Extreme Policy Makeover: Re-Evaluating Current U.S.-Vietnam Relations under the International Religious Freedom Act

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

Kevin V. Tu†

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. However, this promise of religious

† The author is grateful for the generous guidance and advice of Professor Kathleen O’Neill, University of Washington School of Law. In addition, the Editorial Staff of the Pacific Rim Law & Policy Journal provided invaluable assistance and insight. The author also wishes to thank his wonderful family and friends for their ongoing encouragement, understanding, and support during the writing of this Comment. Finally, Carly Burns deserves special mention for selflessly volunteering her time and assistance. Any errors or omissions are the author's own.

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. Religious rights violations in Vietnam include the arbitrary detention of religious leaders and forced renunciation of Christian faith.

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. 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.

To date, United States foreign policy toward Vietnam has been characterized by constructive engagement, the theory that increased trade and economic relations will expose the target country to democratic ideals, thus effecting improvements in human rights. However, Vietnam's already poor human rights record has deteriorated in recent years. 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 reevaluated 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") in accordance with the tenets of responsible

---

2 See infra Part III.B.
3 See infra Part IV.A.
4 See infra Part IV.B.
6 See infra Part IV.A.
8 See Craig Forcese, Globalizing Decency: Responsible Engagement in an Era of Economic Integration, 5 YALE HUM. RTS. & DEV. L.J. 1, 4-7 (2002).
engagement. Specifically, the United States should narrowly tailor economic sanctions against Vietnam pursuant to the IRFA. Additionally, the United States should continue engagement that does not contribute to continued violations. 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

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].

Forcese, supra note 8, at 38.

12 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).

13 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).

14 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, which included the Vietnamese people's right to "freedom of belief." 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, the new government established a number of repressive social policies. The new regime placed severe restrictions on religious groups, essentially eviscerating rights guaranteed in Article 11 of the Paris Peace Accord. Those protesting against the restrictions were imprisoned, and international actors who objected were accused of "intervening in Vietnam's internal affairs." In response, the United States ended virtually all economic interchange with Vietnam.

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," U.S.-Vietnamese relations took a major step forward when President William Clinton ordered an end to the United States' trade embargo against Vietnam. Thereafter, the United States re-established formal diplomatic relations in 1995. In 1998, President Clinton granted a waiver of the Jackson-Vanik Amendment.

---

16 Id. art. 11.
20 Denney, supra note 18, at 5.
21 MANYIN, supra note 17, at 1.
23 Id. at 4.
25 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. PREGEU, THE JACKSON-VANIK AMENDMENT: A SURVEY, CONG. RESEARCH SERVICE REPORT, at 2, (Sept. 22, 2000),
which prohibited normal trade relations with Vietnam.\(^\text{26}\) On July 13, 2000, the United States and Vietnam continued to normalize relations\(^\text{27}\) by agreeing to the Bilateral Trade Agreement ("BTA").\(^\text{28}\) After receiving President Bush’s signature, the BTA was congressionally approved in 2001.\(^\text{29}\) 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.\(^\text{30}\)

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.\(^\text{31}\) However, such a connection never occurred. A joint resolution ratifying the BTA was signed into law\(^\text{32}\) without explicitly conditioning normal trade relations upon human rights improvements.\(^\text{33}\) Nonetheless, the hope remained that engagement with Vietnam would have a liberalizing effect, improving the lives of the Vietnamese people.\(^\text{34}\) Despite the hope that the BTA would improve human rights,\(^\text{35}\) and assurances of

\(^{26}\) MANYIN, supra note 17, at 2.

\(^{27}\) 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.

\(^{28}\) 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 (last visited May 29, 2005).

\(^{29}\) MANYIN, supra note 22, at 5.

\(^{30}\) 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].

\(^{31}\) 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).


\(^{33}\) See MANYIN, supra note 22, at 5.


\(^{35}\) 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"), Vietnam's human rights record has continued to decline.

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. 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.

Trade with Vietnam has increased rapidly since the signing of the BTA, exceeding US$ 6 billion in 2004. 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. 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).


See infra Part V.B.


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")\(^{42}\) recommend more than once\(^{43}\) that Vietnam be designated a Country of Particular Concern ("CPC") under the IRFA.\(^{44}\) Congress finally heeded this advice in September 2004.\(^{45}\) Absent a binding agreement, the IRFA provides for economic sanctions or commensurate actions to be imposed upon CPCs.\(^{46}\) 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.\(^{47}\) Even so, some members of Congress have called for more active responses in opposition to violations of religious rights.\(^{48}\)

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")\(^{49}\) and its own Constitution.\(^{50}\) While these

---

\(^{42}\) 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.

\(^{43}\) 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.

\(^{44}\) 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).


\(^{46}\) See 22 U.S.C. §§ 6442(a)(2), 6442(c)(1), 6445(a)(9)-(15).

\(^{47}\) See Asia Dominates U.S. Blacklist of Top Religious Freedom Violators, supra note 45.


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

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

---

51 See infra Part IV.
53 See ICCPR, supra note 49.
58 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.
59 Id. art. 18(2).
60 Id. art. 18(3).
61 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.\textsuperscript{62} 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:

\textit{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 . . . .}\textsuperscript{63}

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\textsuperscript{64} institutionalized the government’s religious policies.\textsuperscript{65} 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.”\textsuperscript{66}

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.\textsuperscript{67} In practice, the permissive laws and the lack of transparency of the legal system allow for continued violations of religious freedom to occur.

\textsuperscript{62} 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/0/058fe36999cc1ad8c12568b700535ad67?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. \textit{Id.}

\textsuperscript{63} \textit{CONSTITUTION} art. 70.

\textsuperscript{64} Ordinance, \textit{supra} note 54, art. 1.

\textsuperscript{65} \textit{Vietnam Condemns Human Rights Watch’s Report on Religion}, \textit{supra} note 1.

\textsuperscript{66} Ordinance, \textit{supra} note 54, art. 8, sec. 2.

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 report to the United Nations Human Rights Committee (“UNHRC”) 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.” 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. While Article 70 grants citizens the freedom of belief, no religious practice may “contravene ... State policies.” Accordingly, the Special Rapporteur characterized the provision as “a vague and extendable concept that could be potentially restrictive of religious freedom.” 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, which subjects religious liberty to exceptions that reduce freedom of religion to little more than an

---

68 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).


71 Id. at 9.

72 CONSTITUTION art. 70.

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

74 Ordinance, supra note 54.
illusory right. While the right to religious belief is protected by the ordinance, 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.

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. 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, and receive approval for many activities, including the training of clergy, construction of religious facilities, preaching outside a recognized facility, and evangelizing.

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, and noted that the new law reflects the government’s increasing unwillingness “to tolerate religious practice outside its strict control.” The Vietnam Evangelical Fellowship, an organization of approximately thirty unregistered church organizations

75 Id. art. 1.
76 Id. art. 8(2).
77 Id. art. 15.
78 Id. art. 16, 19.
79 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.
representing hundreds of house-churches, fears that the legislation will result in further persecution of its followers. U.S. Congressional Representative Chris Smith (R-N.J.) calls the ordinance an “anti-religious law” that will increase religious persecution in Vietnam. 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. 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. Moreover, vaguely defined crimes and broad discretion to implement administrative probation compounds the problem by creating a permissive environment where violations go unpunished.

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.” 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.” Ongoing complaints allege that officials fabricate evidence and apply laws in contravention of the right to religious freedom in order to

---

82 Id.
84 Id.
85 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.
86 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.”
87 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.
88 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. While serving administrative probation sentences, religious believers remain in conditions comparable to house arrest.

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

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. As a threshold requirement, the government mandates that religious organizations obtain official recognition to operate. Moreover, Vietnam limits religious activities by officially-recognized churches whose governing boards are approved and controlled by the government. When the government withholds official recognition, religious organizations face severe impediments if they choose to practice their faith. Moreover, religious bodies are confined to spiritual matters, and are restricted in other activities such as charitable programs.

89 See 2004 Report, supra note 79.
90 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).
91 See 2004 Report, supra note 79.
92 Id.
93 See infra Part IV.
95 2004 Report, supra note 79.
96 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").
97 See 2004 Report, supra note 79.
98 Id.
The United Nations,99 foreign governments,100 and human rights groups101 have expressed concerns regarding Vietnam’s policy toward freedom of religion. Nonetheless, the government continues to significantly restrict public religious activities by unrecognized groups,102 and believers continue to experience harassment when operating without legal recognition.103 Examples of persecution based on religious belief and impediments to freedom of religion include arbitrary detention and imprisonment of religious leaders and followers,104 forced renunciations of faith,105 acts of violence or reprisal,106 and heavy governmental control of religious activities and organizations.107 While it is not possible to determine the exact number of religious detainees,108 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 1981.109 In its place, the Vietnamese Buddhist Sangha


103 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).

104 See generally 2004 Report, supra note 79.

105 Id.

106 Id.

107 Id.

108 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.

The government requires all Buddhist monks to be approved by and work under the officially recognized VBS. \(^{111}\) Moreover, the government influenced the selection of the leadership of the VBS, excluding many members of the UBCV. \(^{112}\)

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. \(^{113}\) Since that time, Quang has been kept under effective house arrest without charge or trial. \(^{114}\) 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. \(^{115}\) Heavy international criticism in 2003 prompted the Vietnamese government to release Do from a 2001 probationary house arrest two months earlier than expected. \(^{116}\) However, human rights groups met Do's release with skepticism, \(^{117}\) characterizing it as an attempt by the government to deflect external criticism over abuses of religious freedom. \(^{118}\)

This skepticism appears well-founded, as restrictions on the UBCV have intensified. Following an unauthorized organizational meeting in 2003, \(^{119}\) Vietnam placed many leaders of the UBCV under house arrest. \(^{120}\)

---

\(^{110}\) Id.

\(^{111}\) 2004 Report, supra note 79.

\(^{112}\) Id.


\(^{114}\) 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).


\(^{116}\) 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).


\(^{118}\) 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).

and initiated a renewed crackdown on the UBCV. 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. In response to international queries, Vietnamese officials denied forcing monks to boycott the meeting, and reiterated that the UBCV no longer exists.

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. Vietnamese authorities have harassed Protestants in the Central Highlands since 1975, sometimes forcing them to renounce Christianity and perform traditional rites such as drinking rice wine mixed with animal blood. In 2001, the Vietnamese government ordered almost all unrecognized Protestant congregations in the Central Highlands to close. In April 2001, approximately 20,000 ethnic minorities from the Central Highlands protested the restrictions on their faith. Over 1,000 ethnic minorities then sought asylum in Cambodia after security forces forcibly put down their protests. The asylum seekers emerged under U.N. protection and recounted incidents of police repression following the demonstrations.

---

120 See 2004 Report, supra note 79.
121 Ben Rowse, Head of Outlawed Vietnamese Buddhist Says Repression Will Never Work, AGENCÉ FRANCE PRESSE, Jan. 23, 2004; see also Patriarch of Outlawed Vietnamese Buddhist Church Gravely Ill, AGENCÉ 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).
122 US Ambassador Meets Vietnamese Buddhist Dissident, AGENCÉ FRANCE PRESSE, Apr. 28, 2004; see also Prominent Buddhist Dissident Slams Vietnam for Arbitrary Detention, AGENCÉ FRANCE PRESSE, Oct. 28, 2004 (Vietnam’s Foreign Ministry Spokesman contends that the monks were not arrested).
123 See Lauras, supra note 113.
124 See Record IV, supra note 48, at H5416 (statement of Rep. Smith).
125 Id. at H5423 (statement of Rep. Ballenger).
126 2004 Report, supra note 79.
127 Id.
129 Tension Remains in Vietnam Central Highlands After Protests, AGENCÉ 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).
130 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. Following the protests, minority Protestants appealed for international assistance after seeking refuge in Cambodia. In response, the Vietnamese government blocked foreign observers from the Central Highlands area for two weeks. Even after the area was reopened, strict oversight by the government made the honest assessment of the state of affairs extremely difficult to obtain. 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.

To date, the majority of the several hundred Protestant house-churches closed in 2001 remain officially closed and unrecognized. 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. Local officials have also harassed unregistered Protestants by forcing church gatherings to cease and demolishing or closing house-churches. 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.

2.

131 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).


134 2004 Report, supra note 79.


136 Id.

137 Id.

138 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." 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. 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. In accordance with this policy, the United States normalized relations with Vietnam in 1995 and agreed to the BTA in 2000. Since that time, engagement has failed to improve the human rights situation in Vietnam, and religious rights have degenerated. Attempts at diplomacy have also failed to achieve substantive policy improvements for religious freedom. 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. As it stands, the United States policy of engagement has failed in both achieving substantive improvements and protecting religious rights in Vietnam.

140 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"); Forcse, 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. Hass & Meghan L. O'Sullivan eds., 2000) (defining engagement as the use of incentives alongside foreign policy to persuade governments to change).
141 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).
144 See infra Part V.C.
145 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."146 There is incontrovertible evidence that since the passage of the BTA, the Vietnamese government continues to pursue suppressive religious policies.147 Freedom Now148 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."149 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.150 Despite promises that the BTA and increased trade would result in improvements,151 the state of religious freedom has deteriorated in recent years.152 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

146 Genser, Scandal, supra note 34.
147 Id. See also Congressional Caucus Testimony, supra note 37 (listing the pattern of human rights abuses since the passage of the BTA).
148 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).
149 Vietnam Lacking in Human Rights, BATON ROUGE ADVOCATE, Sept. 3, 2004, at 1OB.
150 U.S. DEP’T OF STATE, supra note 143.
Highlands, release political prisoners and authorize return visits by U.N. Special Rapporteur, but Vietnam made few concrete commitments. 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. 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.

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. These attempts included: (1) visits from the United States Ambassador at Large for International Religious Freedom to Vietnam to press for greater religious freedom; (2) three visits to Vietnam from the Office of International Religious Freedom; (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; (4) regularly raised concerns with Vietnamese leaders by Embassy and Consulate officials regarding religious freedom concerns; (5) discussion of religious rights issues by the Assistant Secretary for East Asia and Pacific Affairs at the annual bilateral political dialogue in Hanoi; and (6) regular meetings with religious leaders and travels throughout Vietnam to investigate reports of religious freedom violations by the Embassy and Consulates.

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. In spite of these isolated successes, the Report

---

154 2004 Report, supra note 79.  
155 Id.  
156 Id.  
157 Id.  
159 Id.  
160 Id.  
161 Id.  
162 Id.  
163 See 2004 Report, supra note 79.
declared Vietnam one of the world's worst offenders of religious freedom, and downgraded Vietnam's status to a CPC. 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. Secretary Powell noted that existing partnerships are "one of the best methods... to encourage... friends to adopt tolerant practices." 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." 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. 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.

H.R. 2833 received an overwhelming 410-1 vote in passing the House, but was subsequently blocked in the Senate. Senator John

---

165 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).
166 Asia Dominates U.S. Blacklist of Top Religious Freedom Violators, supra note 45.
167 Id.
168 Record IV, supra note 48, at H5417 (statement of Rep. Davis).
169 See H.R. 2833, supra note 48, sec. 201(a).
170 Id. sec. 201(b)(3)
171 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. 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"), essentially the same legislation as H.R. 2833. 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. The IRFA

---

172 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).


174 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).

175 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).

176 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. 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. By implementing IRFA in accordance with the tenets of responsible engagement, the United States would follow the IRFA mandate of action. 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.


The IRFA mandates that the United States designate severe violators of religious freedom as CPCs. Following such a designation, the United...
States must take further actions to oppose the violation. While the United States has taken the first step in recognizing Vietnam as a CPC, 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.

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. 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. Accordingly, the IRFA mandates specific action in opposition to abuses, categorizing offenses as either "violations of religious freedom" or "particularly severe violations of religious freedom." While the IRFA allows some discretion in choosing how the United States will react to a violation, some action must be taken unless the requirement is waived by the U.S. President.

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. 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.

The IRFA also mandates opposition to "severe violations of religious freedom"
freedom that are or have been engaged in or tolerated by the governments of foreign countries." For particularly severe violations, defined as engaging in or tolerating "ongoing, systematic, and egregious" violations of religious freedom, the IRFA first requires CPC designation. 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. Economic actions may not be taken until after consultations with the offending government, humanitarian organizations, and interested United States parties. 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. Additionally, a statement of policy options and a description of multilateral negotiations must be submitted prior to acting. 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. 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. 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. 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. CPC designation alone, however, is unlikely to
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. 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. 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.” In fact, the IRFA recognized this reality and mandated further action by the United States toward severe violators following CPC designation. 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, the President must choose one of the economic sanctions provided. 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. Those opposing this position argue that economic engagement and liberalization increase many of the human rights violations that they are...

---

203 Institute on Religion and Public Policy, supra note 182.
204 Id.
205 Id.
206 See 22 U.S.C. §§ 6442(b)-(c).
207 Id. §§ 6442(c)(2), 6445(c), and 6447.
208 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).
209 Forcuse, supra note 8, at 1.
intended to cure.\textsuperscript{210} Advocates of economic sanctions believe that given lax international enforcement,\textsuperscript{211} unilateral actions may be the only way to achieve improvements.\textsuperscript{212} Moreover, sanctions may also aid in the development of international human rights norms by bringing public attention to violations.\textsuperscript{213} 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.\textsuperscript{214} In light of this debate, the more nuanced approach of responsible engagement has been promulgated by some commentators.\textsuperscript{215}

Responsible engagement recognizes that blind economic investment alone may not be appropriate in all circumstances, particularly where "economic engagement will acerbate repressive regimes and human suffering" by contributing indirect support for the violations that are sought to be improved.\textsuperscript{216} As such, responsible engagement requires targeted economic sanctions that affect the offending government, while minimizing the adverse impact on innocent citizens.\textsuperscript{217} 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.\textsuperscript{218}

\textsuperscript{210} Id.
\textsuperscript{212} Kaplan, supra note 211, at 1912.
\textsuperscript{214} 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).
\textsuperscript{215} Forcise, supra note 8, at 3.
\textsuperscript{216} See id. at 11.
\textsuperscript{217} Id. at 32-38.
\textsuperscript{218} 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. 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. 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. 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. While the IRFA only requires that humanitarian aid must continue, 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. 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.

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

219 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).

220 See Forcese, supra note 8, at 38.


222 See Forcese, supra note 8, at 3, 32-8.


224 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).

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 or 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.