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**Beyond diplomacy: can dialogue overtake history, ideological, and power
distortions? The case of human rights conversations
between the U.S. and Vietnam**

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Abstract

This thesis is an empirical study of a diplomatic dialogue on human rights between the U.S. and Vietnam. The two countries represent an interesting duality of asymmetric power relation and human rights dichotomies: superpower/much less powerful country, developed/developing, capitalist/socialist, and Western/Asian among others. The theoretical frameworks for the study are the two models of a genuine dialogue drawn from Gadamer's philosophical hermeneutics and Habermas's theory of communicative action. Applying the conditions for, and the indications of, mutual understanding of the models as criteria, the thesis explores the nature and extent of, and identifies the obstacles to, mutual understanding on human rights in the dialogue. Its findings are that the Vietnamese and American interlocutors failed to narrow the gap of human rights differences due to their evasive, reserved and disengaging attitudes and use of strategic actions in the dialogue. Underlying these attitudes and actions are the impacts of ethnocentrism, ongoing suspicions due to war legacies, and differences in power and development levels. These factors have distorted the interlocutors' perceptions of the other side's justifications for its human rights position, and blinded them from appreciating any possible valid rationality in the others' arguments. This exploration of the dynamics behind the process of understanding supports the view that it is not the diplomatic framework and the incommensurabilities of different human rights understandings that obstruct the bridging of differences on human rights. Accordingly, any attempts to narrow human rights differences must pay due attention to the contextual factors of ethnocentrism, power asymmetry, and distrust among the interlocutors. In this regard, the thesis supports Charles Taylor's dialogical approach of an overlapping consensus. Countries may agree on the norms stipulated in certain international human rights conventions of which they are signatories, despite their profound differences on those norms justifications. This consensus serves as the starting point for them to discuss and reach mutual understanding on particular human rights issues. What count as rational by all involving parties from such discussion constitute small but solid steps towards truly universal human rights values.

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This thesis is composed of my original work, and contains no material previously published or written by another person except where due reference has been made in the text. I have clearly stated the contribution by others to jointly-authored works that I have included in my thesis.

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Human rights, inter-cultural dialogue, American human rights understanding, Vietnamese human rights understanding, Gadamer's philosophical hermeneutics, Habermas's theory of communicative action, diplomacy.

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Abbreviations

A/S	Assistant Secretary
CPV	Communist Party of Vietnam
DG	Director General
GVN	government of Vietnam
HRD	human rights dialogue
PH	philosophical hermeneutics
TCA	theory of communicative action
U.S.	United States
USG	U.S. government

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Introduction

“All men are created equal. They are endowed by their Creator with certain inalienable rights; among these are Life, Liberty, and the pursuit of Happiness.” This immortal statement was made in the Declaration of Independence of the United States of America in 1776. In a broader sense, this means: All the peoples on the earth are equal from birth, all the peoples have a right to live, to be happy and free...Those are undeniable truths.

Vietnamese President Hồ Chí Minh in 1945¹

[Our socialist democracy is] total difference in essence to and tens of thousand times higher than capitalist democracy.

Vietnamese Vice-President Nguyễn Thị Doan in 2011²

As a desk official of U.S. - Vietnam relations in an international relations think-tank of Vietnam, I have found it fascinating to follow the human rights dimension in this bilateral relationship. Human rights has been said to hinder improvement in American and Vietnamese relations. To settle this problem, in 1994 one year prior to the normalisation of the relationship, the two sides organised the first annual dialogue on human rights. Despite some hiatus along the years, so far up to eighteen rounds of dialogues have been organised.³ After

¹ The first line of the Declaration of Independence of the Republic Democratic of Vietnam written by President Ho Chi Minh. It is noteworthy that he made three intentional changes from the American text: "in a broader sense", the order between liberty and happiness was changed with happiness taking the priority over liberty; the expansion from "all men" to "all people"; and the drop of the phrase "we hold these truths to be self-evident". The original text in Vietnamese can be found on,

http://www.cpv.org.vn/cpv/Modules/News/NewsDetail.aspx?co_id=30196&cn_id=119997#, accessed on September 26, 2011. For a detailed account of this analysis, refer to the article in Vietnamese by Duong Trung Quoc, a famous Vietnamese historian and a Vietnam's National Assembly Deputy (MPs), on <http://nld.com.vn/201069p0c1002/tuyen-ngon-doc-lap-va-nhung-tu-tuong-mang-tinh-thoi-dai.htm>, accessed on September 26, 2011. The question is, given these intentional changes, did Ho Chi Minh and Thomas Jefferson conceptualise these human rights, i.e. "liberty," in the same way? Consequently, do the Vietnamese and American officials conceptualise the same thing when they talk about human rights in their dialogues?

² Nguyễn Thị Doan, "The Role of the Party in the Vietnam revolution in the renewal time," *Nhân Dân* [The People Newspaper], 5 November 2011, this can be found on <http://www.baomoi.com/Vai-tro-lanh-dao-cua-Dang-doi-voi-cach-mang-Viet-Nam-trong-thoi-ky-moi/122/7298483.epi>, accessed 21 April 2014.

³ After the dialogue in 2002, the U.S. decided to suspend human rights dialogue in the three following years due to "inadequate progress on human rights concerns" in Vietnam. Supporting Human Rights and Democracy: The U.S. Record 2003 – 2004, this can be found on <http://www.state.gov/j/drl/rls/shrd/2003/31020.htm>, accessed 15 April 2014. The two sides agreed to reopen annual human rights dialogue after Vietnamese Prime Minister Phan Van Khai's visit to the U.S. in 2005.

each dialogue, both sides have described their dialogues in positive terms, such as constructive, candid, open and conducive to narrowing their human rights differences.⁴

However, after more than two decades of exchanging views on human rights and satisfaction with the current human rights dialogues, human rights has remained a thorny, high-profile and contested issue raised in almost all of their official meetings. Mark Manyin observed in 2013 that although their disagreements over human rights have not prevented the two sides from improving relations, the issue remains “the biggest thorn in the side of the relationship.”⁵ Accordingly, disagreements over human rights between the U.S. and Vietnam will continue to “create a ceiling for the speed and extent” of the improvements in the bilateral relations.⁶ Besides, numerous reports by non-governmental organisations, Vietnamese overseas organisations and others continue to criticise the worsening human rights situation in Vietnam.⁷ This reality casts doubts to the positive assessments mentioned above and raises question about the true nature and outcomes of the dialogues. Given the public satisfaction of both sides with the current mechanism, and the lack of an independent assessment of those dialogues, it is unlikely that the current exchanges on human rights will change much in the short to mid-term.

This is problematic for a number of concerned parties. Advocates for greater freedom and democracy in the U.S. and Vietnam may expect greater human rights reforms in Vietnam after such dialogues. As for the Vietnamese people, the question is whether such dialogues help to improve their rights and prevent them to be victimised in the political games between the two states. In other words, would the release or arrest of certain Vietnamese whom the U.S. calls political dissidents and Vietnam law breakers continue to depend on the trade-offs of political interests by both sides? For example, the U.S. put pressure on Vietnam to release certain Vietnamese “dissidents” in exchange for the U.S. dropping its restriction of exporting

⁴ See for example Vietnamese spokesperson on the 18th dialogue on <http://vietnamconsulate-ny.org/news/2014/05/regular-press-briefing-mofas-spokesperson-le-hai-binh-may-15-2014>, accessed 15 Jun. 14. For an interview with the head of American delegation Tom Malinowski after the latest dialogue, see <http://www.youtube.com/watch?v=wZyZoyYITwE>, accessed 15 Jun. 14. The interview is in Vietnamese.

⁵ Manyin, Mark E., “U.S. – Vietnam Relations in 2013: Current Issues and Implications for U.S. policy,” *Congressional Research Service*, this can be found on <http://fas.org/sgp/crs/row/R40208.pdf>, accessed 22 July 2014.

⁶ Ibid. Testifying before the House Committee on Foreign Affairs Subcommittee on Asia and the Pacific, Acting Assistant Secretary, Bureau of East Asian and Pacific Affairs Joseph Yun stated on June 5, 2013 that, “We have underscored with the Vietnamese leadership that the American people will not support a dramatic upgrading of our bilateral ties without demonstrable progress on human rights.” This can be found on <http://www.state.gov/p/eap/rls/rm/2013/06/210297.htm>, accessed 24 July 2014.

⁷ According to Human Rights Watch, “The human rights situation in Vietnam deteriorated significantly in 2013, worsening a trend evident for several years.” This can be found on <http://www.hrw.org/world-report/2014/country-chapters/vietnam>, accessed 23 July, 2014.

non-lethal weapons to Vietnam or concluding negotiations on trans-pacific partnership agreement with Vietnam.⁸ The Vietnamese government, as some human rights advocates in the U.S. charge, feel free to arrest or release those people as political leverages in its dealing with the U.S. Moreover, have those dialogues, as a kind of cultural exchanges, enriched the values and understandings of both the American and Vietnamese people? And finally for those who want to see a stronger U.S. – Vietnam relation that evolves along a mutually agreeable and beneficial line, it is important to ask whether and how this “ceiling” can be removed.

Searching for solutions to this puzzle motivated me to write this thesis. Its core research question is, “Can diplomatic dialogues narrow the differences on human rights understanding between Vietnam and the U.S.?”

To answer this question, it is necessary to investigate the following questions:

- In which ways do Vietnam and the U.S. respectively understand the concept of human rights?
- What obstacles to mutual understanding are encountered by the American and Vietnamese diplomats?
- Can these obstacles be overcome within a diplomatic framework, and if so, how?

The remainder of this Introduction is divided into four sections. The first section reviews the human rights debates in international politics that share certain similarities with the U.S. – Vietnam human rights encounter. The U.S. and Vietnam human rights dialogue can be said to represent the debates between the developed North and the developing South, the capitalist camp and the socialist camp, and the proponents and critics of the “Asian values.” A brief survey of the arguments raised in those debates and of the factors that determined their outcomes is helpful for answering the research questions. If certain arguments by the Americans and the Vietnamese echo those preceding debates, does this mean that U.S. - Vietnam dialogues will share the same outcomes and determining factors of the latter? The second section presents various scholarly attempts to bridge the differences on human rights. Their different approaches are suggestive to possible paths for identifying criteria of genuine dialogue. Through an empirical analysis of a particular U.S. – Vietnam human rights dialogue,

⁸ In the words of Joseph Yun, “I would like to emphasize that our concern for human rights factors [reaches] into all aspects of our policy approach and engagement with Vietnam...[and] We regularly engage Vietnamese officials to emphasize that building a vibrant, innovative economy requires allowing people the freedom to think, create, and take full advantage of the trade and investment ecosystem that TPP [trans-pacific partnership] will afford.” See Note 6 above for the context and source of this statement.

the satisfactions or failures to meet these criteria will shed light upon the nature of the dialogue and the obstacles to their mutual understanding on human rights. The third section discusses the nature and purposes of diplomacy, as the U.S. – Vietnam human rights dialogues have been conducted within official diplomatic framework. The possible diplomatic enabling or impeding factors to mutual understanding are discussed in this section. The fourth section is a detailed chapters outline.

I. The human rights debates in international politics

1. The North-South debates⁹

Developing countries challenge Western human rights understanding on a number of issues. First, they argue that social and economic rights are more important than civil and political rights and constitute a prerequisite for a meaningful realisation of the latter rights. In 1976, for example, an Iranian delegate argued at the UN General Assembly that "it must be admitted that there was a hierarchy of rights and that respect for psychological and political rights was frequently almost unattainable as long as the realization of material rights was not guaranteed."¹⁰ Likewise, a Pakistani representative claimed that "once basic human needs had been met," then "civil and political liberties which normally represented a higher standard in socio-political development, could best be promoted."¹¹ Second, developing countries consider the right to development an inherent and fundamental human rights, and the third challenge is the South's insistence on the right to self-determination. These two rights were (and still are) of utmost importance for those countries that had just regained their independence and were underdeveloped. As R.J. Vincent observed in 1986, "a widespread and often repeated argument of the Third World" is that without this latter right, "the rights of individual within national groups could mean very little."¹² This is because "[i]ndividuals could enjoy civil and political rights only if their community did not suffer foreign oppression. Self-determination was the precondition for the enjoyment of all other human rights."¹³ This self-determination right, R. J. Vincent argues, connects with the calls for eliminating all racial discrimination, consolidates the stress on social and economic rights,

⁹ In this thesis, the North is designated as developed countries, and the South developing countries.

¹⁰ In Jack Donnelly, "Recent trend in UN human rights activity: description and polemic," *International Organization*, 35, 4, Autumn 1981, p. 638.

¹¹ A statement by the Pakistani delegate at the UN National Assembly, cited in *Ibid.*, p. 644.

¹² R. J. Vincent, *op. cit.*, p. 80.

¹³ Antonio Cassese, "The Self-Determination of Peoples," in Louis Henkin (ed.), *The International Bill of Rights* (New York, Columbia University Press, 1981), pp. 92-3, cited in *Ibid.*

and reflects a shift from internal self-determination (the right to elect political representative) to external self-determination. This shift, in his words, reflects “the ascendancy of socialist and Third World conceptions of the right of self-determination over those of Western countries at the United Nations.”¹⁴

In the 1960s and the 1970s, developing countries successfully gained official recognitions of these human rights understandings. The Declaration on the Granting of Independence to Colonial Countries and Peoples adopted by the General Assembly in 1960 asserts that, “the subjection of people to alien subjugation, domination and exploitation constituted a denial of fundamental human rights, was contrary to the Charter of the United Nations, and was an impediment to the promotion of world peace and cooperation.”¹⁵ The General Assembly resolution 32/130 of 16 December 1977 recognises that, “the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights.”¹⁶ This line was also reiterated in the Proclamation of the International Conference of Human Rights held in Teheran in 1986, demonstrating the continuous priority for collective economic and social rights over political and civil rights.¹⁷ Also in that year, the General Assembly adopted the Declaration on the right to development which confirms this right as an inalienable human rights.”¹⁸ These developments prompted proponents of universalism like Donnelly to lament that “[t]oday in the UN little attention is given to any rights other than economic, social and cultural rights.... [and] in general civil and political rights today receive little more attention in the UN than economic and social rights received twenty years ago” and this “actually represent[s] an ideological reinterpretation of the previously

¹⁴ Ibid., p. 81.

¹⁵ “Therefore, lack of preparedness for independence should never serve as a pretext for delaying independence; and immediate steps should be taken to transfer all powers to the peoples of non-self-governing territories.” “Declaration on the granting of independence to colonial countries and peoples”, UN Resolution 1514 (XV) 947th plenary meeting, 14 December 1960; this document can be found on <http://www.un.org/documents/ga/res/15/ares15.htm>. The right to self-determination is also reaffirmed in the Vienna Declaration and Programme of Action, adopted at the United Nations World Conference on Human Rights in Vienna Austria World Conference in June 1993; this document can be found on <http://www.un.org/rights/dpi1627e.htm>, accessed on September 28, 2011. The right to self-determination is argued to even take precedence over the right to territorial integrity; see Susan Marks, “Self-Determination and Peoples’ Rights,” *King’s College Law Journal*, 2 K.C.L.J. (1991-1992), pp. 87-92. This document can be found on http://heinonline.org/HOL/Page?handle=hein.journals/kingsclj2&div=8&g_sent=1&collection=journals, accessed on September 28, 2011.

¹⁶ Its full name is, “Alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms” and its code A/RES/32/130, this can be found on <http://www.un.org/documents/ga/res/32/ares32r130.pdf>, accessed on September 28, 2011.

¹⁷ It proclaims that “since human rights and fundamental freedoms are indivisible, the full realization of civil and political rights without the enjoyment of economic, social, and cultural rights, is impossible.” E/CN-4/SR.1314, cited in Jack Donnelly, “Recent trend in UN ...,” p. 638.

¹⁸ Ramcharan, Bertrand G., *Contemporary human rights ideas*, New York, NY: Routledge, 2008, p. 90.

authoritative statements of principles contained in the Universal Declaration and the Covenants” and the United Nations’ voice in human rights “is not only limited in range, but shrill, and quite disturbing.”¹⁹

The question is how these views came to be so predominant. Their philosophical background, according to R. J. Vincent, is the ‘basic need’ doctrine that argues for the priority of what is necessary for human survival, such as food, drink, safety, love, esteem, and self-actualisation over classic human rights. This doctrine, he argues, “might have no greater appeal to Third World countries than Western theories of human rights.”²⁰ However, the doctrine were more appealing to those countries, as mentioned above, that had just regained their independence and were struggling with poverty and underdevelopment. As the North was and still is in majority in the UN General Assembly, these ideas dominated the debate about human rights “at the United Nations and elsewhere;” accordingly “history of human rights doctrine at the United Nations reflects *the change in the balance of power*” in the General Assembly from the North to the South.²¹ This power struggle was intertwined with the competition for influence over the South between the capitalist and socialist camps; both Western politicians and scholars proposed solutions to draw the newly dependent countries to their camps. A French minister wrote in *Foreign Policy* in 1982 that any responsible policy maker must address the fact that “the true ground for competition between East and West is therefore in the South”²² while R. J. Vincent suggested an “appealing policy” for the West to “outflank the Soviet Union in the Third World by meeting Southern claims.”²³ With the dependence of the debate outcome on power struggle, the North-South debate has not yet settled; and the two sides still differ on their interpretations on the right to development.²⁴

2. *The East-West debate*²⁵

¹⁹ Jack Donnelly, “Recent trend in UN ...,” p. 635 and p. 655. For a criticism against this assessment of UN roles, see Philip Alston, “The Alleged Demise of Political Human Rights at the UN: A Reply to Donnelly,” *International Organization*, Vol. 37, No. 3 (Summer, 1983), pp. 537-546.

²⁰ R. J. Vincent, *op. cit.*, p. 90 and p. 88.

²¹ *Ibid.*, p. 79 and p. 83. Italics added.

²² Jean-Pierre Cot, “Winning East-West in North-South,” *Foreign Policy*, No. 46 (Spring, 1982), p. 5.

²³ R. J. Vincent, *op. cit.*, p. 91.

²⁴ Ramcharan, Bertrand G., *op. cit.*, p.86-88. At the 1993 World Conference on human rights in Vienna, the rights to development and self-determination were confirmed as human rights. For a comprehensive account of the conference, See Kevin Boyle, “Stock-taking on Human Rights: The World Conference on Human Rights, Vienna 1993,” *Political Studies*, 1995, XLIII, 79-95.

²⁵ In this thesis, the East-West debate is understood as the debate between socialist countries and Western liberal democracies.

The debate between the socialist and capitalist sides can be exemplified as between the U.S. and the former Soviet Union. The two countries differed in almost every aspect of human rights: the origin, the subjects, the contents, and the priorities of human rights as well as the roles of the state in matters regarding human rights. While there is not enough space here to canvass the whole debate, some of these differences are reviewed.²⁶ On rights origin, for example, the Americans hold that human rights are deeply rooted in natural law; they are self-evident, inherent, and universal.²⁷ Whereas in Marxist-Leninist doctrine, human rights are conferred, guaranteed and protected by the state through law, a law that is presumed to be the product of underlying economic relationships and used by the economic dominant class as a means to maintain its power. Thus, the individual has no *inherent* rights; outside the state, human rights is "a mere abstraction, an empty illusion easily created but just as easily dispelled."²⁸ Moreover, as in the former Soviet Union the dominant class was deemed to be the workers (the proletariat), human rights were presented there as the product of the collective will of the people.²⁹ As for the government's roles, as R. J. Vincent relates, in Marxist-Leninist doctrine the state is viewed as "the buttress of liberty" while in the West it is viewed as "the threat to freedom against which individuals must constantly be on their guard."³⁰

In regards to the priorities of rights, the Soviet Constitution lists the right to labour as first among basic rights and the subsequent rights are rest, free health care, housing, education... which are social and economic rights. As Mary Hawkesworth notes, only after these rights are guaranteed, does the Constitution move to "freedom of speech, of the press, of assembly, of mass meetings and of street procession and demonstration." However, these latter rights are contingent; they must be "in accordance with the working people's interests and for purposes of strengthening the socialist system" and "may not be used to the detriment of the working people interest" or "to weaken the socialist system."³¹ Moreover, interpretation of these contingencies were left to the discretion of the Soviet Communist Party. In sharp contrast, the U.S. Bills of Rights contains none of the social and economic rights; for

²⁶ For a detailed analysis of the differences, see R. J. Vincent, *op. cit.*, Chapter 4, also an analysis of the differences from a legal perspective, see Richard Dean, "Beyond Helsinki: The Soviet View of Human Rights in International Law," *Virginia Journal of International Law*, Vol.21:1, 1980-1981, pp. 55-95.

²⁷ Chapter Three of this thesis discusses American understandings of human rights in details.

²⁸ Statement of Andrei Vy Shinsky, 3 (1) U.N. Doc. A/119 (1948), cited in Richard Dean, *op. cit.*, p. 58.

²⁹ *Ibid.*, p. 59.

³⁰ R. J. Vincent, *op. cit.*, p. 64.

³¹ Mary Hawkesworth, "Ideological Immunity: the Soviet Response to human rights criticism," *Universal Human Rights*, Vol. 2, Issue: 1, 01/1980, p. 73.

Americans, these are merely ideals for which man can strive, whereas only civil and political rights are true rights.³²

Underlying these differences are philosophical disputes between Marxism-Leninism and natural liberal rights theory.³³ For example, the social contract theory in the West holds that individuals traded off parts of their inherent rights in exchange for order and protection from a state. Thus, liberty is the freedom to do whatever one wishes to as long as it does not infringe upon others' legitimate rights. Viewing society through the lens of class struggle, the Soviets held that liberty was freedom from exploitation and oppression and argued that workers' freedom to choose between working in sweatshops or starving to death is a masquerade for capitalist's economic exploitation.³⁴ From a legal perspective Richard Dean concludes that the two human rights philosophies are irreconcilable, while Mary Hawkesworth holds that the ideological differences led to immunity to human rights criticism and interventions.³⁵

In practice, the debate on human rights between the two superpowers was illustrated by the debates over the dissidents in the Soviet Union and the implementation of the Final Act of Helsinki Conference on Security and Cooperation in Europe after 1975. While the West viewed the dissidents as "outstandingly courageous individuals on whose qualities the possibility of progress in the Soviet Union depends," the Soviet officials held that these were those who surrendered to Western paymasters and their "self-interested egoism ... allied them with anti-socialist interests outside the Soviet Union, from which their protest really sprang."³⁶ With this conviction, they regarded the Western human rights campaign as "a conscious incitement of mistrust and hostility, the falsification of reality or, least of all, subversive activity;" in other words, a subversive "psychological warfare." It should be noted that fears for subversion were not only prevalent in the socialist camp, as the Soviet Union also called for the unity of the proletariat and workers worldwide to topple down the exploiters - the capitalists in the West. However, in their interactions on human rights these suspicions were not addressed. As Vincent observes, "each side, especially when represented

³² Richard Dean, *op. cit.*, p. 62.

³³ It should be noted, however, that the differences on human rights understanding between the former Soviet Union and the U.S. are not necessarily identical to the differences between Marxism-Leninism and liberal natural rights theory. David Lane argues that Soviet's model of rights has "a particular correspondence with Russian culture" and its impacts on other socialist countries also varies due to internal factors, see David Lane, "Human Rights Under State Socialism," *Political Studies*, 1984, Vol. 32, pp. 349-368.

³⁴ For a good account of human rights and Soviet ideology, see Mary Hawkesworth, *op. cit.*, pp. 69-74.

³⁵ Richard Dean, *op. cit.*, p. 92 and Mary Hawkesworth, *op. cit.*

³⁶ In R.J. Vincent, *op. cit.*, p. 65.

by its chief advocate the United States, or the Soviet Union, seeks to persuade the other, by various means, to adopt the better course.”³⁷ If more constructive dialogues are not to be built, Richard Dean warns, subsequent Helsinki follow-up conferences would be “little more than biennial shouting matches as each side seeks to justify its position on human rights at the expense of the other.”³⁸ In fact, eventually such shouting matches had stopped altogether, as one side of the dialogue imploded after the collapse of socialism in the former Soviet Union and Europe.

3. The “Asian values” debate

Proponents of the “Asian values” hold that Western values inherent in human rights are not compatible and suitable to Asian societies as reflected in Asian cultural essence. For example, the individualistic focus and antagonistic form of Western rights concept contradict the communitarianism and harmony promoted in Confucian political thought. Given the need for economic development, they deem that it is necessary to focus on meeting this need, i.e. poverty eradication, even at the expense of temporarily suspending civil and political rights. In a more general term, “particular rights in particular contexts can and should be curbed for particular economic or political purposes.”³⁹ Besides, the promotion of Western “universal” rights is charged “as essentially a means of asserting Western cultural hegemony and so undermining the national competence, sovereignty and self-determination of the state in regard to domestic conflicts.”⁴⁰ The debate was initially inspired by the leaders of successful economies in the early 1990s, most strongly by Singaporean and Malaysian Prime Ministers Lee Kuan Yew and Mahathir Mohamad, and it reached a regional consensus in the Bangkok Declaration in 1993 that preceded the UN Conference on human rights in Vienna in the same year.⁴¹

³⁷ Ibid., p. 69.

³⁸ Richard Dean, *op. cit.*, p. 92.

³⁹ Joanne R. Bauer and Daniel A. Bell, “Introduction,” in Joanne R. Bauer and Daniel A. Bell (eds.), *The East Asian challenge for human rights*, Cambridge, UK, New York: Cambridge University Press, p. 8.

⁴⁰ M. Anne Brown, *Human rights and the borders of suffering: the promotion of human rights in international politics*, New York, Manchester: Manchester University Press, 2002, p. 76.

⁴¹ Lee Kuan Yew claimed in 1991 that Asians have “little doubt that a society with communitarian values where the interests of society take precedence over that of the individual suits them better than the individualism of America.” *International Herald Tribune*, November 9-10, 1991, cited in Joanne R. Bauer and Daniel A. Bell, *op. cit.*, p. 6. On another occasion, he held that “[a]s prime minister of Singapore, my first task was to lift my country out of the degradation that poverty, ignorance and disease had wrought. Since it was dire poverty that made for such a low priority given to human life, all other things become secondary.” Nathan Gardels, “Interview with Lee Kuan Yew,” *New Perspective Quarterly*, Vol. 9, no. 1 (Winter 1992), cited in Ibid. Whereas in Washington in 1996 Mahathir openly “criticis[ed] claims to universal values as specifically Western

The critics of these “Asian values,” included most of the Western media, human rights NGOs, and prodemocracy academics. Kingsbury and Avonius observe that “[t]he great majority of scholars researching this issue” have challenged the Asian leaders’ interpretations of ‘Asian values’ and claimed that the latter had selectively interpreted those values for supporting “the political ambitions of authoritarian regimes” and “oppress[ing] the critical voices within the countries.”⁴² These criticisms challenge the advocates of “Asian values” on the latter’s authority and legitimacy in representing the essences of *their own values*.⁴³ The debate, however, slipped off public agenda after the East Asia economic crisis of 1997–1998 and the fact that Lee Kuan Yew himself seemed to abandon his advocacy.⁴⁴ For critics of “Asian values,” the collapse of a number of Asian economies demonstrated that “authoritarian rule had not guaranteed economic success after all.”⁴⁵ A Singaporean scholar observed that:

I think the real interests underpinning the debate .. are related to Asian economic success and confidence and Asia's continuing reaction to colonialism. I doubt very much if this debate would have even started, were late twentieth-century Asia nothing but a sea of poverty, degradation, and squalor ... [and] the fact that many Asians appear to be speaking from a position of strength; strength drawn not from the merits of intellectual arguments but from economic success.⁴⁶

Anthony Langlois seems to share this observation when he states that although it should not be thought that the “regional economic crisis has permanently ended the debate,” the Asian economic miracle has “acted as a moral and strategic high ground from which these positions

and assert[ed] that it was time for the West to respect Asian cultures as equal to their own.” Mahathir Mohamad, “Asian Values Debate” Speech at the 29th International General Meeting of the Pacific Basin Economic Council in Washington, 21 May, cited in Leena Avonius and Damien Kingsbury, “Introduction,” in Leena Avonius and Damien Kingsbury (eds.), *Human Rights in Asia: A Reassessment of the Asian Values Debates*, p. 4. For the full text of the Bangkok Declaration, see

http://www.hurights.or.jp/archives/other_documents/section1/1993/04/final-declaration-of-the-regional-meeting-for-asia-of-the-world-conference-on-human-rights.html, accessed on 26 May 2014.

⁴² Leena Avonius and Damien Kingsbury, *op. cit.*, pp. 7-8.

⁴³ For a comprehensive and detailed account of the “Asian values” debate that examines the arguments on both sides of the debate, see Anthony Langlois, *The Politics of Justice and Human Rights: Southeast Asia and Universalist Theory*, Cambridge University Press, 2001.

⁴⁴ Lee Kuan Yew later admitted that “British derived rule of law was most important to Singapore’s economic survival and that ‘family values sometimes’ led to cronyism.” *Ibid.*, p. 5. Mahathir, however, has continued to assert Asian values, see for example his arguments that democracy would breed violence and insecurity at <http://www.themalaysianinsider.com/malaysia/article/democracy-could-breed-violence-says-dr-m>, accessed 9 Jun. 14.

⁴⁵ Leena Avonius and Damien Kingsbury, *op. cit.*, p. 8.

⁴⁶ Kevin Y. L. Tan, in Carnegie Council for Ethics in International Affairs, “What Asians Think About the West’s Response to the Human Rights Debate *Human Rights Dialogue* 1.4 (Spring 1996): “Three Years After The Bangkok Declaration.” This can be found on http://www.carnegiecouncil.org/publications/archive/dialogue/1_04/articles/520.html;pf_printable, accessed on 9 June, 2014.

[of the Asian values proponents] could be argued.”⁴⁷ This observation points to the linkage between Asian economic successes and the assertion of distinctive values, with the dependence of the latter on the former. Viewing the “Asian values” debates in this light, it could be argued that it is the strength of material success, not of better arguments that helped to determine the emergence and dying out of the debate.

In retrospect, it is interesting to note that the previous debates on human rights in international politics had not concluded with a rational mutual understanding on the issue. Instead of being settled by the force of better arguments, the debates of the developed/developing, the capitalist/socialist, and the Western/Asian parties had been much influenced and determined by the balance of power, the conviction on the incommensurability of capitalist/socialist human rights understanding, and a position of strength, respectively. The First and Third worlds debate has been determined by the overwhelming majority of newly independent countries in the UN General Assembly. The East-West debate was between two opposing political regimes whose ultimate goal was to eliminate the other, and the debate and the “Asian values” one ended with the economic failures of the challengers to the liberal universal human rights.

As shown later throughout the thesis, in their human rights dialogues today, the Americans and the Vietnamese use a number of arguments similar to those in these historical debates. Does this mean that U.S. – Vietnam human rights dialogues will lead to similar ending? That is, that no consensus on human rights can be ultimately achieved via rational and better arguments and any human rights compromises are made in response to pressures and considerations of external factors. Moreover, does this mean that the balance of power and other material factors determine the nature and outcomes of the U.S. – Vietnam human rights dialogues? Is the incommensurability of their human rights approaches a decisive obstacle to their mutual understanding on the issue? And lastly, does this mean that their human rights differences can only be settled with the collapse of one side; in this case, the Vietnamese communist regime is the more likely candidate? Before discussing the diplomatic factors that may determine the outcome of a contemporary human rights dialogues, this text now turns to discuss scholars’ attempts to narrow differences on human rights.

⁴⁷ Anthony J. Langlois, *op. cit.*, p. 4.

II. The initiatives to bridge the differences on human rights understandings

Attempts to bridge differences can be roughly put into two categories: those that discern a number of commonalities as foundations for the universality of human rights and those that adopt a non-foundational and dialogical path. The foundational approaches carry with them unresolved charge of imposing values onto others. The dialogical approaches, however, seem to surmount this critics but lacks a specific model and empirical studies.

1. Foundational approaches

a. The liberal approaches by Donnelly and An-Na'im

The previously reviewed debates occurred after the United Nations' adoption of a Universal Declaration of Human Rights in 1948. As Tim Dunne and Nicholas J. Wheeler observe, with the preamble of the UN Charter, the Declaration "marked the beginnings of a full-blown global human rights regime ... [and] established a standard of civilised conduct which applies to all governments in the treatment of their citizens."⁴⁸ It can thus be argued that those three preceding debates, in a way, relate to controversies surrounding the contemporary human rights regime. These controversies on human rights understanding, especially those in the "Asian values" debate, would be explained by Donnelly and An-Na'im differently. For the former, although cross-cultural differences on human rights are undeniable, "it is the similarities across civilization that are more striking and important."⁴⁹ Donnelly claims that there is now "remarkable international normative consensus" on the list of such basic rights as 'the rights to life, liberty, security of the person; the guarantee of legal personality; and protections against slavery, arbitrary arrest, detention, or exile and inhuman or degrading treatment.'⁵⁰ With this abstract and general consensus, Donnelly holds that the differences relate to specific interpretations and implementations of these rights. For example, everyone has the right to work and protection from unemployment, but what counts as adequate protection from unemployment differs among civilizations.⁵¹ Donnelly thus may explain that

⁴⁸ In Tim Dunne and Nicholas J. Wheeler, "Introduction," in Tim Dunne and Nicholas J. Wheeler, (eds.), *Human Rights in Global Politics*, Cambridge: Cambridge University Press, 1999, p. 1.

⁴⁹ Jack Donnelly, *Universal Human Rights ...*, pp.103-6. See also Jack Donnelly, "Human Rights and the dialogue ...," p. 29.

⁵⁰ Jack Donnelly, *Universal Human Rights ...*, p. 23 and p. 122. Bhikhu Parekh, however, disagrees with this observation. He argues that "[t]here is no universal consensus on the evils of cruelty, torture, inhuman punishment, and many of the other evils" that minimum universalists rightly condemn." Parekh, in Tim Dunne and Nicholas J. Wheeler, *op. cit.*, p. 138.

⁵¹ Jack Donnelly "Human Rights and the dialogue ...," p. 24.

the differences on the “Asian values” debate are minor, whereas the similarities across cultures are sufficiently important for an agreement on the rights in the Declaration.⁵²

Therefore, Donnelly himself is “all in favour of a cross-cultural dialogue that will allow the incorporation of non-Western symbolism into the international human rights discourse, and make support for human rights more powerful in non-Western societies.”⁵³ Such incorporation, for Donnelly, would lead to a *relative* universality of human rights.

An-Na’im may explain that “Asian values” debate originated from the fact that Asian traditions, like many other cultural traditions have had little say in the formulation of those standards. Hence, for An-Na’im, the claim that all the existing standards already enjoy universal cultural legitimacy may be weak, “since people are more likely to observe normative propositions if they believe them to be sanctioned by their own culture.”⁵⁴ To address this lack or insufficiency of intercultural legitimacy of human rights standards, An-Na’im calls for both internal and cross-cultural dialogues on human rights.⁵⁵ Internal dialogue is possible, he argues, because a society’s views on the meaning and implications of cultural values and norms, and therefore the evaluation of legitimacy of human rights standards, are neither unified nor unchangeable. Rather, these views reflect and are the result of the internal struggle for control over the cultural sources and symbols of power between dominant and dominated groups or classes within that society. Thus, internal dialogue is encouraged to establish “enlightened perceptions and interpretations of cultural values and norms” “within the major traditions of the world.”⁵⁶

Once “an adequate level of legitimacy” is achieved within each tradition, cross-cultural legitimacy shall be constructed by human rights scholars and advocates from diverse cultural traditions. The goal of their dialogue is to agree “on the meaning, scope, and methods of implementing these rights.” Such an agreement is achievable, as An-Na’im believes that despite their diversity, “human beings and societies share certain fundamental interests,

⁵² In his own words, “Today ... the moral equality of all human beings is strongly endorsed by most leading comprehensive doctrines in all regions of the world. This convergence, both within and between civilizations, provides the foundation for a convergence on the rights of the Universal Declaration.” Jack Donnelly, “The Relative Universality of Human Rights,” *Human Rights Quarterly*, Volume 29, Number 2, May 2007, p. 291.

⁵³ Jack Donnelly, “Cultural Relativism and ...” *op. cit.*, pp. 418-9.

⁵⁴ An-na’im, Ahmed Abdullahi, “Toward a Cross-Cultural Approach to Defining International Standards of Human Rights,” in An-na’im, Ahmed Abdullahi (ed.), *Human Rights in Cross-Cultural Perspectives, A Quest for Consensus*, Philadelphia: University of Pennsylvania Press, 1992, pp. 20-1.

⁵⁵ An-na’im, Ahmed Abdullahi, “Toward a Cross-Cultural Approach to Defining International Standards of Human Rights,” in An-na’im, Ahmed Abdullahi (ed.), *Human Rights in Cross-Cultural Perspectives, A Quest for Consensus*, Philadelphia: University of Pennsylvania Press, 1992, pp. 20-1.

⁵⁶ *Ibid.*, p. 21.

concerns, qualities, traits, and values that can be identified and articulated.”⁵⁷ Moreover, for him, the current human rights regime is “the best possible candidate for the proposed universality of human rights” because it is “not the exclusive product of Western societies,” and has “legitimacy in Western societies and ... growing familiarity and relevance in non-Western settings.”⁵⁸ Besides, An-Na’im argues that “it is better to try to improve an existing regime, if only as a point of departure and framework for critique, than to seek to dismantle and replace it with a new system.”⁵⁹

Though different in ways, both An-Na’im’s and Donnelly’s dialogues take cultural differences into considerations. Such considerations, however, for both Donnelly and An-Na’im to a lesser extent, have a limitation: they do not challenge the current human rights regime. Donnelly takes the current regime as *the* regime and persuade others to agree with this “fact” via dialogue, while An-Na’im keeps defending its legitimacy and necessity. Thus, the dialogues on human rights in An-Na’im’s and Donnelly’s term cannot escape the cultural relativists’ critique of moral imperialism associated with the current human rights regime, which is discussed below.

The proponents of cultural relativism claim that the source for moral rules and the validity of rights is the actual socio-cultural context.⁶⁰ Given the plurality of cultures in the world, it could appear that the claim of universal human rights is an imperialist attempt to impose moral values onto others.⁶¹ A radical relativist position, according to Steiner and Alston, considers that the consequences of this cultural diversities are that no culture or state ... is justified in attempting to impose [values] on other cultures or states” and “no transcendent or transcultural ideas of rights can be found or agreed on.”⁶² A radical relativist thus may reject the liberal dialogues above on the two following arguments. First, the claim to universality of human rights, even Donnelly’s “relative universality,” is indeed an attempt to impose values onto others. Second, those dialogues would bring no agreement on ideas of rights.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ An-na’im, Ahmed Abdullahi, “The Cultural Mediation of Human Rights: The Al-Argam Case in Malaysia,” in Joanne Bauer and Daniel Bell, *op. cit.*, p. 153.

⁶⁰ Starting from the reliance of the validity of rights on culture, Jack Donnelly categorizes cultural relativism into strong and weak ones. In the former, culture is the principal source of the validity of rights; thus, only a few basic rights would be accepted as universal rights but with a wide range of variation. In weak cultural relativism, culture may be an important source of the validity of a right, but the relativity of human nature, communities, and rights serve as a check on potential excesses of universalism. See Jack Donnelly, *Universal Human Rights in Theory and Practice*, Ithaca: Cornell University Press, 2003, p. 90; see also Jack Donnelly, “Cultural Relativism and Universal Human Rights,” *Human Rights Quarterly*, Vol. 6, No. 4 (Nov. 1984), p. 401.

⁶¹ R.J. Vincent, *op. cit.*, p. 37.

⁶² Henry J. Steiner and Philip Alston, *International human rights in context: law, politics, and morals*, 2nd edition, Oxford: Oxford University Press, 2000, pp. 366-7.

Responding to this challenge, Donnelly argues that the “single most important explanation for the prevalence of arguments of cultural relativism . . . is that they are used by vicious elites as a way to attempt to deflect attention from their repressive policies.”⁶³ Donnelly finds support for his argument from a number of scholars preceding him.⁶⁴ Among them, R.J. Vincent criticises cultural relativism for allowing the injustices that “outraged the conscience of mankind” to take place with immunity from external criticism and intervention.⁶⁵ Elvin Hatch contends that cultural relativism neutralizes moral judgment and thereby impairs action against injustice.⁶⁶ I.C. Jarvie accuses that cultural relativism “disarms us, dehumanizes us, leaves us unable to enter into communicative interaction; that is to say, unable to criticize cross-culturally, cross-sub-culturally; intimately, relativism leaves no room for criticism at all . . . behind relativism nihilism looms.”⁶⁷

In response to the charge that cultural relativism may breed tolerance of injustice, Alison D. Renteln admits that the association of cultural relativism with tolerance by early cultural relativists “has left cultural relativists in dire straits.”⁶⁸ However, she argues that such criticism is “biased from the start” as the term tolerance it used “implies that there is something objectionable in the other society and that the person observing it must suppress his feelings of revulsion.”⁶⁹ For her, the theory of relativism does not prevent criticising activities and beliefs of other cultures, it only reminds that such criticism is based on our own ethnocentric standards.⁷⁰ Thus, cultural relativism “points to the degree to which self-righteous attitudes toward internal moral standards are ingrained. Insofar as individuals adopt moral categories uncritically, conflict between cultures will be exceedingly difficult to resolve.”⁷¹ However, Renteln has not elaborated further on how such self-righteous attitudes and uncritical adoption of one’s own cultural values could obstruct cross-cultural mutual understandings.

⁶³ Jack Donnelly, “Human Rights and the dialogue among civilizations,” this can be found on <http://mysite.du.edu/~jdonnell/papers/dialogue.pdf>, accessed 15 Jun. 14, p. 25.

⁶⁴ See Alison D. Renteln, “Relativism and the Search for Human Rights,” *American Anthropologist*, New Series, Mar., Vol. 90, No. 1, 1988, also Alison D. Renteln, *International Human Rights: Universalism Versus Relativism*, p. 67 for a list of several of these authors.

⁶⁵ R.J. Vincent, *op. cit.*, pp. 54-5.

⁶⁶ Elvin Hatch, *Culture and Morality: The Relativity of Values in Anthropology* (New York: Columbia University Press, 1983), p. 12, cited in Abdullahi Ahmed An-na’im (ed.), *op. cit.*, p. 24.

⁶⁷ I.C. Jarvie, “Rationalism and Relativism,” *British Journal of Sociology* 34 (1983): 46, cited in An Na’im, *op. cit.*, p. 24.

⁶⁸ Alison D. Renteln, *International Human Rights: Universalism Versus Relativism*, p. 65.

⁶⁹ *Ibid.*, p. 76.

⁷⁰ *Ibid.*, p. 77.

⁷¹ *Ibid.*, p. 76.

Neither have other proponents of cultural relativism pushed this idea further. Adamantia Pollis calls for clarifying and differentiating “legitimate cultural specificity that is deeply imbedded in diverse belief systems and values, and the state's exploitation of this contention” in any human rights discourse.⁷² Likewise, Christina M. Cerna turns to the theory main contention that “different norms occupy different places” and suggests that reaching universal acceptance of human rights norms is an ongoing process, and the “[c]hange and acceptance of these norms must ultimately come from within the region and cannot be imposed by outside forces.”⁷³

In short, the foundation of Donnelly and An-Na'im' dialogue models, the current international human rights regime, is challenged by cultural relativists on its claim to universalism. A weakness of these models, a cultural relativist may point out, is that they do not pay due attention to the impacts of cultural differences and ethnocentrism.⁷⁴

2. The classical objections against the theory of natural rights

Before turning to alternative approaches by John Rawls and Chris Brown, it is necessary to discuss another unresolved challenge against the current human rights regime, from which alternative approaches start. The development of the current regime, as Tim Dunne and Nicholas J. Wheeler observe, has been underpinned by liberal natural rights thinking.⁷⁵ Put simply, a liberal natural theorist claim that we have certain natural and universal rights by virtue of our common humanity, despite our belongings to different communities. What is common to all is our inherent human nature, which is rational. For example, although we may come from different traditions and societies, we all know to differentiate right from wrong, i.e. it is wrong to kill and right to preserve life. If Tim Dunne and Nicholas J. Wheeler's observation is right, then the classical objections against the theory of natural rights of Edmund Burke, Hegel, Marx, and Bentham below can also be applied to the current international human rights regime.

Natural rights, Burke charges, are foreign to the complex nature of politics as they "admit no temperament and no compromise; anything withheld from their full demand is so much of

⁷² Adamantia Pollis, “Cultural Relativism Revisited: Through a State Prism,” *Human Rights Quarterly*, Vol. 18, No. 2 (May, 1996), p. 320.

⁷³ Christina M. Cerna, “Universality of Human Rights and Cultural Diversity: Implementation of Human Rights in Different Socio-Cultural Contexts,” *Human Rights Quarterly*, Vol. 16, 1994, p. 752.

⁷⁴ The relevance and importance of ethnocentrism are discussed in details in the last chapter of this thesis.

⁷⁵ *Ibid.*, p. 5.

fraud and injustice" and are also among the pretexts behind which "many disorderly appetites hide."⁷⁶ Thus, for Burke, the language of natural rights "deepened the antagonism of political opponents while raising their expectations," which can lead down a path to anarchy. Rights, according to Burke, mean particular rights in particular locations, and they are inherited from the previous generations' prejudice and latent wisdom. Rights, therefore, can only be grasped through the conventions and customs of a community.⁷⁷ It is the proposition that natural rights are not rooted in any tradition that led to Burke's contention that natural rights were just monstrous fictions.⁷⁸

Sharing with Burke the critics over the abstract notion of human nature, Hegel explains the matter differently. For him, human identity exists via the recognition of others: one cannot be conscious of one's self as a person unless one is aware of, and mutually recognised by, other persons. Under this logic, the concept of human being separate from all social ties would "make little or no sense." In other words, only within the context of existing society, can the human person be.⁷⁹ As Hegel puts it, "it is only as one of its [the state] members that the individual himself has objectivity, genuine individuality, and an ethical life."⁸⁰ Thus, in line of this argument, the abstractness and universality of human nature cannot be justified.

Marx's account of human nature is, to a degree, similar to Hegel's. Marx contends that, "the essence of man is no abstraction inherent in each single individual" but "in reality, it is the ensemble of the social relations."⁸¹ Furthermore, for Marx, human rights are economically and historically contingent; he argues that the rights of man are nothing but the rights of a member of bourgeois civil society and are part of the ideology of that society. The dominant class in capitalist society use legally instituted civil rights to facilitate exploitation which is hidden and legitimized through rights. Tore Lindholm explains that in Marxism, "the rights of man are *characteristic social forms* of a capitalist mode of production to make exploitation invisible to social actors, legitimate class relations in the eyes of the actors, and thus stabili[ze] the economic structure as a basis of a self-reproductive exploitative economic

⁷⁶ The full list is: pride, ambition, avarice, revenge, lust, sedition, hypocrisy, ungoverned zeal, and all the train of disorderly appetites. Burke, *Reflections on the Revolution in France*, 1970, in *Works*, Bohn's British Classics edition., London, Bell and Daldy, 1872, Vol. 2, p. 412, cited in R.J. Vincent, *op. cit.*, p. 28.

⁷⁷ *Ibid.*

⁷⁸ Andrew Vincent, *op. cit.*, p. 77, also in David P. Forsyth, *Human Rights in International Relations*, 2nd ed., Cambridge: Cambridge University Press, 2006, p. 29.

⁷⁹ Andrew Vincent, *op. cit.*, p. 181.

⁸⁰ Hegel, *Philosophy of Right*, transl. and with notes by T.M. Knox, Oxford: Clarendon Press, 1942, p. 156, cited in *Ibid.*, p. 29.

⁸¹ Karl Marx, *The 6th Thesis On Feuerbach*, 1845, can be found on <http://www.marxists.org/archive/marx/works/1845/theses/index.htm>, accessed on 26 September, 2011.

system.”⁸² It follows that the relations between class, ownership, power, and material interests, which are all historically contingent, decide the real meaning of rights. Hence, Lindholm concludes, natural rights “tell us virtually nothing substantive about a society or about the nature of rights per se.”⁸³

Unlike the other three philosophers, Jeremy Bentham does not criticize natural rights for their lack of sociological contingency: for the founder of utilitarianism, humans essentially try to maximize pleasure and minimize pain. Our rejection or acceptance of rights depends on whether this goal, or in his word “the principle of utility” is met. He argues that, “only the principle of utility provided any rational ground for resolving moral, and hence political and legal, disputes, while talk of justice, injustice, natural rights, or moral sense is merely a veneer to give respectability to, or to endow with persuasive force, *the likes and dislikes of the speaker*.”⁸⁴ In other words, the speaker persuasively projects her own subjectivity as an objective truth via the language of justice, morality, and natural rights. This is why, in his much cited phrase, Jeremy Bentham strongly charges the concept of natural rights as “simply nonsense... rhetorical nonsense – nonsense upon stilts.” And even if the Benthamian view means that it is still possible to make out a case for natural rights on the basis of utilitarianism, as Andrew Vincent argues, those rights would not necessarily be universal but depend on human utility, preferences, and interests.⁸⁵

The common thread among those criticisms is the charge of generalisation and oversimplification of human beings. Beyond the proposition that an individual is a member of the human race, human beings are different in their interests, preferences, and belong to different communities and societies. Deprived of these features, the concept of human beings as thought of in the natural liberal school is purely abstract. This abstractness, R.J. Vincent admits, is “perhaps the central difficulty with the theory of human rights” of that school.⁸⁶

⁸² Tore Lindholm, “Prospects for Research on the Cultural Legitimacy of Human Rights The Case of Liberalism and Marxism,” in Abdullahi Ahmed An-na’im (ed.), *Human Rights in Cross- Cultural Perspectives, A Quest for Consensus*, 1992, Philadelphia: University of Pennsylvania Press, p. 416.

⁸³ In Andrew Vincent, *op. cit.*, p. 75.

⁸⁴ In Philip Schofield, *Utility and Democracy, The Political Thought of Jeremy Bentham*, Oxford: Oxford University Press, 2006, p. 76. *Italics added*.

⁸⁵ Andrew Vincent, *op. cit.*, p. 76.

⁸⁶ *Ibid.*, p. 35.

3. *Alternatives to the liberal concept of human nature by John Rawls and Chris Brown*

Recognising the controversies associated with human nature, John Rawls attempts to avoid “any particular comprehensive moral doctrine or philosophical conception” of this concept by developing the laws of the peoples from his idea of justice as fairness. While there is not enough space to elaborate in details his arguments here, they can be summarised as follows: Rawls divides the peoples in the world into three types of society: liberal, hierarchical, and outlawed ones. Tyrannical and dictatorial regimes and expansionist states conducting wars fall into the last category. The first two belong to well-ordered society of the just peoples of the world with conditions set for the hierarchical one. To be members in good standing of that world society, well-ordered hierarchical society must satisfy three necessary conditions – “that it respects the principles of peace and not expansionism, that its system of law meet the essentials of legitimacy in the eyes of its own people, and that it honours basic human rights.”⁸⁷ Should these essential requirements not be met by well-ordered societies, economic sanctions or military pressure can justifiably applied.⁸⁸ And Rawls argues that the peoples in liberal and particularly hierarchical societies can reasonably and rationally endorse his list of human rights proper that includes only the right to life, liberty, property, and formal equality.⁸⁹ For these rights to hold, Rawls claims, “does not require the liberal idea that persons are first citizens and as such free and equal members of society who have those basic rights as the rights of citizens;”⁹⁰ these rights hold simply through principles of justice in their fair and equal relation with all other societies. In this way, Rawls claims, the charge that the liberal law of peoples including this human rights list is “ethnocentric and merely Western” can be refuted.

The Rawlsian approach has been under attacks, even from liberals. Thus, Pogge and Buchanan attack Rawls’ list of basic rights. Pogge charges that “Rawls shrinks the received list of human rights” while Buchanan claims the *Law of peoples* is “a betrayal of liberalism” because such important rights for women as the right to education and to equal opportunity in

⁸⁷ In his own words, “rights to means of subsistence and security (the right to life), to liberty (freedom from slavery, serfdom, and forced occupations), and (personal) property, as well as to formal equality as expressed by the rules of natural justice (for example, that similar cases be treated similarly).” John Rawls, “The Law of Peoples,” *Critical Inquiry*, Vol. 20, No. 1 (Autumn, 1993), p. 66. Rawls argues that “satisfying these requirements does not entail that a regime is liberal.” *Ibid.*, p. 50.

⁸⁸ In his words, “the liberal law of peoples does not justify economic sanctions or military pressure on well-ordered hierarchical societies to change their ways, provided that they respect the rules of peace and their political institutions satisfy the essential conditions we have reviewed.” *Ibid.*, p. 67.

⁸⁹ *Ibid.*, p. 52.

⁹⁰ *Ibid.*, p. 57.

employment are not in the list.⁹¹ Parekh also criticises Rawls on the basis that requirements entail “a distinctly social democratic view of society.”⁹²

Chris Brown starts his approach with the main thesis of cultural relativism. Rights, for Brown, are contextualised and “best seen as a by-product of a functioning ethical community.”⁹³ Drawing on the postmodern philosopher Richard Rorty’s idea of a shared moral identity, Brown argues that an American and European “human rights culture” since the Enlightenment is based and reinforced by security and sympathy. Security here means a risk-free condition that allows for respecting the others regardless of their differences; whereas sympathy is the “ability to put one’s self in another’s shoes” and perceive him/her “as a fellow human-being.” For Brown, Bosnian Serbs killed Bosnian Muslims because the former cannot see the latter as fellow human beings. Therefore, according to Brown, it would be futile to suggest that these people are wrong or irrational or that they had not understood the nature of human beings; as “[t]here is no such nature; there are no general moral standards that apply here.”⁹⁴ The best way, for Brown, is to see that the Bosnian Serbs are “deprived of the security and sympathy that have allowed us to create a culture in which they can reflect on these matters in relative safety.”⁹⁵ Accordingly, what can be counted as universal for Brown is not human nature but sympathetic feeling. And Brown suggests ‘sentimental education’ might be the only response to human wrongs though this approach may be “inadequate” and “does not solve all the problems of relativism.”⁹⁶

At issue with this approach is that by rejecting rationality as a way to settle human rights disputes, how can Chris Brown and Richard Rorty substantiate sentimental education. For example, what does the sympathy of perceiving the other as a fellow human being entail? How can this become universal? Another objection to this model is that “it implies that human beings can be persuaded to care for each other only by emphasising their similarities.” “Such a view,” as Bhikhu Parekh observes, could breed “intolerance of differences, and requires that unless others become like us we cannot share solidarity with them.”⁹⁷

⁹¹ Pogge, “Rawls on International Justice,” *Philosophical Quarterly* 51, 2001, pp. 246–253 and Buchanan, “Rawls’s Law of Peoples: Rules for a Vanished Westphalia World,” *Ethics* 110, 2000, pp. 697–721 cited in M. Avila, “Human Rights and Toleration in Rawls,” *Human Rights Review* (2011) 12:1–14, p. 9.

⁹² Parekh, “Non-ethnocentric universalism,” p. 139.

⁹³ Chris Brown, “Universal human rights..” p. 120.

⁹⁴ *Ibid.*, p. 119.

⁹⁵ *Ibid.*, p. 120.

⁹⁶ *Ibid.*

⁹⁷ Bhikhu Parekh, “Non-ethnocentric universalism,” p. 140.

To conclude at this juncture, attempts to bridge differences on human rights understandings by securing a common ground remains controversial and unconvincing. Donnelly's and An-Na'im's models invoke the cultural relativists' criticisms against ethnocentrism and values imposition. The alternatives provided by John Rawls and Chris Brown do not satisfactorily refute the charge of ethnocentrism. Perhaps the common weakness in all these approaches is that the others are presumed and constructed, *not listened to*. In the Rawlsian approach, the others are assumed to meet Rawl's requirements to be capable of accepting Rawl's list of basic rights or otherwise be categorised into outlawed ones who could be subjected to coercive measures. To a lesser extent, in Rorty's and Brown's dialogue models, the others are supposed to share some similarities and sympathetic feelings with the self before a dialogue may occur. The next sub-section is a reflection about dialogical approach to human rights differences.

4. Dialogical approaches by Charles Taylor and Richard Shapcott

Charles Taylor shares with Brown the conviction that it is not possible to reach universal values on human rights, and he offers an alternative. Using Rawls' concept of overlapping consensus, he argues that we can converge on certain norms of conduct without agreeing on their underlying philosophical foundations and legal forms. Drawing from the case of Buddhism and royal charisma in Thai tradition, he observes that Thai and Western traditions share similar human rights related patterns: the expansion of privileges to all, once reserved for minorities only. In this light, universal human rights values could be forged through a process of mutual learning, from certain "observable" consensus on norms, we can move toward a 'fusion of horizons' in Gadamer's terms, in which "the moral universe of the other becomes less strange" and what follow are "further borrowings and the creation of new hybrid forms."⁹⁸ World consensus on human rights can thus be attained, he argues, when "greater sympathetic understanding of the situation of each party by the other" (he was speaking about the unequal treatments against women) can lead to agreement on norms of conduct on that issue.⁹⁹ This resembles Brown's and Rorty's claim for universal sympathetic feelings mentioned above but Taylor's model does not abandon rational arguments as a way to reach mutual agreements.

⁹⁸ Charles Taylor, "Conditions of an Unforced Consensus on Human Rights," in Joanne Bauer and Daniel Bell, *op. cit.*, p. 136.

⁹⁹ *Ibid.*, p. 140.

Taylor also provides some sketches on what this process of mutual learning can look like. He envisages that consensus would always be renewed and “never complete,” because both sides would come to some compromise in different practical contexts. For such dialogues to be successful, each side must understand “what moves the other,” respect each other, and possess some degree of sympathetic feelings.¹⁰⁰ Taylor also warns that such a consensus may lead to “a redefinition of identity”¹⁰¹ and ventures into how ethnocentrism may prevent Westerners from reaching human rights consensus,

An obstacle in the path to this mutual understanding comes from the inability of many Westerners to see their culture as one among many.... they will tend to think that the path to convergence requires that others too cast off their traditional ideas, that they even reject their religious heritage, and become “unmarked” moderns like us.¹⁰²

While Taylor borrows Gadamer’s terms, Shapcott draws exclusively on Gadamer’s philosophical hermeneutics to suggest a way towards a non-foundational universalism for solving differences within the international community. He argues that the impacts of ethnocentrism can be addressed by a commitment to “communicative inclusion” and the understanding that shared commitments to, and definitions of, universal human rights are socially constructed. In this sense, the meaning of human rights and their universality is no longer a “truth” of which one side tries to convince the other, but the common subject of a dialogue. In such dialogue, for Shapcott, participants are required, among other things, to recognise that the other “may have something different to say and that [...] be open to the possibility of learning.”¹⁰³ And the question whether we can achieve universal human rights can only answered once “dialogue has taken place.”¹⁰⁴ It should be noted here that while Taylor’s and Shapcott’s models are promising, neither intends to build in a detailed and systematic way the conditions for, and indications of, a genuine dialogue on human rights.

¹⁰⁰ Ibid., p. 138. In his words, “The continued coexistence in a broad consensus that continually generates particular disagreements, which have in turn to be negotiated to renew consensus, is impossible without mutual respect. If the sense is strong on each side that the spiritual basis of the other is ridiculous, false, inferior, unworthy, these attitudes cannot but sap the will to agree of those who hold these views while engendering anger and resentment among those who are thus depreciated. The only cure for contempt here is understanding...[and] “the path to agreement lies through some degree of sympathetic mutual comprehension.” Ibid.

¹⁰¹ Ibid., p. 140.

¹⁰² Ibid., p. 143.

¹⁰³ Shapcott, *Justice, Community, and Dialogue in International Relations*, Cambridge: Cambridge University Press, 2001, p. 228.

¹⁰⁴ Ibid., p. 230.

5. Gadamer's philosophical hermeneutics and Habermas's Theory of Communicative Actions as theoretical frameworks of this thesis

Gadamer also did not intend to build a criteria for genuine understanding in his *Truth and Method*. As he claims, the hermeneutics developed in that work is not “a methodology of the human sciences, but an attempt to understand what the human sciences truly are, beyond their methodological self-consciousness, and what connects them with the totality of our experience of the world.”¹⁰⁵ His aim is neither to develop an alternative procedure of understanding like the preceding hermeneutic theorists nor to “offer a general theory of interpretation and a differential account of its methods;” his primary aim is to “discover what is common to all modes of understanding” or put it simply, to clarify the conditions in which understanding takes place.¹⁰⁶ In pursuing this aim, as Shapcott observes, Gadamer criticises that technical instrumental rationality in the forms of historicism and objectivism stands in the way of ‘genuine’ understanding.¹⁰⁷ Although he does not *directly* or *intentionally* focus on developing a model of a genuine dialogue,¹⁰⁸ one can draw from Gadamer specific conditions for, and indications of, mutual understanding. For genuine understanding to occur, Gadamerian interlocutors and dialogue outcome must meet certain criteria under these conditions and indications. The satisfaction or failure to meet these criteria will shed light into the obstacles to genuine understanding between the Americans and the Vietnamese on the issue of human rights.

Another possible framework is Habermas's theory of communicative action [henceforth TCA], that suggests that it is *not* up to the scholars to determine what count as rational, but this is left to be decided by the speaking and acting subjects themselves. What could constitute the basis of the TCA is Habermas's concept of communicative rationality, which is “tied to ... subject-subject relation between communicating and interacting individuals.”¹⁰⁹ This *procedural* view of rationality does not guarantee our conclusions but a right manner to come to conclusion.¹¹⁰ Although like Gadamer, Habermas does not aim at building the

¹⁰⁵ Gadamer, Hans Georg, *Truth and Method (TM)*, London: Sheed & Ward, 1979, p.xiii.

¹⁰⁶ *Ibid.*, p. xvi and p. xix.

¹⁰⁷ Shapcott, *op. cit.*, p. 187.

¹⁰⁸ Bernstein observes that Gadamer had “fail[ed] to pursue [the] strong practical and political implications” of his entire project and calls for more research on what should be done to make a genuine dialogue “a concrete reality.” Bernstein, Richard J., *Beyond objectivism and relativism: science, hermeneutics, and praxis*, Oxford: B. Blackwell Press, 1983, p. 163.

¹⁰⁹ *Ibid.*, p. 4. For further elaboration on communicative rationality, see Habermas, J. and Maeve Cooke (eds.), *On the pragmatics of communication*, MIT Press, Cambridge, Massachusetts, 1998, pp. 315-7.

¹¹⁰ Habermas develops the concept of communicative rationality in his critique against the first generation members of the Frankfurt school. As a second generation member, Habermas criticises that the early

criteria for genuine understanding in his TCA, it is still possible to extract from this theory another set of conditions for, and indications of, genuine understanding.

These conditions and indications from Habermas's and Gadamer's works will serve both as a search light and a lens into explaining U.S. – Vietnam human rights dialogues. As search lights, they show this writer that at which he needs to focus his attention in front of relevant information and data and how to build the right questions for his interviews. As focus lenses, they provide the means to explain the nature and the extent of agreement achieved in the dialogue. Further, as the case study is a diplomatic dialogue, this necessitates a discussion on diplomacy and its possible impacts on mutual understanding on human rights.

III. Diplomacy and its use in the U.S. – Vietnam mutual understanding on human rights

This section first justifies the selection of diplomatic dialogue as the research object of this thesis. It then provides a brief overview of the history of, literature on, and a grasp of, diplomacy. Finally, it discusses the features of diplomacy that may hinder and/or support mutual understanding in diplomatic dialogues.

1. Why diplomatic dialogue

The diplomatic dialogues are primarily used for practical reasons. The human rights viewpoints of diplomats and other representatives are considered, at least by the involved states, the official and legitimate voice of that country. Moreover, so far only the yearly exchange between the U.S. and Vietnam constitute their diplomatic human rights dialogue. Given the subject of this thesis is about the human rights issue within the U.S. – Vietnam relationship and their encounter on human rights, diplomatic dialogues are thus a valid and unavoidable choice. Another practical concern is that there is a dearth of research on dialogues among nations on human rights in diplomatic channels as well as of empirical research on actual cross-cultural human rights dialogues.¹¹¹

members, such as Horkheimer and Adorno, emphasised only one aspect of rationality, which is instrumental in subject-object relation. This rationality, as Erik Oddvar Eriksen and Jarle Weigård suggest, is defined in terms of the "individual actor's capacity to use his knowledge in order to achieve his goals" by "manipulat[ing] his surroundings." Erik Oddvar Eriksen and Jarle Weigård, *Understanding Habermas, Communicative Action and Deliberative Democracy*, London: Continuum, 2003, p. 2. With Habermas's theory of communicative action, rationality is shifted to communicative from cognitive-instrumental.

¹¹¹ An example of East - West "dialogues" between Chinese and Canadian human rights scholars is found in Errol P. Mendes and Anik Lalonde-Roussy (eds.) *Bridging the Global Divide: A Canada-China Dialogue*,

2. A brief overview of diplomacy

Diplomacy has a long history, including a history of demands for changing its nature. Recorded diplomatic practices can be found in the exchanges of correspondence between the Egyptian king and neighboring courts in the fourteenth century BC.¹¹² There have been a great number of calls for changing the nature of diplomacy at important turns of the world's history. Following the religious wars in Europe and the signing of the Treaty of Westphalia (1648), the new diplomacy was under the exclusive control of the state, instead of the Catholic Church and the Holy Roman Empire.” After the French revolution, there were calls for diplomacy to represent not the aristocrats but “to be popularized and conducted in the name and interests of the ‘people.’”¹¹³ By the end of the World War I, Woodrow Wilson challenged the secret, imperial, and megaphone diplomacy and called for *open* diplomacy. And the recent years witness the rise of public diplomacy and other stakeholders, such as non-governmental organizations and civil society.¹¹⁴

Despite this long history, the traditional literature on diplomacy, Neumann remarks, is characterized by “a combination of history, practitioners’ reflections, and a proliferation of typologies, with a relative dearth of theoretically informed analysis.”¹¹⁵ According to Christer Jönsson and Martin Hall, this is because the practitioners or diplomatic historians only accounted for particular experiences or particular historical period, respectively.¹¹⁶ Thus, there has not been due attentions to diplomacy by theorists or put in another way, diplomacy has not been provided with a satisfactory theoretical basis.

Diplomacy has been defined in different ways. Realists, like Hans Morgenthau, view diplomacy as a technique or an asset - like “a strong fleet or nuclear capacity” that the state possesses, whereas for liberalist, diplomacy is “a mere channel of communication.”¹¹⁷ Some scholars from the first and second generations of the English School view diplomacy as an

Ashgate, England, 2003. This book is a compilation of essays by both Canadian and Chinese authors rather than their direct conversations on human rights.

¹¹² See for more details in G. R. Berridge and Alan James, *A Dictionary of Diplomacy*, Houndmills, Basingstoke, Hampshire; New York: Palgrave, 2001, entries ‘Amarna letter’ in p. 8 and ‘Kautilya’ in p. 140.

¹¹³ Costas M. Constantinou and James Der Derian, “Introduction: Sustaining Global Hope: Sovereignty, Power and the Transformation of Diplomacy,” in Constantinou and James Der Derian (eds.), *Sustainable diplomacies*, Palgrave Macmillan, 2010, Online publication, p. 6.

¹¹⁴ Ibid.

¹¹⁵ In Ole Jacob Sending et al “The future of diplomacy, changing practices, evolving relationship,” *International Journal*, Summer 2011, p. 529.

¹¹⁶ Christer Jönsson and Martin Hall, *Essence of diplomacy*, Palgrave Macmillan, online publication, 2005, p.7.

¹¹⁷ Ibid., pp. 15-8.

international institution.¹¹⁸ While James Der Derian and Christian Reus-Smit of the third English school generation and Neumann may agree that diplomacy is a social practice and cannot be understood without referring to its social context.¹¹⁹ Others like G. R. Berridge proposes that diplomacy is “an essentially political activity” with the chief purpose of “enabl[ing] states to secure the objectives of their foreign policies without resort to force, propaganda, or law.”¹²⁰ Adam Watson, meanwhile, regards diplomacy as communication and argues that the “dialogue between independent states ... is the substance of diplomacy.”¹²¹

As this thesis examines bilateral diplomatic dialogue, it takes the view of the last two scholars that diplomacy involves representation of, and communication between, states with its ultimate goal of protecting their national interest. This understanding is in accordance with the Vienna Convention on diplomatic relations in 1961 of which both the United States and Vietnam are signatories.¹²²

3. The diplomatic features that might be influential to mutual understanding on human rights

At this stage, it is difficult to identify the diplomatic features that can facilitate or hinder mutual understanding on human rights. A review of the literature on diplomacy suggest the following hypotheses.

A first possible obstacle to agreement on human rights is the purpose of diplomats: in the Vienna Convention, diplomats are supposed to protect their country's interests through, among other functions, representing their states and communicating with the receiving states on behalf of their own states. With national interests as their ultimate goal, diplomats are

¹¹⁸ English School first generation scholar Martin Wight sees diplomacy as both “the master-institution of international relations” and “the art of communication between powers.” Hedley Bull from the second generation no longer places diplomacy as a master institution but only one of the five primary institutions that shaped international society, which are the balance of power, international law, diplomacy, war, and great power. Iver B. Neumann, “The English School on Diplomacy: Scholarly Promise Unfulfilled,” *International Relations*, 2003, p. 113 and p. 348. Jönsson and Hall regard diplomacy as a core international institution with three constitutive elements of representation, communication, and reproduction of international society. *Ibid.*

¹¹⁹ *Ibid.*, pp. 21-2.

¹²⁰ Berridge, G. R., *Diplomacy theory and practice*, Palgrave Macmillan, online publication, 2005, p. 1.

¹²¹ Adam Watson, *Diplomacy, The dialogue between states*, London: Eyre Methuen, 1982, p. 14.

¹²² Article 3.1 of the Convention lists the following function of a diplomatic mission: (a) Representing the sending State in the receiving State; (b) Protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law; (c) Negotiating with the Government of the receiving State; (d) Ascertaining by all lawful means conditions and developments in the receiving State, and reporting thereon to the Government of the sending State; (e) Promoting friendly relations between the sending State and the receiving State, and developing their economic, cultural and scientific relations.” This information can be found on http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=III-3&chapter=3&lang=en#EndDec, accessed on 26 July 2013.

assessed only on the way they have fulfilled this task. Lord Palmerston claimed in 1856 that Britain would have no eternal allies or enemies; what is eternal is British national interests which become the guiding principle for British diplomats.¹²³ In other words, furthering the state's interests is the only criteria whereby to assess a diplomat, not 'his' morality; 'he' cannot and should not be judged for telling lies or being dishonest. As Sir Henry Wotton a British diplomat argued in 1604, "an Ambassador is an honest man, sent to lie abroad for the good of his country."¹²⁴ The use of strategies and tactics in diplomacy therefore is tolerable, even deemed to be professional and necessary. Accordingly, it has become conventional that the ultimate authority in diplomatic dialogue is neither the truth of the subject matter nor the force of better argument, but the national interest. And as diplomatic dialogue is a means of protecting and furthering this interest, it is supposed to be filled such strategic actions as lies or manipulations.

A second possible obstacle is the problem-solving nature of *private* diplomatic meetings. As Adam Watson observes, in private dialogue,

both bilateral and collective, statesmen and diplomats can get down to a practical discussion about interests and courses of action without the embarrassment caused by discussion of ideology and issues of principle. For just as public debate tends towards issues of principle, so private negotiation inclines towards compromise and understanding of the other man's point of view, and tends to bring even matters of principle onto the bargaining table. This is not hypocrisy. It is a natural division of labour between public and private dialogue, between the clash of incompatible values and the search for compatible ones like peace and independence, between the vision of the desirable and the art – or the craft – of the possible.¹²⁵

What Watson argues here is that with the division of functions between public announcements and private dialogues, diplomats in their private meetings are supposed to put aside their convictions and to focus exclusively on possible compromises and concessions. In this light, it is *presumed* that in their private human rights dialogues, the Americans and the Vietnamese are supposed not to discuss the incompatible differences on their human rights

¹²³ In this words, "when people ask me ... for what is called a policy, the only answer is that we mean to do what may seem to be best, upon each occasion as it arises, making the Interests of Our Country one's guiding principle." Palmerston to Clarendon, July 20, 1856, quoted in Harold Temperley and Lillian M. Pension, *Foundations of British Foreign Policy from Pitt (1792) to Salisbury (1902)*, Cambridge: Cambridge University Press, 1938, p. 88, cited in Henry Kissinger, *Diplomacy*, London; New York; Sydney: Simon & Schuster, 1994, p. 95; and "we have no eternal allies and no permanent enemies. Our interests are eternal, and those interests it is our duty to follow." Palmerston, in Asa Briggs, *Age of Improvement 1783-1867*, London: Longmans, 1959, p. 352.

¹²⁴ This quote can be found on <http://anglicanhistory.org/walton/wotton.html>, accessed 30 July 2014.

¹²⁵ Adam Watson, *op. cit.*, p. 80.

values. Instead, they are supposed to get down to practical compromises on human rights-related issues, such as those regarding political dissidents.

A third possible obstacle to human rights agreement is the restrictions on diplomats to change their views or opinions. Jönsson and Hall argues that diplomats pursue their countries' interests by acting somewhere between strictly abiding to instructions and mandates from their higher chain of command and operating more creatively as they see fit.¹²⁶ In all cases, diplomats are instructed to speak and behave on behalf of others: they only represent the position and viewpoint of their countries. Their inherent and ultimate constraint is the determining voice of their superiors on their positions and actions in the field. The diplomats' private views cannot interfere in the process of their interactions with local counterparts; they should not translate their personal views into concrete actions *beyond* their mandates, either strict or flexible.¹²⁷ In case a diplomat disagrees with a policy of his government, he can express his reasons within the system, but in the end, he must defend that policy loyally; otherwise he must request a transfer or resign.¹²⁸ Thus, even if diplomats change their views in meeting their counterparts, they are not allowed to reveal such changes to the other side.

This is still true even if the relation between the resident diplomat and his superiors is viewed not as uni-directional, but as a "*process* of mutual interaction between principals and agents."¹²⁹ Given the credits of their first-hand accounts and expertise in the field, resident diplomats could exert influence back to their superiors. In fact, it has been codified into the American Foreign Service Act that diplomats are supposed to participate in the foreign policy formulation process, "members of the Service under the direction of the Secretary ... provide

¹²⁶ Jönsson and Hall describe this as the substantial representation function of diplomats. Another aspect of diplomats' representation is "symbolic," meaning "the diplomat is then a representative in the same way that a flag represents a nation." Christer Jönsson and Martin Hall, *op. cit.*, p. 114. Another vital function of diplomacy is communication. Constantinou argues that "at its basic level, diplomacy is a regulated process of communication between at least two subjects, conducted by their representative agents over a particular object." Costas M. Constantinou, *On the way to diplomacy*, Minneapolis : University of Minnesota Press, 1996, p. 25. While Tran Van Dinh compares communication as the flow of blood in the human body, "whenever communication ceases, the body of international politics, the process of diplomacy, is dead, and the result is violent conflict or atrophy." Tran Van Dinh, *Communication and Diplomacy in a Changing World*, Norwood, NJ, Ablex, 1987, p. 8, cited in Christer Jönsson and Martin Hall, *op. cit.*, p. 67. Freeman explains the importance of communication as follows, "lack of active dialogue deprives states of real knowledge of each other. It leaves intentions to be deduced by a priori reasoning and feeds suspicion," "fosters miscalculation and perpetuates animosity between states that are adversaries" and perilously "bring[s] a state to base its strategy on illusion." Charles W. Freeman, *Arts of Power: statecraft and diplomacy*, Washington DC, United States Institute of Peace Press, 1997, p. 123.

¹²⁷ Jönsson and Hall give examples of U.S. Ambassador to the United Nations Andrew Young in 1970s and British Ambassador to Uzbekistan Craig Murray who were forced to resign for acting beyond their instructions. *Ibid.*, p. 103.

¹²⁸ *Ibid.*, pp. 103-4.

¹²⁹ Christer Jönsson and Martin Hall, *op. cit.*, p. 117. Italics as original.

guidance for the formulation and conduct of programs and activities of the Department and other agencies which relate to the foreign relations of the United States.”¹³⁰ However, the extent of resident diplomats’ influence on policy planning back home is contingent to a number of factors, such as the capability of those diplomats, the power struggle within policy planning actors, and the resistance to changes within the diplomatic circle.¹³¹ Besides, a resident diplomat is only one adviser, among a number of others.¹³² In this light, it could be a futile effort to search for indications for changes of the diplomats’ convictions within a diplomatic dialogue. It could also be very hard to determine if and to what extent the result of a particular diplomatic dialogue can be attributed to the subsequent changes in the positions and policies of the involved parties.

To make this ontological change-tracking more difficult, diplomats are warned not to sympathise with or accommodate the views of their posting country. This is considered as an unavoidable and “*inherent danger* of the diplomatic profession” as “the person who explains glides easily into the role of the person who justifies and advocates.”¹³³ Berridge explains the inevitability of this risk that a resident diplomat who is “ideally in constant touch with local officials and other influential persons” may find it difficult not to show “a certain sympathy for their point of view.”¹³⁴ Such sympathy, Bailey would argue, is substantial because long posting diplomats can become too attached to, and assumed “the perspectives of their host country.”¹³⁵ Consequently, to deal with this occupational hazard, it has become a normal practice that diplomats are rotated every three or four years between their postings, “despite the costly sacrifice of hard-won area expertise that this involved.”¹³⁶ A draw back to this practice, however, is that this mechanism of posting rotations can hinder or even foreclose the

¹³⁰ Foreign Service Act, Section 104. 4(2).

¹³¹ For the resistance to changes in diplomacy, see Iver B. Neumann, “A Speech That the Entire Ministry May Stand for, or: Why Diplomats Never Produce Anything New,” *International Political Sociology*, 2007, 183-200. In this article, drawing on his own experience of bureaucracy within Norwegian Ministry of Foreign Affairs Neumann argues that, as diplomats are supposed to speak in one voice within the Ministry, changes in diplomacy should not be expected by diplomats but by politicians.

¹³² Others advisers could be relevant players within the foreign ministry or other ministry. Neumann observes that advice from diplomats can be ignored or lightly considered, “if statesmen do not get advice from diplomats when they feel they need it, their response may be to bypass them in favor of some other adviser. Indeed, the complaint is routinely made by politicians in other countries, sometimes in a generalized form, that diplomats cannot give advice of a strategic kind.” Iver B. Neumann, “To Be a Diplomat,” *International Studies Perspectives*, 2005, Vol. 6, p. 89.

¹³³ Felix Gilbert, “Two British Ambassadors: Perth and Henderson,” in Gordon A. Craig and Felix Gilbert (eds.), *The Diplomats, 1919-1939*, Vol. 2: *The thirties*, New York: Princeton University Press, p. 547. *Italics added*.

¹³⁴ Berridge, *op. cit.*, p. 110.

¹³⁵ T.A. Bailey, “Advice for Diplomats,” in E. Plischke (ed.), *Modern Diplomacy: The Art and the Artisans* Washington, DC: American Enterprise Institute for Public Policy Research, 1979, pp. 203-1, cited in Christer Jönsson and Martin Hall, *op. cit.*, p. 112.

¹³⁶ Berridge, *op. cit.*, p. 110.

possibility of having a diplomat who possesses extensive and intensive knowledge about the prejudgments and convictions of her local counterparts.

Courtesy and “constructive ambiguity” are also prominent features of diplomatic communication.¹³⁷ Courtesy or politeness in diplomacy could refer to, in the words of Caskie Stinnett, “a person who can tell you to go to hell in such a way that you actually look forward to the trip.”¹³⁸ As for “constructive ambiguity,” Christer Jönsson and Martin Hall explain that diplomats deliberately use ambiguity in their speech so as to conceal vital information or retain flexibility in confirming or denying their own signals.¹³⁹ As intentional ambiguity thus become necessary, it could be expected that diplomats may not clearly state their assessments of their counterparts’ arguments or claims. Exclusiveness and secrecy in diplomatic dialogues mean that the diplomatic meetings are often held behind close doors, and reserved for government representatives only, whereas other interested parties such as “political dissidents” are not allowed to participate. And as their countries are equal sovereign in international relations (at least in theory), diplomats are supposed to treat their counterparts as equal partners. The effects of these features on the U.S. – Vietnam human rights dialogues are not determinable at this stage: does ambiguity make it more difficult or easier for the Americans and the Vietnamese to agree on human rights? Likewise, would the principle of equality lead to a genuine mutual understanding on human rights between the U.S. and Vietnam? And could mutual understanding on human rights be achieved in secret and exclusive meetings or in a more open and inclusive dialogues?

In sum, a review of diplomacy as a framework indicates that the diplomatic constraints to the U.S. – Vietnam mutual understanding on human rights might be greater than the enabling features for such understanding. The diplomats’ ultimate purpose of serving their national

¹³⁷ The remaining prominent feature of diplomatic communication, according to Jönsson and Hall, is non-redundancy. Non-redundancy in diplomatic communication means that diplomats “should say neither too much nor too little because every word, nuance of omission will be meticulously studied for any shade of meaning.” R. Cohen, *International Politics: The Rules of the Game*, London and New York: Longman, 1981, p. 32 in Christer Jönsson and Martin Hall, *op. cit.*, p. 73.

¹³⁸ Christer Jönsson and Martin Hall, *op. cit.*, pp. 72-3. However, Penelope Brown and Stephen Levinson would argue that it is not simply a matter of sweetening bitter bills. They proposed in 1978 a politeness theory based on their observations of similar patterns of language forms in different cultures. For an overview of this theory, See Deana J. Goldsmith, “Politeness Theory,” in Stephen W. Littlejohn & Karen A. Foss, *Encyclopedia of Communication Theory*, SAGE knowledge, Online Pub., pp.755-758. For a critical application of this theory, see Paul Chilton, “Politeness, Politics and Diplomacy,” *Discourse Society*, 1990, Sage: London, Newbury Park and New Delhi, Vol. 1 (2), pp. 201-224. This dissertation deliberately omits the research on the influence of diplomatic politeness in U.S. – Vietnam human rights dialogue. Such a study deserves an entirely different thesis.

¹³⁹ For example, “ambiguous signals allow the sender to argue ‘I never said that,’ ‘this is not what I meant’ and the like, if the situation calls for it.” Christer Jönsson and Martin Hall, *op. cit.*, p. 76.

interest and the problem-solving nature of their dialogues suggests that reaching agreement on human rights approaches may not be the real concern of their dialogues. Besides, the sanction against diplomats' changing their viewpoints and revealing such changes to those on the other side may prevent any narrowing of differences in the American and Vietnamese human rights understandings.

A number of scholars have thus assumed that there can be no genuine understanding in official diplomatic dialogues, such as that between the U.S. – Vietnam on the issue of human rights. For Daniel Wehrenfennig, “state diplomacy leaves little room for Habermasian communication theory and could count as another example of the inapplicability of his ideas;” he suggests to apply the theory to second track diplomacy in the area of conflict management.¹⁴⁰ Jennifer Mitzen and Marc Lynch meanwhile attempt to apply the TCA to global or international public spheres, and Thomas Risse looks into domestic public spheres and global governance.¹⁴¹ The common assumption of these authors is the contention that there can exist no genuine understanding in official diplomatic dialogues. This thesis is thus an empirical study to shed light into these assumptions. It investigates whether there is evidence for genuine communication in diplomatic dialogues, from both an Habermasian perspective and a Gadamerian one.

In conclusion, the above review of diplomacy and the earlier reviews of the human rights debates in international politics point to three factors that may determine the outcome of the U.S. – Vietnam human rights dialogues: (1) the incommensurabilities of their human rights understandings; (2) diplomacy as both facilitator for, and obstacle to, mutual understanding; and (3) the balance of power and other contextual factors (i.e. material successes, the ontime collapse of one side). Whereas the discussion on narrowing the human right differences appear to suggest that Gadamer's philosophical hermeneutics and Habermas's theory of communicative action constitute valid theoretical frameworks for this thesis.

¹⁴⁰ D. Wehrenfennig, *op. cit.*, p. 356.

¹⁴¹ See Jennifer Mitzen, “Reading Habermas in Anarchy: Multilateral Diplomacy and Global Public Spheres,” *American Political Science Review*, Vol. 99, No. 3 August 2005, Marc Lynch, “The Dialogue of Civilisations and International Public Spheres,” *Millennium: Journal of International Studies*, 2000, Vol. 29, No. 2, pp. 307-330, Thomas Risse, “Let's Argue!': Communicative Action in World Politics,” and Thomas Risse, “Global Governance and Communicative Action,” *Government and Opposition*, Vol. 39, Issue 2, article first published online: 17 March 2004.

IV. Chapters Outline

Chapter One examines American understanding of human rights. Influenced by the natural liberal rights advocated and popularised among others by John Locke and Thomas Paine, Americans hold that rights are individual, universal, and defined in civil and political fields. In connection with rights, the state is defined as a necessary evil and legitimised by the consent of the people and by its adherence to natural law. Americans also hold that in speech, press, and religious freedoms, strict regulations are imposed upon the state. They also reject alternative international human rights understanding in the name of conviction on the superiority of their own stance. The denial of social and economic rights as human rights can be explained in reference to domestic fears of communism in the 1950s. Conversations on the topic are thus uni-directional; others are expected to learn and emulate American values. The belief in a Manifest Destiny and in the U.S. as a land of liberty and religious freedom motivate Americans to a mission of helping others to adopt and enjoy similar human rights values. From the 1970s onwards, as a direct result of the power struggle between the legislative and executive branches, this mission has been institutionalised as an independent American foreign policy interest.

Chapter Two analyses Vietnamese understanding of human rights and simultaneously compares it with American human rights understanding. Like the Americans who responded to social and economic rights at the height of the fear of communism, the Vietnamese communists conceptualized human rights in the early 1990s amidst the collapse of socialism worldwide. However, unlike the Americans, the Vietnamese do not reject political and civil rights but attempt to frame those rights and other human rights in a combination of selected ideas from natural rights, Marxism-Leninism, Ho Chi Minh thoughts, and traditional values. For the Vietnamese, human rights reflect a class struggle of the oppressed against the exploiters. Accordingly, freedoms are both inherent rights and result from oppression and exploitation. The Vietnamese also hold that human rights are contingent on historical, traditional, and cultural values and that their implementation also depends on the levels of development. Moreover, the Vietnamese human rights conceptualisation entails the unity between individual rights and responsibilities, and between individual rights and national interests. As far as human rights exchange, the Vietnamese do not reject the possibility to learn from others but such exchange is based on their pride of the superiority of socialism over capitalism and on the fears of peaceful evolution towards the latter. The chapter suggests that although human rights differences between the U.S. and Vietnam are overwhelming and

at times to the point of incommensurability, there remains proximities or similarities upon which the two countries can build.

Chapter Three draws a number of conditions for, and indications of, mutual understanding based upon Gadamer's philosophical hermeneutics [henceforth PH]. At the same time, it applies these conditions and indications into a particular U.S. – Vietnam human rights dialogue. According to Gadamer, for genuine mutual understanding to occur, interlocutors must satisfy a number of conditions: not to find out other's position or out-argue the other; to be led by the truth of the subject matter; be aware that they carry along their own prejudices and be ready to suspend their prejudgements when encountering something new and different; to put oneself into the other's perspective; and to be open to the new meaning provided by the other. The indications of mutual understanding are categorised into three levels, from substantial agreement, to familiarisation with (human right) differences, and to attempt to try to understand the other. The application of these conditions and indications to the 2006 human rights dialogue [henceforth 2006 HRD] between the U.S and Vietnam shows that almost all Gadamerian conditions were not met. It also reveals that the absence of substantial mutual understanding on human rights can be explained by interlocutors' evasive and ignorant attitudes and by certain features of diplomacy. However, what the use of Gadamer's PH does not reveal is the impact of power relations and why the interlocutors adopted such attitudes in the first place.

In a similar pattern, Chapter Four extracts genuine understanding conditions and indications from Habermas's TCA and applies them to the 2006 HRD. The Habermasian conditions are of double layers. In the first and comprehensive layer, interlocutors adopt not an objectivating but a performative attitude; they possess certain knowledge about the objective, social, and subjective worlds of the other; they understand certain linguistic expressions in the same way; they recognise the other as an equally rational subject, and their dialogue must adhere to the principles of equality, inclusiveness, truthfulness, and be free from power constraints. On a more specific layer, the speech acts in the dialogue must satisfy three validity claims to truth, rightness, and truthfulness so that their conversations are communicative and genuine agreement occur. The analysis from a Habermasian perspective brings about more specific dialogue results but none of them help to narrow the gap of human rights differences between the two countries. It also points to strategic actions as the main reason for that outcome and sheds light into diplomacy as both obstacle to, and facilitator of, genuine agreement. The analysis in this chapter also suggests that power and developmental asymmetries and the lack

of trust are contributing factors to the dialogue outcome. However, like the analysis from Gadamer's perspective, what is unclear is why interlocutors turned to strategic actions in their conversation.

The last chapter sheds light into what remained unclear in the previous chapters. It first argues that certain features of diplomacy are conducive to genuine understanding, namely the principles of mutual respect, courtesy, and equality whereas some other features prevent the interlocutors from reaching genuine agreement. Thus, diplomacy, like the incommensurabilities of the U.S. – Vietnam human rights understanding, should not be blamed as immediate and direct obstacles to genuine understanding. It then comes to the primary argument of the thesis, that is the underlying obstacles are fears and suspicions, ethnocentrism, and power imbalances and the gaps in development levels. Combined together, these three obstacles distort how each side views the other's arguments and justifications. Any attempt to narrow the differences on human rights understanding between the U.S. and Vietnam must take these obstacles into considerations. The chapter then articulates this thesis' theoretical and practical contributions for cross-cultural human rights dialogues.

The main argument of this thesis is that fears and suspicions, ethnocentrism, and imbalances of power and developmental level constitute underlying and immediate obstacles to American and Vietnamese mutual understanding on human rights. As for the first obstacle, Vietnamese fears and American suspicions originated from the Vietnam war legacies and the two opposing political systems. The Vietnamese communists are concerned that human rights constitute a new battle field for the Americans to undermine socialism in their country, a goal that the latter failed to accomplish in the war. Whereas the Americans hold what the Vietnamese deem as legitimate restrictions on freedoms of press and religion as cynical attempts to cling to power. These fears and suspicions undermine the necessary basic trust and goodwill required for a meaningful outcome to eventuate, which are the cause of the interlocutors' evasive and ignorant attitudes and their use of strategic actions in the 2006 HRD.

As for the second obstacle, with their convictions on the superiority of their human rights values and what the U.S. hold to be their unspoken Manifest Destiny, the Americans judge the Vietnamese by their standards, and dictate what Vietnam should and should not do, from general advices to specific requests. These advices and requests are interpreted by the Vietnamese as interferences into their internal affairs or worse, attempts to subvert the

communist regime. And under the impression of being dictated and lectured, the Vietnamese again opted for the attitudes of ignorance and disengagement. Finally, while the difference in development level dictates that the Vietnamese side has to change, power imbalance provides the Americans with the discretion to opt for strategic actions. At the same time, the Vietnamese took the U.S. material strength into their appreciation of American values, thus they may not appreciate American human rights understanding *on its own merits*.

These three obstacles reinforce each other. The power imbalance consolidates Vietnamese fears and suspicions whereas the gap of development justifies American ethnocentric thinking and determines whose values are deemed superior. At the same time, the manifestations of American ethnocentric prejudices further feed Vietnamese fear of an unfinished Vietnam war. Consequently, these factors limit the interlocutors' appreciation on any possible valid rationality and truth in the others' arguments and human rights understanding. In this sense, the interlocutors allowed the three obstacles to distort their perceptions and understanding of the other.

Before moving on to the concrete arguments of this thesis, it is necessary to mention what the thesis does not cover. This thesis restricts itself to exploring the nature of human rights exchanges between the Americans and the Vietnamese. It refrains from investigating whether the American or the Vietnamese human rights position is rational or mere propaganda: it is up to the parties to agree on what can be counted as rational. Nor does the thesis discuss the agents of, and dynamics for, improvements of human rights conditions in Vietnam, although its findings are relevant to such improvements. The advocacy networks of human rights organisations, which several authors consider agents of changes in human rights, are not yet present in Vietnam.¹⁴² If there are such networks in Vietnam that are unknown to the author of this thesis, they are probably closely scrutinised by the security in that country.

Furthermore, as the thesis discusses human rights dialogues between the two states, only *the* official view and perception of human rights of the U.S. government and those of the Vietnamese government will be analysed. The discussion of perceptions of human rights advocated by different social groups within the American and Vietnamese societies though desirable, does not directly serve the purpose of this thesis. And finally, although Habermas's

¹⁴² See for example, Margaret E. Keck and Kathryn Sikkink, *Activists beyond borders: advocacy network in international politics*, Ithaca, New York, Cornell University Press, 1998 that discusses transnational advocacy networks as agent of human rights changes or Thomas Risse, Stephen C. Ropp, Kathryn Sikkink (eds.), *The Power of Human Rights International Norms and Domestic Change*, Cambridge University Press, 1999, online publication for the diffusion of international human rights norms as a result of the dialogues between the human rights violating governments and the domestic and international human rights advocacy organisations.

and Gadamer's works are analysed in depth here, the thesis does not aim at testing their approaches to understanding inter-state dialogues. To serve its primary goal of studying U.S. - Vietnam human rights dialogue, it is necessary to extract from their works the two models for a genuine dialogues and analysing U.S. – Vietnam interactions on human rights through the prism that these two models provide.

Chapter One

American Understanding of Human Rights

This Chapter has three parts; it first examines the philosophical and historical foundations of rights in the U.S. and how liberal ideas have become embedded in the American conception of rights. American leading and founding thinkers had well established that rights were individualistic, inherent, and universal; defined in the political and civil domain; and upheld as individual protections against a necessary but evil state. The chapter then presents the exceptional features in the American understanding of rights, focusing on strong protections for individuals in the rights to freedom of speech, of press, and religious freedom. It also provides an account for the failure to incorporate social and economic rights into American human rights understanding. In the second part, the chapter explores American views of exchanges on rights with others. On one hand, the Americans believe in their superiority in terms of rights: the others are expected to learn from the U.S. model. On the other hand, with convictions in their manifest destiny Americans want others to enjoy the same liberties and freedoms as they do, by a “leading by example” approach and from the 1970s onwards by regarding human rights as an independent interest in planning American foreign policy. The third part discusses the instrumentalisation of human rights issue into American foreign policy.

It should be noted here that the chapter does not intend to present all American understandings of rights, but only those that seem to be of the most obvious differences to the Vietnamese understanding of human rights. The chapter will also not discuss the evolution of American understandings of rights in U.S. history. Chronological explanations are used for the periods when American perception of rights was most strongly formulated, that is in their early days, Revolutionary period, the 1950s, and the 1970s.

I. American understanding of rights

1. Understandings of rights in American classical liberalism

Early American understanding of rights was influenced by the adepts of classic liberalism, most notably are John Locke and Thomas Paine. The former was one of the most influential

thinkers among American intellectuals in the revolutionary period and beyond. The latter popularized liberal ideas among the American people. Before discussing their ideas on rights, the justifications for the selection of these two thinkers are as followed.

1.1 Why John Locke and Thomas Paine:

The work of the British philosopher John Locke, one of the most influential thinkers in the Enlightenment period, penetrated America in the early 17th century.¹⁴³ The U.S. founding father Thomas Jefferson considered Locke one of the three greatest men that had “laid the foundation of those superstructures which have been raised in the Physical and Moral sciences.”¹⁴⁴ Not only was Jefferson under an “especially strong and extensive” influence of Locke, but according to Kevin L. Cope, “most of American intellectuals and self-made men at that time, including Benjamin Franklin, were not far behind Jefferson in applauding the polymeric Locke.”¹⁴⁵

Tracing back the marks of Locke on American history, one may find his direct involvement in the U.S. in colonial time.¹⁴⁶ But it is his social contract theory in the *Two Treatises on Civil Government* in 1689 that had the most influence on the American revolutionary movement and their understanding of human rights. This work, as developed below, had an enormous impact on political thought in the colonies and became the main source of reference for the revolutionaries’ ideological response to British rule.¹⁴⁷ Locke’s theory, as Anne Brown observes, continues to be influential in the U.S.; it provides a fundamental point of theoretical reference for the writings of John Rawls, Ronald Dworkin or Jack Donnelly on rights and

¹⁴³ Alan Brinkley, *The Unfinished Nation, A Concise History of the American People*, 5th Edition, Boston: McGraw-Hill, 2008, p. 85.

¹⁴⁴ Thomas Jefferson’s letter to his friend Richard Price Paris on January 8, 1789, see <http://www.let.rug.nl?usa/P/tj3/writings/brf/jefl74.htm>, accessed on June 1, 2012. The other two are Bacon and Newton whose works are not relevant to human rights.

¹⁴⁵ Kevin L. Cope, *John Locke Revisited*, New York: Twayne, 1999, p. 124.

¹⁴⁶ Locke shaped the founding of Georgia and helped to draw up the Fundamental Constitution for Carolina in 1669 as a secretary of the Earl Shaftesbury Anthony Ashley Cooper who was Lord Chancellor of England in 1672 (Alan Brinkley, *op. cit.*, p. 19 and p. 43). His direct actions were in fact contrary to his theory of social contract, which led some to accuse him of hypocrisy; see James Farr, “Locke, Natural Law, and New World Slavery,” *Political Theory* 2008, pp. 495-522.

¹⁴⁷ In response to new taxes from Britain imposed by George Grenville the first minister and first lord of the Treasury, the American radicals referred to John Locke’s justification of the Glorious Revolution and his *Two Treatises on Government*, among other sources, to view English history “as a struggle by Parliament to preserve life, liberty, and property against royal tyranny.” Tindall, George Brown, David Emory Shi., *America: A Narrative History*, 5th edition, New York: Norton, 1999, pp. 208-9.

“provides a persistent, powerful and deeply embedded set of conceptual linkages for Western constructions of human rights and ideals and the rhetoric of political community.”¹⁴⁸

It should be noted that John Locke was not the only proponent of social contract theory. In the seventeenth and eighteenth centuries, this theory was also developed by Hugo Grotius, Thomas Hobbes, Samuel von Pufendorf, Jean-Jacques Rousseau, and Immanuel Kant. All of them argued that political authority should no longer be the divine right of kings mandated from God, but based on an agreement among people. Apart from this, their respective versions of social contract theory were distinctively variant.¹⁴⁹

However, John Locke’s story of social contract was the most appealing to the early Americans, as other versions seem to be incompatible with the needs of American colonists at that time. Grotius had equated natural rights with life, body, freedom, and honor, a list that according to Lynn Hunt, “seemed to call slavery, in particular, into question.” Pufendorf did not advocate so much “rights of man but those social duties ‘which render him capable of society (*sociabilis*) with other men.’”¹⁵⁰ And Thomas Hobbes whose work was also well known in the British North American colonies would suggest that the Americans surrender all their natural rights except that of self-defense in return for the protection of the sovereign, in order to avoid the “war of all against all.”¹⁵¹ On his part, Locke defined natural rights as life, liberty, and estate; thus he did not challenge slavery. He even justified slavery for captives taken in a just war and proposed legislation to ensure that “every freeman of Carolina shall have absolute power and authority over his negro slaves.”¹⁵² And Locke’s idea of universal rights brought change in American discourse of rights from focusing on particular rights of freeborn English-man in the first half of the eighteenth century to universally applicable rights in the 1770s.¹⁵³ This change, as Lynn Hunt explains, is because

¹⁴⁸ M. Anne Brown, *Human rights and the borders of suffering, the promotion of human rights in international politics*, Manchester; New York, Manchester University Press, 2002, pp. 25-6.

¹⁴⁹ Reiner, Toby, "Social Contract Theory" in *Encyclopedia of Political Theory*, edited by Mark Bevir, pp. 1288-94. Thousand Oaks, CA: SAGE, 2010. <http://sage-ereference.com/view/politicaltheory/n420.xml>.

¹⁵⁰ Cited in M. Anne Brown, *op. cit.*, p.25.

¹⁵¹ *Ibid.*, and Lynn Hunt, *Inventing human rights: a history*, New York: W.W. Norton & Co., 2007, p. 119.

¹⁵² Lynn Hunt, *op. cit.*, p. 119.

¹⁵³ *Ibid.* It should be noted, however, the claim to “universal” rights in the 1770s did not apply to slaves and the indigenous Indians. Although these are important issues to undertake the history of human rights in the U.S., they are not relevant to the purpose of this thesis and thus are deliberately skirted in this thesis. Locke thus only extended rights to freeborn man in England to those in the colony. As William Blackstone a prominent thirteenth century jurist explained, “these [natural liberties of freeborn English-man] were formerly, either by inheritance or purchase, the rights of all mankind, but, in most other countries of the world being now more or less debased and destroyed, they at present may be said to remain, in a peculiar and emphatical manner, the rights of the people of England”; and even if rights had once been universal, only the superior English had managed to hold on to them, William Blackstone, *Commentaries on the Laws of England*, 8th edition, 4 Vols, Oxford: Clarendon Press, 1778, Vol. 1, p. 129, cited in *Ibid.*

in their attempt to establish a new, separate country, the colonists could not rely on the particular rights of freeborn Englishmen, “otherwise, they were looking at reform, not independence” whereas Locke’s theory promoted the image of breaking with British sovereignty.”¹⁵⁴ It could be argued that Locke’s social contract was the *right* political theory for the advocates of independence in America: it justifies their war for independence from Britain, and allows them to leave the slavery issue aside.¹⁵⁵

Early in 1776, Thomas Paine wrote the pamphlet *Common Sense* that criticized Britain’s Constitution, the royal powers and hereditary succession, and was an enthusiastic call for American independence. Echoing Locke, Paine argued that it was an American natural right to form their own government, “[a] government of our own is our natural right.”¹⁵⁶ And this government, for Paine, is founded by reasoning the common interest of society and the common rights of man. This type of government, for Paine, is in sharp contrast to the other two types of government: priest craft founded by superstition and conquerors by power. He also argued that the first “is the only mode in which governments have a right to arise, and the only principle on which they have a right to exist.”¹⁵⁷ As Craig Nelson observes, a “key to the great popularity and influence” of *Common Sense* was Paine’s insistence that the legitimacy of this last mode of government would ensure a final victory for the Americans against the greatest military power of that time.¹⁵⁸ Combined with his plain arguments and a straight forward manner, Paine had popularized ideas associated with social contract theory among the average readers.¹⁵⁹ His pamphlet sold over 100,000 copies in only a few months and “helped build support for the idea of independence in the early months of 1776.”¹⁶⁰ Paine

¹⁵⁴ Lynn Hunt, *op. cit.*, pp. 120-1.

¹⁵⁵ It should be noted that Locke’s influence in early American political thought is not without controversy. Some authors call the “orthodox” view that Locke’s ideas dominated American political thought in the founding era whereas others argue that his influence was exaggerated and point to other thinkers who had central and continuing influence on early American political thought. See Donald S. Lutz, “The Relative Influence of European Writers on Late Eighteenth-Century American Political Thought,” *The American Political Science Review*, Vol. 78, No. 1 (Mar., 1984) pp. 189-197 for more details. Despite this, the author of this thesis views that John Locke cannot be missed in discussing American early political thought and human rights understanding in particular.

¹⁵⁶ Thomas Paine, *Common Sense*, this can be found on <http://www.ushistory.org/paine/commonsense/singlehtml.htm>, accessed 14 July 2014.

¹⁵⁷ Thomas Paine, *The Right of Man, Being an Answer to Mr. Burke’s Attack on the French Revolution*, this can be found at <http://www.ushistory.org/paine/rights/c1-010.htm>, accessed on 21 October 2012.

¹⁵⁸ Nelson, Craig, “Thomas Paine and the Making of ‘Common Sense,’” *New England Review* (1990-), Vol. 27, No. 3 2006, p. 238.

¹⁵⁹ Clement Fatovic, “Paine, Thomas (1737–1809)” in Mark Bevir (ed.), *Encyclopedia of Political Theory*, SAGE Publications, Inc., 2010, p. 99. For a short biography of Thomas Paine’s life in England and his arrival in America, see Claude Mancéron, *The Men of Liberty, Europe on the Eve of the French Revolution 1774-1778*, transl. by Patricia Wolf, London, Eyre Methuen Ltd, 1977, pp. 244-9.

¹⁶⁰ Brinkley, *op. cit.*, p. 118.

may have died in poverty because he relinquished the rights to his publications,¹⁶¹ but his writings had helped to bring these ideas to the general public in early America.

1.2 The philosophy and conceptualization of American rights understanding

The social contract theory of Locke and Paine starts with a state of nature where people are born and live in freedom and equality. In this state, Locke argues that everyone is free to “order their actions,” “dispose of his person or possessions ... without asking leave, or depending upon the will of any other man.”¹⁶² Paine categorizes rights into the rights to “liberty, property, security, and resistance to oppression” (the “intellectual rights or rights of the mind” and religious freedom might be within the scope of the right to liberty) and contends that these rights “are those which appertain to man in right of his existence.”¹⁶³ Yet freedom and liberty, Locke argues, are not totally out of control as people live “within the bounds of the law of nature;” for example, no one has “the liberty to destroy himself” or the right to harm another in his “life, health, liberty or possessions.”¹⁶⁴ This law, Locke explains, is a law of reason, thus intelligible and plain to a rational creature, as people have reason so they can consult it.

The problem with the state of nature, Locke points out, is its insecure environment. Following his theory, in the state of nature, as everyone is rational and equal, everyone can punish and seek reparation from those who transgressed his rights.¹⁶⁵ Consequently, man is exposed to the “irregular and uncertain exercise of the power everyman has of punishing the transgressions of others,” and his enjoyment of natural rights “is very uncertain, and constantly exposed to the invasion of others.” Such inconveniencies, Locke argues, force man to seek and join some form of society to preserve his life, liberty, and estate.¹⁶⁶

In joining a society or political community, man signs a ‘contract’ in which he consents to give up part of his state of nature’s liberty in exchange for security and protection from that

¹⁶¹ Clement Fatovic, *op. cit.*

¹⁶² John Locke, “Of civil government,” *Headlines Series*, Vol. 318, Winter 1998, p.43. Locke insists that a state of nature can exist: international environment of all independent governments in the world or two men in a deserted island. *Ibid.*, p. 47.

¹⁶³ Thomas Paine, *The Right of Man, Being an Answer to Mr. Burke’s Attack on the French Revolution*, this can be found at <http://www.ushistory.org/paine/rights/c1-010.htm>, accessed on 21 October 2012.

¹⁶⁴ John Locke, *op. cit.*, p. 47. In a similar vein, Paine argued that natural rights are “all those... of acting as an individual for his own comfort and happiness, which are not injurious to the natural rights of others.” Thomas Paine, “The Right of Man...”

¹⁶⁵ *Ibid.*, p.45.

¹⁶⁶ *Ibid.*, pp. 53-4.

society or state. For Locke, both the legislative and executive power of governments originate from this contract, “no government can have a right to obedience from a people who have not freely consented to it.”¹⁶⁷ In other words, a government maintains its legitimacy by the consent of the people. It follows that if a government cannot fulfill the obligations that its people expect, it will lose their trust and they will have the right to rebel against it. And in rebellions, a strict reading of Locke’s social contract theory would state that “it is not the people who rebel against the government, because those who formerly had authority *are* no longer the people’s government, rather, it is the former governors who rebel against the people, in that they attempt to retain by force power which is no longer rightfully theirs.”¹⁶⁸ Paine adds that the source of all sovereignty comes not from “any Individual, or Any Body Of Men” but from the whole nation and that “the end of all political associations is the preservation of the natural and imprescriptible rights of man.”¹⁶⁹

In the process of forming a political society, Locke acknowledges that unanimous consent cannot always be attained as a minority may have different views. In such case, for Locke the majority rules as “by the law of nature and reason” the majority has “the power of the whole.”¹⁷⁰ Following Locke, those in minority then have two choices: either stay in that political society and accept the will of the majority or leave it and return to the state of nature. Several implications can be derived from this social contract theory. First, it starts with and centers on the individual. As Anne Brown observes, Lockean theory leads to “a radical assertion of individuality,” as it imagines an idealized subject who is “individual, autonomous, and disembodied from social context.” The subject is autonomous because “his interest, value, and rationality” are “naturally equipped” and “cast as prior to and independent of questions of power and political community.”¹⁷¹ Thus, people’s being and accordingly their rights are independent of their particular environment and circumstance. At the same time, it is the individuals who form and are able to break up a society thanks to all their naturally endowed rationality. As such, society is nothing but a collection of individuals who agree to live with each other under an imagined social contract. Conceptualizing the relation

¹⁶⁷ John Locke, *Of Civil Government*, cited in Lamprecht, Sterling Power, *The moral and political philosophy of John Locke*, New York: Russell & Russell, 1962, p. 136.

¹⁶⁸ D.A.Lloyd Thomas, *Locke on Government*, London, New York, Routledge, 1995, p. 61.

¹⁶⁹ Thomas Paine, *op. cit.*,. Paine categorized governments into first: priestcraft founded by superstition, second: conquerors by power, and third: reasoning the common interest of society and the common rights of man. Given the sovereign right of each individual and their entering “into a compact with each other to produce a government,” for Paine the last “is the only mode in which governments have a right to arise, and the only principle on which they have a right to exist.” *Ibid.*

¹⁷⁰ John Locke, *Of Civil Government*, p. 192, 106, cited in Lamprecht, Sterling Power, *op. cit.*, p. 136.

¹⁷¹ M. Anne Brown, *op. cit.*, p. 27.

between individual and society in this way, the former has no responsibility towards the latter. As Paine contends, “society grants him [man after entering a society] nothing ... [as] every civil right has for its foundation some natural right pre-existing in the individual.”¹⁷²

Second, it follows that in this theory human rights become universal. Brown rightly observes that “for the story of the contract, human rights are rooted in the citizen’s universal nature. They are given shape or articulated, however, by the process by which he enters the sovereign state and which binds him to his fellows.... Thus rights are the definition and expression of the universal subject as he enters the political order.”¹⁷³ In other words, people everywhere form their communities in the same pattern: their natural inherent rights are all that they have to enter or form their own societies.

Third, this narration of how society forms allows rights to be defined within civil and political domain only. As Brown argues, in Locke’s theory, economic and power relations (i.e. rich-poor gap, or the way the economy is organized) are excluded from the zone of the state, resulting the priority of political rights over economic rights and the irrelevance of economic issues when discussing about rights.”¹⁷⁴ Perhaps Locke and Paine’ only economic related concerns are property right and the freedom from state’s economic intervention. Accordingly, social and economic rights as stipulated in the ICESCR cannot be counted as rights in the American traditional conceptualization of human rights. I will return to the American response to these rights in the final section of this part.

Fourth and drawing from the previous point, state is a necessary evil and subjected to natural law. With no responsibility to the wellbeing of its people, a Lockean state is depicted in a negative sense, for example as something to prevent men from exercising excessive punishment against the transgressors of their rights. Paine makes clear this depiction in his *Common Sense*. Society and government, he wrote:

are not only different, but have different origins. Society is produced by our wants, and government by our wickedness; the former promotes our happiness POSITIVELY by uniting our affections, the latter NEGATIVELY by restraining our vices. The one encourages intercourse, the other creates distinctions. The first is a patron, the last a punisher. Society in every state is a blessing, but Government, even in its best state, is but a necessary evil.¹⁷⁵

¹⁷² Thomas Paine, *op. cit.*, It should be noted that for Paine, the distinction between natural right and civil right is not very clear. What Paine wanted to emphasize here was that natural rights were the origin of all civil rights.

¹⁷³ *Ibid.*, p. 28.

¹⁷⁴ M. Anne Brown, *op. cit.*, p. 29.

¹⁷⁵ Thomas Paine, *The Common Sense*, this can be found at <http://www.ushistory.org/paine/commonsense/singlehtml.htm>, accessed on 10 October, 2012.

For Paine, the state is necessary because it is required to punish those who violate others' legitimate rights. In this way, the state's function is only to ensure security and order whereas the provisions of other human needs, i.e. subsistence is beyond its responsibility.¹⁷⁶

Translated this into modern terms, the state should only provide political and civil rights, whereas the provisions of social, economic, and cultural rights should be the responsibility of the citizens themselves. At the same time, the state is evil because by restraining and punishing people's vices, it has already violated people's natural rights. This is why the state should act within the mandates given to it by the people. And this is why the state should always be guarded against potential abuse of its mandated power.

Besides the limitations of not exceeding the power granted by its citizens, a Lockean state is also limited by the law of nature. For Locke "the obligations of the law of nature cease not in society," but "the law of nature stands as an eternal rule to all men, legislators as well as others,"¹⁷⁷ and "nobody, no power, can exempt from the obligations of that eternal law."¹⁷⁸ Accordingly, the state cannot just do as it pleases and its positive laws must be "conformable to the laws of nature."¹⁷⁹ If Locke joined the contemporary debate on the relation between individual rights and state's sovereign rights, he would definitely be a steady advocate for the supremacy of the former over the latter. A Lockean view would argue that whoever violated natural human rights in the name of sovereign rights have already violated the ultimate law of nature; if they are the rulers, the legitimacy of their rulings must be challenged.

In summary, John Locke's social contract theory provides appealing "truths" for the Americans: human rights are *individual* rights, and inherent in human beings, natural and universal; the state is a necessary evil that acts within the authorities mandated by its citizen and the law of nature; and rights political and civil while social and economic rights are not human rights. The next section examines how these ideas were codified and institutionalized.

1.3 The codification of U.S. understanding of rights into her historical documents:

The Virginia's Declaration of Rights, the Declaration of Independence, and the Bill of Rights are among those that laid the foundation of the nation, and are the bedrock of American

¹⁷⁶ Henry Shue sharply observes that "a standard assumption in liberal theory is that ... [y]ou must have your subsistence guaranteed in order to be admitted into the domain of theory." Shue, Henry, *Basic Rights: Subsistence, Affluence and US Foreign Policy*, Princeton University Press, Princeton: New Jersey, 1980, p.27, cited in Anne Brown, *op. cit.*, p. 32.

¹⁷⁷ John Locke, *Of civil government*, p. 135, cited in Lamprecht, Sterling Power, *op. cit.*, p. 142.

¹⁷⁸ *Ibid.*, John Locke, *Of civil government*, p. 195, cited in *Ibid.*

¹⁷⁹ John Locke, *Of civil government*, p. 12, cited in *Ibid.*

conception of rights. The Virginia Declaration of Rights was drafted by the delegate from Fairfax County George Mason and submitted to the Virginia Fifth Convention in May 1776 when the sentiment toward independence in the colonies grew high. The Declaration for Independence was drafted by Thomas Jefferson, who mainly drew from his own draft preamble to the Virginia Constitution and George Mason's draft of Declaration of Rights.¹⁸⁰ And the Bill of Rights was introduced as a compromise for the adoption of the constitution by all the thirteen states. Although the American Constitution was signed in September 1787, its critics including well-established characters such as George Mason, Samuel Adams, and Patrick Henry¹⁸¹ who were worried that the Constitution "seemed interested solely in safeguarding the rights of property," made no reference to the natural rights of the people, and would "wield dictatorial powers, favor the 'well born' over the common people, and abolish individual liberty."¹⁸² These concerns brought seven out of thirteen states to adopt the Constitution in May 1790 "only on the virtual promise that it would be amended to protect the 'rights of man.'¹⁸³ The first Congress submitted twelve amendments to the states, ten of which were ratified by the states by the end of 1791, becoming known as the Bill of Rights. In meeting these concerns, the Bill of Rights officially codifies and safeguards fundamental individual rights against the infringement of the state.

The radical philosophy of John Locke and Thomas Paine was eloquently present in the first two documents. Consider these lines:

On natural rights

All men are by nature equally free and independent and have certain inherent rights, of which, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property. (Virginia's Declaration of Rights)

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. (Declaration for Independence)

On the origin and power of government

Government is, or ought to be, instituted for the common benefit, protection, and security, of the people. (Virginia's Declaration of Rights)

¹⁸⁰ Tindall, George Brown and David Emory, *op. cit.*, pp. 235-6. Jefferson was one of the five members of a committee appointed by the Continental Congress in Philadelphia to propose a declaration for independence. The other members are John Adams, Benjamin Franklin, Roger Sherman, and Robert Livingston. *Ibid.*

¹⁸¹ In *Ibid.*, p. 321.

¹⁸² In Brinkley, *op. cit.*, pp. 152-4.

¹⁸³ In Faulkner, *op. cit.*, p. 158.

That to secure these [unalienable] rights, Governments are instituted among Men, deriving their just powers from the consent of the governed (Declaration for Independence)

All power is vested in, and consequently derived from, the people. All power of suspending laws, or the execution of laws, by any authority without consent of the representatives of the people, is injurious to their rights, and ought not to be exercised. (Virginia's Declaration of Rights)

On the justification for revolution

Whenever any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, unalienable, and indefeasible right, to reform, alter, or abolish it. (Virginia's Declaration of Rights)¹⁸⁴

That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. (Declaration for Independence)¹⁸⁵

In the Bill of Rights, the rights appear in the following order: the right to enjoy freedom of religion, speech, press, and assembly; keep and bear arms; refuse to house soldiers in private homes; be secure against unreasonable searches and seizures; refuse to testify against oneself, be deprived of life, liberty, or property without due process of law; enjoy a fair, speedy and public trial by an impartial jury; and be protected against excessive fines or cruel and unusual punishment.¹⁸⁶ Among these rights, the freedoms of speech, press freedom and religious freedom are discussed in details below for two reasons: they are obvious American divergences from other democracies and have always remained the contested issues in U.S. – Vietnam human rights encounters.

2. The exceptional features of American understanding of rights

2.1 Freedom of speech

The U.S. differs from other liberal democracies and “an emerging multinational consensus” in their understanding of the entire domain of freedom of expression, most notably in hate

¹⁸⁴ This document can be found on <http://www.history.org/media/slideshows/va%5Fdeclaration%5Fmagnify/>, accessed on 21 June 2012.

¹⁸⁵ The Declaration for Independence can be found on http://www.archives.gov/exhibits/charters/print_friendly.html?page=declaration_transcript_content.html&title=NARA%20%20The%20Declaration%20of%20Independence%3A%20A%20Transcription, accessed on 28 April 2014.

¹⁸⁶ The Bills of Rights can be found on <http://www.ushistory.org/documents/amendments.htm>, accessed on 21 June 2012.

speech, racial insults, and defamation.¹⁸⁷ American courts establish strict conditions for prohibiting those acts and are more protective of speakers' rights and a typical case for this is the *Brandenburg v. Ohio*. In a rally with Ku Klux Klan members in southern Ohio in 1969, local leader Clarence Brandenburg made speeches conveying racist and anti-Semitic statements and warned of taking "revengeance" acts against African Americans and Jews, "if our President, our Congress, our Supreme Court, continues to suppress the white, Caucasian race."¹⁸⁸ Ohio's courts convicted him of violating the state's criminal syndicalism statute, which prohibited advocating "the duty, necessity, or propriety of crime, sabotage, violence, or unlawful methods of terrorism as a means of accomplishing...political reform."¹⁸⁹ However, the Supreme Court of the United States reversed this conviction by holding that a state can only forbid or proscribe advocacy of the use of force or law violation when "such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action."¹⁹⁰ The *Brandenburg* case, as Schauer explained,

stands for the proposition that restrictions on the incitement of racial hatred can be countenanced... only when they are incitements to *violent* racial hatred, and even then only under the rare circumstances in which the incitements unmistakably call for immediate violent action, and even then only under the more rare still circumstances in which members of the listening audience are in fact likely immediately to act upon the speaker's suggestion.¹⁹¹

In other words, for a hate speech or racial insult to be outlawed, it should meet all three strict conditions: inciting violent racial hatred, producing imminent lawless action, and the audience's likeliness to act immediately upon the speaker's suggestion. *Brandenburg* therefore could not be convicted because his speech, though advocating the use of force, was not deemed to produce imminent lawless action and his audience to be unlikely to produce such action. In a similar vein, for Americans, a person calling for political reforms or even regime change can only be outlawed if her speech incites violence, produces lawless action, and her audience acting immediately at her suggestions. If one of these conditions is not met, any state action against her because of her speech is a violation of her freedom of expression.

¹⁸⁷ Schauer, Frederick, "The Exceptional First Amendment," in Ignatieff, Michael (ed.), *American Exceptionalism and Human Rights*, Princeton and Oxford: Princeton University Press, 2005, p. 30, p. 41 and p. 43.

¹⁸⁸ See Kamatali, Jean-Marie, "The U.S. First Amendment Versus Freedom of Expression in Other Liberal Democracies and How Each Influenced the Development of International Law on Hate Speech," *Ohio Northern University Law Review*, Vol. 36, 2010, pp.723-4. See also, Schauer, *op. cit.*, p.36.

¹⁸⁹ In Kamatali, *op. cit.*, p. 724.

¹⁹⁰ *Ibid.*

¹⁹¹ Schauer, *op. cit.*, p. 36.

As for defamation, American courts also make it very difficult, even impossible to sanction the speakers. Since the case *New York Times Co. v. Sullivan* in 1964, the Supreme Court has been of the view that actions for libel (written) and slander (spoken) “could succeed only upon proof by clear and convincing evidence...of *intentional* falsity.”¹⁹² For example, in order to win a law suit against a publisher for libel or slander, a plaintiff in the U.S. needs to prove that the information publicized by the publisher is both false *and* despite having known beforehand the falsity of that information, the defendant still intentionally published it - a burden of proof, as Schauer assesses, “almost impossible to meet.”¹⁹³ Schauer also notes that this case marks the American departure from the common law world tradition, in which the plaintiff only needs to prove that the defendant had uttered or published words “tending to injure the alleged victim’s reputation” “by a bare preponderance of the evidence.”¹⁹⁴

Consequently, several acts sanctioned in other liberal countries could not be prohibited in the U.S. There are abundant examples for those acts, such as Jean-Marie Le Pen’s accusing Jews of exaggerating the Holocaust, Brigitte Bardot’s crusading against Islam and urging the deportation of those of Arab ethnicity in France, or Ernst Zundel and James Keegstra’s denying the Holocaust in Canada;¹⁹⁵ or in a more recent case, an anti-Islam movie posted in YouTube in September 2012 causing violent protests against the U.S. in so many Muslim countries that the Obama’s administration had to condemn the film.¹⁹⁶ However, the film alleged producer Nakoula Basseley Nakoula could not be prosecuted for defaming Allah and was only investigated for violating his terms of release after pleading guilty to bank fraud in 2010.¹⁹⁷ No charge could be brought against him on the film only.

According to Schauer, there are several reasons for the lack of practical restrictions on freedom of expression. Among them is the preference for liberty over community values: on issues “in which the preferences of individuals may be in tension with the needs of the collective,” Schauer argues, “the United States, increasingly alone, stands as a symbol for a certain kind of preference for liberty even when it conflicts with values of equality and ...important community values.” Another reason is a libertarian culture of distrusting the government “reliably to distinguish the good from the bad, the true from the false, and the

¹⁹² Ibid., p. 39.

¹⁹³ Ibid.

¹⁹⁴ Ibid, p. 38.

¹⁹⁵ Ibid, pp. 36-7.

¹⁹⁶ See, for example, <http://www.telegraph.co.uk/news/worldnews/northamerica/usa/9541823/Hillary-Clinton-anti-Islam-film-disgusting-and-reprehensible.html>, accessed on September 9, 2012.

¹⁹⁷ See <http://news.yahoo.com/actress-sues-california-man-behind-anti-muslim-film-031549567.html>, accessed on 9 September, 2012.

sound from the unsounds... It is for neither the government nor the courts, for example, to decide that Nazi ideas are dangerous or that the views of the Ku Klux Klan are as wrong as they are pernicious.” Therefore, in a defamation case the Supreme Court had ruled that “under the First Amendment, there is no such thing as a false idea.”¹⁹⁸ Schauer also observes that in other constitutional democracies the inquiry for sanctioning speakers’ rights will question whether a restriction is reasonable, necessary, or most commonly, “proportional in light of the importance of the restriction and the extent of the free expression interest that is restricted.” An American inquiry of this kind, however, will first consider if the act is within the First Amendment’s purview, and if it is, then a number of First Amendment rules will be selected to apply for that particular case.¹⁹⁹ A judicial inquiry would thus focus on whether such a restriction is a violation of the First Amendment and ignore any discussion of the proportional importance or necessity of such a restriction.

Some observations are drawn from the above discussion. For the Americans a call for political change or even subversion or a defamation of highly dignified individuals (such as American founding fathers) cannot be punished. At the same time, restrictions on freedom of expression for reasons of advocating wrong ideas, or going against the traditional and cultural values, or for proportional necessity cannot be justified in American view. This strong support for freedom of speech at the expense of the common good is in sharp contrast to Vietnamese view on this freedom.²⁰⁰

2.2 Press freedom

With the limited restraints on freedom of expression, it can be expected that freedom of the press would also be well protected in the U.S. According to Lee C. Bollinger, the “central image” that was confirmed by the Supreme Court’s 1964 decision in the *New York Times v. Sullivan* case is as follows:

In the United States the government is forbidden by virtue of the First Amendment from censoring or punishing the press for what it chooses to say. The press is not licensed, as it was in seventeenth-century England. It need not clear with the government what it proposes to publish. And, except under very limited circumstances, the government may not punish the press for what it has said. Libel, invasions of privacy, extraordinary threats to national security, and a few

¹⁹⁸ Schauer, *op. cit.*, pp. 45-6. Reviewing a number of cases at the Supreme Court, Kamatali also observes that, “the Supreme Court of the United States has remained consistent in refusing to distinguish protected from unprotected speech on the basis of the point of view espoused.” Kamatali, *op. cit.*, p. 722.

¹⁹⁹ *Ibid.*, pp. 53-4.

²⁰⁰ Vietnamese view on this freedom is elaborated in the next chapter.

other justifications may permit government to limit press freedom, but these circumstances are limited and scrutinized closely by the courts. It is, indeed, the function of the courts to protect press freedom against government interference and to decide when those rare instances arise. The principal justification for this manner of organizing society is the necessity of a free press in a democratic political system. Without it the public cannot receive all the information it needs – about government actions or public issues – to exercise its sovereign press.²⁰¹

In other words, in the U.S. press is free and independent from the state; it does not need to register with the state to operate nor state's approval for what it proposes to publish, except for certain rare exceptions for prior restraints.²⁰² And this freedom is crystallized in the Constitution and protected by the Supreme Court, in order to provide the people with all information about government actions and any other issues. Under this understanding, press is conceptualized as a tool of the people to keep the government in check. Although Bollinger points out that although there had been “extensive government intervention through a regulatory system” during most of the XXth century, the dominating idea in the U.S. is that American press enjoy an autonomous position to watch over the government for the sake of the people.²⁰³

2.3 Religious freedom

In a similar vein, there is a dominating narration on American religious freedom. What has been “so ingrained in American consciousness” and becomes “an orthodoxy of sorts,” as Sehat observes, is the narration that the United States is “a land of liberty born from a desire for religious freedom;” and “religious liberty ... is a hallmark of American democracy.” Having been separated from the state, the story goes, “religion has flourished in the United States [and] [i]t became central to reform movements ... that sought to perfect the American project by expanding democracy.”²⁰⁴ In other words, even though there has always been a wall of separation between church and state along American history, liberty of conscience is well respected and protected in the U.S.

²⁰¹ Bollinger, Lee C., *Images of a free press*, The University of Chicago Press, Chicago, London, 1991, p. 1.

²⁰² According to John Allen Hendricks, prior restraints may be allowed for information that would interfere with war efforts, or incite acts of violence, and is defined as obscene. And the procedures required for censorship of obscene material are outlined in the Supreme Court's decision of the 1965 *Freedman v. Maryland* case: “the censor must prove the material in question is obscene,” “there must be a process in place for a quick judicial review for that matter,” and “a permanent restraint is permissible if the courts find the material to be obscene.” John Allen Hendricks, “Press Freedom,” in Lynda Lee Kaid & Christian Holtz-Bacha, *Encyclopedia of Political Communication*, 2008, pp. 645-6.

²⁰³ Bollinger, *op. cit.*, p. 62.

²⁰⁴ Sehat, David, *The Myth of American Religious Freedom*, USA, Oxford: Oxford University Press, 2010, p. 2.

Evidence abounds to support this understanding: religious freedom is protected in both the Constitution and the Bill of Rights, even though, as Isaac Kramnick and R. Laurence Moore note, “God and Christianity are nowhere to be found in the American Constitution.”²⁰⁵ It was the American founding fathers Thomas Jefferson and James Madison, according to Eisgruber and Sager, who set themselves against religious persecution and intolerance. And religious freedom receives a “lavish treatment in the Constitution” when it makes room for declaring unconstitutional “prohibitions on the free exercise of religion” as well as laws “respecting the establishment of religion” and “requiring religious oaths as a condition of public office.”²⁰⁶ Mitt Romney, in a speech at the 2008 presidential primaries, claimed that the U.S. has a grand tradition of religious tolerance and liberty which is “fundamental to America's greatness.” Freedom and religion required each other, he argues, the two “endure together, or perish alone.”²⁰⁷ And the current American President Barack Obama recently proclaimed January 16, 2014 as American Religious Freedom day to celebrated the American legacy of religious liberty which, for him, was affirmed by the Virginia Statute for Religious Freedom in 1786.²⁰⁸

However, others argue that this understanding ignores certain facts and thus rests more on myths.²⁰⁹ Sehat points out that for nearly one century and a half following its ratifications, the First Amendment “had no effect on the protection of religious belief or non-belief,” given the Supreme Court consistent ruling since 1833 that the Bill did not apply to the states, leaving the states “free to prosecute for blasphemy and otherwise constrain religious belief in any way they saw fit” and “enormous reservoir of power to regulate . . . the morals of its residents, and religious partisans drew from this source to imprint their moral ideals onto state constitutions and judicial opinions.”²¹⁰ Thus, behind the myth of religious freedom as an exceptional liberty, “stood the reality of religious control, which worked through much of U.S. history to coerce rather than to persuade citizens to behave according to religious

²⁰⁵ Kramnick, Issac and Moore, R. Lauraence, *The Godless Constitution: A Moral Defense of the Secular State*, New York: Norton, 2005, pp. 27-8.

²⁰⁶ Eisgruber, Christopher L. and Sager, Lawrence G., *Religious Freedom and the Constitution*, Cambridge, Massachusetts: Harvard University Press, 2007, pp. 1-2.

²⁰⁷ Mitt Romney, *Faith Speech*, this can be found on <http://www.npr.org/templates/story/story.php?storyId=16969460>, accessed on 26 September, 2012.

²⁰⁸ See President Barack Obama's proclamation on religious freedom day, this can be found on <http://www.whitehouse.gov/the-press-office/2014/01/15/proclamation-religious-freedom-day-2014>, accessed 4 July 2014.

²⁰⁹ See, for examples, Craycraft, Kenneth R. Jr., *The American myth of religious freedom*, Dallas: Pence Publication, 1999 and David Sehat, *op. cit.*

²¹⁰ Although the federal courts began expanding the protection of the Bill to include all levels of government in the 1920s, it was not until 1940 that the Court specifically applied the First Amendment's religion clauses. Sehat, *op. cit.*, pp. 4-5.

norms.”²¹¹ Craycraft goes as far as claiming that the belief in religious freedom in the U.S. is like that in witches and unicorns.²¹²

What is important, in terms of American understanding of their rights, is not much the factual inadequacies of these founding myths, but how the myths are used. Internally, they provide the grounding for American values and how the U.S. as a political community came into being; in other words, they “provide the foundation of the civic identity of the American people.”²¹³ Moreover, they also generate domestic expectations of American exceptionalism – the “self-image of an exceptional people who stand for freedom around the world” – which any President must factor in when formulating U.S. foreign policy.²¹⁴ The three freedoms discussed on this sub-section are the items that the U.S. strongly emphasizes in its human rights agenda for Vietnam. The next section examines American views on exchanges on rights understanding with others.

3. The failure to incorporate economic and social rights into American understanding of rights

The economic rights discussed in this section means those rights that have been crystalized in the ICESCR, not American rights to property and to be free of government interventions. Unlike many other rights in international laws that have been rejected or nullified by the U.S. governments, economic and social rights stand out as a curious case as they were advocated to American public by president Franklin D. Roosevelt. Taking office in March 1933, Roosevelt faced with the nation’s “utter collapse of the economic life” and social unrest.²¹⁵ Roosevelt’s administration quickly proposed and enforced the New Deal, a number of legislative acts that greatly extended government’s intervention and participation in the economy, strengthened and protected labor rights to bargain collectively, and provided economic and social benefits and public assistance for the neediest citizens. The New Deal

²¹¹ Ibid, pp. 7-8.

²¹² Craycraft, *op. cit.*, p. 27.

²¹³ Sehat, *op. cit.*, p. 7.

²¹⁴ Forsythe, David P., “Human Rights and US Foreign Policy: Two Levels, Two Worlds,” *Political Studies*, Volume 43, Issue 1, 01/1995, p. 111.

²¹⁵ Faulkner, *op. cit.*, p. 857. As Faulkner describes, “Business had sunk to 60 per cent of normal; exports were close to the lowest point in thirty years; unemployment was estimated at from 13,000,000 to 17,000,000. Over 1400 banks had failed during 1932...”, Ibid. The economic hardships affected all American social strata, especially the socially marginalized and racially discriminated. Separate protests by farmers and veterans broke out in summer 1932 and in the second incident, the military was called in to quell tens of thousands of World War I veterans demanding for their immediate bonus payments out of Washington D.C, see Brinkley, Allan, *op. cit.*, pp. 651-76 for more details.

won popular support and earned Roosevelt a second term in office.²¹⁶ But it was not without criticism; as Faulkner observed, many vehemently charged that “the general philosophy and tendency of the New Deal was considered foreign to American traditions,” in other words, it was “breaking down free enterprise and moving toward socialism.”²¹⁷

In defending the spirit of the New Deal at the Democratic convention that nominated Roosevelt as the party’s presidential candidate in 1936, Roosevelt argued that although the constitutional framers were concerned only with political rights, new circumstances required the recognition of economic rights as “freedom is no half-and-half affair.”²¹⁸ Later, in addressing Congress on January 6, 1941, Roosevelt discussed “four essential human freedoms” namely freedom of speech, freedom of religion, freedom from want, and freedom from fear of foreign aggression.²¹⁹ The first two freedoms were traditional individual rights in the U.S. whereas the two remaining ones were new in two senses. First, freedom from want falls into the economic sphere; second, both the last two freedoms are the responsibility of nations, not individuals. It is here that he extended the American concept of rights beyond traditional rights; for Roosevelt, *economic* and *collective* rights were also essential human rights. The expected goals for American *internal* human rights policy, Roosevelt specified, were “a wider and constantly rising standard of living,” “old-age pensions and unemployment insurance,” and “adequate medical care.”²²⁰

Three years later, Roosevelt attempted to get his economic and social rights implemented by the Congress in his State of the Union Address. Reminding American Congressmen and Senators of “certain inalienable political rights” under which the U.S. “had its beginning, and grew to its present strength”, Roosevelt persuasively argued, “[w]e have come to a clearer realization of the fact, however, that true individual freedom cannot exist without economic security and independence. ‘Necessitous men are not free men.’ People who are hungry, people who are out of a job are the stuff of which dictatorships are made.” He then suggested, “we have accepted, so to speak, a Second Bill of Rights” and named a series of rights which

²¹⁶ Faulkner, *op. cit.*, pp. 856-83.

²¹⁷ *Ibid.*, p. 875.

²¹⁸ Franklin Delano Roosevelt, “Speech before the 1932 Democratic National Convention”, in *The Essential Franklin Delano Roosevelt*, New York, Gramercy Books, p. 17, cited in Cass R. Sunstein, Chapter 4 “Why Does the American Constitution Lack Social and Economic Guarantees”, in Michael Ignatieff (ed.), *American Exceptionalism and Human Rights*, Princeton and Oxford, Princeton University Press, p. 100.

²¹⁹ F.D. Roosevelt, *The Four Freedoms*, this can be found on <http://www.americanrhetoric.com/speeches/fdrthefourfreedoms.htm>, accessed July 12, 2012.

²²⁰ *Ibid.*

can be categorized into today's social and economic rights.²²¹ Arguing that implementing these rights was the continuation of the war effort, Roosevelt asked Congress to explore the means for realizing this economic bill of rights. In the event that Congress failed to do so, Roosevelt expressed his conviction that the American people would be "conscious of the fact" about these rights.²²²

Such consciousness of social and economic rights lasted for some time in the U.S., as evidenced at least in the Supreme Court's interpretations. In reviewing several cases by the Supreme Court in the 1960s and 1970s, Sunstein observed that the Court had signaled a "willingness to consider the possibility that some constitutional provision would grant a right to subsistence;" however, this "serious and partially successful effort...to interpret the existing Constitution to create social and economic guarantees" was cut off in early 1970s after Nixon won the presidential election.²²³

The Americans came close to the recognition of social and economic rights again when President Carter signed both the ICCPR and the ICESCR in October 1977 and sent them to the Senate for approval.²²⁴ His Directive in February 1978 stated that the last objectives of the U.S. human rights policy, in the order of priority, was to "promote basic economic and social rights."²²⁵ In line with this Directive, later in that year US Ambassador to the United Nations Andrew Young stated at the UN General Assembly that civil and political rights were of

²²¹ Franklin Delano Roosevelt, *Fireside Chat 28 - On the State of the Union (Economic Bill of Rights)* delivered 11 January 1944. The rights that Roosevelt introduced were the rights to employment, food, clothing, recreation, housing, medical care, education, and to security in the event of old age, sickness, and accident and unemployment. This can be found on

<http://www.americanrhetoric.com/speeches/fdrsoustateoftheunion1944.htm>, accessed July 12, 2012.

²²² Ibid.

²²³ For example, in *Griffin v. Illinois* (1956) and *Douglas v. California* (1963), Sunstein argued that the American Supreme Court held that government must subsidize the poor in certain domain, thus "emphatically recognize[d] social and economic rights"; and in *Shapiro v. Thompson* (1969), the Court decided that welfare "can help bring within the reach of the poor the same opportunities that are available to others to participate meaningfully in the life of the community." Nixon was elected in 1968 and later appointed to the Supreme Court Warren Burger in 1969, Harry Blackmun in 1970, and Lewis Powell and William Rehnquist in 1972. The Supreme Court with these new judges rejected this trend. In *Linday v. Normet* (1973), the Court said that "Constitution does not provide judicial remedies for every social and economic ill. We are unable to perceive in that document any constitutional guarantee of access to dwellings of a particular quality." Cass R. Sunstein, Chapter 4 "Why Does the American Constitution Lack Social and Economic Guarantees", in Michael Ignatieff, *op. cit.*, pp. 106-9.

²²⁴ The Senate ratified the ICCPR in 1992, it has not ratified the ICESCR and the prospect for ratifying the latter remains unlikely.

²²⁵ The first two objectives are to "reduce worldwide governmental violations of the integrity of the person," and "enhance civil and political liberties." This can be found on <http://fas.org/irp/offdocs/pd/pd30.pdf>, accessed 21 Aug. 14.

secondary importance to people threatened by starvation, thus poverty was the gravest obstacle to the global protection of human rights.²²⁶

But the venture for economic rights stopped there. In the second half of Carter's term, his administration "generally shied away from an evaluation of the socio-economic background of human rights violations."²²⁷ This is partly because objections to social and economic rights existed even at the beginning of Carter's term. In the drafting process of the President's Notre Dame speech in 1977, his speech writer Griffin commented that the line "[n]o one forced to live in poverty, hunger and sickness can be really free" was "an unapproved broadening of the administration's human rights concept." Employment, shelter, and health, in his words, "are human needs, but they are not thereby human rights" and "to lump them together is muddled thinking;" thus "let's keep human rights to mean human rights, and find another label for economic and social progress."²²⁸

The Reagan administration flatly denied social and economic rights as human rights. In the early days of Reagan's administration, a leaked internal memorandum of the Department of State on human rights policy defined human rights as "meaning political rights and civil liberties" and urged the administration to move away from human rights as a term and instead to speak of individual rights, political rights and civil liberties. This strategy of simply defining economic rights out of existence, observed Alston, led to the deletion of sections dealing with "economic and social rights" in the first draft of the State Department's annual Country Reports on Human Rights Practices. According to Alston, "after 1986, the language of rejection became even more straightforward and unquestionably consistent;" officials from the State Department often inserted "so-called" in front of the full phrase, and stated that the claim that economic and social rights constituted human rights was the first among a number of "myths" about human rights.²²⁹

The question is, why the second generation of human rights, ratified by almost all nations, has been rejected in the U.S.²³⁰ There is not enough space to answer this question here and doing so is not the main purpose of this Chapter. However, a brief review of the arguments

²²⁶ Ambassador Andrew Yong, Statement to the United Nations General Assembly (14 December 1978), cited in Hartmann, *op. cit.*, p. 25.

²²⁷ *Ibid.*, pp. 410-2.

²²⁸ Hauke Hartmann, "US Human Rights Policy under Carter and Reagan, 1977-1981," *Human Rights Quarterly* 23, 2001, pp. 407-9.

²²⁹ *Ibid.*, p. 374. Ample examples can be quoted, see *ibid.*, p.372-377.

²³⁰ By then, there are a total of 160 UN member countries that have ratified the ICESCR, See http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en, accessed on August 9, 2012.

against those rights and the debate on this issue is necessary to shed light into American understandings of social and economic rights.

Opposition to social and economic rights and in fact international human rights treaties in general was led by members of the American Bar Association (ABA), an influential association of American lawyers. According to Kaufman, the ABA played a crucial role in the story of the opposition to human rights treaties: its reports were widely quoted as authoritative during Senate hearings on the treaties, and major arguments against the treaties were first outlined in its addressing to the public.²³¹ The typology of its arguments against the treaties, Kaufman argues, can be categorized as fears of the dangers at home and abroad. Domestically, opponents of international human rights treaties raised the threats of weakening the constitutional system, including the loss of basic American rights, of deteriorating U.S. sovereignty, and of abrogating the states' rights by the federal government. Internationally, they elaborated the dangers of the advancement of communism and the increase of Soviet influence, and the promotion of world government.²³²

For example, ABA President Frank Holman argued in 1948 that, "*the basic theory and language of a bill of rights, as heretofore recognized by Americans, is to impose a restraint upon government from denying to the citizens certain basic rights.*" The Universal Declaration of Human Rights, he charged, "constitute[d] an agreement to adopt the 'New Deal' on an international scale" and "imposed so-called economic and social duties upon government, the fulfillment of which will require a planned economy and a control by government of individual action. This program, if adopted and approved by the member nation, will promote state socialism, if not communism, throughout the world."²³³ Another example is the 1979 Senate hearings on ICESCR. Ideological opponents of the Covenant portrayed it as an "intrinsically un-American enterprise." The Covenant, one witness argued, "is largely a document of collectivist inspiration, alien in spirit and philosophy to the principles of a free economy." Other stated that the "Covenant is a socialist blue-print that encourages open-ended unlimited government meddling of the sort on which dictatorships thrive."²³⁴

²³¹ Kaufman, Frank E., *Human Rights Treaties and the Senate: A History of Opposition*, Chapel Hill, University of North Carolina Press, p. 35.

²³² Ibid, p. 92 and p. 116.

²³³ Frank E. Holman, "An 'International Bill of Rights': Proposals Have Dangerous Implications for U.S.," *American Bar Association Journal*, 34, 1948, p. 986, p. 1080.

²³⁴ Philip Alston, "U.S. Ratification of the Covenant on Economic, Social and Cultural Rights: The Need for an Entirely New Strategy," *The American Journal of International Law*, Vol. 84, No. 2, April 1990, pp. 383-4.

Several scholars now refute the validity of these arguments and argue that the underlying reasons are contextual. Philip Alston wrote in 1990 that, “it is now generally agreed that there is no fundamental incompatibility between the latter [ICESCR] and the U.S. law.”²³⁵ The concept of economic, social and cultural right is not necessarily incompatible with the philosophy of the American people, he concludes, rather the rejection of such a concept was “largely motivated by the desire to ensure consistency with a compatible domestic agenda.”²³⁶ Likewise, Sunstein argues that the absence of economic and social rights in American constitution cannot be satisfactorily explained by chronological, institutional, and cultural reasons. For Sunstein, the correct explanation is a realist one: the victory of Nixon in 1968 “reflected large-scale social forces” that “included antipathy to social and economic guarantees.”²³⁷ Whereas Kaufman argues that the Senate’s opposition to social and economic rights originated from fears in the 1950s - the fear of communism abroad and at home, and the general fear of change in the American political, economic systems and traditional way of life.²³⁸

Indeed, subsequent events after the Second World War nourished this fear. Abroad, the success of Soviet nuclear test and the “loss” of China in 1949, and the stalemate of Korean War (1950 - 1953) all increased the sense of insecurity about America’s position in the world. At home, the investigations of the House Committee on Un-American Activities, the Loyalty Program initiated by the Truman administration, the trial of Alger Hiss, the McCarran Act, the Rosenberg case, and the rise of McCarthyism, all combined to a growing fear of internal communist subversion that “reached the point of near hysteria” by the early 1950s.²³⁹ The American administration and Congress in the 1950s made use of those fears to promote their own agendas. In order to win over supports for American economic and military commitments abroad, especially from conservatives with their traditional position of isolationism, the Truman administration raised the fear of Soviet threat.²⁴⁰ In Congress, Senator John W. Bricker proposed a series of amendments to the United States Constitution

²³⁵ Ibid., p. 366. Alston cited Jack Goldklang a representative from Office of Legal Counsel as saying, “as the representative of the Justice Department, I am here to assure you that, subject to the proposals that we have made, there are not legal obstacles to our becoming a party to these treaties [the two UN human rights Covenants].” International Human Rights Treaties: Hearings Before the Senate Committee on Foreign Relations, 96th Congress, 1st Session, 1979, cited in Ibid, note 10.

²³⁶ Ibid., pp. 383-4.

²³⁷ Sunstein, *op cit.*, p. 109. For details of these explanations, see Ibid.

²³⁸ Kaufman, Frank E., *Human Rights Treaties and the Senate: A History of Opposition*, Chapel Hill, University of North Carolina Press, p. 35.

²³⁹ Brinkley, *op. cit.*, pp.775-80.

²⁴⁰ Kaufman, Frank E., *Human Rights Treaties and the Senate: A History of Opposition*, Chapel Hill, University of North Carolina Press, pp. 12-3.

that would have placed restrictions on the President's power to conclude executive agreements with his openly stated purpose of "bury[ing] the so-called covenant on human rights so deep that no one holding high public office will ever dare to attempt its resurrection."²⁴¹ The fate of ICESCR was thus politicized and marginalized.

In summary, fear of communism in the Cold War had distorted American understanding of rights and led, without legitimate justifications, to the rejection of American home-made product: social and economic rights. This fear also helped to establish the belief that international understandings of human rights were dangerous to the U.S. The second part of this Chapter discusses American views on human rights exchanges with the other.

II. American views of self-other relations in terms of rights

1. External influence on American human rights understanding

In their encounters with human rights understandings in other countries and in international human rights treaties, the Americans hold an attitude of resistance or even rejection. This can be demonstrated in the U.S. consistent rejection of these treaties. It has not ratified many important treaties, such as CEDAW (discrimination against women), CROC (the rights of a child), and ICESCR.²⁴² For the few that the U.S. has signed and ratified, it has made many reservations, understandings and declarations (RUD) to make its participation in those treaties, as Kenneth Roth describes, "a purely cosmetic gesture."²⁴³ For example, in ratifying the ICCPR, the U.S. attached an unprecedented number of RUDs,²⁴⁴ among which are those on capital punishment for crimes committed by persons under eighteen years of age. This has been criticized by several Covenant parties and the Human Rights Commission as incompatible with the object and purpose of the Covenant and invalid to the point of jeopardizing the American status as a signatory to the Covenant.²⁴⁵ Likewise, the U.S. has

²⁴¹ Senator John Bricker, *Congressional Record*, 1951, cited in Kaufman, *op. cit.*, p. 1, subtitle.

²⁴² See <http://www1.umn.edu/humanrts/research/ratification-USA.html> for the list of international human rights treaties and U.S. response, accessed on 27 September 2012.

²⁴³ Roth, Kenneth, "The Charade of US Ratification of International Human Rights Treaties," *Chicago Journal of International Law*, Vol. 1, Issue 2, 10/2000, p. 349. Ignatieff also described this as "symbolic," see Ignatieff, *op. cit.*, p. 6.

²⁴⁴ Schabas, William A., "Invalid Reservations to the International Covenant on Civil and Political Rights: Is the United States still a Party?" *Brooklyn Journal of International Law*, Volume 21, Issue 2, 12/1995, p. 280. For details and analysis of U.S. reservations to ICCPR, see for example Ash, Kristina, "U.S. Reservations to the International Covenant on Civil and Political Rights: Credibility Maximization and Global Influence," *Northwestern University Journal of International Human Rights*, Vol. 3 Spring 2005.

²⁴⁵ See Ash, *op. cit.* and Schabas, *op. cit.*, p. 278.

signed the Race Convention with reservations that seems “designed ... to resist change in United States law.”²⁴⁶

According to Louis Henkin, these RUDs are guided by the following “principles:” the U.S. will not undertake any treaty obligation if it is inconsistent with the United States Constitution; U.S. adherence to an international human rights should not modify existing U.S. law or practice; the U.S. will not submit to the jurisdiction of external tribunals; the U.S. will exclude any international obligation as to matters subject to the jurisdiction of the states; and every international human rights convention is non-self-executing. This last principle means that after Senate consent and the U.S. ratification, a treaty will not automatically become law but is required to go to the Senate again and the House for implementing legislation.²⁴⁷ After being signed by the U.S. government and before being sent to the Congress, a treaty will be sent to Justice Department lawyers who would then look for and draft RUDs to negate any additional rights protection by that treaty. And yet, implementing legislations are unnecessary as all rights in such treaty *with* RUDs are already protected by U.S. law.²⁴⁸ These principles and procedures thus are created to ensure that no changes shall be expected from the American side in their human rights interaction with the others.

There have been several explanations for this rejection of international human rights treaties. From the case study of the social and economic rights above, one may think of the fears of communist threats in the 1950s. However, this kind of fear cannot be used to justify for American objection of almost all other international human rights documents. Other possible concerns are for sovereignty and for the “integrity” of American legal system in terms of stability, continuity, and legitimacy before too liberal an international understanding of human rights.²⁴⁹ There was also the view that the U.S. Constitution and political institutions are “sacred symbols” of the nation, or a long-standing American belief in “popular sovereignty” and “local governments” resulting in opposition to centralized judicial norms, or an American rights culture of negative individual liberties with a limited government.²⁵⁰ Others like Andrew Moravcsik seek answers in a combination of empirical factors: the status

²⁴⁶ Henkin, Louis, “U.S. Ratification of Human Rights Conventions: The Ghost of Senator Bricker,” *The American Journal of International Law*, Vol. 89, No. 2 (April 1995), p. 342.

²⁴⁷ *Ibid.*

²⁴⁸ Roth, Kenneth “The Charade of US Ratification of International Human Rights Treaties,” *Chicago Journal of International Law*, Vol. 1, No. 2, p. 347 and p. 349.

²⁴⁹ Ignatieff, *op. cit.*, p. 9.

²⁵⁰ Ignatieff explains, “U.S. rights guarantees have been employed in the service of a political tradition that has been consistently more critical of government, more insistent on individual responsibility, and more concerned to defend individual freedom than the European socialist, social democratic, or Christian democratic traditions.” Ignatieff, *op. cit.*, p. 11.

of a great power, a stable democracy and judicial review, the opposition of conservative constituents, and the fragmented nature of American political institutions resulting in a great number of those who can impede or block a particular government action.²⁵¹

In a way, all other signatories of international human rights covenants or treaties have their own distinctive legal systems and cultures and the conservative forces that are dynamics in preserving their traditional values. The question is why the U.S. stands out in the rejection of human rights treaties. Besides its status of a super power, there is another possible reason. What seem to underlie many, if not all, of American justifications for its rejections of international human rights covenants is the assumption in the superiority of American values over the others'. A good example here is the resistance to the Genocide Convention. Consider Senator George's comments on the Genocide Convention,

I don't think the peoples of the earth are in any position where they can tell this great people on morals, politics and religion, how they should live. I still feel that *we are ahead of them in that respect*, and I would hate to bind ourselves... I am not in favor of leaving it [mass murder] to the interpretation of nations who have been indulging for centuries in just such a thing, and they have been occurring at every drop of the hat.²⁵²

What Senator George claims here is that the U.S. is well "ahead" of those who signed this convention on the issue of genocide; therefore it is unquestionably absurd for the latter to tell the Americans how they should live. Kaufman observes that conservatives' criticisms against this Convention were founded on a "strong belief in the superiority of the United States."²⁵³

Indeed, American superiority and exceptionalism have been used by several Americans to justify American noncompliance with other international human rights treaties. For example, Jack Goldsmith argues that the incorporation of ICCPR "would bring significant costs and very few benefits," adding that, those who claim that "the United States' resistance to incorporation of human rights treaties has the same significance as similar practices by China and Iran," have been "falling into absurd legal formalisms."²⁵⁴ For him, the U.S. cannot be compared with such countries as China and Iran as the former is far ahead of the latter, notably on the issue of human rights. Further, American judges, Ignatieff observes, are

²⁵¹ See Andrew Moravcsik, "Paradox of U.S. Human Rights Policy" in Ignatieff, *op. cit.*, pp. 147-97 for more details of these explanations.

²⁵² In Kaufman, Frank E., *Human Rights Treaties and the Senate: A History of Opposition*, Chapel Hill, University of North Carolina Press, 1990, p. 45. Italic added. It should be noted, however, that the definition of ethnocentrism by Kaufman and the author of this dissertation might be different. Kaufman briefly defines ethnocentrism as "a perspective suspicious or disdainful things foreign." Ibid. For this dissertation's definition of ethnocentrism, see Chapter 7 Discussion and Conclusion.

²⁵³ Ibid.

²⁵⁴ Goldsmith, Jack, "Should International Human Rights Law Trump US Domestic Law," *Chicago Journal of International Law*, Volume 1, Issue 2, 10/2000, p. 339.

resistant to using foreign human rights precedents to guide them in their domestic opinions. And this judicial attitude “is anchored in a broad popular sentiment that the land of Jefferson and Lincoln has nothing to learn about rights from any other country;” consequently, “the legal trade in understanding continues to be mostly one-way, with the U.S. legal tradition teaching others but not learning much itself.”²⁵⁵

In sum, many Americans hold the conviction that the U.S. has nothing to learn from ‘the other’ as it is morally superior and well ahead of others, both authoritarian and democratic countries alike, in terms of human rights understanding and practice. This conviction would obstruct the Americans to seriously seek for any rationality or legitimacy in the others’ arguments and to change their views in their dialogues with the other. This is more likely the case when ‘the other’ is Vietnam, an authoritarian and socialist regime like those in Eastern Europe and Russia whom the U.S. defeated in the Cold War. Moreover, as discussed in the previous chapter, diplomats are supposed not to change their views unless instructed to do so and prohibited from sympathizing with local viewpoints. Expectations for changes in convictions of an American diplomat are thus even gloomier: for such a change to occur, she must overcome both her professional limitation and her own feelings of superiority. This belief heralds American thoughts about their influence on the others on human rights issue.

2. *American influence on others’ human rights understanding*

As David Golove observes, Americans

are accustomed to thinking that our legal system, especially our constitutional commitment to fundamental rights, provides a model that other countries would be well advised to emulate. This confident, perhaps arrogant, self-conception as a moral beacon for the rest of the world has deep roots in U.S. history and seems as strong today as it has ever been. In contrast, many Americans are apt to be far less comfortable with the notion that when it comes to justice, we may have something to learn from other nations – that we may benefit from the importation, not just the exportation, of rights.²⁵⁶

In other words, for many Americans given the superiority of their values, others should only learn from the U.S. As President Carter stated in his inaugural address in January 1977, “the best way to enhance freedom in other lands is to demonstrate here that our [American]

²⁵⁵ Ignatieff, *op. cit.*, pp. 8-9. Shauer also shares the same view in stating that “American courts, American lawyers, and the American constitutional culture have been stubbornly anti-international, far too often treating foreign influence as a one-way process, in which Americans influenced others but were little influenced in return.” Schauer, *op. cit.*, p. 51.

²⁵⁶ Golove, David, “Human Rights Treaties and the U.S. Constitution,” *DePaul Law Review* 52, Winter 2002, p. 579.

democratic system is worthy of emulation.”²⁵⁷ To explain this belief, some “deep roots in U.S. history” must be unearthed, among them are the ideas encompassed in Manifest Destiny. The following reviews the appearance and evolution of this concept.

The term Manifest Destiny was first coined by journalist John L. O’Sullivan in 1845 to justify the American annexation of Texas.²⁵⁸ However, O’Sullivan’s ideas were not merely on land acquisition. The U.S. had been chosen by God, he claimed, to “manifest to mankind the excellence of divine principles; to establish on earth the noblest temple ever dedicated to the worship of the Most High - the Sacred and the True.” These divine principles, as he explained, were found in American ideas of freedom, namely the “freedom of conscience, freedom of person, freedom of trade and business pursuits, universality of freedom and equality.” O’Sullivan also claimed that it was her “unparalleled glory” that the U.S. must fulfill the Godly mission of defending “the rights of conscience, the rights of personal enfranchisement” of the “oppressed of all nations.”²⁵⁹ This mission thus has two fronts: demonstrating the excellence of American liberties to other nations and defending the political rights of human rights victims worldwide. And the *absolute* excellence of American freedoms, the fact that the U.S. is destined to carry out this mission, and the good results of its preordained mission are all beyond doubt and unquestionable. Who would dare to challenge divinity and fate?

In fact, the linking of American goals with the working of divine providence was attributed to the Puritan settler John Winthrop, who, in 1631, told the settlers on the ship Arbella heading to Massachusetts Bay that

for wee must Consider that wee shall be as a City upon a Hill, the eies of all people are upon us; soe that if wee shall deale falsely with our god in this worke wee have undertaken and soe cause him to withdrawe his present help from us, wee shall ... open the mouthes of enemies to speake evill of the wayes of god and all professours for Gods sake; wee shall shame the faces of many of gods worthy servants, and cause their prayers to be turned into Curses upon us till wee be consumed out of the good land whether wee are going.²⁶⁰

Winthrop warned that although their upcoming settlement was an extension of God’s promise for a new world, this blessing was not unconditional; their failure would not only doom them

²⁵⁷ Carter, Jimmy, Inaugural Address on January 20, 1977, this can be found on http://avalon.law.yale.edu/20th_century/carter.asp, accessed July 16, 2014.

²⁵⁸ John O’Sullivan on Manifest Destiny in 1845 this can be found on http://www.historytools.org/sources/manifest_destiny.pdf, accessed 12 October 2012.

²⁵⁹ John L. O’Sullivan on Manifest Destiny in 1839, this can be found at <https://www.mtholyoke.edu/acad/intrel/osulliva.htm>, accessed on 12 October 2012.

²⁶⁰ John Winthrop, City upon a Hill, 1630, this can be found at <https://www.mtholyoke.edu/acad/intrel/winthrop.htm>, accessed on 12 October 2012.

but take a toll on God as well. Therefore, the early Americans considered themselves as a city upon a hill, a spotlight closely and perhaps harshly watched by God and all people. It should be noted that in Winthrop's sermon, there was nothing about the colony as a model. For him, the eyes of other people who looked at the colony were not those of admiration but of the same purpose as God's eyes, that is scrutiny. O'Sullivan thus had sustained the religious aspect of manifest destiny and developed it into the superiority of American values. As God is universal, so are his values. American values were thus naturally universal. Again, like religious freedom, it was not the factual accuracy that matters, but how the story of Winthrop's warnings was interpreted and spread.

Thomas Paine was among those who popularized Manifest Destiny to the American people. Referring to the days of Noah in the Bible, Paine told Americans that they were like Noah, with a mission to "form the noblest, purest constitution on the face of the earth" in the New World and "begin the world over again" in their power. "Every spot of the old world," he declared, "is overrun with oppression. Freedom hath been hunted round the globe. Asia, and Africa, have long expelled her. Europe regards her like a stranger, and England hath given her warning to depart." The New World should then serve as Noah's Ark, Paine exclaimed, "O! receive the fugitive, and prepare in time an asylum for mankind."²⁶¹ Again, Paine was calling Americans to realize their unparalleled glory of defending humankind into concrete actions. On one hand, it was building the U.S. as the noblest temple, as O'Sullivan suggested earlier. On the other hand, it was receiving the fugitives and asylum seekers whose freedoms were oppressed worldwide and even remake the world over again. And in terms of rights, Paine would contend that true freedom only exist in American soil just as Noah's Ark which was built in a context of evil oppressions.

The ideas of manifest destiny have been confirmed by the successes of American territorial acquisition. The U.S. victory over Mexico in 1847 "marked the zenith of U.S. claims of its Manifest Destiny."²⁶² Frederick Merk criticizes that the concept of Manifest Destiny had been used as propaganda and "harnessed to the cause of continentalism in the 1840s" like many other crusading ideologies in world history.²⁶³ In advocating the annexation of Hawaii

²⁶¹ Thomas Paine, *The Common Sense*.

²⁶² Samuels, Richard, "Manifest Destiny," *Encyclopedia of United States National Security*, Massachusetts Institute of Technology, 2012, pp. 442-3. See this also for other earlier U.S. territorial expansions.

²⁶³ Merk, Frederick and Merk, Lois Bannister, *Manifest destiny and mission in American history: a reinterpretation*, Cambridge, Massachusetts, Harvard University Press, 1995, p. xvi and p. xvii. In his words, "in the case of Arab expansionism it was Islam; in Spanish expansionism, Catholicism; in Napoleonic expansionism, revolutionary liberalism; in Russian and Chinese expansionism, Marxian communism." Ibid.

in 1898, President William McKinley told his personal secretary George Cortelyou that “we need Hawaii just as much and a good deal more than we did California. It is manifest destiny.”²⁶⁴

The influence is also operative beyond continental territory: Manifest Destiny had been used to justify American involvements around the world. As William Pfaff observed, with Woodrow Wilson, Manifest Destiny “ceased to be continental expansion and national power and progress, and was reimagined as a divinely ordained mission to humanity.”²⁶⁵ On July 10, 1919 Wilson persuaded the U.S. Senate to ratify the Versailles peace treaty after the First World War with the following concluding words:

The stage is set, the destiny disclosed. It [American world role] has come about by no plan of our conceiving, but by the hand of God who led us into this way ... It was of this that we dreamed at our birth. America shall in truth show the way.²⁶⁶

Manifest Destiny has continued to be used in the contemporary U.S. William Pfaff argues that, there had been increasing abuses, and the arbitrary use, of power in the Cold War, the Vietnam War, and the eight years of the George W. Bush administration that are justified by a universally relevant and valid Manifest Destiny.²⁶⁷ While Samuels observes that “[e]choes of John O’Sullivan’s original beliefs still can be heard in the latest ambition of the United States to promote democracy in turbulent regions of the world, such as the Middle East, Africa, and central Asia.”²⁶⁸ To cite but one example: Secretary of State Condoleezza Rice under the George W. Bush administration wrote in 2008 that the U.S. could fulfill its “unique role in the world” in the twenty-first century because Americans can imagine that the world “can always be better-not perfect, but better-than others have consistently thought possible.”²⁶⁹ She continues, “we have never accepted that we are powerless to change the world. Indeed, we have shown that by marrying American power and American values, we could help friends and allies expand the boundaries of what most thought realistic at the

²⁶⁴ http://en.wikiquote.org/wiki/William_McKinley, accessed on November 23, 2012.

²⁶⁵ Pfaff, William, *The Irony of Manifest Destiny, The Tragedy of America’s Foreign Policy*, New York, Walker & Company Press, 2010, p. 72.

²⁶⁶ “An Address to the Senate (July 10, 1919),” in Arthur S. Link et al, (eds.), *The Papers of Woodrow Wilson*, Vol. 61, June 19-July 25, 1919, Princeton, NJ: Princeton University Press, 1989, p. 436. This can also be found on <http://historymatters.gmu.edu/d/4979/>, accessed 15 July 2014. A year later, President Wilson again mentioned Manifest Destiny for his support of democracy. As he stated at his 8th annual message to Congress in 1920, “this is the time of all others when Democracy should prove its purity and its spiritual power to prevail. It is surely the manifest destiny of the United States to lead in the attempt to make this spirit prevail.” Woodrow Wilson, 8th Annual Message to Congress, December 7, 1920, this can be found at <http://www.presidency.ucsb.edu/ws/index.php?pid=29561>, accessed on 12 October 2012.

²⁶⁷ Pfaff, William, *op. cit.*, p. 184.

²⁶⁸ Samuels, Richard, *op. cit.*, p. 443.

²⁶⁹ Rice, Condoleezza, “Rethinking the National Interest,” *Foreign Affairs*, July-August 2008.

time.” Therefore, she argues that Americans recognizes that “freedom and democracy are the only ideas that can, over time, lead to just and lasting stability, especially in Afghanistan and Iraq.”²⁷⁰

To sum up at this stage, for the Americans there is only a one way trade-off between the U.S. and others in terms of rights. On one hand, they have always been skeptical of incorporating other’s human rights understandings in their own legal system, even if from international treaties. This is because they do not believe that anything could be learnt from outsiders in terms of rights. On the other hand, they are convinced that the others would only benefit by embracing the American superior rights model. This conviction has been consolidated by an embedded idea of a destined American mission to spread its model worldwide and continued to exist in the contemporary U.S. Consequently, a human rights dialogue with the Americans thus is likely to be premised upon the two inequalities. The first is that the U.S. model is unquestionably described in absolute terms compared to the others’ less than perfect understandings and practices of human rights. This lead to the second one: changes in human rights understandings and practices should be expected from the other sides only. And these inequalities would be even greater in the encounter of American diplomats with the Vietnamese communists. And given the conviction on the superiority of the American model, in such a human rights dialogue, the discussion of human rights *in the U.S* should be out of the table and if human right is an issue, it should be for the others, or in other words, a matter of American foreign policy. In the words of Arthur Schlesinger, Jr., “Americans have agreed since 1776 that the United States must be the beacon of human rights to an unregenerate[d] world. The question has always been how America is to execute this mission.”²⁷¹ The next sub-section offers an answer to this question.

III. The instrumentalisation of human rights issue in American foreign policy

To fulfill its human rights mission, the U.S. has opted for two ways: either through leading the world by example without intervening into others’ internal affairs or by making human rights an interest and a concern in American foreign policy. The first path was the main choice of the U.S. until the mid-1970s when the human rights issue was institutionalized into American foreign policy.

²⁷⁰ Ibid.

²⁷¹ Schlesinger, Arthur, Jr., “Human rights and the American tradition,” *Foreign Affairs*, Volume 57, Issue 3, 01/1979, p. 505.

Leading the world by a benign and moral influence had become a tradition in American foreign policies for a long time, despite certain attempts to break with it. In 1821, Secretary of State John Quincy Adams who later became the sixth American President warned that the U.S. “goes not abroad, in search of monsters to destroy” as she [the U.S.] will commend the general cause by the countenance of her voice, and the benignant sympathy of her example.”²⁷² In December 1849, Senator Cass of Michigan attempted to break this tradition by introducing a resolution to consider suspending diplomatic relations with Austria in response to the bloody suppression by Austrian and Russian troops of the Hungarian revolution one year earlier. His attempt was supported by Hungarian President Louis Kossuth who publicly stated in his visit to the U.S. that the Americans talked endlessly about their mission of liberty and “really believe they will make their way throughout the world by their moral influence... I have never yet heard of a despot who had yielded to the moral influence of liberty.”²⁷³ Despite this, Cass’s resolution failed as its opponents in the Senate quickly raised difficult questions that the U.S. had to answer if it went down that road. John Parker Hale from New Hampshire questioned the impartiality of Cass’s ideas, “why we were not to try Russian empire first and then England, France, and Spain?” While Henry Clay from Kentucky questioned the justifications for American authority to judge other nations on “*our notion and judgment of what it is right and proper* in the administration of human affairs” and to interfere in the internal affairs of foreign nations. Such judgments, Hale concluded, ought to be on the slavery issue at home, where “men are to be bought, and women are to be bought, and kept at twenty-five cents per day, until ready to be transported to some other market.”²⁷⁴

In the decades that follows, the tradition of doing good by example was upheld by the same rationales. After the Civil War, President Grant justified American non-involvement in the Cuban struggle for independence from Spain that “as the United States is the freest of all nations... [and] sympathize[s] with all people struggling for liberty and self-government ... it is due to our honor that we should abstain from enforcing our views upon unwilling nations

²⁷² John Quincy Adams on U.S. Foreign Policy, 1821. This can be found at <http://www.fff.org/comment/AdamsPolicy.asp>, accessed on 6 November 2012. In the similar voice, “the last survivor among the great statesmen of the early republic” Albert Gallatin told his countrymen in 1847, “[y]our mission was to be a model for all other governments and for all other less-favored nations, to adhere to the most elevated principles of political morality, to apply all your faculties to the gradual improvement of your own institutions and social state, and by your example to exert a moral influence most beneficial to mankind.” Albert Gallatin, *Peace with Mexico*, New York, Bartlett & Welford, 1847, Section vii, cited in Ibid.

²⁷³ Kossuth’s speech at Concord, May 11, 1852, *Old South Leaflets*, No. 111, p. 15, cited in Ibid.

²⁷⁴ *Congressional Globe*, 31st Congress, 2nd Session, January 7, 1850, pp. 113-6, cited in Ibid, pp. 507-8, *Italics added*.

and from taking an interested part, without invitation, in the quarrels between different nations or between governments and their subjects.”²⁷⁵ Then in 1904 President Theodore Roosevelt warned that only for extreme cases where crimes were “committed on so vast a scale and of such peculiar horror,” could the U.S. show its disapproval and sympathy with the sufferers: American military interventions like that in Cuba, he added, “are necessarily very few.” What could be “very much wiser and more useful” for the U.S., President Roosevelt continued, was to “striv[e] for our own moral and material betterment here at home than to concern ourselves with trying to better the condition of things in other nations. We have plenty of sins of our own to war against, and under ordinary circumstances we can do more ... to put a stop to civic corruption, to brutal lawlessness and violent race prejudices here at home than by passing resolutions about wrongdoing elsewhere.”²⁷⁶ Consequently, as Apodaca observes, although both Congress and the executive continued to condemn violations of human rights abroad, no practical action was taken.²⁷⁷

In the 1970s, the Nixon and Ford administrations chose to ignore human rights violations, but this time for more pragmatic reasons: Realpolitik. Both president Nixon and his secretary of State Henry Kissinger advanced an American foreign policy that was based on practical politics and interests and devoid of any moral component. In 1973, Nixon stated that “the only proper concern” for American foreign policy was “national interests” that “should be narrowly constructed to exclude moral commitments or “cause” that do not promise a clear, direct, predictable payoff in increased security or prosperity for the nation.”²⁷⁸ Henry Kissinger flatly denied any interventions in the name of human rights when he said that “I believe it is dangerous for us to make the domestic policy of countries around the world a direct objective of American foreign policy ... [as] the protection of basic human rights is a very sensitive aspect of the domestic jurisdiction of ... governments.” Consequently, the American administrations during the Nixon-Ford years did not make any drastic actions dealing with human rights violations abroad.²⁷⁹

²⁷⁵ President Ulysses S. Grant, first annual message, December 6, 1869, this can be found on <http://www.presidency.ucsb.edu/ws/?pid=29510>, accessed 2 May 2014.

²⁷⁶ President Theodore Roosevelt, fourth annual message, December 6, 1904, this can be found on <http://www.presidency.ucsb.edu/ws/?pid=29545>, accessed 2 May 2014.

²⁷⁷ Apodaca, Clair, *Understanding U.S. Human Rights Policy, A Paradoxical Legacy*, New York, Routledge, 2006, p. 505.

²⁷⁸ Richard Nixon, 1973, *New York Times*, December 23, cited in *Ibid*, p. 31.

²⁷⁹ See for more details in *International Protection of Human Rights, The Work of International Organizations and the Role of U.S. Foreign Policy*, hearings before the Subcommittee on International Organizations and Movements of the Committee on Foreign Affairs, House of Representatives, 93rd Congress, 1st Session, Washington D.C., 1973, p. 507, cited in Roberta Cohen, “Human Rights Decision-Making in the Executive

Alarmed by this, and in an attempt to gain power over the executive branch on foreign policy, Congress in the early 1970s took a more assertive role in human rights issue. It conducted hearings, made recommendations to the administration, and issued legislations related to human rights violations, thus “keeping human rights concerns in the forefront of U.S. foreign policy.”²⁸⁰ As de Neufville observes, faced with rejections and resistance from the executive branch, Congress increasingly asserted the position of human rights in American foreign policy, from “modest” legislations in 1973 and 1974 expressing “sense of Congress” that “U.S. security assistance and weapons may have been used for repression in the client nations” and “suggesting the President curtail assistance to governments seriously violating human right” to putting in place “the major components for implementing human rights criteria in foreign policy.” Thus, the Harkin amendment to the Foreign Assistance Act in 1975 “specifically prohibited U.S. development assistance to ‘any government which engages in a consistent pattern of gross violations of internationally recognized human rights.’” In another amendment, Congress declared that “a principal goal of the foreign policy of the United States shall be to promote the increased observance of internationally recognized human rights by all countries,” thus establishing human rights requirements as a “general principle for all foreign policy.” In the following years Congress was “actively involved in building the growing list of legislation limiting foreign assistance and other activities for nations where human rights abuses are significant.”²⁸¹ Still, these good intentions were contemporaneous with Nixon and Kissinger’ logic that the enemy of our enemy is our friend, regardless of its domestic dealings with human rights.

In terms of organization, it was also Congress who established annual Country Reports on human rights practices, the position of Coordinator for Human Rights and Humanitarian Affairs in the Department of State (which was later upgraded to Assistant Secretary), and “oversight systems in the Commission on Security and Cooperation in Europe and the Subcommittee on Human Rights and International Organizations in the House Foreign Affairs Committee” in the second half of 1970s.²⁸² Indeed, Secretary Kissinger had been warned in 1974 by one of his deputies that “Congress is beginning to insist that military and

Branch: Some Proposals for a Coordinated Strategy,” in Kommers, Donald P. and Loescher, Gilbert D. (eds.), *Human Rights and American Foreign Policy*, London, University of Notre Dame Press, 1979, p. 217.

²⁸⁰ And during the Ford Administration, the Subcommittee on International Organizations of the 94th Congress (Jan 1975- March 1977) chaired by Democratic Representative Donald Fraser organized up to forty human rights hearings. Apodaca, *op. cit.*, pp. 33-4.

²⁸¹ De Neufville, Judith Innes, “Human Rights Reporting as a Policy Tool: An Examination of the State Department Country Reports,” *Human Rights Quarterly*, Vol. 8, 1986, pp. 683-4.

²⁸² *Ibid*, p. 684. See also Apodaca, *op. cit.*, p. 219 for how human rights had been substantially institutionalized as a foreign issue during Nixon, Ford, and Carter administrations.

economic aid be reduced when authoritarian regimes with which we are identified commit violations ... [and] if the Department did not place itself ahead of the curve on this issue, Congress would take the matter out of the Department's hands."²⁸³

Subsequent administrations, from Presidents Carter to George W. Bush, upheld human rights as a priority in their foreign policies, though their commitments to human rights differ. In his inaugural address in January 1977, President Carter declared that American commitments to human rights "must be absolute."²⁸⁴ Carter signed both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) in October that year, and signed a directive in February 1978 that declared it were American objective to "reduce worldwide governmental violations of the integrity of the person", "enhance civil and political liberties," and "promote basic economic and social rights."²⁸⁵ Julie Mertus pointed out that Carter had made "unprecedented presidential commitment" to the issue of human rights and was the first president to make the institutionalization of human rights a central concern.²⁸⁶ However, his moral commitments to human rights, according to Apodaca, were victimized by the bureaucratic and ideological fightings within the administration and the realities of power politics in the world.²⁸⁷ For example, the initial claim on a single human rights standards for both friends and foe alike of his administration soon turned into a case-by-case principle due to, in the words of his Secretary of State Cyrus Vance, "the limits of our power and of our wisdom ... [in] a matter for informed and careful judgement."²⁸⁸

His successor President Reagan unsuccessfully dismissed human rights as a foreign policy objective because human rights had become institutionalized to the point of being uneradicable. As Mower explained, "the existence of human rights legislation, the presence in the State Department of a Human Rights Bureau, and other institutional arrangements

²⁸³ Deputy Secretary of State Robert Ingersoll's memorandum to Secretary Kissinger, in *Human Rights in the World Community: A Call for U.S. Leadership*, Report of the Subcommittee on International Organizations and Movements of the Committee on Foreign Affairs, House of Representatives, 93rd Congress, 2nd Section, Washington D.C. 1974, pp. 9-10, cited in Roberta Cohen, *op. cit.*, p. 219.

²⁸⁴ President Carter inaugural address, 20 January, 1977, this can be found on http://avalon.law.yale.edu/20th_century/carter.asp, accessed 3 May 2014.

²⁸⁵ President Directive 30 titled "Human Rights," this can be found on <http://fas.org/irp/offdocs/pd/pd30.pdf>, accessed 16 July 2014. As for the two covenants, the U.S. Senate ratified the ICCPR in 1992, but the ICESCR and the prospect for ratifying the latter is far from promising.

²⁸⁶ Mertus, Julie, *op. cit.*, p. 29 and p. 31.

²⁸⁷ See Apodaca, *op. cit.*, Chapter 3.

²⁸⁸ *Ibid.*, p. 57.

seemed to ensure the survival of this foreign policy element.”²⁸⁹ In the second Reagan administration, human rights were redefined “very narrowly to exclusively mean democracy and anti-communism” and put “to the service of condemning the Soviet Union.”²⁹⁰ The combination of human rights with anti-communism brought about a double-standard that was sustained during the Reagan’s years. Apodaca concludes that “[w]ith friendly countries that abused the human rights of their citizens the Reagan strategy was quiet diplomacy and persuasion, while with communist countries it was public denoucnements and isolation, if not outright military intervention.”²⁹¹

The inconsistencies between human rights rhetoric and actions were evident in subsequent U.S. administrations. President W.H. Bush continued the trend set by Reagan: human rights were defined as political and civil rights and applied “in a selective and self-serving manner.”²⁹² Under Bush’s administration, American responses to human rights violations were contingent on whether economic and strategic interests were involved or absent.²⁹³ Likewise, despite his declaration that human rights and democracy would serve as a cornerstone of his foreign policy, President Bill Clinton “only supported human rights when they were compatible with other, mostly economic, foreign policy preferences.”²⁹⁴ And President George W. Bush while claimed to extend democracy globally and lead the world by “defending liberty and justice,” violated human rights in the U.S. and “eliminated any hope of incorporating a principle of morality and human rights in U.S. foreign policy.”²⁹⁵

The underlying reason for all these inconsistencies, as Mertus explains, is that:

[B]oth Republican and Democratic administrations ...[have] employed human rights selectively, condemning the human rights abuses of its enemies while overlooking those of its allies.... [U]pon careful examination, the differences between the presidencies [after the Cold War] are eclipsed by one overriding similarity: the belief in American exceptionalism, with the United States applying one standard of human rights to itself and another to the rest of the world.... In all administrations, national interests trump the consistent application of a single standard for human rights. Furthermore, despite rhetoric to the contrary, each president has acted as if the United States is first among states that are less than equal. Human rights are envisioned as something applied to *others* in line with U.S. national interests.... In no presidency to date can we say that human rights norms have been pervasively or consistently

²⁸⁹ Mower, Glenn, Jr., *Human Rights and American Foreign Policy, the Carter and Reagan Experiences*, New York: Greenwood Press, 1987, p. 3.

²⁹⁰ Apodaca, *op. cit.*, p. 82.

²⁹¹ *Ibid.*, p. 111.

²⁹² Apodaca, *op. cit.*, p. 134 and Mertus, *op. cit.*, p. 36.

²⁹³ See Forsythe, “Two Levels, Two Worlds,” pp. 124-5.

²⁹⁴ Apodaca, *op. cit.*, p. 162.

²⁹⁵ *Ibid.*, pp. 188-9.

embedded in thought and action. Human rights have to some extent become institutionalized, but they do not have an automatic influence over identities, interests, and expectations.²⁹⁶

Here, Mertus points to three common themes in American human rights policy. First, it is justified through consolidating the self-image, though via different rhetoric, that the U.S. is an exceptional nation, born out of freedom with a ordained mission to spread its superior values worldwide. Second, it is precisely because of this exceptionalism that the U.S. views others as less equal and human rights are only to be “exported” to others. This is the first double-standard on American human rights practice. A clear evidence of this is American usage of different wordings for human rights: “civil liberties” at home, and “human rights” for the rest of the world. Forsythe reaches the same conclusion when he observes that, “rights for Americans was one thing. US action on behalf of the human rights for foreigners was another.”²⁹⁷ Third, Mertus highlights the limit of the institutionalization of human rights into American foreign policy: human rights has been recognized as an independent means to realise the national interest, but not an imperative. It is at American governments’ discretions to raise or ignore human rights issue, in their considerations with other competing interests, such as security or trade. And this leads to a second double-standard in American human rights practice: human rights requirements have never been applied uniformly to different countries, or even to any country at different circumstances.

It is interesting to note that the Americans themselves seems not to accept that others will see all these complexities and double-standards associated with the U.S. human rights policy. As Jack Donnelly, a leading human rights scholars in the U.S. states,

as an American, I must again admit (with considerable embarrassment) that both individuals and government officials in the United States seem unusually prone to a misplaced self-righteousness that stubbornly refuses to consider the possibility that men and women of good will could possibly see anything but the purest motives in American actions.²⁹⁸

In other words, Donnelly comes to the conclusion that American officials do not realise that others may view the motives of American human rights action as well beyond their sincere and benign wishes for the betterments of the others.

In short, human rights have always been a matter of concern for the Americans whose freedoms are both factually and mythologically established as one of the founding values of an exceptional nation. Prior to the mid-1970s, human rights were considered secondary in

²⁹⁶ Mertus, Julie, *op. cit.*, pp. 84-6. Italics as original.

²⁹⁷ Forsythe, *op. cit.*, p. 129.

²⁹⁸ Jack Donnelly, “Human rights and the dialogue among civilizations,” note 21, pp. 24-5.

terms of policy by disconnecting morality from calculations of national interests. The struggles for power between the executive and legislative branches in the late 1970s brought the human rights issue to the fore and institutionalized it as an independent foreign policy interest. By the 1980s, this institutionalisation had reached a point at which a reversal of human rights interest proved impossible. However, as human rights is an interest among many others rather than an authoritatively embedded values, an option rather than a necessity, there have been two double-standards in American foreign policy: liberties for the *self* and human rights for others, and different human rights standards for others. The ideas of exceptionalism that are used by all American authorities help to naturalize the first double-standard while the extent of human rights domestic institutionalization ensures the second one. These double-standards herald suspicions from other countries on American human rights statements and actions.

Conclusion

In this chapter, I have traced the historical foundation of American human rights understandings in classical liberalism and how liberal ideas had been legally codified and conceptualized in American rights understanding. Among other rights, freedom of speech and press freedom have become a practically unrestrained supervising tool for the people against a necessary evil state. Together with religious freedom, Americans regard these liberties as *exceptional and superior* and believe in a manifest destiny to help others enjoy the same liberties as they are. On one hand, the self-evident and lofty ideas of ensuring others to adopt American rights model make it not easy or even surprising for the Americans to realise that others may see more than just sincere goodwills from the American human rights statements, but may be suspicious of being forced to turning into American or the like. On the other hand, this has exerted great impact on their views of the self-other relations in terms of rights. Accordingly, the influence in rights understanding for Americans is uni-directional, where the self has nothing to learn from the other and where the other can only benefit, and should learn, from the self. Based on these views and as a result of the power struggle within American government, human rights has become an independent reference in planning American foreign policy. And the realisation of U.S. human rights goals, however, suffers from two inevitable double-standards that the Americans themselves are not willing or even able to admit. Moreover, besides the convictions on the superiority of their rights understanding, American human rights exchanges in the 1950s were also affected by the U.S. fears of external threats of communism.

These features of American human rights understanding can be used to justify the U.S. position in their human rights dialogue with the Vietnamese. Moreover, American exceptionalism and the inequalities and double-standards associated with it raises the suspicions of Vietnam, as any other countries that are criticised by the U.S. for its human rights record. And the American uni-directional exchange of rights is indicative of the natures and outcomes of those dialogues, at least the changes from the American participants. The next chapter, in a similar way, explores Vietnamese understanding of human rights that justifies Vietnam's human rights position. At the same time, it compares American and Vietnamese human rights understanding in order to assess the level of incommensurability and incompatibility of the two understandings as an obstacle to their human rights mutual understanding.

Chapter Two

Vietnamese Understanding of Human Rights

This chapter presents an overall Vietnamese understanding of human rights. In a similar structure to that of the previous chapter, it examines the philosophical, ideological and historical foundations of rights in Vietnam. While Americans look to natural liberalism as a source of their human rights justifications, Vietnamese scholars and researchers in the early 1990s have grounded the theoretical frameworks of their understanding of human rights in Marxism, Leninism, Ho Chi Minh thought, and Vietnamese traditions. With strong convictions on the communist mission of liberating the toiling people from oppression and injustice, the Vietnamese communists hold that human rights are common values of humankind and shaped as a result of the struggles between societal classes. At the same time, human rights differ between cultural groups because of the differences in the levels of socio-economic developments and cultures among nations. Further, the legacy of Buddhism, Confucianism, and the tradition of resistance to foreign domination have consolidated the Vietnamese view on the unity between human rights and national rights for independence and self-determination, the importance of social and economic rights with the state as caretaker, and the balancing of individual rights and collective interests in the socialist society. In sharp contrast to American views on religious, speech, and press freedoms, the Vietnamese hold that these same freedoms cannot supersede citizens' obligations and responsibilities in maintaining social order and the revolutionary cause of moving towards socialism. And while Americans do not feel the need to learn from the human rights experiences as practised by others, the Vietnamese acknowledge the differences in human rights understandings among societies and their own need of improving human rights conditions in the country. This acknowledgement drives the Vietnamese to deem human rights dialogues and cooperation both legitimate and necessary. And finally, the Vietnamese communists are concerned about the infiltration of capitalist elements under the cover of human rights reforms that could lead to socialism derailment.

This chapter has three sections. It first examines the Party and State understandings of the concept of human rights and its main features. The second section elaborates on the origins of the Vietnamese human rights understanding. The last section examines Vietnamese view of

human rights dialogues and cooperation. Comparisons with American human rights understanding are observed along the chapter.

I. The Vietnamese reaction to Western human rights pressure and the main features of the Vietnamese human rights understanding

1. The Vietnamese reaction to Western human rights pressure

The issue of human rights did not significantly reach the CPV and Vietnamese scholars' attention until the late 1980s and early 1990s. Like many other communist countries at the time, the concept of "human rights" was considered a Western concept, used by capitalist countries for interfering into the internal affairs of the socialist states. As Đặng Dũng Chí noted,

in the 1970s, as in other socialist countries of the time, the concept of human rights was rarely used in Vietnam, even not fully grasped theoretically. This limited the general knowledge on human rights, and reactionary forces to Vietnam made use of this situation to distort [human rights conditions in Vietnam] and undermine [the revolutionary cause][my translation].²⁹⁹

In an effort to defend against the capitalist bloc's accusations of human rights violations, particularly the redefining human rights with anti-communism of the Reagan administration in his second term, several communist parties decided to conduct a joint research project titled "Socialism and Human Rights" in the late 1980s, and the CPV also took part in this research.³⁰⁰ Although the political turmoil in many socialist countries in late 1980s and early 1990s halted this joint research, the CPV still conducted their assigned part. This initial

²⁹⁹ Đặng Dũng Chí, "Quá trình nhận thức của Đảng ta về quyền con người," [The process of understanding about human rights of our Party], *Thông tin Nhân quyền* [Information of Human Rights], No.6, 2010, p.3.

³⁰⁰ The project had ten components: the developments of individual political rights under socialism; the theoretical debates and political dialogues on human rights; human rights and the international protection of human rights; scientific progress and human rights; the prospects of initiatives on human rights within the United Nations and Helsinki Conference; human rights in developing countries; human rights and disarmament; human rights and ethnicity; human rights and constitution; and human rights protection at the international level. Within that framework, Vietnam was responsible for three main topics: the realization of human rights in developing countries, perceptions, positions on human rights and problems and necessary conditions in implementing human rights in those countries; the development of political rights and dignity in socialism: experiences, situations, and prospects; and the experiences and positions on the relation between human rights and national rights, such as self-determination. Hoàng Văn Hào, Chu Thành, "*Quyền con người, quyền công dân – khái lược lịch sử và lý luận*" [Human rights, citizen rights – a brief historical and theoretical review], *Quyền con người trong thế giới hiện đại* [Human rights in modern world], Trung tâm Khoa học Xã hội và Nhân văn Quốc gia [National Center for Social Science and Humanity], 1995, pp. 11-2.

research was the first step in developing indigenous knowledge about human rights in Vietnam.³⁰¹

The collapse of the socialist bloc in the late 1990s forced the CPV to search for a new path of development for the country. The renewal process (*đổi mới*) started from the Sixth Plenum of the Party Central Committee in 1986 and accelerated at the Seventh Plenum in 1991. As part of *đổi mới*, over 200 scientists and scholars from various disciplines were mobilized to participate in a research project titled “Humans - the Goal and the Driving Force for Development.” Part of this was a “branch project” focusing on human rights and conditions to guarantee human rights and citizen rights.³⁰² In 1993 and 1994, the Ho Chi Minh National Academy of Politics (the national center for theoretical study and training of the Party) organized three workshops to present the findings of this research.³⁰³ Although this branch research was attributed to the participating scholars, it was also considered a product of the Academy and thus the source of reference for the Party’s human rights understanding.

Many important Party and State documents in the early 1990s started to mention the phrase ‘human rights,’ such as the Program for national building in the transition period towards socialism of the Seventh Plenum and the 1992 Constitution of Vietnam.³⁰⁴ However, the document that focused most on human rights was the Directive 12/CT/TW issued on 12 July 1992, of the Party’s Secretariat “On Human Rights Issue and our Party’s Viewpoints and Policies.” Based on these documents and the Vietnamese literature on human rights in the 1990s, the following part details the official Vietnamese understanding of human rights.

Human rights, according to then Vice-President of the State Nguyễn Thị Bình, “briefly, is the right to live as a HUMAN BEING. It is the basic right of everyone in all nations and states at all times.”³⁰⁵ This rather vague definition reflects the lack of a solid theoretical foundation for

³⁰¹ Hoàng Văn Hào, Chu Thành, “Quyền con người – vấn đề lý luận và thực tiễn bức xúc” [Human rights – an urgent theoretical and practical issue], *Tạp chí Nghiên cứu Lý luận* [Theoretical Research Review], Number 4, August 1993, p. 23. It should be noted that Vietnam acceded to the ICCPR in September 1982, which could be interpreted more as a strategic move against Western pressures than a true attention to international understanding of human rights.

³⁰² The layer project was coded KX-07; the human rights project coded KX-07-16 was one of several other branch projects. See Chu Thành, “Quyền con người và quyền công dân” [Human rights and citizen rights] *Tạp chí Cộng sản (TCCS)* [Communist Review], Vol. 5, 1993, pp. 9-12.

³⁰³ The workshops were “Human rights – history and theories” March 1993, “Human rights” May 1994, and “Human rights – history and theories” August 1994 with the participation of Swedish scholars. The Academy changed its name to the Ho Chi Minh National Academy of Politics and Public Administration in 1993. For a brief history of this Academy, see <http://www.hcma.vn/english/HistoricalInformation/tabid/281/Default.aspx>, accessed on 26 February 2013.

³⁰⁴ Previous Constitutions of 1946 and 1980 only mention citizen’s rights.

³⁰⁵ Nguyễn Thị Bình, then Vice-President of the Socialist Republic of Vietnam, “Bàn về quyền con người” [On human rights], *TCCS* [Communist Review], Vol. 5, 1993, p. 13.

Vietnamese concept of human rights. Two scholars Hoàng Văn Hảo and Chu Thành wrote in Project KX-07 that the collapse of socialism in the former Soviet Union and Eastern European countries was partly due to the lack of democracy, human rights and freedom there. This forced the Vietnamese to revisit two main arguments of the socialist bloc on human rights. First, against the Western idea that human rights originate from natural law, socialist countries argued that humans had rights only as citizens of a nation state and only those rights that were defined by laws of that state. Second, the socialist countries' emphasis on economic determinants of growth led to the logic that only once economic and social rights had been guaranteed, could political and civil rights be practically realizable. These scholars then argued that although citizen rights originated from natural right, they could not escape the state and the law, as rights can only be ensured within the limitations of certain socio-economic conditions.³⁰⁶

The Vietnamese human rights concept is not grounded exclusively in a particular ideology like the Americans or the Soviet communists. As previously discussed, the U.S. views human rights from classical liberalism and the Soviet mainly from a Marxist viewpoint. Instead, the Vietnamese communists chose not to abide by Marxism ideology but extracted what they deemed valid in human rights arguments from the two opposing socialist and capitalist camps. For the Vietnamese, human rights stem from natural right *and* are dependent on the level of social and economic developments. In this way, both sets of rights (political and civil; social, economic and cultural) are human rights, though the realisation of those rights is circumstantial.

The problem with this human rights understanding, these scholars continued, “is whether the level of rights that a person is enjoying is sufficient and in accordance with the specific historical conditions in which that person is living.”³⁰⁷ They also argued that despite these circumstantial limitations, the overemphasis of economic rights often led to the lack of adequate attention to political rights and liberties; thus, both economic and political rights should be afforded equal importance.³⁰⁸ Accordingly, these scholars put forth an initial definition of human rights which was also vague, “human rights firstly are understood as the special rights reserved only for human beings. These are the ability to consciously act to demand, reject or gain something for self-preservation and development. [my translation]”³⁰⁹

³⁰⁶ Chu Thành, *op. cit.*, 1993, p. 22.

³⁰⁷ *Ibid.*, p. 23.

³⁰⁸ *Ibid.*

³⁰⁹ *Ibid.*, p. 18.

Or as stated in the Party's daily newspaper *Nhân Dân*, "human rights are the rights to live a deserved life as a human being."³¹⁰

At this stage, two short observations can be made in comparing Vietnamese experiences of human rights with American ones. First, the Americans have encountered and developed the concept of human rights more than two centuries before the Vietnamese started to conceptualise it. And in a way similar to American conceptualisation of economic and social rights, the Vietnamese conceptualisation of human rights occurred at the time of big fear for the threat of capitalism. The collapse of the socialist regimes worldwide in the early 1990s, from the CPV's perspective, was partly due to the "democracy" and "freedom" campaigns of the U.S. and other hostile forces to socialism. Second, while the U.S. bases her human rights understanding on the solid philosophical ground laid by John Locke and Thomas Paine's natural right and social contract theory, among others, the Vietnamese communists choose to adopt certain ideas both from natural liberalism and Marxism; accordingly, they share with the Americans on the idea that civil and political rights are human rights.

2. The main features of the Vietnamese human rights understanding

The absence of a clear definition of human rights did not stop the Vietnamese from elaborating on their contents and features. On 12 July, 1992, the CPV's Secretariat issued a directive on human rights which has become an official synthesis of the Vietnamese view on the issue. The following discussion presents the main features of Vietnamese human rights and compares them with those of the Americans.

A first feature for the Vietnamese is that human rights reflect the struggle of the oppressed people and is a common value of mankind. Directive 1992 stated that, "human rights is a fruit of a long struggle of the toiling peoples and oppressed nations in the world; it is also a fruit of the struggle of the human race in mastering nature; thus, human rights become a common value of mankind."³¹¹ In this regard, though the Vietnamese may agree with the Americans that human rights is inherent in human beings, it is not something that can be taken for granted. It takes more than the fact that one is a human being to enjoy one's rights, as one has

³¹⁰ Thuận Thành, "*Quyền con người bao gồm quyền dân chủ về chính trị và quyền được phát triển tự do, hài hòa*" [Human Rights include political democracy and the rights to develop freely and in a harmonious way], *Nhân Dân (ND)* (The People Newspaper), 3 June 1993.

³¹¹ Directive 1992, cited in Nguyễn Đăng Dung et al, *Giáo trình lý luận và pháp luật về quyền con người* [Curriculum on human rights theories and laws], Đại học Quốc Gia Hà Nội [Hanoi National University] Nhà Xuất Bản Chính Trị Quốc Gia (NXBCTQG) [National Political Publishing House], October 2009, p. 540.

to fight against oppression and injustice to claim them. Those who need to fight against oppression, logically, are the oppressed at both national and international levels. At the national level, they are the working majority struggling against exploitation and social injustice. At the international level, they are the nations resisting foreign interference and domination. Under this logic, throughout mankind's history, the enemies of human rights of the majority are, in the order of appearance in history, the kings and aristocrats, and then the capitalists or other oppressors of the working class.³¹²

Under this logic, the capitalists' credits in siding with the toiling people to fight against feudalism are not denied; yet, the main author of human rights is still the toiling people.³¹³ This enables the Vietnamese to contend that human rights are a "common value of mankind." In so doing, the concept is not an 'invention' by capitalism, though it is the capitalist bloc that raised the human rights issue to the socialist camp. It should be noted that during the Cold War it became common prejudice on both camps that whatever related to the other camp was 'bad' while whatever related to one's own camp was 'good'. The Vietnamese communists' ascription of human rights to the mass made it more convenient for them to adopt the concept not from their class enemies. The phrase "human rights" thus became acceptable in their language.³¹⁴

What is more, viewing human rights as the result of a historical struggle allows the Vietnamese to affirm that only under socialism, where all toiling people are liberated, can true human rights be realized. "In terms of the essence of class and society in socialism," Binh argued, "socialist society is a humane society, a society of human rights. Only under socialism, could conditions and possibilities in terms of economics, politics, society, and culture be generated to fulfill most adequately and thoroughly true human rights."³¹⁵ Whereas in capitalist society, only a minority of the rich and the powerful have their human rights

³¹² As Binh argues, "inscribed in the flags of the capitalist revolutions in the 18th and 19th centuries were the sacred and inviolable human rights. This is the unfadable historical contribution of the capitalist class on human rights in its struggle against feudal regimes." But she also argues, "[b]rutal exploitation of workers at home and oppression, and forceful deprivation of rights, of colonial people for centuries is a humiliating page of capitalist class in world history." Nguyễn Thị Bình, *op. cit.*, p. 13 and p.14.

³¹³ Academically, one may find the word 'author' in this sentence contestable by arguing in Marxism's term that those rights were invented and promoted by the capitalists. This again demonstrates a selective application of Marxism by the Vietnamese Marxists.

³¹⁴ A similar example is the concept 'market economy'. An article in the *Communist Review Online* argued in 2007 that "by now, we can confirm that market economy is a common achievement of mankind, not exclusively of capitalism." See Đỗ Mai Thành, "*Mấy suy nghĩ về phát triển nền kinh tế thị trường định hướng xã hội chủ nghĩa ở Việt Nam*" [Some thoughts on the development of socialist-oriented market economy in Vietnam], *TCCS* [Communist Review], this can be found on <http://www.tapchiconsan.org.vn/Home/kinh-te-thi-truong-XHCN/2007/2012/May-suy-nghi-ve-phat-trien-nen-kinh-te-thi-truong-dinh.aspx>, accessed 4 August 2013.

³¹⁵ Nguyễn Thị Bình, *op. cit.*, p. 13.

guaranteed, in socialist society the rights of the majority are realised. This is the foundation for the Vietnamese claim that human rights under socialism are better protected than under capitalism.

Indeed, this liberating and humane nature of socialism became the Vietnamese pride of their stated goal. Speaking at a conference of leaders of provinces, cities, ministries and other central ministerial bodies, former general secretary Đỗ Mười asked his comrades to be “clearly aware ... that the protection of and strengthening the enjoyment of human rights in our country are the cause of our Party, our State, and our people” and “the goal of our revolutionary cause is to ensure each and everybody to develop freely and comprehensively. This cause serves our own interest, not because of outside pressure.” “Without being fully aware of this,” he warned, “it would easily lead to an attitude of cosmetic realization of human rights.”³¹⁶ It is interesting to observe that both the Americans and the Vietnamese are proud of the superiority of their respective versions of human rights for different reasons. For the Americans, the U.S. was born, and has continued to serve, as a sanctuary of freedom for humanity. Whereas the Vietnamese communists base their pride on their perceived superiority of a socialist model that they are building.

A *second feature* is that “in societies with opposing classes, the concept of human rights deeply reflects the class struggles.”³¹⁷ In such societies, Bình explains, “the liberty of one’s class cannot avoid having an impact on the liberty of the other class.” For her, the differences between classes in terms of property, social status, ideologies and politics cannot guarantee equality. “How could there be equal human rights between millions of homeless and unemployed people and millionaires or billionaires?” she asked.³¹⁸ For the Vietnamese, the starting question related to human rights is ‘by whom’ and ‘for whom’. The answer, argue Hoàng Văn Hảo and Chu Thành, is that “from their own interests, the ruling class always considers human rights as *their own rights*; all strategies and policies to stabilize and develop their social regime must focus on those rights.”³¹⁹ And the ruling class, be it the capitalists or the proletariats, will codify their favorable and beneficiary social and political regime into domestic law. Further, as the issue of human rights is often politicized and used by the U.S.

³¹⁶ Đỗ Mười, Speech at the Conference of leaders of provinces, cities, ministries and central ministerial bodies in September 1994. The Vietnamese version for cosmetic realization is, “*tư tưởng đối phó, cách làm chiếu lệ và thái độ bao biện.*”

³¹⁷ Directive 92 cited in Nguyễn Đăng Dung et al, *op. cit.*, p. 541. In a similar vein, the Prime Minister’s Directive 41/2004/CT-TTg on the December 2, 2004 confirms that “the struggle on the human rights issue has deep-rooted class nature and will be continuous, durable, and fierce.” Cited in *ibid.*

³¹⁸ Nguyễn Thị Bình, *op. cit.*, p. 14.

³¹⁹ Chu Thành, *op. cit.*, 1993, p. 17. Italics as original.

and Western countries to interfere into internal affairs of other countries, it is necessary to maintain the dictatorship of the proletariat in order to ensure and protect human rights of the toiling people.³²⁰

It should be noted that the word ‘dictatorship’ for the Vietnamese communists does not contain the negative connotations that an advocate of liberalism may associate with it. Dictatorship is even necessary to protect the interests of the proletariat, which can only be realised in a socialist regime. After all, a Vietnamese communist may argue that the minority capitalists who are being governed without their consent would eventually dissolve themselves into the mass. In this vein, for the Vietnamese the word ‘dictatorship regime’ has positive connotations and is but a necessary means for realising the human rights of the people.

A *third feature* is the Vietnamese stress on the relativity of human rights. Like the proponents of Asian values, the Vietnamese hold that human rights are contingent to history, culture and tradition. And like other developing countries, the Vietnamese stress on the contingency of rights promotion on the level of development. Directive 1992 states that “human rights are always related to history, tradition and depend on the level of economic development and culture. Thus, it is impossible to impose or mechanically copy the standards and models of some countries onto others.”³²¹

Human rights are dependent on the level of economic development, as Bình explains, socio-economic developments “generate conditions to fundamentally realize human rights.”³²² However, in emphasizing the relativity of the human rights concept, unlike the advocates of cultural relativism, the Vietnamese do not reject its universality. At the 1993 Vienna conference on human rights, the Vietnamese delegation stated that, “human right is a synthesized concept; it is both a universal standard and the synthesized product of a long historical process.”³²³

This compromise between the universality and the relativity of human rights is the foundation for both the Vietnamese openness to the concept and for their refutation of human rights

³²⁰ Nguyễn Thị Bình, *op. cit.*, p. 14. Directive 1992 affirms the need to “carrying out the dictatorship of the proletariat to all actions infringing upon the interests of the country and the people” while expanding socialist democracy and promoting the people’s master right. Directive 1992, cited in Nguyễn Đăng Dung et al, *op. cit.*, p. 545.

³²¹ Directive 1992, cited in Nguyễn Đăng Dung et al, *op. cit.*, p. 542.

³²² Nguyễn Thị Bình, *op. cit.*, p. 16.

³²³ Speech by Lê Mai, Vice Foreign Minister at the Vienna Conference on Human Rights in 1993, *ND* [The People Newspaper], 18 June, 1993.

criticism. This compromise means that the Vietnamese do not reject universal human rights, they indeed embrace them. If there are shortcomings in the implementation of human rights according to Vietnamese human rights standards, they could be explained by social and economic constraints and/or cultural and traditional issues in Vietnam. Such a justification for human rights shortcomings cannot convince the Americans who define human rights within civil and political domain only. However, at least the Vietnamese and the Americans may agree that civil and political rights are human rights and universal.

A *fourth feature* is the unity between human rights and the national rights for national independence, freedom, and self-determination. Directive 1992 states that “The liberation of human beings (including the assurance of human rights) is closely linked with the liberations of the nation, the class, and the society; only under the precondition of national independence and socialism, can human rights be assured in the widest, fullest, and most complete way.”³²⁴ A decade earlier, Trường Chinh, the Chairman of the Council of State, wrote that “for us, human rights are first and foremost, the right of the nation to live in independence and freedom, the right of the toiling people to fight against oppression and exploitation, and second other citizens’ rights in economic, cultural, and social fields.”³²⁵ This is because, Bình explains, “in a country under foreign aggression and the threat to slavery, there would be no human rights for the people of that country!”³²⁶ In other words, for Vietnam or other developing countries, the precondition for individual rights to be guaranteed is the assurance of the national right for independence and self-determination.

Although individual and collective rights are intertwined, for the Vietnamese, they are important in different ways. “Under socialism,” the Directive argues, “the interests of the individuals, the collectives, and the whole society is closely intertwined. Individual interest is highly valued because it is the goal and motivation of social development. At the same time, due attention must be paid to ensuring the interests of the collectives and of the entire nation.”³²⁷ In other words, while the realization and assurance of individual rights are the ultimate goal, in order to reach this goal, collective interests must be respected. Collective

³²⁴ Directive 1992, this quote can be found on an Outline for propaganda work of the Commission for Education and Propaganda of the CPV’s Central Committee in 2008, this can be found on <http://www.tuyengiao.vn/Home/BantuyengiaoTW/huongdanchidao/4461/De-cuong-tuyen-truyen-ky-niem-60-nam-Ngay-nhan-quyen-the-gioi-10121048-10122008>, accessed 25 July 2014.

³²⁵ Trường Chinh, *Báo cáo về dự thảo Hiến pháp nước Cộng hòa Xã hội Chủ nghĩa Việt Nam* [Report on the draft for the Constitution of the Socialist Republic of Vietnam], NXB Sự thật [Truth Publisher], Hanoi, 1981, p. 42.

³²⁶ Nguyễn Thị Bình, *op. cit.*, p. 15.

³²⁷ Directive 1992, cited in the Commission for Education and Propaganda, Outline for propaganda work..., *op. cit.*

interests, for the Vietnamese, interestingly, can be at times prioritised over the exercise of the individual rights. That is, while the former is supportive for the latter, the exercise of the latter should not be detrimental to collective interests. In this relation, only individual rights, or more specifically the first generation of human rights can bear negative meanings, as the majority always wins over the minority, not the other way round. Thus, such rights as freedom of speech or religious freedom *can* and *should* be suspended in the name of the common goods. This collective understanding of human rights also leads to the conviction that “the right to live, to develop, economic and social rights and the right to social justice [are]... the most basic rights for the majority of mankind.”³²⁸

The priority of collective interests over individual ones leads to a fifth feature of Vietnamese human rights understanding. “Individual rights to democracy and liberty,” Directive 1992 states, “cannot be detached from citizens’ obligations and responsibilities. Democracy must be in parallel with social order and law.”³²⁹ Bình explained the linkage of human rights with social obligations and responsibilities as follows, “man cannot be outside society. There are no rights without obligations; likewise there are no obligations without rights. Only the unity between rights and obligations could constitute true human rights.”³³⁰ She found support for this linkage in the Universal Declaration of Human Rights. The Declaration refers to individual “duties” to the community to which the rights holder belongs and sets limitations to human rights, “solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and general welfare in a democratic society.”³³¹ These “duties”, “public order”, and “general welfare” are interpreted by the Vietnamese in a broader sense; they are generalised into “the interests of the country and the people.”

Similar to collective and individual rights, individual responsibility is described in a negative sense in its relation to the state. Although “the rights of the citizens are the duties of the state,” Hoàng Văn Hảo argued, “citizen’s duties are state’s rights.”³³² Those rights, Hảo argued, include “the right to force citizens to comply with their duties.” Citizens’ rights, he warned “are always attached to their duties to the state and the society, one cannot push

³²⁸ Nguyễn Thị Bình, *op. cit.*, pp. 14-15.

³²⁹ Directive 1992, cited in Nguyễn Đăng Dung et al, *op. cit.*, p. 545.

³³⁰ Nguyễn Thị Bình, *op. cit.*, p. 14.

³³¹ Article 29, Universal Declaration of Human Rights, this can be found at <http://www.un.org/en/documents/udhr/index.shtml>, accessed on March 10, 2013.

³³² Hoàng Văn Hảo, “Tackling well all relations between democracy and rule of law is the basis for ensuring human rights” *ND* [The People Newspaper], 11 November 1992.

human rights to an absolute level where individual freedoms are detached from and are detrimental to state and community.”³³³

The last three features of Vietnamese human rights understanding are in sharp contrast to those of the Americans. As rights are defined in the U.S. as political and civil rights, for the Americans it would be illegitimate to violate or even limit rights in terms of culture and level of development. The dependence of individual rights on national rights is alien to American rights culture whether there are no such national rights but collective needs. And whereas for the Vietnamese, the individual is supposed to have the responsibility of contributing to the common goals that are dictated by the state, the Americans hold that the individual owes nothing to the state but the latter must respect the former's rights. Finally, while the Vietnamese seek to prevent individuals from abusing their rights to harm the state, the American are worried about an evil state that abuses the rights of the individuals.

Summing up, faced with the need for national renewal, the Vietnamese in the early 1990s searched for a moderate understanding of human rights that avoided some of ideological controversies between socialism and capitalism and combined both the universality and the relativity of the concept. Human rights, in Party and State' official understanding, are the fruits of the struggles of the majority for a more decent and better life, reflect the class struggle, depend on the level of economic and social development, and can only be realized by law and best guaranteed under socialism. With this understanding, the Vietnamese prioritize collective interests over individual rights, and social and economic rights over political and civil ones. At the same time, rights are contingent to tradition and culture and linked with responsibilities and obligations to social order and the revolutionary cause. These features differ strongly, at times to the point incommensurability, to American human rights understanding. Despite the differences, the Americans and the Vietnamese can still agree that human rights are inherent and universal. The next section explores the origins of these main features of Vietnamese human rights understanding.

II. The foundations and influencing factors of Vietnamese human rights understanding

1. The constant struggle for preserving national independence and identity

³³³ Hoàng Văn Hào, “Striving to build a law governed state of the people, for the people, and by the people in order to create legal basis for the protection of human rights in Vietnam,” *ND* [The People Newspaper], 7 June 1993.

The Vietnamese history is full of sufferings from aggressions wars, of constant efforts to preserve their own identity and fend off foreign intervention. After a thousand year of unsuccessful resisting Chinese domination and assimilation, the nation under the leadership of Ngô Quyền regained independence in 939. Since that formal proclamation of independence, the small Vietnam frequently had to defend from a number of aggressions by various Chinese Dynasties in 981, 1076, from 1407 to 1225, and in 1789. After the declaration of independence in September 1945, it took the communist-led Vietnam nearly 30 years to safeguard the nation from the French and then the Americans until 1975 when the U.S.-supported Saigon regime fell.³³⁴ These experiences have taught the Vietnamese both the precariousness and the preciousness of independence and freedom. This tradition, as Kenneth Christie and Denny Roy observe, “has played a major role in forging their [the Vietnamese] national identity and current perspectives.”³³⁵ Indeed, it has forged both a strong feeling for national independence and a sensitive attitude towards foreign intervention. Comparing this to the U.S. history, the American fight for independence could be understood as a fight for *individual* rights against an *evil ruler*. The Vietnamese struggles in a way were also for their rights, but the *collective* rights for regaining their national independence and preserving their national identity against *foreign aggressors*.

2. *The subordination of the individual to the collective interests*

In wartime, individuals were required to sacrifice for the survival of the nation. In peace time, certain natural and geographical features of Vietnam also demand this subordination. As a tropical country in the South, Vietnam had long been an agrarian society. The majority of Vietnamese people were farmers in water paddy fields. Cultivating in a country annually stricken by floods and droughts requires people to join forces in building the irrigation system and defending against natural disasters. The solidarity and collective interests was thus upheld by all members of the community, even at the expenses of individual desires. William Duiker rightly observed that,

Vietnamese society was fundamentally agrarian. Almost nine of every ten Vietnamese were rice farmers, living in tiny villages scattered throughout the marshy delta of the Red

³³⁴ For a recent account of Vietnam’s history in English, see for instance Cornfield, Justin, *The History of Vietnam*, Westport, Conn., Greenwood Press, 2008.

³³⁵ Christie, Kenneth and Roy, Denny, *The Politics of Human Rights in East Asia*, Pluto Press: London, Sterling, Virginia, 2001, p. 104.

River.... Hard work, the subordination of the desires of the individual to the needs of the group, and a stable social and political hierarchy were of utmost importance.³³⁶

Consequently, the spirit of being loyal to and ready to sacrifice for the common cause of the nation has been nurtured, consolidated, and considered among the most respectful social values in Vietnam.

Gratitude and respect are extended to those who have made great contributions to the nation; some have been worshiped by the population as deities, such as *Trần Hưng Đạo*, a famous general who united the Vietnamese people to defeat the first two Mongol invasions in the 1280s.³³⁷ And in each Vietnamese village today, one can easily find a temple where heroes in wartime or those who contributed greatly to the development of the community are worshiped as the safeguard spirits of the whole village (*thành hoàng*). A Vietnamese proverb states that, “for those officials who love the people, the people will build temples to worship them when they dies..”(*thương dân dân lập đền thờ..*).³³⁸ A more recent example is the worshipping of a local official in 2003 as the village safeguard spirit for his contribution to economic development in Tam Giang area.³³⁹ Community interests and values have been traditionally prioritized to the point of prevailing over individual interests. In the past, no village member was allowed to act beyond the rights and interests of the community and “the rights and freedoms of individual could only be understood, assessed and recognized in accord with the village’s standards.”[my translation]³⁴⁰

The story of social contract theory cannot fit in this history. The Vietnamese cannot appreciate those who consider their own liberty and property the highest priority. Likewise, the Americans may find it difficult to accept the suppression of individual rights and interests in the name of the common good.

³³⁶ Duiker, William J., *Ho Chi Minh, a life*, New York: Hyperion, 2000, p. 10.

³³⁷ For more details about *Trần Hưng Đạo*, see Ibid., p. 174. For an account on the religious practice of worshipping him, see Phạm Quỳnh Phương, “Empowerment and Innovation among Saint Trần’s Female Mediums” in Philip Talor(ed.), *Modernity and Re-enchantment, Religion in Post-revolutionary Vietnam*, Singapore: Institute of Southeast Asian Studies, 2007, pp. 221-249.

³³⁸ The second part of this proverb is a strong revenge of the mass who are powerless, “against those officials who have done harms to the people, the people will pee into their graves until their graves be flooded with urines” (*hại dân dân đái ngập mộ, thâu xương.*”

³³⁹ This official was Phan Thế Phương a Director for Fisheries Industry of Bình Trị Thiên province in the 1980s. Last year, in 2013 a school was named after him 22 years after he died. This can be found on <http://tuoitre.vn/Chinh-tri-Xa-hoi/Phong-su-Ky-su/590190/mieu-tho-quan-va-ngoi-truong-mang-ten-giam-doc-so.html>, accessed 21 April 2014.

³⁴⁰ Hoàng Văn Hào and Cao Đức Thái (eds.), *Giáo trình Lý luận về Quyền con người* [Curriculum on Human rights Theories], Học viện Chính trị Quốc gia Hồ Chí Minh [Ho Chi Minh National Political Academy], Hanoi, 2002, p.127.

3. Traditional values of humanity, loving kindness, and tolerance

Other dominant traditional values of the Vietnamese are humanity, loving kindness, and tolerance. Humanistic concerns have taken roots in Vietnamese society and been handed down to generations via a number of proverbs and popular phrases. One should care for the unfortunate in society “whole leaves shall cover the torn leaves” (*lá lành đùm lá rách*) or those who are different from himself in the community, “Oh gourd, love the pumpkin. Though of different species, you share the same trellis” (*Bầu ơi thương lấy bì cùng. Tuy rằng khác giống nhưng chung một giàn*). There is a proverb similar to the Christian commandment, “love the others as yourself” (*thương người như thể thương thân*), because, human beings, above all, “are the flowers of the land” (*người ta là hoa của đất*). Compassion for others also extends even to those who are considered ‘bad’ in the community. Almost all Vietnamese people know such proverbs for tolerating the bad people as, “there are both long and short fingers on a hand” (*năm ngón tay có ngón dài ngón ngắn*) or for forgiving the atoned for their sins, “one should punish those who keep heading down the wrong path, not those who return to the way of righteousness” (*đánh kẻ chạy đi, không ai đánh người chạy lại*). History professor Trần Văn Giàu claimed that the compassion for others “is a spiritual value, a big characteristic in Vietnamese traditions [my translation].”³⁴¹

Buddhism has further consolidated and provided justifications for these values for more than a thousand years. According to Tạ Văn Tài, Buddhism came to Vietnam following the Chinese colonial period (111 B.C. – A.D. 939) and flourished during the dynasties of the Lý (1010-1225) and the Trần (1225-1400). Most Vietnamese are imbued with Buddhism’s teachings on causal relation, loving kindness, and gratitude. Vietnamese people are convinced by the Buddhist law of causality which means that one deserves or endures things as one did good or bad things in the past or in a previous life (Karma). Therefore, one should not commit evil things for fear of encountering misfortunes happening to oneself or in the next life; instead one should do charitable things to generate “happiness” (*phúc*) for one’s self and one’s family. Commenting on one’s own misfortune, one may lament that, “what did I do in my previous life that I am suffering now?”

A kind-hearted person is often described in Vietnamese as the one who possesses a heart and mind of Buddha, in opposite to those of an evil snake: *khẩu xà tâm phật* [talking like a snake and having the mind of Buddha] or *khẩu phật tâm xà* [talking like Buddha and having the

³⁴¹ Trần Văn Giàu, *Giá trị tinh thần truyền thống của dân tộc Việt Nam* [Traditional spiritual values of Vietnamese nation], NXB Khoa học Xã hội [Social Science Publisher], Hanoi, 1980, p. 244.

mind of a snake]. Kindness, for the Vietnamese, should not only be an attribute of the mind but one that ought to be realized in deeds. This social virtue is extended not only to the subject but also the ruler, especially during the dominating time of Buddhism in the country. Hoàng Văn Hảo regards the humane treatments by some Lý Kings praised along the Vietnam's feudal history as one of the sources for Vietnamese contemporary understanding of human rights.³⁴²

As for gratefulness, the first and foremost acknowledgement of every Vietnamese is to her own parents. Parental abuse is considered the worst human crime; this seventh out of the fourteen teachings by Buddha hang in many Vietnamese houses. Those who mistreat their parents are harshly criticized by the public and have their sincerity/morality suspected; if one does not respect and love one's own parents, how can one truly respect and care for others? To fulfill one's piety duty (*báo hiếu*) is a moral obligation of every Vietnamese.³⁴³ To a larger extent, one should be grateful for what others have done to the common good that one is now enjoying. "Paying tribute to the fallen soldiers" and "remembering the source while drinking water" are among many other activities initiated by the CPV and the State to demonstrate respect and support for those who have sacrificed in the wars against the French and the Americans.

Imbued with these values, for the Vietnamese, supporting and caring for the less advantageous other in the community is both a moral duty and a gesture of goodwill. This perception of a caring society makes it easy for the Vietnamese to the modern concept of social and economic rights. On the contrary, the Americans, as discussed in the previous chapter, reject this second generation of human rights in their conceptualisation of rights.

4. The influence of Confucianism on the Vietnamese perceptions of leader's qualities

Confucianism took over Buddhism as the dominant ideology of the ruling officials during the Lê dynasty (1428-1778) and maintained this position until the early twentieth century. It

³⁴² See Hoàng Văn Hảo and Cao Đức Thái, *op. cit.*, p. 128.

³⁴³ This teaching is passed to children via lullabies and as well as in primary schools. Many folk poems extoll the efforts of the parents in raising their children. One poem that most Vietnamese learn by heart is that The efforts that your father has made for you are as high as the Thai mountain
The love of your mother for you is like endless water from its source
To whole-heartedly revere your mother and father
And to fulfill one's own piety is the child's moral obligation.
In vietnamese, *Công cha như núi Thái Sơn, Nghĩa mẹ như nước, trong nguồn chảy ra. Một lòng thờ mẹ, kính cha, Cho tròn chữ Hiếu, mới là Đạo con.* Thai mountain is thought to be a very high mountain in China.

gradually became obsolete after France had completed its “pacification” of Vietnam by 1900, which, David Marr observes, “had the important philosophical effect of stripping Confucianism of most of its sacral and universalistic claims among the scholar-gentry” and left the Vietnamese scholars in an ideological crisis.³⁴⁴ Since Vietnam regained its independence in the 1945, Confucianism and also Buddhism have never reacquired a dominant status in the country.

While Buddhism provides a moral foundation by which the Vietnamese are to treat each other, Confucianism suggests a way to manage society via ethical codes for all social strata.³⁴⁵ Under these codes, women and girls are placed in subordinate and dependent status: they must follow the lead of their fathers and husbands and limit their role in the private realm. Whereas the father is the undisputed master of the family, so is the ruler of the entire nation. Social disorder, for the Confucians, unfolds when people do not behave in accordance with their social status. Thus, for a society to thrive and prosper, social stability must be insured by maintaining this hierarchical order. Under these codes, the father is supposed to uphold the house discipline both in words and deeds (*righteousness and ritual*) whereas the ruler must abandon his own selfishness and private gains for common benefits and public interests and constantly engage in moral self-cultivation and self-improvement (*tu thân*). The Vietnamese, of course, have never adopted all of these teachings of Confucianism.³⁴⁶ Nevertheless, lasting traces of its influence can still be found in several aspects of contemporary Vietnamese society. One of those traces is the expectations on the quality of those in power. As a popular Vietnamese saying goes, a house with a broken roof, everything else inside the house will be exposed to water when it rains (*nhà dột từ nóc*). This implies

³⁴⁴ Marr, David G., *Vietnamese Tradition on Trial, 1920-1945*, Berkeley: University of California Press, 1981, pp. 60-1.

³⁴⁵ The two basic codes are *Ngũ luân* [Five Relationships] that are between ruler-subject, father-son, husband-wife, elder-younger brother, and friend-friend; and *Ngũ thường* [Five Cardinal Virtues of a gentleman [*quân tử*]: benevolence [*nhân*], righteousness [*ngĩa*], ritual (*lễ*), knowledge [*trí*], and sincerity [*tín*].

³⁴⁶ There was always a tension between popular culture and the type of Confucianism that had been adopted by the mandarins and the monarchs. As William Duiker observed, “throughout the traditional period, a popular counterculture emphasizing indigenous themes and ridiculing the pomposity, pedantry, and hypocrisy of Confucian orthodoxy coexisted with official doctrine and won adherents from intellectuals and peasants alike.” Duiker, William J., *Historical Dictionary of Vietnam*, pp. 36-7. Besides, the constraints against Vietnamese women are said to be less severe than in China. Along the feudal history, many female generals and queens had been praised for their contributions to national independence and social management. See for example Trần Thị Hòe, “Đảm bảo quyền bình đẳng của phụ nữ Việt Nam trong thời kỳ đổi mới: thành tựu và những vấn đề đặt ra,” [Ensuring equality for Vietnamese women in renewal period: achievements and issues], and Đỗ Hồng Thom, “Bảo đảm quyền con người của phụ nữ và trẻ em trong pháp luật quốc tế và ở Việt Nam” [Ensuring women and children’s rights in international law and Vietnam], Hoàng Văn Tuệ et al (eds.), *Quyền con người ở Trung Quốc và Việt Nam, truyền thống, lý luận và thực tiễn* [Human Rights in China and Vietnam, tradition, theories and realities], NXBCTQG [National Political Publisher], Hanoi, 2003, pp. 750-781.

that the family master fails to behave in the right way, he is to blame for the misconduct of any family member. Likewise, the leaders and officials are supposed to devote themselves to meeting the needs of the people. This is perhaps one of the most important qualifications for leadership that the Vietnamese people expect of their leaders. At the death of General Võ Nguyên Giáp in October 2013, thousands of Vietnamese across the nation came to bid final farewell to him. Among them a student said that, “I never heard guns or bombs but I know our history. After Uncle Ho and General Giap, it would be hard to find anyone like them, who dedicate their lives to the country without thinking of their personal interest.”³⁴⁷

To observe at this stage, these historical, traditional, and cultural factors are used by the Vietnamese to explain for the third feature of their human rights understanding, the contingencies of human rights realisation on these factors. The Vietnamese communists, on one hand, retain and incorporate these influences into their perceptions of human rights. On the other hand, they adopt certain ideas of Marxism and Leninism to develop and explain for their human rights position. The next section discusses this in details.

5. *Marxism, Leninism and Ho Chi Minh thought as the CPV's official theoretical framework*

This section is not a compressive or systematic analysis of Marx, Lenin or Ho Chi Minh' ideas on human rights.³⁴⁸ Rather, in reviewing the Vietnamese literature on human rights and Marxism-Leninism and Ho Chi Minh thought, it points to the traditions that the CPV has adopted and developed into its own ethical codes and social views. It also identifies the ideas from Marx, Lenin and Ho Chi Minh that the Vietnamese communists have often cited in explaining and defending their human rights position.

Among other things, Ho Chi Minh had set the qualities for the communists in power that share many similarities with Confucian teachings. In 1926 when the CPV was yet to be formed, Ho Chi Minh wrote *Tư cách một người cách mệnh* (*The Revolutionary's Code of*

³⁴⁷ It is estimated that within five days from his death to his state funeral, up to 200 000 turns of people who came to bid final farewell to him at his private house in Hanoi. This can be found on <http://vietnamnet.vn/vn/doi-song/144994/chuyen-it-biet-ve-dam-tang-dai-tuong-vo-nguyen-giap.html>, accessed 19 July 2014. For the statement of the student, see

<http://www.omantribune.com/index.php?page=news&id=153395&heading=Asia>, accessed 19 July 2014.

³⁴⁸ Up to now, the literature on Marx, Lenin, and Ho Chi Minh' ideas on human rights in Vietnam is mainly the compilations of these people' sayings, speeches and writings that are human rights related. Directive 1992 recognises this fact and calls for “organis[ing] scientific research on human rights, especially developing humane and emancipatory ideas of Marxism-Leninism, of President Ho Chi Minh and our Party, and making clear the differences between Marxism-Leninism and our Party' ideas of human rights and capitalist ideas of human rights.” Directive 12 July, 1992, cited in Karl Marx and Ph. Engels, *Về vấn đề quyền con người* [On Human Rights], NXBCTQG [National Political Publishing House], Hanoi, 1998, p. 19.

Conduct) that lists the exemplar behaviours of the revolutionaries which are “similar in form, if not in entirety in content, to Confucian precepts.”³⁴⁹ In 1947 two years after the communists were in power, he wrote *Sửa đổi lối làm việc* (*Reforming the way we work*) in which he set the five virtues for a revolutionary. The first two are similar in forms to Confucian ethics (benevolence and righteousness) and he explained “benevolence” with definite reference of Confucianism.

Benevolence means *genuine affection* for, and complete devotion to, one’s comrades and fellow countrymen. Benevolence leads us to resolutely oppose people and actions that are harmful to the party and the masses. A benevolent person is *the first to endure hardship and the last to enjoy happiness*. He or she does not covet wealth or honor and is not afraid to fight people in power. Benevolent people fear nothing and will always succeed in doing the right thing.³⁵⁰

Moreover, in a somewhat similar Confucian morality for rulers, Ho Chi Minh also contended that it was the Party’s responsibilities to ensure the people’s social and economic rights; if the people suffer from hunger, cold, illiteracy, and sickness, for each of this, the blame should be on the Party and the Government.³⁵¹

Although Ho Chi Minh ideas had always been referred to in the CPV’s documents, it was not until the VIIth Party Congress in 1991 that his thoughts were officially confirmed as “ideational foundation and guidelines for our [the CPV’s] actions” besides Marxism and Leninism.³⁵² Since then, the Party has launched two big nationwide campaigns in 2002 and 2007 for its members and cadres to learn Ho Chi Minh thoughts and follow his moral example as a way to rectify the Party and regain the faith and loyalty of the people.³⁵³ On a more regular basis, the Party calls for its cadres to have both personal attributes of “virtue” (*đức*) and “talent” (*tài*), with virtues preceding talents; cadres also practise self-criticism regularly to improve themselves to live up to the expectations of the people. In this way, the communists have set the criteria and qualities for themselves and to a larger extent the state, on what the people should expect from them. For the Vietnamese, individuals are supposed to be beneficiaries of a benevolent rule: their rights are guaranteed by the state that is expected

³⁴⁹ See Dutton, George Edson et al, *Sources of Vietnamese tradition*, Columbia University Press, 2012, p. 396.

³⁵⁰ Ibid., p. 398. My emphasis.

³⁵¹ Hồ Chí Minh, *Toàn tập* [Full Volume], Vol. 9, NXBCTQG [National Political Publishing House], Hanoi, 2000, p. 554.

³⁵² The VIIth Party Congress Resolution on “Party building and Party’s Stature Admendments” by the Central Committee on 27 June 1991.

³⁵³ The first campaign was named Party Building and Rectification, the second “Study and follow Ho Chi Minh’s moral example. Tô Huy Rúa, Secretary of the Party Central Committee, Head of the Party Commission for Communications and Education, “The value of Ho Chi Minh’s Thoughts will last forever,” this can be found on <http://english.vov.vn/Opinion/The-value-of-Ho-Chi-Minhs-Thoughts-will-last-forever/19568.vov>, accessed 22 April 2014.

to be an order keeper, a service provider, and a care taker. In sharp contrast, as discussed in the previous chapter, the Americans hold that the state is formed out of the consent of the people; it is both evil as it has the power to violate individual's rights, and necessary to maintain order.

Another important foundational idea of Ho Chi Minh regards the linkage between individual and national rights. In the Vietnamese Declaration of Independence, Ho Chi Minh extended the individual rights that he quoted from the American declaration of Independence to the rights of the nation.³⁵⁴ The national rights to independence and freedom related to a nation that had just liberated itself from colonization and to the imminent threat of being enslaved again. A famous statement by Ho Chi Minh that has become a slogan hung in all public institutions is that, “nothing is more precious than independence and freedom.” This statement is also often quoted by the Vietnamese today to defending the fourth feature of their human rights understanding, the unity between human rights and national independence. Indeed, the tradition of fighting for independence was used by Ho Chi Minh and his followers to rally people's supports for the two wars against the French and the Americans.

As for Marxism and Leninism, the Vietnamese scholars found in these theories the philosophical justifications for their combination of the particularity *and* the universality of human rights. For Hoàng Việt, Marx viewed human being not as abstract concept, but a social animal constituted by social relations. This he explained, “is an affirmation that the human being is attached to history, and belongs to different production relations, and different phases of human history.” As Hoàng Việt claims, “the agreement with this statement for long had served as a gold testing stone for a true Marxist.”³⁵⁵ In the same vein, Vũ Hoàng Công argues that

the most important thing of the concept of the individual is to define the social natures of an animal called human ... [which were reflected in the] level of spiritual growth, the absorptions of social relations, and the capacity to manage those relations in accordance with standards, practices, and rules of a particular society.³⁵⁶

³⁵⁴ For the Declaration of Independence of the Republic Democratic of Vietnam in 1945, see http://www.cpv.org.vn/cpv/Modules/News/NewsDetail.aspx?co_id=30196&cn_id=119997#, accessed on September 26, 2011.

³⁵⁵ Hoàng Việt, “Sự đóng góp của chủ nghĩa Mác vào vấn đề quyền con người và cách hiểu sai lầm của những người đối lập” (Marxism's contribution to human rights and the wrong interpretation of this by the critics), *TCNCLL* [Theoretical Research Journal], Vol. 4, August 1993, p. 39, my translation.

³⁵⁶ Vũ Hoàng Công, “Một ý kiến chung quanh khái niệm quyền con người” [Some general comments on the concept of human rights], *Tạp chí nghiên cứu lý luận (TCNCLL)* [Theoretical Research Journal], Vol. 4, August 1993, p. 27, my translation.

However, in the view of these scholars, Marx did not argue that there was *only* one aspect to the human condition. Hoàng Việt claimed that Marx did not deny the fact that before becoming “the ensemble of the social relations,” a human being is an entity.³⁵⁷ Were the infants, the mentally or physically disabled people, Công asked, not human beings?³⁵⁸ And Hoàng Chí Bảo claimed that human rights were all about the two aspects of a human being, “the right to exist as a social animal and the right to create as a free individual.”³⁵⁹ This embracement of human being as *both* a member of a particular society *and* a member of the human species laid the foundation for the Vietnamese Marxists to justify the particularities and the universality of human rights.

The thesis that the human being is both a social animal and a unique entity serves as the starting point for explaining several features of Vietnamese human rights understanding. Part of the third feature discussed earlier in this chapter is the contingency of human rights realisation on social and economic development level. Commonly quoted by the Vietnamese Marxists are Marx’s two statements: the “essential character and direction [of the will of the ruling class] are determined by the economic conditions of existence of your class;”³⁶⁰ and “right can never be higher than the economic structure of society and its cultural development conditioned thereby.”³⁶¹ This form of economic determinism has been applied by the Vietnamese in prioritizing rights and justifying their limitations on their assurance and realisation of human rights, particularly political and civil rights. Vũ Hoàng Công stated that the order of priorities of human rights “depend on the economic, political, and social level, meaning the level and quality of life.”³⁶² While Nguyễn Phú Trọng who is now the General Secretary of the CPV attributed “the limitations in implementing human rights” in early 1990s on “the limited level of development and the weaknesses in management, and by no means because we do not attach importance to taking care of our people.”³⁶³

³⁵⁷ Hoàng Việt, *op. cit.*, p. 39, my translation. This phrase by Marx was in his “Theses On Feuerbach”, Marx/Engels Selected Works, Volume One, p. 13 – 15, Progress Publishers, Moscow, USSR, 1969, this can be found on <http://www.marxists.org/archive/marx/works/1845/theses/theses.htm>, accessed 9 July 2013.

³⁵⁸ Vũ Hoàng Công, *op. cit.*, p. 27.

³⁵⁹ Hoàng Chí Bảo, “*Chủ nghĩa Xã hội và Quyền con người*” [Socialism and Human Rights], *ND [The People Newspaper]*, 9 November, 1992.

³⁶⁰ Karl Marx, Manifesto of the Communist Party, this can be found at <http://www.marxists.org/archive/marx/works/1875/gotha/ch01.htm>, accessed on 5 August, 2013.

³⁶¹ Karl Marx, Critique of the Gotha programme, this can be found at <http://www.marxists.org/archive/marx/works/1875/gotha/ch01.htm>, accessed on 3 July 2013.

³⁶² Vũ Hoàng Công, *op. cit.*, p. 29.

³⁶³ Nguyễn Phú Trọng, “*Nhân quyền – Đạo lý Việt Nam*” [Human Rights – Vietnamese morality], *ND [The People Newspaper]*, 14 May 1993.

As for dialectical relation between rights and duties, the Vietnamese communists have quoted Marx that there are “no rights without duties, no duties without rights,”³⁶⁴ “only in community [with others, has each] individual the means of cultivating his gifts in all directions; only in the community, therefore, is personal freedom possible;”³⁶⁵ and “the free development of each is the condition for the free development of all.”³⁶⁶ Echoing Marx in the last statement, Hoàng Chí Bảo contends that, “the free and complete development of each is the condition for the development of the whole society, and this is the goal of history [of human kind].”³⁶⁷ Accordingly, the relationship between individual rights and common interests of the nation becomes interdependent. These ideas fit nicely in the traditional value of prioritising common good over individual interests. Combining together, they serve as a solid background for the fifth feature of Vietnamese understanding on human rights on the relation between rights and duties.

Another frequently applied feature of Marxism is the view of society as a class struggle. Accordingly, the human rights related concepts of law and equality have been viewed through this class lens. For Marx, law was just “the will of your [the ruling] class made into a law for all.”³⁶⁸ In line with this argument, Trần Hữu Tiến stated that the legal system reflected the ruling position of a certain class, resulting in the class nature of citizen rights.³⁶⁹ Thus, human rights as reflected in laws always serve the interests of a certain class in society, i.e. the bourgeois rights in capitalist society and the rights of the proletariat in a socialist one. A VIIIth Party Congress Document in 1991 confirms this understanding, “the State

³⁶⁴ This was one of the rules in “The Rules and Administrative Regulations of the International Workingmen’s Association” which was partly prepared by Marx in 1867; this can be found at <http://www.marxists.org/archive/marx/iwma/documents/1867/rules.htm>, accessed on 4 July 2013.

³⁶⁵ Karl Marx, *The German Ideology, Part I: Feuerbach, Opposition of the Materialist and Idealist Outlook, D. Proletarians and Communism*, this can be found at <http://www.marxists.org/archive/marx/works/1845/german-ideology/ch01d.htm>, accessed on 5 July 2013. It should be noted that the word “community” in this statement means a stateless society as Marx continues, “in the previous substitutes for the community, in the State, etc. personal freedom has existed only for the individuals who developed within the relationships of the ruling class, and only insofar as they were individuals of this class. The illusory community, in which individuals have up till now combined, always took on an independent existence in relation to them, and was at the same time, since it was the combination of one class against another, not only a completely illusory community, but a new fetter as well. In a real community the individuals obtain their freedom in and through their association.” Ibid. However, the quotations of this by Vietnamese scholars seem to ignore the latter part of Marx’s argument. See for example, Hoàng Văn Hảo and Cao Đức Thái (eds.), *op. cit.*, p. 168.

³⁶⁶ *Communist Manifesto, Chapter II Proletariats and Communists*, this can be found at <http://www.marxists.org/archive/marx/works/1848/communist-manifesto/ch02.htm>, accessed on 5 July 2013.

³⁶⁷ Hoàng Chí Bảo, *op. cit.*

³⁶⁸ Karl H. Marx, *Manifesto of the Communist Party in Basic Writings on Politics and Philosophy*. [by] Karl Marx and Friedrich Engels. Anchor Pub. Co., Garden City, NY, 1959, p. 24.

³⁶⁹ Trần Hữu Tiến, “*Tính giai cấp và tính nhân loại trong vấn đề quyền công dân và quyền con người*” [The characteristics of Class and Humanity in the Issues of Citizen Rights and Human Rights], *TCNCLL* [Theoretical Research Journal] Vol. 4, August 1993, p. 30, my translation.

promulgates laws to identify citizen rights and human rights.”³⁷⁰ Likewise, the Vietnamese Marxists take Marx’s view that equality means being equal not only in law but also in social and economic fields. They quoted Marx as saying that “legal equality should be supplemented by social equality” and “equality must mean true equality in economic and social field.”³⁷¹ These views justify the contention in Directive 1992 that human rights reflect class struggle.

To summarize at this point, the influence of Marxism-Leninism is omnipresent in all the features of Vietnamese human rights understanding, from the universal, particular, and class nature of human rights to the contingency of human rights realisations on economic development and culture. Certain traditional values have also been accommodated by Marxism-Leninism and embraced by Ho Chi Minh and his followers, such as the view of government as a care giver and service provider, the emphasis on positive freedoms through legalizing the assurances of economic and social rights, and the submission of individual rights to collective interests. Before discussing the Vietnamese view on human rights dialogue with other, the remainder of this section analyses the Vietnamese understandings of liberty and its constraints and compares them with those of the Americans.

For the Vietnamese marxists, like other marxists, liberty means that the working people are freed from exploitation, oppression, and degradation of human beings caused by the capitalists in minority. To ensure this liberty, proletarian dictatorship must be implemented even this could entail violence and oppression if necessary against the enemies of socialism. Following this rationality, oppression and violence against the capitalists or others who are against the interests of the majority are justifiable and necessary. This understanding has been

³⁷⁰ *Đảng Cộng sản Việt Nam* [The Communist Party of Vietnam], *Cương lĩnh xây dựng đất nước trong thời kỳ quá độ lên Chủ nghĩa Xã hội* [Program for national building in the transition period to socialism], NXB Sự thật [Truth Publisher], 1991, p. 19. In a similar vein, Article 50 of the 1992 Constitution states, “in the Socialist Republic of Vietnam, human rights in all aspects, political, civic, economic, cultural and social are respected, find their expressions in the rights of citizens and are provided for by the Constitution and the law.” It should be noted, however, that the new Constitution (2013) drops the legal positivist’s idea that law gives rights. Consider the differences between Article 50 of 1992 Constitution and Article 14.1 of the 2013 Constitution which states that, “In the Socialist Republic of Vietnam, human rights and citizen rights in political, civil, economic, cultural, and social fields are recognised, respected, protected, and assured in accordance with the Constitution and the law.” This can be found on <http://vnexpress.net/tin-tuc/thoi-su/quoc-hoi-thong-qua-hien-phap-sua-doi-2916328-p2.html>, accessed 22 April 2014.

³⁷¹ Karl Marx and Engels, *Toàn Tập* [Full Volume], Vol. 20, NXBCTQG [National Political Publishing House], Hanoi, 1994, p.153-4, cited in Hoàng Văn Hào and Cao Đức Thái (eds.), *op. cit.*, p. 175, my translation. Echoing this view, Tiến argued that the practical and complete human rights in accordance with Marxism must consist of “equality not only before the law but also in economic and social fields.” Trần Hữu Tiến, *op. cit.*, p. 32.

crystalised into the 1959, 1980, 1992, and 2013 Constitutions.³⁷² Article 38 of the 1959 Constitution warned that “[n]o one is allowed to abuse democratic freedoms to infringe upon the interests of the State and the people” and this line was retained in article 67 of the 1980 Constitution. In the same vein, article 70 of the 1992 Constitution and Article 24 of the 2013 Constitution both prohibited any abuse of religion that violated the laws and policies of the State. The 2013 Constitution also repeats the same edicts as those in the 1959 and 1980 Constitutions though in a different way, “the practice of human rights and citizens’ rights cannot infringe upon national interests, and the rights and lawful interests of others.”³⁷³ The constraint on human rights in the latest constitution contains an unmistakably natural right limitation (the rights of others), but collective interests continue to be used to justify limiting human rights. Such constraint is in sharp contrast to American view that liberty is conceptualised as individual freedom to do whatever one wishes, as long as those actions do not violate the legitimate rights of others.

For example, on press freedom, the Vietnamese view that all newspapers and journalists are supposed to carry out certain political tasks: winning the war against the French and then the Americans and/or building socialism in the North after 1954 and the whole nation after 1975. The Americans also view press as a tool. The difference is that while the Vietnamese view press as a tool of the state to lead the people, the Americans consider press a tool of the people to guard against a necessary but evil state. The following arguments are fully rational in Marxism-Leninism but could not be comprehensible in liberalism. In interpreting a directive on press in 1959 that “prohibits those who abuse that right [freedom of expression] to harm the struggle for peace, unification, independence, and democracy of the nation,”³⁷⁴ the daily newspaper of Vietnam People Army argued that:

Thus, press at that time, whether of the government, political parties, mass organisation, or private sector is the tool for the struggle of the people, must serve the interests of the Fatherland, protect the people’s democratic regime, support the Democratic Republic of Vietnam [North Vietnam]. Press has an obligation to conduct propaganda work for educating the masses, implement well all directions

³⁷² The first Constitution of Vietnam was approved on 9 November 1946. It did not contain this constraint on human rights. However, it had never been officially issued because of the war with the French broke out shortly after. For the Vietnamese constitutions 1946, 1959, 1980, and 1992, see Tuyên ngôn Độc lập năm 1945 và các hiến pháp Việt Nam [The Declaration for National Independence in 1945 and Vietnamese constitutions], NXBCTQG [National Political Publisher], Hanoi, 2006.

³⁷³ The 2013 Constitution, its full text can be found on <http://vnexpress.net/tin-tuc/thoi-su/quoc-hoi-thong-qua-hien-phap-sua-doi-2916328-p2.html>, accessed 24 April 2014. My translation.

³⁷⁴ For an account on the government’s limitations on political rights and the critics against them in the 1950s, see Kerkvliet, Benedict J. Tria, “State-Society Relations in Vietnam,” in Luong, Hy V. (ed.), *Postwar Vietnam: Dynamics of a Transforming Society*, Rowman & Littlefield Publishers, Oxford, United Kingdom, 2003, pp. 38-40.

and policies of the state, fight against all plots, actions and arguments that undermine the cause of building a strong North, the cause of unifying the Fatherland, peace, and solidarity and friendship with international friends.³⁷⁵

III. The Vietnamese view on human rights dialogue with other

Drawing on the above analysis, three main features can be drawn about how the way the Vietnamese view others in terms of human rights. First, there is an inherent level of pride in the Vietnamese view of human rights. While the Americans are proud of their “natural and self-evident” superiorities on the issue of human rights and that the U.S. is a land of liberty, the Vietnamese find the superiority of their version of human rights through a class lens. From a Vietnamese Marxist perspective, the implementation of human rights in Vietnam is superior to that in capitalist countries. This is because Vietnamese society is oriented towards socialism as a more advanced stage in human history, where both sets of rights (political and civil, and social and economic) are promised to be well ensured and protected. Political and civil rights in capitalist countries, a Vietnamese Marxist would argue, are exclusive bourgeois rights and serve as a façade for the economic exploitation of workers and the toiling people there. Besides, the argument goes, the realization of human rights in the U.S. is limited by an inherent constraint in its political system as the proletariat and the toiling people is still being exploited by the capitalists. While in a country moving towards socialism like Vietnam, the proletariat rules over the capitalists who eventually dissolve themselves into the mass; the oppressed is in the minority and soon will no longer exist neither will oppression. As, Vice President Nguyễn Thị Doan proudly claims, “[o]ur state is a socialist ruling state of the people, by the people, and for the people, [Our state] adopts the democratic values of ruling states in history and is developing to a new height, total difference in essence and tens of thousand times higher than capitalist democracy.” The problem for some negative depictions of Vietnam on human rights, she explains, is that the CPV and the State “have not disseminated and educated the people to correctly understand that democracy goes with order so that some have intentionally abused democracy for making disorder and division [in the society] [and this] has negative impact on social order and safety.”³⁷⁶

³⁷⁵ Quân Đội Nhân Dân (People’s Army), “Ensuring the freedom of expression on press,” [*Báo đảm quyền tự do ngôn luận trên báo chí*], this can be found on <http://www.qdnd.vn/qdndsubsite/vi-VN/89/6209/print/Default.aspx>, accessed 24 April 23, 2014. My translation.

³⁷⁶ Nguyễn Thị Doan, “The Role of the Party in the Vietnam revolution in the renewal time,” *ND* [The People Newspaper], 5 November 2011, this can be found on <http://www.baomoi.com/Vai-tro-lanh-dao-cua-Dang-doi-voi-cach-mang-Viet-Nam-trong-thoi-ky-moi/122/7298483.epi>, accessed 21 April 2014 [my translation].

Second, Vietnam situates human rights within the unavoidable war between capitalism and communism. Directive 1992 calls for “tak[ing] the initiatives in our struggle for human rights in the international arena.” The Tenth Party Congress in 2006 reaffirmed this understanding; its political report calls for Vietnam to “proactively participate in the common struggle for human rights [and] stand ready for dialogue with concerned countries, and international and regional organisations on human rights issue.”³⁷⁷ Interestingly, the Americans may also frame human rights as an inevitable war, but in a different way. For the Americans, such war could be between the freeworld *and* the sufferers in the communist world against the authoritarian regimes, among them the communist regime in Vietnam.

Third, and drawing from the second feature, there have been a constant fear that capitalist countries use human rights to support subversions or changes towards capitalism in Vietnam. This suspicion is reflected in the concept of ‘peaceful evolution’ which was first defined in 1992 as follows:

‘Peaceful evolution’ was a fundamental and general strategy by imperialism since the late 1980s, which aimed at eliminating socialism through peaceful methods. Its main pathway is to infiltrate capitalist elements into socialist countries through political, ideological, economic, cultural and social activities, at the same time to nurture and encourage elements negating socialism in these countries, creating internal transformation of socialism into capitalism.³⁷⁸

On the same alert attitude, Directive 1992 demanded to “fight against plots abusing this [human rights] issues to undermine us [Vietnam].”³⁷⁹ Two years later, at a mid-term Central Committee’s plenum in January 1994, the CPV designated ‘peaceful evolution’ as one of the four immediate challenges, besides lagging behind economically, derailment from socialism direction, and corruption and other social vices.³⁸⁰ Obviously, the imperialism referred to here is that of the U.S. A number of Vietnamese scholars agree that various American strategies towards the socialist block during the Cold War were also peaceful evolution under

³⁷⁷ The CPV, Báo cáo chính trị của Ban Chấp hành Trung ương Đảng khoá IX tại Đại hội đại biểu toàn quốc lần thứ X của Đảng [Political Report of the Central Committee of the IXth Tenure at the Xth Party Congress], this can be found on http://123.30.190.43:8080/tiengviet/tulieuvankien/vankiendang/?topic=191&subtopic=8&leader_topic=699, accessed 30 March, 2012.

³⁷⁸ Báo Cáo Của Bộ Chính Trị Trình Hội Nghị Lần Thứ Ba Ban Chấp Hành Trung Ương Khóa VII: Về Phát Triển Kinh Tế Đối Ngoại Trong Tình Hình Mới [Report of the Politburo to the 3rd Plenum of the Party Central Committee (VIIth Tenure): On the Promotion of External Economic Activities in the New Context], 06/1992. Văn Kiện Đảng Toàn Tập: Tập 52 [CPV Documents: Volume 52], Hanoi, NXBCTQG [National Political Publishing House].

³⁷⁹ Directive 1992, cited in Nguyễn Đăng Dung et al, *op. cit*, p. 540.

³⁸⁰ Mid-term Central Committee’s plenum 20-25 January 1994, this can be found on http://dangcongsan.vn/cpv/Modules/News/NewsDetail.aspx?co_id=30136&cn_id=192683, accessed 5 August 2013.

different names. For them, peaceful evolution appeared in the late 1940s and early 1950s and was called “flexible responses” and “the arrow and the olive branch” in the 1960s; “practical deterrence” and “stick and carrots” in the 1970s. By the 1980s, they claim, imperialism perfected the strategy and used it to wield a decisive blow to socialism in the former Soviet Union and Eastern Europe.³⁸¹ Indeed, the collapse of socialism in the 1990s was then and is still now attributed by the Vietnamese to “peaceful evolutions,” among other reasons.³⁸²

In recent years, this concept has been extended to self-evolution: Party members may change in a direction away from socialism and forward to capitalism. Party officials were warned by Truong Tan Sang in 2000 about the risk of being “seduced by and have fallen into the economic traps of hostile forces to the point of losing faiths in socialism and degrading morally.”³⁸³ Sang also warned that hostile forces and imperialism use the issues of democracy, human rights, ethnicity, and religion to call for regime change, destroy social consensus, summon “dissidents who actually are anti-socialism elements” and use them as insiders for carrying out ‘peaceful evolution.’³⁸⁴ Thus, for the CPV, the Vietnamese must always stay vigilant to both peaceful evolution and self-evolution in such issues as democracy, human rights and religious freedom.

This understanding impacts upon human rights issue and dialogue. Vietnam’s human rights understanding is vulnerable to being influenced by capitalist elements under the cover of human rights reforms. The greater such elements are present in Vietnam, the bigger the threat to the regime and socialism in Vietnam. Accordingly, human rights as a concept is well

³⁸¹ Lê Minh Vượng and Nguyễn Tiến Quốc (eds.), *Phòng, chống “Diễn biến hòa bình” ở Việt Nam – Những vấn đề lý luận và thực tiễn* [A review on Preventing and Fighting Against Peaceful Evolution in Vietnam – theoretical and practical issues], NXBCTQG [National Political Publishing House], Hanoi, 2009.

³⁸² Other reasons are the international economic crises in the 1970s, the shortcomings and mistakes in building socialism in those countries, and some others. See the Vietnamese view of the collapse at that time at: Nguyễn Văn Thúc, “Góp phần tìm hiểu nguyên nhân khủng hoảng của chủ nghĩa xã hội” [Contributing to explaining the reasons for the crisis of socialism], *Tạp chí Triết học* [Journal of Philosophy] Number 3, 1990, Phạm Ngọc Quang, “Tìm hiểu nguyên nhân sụp đổ của Liên bang Xô viết” [On the reasons for the collapse of the Soviet Union], *Tạp chí Triết học* [Journal of Philosophy], Number 4, 1992, Nhị Lê, “Chủ nghĩa xã hội đã lỗi thời hay là sự lỗi thời về một cách nhìn về chủ nghĩa xã hội?” [Is socialism or a viewpoint of socialism outmode] *Tạp chí Khoa học Xã hội*, [Journal of Social Sciences], Number 18, 9/1998, Nguyễn Phú Trọng, “Vì sao Đảng cộng sản Liên Xô tan rã?” [Why did the Communist Party of Soviet Union collapse], *Tạp chí Cộng sản* [Communist Review], Number 4, 1992. For the contemporary explanation of the CPV, see for example an article titled *Vì sao Liên Xô sụp đổ* [Why did the Soviet Union collapse] in May 2010 on the CPV’s electronic paper, this can be found on http://dangcongsan.vn/cpv/Modules/News/NewsDetail.aspx?co_id=30684&cn_id=404129, accessed 25 July 2014.

³⁸³ Trương Tấn Sang, “Nâng cao hiệu quả cuộc đấu tranh chống ‘Diễn biến hòa bình’” [Enhancing efficiency in [our] fight against ‘peaceful evolution’], *TCCS* [Communist Review], 29 November 2010, this can be found on <http://www.tapchicongsan.org.vn/Home/Tieu-diem/2010/3003/Nang-cao-hieu-qua-cuoc-dau-tranh-chong-Dien-bien-hoa-binh.aspx>, accessed on 5 August 2013. Sang wrote this when he was Politburo member and Party Secretary for Ho Chi Minh city. He has been President of the Socialist Republic of Vietnam since 25 July 2011.

³⁸⁴ Ibid.

associated with the CPV's fears of socialism derailment. American concerns for democracy, human rights, religious freedom, and ethnic minority are suspected as not sincere and only means to topple the communist regime. The CPV indeed confirmed their determination in 2006 to "foil plots and attempts to distort and abuse the issues of democracy, human rights, ethnicity, and religion to interfere into internal affairs, infringe upon independence, sovereignty, territorial integrity, security, and political stability of Vietnam."³⁸⁵ Changes related to human rights or in the name of improving human rights conditions are thus suspiciously scrutinized under the ambiguous caution of being a 'deviation from socialism direction.'

Three observations follow. First, the Vietnamese diplomats are also under two constraints against changes in their human rights understandings. Like the American diplomats, the Vietnamese diplomats are warned not to change their positions and not speak it out to their counterparts in case they disagree with their government policies and position. And whereas the Americans are also against changes due to their convictions on the superiority of their human rights values, the Vietnamese may think twice when they change their understanding on human rights, in fear of peaceful evolution and self-evolution. Second, human rights-related fears and suspicions are not only found at the Vietnamese communists. As discussed in the preceding chapter, the Americans were also feared of elements of communism in their response to social and economic rights that were advocated by their own president in the 1950s. Putting this in the Vietnamese term, it can be said that the Americans were afraid of capitalist derailment. And finally, while the Vietnamese are worried about the possible impacts of the other on their human rights understanding, the Americans are concerned about how their human rights understanding could be adopted by the other.

Conclusion

This chapter has discussed Vietnamese understanding of human rights and has compared it with the American understanding. Responding to the concept of human rights amidst the fears of having to compromise on their revolutionary cause, the Vietnamese have attempted to frame human rights both in the natural right school and in Marxism-Leninism. For the Vietnamese, human rights are conceptualized as inherent *and* as dependent on the level of development. Unlike the Americans, the Vietnamese hold that human rights are products of

³⁸⁵ The Political Report of the Xth Party Congress in 2006, *op. cit.*

the class struggle against oppression and exploitation, and contingent to historical and cultural values. In sharp contrast to the American human rights understanding, the Vietnamese believe in the unities between individual rights and individual responsibilities, between individual rights and national independence and self-determination. And whereas the Americans find justifications for their human rights position mainly from Locke and Paine's ideas on natural rights, the Vietnamese construct and justify their human rights understanding on selected values of their tradition, Confucianism, Buddhism, Marxism-Leninism, and Ho Chi Minh thought. Based on these foundations, the Vietnamese believe that the press should be a tool of the state to advance collective goals and that strict regulations should be put on the possibility of individuals abusing their human rights that would undermine the state. This is incommensurable with American views, in which the press sides with the people against a necessary evil state. Overall, besides the possible agreement that human rights are inherent and that political and civil rights are human rights, the two countries differ on a number of other aspects of human rights, even to the point of incompatibility and incommensurability. The chapter has also compared American and Vietnamese view on human rights exchange. While the Americans are convinced that such exchanges are uni-directional, and that only others should learn from the U.S., the Vietnamese do not reject the possibility of learning from others. However, such learning, if it is to occur, must occur in a climate of constant guard against derailment from socialism. Moreover, both Americans and Vietnamese are proud of their respective human rights understandings for different reasons: the superiority of American human rights values for the former, and for the latter, the superiority of socialism as their claimed lofty goal.

The findings in this chapter help to answer the first research sub-question. It has become clear now that the two countries differ in many ways in their human rights understanding. These differences constitute a real and important obstacle to narrowing their human rights differences. Besides, the comparison of their views on human rights exchange suggests that exchanges on human rights between the two sides may not be fruitful due to a number of limitations. The next two chapters examine an actual encounter of the two human rights understandings as examined from Gadamer's and Habermas's perspectives.

Chapter Three

The 2006 U.S. - Vietnam Human Rights Dialogue as examined using Gadamer's philosophical hermeneutics

This chapter carries out two tasks simultaneously. It extracts from Gadamer's account of understanding in philosophical hermeneutics [henceforth PH] a separate model for successful human rights dialogues. Specifically, Gadamer's thoughts on what constitutes understanding, what is involved in the process of understanding, and what are the conditions of, and indications for, understanding will serve as critical lenses to analyze a transcript of the 2006 human rights dialogue [henceforth 2006 HRD] between the U.S. and Vietnam. At the same time, the chapter tests whether evidences of genuine understanding from a Gadamerian perspective can be found in the 2006 HRD. To fulfill these tasks, the chapter is divided into three parts. It first locates Gadamer's overall work in PH and presents his account of mutual understanding. It then extrapolates a model of successful dialogue from his work and test whether these conditions and indications can be evidenced in the 2006 HRD. The chapter then reviews some critique of Gadamer's PH relevant to this model, provides answers to the research questions from a Gadamerian perspective, and links its findings to the conclusions reached in the preceding chapters.

Before fulfilling these tasks, it is necessary to justify for the selection of the 2006 HRD. The transcript of the 2006 HRD was, and still is now, the only one available and publicly accessible.³⁸⁶ No transcript of any of the other 15 human rights dialogues between the U.S. and Vietnam is available, nor any additional primary materials about the issue (such as Congressional hearings on American human rights dialogues with Vietnam, or the assessments of the Communist Party of Vietnam on such dialogues). Accordingly, this sets an inherent limitation of the thesis; it cannot assess the progress on the human rights issue between the U.S. and Vietnam over the 16 rounds of dialogues." Nevertheless, in itself, the 2006 HRD clearly exposes the limits inherent to each party's position and the difficulties and

³⁸⁶ Like many other primary materials used in this thesis, the transcript of the 2006 HRD is available on the internet thanks to Wikileaks.

challenges consequently faced in the dialogue. That is where the Gadamerian and Habermasian prisms come into play to expose the deep reasons for the stalemate.

I. Mutual understanding in Gadamerian PH

1. Situating Gadamer's project in PH

Hermeneutics, of which PH is a branch, is concerned with the methods for interpreting ancient and particularly biblical texts.³⁸⁷ For early hermeneutic theorists such as Spinoza and Chladenius, the primary task of hermeneutics is to transmit a substantive understanding of the Bible, which they suggest is for the most part unproblematic. When the truth of claims is no longer self-evident however, such as those about miracles, they see the need for explicit hermeneutic procedures or methods.³⁸⁸

F.D.E. Schleiermacher moved the focus of hermeneutics from the concerns about classical texts “to the general orientation of the science of understanding.”³⁸⁹ He contended that not only classical texts and the Bible but all written works and spoken utterances could be understood by his formulated principles of a general theory of interpretation.³⁹⁰ Unlike his predecessors' idea that understanding arose of itself, Schleiermacher held that it was misunderstanding that “occurr[ed] as a matter of course” and thus understanding must be “willed and sought at every point.”³⁹¹ And in order to understand a text, the interpreter “transform himself . . . into the author” to comprehend the author as an individual.³⁹² This “divinatory method” as he called it allows the uniqueness of the author to be found. However, Schleiermacher argued that this method must be combined with a comparative one – compare the author with “the others of the same general type” – so that the author's particulars can be confirmed.³⁹³ In this way, for Schleiermacher, the interpreter can understanding the author

³⁸⁷ Shapcott, Richard, *Justice, Community, and Dialogue in International Relations*, Cambridge: Cambridge University Press, 2001, p. 133, also Ringma, Charles Richard, *Gadamer's Dialogical Hermeneutic: the Hermeneutics of Bultmann, of the New Testament Sociologists, and of the Social Theologians in Dialogue with Gadamer's Hermeneutic*, Heidelberg: Universitätsverlag C. Winter, 1999, p. 9.

³⁸⁸ Warnke, Georgia, *Gadamer, Hermeneutics, Tradition and Reason*, Cambridge, Polity Press, 1987, p. 10.

³⁸⁹ Ibid., p. 19, quoted in Ricoeur, Paul, *Hermeneutics and the Human Sciences: Essays on Language, Action and Interpretation*, edited, translated and introduced by John B. Thompson, Cambridge, Cambridge University Press, 1981, p. 19.

³⁹⁰ Warnke, *op. cit.*, pp. 1-6.

³⁹¹ Schleiermacher, Friedrich D. E., *Hermeneutics: The Handwritten Manuscript*, edited by Heinz Kimmerle and translated by J. Duke and J. Forstman, Missoula, Montana: Scholars Press, 1977, pp. 108-10.

³⁹² Ibid., p. 150.

³⁹³ Ibid., pp.150-1.

better than she understands herself as the former has “rightly reconstruct[ed] the creative act” of the latter.³⁹⁴

Schleiermacher’s hermeneutics, particularly the need to understand the author’s intentions, were applied to the study of history by Ludwig von Ranke and Johann Gustav Droysen of the Historical School and developed by Wilhelm Dilthey.³⁹⁵ While Schleiermacher searches for the methods that would permit an objective understand of any texts and utterances, Dilthey extends the object of inquiry to any symbolic structures, “including actions, social practices, norms and values” and aims to bring about a general methodology “that would be distinct from, but equal in status and objectivity to, that of the natural sciences.”³⁹⁶ As Ringma notes, with the work of Dilthey, hermeneutics in the 19th century became the methodological foundation for all human sciences.³⁹⁷

Gadamer criticizes that these scholars had mistakenly restricted the problem of understanding to ascertaining only the author’s intentions.³⁹⁸ For Gadamer, the task of hermeneutics is not to penetrate “the spiritual activities of the author” but to grasp “the meaning, significance, and aim of what is transmitted to us”³⁹⁹ as “we cannot enter the horizon of the past and understand it on its own terms, for we cannot leave ourselves behind.”⁴⁰⁰ Gadamer also criticizes Dilthey’s search for the objectivity of understanding that followed the influence of the Cartesian theory.⁴⁰¹ Developed by Descartes, this theory rejects “prejudices, tradition, or any authority” as the foundation of knowledge, and claims that one could reach objectivity in understanding by resorting to the appeal of reason that was “universal, not limited by historical contingencies, and shared by all rational beings.”⁴⁰² This Cartesian rejection of authority and tradition, as Bernstein notes, is the seed for the typical Enlightenment contrasts

³⁹⁴ Ibid., p. 192.

³⁹⁵ Ibid., p. 6.

³⁹⁶ Shapcott, *op. cit.* p. 133.

³⁹⁷ Ringma, *op. cit.*, pp. 9-10.

³⁹⁸ See Warnke, *Ibid.*, ix. Italics as original.

³⁹⁹ Gadamer, “The Problem of Historical Consciousness,” in Paul Rabinow and William M. Sullivan (eds.), *Interpretive Social Science: A Reader*, Berkeley: University of California Press, 1979, p. 147, cited in Ringma, *op. cit.*, p. 20. This does not, as Warnke explains, mean that the author’s intention “ought not to be a subject of interest to the historian,” but even when we did so, “we remain historically situated.” Consequently, our description of those intentions might be right, but just one among many others. Warnke, *op. cit.*, p. 25, italics as original.

⁴⁰⁰ Quoted in Ringma, *op. cit.*, p. 23.

⁴⁰¹ Gadamer, Hans Georg, “The Problem of Historical Consciousness,” in Paul Rabinow and William M. Sullivan (eds.), *Interpretive Social Science: A Reader*, Berkeley: University of California Press, 1979, pp. 209-211.

⁴⁰² In Bernstein, Richard J., *Beyond objectivism and relativism: science, hermeneutics, and praxis*, Oxford: B. Blackwell Press, 1983, p. 117. Italics as original.

between “reason and tradition, reason and authority, reason and superstition.”⁴⁰³ Against this view, Gadamer points out that Cartesianism fails to acknowledge the dependence of human knowledge on tradition and prejudices because the theory is “based on a misunderstanding of being, and in particular upon a misunderstanding of our being-in-the-world.”⁴⁰⁴ Thus, the Enlightenment’s claim of overcoming all prejudices, for Gadamer, “prove[s] to be itself a prejudice.”⁴⁰⁵

This ontological attack against Descartes is not only attributed to Gadamer, but also to Heidegger. Indeed, the latter had a great influence on the former upon whose work Gadamer built.⁴⁰⁶ Jean Grondin argues that Gadamer built on Heidegger’s notion of understanding and applied it to the field of the hermeneutical disciplines and the linguistic nature of experience.⁴⁰⁷ Ringma also notes that Gadamer took up Heidegger’s fore-structure of understanding and gave it a strong historical orientation. For Heidegger, understanding is interpretation and grounded in fore-having (something we have in advance), fore-sight (something we see in advance), and fore-conception (something we grasp in advance). Gadamer develops that these fore-structures are not only our personal property, but they are the prejudices which constitute our horizon.⁴⁰⁸

While it is impossible to capture Gadamer’s hermeneutics in a few sentences, some of the main arguments of his hermeneutics could be summarized as followed. On one hand, Gadamer contends that language is not only the medium for understanding but also what “discloses and manifests the world for us” and conditions “the scope of our knowledge and experience;” and what is contained within and carried by language is history and tradition. As Shapcott notes, “the major argument of *Truth and Method* is that all knowledge is interpretation because all knowledge is constituted linguistically.”⁴⁰⁹ On the other hand, Gadamer claims that understanding is ontologically a function of our situatedness in an historical tradition. And history and language provide the productive prejudices with which one understands and engages with the world. For Gadamer, understanding corresponds to a dialogue between the interpreter and the text or between two interlocutors, and is possible

⁴⁰³ Ibid.

⁴⁰⁴ Bernstein, *op. cit.*, p. 118.

⁴⁰⁵ Gadamer, Hans Georg, *Truth and Method (TM)*, London: Sheed & Ward, 1979, p. 244.

⁴⁰⁶ For an interesting account of Heidegger’s influence on and interactions with Gadamer, see Jean Grondin, *The philosophy of Gadamer*, translated by Kathryn Plant, Chesham: Acumen, 2003, pp. 6-12.

⁴⁰⁷ Jean Grondin, “Gadamer’s Basic Understanding of Understanding,” in Robert J. Dostal (ed.), *The Cambridge Companion to Gadamer*, Cambridge; New York: Cambridge University Press, 2002, p. 50.

⁴⁰⁸ In Ringma, *op. cit.*, p. 23.

⁴⁰⁹ Shapcott, *op. cit.*, p. 135. In Gadamer’s words, linguisticality is “the fundamental mode of our being-in-the-world and the all embracing form of the constitution of the world.” Gadamer, *Philosophical Hermeneutics*, p. 4.

when there is a fusion of their horizons. The following section presents in more details Gadamer's account of understanding and how the U.S. – Vietnam human rights understanding could be explained from Gadamer's perspective.

2. Gadamer's account of understanding

Gadamer explains understanding as follows,

to understand means primarily for two people to understand one another. Understanding is primarily agreement or harmony with another person. Men generally understand each other directly, i.e. they are in dialogue until they reach agreement. Understanding, then, is always understanding about something. Understanding each other means understanding each other on a topic or the like.⁴¹⁰

What Gadamer is stating here is that understanding involves a process of a conversation between at least two interlocutors over a subject matter that is placed before them. They could be two partners in a conversation or one person and the text he/she is trying to understand. In the conversation, the interlocutors pose questions and seek answers from each other on a subject matter until they come to agreement on it. This is also true for the interpreter and his text. In reading the text, the interpreter is searching for answers for his questions about a particular topic. Furthermore, for Gadamer the subject of understanding is a specific topic, neither the original meaning nor the initial intentions of the speakers. However, the hearer should return to the intention of the speaker or the reader to the author's original meaning when the understanding of the subject matter is disturbed.⁴¹¹

As we communicate and reach agreement with one another through language, language becomes the medium of understanding. As Gadamer puts it clearly, "every conversation automatically presupposes that the two speakers speak the same language. Only when it is possible for two people to make themselves understood through language by talking together can the problem of understanding and agreement be even raised."⁴¹² In the case where the two speakers are dependent on translation, Gadamer continues, the hermeneutical process of the conversation is duplicated: the process between the translator and the other as well as between oneself and the translator.⁴¹³ In this case, the translator must translate the meaning into the living context of the other speaker. Since the meaning must be preserved and

⁴¹⁰ Gadamer, *TM*, p. 158.

⁴¹¹ See Jean Grondin, "Gadamer's Basic Understanding ...," p. 40.

⁴¹² Gadamer, *TM*, p. 347.

⁴¹³ *Ibid.*

“understood within a new linguistic world, it must be expressed within it in a new way.” As such, every translation, Gadamer concludes, “is at the same time an interpretation.”⁴¹⁴

Another aspect of Gadamerian understanding is that understanding also means interpretation and application. Gadamer shared the romantic recognition of the inner unity of understanding and interpretation when he stated that “interpretation is not an occasional additional act subsequent to understanding, but rather understanding is always an interpretation, and hence interpretation is the explicit form of understanding.”⁴¹⁵ But he moved beyond romantic hermeneutics by claiming that application is also an integral element of all understanding or “[u]nderstanding . . . is always application” as a proper way of understanding a text is that it must be understood “at every moment, in every particular situation, in a new and different way.”⁴¹⁶ In this vein, the text will be understood differently, depending on different situations that the interpreter encounters. Thus, when we say we understand something, we in fact interpret it and apply our particular situation to make sense of it.

The above example of a translator is a good case in point. In interpreting the meaning of the speaker, the translator had already *applied* the words that he deemed appropriate in his situation so as to bring the preserved meaning across the two different linguistic worlds and express it in one of those two languages. To put it another way, the selection of those words depends on the overall situation in which the translation takes place and on the knowledge of the two languages of the interpreter at that particular moment. This dependency of understanding of a text’s on the interpreter’s situation produces the text new meaning for different interpreters or even for the same interpreter at different times. In this regard, application is situational and likewise, in Gadamer’s words, “understanding itself proved to be an event.”⁴¹⁷

As understanding is situational, for Gadamer, any claim to objectivity is denied. “The very idea of a situation,” Gadamer points out, “means that we are not standing outside it and hence are unable to have any objective knowledge of it. We are always within the situation, and to throw light on it is a task that is never entirely completed.”⁴¹⁸ In other words, objective knowledge is unattainable because of the historical situatedness of the people who seek it. And this incompleteness, Gadamer explains, “is not due to a lack in the reflection, but lies in

⁴¹⁴ Ibid., p. 346.

⁴¹⁵ Ibid., pp. 274.

⁴¹⁶ Ibid., p. 275.

⁴¹⁷ Ibid., p. 276.

⁴¹⁸ Ibid., p. 269.

the essence of the historical being which is ours.”⁴¹⁹ The essence of our being-in-the-world is reflected in what Heidegger called fore-havings and Gadamer developed as prejudices.

Gadamer defines prejudices as prejudgments which are “given before all the elements that determine a situation have been finally examined.”⁴²⁰ Simply put, they are the convictions, ideas and opinions that one has before encountering another person or text. As they are prejudgments, they can be true and positive, or false and negative. While the latter “hinder understanding and lead to misunderstandings,” the former are “productive prejudices that make understanding possible.”⁴²¹ The interpreter, he continues, cannot separate in advance these two kinds of prejudices and even is not aware of a prejudice “while it is constantly operating unnoticed.” She is aware of his/her own prejudices if they are stimulated by his/her encountering something new and valid.⁴²² To put it another way, our prejudices are operating without being recognized by us until we are experiencing the other’s claim to truth. Only by accepting that the other’s claim to truth may be valid, do we notice our prejudices and tell the positive and true from the negative and false ones.⁴²³ Thus, as Ringma notes, our own prejudices represent an important starting point of and the foundation for our understanding.⁴²⁴

Other concepts involved in the Gadamerian process of understanding are tradition and horizon. Similar to the concept of prejudice, tradition becomes part of us and we cannot distance ourselves from it. As Gadamer states:

We stand always within tradition, and this is no objectifying process, i.e. we do not conceive of what tradition says as something other, something alien. It is always part of us, a model of exemplar, a recognition of ourselves which our later historical judgment would hardly see as a kind of knowledge, but as the simplest preservation of tradition.⁴²⁵

But for Gadamer this preservation is not simply a reproduction of the old but a combination of the old with the new to create a new value; in other words, there are both continuity of what is transmitted to us from the past in the form of prejudices and creativity in any present situation.⁴²⁶ And tradition is a precondition for our understanding, as the latter can be defined

⁴¹⁹ Ibid.

⁴²⁰ Ibid., p. 240.

⁴²¹ Ibid., p. 263.

⁴²² Ibid., p. 266.

⁴²³ For example, it is only after our encountering other claims to freedom and accepting that such a claim or part of it is true, that we know that our long-held ideas on freedom are just prejudices, and which of them are valid.

⁴²⁴ Charles Ringma, *op. cit.*, pp. 26-9.

⁴²⁵ Gadamer, *TM*, p. 250.

⁴²⁶ Gadamer argues that “the meaning of the connection with tradition ... is fulfilled in the fact that we share fundamental prejudices with tradition.” Ibid., p. 262.

as the placing of ourselves “within a process of tradition, in which past and present are constantly fused.”⁴²⁷ However, understanding also helps to develop tradition, in Gadamer’s words, “we produce it ourselves, inasmuch as we understand, participate in the evolution of tradition and hence further determine it ourselves.”⁴²⁸

Gadamer defines the concept of horizon as “the range of vision that includes everything that can be seen from a particular vantage of point” that a person possesses in a particular situation or standpoint.⁴²⁹ For Gadamer, the possibility of vision is determined by a person’s attitude and limited by this particular standpoint. If that person “does not see far enough and hence overvalues what is nearest to him,” s/he then has no horizon; contrariwise, s/he who has an horizon is able to see beyond what is nearest and “knows the relative significance of everything within this horizon, as near or far, great or small.”⁴³⁰ And our horizon is always in motion and change with us when we change our position or acquire a new standpoint.⁴³¹ In this sense, interlocutors understand each other on a subject matter, if and when their different perspectives on the matter or horizons “meet in a fusion.” These changes, as Shapcott notes, are not as radical as to the level of “annihilation or assimilation of existing positions” but sufficient enough for the interlocutors to share a new meaning or occupy the same territory or vantage point.⁴³² Thus, the extent of mutual understanding among the interlocutors can be measured by the extent of the fusion of their horizons.

To summarize at this point, according to Gadamer, understanding is dialogical and linguistical in nature. There is an inner unity between understanding with interpretation, translation, and application. Understanding can also be understood as an event as we are situated within an historical tradition which constitutes and also is constituted by our own prejudices.⁴³³ Moreover, understanding can also be regarded as a fusion of horizons, the extent of which depends on the interlocutors’ attitudes and positions. As all these concepts are relevant to a process of mutual understanding, any analysis of a genuine dialogue requires firstly the examinations of the prejudices, traditions and horizons of the participants.

Applying these ideas on the 2006 HRD, mutual understanding in that dialogue means that the Americans and the Vietnamese agree with each other on certain perceptions of human rights

⁴²⁷ Ibid., 258.

⁴²⁸ Ibid., 261.

⁴²⁹ Ibid., 269.

⁴³⁰ Ibid.

⁴³¹ Ibid., 271.

⁴³² Shapcott, *op. cit.*, p. 143.

⁴³³ Ibid., p. 136.

or human rights-related issues *at that particular moment* of the dialogue. Such mutual understanding also involves a process in which the Vietnamese and the American interlocutors apply their own traditional, cultural, and historical convictions into their interpretations of the meanings raised by the other side. This demands that before analyzing the 2006 HRD, it is necessary to examine both the participants' prejudices and the particular context of that dialogue.

As the participants in the 2006 HRD are diplomats who represent their respective countries, an analysis of their prejudices could be reduced to American and Vietnamese human rights understanding. This analysis has been carried out in the previous two chapters. The following thus is an overview of the background of the 2006 HRD.

3. The bilateral context of the 2006 HRD

Prior to the 11th human rights dialogue, U.S. – Vietnam relations were in a warm and improving state. In June 2005, Prime Minister Phan Van Khai paid an official visit to the U.S., the first such visit since the end of the war in 1975.⁴³⁴ Prime Minister Khai and President Bush committed to bring their bilateral relations “to a higher plane by developing a friendly, constructive, and multi-faceted cooperative partnership on the basis of equality, mutual respect, and mutual benefit.” The two leaders also agreed on the importance of pursuing an “open and candid dialogue on issues of common concern, including human-rights practices and conditions for religious believers and ethnic minorities.”⁴³⁵ In January 2006, Assistant Secretary Christopher Hill visited Vietnam to reconfirm this framework and pave the way for President Bush's visit later that year.⁴³⁶

This framework was expected to facilitate a number of mutually-benefiting facets of the relations. Most notably was trade which had risen sharply year by year since the bilateral trade agreement took effect in 2001. In 2005, the United States was Vietnam's largest export market, and U.S. firms constituted “the single largest source of foreign direct investment in Vietnam.”⁴³⁷ The two governments were also in their final phases of bilateral negotiations for

⁴³⁴ The first presidential visit to Vietnam after the war was by President Bill Clinton in 2000.

⁴³⁵ Joint Statement Between the United States of America and the Socialist Republic of Vietnam 2005, this can be found on <http://2001-2009.state.gov/p/eap/rls/rm/2005/48443.htm>, accessed 23 September 2013.

⁴³⁶ For an American report on Hill's meeting with the Vietnamese Foreign Minister Nguyen Dzy Nien, see http://www.wikileaks.org/plusd/cables/06HANOI249_a.html, accessed on 13 Jan. 14.

⁴³⁷ Trade in 2005, for example, was worth over \$7.6 billion, and “more than five times the level in 2001 (the year before the bilateral trade agreement came into effect), and nearly thirty times the level when relations were normalized in 1994”, Mark E. Manyin, “U.S. – Vietnam relations, Background and Issues for Congress,” p. 7.

Vietnam's admission to the World Trade Organization. In January 2006, a delegation of American negotiators led by Assistant U.S. Trade Representative Dorothy Dwoskin successfully concluded another round of negotiations.⁴³⁸ Joining the WTO was necessary for Vietnam's development and integration into the world economy, a goal that Vietnam had long pursued. As a member of the WTO, Vietnam would also receive the permanent normal trade relation status (NTR) from the U.S., not the conditional NTR that required presidential waiver of Jackson-Vanik provisions and Congress's approval of the waiver.⁴³⁹

Positive developments were also observed in the human rights situation in Vietnam, particularly in regards to religious freedom. In the two years prior to the dialogue, the Vietnamese government had issued a number of ordinances and decrees on religious freedom, namely the Ordinance on Belief and Religion in June 2004, its Implementing Decree in March 2005, and the Prime Minister's Instruction on Protestantism in February 2005. These documents provide a legal framework for religious policies and practices in the country. Accordingly, the right to religious freedom is assured in Vietnam and any forced following or renouncing any religion is prohibited by law. At the same time, people are warned not to abuse religious freedom for activities that "undermine peace, national independence and unity."⁴⁴⁰ On this basis, Vietnam allowed the return of the long exiled Buddhist leader Thich Nhat Hanh with nearly a hundred of his followers in the early months of 2005.⁴⁴¹ Later in the year, Vietnam also welcomed Cardinal Sepe of the Vatican for a series of meetings with Vietnamese leaders and chairing an establishment ceremony of the 26th diocese in the country.⁴⁴² After the visit by Ambassador-at-large for International Religious Freedom John Hanford in March that year, the two governments reached an agreement on religious freedom in which the Vietnamese government made a number of

⁴³⁸ For some information on this round of negotiation, see statement by Dorothy Dwoskin Assistant USTR for WTO and Multilateral Affairs Regarding Negotiations for Vietnam's Accession to the WTO, this can be found on http://www.ustr.gov/archive/Document_Library/Press_Releases/2006/January/Statement_of_Dorothy_Dwoskin_Assistant_USTR_for_WTO_Multilateral_Affairs_Regarding_Negotiations_for_Vietnams_Accession_to_the_WTO, accessed on 13 Jan. 14.

⁴³⁹ As Vietnam was not (and has not been) considered a market economy by the U.S., under the U.S. Trade Act of 1974's Jackson-Vanik provisions which govern trade with non-market economies, Vietnam trade status was subject to annual Congressional review. Vietnam had received presidential waivers of the provisions on a yearly basis since 1997.

⁴⁴⁰ For the text of the Ordinance on Belief and Religious Freedom, see http://www.moj.gov.vn/vbqp/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=7818, accessed on 14 Jan. 14. For the text in Vietnamese of the Prime Minister's Instruction, see <http://www.noivuqnam.gov.vn/Default.aspx?tabid=350&ni=170&language=en-US>, accessed on 14 Jan. 14.

⁴⁴¹ For an overview of Thich Nhat Hanh's activities in Vietnam, see <http://vietbao.vn/Xa-hoi/Hoat-dong-cua-hoa-thuong-Thich-Nhat-Hanh-tai-Viet-Nam/45113150/157/>, accessed 13 Jan. 14.

⁴⁴² For a Vietnamese account on the trip, see http://www.vietnamembassy-southafrica.org/vnemb.vn/tin_hddn/ns051206152417?b_start:int=25, accessed 13 Jan. 14.

commitments to advance and protect religious freedom in Vietnam,⁴⁴³ and in August, Vietnam issued a White Paper on the country's human rights policies and achievements.

The Americans, however, had a number of additional human rights concerns, among them were imprisonment of "political dissidents," administrative detention, and the questions of the Montagnards in Central Highlands.⁴⁴⁴ In their views, although Vietnamese law provided for freedom of worship, in practice Vietnam continued to "restrict significantly organized activities of religious groups that it declared to be at variance with state laws and policies."⁴⁴⁵

One indirect way of controlling and monitoring religious activities is that all religious organizations must register and get the state's approval to practice. The 2004 country report on human rights practice by the U.S. State Department observed that members of the Unified Buddhist Church of Vietnam (UBCV) continued to be harassed and prevented from "conducting independent religious activities, particularly outside their pagodas.... [and] During the year, several UBCV leaders, including Thich Huyen Quang and Thich Quang Do, remained confined to their pagodas and had restrictions on their ability to travel and meet with followers."⁴⁴⁶ As for political dissidents, the report charged that the Vietnamese government "continued to imprison persons for the peaceful expression of dissenting religious and political views;" thus activist Nguyen Khac Toan, journalist Nguyen Vu Binh and Dr. Pham Hong Son were all convicted of "spying" in 2002 and 2003.

Administrative detention was another concern of the U.S. According to the 2004 country report, Vietnamese courts "may sentence persons to administrative detention of up to five years after completion of a sentence."⁴⁴⁷ Besides, under the Decree 31/CP of 1997⁴⁴⁸ and the

⁴⁴³ For a detail of the commitment, see Bureau of Democracy, Human Rights, and Labor, "International Religious Freedom Report 2005 – Vietnam," this can be found on <http://www.state.gov/j/drl/rls/irf/2005/51535.htm>, accessed on 13 January 2014. The report was released on 28 February 2005.

⁴⁴⁴ The Montagnards are indigenous peoples of the Central Highlands who had claimed for autonomy and dependence from Vietnam. Many Montagnards supported the French and then the Americans during the Vietnamese struggles for independence. For an overview of the Montagnards, see Berman, D., "Montagnards," in *Encyclopedia of the Vietnam war: A political, social, and military history*, 2011.

⁴⁴⁵ Bureau of Democracy, Human Rights, and Labor, "International Religious Freedom Report 2002," this can be found on <http://www.state.gov/j/drl/rls/irf/2002/13916.htm>, accessed 20 July 2014.

⁴⁴⁶ Bureau of Democracy, Human Rights, and Labor, "2004 Country Reports on Human Rights Practices," February 28, 2005, this can be found on <http://www.state.gov/j/drl/rls/hrrpt/2004/41665.htm>, accessed 26 Feb. 14. The Unified Buddhist Church of Vietnam (UBCV) was established in 1964 and was de facto banned in 1981 after the Vietnamese government formed the Vietnamese Buddhist Sangha which UBCV did not join. For a report on UBCV's history and relation with the state from its beginning to 1995 from Human Right Watch (HRW)'s perspective, see <http://www.hrw.org/reports/1995/Vietnam.htm>, accessed on 17 Mar. 14. It should be noted this is HRW's viewpoint and account, not those of the author of this thesis and the author cannot confirm the veracity of the matters reported.

⁴⁴⁷ Bureau of Democracy, Human Rights, and Labor, "2004 Country Reports on Human Rights Practices," February 28, 2005.

revised Ordinance on Administrative Violations, People's Committee chairpersons at local, district, and provincial levels can propose "administrative measures" (including terms ranging from six months to two years in either juvenile reformatories or adult detention centers) on offenders with a record of minor offenses such as petty theft or "humiliating other persons" without a trial.⁴⁴⁹

Lastly, on ethnic minorities, the report held that although the Vietnamese government had preferential treatments and policies for ethnic minorities, "the large-scale migration of ethnic Kinh [the majority ethnic group of Vietnam] to the Central Highlands in past years led to numerous land disputes between ethnic minority households and ethnic Kinh migrants." "The loss of traditional ethnic minority lands to Kinh migrants," according to the report, "was an important factor behind the ethnic unrest in the Central Highlands in 2001 and during the year." Besides, "[Vietnamese] Government officials continued to harass some highland minorities, particularly .. several ethnic groups in the Central Highlands, for practicing their Protestant religion without official approval." For these reasons "groups of Montagnards continued to flee to Cambodia to escape ethnic and religious repression in the Central Highlands." However, they were caught by Vietnamese police "operating on both sides of the border" and returned to Vietnam, "sometimes followed by beatings and detentions."⁴⁵⁰

The Vietnamese government had a different accounts on these matters. On its White Paper on Human Rights which was released in August 2005, the Vietnamese government claimed that there were hostile forces who "for their own political purposes, have used and continue to use all means to make fabrications and false allegations against Vietnam on issues related to human rights, democracy, religions and ethnicity." Among them are "a small group of persons who just wrap themselves in the religious cloak to serve the interests of the outside forces; they do not care about the life of religion followers." The UBCV and its leaders would fall into this category in the White Paper. The "so-called" political dissidents, in the view of the Vietnamese government, were "a handful of people who are using the label of 'fighting for freedom and human rights' to promote their personal ambitions and foreign

⁴⁴⁸ The Decree 31/CP was issued on April 14, 1997 by then Prime Minister Võ Văn Kiệt. The decree allows security agents at village level to detain without trial, up to two years, individuals suspected of committing offences against "national security." Persons subjected to administrative detention are allowed to travel only within a designated area. For an unofficial translation of the Decree, follow the link at the end of this International Labor Organization's webpage,

http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=VNM&p_classification=01.04&p_origin=COUNTRY&p_sortby=SORTBY_COUNTRY, accessed 17 March 2014.

⁴⁴⁹ The report gave an example that "in October 2003, the People's Committee Chairman of Ho Chi Minh City sentenced four Unified Buddhist Church of Vietnam (UBCV) monks to two years' house arrest." Ibid.

⁴⁵⁰ Ibid.

interests in disregard of the voice of the majority” and claimed that “in a number of cases, they try to mislead people as to the law violators, turning these law violators into ‘freedom fighters.’” In other words, the Vietnamese government held that such individuals of U.S. concerns as Nguyen Khac Toan, Nguyen Vu Binh and Dr. Pham Hong Son only aimed at pursuing their own selfish ambitions while disregarding the common interests of the nation. Such people were, the White Paper charged, under the “patronage of some foreign forces” and promoted those forces’ interests. In so doing, they had broken Vietnamese laws and therefore being sent to prison.⁴⁵¹

The unrest in Central Highland, the White Paper argued, was not due to land disputes between the ethnic minority and the Kinh people. The riots there in 2001 and 2004 were instigated by some “terrorist” organizations such as the one led by Nguyen Huu Chanh or the “Montagnard Foundation Inc.” of Ksor Kok.⁴⁵² That organization, the White Paper charged, had been “frenziedly promoting acts of secession and, for these purposes, ha[d] been falsely accusing Vietnam of suppressing, arresting and coercing ethnic minority people and forcing Protestants to renounce their religion in the Central Highlands.”⁴⁵³ Under this charge, the information about religious repression, and harassments and beatings of ethnic minority people in that area was appears unclear and could have been fabricated by those “terrorist organizations.”

Under this bilateral context and with their different accounts on human rights situation in Vietnam, the Vietnamese and American interlocutors held their 11th round of human rights dialogue on 20 February 2006.⁴⁵⁴ The Chapter now discusses the conditions for, and indications of, true understanding and simultaneously tests each of these in the 2006 dialogue.

II. Gadamer’s conditions for, and indication of, mutual understanding and the reviews of these conditions and indication in the 2006 HRD

⁴⁵¹ Ministry of Foreign Affairs, “Achievements in Protecting and Promoting Human Rights in Vietnam,” released on August 18, 2005, this can be found on [HTTP://WWW.MOFA.GOV.VN/VI/CTC_QUOCTE/PTKLG/NR040819162124/NS070206102551](http://www.mofa.gov.vn/vi/ctc_quocte/ptklk/nr040819162124/ns070206102551), accessed on 23 March, 2012.

⁴⁵² Nguyen Huu Chanh was tried in absentia at Ho Chi Minh city People Court on 16 May, 2001 with 37 defendants for terrorist activities and propaganda against the Socialist Republic of Vietnam, this can be found on <http://vnexpress.net/tin-tuc/phap-luat/chuan-bi-xet-xu-vu-an-to-chuc-phan-dong-nguyen-huu-chanh-1954530.html>, accessed 20 July 2014. Chanh’s associates were found guilty and sentenced to years in prison and Chanh would be put to trial once he is arrested.

⁴⁵³ Ibid.

⁴⁵⁴ For a brief history of the previous rounds of the dialogue, see the Introduction.

1. Condition One The purpose of the interlocutors is to seek mutual understanding, not out-argue the other or learn the other's position.

The first Gadamerian condition for mutual understanding relates to the purposes of the dialogue participants. According to Gadamer, no mutual understanding can be reached if the participants come to the dialogue only to convince the other of the primacy of their opinion or to win over the other; in his words, to “talk at cross purposes,” “to out-argue the other person”⁴⁵⁵ or to successfully assert “one’s own point of view.”⁴⁵⁶ Moreover, no mutual understanding is possible if the partners in a conversation are only aiming at discovering the others’ positions, as such conversation, Gadamer explains, “is not a true conversation, in the sense that we are not seeking agreement concerning an object, but the specific contents of the conversation are only a means to get to know the horizon of the other person.” Gadamer illustrates this point by examples of a therapeutical doctor examining her patient, a teacher questioning her student in exam, or a policeman inquiring a suspected man. In those cases, the doctor, the teacher, and the policeman only aim at drawing out what the others have known, felt, or done whereas the patient, the student, or the suspected criminal are not trying to understand their interlocutors.⁴⁵⁷ Therefore, for Gadamer the specific contents of a true conversation should be the subject matter: all partners must have no other purpose but to seek mutual understanding about a subject matter.

Applying this condition into the 2006 HRD, its interlocutors seemed to meet this first condition. Both sides did not aim at convincing the other of the primacy of their opinions. On their approaches to human rights, neither side attempted to establish that their approach was *the* right one or superior. Indeed, they openly acknowledged and respected their differences. “Given historical, political and cultural differences,” the head of the Vietnamese delegation claimed, “each nation's values are also different.”⁴⁵⁸ The leader of the American delegation agreed with this by reiterating then secretary of state Condoleezza Rice’s contention that “democracy by definition cannot be imposed, and that there is no single road to building democracy.”⁴⁵⁹ And even when their differences on the same matter - basic and fundamental human rights - were revealed, neither sides sought to persuade the other that their

⁴⁵⁵ Gadamer, *TM*, p. 330.

⁴⁵⁶ *Ibid.*, p. 341.

⁴⁵⁷ *Ibid.*, p. 270.

⁴⁵⁸ The U.S. Embassy in Hanoi, 2006 U.S. – Vietnam human rights dialogue, see Appendix of this thesis, p. 224. Hereafter, 2006 HRD.

⁴⁵⁹ 2006 HRD, p. 225 of this thesis.

understanding was right and the other was wrong. Indeed, both sides only claimed what they believe is right for *them*:

The Vietnamese interlocutor: [freedom and independence] are the basic human rights that *Vietnam* cherishes, along with sovereignty, territorial integrity and non-interference in its internal affairs. [Italics added]⁴⁶⁰

The American interlocutor: *the Secretary, the President and the American people* believe that there are some universal human rights principles: the right for the full political participation of the citizens of each country; the right for the development of a robust civil society; and, the right to have a government that is transparent and accountable to the people. [Italics added]⁴⁶¹

Learning the other side's positions was not the purpose of the interlocutors. Each side openly stated their aims: to reach concrete results (for the Americans), and to increase mutual understanding and remove Vietnam from the CPC list. These seem to be their real goals and the degree of success in achieving them would be tested at the end of the dialogue. For the Vietnamese, the dialogue was a "success" as it allowed the two sides to "share experiences, learn from each other and increase mutual understanding."⁴⁶² For the head of the American delegation, the dialogue was a starting point of a working process where judgments would be based not on "the quantity of meetings we hold, but what those meetings produce."⁴⁶³ Thus, while the Vietnamese searched for the dialogue results in the realm of thoughts, the Americans located any such results in the area of actions, such as specific commitments or actions.

2. *Condition Two The interlocutors let themselves be led by the truth of the discussed matter.*

For Gadamer, "reaching understanding in conversation presupposes that both partners are ready for it."⁴⁶⁴ To prepare for mutual understanding, Gadamer advises that no side should seek to dominate the dialogue and attempt to dominating the other. This relates to the pathologies of power relations where a side falls into the above situation of trying to 'convince' the other. The power vacuum should be filled by the validity of the arguments on the subject matter. Put in another way, the authority in a true conversation, if there is any, should be that of the truth of the subject matter. Consequently, Gadamer argues, the partners do not actually "conduct" a conversation; instead they are led by it, for the conversation will

⁴⁶⁰ Ibid., p. 224 of this thesis.

⁴⁶¹ Ibid, p. 225 of this thesis.

⁴⁶² Ibid, p. 242 of this thesis.

⁴⁶³ Ibid.

⁴⁶⁴ Ibid., p. 348 of this thesis.

take “its own turnings” and reach “its own conclusion” about which the partners cannot know at the beginning of their conversation.⁴⁶⁵

Throughout the 2006 HRD, the interlocutors took control of the dialogue and at no times were they led by the truth of the discussed matters. Indeed, their differences were not extensively discussed or even touched upon, making it difficult for any new meaning on the discussed matter to emerge. The following pattern of exchange can be observed in most of the dialogue: the interlocutors used their allocated time to state their positions, quickly expressed their agreements on what they could agree, and deliberately ignored the differences. Below is a typical example of how the interlocutors conversed on certain topics.

The section “Approaches to Human Rights” was the only occasion in the entire dialogue when some of Vietnamese and American prejudices on human rights were directly exposed. Their differences on this were clear: the Vietnamese named independence and freedom as their fundamental rights while the Americans recalled the rights for “full political participation,” for the “development of a robust civil society,” and “transparent and accountable” government.”⁴⁶⁶ However, identifying the basic rights was not the concerns of the interlocutors. In fact, after taking turn to present their human rights approaches, *neither side discussed their approaches any further*. The Americans did not question why collective rights should be added to basic human rights besides the individual rights that they listed. Similarly, the Vietnamese did not challenge the claim that those individual rights are fundamental and also important for Vietnam’s development. Consequently, no explanation or justification appear to relativize either the American or the Vietnamese human rights conviction. On Gadamerian terms, American and Vietnamese human rights-related horizons on fundamental human rights remained untouched.

Moreover, even when either side was directly or indirectly challenged by the other, they intentionally avoided the challenge, which, if accepted might put themselves in difficult and disadvantaged positions. Consider the following exchanges:

The Vietnamese:

V1: All the prisoners of American concern “have been charged, tried and convicted of offenses under Vietnam’s criminal code.”

V2: A request for explanation on the contradiction between Patriot Act and American urging other countries to consider human rights over national security.

⁴⁶⁵ Ibid., p. 345 of this thesis.

⁴⁶⁶ 2006 HRD, p. 225 of this thesis.

The Americans:

A1: The criminal code and due process are problematic.

A2: The Patriot Act was passed through “democratically” which is “the best guarantee against abuse by the state.”⁴⁶⁷

(A1) responded to (V1), and (A2) to (V2). (A2) seemed not to address the Vietnamese concern in (V2); or it could be interpreted that if other countries follow the American way for reconciling national security and human rights, they will not be criticized by the U.S. In both cases, the Vietnamese did not elaborate further on the American responses, leaving Vietnamese positions on the Code or the American way of reconciling national security and human rights unknown. If the issues were pushed further, the dialogue might have taken unexpected turns. For example, further questions and answers about the Code could have led to more substantial results. If the Vietnamese observed that the Americans were right about the Code, this could have led to a Vietnamese acceptance that they had violated ICCPR and accordingly Vietnam may have released some prisoners of American concerns. If the Americans agreed that their charges against the Code were wrong, they would have dropped the issue of concerned prisoners after the dialogue. Any agreement on the Code by the two sides could not emerge because the Vietnamese did not engage in pushing the matter with the Americans.

All in all, deliberately ignoring undesirable topics and reluctance to engage each other had kept most of the interlocutors' differences on those topics intact. At the same time, the interlocutors were in total control of the dialogue, but not of the issues discussed. As little developments in the substance of the dialogue and no unexpected twists and turns were registered, no new meanings had been borne out of it. This Gadamerian condition was thus not satisfied.

3. Condition Three Acknowledge that one's own prejudices are operating and could be wrong, and be ready to suspend them when encountering something new and different.

A third condition is that the interlocutors should acknowledge and bracket their own prejudices. “The primary hermeneutical condition,” Gadamer states, requires the fundamental suspension of our own prejudice(s) or more correctly its (their) validity “for what leads to understanding must be something that has already asserted itself in its own separate

⁴⁶⁷ Ibid., p. 239 of this thesis.

validity.”⁴⁶⁸ In other words, understanding is possible only if we are willing to suspend those prejudices that have turned out to be wrong. At the same time, we only recognize that these prejudices are vulnerable when we encounter something new and different from the text/conversation. Gadamer makes the same argument when he warns an interpreter reading a text of the past that “it is constantly necessary to guard against over hastily assimilating the past to your own expectations of meaning. Only then can we listen to tradition in a way that permits it to make its own meaning heard.”⁴⁶⁹ Similarly, the interlocutors must be aware of the fact that their prejudices are always operating and tempting them to assimilate the other’s views into theirs. They must suspend this temptation for not only the voice of the others to be heard but also the meaning expressed by the others to be considered. As Shapcott puts it, “only when we are aware of the fact that we always bring prejudices with us” can we “prevent our prejudices from over-determining the content of encounter” and “understand the other, hear their particular voice and resist assimilation.”⁴⁷⁰

Testing this criterion in the 2006 HRD, it can be argued that the participants were not challenged by a new meaning from their conversation. As previously discussed, on most issues of different assessments and positions, they opted for ignorance or evasion. With no challenging questions posed, no further clarifications, explanations and justifications were required. As their positions were not challenged, so were their underlying rationales and arguments for their positions. Under this logic, the American and Vietnamese interlocutors did not need to recall and apply their prejudices as they did not have to defend their positions. And as their prejudices were not challenged, it was difficult for the participants to acknowledge that their convictions were just prejudgments and might be wrong. We have observed this in the above analysis of their exchange on fundamental human rights.

Nevertheless, there were moments when their prejudices were either suspended or exposed. Consider the following suspensions of their prejudices:

On Decree 31, Ambassador Hanford held that the decree violated the ICCPR and this needed to be addressed. For the Vietnamese, the decree *was* justified at the time of its issuance and later might be changed as no legal document is permanent.⁴⁷¹ By accounting for the decree in a general term, the Vietnamese chose not to disclose their convictions on whether the decree

⁴⁶⁸ Gadamer, *Truth and Method*, trans. Weinsheimer, J. and Marshall, D.), London: Sheed and Ward, 1989, p. 305, cited in Shapcott, *op. cit.*, p. 266.

⁴⁶⁹ *Ibid.*, p. 145.

⁴⁷⁰ *Ibid.*, p. 144.

⁴⁷¹ 2006 HRD, p. 228 of this thesis.

was wrong then as the Americans charged. Likewise, the Americans suspended their assessments on whether the decree was acceptable when it was promulgated. Consequently, both sides came out of this exchange with unshaken belief in their prejudices. However, it was difficult for the interlocutors to question their own prejudices when the other side opted for not commenting on those prejudices, a long distance from challenging them.

Another example is that after listening to the Vietnamese account on training local officials on the new legal framework for religious freedom, Ambassador Hanford politely acknowledged Vietnam's "vigorous efforts to train local officials." What followed put this acknowledgement into question. "The GVN needs to work on educating local authorities to properly enforce the law," Ambassador Hanford said, as his office continues to receive "credible reports" of violations of religious rights in the Central and Northwest Highlands. This acknowledgement did not force him to look back and question his own prejudgments on religious freedoms before participating in the dialogue. The reports on church closings and religious practices obstructions that he received before the dialogue remained "credible" for him. His encounter with a detailed description of local official trainings did not force him to review that his earlier convictions on the issue might be wrong. Consequently, he suggested what he had thought in advance, "the need for continued efforts to educate local officials."⁴⁷²

An exposure of the interlocutors' prejudices was found in their discussion of the charges of violating religious freedom by local leaders in Ha Giang province by an article in the *Time Magazine*.⁴⁷³ Encountering with this new information, the Vietnamese interlocutors had three different responses:

DG Minh: "The GVN will verify, objectively and in due course the information it contains, and does not want to admit or reject anything in it now."⁴⁷⁴

Supreme People's Procuracy Deputy DG Nghiem Quang Xuyen: "If the article is true, some of the officials mentioned could face criminal charges."⁴⁷⁵

Deputy DG Nguyen Thi Bach Tuyet from the Committee on Religious Affairs (CRA): "The *Time* article needs to be verified, but based on the CRA's recent unsatisfactory visit to Ha Giang (where the local authorities repeated the statement to the CRA delegation that there are

⁴⁷² Ibid, pp. 234-5 of this thesis.

⁴⁷³ The name of the article is "Police Raids Show Vietnam Still Fears Illegal Religion," the date when this article was published in the *Time Magazine* is unknown as the American interlocutors did not specify it. Ibid, p. 234 of this thesis.

⁴⁷⁴ Ibid., p. 236 of this thesis.

⁴⁷⁵ Ibid, p. 237 of this thesis.

no believers in Ha Giang, a statement the CRA acknowledges is untrue) the article's description of the local authorities' behavior "might be true." ...[and] Significant progress has been made in the Central Highlands in the past 18 months ... and now the CRA is focused on the Northwest Highlands provinces. The CRA hopes to be able to report significant progress there, too."⁴⁷⁶

These three reactions are different. The first two Vietnamese suspended their prejudices, but they did not take the next step of engaging with the new information provided by the Americans. DG Minh took a step back by stating that the Vietnamese government "does not admit or reject anything in it [the article] now," though he made a promise to investigate in the case. Xuyen's response was in a hypothetical sentence, implying a strict punishment *if* the information was correct. In both responses, we can not know what Minh and Xuyen really thought about the new information or whether they had any precise position on religious freedom in that province. Their suspension of prejudices, thus, was not sufficient for any newness in the discussed issue to emerge.

Tuyet, however, openly revealed her thoughts. She recalled that her recent visit to the province was unsatisfactory. Although she did not elaborate further on her visit, her experience with the province's officials points to a conclusion similar to American assessments. In this case, she exposed her thoughts on local officials in Ha Giang and a common ground between Tuyet's and American horizons appear. In this very utterance, a certain territory of agreement was occupied by both the Americans and the Vietnamese (Tuyet at least): that Ha Giang officials were wrong to deny the existence of religious followers in that province. It is also the last time in the dialogue that we could observe the interlocutors' prejudices to be recalled and compared when dealing with new information. However, it should be noted that what Tuyet learned from the article was neither new nor different to her experience. Tuyet's response thus was close to Gadamer's third condition for mutual understanding but not fully met it.

4. Condition Four Putting oneself into the other's horizon without objectifying the other and relating the new truth provided by the other to his/her particularity.

After satisfying a third condition of acknowledging the impacts of their own prejudices, the interlocutors in the Gadamer's model must then place themselves into the others' horizons.

⁴⁷⁶ Ibid., the explanation in bracket was by the U.S. Embassy in Hanoi.

As discussed earlier, this does not mean trying to grasp the initial intentions of the other, but means that “becom[ing] aware of the otherness, indissoluble individuality of the other person.”⁴⁷⁷ For Gadamer, then, putting oneself to the other’s position means respecting the other’s as a separate subject who does not require our empathy and cannot be imposed by our own standards.⁴⁷⁸ The purpose of this action is that in seeing things as the other does, the interlocutors are able to see the respective validity of each other’s opinions and arguments. The acknowledgement of this otherness, Gadamer warns, should not mean objectifying the other. For the interlocutors whose purpose is only to know the other’s positions, the efforts to understand stop when the other’s ideas become intelligible. It also does not mean totally replacing one’s own horizon by the viewpoints of the others. Gadamer illustrates this by the following example:

We think we understand when we see the past from a historical standpoint, i.e. place ourselves in the historical situation and seek to reconstruct the historical horizon. In fact, however, we have given up the claim to find, in the past, any truth valid and intelligible for ourselves. Thus this acknowledgement of the otherness of the other, which makes him the object of objective knowledge, involves the fundamental suspension of his claim to truth.⁴⁷⁹

In other words, although the historian has put herself into the horizons of the past, she still fails to critically assess it. The reason is that she has attached the tag named “belonging to the past” to any valid truth that she has found in it. For her, if the past is right on something, it is right only in the past. Any connection of this rightness to her present situation cannot be reached because she had already adopted a historical standpoint while studying the past. Similarly, the dialogical partners should not hold that any valid point that they have found from the others’ arguments is likely to be valid only for the other and in the other’s situation. In this vein, to reach mutual understanding, the self shall not quarantine any new truth provided by the other within the other’s particularity; instead s/he should let his/her prejudices be exposed, disturbed, and challenged by this possible new truth.

Applying this condition into the 2006 HRD, it can be observed that neither the Vietnamese nor the Americans truly attempted to examine human rights issues from the other side’s perspective, despite the fact that their approaches to human rights had been presented at the beginning of the dialogue. For example, the Vietnamese interlocutors did not look at the American allegation that Decree 31 violated ICCPR and the related American view that

⁴⁷⁷ Gadamer, *TM*, 1989, p. 305, cited in *Ibid.*, p. 144.

⁴⁷⁸ *Ibid.*

⁴⁷⁹ Gadamer, *TM*, p. 270.

individual political rights were fundamental. The Vietnamese justification for the Decree started with a collective viewpoint, “Vietnam is currently attempting” and “Vietnam needs legal documents to...”⁴⁸⁰ The only moment when the Vietnamese admitted political rights as fundamental was when a member of the Vietnamese delegation read a prepared text. As observed by the American side, Deputy Director Nguyen Tri Dung ... read the official GVN response from a roughly mimeographed sheaf of papers: “The GVN attaches great importance to freedom of the press and freedom of speech, he intoned, which are fundamental rights of the Vietnamese people and guaranteed under Article 69 of the Constitution.”⁴⁸¹

It was quite unlikely that in preparing this text, Mr. Dung took into consideration how fundamental the freedoms of press and speech were, as seen from the American perspective. The encounter with the American account on fundamental political rights had not prevented Mr. Dung from *reading* out loud his prejudgments *before the dialogue*. Besides, the subject of political rights in his remark was again collective, “the Vietnamese people” not an individual Vietnamese.

While refusing to view the issues from the American perspective, the Vietnamese invited their counterparts three times to view human rights situation in Vietnam from their perspective. In the section “approaches to human rights,” DG Minh warned that “to understand Vietnam's perspective on human rights, one had to understand Vietnam's historical circumstances, particularly its over thousand-year struggle for freedom and independence.” Later on, a Vietnamese delegate asked the Americans to understand Decree 31 from a particular context: Vietnam was transforming into a law-based nation and needed legal documents to “manage society, protect national security and promote human rights.” Finally, in the human rights and national security session, DG Minh made “a plea for the USG to make a special effort to understand Vietnam's particular historical context when evaluating its human rights record.”⁴⁸²

The American response to the invitations was predictable, they rejected them by drawing the Vietnamese attention to the present and future. At the first invitation, A/S Lowenkron bypassed Vietnam’s history of struggling for independence and freedom and paid attention to Vietnam’s current renewal policy and to the prospect of a future international role for

⁴⁸⁰ 2006 HRD, p. 228 of this thesis.

⁴⁸¹ Ibid., p. 241 of this thesis.

⁴⁸² Ibid, p. 238 of this thesis.

Vietnam. At the second invitation, A/S Lowenkron openly refused to consider the decree from the Vietnamese context in a diplomatic manner, “it is not for the United States to discuss Vietnam's history.” A/S Lowenkron continued, “but Vietnam *is* resilient, independent and strong[,] Decree 31 does not reflect a Vietnam that is *now* more open and confident.”(Italics added). And at the last invitation, A/S Lowenkron did not answer the plea, he simply ignored it.⁴⁸³

Interestingly, unlike A/S Lowenkron, Ambassador Hanford seemed to put himself into the horizon of the Vietnamese twice *without invitation*. At the session on religious freedom and ethnic minority, Ambassador Hanford expressed his sympathy with the Vietnamese concerns over religious and minority groups. He seemed to view religious freedom from the Vietnamese position of prioritizing collective interest over individual rights. In his words,

The USG respects the territorial integrity of Vietnam and does not defend groups who lack peaceful intentions. The USG's concern is for sincere religious believers who simply seek to practise their faith and in the past have been suppressed;⁴⁸⁴

The USG understands that the issue of ethnic minority relations is sensitive for the GVN, and that Vietnam has more than 50 ethnic groups.⁴⁸⁵

Hanford's first claim acknowledged an earlier Vietnamese statement that the country “cherishes sovereignty, territorial integrity and non-interference in its internal affairs.”⁴⁸⁶

However, his understanding of Vietnamese concern for the religious groups aiming at secession neither led him to see religious freedom as the Vietnamese might see it nor were his convictions on religious freedom disturbed. Ambassador Hanford also did not elaborate on the “peaceful intentions” of the persons whom the Vietnamese government should end “travel restrictions and surveillance.”⁴⁸⁷ His second claim was even more disconnected with what he later said. He did not specify his understanding of the sensitivity that GVN attaches to ethnic minority issue. He also gave no explanation why the U.S. paid special interest to the Montagnards, nor any of the 49 other ethnic groups. It can thus be argued that Ambassador Hanford's acknowledgements of the concerns of his interlocutors were far from an effort to view religious freedom from the Vietnamese position. Rather, his sympathetic expressions were to assure the other side that his requests were not harmful to the government of Vietnam so that the Vietnamese could accept and implement them.

⁴⁸³ Ibid., p. 230 of this thesis.

⁴⁸⁴ Ibid., p. 235 of this thesis.

⁴⁸⁵ Ibid., p. 238 of this thesis.

⁴⁸⁶ Ibid., p. 224 of this thesis.

⁴⁸⁷ Ibid., p. 236 of this thesis

In short, neither the Vietnamese nor the Americans put themselves into the other side's perspective, even when they were invited to do so. This failure, in turn, makes it difficult for new or different meaning to emerge from their dialogue and consequently the failure to suspend their negative prejudices. Both the conditions three and four are thus not met.

5. Condition Five Openness to the new truth provided by the others

A final condition is the interlocutors' openness to the new truth provided by the others. "All that is asked," Gadamer states, "is that we[they] remain open to the meaning of the other person or text."⁴⁸⁸ This openness is reflected in listening to the other as "anyone who listens is fundamentally open."⁴⁸⁹ It involves the hearer's sensitivity to the "quality of newness" of the text or other's arguments and the former's disposition for the latter "to tell him something."⁴⁹⁰ It also requires the acceptance of "some things that are against me, even though there is no one else who asks this of me."⁴⁹¹

But how could the interlocutors be open to the new truth when their prejudices are always operating and tempting them to assimilate the other's views and/or to dominate the others? Gadamer believes that with the awareness of the impacts of prejudices *and* an attitude of openness, the interlocutor can recognize the logics of the subject matter and change themselves accordingly.⁴⁹² "If a person is trying to understand something," Gadamer argues, "he will not be able to rely from the start on his own chance previous ideas, missing as logically and stubbornly as possible the actual meaning of the text until the latter becomes so persistently audible that it breaks through the imagined understanding of it."⁴⁹³ In other words, the reader should start reading the text with his prejudgments about it (as this is all that he has in encountering it). However, in encountering new ideas emerging out of the text, he should not stubbornly hold his prior prejudices that have turned out to be wrong. Instead, he should change his prejudices accordingly with the newness that he has found from the text. Likewise, dialogue partners should not rely only on the convictions they had *before* the dialogue. Instead, they should be open to the rationality and possible truth provided by the

⁴⁸⁸ Gadamer, *TM*, p. 238.

⁴⁸⁹ *Ibid.*, p. 324.

⁴⁹⁰ *Ibid.*, p. 238

⁴⁹¹ *Ibid.*, p. 324.

⁴⁹² Gadamer argues that the first requirement must precede the second one when he argues, "The important thing is to be aware of one's own bias, so that the text may present itself in all its newness and thus be able to assert its own truth against one's own fore-meanings." *Ibid.*, p. 238.

⁴⁹³ *Ibid.*

other to the point of looking back and changing their own prejudices. This implies that interlocutors must recognize their own finitude because of their historical situatedness. Being open thus means being aware of the limitations of one's own knowledge and one's need for new knowledge and experience. This openness, Gadamer contends, allows the experience of the other as truly other and renders the partners' relation as "genuine human relationship."⁴⁹⁴

Early in the 2006 HRD, the American and Vietnamese interlocutors openly acknowledged their limitations on human rights issue. Both sides agreed that their country was not perfect in the area of human rights. DG Minh's claim that "no nation should consider itself perfect in the area of human rights" was well agreed by A/S Lowenkron who stated that "Indeed, no country is perfect in human rights; in fact, no country is perfect."⁴⁹⁵ Did this acknowledgement of the finitude of one's knowledge lead to an openness to the new meaning provided by the other? And did the admittance of the shortcomings in one's realization of human rights lead to a willingness to learn from the other side's experiences?

The Vietnamese side did express a desire to learn from the U.S. when DG Minh stated that "Vietnam stands ready to use the dialogue to learn from the United States." During the dialogue, the head of the Vietnamese delegation again spoke out the need for Vietnam to learn new experience. "The Vietnamese side *listened carefully* to the U.S. delegation's legal and judicial reform recommendations," he noted and promised that "some of these views may be reflected in future legislation and legal revisions."⁴⁹⁶ (Italics added) At face value, the message is consistent and clear: Vietnam is willing to and ready to learn and implement American legislative and legal experiences.

However, they were not as open to any new truth as they claimed to be. As discussed earlier, neither sides applied the other side's approach to human rights in assessing their counterpart's human rights situation. Responding to their counterpart's information and assessments, in most cases they did not reveal their thoughts on them and instead talked about the information they planned to convey. The reading of a prepared text on speech and press freedoms above was an example. Another example is how the Vietnamese responded to American sharing of their experiences in dealing with human rights-related problems. Twice

⁴⁹⁴ Ibid., p. 324. Gadamer refers three types of understanding to three types of I-Thou relation. With openness, the partners possess the highest level of understanding and their relationship is a genuine human one. The other two types are: 1) the self treats the other as a means rather than an end in himself as s/he "calculates how the other person will behave" and sees the other "as a tool that can be absolutely known and used;" 2) the other is objectified and deprived of the ability to make any claim to truth upon the self. The self claims to know the other even better than the latter does himself/herself. See Shapcott, *op. cit.*, pp. 138-40.

⁴⁹⁵ 2006 HRD, p. 225 of this thesis.

⁴⁹⁶ Ibid., p. 229 of this thesis.

in the dialogue, the American interlocutors elaborated on the way to prevent human rights abuse by the state and deal with cases of human rights violations. The Vietnamese neither showed any interest in these experiences, nor posed any questions for clarification or further information on that experience. They either ignored the points or changed subject. Below is the illustration of the second case:

A/S Lowenkron: In short, no country is perfect, but the fundamental freedom of debate, rule of law and listening to the people through the electoral process can help to discover and address problems.

DG Minh: EU Ambassadors and the Swiss Ambassador have been able to visit prisons. While the GVN had arranged for A/S Lowenkron to visit a prison in Ho Chi Minh City, the delegation decided against it.⁴⁹⁷

To summarize at this point, according to Gadamer, the claim for mutual understanding can be 'tested' by satisfying all the following five conditions: the purpose of seeking mutual understanding, not out-arguing or winning over the others; the commitment to be led by the truth of the subject matter; the acknowledgment and suspension of one's own prejudices; the putting of oneself into the other's horizon without objectifying the other and relating the new truth provided by the other to his/her particularity; and the openness to the new meaning provided by the other.

Out of these five conditions, only the first condition is met in the 2006 HRD. The American and Vietnamese interlocutors came to the dialogue not to out-argue each other that their understanding of human rights was superior or more rational. And what underlies the failures to meet other criteria are attitudes of disengagement and ignorance: the interlocutors avoided unpleasant topics of differences, ignored new information and knowledge in the dialogue, and stepped away from discursive reasoning. With most of Gadamer's conditions for a genuine dialogue not satisfied, the thesis now turns to Gadamer's signs of successful dialogue and searches for their evidence in the 2006 HRD.

6. Indication of mutual understanding

Based on the above analysis, Gadamer would consider the changes in the interlocutors as indications of successful dialogues. Specifically, the interlocutors' horizons will have fused with each other, and accordingly their positions will also have changed. There will emerge some similarities in their positions after the dialogues; these similarities would be either a

⁴⁹⁷ Ibid, p. 231 of this thesis.

new meaning to both of them or one that belonged to one of them prior to their dialogue. It seems that Gadamer does not rule out the possibility of embracing some of the other's position.⁴⁹⁸ However, in Gadamerian sense, this adopting must be done by a change from within the partners and free of any coercion. As the interlocutors' positions are moving to occupy the same place, they are accordingly "bound to one another in a new community" and transform themselves "into a communion, in which [they] do not remain what [they] were."⁴⁹⁹ According to Shapcott, the indications of mutual understanding in a Gadamerian genuine dialogue are defined at different extents, from substantive agreement on the concrete subject matter, to "merely the coming to inhabit a similar frame of reference, or coming better to understand the differences between the respective horizon" or even "the act of trying to understand or engage with the other in conversation towards understanding."⁵⁰⁰ However, as discussed in the Introduction, diplomats are sanctioned against changes. It should not be expected that they may change their position and disclose such change to their counterpart. Accordingly, the mutual understanding at the highest level might not be present in the 2006 HRD.

Indeed, no *new* substantive agreements were reached in that dialogue. It can be observed that the two sides had agreed on a number of important matters, which are the status of their bilateral relations, the fact that no country is perfect in human rights issue, the principles of human rights dialogue, and the positive steps in religious freedom that the government of Vietnam had taken. Besides the second agreement which seems to be obvious, the rest are what the two sides had agreed on *well before* the dialogue. The assessment that bilateral relations were "strong, cooperative and productive" had been confirmed on several occasions. In the joint statement of June 2005, Prime Minister Phan Van Khai and President Bush agreed that their bilateral relations were characterized by "growing economic and commercial ties," they also agreed to develop a "friendly, constructive, and multi-faceted cooperative partnership." And only a month prior to the dialogue, in his visit to Vietnam, Assistant Secretary Christopher Hill agreed with Vice Foreign Minister Le Van Bang that the U.S. – Vietnam relations were very positive and promising.⁵⁰¹ And the last two matters had also

⁴⁹⁸ This possibility, according to Gadamer, does not extend to becoming the other.

⁴⁹⁹ Gadamer, *TM*, p. 324.

⁵⁰⁰ Shapcott, *op. cit.*, pp. 206-7.

⁵⁰¹ In their own wordings, Mr. Bang said that 2005 was "the best ever" and 2006 would be a year of "still better bilateral relations." Assistant Secretary Hill relayed the positive spirit in Washington towards Vietnam and underscored "the United States' commitment to developing relations with Vietnam as a valued friend." For more details, see the American Hanoi Embassy's cable reporting this meeting on <http://wikileaks.org/cable/2006/02/06HANOI250.html>, accessed 22 July 2013.

been agreed prior to the dialogue. In their Joint Statement, the two leaders agreed “on the importance of continuing an open and candid dialogue on issues of common concern, including human-rights practices.” In the same statement, President Bush “welcomed Vietnam's efforts to date” on the issues of human rights practices, religious freedoms, and ethnic minorities. Earlier, in a meeting with Politburo member Phan Dien in August 2005, then American Ambassador Marine stated that “the USG recognizes fully the progress that Vietnam has made in recent years” in dealing with these matters. “The Party and GVN,” he specified, “deserve credit for improving Vietnam's standard of living, expanding the space available for religious believers and creating social and economic opportunities for ethnic minorities.” The interlocutors in the dialogue under scrutiny thus only reconfirmed already reached agreements. However, if we follow strictly Gadamer’s point that understanding is situational, these agreements could still be regarded *new* at the time of the dialogue. That is, after the annual human rights dialogue in February 2006, both sides continued to agree that their relationship was positive, that religious freedoms in Vietnam had been improved, and that dialogues on human rights issue should be carried out in a open and frank manner.

As for the familiarization with the differences in each other’s positions, this dialogue had helped to expose and compare differences over some specific matters, namely fundamental human rights and the case of Pham Hong Son. As concluded by the leader of the Vietnamese delegation at the end of the dialogue, “we agree on a number of issues, and remain in disagreement on some others.”⁵⁰² As for the least result, there were few attempts to try to understand or engaging with the other towards understanding. The Vietnamese twice asked for the U.S. attention to their history in order to understand its human rights policies. The Americans, on their part, raised the case of Pham Hong Son six times during the dialogue. Though neither the Americans agreed to take Vietnamese history into their judgments of Vietnam policies nor the Vietnamese engaged in the reasons for Pham Hong Son’s imprisonment, their respective insistence at least conveyed important messages: history plays a part in Vietnamese human rights understanding and Pham Hong Son is a high priority for the U.S. in their list of concerned prisoners.

III. The critique against Gadamer’s account of successful dialogues and preliminary answers to the research questions from his perspective

⁵⁰² 2006 HRD, p. 242 of this thesis.

1. The critique against Gadamer's account of successful dialogues

Although Gadamer's *Truth and Method* has been criticized on a number of points,⁵⁰³ this subsection focuses only on the critics that challenge Gadamer's above account of mutual understanding and a genuine dialogue. Among Gadamer's opponents, Habermas and Hans Herbert Kögler seem to pose the most serious challenges to his account. First, Habermas argues that Gadamer failed to appreciate the power of reflection in favor of tradition. Second, Habermas claims that Gadamer's hermeneutics could not be aware of certain constraints that are ideology, domination, and social power that can lead to distorted understanding among the interlocutors. Moreover, Kögler criticizes both Habermas and Gadamer for not adequately addressing the impacts of power relations on mutual understanding. Each of these challenges will be addressed in turn.

a Tradition and the power of reflection

Habermas criticizes Gadamer, among other things, for failing to appreciate the power of reflection in understanding. Put simply, Habermas claims that Gadamer was wrong to confirm that reflection could only move within the limits of tradition. Indeed, although "knowledge is rooted in actual tradition," Habermas argues that reflection can bypass tradition as we are able to "turn back upon internalized norms" and strip away "the element of authority that was simply domination" which we follow blindly.⁵⁰⁴ Thus, Habermas claims that Gadamer "defend[s] tradition over reason and den[ies] reason its emancipatory power."⁵⁰⁵ Put it another way, while Gadamer holds that prejudices and tradition are inescapable, for Habermas, we can criticize our own prejudices through self-reflection. Habermas also contends that in linking tradition with authority and projecting tradition as a natural-like substance, Gadamer has given his hermeneutic a conservative structure.⁵⁰⁶

In his response, Gadamer suggests that Habermas's concept of reflection is "itself encumbered with dogmatism," and as such is a misinterpretation of reflection.⁵⁰⁷ Habermas's concept of reflection is dogmatic because for Gadamer, one cannot at the same time call into question all of one's "concepts, judgments, principles, and standards;" this is idealistic. In

⁵⁰³ See Shapcott, *op. cit.*, Chapter 5 "Philosophical hermeneutics and its critics"; also Ringma, *op. cit.*, Chapter 3 "Gadamer and His Critics: A Defense" for some accounts of the debates between Gadamer and his critics.

⁵⁰⁴ *Ibid.*, p. 358.

⁵⁰⁵ Shapcott, *op. cit.*, p. 183.

⁵⁰⁶ Ringma, *op. cit.*, p. 83.

⁵⁰⁷ *Ibid.*, pp. 34-5.

fact, one can only criticize or thematize a particular issue and from a particular point of view. Therefore, “[r]eflection is no less historically situated, context-dependent, than other modes of thought.”⁵⁰⁸ Furthermore, Gadamer argues that “reflection is not always and unavoidably a step towards dissolving prior convictions. Authority is not *always* wrong.”⁵⁰⁹ According to Gadamer, authority exists because it is accepted and this acceptance is not by force (otherwise it only pretends to be). It is accepted as “one concedes superiority in knowledge and insight to the authority, and for this reason one believes that authority is right.” Thus, for Gadamer authority is not followed as blindly or slavishly as Habermas suggests.⁵¹⁰

For the relation between reflection and tradition, Shapcott explains that Gadamer did neither deny the desirability or power of reflection, nor “presuppose the inherent legitimacy of any particular aspect of tradition;” instead, Gadamer merely sought to counter the Enlightenment’s claim that we can see through our own prejudices by our reasons. Therefore, Shapcott contends that Gadamer’s PH does not reject “the use of reason to understand and engage with prejudices;” and philosophical hermeneutics “is not necessarily conservative.”⁵¹¹ Accordingly, Gadamer would not advise the Vietnamese and American interlocutors to have uncritical approaches to their respective traditions, but would remind them that they start from, and are limited by, their own traditions in interpreting the other’s ideas and opinions. Moreover, exposing the hidden influences of traditions on participants’ thinking has the potential for them to engage critically with their own prejudices related to traditions. Therefore, Gadamer’s model of understanding and successful dialogues demounts this critics by Habermas.⁵¹²

This debate provides the author of this thesis with a right attitude towards tradition and authority. On one hand, in order to understand American and Vietnamese positions on human rights, it is necessary to explore their respective human rights-related histories and traditions. This have been done in the two preceding chapters. On the other hand, although American and Vietnamese prejudices are limited by their own traditions, this does not mean that their traditions cannot be critically reflected upon. Following Gadamer, the more the Vietnamese

⁵⁰⁸ In Thomas McCarthy, *The Critical Theory of Jürgen Habermas*, MIT, Polity Press, 1979, p. 188.

⁵⁰⁹ *Ibid.*, pp. 32-3.

⁵¹⁰ Gadamer, Hans Georg, *Philosophical Hermeneutics*, translated and edited by David E. Linger, Berkeley, Los Angeles, London: University of California Press, 1976, pp. 33-4.

⁵¹¹ Shapcott, *op. cit.*, pp. 183-4.

⁵¹² It should be noted that Habermas moved away from this view of Gadamer and chose psychoanalysis as a model for his critical theory that would eradicate unnecessary oppression and maximize human emancipation, see Holub, Robert C., *Jürgen Habermas: critic in the public sphere*, Routledge, London, 1991.

and American interlocutors are exposed to their human rights-related traditions and prejudices, the greater opportunities they can reach a mutual understanding on human rights.

b The distortions of ideology, domination and social power on understanding

Habermas also criticizes that Gadamer's hermeneutics is unaware of ideology, domination, and social power that are carried by language. Language, for Habermas, is not only "the happening of tradition" but

is *also* a medium of domination and social power; it serves to legitimate relations of organised force. Insofar as the legitimations do not articulate the power relations whose institutionalization they make possible, insofar as these relations merely manifest themselves in the legitimation, language is *also* ideological. Here it is a question not of deceptions within a language but of deception with language as such.⁵¹³

Habermas argues here that, as a medium for domination and social power, language inherently carries the legitimations in favor of the dominant forces and ideology. In this way, language has already deceived us in our search for true understanding by hiding the effects of domination and social power within it. Accordingly, for Habermas, language and tradition are not sufficient to understand social actions which "can only be comprehended in an objective framework that is constituted conjointly by language, labor, and domination."⁵¹⁴ In other words, besides "intersubjectively intended and symbolically transmitted meaning," to be effective a conversation also requires a "reference system" that links tradition with "other aspects of the complex social life."⁵¹⁵ Therefore, following Habermas, Gadamer's hermeneutics would fail to acknowledge the systematic distortions in language and tradition; and even if Gadamer's hermeneutics could factor in such distortions, it would still be insufficient to address them.

Warnke illustrates this point by referring to Marx's analysis of the buying and selling of labor power. In this exchange of labor for money, the principle of freedom and equality has been upheld: freedom as "both buyer and seller ... are constrained only by their free will. They contract as free agents;" equally, as "each enters into relation with the other as with simple

⁵¹³ Habermas, Jürgen, "A Review of Gadamer's *Truth and Method*," in Fred R. Dallmayr and Thomas A. McCarthy (eds.), *Understanding and Social Inquiry*, Notre Dame, London: University of Notre Dame Press, 1977, p. 360.

⁵¹⁴ Ibid, p. 361.

⁵¹⁵ Ibid.

owner of commodities, and they exchange equivalent for equivalent.”⁵¹⁶ The problem, according to Warnke, is what have been concealed in the characterization of freedom and equality,

The talk of freedom obscures the coercion that one partner suffers in as much as he or she must sell his or her labour power in order to survive; likewise, the talk of equality obscures the inequality contained in the economic dependence of one class on the other.⁵¹⁷

In Habermas’s view, a hermeneutical focus only on the “truth” of freedom and equality fails to account for the societal conditions in which the exchange occurs. Thus, it would seem that referring to these societal conditions in which a dialogue happens would help to identify the distortions or deformations carried by language as untruth, even those that have been agreed by both sides in conversation.⁵¹⁸ Under the same logic, an analysis of U.S. – Vietnam human rights dialogues require not only examinations of the issues discussed but also references to the broad contexts in which those dialogues are taken. Revealing these distortions, Habermas may argue, would help determine the true nature of American and Vietnamese understanding of human rights.

Gadamer counter-argues that these “so-called real factors” are not outside the realm of hermeneutics, as “the principle of hermeneutics simply means that we should try to understand everything that can be understood.”⁵¹⁹ Following Gadamer, it would seem that there is no need of a “reference system” to social conditions for genuine understanding because these realities have already been included in language. In his words, “there is no societal reality, with all its concrete forces, that does not bring itself to representation in a consciousness that is linguistically articulated. Reality does not happen ‘behind the back’ of language.... reality happens precisely *within* language.”⁵²⁰ In other words, ideological differences and power relations find their expression in language, and PH does cover these elements in understanding. For Gadamer, all these outside factors indeed could therefore be founded rooted in the prejudices of the interlocutors.

Kögler agrees with Gadamer on this response when he argues that it is illusory to have an “objective” critique of power from a power-free standpoint or an ideology-critical view

⁵¹⁶ Karl Marx, *Capital*, Moscow: Progress Publishers, reproduced from the 1887 edition, Vol. 1, p. 172, note 14, cited in Warnke, *op. cit.*, p. 115.

⁵¹⁷ *Ibid.*, p. 116.

⁵¹⁸ In Shapcott’s words, “one of the task of critical theory is to identify agreements or understanding that rest on, for want of a better term, false consciousness.” *Ibid.*, p. 199.

⁵¹⁹ Gadamer, *Philosophical Hermeneutics*, p. 31.

⁵²⁰ *Ibid.*, p. 35.

which “imagines itself capable of insight superior to historically-situated knowledge.” However, Kögler argues that it is an equal illusion in Gadamer’s claim that structures of domination “can already qualify as legitimate precisely because they belong to tradition.”⁵²¹ This is because as Kögler observes, Gadamer takes every social order including power structure to be constituted through “a fundamental and substantial *agreement*,” accordingly, the “true” conception of authority is “exclusively grounded in knowledge.” For Kögler, this understanding fails to recognize the complex interplay between power and knowledge whereby power “inconspicuously shapes the natural disclosure of meaning.”⁵²² In short, Kögler criticizes that in addressing the correlation between the symbolic horizon of subjects and social institutions and power relations, Gadamer takes an “affirmative position” whereas Habermas’ position takes itself “to be outside the historical situation.”⁵²³

The critiques by Habermas and Kögler discussed above have an important implication for analyzing the 2006 HRD. That is, in order to gain a true and comprehensive account of its nature and outcome, due attention must be paid to power relations between the U.S. and Vietnam that are operative at the time of the dialogue. The failure to grasp the U.S. – Vietnam power relations and their possible distorting effects on the dialogue outcome is thus a limitation of the Gadamer’s model.

2. The answers to the research questions from Gadamer’s perspective, in relations to the findings in the previous chapters.

Based on the preceding testing of Gadamer’s conditions of, and indications for, mutual understanding on the 2006 HRD and the critiques against the Gadamer’s model, the chapter now turns to how applying Gadamer’s philosophical hermeneutics could answer the core and the second-subsidary research questions.

Can diplomatic dialogues narrow the differences on human rights understanding between Vietnam and the U.S.?

As for Gadamer, understanding is always about something. It can be observed that both the practical and theoretical aspects of human rights understanding were discussed in this dialogue. The interlocutors discussed a number of practical issues, namely the principles that

⁵²¹ Kögler, Hans Herbert, *The Power of Dialogue: Critical Hermeneutics after Gadamer and Foucault*, translated by Paul Hendrickson, Cambridge, Massachusetts, London, England: MIT Press, 1996, p. 77.

⁵²² Ibid., p. 76.

⁵²³ Ibid., pp. 76-7.

were to guide their human rights dialogue, human rights related laws and regulations, and particular human right cases. As discussed above, no new mutual understanding was found in practical issues as they had been agreed at advance even in a higher level of authority before the dialogue.

Theoretically, the interlocutors conversed on their respective human rights tenets. However, the theoretical and philosophical differences on human rights understanding between the Americans and the Vietnamese remained mostly unaffected after the dialogue. The interlocutors came out of this dialogue with no common agreement on the definition and meanings of fundamental rights, the relativity of human rights, the relation between human rights and collective interests and national developments. The only exception was their agreement that no country is perfect in the area of human rights. In Gadamerian term, this truth on human rights constituted the common territory where the Vietnamese and the Americans human rights horizons could be fused. It should be observed that this fusion of horizons was achieved rather quickly and easily by the interlocutors. The abstract and non-controversial nature of this truth, however, makes this mutual understanding less substantial.

Thus, a concise Gadamerian answer to the question above is that the 2006 diplomatic human rights dialogue did not help to narrow the differences on human rights understanding between Vietnam and the U.S. Overall, the dialogue was not productive and yielded only a trivial result.

These findings shed light into two of the possible diplomatic obstacles raised in the Introduction. They serve as an evidence against Adam Watson's contention that private diplomatic meetings are exclusively for problem-solving purposes, not for discussing incompatible values. In the 2006 HRD, an entire and first session was reserved for American and Vietnamese human rights approaches. Nevertheless, Watson's idea is not totally wrong; although the diplomats presented their human rights understanding, neither side embarked on discussing further and debating on the differences in their human rights understanding. Another hypothetical obstacle, however, is clearly correct. American and Vietnamese diplomats did not change their positions or viewpoints. Indeed, they failed to embark on several steps that according to Gadamer are necessary for such changes to occur. What is not yet clear at this stage whether such American and Vietnamese diplomats' resistance to changes is because of their professional limitation or due to other constraints raised in Chapter One and Two, namely American conviction on the superiority of their values and the Vietnamese fear of peaceful evolution.

What are the obstacles for the American and Vietnamese diplomats to their mutual understanding on human rights?

The reason for the failure to narrow the human rights understanding gap, as measured from a Gadamerian perspective, is that the interlocutors in this dialogue could not pass most of Gadamer's conditions for mutual understanding. This failure points to the interlocutors' attitudes of disengagement and ignorance and their lack of openness. In the greater part of the dialogue, both Vietnamese and Americans chose to avoid unpleasant topics that could give the other side the upper hand. They also tried not to disclose their opinions on issues of different assessments or even to engage in discussing them.⁵²⁴ We have seen in the dialogue how their differences on assessing the case of Pham Hong Son accumulated the tension between them and forced them to admit openly that they disagreed on that issue. The case of Pham Hong Son was raised six times by the American interlocutors but no mutual agreement was attained. Unless that the dialogue partners adopted a different attitude, Pham Hong Son remained a victim of the violation of freedom of speech for the Americans; for the Vietnamese, he was a law breaker who had been properly charged and imprisoned.

As the interlocutors did not seriously engage in their differences, few assessments from the other side's perspective and new truths emerged in the dialogue. And even the few truths that came forth from obscurity were not appreciated by the interlocutors: they were unwilling to view from the other side's perspective, and even rejected invitations to do so. And among these shortcomings, the reluctance to address their differences appears to be the main obstacle that prevents any potential truth to emerge. In Gadamerian standards, the dialogue was thus not "open and candid" as the parties claimed, and as in the American assessment of the dialogue.⁵²⁵

It is interesting to note that in light of this analysis, the profound differences on human rights understanding between the two sides was not to be directly blamed for this limited outcome. What is problematic, for Gadamer, is the way the interlocutors dealt with negative prejudices, not the prejudices themselves. In light of this, the main conclusion in chapter Two can be supplemented. The differences on human rights understanding between the U.S. and Vietnam constitute a real but *not immediate* obstacle to their human rights understanding.

⁵²⁴ These observations are illustrated in more details in the next chapter.

⁵²⁵ The report assesses in its summary at its beginning that "the tone of the HRD was open and cordial."

A question remains: what did the satisfaction of the first condition by the interlocutors bring about? Obviously this was insufficient for reaching a mutual understanding. But the fact that the interlocutors did not aim at persuading each other that their view of human right understanding was superior facilitated the exposure of differences of understanding. It also allowed for human rights related messages to be conveyed, concerns to be raised, and promises, commitments, and assurances to be made.

Conclusion

This Chapter has extracted from Gadamer's PH a number of conditions for, and indications of, mutual understanding. It has then tested these criteria in the 2006 HRD and argued that most of the conditions were not met, resulting in a trivial mutual understanding on human rights. From a Gadamerian perspective, the 2006 HRD did not help to narrow the differences in human rights understanding between the Americans and the Vietnamese; and the main obstacle encountered was the parties' attitudes of ignorance, disengagement and lack of openness. Linking the analysis in this chapter to the features of diplomacy, the contention on the division of labor between public and private dialogue proves incorrect in the 2006 HRD whereas the restriction against changes of diplomats' views is a real obstacle to mutual understanding. And connecting the findings in this chapter to those of Chapter Two, it is clear that the profound differences in American and Vietnamese human rights understandings were a real but not direct obstacle. What remains less clear at this stage is why the participants held such attitudes in the dialogue and the possible impacts of power relations at the time of the 2006 HRD. The next Chapter conducts a similar analysis so as to answer the research questions and the above ambiguities from a different perspective.

Chapter Four

The 2006 U.S. - Vietnam Human Rights Dialogue as examined from Habermas's Theory of Communicative Action

In a structure similar to that of the previous chapter, this chapter extracts from Habermas's theory of communicative action the conditions of, and indications for, genuine understanding and simultaneously tests whether these criteria are satisfied in the 2006 HRD. It has four parts. It first examines Habermas's conceptualization of mutual understanding in his TCA. It then draws out from this theory the conditions of genuine understanding and tests them in the 2006 HRD. Following this are the discussion and the testing of Habermasian indications for genuine understanding. Finally, it discusses criticism of the model and offers preliminary conclusions on the nature and extent of mutual understanding in this dialogue. The findings in this chapter shed more light to the unresolved questions in the preceding chapters and provides answers to the research questions from an Habermasian perspective.

I. Mutual understanding in Habermas's TCA

1. An overview of the TCA

In order to understand Habermas's conditions for, and indications of, shared understanding, it is necessary to grasp a general understanding of his TCA. Habermas's concept of communicative action "refers to the interaction of at least two subjects capable of speech and action who establish interpersonal relations."⁵²⁶ Thus, for Habermas communicative action does not equate with communication, although the capable interlocutors use language to communicate with each other. In this interaction, interlocutors do not resort to language only to convey information but to "com[e] to an understanding with one another so as to coordinate their actions" and through this, "pursue their particular aims."⁵²⁷ Habermas categorizes these aims as illocutionary or perlocutionary ones.

⁵²⁶ Habermas, Jürgen, *The theory of communicative action (TCA)*, transl. by Thomas McCarthy, Boston: Beacon Press, 1984, Vol. 1, p. 86.

⁵²⁷ *Ibid.*, p. 101.

The term “illocutionary” was first proposed by the J. L. Austin in his book *How to do things with words*.⁵²⁸ Austin classifies an utterance or a speech act as locutionary, illocutionary, or perlocutionary acts. The term “locutionary” refers to the content of propositional sentences or of normalized propositional sentences; through locutionary acts, the speaker expresses states of affairs; he says something. Through illocutionary acts, the speaker performs an action in saying something, such as giving a promise or a command. And through perlocutionary acts, the speaker produces an effect upon the hearer. Put in another way, these acts mean, respectively, “to say *something*, to act *in* saying something, to bring about something *through* acting in saying something.”⁵²⁹ For example, when I say that “The capital of France is Paris,” the fact that Paris is the capital of France is the content of this propositional sentence and I perform a locutionary act. However, in saying this sentence, I might be answering a quiz, in which case I would perform an illocutionary act.⁵³⁰ And putting this utterance in a particular context, i.e. a newly wed couple discussing where to spend their honeymoon, this could bring about the selection of Paris as the location for the anniversary; that would be perlocutionary. Building on this, Habermas argues that any speech act is designed for either illocutionary or perlocutionary aims. In pursuing illocutionary aims, a speaker does not “go beyond wanting the hearer to understand the manifest content of the speech act.”⁵³¹ Acting with an orientation to understanding, the speaker therefore “selects a comprehensible linguistic expression only in order to come to an understanding *with* a hearer *about* something and thereby to make *himself* understandable.”⁵³² Whereas a speaker with a perlocutionary aim intentionally wants his speech acts to produce certain illocutionary effect on his hearer. Habermas calls this action as linguistically mediated strategic action with “an orientation to success.” For a strategic speaker, a hearer “could at best infer the speaker’s perlocutionary aims from the context” by answering the question that “what *else* the speaker has in view in uttering it?”⁵³³ An example of a strategic actor is a host telling a story late in the evening to delay a guest’s departure: the guest knew the host’s real intention by taking into account the situation, i.e. the former was about to leave.⁵³⁴ “The description of perlocutionary effects,” Habermas argues, “must therefore refer to a context of teleological action that *goes beyond* the speech act.”⁵³⁵

⁵²⁸ See Andrew Edgar, *Habermas: The Key Concepts*, New York, Routledge, 2006, p. 72.

⁵²⁹ Habermas, *TCA*, Vol.1, *op. cit.*, pp. 288-9. Italics as original.

⁵³⁰ See Andrew Edgar, *op. cit.*, p. 72.

⁵³¹ Habermas, *TCA*, Vol.1, *op. cit.*, p. 290.

⁵³² *Ibid.*, p. 307. Italics as original.

⁵³³ *Ibid.*, p. 290. Italics as original.

⁵³⁴ *Ibid.*, p. 294.

⁵³⁵ *Ibid.*, p. 291. Italics as original.

Habermas describes a strategic interaction as follows:

Here we start with at least two goal-directed acting subjects who achieve their ends by the way of an orientation to, and influence on, the decision of other actors. Success in action is also dependent on other actors, each of whom is oriented to his own success and behaves cooperatively only to the degree that this fits with his egocentric calculus of utility.⁵³⁶

Habermas then defines communicative action as “those linguistically mediated interactions in which all participants pursue illocutionary aims, and only illocutionary aims, with the mediating acts of communication.”⁵³⁷ It should be noted that reaching mutual understanding is not necessarily the communicative actors’ initial goals, as their individual goals are what bring them to the conversation table, like strategic actors. The difference between strategic and communicative actors is that while the formers coordinate their actions through “egocentric calculations” of individual successes, the latter first reach mutual understanding and then coordinate their actions accordingly. In other words, participants in communicative actions “harmonize their plans of action on the basis of common situation definitions.”⁵³⁸

2. Habermas’s account of understanding

Reaching understanding, Habermas contends, is a “process of reaching agreement among speaking and acting subjects” that “meets the conditions of rationally motivated assent to the content of an utterance.”⁵³⁹ In other words, a genuine agreement has “a rational basis,” “has to be accepted or presupposed as valid by the participants,” and “rests on common convictions.”⁵⁴⁰ Therefore, an agreement is genuine when dialogue participants are communicative actors pursuing only illocutionary aims or in his words “reaching understanding has to be clarified *solely* in connection with illocutionary acts.”⁵⁴¹

Accordingly, genuine understanding is possible when interlocutors act communicatively; and they are able to do so under what Habermas calls an ‘ideal speech situation.’

⁵³⁶ Ibid., pp. 87-8.

⁵³⁷ Ibid., p. 295.

⁵³⁸ Ibid., p. 286.

⁵³⁹ Ibid., pp. 286-7. Habermas mentions that the content of this agreement is “definitions of the situation and prospective outcome.” Habermas, *Moral consciousness and Communicative Action*, MIT Press, Cambridge, Mass., 1990, pp. 134.

⁵⁴⁰ Habermas, *TCA*, Vol. 1, p. 287. Italics as original.

⁵⁴¹ Ibid., p. 293.

Complementing the concept of communicative action is Habermas's concept of lifeworld.⁵⁴² In a way, this concept is similar but not identical to Gadamer's concept of prejudice. For Habermas, lifeworld "is formed from more or less diffuse, always unproblematic, background convictions" and "stores the interpretive work of preceding generations;" it serves as "a source of situation definitions" and a "conservative counterweight to the risk of disagreement that arises with every actual process of reaching understanding."⁵⁴³ In connection with communicative action, the life world is "the transcendental site where speaker and hearer meet, where they can reciprocally raise claims [...], criticize and confirm those claims, settle their disagreements, and arrive at agreements."⁵⁴⁴ Put simply, lifeworld is the source of knowledge that participants have and through communication, they can reach a common lifeworld upon which their agreement is based.

Moreover, the concept of lifeworld comprises three structural components, corresponding but not identical to the three-formal-worlds concept. The social, the objective, and the subjective worlds of the interlocutors are transmitted and renewed through the processes of social integration, cultural reproduction, and socialization, respectively. Corresponding to these processes are the three structural components of the lifeworld: culture, society, and personality.⁵⁴⁵ Their functions also differ: the lifeworld constitutes mutual understanding, whereas the formal world concepts "constitute a reference system for that *about which* mutual understanding is possible: speakers and hearers come to an understanding from out of their common lifeworld about something in the objective, social, or subjective worlds."⁵⁴⁶

⁵⁴² Ibid., p. 70. According to Andrew Edgar, the term lifeworld "was originally coined by the German phenomenologist Edmund Husserl, and was developed as a concept in sociology by the latter's pupil Alfred Schutz. Habermas adopts the concept from them." Andrew Edgar, *op. cit.*, p. 89.

⁵⁴³ Habermas, *TCA* Vol. 1, p. 70. See also Habermas, *TCA*, Vol. 1, p. 126. Andrew Edgar summarizes Habermas' lifeworld as "the stock of skills, competences and knowledge that ordinary members of society use, in order to negotiate their way through everyday life, to interact with other people, and ultimately to create and maintain social relationships." Andrew Edgar, *op. cit.*, p. 89

⁵⁴⁴ Habermas, Habermas, *The Theory of Communicative Action*, (TCA) Vol. 2 *Lifeworld and System: A Critique of Functionalist Reason* Boston: Beacon Press, 1987, p. 126.

⁵⁴⁵ Ibid., pp. 137-8. Habermas defines these three components as follows: (1) culture: "the stock of knowledge from which participants in communication supply themselves with interpretations as they com to an understanding about something in the world;" (2) society: "the legitimate orders through which participants regulate their memberships in social groups and thereby secure solidarity;" (3) personality: "the competences that make a subject capable of speaking and acting, that put him in a position to take part in processes of reaching understanding and thereby to assert his own identity." Ibid., p. 138.

⁵⁴⁶ Habermas, *TCA*, Vol. 2, p. 126. Italics as original.

II. Habermas's conditions for, and indication of, mutual understanding and the reviews of these conditions and indication in the 2006 HRD

In ideal speech situation, a number of criteria are required for the participants, the relation between them, and the structure of the dialogue. In both strategic and communicative actions, actors must be “assumed to have the ability to act purposively and to have an interest in carrying out their plans.”⁵⁴⁷ In strategic exchanges, however, participants only pursue their self-interests through the egoistic calculations of effects and results and the resort to instrumental rationality. Whereas in communicative actions, participants attempt first to “negotiate interpretations of the situation at hand” and then “harmonize their respective plans with one another;” during this process, they must pursue illocutionary goals without any restraints.⁵⁴⁸ An indication of this unrestrained pursuit of illocutionary goals, for Habermas, can be found in the *attitudes* of the interlocutors. He explains:

Naturally, the binding energies of language can be mobilized to coordinate action plans only if the participants suspend the objectivating attitude of an observer, along with the immediate orientation to personal success, in favor of the performative attitude of a speaker who wants to *reach an understanding* with a second person about something in the world.⁵⁴⁹ [and]

speakers and hearers confront one another in a performative attitude as first and second persons, not as opponents or as objects within the world of entities about which they are speaking.⁵⁵⁰

Essentially, Habermas states that communicative actors must regard each other as the first and second persons, as rational members of a shared community. On the contrary, strategic actors choose the position of observing outsiders and treat their dialogue partners as entities that they can manipulate. Thus, a first condition is that interlocutors adopt a performative attitude, not an objectivating one.

However, Habermas argues elsewhere that the meeting of this condition and the like for ideal speech situation is *insufficient* to differentiate communicative action from strategic action.

This is because,

communicative and strategic action do not differ primarily in terms of the attitudes of the actors but rather with respect to structural characteristics. A formal-pragmatic analysis of successful speech acts is required precisely because, in communicative action, the structure of the use of language oriented toward

⁵⁴⁷ Habermas, *Moral Consciousness ...*, p. 134

⁵⁴⁸ Habermas, Habermas, *Between Facts and Norms: contributions to a discourse theory of law and democracy*, Cambridge, Mass., MIT Press, 1996, p. 18.

⁵⁴⁹ Ibid. Italics as original.

⁵⁵⁰ Habermas, J. and Maeve Cooke (eds.), *On the pragmatics of communication*, MIT Press, Cambridge, Massachusetts, 1998, p. 316. Italics as original.

reaching understanding is superimposed on the fundamental teleological structure of action and subjects the actors to precisely such constraints as compel them to adopt a performative attitude – an attitude that is more laden with presuppositions than is the objectivating attitude of the strategic actor. Interaction mediated through acts of reaching understanding exhibits both a richer and more restrictive structure than does strategic action.⁵⁵¹

Therefore, the differentiation of communicative and strategic action rests primarily on analyzing certain speech acts. To determine if communicative actions had occurred in the 2006 HRD, it is necessary to also analyze important speech acts in that dialogue. An analysis of a human rights dialogue in Habermas's perspective thus has two folds: the testing of the conditions above and the like and of the validity claims of important utterances. The remainder of this section discusses and tests the conditions of an 'ideal speech situation' before analyzing a number of utterances in the 2006 HRD.

1. The testing of the conditions for 'ideal speech situation'

Condition One Interlocutors adopt not an objectivating attitude, but a performative one

Throughout most of the 2006 HRD, the American and Vietnamese participants treated each other *not* as opponents or objects that they can manipulate. Both sides wanted to reach understanding with each other on specific matters. In accounting for human rights progress, especially those on religious freedom, the Vietnamese hoped to reach a mutual understanding with the Americans, hoping that progress would be sufficient for Vietnam to be removed from the CPC list. Likewise, the Americans wanted to point out to the Vietnamese that certain Vietnamese laws and regulations constituted serious violations of civil and political rights or shortcomings in the implementation of these rights at local level. The interlocutors may not have wanted to confront each other on the betterment of their human rights approaches or the greater accuracy and reliability of their human rights accounts. For example, in the section on religious freedom, Ambassador Hanford referred to the *Time* article and admitted that he "cannot comment on" its credibility.⁵⁵² Perhaps this is because with their diplomatic quality of politeness, the speakers in this dialogue did not wish to out-argue each other on issues of ideological differences which may lead to unnecessary tensions. However, the fact that the interlocutors did not adopt an objectivating attitude does not necessarily mean that they choose a performative one for an unrestrained pursuit of

⁵⁵¹ Habermas, J. and Maeve Cooke (eds.), *op. cit.*, pp. 204-5.

⁵⁵² 2006 HRD, p. 234 of this thesis.

illocutionary goals. The detailed analysis of specific speech acts after the testing of these conditions will clarify this point. Thus, this first condition is only partly met by the 2006 HRD participants.

Condition Two Participants possess a certain knowledge about the objective, social, and subjective worlds of the other

Besides certain required attitudes, a second Habermasian condition is that communicative actors are required to possess a certain knowledge about the objective, social, and subjective worlds of each other. To answer yes or no to a validity claim (whether it is as a fact, a valid norm, or a subjective expression), a hearer has to decide if it is true in the objective world, legitimate in the social world, and trustworthy in the subjective world of the speaker, respectively. As Habermas argues, in judging a claim, “the interpreter has to be familiar with the conditions of its validity; he has to know under what conditions the validity claim linked with it is acceptable, that is, would have to be acknowledged by a hearer.”⁵⁵³

The participants of the 2006 HRD possessed segments of the lifeworlds of the other side and shared a common knowledge about their bilateral relations. Besides, as professional diplomats, the American speakers and the main speaker on the Vietnamese side (Pham Binh Minh) also knew and mastered the norms and rules in diplomacy.

On the American side, all the speakers had expertise or were at least familiar with the human rights conditions in Vietnam and to a certain extent, with the Vietnamese human rights related fears and suspicions. Before the dialogue, Ambassador Marine had been in Vietnam for about two years, whereas Ambassador Hanford had visited Vietnam several times.⁵⁵⁴ And the head of the American delegation, A/S Barry Lowenkron, was briefed on the human rights conditions in Vietnam, Vietnamese laws and regulations on human rights, and the bilateral relations.⁵⁵⁵ During the dialogue, Ambassador Hanford demonstrated his knowledge about Vietnamese concerns on ethnic minority issue when he claimed that, “the USG understands

⁵⁵³ Habermas, *TCA*, Vol. 1, p. 115.

⁵⁵⁴ By the time of the dialogue, Ambassador Michael Marine had been serving in Vietnam for nearly one and a half year, he submitted his credential in September 2004. Ambassador Hanford occasionally paid visits to Vietnam to familiarise himself better with the religious issue. In March 2005, he met with Vice Minister for Public Security Nguyen Van Huong and Committee on Religious Affairs (CRA) Chairman Ngo Yen Thi; see for example the American account of Ambassador Hanford’s meeting with CRA Chairman, <http://wikileaks.org/cable/2005/03/05HANOI570.html>, accessed 21 Jul. 13.

⁵⁵⁵ See the US embassy in Hanoi’s scene setter cable for A/S Lowenkron before the dialogue at <http://wikileaks.org/cable/2006/01/06HANOI196.html>, accessed 22 Jul. 13.

that the issue of ethnic minority relations is sensitive for the GVN, and that Vietnam has more than 50 ethnic groups.’’⁵⁵⁶

On the Vietnamese side, Director General Pham Binh Minh is a professional diplomat who served his terms in the U.S. from 1999 to 2003.⁵⁵⁷ Other speakers in the Vietnamese delegation have expertise on human rights related areas such as those related to the judiciary, public security, or religious affairs. They had also reportedly been briefed about the bilateral relations and the U.S. human rights policy and understanding before the meeting, as a necessary procedure in the Vietnamese preparation for the HRD. For instance, a Vietnamese participant from the Department of Prison Management demanded further information on the allegation in the *New York Time* that 13% of U.S. prisoners had been sexually abused and on the over 300 cases of cruel and inhumane treatment of prisoners in Iraq, Afghanistan, and Guantanamo Bay. Without knowing about those mistreatments of prisoners inside and outside the U.S. this issue in his preparation for fulfilling his task in the dialogue, the Vietnamese interlocutor could not challenge the Americans on that issue.

Thus, prior to this dialogue participants were quite aware of the subjective and objective worlds of each other as well as their intersubjectively shared lifeworlds on the bilateral relations and diplomacy.

Condition Three Interlocutors must understand certain linguistic expressions in the same way

Apart from mastering certain shared knowledge, interlocutors must share or agree upon the semantics of the expressions they employed as their discursive acts rely on language.

Habermas explains that “the ideal character of semantic generality shapes communicative action inasmuch as the participants could not even intend to reach an understanding with one another about something in the world if they did not *presuppose*, on the basis of a common (or translatable) language, that they conferred identical meanings on the expressions they employed.’’⁵⁵⁸ So a third condition is that interlocutors must understand certain linguistic expressions in the same way.

Applying this into the 2006 HRD, with some shared knowledge about diplomacy and the bilateral relations, the American and Vietnamese participants were supposed to confer

⁵⁵⁶ 2006 HRD, p. 238 of this thesis.

⁵⁵⁷ See Pham Binh Minh’s biography at

http://www.mofa.gov.vn/en/bng_vietnam/nr040824153458/ns040824160113, accessed 29 March 2014.

⁵⁵⁸ Habermas, *Between Facts and Norms*, p. 19.

identical meanings on many linguistic expressions that they employed. For example, they knew at the time of the conversation what it meant for “strong, cooperative, and productive relations,” or what the rights regulated in the ICPR were, or what the CPC issue (Country of Particular Concern) was about.⁵⁵⁹ The agreements on the semantics of these and many other expressions that they used in this dialogue were sufficient for them to converse without arguing over semantics. This precondition for mutual understanding thus was also sufficiently realized.

Condition Four Recognize the other interlocutors as equally rational subjects

Another Habermasian condition is that participants in ideal speech situation must acknowledge that the others have the right and ability to challenge them through rational arguments. Thus, in raising any utterance, interlocutors must be prepared to defend its validity and at the same time be ready to be persuaded by the better arguments of the others. “Whoever enters into discussion with the serious intention of being *convinced* of something through dialogue,” Habermas argues, “has to presume performatively that the participants allow their ‘yes’ or ‘no’ to be determined solely by the force of the better argument.”⁵⁶⁰ This implies a fourth condition for communicative actors: they must recognize the others as equally rational subjects whose arguments may be better than theirs.

In the 2006 HRD, neither the Vietnamese nor the Americans showed any signs that their counterparts could not follow their arguments. Indeed, both sides equipped themselves with facts and evidence to support their arguments before the dialogue, in case of being challenged by the other side. The Vietnamese searched for information on American prison conditions and human rights violations in Abu Ghraib and Guantanamo Bay to defend its proposition that no country is perfect in the area of human rights. Ambassador Hanford brought with him to the dialogue an article on human rights situation in Vietnam in support of his requests. However, this preparation does not mean that they recognize each other as *equally* rational. In other words, each side regards the other as rational but may hold that it is the *more* rational

⁵⁵⁹ The International Religious Freedom Act (IRFA) of 1998 requires that each year American President designate as a “Country of Particular Concern” each country the government of which has engaged in or tolerated “systematic, ongoing and egregious violations of religious freedom.” For a brief overview of this issue, see <http://www.state.gov/j/drl/irf/c13003.htm>, accessed 30 July 2014.

⁵⁶⁰ Habermas, J. and Maeve Cooke (eds.), *op. cit.*, p. 367. Italics as original. In a similar vein, Habermas argues that “[i]f the participants genuinely want to convince one another, they must make the pragmatic assumption that they allow their “yes” and “no” responses to be influenced solely by the force of the better argument.” Habermas, J. *Justification and application: remarks on discourse ethics*, MIT Press, Cambridge, Mass., 1993, p. 31.

side. This matter is discussed in the next chapter of the thesis. At this stage, it suffices to say that this condition might not be satisfied.

Condition Five Conduct a dialogue that adheres to the principles of inclusiveness, equality, truthfulness, and freedom from power constraints

A fifth and final condition is that a genuine dialogue must adhere to the principles of equality, freedom, and inclusiveness. In Habermas's words, "[a]nyone who seriously engages in argumentation must presuppose that the context of discussion guarantees in principle freedom of access, equal rights to participate, truthfulness on the part of participants, absence of coercion in adopting positions."⁵⁶¹ Habermas calls these are "the four most important...unavoidable pragmatic presuppositions" and explains as follows:

- (a) inclusivity: no one could make a relevant contribution may be prevented from participating;
- (b) equal distribution of communicative freedoms: everyone has an equal opportunity to make contributions;
- (c) truthfulness: the participants must mean what they say; and
- (d) absence of contingent external constraints or constraints inherent to the structure of communication: the yes/no positions of participants on criticizable validity claims should be motivated only by the power of cogent reasons to convince.⁵⁶²

While the truthfulness of the participants is difficult to test, the other three presuppositions are clear. Inclusion is required in a genuine dialogue so that all competent parties must be included "so that all valid arguments can be heard."⁵⁶³ In such a dialogue, all participants must be given equal time to raise any questions or claims, to initiate any speech acts and take turn to be the speaker.⁵⁶⁴ The stress on a symmetrical distribution of chances, Steve Harrist and Scott Gelfand explain, aims at excluding the distorting influence of power from

⁵⁶¹ Habermas, *Justification and application*, p. 31

⁵⁶² Habermas, J. *Between Naturalism and Religion*, Malden, MA., MIT Press, 2008, p. 82. See also J. Habermas, *Moral consciousness ...*, p. 89 for similar conditions but put differently.

⁵⁶³ Daniel. Wehrenfennig, "Conflict Management and Communicative Action: Second-Track Diplomacy from a Habermasian Perspective," *Communication Theory*, 18, 2008, p. 360.

⁵⁶⁴ McCarthy observes that for Habermas, "the structure is free from constraint only when ... there is an effective equality of chances for the assumption of dialogue roles." Thomas A. McCarthy, "A Theory of Communicative Competence," *Philosophy of the Social Sciences*, Vol. 3: 135, 1973, p. 145.

discourse.⁵⁶⁵ Habermas explains this exclusion by raising the principle of freedom from constraints either by external forces or inherent in linguistic expressions. Alan Gross argues that for Habermas, the freedoms in communicative actions also include those to “use any speech act,” “reveal their ‘inner natures,’ [and] to allow their discourse to become transparent to their full subjectivity.”⁵⁶⁶

In light of this analysis, the impacts on mutual understanding of certain diplomatic features, that have been discussed in the Introduction, are now clear. The diplomatic principle of equality is conducive to mutual understanding as it would guarantee an equal distribution of opportunities for participants to be speakers. Whereas the diplomatic features of exclusiveness and secrecy are harmful to mutual understanding, as it prevents the opportunity for listening to all valid arguments. Moreover, truthfulness should not be expected from the 2006 HRD participants as their ultimate goal was to serve their countries’ interests. The diplomats’ ultimate purpose of serving their national interest is thus a real obstacle to mutual understanding.

Testing this condition at the 2006 HRD, it can be observed that this condition is partly met. The participants on both sides were in principle freed to initiate any speech act in the dialogue. They agreed on this principle at the beginning that “any and all issues of mutual concern” could be raised in the dialogue.⁵⁶⁷ At the same time, they were allocated equal time to raise any speech acts, i.e. about their concerns or justifications for their requests. They were also equal in the assumption of dialogue roles as speaker and hearer, and inquirer and answerer. While the American raised concerns over human rights conditions in Vietnam, the Vietnamese also raised concerns about violations of human rights in the U.S. or committed by the Americans in other places. The items for the dialogue agenda were proposed by both

⁵⁶⁵ Steve Harrist and Scott Gelfand come up with a list of conditions similar to those by Alan G. Gross (see the footnote below), plus an openness to the public. Their list includes “openness to the public, inclusiveness, equal rights to participation, immunization against external or inherent compulsion, as well as the participants’ orientation toward reaching understanding (that is, the sincere expression of utterance). The conditions of ideal speech serve to exclude the distorting influence of power from discourse by stressing equality among all participants such that each has an equal voice to express attitudes, desires and needs in discourse regarding proposed norms and normative institutional arrangements.” Steve Harrist and Scott Gelfand, “Life Story Dialogue and the Ideal Speech Situation Critical Theory and Hermeneutics,” *Theory Psychology*, 2005, Vol. 15 (2), p. 228.

⁵⁶⁶ Alan G. Gross, “Persuasion and peer review in science: Habermas’ Ideal speech situation applied,” *History of the Human Sciences*, 06/1990, Vol. 3. 2, pp. 197-8.

⁵⁶⁷ 2006 HRD, p. 224 of this thesis.

sides, as suggested by DG Minh in his discussion with the American Embassy in Hanoi on the prospect of resuming bilateral HRD.⁵⁶⁸

However, this HRD was not sufficiently inclusive as required in the ideal speech situation. Many people who were the subjects of discussion were not present in the dialogue, such as Pham Hong Son or the victims of the church burning incident in the U.S. Had they been allowed to participate, they could have provided different reasons why Son was imprisoned or their church burnt. Moreover, the exclusion of those whom the diplomats referred to make it more difficult for the diplomats to justify the legitimacies of their contentions. The Americans may hold that, for example, the dissident Pham Hong Son may disagree that freedom of expression is respected in Vietnam. Likewise, the Vietnamese may challenge that an American inmate may not believe that the current mechanism addressing prison abuses is perfect. Thus, this condition is only partly met.

Summing up, there are not many deviations from Habermas's preconditions for mutual understanding. In terms of Habermas's standards, there are three problems with the 2006 HRD. First, Habermas would share with the conclusion from a Gadamerian perspective that the interlocutors did not adopt a performative attitude. Second, the dialogue was not sufficiently inclusive, an inherent constraint of diplomacy. And third, the interlocutors might not recognize the other as *equally* rational. With this initial result, the chapter now turns to analyzing a number of speech acts on specific issues.

2. Analyzing the main speech acts in the dialogue

To determine that an interlocutor is acting communicatively not strategically, Habermas contends that she must only aim at illocutionary effect and not *intentionally* at perlocutionary impact in her utterance. For that condition to be met, that speech act must satisfy *simultaneously* three criticisable validity claims. They are the claims to:

- Rightness: the speaker performs a speech act that is right in respect to the given normative context (or indirectly for these norms themselves), so that between him and the hearer an intersubjective relation will come about which is recognized as legitimate;

⁵⁶⁸ At the meeting, DG Minh requested that "the dialogue would be conducted on an 'equal footing,' with each side proposing items for the agenda." American cable titled "GVN considers resumption of human rights dialogue," this can be found on <http://wikileaks.org/cable/2005/06/05HANOI1303.html>, accessed 22 Jul. 13.

- Truth: the speaker makes a *true* statement (or correct existential pre-suppositions), so that the hearer will accept and share the knowledge of the speaker; and
- Sincerity or truthfulness: the speaker expresses *sincerely* or *truthfully* his subjective experience to which he has privileged access (such as beliefs, intentions, feelings, desires, and the like) so that the hearer will give credence to what is said.⁵⁶⁹

A speaker may stress one particular validity claim in her speech act, and Habermas categorizes such speech act as follows: a normatively regulated speech act, such as “commands, requests, warnings, excuses, recommendations, advice” for emphasizing the claim to rightness; constative speech act, such as “asserting, reporting, narrating, explaining, predicting, denying, contesting” for stressing the claim to truth; and a representative speech act, such as “to reveal, expose, conceal, pretend, deceive, express” for stressing the claim to truthfulness. In each of these cases, a communicative speaker is supposed to assume obligations to provide grounds, justifications, and trustworthy to the hearer, respectively.⁵⁷⁰

And accordingly, every speech act must fit into the following three ‘worlds’:

- The social world: as the totality of legitimacy regulating interpersonal relations;
- The objective world: as the totality of entities about which true statements are possible;
- The subjective world: as the totality of experience to which a speaker has privileged access and which he can express before a public.⁵⁷¹

Thus, the interlocutors may reach agreement on something that they may treat as a fact, or as a valid norm, or as a subjective experience. As the third validity claim concerns the subjective world of the speaker to which the hearer cannot have access, the former’s truthfulness can be tested by the consistency between her words and subsequent actions, but “ultimately [this] relies on trust.”⁵⁷² And trust is a basic requirement, as along this process,

⁵⁶⁹ To illustrate these validity claims, Habermas gives an example of a request addressed by a professor to one of his seminar participants, “Please bring me a glass of water.” The participant can reject this request under the three following validity aspects: (1) Rightness: No. You cannot treat me like one of your employees; (2) Sincerity: No. You really only want to put me in a bad light in front of the other seminar participants; and (3) The truth: No. The next water tap is so far away that I could not get back before the end of the session. Habermas, *TCA*, Vol.1, *op. cit.*, p. 99-100 and pp. 306-8. This is a close paraphrasing of Habermas’ words, plus personal annotation.

⁵⁷⁰ *Ibid.*, pp. 333-4. See also, Thomas McCarthy, *op. cit.*, pp. 285-7.

⁵⁷¹ Habermas, Jürgen, *TCA*, Vol. 2, p. 120. This is also a close paraphrasing of Habermas’s words, with personal annotation.

⁵⁷² Thomas Risse, “Let’s Argue!’: Communicative Action in World Politics,” *International Organizations*, Vol. 54, No. 1, (Winter, 2000), p. 10. Habermas explains the response to the claim to truthfulness as follows: “The sincerity of expressions cannot be *grounded* but only *shown*; insincerity can be *revealed* by the lack of

unintended consequences may appear at any time which may threaten to break down communicative actions. If a hearer harbours doubts on a validity claim, she must have enough trust to give the speaker the benefits of the doubt through raising questions to challenge it. To save the communicative action, the speaker then has to offer “explanations and denials, and if need be, apologies, in order to dispel the false impression that these side effects are perlocutionary effects.”⁵⁷³ In this way, they engage in discursive reasoning until *both* of them agree on the validity or invalidity of their speech acts. The presence of valid speech acts is a necessary condition for participants to form their common understandings on the situation, from which they would thereafter coordinate their plans of action.

In his more recent work, Habermas contends that a speech act does not need to satisfy all the three claims for the interaction to be communicative. If a speech act satisfies the claims to truth and truthfulness but not the claim to rightness, Habermas argues, there still exists communicative action, but in a weak sense. A communicative action in a strong sense occur when all three claims are satisfied. Habermas elaborates the differences between these two as follows,

I will speak of communicative action in a weak sense whenever reaching understanding applies to facts and to actor-relative reasons for one-sided expressions of will; I will speak of communicative action in a strong sense as soon as reaching understanding extends to the normative reasons for the selection of the goals themselves. In the latter case, the participants refer to intersubjectively shared value orientations that – going beyond their personal preferences - bind their wills. In weak communicative action the actors are oriented toward claims to truth and truthfulness; in strong communicative action they are oriented toward intersubjectively recognized rightness claim as well; in the case of strong communicative action, not just arbitrary freedom of choice but autonomy in the sense of the capacity to bind one’s will on the basis of normative insights is presupposed.⁵⁷⁴

Communicative actions in strong and weak senses result in different outcomes. Habermas regards the result of strong communicative actions where participants are able to accept a validity claim for *the same* reason as agreement. While in weak communicative action, when a hearer may agree with a speaker on something for the reasons that are *good for the latter*

consistency between an utterance and the past or future actions internally connected with it." Habermas, *TCA*, Vol. 1, p. 40. Italics as original.

⁵⁷³ Ibid., pp. 294-5.

⁵⁷⁴ Habermas, J. and Maeve Cooke (eds.), *op. cit.*, MIT Press, Cambridge, Massachusetts, 1998, pp. 326-7. Ingram gives examples: “simple commands (“Sit down!”) and declarations of intent (“I intend to sit down”) can succeed in coordinating action without depending on speaker and listener reaching agreement on the normative appropriateness of the action. As a listener, I know what these speech acts mean if I know what the speaker’s reasons for uttering them are. I need not accept these reasons as long as I take the speaker seriously (sincerely) and accept his (true) understanding of the world (such as his assumption that there is a chair in the room).” David Ingram, *Habermas: Introduction and Analysis*, Cornell University Press, Ithaca and London, 2010, p. 85.

only, this would bring about *mutual understanding* (*Verständigung*).⁵⁷⁵ Put this simply, in Habermasian term, agreement is more substantial than mutual understanding, as the participants hold the same reasons for what they agreed upon.⁵⁷⁶

Under this framework and conceptualization, the Chapter now turns to examine a number of selective speech acts on specific issues. It should be noted that the order of the issues discussed below is intentionally arranged by the author of this thesis.

On the purposes and principles of HRD

At their opening remarks, Director General (DG) Minh and Assistant Secretary (A/S) Lowenkron uttered their understandings of the purposes and principles of the dialogue. In their words:

Minh1 (M1) [hereafter M refers to Minh]: The HRD will help to increase mutual understanding between the United States and Vietnam by allowing the two sides to frankly discuss issues of mutual concern in the spirit of the Joint Statement.

Lowenkron1 (L1) [hereafter L refers to Lowenkron]: The United States and Vietnam need *to do* everything in their power to ensure that the HRD bolsters their positive relations The HRD is also important because ... [I have] an obligation to report to Congress the HRD and *what it has achieved*. For the United States, the principles surrounding the HRD are threefold: *that it leads to concrete results*; that it is candid and transparent; and, that the two countries can bring all of their concerns to the table. [emphasis added].⁵⁷⁷

Again, these are all constative speech acts, in which speakers are supposed to provide grounds for their assertions and explanations. It is clear that the two sides reached a mutual understanding on some principles of HRD, as also is the positive influence that the dialogue should have on the overall relationship. A/S Lowenkron agreed with DG Minh on the principle of frankness and added that all issues of concerns could be raised. The latter

⁵⁷⁵ Ibid., p. 321.

⁵⁷⁶ It should be noted, however, Habermas's distinction between an outcome that all parties accept for the same reason and an outcome that they accept for different reasons is not clear. Habermas claims in 1996, that, "The reasons that justify more rules lead to rationally motivated *consensus* (*Einverständnis*); the grounding of legal norms serves a rationally motivated *agreement* (*Vereinbarung*)." Habermas, *Between Facts and Norms*... p. 157. To complicate the matter further, later in that book Habermas calls "a compromise can be accepted by the different parties each for its own *different* reasons" as "a negotiated agreement (*Vereinbarung*) that balances conflicting interests. Whereas a rationally motivated consensus (*Einverständnis*) rests on reasons that convince all the parties in *the same way*." Ibid., p. 166. Italics as original. In this thesis, I choose to use Habermas's more recent categorization of these terms.

⁵⁷⁷ 2006 HRD, p. 223 of this thesis.

responded to this additional principle right after the former's speech, "Vietnam agrees that the HRD should be used to raise any and all issues of mutual concern."⁵⁷⁸

Though agreed that HRD should positively impact the relations, the two sides disagreed on the reasons for it. For the Vietnamese, the dialogue was to "increase mutual understanding;" talk is itself an achievement. For the Americans, it is clear that talk is not enough and tangible results must be achieved. It must be noted here that these two goals may or may not exclude each other. If specific commitments are reached through mutual understanding, the American goal is an advancement from the Vietnamese goal. But if the Americans intend to achieve their goal, i.e. the release of Pham Hong Son *without* having the Vietnamese agree with them that it was wrong to imprison the man, the former indeed will be engaging in strategic actions. In that case, strategic actions are detrimental to reaching mutual understanding.

This difference submerged once again and translated into their judgments of the dialogues in the concluding remarks:

M2: The Dialogue was a success, allowing both sides to share experiences, learn from each other and increase mutual understanding. We agree on a number of issues, and remain in disagreement on some others. The GVN is willing to conduct further meetings and exchanges of views.

L2: [We have] to work hard on making this Dialogue results [-] oriented. We would be ultimately judged not on the quantity of meetings we hold, but what those meetings produce.⁵⁷⁹

While DG Minh claimed the dialogue a success, A/S Lowenkron was more cautious and viewed this dialogue as a step in the process of improving human rights conditions in Vietnam. Their mutual understanding on this topic are the two principles of HRD and the positive influence HRD should have on their bilateral relations.

Approaches to human rights

The two sides then took turn in presenting their human rights approaches. Among others, they raised different accounts of what constitute fundamental human rights but no questions or discussions followed. As discussed at the end of the previous chapter, both sides mentioned but did not intend to discuss on this topic. This was regrettable as they missed the opportunity to engage in the roots of their human rights differences: their different human rights understandings.

⁵⁷⁸ Ibid, p. 224 of this thesis.

⁵⁷⁹ Ibid., p. 242 of this thesis.

Nevertheless, A/S Lowenkron responded to the two contentions in DG Minh's speech; the exchanges are below:

M3: In a diverse world, international human rights standards should be harmonized with the unique historical, cultural and other traditions of individual countries.

M4: There needs to be a common international understanding about human rights. No nation should consider itself perfect in the area of human rights, and there should be no double-standards.

Lowenkron1 (L3)[hereafter L refers to Lowenkron]: In a recent speech, she [Secretary of State Condoleezza Rice] noted that democracy by definition cannot be imposed, and that there is no single road to building democracy. However, the Secretary, the President and the American people believe that there are some universal human rights principles.⁵⁸⁰

L4: Indeed, no country is perfect in human rights; in fact, no country is perfect.

(L3) responded to (M3), and (L4) to (M4). (M3) is a constative speech act, asserting the particularity of human rights from the Vietnamese perspective. A/S Lowenkron showed his agreement with this by providing ground for this claim to truth: our Secretary of State also said so. In (L4), however, A/S Lowenkron only accepted the imperfectability of human rights realization as legitimate and valid while deliberately setting aside the Vietnamese claim on double standard. This reminds us Jack Donnelly's observation that American officials often stubbornly refuse to consider that the other may see other things, beside their "purest motives" in American human rights-related actions. This refusal, as explained in chapter One, is rooted in American convictions of their superior and exceptional human rights values. As a result, mutual understanding from these exchanges is that each country can have its own road to democracy and no country is perfect in human rights.

Criminal procedures code

The avoidance of certain topics was also evident at the discussion on criminal procedures code. A/S Lowenkron raised this issue by asking how the changes in courtroom proceedings in the newly amended criminal procedures code were implemented. The Vietnamese response was indirect, it accounted for *other* amendments in the code and only touched upon the new regulations related to courtroom procedures but not on how the new regulations were actually implemented and changed the courtroom procedures. A/S Lowenkron's response is short and contains two speech acts: an expressive one – "we are grateful for the comprehensive

⁵⁸⁰ 2006 HRD, pp. 224-5 of this thesis.

overview of Vietnam's criminal procedures” and a constative one – “areas of concern remain;” “American concerns on this issue remain.”⁵⁸¹ The first could be interpreted as a polite diplomatic appreciation for the Vietnamese presentation while the second shows his frankness: he was not happy with that answer. The candid attitude was not followed up, as the Vietnamese side did not actually talk to the American and thus no mutual understanding on the code was achieved.

The analysis of the exchanges on these two issues elaborates and confirms the main conclusion reached in the previous chapter. That is, the interlocutors avoided unpleasant topics that may put them in a disadvantaged position; in these cases, they are the possibility of double-standards in American human rights policy and the practical changes of courtroom procedures in Vietnam. The American ignorance of the double-standards charge maybe because they did not want to be criticized by the Vietnamese on their human rights policy. As for the Vietnamese, an elaborating on Vietnamese courtroom procedures would be an excellent opportunity for them to challenge the American earlier charge that the trial of Pham Hong Son was not carried out in a transparent manner. Why did the Vietnamese side not take that chance? Perhaps a discursive reasoning on Son’s trial would lead to a rational agreement that the Vietnamese government considers as dangerous. For example, a release of Son and other “political dissidents” will be an encouragement and strengthening for the opposition elements in Vietnam. Or perhaps the Vietnamese did not want to carry out certain changes in the courtroom procedures that they regard as infiltrating capitalist elements. Both of these two kinds of elements, as the Vietnamese fear, would lead to the elimination of socialism in Vietnam.

Decree 31

Raised at the same time with the criminal procedures code is Decree 31. A/S Lowenkron made a claim to truth that the Decree is “broad, ill-defined and opened to abuse,” and “violates the International Covenant on Civil and Political Rights.” He then recommended Vietnam “to repeal the decree and release those imprisoned under it.”⁵⁸² A Vietnamese member Tran Van Thanh responded as follows:

Thanh (T1)[hereafter T refers to Thanh]: Vietnam is currently attempting to transform into a nation based on rule of law. Vietnam needs legal documents to

⁵⁸¹ Ibid, p. 230 of this thesis.

⁵⁸² Ibid., p. 225 of this thesis.

manage society, protect national security and promote human rights. Decree 31 must be understood in that context.

T2: However, no legal document is permanent, and Vietnam will consider amendments to Decree 31 through a survey and review of the decree to ensure that it reflects appropriate international standards.⁵⁸³

Here, Thanh did not challenge A/S Lowenkron's claim to truth on Decree 31 but he promised to amend the Decree in accordance with "appropriate international standards" - an implicit reference to the ICCPR. A/S Lowenkron accepted this promise as valid by stating that "it is good to hear that the GVN is discussing ways to amend the law" though this result is far from the American expectations.⁵⁸⁴ Mutual understanding on this topic is that the two sides agreed that Decree 31 should be subjected to change, but not on why, when, and how it should be changed.

Ethnic minority

Another example of the agreement on overall principle but not on specific details is the issue of ethnic minority. A Vietnamese delegation member started the discussion by elaborating on Vietnamese achievements on ethnic minority issue, both in laws and practice and ended his remark with a request for "support and assistance" from the U.S. Ambassador Marine promptly responded to the request by informing that the U.S. was "considering a package of assistance, and [would] be presenting it for discussion with the GVN soon."⁵⁸⁵ This reply indicates that the Americans acknowledged this request as valid. The mutual understanding here is that the U.S. promised to assist Vietnam on ethnic minority development efforts.

However, how exactly such efforts would look like is another matter. Ambassador Hanford requested the Vietnamese to ensure that there would be no mistreatment to the Central Highland minorities who returned to Vietnam after migrating to Cambodia. Justifying this request are his two opening and closing speech acts: "the USG understands that the issue of ethnic minority relations is sensitive for the GVN, and that Vietnam has more than 50 ethnic groups" and "The U.S. commitment to defend the rights of minority populations is global; for example, the United States has urged Cambodia to respect the rights of Vietnamese minority

⁵⁸³ Ibid, p. 228 of this thesis.

⁵⁸⁴ Ibid., p. 230 of this thesis.

⁵⁸⁵ Ibid, p. 238 of this thesis.

residents.”⁵⁸⁶ In the rest of this item, the two sides discussed the procedures for a number of ethnic minorities to resettle in the U.S.

Except for the discussion on the procedures, the dialogue on this topic was like a conversation among the deaf. Ambassador Hanford set aside the Vietnamese narration on ethnic minority policies and achievements. DG Minh in turn ignored both Ambassador Hanford’s request and its justifications. It is clear that the two sides did not engage in discursive reasoning. It could be argued that the interlocutors only cared about fulfilling their strategic aims: the Americans raised their Central Highland concerns; the Vietnamese showed that they were doing well on ethnic minority. Perhaps these were the only mandates for the diplomats in the dialogue. They did not need to go beyond their assigned tasks, for example to identify and agree on the truths about ethnic minorities in Vietnam. Consequently, what the two sides achieved out of this exchange cannot be counted as mutual understanding in a Habermasian standard: they knew each other’s claims and requests without knowing if the other side acknowledge them as valid.

National security and human rights

Following the discussion on ethnic minority issue is the exchange on the linkage between national security and human rights. After DG Minh invited the Americans to understand this issue from Vietnam’s historical context, a Supreme People’s Procuracy (SPP) representative Xuyen provided a short elaboration on the authority of SPP and the Criminal Code and uttered the following significant three speech acts, in the order of their utterance:

Xuyen (X1)[hereafter X refers to Xuyen]: Vietnam would like assurances that the United States will cooperate with Vietnam to extradite him [Nguyen Huu Chanh who lives in the U.S. and is wanted in Vietnam for terrorist activities] or compel him to return to Vietnam to stand trial if there is sufficient evidence to warrant such an action.

(X2): All of the prisoners of concern identified by the United States in Vietnam have been charged, tried and convicted of offenses under Vietnam's criminal code.

(X3): How the United States could reconcile the Patriot Act, with its provisions limiting civil liberties, with its statements urging other countries to consider human rights over national security.⁵⁸⁷

In turn, A/S Lowenkron promptly engaged with (X2) by claiming that the Vietnamese criminal code “itself is a problem,” “lacks precision,” and contains “provisions such as

⁵⁸⁶ Ibid.

⁵⁸⁷ Ibid, p. 239 of this thesis.

‘National Security Crimes’ that are so vague as to “allow the State to prosecute nearly anyone,” adding that “due process is also a problem.”⁵⁸⁸ In response to (X3), he elaborated on the American way of reconciling the Patriot Act with its own human rights commitments, *not with* the American urging for other countries putting human rights over national security as the Vietnamese charged. He then responded to DG Minh’s invitation unmistakably with a tone of lecturing:

L5: Vietnam must decide for itself what is national security and what is freedom. The more confident and secure a nation is, the more confident it can be to open its system. For decades other countries have fought to determine Vietnam's future, but now only Vietnam determines Vietnam's future. Advances in human rights and openness support Vietnam's economic reform policies and demonstrate both the resilience and independence of a free Vietnam.⁵⁸⁹

Unlike the previous conversation among the deaf, the exchanges here were full of intentional manipulations for perlocutionary effects. In an obvious way, (X3) implied a claim that it is not normatively right when U.S. itself prioritized national security over human rights while indirectly suggesting that other countries were not capable of doing so. Interpreted (X3) in this way, A/S Lowenkron did not directly engage with the question but took this opportunity to lecture the Vietnamese on the necessity and importance of liberties. The American side might not see A/S Lowenkron’s speech here as lecturing; for them, it is self-evident that American value of liberty is *the* value and thus worth spreading in Vietnam. No engagement or even a notice from the Vietnamese side on this speech act.

With regards to (L5), for A/S Lowenkron DG Minh’s “the historical context” meant the decades when “other countries have fought to determine Vietnam’s future.” Whether this is the part of Vietnam’s history that the latter wanted to referred to is unclear and so are the decades that the former referred to. Neither side felt the need to provide clarifications on this ambiguity. The fact that the Vietnamese side did not respond to this A/S Lowenkron’s remark and (L5) could be due to these inherent ambiguity in diplomatic talks. Or that could be attributed to the structure of diplomatic dialogue: the Vietnamese had used up their time slot for this agenda item. Or that the Vietnamese interlocutors decided to break up the conversation possibly because of the lecturing tone in (L5). In either way, no mutual understanding was achieved out of these strategic interactions.

The only mutual understanding on this topic was on Chanh’s case when Ambassador Marine responded directly to (X2) that the Americans “are willing to work with Vietnam to develop

⁵⁸⁸ Ibid.

⁵⁸⁹ Ibid, p. 240 of this thesis.

an appropriate response considering the evidence. We are considering appropriate next steps on this issue, and will be in touch soon.”⁵⁹⁰ With this promise, Ambassador Marine accepted (X2) as legitimate. Thus, on this topic the Vietnamese secured American commitments to work on the case of Nguyen Huu Chanh whereas the issue of freedom raised by the American side was not taken up by the Vietnamese. In what follows is the analysis of their exchanges on concrete freedoms, namely press, internet, and religious freedoms.

Press, internet, and religious freedom

Right after A/S Lowenkron’s lecturing speech is the discussion on press and internet freedom. A/S Lowenkron started this item with his assessments of Vietnam’s Press Law, his views of internet control, and a number of specific requests related to internet freedom. Nguyen Tri Dung replied by reading a speech prepared before-hand that elaborated on Vietnamese internet freedom policies and achievements. It was not until the end of his presentation that Dung addressed one of American requests on internet restrictions by claiming that the existing internet regulations were “just circulars which can easily be changed or amended” and that “it takes time to perfect the system.” A/S Lowenkron responded that what mattered was not the growing number of media outlets but what these outlets are about and made a specific request related to Radio Free Asia.⁵⁹¹ This response was ignored by the Vietnamese side.

The discussion on religious freedom was also informative but not at the level of discursive reasoning. After expressing the her government’s hope to be delisted from CPC, Nguyen Thi Bach Tuyet described a number of Vietnamese efforts and achievements in religious freedom. In concluding her speech, she sought information about the burning down of ten Protestant churches in the U.S. Ambassador Hanford responded first with his justifications for American concerns on religious freedom in Vietnam: religious freedom is a “fundamental right” and “of high interest and concern to the international community.” He then mentioned a number of Vietnamese achievements on religious freedom and expressed American appreciations by such expressions as “we [the U.S.] recognize and welcome the efforts the GVN has made,” “a real commitment to change,” and “eliminating a divisive issue between

⁵⁹⁰ Ibid., p. 240 of this thesis.

⁵⁹¹ Ibid, p. 242 of this thesis.

the United States and Vietnam.” Ambassador Hanford concluded his remark with a promise to work with the Vietnamese “in the coming months to resolve the CPC issues.”⁵⁹²

A number of observations can be made on these exchanges. First, Ambassador Hanford’s accounts for Vietnam’s achievements on religious freedom indicate that the U.S. accept the Vietnamese constative claims for progress on this issue. A mutual understanding was thus registered: Vietnam had made considerable progress on religious freedom. Based on this, Ambassador Hanford set the time frame for resolving the CPC issue (the coming months) and the condition for this (Vietnam should continue to work with the U.S on the issue). The implicit message here is that Vietnamese progress on religious freedom was still not sufficient for Vietnam’s delisting.⁵⁹³ Second, no such mutual understanding could be observed in the discussion on press and internet freedom, as both sides did not attempt to engage in discursive reasoning. And third, as the Vietnamese were busy at describing their achievements and the Americans at elaborating on their requests, their fundamental differences on the definition of freedom and its constraints, and the function of press were not even mentioned and thus remained intact.⁵⁹⁴ The mutual understanding reached here is thus similar to that on the ethnic minority issue: both sides agreed on religious freedom progress in Vietnam but were divided on the definition and constraint of that very freedom.

Prison conditions

Like their exchange on national security and human rights, the discussion on this issue was also full of strategic actions. A/S Lowenkron expressed American concerns about prison *conditions* and urged Vietnam to “consider full access to prisons and prisoners of concern by members of the international community.” In reply, a Vietnamese interlocutor talked about prison *policies* of Vietnam and its humanitarian practice of offering amnesties before requesting “clarification of and elaboration on” prison conditions in the U.S., Guantanamo Bay and CIA secret prisons worldwide which in his view “are reportedly worse than hell.” In response, A/S Lowenkron quickly admitted that the U.S. prison conditions were problematic, and elaborated on the American solution to it, which in his words, “American people expect

⁵⁹² Ibid, p. 233 of this thesis.

⁵⁹³ This became clear in the meeting between the U.S. delegation and Vice Minister Le Van Bang right after the morning session. Ambassador Hanford revealed that he had told the former that “Vietnam had not yet made enough progress to merit delisting ...[and]... as further progress occurs, we [the U.S.] will hopefully be able to remove Vietnam's CPC designation.” See the American report cable on this meeting at <http://wikileaks.org/cable/2006/02/06HANOI393.html>, accessed 22 July 2013.

⁵⁹⁴ For the incommensurability of the American and Vietnamese view on these issues, see Chapter Two.

nothing less.” He also tactfully added that the International Committee of Red Cross was given “full and unimpeded access to the remaining prisoners” in Guantanamo Bay.⁵⁹⁵

These are strategic exchanges. The Vietnamese initial response to American concerns on this topic is both indirect and challenging. On one hand, it evaded American concerns for actual prison conditions in Vietnam. On the other hand, it conveyed an implicit message that the U.S. itself is far from impervious to criticism. This demonstrated that the Vietnamese interlocutors rejected American concerns and requests at least at the claim to normative rightness: “you are not in a position to criticize us on prison conditions.” A/S Lowenkron also acted strategically. He accepted the validity claims to truth of the Vietnamese constative speech acts on American prison conditions but might doubt the claims to truthfulness – why the Vietnamese were concerned about American prison conditions. Were the Vietnamese, he might ask, really concerned about these problems or trying to embarrass the American delegation? A/S Lowenkron indeed used his acceptance of American problem as a foundation to convey what he intended to do: the U.S. allowed international access to its prisons and had the perfect way to solve problems.

Doubts and tactical moves emerged again in their concluding remarks on this item:

M5: EU Ambassadors and the Swiss Ambassador have been able to visit prisons. While the GVN had arranged for A/S Lowenkron to visit a prison in Ho Chi Minh City, the delegation decided against it.

L6: it is important for Vietnam to allow the UN [United Nations] access to prisons.⁵⁹⁶

(M5) is a constative speech act with direct claim to truth but its implication is obvious. It was an indirect challenge to American intention in their request for prison visiting. The speech act raised doubt about the truthfulness of the American concern. This time it was the Vietnamese side to question American sincerity. If the Americans were really concerned about prison conditions in Vietnam, why would they decline to visit a Vietnamese prison? Was the U.S. real purposes in this request to not visit *any* prison, but to visit and show supports for “political dissidents” in Vietnam? A/S Lowenkron took no attempts to explain and clear this doubt in order to save the communication; he simply repeated an earlier American demand. In short, in this exchange communicative actions were not established as the claims to truthfulness were quickly rejected whereas there were not enough trust on both sides to act

⁵⁹⁵ 2006 HRD, pp. 226-30 of this thesis.

⁵⁹⁶ Ibid, p. 231 of this thesis.

communicatively. Consequently, both sides were engaging in strategic actions and no mutual understanding was achieved on this agenda.

It should be noted that the Americans once tried to establish communicative actions. *For the first and only time in this dialogue*, the American side touched upon the Vietnamese subjective feelings in justifying for their requests, apart from the benefits for Vietnam's development and international status. Below are the two speech acts that Ambassador Hanford made before and after making his requests on ethnic minority issue:

Ambassador Hanford1 [hereafter H refers to Ambassador Hanford]: The USG understands that the issue of ethnic minority relations is sensitive for the GVN, and that Vietnam has more than 50 ethnic groups.

H2: The U.S. commitment to defend the rights of minority populations is global; for example, the United States has urged Cambodia to respect the rights of Vietnamese minority residents.⁵⁹⁷

Here, Ambassador Hanford demonstrated his knowledge about the lifeworlds of the Vietnamese interlocutors: the objective world (Vietnam has 50 ethnic groups) and the subjective world (ethnic minority is sensitive for Vietnam, and is the real American target is the political regime, not ethnic issue, in Vietnam?) As the Vietnamese side did not mention the sensitivity it attached to ethnic minority issue, this could be interpreted as the American responses to some of Vietnamese contentions earlier. In explaining Vietnam's approach to human rights early in the dialogue, DG Minh mentioned territorial integrity as one of the values that Vietnam cherished, apart from sovereignty and non-interference in its internal affairs. Putting these two speech acts in the dialogue context, Ambassador Hanford tried to save or establish communicative action. He aimed at clearing any perlocutionary effects of his requests, such as the Vietnamese doubts that the U.S. is supporting secessions in Central Highland and focused only on Vietnam in order to promote regime change.

This effort seemed to be effective, but not for long. DG Minh responded to (H2) by showing the Vietnamese willingness to allow and facilitate certain Montagnards who wanted to move to the U.S. He then asked for another American understanding on Vietnam's human rights records by inviting the Americans to evaluate the records from Vietnam's "particular historical context." However, the Americans rejected this invitation, as they did on the other two Vietnamese similar invitations.⁵⁹⁸

⁵⁹⁷ Ibid, p. 238 of this thesis.

⁵⁹⁸ For the analysis on this, see the previous chapter.

Against the scarcity of efforts to establish trust and communicative interactions was a greater number of times when pressures had been used. The American side raised the same deadline four times for human rights improvements in Vietnam during the dialogue. At his opening remark, A/S Lowenkron linked human rights progress with President Bush's visit.⁵⁹⁹ This tentative visit was mentioned again in the discussion on criminal code, prisons and prisoners of concern. A/S Lowenkron stated,

L7: By frankly raising our concerns in these areas, we will be able to see progress before the President's visit in November.⁶⁰⁰

(L7) is an expressive speech act, revealing the American delegation's hope for progress before President Bush's visit to Hanoi later that year. It has direct claim to truthfulness (the Americans sincerely hoped so), indirect claims to truth (President Bush was scheduled to visit Vietnam) and rightness (it was appropriate for the U.S. to hope so). However, like the first time, DG Minh and other Vietnamese speakers ignored this speech act, making it difficult to decide at that moment whether all the claims to validity of this speech act were implicitly accepted or which one was rejected by the Vietnamese.

Only later on, when Ambassador Hanford raised this deadline for the third time, did the Vietnamese react to it and this ambiguity was cleared. In response to the former's claim that continued progress in religious freedom would "provide a more solid basis for a successful visit by President Bush," DG Minh denied that "any external pressure" was the source of GVN's human rights efforts, arguing that it came from the sincere wish of his government.⁶⁰¹ In this way, DG Minh considered Ambassador Hanford's deadline as a threat and rejected it. The American side insisted on this deadline by raising it for the fourth time. In this final time, the threat was totally exposed. In the middle of his remark on press freedom, A/S Lowenkron stated,

L8: The November 2006 APEC meetings as an opportunity for Vietnam to either highlight its openness and development, or be subject to criticism from frustrated journalists who find themselves unable to access blocked Internet sites.⁶⁰²

As observed earlier, both sides did not attempt to engage in discursive reasoning in this exchange over press freedom. The vulnerability contained in this utterance of A/S Lowenkron confirmed this observation. His claim on "frustrated journalists" at APEC

⁵⁹⁹ In his words, "The United States and Vietnam need to do everything in their power to ensure that the HRD bolsters their positive relations, the A/S continued, particularly because of President George W. Bush's plans to visit Hanoi in November 2006 for the APEC Leaders Meeting."

⁶⁰⁰ 2006 HRD, p. 225 of this thesis.

⁶⁰¹ Ibid, p. 236 of this thesis.

⁶⁰² Ibid, p. 240 of this thesis.

meetings could be rejected on the claims to truth and truthfulness: whether the journalists would be angry and A/S Lowenkron could not speak for them. The Vietnamese side also made several speech acts which could be easily attacked by the Americans. The latter, however, did not openly challenge but reported with doubts in their report on the dialogue.⁶⁰³ The use of strategic actions in the form of threats thus eliminated any trust leftover in this 2006 HRD.

Summing up, the analysis above brings about the following main results:

- (1) HRD should be conducted in a candid and transparent way with all concerned issues to be discussed and HRD should have positive influence on the overall relationship;
- (2) Each country can have its own road to democracy and no nation is perfect in human rights issue;
- (3) The Vietnamese government promised to change Decree 31 to meet international standards,
- (4) There had been considerable progress in religious freedom in Vietnam since Ambassador Hanford's 2005 visit, and the government of Vietnam promised to continue to improve religious freedom.
- (5) The U.S. promised to assist Vietnam on its ethnic minority development efforts and to work with Vietnam on the case of Nguyen Huu Chanh on the basis of evidence.

The first result, a mutual understanding on the principle of their HRD was not borne out of this dialogue as the principle of "a candid and transparent" human rights dialogue had been agreed upon long before that.⁶⁰⁴ In other words, (1) was reaffirmations of what both the leaders of the two countries had agreed upon. Whereas (2) seems to be an undeniable truth that does not require reference to American and Vietnamese human rights perceptions and understandings. Apart from these, the rest of these mutual understandings are either promises or commitments. The Americans committed to assist the development of Vietnamese ethnic minority and to work with Vietnam on Chanh's case; the Vietnamese promised to amend

⁶⁰³ When Dung said "Vietnam is second in the world in the percentage of the population using the internet and telecommunication devices," the report notes "not likely." Or when Dung claimed "the Ministry of Culture receives tens of thousands of letters from concerned parents regarding the harm the internet causes their children" the phrases "tens of thousands" was in double quotation marks. Ibid, p. 241 of this thesis.

⁶⁰⁴ See the beginning of the preceding chapter.

Decree 31 and continue to improve religious freedom. It should be noted that, as analyzed above, each side held different justifications for those commitments.

Moreover, the analysis above sheds more light into and supplements the previously concluded reasons for failing to meet Habermas's preconditions. Besides the exclusiveness nature of this diplomatic dialogue, two other possible diplomatic obstacles prove to be real: the ambiguity in diplomatic speeches and the diplomats' focus on fulfilling their assigned tasks for promoting their national interests. As the analysis of specific speech acts on the topic "national security and human rights" has shown, ambiguity in diplomacy contributed to the break up of further communication on that topic and accordingly the lack of mutual understanding. Whereas the American and Vietnamese listings of their respective requests and records on Vietnamese ethnic minority spared no time left for discursive reasoning on the justifications and reasons for their demands and achievements. As the possible failure of recognizing the other as *equally* rational, the lecturing tone in the American account on liberties suggest that the American interlocutors were more likely the candidates in this case. Apart from this inequality, it should also be noted that it was the U.S. side who set the deadlines and raised threats in this dialogue.

And finally, the lack of a performative attitude (as initially found in examining Habermas's overall conditions) or the presence of evasive and ignorant attitude (as concluded via a Gadamerian analysis of the dialogue) is both demonstrated and initially explained at this stage. The overwhelming of strategic actions over communicative interactions reflected such attitudes. It could also be argued the other way round, that negative attitudes have led to the temptations to use strategic actions. As the hearers chose to turn their backs to any new 'truths' raised by the speakers, the latter had no choice but to abandon communicative action and act strategically. The hearers in turn stick to their negative attitudes and also acted strategically. This created a vicious cycle of distrusts and manipulations. The question is why the Vietnamese and American interlocutors adopted such attitudes and strategic actions in the first place? How did this cycle emerge? Also what remains unclear at this stage are the dynamics of the Vietnamese concerns for territorial integrity as well as their suspicions over American true intentions identified in the above analysis. These questions are answered in the following chapter; before that are discussion on the Habermas's indications for genuine understanding and the criticism against his model.

III. Indications of communicatively reached agreement

For Habermas, a genuine agreement has three detectable indications. First, the outcome of communicative interactions is more stable than that of strategic ones. As strategic actors reach agreement on the calculations of interests, such agreement is subject to change once dialogue participants change their interests. Habermas explains that “coordination of the subjects’ actions depends on the extent to which their egocentric utility calculation mesh. The degree of cooperation and the stability is determined by the interest positions of the participants.”⁶⁰⁵ Whereas the outcome of communicative interactions has a rational basis, “has to be accepted or presupposed as valid by the participants,” and “rests on common convictions.”⁶⁰⁶ Accordingly, a communicative outcome is free from any changes of their interests. “What we hold to be true,” Habermas contends, “has to be defensible on the basis of good reasons, not merely in a different context but in all possible contexts, that is, at any time and against anybody.”⁶⁰⁷ Thus, a more stable and context-free agreement could serve as an indication of a genuine dialogue.

However, this does not mean that the outcome of a genuine dialogue remains unchanged. On one hand, validity claims go beyond the context in which they are raised. On the other hand, those claims rest on the force of better arguments or the best reasons. Participants may find out in their subsequent encounters that there may be better reasons to modify or even change their shared understanding. Jennifer Mitzen captures this situation well:

On the one hand, it [communicative action] can generate stable consensus: a possible response to a validity claim creates an agreement on a fact and “obligations relevant to future interaction.” But validity claims also always point beyond a particular context. Because ideally, communicative agreements are supported by the “best” reasons, any achieved agreement must remain open to “better” reasons in the future. Through social learning and change, over time some reasons can become obsolete.⁶⁰⁸

Thus, neither the outcomes of communicative nor strategic actions stay unchanged but for different reasons. However, it is safe to say that a genuine dialogue brings about a more stable result: agreements drawn from communicative actions are unlikely to be challenged by possible changes in the participants’ interests or the situations.

⁶⁰⁵ Habermas, *Moral consciousness and Communicative Action*, pp. 133-4.

⁶⁰⁶ Habermas, *TCA*, Vol. 1, p. 287. Italics as original.

⁶⁰⁷ Habermas, *On the pragmatics of communicative action*, p. 367.

⁶⁰⁸ Jennifer Mitzen, “Reading Habermas in Anarchy: Multilateral Diplomacy and Global Public Spheres,” *American Political Science Review*, Vol. 99, No. 3 August 2005, p. 403.

A second indication is that participants coordinate and carry out their respective follow-up actions on the basis of their communicatively achieved agreements. Habermas argues that communicative actors must, among other things, “tie their agreement to the intersubjective recognition of criticizable validity claims,” and be “ready to take on the obligations resulting from consensus and relevant for further interaction.”⁶⁰⁹ In other words, they do not stop at the point of reaching agreements, they must move on to coordinate their actions based on these agreements. An examiner of a dialogue must thus observe if the promises and compromises made in the dialogue have been actually realized, and if subsequent actions of dialogue participants are in conformity with the reached agreements.

A third indication could be found in the changes of the participants’ lifeworlds. In communicative actions, participants draw their rational arguments from their own lifeworlds and stay ready to be convinced by the others’ better arguments. Thus, their own lifeworlds are also subject to be changed or rationalized. And it is likely that in reaching agreement, they can also share certain common lifeworlds (either they have certain common lifeworlds in advance or they work for a shared lifeworlds or both). In any cases, the lifeworlds of the interlocutors are no longer the same but have been transformed. Participants come out of a genuine dialogue with changes in their convictions, interests, and even identities.

In sum, a genuine dialogue can be confirmed by the relatively stable and interests-free outcome, the realizations of coordinated actions based on their agreements, and the changes of the interlocutors’ convictions and ideas. The last indication, as concluded in the answers for the thesis questions from a Gadamerian perspective and also evident in this chapter, was not present. There were no changes in the convictions and positions of the 2006 HRD interlocutors. Moreover, as the interlocutors disagreed on the claims to rightness, the indications of this 2006 HRD *mutual understanding* are of the first two types and can be found in events after the dialogue.

The outcomes of this dialogue seem to satisfy these two conditions. From this round of dialogue to the next round in April 2007, neither side stated any contradiction to the mutual understandings listed above.⁶¹⁰ Indeed, both sides fulfilled their commitments and promises though to different extents, as proved in the following selective events.

⁶⁰⁹ Habermas, *Between Facts and Norms*, p. 4.

⁶¹⁰ The 12th round of HRD was on 24 April, 2007 in Washington D.C. Interestingly, the two delegation heads were still the same. A/S Lowenkron and Pham Binh Minh who was then promoted to assistant to foreign minister, this can be found on http://www.vietnamconsulate-shihanoukville.org/vi/vnemb.vn/tin_hddn/ns070427102410, accessed 3 April 2014.

In December 2006, the National Assembly passed a resolution supporting a GVN's proposal to abolish Decree 31. According to the resolution, from January 1, 2007, authorities would no longer use administrative detention and instead rely on the judicial process "to mete out punishment for actions identified in law as crimes."⁶¹¹ Then Minister of Justice Uong Chu Luu was quoted as saying that "the denial of the rights of the suspected through an administrative decision [in the Decree] was legally problematic ...[and] ... In the context of Vietnam's judicial reform and in accordance with international norms, such denial should be made through judicial proceedings to protect citizens' rights."⁶¹² The Vietnamese thus acted in accordance with their previously reached agreement with the U.S. on the Decree.

On Chanh's case, though the U.S. has not extradited him to Vietnam to stand trial, the U.S. has shown indications of cooperation on the issue. About three months after the dialogue, Ambassador Marine informed Vice Minister of Public Security Nguyen Van Huong in a meeting that "there have been meaningful and beneficial exchanges of information regarding the case of Nguyen Huu Chanh."⁶¹³ And when FBI Director Robert Mueller visited Vietnam in January 2008, Huong thanked him for information "concerning investigations regarding Nguyen Huu Chanh and his associates."⁶¹⁴ Based on these evidences, it can be assumed that the Americans had kept their promises on this issue. And on the American pledge to assist Vietnam in development for ethnic minority, American Congress had provided two million USD to help improving economic conditions for ethnic minorities in the Central Highlands.⁶¹⁵

IV. Criticism of Habermas's TCA and the answers to the research questions from a Habermasian perspective

1. Criticism against Habermas's TCA

⁶¹¹ Vietnam Moves to Abolish Decree 31, Wikileaks cable, this can be found at <http://wikileaks.org/cable/2006/12/06HANOI3018.html>, accessed 23 July 2013.

⁶¹² "NA members want detested two-year detention law scrapped," this can be found on <http://www.intellasia.net/na-members-want-detested-two-year-detention-law-scrapped-30332>, accessed 3 April 2014.

⁶¹³ Ambassador Meets MPS Vice Minister, this can be found on <http://wikileaks.org/cable/2006/05/06HANOI1115.html>, accessed 4 April 4, 2014.

⁶¹⁴ FBI Director Meets With Vice Minister Of Ministry Of Public Security, this can be found on <http://wikileaks.org/cable/2008/02/08HANOI169.html>, accessed 4 April 4, 2014.

⁶¹⁵ This was informed by Ambassador Marine to a leader from the Ministry of Public Security in May 2006. This can be found on <http://wikileaks.org/cable/2006/05/06HANOI1115.html>, accessed 4 April 2014.

Not surprisingly, Habermas's TCA has been under an array of criticism. This subsection focuses only on the critics *related to* the conditions for, and indications of, a genuine dialogue and suggests that those critics are surmountable.

The first criticism is about the sufficiency of these conditions. McCarthy questions the sufficiency of symmetry in terms of time and opportunities for all participants that are necessary for rational discourse, as other "empirical conditions ... referring to the intelligence, competence, psychological normality, etc. of the participants" may also be required.⁶¹⁶ Held, meanwhile, argues that the conditions for ideal speech situation do not include such categories as "the nature (content) of cultural traditions" and "the distribution of material resources."⁶¹⁷ In response, Habermas argues that on one hand the sensitivity to these sources of deviation "is built into the theory at the formal level;" on the other hand, he views the results of such deviations are essentially "unproblematic" as participants can realize the equality principle has been breached.⁶¹⁸ As Habermas explains, "should one party make use of privileged access to weapons, wealth or standing, in order to wring agreement from another party through the prospect of sanctions or rewards, no one involved will be in doubt that the presuppositions of argumentation are no longer satisfied."⁶¹⁹ In other words, if an interlocutor resorts to her advantages over the other interlocutors to win their agreement, she will be viewed by others as engaging in strategic action and the agreement as not genuine. Inequality is tolerable in communicative action if it is not used by the advantaged interlocutors. In this way, communicative actions can still occur in dialogue among unequal partners.

Habermas's defense against this first criticism provides further analysis for the 2006 HRD. The two sides of that dialogue presented two unequal partners, the U.S. and Vietnam, in terms of the level of development and power, among others. Indeed, in order to extract Vietnamese acquiescence to the U.S. demands, the American interlocutors made use of their advantages. They offered the Vietnamese both the sanctions (the prospects of "frustrated journalists" at the upcoming APEC meeting and the limited result of President Bush's visit) and the rewards (Vietnam's higher international status and further economic development). A similar threat from the Vietnamese about the visit of their leaders to the U.S. cannot be

⁶¹⁶ Thomas A. McCarthy, "A Theory of Communicative Competence," p. 150.

⁶¹⁷ Held, D. *Introduction to Critical Theory*, Berkeley, California: University of California Press, p. 396, cited in Alan Gross, *op. cit.*, p. 196.

⁶¹⁸ *Ibid.*, p. 196.

⁶¹⁹ Habermas, "A reply to my critics" in J.B. Thompson and D. Held (eds.), *Habermas: the critical debates*, Cambridge, Mass., MIT Press, 1982, pp. 272-3.

compared to this American threat on President Bush's visit, even practically unthinkable. Likewise, it is unlikely that Vietnam, a country still struggling with its development, would map out the development path for the U.S., a developed country and even the number-one economy in the world.

A second objection that appears more difficult to tackle relates to the differences between strategic and communicative actions. For Jeffrey Alexander, the distinction between strategic and communicative actions is not clear because communication and understanding are also required in strategic actions. Alexander gives an example of a successful deceit, where both the perpetrator and his/her victim need particular understandings: the former needs an "intricate understanding of the meaning of his victim's actions," and the latter's "understanding of his interlocutor's actions in an 'objectively preferable' way."⁶²⁰ In his view, this is because Habermas misinterpreted Austin's ideas on strategic and communicative acts, for whom strategic or perlocutionary acts include understanding so that it is also true for communicative or illocutionary acts to include strategizing.⁶²¹ Illocutionary understanding, Alexander concludes, "can never occur without the calculation of effects and the purposive direction of action toward that end."⁶²² To a lesser extent, Jon Elster raises the difficulties in differentiating the two actions as people often justify a proposal for their own narrow interests "by means of arguments that have a general and impartial character" so as to gain support from wide groups.⁶²³

In response to these criticisms, Habermas concedes that his distinction between communicative and strategic actions is analytical, and strategic interactions "also demand discerning achievements in understanding and interpretation." And he revised his position on the differences between strategic and communicative actions. Apart from objectivating and performative attitudes, these two interactions can be distinguished by examining whether the interlocutors reveal or disguise their true motivations in the dialogue. Habermas posits that while strategic actors intentionally conceal their real goals, communicative actors must

⁶²⁰ Jeffrey Alexander, "Habermas and Critical Theory: Beyond the Marxian Dilemma?" in Honneth, Axel and Joas, Hans (eds.), *Communicative action: essays on Jürgen Habermas's "Theory of Communicative Action,"* Oxford, Polity Press, 1991, p. 64.

⁶²¹ Ibid., p. 67.

⁶²² Ibid., p. 68.

⁶²³ Jon Elster, "Arguing and Bargaining in the Federal Convention and the Assemblée Constituante," in R. Malnes and A. Underal (eds.): *Rationality and Institutions, Oslo: Universitetsforlaget,* cited in Erik Oddvar Eriksen and Jarle Weigård, *op. cit.*, p. 38.

declare their aims at the beginning of the dialogue.⁶²⁴ Habermas gives an example that a person *Y* borrows some money from a person *H* without telling *H* the truth about the reason for this borrowing. If *H* knew in advance that *Y*'s real purpose was to use the money to prepare for a burglary, *H* would have refused to lend *Y* the money; in this situation, *Y* had acted strategically.⁶²⁵ This Habermas's revision has a consequence on our model for a genuine dialogue: an additional condition for reaching agreements is that the interlocutors openly declare the goals that they expect from their dialogue. As it has become clear after the analysis of the 2006 HRD from both Gadamer's and Habermas's perspectives, the interlocutors declared their expected goals openly at the beginning of the dialogue and judged the outcome of their meeting on those goals.

A last strand of criticism is about the practicality of Habermas's conditions. "It is apparent that the conditions of actual speech," McCarthy remarks, "are rarely, if ever, those of the ideal speech situation. Indeed the space-time limitations, the psychological limitations, and the like, of actual discourse seem to exclude a perfect realization of these conditions."⁶²⁶ Likewise, Michel Foucault argues that besides power relationships external to the discourse which might influence actors' arguments, "power as social structure resides in the discourse itself" as it "prescribe[s] which arguments can be legitimately used by the participants," which renders an ideal speech situation impossible.⁶²⁷ In his defense, Habermas contends that "linguistic reconstruction ... calls for empirical inquiries with actual speakers."⁶²⁸ Under this view, the ideal speech situation should be viewed, in Alan Gross's words, not as "generalization from experience" but as "a rational reconstruction of the criteria that make a certain kind of experience possible."⁶²⁹ Though the conditions in this ideal speech situation may have never been fully realized, a testing of these conditions in a particular dialogue would bring insights into explaining the successes or failures of that dialogue. Specifically,

⁶²⁴ Habermas argues that "in general, the strategic use of illocutionary acts functions under conditions of latently strategic action: the speaker must not 'concede' the existence of perlocutionary effects – the side effects of a consensus seemingly achieved communicatively which s/he may trigger off in the hearer in the form of obligations relevant to the further sequence of interaction... [and] I term those effects strategically intended which come about only if they are not declared or if they are caused by deceptive speech acts that merely pretend to be valid. Perlocutionary effects of this type reveal that a use of language oriented toward reaching understanding is deployed for strategic interactions." Habermas, "A reply," in Alex Honneth and Hans Joas (eds.), *Communicative action: essays on Jurgen Habermas's "Theory of Communicative Action,"* Polity Press, Oxford, 1991, pp. 239-240.

⁶²⁵ Habermas, J. and Maeve Cooke (eds.), *op. cit.*, p. 223.

⁶²⁶ McCarthy, "A theory of communicative competence," p. 146.

⁶²⁷ In Thomas Risse, *op. cit.*, pp. 16-7.

⁶²⁸ Alan Gross, *op. cit.*, p. 197, cited in McCarthy, "Rationality and relativism: Habermas' 'overcoming of hermeneutics'," in J.B. Thompson and D. Held (eds.), *op. cit.*, p. 61.

⁶²⁹ *Ibid.*, p. 196.

and this has been mentioned in the Introduction and demonstrated in this chapter, the satisfactions or failures to meet these conditions reveal the obstacles to American and Vietnamese mutual understanding on human rights.

2. The answers to the research questions from a Habermasian perspective

Can diplomatic dialogues narrow the differences on human rights understanding between Vietnam and the U.S.?

The analysis of the 2006 HRD from Habermas's perspective points to a similar conclusion from a Gadamerian perspective, that is no substantial differences on the Vietnamese and American understanding of human rights were bridged. The interlocutors failed to discuss their justifications for their respective human rights positions, leading to the scarcity of intersubjective rationality in the dialogue. However, analyzing the dialogue from a Habermasian lens brings about concrete outcomes in the forms of promises and commitments. Though they held different reasons for these common understandings and commitments, these promises were indeed communicatively achieved in, and had been kept fulfilled after, the dialogue. A concise Habermasian answer to this question is that although the 2006 HRD failed to narrow the American and Vietnamese human rights perceptions, it still brought about a number of true commitments and mutual understandings on concrete issues.

What are the obstacles for the American and Vietnamese diplomats to their mutual understanding on human rights?

The main reason for the failure to narrow the human rights understanding gap, as measured from a Habermasian perspective, is that participants resorted to strategic actions. The reasons for this and also are the obstacles to mutual understandings are: first, the dialogue lacked the participations of involved parties whose names were mentioned, their activities discussed, and their interests expressed. Second, the focus of the 2006 HRD participants to fulfill their tasks rather than discussing their human rights differences and the ambiguity in their utterances are to be blamed for the limited outcome. Third, there were a certain level of inequalities as the Americans seemed to consider their human rights understanding *more* rational and took their relative advantages to the Vietnamese to their argumentations in the dialogue. And finally, the lack of the interlocutors' performative attitude is both the reason

and the cause of their strategic actions. Underlying all these reasons, as the analysis suggests, were the lack of trust and the impacts of asymmetries in terms of power and development level.

Conclusion

This Chapter has drawn from Habermas's TCA a number of conditions for, and indications of, mutual understanding. A testing of these criteria in the 2006 HRD leads us to a similar outcome result as that extracted using a Gadamerian perspective: there were no substantial agreement or mutual understanding on human rights approaches between the U.S. and Vietnam. However, there were a number of promises and commitments which were communicatively achieved in the dialogue, which had been evidenced in subsequent events. The main obstacle to their mutual understanding on human rights, from an Habermasian perspective, was the overwhelming use of strategic actions in the dialogue. The extensive use of strategic actions sheds light into the diplomatic constraints: reconfirming the diplomats' resistance to changes as an obstacle to mutual understanding. It also verifies that the exclusive nature of diplomatic meeting, the ambiguity in diplomats' speeches, and their ultimate goal of serving their national interests obstruct mutual understanding. And finally, this analysis of the 2006 HRD using an Habermasian perspective suggests the presence and impacts of the fear factor (as concluded in the preceding chapter) and the asymmetries of power and development level (which the Gadamer model fails to identify). The next chapter elaborates on these obstacles.

Chapter Five

Discussion and Conclusion

By now, the three possible obstacles raised in the introduction are revealing themselves clearly. The profound differences in American and Vietnamese human rights perceptions constitute a real obstacle but they are not the main one. As for the second possible obstacle, the diplomatic framework, the diplomatic features listed in the introduction have been tested and discussed throughout Chapters Three and Four. The impact of diplomatic features on mutual understanding will be summarized and discussed further here. And the third obstacle namely power imbalance, is discussed in details here, as also fear and ethnocentrism.

This conclusion has three parts. It first argues that diplomacy is not all to be blamed for the limited outcome of the 2006 HRD. Second, the chapter shows that the three factors of power imbalance, fear and suspicions, and ethnocentrism that have appeared along this thesis constitute the underlying and main obstacles to mutual understanding on human rights between the U.S. and Vietnam. The chapter discusses in details the impacts of, and the mutual effects of these obstacles before turning to the conclusion and the theoretical and practical contributions of this thesis.

I. Diplomacy; an obstacle to mutual understanding on human rights?

Does diplomacy stand in the path of a genuine dialogue? The analyses of the 2006 HRD from both Gadamer's and Habermas's perspectives have shed light into determining which diplomatic features obstruct or facilitate mutual understanding. The diplomats' ultimate purpose of serving their national interests, the ambiguity in their speeches, the restrictions on changing their views or opinions, and the exclusive nature of their meetings are all creating obstacles to mutual understanding. With national interests being their ultimate goals, the 2006 HRD participants resorted to strategic actions, such as threats or pressure to extract certain commitments or promises from the other side. At the same time, the lack of confirmation or rejection of the other side's claims broke up the flow of communication, preventing any possible discursive reasoning or the emergence of new meanings on the topic discussed. Furthermore, the absence of a number of involved parties in that dialogue rendered any

claims referred to them be challenged while the sanction against changing the interlocutors' positions prevented any possible change to occur. In light of these diplomatic constraints, it is understandable why the interlocutors failed to satisfy a number of the Gadamerian and Habermasian conditions for genuine understanding.

However, not all diplomatic features are detrimental to genuine understanding on human rights. The issue of principles and ideologies was still discussed in the 2006 HRD, and was even reserved a separate agenda item. Besides, mutual respect, courtesy, and equality are conducive to agreement: the first two prevent the interlocutors from out-arguing the other, the last one assures a certain level of equalities (in terms of opportunity to assume the speaker role, of time slots in the dialogue, and of setting the agenda).

Overall, diplomacy *appears* to bear ultimate responsibility for the lack of mutual understanding on human rights, as claimed by a number of scholars.⁶³⁰ The analyses of the 2006 HRD in the two preceding chapters also demonstrate how strategic actions and reserved, evasive and disengaging attitudes obstruct mutual understanding between the two sides. However, two questions remain. Was it *only* because the 2006 HRD participants were supposed to have those attitudes and strategic actions in their quality of diplomats? And as raised in Chapter Four, why did the cycle of these attitudes and strategic actions emerge? While the diplomatic constraints to mutual understanding are clear and second track diplomacy and public spheres are more compatible with Habermas's ideal speech situation, it does not necessarily mean that diplomacy is *mainly* to be blamed for the lack of mutual understanding. The decisive culprit for the limited outcome of the 2006 U.S. - Vietnam human rights dialogues are the three factors mentioned earlier: fears and suspicions, the conviction in the superiority of one's own values or ethnocentrism, and power and development level imbalances. The next section discusses these in turn and argues that they are the underlying obstacles to U.S- Vietnam mutual understanding on human rights.

II. Three underlying obstacles to mutual understanding

1. Fears and Suspicions

Fears and suspicions seemed to reside in the Vietnamese interlocutors' thinking while the Americans held suspicions over their true motivations. In the 2006 HRD, the American delegation acknowledged some of Vietnamese fears when Ambassador Hanford stated that

⁶³⁰ See Introduction of this thesis, pp. 40-1.

the U.S. respected the territorial integrity of Vietnam and understood the sensitivity that it attached to ethnic minority issue. This acknowledgment, as discussed in the preceding chapter, was not sufficient for the Americans to convince the Vietnamese of their good intentions. This is because the sources of such fears and suspicions extend to the war legacies and political system differences. Accordingly, it requires more than just claims of good intentions to eliminate the fears and suspicions that are latent on both sides.

There is neither space nor intent to provide a full account of the war legacies.⁶³¹ What should be stressed is their ongoing different ways to explain and justify the war. For the Americans, it was a war to fend off communism in Asia and liberate the Vietnamese people. For the Vietnamese, it was first and foremost a war against foreign aggression and for the reunification of the country. Twenty five years after the war ended and fifteen years after the normalization of the bilateral relations, this difference re-emerged at the first American president visit to Vietnam in 2000. After a welcoming remark, General Secretary Le Kha Phieu challenged President Clinton on how to understand the war and the past in these terms:

About the past, I agree with you that we do not forget the past, and cannot remake it. The important thing is to understand it correctly. More specifically to understand correctly the war against aggression that we had to undertake. What was the origin of our war against aggression? The root of it was when imperialism raised wars to colonize other countries. As Vietnam did not invade the U.S., why the U.S. brought its troops here to invade Vietnam? The result of our war against aggression is that we had gained national independence, reunified the Motherland and brought the nation into socialism. Thus, for us the past was not a historical chapter of darkness, sorrow and unhappiness.⁶³²

In his memoir *My Life*, President Clinton recalled the encounter that “[t]he party leader, Le Kha Phieu, tried to use my opposition to the Vietnam War to condemn what the United States had done as an imperialist act. I was angry about it” and “told the leader in no uncertain terms that while I had disagreed with our [the U.S.] Vietnam policy, those who had pursued it were not imperialists or colonialists, but good people who believed they were fighting

⁶³¹ The war legacy is one of the issues listed in the Joint Statement by the American President Barack Obama and Vietnamese President Truong Tan Sang on 25 July, 2013, this can be found on <http://www.whitehouse.gov/the-press-office/2013/07/25/joint-statement-president-barack-obama-united-states-america-and-preside>, accessed 19 August 2014. Among the legacies is MIA (Americans missing in action) and efforts to recover the remains of American soldiers began before, and is one of the contributing factor to, the normalization of the bilateral relations in 1995. As for the agent orange issue, the Vietnamese victims of agent orange chemical used by the U.S. during the Vietnam war have been pursuing lawsuit against the U.S. government and the chemical companies for compensation. See for example, http://www.huffingtonpost.com/marjorie-cohn/the-struggle-continues-se_b_3736761.html, accessed 5 August 2014. What is not mentioned in the Joint Statement but of no less importance to the U.S. is the long lasting mental effect on American soldiers serving in Vietnam, see for example, <http://www.news.harvard.edu/gazette/2006/08.24/99-ptsd.html>, accessed 13 April 2014.

⁶³² *Nhan Dan* [The People], 19 November, 2000. My translation.

communism.” Clinton also recalled his response to another Vietnamese statesman who praised him for his opposition to the war in a more friendly atmosphere, “I said that the Americans who disagreed with me and supported the war were good people who wanted freedom for the Vietnamese.”⁶³³ It is clear from these exchanges that the two leaders understood the notion of freedom differently. For the head of the CPV and nominally of Vietnam, freedom means first and foremost national freedom from foreign aggression and domination. For Clinton, it was the freedom for every Vietnamese from communism.⁶³⁴

The Vietnam war was indeed mentioned in the 2006 HRD. A/S Lowenkron’s claim is quoted again here: “for decades other countries have fought to determine Vietnam's future, but now only Vietnam determines Vietnam's future. Advances in human rights and openness support Vietnam's economic reform policies and demonstrate both the resilience and independence of a free Vietnam.” For A/S Lowenkron, the U.S. is one of those “other countries” who fought to determine a future for Vietnam; such future, which the U.S. envisioned before and during the war and still does now, is a “free Vietnam.” Accordingly, it can be speculated that for many Americans the war is ongoing and in a new battle field: human rights. The victor of this war is the party that could succeed in convincing the other of the rightness of their arguments. The words of Thomas L. Friedman captures this well, “we can still hope - as partially happened in Vietnam - that our values will triumph where our power failed.”⁶³⁵ Thus, many Americans may hope that the U.S. might have lost the war but will win the peace in Vietnam; supposedly when Vietnam finally sees the light and embraces (American) liberties.

As mentioned in Chapter One, in early 1994 the CPV officially considered “peaceful evolution” one of the four main risks to the regime. In Chapter Four, we have observed the Vietnamese fear of infiltrating capitalist elements into its court room procedures, their concerns for Vietnam’s territorial integrity and the non-interference in its internal affairs while discussing ethnic minority issue, and their doubts about American true intention in the latter’s request to visit prisons in Vietnam. The Vietnamese communists may interpret American requests on changing courtroom procedures and visiting Vietnamese prisons as attempts to support “political dissidents” when they are on trial or imprisoned. Likewise,

⁶³³ Clinton, Bill, *My Life*, Hutchinson Press, London, 2004, p. 390.

⁶³⁴ The American and Vietnamese different perceptions of freedom has been analyzed in Chapter Two of this thesis.

⁶³⁵ Thomas L. Friedman, the author of the famous *The World is Flat* sated so in his comparison between the democratic developments in Iraq and what is happening in Vietnam. Thomas L. Friedman, “Iraq’s Best Hope,” *New York Times*, this can be found on http://www.nytimes.com/2014/06/04/opinion/friedman-iraqs-best-hope.html?_r=0, accessed 18 June 2014.

American concerns for the Montagnards who demanded an independent state were perceived by the Vietnamese as causing instability and even risking secession in Vietnam's Central Highland. Therefore, many Vietnamese are convinced that American engagements with Vietnam are to serve an ultimate goal: to topple the communist regime and turn Vietnam into a capitalist country. This is the common view of many Vietnamese interviewees.⁶³⁶ As observed by a Vietnamese diplomat whom I interviewed, the U.S. would never change its goal in Vietnam, "the Americans were just patient and accept incremental changes, they knew that they could not change Vietnam overnight as they had done in Eastern Europe."⁶³⁷ With such concerns in mind, the Vietnamese communists did not believe that American interests and advices were benign and free of ultimate intents unpalatable to Vietnam. Accordingly, perhaps the Vietnamese communists too hold that the war between a capitalist U.S. and a socialist Vietnam is not yet over; they must be on constant guard against possible danger from the former, a past invader and a current class enemy.

Moreover, the differences in political regimes associated, ideological filters prevent each side from understanding the other correctly. While the Americans have known the separations of power for over two centuries, the Vietnamese are only familiar with the centralization and monopoly of power. A Vietnamese interviewee observed that with regards to human rights, those in the State Department are more practical whereas Congress members often have a more aggressive and hard-line tone, which for him was just a division of roles of a good cop/bad cop.⁶³⁸ Another difference stemming from regime differences is the role of press. As discussed in Chapters One and Two, for the Americans, press is an independent tool siding with the people against a necessary evil state; whereas the CPV's official view is that press is a tool of the state to orient public opinion towards supporting state policies and party

⁶³⁶ Given the sensitivity of the human rights issue and the secrecy of bilateral human rights dialogues, the officials, scholars, and practitioners of both sides whom I interviewed consented to be interviewed on the condition that their names and the names of their organisations should not be disclosed.

⁶³⁷ Other examples are the charge in an article in *Quân Đội Nhân Dân* (People's Army) Newspaper against the 2005 Country Report on Human Rights that the report "represented the prejudiced views of a minority of people unable to overcome the past and intent on hindering the stabilization process of U.S.-Vietnam relations." This can be found on a U.S. Embassy cable about Vietnam's reactions to the 2005 report, at <http://wikileaks.org/cable/2006/03/06HANOI736.html>, accessed 22 July 2013. And only few months after the 2006 HRD, Vietnamese Foreign Minister Nguyen Dzy Nien officially stated that "[peaceful evolution] is not a speculation [suy diễn] but a factual phenomena that Vietnam acknowledges." This can be found on <http://dantri.com.vn/xa-hoi/dien-bien-hoa-binh-la-thuc-te-ma-viet-nam-nhin-nhan-112899.htm>, accessed 5 August 2013

⁶³⁸ As discussed in Chapter Two, strong accusations of human rights violations by other countries often come from the American Congress whereas subsequent U.S. administrations since the 1970s opted for a more pragmatic approaches to these violations. Vietnam is not an exception on this. At the time of this writing, a Vietnam Human Rights Act of 2013 has passed the House of Representative and gone to the Senate for consideration. For the content of this Act, see <https://www.govtrack.us/congress/bills/113/hr1897/text>, accessed 5 August 2014.

guidelines. To differentiate their particular understanding about press freedom, the Vietnamese communists attach the adjective “revolutionary” to the word “press.”⁶³⁹ Therefore, the Americans view the Vietnamese government’s attempts to suppress any voice openly challenging the official [communist] lines as nothing but serious violations of press freedom so as to cling to power. In this case, it is the Americans who are unable to accept what Vietnam considers legitimate human rights-related measures.

The following example is insightful. In 2002, then American Ambassador Raymond Burghardt commented on Vietnamese understanding of human rights as follows,

GVN officials remain officially wedded to the *propaganda* that the CPV has been the savior of the Vietnamese people from the centuries of what they see as tyranny by outside forces, including the U.S. As such, they view the CPV (and, through it, the GVN itself) as the creator of (not even restorer) of those rights now enjoyed by the people of Vietnam, primarily that of national independence but also of the larger societal “rights” of stability, economic development, and equality.

[T]he Vietnamese insistence ... on the enshrined priority of national solidarity, as well as the frequent references to threats to internal stability, may reflect an unacknowledged anxiety that longer term trends for Vietnam do indeed not favor *the continued monopoly*.⁶⁴⁰

In this, Ambassador Burghardt viewed Vietnamese human rights arguments as nothing but propaganda of a party who was trying to retain monopoly of power over the country against an unavoidable trend toward political pluralism. This was the reason for his earlier claim that “there should be no illusions ... [of] any meetings of the minds between the two delegations on the nature of human rights and the extent of problems in Vietnam.”⁶⁴¹

In sum, suspicions originating from the war legacies and different political systems result in the insufficient basic trust and goodwill necessary for a genuine dialogue. As discussed in Chapter Three, according to Habermas trust is needed for interlocutors to engage in and save communicative actions (raising questions for clarifications or justifications should the hearer harbor doubts on a validity claim of the speaker). In Chapter Four, we have seen the lack of willingness to engage in unpleasant topics, in fear of giving the other side an upper hand. These fears and suspicions thus are explanatory for the attitudes of ignorance and disengagements which, as concluded in Chapter Three, prevent both sides from reaching a genuine mutual understanding.

⁶³⁹ For example, the 21st of June is the Vietnam’s Revolutionary Press Day, celebrating the first issuance of the Youth Magazine established by Ho Chi Minh on 21 June, 1925 in China.

⁶⁴⁰ Wikileaks cable, “Vietnam and human rights,” This can be found on http://www.wikileaks.org/plusd/cables/02HANOI2612_a.html, accessed 24 March 2014. Italics added.

⁶⁴¹ Ibid.

2. Ethnocentrism

Ethnocentrism can be understood as the habit of seeing things from the view of one's own group and judging other culture by the standards of one's own culture.⁶⁴² It can create a strong sense of group solidarity and superiority, but also can lead to "overt political conflict, war, terrorism, even *genocide*."⁶⁴³ In its benevolent form, ethnocentrism means that one group or one culture thinks that its way of life is superior to that of any other group; even in such form, however, it leads to "narrow minded conclusions about the worth of diverse cultures" and "discourages intercultural or intergroup understanding."⁶⁴⁴ Why do we still need to engage in intercultural understanding, an advocate of ethnocentrism may argue, if what is ours equates what is "true," when our own way of reasoning is "the only good one,"⁶⁴⁵ and when the specific values of our own society are unwarrantedly established as universal values.⁶⁴⁶ Thus, for the ethnocentric advocate, if there is a cultural dialogue, the purpose of such dialogue is to persuade the other interlocutors to believe in, or accept her *universal* values.

Tzvetan Todorov explains the ethnocentrist's claim to universality as follows:

The ethnocentrist is thus a kind of caricature of the universalist. The latter, *in his aspiration to universality*, starts with a particular phenomenon that he then undertakes to generalize, and this particular phenomenon is of necessity a familiar one: that is, in practice it must be found in his own culture.⁶⁴⁷

Thus, for the ethnocentric universalist it has become *natural and unquestionable* that 'his' values are superior and universal, and that others should adopt these very same values. With sincere wishes for the betterment of the others, a naïve ethnocentrist could not comprehend that he is in fact imposing his values onto others.

Todorov gives an indication of an ethnocentric judgment which is worth quoting at length here:

Francisco de Vitoria, a theologian, jurist, and professor at the University of Salamanca, in justifying the Spanish wars against the Indians [the formers' conquest of America], considers "that an intervention is permissible if it is made in

⁶⁴² Margaret L. Andersen and Howard Francis Taylor, *Sociology: understanding a diverse society*, 4th edition, Thompson Learning In.: USA, 2006, p. 67.

⁶⁴³ *Ibid.*, italics as original.

⁶⁴⁴ *Ibid.*

⁶⁴⁵ Tzvetan Todorov, *On Human Diversity: Nationalism, Racism, and Exoticism in French Thought*, translated by Catherine Porter, Harvard University Press, Cambridge, Massachusetts, London, England, 1993, p. 6.

⁶⁴⁶ *Ibid.*, p. 1.

⁶⁴⁷ *Ibid.*, pp.1-2. Italics added.

the name of the innocent against the tyranny of native speakers or laws, a tyranny that consists "for instance of sacrificing innocent men or even putting to death innocent men in order to eat them." Such justification of war is much less obvious than Vitoria would suggest, and in any case does not derive from reciprocity: even if this rule were to applied alike to Indians and the Spaniards, it is the latter who had decided on the meaning of the word *tyranny*, and this is the essential thing. The Spaniards, unlike the Indians, are not only subject to the decision but also its judge, since it is they who select the criteria according to which the judgment will be delivered: they decide, for instance, that human sacrifice is the consequence of tyranny, but massacre is not. Such a distribution of roles implies that there is no real equality between Spaniards and Indians.⁶⁴⁸

Essentially, Todorov points to the unequal interactions between the Spaniards and the Indians. The former judged the latter by standards and even terms unknown to the latter, i.e. the word "tyranny" and its contents were determined by the Spaniards and alien to the Indians. The failure to view the other as both different *and* equal, Todorov claims, leads to misunderstandings between the Spaniards and the Indians and the tragic elimination of the latter.⁶⁴⁹

Parallel patterns of inequality can be detected between the Americans and the Vietnamese in the issue of human rights. As argued in Chapter One, not until the early 1990s did the Vietnamese scholars embark upon making sense of the phrase human right and its contents.⁶⁵⁰ One may argue that by 2006 the Vietnamese were no longer ignorant of the concept of human rights; after all, Vietnam by then had acceded to the ICCPR. Thus, unlike the Indians who might be alien to the concept of "tyranny," the Vietnamese interlocutors knew and had developed their own account of human rights.

This does not mean, however, that a measure of ethnocentric prejudices is no longer latent between the Americans and the Vietnamese on human rights related concepts. That both the U.S. and Vietnam are members of the ICCPR does not guarantee that they understand such terms as political rights or freedom of expression in the same way. As argued in Chapters One and Two and also evidenced in the encounter between Lê Khả Phiêu and Bill Clinton, such a basic concept as freedom has been interpreted differently by the two sides. Besides,

⁶⁴⁸ Todorov, Tzvetan, *The Conquest of America, the Question of the Other*, trans. from French by Richard Howard, Norman: University of Oklahoma Press, 1999, pp. 149-50.

⁶⁴⁹ See *ibid.*

⁶⁵⁰ The concept of human rights was popularized to the Vietnamese people much later. Only in recent years has the word "human rights" been no longer a taboo or publicly mentioned without being associated with such phrase as "peaceful evolution" or the like. In 2013, Vice Minister of Justice stated in a Vietnamese online newspaper that, "in the past talking about human rights was considered sensitive, now the state has considered human rights as a universal value of mankind ... that the Vietnamese people are eligible to enjoy." This can be found on <http://vietnamnet.vn/vn/chinh-tri/106613/quyen-con-nguoi-khong-con-la-chuyen-nhay-cam.html>, accessed 10 April 2014.

while the Americans took part in the drafting of ICCPR, the Vietnamese did not have any voice in that process.⁶⁵¹ Moreover, in the 2006 HRD, the Americans appraised Vietnam's actions by *not only* ICCPR standards but also American laws.

In regards to the CPC issue and internet freedom, the Vietnamese presented their achievements on religious freedom hoping for their country to be removed from the CPC list. A standard was set in the International Religious Freedom Act enacted by the American Congress in 1998, which defines what constitutes violations of religious freedom, and to what extent violations would lead to including a violator in the list. Referring to Todorov's words that "the criteria according to which the judgment will be delivered," it can be said that the term "violations of religious freedom" were all decided by the Americans.⁶⁵² As for internet freedom, it was again the American side who set the limitations for this freedom in Vietnam. A/S Lowenkron told the Vietnamese side that the internet should be controlled only on those concerning "crime, terrorism, violence and sabotage of computer networks." Thus, the 2006 HRD or most of it was conducted in American terms and language.⁶⁵³

Other indications of ethnocentrism are the American universalization of their own values and the perceived superiority of its problem-solving mechanisms. What A/S Lowenkron claimed as universal includes the rights for "full political participation," and to have "a robust civil society," and a "transparent and accountable" government. These are unmistakably American human rights, political and civil liberties that an individual is deemed to possess to safeguard herself against a possible evil state. And when he was challenged with the proposition that the U.S. itself violates these same rights, A/S Lowenkron presented his country's long

⁶⁵¹ ICCPR was drafted and came into force on 23 March 1976. The Socialist Republic of Vietnam was officially admitted to the United Nations in replacing the Republic of Vietnam of the Saigon regime one year later, on 20 July 1977 by Resolution 413 of that year, this resolution can be found in <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/296/96/IMG/NR029696.pdf?OpenElement>, accessed on 13 July 2014.

⁶⁵² For example, the Act defines "violations of religious freedom" as "including violations such as—(A) arbitrary prohibitions on, restrictions of, or punishment for (i) assembling for peaceful religious activities such as worship, preaching, and prayer, including arbitrary registration requirements; (ii) speaking freely about one's religious beliefs; (iii) changing one's religious beliefs and affiliation; (iv) possession and distribution of religious literature, including Bibles; or (v) raising one's children in the religious teachings and practices of one's choice;..." And one of the criteria for being enlisted in CPC list is that "systematic, ongoing, egregious violations of religious freedom." International Religious Freedom Act, this can be found on <http://www.state.gov/documents/organization/2297.pdf>, accessed 11 April 2014.

⁶⁵³ This inequality can also be viewed within the framework of the struggle for development orientation between the East and the West. Ziauddin Sardar, a scholar of critical development theory, observes that, "[t]he real power of the West is not located in its economic muscle and technological might. Rather, it resides in its power to define. The West defines what is, for example, freedom; ... community; reason... what is real and what it means to be human. The non-Western civilization have simply to accept these definitions or be defined out of existence." Ziauddin Sardar, "Development and the Locations of Eurocentrism," in Munck, Ronaldo & O'Hearn, Denis (eds.), *Critical Development Theory: contributions to a new paradigm*, London, New York, Zed Books Ltd, 1999, p. 44.

established mechanisms for problem-solving and his own convictions on the superiority of these mechanisms. In his own words,

[On the incidents at Abu Ghraib] This kind of incident was not unique in American history, but when it has happened in the past, we have counted on a free press, a fully independent court system, including the Supreme Court, and a fiercely independent and active U.S. Congress. *The American people expect nothing less....;*

[On the rendition of Ramsey Youssef] this is a procedure that *nations* need to defend themselves against attack; and

[On the reconciliation between human rights and security in the Patriot Act] the United States has faced many similar crises in past wars, and has met them by debating necessary national security decisions openly and transparently. This ... is the best guarantee against abuse by the state.⁶⁵⁴

In his first statement, we can observe that it was an American solution, the U.S. Congress and the American people were mentioned. In the last two statements, however, American solutions were described in general term, “nations” and “the state” not the U.S. In other words, these solutions were no longer for American people only but they could be applicable to all. Combined with the traditionally established concept of Manifest Destiny, it has become self-evident for the Americans to try to dictate what Vietnam should and should not do, from general advices to specific requests.⁶⁵⁵ For example, A/S Lowenkron claimed that the improvement of human rights conditions in Vietnam would help to strengthen its renewal policy, “increase its international stature and have a positive role beyond its borders,” while Ambassador Hanford suggested that Vietnam should consistently accelerate its recognitions of new congregations and churches. These advices, for the two Americans, are not contrary to their Secretary of State Condoleezza Rice’s claim that the U.S. did not attempt to impose its understanding of democracy onto others.⁶⁵⁶

The Vietnamese interlocutors, on one hand, rejected American claims to universality. It was not without implication that the Vietnamese side claimed that “no nation should consider itself perfect in the area of human rights” and raised a number of notorious human rights violations in the U.S. On the other hand, the Vietnamese interlocutors might interpret American requests, particularly the concrete ones, as interferences into their internal affairs or worse, attempts to subvert their communist regime. It thus can be speculated here that the

⁶⁵⁴ 2006 HRD, p. 230, p. 231, and p. 239 of this thesis.

⁶⁵⁵ For a discussion on Manifest Destiny, see Chapter Two. For additional reasons why the U.S. feel it has the *right* to dictate Vietnam’s actions, see the observations at the end of this section.

⁶⁵⁶ At the beginning of the 2006 HRD, A/S Lowenkron repeated Secretary of State Rice’s claim that “democracy by definition cannot be imposed, and there is no single road to building democracy.” 2006 HRD, p. 225 of this thesis.

Vietnamese reserved and disengaging attitudes are linked to what they consider acts of ethnocentric imposition. As remarked by a Vietnamese researcher, “HRD might be equal, but the human rights issue is not.”⁶⁵⁷

So how exactly does ethnocentrism stand in the way of mutual understanding? From the analysis above, each side was unable to acknowledge what the other side consider as facts. The Americans failed to acknowledge that they were imposing *their* values onto the Vietnamese and that this could be one of the reasons why the latter could not but reject their advice. Under the impression of being dictated and lectured, the Vietnamese opted for the attitudes of ignorance and disengagement, the factor leading to trivial mutual understanding from Gadamer’s perspective. By ignoring entirely the experiences shared by the Americans, however, the Vietnamese might miss any valuable input and critique emerging from American perceptions of human rights and their problem-solving mechanisms.

To sum up at this stage, fears and suspicions, and ethnocentrism are impediments to American and Vietnamese mutual understanding on human rights. In Gadamerian terms, it is the interlocutors’ prejudices or more specifically, negative prejudgments that form a barrier to understanding. And these prejudices are supported and even substantiated by certain historical legacies, including but not exclusively the Vietnam war and the myths of American religious freedom and Manifest Destiny. Gadamer would argue that such historical legacies have certain effects in our understanding; as he claims, “a proper hermeneutics would have to demonstrate the affectivity of history within understanding itself,”⁶⁵⁸ and this effective history

determines in advance both what seems to us worth enquiring about and what will appear as an object of investigation, and we more or less forget half of what is really there – in fact, we miss the whole truth of the phenomenon when we take its immediate appearance as the whole truth...[and] in all understanding, whether we are expressly aware of it or not, the power of this effective history is at work.⁶⁵⁹

Applying this concept of effective history into the U.S. – Vietnam human rights encounter, it can be observed that for the Americans, what is worth enquiring about are political and religious freedoms and the objects of their investigation are Vietnamese laws and practices related to these rights and the “political dissidents.” Consequently, the Vietnamese records on social and economic rights and their concern for the collective rights of national

⁶⁵⁷ The interviewee explained that the HRD was equal because it was the dialogue between two sovereign nations both of which agree with the principle of equality in international relations.

⁶⁵⁸ Gadamer, *Truth and Method*, *op. cit.*, p. 267.

⁶⁵⁹ *Ibid.*, pp. 267-8.

independence and self-determination drop beneath the U.S. radar or are even considered not rights per se. Likewise, the Vietnamese prejudice of “peaceful evolution” determines in advance how they should interpret American human rights-related advices: the suspected U.S. true intentions behind such advices and any possible capitalist elements that may infiltrate their political regime and society. This is another way to explain why the Vietnamese maybe unable to perceive any valuable input and critique emerging from American human rights-related statements and problem-solving mechanisms. In this way, the effects of history are so powerful that both sides miss the whole picture of human rights understanding in general and human rights conditions in Vietnam in particular.

3. The impacts of power imbalance, and difference in development levels

A dialogue between unequals is always problematic, as power-holders may set agendas, dominate the stage and have an unfair say on the outcome. Fortunately, as discussed at the beginning of the previous section, the diplomatic principles of equality and mutual respect can mitigate these negative effects. However, these principles could not help prevent other impacts of power asymmetry which influenced the Vietnamese and the Americans in different ways.

The Vietnamese took the U.S. material strength into their appreciation of American values. A common phrase quoted by Vietnamese interviewees in their explanations for American human rights values is “*mạnh vì gạo, bạo vì tiền*” (stronger by rice, daring by money). In other words, American (human rights) values are spreading worldwide not because those values are superior, but because of the U.S. position as unrivaled superpower and of its projection of human rights as an important foreign policy interest. In this way, the Vietnamese may not appreciate American human rights understanding *on its own merits*.

Power imbalance affects the Americans too. It provides them with the discretion to opt for strategic actions. As demonstrated in the preceding chapter, it was the Americans who set a deadline for Vietnam human rights improvements, and raised threats and made a number of demands and requests to the Vietnamese. At issue is that even when the Americans aim at interacting communicatively with the Vietnamese, their upper hand position allows and tempts them easily to slide to using strategic actions. With a self-perceived upper hand in the bilateral relation at their discretion, the Americans may combine both persuasions and threats

to reach their goals in dialogues with the Vietnamese. Ambassador Hanford described his experiences in dealing with the Vietnamese on the CPC in the following terms:

We spent an enormous amount of time forming trusting relationships, so Vietnamese officials would believe we were dealing in good faith, that we were not discussing religious freedom issues to rub their nose in it, but that we were pursuing the interests of the United States. Because no other government raises the religious freedom issue as we do, we had to explain our position, *as well as the threat of CPC designation*.... I spent time explaining why the U.S. cares about religious freedom, how it goes back to our heritage, how we were founded by people fleeing religious persecution. Also we had this International Religious Freedom Act which places particular requirements upon every Administration, *whether they like it or not*.⁶⁶⁰

Here, on one hand, Ambassador Hanford acted communicatively when he spent time building trust with the Vietnamese hearers by explaining to them the importance the U.S. attaches to religious freedom. On the other hand, he disregarded his hearers' feelings about the imposition of American standards onto the Vietnamese and had no difficulty in threatening them on CPC designation. These strategic actions, as concluded in the analysis from Habermas's perspective, are detrimental to reaching agreements.

The difference in development level also influences the interlocutors. It may not lead to a conviction that Vietnam should take an identical route to development as the U.S., however, the fact that Vietnam is a developing country while the U.S. is a developed one dictates which side has to change. Changes in human rights perceptions and situations in Vietnam are presumed as inevitable and necessary by both American and Vietnamese interviewees. If both sides are imperfect on human rights, then Vietnam is farther than the U.S. on the issue. What the 2006 HRD participants disagreed on was what pace, direction and how the human rights related changes should happen, such as whether and when Decree 31 should be amended or abolished.⁶⁶¹ Nevertheless, the fact that after all Vietnam is now also embracing a measure of market economy (and also the concept of human rights) makes the Americans

⁶⁶⁰ An interview by Dr. Maryann Cusimano Love with Ambassador Hanford on 10 March, 2010, this can be found on <http://www.uscirf.gov/sites/default/files/resources/stories/pdf/maryann%20love%20vietnam%20case%20study.pdf>, accessed 15 April 2014. Italics added.

⁶⁶¹ For the U.S., there is an essential association between development and human rights progress. This is obvious in the 2006 HRD. Other evidence is the statement by the nominee to be U.S. Ambassador to Vietnam, Ted Osius, before the Senate Committee on Foreign Relations. He pledges that he "will say that when Vietnam's government respects human rights it will grow stronger, not weaker, and our partnership's potential will grow as well." This can be found on http://www.foreign.senate.gov/imo/media/doc/Osius_Testimony.pdf, accessed 19 June 2014. For the literature on development in North-South relations, some scholars from critical development theory argue that the developed North has dominated the developing South in shaping economic, political, and even cultural developments of the latter. See for example, Ronaldo Munck & Denis O'Hearn (eds.), *op. cit.* especially Chapters 1 and 3.

more convinced of their Manifest Destiny, of succeeding in having Vietnam embrace what they see as their own version of human rights.

Expecting the Vietnamese to adopt American standards on religious freedom in the 2006 HRD is a good example for this. Another example is Ambassador Hanford's sharing of experiences in dealing with the Vietnamese: "countries [like Vietnam] are less insulted if you tell them, give them notice, ... and *plot a specific roadmap for improvements.*"⁶⁶² As the power holder for a nation that has gone through a long tradition of liberty and market economy, it has become natural and appropriate for Ambassador Hanford to "map out the road" for Vietnam's development. The Vietnamese are thus not considered on an equal footing and are subject to benevolent assimilation efforts.

Three observations follow: first, the asymmetries of power and development level reinforce the other two obstacles. The gap of development justifies American ethnocentric thinking and determines which side is supposed to change and whose values are deemed superior. At the same time, power imbalance consolidates Vietnamese fears and suspicions. Whereas as the power-holders, the Americans have at their discretion the option of using such strategic actions as pressures and threats on the Vietnamese, either in combination with communicative action or in direct use, should they deem it necessary. These pressures and threats only cornered the Vietnamese into adopting reserved and disengaging attitudes and consolidating the fear of 'peaceful evolution'. And as the U.S. is much more powerful than the Vietnamese, fears seem to reside in the Vietnamese side only. We may hypothesize a converted situation: if the Vietnam and the U.S. exchanged their power positions, the fears of communism in the 1950s would return to the American interlocutors in the 2006 HRD.

Second, the manifestations of American ethnocentric prejudices further feed Vietnamese fears: the American attempts, even in a naïve way, of making the Vietnamese enjoy the same liberties are interpreted as plots to eliminate the latter's socialist regime as the final victory for an unfinished Vietnam war. Third, and consequently, these factors limit the interlocutors' appreciation on any possible valid rationality and truth in the others' arguments and human rights understanding. They also blind the overwhelmingly powerful side from realizing that it is indeed imposing its version of human rights and development on Vietnam. In this sense,

⁶⁶² Ibid. Italics added.

the interlocutors allowed these factors to distort their perceptions and understanding of the other.⁶⁶³

To sum up, this section has argued that fears and suspicions, ethnocentrism, and the asymmetries of power and development level have infused the 2006 HRD in particular and the Vietnamese and American understanding of human rights issue in general. They are the underlying reasons for the evasive, reserved and disengaging attitudes and the use of strategic actions and the vicious circle that they generated in the dialogue. Combined together, the three underlying obstacles create a mine field of misunderstandings and distortions upon which both Vietnamese and American interlocutors might easily step. The remainder of this section answers the last research sub-question: could these obstacles be overcome within a diplomatic framework, if so, how?

4. Beyond diplomacy

With the insights acquired so far, the thesis now reassesses the role of diplomatic framework on genuine understanding. The diplomatic principles of equality, mutual respect, and sovereignty which are conducive to mutual understanding help to reduce the negative impacts of power asymmetries. The power-holder cannot alone set dialogue agenda, dominate the forum, and assume the role of the speaker. Any interference into the internal affairs of a state requires justification. Besides, the conventional function of problem-solving in secret diplomacy creates opportunities for substantial mutual understanding in human rights-related matters. This is not to deny the necessity and desirability of presenting the parties' human rights respective versions. However, an intensive discussion on their differences, i.e. which right is more important freedom of expression or the right to shelter, might never conclude or end up with consolidating the convictions that the parties' respective human rights understandings are incommensurable. It could be easier for both American and Vietnamese

⁶⁶³ It should be noted, however, the differences in culture and negotiation styles could constitute other blockages to mutual understanding. Exploring this path requires, among other things, an extensive examination of American and Vietnamese culture and sociological surveys. The author accepts this as a limitation of the thesis. A survey of this kind by Kathryn J. Ready and Van Dinh in 2006 of Vietnamese and American students found out that in collectivist cultures such as Vietnam, negotiation is relationship-oriented, while in highly individualistic U.S. culture, it is result oriented. Kathryn J. Ready and Van Dinh, "Vietnam's Developing Markets: How Do Perceptions And Strategies In the Negotiation Process Differ From The U.S.?", *Journal of Diversity Management*, 2006, this can be found on <http://journals.cluteonline.com/index.php/JDM/article/view/5029>, accessed 15 April 2014. This could definitely have some repercussions on both sides: the Vietnamese may view the Americans as pressing them for specific compromises, whereas the latter may view that talk is cheap and the Vietnamese are not serious about the dialogue.

diplomats to reach an agreement on specific human rights related issues, such as whether Decree 31 should be kept or abolished. Through such discussion, they would have to expose and apply their own ethnocentric prejudices and their fears and suspicions in their argumentations on the Decree. According to Gadamer, application also means understanding; thus such application may lead to agreement on what could be counted as rational *on this particular issue*. This is one way for both sides to build on their intersubjective rationality on human rights against the profound differences of their human rights understandings.

The diplomatic features of exclusiveness and strategic actions, however, feeds the fears and suspicions that are standing in the way of mutual understanding. With strategic actions tolerated and even necessary in diplomatic dialogues, diplomats of the stronger side might be more prone to, and skillful at, using such tactics as pressures and threats to achieve their assigned goals, than in conversation held outside diplomacy. This practice will be responded by the weaker side with the attitudes of ignorance and disengagement, thus putting the circle of ignorant attitudes and strategic actions in motion and consequently, a lack of communicative interactions. Besides, faced with a tension between time constraints and their priority of fulfilling their assigned tasks, diplomats on both sides may use strategic actions to reach specific outcomes rather than spending time persuading their counterparts that it is the right thing for the other side to follow their recommendations. As a result, diplomats are not free to fully reflect upon their prejudices, which is an important Gadamerian condition for, or even an increased possibility of, mutual understanding.

In sum, within a diplomatic framework there are both favorable conditions for, and impediments to, a genuine dialogue. While equality, mutual respect and sovereignty ensures equality in chances to speak and selecting agenda items, the exclusion, time constraints and tolerance for strategic actions make it more difficult for interlocutors to pursue communicative actions and resist strategic actions. With this understanding, exchanges beyond first-track diplomacy do not automatically yield better outcomes than official secret diplomatic meetings. On the contrary, while certain obstructions might be removed (such as in academic exchanges), due attention must be paid to the requirements of equality and mutual respect. And whether the dialogue is within or beyond diplomatic framework, the distortions caused by ethnocentrism, power imbalances, different development level and political regimes will likely emerge as these are not the properties of diplomacy.

Conclusion

Human rights remain controversial in international politics. This issue had been strongly contested between the developed North and the developing South in the 1960s and the 1970s, between the socialist and the capitalist camps during the Cold War, and between the proponents and opponents of the “Asian values” in the 1990s. A review of these debates point to the incompatibility of human rights understanding and the balance of power as possible influencing factors to the U.S. – Vietnam human rights dialogue. Besides, the diplomatic framework can be both supporting and detrimental to mutual understanding in dialogue. A review of scholars’ attempts to narrow the human rights differences while overcoming the charge of ethnocentrism and imposing values onto others suggests the use of Gadamer’s PH and Habermas’s TCA as the thesis’s theoretical frameworks.

Chapters One and Two address the first possible obstacle: the incompatibilities of the U.S. - Vietnam human rights understandings. The analyses and comparisons of the two understandings reveal overwhelming differences. While the Americans view the state as a necessary evil, the Vietnamese conceptualise it as a benevolent service provider, of care and order. For the Americans, strict regulations must be imposed upon the state as a guard from abuse of power and infringement of individual rights. For the Vietnamese, strict regulations are placed upon individuals against the abuse of their freedoms to undermine the social order and the ultimate national goal of socialism. Accordingly, the concept of dictatorship that bears only negative meaning in American view is considered by the Vietnamese communists as necessary. Besides, while the Americans view the press as a tool of the people to watch against the state, the Vietnamese communists regard the press as a tool of the state to advance collective interests. Other matters that the U.S. rejects or is unfamiliar with include the following Vietnamese views: the contingencies of realising human rights on development level, the subordination of individual rights to collective interests, and the unities between individual rights and national independence and between rights and responsibilities. These incompatible and even incommensurable views attest that human rights differences pose a real and important obstacle to the two parties.

The analyses of a real encounter on human rights between the Vietnamese and American diplomats as examined from Gadamer’s and Habermas’s perspectives in the Chapters Three

and Four revealed additional obstacles to their mutual understanding. For Gadamer the dialogue only yields a trivial outcome as no substantial common horizon on human rights was established. Habermas would agree with this, adding that a number of promises and commitments made during the dialogue can still be counted as mutual understanding. Gadamer would blame this limited result on the disengaged and reserved attitudes of the participants, whereas from a Habermasian lens, the dialogue was not inclusive and the interlocutors were acting strategically. In a way, one can argue that there is a connection between strategic actions and negative attitudes, each nurtures and leads to the other. As these are considered the properties of diplomacy, diplomacy can be blamed for the lack of substantial agreement on human rights dialogue. However, the thesis turns against this conventional thinking in its last chapter.

By questioning the reasons why interlocutors adopted strategic actions and those attitudes in the first place, the thesis argues that the underlying obstacles to mutual understanding go beyond diplomacy and the irreconcilability of their human rights positions. Ethnocentrism, fear and distrust due to their past legacies and opposing political regimes, and asymmetries of power and development level explain the diplomatic limitations. The last two have distorted both the Americans and the Vietnamese understanding of the other side's positions justifications.

The Americans failed to understand that there may exist certain truths in Vietnamese justifications, besides mere propaganda and excuses for CPV to cling to monopoly of power. The Vietnamese turned a blind eye to the appealing truths in American arguments as they only viewed them as the language of a much stronger who would never abandon the aim of destroying the Vietnamese revolutionary cause. Ethnocentrism further blinded the Americans to the fact that they were imposing their standards and values onto the Vietnamese. In this way, the Americans failed to understand themselves. These three impediments are inter-related, they nourish each other and together lay the numerous traps on the road to human rights mutual understanding between the U.S. and Vietnam.

Theoretical implications

The models drawn from Habermas's Theory of Communicative Action and Gadamer's philosophical hermeneutics bring different insights and different weaknesses when appropriated for the purpose of analyzing human rights dialogues. The former is useful in

searching for any mutual understanding reached in dialogue. Through analyzing all the speech acts in the dialogue and observing how the hearers respond to them, it is possible to determine what the interlocutors consider mutual understanding and differences. The three dimensions of the three criticisable validity claims shed light into explaining why and on what grounds the interlocutors agreed or disagreed with each other. Thus, applying Habermas's model helps to identify specific dialogue outcomes. However, as developing a model of a genuine dialogue is not the aim of Habermas's TCA, the model drawn from his work in this thesis does not provide a satisfactory explanation for such outcome. As can be seen in Chapter Four, in the 2006 HRD the majority of his preconditions for mutual understanding are satisfied, such as the interlocutors knowing about the others' lifeworlds, not hiding their real goals, and recognizing the other as rational subjects. The only deviations from these preconditions are the participants' failure to put themselves into the others' perspectives and the absence of other interested parties. The question is why, despite all these satisfactions, they still chose to act strategically.

A comparison of the two American main speakers, A/S Lowenkron and Ambassador Hanford is a good illustration for this question. The latter as an Ambassador-at-large for International Religious Freedom possessed a very sound knowledge about human rights (at least religious rights) conditions in Vietnam and about the Vietnamese concerns over the issue. He had visited Vietnam several times before the dialogue. From 2002 when he became the Ambassador-at-large for international religious freedom to early 2006 when the dialogue occurred, Ambassador Hanford had expressed his concerns several times with the leaders, officials and the alleged victims of human rights violations in Vietnam.⁶⁶⁴ Though there is no record of the number of A/S Lowenkron's visits to Vietnam, it is safe to speculate that Ambassador Hanford had more first-hand experiences than A/S Lowenkron on human rights condition in Vietnam. In fact, as discussed in Chapter Four, during the dialogue, the former demonstrated his understandings about Vietnam by acknowledging Vietnam's concerns over territorial integrity in the issue of religious freedom and its sensitivity to ethnic minority issue. This did not, however, prevent him from joining A/S Lowenkron in setting a time frame for progress on human rights in Vietnam. According to Habermas, the more the speaker knows about the lifeworlds of the hearer, the greater opportunity she has to act

⁶⁶⁴ Ambassador Hanford visited Vietnam in August 2002 as his first visit as the newly appointed Ambassador at large for international religious freedom, this can be found on <http://www.uscirf.gov/sites/default/files/resources/stories/pdf/maryann%20love%20vietnam%20case%20study.pdf>, accessed 11 April 2014. He came back to Vietnam in November 2003; for an American cable report on this visit, see <http://www.cablegatesearch.net/cable.php?id=03HOCHIMINH CITY1093>, accessed 8 April 2014.

communicatively with the latter. Why did a better knowledge about the Vietnamese lifeworlds not prevent Ambassador Hanford from opting for strategic actions in the dialogue? In this regards, the model drawn from Habermas's TCA does not provide an entirely satisfactory explanation for the limited outcome of this human rights dialogue.

Gadamer's model does provide an explanation to the limited outcome of the dialogue. As argued in Chapter Three, the failures of the 2006 HRD participants in meeting Gadamer's conditions for genuine understanding point to the reserved, evasive and disengaging attitudes of the participants. Following Gadamer, though the participants sought agreements concerning the objects of discussion, their mutual understanding was limited by their lack of sufficient willingness to be led by the "truth" of the matter and openness to new meanings provided by the other. In this way, Gadamer's model provides a better understanding of the dialogue's limited outcome than Habermas's TCA.

This comparison of the two models demonstrates that the two models can complement each other: the Habermas's TCA excels at identifying concrete dialogue results, the Gadamer's PH stands out at identifying the attitudes blocking the way to mutual understanding. In other words, the former compensates for the lack of detailed analysis in the Gadamerian model whereas the latter brings about greater insights into explaining the dialogue outcome. This observation supports McCarthy's argument that there can be "intimate connection of critical reflection to hermeneutics understanding" between Habermas's TCA and Gadamer's PH despite different attitudes that they hold towards tradition.⁶⁶⁵ As he observes,

Whereas Gadamer speaks of tradition primarily as a source of insights and values that have to be constantly reactualized in ever new situations, Habermas stresses the elements of domination, repression, and distortion, which are also incorporated in our heritage and from which we must continually strive to emancipate ourselves. Whereas Gadamer speaks of 'the dialogue that we are,' Habermas speaks of the dialogue that is not yet but ought to be. Whereas Gadamer is moved by respect for the superiority of tradition, Habermas is motivated by the anticipation of a future state of freedom.⁶⁶⁶

So what can we draw from the application of their models in this thesis? As their projects are critical not explanatory, the models seem not to provide a satisfactory explanation for this limited dialogue outcome. In a way, the obstacles identified by this thesis still fall within the terms of Habermas's TCA and Gadamer's PH. For Habermas, power and developmental imbalances are factors in the interlocutors' objective worlds, while ethnocentric thinking, fear

⁶⁶⁵ Thomas McCarthy, *op. cit.*, p. 192.

⁶⁶⁶ *Ibid.*

and distrust belong to their subjective worlds. In Gadamerian terms, those are all interlocutors' prejudices or more specifically, negative prejudgments to understanding. Despite this, it seems that both Habermas and Gadamer have not provided a sufficient account for how the distortions in the interlocutors' lifeworlds or their negative prejudices block the path to mutual understanding. However, the testing of their conditions for genuine understanding made us reflect upon the dynamics of these distortions and negative prejudices. The thesis has then elaborated on how these dynamics have helped the interlocutors adopt negative attitudes in dialogue and distorted their viewing and understanding of the others. Any application of the models by Habermas and Gadamer or any attempt to build a better model for genuine dialogue should take this into consideration.

In regard to the attempts to bridge the differences on human rights, on one hand, the empirical findings of this thesis rejects Chris Brown's and John Rawls's efforts to identify some substantive common grounds for human rights. Sympathetic feelings were not found in the American and Vietnamese interlocutors in the 2006 HRD; indeed the Vietnamese had to ask for such feelings from their American interlocutors. Further, Rawls's list of rights proper is unrealistic from a Gadamerian perspective. Following Gadamer one could not reject one's own human rights prejudices that are imbedded in the cultural and philosophical backgrounds as these are all one has when encountering the other. Specifically, the Americans would have to call upon their liberal ideas of social contract theory in assessing the list; likewise, the Vietnamese could only view this list from a lens of the combined ideologies of Marxism, Confucianism, and Buddhism and their historical and cultural backgrounds. Moreover, Rawls's list of the rights to life, liberty, property, and formal equality is much shorter than certain rights that could be found in the current human rights regime, including the UDHR and related covenants. In this way, Donnelly is right in his observation that the list of basic rights are substantial, but he is wrong to claim that the differences on the interpretations and implementations of these rights are minor. We have observed in the two preceding chapters how the differences on American and Vietnamese understanding of internet and press freedom contributed to the breaking down of communication between the Americans and the Vietnamese. Lastly, An-Na'im's thesis on the legitimacy of the current international human rights standards may not be applicable to the U.S. – Vietnam case of human rights differences. Clearly in the 2006 HRD, the Vietnamese did not challenge the existing human rights regime on the ground that they had little say in its formulation, but on the ground of historical, cultural, and development level differences.

As it has become clear by now, the fundamental differences on the nature of human rights between the U.S. and Vietnam is an important obstacle, but not the direct one. The 2006 HRD participants did not expose their prejudgments and prejudices on human rights because of their negative attitudes and the adoption of strategic actions. Thus, in order to touch upon the incompatibilities of their human rights understandings, the Vietnamese and the Americans must pay due attention to the underlying causes of these attitudes and actions: ethnocentrism and the war legacies. In a broader context, in analyzing a human rights dialogue between a Western country and non-Western one, due attention must also be paid to contextual factors, such as the impacts of ethnocentrism, power asymmetry, and distrust among the interlocutors. Therefore, efforts to narrow the human rights differences should focus first and foremost on addressing these impediments.

With sufficient attention to the contextual factors, interlocutors may engage in discursive reasoning on practical human rights issues that could help to expose, challenge, and move their human rights related prejudices. This is a possible way to reach some communicative rationalities that can present solid steps towards greater human rights mutual understandings. However, it must be stated here that discussing practical issues does not necessarily means silencing all foundational arguments. For example, it is not to suggest that the Americans and the Vietnamese should not discuss the concepts of human nature or class struggle. Abandoning such foundations is impossible, according to Gadamer, as these are the prejudices that one has and starts with. Interlocutors will inevitably draw upon their prejudices to engage in discursive reasoning and this may bring about some critical reflections upon their own foundational justifications. Thus, instead of discussing the human rights foundations which may be close to incompatible, interlocutors from different cultures may find it easier to agree on specific proposals for specific circumstances. Of course, agreements on specific contexts do not guarantee some common justifications for human rights. But the possible questioning of one's own foundations in the process of discussing specific cases may lead to an increased possibility of agreement at a more abstract and conceptualized level.

Finally, this thesis supports Charles Taylor's and Richard Shapcott's dialogical approaches. Taylor argues that we could agree on certain basic norms despite our different justifications for these norms. A process of mutual learning on human rights, for Taylor, could start with agreements on a number of human rights norms which have been attained at the outset. Later on, this process "mov[es] toward a 'fusion of horizons' in Gadamer's term, in which the

moral universe of the other becomes less strange. Out of this will come further borrowings and the creation of new hybrid forms.”⁶⁶⁷ Whereas for Shapcott, the meaning of human rights and their universality is no longer a “truth” of which one side tries to convince the other, but the common subject of a dialogue. Following Shapcott, it could be argued that the current regime is flexible enough to accommodate cultural differences; Jack Donnelly may suggest, human rights documents should be treated not as fixed but could be subjected to changes by better arguments. Again, it is up to the parties to determine the status of the current human rights regime through communicative actions. In this way, the injustice to those who had no chance to participate in drafting the human rights documents could be remedied.⁶⁶⁸

Practical implications

As shown in this thesis, both the Americans and Vietnamese have been content with the current mechanism of their human rights dialogues, which they view both in public and private as open and candid. Although at times they have not been satisfied with the dialogue outcomes, most of the time they referred to them as successful. This study has provided a different account of their dialogues. It posits that such a dialogue is not open, frank and effective as they have claimed to be, but brings about only limited results. Without acknowledging and addressing the distortions caused by ethnocentrism, fear and suspicion, and power distortion and development level imbalances, human rights differences will never be correctly comprehended and assessed. Consequently, the same kinds of accusations, justifications, and arguments will be repeated and the gap on their human rights understanding will not be narrowed.

A question arises, can the U.S. and Vietnam avoid this repetition so that the improvements in the bilateral relations no longer suffers the “ceiling” created by the human rights issue? After all, the U.S. will remain more powerful and developed than Vietnam, at least in the foreseeable future and ethnocentrism is unavoidable as one’s own values are all that one has to compare and judge the other side. Likewise, so long as the two opposing political regimes

⁶⁶⁷ Charles Taylor, Condition of an Unforced Consensus on Human Rights, in Joanne R. Bauer and Daniel A. Bell, *op. cit.*, p. 136.

⁶⁶⁸ Or in Richard Rorty’s term: “shaped rather than found.” Rorty uses this term in the following paragraph, “Our identification with our community – our society, our political tradition, our intellectual heritage – is heightened when we see this community as ours rather than nature’s, shaped rather than found, one among many which man have made.” Richard Rorty, *Consequences of Pragmatism: essays, 1972-1980*, Minneapolis, University of Minnesota Press, 1982, p. 166.

remain in place, Vietnamese suspicions of the American motivations behind human rights issue will persist.

The thesis is thus an indirect attempt to end this repetition. Pointing the Americans and the Vietnamese to what stand in the way of their human rights understandings is to expose and challenge their respective prejudices. Following Gadamer, exposing the interlocutors to prejudices that may be negative to mutual understanding is a necessary condition for a genuine agreement on an issue. Thus, exposing the Americans and the Vietnamese to the three underlying obstacles and their distorting effects upon understanding is a necessary step toward a possible deeper mutual understanding on human rights. Such a mutual understanding could bring the two nations closer. And in a larger context, as the issue of human rights is closely associated with the ethnocentric claim to universality as well as changes in state policies and institutions, these distorting impacts could also be found in other dialogues between the developed and the developing worlds.

Speaking to the Vietnamese students in his visit to Vietnam in 2000, President Bill Clinton recalled the early days of the U.S. – Vietnam relationship when the “two distant cultures were talking past each other” and calls for those days “be gone for good.”⁶⁶⁹ And for the U.S. and Vietnam become comprehensive partners, it took more than two decades of war with destructions and pains which were inflicted on both sides and have not yet healed. During these years, soldiers killed and destroyed whole village to save them from communism.⁶⁷⁰ One may argue that these tragic years could have been avoided if opportunities had not been missed due to misunderstandings. Today, the Americans and the Vietnamese are talking to each other, but they still have a long way to go to truly understand each other, so that good intentions do not end up destroying the other.

⁶⁶⁹ Speech by President Bill Clinton in his first visit to Vietnam in 2000, this was the first American Presidential visit since the end of the Vietnam war. For a video of this speech, see <http://www.youtube.com/watch?v=Z6b9ktchnx4>, accessed 17 April 2014.

⁶⁷⁰ For an account of American atrocities in the Vietnam war, see Nick Turse, *Kill anything that moves: the real American war in Vietnam*, Metropolitan Books/Henry Holt and Company, New York, 2013.

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APPENDIX

The 2006 U.S. – Vietnam human rights dialogue

Summary

Delegations from the United States and Vietnam met for the two countries' first Human Rights Dialogue in over three years February 20. The morning session included opening remarks, Vietnam's presentation of its approaches to human rights, a discussion of criminal code, prison conditions and prisoners of concern and an abbreviated discussion of religious freedom, which was picked up in the afternoon session (septel). The tone of the HRD was open and cordial, with both sides expressing their desire to use the discussions to further accelerate positive developments in bilateral relations. In response to DRL A/S Lowenkron's presentation on criminal code, prisons and prisoners of concern, the GVN highlighted recent progress in legal and judicial reform and suggested that Decree 31 (administrative detention) may be amended, but not abolished. A/S Lowenkron also called for greater access to trials and prisons and urged the GVN to allow the UN access to prisons. The GVN representatives left open the possibility that there would be future amnesties or sentence reductions for prisoners of concern, including Pham Hong Son, and agreed to discuss further our prisoner list.

The GVN sought clarification of the reported mistreatment of prisoners in U.S. prisons, incidents at Abu Ghraib and the situation in Guantanamo Bay. In the discussion on religious freedom, the GVN representatives highlighted recent advances, including the promulgation of a new legal framework on religion, efforts to ensure that local officials and religious believers are aware of the changes and the registration of new congregations. U.S. Ambassador-at-Large for International Religious Freedom Hanford acknowledged these improvements and pledged to work with the GVN to address our issues of concern in order to remove Vietnam from the list of Countries of Particular Concern. The two sides agreed to continue in the afternoon the discussion on religious freedom, including remaining issues of USG concern.

End Summary.

Opening Remarks

Vietnam delegation head and MFA International Organizations Department Director General Pham Binh Minh opened the 11th round (and first in over three years) of the U.S.-Vietnam Human Rights Dialogue (HRD) February 20 (full participants' lists in Para 33). In his initial remarks, Minh noted that bilateral relations had greatly improved in 2005, and Prime Minister Phan Van Khai's visit to the United States and the U.S.-Vietnam Joint Statement were the year's highlights. With Vietnam's WTO accession efforts and its hosting of APEC 2006, this year would prove to be an equally important year for bilateral ties. In this context, the HRD will help to increase mutual understanding between the United States and Vietnam by allowing the two sides to frankly discuss issues of mutual concern in the spirit of the Joint Statement, DG Minh said.

Assistant Secretary of State for Democracy, Human Rights and Labor Barry F. Lowenkron noted that the fact that the United States and Vietnam were able to schedule the HRD shows that the two sides had overcome the obstacles that had led to the HRD's suspension in 2002. Today, the United States and Vietnam enjoy strong, cooperative and productive relations and have the responsibility to build on PM Khai's historic visit to the United States. The Joint Statement commits the two countries to raise their ties to a higher plane, and this is the basis for the efforts surrounding the HRD. United States Ambassador-at-Large for International Religious Freedom John V. Hanford's participation in the HRD signals the importance of the HRD and the key place religious freedom has in this dialogue, A/S Lowenkron said.

The United States and Vietnam need to do everything in their power to ensure that the HRD bolsters their positive relations, the A/S continued, particularly because of President George W. Bush's plans to visit Hanoi in November 2006 for the APEC Leaders Meeting. The HRD is also important because the A/S has an obligation to report to Congress the HRD and what it has achieved. For the United States, the principles surrounding the HRD are threefold: that it leads to concrete results; that it is candid and transparent; and, that the two countries can bring all of their concerns to the table. On this occasion, the United States delegation will present a number of suggestions for Vietnam's consideration, including possible actions that Vietnam could take that would be well received by both the President and the international community. We note the positive steps that the GVN has taken in the area of religious freedom and in releasing a number of prisoners of concern. Vietnam has much to be proud of

in its socio-economic development efforts on behalf of its citizens. Improvements in these areas are without question. Continued improvements in the human rights situation, and political and legal developments, can bolster Vietnam's efforts in other areas. They can also help to demonstrate the importance Vietnam attaches to these matters and establish Vietnam as a model country that respects fundamental human rights, A/S Lowenkron stressed.

In the May 5 exchange of letters, the United States committed to engage in dialogues, Ambassador Hanford observed, and the United States is pleased in connection with HRD to uphold this commitment. Over the past few years, the United States and Vietnam have worked on the religious freedom issue in ways that have improved official and unofficial bilateral ties. Progress in the area of religious freedom and other areas on the HRD's agenda will allow the U.S.-Vietnam relationship to improve further, Ambassador Hanford said.

Approaches to Human Rights

Turning to the next item on the agenda, "Approaches to Human Rights," DG Minh noted that to understand Vietnam's perspective on human rights, one had to understand Vietnam's historical circumstances, particularly its over thousand-year struggle for freedom and independence. These are the basic human rights that Vietnam cherishes, along with sovereignty, territorial integrity and non-interference in its internal affairs. Furthermore, Vietnam believes that the protection of political and civil rights are linked with social and economic development. As such, Vietnam's efforts to develop its economy, such as through its "doi moi" (renovation) policy, are designed to encourage social progress. Vietnam also believes that, in a diverse world, international human rights standards should be harmonized with the unique historical, cultural and other traditions of individual countries, DG Minh said.

The principal responsibility of each nation is the protection of its citizens' human rights, the Director General continued. In Vietnam, individual rights can only be secured once the common interests of the community, and the nation, are respected. Finally, given historical, political and cultural differences, each nation's values are also different, but there needs to be a common international understanding about human rights. No nation should consider itself perfect in the area of human rights, and there should be no double-standards. In closing, Vietnam agrees that the HRD should be used to raise any and all issues of mutual concern,

and, in that spirit, Vietnam stands ready to use the dialogue to learn from the United States, DG Minh said.

Secretary of State Condoleezza Rice has spoken often on the subjects of human rights and democracy promotion; in a recent speech, she noted that democracy by definition cannot be imposed, and that there is no single road to building democracy, A/S Lowenkron responded. However, the Secretary, the President and the American people believe that there are some universal human rights principles: the right for the full political participation of the citizens of each country; the right for the development of a robust civil society; and, the right to have a government that is transparent and accountable to the people. Vietnam's doi moi policy can be strengthened by the advancement of the human rights and democracy agenda and, in so doing, Vietnam can increase its international stature and have a positive role beyond its borders. Indeed, no country is perfect in human rights; in fact, no country is perfect, A/S Lowenkron noted.

Criminal Code, Prisons, Prisoners of Concern

A/S Lowenkron opened the next agenda item by expressing hope that, by frankly raising our concerns in these areas, we will be able to see progress before the President's visit in November. Vietnam's National Assembly amended its criminal code in 2003 [differs from Vietnam criminal procedure code, it seems that A/S Lowenkron mistook the criminal procedure code for criminal code, as the former was amended in 2003, the latter in 2009. In light of the scencesetting report to A/S Lowenkron, it seemed that he mistook the Criminal Code for the Criminal Procedure Code] to allow for increased rights for defendants. The purpose was to change courtroom proceedings to a more "adversarial" system in which the judge presides over proceedings while the State and the defense make their arguments (rather than the previous system in which the judge helped to guide the State's case). The United States would be interested in learning how these changes are being implemented.

Furthermore, the United States continues to have concerns about Decree 31/CP, which deals with administrative detention. We are concerned that the definition is broad, ill-defined and open to abuse. It also appears that Decree 31 violates the International Covenant on Civil and Political Rights (ICCPR). We urge Vietnam to repeal the decree and release those imprisoned under it. At the most recent U.S.-Vietnam HRD in 2002, this issue was discussed, and we

would be interested in hearing whether Vietnam thinks that it would be possible to move beyond this decree, A/S Lowenkron asked. In the view of the United States, detentions, trials and sentencings without due process damage Vietnam's international image. Opening court trials to observers, journalists and Vietnamese citizens could increase confidence in Vietnam's legal system, A/S Lowenkron continued. There have been some arrests, including of Pham Hong Son, that appear to contravene the ICCPR because the trials were not carried out in a transparent manner. The United States would also like to see further reforms to allow for unrestricted pre-trial access to an attorney from the time an individual is arrested, A/S Lowenkron stressed.

On the subject of prisoners of conscience, Vietnam ratified the ICCPR in 1982, the A/S noted. However, Vietnam has detained, arrested, brought to trial and imprisoned individuals for seeking to exercise their right to free speech. This is a serious violation of the ICCPR. We have a list of prisoners of concern and those facing travel and other restrictions that we will share with the GVN, and, as always, we would welcome any further information on these prisoners and other individuals. On the list are a number of prisoners of particular concern, such as Pham Hong Son, who distributed an essay calling for democracy and translated an article from the State Department's website entitled "What is Democracy?" The American people and Congress will not understand why a country the United States wants good relations with would arrest someone for translating an article from the State Department website. Vietnam would send an important message by releasing Son and others, such as Nguyen Vu Binh, Do Van My and Pham Van Ban. We are also concerned about religious prisoner Ma Van Bay, A/S Lowenkron said.

Finally, the United States is concerned about prison conditions, the A/S noted. While we note progress since the criminal code came into effect in July 2004, we would also note that the last prison visit by the UN Working Group on Arbitrary Detentions was in 1994. The United States urges Vietnam to consider full access to prisons and prisoners of concern by members of the international community. These are not easy issues, but we seek to discuss them with Vietnam in the spirit of mutual understanding. They are at the core of President Bush's beliefs and U.S. Congressional interest in Vietnam, A/S Lowenkron stressed.

Vietnam Responds: Criminal Procedures Code

Asked by DG Minh to respond to a number of the issues raised, Ministry of Justice representative Dang Hang Oanh described Vietnam's efforts at legal reform as being aimed towards building a just system that is clear, sound, transparent and democratic. One aspect of this is decreasing sentences, expanding the number of set punishments and using non-detention sentences, such as re-education. Vietnam is also seeking to decrease its use of the death penalty, which now applies to a limited number of serious crimes. Thanks to the revision of the criminal procedures code in 2003, there are now strict procedures for arrests, interrogations and sending cases to trial. For example, the 2003 code clearly defines who has the right to make an arrest: the chief and deputy chief of the Supreme People's Procuracy and military procuracies at all levels; a presiding judge or deputy and military judges at all levels; appellate judges of the Supreme People's Court or Trial Council and the heads and deputies of investigative agencies, Oanh described.

Section 2, Article 18 of the revised criminal code also spells out rights and obligations regarding searches. If an arrest is carried out in someone's residence, a communal official or neighbor must be present as a witness. Similarly, if an arrest takes place in a workplace, a workplace representative and local official must be present. The criminal procedures code was also amended in 2003 to lay out rules for arrests in emergency situations. Following an emergency arrest, Article 81 of the criminal procedures code requires the local people's procuracy to approve the arrest warrant. If the warrant is denied, the person must be released immediately. The rules guiding administrative detentions have also been changed. In the past, a person could be held indefinitely for a national security crime, but now the time limit is four months. The 2003 code revisions also established regulations regarding interrogations and questions and answers in court. This was to increase the responsibility of prosecutors to make their case. The prosecutor asks questions, and the accused has the right to defend himself or herself. Defense lawyers also have increased rights to express their opinions in court to ensure that the trial is run in a fair, democratic and transparent manner, Oanh concluded.

Prisoners of Concern

Tran Van Thanh of the Ministry of Public Security (MPS) addressed the issue of prisoners of concern. He noted that Ambassador Hanford presented a list of 86 persons of concern, both prisoners and those facing restrictions, to MPS Vice Minister Huong in October 2003. MPS

discovered one duplicate name, decreasing the number to 85 persons of concern. Among these, 13 could not be identified, four had not been arrested and two were not present at their residences. Since then, 47 of the 85 have been released or received amnesties. The remaining 19 are serving their sentences. In June 2005, Ambassador Marine presented Vice Minister Huong with a list of 13 persons of concern and, in January 2006, provided Prime Minister Khai with a list of 17 persons of concern, including a number on the previous list and a number of individuals facing restrictions. With regard to the June 2005 list, seven individuals have been amnestied, one person committed suicide, four are serving their sentences and one is under consideration for an amnesty. Based on progress during his detention period, Nguyen Khac Toan was recently released on the occasion of Tet, Thanh observed.

For other cases of concern, based on the necessary conditions for receiving an amnesty and in accordance with Vietnamese law, MPS will work closely with other concerned agencies, Thanh said. In the time to come, there may be additional individuals of concern who receive amnesties, are released or receive sentence reductions. Among those individuals raised by Ambassador Marine who are facing restrictions, MPS has found that only one is subject to probation based on Vietnamese law. The others are leading normal lives in their areas of residence. MPS stands ready to discuss with the United States, through different channels, the U.S. list of names. That said, all the individuals of concern who are in prison were tried in a democratic and transparent manner and in accordance with Vietnamese law, Thanh averred.

On the subject of Decree 31 (administrative detention), Thanh said that Vietnam is currently attempting to transform into a nation based on rule of law. Vietnam needs legal documents to manage society, protect national security and promote human rights. Decree 31 must be understood in that context. However, no legal document is permanent, and Vietnam will consider amendments to Decree 31 through a survey and review of the decree to ensure that it reflects appropriate international standards, Thanh said.

Prisons, and a List of Concerns About the U.S.

Nguyen Van Ninh of the Department of Prison Management (MPS) said that Vietnam's prison policies are in accordance with Vietnam's regulations and legal code. Vietnamese law prohibits mistreatment of prisoners and encourages prisoners to reflect on their crimes to become better citizens in the future. Vietnam's humanitarian policies and traditions are

reflected both in its prison laws and in the practice of offering amnesties. For example, in 2004 and 2005 there were four grand amnesties in which 35,299 persons were released, including over 100 foreigners and 25 individuals of concern to the United States. Anyone is eligible regardless of religion, ethnicity or citizenship, provided their fellow prisoners vote that he or she should be amnestied and Vietnam's Amnesty Council agrees, Ninh said.

Turning to a number of issues of concern to Vietnam about the United States, Ninh noted that U.S. prison conditions and the treatment of prisoners are not ideal and sought further information on the alleged mistreatment and sexual abuse of prisoners. A November 12, 2004, New York Times article reported that over 13 percent of U.S. prisoners have been sexually abused. The news surrounding Abu Ghraib was also disturbing. Furthermore, since 2003, there have been over 300 cases of cruel and inhumane treatment of prisoners in Iraq, Afghanistan and Guantanamo Bay. According to a number of documents made public by the White House in June 2004, the U.S. Department of Defense authorized the harsh treatment of prisoners in Guantanamo Bay. Vietnam also has concerns about the detention without trial of a number of individuals. Since September 11, 2001, 70 persons, including 69 Muslims, have been detained because of their refusal to provide information to U.S. courts. Finally, the GVN would like further information on the secret prisons the CIA has reportedly established in eight countries. Over the past four years, some 100 suspects have been detained in these locales, with 30 of them turned over to third country intelligence services. The German press has also reported many rendition flights over its territory. The conditions in these prisons are reportedly worse than hell. The GVN seeks U.S. clarification of and elaboration on these matters, Ninh requested.

Prior to asking A/S Lowenkron to respond, DG Minh noted that the Vietnamese side listened carefully to the U.S. delegation's legal and judicial reform recommendations. He suggested that some of these views may be reflected in future legislation and legal revisions.

A/S Lowenkron Responds

The list the U.S. delegation will hand over today will have more than 13 names but fewer than 86. The list's content reflects discussions at both the State Department and White House and was updated to note Nguyen Khac Toan's amnesty, which was welcomed in Washington. We will continue to work with the GVN in the months ahead to share information about the

individuals on the list to hopefully resolve the 21 cases. The release of Pham Hong Son would send a strong signal to the international community. On Decree 31, it is good to hear that the GVN is discussing ways to amend the law, even if there are no discussions underway to abolish it. It is not for the United States to discuss Vietnam's history, but Vietnam is resilient, independent and strong, and Decree 31 does not reflect a Vietnam that is now more open and confident, particularly after so many difficult years. We are grateful for the comprehensive overview of Vietnam's criminal procedures code, but areas of concern remain. The United States is willing to work with Vietnam in a partnership to strengthen its legal system and reform efforts.

In response to A/S Lowenkron's question about whether there will be further amnesties this year, Ninh said that the State President makes the decision, and an amnesty or sentence reduction is granted based on the subject's progress in prison. A/S Lowenkron stressed that the international community is very interested in access to prisons and for observers to attend trials.

On the issues of concern to Vietnam, A/S Lowenkron said that the incidents at Abu Ghraib are inexcusable and indefensible. While there have been more than 300 cases of prisoner abuse around the world, there have been over 400 prosecutions in the United States for these abuses and over 100 persons were found guilty. The question of how the United States organizes prisons in the context of the global campaign against terror has been debated openly and freely in the United States. This kind of incident was not unique in American history, but when it has happened in the past, we have counted on a free press, a fully independent court system, including the Supreme Court, and a fiercely independent and active U.S. Congress. The American people expect nothing less. The debate on interrogations and prisons is conducted on the basis of a free press, rule of law and the Congress, A/S Lowenkron stressed.

On Guantanamo Bay, over one-third of the prisoners have been released or sent back to other governments. The International Committee of the Red Cross has full and unimpeded access to the remaining prisoners. In fact, the days of Guantanamo Bay are numbered, and Guantanamo Bay is not Abu Ghraib. These prisons are not prison camps but camps for prisoners of war. The war on terror is a long and difficult struggle and involves many nations. Progress will be fitful. Working with others, the United States will do everything it can to ensure that its principles are honored while these same principles, and its homeland, are protected to the full extent of our law and international law. On the issue of renditions,

Ramsey Youssef, one of the 1993 World Trade Center bombers, is probably the most famous rendition case, and this is a procedure that nations need to defend themselves against attack. In short, no country is perfect, but the fundamental freedom of debate, rule of law and listening to the people through the electoral process can help to discover and address problems, the A/S said.

DG Minh wrapped up this agenda item by noting that EU Ambassadors and the Swiss Ambassador have been able to visit prisons, and said that, while the GVN had arranged for A/S Lowenkron to visit a prison in Ho Chi Minh City, the delegation decided against it. A/S Lowenkron stressed that it is important for Vietnam to allow the UN access to prisons.

Religious Freedom: Vietnam Describes Achievements

Nguyen Thi Bach Tuyet of the GVN's Committee for Religious Affairs (CRA) opened this agenda item by expressing her government's hope that Vietnam's achievements in this area would allow Vietnam to be removed from the list of Countries of Particular Concern (CPC). Over the past year, Vietnam has promulgated the Ordinance on Religion and its Implementing Decree and the Prime Minister's Instruction on Protestantism. To ensure that local officials understand the new legal framework, the GVN has organized training courses and workshops for over 2,000 civil servants in charge of religious affairs. Some 12,878 religious leaders and followers have also taken part in these courses. A total of 281 courses in 32 out of 64 provinces and cities have reached 1,154,735 civil servants at all levels. The central-level CRA is working closely with local authorities to promote communication and information sharing and ensure that there is broad awareness of the new laws and regulations, particularly in the Central Highlands and northwest and southwest, Tuyet explained.

In the Central Highlands and Binh Phuoc Province, there are currently 300,760 Protestant believers, 32 pastors, 37 honorary pastors, 105 missionaries and 50 Protestant congregations. Out of these 50, 12 are new or recently established. Local authorities in Dak Lak and Gia Lai have allocated land for the construction of churches, and a new church was recently opened in Gia Lai on February. Also, there are increasing numbers of ordained pastors and honorary pastors. Some 25 students from Gia Lai were sent to attend a training course at an institute for bible and theological studies, and there have been three courses for 113 deacons and an additional 115 deacons in Binh Phuoc. The GVN is also considering recognizing additional

Protestant branches, such as the Baptists. It has published 60,000 copies of the Ordinance and the implementing decree, with half of them written in ethnic minority languages. The GVN has also produced three films regarding the Central and Northwest Highlands and the southwest to help the international community understand better the situation there, Tuyet said.

There have been a number of important visits to Vietnam by religious leaders over the past year, she continued. In 2005, Buddhist leader Thich Nhat Hanh led a large delegation to Vietnam for discussions. Cardinal Sepe of the Vatican also traveled to Vietnam to ordain 57 priests in Hanoi; he also visited a number of diocese. EU Ambassadors have visited both the Northwest and Central Highlands and conducted meetings with religious leaders and followers. Ambassador Hanford himself has visited the Central Highlands. Vietnamese religious organizations have sent delegations abroad, including to the ASEM Dialogue on Beliefs in Bali. The CRA and other agencies have also sent delegations abroad, and the positive outcomes to date have been thanks to the efforts and goodwill of religious organizations and followers. Tuyet closed by seeking information the ten Protestant churches that were recently burned down in the United States.

Ambassador Hanford Responds

Religious freedom is an issue of high interest and concern to the international community, Ambassador Hanford said. No country, including the United States, is perfect, but respect for religious freedom is a fundamental right. It is important to recognize that the large portion of the Vietnamese population is able to enjoy a significant degree of religious freedom. The focus of U.S. concern is on particular groups that are not able to freely practice their faith. We recognize and welcome the efforts the GVN has made to promote religious freedom and address issues of concern. For example, the GVN has released a number of religious prisoners of concern. These were individuals for whom we had made personal appeals, and we appreciate the GVN's responsiveness, Ambassador Hanford said.

The most important initiative to date has been the introduction of new laws, including the Ordinance on Religion and Belief, its implementing decree and the Prime Minister's Instruction on Protestantism, the Ambassador continued. These represent a real commitment to change and established a nationwide structure to protect new freedoms or preserve

freedoms established in the past. It is commendable that the Prime Minister demonstrated his personal commitment to this issue as reflected in his special instruction on Protestantism. The GVN's efforts to reach the May 5 exchange of letters were also significant, and we appreciate the GVN's hard work to conclude this exchange. As President Bush said in his meeting with PM Khai, this is a landmark agreement, the implementation of which will help bilateral relations to reach a higher plane. President Bush has a personal interest in this matter and, as A/S Lowenkron said, the Secretary has the same interest, Ambassador Hanford noted.

We have heard from various religious groups in Vietnam that there is increasing openness for religious practice, he continued. In particular, the USG welcomes the explicit ban on forced renunciations. This kind of progress goes far in eliminating a divisive issue between the United States and Vietnam. Religious believers in the United States can be expected to find it very difficult to understand such an extreme practice. The GVN claimed this was not the law of Vietnam, and now that a ban on forced renunciations has been codified, this issue has been clarified for all concerned parties both at home and abroad. The USG also welcomed: the Evangelical Church of Vietnam- North's (ECVN) December 2004 Congress, the first in twenty years; Thich Nhat Hanh's visit to Vietnam after 38 years; the new latitude granted to religious groups to select their leadership; the recognition granted to Grace Baptist Church and the Seventh Day Adventists, which opens up a new chapter in the recognition of religious groups; the formal recognition of over 200 meeting points in Gia Lai Province, facilitating over 200 meeting points for Protestants for Christmas service in Dak Lak Province; and, providing religious training and building permits, which in the past have been difficult to secure. The United States and others in the international community recognize these and other positive steps. We hope to work together in the coming months to resolve the CPC issues, Ambassador Hanford concluded.

At this point, the two delegations agreed to break for lunch and continue in the afternoon the religious freedom discussion, including our remaining areas of concern (afternoon session reported septel). A/S Lowenkron and Ambassador Hanford cleared this message. MARINE

This can be found on <http://wikileaks.org/cable/2006/03/06HANOI669.html>, accessed 22 July 2013

Continuation of Morning Session

In an agreed continuation of the morning session on religious freedom and ethnic minority affairs of the February 20 U.S.-Vietnam Human Rights Dialogue, before beginning the afternoon schedule, Ambassador at Large for International Religious Freedom John Hanford presented the GVN side with a copy of a recently released Time Magazine article entitled "Police Raids Show Vietnam Still Fears Illegal Religion." Ambassador Hanford said that while he cannot comment on the credibility of the sources for the article, it raises several of the points he wants to highlight. The article mentions the progress Vietnam has made in protecting religious freedom, a point Ambassador Hanford also stressed. There are, however, areas for further improvement.

First, he said, Vietnam should improve the rate and consistency with which it registers and recognizes new congregations and churches. In recent months, he acknowledged, the GVN has recognized some congregations and registered many new churches. However, many churches and other places of worship have faced long delays or have been turned down without adequate explanation. In particular, Ambassador Hanford said, the pace of recognition and registration of churches is slowest in provinces in the Northwest Highlands, such as Ha Giang Province, singled out in the Time Magazine article. One of the positive points in the Vietnamese legal framework on religion is the deadlines for official action on applications for recognition and registration, but some local officials are not honoring those deadlines. The GVN should consider streamlining procedures and paperwork for registration and recognition, and thoroughly explain the reasons for rejecting any application. It would be particularly useful, he added, if the GVN could provide in a few months time a breakdown of the numbers of successful and unsuccessful registrations, disaggregated by province and containing reasons for the rejection of unsuccessful applications.

Second, the GVN needs to work on educating local authorities to properly enforce the law. The changes in the legal framework have begun to contribute to the expansion of religious freedom and benefit religious practitioners. Despite this progress, Ambassador Hanford said, his office continues to receive credible reports of church closings, obstruction of worship services and pressure on believers to renounce their faith, particularly in the Central and Northwest Highlands. In some areas, he said, particularly the Northwest Highlands, local authorities have rejected applications for registration and then used the information contained

in the applications to suppress those groups and harass individual members. Ambassador Hanford took note of improvements in the Northwest Highlands, noting that as recently as one year ago Ambassador Marine reported that local officials in Ha Giang Province stated that there are no religious believers at all in Ha Giang. He stressed that the USG does not believe that this is the result of the GVN's unwillingness to implement the new framework on religion, but instead demonstrates the need for continued efforts to educate local officials. The USG is heartened, he stated, by Deputy Director General of the Department of External Relations of the Committee on Religious Affairs Nguyen Thi Bach Tuyet's description of vigorous efforts to train local officials. The USG respects the territorial integrity of Vietnam and does not defend groups who lack peaceful intentions. The USG's concern is for sincere religious believers who simply seek to practice their faith and in the past have been suppressed.

The Time article is illustrative, Ambassador Hanford continued. The article gives credit to Vietnam, mentioning the ordination of new priests and the GVN's permission for Thich Nhat Hanh to return to Vietnam with his entourage. Specifically, he quoted the article's statement that "the days when the Communist Party suppressed general religious practice in Vietnam are long gone, and millions worship freely in Vietnam." However, the problems cited in the article are the same problems that have been reported to the Office of Religious Freedom in the State Department. The chief of police in Tung Ba Commune in Ha Giang Province, according to the article, is forcing people to stop practicing religion there "because it is illegal." He is quoted saying that he caught 20 people "red handed illegally singing." Believers say that when they were caught singing, the police beat them; the police claim they only fined the singers. The Protestant leaders there claim that they are members of the Evangelical Church of Vietnam (North) but that the local government will not recognize new congregations. And finally, it reports an old police practice more common several years ago, which is the practice of billeting officials in the homes of local believers to keep them quiet. The article admits that it is "unclear" if the Ha Giang crackdown was ordered by Hanoi or was the brainchild of an overzealous local Communist Party organization, but it adds that fear of ethnic minority unrest is also a concern. These problems may fundamentally be caused by poor implementation and awareness of the law at the local level, Ambassador Hanford concluded, but the USG calls on the GVN to ensure that implementation of Vietnam's legal framework for the protection of religion is uniform across Vietnam.

Ambassador Hanford also urged the GVN to respond "promptly and firmly" to reports of violations of religious freedom, such as those alleged in the Time article. Individuals must be held accountable, he added, including those listed in the article as violating religious freedom, if the article is found to be accurate. This would send the clear message that the GVN is standing by its public pronouncements, he said.

The third issue the article touches on is Vietnam's efforts to release prisoners of concern imprisoned for expression of their religious beliefs. These efforts have been very impressive, Ambassador Hanford said, noting that only the case of Ma Van Be remains on the U.S. list. The United States remains concerned about the continuing house and pagoda arrest of some individuals, and restrictions on the right to travel of some others, including Thich Quang Do, recently detained for trying to visit Buddhist patriarch Thich Huyen Quang. The United States asks the GVN to end travel restrictions and surveillance on individuals "for the practice of their faith," and instead ensure that they have the same rights as any Vietnamese citizen.

Over the past months, Ambassador Hanford stressed, the GVN has made remarkable progress on religious freedom, which Ambassador Hanford has expressed publicly to "doubters" in the United States. Just as progress on religious freedom helped to pave the way for a successful visit by PM Phan Van Khai to the United States in June of 2005, Ambassador Hanford said, continued progress will provide a more solid basis for a successful visit by President Bush, as well as an improved environment for continued bilateral relations and Vietnamese engagement with the international community.

Vietnam's delegation's leader, Ministry of Foreign Affairs International Organizations Department Director General Pham Binh Minh, thanked Ambassador Hanford for his positive assessment of GVN actions, and repeated Vice Foreign Minister Le Van Bang's earlier statement that the GVN is making many efforts to ensure that Vietnamese citizens have all their religious rights. This effort, he stressed, is taken not because of any external pressure but because the GVN wishes to truly guarantee the rights that all Vietnamese citizens are entitled to. To that end, the GVN will "continue to redouble its efforts to perfect the legal system and do its best to ensure that all officials strictly implement the documents and regulations on religious freedom." Regarding the article, DG Minh said that the GVN will "verify, objectively and in due course," the information it contains, and does not want to admit or reject anything in it now. He said the two sides are in agreement that considerable progress has been made since Ambassador Hanford's last visit.

Deputy DG Nguyen Thi Bach Tuyet from the Committee on Religious Affairs said that the CRA is making "many efforts" to increase the awareness of local authorities of the documents on religious freedom in Vietnam. The Time article needs to be verified, she said, but based on the CRA's recent unsatisfactory visit to Ha Giang (where the local authorities repeated the statement to the CRA delegation that there are no believers in Ha Giang, a statement the CRA acknowledges is untrue) the article's description of the local authorities' behavior "might be true." If Vietnam were too perfect, she joked, there would be no reason to have a dialogue on human rights. Supreme People's Procuracy Deputy DG Nghiem Quang Xuyen said that if the article is true, some of the officials mentioned could face criminal charges.

Significant progress has been made in the Central Highlands in the past 18 months, DDG Tuyet continued, and now the CRA is focused on the Northwest Highlands provinces. The CRA hopes to be able to report significant progress there, too. "There is a saying that Moscow was not built in a day," Tuyet said seriously, "and so we hope you will show patience."

Responding to an earlier inquiry about church burnings in Alabama, Ambassador Hanford stated that those attacks are thoroughly investigated, and the perpetrators severely punished. Sometimes, he said, the attacks occur not for religious reasons but for ethnic or racial ones. These crimes are just as serious, and also against the law.

Deputy DG of the Department of External Relations of the Committee for Ethnic Affairs Hoang Van Phan circulated a pamphlet highlighting the situation for ethnic minorities in Vietnam, and identified specific GVN policies and accomplishments that showed Vietnam's positive treatment of its ethnic minority population. The State of Vietnam, he pointed out several times, guarantees rights to all people, including ethnic minorities. He enumerated many of those rights, which amounted to a recitation of the Vietnamese Constitution. He pointed out that the representation of ethnic minorities in the National Assembly is actually higher in percentage terms than their representation in the population at large, and drew attention to several huge nationwide infrastructure-building and antipoverty projects that focus heavily on minority-populated areas, citing extensive statistics on Vietnam's successful infrastructure development and poverty alleviation efforts. (He did not comment on the fact that antipoverty and infrastructure development programs by definition focus on districts with high minority populations in Vietnam, because ethnic minorities are by far more likely to live in high-poverty districts than majority ethnic Kinh populations.) He concluded his

presentation with a request for "support and assistance" from the United States for ethnic minority development. Ambassador Marine replied that the United States is considering a package of assistance, and will be presenting it for discussion with the GVN soon.

Ambassador Hanford said the USG understands that the issue of ethnic minority relations is sensitive for the GVN, and that Vietnam has more than 50 ethnic groups. Of special interest to the United States is the matter of access to those groups, particularly those in the Central Highlands who have returned to Vietnam after migrating to Cambodia. Ambassador Hanford said the USG greatly appreciates the GVN's willingness to permit access to these groups by U.S. diplomats, other country diplomats and officials from the UN High Commission on Refugees. There have been concerns that some of the returnees have faced mistreatment or detention on their return to the Central Highlands, Ambassador Hanford said. He urged the GVN to follow up with local authorities to ensure that the guarantees not to mistreat or detain returnees under the tripartite MOU among Vietnam, Cambodia and UNHCR are respected. Ambassador Hanford further noted that the U.S. commitment to defend the rights of minority populations is global; for example, the United States has urged Cambodia to respect the rights of Vietnamese minority residents.

DG Minh asked that the United States consider the cases of a number of ethnic minorities in the Central Highlands who have requested resettlement in the United States but have not been able to complete the necessary visa procedures. He said that authorities in Dak Lak have recently issued 43 passports to willing travelers, Dak Nong has issued 13 and Lam Dong has issued 145. These are cases that have not yet been addressed by the United States, Minh said. Ambassador Marine thanked Minh for the GVN's efforts to issue travel documents to the family members of refugees admitted to the United States for resettlement, and pledged to review specific cases as soon as the GVN can provide more detailed information. In all, he noted, there are 750 people eligible to rejoin their family members in the United States, and the USG hopes to see their relocation completed as soon as possible.

National Security and Human Rights

DG Minh opened the session on national security and human rights with a plea for the USG to make a special effort to understand Vietnam's particular historical context when evaluating its human rights record. "For a long time," he said, "national security has been the paramount

issue for Supreme People's Procuracy DDG Xuyen explained that the SPP has the right to set the time of detention of criminal suspects and to order investigation, and is the only agency with the right to bring charges against suspects. Without the approval of the SPP, no Vietnamese citizen can be arrested or detained during the investigation period. With this in mind, the SPP "tries to minimize" cases where "preventive measures are applied" (read: individuals arrested and detained) but the defendants are found not guilty or the cases are not pursued. Fifteen of the 344 articles in the Vietnamese Criminal Code deal with national security, he said, of which three are violent crimes: rebellion, banditry and terrorism. The SPP is currently considering the case of Nguyen Huu Chanh, who lives in the United States. Chanh is wanted in Vietnam for terrorist activities, Xuyen explained, and Vietnam would like assurances that the United States will cooperate with Vietnam to extradite him or compel him to return to Vietnam to stand trial if there is sufficient evidence to warrant such an action. Xuyen additionally declared that all of the prisoners of concern identified by the United States in Vietnam have been charged, tried and convicted of offenses under Vietnam's criminal code.

Deputy Director General of the Supreme People's Court (SPC) asked how the United States could reconcile the Patriot Act, with its provisions limiting civil liberties, with its statements urging other countries to consider human rights over national security.

A/S Lowenkron responded to DDG Xuyen that if he is correct that all of the persons of concern on the U.S. list have violated the criminal code, then the criminal code itself is a problem. The criminal code lacks precision, containing provisions such as "National Security Crimes" that are so vague as to allow the State to prosecute nearly anyone. Due process is also a problem, A/S Lowenkron said, noting that from rights to an attorney to the right to face one's accuser to the right of appeal, due process needs to be critically addressed in Vietnam. Reforming the criminal code, as Vietnam has said it is doing, is a positive step, he said. The phrase "National Security Crimes" should be narrowed to prevent abuse.

Regarding the Patriot Act, A/S Lowenkron noted that the Patriot Act was passed after lengthy public debate in Congress and heavy coverage in our free press and is subject to review by the independent judiciary. The United States has faced many similar crises in past wars, and has met them by debating necessary national security decisions openly and transparently. This, he said, is the best guarantee against abuse by the state. In the United States, the debate is full and diverse, including intra-party as well as inter-party discussions. Vietnam must decide for itself what is national security and what is freedom. The more confident and secure

a nation is, the more confident it can be to open its system. For decades, he noted, other countries have fought to determine Vietnam's future, but now only Vietnam determines Vietnam's future. Advances in human rights and openness support Vietnam's economic reform policies and demonstrate both the resilience and independence of a free Vietnam, he concluded. Ambassador Marine added that on the subject of Nguyen Huu Chanh, the United States and Vietnam have been in discussions on the topic and we are willing to work with Vietnam to develop an appropriate response considering the evidence. We are considering appropriate next steps on this issue, and will be in touch soon, he said.

Freedom of the Press and Internet Freedom

Assistant Secretary Lowenkron said he has heard that the National Assembly is considering a new Press Law, and hopes that a new law will reduce both official censorship and self-censorship. The current press laws are too broad, he stated, and allow anyone to be prosecuted, thus opening up the possibility of abuse. The Internet is also an area where Vietnam should embrace freedom. The United States is ready to work with Vietnam on controlling Internet problems, but only those that concern crime, terrorism, violence and sabotage of computer networks.

Outside of those areas, the United States believes in Internet freedom, an issue affecting not just Vietnam but many other countries as well. Vietnamese citizens should have the freedom to use the internet for peaceful purposes, including political ones, without fearing arrest, A/S Lowenkron declared. With this in mind, he again raised the issue of imprisoned dissident Pham Hong Son. "Congress and the American people cannot understand imprisoning someone for translating and forwarding a U.S. document," he said. A/S Lowenkron identified the November 2006 APEC meetings as an opportunity for Vietnam to either highlight its openness and development, or be subject to criticism from frustrated journalists who find themselves unable to access blocked Internet sites.

A/S Lowenkron identified a specific list of USG requests related to Internet freedom, including: relaxing restrictions on Internet usage; eliminating the requirement that cybercafes register the personal information of customers; releasing those who have been imprisoned for expressing peaceful political views; recognizing increased Internet access and usage as an improvement of human rights in Vietnam; and, seeing the Internet as a way to promote

investment and trade in Vietnam and allow Vietnam to compete effectively in a globalized world.

Deputy Director Nguyen Tri Dung of the Ministry of Culture and Information's Department of the Press, who spent much of the day's sessions tapping ostentatiously on the GVN delegation's only laptop computer, read the official GVN response from a roughly mimeographed sheaf of papers. The GVN attaches great importance to freedom of the press and freedom of speech, he intoned, which are fundamental rights of the Vietnamese people and guaranteed under Article 69 of the Constitution. The GVN is trying to implement freedom of speech and freedom of the press, he continued, especially in the development of common strategies and policies for national development. Vietnamese newspapers, he said, are not censored before being printed or published. As evidence of Vietnam's press freedom, he cited the rapid increase in the number of media outlets in TV, radio, newspaper and Internet channels. The advance of technology is increasingly meeting the information needs of the Vietnamese people, he added

However, the Internet is new in Vietnam, he said. In contrast to the United States, which has had the Internet for more than 40 years, Vietnam was only connected to the Internet in 1997, and then access was limited to scientists. It was not until 2002-2003 that Vietnam began to see widespread Internet access; now, however, Vietnam boasts more than 2.9 million Internet subscribers and more than 10 million users. Vietnam, he boasted, is "second in the world in the percentage of the population using the Internet and telecommunication devices." (Note: Not likely. End Note.)

Dung further elaborated on the specific numbers of schools connected to the Internet at all levels of education. This, he said, illustrated the dual nature of the Internet: on one side of the coin, the Internet brings advantages to people, but on the other, it brings disadvantages, particularly to children. Protecting children from the evils of the Internet, particularly online games, pornography and violent sites, is the reason for Vietnam's regulation of the Internet. The Ministry of Culture receives "tens of thousands" of letters from concerned parents regarding the harm the Internet causes their children, and there have been reports of children quitting school to spend their time playing online games and surfing the Internet from cafes. Vietnam is aware, Dung continued, of the need for an "information society" built on the twin pillars of information and communication. This is why Vietnam is promoting Internet usage. This process, however, is difficult for Vietnam and the GVN is in need of experience sharing,

technical assistance and human resources development from the international community. The existing regulations on the Internet, Dung conceded, are just "circulars" which can easily be changed or amended. "It takes time to perfect the system," he said. DG Minh added that the press in Vietnam plays a valuable role in ferreting out corruption, and as a result a number of officials, including high officials, have been arrested and prosecuted.

A/S Lowenkron acknowledged that the growth in the number of media outlets in Vietnam is positive, but said that the issue is not the amount of programming available but what that programming is. Vietnam could and should stop blocking Radio Free Asia, both the radio signal and the website. Vietnamese domestic Internet demand represents a thirst to enter a globalized world, he said. The United States and Vietnam can agree on protecting children from pornography and violence, but the prisoners of concern to the United States such as Pham Hong Son are not pornographers. This is an issue that will remain contentious, he predicted.

DG Minh replied that Pham Hong Son was convicted of espionage under Article 80 of the criminal code, not for using the Internet. (Note: This is disingenuous. Son's Internet use provoked his arrest; his conviction on thinly supported espionage charges stemmed from that, though the Internet was not mentioned in the actual conviction. End Note.) A/S Lowenkron stated that on this subject, we disagree.

Concluding the talks, DG Minh declared that the Dialogue was a success, allowing both sides to "share experiences, learn from each other and increase mutual understanding." We agree on a number of issues, and remain in disagreement on some others, he said. The GVN is willing to conduct further meetings and exchanges of views. A/S Lowenkron closed with an appeal to work hard on making this Dialogue "results oriented," noting that we would be ultimately judged not on the quantity of meetings we hold, but what those meetings produce.

List of HRD participants:

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Ambassador Michael W. Marine

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Mr. Pham Binh Minh, Director General, Department of International Organizations, Ministry of Foreign Affairs (MFA)

Mr. Nguyen Quang Thang, Director General, Department of Internal Affairs, Office of the Government

Mr. Tran Van Thanh, Deputy Director General, Department of Security Advisory, General Security Department, Ministry of Public Security

Mr. Hoang Van Phan, Deputy Director General, Department for External Relations, Committee for Ethnic Affairs

Mr. Nghiem Quang Xuyen, Deputy Director General, Department of Prosecution and Investigation of Security Violations, Supreme People's Procuracy

Mr. Ngo Cuong, Deputy Director General, Judicial Science Institute, Supreme People's Court

Mr. Nguyen Tri Dzung, Deputy Director General, Press Department, Ministry of Culture and Information

Mr. Nguyen Van Ninh, Deputy Director General, Prison Management Department, Ministry of Public Security

Mr. Nguyen Ba Hung, Deputy Director General, Americas Department, MFA

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A/S Lowenkron and Ambassador Hanford cleared this message. MARINE

This can be found on <http://wikileaks.org/cable/2006/03/06HANOI667.html>, accessed 22
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