *supra* note 48, sec. 201(a).

<sup>170</sup> *Id.* sec. 201(b)(3)

<sup>171</sup> Record IV, *supra* note 48, at H5426 (Roll No. 335); see also Record, *supra* note 24, at S10106 (printing Roll No. 335 into the record without objection); 147 CONG REC. D871-01, D871 (2001) (noting passage of H.R. 2833 by the House).

Kerry (D-Mass), with the backing of Senator John McCain (R-Ariz), explained his opposition to the legislation by insisting that the carrot of engagement would do more to nurture human rights in Vietnam than the stick of sanctions.<sup>173</sup> Recognizing the deterioration of religious freedom in Vietnam despite the current policy of constructive engagement, the U.S. House of Representatives passed the Vietnam Human Rights Act of 2004 ('H.R. 1587'),<sup>174</sup> essentially the same legislation as H.R. 2833.<sup>175</sup> H.R. 1587 was subsequently submitted to the Senate Committee on Foreign Affairs, but no further action has been taken in the Senate.

In light of the failure of the BTA, diplomatic attempts, and proposed legislation to achieve lasting religious rights improvements in Vietnam, the United States policy of constructive engagement must be re-evaluated.

#### VI. THE UNITED STATES MUST IMPLEMENT IRFA ACTIONS UNDER THE RESPONSIBLE ENGAGEMENT DOCTRINE RATHER THAN CONTINUE CONSTRUCTIVE ENGAGEMENT

As a result of Vietnam's deteriorating record on religious freedom and the failure of the United States policy of constructive engagement, a new strategy must be developed. This Comment proposes that an appropriate alternative to current United States policy is the implementation of the IRFA in accordance with the doctrine of responsible engagement.<sup>176</sup> The IRFA

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<sup>172</sup> Record III, *supra* note 48, at H5743 (statement of Rep. Smith) (noting that H.R. 2833 never received a vote after being blocked in the Senate); Record, *supra* note 24, at S10119 (statement of Sen. Smith) (discussing the secret hold placed on H.R. 2833).

<sup>173</sup> Ted Sampley, *John Kerry's Sabotage of Vietnam Human Rights Act*, U.S. VETERAN DISPATCH, [http://www.vietnamveteransagainstjohnkerry.com/kerry\\_human\\_rights.htm](http://www.vietnamveteransagainstjohnkerry.com/kerry_human_rights.htm) (last visited May 29, 2005); *see also* Quynh-Giang Tran, *Kerry Stand Upsets Some Vietnamese*, BOSTON GLOBE, at A4, Aug. 14, 2002 (Sen. Kerry noted that ongoing relations with Vietnam would promote greater freedom while the Vietnam Human Rights Act undermined the United States' ability to promote economic reforms); Patrick Goodenough, *Refugees from Vietnam Unimpressed with Kerry*, CNSNews.com, Aug. 31, 2004, available at <http://www.cnsnews.com/ViewForeignBureaus.asp?Page=%5C%5CForeignBureaus%5C%5Carchive%5C%5C200408%5C%5CFOR20040831a.html> (last visited May 29, 2005) (explaining how Sen. Kerry blocked the Vietnam Human Rights Act and expressed concern that denying aid would slow human rights improvements).

<sup>174</sup> *See* H.R. 1587, *supra* note 48; *see also* Record III, *supra* note 48, at H5743-45, H5748 (statements of Reps. Smith, Rohrabacher, Lofgren arguing for the passage of H.R. 1587 because of the deteriorating rights situation and lack of substantive change achieved through current policy); 150 CONG. REC. D793-01 (2004) (Roll No. 391) (H.R. 1587 passed the House by a 323-45 vote).

<sup>175</sup> *Compare* H.R. 1587, *supra* note 48, at sec. 101 (prohibiting non-humanitarian assistance to the government of Vietnam in an amount exceeding the amount provided in the previous fiscal year unless the government has made substantial progress in human rights such as respecting the right to religious freedom), *and* H.R. 2833, *supra* note 48, at sec. 201 (prohibiting United States non-humanitarian assistance to the government of Vietnam unless substantial progress in human rights is made, including respect for religious freedom and the release of religious prisoners).

<sup>176</sup> The doctrine of responsible engagement supports the idea that economic engagement, integration,

provides the United States with specific responses to international violations of religious freedom, including economic sanctions against severe violators.<sup>177</sup> Ineffectual diplomatic attempts and CPC designation alone are insufficient under the IRFA. In following the doctrine of responsible engagement and the directives of the IRFA, the United States should narrowly apply economic pressure in the form of targeted IRFA sanctions against the government of Vietnam. At the same time, the United States should continue to engage Vietnam where doing so does not support continued religious violations. For example, the United States should continue to provide humanitarian aid such as food, medicine, and AIDS/HIV programs.<sup>178</sup> By implementing IRFA in accordance with the tenets of responsible engagement, the United States would follow the IRFA mandate of action.<sup>179</sup> Moreover, the United States would take an active role in opposing violations of religious freedoms without levying comprehensive sanctions and completely severing bilateral relations. Therefore, the United States dual interests in improved religious freedom and continued relations would be balanced, and religious rights would be enhanced by utilizing pressure and engagement.<sup>180</sup>

A. *The International Religious Freedom Act Mandates Affirmative Action, Including Targeted Economic Sanctions*

The IRFA mandates that the United States designate severe violators of religious freedom as CPCs.<sup>181</sup> Following such a designation, the United

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and growth are consistent with "human rights-responsible developments." It recognizes, however, that in some cases continued engagement encourages human rights violations by directly or indirectly assisting violators. To address this conflict, the doctrine permits economic sanctions specifically targeted at offenders, thereby minimizing the negative affect felt by innocents. See Forcese, *supra* note 8, at 37.

<sup>177</sup> See 22 U.S.C. § 6445.

<sup>178</sup> "In FY2002, total U.S. assistance to Vietnam—which includes USAID programs—is expected to exceed US \$30 million, which includes funds budgeted for food assistance (US \$11 million), the Fulbright exchange program (US \$4 million), HIV/AIDS programs (US \$8.5 million), land mine victims and orphans (US \$3 million), a U.S. Department of Labor technical cooperation program (US \$1.5 million), and technical assistance to help Vietnam understand, develop, and implement trade reforms (US \$4.6 million). This total includes US \$5 million that is budgeted for a new educational exchange program—the Vietnam Education Foundation—that Congress authorized in 2000 but has yet to be implemented." MARK E. MANYIN, THE VIETNAM—U.S. NORMALIZATION PROCESS, CONG. RESEARCH SERVICE ISSUE BRIEF IB98033, at 1 (June 6, 2002).

<sup>179</sup> See 22 U.S.C. §§ 6441(b)(1), 6442(c)(1)-(2), and 6445(a)(1)-(15) (requiring that the United States President take action as provided in the IRFA in response to violations of religious freedom).

<sup>180</sup> In debating ratification of the BTA, Rep. Levin noted the struggle for a formula that combines engagement and pressure and argued that any House action must both engage and pressure Vietnam. Record II, *supra* note 30, at H5429.

<sup>181</sup> See 22 U.S.C. §§ 6441(b)(1), 6442(c)(1)-(2), and 6445(a)(1)-(15); see also T. Jeremy Gunn, A Preliminary Response to Criticisms of the International Religious Freedom Act of 1998, 2000 BYU L. REV.



States must take further actions to oppose the violation. While the United States has taken the first step in recognizing Vietnam as a CPC,<sup>182</sup> the designation alone is insufficient to affect change. Therefore, the United States must also take affirmative action as provided in the IRFA, including economic sanctions.<sup>183</sup>

The IRFA establishes that it is the policy of the United States to condemn violations of religious freedom and promote the fundamental right of religious freedom.<sup>184</sup> Any action under the IRFA must be flexible to achieve “the most effective and principled response,” reflecting both the violation and the status of relations with the offending nation.<sup>185</sup> Accordingly, the IRFA mandates specific action in opposition to abuses,<sup>186</sup> categorizing offenses as either “violations of religious freedom” or “particularly severe violations of religious freedom.”<sup>187</sup> While the IRFA allows some discretion in choosing how the United States will react to a violation, some action must be taken<sup>188</sup> unless the requirement is waived by the U.S. President.<sup>189</sup>

In response to “violations of religious freedom,” the President of the United States must take one or more of fifteen possible actions, or negotiate and enter into a binding agreement with the government of the offending country.<sup>190</sup> The available actions range in seriousness from a private demarche to any number of targeted economic options, such as the withdrawal or limitation of development assistance.<sup>191</sup>

The IRFA also mandates opposition to “severe violations of religious

841, 858-59 (2000) (discussing the requirement of action under the IRFA).

<sup>182</sup> Institute on Religion and Public Policy, *Saudi Arabia, Eritrea, and Vietnam Added to List of Countries of Particular Concern for Severe Violations of Religious Freedom*, Sept. 15, 2004, available at <http://www.religionandpolicy.org/show.php?p=1.1.1317> (last visited May 29, 2005); see also 22 U.S.C. § 6442(b)(1)(A) (2001) (requiring designation of severe violators of religious freedom as CPCs).

<sup>183</sup> See 22 U.S.C. §§ 6442(a)(2), 6442(b)(2), 6442(c), and 6445(a).

<sup>184</sup> *Id.* § 6401(b)(1).

<sup>185</sup> *Id.* § 6401(b)(3).

<sup>186</sup> *Id.* §§ 6441(b)(1), 6442(c)(1)-(2), and 6445(a)(1)-(15).

<sup>187</sup> Compare 22 U.S.C. § 6441 (2001), and 22 U.S.C. § 6442 (2001) (distinguishing the requirement of action as between violations of religious freedom and particularly severe violations of religious freedom); see also 22 U.S.C. §§ 6402(11), (13) (definition of “violations of religious freedom” and “particularly severe violations of religious freedom”).

<sup>188</sup> See 22 U.S.C. § 6441(a)(1)(B), 6442(a)(2), and 6445(a)(1)-(15); see also Steven Wales, *Remembering the Persecuted: An Analysis of the International Religious Freedom Act*, 24 HOUS. J. INT’L L. 579, 594 (2002) (noting that discretion is granted as to the manner of acting but not with respect to the decision to act itself).

<sup>189</sup> See 22 U.S.C. § 6447(a)(1)-(3). Waiver can only occur after it is determined and reported to Congress that: (1) the foreign government has ceased the violations; (2) a waiver would further the purposes of the IRFA; or (3) an important national interest of the United States requires the waiver. *Id.*

<sup>190</sup> See 22 U.S.C. §§ 6441(a)(1)(B), 6441(b)(1)(A)-(B).

<sup>191</sup> *Id.* § 6445(a)(1)-(15).

freedom that are or have been engaged in or tolerated by the governments of foreign countries.”<sup>192</sup> For particularly severe violations, defined as engaging in or tolerating “ongoing, systematic, and egregious”<sup>193</sup> violations of religious freedom, the IRFA first requires CPC designation.<sup>194</sup> In order to promote religious freedom in countries designated as CPCs, the President must then select from seven targeted economic sanctions that are enumerated in the IRFA.<sup>195</sup> Economic actions may not be taken until after consultations with the offending government, humanitarian organizations, and interested United States parties.<sup>196</sup> The President must also submit a report to Congress which: (1) identifies the presidential action to be taken; (2) describes the violations; (3) describes the purpose of the actions; and (4) evaluates the impact of the actions.<sup>197</sup> Additionally, a statement of policy options and a description of multilateral negotiations must be submitted prior to acting.<sup>198</sup> The President, however, may also take alternative action “commensurate in effect” to the options given in the IRFA, when in furtherance of United States policy as set forth in the IRFA.<sup>199</sup> Finally, the President may conclude a binding agreement requiring the offending government to cease, address, and phase out the act, policy, or practice constituting the violation.<sup>200</sup> Therefore, the plain language of the IRFA’s provisions requires that the United States not only designate Vietnam a CPC, but also that it resort to economic sanctions absent a presidential waiver or binding agreement.

Admittedly, CPC designation is a flexible diplomatic tool that provides the President with a range of specific options to address abuses of religious freedom.<sup>201</sup> When used properly, CPC designation: (1) sends a clear message that the United State is concerned about human rights; (2) starts a dialogue in which specific benchmarks of progress are agreed upon; (3) allows the threat of multiple and ongoing sanctions to address egregious abuses of religious freedom; and (4) allows the President to waive any specific actions if progress is being made toward addressing serious religious freedom abuses.<sup>202</sup> CPC designation alone, however, is unlikely to

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<sup>192</sup> *Id.* §§ 6442(a)(1)-(2).

<sup>193</sup> *Id.* § 6402(11).

<sup>194</sup> *Id.* § 6442(b)(1)(A).

<sup>195</sup> *See id.* §§ 6442(a)(2), 6442(c)(1)(A), and 6445(a)(9)-(15).

<sup>196</sup> *Id.* §§ 6442(c)(1), 443.

<sup>197</sup> *Id.* §§ 6442(c)(1), 6444(a)(1)-(4).

<sup>198</sup> *Id.* §§ 6444(a)(5)-(6).

<sup>199</sup> *Id.* §§ 6442(c)(1)(B), 6445(b).

<sup>200</sup> *Id.* §§ 6442(c)(2), 6445(c).

<sup>201</sup> *See* Press Release Feb. 12, 2004, *supra* note 34; President’s Statement, *supra* note 10.

<sup>202</sup> Press Release Feb. 12, 2004, *supra* note 34.

ensure Vietnam's conformity with international religious rights standards.

The designation of a government as a CPC is only a first step in achieving substantive improvements in religious rights.<sup>203</sup> Significant improvement in the religious rights environment of a CPC has not occurred in the absence of strong and decisive involvement by the United States government.<sup>204</sup> Accordingly it is clear that "simply putting a name of a country on a list is not enough to guarantee freedom of belief, expression, and practice of one's most fundamental beliefs."<sup>205</sup> In fact, the IRFA recognized this reality and mandated further action by the United States toward severe violators following CPC designation.<sup>206</sup> Accordingly, the United States must apply economic pressure under the IRFA if a binding human rights agreement cannot be reached with Vietnam.

In sum, the IRFA mandates designation of severe violators of religious freedom as CPCs. The United States has taken this first step by designating Vietnam as a CPC. The IRFA mandates further action, specifically providing that absent a waiver or binding agreement,<sup>207</sup> the President must choose one of the economic sanctions provided.<sup>208</sup> Therefore, the United States must turn to targeted economic sanctions under the IRFA to address continuing religious violations in Vietnam. While the IRFA provides general guidelines as to the applicability of economic sanctions, an application of the IRFA under the responsible engagement doctrine best addresses the particularities of the U.S.-Vietnamese relationship.

*B. IRFA Remedies in Accordance with Responsible Engagement Allow for a More Nuanced Response That Better Addresses the Unique Problems of Pursuing Religious Freedom and Economic Relations*

The prevailing view of Western countries such as the United States is that constructive engagement with repressive regimes through trade, investment, and dialogue will induce human-rights-sensitive development.<sup>209</sup> Those opposing this position argue that economic engagement and liberalization increase many of the human rights violations that they are

<sup>203</sup> Institute on Religion and Public Policy, *supra* note 182.

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

<sup>206</sup> See 22 U.S.C. §§ 6442(b)-(c).

<sup>207</sup> *Id.* §§ 6442(c)(2), 6445(c), and 6447.

<sup>208</sup> *Id.* §§ 6442(a)(2), 6442(c)(1)(A); see also § 6441(c)(1)(C) (for violations of religious freedom, the President must make every reasonable effort to conclude a binding agreement concerning cessation of violations with countries that have diplomatic relations with the United States); § 6445(b) (the President may also select a commensurate action instead of an enumerated action).

<sup>209</sup> Forcese, *supra* note 8, at 1.

intended to cure.<sup>210</sup> Advocates of economic sanctions believe that given lax international enforcement,<sup>211</sup> unilateral actions may be the only way to achieve improvements.<sup>212</sup> Moreover, sanctions may also aid in the development of international human rights norms by bringing public attention to violations.<sup>213</sup> Critics of economic sanctions, however, argue that sanctions are blunt mechanisms that punish innocent citizens, while those in control are largely able to shield themselves from the negative effects.<sup>214</sup> In light of this debate, the more nuanced approach of responsible engagement has been promulgated by some commentators.<sup>215</sup>

Responsible engagement recognizes that blind economic investment alone may not be appropriate in all circumstances, particularly where “economic engagement will exacerbate repressive regimes and human suffering” by contributing indirect support for the violations that are sought to be improved.<sup>216</sup> As such, responsible engagement requires targeted economic sanctions that affect the offending government, while minimizing the adverse impact on innocent citizens.<sup>217</sup> Given the limited success of the United States’ constructive engagement policy, following the tenets of responsible engagement in implementing the IRFA constitutes the superior method of promoting religious freedom in Vietnam. By utilizing a mixed plan of targeted economic sanctions and continuing engagement where it does not contribute to violations of religious freedom, the United States can achieve substantive improvements.<sup>218</sup>

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<sup>210</sup> *Id.*

<sup>211</sup> Margo Kaplan, *Using Collective Interest to Ensure Human Rights: An Analysis of Articles on State Responsibility*, 79 N.Y.U. L. REV. 1902, 1912 (2004); see also Amy Howlett, *Getting ‘Smart’: Crafting Economic Sanctions that Respect All Human Rights*, 73 FORDHAM L. REV. 1199, 1210-11 (2004); RICHARD B. LILICH & HURST HANNUM, *INTERNATIONAL HUMAN RIGHTS PROBLEMS OF LAW, POLICY AND PRACTICE* 210 (3d ed. 1995); DINAH SHELTON, *REMEDIES IN INTERNATIONAL HUMAN RIGHTS LAW* 37 (1999); Anne F. Bayefsky, *The U.N. and International Protection of Human Rights*, in *RETHINKING HUMAN RIGHTS* 80-81, 85-86 (Brian Galligan & Charles Sampford eds., 1997).

<sup>212</sup> Kaplan, *supra* note 211, at 1912.

<sup>213</sup> *Id.* at 1914; Howlett, *supra* note 211, at 1220-22; Sarah H. Cleveland, *Norm Internalization and U.S. Economic Sanctions*, 26 YALE J. INT’L L. 1, 6-7 (2001); Lori Fisler Damrosch, *The Civilian Impact of Economic Sanctions*, in *ENFORCING RESTRAINT* 277-78 (Lori Fisler Damrosch ed., 1993).

<sup>214</sup> Howlett, *supra* note 211, at 1217-18; see also Damrosch, *supra* note 213, at 275; HAASS & O’SULLIVAN, *supra* note 140, at 2; HENRY J. STEINER & PHILIP ALSTON, *INTERNATIONAL HUMAN RIGHTS IN CONTEXT* 662-63 (2d ed. 2000); DAVID CORTRIGHT & GEORGE A. LOPEZ, *THE SANCTIONS DECADE* 23-26 (2000).

<sup>215</sup> Forcese, *supra* note 8, at 3.

<sup>216</sup> See *id.* at 11.

<sup>217</sup> *Id.* at 32-38.

<sup>218</sup> See CORTRIGHT & LOPEZ, *supra* note 214, at 29-30; see also HAASS & O’SULLIVAN, *supra* note 140, at 160, 174-5 (Reality dictates that in every engagement strategy the target country retains the ability to either ensure success or force failure. Therefore, an effective engagement strategy utilizing incentives must also include credible penalties.).

To more effectively address the problem of continuing religious rights violations in Vietnam, the United States should implement the IRFA in accordance with the doctrine of responsible engagement. In doing so, the United States should develop and implement a targeted economic sanction plan, and continue not only humanitarian assistance, but also other forms of engagement where doing so does not sustain the violations. Both the available range of IRFA actions and the IRFA's framework suggest that the IRFA only permits targeted sanctioning.<sup>219</sup> Moreover, responsible engagement counsels toward the use of narrowly targeted economic sanctions because the doctrine recognizes both the need for economic sanctions and also the potential for such sanctions to cause harm.<sup>220</sup> In fact, the United States should forgo the use of an enumerated IRFA sanction in favor of a commensurate action, whereby the President may craft a tailored economic response that will apply appropriate pressure to Vietnam.<sup>221</sup> Additionally, in following the doctrine of responsible engagement under the IRFA, the United States should engage Vietnam to the extent that it does not aid in sustaining continued violations.<sup>222</sup> While the IRFA only requires that humanitarian aid must continue,<sup>223</sup> the United States must engage further in relations deemed permissible under the doctrine. By narrowly targeting sanctions and continuing to engage where possible, the danger of comprehensive sanctions is eliminated and the negative effect on the general population is minimized.<sup>224</sup> Moreover, the IRFA provides that the President must minimize the adverse impact on the target country's population and humanitarian activities when utilizing economic sanctions.<sup>225</sup>

In sum, the IRFA and the doctrine of responsible engagement are compatible and capable of joint implementation to address the continued violations of religious freedom in Vietnam. Through this approach, the

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<sup>219</sup> See, e.g., 22 U.S.C. § 6442(c)(2) (IRFA requires a determination of the party responsible for the violations in order to appropriately target actions); STEINER, *supra* note 214, at 1107 (noting the IRFA's mandate to precisely determine the responsible party); § 6441(c)(1)(A)-(B) (requiring consideration of the severity of the violation and the implementation of an appropriate and narrow response directed at the specific party responsible for the violations); §§ 6445(a)(9)-(15) (the economic sanctions enumerated in the IRFA are narrow rather than comprehensive).

<sup>220</sup> See Forcese, *supra* note 8, at 38.

<sup>221</sup> See 22 U.S.C. § 6442(c)(1)(B).

<sup>222</sup> See Forcese, *supra* note 8, at 3, 32-8.

<sup>223</sup> 22 U.S.C. § 6445(d).

<sup>224</sup> See Howlett, *supra* note 211, at 1217-18 (because comprehensive sanctions may cause severe civilian suffering, narrowly targeted sanctions were developed to affect the guilty parties alone); Damrosch, *supra* note 213, at 281-84 (suggesting that an effective sanctions program minimizes civilian impact, targets guilty parties, and prevents enrichment of violators); CORTRIGHT & LOPEZ, *supra* note 214, at 223-24, 227 (arguing that targeted sanctioning and humanitarian exemptions ameliorate civilian suffering).

<sup>225</sup> See 22 U.S.C. § 6441(c)(2)(A)-(B).

United States would not categorically isolate Vietnam. Moreover, this proposed solution would allow the United States to implement the requisite actions of the IRFA, actively apply pressure to the Vietnamese government, and send the message that religious freedom must be protected. All of this would be accomplished without needlessly endangering the population of Vietnam or unequivocally severing bilateral relations. Therefore, implementation of IRFA in accordance with the tenets of responsible engagement provides a better method of addressing religious rights violations in Vietnam than continued constructive engagement.

## VII. CONCLUSION

The United States policy of constructive engagement has failed to produce substantive improvements in religious freedom in Vietnam. Additionally, bilateral relations and diplomatic measures alone do not provide redress for the recurring violations of religious freedom. Regardless of current policy, the IRFA exists to address precisely this type of international violation of religious freedom and demands specific response by the United States. Vietnam's designation as a CPC is only the first step. If a binding agreement cannot be negotiated, the IRFA mandates the use of targeted economic sanctions absent Presidential waiver. Due to concerns over improving bilateral relations and promoting religious rights, a proper remedy must balance both interests. Accordingly, the United States should implement a targeted economic option under the IRFA in accordance with the tenets of the responsible engagement doctrine.

Specifically, the United States should develop and enact a tailored economic response that affects only those government actors responsible for the violation. Moreover, humanitarian aid must continue, and other steps should be taken to minimize any adverse impact on innocents. Finally, the United States should continue humanitarian programs or any other forms of engagement in Vietnam so long as the engagement itself does not support further violations. Because a dual IRFA and responsible engagement policy allows engagement with Vietnam to coexist with interests in religious rights improvements, this proposed solution provides a more appropriate policy than continued constructive engagement.

