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Introduction

With \$30,000 in generous support from the Starr Foundation and the kind assistance of The Diplomatic Academy of Vietnam (DAV) and the Embassy of Vietnam in Washington, DC, the International Law and Organizations Program (ILAW) organized an academic study trip to Vietnam during January 2017. The theme of the trip was international law and strategic issues between Vietnam, China, and the United States, including maritime security, economic development, and environmental protection.

In studying the theme, a delegation of 12 SAIS students and 1 SAIS alumnus led by Professors Ruth Wedgwood and Tiffany Basciano met with a variety of organizations, including the Ministry of Industry and Trade, Ministry of Foreign Affairs – Americas Department, Ministry of Defence, The United States Embassy – Hanoi, Institute for East Sea Studies, Ministry of Natural Resources and Environment, EU-Multilateral Trade Assistance Project, International Labour Organization, Wildlife Conservation Society, and the Education for Nature – Vietnam. In exploring the culture of Vietnam, the delegation traveled to the UNESCO World Heritage Site of Ha Long Bay. While in Ha Long Bay, the delegation traveled the waterways by kayak taking in the scenic limestone islands. They also visited Sung Sot Cave, the main cave in Ha Long Bay. In exploring the food culture of Vietnam, the delegation learned how to make Vietnamese spring rolls, ate Bun cha at Bún chả Hương Liên, the restaurant made famous by Anthony Bourdain’s and President Obama’s visit in May 2016. A few adventurous delegates also went on a food tour of Vietnam. Finally, in understanding the history of Vietnam, the delegation visited Hỏa Lò Prison – otherwise known as the “Hanoi Hilton”- a prison used both during the French colonial period for political prisoners and US POWs during the Vietnam War; it was an informative and solemn experience.

On April 7, 2017 the delegation hosted and participated in a half-day public conference at SAIS on “Vietnam on the Hedge: Strategic and International Law Issues between Vietnam, China and the United States.” The conference included three panel discussions on economic development and labor rights, environmental protection, and foreign policy and security issues. The event also featured a keynote address by Gregory B. Poling, Director of the Asia Maritime Transparency Initiative and a Fellow with the Southeast Asia Program at the Center for Strategic and International Studies (CSIS). The conference may be viewed on the [SAIS Events YouTube channel](#).

This experience will certainly resonate with the delegation for a long time, as they continue to follow ongoing developments on trade, labor, the environment, and maritime security in Vietnam. Once again, we are grateful for the support of the Starr Foundation and the Diplomatic Academy of Vietnam.

- The International Law and Organizations Program

Geopolitical Implications for Vietnamese Labor Relations in Trump's America

Caitlin Erskine

On January 23, 2017, three days into his presidency, Donald Trump signed a presidential memorandum to withdraw from the Trans-Pacific Partnership (TPP). Part of Trump's "America First" agenda, the move effectively kills what was to be "the largest proposed free trade deal in history."¹ Designed as a hub-and-spokes transaction, the TPP linked smaller countries to the central hub of the US economy – without the US, parties are left with little incentive to move forward.² Vietnam, the country once projected to benefit most from the deal, has been forced to make pragmatic assessments about its future. For Vietnam, the importance of the US market is monumental: the US is the country's largest export market, contributing \$38.5 billion in revenue in 2016 alone, up 15 percent from the previous year.³ US exports to Vietnam have also increased; as the country moves quickly toward middle-income, the growth of its brand conscious market has benefited Western companies. Yet, the potential value of the TPP for the United States cannot be solely quantified by trade flows, it has just as much to do with geopolitical strategy and the sweeping norms it brought to trade; nowhere is that more clear than in Vietnam.

Trans-Pacific Partnership (TPP)

Doi moi reforms initiated a radical transformation of the country. In an effort to sustain its accelerated levels of growth and avoid the middle-income trap, Vietnam now hopes to become Southeast Asia's premier hub for labor-intensive manufacturing, like electronic assembly and garment making. Freer trade and economic integration into global markets is often spoke of as the only viable option for this economic development. "Vietnam is a late, but true believer in globalization."⁴ Though a bit reluctantly, the party has looked once again to systemic reforms. The privatization of state owned enterprises, programs for high value-chain employee training, compliance with international trade standards on intellectual property and sanitation standards, and reforms on labor and environment regulations – all seek to tap into the export-led growth that has carried some of their neighbors to high-income status. Yet, Vietnam is less successful in implementing and enforcing agreements, particularly on intellectual property and the liberalization of the service sector, due to the lack of capacity, financial resources, and organization.⁵ The

¹ Riley, Charles. "TPP: Trump's decision to kill trade deal leaves door open for China." CNNMoney. January 25, 2017. Accessed March 17, 2017. <http://money.cnn.com/2017/01/23/news/economy/tpp-trump-china/>.

² Armstrong, Shiro. "A New Deal in Asia." Foreign Affairs. March 17, 2017. Accessed March 17, 2017. <https://www.foreignaffairs.com/articles/asia/2017-03-17/new-deal-asia>.

³ "TPP expected to continue despite US withdrawal: VCCI." Vietnamnews.vn. March 06, 2017. Accessed March 30, 2017. <http://vietnamnews.vn/economy/372329/tpp-expected-to-continue-despite-us-withdrawal-vcci.html#ijLLxoWZ1uQi7LWx.99>.

⁴ Meeting with the Ministry of Foreign Affairs, Americas Department on Jan. 16, 2017, Hanoi, Vietnam.

⁵ Meeting with Claudio Dordi, Team Leader at the EU Multilateral Trade Assistance Project on Jan. 19, 2017, Hanoi, Vietnam.

Vietnamese consistency plan mandated legal reforms allowing for grassroots labor unions, improved safeguards against employment discrimination, and increased penalties for forced labor.⁶ These reforms would have carried the weight of US government enforcement – Vietnam would not have been allowed to officially join the TPP until the US had deemed these requirements met. Now, without its watchful eye, only the commitment remains.

When compared with its regional counterparts, Vietnam’s rates of unionization among wage employees are comparatively high. Yet, as US Ambassador Ted Osius succinctly says, “Labor unions are good at funerals, but bad at collective bargaining.”⁷ All trade unions fall under the preview of the Vietnam General Confederation of Labour (VGCL), itself under the leadership of the Community Party of Vietnam (CPV).⁸ Enterprise-level unions are often close to management, senior executives even holding top union positions.⁹ Wildcat strikes are common, particularly in the foreign-owned sector, arising from the lack of credible institutions for negotiating pay and working conditions – forcing workers to take extreme measures. Freedom of association is a sticky issue for the CPV, associations can play an expanding role in criticizing state guidelines and policies. Thus, the CPV believes that “once you open to [trade unions], it is the opening of the political system. It’s the end of the monopoly of the political system,” says Claudio Dordi, Team Leader at the EU Multilateral Trade Assistance Project in Hanoi.¹⁰ The US had been smart to use the promise of its market as a ‘can opener’. The Vietnamese government has pledged to continue with these reforms, but – with the withdrawal of the US from the TPP – the brisk deadlines for revision no longer apply. According to Changhee Lee, Director of ILO Vietnam, this may well be a good thing. “This is the silver lining. Now we can have a deeper conversation about reforms,” he says.¹¹ Perhaps the relaxation of the timeline may lead to more entrenched and lasting reforms. It remains to be seen how these promises will play out without carrots and sticks from the US government: whether the party will be secure enough to undertake reforms, whether higher negotiated wages will crumble Vietnam’s comparative advantage, whether uncertainty in global markets will scare off real change.

⁶ United States of America; Socialist Republic of Viet Nam. *United States-Viet Nam Plan for the Enhancement of Trade and Labour Relations*. February 4, 2016. Accessed February 17, 2017. <https://ustr.gov/sites/default/files/TPP-Final-Text-Labour-US-VN-Plan-for-Enhancement-of-Trade-and-Labour-Relations.pdf>.

⁷ Meeting with Ambassador Ted Osius and officials of the U.S. Embassy Hanoi on Jan. 17, 2017, Hanoi, Vietnam.

⁸ Schmitten, Achim Daniel, and Truman G Packard. *Vietnam’s Labor Market Institutions, Regulations, and Interventions: Helping People Grasp Work Opportunities in a Risky World*. Working paper no. Policy Research working paper; no. WPS 7587. World Bank Group. March 01, 2016. Accessed March 17, 2017.

<http://documents.worldbank.org/curated/en/585801468197069751/Vietnams-labor-market-institutions-regulations-and-interventions-helping-people-grasp-work-opportunities-in-a-risky-world>.

⁹ *Ibid.*

¹⁰ Meeting with Claudio Dordi, *op. cit.*

¹¹ Meeting with Changhee Lee, Director at the International Labor Organization on Jan. 19, 2017, Hanoi, Vietnam.

US Bilateral Trade Agreement

Alternatively, the US could seek to pass a bilateral agreement with Vietnam – providing freer trade than is afforded under the current FTA – including the negotiated labor provisions. The Trump administration is not likely to prioritize free trade deals in the near future, yet – when he gets there – the President has vowed to “aim for simpler, less top-heavy bilateral pacts that would be more transparent and accountable to US officials, thereby making them easier to renegotiate if necessary.”¹² Trump’s distaste for multilateral trade agreements is predicated on both politics and (what he views as) suboptimal negotiating positions. The political argument aligns naturally with the President’s blue-collar base, but it’s also something of a political right of passage to pin America’s economic woes on trade liberalization.¹³ The negotiating position explains Trump’s preference for bilateral agreements over multilateral ones: multilateral negotiations give smaller nations room to bargain, while power disparities in bilateral agreements allow larger nations to potentially ‘bulldoze’ larger ones (China has taken a similar position in their negotiations over the South China Sea). Trump should not write off labor rights negotiations as a smokescreen for trading partners to take advantage of the US, they can be of pragmatic interests. The US government has long used labor clauses, which have been inserted into all of its trade agreements since NAFTA, to create a ‘level playing field’ for American businesses and workers by raising international labor standards.¹⁴

European Union-Vietnam Free Trade Agreement (EVFTA)

With the gutting of the labor clause enforcement of the TPP, many reformists are turning instead to the European Union-Vietnam Free Trade Agreement (EVFTA). The agreement, expected to come into force in 2018 and to cut almost all tariffs within seven years, would afford Vietnam access to the 500 million person market. While chief European negotiator Mauro Petriccione said in a statement last year, the EVFTA includes “strong commitments to protect people’s basic rights at work, their human rights more broadly, and the environment,”¹⁵ the language of labor rights provisions is significantly less rigorous than the TPP. The agreement relies more on goodwill than explicit guidelines. Members of the European Parliament’s Subcommittee on Human Rights, who traveled to Vietnam in late February, have expressed

¹² Auslin, Michael. "Time for a U.S.-Japanese Free Trade Agreement?" *Foreign Affairs*. February 13, 2017. Accessed March 17, 2017. <https://www.foreignaffairs.com/articles/asia/2017-01-09/time-us-japanese-free-trade-agreement>.

¹³ Even President Obama and Hillary Clinton, both champions of the TPP while in power, stood quite oppositely in their campaigns.

¹⁴ Tham, Joo-Cheong, and K. D. Ewing. "Labour Clauses in the TPP and TTIP: A Comparison without a Difference?" *Melbourne Journal of International Law* 17, no. 2 (January 4, 2017): 1-35. Accessed March 17, 2017. <https://ssrn.com/abstract=2892982>.

¹⁵ Jennings, Ralph. "EU Presses Vietnam to Improve Human Rights Ahead of Trade Deal." *VOA*. March 01, 2017. Accessed March 17, 2017. <http://www.voanews.com/a/eu-presses-vietnam-on-human-rights/3744840.html>.

ongoing concerns about the country's political rights and freedom of expression.¹⁶ While human rights – and the difficult task of ratifying the FTA in each of the 28 EU member countries, particularly in this political climate – are a sticking point, the deal would certainly be in Vietnam's long-term interests. Exports constitute roughly 89 percent of Vietnamese GDP, the United States and China being two of the biggest markets. While the TPP or the Regional Comprehensive Economic Partnership (RCEP) would allow Vietnam greater access to these markets, it would also likely increase its dependency on them. One consultancy firm notes that, "given the size of the Vietnamese economy relative to these countries, it is quite possible that jobs and spending power of local consumers could have been put at risk in the event that conditions within purchasing markets had shifted."¹⁷ Vietnam – long adept at hedging against risk from China *or* America – may do well to increase ties with the EU and diversify its export portfolio as a safeguard against both.

Regional Comprehensive Economic Partnership (RCEP)

Just as Obama envisioned a "pivot to Asia," Hanoi seeks to orient its trade policy toward the West, in part to decrease its trade dependency with China.¹⁸ Given geopolitical and strategic concerns, including the South China Sea and potential tension between Trump's America and China, Vietnam has sought to tread lightly between the two powers. Vietnam also currently runs a trade deficit with China, as it imports the raw materials (like cloth) from China to transform (into clothes), and had hoped the TPP would assist in future diversification and shift global supply chains (due to its country of origin requirements). By strengthening the significance of labor reforms in the TPP, the US had the opportunity to dictate the future of trade rules worldwide, with China forced to follow.¹⁹ Now the RCEP – seen by most as a China-led alternative between itself, the ASEAN bloc, Australia, India, Japan, South Korea, and New Zealand – is the only multilateral FTA left standing.

Some argue that Trump's decision to withdraw from the TPP is tantamount to handing China a victory, clearing the way for them to step in as the global leader of free trade. While this is not entirely untrue (in recent speeches, President Xi Jinping has called on China to become the new leader of globalization), it's also an oversimplification.²⁰ Despite their exclusion from the deal, the TPP was in many ways in China's

¹⁶ Jennings, Ralph. "Vietnam's TPP Backup Plan, A Free Trade Agreement With Europe, Is Facing New Obstacles." *Forbes*. March 03, 2017. Accessed March 17, 2017. <https://www.forbes.com/sites/ralphjennings/2017/03/02/vietnams-new-most-important-trade-bill-is-hitting-new-obstacles/#4dca78d848d2>.

¹⁷ Brown, Maxfield. "TPP is Dead, What's Next for Vietnam?" *Vietnam Briefing News*. March 20, 2017. Accessed March 30, 2017. <http://www.vietnam-briefing.com/news/tpp-is-dead-whats-next-for-vietnam.html/>.

¹⁸ Meeting with Claudio Dordi, *op. cit.*

¹⁹ *Ibid.*

²⁰ Kellogg, Thomas E. "Xi's Davos Speech: Is China the New Champion for the Liberal International Order?" *The Diplomat*. January 24, 2017. Accessed March 17, 2017. <http://thediplomat.com/2017/01/xis-davos-speech-is-china-the-new-champion-for-the-liberal-international-order/>.

best interests: by preventing potential global trade instability, the country would be better protected against international shocks that would harm the country's export-led growth. Moreover, by boosting the economic prosperity of their regional trading partners, China even directly benefited from TPP reforms. Trump has long opined China-US trade imbalances: he has gone as far as to suggest a 45 percent tariff on Chinese imports and has demonstrated the political gumption for such a radical measure. Trade deals (and further – international law, in general) create stability in trade flows by preventing surprise policy changes and the potential for economic brinkmanship. “America first” not only killed America's involvement in the TPP (and maybe the deal on the whole), but sends a worrying message to those with high stakes in the US market – including China, who exported a total of \$423.4 billion (approximately 20% of the country's total exports) to the United States last year.

Geopolitical Implications

Thus, the pivotal geopolitical loss from the withdrawal of the TPP may well be the contraction of US soft power. RCEP is mostly silent on the norms and reforms (including rule of law, environmental protections, and labor rights, but also rules for 21st century like digital trade and e-commerce) pushed in the TPP. Some hope that an alliance between Australia, New Zealand, Japan, and Singapore could push China toward more TPP-style provisions,²¹ yet such reforms would be based on consensus, which often leads to lower levels of protection.²² Regardless, while Trump may not care about labor laws in Vietnam, he should care about preserving the US-lead rules and institutions established after WWII. The TPP would have protected US values and interests, while compelling China and others to play by its rules for international commerce. Foreign Affairs wrote last year, “there is no better way to dissuade China from bellicosity over its regional territorial disputes than to demonstrate a prosperous alternative... Rather than deploy a naval fleet, why not offer China and its neighbors a clear and plausible path to faster growth and security?”²³ President Trump would do well to consider the geopolitical implications of its loss of soft power, particularly in regard to Vietnam. Many commentators have prophesized an impending trade war between the US and China, but this need not be – encouraging stability, strong institutions, and economic growth in the region is in everyone's interest. Vietnam is determined to secure its place as a developed nation and economic powerhouse in Southeast Asia; how the US chooses to assist in this transition could have lasting effects on its future global affairs.

²¹ Clark, Helen. "RCEP, the TPP and the future of trade." ANZ BlueNotes. March 14, 2017. Accessed March 20, 2017. <https://bluenotes.anz.com/posts/2017/03/does-the-future-of-trade-look-like-rcep/>.

²² Meeting with Ambassador Ted Osius, *op. cit.*

²³ Ikenson, Daniel. "TPP, R.I.P.?" Foreign Affairs. January 24, 2017. Accessed March 17, 2017. <https://www.foreignaffairs.com/articles/americas/2016-11-22/tpp-rip>.

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Understanding Vietnam's Labor Rights Regime vis à vis TPP

Sara Golden

“Vietnam is not just a destination for investment but also a country”

– Human Resources Representative, Ministry of Industry and Trade of Vietnam

“Vietnam is not a war; it is a country”

– Professor at the Americas Department, Ministry of Foreign Affairs, Hanoi

Introduction

During a recent trip to Hanoi, Vietnam, twelve master’s students from Johns Hopkins School of Advanced International Studies (SAIS) set out to explore three facets of international law: international trade and labor standards, wildlife trafficking, and the South China Sea dispute. The Starr Foundation graciously supported the trip and esteemed faculty from the International Law and Organizations Program supervised, including Director, Professor Ruth Wedgwood and Associate Director and Renaissance woman, Tiffany Basciano. For one week in January the delegation from SAIS met with public officials and non-governmental organizations to explore the various subjects of interest. This brief essay explores lessons from the study trip related to labor standards, international trade agreements, and the garment sector.

At the outset of the trip, students of international law, human rights, and trade economics suspected that labor standards and enforcement would be of grave concern to Party officials and industry leaders. For a student who had never visited a contemporary communist country and who did not fully understand the party system, it was a logical expectation that Vietnamese industry professionals would be open to discussing the amelioration of labor rights issues within their international trade and domestic manufacturing policies. In addition, after studying the Trans-Pacific Partnership (TPP) agreement from a political economy standpoint, and after watching the United States “stab itself in the back” as President Trump backed out of the long-awaited deal, expectations were that the Vietnamese would scold the American delegation for its poor decision-making. Below are some of the lessons learned regarding the amelioration of Vietnam’s labor rights regime partially due to Vietnam’s booming international economic integration.

Meetings Overview

The relevant meetings to this particular case study illuminated Vietnam’s labor rights landscape for stakeholders such as workers, employers, party labor unions, international organizations, and importers and exporters. The relevant meetings were with the Ministry of Industry and Trade, then a conversation at

the United States Embassy with Ambassador Ted Osius, and finally a briefing with the Vietnam Office of the International Labour Organization (ILO).

Ministry of Industry and Trade Findings

During this meeting students met with three Vietnamese TPP negotiators, one representative from the Ministry's Human Resources Department, and Head of the Light Industry Policies. The question and answer session was fruitful in that students were able to ask pointed questions to the leaders regarding trade, labor, and export-oriented industrialization. When prodded about the enforcement of labor standards, the leaders made a point of directing the group to the Ministry of Labor and Invalids to obtain more detailed information. However they were able to shed light on the intersection of trade agreements and labor reforms in the country. The Ministry panel drilled down, almost repetitively, that Vietnam adheres to the four basic International Labour Organization commitments: 1) freedom of association; 2) right to collective bargaining; 3) abolishing forced labor; 4) and abolishing child labor, and that Vietnam was not going to change its labor standards from the ILO commitments. It was a clear party line flying in the face of many reports coming from international watchdog organizations.

Although Vietnam's wages are low, that is part of their competitive advantage in the global economy, into which Vietnam has been committed to fully integrating since 2005. The panel explained that if wages increase or labor costs go up, it would affect global prices, change exports and production outputs, and constrain Vietnam's competitiveness from where it now stands as the world's fourth largest exporter of garments. The sector, which is 53% state-owned, grew 15% year over year in the past four years, and according to one of the panelists, the goal is to privatize all industries. Furthermore, the Ministry prided itself on the high quality of manufacturing, while silently acknowledging that the minimum wage factory workers often make a non-living wage. There are 50 colleges and universities run as branches of the government to train people for the garment sector alone. Throughout the meeting there was mixed messages from the panel because another speaker contradicted a previous speaker by saying that wages are increased by 7.3% per year for laborers due to a recent law. This law received some negative criticism from the textile associations who claimed that the higher wages would price out Vietnamese producers in relation to their lower wage neighbors Bangladesh and Myanmar. Despite some political tension regarding minimum wage reforms, the panel reaffirmed its position focusing on the high quality of Vietnamese laborers, who are trained for the domestic and international market nonetheless. Again, in a

lack of clarity, a panelist claimed that it was the high quality labor not the low cost labor that set Vietnam apart and allowed Vietnam to be the only country where textile exports were not on the decline.²⁴

United States Embassy Findings

When the SAIS delegation visited the United States Embassy in Hanoi, we were welcomed into a big, grey, heavy, outdated block building. Juxtaposing the daunting looking exterior, the interior of the cultural center was stunning, modern, updated and bright. After briefings by a handful of Foreign Service Officers from the economic, political, and human rights cones, Ambassador Osius, an alumnus of SAIS, took questions from the students. Instead of being overly formal or distant, he was relatable and spoke candidly. He made a point to mention how ironic it is that so frequently international organizations come from an American or Western capitalist perspective to lecture Vietnam, a communist country, on its labor issues. It was a point well taken, and students tried to internalize this important message throughout the rest of the trip, especially as it was echoed by Vietnamese leaders who referenced Vietnam as a country with agency, not just the product of war or a site for investment. However, it was noted that while the U.S. might pull out of the high-standard TPP (this meeting took place days before the US presidential inauguration), Vietnam is just as intent on sticking to TPP and its standards whether or not the U.S. keeps with the deal. On the other hand, the Embassy was skeptical yet hopeful that the Regional Comprehensive Economic Partnership (RCEP), led by China and India who were left out of the TPP, would hopefully become a high standards agreement like the TPP and incorporate labor and environmental obligations. In all, the meeting shed light on the broad interplay between Vietnam's labor reforms and international trade agreements.²⁵

International Labour Organization Findings

Last on the list of relevant meetings is the informative and in-depth conversation with the Director of the International Labour Organization's Office in Vietnam. This meeting confirmed what the Ministry of Industry and Labor said about Vietnam's compliance with ILO standards as set out in 1992 when Vietnam joined the ILO and reaffirmed in the 2015 TPP negotiations. The Director also confirmed what the U.S. Ambassador said that Vietnam is going to implement labor reforms, namely convention on the freedom of association and collective bargaining, regardless of the TPP process because of another bilateral agreement with the EU. Interestingly, he couched his conversation about Vietnam and labor in the context of China due to our trip's multilateral focus, and explained that Vietnam wanted to protect its industry against China so it agreed to freedom of association laws in the TPP. At the ILO was the final

²⁴ Meeting with the Ministry of Industry and Trade on January 16, 2017, Hanoi, Vietnam.

²⁵ Meeting with the United States Embassy in Vietnam on January 17, 2017, Hanoi, Vietnam.

opportunity for students to ask the hard questions about Vietnam's enforcement of labor standards, not just their codified commitments in treaties. The group learned that the enforcement issues are related to the overall governance structure of the country. Because it lacks coordination from the top down, there is room for innovation from the bottom up, such as with labor unions. However the labor and trade unions in Vietnam are branches of the Communist Party and therefore union leaders are in fact civil servants, which the Vietnamese public generally looks down upon. In retrospect, the labor laws have grown more protective of workers in Vietnam, perhaps due to their socialist mindset.

Women's labor force participation ratio (the percentage of eligible women workers in the total population) has significantly increased over the years, largely due to the growth of the garment sector whose employees are mostly women. The ILO Director said that Vietnam has some pre-modern views of gender roles and its old-fashioned labor laws reflect this. Yet it has somewhat progressive laws for working women in comparison to the U.S. For example, women can have up to six months of paid maternity leave, which to an American sounds like a long time because the U.S. has up to 12 weeks of guaranteed unpaid leave compared to the OECD average of 20 weeks.²⁶ While in the country, news was buzzing about a controversial new factory labor law that gave women the option to take a fifteen or twenty minute break during their menstrual cycle when they would otherwise not be allowed breaks. This law was controversial because it required women to divulge to managers that they were menstruating and provided a disincentive for employers to hire women since the menstruation-related work break would lower their productivity. Overall, the meeting with the ILO gave the trip a positive outlook on the progress Vietnam has made to support, respect, and protect its workers.

²⁶ "Length of maternity leave, parental leave and paid father-specific leave." OECD. Accessed April 06. 2017. <http://www.oecd.org/gender/data/length-of-maternity-leave-parental-leave-and-paid-father-specific-leave.htm>.

Vietnamese Labor Reforms: An Uncertain Future without the Trans-Pacific Partnership

Rachel Minogue

Introduction

For years, Vietnam has faced international criticism for its poor record on labor rights. In addition to human rights concerns, many believe low labor standards give Vietnam an unfair comparative advantage in global trading relations, with Vietnam serving as a “race to the bottom” country since its global economic opening with *Doi Moi* in the 1980s. The inclusion of Vietnam in the Trans-Pacific Partnership (TPP) provided a unique opportunity to use a trade agreement to impose higher labor standards on Vietnam and compel the country to institute concrete labor reforms. But with the recent crumbling of the TPP, the agreed-upon labor improvements are now in jeopardy, as no external enforcement measure now binds Vietnam to its labor commitments.

Vietnam and the TPP

Concluded in 2015 after almost a decade of talks, the TPP is a free-trade agreement between 12 trading partners, which together constituted approximately 40 percent of the world’s GDP and one-third of global trade.²⁷ If implemented, the agreement would eliminate more than 18,000 tariffs, as well as other trade barriers, addressing issues from data flows and intellectual property standards to state-owned enterprises. In order to come into force, the TPP needed first be signed by and legally applicable in each member state within two years of the agreement’s completion. The agreement, however, could also come into force if at least six countries accounting for at least 85 percent of the combined GDP of the original signatories approved the agreement, though the TPP would then only apply to those countries.²⁸

Several evaluations of the finalized TPP text asserted that Vietnam stood to benefit greatly from the agreement, perhaps the most of any signatory country. The World Bank estimated that, by 2030, the TPP would increase Vietnam’s GDP by 8 percent.²⁹ The Eurasia Group forecasted even larger gains for the

²⁷ Granville, Kevin. "The Trans-Pacific Partnership Trade Accord Explained." The New York Times. October 05, 2015. Accessed March 17, 2017. http://www.nytimes.com/2015/10/06/business/international/the-trans-pacific-partnership-trade-deal-explained.html?_r=0.

²⁸ Fergusson, Ian F., and Brock R. Williams. "The Trans-Pacific Partnership (TPP): Key Provisions and Issues for Congress." Congressional Research Service. June 14, 2016. Accessed 2017. <https://fas.org/sgp/crs/row/R44489.pdf>.

²⁹ Corben, Ron. "World Bank Sees Vietnam As 'Winner' from TPP." VOA. October 13, 2015. Accessed March 17, 2017. <http://www.voanews.com/content/world-bank-sees-vietnam-as-winner-from-tpp/3004217.html>.

country, predicting that GDP would increase by 11 percent by 2025 (or \$36 billion), along with impressive export gains, increased by 28 percent.³⁰

Vietnam's Labor Rights Commitments

The TPP text aimed to address Vietnam's poor labor rights record with "the strongest protections for workers of any trade agreement in history."³¹ Under this agreement, Vietnam committed to freedom of association, collective bargaining, and minimum work condition, marking the first time Vietnam agreed to specified labor standards in a free trade agreement.³² As a result, the country would have legally allowed worker unionization independent of the government. Workers would have also been permitted the right to collective bargaining, and could freely strike on issues such as improved wages, hours, and working conditions.³³

In addition to agreeing to the final text of TPP, the United State and Vietnam signed a side agreement on Vietnam's labor right commitments. Officially concluded in February 2016, the United States-Vietnam Plan for the Enhancement of Trade and Labor Relations served as an implementation plan that detailed concrete actions for Vietnam to take in complying with the TPP labor standards. The plan also committed Vietnam to "build the capacity of its institutions to enforce" the new labor laws, subject to an independent review mechanism. Perhaps most importantly, the agreement provided for additional enforcement of the labor commitments, as the United States maintained the right to suspend the agreed-upon tariff rate concessions if Vietnam had failed to comply with the labor regulations within five years.³⁴

While many remained skeptical that the inclusion of such language would have resulted in a genuine impact on labor rights in Vietnam, Tom Malinowski, U.S. Assistant Secretary of State for Democracy, Human Rights, and Labor, said the provisions encouraged "deep institutional reform in Vietnam that

³⁰ "The Trans-Pacific Partnership: Sizing Up the Stakes - A Political Update." Eurasia Group. July 14, 2015. Accessed March 17, 2017. https://eurasiagroup.bluematrix.com/sellside/AttachmentViewer.action?encrypt=009c9184-4c8f-4b0f-9f2f-c39d898429a8&fileId=18482_d0bcb84c-803d-4e3f-a57a-cf290798cd59&isPdf=false.

³¹ "TPP: Made in America: Chapter 19: Labor." Office of the U.S. Trade Representative. Accessed March 17, 2017. <https://ustr.gov/sites/default/files/TPP-Chapter-Summary-Labour-1.pdf>.

³² Massmann, Oliver. "The TPP: A Win for Vietnam's Workers." The Diplomat. April 20, 2016. Accessed March 17, 2017. <http://thediplomat.com/2016/04/the-tpp-a-win-for-vietnams-workers/>.

³³ "Labor | United States Trade Representative." Labor | United States Trade Representative. Accessed March 17, 2017. <https://ustr.gov/trade-agreements/free-trade-agreements/trans-pacific-partnership/tpp-chapter-chapter-negotiating-4>.

³⁴ "United States-Vietnam Plan for the Enhancement of Trade and Labor Relations." Office of the U.S. Trade Representative. Accessed March 17, 2017. <https://ustr.gov/sites/default/files/TPP-Final-Text-Labour-US-VN-Plan-for-Enhancement-of-Trade-and-Labour-Relations.pdf>.

[would have advanced] human rights.”³⁵ Officials from the U.S. Embassy to Vietnam confirmed that the proposed labor rights reforms would have “moved Vietnam far forward.” They noted the pressure put on Vietnam to change its treatment of labor in order to join the trade bloc, stressing that respect for freedom of association was the “price of entry” for Vietnam into the TPP. Embassy officials also recognized the legal reforms would have major implications on all political prisoners, but especially those advocating for improved labor rights.³⁶ And though countries rarely perfectly comply with trade agreements, with the conclusion of TPP negotiations in 2015, Vietnam began its efforts to modify domestic legislation to reflect its new commitments.

Commitment Continuation Post-TPP

After months of heavy domestic criticism of the trade agreement, the United States officially withdrew from TPP in January 2017.³⁷ With the loss of this critical negotiator and market, the future of the trade relations between the remaining eleven partner countries is uncertain. And with no United States, there is no U.S.-Vietnam labor implementation agreement. The enforcement mechanism designed to pressure Vietnam into upholding its labor commitments is no longer legally relevant. The question remains: will Vietnam implement any labor reforms without TPP?

In January, U.S. Embassy officials stated their expectation that Vietnam would still complete many of its commitments regardless of TPP’s future. The reforms required of Vietnam under TPP have growing importance for the country’s overall economic success, particularly in attracting international investment and multinational companies into its market. However, the officials also conceded that the labor reforms themselves are less certain without a path forward on TPP.³⁸

Professor Claudio Dordi, a leading expert at the EU Multilateral Trade Assistance Program in Hanoi, was pessimistic about the future of labor reforms in Vietnam. He highlighted Vietnam’s limited success in implementing and enforcing international agreements, especially regarding intellectual property and liberalization of trade in services. He attributed this problem to a lack of capacity, financial resources, and organization in the Vietnamese government, a deficiency that would also negatively influence labor

³⁵ Calmes, Jackie. "Trans-Pacific Partnership Text Released, Waving Green Flag for Debate." The New York Times. November 05, 2015. Accessed March 17, 2017. http://www.nytimes.com/2015/11/06/business/international/trans-pacific-trade-deal-tpp-vietnam-labor-rights.html?_r=0.

³⁶ Meeting with Ambassador Ted Osius, *op. cit.*

³⁷ Mui, Ylan Q. "Withdrawal from Trans-Pacific Partnership shifts U.S. role in world economy." The Washington Post. January 23, 2017. Accessed March 17, 2017. https://www.washingtonpost.com/business/economy/withdrawal-from-trans-pacific-partnership-shifts-us-role-in-world-economy/2017/01/23/05720df6-e1a6-11e6-a453-19ec4b3d09ba_story.html?utm_term=.71e7ff49ce07

³⁸ See Meeting with Ambassador Ted Osius, *op. cit.*

reform implementation. Professor Dordi also noted that, specifically regarding labor rights, legally mandating respect for freedom of association would require a modification of the Vietnamese constitution. While constitutional reforms can be a challenge in any country, this process is particularly difficult in Vietnam due to the Communist Party's fear of creating an opening for new political rivals. He emphasized the high sensitivity of labor reforms in Vietnam and forecasted a long road to achieving high labor standards in the country.³⁹

Changhee Lee of the International Labor Organization's Hanoi outpost provided a different perspective on the reform's futures. Mr. Lee stressed that with or without TPP, "most labor reforms will still go through," as the Vietnamese government has already commenced transposing them into its domestic legislation. He noted that the recently signed free trade agreement between the EU and Vietnam also contains labor provisions, some of which are similar to those under TPP. Mr. Lee also commended Vietnam for its usage of international agreements to change domestic practices like labor reforms, describing the country as a "genius at using external processes to implement internal reforms." He added that, though the concrete pressure on Vietnam to reform under the TPP labor implementation agreement is gone, the lack of a deadline on labor reforms could produce more realistic implementation of new labor standards, and the relaxed atmosphere may lead to more lasting reforms.⁴⁰

It also bears noting that while the United States has withdrawn from the TPP, the eleven remaining members could still decide to uphold the agreement, albeit in a slightly different form. As noted by U.S. Ambassador Ted Osius, "TPP is in purgatory; it's not dead."⁴¹ In March 2017, officials from all TPP member countries met in Chile to discuss the future of the trading bloc, and several chief negotiators expressed their interest in continuing the pact without the United States.⁴² With a revived TPP, the labor standards agreed to in the original agreement may see renewed life. In addition, on the U.S. side, the trade arena is ripe with rumors of a potential bilateral free trade agreement between the U.S. and Vietnam under the new Administration. Should such a bilateral take place, the U.S.-Vietnam labor implementation plan could be re-adopted as part of the negotiations.

³⁹ Meeting with Claudio Dordi, *op. cit.*

⁴⁰ Meeting with Changhee Lee, *op. cit.*

⁴¹ See Meeting with Ambassador Ted Osius, *op. cit.*

⁴² Cassella, Megan, Doug Palmer, Jason Huffman, Adam Behsudi, Parag Khanna, and Lauren Gardner. "Morning Trade: Lighthizer's turn in the hot seat." *The Agenda*. Accessed March 17, 2017. <http://www.politico.com/agenda/story/2017/03/morning-trade-lighthizers-turn-in-the-hot-seat-000346>.

Conclusion

At the present time there is no consensus as to the future of Vietnam's labor reforms agreed upon in the Trans-Pacific Partnership negotiations. Regional experts have posited a complex combination of predictions, ranging from overly optimistic, to pragmatic, to fatalistic. Thus, the continuation of Vietnamese labor reforms is at best uncertain, but given some positive indications and global economic pressures, the reforms may have a more promising future than at first glance.

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<http://www.politico.com/agenda/story/2017/03/morning-trade-lighthizers-turn-in-the-hot-seat-000346>.

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https://eurasiagroup.bluematrix.com/sellside/AttachmentViewer.action?encrypt=009c9184-4c8f-4b0f-9f2f-c39d898429a8&fileId=18482_d0bcb84c-803d-4e3f-a57a-cf290798cd59&isPdf=false.

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The Legacy of *Doi Moi*: Labor and the Environment

Ashley Patton

In just over a decade after the end of the Vietnam War, in December 1986, the Vietnamese government under the rule of the Communist Party launched a set of free-market reforms known as *doi moi*, which has been translated as economic renovation, rejuvenation, or renewal.

Doi Moi: A Background

Following the lead of China who launched similar “opening-up” economic reforms in 1978 under Deng Xiaoping, the reforms in Vietnam were driven by three major factors for initiating change in a strict governmental system: receptivity; crisis; and opportunity. In short, Vietnam was discontented with its past legacy of development approaches (receptivity); there was an abrupt decline within the agricultural sector where more than 80% of the Vietnamese held employment (crisis); and there was a death of a prominent Vietnamese leader and staunch socialist General Secretary Le Duan. “These transformative events enabled new leaders with a more pragmatic view and a stronger sense of urgency to emerge.”⁴³ Under *doi moi*, there was a move away from a centrally-controlled economy and toward a market socialism economy, a greater focus on foreign trade and investment, and a shift from an agricultural-based economy to a more globally interconnected, modern economy based on industry, service, and tourism.

In the past thirty years since *doi moi* was initiated, Vietnam has developed as a nation with a dynamic and fast-growing economy. Aside from a minor dip in Gross Domestic Product (GDP) in 1989 and 1990, Vietnam has seen a steady annual increase in its GDP. It has grown at an annual rate of somewhere between 5% and 7% from 1991 to 2015, the most recent year that the World Bank has data.⁴⁴ In current US\$, the total GDP grew from \$26.3billion in 1986 to \$193.6trillion today. Gross National Income per capita, PPP (current international \$) has grown from \$910 in 1990 to \$5,720 in 2015⁴⁵ and according to a World Bank report the poverty rate fell from almost 60% in the early 1990s to 20.7% in 2010.⁴⁶

Though *doi moi* has had astounding positive effects on Vietnam’s economy in terms of general growth, industrial expansion, and the other forms of development that it promotes; it has also had ill-effects on various aspects of Vietnamese society. One study on the effect of these reforms on the health system notes “[w]ith the liberalization of the economy have [sic] come not only growth for many, and increased choice, but also increased income and regional disparities and the problem of access to social services for those households which are less successful in the market economy,”⁴⁷ such as youth, the poor, and those in rural areas. While there are many other areas in which Vietnam has been impacted by *doi moi*, given its rapid connection to the global economy it “presents an excellent case study for examining how a country

⁴³ Vu Minh Khuong, “Can Vietnam Achieve More Robust Economic Growth?,” *Journal of Southeast Asian Economies* 32 (2015): 52-83. 53.

⁴⁴ The World Bank. 2016. *Vietnam / Data*. Accessed March 2, 2017. <http://data.worldbank.org/country/vietnam>.

⁴⁵ Ibid.

⁴⁶ The World Bank. 2013. *Poverty Reduction in Vietnam: Remarkable Progress, Emerging Challenges*. January 24. Accessed March 2, 2017. <http://www.worldbank.org/en/news/feature/2013/01/24/poverty-reduction-in-vietnam-remarkable-progress-emerging-challenges>.

⁴⁷ Witter, S. 1996. "'Doi moi' and health: the effect of economic reforms on the health system in Vietnam." *The International Journal of Health Planning and Management* (National Institutes of Health) 2: 159-72. 159.

makes the transition to industrial development and global economic integration, while facing the challenges and opportunities of protecting workers and the environment.”⁴⁸ Before such an examination can happen, it is important to first understand *doi moi*'s connection to labor and the environment.

Labor

One sector that is directly affected by policies under *doi moi* is the labor sector. As Vietnam opened to international trade, it became an important country within the global trading network. Some advocates credit *doi moi* with advances in workers' rights in Vietnam, as it rejoined the International Labour Organization (ILO) in 1992, the right to strike was recognized, and unions have become more assertive. The first adoption of labor laws within Vietnam was not until January 1995.⁴⁹ However, with the shift from a country based on agriculture to one steeped in the globalized sectors of industry, tourism, and services, the desire for rapid economic development (especially when it involves a comparative advantage in goods that are produced quick and cheap) is often associated with workers' abuses and the denial of their rights. A report conducted by the U.S. Congressional Research Service states in its summary on the labor rights regime in Vietnam that, in addition to various issues such as corruption and a shortage of resources that make it difficult for Vietnamese government officials to enforce labor laws, the 1986 *doi moi* reforms: have been followed by surging urban unemployment and a rise in child labor, forced prostitution, and the trafficking of women and children. Workers in all sectors of the economy are often exposed to dangerous, unhealthy, and in some cases impoverished "sweatshop" conditions.⁵⁰

The ILO notes that despite high growth and development throughout this economic opening, “vulnerable employment remains significant: 61% of all workers in Viet Nam are estimated to be engaged in vulnerable forms of employment.”⁵¹ In conversations developing the Trans-Pacific Partnership (TPP), the United States contended that Vietnam did not meet certain labor standards it deemed necessary to become a member state. Through the U.S. Trade Representative, it negotiated a consistency plan that highlighted the changes Vietnam must put into force, including increases in penalties for forced labor and legislative reforms allowing greater member organization within unions.⁵²

Environment

As noted by Javier Revilla Diez in a look into the achievements and challenges in the thirty years since *doi moi*, “environmental issues need to be considered more seriously, especially pollution from intensified agricultural production, mining, and industrialization.”⁵³ There is a unique relationship globally between trade and environment, as free traders and environmentalists have opposing fears, the former concerned with the protections that some economic sectors may claim against foreign competition and the latter with the potential for pollution and degradation that can happen with rapid industrialization in the absence of

⁴⁸ O'Rourke, Dara. 2004. *Community-Driven Regulation: Balancing Development and the Environment in Vietnam*. Cambridge, Massachusetts: The MIT Press. XI.

⁴⁹ Meeting with Changhee Lee, *op. cit.*

⁵⁰ Manyin, Mark, Thomas Lum, Lois McHugh, Phuong-Khanh Nguyen, and Wendy Zeldin. 2002. Vietnam's Labor Rights Regime: An Assessment. Congressional Research Service, Washington, DC: The Library of Congress.

⁵¹ The International Labour Organization. 2016. "The ILO in Viet Nam." Geneva: Department of Partnerships and Field Support.

⁵² Semuels, Alana. 2016. *The TPP's Uneven Attempt at Labor Protection*. January 22. Accessed March 2, 2017.

<https://www.theatlantic.com/business/archive/2016/01/tpp-mexico-labor-rights/426501/>.

⁵³ Revilla Diez, Javier. 2016. "Vietnam 30 years after Doi Moi: achievements and challenges." *The German Journal of Economic Geography* 60 (3): 121-133. 121.

stringent environmental standards.⁵⁴ A significant amount of literature has been written on the intersection of economic trade and growth with environmental concerns, but the reality is that each country is different.

Over the past couple of decades of development, Vietnam has experienced such maladies as deforestation and ecological degradation, a loss of biodiversity (especially through the illegal wildlife trade), and both water and air pollution from rapid industrialization and outdated infrastructure unable to cope with the rise in population and shift toward urban areas.⁵⁵ Hanoi and Ho Chi Minh City, hubs for economic growth, have seen increasing quantities of pollution at levels that rival those places traditionally thought of as the world's largest polluters, such as cities throughout China, India, and the Middle East. For instance, the first two days of 2017 in Hanoi saw Air Quality Index levels at the upper limits of the "Very Unhealthy" range designated by the Environmental Protection Agency, the second highest designation, only below "Hazardous."⁵⁶

A study conducted through the World Bank took a deeper dive into the intersection of the environment and trade liberalization in Vietnam in 2006. Through extensive research, it ultimately concluded that while the liberalization of trade was intended as a measure to spur Vietnamese economic growth, it has also had potentially harmful consequences for the environment. These results suggest that there is a trade-off between the economic gains from liberalization and the environmental consequences from a liberalization episode that has not been accompanied by a simultaneous strengthening of environmental policies.⁵⁷

Moving Forward

With the uncertainty that the election of Donald Trump to President of the United States brings, there remains much ambiguity surrounding the continued U.S. "pivot to Asia" seen under the Obama administration. On one of his first days in office, President Trump withdrew from the TPP, a move that is perceived to be a big blow to the agreement and the eleven other nations who have signed on, Vietnam included. One article described the TPP as "helping to spur the biggest overhaul of Vietnam's economy in decades" but also argued that this pact will change Vietnam's economy, no matter the decision of President Trump.⁵⁸ Vietnam has been working toward this trade pact for many years, actually citing the TPP as a critical part of the Vietnamese integration process.⁵⁹ In addition, in December 2015 the negotiation process surrounding a free trade agreement between Vietnam and the European Union

⁵⁴ Jha, Shreyasi, and Muthukumara Mani. 2006. "Trade Liberalization And The Environment In Vietnam." *Policy Research Working Papers* (World Bank Group).

⁵⁵ Asia Society. n.d. *The Real Cost of Developing Vietnam*. Accessed March 2, 2017. <http://asiasociety.org/real-cost-developing-vietnam>.

⁵⁶ Environmental Protection Agency. 2017. Accessed March 2, 2017. [https://airnow.gov/index.cfm?action=airnow.global_summary#Vietnam\\$Hanoi](https://airnow.gov/index.cfm?action=airnow.global_summary#Vietnam$Hanoi).

⁵⁷ Jha and Mani, 25-26.

⁵⁸ Nguyen, Giang. 2016. *The TPP Is Changing Vietnam's Economy, No Matter What Trump Does*. November 28. Accessed March 2, 2017. <https://www.bloomberg.com/news/articles/2016-11-28/the-tpp-is-changing-vietnam-s-economy-no-matter-what-trump-does>.

⁵⁹ Meeting with the Ministry of Foreign Affairs, Americas Department, *op. cit.*

concluded, with the full text published the following February.⁶⁰ Thus, Vietnam, is unlikely to scrap all of its plans for economic development with the potential demise of the TPP.

In January 2017, various Vietnamese public officials, such as those within the Ministry of Industry and Trade⁶¹ and the Ministry of Foreign Affairs,⁶² expressed great optimism surrounding the growth of Vietnam. For instance, a lot of focus was placed on the Regional Comprehensive Economic Partnership (RCEP), an agreement in the works with the nine other countries who are a part of the Association of Southeast Asian Nations (ASEAN), along with other major economic regional powers Australia, China, India, Japan, New Zealand, and South Korea. In an interview with Bloomberg, Nguyen Van Tuan, Deputy General Secretary of the Vietnam Textile and Apparel Association, said “[w]e are not so concerned about TPP ending, since we still have others FTAs with different markets... We will look at ways to boost exports to the EU, which we still have a lot of room to grow. We also have a large domestic market which should be our priority.”⁶³ It is clear that the potential demise of the TPP will not result in the demise of the pursuit of economic growth within Vietnam.

Since *doi moi*, there has been a focus on “8% growth, no matter what” in Vietnam – at the expense of human rights, the environment, and everything else; only recently has there been a willingness to lower growth to focus on achieving higher human rights and environmental standards.⁶⁴ As Vietnam positions itself in the world as an increasingly important trade partner, addressing the effects this expansion has on the labor market and environment needs to be a priority. Future growth models for Vietnam must abide by international labor and environmental standards.

Labor

The Ministry of Industry and Trade stated that focusing on labor rights is a priority, noting both a regulation to raise average wage for labor (conducted yearly) and a shift from a focus on cheap labor to quality labor as a main advantage.⁶⁵ The European Trade Policy and Investment Support Project in Hanoi, Vietnam noted the European Union’s commitment to labor rights through its sustainable development chapter based on human rights and the ILO’s convention to promote freedom of association, something that Vietnam has currently not signed on to. Vietnam must modify its constitution to legalize freedom of association and better include a focus on workers’ rights in its international trade agreements, such as RCEP.⁶⁶ Given its not so bright labor record in the past, Vietnam must continue to abide by these goals and ILO standards, even if the TPP (and its conditional rules surrounding Vietnamese development standards) does not move forward. There is a huge potential for legal reform, so there needs to be a greater focus on this.⁶⁷

⁶⁰ European Commission. 2017. *EU-Vietnam Free Trade Agreement Now Available Online*. February 1. Accessed March 20, 2017. <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1449>

⁶¹ Meeting with the Ministry of Industry and Trade, *op. cit.*

⁶² Meeting with the Ministry of Foreign Affairs, Americas Department, *op. cit.*

⁶³ Nguyen, Dieu Tu Uyen. 2017. *Vietnam Turns to Its Neighbors After Trump Kills Trade Deal*. January 26. Accessed March 2, 2017. <https://www.bloomberg.com/news/articles/2017-01-25/vietnam-turns-to-neighbors-as-trump-strikes-blow-to-trade-deal>

⁶⁴ Meeting with the Wildlife Conservation Society on Jan. 20, 2017, Hanoi. Vietnam.

⁶⁵ Meeting with the Ministry of Industry and Trade, *op. cit.*

⁶⁶ Meeting with Claudio Dordi, *op. cit.*

⁶⁷ Meeting with the United States Embassy in Vietnam, *op. cit.*

Environment

In terms of the environment, many sectors within Vietnam have been focused on this issue, especially since the need to address the environmental impacts of the war remains.⁶⁸ With the rampant pollution, food safety is a top fear. In addition, Vietnam is one of the top five nations in the world in terms of vulnerability to climate change.⁶⁹ The Ministry of Natural Resources and Environment noted the “Intended Nationally Determined Contribution of Viet Nam,” a declaration submitted to the United Nations in 2015 focused on achieving certain environmental goals and standards, and other plans for sustainable development within the nation.⁷⁰ The Vietnamese government must follow through on its international commitments to environmental standards and increase its environmental education initiatives.

Conclusion

The current opportunities for growth should be thought of as not just an opportunity for Vietnam to achieve a higher position within the global economy, but also as an opportunity to instill certain labor regulations and environmental standards going forward. To be truly competitive, Vietnam must adopt, and adhere to, higher legal standards regarding labor and the environment within its internal legal framework. Vietnam is a beautiful country with great people, and it must not allow significant growth efforts, started in 1986 with *doi moi*, come at their expense.

⁶⁸ Meeting with the Ministry of Defence on Jan. 17, 2017, Hanoi, Vietnam.

⁶⁹ Meeting with the United States Embassy in Vietnam, *op. cit.*

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Vietnam Hedging: The TPP and RCEP

Madison P. Wilcox

Introduction

In November 2016, former US Trade Representative Michael Froman stated that the failure to ratify the Trans-Pacific Partnership (TPP) would give China the opportunity to boost its exports and set labor and environmental standards in the fast-growing Asia Pacific Region through the Regional Comprehensive Economic Partnership (RCEP).⁷¹ Two months later, President Donald Trump issued a Memorandum withdrawing the United States from the TPP. The President's concerns lie in domestic politics and the plight of the American manufacturing jobs while Froman's lie in a regional power struggle that is being fought not only in visible territorial disputes, such as the South China Sea, but also in trade leadership. Domestic concerns aside, US withdrawal from the TPP has immense implications in terms of trade regulation, international alliances, and influence in Southeast Asia.

Vietnam is at the forefront of this power struggle, with the US and China constituting its two biggest trading partners and most tenuous allies.⁷² With a large growing population and economy, Vietnam is, potentially, the most important emerging economy in either the TPP or RCEP regional trade agreements (RTAs).⁷³ Vietnam also stands to gain the most from a wider free trade area but is lagging in environmental and labor standard enforcement, among other important issues.⁷⁴ Consequently, the struggle for influence in Vietnam is a microcosm, but also the epicenter, of events in the larger region. While territorial disputes in the South China Sea remain the highlight of crisis management in Vietnam, negotiations around these RTAs are occurring behind the scenes and bring equally important long-term implications.

In fact, regional trade agreements are becoming increasingly important tools of diplomacy in international relations. RTAs can include multiple partners in free trade agreements and customs unions. They may also add regulations that go beyond the general international trade law framework established by the World Trade Organization (WTO). The latest proposed "mega-regional trade agreements", the TPP and RCEP, represent a more robust effort by the superpowers not just to create larger free-trade zones but to

⁷¹ Mauldin, William. "TPPs Failure Would Hand US Business in Japan to China, White House Says." The Wall Street Journal. 11/3/2016.

⁷² Martin, Michael F. US-Vietnam Relations in 2016: Current Issues and Implications for US Policy. Congressional Research Service. Summary. May 20, 2016.

⁷³ Boudreau, John. "The Biggest Winner from TPP Trade Deal May Be Vietnam". Bloomberg. 10/8/2015. Website. Accessed 12/18/2016. <https://www.bloomberg.com/news/articles/2015-10-08/more-shoes-and-shrimp-less-china-reliance-for-vietnam-in-tp>

⁷⁴ Meeting with Changhee Lee, *op. cit.*

promote their version of trade norms and regulations.⁷⁵ In short, the TPP is meant to enforce greater standards for labor protection, environmental conservation, and intellectual property rights along with a robust investor state settlement dispute (ISDS) mechanism. RCEP looks to incorporate some aspects of the TPP but to a much lesser extent, allowing Chinese business increased access with an expanded free trade zone. Although the TPP will not go forward to implementation in the near future, it is useful to analyze in order to compare its potential impact with that of RCEP, which is currently being negotiated.

The Trans-Pacific Partnership Agreement

The Trans-Pacific Partnership (TPP) would link the United States with 11 other Pacific Rim countries in the largest free trade area to-date.⁷⁶ The goal of the TPP is to become a potential platform for “economic integration across the Asia-Pacific region that will advance United States’ and Vietnam’s economic interests.”⁷⁷ Signatories represent roughly 40% of global GDP and one-third of world trade but, importantly, exclude China. According to Claudio Dordi of the EU Trade Policy Investment Support, the TPP has important rules on State Owned Enterprises, subsidies, environmental standards, labor protection, and anti-corruption.⁷⁸ It also requires expedited customs procedures, additional privacy laws, consumer protections for online transactions, and limits to non-tariff barriers to trade which have become increasingly diversionary in the past decade.^{79,80}

The TPP would layer onto the existing US-Vietnam Bilateral Investment Treaties (BIT) to further integrate economic activity.⁸¹ Additionally, the TPP mandates good governance standards by requiring signatories to join the United Nations Convention against Corruption. According to the USTR, the TPP includes the most robust environment commitments of any trade agreement in history because it requires signatories to fulfill their obligations under the Convention on International Trade in Endangered Species (CITES).⁸² Enforcement is an important aspect since, as noted by the US Embassy in Viet Nam, the government has already made many commendable international commitments, such as signing CITES and several International Labour Organization (ILO) conventions, but has fallen short on enforcing the treaties.⁸³

However, as evidenced by the political failure of the agreement in the United States, the TPP was not without problems. Negotiations were extended because of disagreements over certain issues like agriculture

⁷⁵ International Trade Centre. “Understanding NTMs.” 2016. Website. Accessed 12/20/2016. <http://www.intracen.org/itc/market-info-tools/non-tariff-measures/understanding-ntms/>

⁷⁶ William, Brock R. The Trans-Pacific Partnership: Strategic Implications. Congressional Research Services. 2/3/2016. P 7-9

⁷⁷ Embassy of the United States Hanoi, Vietnam. "U.S.-Vietnam Bilateral Economic Relations: 15 Years of Success".

⁷⁸ Meeting with Claudio Dordi, *op. cit.*

⁷⁹ Ed Gerwin (27 November 2015). "Small Businesses With a Big Stake in the Pacific Trade Deal". The Wall Street Journal.

⁸⁰ International Trade Centre. *Ibid.*

⁸¹ Isfeld, Gordon. "Forget NAFTA, the TPP is the new 'gold standard' of global trade". Financial Post. Toronto: National Post. 08/15/2015

⁸² Office of the United States Trade Representative: Executive Office of the President. “The Trans-Pacific Partnership.” Website. Accessed 12/21/2016. <https://ustr.gov/tpp/>

⁸³ Meeting with the Embassy of the United States in Vietnam, *op. cit.*

subsidies and intellectual property rights.⁸⁴ Additionally, many NGOs including WWF and Sierra Club have criticized the agreement as incompatible with the UN Sustainable Development Goals (SDGs).⁸⁵ Loss of manufacturing jobs due to structural unemployment shifts with liberalized trade is a politically sensitive issue in the United States as well. According to many trade models, Vietnam was predicted to absorb the majority of these diversionary trade effects and gain immensely, while US job growth would be minimal due to the structure of the advanced economy and gains would mostly be seen in lower consumer prices.⁸⁶

Still, the TPP is very US-Centric in its establishment of an ISDS and expansion of intellectual property rights that favor more advanced economies. Intellectual property rights protect the patents of large US agribusiness and pharmaceutical countries while ISDS encourages investment in poorer countries by allowing large international corporations to sue governments which enact policies that hurt their business. These changes would not only bring Vietnam closer to the United States and reduce its dependence on China, but they would push all the members of the TPP to conform to US-friendly trade standards set out in the deal. Although highly controversial, the TPP represented an extension of US trade interests and political influence in Southeast Asia.

The Regional Comprehensive Economic Partnership

The proposed Regional Comprehensive Economic Partnership is a potential free trade agreement between ten member states of ASEAN as well as Australia, China, India, Japan, South Korea, and New Zealand. With negotiations led by China, the agreement would cover many of the same TPP signatory countries but without the Western Hemisphere players, most notably the United States. According to the Vietnam Ministry of Industry and Trade, RCEP is seen as a viable alternative to the US-led TPP.⁸⁷ In terms of its effect on Vietnam-China relationships, RCEP should act to further decrease trade barriers between the two countries and increase China's business presence in the entire region.⁸⁸

RCEP is also, ironically, less comprehensive than the TPP in terms of depth. That is, the agreement contains less extensive requirements for trade barrier elimination, no investor-state arbitration mechanism, minimal labor standard regulations, and no environmental requirements. The scope of the negotiations does cover trade in goods and services, intellectual property and dispute settlement. However, these issues are not expected to be enforced to the same extent or even included in the final agreement.⁸⁹ RCEP reflects a more China-centric form of international commerce that limits high labor regulations, food safety, environmental rules, and restrictions of business activities of the state that would harm Chinese trade interests.⁹⁰ If RCEP is put into effect in the wake of a failed TPP, it would directly challenge US efforts to craft trade rules and exert influence in the area.

⁸⁴ Schott, Jeffrey; Kotschwar, Barbara; Muir, Julia (2013). *Understanding the Trans-Pacific Partnership*. Peterson Institute for International Economics

⁸⁵ Shuaihua Wallace Cheng (2015-10-23). "Pacific Trade Deal Needs To Harmonize With Sustainable Development Goals". YaleGlobal Online. Retrieved 2015-11-18.

⁸⁶ Kniahin D., Mimouni M., Ngavozafy A., Pichot X., Rinderknecht L. (2017 forthcoming). Structure and Tariff Impact of the TPP Agreement. International Trade Centre.

⁸⁷ Meeting with representatives from the Ministry of Industry and Trade, *op. cit.*

⁸⁸ Ribka, Stefani; Yulisman, Linda. "RCEP talks speed up amid TPP failure." The Jakarta Post. 12/7/2016. Website. Accessed 12/10/2016. <http://www.thejakartapost.com/news/2016/12/07/rcep-talks-speed-up-amid-tpp-failure.html>

⁸⁹ William, Brock R. The Trans-Pacific Partnership: Strategic Implications. Congressional Research Services. 2/3/2016. P 7-9

⁹⁰ Chang, Gordon G. "TPP vs RCEP: America and China Battle for Control of Pacific Trade." The National Interest. 10/6/2016. Website. Accessed 12/20/2016.

While these changes do not directly solidify China's influence on Vietnam over that of the United States, they do increase China's likelihood of far surpassing the United States in total trade with Vietnam while diminishing other trade objectives like labor and environmental protection. Currently, the United States is Vietnam's largest trading partner, with China quickly gaining in both exports and imports.⁹¹ However, it is predicted that China will pass the United States as Vietnam's largest single trading partner by 2030. If the entire region is under more direct economic dominance of China, then it will be difficult for Vietnam to remain further removed and exert independence in international politics. Either way, the establishment of RCEP as opposed to TPP would preclude a more involved trade agreement that reflected US interests in issues such as labor standards, good governance, and environmental protection.

Conclusions

During a meeting with the Ministry of Foreign Affairs: Americas Division, a Minister stated that "[i]t is not incorrect to say that Vietnam is hedging its relationship with the US and China."⁹² Vietnam is not looking to make enemies and, with its economy taking off, more accessible export markets are needed for Vietnam to continue its economic development. The failure of TPP may be coming at the perfect time for China if they wish to increase interdependence and gain influence on their southern neighbor. Former President Obama addressed the topic overtly towards the end of his tenure, stating, "[i]f we don't pass this agreement, if America doesn't write those rules, then countries like China will."⁹³ Currently, it remains uncertain when RCEP negotiations will finish and if the US will eventually negotiate an alternative to combat or to supplement RCEP. Regardless, both relative trade interdependence and political developments suggest that the failure of the TPP has given China a head start in creating a larger free trade zone and influencing economic and political events in Vietnam.

⁹¹ World Integrated Trade Solutions. Vietnam Trade at a Glance: Most Recent Values. The World Bank. 2016. Website Accessed 12/19/2016. <http://wits.worldbank.org/CountrySnapshot/en/VNM>

⁹² Meeting with the Ministry of Foreign Affairs, Americas Department, *op. cit.*

⁹³ President Barack Obama. "Here's the deal: the Trans-Pacific Partnership." The White House. 11/6/2015. Website. Accessed 12/14/2016. <https://www.whitehouse.gov/blog/2015/11/06/heres-deal-trans-pacific-partnership>

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The Rhino Horn Myth: Vietnam's Role in the Fight against Illegal Wildlife Trafficking

Anahita Vasudevan

Apart from the destruction of natural habitats, wildlife trade, mostly relating to the exchange of undomesticated animal parts or products, is one of the leading threats to animal species all over the world. Legal wildlife trade for food, medication, and commercial products like clothes, cosmetics, and building materials is a common practice and should be distinguished from poaching and trafficking of animals that are often species at risk.⁹⁴ In Vietnam, wildlife poaching and trade without a permit has been banned since 1975; however, the practice has increased astronomically in popularity, and Vietnam has become one of the major players in worldwide illegal wildlife trafficking. This paper explores some of the reasons behind the illegal wildlife trade in Vietnam, steps that the Vietnamese government and non-governmental organizations have taken to combat the issue, and how these actions fit into the international legal framework surrounding the cross-border trade of endangered species.

Victims of Illegal Wildlife Trafficking in Vietnam

Although the Southeast and East Asian regions have been under scrutiny for many years regarding illegal wildlife trafficking, the spotlight recently shifted to Vietnam after the country was declared the world's largest illegal trading center for rhinoceros horns as of September 2016.⁹⁵ These animals are usually sought after for traditional medicinal purposes as their horns are said to help cure cancer patients.⁹⁶ In addition, Vietnam is known for trading elephant ivory for jewelry and other household products, bear bile for male enhancement, and tiger bones for their healing properties.⁹⁷ Also, pangolins, the most trafficked mammal in the world, are caught and used for their meat and scales.⁹⁸ The illegal wildlife trade usually involves harming or killing these animals in the process of harvesting the desired parts. As a practice, this is unsustainable as it has led to an increase in the number of animal species considered critically endangered, endangered, or vulnerable.⁹⁹

⁹⁴ "Stopping the Illegal Wildlife Trade," *World Wildlife Fund*, accessed March 16, 2017, <https://www.wwf.org.uk/what-we-do/area-of-work/stopping-illegal-wildlife-trade>

⁹⁵ Robyn Dixon, "Vietnam, the Biggest Hub for Illegal Rhino Horn Trafficking, Has Done Little to Stop it," *Los Angeles Times*, last modified September 26, 2016, <http://www.latimes.com/world/africa/la-fg-vietnam-rhino-trafficking-20160926-snap-story.html>.

⁹⁶ "Grim Pickings: Vietnam's Crackdown on Traffickers of Endangered Species is Only Superficial," *The Economist*, last modified November 10, 2016, <http://www.economist.com/news/asia/21710019-vietnams-crackdown-traffickers-endangered-species-only-superficial-grim-pickings>.

⁹⁷ Ibid.

⁹⁸ Melissa Hogenboom, "Pangolins are the World's Most Trafficked Mammal," *BBC.com*, last modified October 8, 2016, <http://www.bbc.com/earth/story/20161006-pangolins-are-the-worlds-most-trafficked-mammal>.

⁹⁹ "Species Directory," *World Wildlife Fund*, accessed March 17, 2017, <https://www.worldwildlife.org/species/>

Vietnam as a Hub for Wildlife Trafficking

Vietnam is known as both a destination and transit country for many of the illegal animal products in Asia. Tiger bone products are mostly imported into Vietnam from neighboring countries like Laos while many of the rhinoceros horns come from South Africa and Central African countries.¹⁰⁰ Additionally, growing demand for such products in China has also allowed Vietnam to take on the role of a transit country in the trafficking network.¹⁰¹

Within Vietnam, the majority of illegal animal product consumers belong to the upper-class. For example, rhinoceros horns are used as a symbol of wealth and given as gifts.¹⁰² Those who deal in animal product smuggling often leave their primary income occupations to do so for the lucrative incentives as one kilogram of rhino horn is worth approximately \$60,000.¹⁰³ Illegal wildlife trade has also brought sources of income to low-skilled workers in Vietnam who often perform duties such as ivory carving for jewelry.¹⁰⁴

Many states in the region have taken steps against illegal wildlife trafficking to recognize the adverse effects of poaching; for instance, China announced its ban on ivory trade by the end of 2017.¹⁰⁵ Although China comprises a huge percentage of the ivory market, demand for ivory in Japan and the U.S. may allow other countries to fill the void, potentially exacerbating the problem in Vietnam.¹⁰⁶

Methods of Illegal Wildlife Trafficking

The traditional illegal wildlife trafficking route in Vietnam usually consists of hunters who first kill and collect the animals for use and sell them to retailers at the commune level.¹⁰⁷ From there, the animal

directory?direction=desc&sort=extinction_status.

¹⁰⁰ Kristin Nowell, "Wildlife Crime Scorecard: Assessing Compliance with and Enforcement of CITES commitments for Tigers, Rhinos, and Elephants," *World Wildlife Fund*, last modified 2012, http://d2ouvy59p0dg6k.cloudfront.net/downloads/wwf_wildlife_crime_scorecard_report.pdf.

¹⁰¹ Ibid.

¹⁰² "Grim Pickings: Vietnam's Crackdown on Traffickers of Endangered Species is Only Superficial," *The Economist*, last modified November 10, 2016, <http://www.economist.com/news/asia/21710019-vietnams-crackdown-traffickers-endangered-species-only-superficial-grim-pickings>.

¹⁰³ Jennifer Harper, "\$60K a Pound: Illegal Rhino Horn Now Declared More Valuable Than Gold, Diamond, and Cocaine," *The Washington Times*, last modified May 7, 2015, <http://www.washingtontimes.com/news/2015/may/17/rhino-horn-considered-cure-all-and-aphrodisiac-now/>.

¹⁰⁴ Meeting with the Director of the Counter Wildlife Trafficking (CWT)- Asia Program at the Wildlife Conservation Society on January 20, 2017, Hanoi.

¹⁰⁵ Eric Olander and Peter J. Li, "Don't Get Too Excited About China's Ivory Ban," *Foreign Policy.com*, last modified January 20, 2017, <http://foreignpolicy.com/2017/01/10/dont-get-too-excited-about-chinas-ivory-ban-enforcement-global-trade/>.

¹⁰⁶ Ibid.

¹⁰⁷ "Report on the Review of Vietnam's Wildlife Trade Policy," *CITIES Management Authority of Vietnam*, last modified 2008, https://www.cites.org/common/prog/policy/Vietnam_wildlife_trade_policy_review.pdf, pg. 18.

products are handed over to wholesale exporters and stores at the city and provincial levels.¹⁰⁸ Finally, local customers will purchase the products, or they will be shipped internationally for consumption.¹⁰⁹

Recently, internet crime has been on the rise, and smugglers use social media platforms like Facebook to promote and sell their illegal products. One such prominent case in Vietnam is that of Phan Huynh Anh Khoa, known as the “Bastard of the Internet,” who was caught selling douc langur monkeys, turtles, otters, pangolins, and lorises and sentenced to five years in prison.¹¹⁰

Government Actions against Illegal Wildlife Trade in Vietnam

In general, Vietnamese government officials and authorities have been criticized for allowing smugglers to pass through relatively porous border security and for the lack of action at the national level. After former U.S. President Obama visited Vietnam in May 2016, the two governments committed to fighting illegal wildlife trade together through promoting demand reduction strategies, bolstering law enforcement and border security, building upon the current legal framework for wildlife crime, and encouraging international cooperation on this issue.¹¹¹ After more than five thousand pounds of ivory were caught by Vietnamese authorities in early November, the government decided to burn the confiscated goods in symbolic protest of illegal wildlife trafficking.¹¹² In addition, Prime Minister Nguyen Xuan Phuc supported the launch of investigations into other cases of wildlife trafficking by the Ministry of Public Security.¹¹³

Hanoi Conference on Illegal Wildlife Trade: November 2016

These directives came just before the Conference on Illegal Wildlife Trade held in Hanoi from November 17-18, 2016 hosted by the Vietnamese Ministry of Agriculture and Rural Development. The goal of the conference was to discuss particular actions that each country and international organization could take regarding the market for illegal wildlife goods, upholding the existing legal frameworks, strengthening law enforcement programs, and fostering sustainable development.¹¹⁴ Vietnam showed its commitment by

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ Meeting with an expert from Education for Nature-Vietnam on January 20, 2017, Hanoi.

¹¹¹ “Joint Announcement of the United States-Vietnam Partnership to Combat Wildlife Trafficking,” *U.S. Embassy & Consulate in Vietnam*, last modified May 23, 2016, <https://vn.usembassy.gov/joint-announcement-united-states-vietnam-partnership-combat-wildlife-trafficking/>.

¹¹² “Vietnam Burns Tonnes of Rhino and Elephant Ivory,” *Aljazeera.com*, last modified November 12, 2016, <http://www.aljazeera.com/news/2016/11/vietnam-burns-tonnes-rhino-elephant-ivory-161112153121411.html>.

¹¹³ Brett Davis, “Huge Ivory Busts Lead Vietnam to Crack Down on Wildlife Trade,” *Forbes.com*, last modified November 1, 2016, <https://www.forbes.com/sites/davisbrett/2016/11/01/huge-ivory-busts-lead-vietnam-to-crack-down-on-wildlife-trade/#42c4ace49857>.

¹¹⁴ “Hanoi Statement on Illegal Wildlife Trade,” *Hanoi Conference on Illegal Wildlife Trade*, last modified November 18, 2016, [http://iwthanoi.vn/wp-content/themes/cites/template/statement/Hanoi%20Statement%20on%20Illegal%20Wildlife%20Trade%20\(English\).pdf](http://iwthanoi.vn/wp-content/themes/cites/template/statement/Hanoi%20Statement%20on%20Illegal%20Wildlife%20Trade%20(English).pdf).

sending representatives to the conference and pledged to start relevant programs in 2017. In response, some organizations felt that Vietnam could have committed to further action, including the World Wildlife Fund that stated, “as the host country and major hub of illegal wildlife trade Vietnam needed to commit to more concrete action plans that will have an impact on the ground.”¹¹⁵ As the issue of illegal wildlife trafficking is an ever-growing problem, the extent to which countries keep their conference pledges over the next year will be important to note for future implementation and enforcement conversations.

The Role of Non-Governmental Organizations

Non-governmental organizations contribute by engaging the public and supplementing national strategies. The Wildlife Conservation Society in Vietnam partners with management authorities, police, customs and border security to fight the illegal wildlife trade. Another organization, Education for Nature-Vietnam (ENV), started combatting wildlife crime in 2005. It focuses on the role of civil society in promoting environmental conservation. ENV acts as a watchdog agency by creating public service announcements and radio broadcasts to raise public awareness of wildlife crime. Some of the themes of their video announcements include campaigns against the gifting of rhinoceros horns and promoting the involvement of citizens in reporting suspicious activity and potential illegal trade activities.¹¹⁶ The role of such organizations is increasingly important in the bottom-up strategy of combatting illegal wildlife trade.

International Legal Framework Surrounding Wildlife Trafficking

The Convention on the International Trade of Endangered Species of Wild Fauna and Flora (CITES) was adopted in 1963, entered into force in 1975, and acts as the major legal document focused on ensuring the survival of plants and animals in international trade. Vietnam acceded to the Convention in 1994, thereby pledging to follow CITES procedures such as taking appropriate actions to penalize those illicitly trading endangered species and keeping track of such specimens.¹¹⁷

The sheer volume of illegal wildlife trade activity in Vietnam confounds the ability of the government to enforce CITES guidelines. The Vietnamese National Law includes procedures for both endangered species and threatened species as well as the handling of animals after confiscation.¹¹⁸ Overlapping

¹¹⁵ “Reflecting on The Hanoi Conference on Illegal Wildlife Trade,” *World Wildlife Fund*, last modified November 18, 2016, <https://www.wwf.org.uk/updates/reflecting-hanoi-conference-illegal-wildlife-trade>.

¹¹⁶ Meeting with an expert from Education for Nature-Vietnam on January 20, 2017, Hanoi.

¹¹⁷ “Convention on International Trade in Endangered Species of Wild Fauna and Flora,” *CITES.org*, accessed March 17, 2017, <https://cites.org/eng/disc/text.php#VIII>.

¹¹⁸ “ENV Wildlife Protection Law Resource Center,” *Education for Nature-Vietnam*, accessed March 17, 2017, <http://envietnam.org/library/law-library.html>.

procedures and laws under CITES and national law make implementation complicated as well, but pledges at the Hanoi Conference seek to address some of the obstacles to enforcement.

Conclusion

In analyzing the causes for illegal wildlife trafficking in Southeast Asia, particularly in Vietnam, it is important to recognize the environmental impact on the animals being poached, economic incentives for traffickers and those working with trafficked goods, social customs that promote the use of trafficked items, and the role of demand for illegal animal products that drives the international trade routes.

Vietnam, as a major center for illegal wildlife trade, sees smuggling of goods through border security as well as solicitation and sale on the internet. The emergence of these activities prompted the government to respond and commit to combat illegal wildlife trafficking. By hosting the 2016 Conference on Illegal Wildlife Trade, Vietnam has shown that the country acknowledges the need to fight against such practices, but enforcement of security and implementation of the national and international legal frameworks can be strengthened. The cooperation of government, non-governmental organizations, and citizens to increase regulation of illegal activities and reduce overall demand for illegal animal products is essential for future improvements.

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Illegal Wildlife Trade in Vietnam

Yuan Yao

Illegal wildlife trade in Vietnam is an important issue of international concern. The Greater Mekong region is one of the most biologically diverse areas, which is home to at least 20,000 species of plants, 1,200 bird species, 800 reptile and amphibian species, and 430 mammal species.¹¹⁹ However, the unsustainable illegal wildlife trade in the region threatens the survival of many endangered species and affects human livelihoods. In Vietnam, around 3,700 - 4,500 tonnes of wildlife products are exchanged and used annually.¹²⁰ Some of the animals that are under threat of extinction include rhinoceros, tigers, elephants, and pangolins. Tragically, the Javan rhinoceros in Vietnam were announced extinct in 2010 as a result of hunting and inadequate law enforcement.¹²¹ Vietnam plays an important role in the market for international wildlife trade— it is a country of origin, transit, as well as destination in the chain. This paper focuses on evaluating the existing legal system and law enforcement measures in Vietnam and analyzing the main drivers of illegal wildlife trade in the region.

Legal System

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is the primary instrument in regulating wildlife trade across borders. It is an international agreement with the goal to safeguard more than 35,000 species of animals and plants from over-exploitation and promote cooperation between countries.¹²² CITES has a system of permits and certificates that is utilized to track the trade of CITES-listed species; CITES permits can be distributed given the legal trade of the species does not threaten their existence.¹²³ The Government of Vietnam became a party to CITES in 1994; the management body is the Vietnam CITES Management Authority under the Ministry of Agriculture and Rural Development (MARD). It is important to note that CITES is legally binding on the parties and countries have to establish national legislation to implement CITES. Moreover, the Convention permits compliance measures, for example trade sanctions, when countries fail to successfully accomplish the provisions.¹²⁴

In addition to CITES, the Government of Vietnam issued many important regulations on wildlife protection including Penal Code (1999) and its amendments and supplements, Law of Forest Protection and Development (2004), Law of Biodiversity (2008), Decree 32/2006, Decree 82/2006, and Decree 99/2009.¹²⁵ The revision of the Penal Code is a milestone for wildlife protection in Vietnam as it strengthens the

¹¹⁹ WWF. "Greater Mekong Region." WWF. Accessed March, 2017. <https://www.worldwildlife.org/places/greater-mekong>.

¹²⁰ Ibid.

¹²¹ Brook, Sarah Maria, Nigel Dudley, Simon Peter Mahood, Gert Polet, A. Christy Williams, J. W. Duckworth, Think Van Ngoc, and Barney Long. "Lessons Learned from the Loss of a Flagship: The Extinction of the Javan Rhinoceros *Rhinoceros Sondaicus Annamiticus* from Vietnam." *Biological Conservation* 174, (6, 2014): 21-29.

¹²² CITES. "CITES Official Website - Viet Nam." CITES. Accessed March, 2017. <https://cites.org/eng/cms/index.php/component/cp/country/VN>.

¹²³ Nguyen Manh Ha, Vu Van Dung, Nguyen Van Song, Hoang Van Thang, Nguyen Huu Dung, Pham Ngoc Tuan, Than Thi Hoa and Doan Canh. "Report on the Overview of Vietnam's Wildlife Trade Policy." CRES/FPD/UNEP/CITES/IUED. Accessed March, 2017. https://www.cites.org/common/prog/policy/Vietnam_wildlife_trade_policy_review.pdf.

¹²⁴ SCANLON, JOHN E. "Strengthening Front-Line Action to Combat Wildlife and Forest Crimes." *UN Chronicle* 51, no. 2 (06, 2014): 16.

¹²⁵ Education for Nature - Vietnam. "ENV Wildlife Protection Law Resource Center." ENV. Accessed March, 2017. <http://envvietnam.org/library/law-library.html>.

legal protection by imposing criminal penalties for offenses; it is expected to become effective this year.¹²⁶ Even though the existing legal system provides an important framework on wildlife protection, the Government of Vietnam faces the challenge of enforcement due to its overall low capacity in many aspects.

First, there is a shortage of law enforcement personnel and lack of communication across borders. One report states that there are only 8,500 forest rangers, which are in charge of wildlife law enforcement and face armed conflicts with poachers, scattered around the 61 provinces in Vietnam.¹²⁷ In some protected areas, one forest ranger is in charge of 11.5 km² and this is not sufficient to protect the entire range.¹²⁸ Moreover, there is no agreement to facilitate direct contact with enforcement personnel in other countries.¹²⁹ This significantly undermines their efficiency to crack down on *international* illegal wildlife trade. Second, the funding that goes into law enforcement is inadequate in Vietnam. Government of Vietnam allocates around \$1,200/km² for centrally managed protected area, which is higher than other Asian countries.¹³⁰ However, these funding are mainly used for capital expenditure such as infrastructure instead of conservation activities.¹³¹ In addition, public funding has the problem of delays and little flexibility that makes it difficult to adjust for management and conservation priorities. Third, there are multiple agencies involved that can hinder the efficiency of management and law enforcement. For example, the Cat Tien National park spreads in three provinces which have different provincial priorities and exert their influence over the conservation effort accordingly.¹³² In general, experts believe that there are too many laws covering overlapping species; multiple agencies for management or enforcement further complicate coordination and weaken enforcement ability.¹³³

Illegal Wildlife Trade in Vietnam

This section focuses on the detailed analysis of illegal trade of tiger parts and rhino horns in Vietnam by evaluating the main drivers, trade chain, and the rule of law. The selection of this two specific species is based on World Wildlife Fund's publication (WWF) on wildlife crime scorecard. Vietnam scored red in their commitment to fight illegal trade of tiger and rhino.¹³⁴ This means Vietnam is failing on key aspects of compliance or enforcement for these two species in regards to CITES Decisions and Resolutions. According to CITES, the trade of tigers and rhinos as well as their parts and products are prohibited completely.¹³⁵ However, the commercial trade of both species remains prevalent in Vietnam due to high demand and weak law enforcement.

¹²⁶ Education for Nature - Vietnam. "The Penal Code Revision: A Wildlife Protection Milestone for Vietnam." ENV. Accessed March, 2017. http://www.envietnam.org/images/News_Resources/Publication/June-21-2016-Penal-Code-Revision.pdf.

¹²⁷ Reeve, Rosalind. "Policing International Trade in Endangered Species: The CITES Treaty and Compliance." Routledge. Accessed March, 2017. <https://books.google.com/books?id=0XbsAgAAQBAJ&pg=PA220&lpg=PA220&dq=cites+enforcement+in+vietnam&source=bl&ots=VsB8eNoH1z&sig=b5j-cWV6DjGnZQgJU-lksHJk5rg&hl=en&sa=X&ved=0ahUKEwi7juzA3djSAhVD2SYKHUxqAckO6AEIQzAH#v=onepage&q=cites%20enforcement%20in%20vietnam&f=false>.

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ L. Emerton, J. Bishop, and L. Thomas. "Sustainable Financing of Protected Areas: A Global Review of Challenges and Options." *IUCN* (2006).

¹³¹ Ibid.

¹³² Ibid.

¹³³ Meeting with the Wildlife Conservation Society, *op. cit.*

¹³⁴ Nowell, Kristin. "Wildlife Crime Scorecard." *WWF* (2012).

¹³⁵ Ibid.

Tiger

The tiger population has been declining in Vietnam since the 1980s. In addition to CITES, both Decree 160 and Decree 32 protect Indochinese tigers and make it illegal in Vietnam to “hunt, trap, keep, kill, transport, sell or advertise” tigers and tiger products.¹³⁶ However, this is not sufficient to stop the illegal trade of tigers. From 2006 to 2013, Education for Nature – Vietnam (ENV) reported around 280 violations in the trade of tigers and tiger products.¹³⁷ Yet, this data does not reflect the total number of crimes related to tigers since many of them are still unknown to law enforcement. Until now, there can be as few as 5 to 30 tigers in the wild in Vietnam.¹³⁸ Experts are concerned that tigers will be the next high-profile species after rhino to go extinct in Vietnam. The high demand for tiger and tiger products is for the medicinal and decorative purposes. Tiger bone medicine is the most popular tiger product in Vietnam. The process involves boiling tiger bones into a glue form, then consuming it with wine.¹³⁹ Customers consider this as traditional medicine that treats bone or joint-related problems. Also, some tiger parts such as tiger skins, claws, and teeth are sold as jewelry and embellishment.¹⁴⁰

In the tiger trade chain, Vietnam is primarily a transit and destination country. Most tigers are sourced from Myanmar, Malaysia, and Thailand, and get transported to Vietnam from tiger farms in Laos and Cambodia.¹⁴¹ Vietnam’s effort against the illegal tiger trade is undermined by its policy that allows trade in captive tigers.¹⁴² The government allowed pilot breeding farms for tigers in 2007; and MARD proposed the use of dead tigers from captive facilities to make medicine and other products in 2012.¹⁴³ However, CITES recommends internal trade of tiger to be “prohibited” because it has negative impacts on international tiger trade dynamics.¹⁴⁴ Many conservation NGOs urge the Government of Vietnam to stop tiger breeding farms, forbid the use of dead tigers for products, and tackle the problem of online advertisement in order to reduce the demand for tiger products.

Rhino

In 2010, hunters killed the last rhino in Vietnam for its horn. The rhino horn trade is viewed as the cause that led to its extinction. In Vietnam, rhino horn is a symbol of wealth and also a traditional medicine that people use to improve health, treat fever, cancer, and other diseases.¹⁴⁵ However, many experts suggest

¹³⁶ Education for Nature - Vietnam. "Stop the Illegal Tiger Trade." ENV. Accessed March, 2017. <http://www.envietnam.org/index.php/what-we-do/env-species-focused-campaigns/stop-the-illegal-tiger-trade>.

¹³⁷ Education for Nature - Vietnam. "Summary of Tiger Seizures 2006-2013." ENV. Accessed March, 2017. http://www.envietnam.org/images/News_Resources/Publication/ENV_Summary_of_Tiger_seizures_2006_2013.pdf.

¹³⁸ Ibid.

¹³⁹ Education for Nature - Vietnam. "Summary of Tiger Trade Investigation Findings." ENV. Accessed March, 2017. http://www.envietnam.org/images/News_Resources/Publication/tiger_trade_investigation_findings_2010.pdf.

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

¹⁴² Ibid.

¹⁴³ Ibid.

¹⁴⁴ Ibid.

¹⁴⁵ Education for Nature - Vietnam. "The Rhino Horn Trade in Vietnam." ENV. Accessed March, 2017. <http://envietnam.org/our-work/rhino-horn-trade-in-Vietnam.html>

there is no valid evidence to prove that rhino horns can cure cancer or other diseases; the promise of a cure is used to increase the profit of rhino horn sales.^{146 147}

In the rhino horn trade chain, Vietnam is the main destination country. Over the last ten years, the local demand has increased significantly in Vietnam and rhino horns are brought directly from Africa.¹⁴⁸ The only legal channel for rhino horns to enter Vietnam has been the legitimate sport hunted trophy since 2003. While the South African CITES recorded 657 rhino horn exports to Vietnam during seven years, the Vietnam CITES only recorded 26% of these imports during the same period of time.¹⁴⁹ This means hundreds of rhino horn trophies are imported to Vietnam from South Africa without any declaration. During 2010, Vietnamese hunters conducted around 171 rhino hunts in South Africa.¹⁵⁰ It is also important to note the involvement of Vietnamese nationals, including diplomats, in illegal rhino horn trade in South Africa.¹⁵¹ Recently, personnel from the Vietnamese Embassy in South Africa were found to be involved in the trade as well. It is believed that some personnel had used diplomatic ways to transport rhino horn to Vietnam. From the Vietnamese demand side, it is urgent for the Government of Vietnam to impose restrictions to its nationals who are involved in illegal rhino trade and strengthen its law enforcement capacity to stop illegal rhino horn from entering the country. It is equally important to launch education campaigns targeting individuals who are trying to obtain rhino horn as curative medicine and in order to inform them of the false medical rumors to reduce demand.

¹⁴⁶ Ibid.

¹⁴⁷ Milliken, Tom and Jo Shaw. "The South Africa - Vietnam Rhino Horn Trade Nexus: A Deadly Combination of Institutional Lapses, Corrupt Wildlife Industry Professionals and Asian Crime Syndicates." TRAFFIC. Accessed March, 2017. http://www.npr.org/documents/2013/may/traffic_species_mammals.pdf.

¹⁴⁸ Ibid.

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

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SCANLON, JOHN E. "Strengthening Front-Line Action to Combat Wildlife and Forest Crimes." *UN Chronicle* 51, no. 2 (06, 2014): 16.

WWF. "Greater Mekong Region." WWF. Accessed March, 2017. <https://www.worldwildlife.org/places/greater-mekong>.

Declining Fish Stocks in the South China Sea: Opportunity for Cooperation between Vietnam and China?

Zach Harris

Introduction

“We don’t want to have to ask your [China’s] permission to fish.”¹⁵² This comment from a meeting with the Vietnamese Ministry of Foreign Affairs highlights the tension surrounding Vietnam and China’s dispute in the South China Sea. The two countries, and many others, have long disputed the waters of the South China Sea (or East Sea). Increasingly, Vietnam and China are militarizing islands in the South China Sea and many experts are worried about conflict over the South China Sea. Understanding the disputes and claims over territory in the South China Sea can be very confusing. Issues over sovereignty and the rights to (potential) natural gas are often considered the main points of contention in the sea. However, often overlooked, the South China Sea contains significant fish resources that provide employment and food to nearly all countries in the region. Should a conflict arise, one cannot rule out the possibility of skirmishes over fishing rights being the match that starts the fire.

If the current situation in the South China Sea continues there will be no fish remaining in ten years.¹⁵³ The Vietnamese East Sea Studies think tank, in a January 18, 2017 meeting, conveyed the dire situation in the South China Sea. Millions of Vietnamese depend on the fish stocks in the South China Sea for work and livelihood (i.e., nutrition). To a lesser degree, the same applies to China (and other countries in the region). The dwindling resources provide an opportunity for Vietnam and China to cooperate as it is in both country’s interest to sustainably fish the South China Sea. Cooperation to address the depletion of fish stocks could lead to greater respect and further cooperation regarding other aspects of the South China Sea dispute.

Fish Resources in the South China Sea

The South China Sea is home to abundant, yet decreasing, fish stocks. According to The Wall Street Journal, fish caught in the South China Sea account for about 12% of the global annual catch.¹⁵⁴ Asia is a growing consumer of fish and many countries in the region consume more than the average amount of fish. Vietnam and China are no different and the declining fish stocks will impact the livelihoods of those

¹⁵² Meeting with the Ministry of Foreign Affairs, Americas Department, *op. cit.*

¹⁵³ Meeting with an expert from the East Sea Studies on January 18, 2017, Hanoi.

¹⁵⁴ Moss, Trefor. "5 Things About Fishing in the South China Sea." The Wall Street Journal. July 19, 2016. <http://blogs.wsj.com/briefly/2016/07/19/5-things-about-fishing-in-the-south-china-sea/>.

in Vietnam and China. Further, millions of fishermen in Vietnam and China rely on the waters of the South China Sea for their job. As a result, disputes take place over fish resources given their importance.

The South China Sea is home to bio-diverse reef systems and over 3,000 indigenous and migratory fish species.¹⁵⁵ The fish caught from the South China Sea were valued at \$22 billion in 2012 contributions to local economies.¹⁵⁶ However, overfishing is and has been a serious problem. In 2008, roughly 25% of fish stocks were collapsed, roughly 25% over-exploited, and roughly 50% fully-exploited.¹⁵⁷ The trend is continuing. In 2016, National Geographic reported that in some waters less than one-tenth of the fish stocks remain compared to six decades ago and high-value fish like tuna and grouper are scarcer.¹⁵⁸ And, researchers from the University of British Columbia say fish stocks have fallen 70 to 95% from 1950 levels and could decline up to 59% from 2015 levels in the next 20 years, if nothing is done.¹⁵⁹ In addition to overfishing, climate change and the increasing government activity (e.g., the increased presence of naval forces and construction of islands) are contributing to reef damage and loss in the South China Sea.

The fish of the South China Sea provide large quantities of food to Vietnam and China, and fish provides as a major source of protein for people in the region. However, as conveyed by the U.S. Embassy in Vietnam, the Vietnamese people are increasingly concerned about food safety.¹⁶⁰ The continual decrease of fish stocks will only fuel this concern. Additionally, fishing in the South China Sea is of great importance to both countries. In China, the fishing industry accounted for \$289 billion in 2013 and fish was its top agricultural export.¹⁶¹ According to the Ministry of Defence, fishing provides work and the livelihood for two million Vietnamese.¹⁶²

Given the importance and quantity of fish in the South China Sea, unsurprisingly, disputes and conflict are a common occurrence. Between 2005 and 2010, Vietnam claimed 63 fishing vessels with over 700 crew members have been seized in areas claimed by China.¹⁶³ Last year, Vietnam detained a Chinese ship

¹⁵⁵ Greer, Adam. "The South China Sea Is Really a Fishery Dispute." *The Diplomat*. July 20, 2016. <http://thediplomat.com/2016/07/the-south-china-sea-is-really-a-fishery-dispute/>.

¹⁵⁶ Moss, Trefor. "5 Things About Fishing in the South China Sea." *The Wall Street Journal*. July 19, 2016. <http://blogs.wsj.com/briefly/2016/07/19/5-things-about-fishing-in-the-south-china-sea/>.

¹⁵⁷ Greer, Adam. "The South China Sea Is Really a Fishery Dispute." *The Diplomat*. July 20, 2016. <http://thediplomat.com/2016/07/the-south-china-sea-is-really-a-fishery-dispute/>.

¹⁵⁸ Bale, Rachael. "One of the World's Biggest Fisheries Is on The Verge of Collapse." *National Geographic*. August 29, 2016. <http://news.nationalgeographic.com/2016/08/wildlife-south-china-sea-overfishing-threatens-collapse/>.

¹⁵⁹ Moss, Trefor. "5 Things About Fishing in the South China Sea." *The Wall Street Journal*. July 19, 2016. <http://blogs.wsj.com/briefly/2016/07/19/5-things-about-fishing-in-the-south-china-sea/>.

¹⁶⁰ Meeting with the United States Embassy in Vietnam, *op. cit.*

¹⁶¹ "Fish: The Overlooked Destabilizer in the South China Sea." *Stratfor*. February 12, 2016. <https://www.stratfor.com/analysis/fish-overlooked-destabilizer-south-china-sea>.

¹⁶² Meeting with the Ministry of Defence, *op. cit.*

¹⁶³ Mydans, Seth. "U.S. and Vietnam Build Ties With an Eye on China." *The New York Times*. October 12, 2010. <http://www.nytimes.com/2010/10/13/world/asia/13vietnam.html>.

carrying 100,000 liters of oil and three crew.¹⁶⁴ Vietnam's official news agency reported the oil was to be sold to Chinese boats illegally fishing in Vietnam's waters.¹⁶⁵ The South China Sea has for many years provided food and employment to millions in the region but the recent trends are worrisome. If the declining fish stock issue is not addressed, there will likely be increased competition and conflict among fishing vessels that could lead to a more serious conflict in the region.

Opportunity for Cooperation?

As the declining fish stocks reside in disputed maritime areas, it will take cooperation among claimant states to reverse the trend. Cooperation regarding fish stocks will be difficult and must be framed in a manner that benefits both countries. Featured in a Washington Post article, Chen Yuguo, a Chinese fisherman, said "but if we don't fish there, how can we claim it is our territory?"¹⁶⁶ Cooperation must not focus on territorial rights and sovereignty issues but on addressing the declining, and soon to be nonexistent, fish stock.

During week long meetings with Vietnamese government officials, rhetoric was mostly positive regarding China and the "strong" relationship between the two countries was mentioned not just a couple times but frequently. Whether this is true or not in practice is another question. But what is important, is the two countries do actively state their desire to solve disputes peacefully. Vietnam and China do cooperate on a host of issues, some even maritime, which provides a foundation for further cooperation. The Vietnamese Ministry of Natural Resources and Environment expressed "very good cooperation between Vietnam and China for providing hydrology information" and cooperation for weather events in places like the South China Sea exists.¹⁶⁷ Particularly relevant, Vietnam and China formed a boundary agreement in the Gulf of Tonkin and signed a fishery agreement establishing a joint fishing regime in 2000.¹⁶⁸ The agreement, especially the fishery agreement, is far from perfect but does provide hope for a better and more comprehensive agreement in the South China Sea.

So how could the two countries address the fish stock issue in the South China Sea? First, discussions must focus on sustainability and avoid any talk of sovereignty. Healthy fish stocks are equally important to Vietnam and China. One moonshot idea is to make certain areas international marine reserves where

¹⁶⁴ Baculinao, Eric. "Vietnam Seizes Chinese Ship for 'Illegal' Entry to Waters." NBCNews.com. April 04, 2016. <http://www.nbcnews.com/news/china/vietnam-seizes-chinese-ship-illegal-entry-south-china-sea-n550066>.

¹⁶⁵ Ibid.

¹⁶⁶ Denyer, Simon. "How China's fishermen are fighting a covert war in the South China Sea." The Washington Post. April 12, 2016. https://www.washingtonpost.com/world/asia_pacific/fishing-fleet-puts-china-on-collision-course-with-neighbors-in-south-china-sea/2016/04/12/8a6a9e3c-fff3-11e5-8bb1-f124a43f84dc_story.html?utm_term=.91c7a7820a32.

¹⁶⁷ Meeting with the Vietnamese Ministry of Natural Resources and Environment, *op. cit.*

¹⁶⁸ Kardon, Isaac B. "The Other Gulf of Tonkin Incident: China's Forgotten Maritime Compromise." Asia Maritime Transparency Initiative. October 21, 2015. <https://amti.csis.org/the-other-gulf-of-tonkin-incident-chinas-forgotten-maritime-compromise/>.

there is a “truce to ownership aspirations.”¹⁶⁹ This idea calls for an “international management board, tourism facilities, research facilities and programs, a private surveillance force, and a contracted research and management institution.”¹⁷⁰ A new initiative, Establishment and Operation of a Regional System of Fisheries Refugia in the South China Sea and Gulf of Thailand Sea, is working with ASEAN governments to integrate habitat and biodiversity conservation considerations into fishery management and practices. All countries and China signed a MOU on regional cooperation.¹⁷¹ However, this initiative is in its infancy and, at best, just a start. Vietnam and China must work together bilaterally to establish maritime zones in their disputed waters that are devoted to replenishing fish stocks. This will require both countries to commit to limited fishing and active efforts to replenish fish stocks.

What role can and should the U.S. play?

Given its relationship with Vietnam and China, the United States could help bring solutions that leads sustainable fishing ultimately replenishing fish stocks. However, the sensitivities over sovereignty and the claims and occupations of islands make the U.S.’s role complicated. In the event of negotiations between Vietnam and China, the U.S. should limit its role. Where the U.S. could have an impact is through technical assistance programs. The U.S., if Vietnam and China agree to jointly addressing the declining fish stocks, should provide research, implementation, and technology support.

Conclusion

War over fish? Peace because of fish? Both seem unlikely. However, fish stocks in the South China Sea could be the catalyst to a significant regional conflict or concrete steps towards lasting peace and solutions to the South China Sea dispute. Vietnam and China should work together given their significant South China Sea territorial claims, commitment to a peaceful relationship, and need for fish from the South China Sea. This paper acknowledges the increasingly important issue of declining fish stocks in the South China Sea and identifies Vietnam and China as two countries uniquely situated and capable to find a solution. The paper hopes to start a larger conversation as to what a realistic and lasting solution looks like.

¹⁶⁹ Mollman, Steve. "A decades-old idea for the South China Sea resurfaces: make a contested area a marine park, instead." Quartz. July 19, 2016. <https://qz.com/735741/a-decades-old-idea-for-the-south-china-sea-resurfaces-make-a-contested-area-a-marine-park-instead/>.

¹⁷⁰ Ibid.

¹⁷¹ Mwangi, Patrick. "South China Sea countries to cooperate on integrating fisheries and marine ecosystem management | UNEP RONA." UNEP's regional office for North America. November 1, 2016. <http://www.rona.unep.org/news/2016/south-china-sea-countries-cooperate-integrating-fisheries-and-marine-ecosystem-management>.

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The Game of Big Powers in the South China Sea

Trang Dang

The South China Sea (SCS), a marginal sea located to the south of China and stretching from the Karimata and Malacca Straits to the Strait of Taiwan, does not only define the Southeast Asian (SEA) region but also serves as a critical trade route and an important source of legitimacy and resources reserves. In the context of China's rise, Beijing has increasingly engaged in staking its claims in the SCS through building artificial islands, clashing with the Philippines and Vietnam, deploying military power and so on. These activities align with Xi Jinping's recent announcement of "the great rejuvenation of the Chinese nation."¹⁷² Moreover, the relative absence of the US's policy on SEA pre-Obama administration also enhanced China's penetration into this region. However, with the pivot to Asia under Obama, the US seemed aware of its lagging behind and started to express stronger commitment to the SEA countries. Although this paper recognizes the economic benefits, resources, security, and freedom of navigation as possible justifications for foreign policies of affected states over the SCS, it is going to examine another factor: the competition for influence among big powers.

China prides itself in playing a former dominant role in Asia when most East Asian countries such as Vietnam, Myanmar, Japan, Korea, etc. submitted to Chinese rulers. However, the century of humiliation where China was taken over by Japan, Britain, France, Germany and Russia drove China backward and thus, would always cast doubt towards Western powers regarding China's future trajectory in international affairs. After the economic reforms in the 1980s, China made great progress transforming from a poor nation into the second largest economy in the world. As a result, it is understandable that China now wants to restore its once lost power and take the lead in the global arena. As China holds more important roles in international affairs, Chinese politicians indicate that China does not want to be a part of the current "US-led world order" but rather "an international order" where China and other developing countries can feel more included in the decision-making process. The international order that China supports is the UN-led system which China has "a strong sense of belonging" and is a part of as a founder, beneficiary, and contributor.¹⁷³

The Southeast Asia region with a young population of over 600 million¹⁷⁴ harbours some of the

¹⁷² Jinping Xi. 2012. Accessed March 10, 2017, http://www.gov.cn/lhdh/2012-11/29/content_2278733.htm.

¹⁷³ Ying Fu. 2016. "China no threat to international order," China & U.S. Focus Digest, Vol. 9, pp.11-14, <http://www.chinausfocus.com/foreign-policy/putting-the-orders-shift-in-perspective>

¹⁷⁴ Latest UN estimates. 2017. Accessed March 18, 2017 <http://www.worldometers.info/world-population/south-eastern-asia-population/>

fastest growing economies in the world, namely Vietnam, Laos, Myanmar according to an International Monetary Fund (IMF) report.¹⁷⁵ China over time has increasingly extended its political, social and economic influence in Southeast Asia vis-a-vis the US. This region is of particular interest to China due to its historically dominant influence here along with the strong economic ties. Southeast Asian countries, in return, are also heavily reliant on Chinese economic growth. China is the biggest trading partner of ASEAN with a total share of 15% according to the statistics in 2015.¹⁷⁶ For the US, the world's most travelled sea lanes in Southeast Asia are crucial both from the perspective of trade development and military deployment. Also, the US needs to maintain partnerships with its treaty allies – Thailand and the Philippines – as well as with emerging players in the region such as Singapore, Indonesia, Vietnam, Malaysia.

Following Chinese activities over the disputed waters in 2012, the Philippines was determined to challenge Chinese claims by bringing the case to an international tribunal. After the Permanent Court of Arbitration (PCA) ruled for the Philippines over China, China attacked the decision by citing the illegitimate jurisdiction over sovereignty issues of the Hague-based court. The US tried to take a neutral stance over the SCS, yet at the same time expected that relevant parties would comply with the ruling.¹⁷⁷ Eventually, big powers such as China will manage to escape the verdict, as the precedent case set by the US. Specifically, in the 1980s, Nicaragua accused the US of “mining its harbors,” yet Washington refused to abide by the decision as well as recognize the International Court of Justice's jurisdiction.¹⁷⁸

In response, the US has deepened its relation with Vietnam to signal to Beijing the unease with Chinese expansion beyond its maritime borders. In 2016, multiple visits among senior leaders between the two countries happened with the most remarkable trip made by President Obama. By lifting the arms embargo, the US will help Vietnam diversify its source of lethal weapons, 90% of which come from Russia as of now according to a general from the Ministry of Defense in Vietnam.¹⁷⁹ To counter China's offensive, although Vietnam does not publicize its military spending, an estimate from SIPRI shows a significant increase from \$1,026 million in 2005 to \$4,571 million in 2015.¹⁸⁰ Simultaneously, there was a greater presence of the US ships in the SCS from over 700 days in 2015 to over 1000 days in 2016.¹⁸¹

¹⁷⁵ IMF. 2016. World Economic Outlook. Accessed <http://www.imf.org/external/pubs/ft/weo/2016/01/index.htm>

¹⁷⁶ http://asean.org/storage/2015/12/table20_as-of-10-June-2016.pdf

¹⁷⁷ John Kirby. 2016. “On the decision in the Philippines-China Arbitration”. Accessed <https://id.usembassy.gov/statement-u-s-department-state-spokesperson-john-kirby-decision-philippines-china-arbitration/>

¹⁷⁸ Graham Allison. 2016. “Of course China, like all great powers, will ignore an international legal verdict”. Accessed at <http://thediplomat.com/2016/07/of-course-china-like-all-great-powers-will-ignore-an-international-legal-verdict/>

¹⁷⁹ Meeting with the Ministry of Defence, *op. cit.*

¹⁸⁰ SIPRI. 2016. “Military expenditure by country”. Accessed at <https://www.sipri.org/databases/milex>

¹⁸¹ David Larter. 2016. “U.S. Navy destroyers stalk China's claims in South China Sea”. Accessed at <https://www.navytimes.com/story/military/2016/07/06/us-navy-destroyers-stalk-chinas-claims-south-china-sea/86777268/>

To engender positive reception of China's policies, China has patiently cultivated the key Southeast Asian leaders. For instance, Cambodia exchanged its veto power in ASEAN for favourable economic benefits from China. As ASEAN policy-making is consensus-based, an agreement on the SCS issue cannot be reached. It was reported that before the ASEAN meeting, China offered Cambodia US\$600 million in foreign aid and debt forgiveness. Also, right after the meeting, it promised to build a "US\$16 million National Assembly hall in Phnom Penh."¹⁸²

Small countries such as Vietnam and the Philippines need to be wary of where to hedge their bets, especially when the new US administration appears to focus more on domestic issues and care less about American credibility in Asia. The lessons from the Vietnam War are always a constant reminder to the Vietnamese government on how a small state can be trapped in a battleground because of big countries' calculations. In addition, for the Philippines, China employed a trade sanction on fruit and threatened to cut aid, which would have a substantial impact on the Philippine economy. Chinese foreign aid with lower interest rate and no human rights conditions is always preferred over other sources of funding. As a result, President Duterte of the Philippines although ascended to power because of his anti-Chinese tactics, has to now work on mending the relations with China. When he paid a visit to Beijing, the Chinese leaders agreed to lift the ban, and in return, Chinese investors can invest in island-building in Davao City, Duterte's hometown.¹⁸³

To sum up, the South China Sea dispute is evolving into a game that neither the US nor China can afford to lose. The US is trying to assure its allies by increasing its support and presence in the region. China perceives these actions as attempts to contain its rise. Nevertheless, both countries are very cautious in managing the conflict and avoiding possible confrontation. Consequently, they are trying to maneuver SEA countries to push the issue to their respectively desired direction. In this regard, SEA countries should be aware of each step they take to hedge over their relations with the US and China because it will influence the future trajectory of the region.

¹⁸² James Kyng and Leila Haddou. 2016. "FT Investigation: How China bought its way into Cambodia." Accessed at <https://www.ft.com/content/23968248-43a0-11e6-b22f-79eb4891c97d>

¹⁸³ Norman Aquino. 2016. "China's Island-Building Skills Lift Hopes in Duterte's Backyard", <https://www.bloomberg.com/politics/articles/2016-12-20/china-uses-island-building-skills-to-develop-duterte-s-backyard>

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Should there be a “Vietnam v. China?”

Qifan Huang

The South China Sea (SCS) region has witnessed a considerable amount of attention in recent years, among them the highly contentious arbitration case, *The Philippines v. China*, an attempt to settle the disputes over the issue under the framework of the United Nations Convention on the Law of the Sea (UNCLOS). A special arbitration court, set up according to the mandatory dispute settlement provisions outlined in UNCLOS, decided on July 12th, 2016 that a significant portion of China's claims in SCS, including the Nine-Dash Line, are invalid.¹⁸⁴ The arbitration marked the first attempt to resolve maritime disputes in the South China Sea through international law and is one of the most influential cases since the ratification of UNCLOS. Vietnam, as an important stakeholder in the dispute, has expressed a murky opinion regarding the arbitration results: while it supported the arbitration by recognizing the court's jurisdiction and objected to China's claim of the Nine-Dash Line via a note sent to the tribunal prior to the adjudication,¹⁸⁵ it has only reaffirmed its stance, without explicitly supporting the results.¹⁸⁶ Many, however, have raised the possibility for Vietnam to also settle its disputes with China over SCS through arbitration under UNCLOS. Is it a feasible route for Vietnam to achieve its objectives in the region? To answer that question, one must first review the extent of Vietnam's claims in SCS, determine its core interests over the issue, analyze the feasibility, cost, and benefit of a similar pursuit, before reaching a conclusion.

Vietnam has territorial and maritime disputes with China over the Spratly Islands, the Paracel Islands, and each country's respective size of the Exclusive Economic Zone (EEZ). Notably, it has never released any official map on the extent of its claims for the EEZ in the Spratly but has only claimed sovereignty over the land area of the islands.¹⁸⁷ It currently controls over 20 structures in the Spratly and has no *de facto* control over the Paracel. Vietnam also objects to the Nine-Dash Line, citing the fact that the line overlaps with the 200-mile nautical miles' area extending from its baselines. In comparison, China exerts claims

¹⁸⁴ Permanent Court of Arbitration (PCA). "Award on the South China Sea Arbitration." Permanent Court of Arbitration (PCA). July 12, 2016. Accessed March 10, 2017. <http://www.pcacases.com/web/sendAttach/2086>.

¹⁸⁵ Ministry of Foreign Affairs of Viet Nam. "Statement of the Ministry of Foreign Affairs of Viet Nam Transmitted to the Tribunal on 05 December 2014." Permanent Court of Arbitration (PCA). December 5, 2014. Accessed March 11, 2017. <https://assets.documentcloud.org/documents/3011036/Statement-of-Vietnam.pdf>.

¹⁸⁶ Ministry of Foreign Affairs of Viet Nam. "Remarks of the Spokesperson of the Ministry of Foreign Affairs of Viet Nam on Viet Nam's Reaction to the Issuance of the Award by the Tribunal Constituted under Annex VII to the United Nations Convention on the Law of the Sea in the Arbitration between the Philippines and China." Ministry of Foreign Affairs of Viet Nam. July 12, 2016. Accessed March 10, 2017. http://www.mofa.gov.vn/en/tt_baochi/pbnfn/ns160712211059.

¹⁸⁷ While Vietnam did submit the outer limits of its continental shelf claims to the UN, none of the documents specify a claimed area of EEZ; the maps in the submissions were also marked as "for illustration purposes only." These submissions could be found at <http://www.un.org/depts/los/LEGISLATIONANDTREATIES/STATEFILES/VNM.htm>.

over both island formations, pursuing bilateral dispute settlement with Vietnam over the Spratly Islands and refusing negotiation in all forms over the Parcel Islands, while also insisting on the Nine-Dash Line.

Various Vietnamese scholars and government officials have discussed their view on where the country's core interest in the region lies. While stressing Vietnam's territorial claims, recognition of the fact that these disputes may better be settled in a bilateral matter through diplomatic means was virtually universal. On the other hand, they have voiced concerns over China's maritime conduct and have stated that in their view, Vietnam's ultimate goal is to uphold principles of international law and ensure innocent passage, as well as other rights and privileges listed under UNCLOS, in the region. Some of them also expressed worries about the consequences of letting China have its way over other security issues in the greater region. Specifically, a government official speaking on condition of anonymity, stated that Vietnam realizes there is little possibility for its territorial claims to succeed and is actively pursuing the intervention of external actors to add bargaining chips during its talks with China.¹⁸⁸

Vietnam is fully capable of launching a separate suit against China under the framework of UNCLOS. Both parties are members of UNCLOS, and as demonstrated by the court, could raise claims without specifically addressing maritime delimitation or sovereignty issues. As the dispute settlement mechanisms are mandatory, it does not matter whether China participates in the process or not, a conclusion supported by the arbitration court.¹⁸⁹ However, while Vietnam has the capacity to initiate proceedings under the law of the sea, whether the current government has the subjective will is a different matter. Officials within the government have cited concerns over the possibility of retaliation from China in a variety of areas as why there has yet to be a formal recognition of the results of the arbitration, and have proposed that working with China within the framework of the Code of Conduct between ASEAN countries and China may be the best way to go.¹⁹⁰¹⁹¹

A cost/benefit analysis of initiating a similar case corroborates the worries of the Vietnamese government, as it will yield little benefit but could bring about a full-scale retaliation by China. Since China has made two reservations with regards to the mandatory dispute settlement mechanisms of UNCLOS in areas of maritime delimitation and sovereignty claims, Vietnam's hypothetical case would need to be carefully framed in a way similar to the Philippines case to fall under the jurisdiction of UNCLOS. It could only involve the identification of the status of features, the legality of Chinese activities, and the general

¹⁸⁸ Meeting with the Ministry of Foreign Affairs, Americas Department, *op. cit.*

¹⁸⁹ Permanent Court of Arbitration (PCA). "Award on Jurisdiction and Admissibility on the South China Sea Arbitration." Permanent Court of Arbitration (PCA). October 29, 2015. Accessed March 11, 2017. <http://www.pcacases.com/web/sendAttach/1506>.

¹⁹⁰ Meeting with the Ministry of Foreign Affairs, Americas Department, *op. cit.*

¹⁹¹ Meeting with members of the Vietnamese Ministry of Defense on Jan. 17, 2017.

conduct of parties in the Paracel and the Spratly. Most of these submissions have been adjudicated already by *The Philippines v. China* case, including the status of rocks of all high-tide features in the Spratly as well as the unlawfulness of artificial island construction, harm to the marine environment, and the aggravation of disputes. A similar suit by Vietnam would only be useful if it asked an arbitration court to determine the status of features in the Paracel, a claim it is not guaranteed to win on the merits as several features, such as Woody Island and Lincoln Island, cover areas larger than Itu Aba in the Spratly Islands, which was determined to have only the status of rock and thus cannot generate its own EEZ. More importantly, both Vietnam and China have declared its baseline in the Paracel Islands and intends to generate EEZ by treating the islands as an archipelago of a non-archipelagic state, a practice whose legality is not specified by UNCLOS. Any mechanism established under UNCLOS, then, would also invalidate Vietnam's claims and should the arbitration court decide that none of the features in the Paracel Islands are islands capable of generating EEZ, it would further undermine Vietnam's claims in the region. As a large part of Vietnam's core interest has already been fulfilled by *The Philippines v. China*, which invalidated the Nine-Dash Line and condemned Chinese actions of artificial island construction, a second arbitration will only add to the already-established principle under UNCLOS without providing much leverage to compel China to abide by the results. If history is any reference, China would be more rather than less hawkish in the region should a new arbitration follows suit.

The cost of launching a suit under international law, on the other hand, is grave compared to the gains Vietnam would be able to achieve. With the Philippines in rapprochement with China, a challenge by Vietnam would attract China to focus its full attention on Vietnam and could invite retaliations politically and economically. Chinese actions similar to that after the initiation of arbitration by the Philippines in 2013, which included the cutting-off of economic ties with the country, will prove detrimental to Vietnamese economy that relies heavily on China.¹⁹² Pursuing an arbitration would also further the divide within ASEAN, which has already taken a blow due to Cambodia's persistent objection to a strongly-worded statement towards Chinese actions, and alienate partners within the regional bloc. Both officials from the Vietnamese Ministry of Foreign Affairs and experts from the Institute for East Sea Studies at the Diplomatic Academy of Vietnam have expressed that it was unwise for the Philippines to submit the case without due consideration of its consequences and that with an unenforceable result, the Philippines has gained few substantial benefits.^{193 194}

¹⁹² Massachusetts Institute of Technology. "Vietnam." OEC - Vietnam (VNM) Exports, Imports, and Trade Partners. Accessed March 18, 2017. <http://atlas.media.mit.edu/en/profile/country/vnm/>.

¹⁹³ Meeting with the Ministry of Foreign Affairs, Americas Department, *op. cit.*

¹⁹⁴ Meeting with scholars at the Diplomatic Academy of Vietnam on Jan. 18, 2017.

A *Vietnam v. China*, as analyzed, would not be a wise decision for the Vietnamese government. Not only would it achieve limited gains for Vietnam, but it would also enrage China and carry complex political and economic implications, let alone the uncertainty over who would win the case. As all parties regard peace and security in the region their top priority, it would be more prudent for Vietnam to find other means of negotiating with China over the disputes. Vietnam has experience in peacefully resolving conflicts with China: their collaboration in the maritime delimitation of the Tonkin Bay is a perfect precedent. Moreover, a bilateral dialogue in a cooperative manner will not drive overwhelming nationalistic sentiments toward the issue at hand and would allow both sides to approach the matter in a more rational and controlled manner. This does not necessarily mean that international law would not be involved: in private talks, Vietnam could voice its valid concerns to China and even advise it on possible strategies in the region to turn a zero-sum game in maritime disputes to a win-win for many stakeholders. The choice is now up to Vietnam.

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Rebalancing, Peacefully Rising and Hedging: U.S.-China-Vietnam Trilateral Relations in Transition

Kaj Malden

In 2017, the U.S. and China will undergo momentous leadership transitions. In Washington, U.S. officials will endeavor to coordinate policy formulation and implementation processes with a newly elected populist president, Donald Trump. Meanwhile, in Beijing, high-ranking Communist Party officials will deliberate over new leadership appointments in the Politburo Standing Committee at the upcoming 19th National People's Congress. These leadership transitions will result in foreign policy shifts among the two countries, and thereby reshape regional security in the Asia-Pacific region. According to some analysts, the U.S.-China relationship may be headed into a more contentious phase.¹⁹⁵ President Trump has threatened a trade war with China, and his colleagues have hinted at harder lines in the South China Sea. Meanwhile, Beijing's influence in the Asia-Pacific region is growing through foreign policy initiatives such as One Belt, One Road (OBOR) and the Regional Comprehensive Economic Partnership (RCEP), not to mention its island building activities in the South China Sea.

Missing from this narrative, however, is a discussion of how third parties to the U.S.-China relationship will react to, if not equally shape, such shifts. Vietnam is an especially intriguing actor in this setting, delicately balancing its relations with the U.S. and China as it develops in to a middle-income country. Vietnam only recently normalized diplomatic relations with the two powers in the 1990s, and foreign policy shifts undertaken by the Communist Party of Vietnam (CPV) since then have underscored the need for “diversified” foreign relations so as “to be friends with all countries in the world community.”¹⁹⁶ Such developments are interesting given Vietnam's checkered past with both the U.S. and China, still getting over a war with the former and reconciling its history as a vassal state to the latter. Additionally, Hanoi must grapple with its role in competing great power visions for Asia: the U.S. “rebalance” and China's “peaceful rise.” Against this backdrop, analysts describe modern Vietnam's foreign policy strategy as characterized by “hedging.”¹⁹⁷ This analysis proceeds to delineate the contours of this hedging strategy and examine the prospects for future U.S.-China-Vietnam trilateral security relations.

¹⁹⁵ Tao, Xie. Assessing the China Challenge for Trump's Presidency. in Carnegie-Tsinghua Center for Global Policy [database online]. 2017 Available from <http://carnegietsinghua.org/2017/01/18/assessing-china-challenge-for-trump-s-presidency-pub-67690>.

¹⁹⁶ Hiep, Le Hong. 2013. Vietnam's Hedging Strategy Against China Since Normalization. *Contemporary Southeast Asia* 35 (3): 333-68, page 342

¹⁹⁷ Hiep, Le Hong. 2013. Vietnam's Hedging Strategy Against China Since Normalization. *Contemporary Southeast Asia* 35 (3): 333-68, page 335

Hedging, or “cooperating while struggling” (*vua hop tac vua dau tranh*)

International relations theory posits several approaches to the management of great power relationships. These include *balancing* against growing superpowers and *bandwagoning* with those superpowers. A recent addition to this discourse is that of *hedging*. According to one Southeast Asia analyst, hedging is comprised of “a set of strategies aimed at avoiding a situation in which states cannot decide upon more straightforward alternatives” instead assuming “a middle position that forestalls or avoids having to choose one side at the obvious expense of another.”¹⁹⁸ Vietnam has carefully pursued this strategy since normalizing relations first with China in 1991 and then the U.S. in 1995. As these partnerships were forged, a new strategic mindset emerged in the CPV that oscillated between “cooperation” and “struggle” vis-à-vis relationships with these two countries.¹⁹⁹ In the economic realm, Vietnam would “cooperate” with China and the U.S. in the aims of bolstering national development. In the regional security realm, however, Vietnamese strategists were aware of their still minimal military capabilities, and understood they must “struggle” against and prepare for the threat of apparent Chinese expansionism, particularly in the South China Sea (or, to Vietnam, East Sea). Notably, Vietnam is the only country that has entered kinetic conflict with China over maritime disputes in the South China Sea, in 1974 and 1988, whereas other players in the region have pursued legal action (Philippines) or attempted to validate international norms (U.S. Freedom of Navigation operations).

While Vietnamese relations with China are turbulent, shared political and cultural affinities appear to make it easier for the two countries to exchange in dialogue. While the U.S.-Vietnam relationship has strengthened in recent years following the Obama Administration’s announcement of the notorious “Asia rebalance” policy in 2011, Hanoi’s enhancement of relations with the U.S. runs parallel (and secondary) to its warming to an ascendant China.²⁰⁰ As U.S. Ambassador to Vietnam Ted Osius noted, Vietnam prioritizes its relations with great powers and neighbors exclusively, and only one country fits that description: China.²⁰¹ Such explains why Vietnam established a “comprehensive strategic partnership” with China in 2008, prior to establishing a lesser “comprehensive partnership” with the U.S. in 2013. Vietnam has additional “strategic partnerships” with a host of other countries, including Japan and India, which also share concerns over China’s maritime activities.

¹⁹⁸ Goh, Evelyn. 2005. Meeting the China Challenge: The U.S. in Southeast Asia Regional Security Strategies. *East-West Center Policy Studies* 16 : i-66, page viii

¹⁹⁹ Hiep, Le Hong. 2013. Vietnam's Hedging Strategy Against China Since Normalization. *Contemporary Southeast Asia* 35 (3): 333-68, page 342

²⁰⁰ Vu Tung, Nguyen. Stronger US-Vietnam Relations are not at China's Expense. *The Diplomat*. June 11, 2016.

²⁰¹ Meeting with the U.S. Ambassador to Vietnam Ted Osius of the U.S. Department of State Foreign Service on January 17, 2017, Hanoi.

What is interesting about these divergent “partnerships” is that the CPV has not clarified their relative hierarchy, nor made efforts to explain which diplomatic partnerships it prioritizes. This ambiguity plays into Vietnam’s strategy of hedging against an increasingly tense regional security environment. As former Senior Director for Asian Affairs at the National Security Council Evan Medeiros further explains, many Southeast Asian countries are monitoring developments in the U.S.-China relationship, with few leaders in Asia wanting to “choose implicitly or explicitly” between the two countries.²⁰² Carlyle Thayer, a professor at the Australian Defense Force Academy in Canberra, echoes this analysis, arguing that “Vietnam’s web of strategic partnerships serves to insulate Vietnam from Sino-U.S. competition and provide Vietnam with the means to maneuver among the major powers in order to protect its independence.”²⁰³ Indeed, when Vietnam Foreign Minister Pham Binh visited Washington in October 2014, he explained that Vietnam’s relationship with the U.S. “is just a comprehensive partnership,”²⁰⁴ seemingly trying to assure international audiences that Vietnam’s diplomacy is omnidirectional.

Maintaining a Delicate Balancing Act

Vietnam’s ambiguity in its hedging strategy that diversifies diplomatic partners should not dissuade U.S. policymakers of the value in further deepening the U.S.-Vietnam bilateral relationship. Vietnam is a critical partner in checking China’s assertive maritime claims in the South China Sea. A major driver of Hanoi’s efforts to develop closer ties with the U.S. is deep-seated suspicion of Chinese intentions in the Asia-Pacific region.²⁰⁵ At the same time, while this strategic convergence makes the U.S. a worthwhile partner for Vietnam, Washington should remember that Hanoi also holds reservations about the U.S. due to historical and ideological reasons.²⁰⁶ As officials from the Ministry of Defense noted, Vietnam supports the presence of the U.S. in Asia “so long as that presence contributes to the peace and stability of the region,”²⁰⁷ underscoring unforgotten memories of the Vietnam War and the U.S.’ occasional adventurism in its foreign policy.

The Trump administration would do well to build off the momentum of the rebalance policy originally advanced by President Obama. Under the rebalance, Vietnam Defense Minister Phung Quang Thang and U.S. Secretary of Defense Ashton Carter signed a Joint Vision Statement that expanded on a prior

²⁰² Medeiros, Evan S. 2005. “Strategic Hedging and the Future of Asia-Pacific Stability.” *The Washington Quarterly* 29 (1): 145-67, page 160

²⁰³ Hookway, James. China-U.S. Rivalry Spurs Vietnam to Look for New Comrades. *Wall Street Journal*, January 17, 2017.

²⁰⁴ Simon, Sheldon. US-Southeast Asia Relations: Diplomatic Gambits. *Comparative Connections* (January 2015): 47-56, page 51

²⁰⁵ Hiep, Le Hong. 2013. Vietnam's Hedging Strategy Against China Since Normalization. *Contemporary Southeast Asia* 35 (3): 333-68, page 359

²⁰⁶ Goh, Evelyn. 2005. Meeting the China Challenge: The U.S. in Southeast Asia Regional Security Strategies. *East-West Center Policy Studies* 16 : i-66, page 22

²⁰⁷ Meeting with officials from the Vietnam Ministry of Defense on January 17, 2017, Hanoi.

Memorandum of Understanding on Advancing Bilateral Defense Cooperation, originally signed in 2011. The updated agreement endorses more comprehensive defense trade relations and works to reduce Vietnamese dependence on Russian arms. Reduced U.S. engagement with Asia and important emerging partners such as Vietnam risks enabling China to set the rules of the game in a growingly tense region. Unreconciled histories and antagonisms among Asian nations contribute to strident nationalism in the region. Additionally, according to a report produced by the Stockholm International Peace Research Institute, arms spending rose by 5.4 percent from 2014 to 2015 in Asia, compared with 1 percent worldwide.²⁰⁸

If the Trump administration indeed puts America first and neglects diplomacy, Vietnam and the wider Southeast Asian region could fall further into China's orbit. Under Rodrigo Duterte, the Philippines has decided to hedge its bets on China, and Vietnam may be thinking along similar lines. In his first state visit of 2017, CPV General Secretary Nguyen Phu Trong received a red carpet welcome in Beijing.²⁰⁹ Trong and CPC General Secretary Xi Jinping later issued a joint communique highlighting the two countries' "strategic cooperative partnership," suggesting that Hanoi may be hedging against volatility in U.S. foreign policy under Trump.²¹⁰ U.S. foreign policymakers in the new Trump administration would be wise to hedge their bets on a strengthened partnership with Vietnam and sustained engagement with Asia.

²⁰⁸ Perlo-Freeman, Sam, Aude Fleurant, Pieter Wezeman, and Siemon Wezeman. 2016. *Trends in World Military Expenditure, 2015*. Stockholm International Peace Research Institute.

²⁰⁹ Doan, Xuan Luc. Is Vietnam Tilting Toward China? *Strategic Culture*. January 21, 2017.

²¹⁰ Quang, Nguyen Minh. The Resurgence of China-Vietnam ties. *The Diplomat*, January 25, 2017.

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Vietnam – Human Rights and the End of the Lethal Weapons Ban

Ramata Sow

On May 23, 2016, during a visit to Hanoi, President Obama announced that the United States would lift the embargo on lethal arms sales to Vietnam that had been in place since the 1960s. Much controversy, however, surrounded the U.S. government's decision to lift the decades-old arms embargo put in place after the Vietnam War. The lifting of the embargo is noteworthy because several stakeholders are impacted by this decision, including China, U.S. defense companies, and the Vietnamese government.

Stakeholders have divergent views on the issue of lifting the ban. Many human rights groups support the embargo as a form of leverage in negotiations with the Vietnamese government to improve its human rights record. China would view the canceling of the embargo as an attempt by the United States to take advantage of Vietnam's important strategic positioning in the South China Sea. For the United States, canceling the weapons ban would be the final step towards normalizing its relations with Vietnam, strengthening Washington's bargaining position to seek further boosts in the bilateral defense relationship with Hanoi,²¹¹ as well as enhancing potential economic growth for U.S. companies. Furthermore, acting as an American military base of operations, Vietnam could serve as a strong deterrent to Chinese incursions into the East Asia Pacific region. In response to China's concerns, the U.S. government declared that it remains neutral on the current dispute over territory in the South China Sea.

Why Did the United States Lift the Arms Embargo?

The tense situation in the South China Sea and Vietnam's increasingly strategic and economic significance outweighs the U.S. government's concerns about Hanoi's dreadful human rights record. The decision to lift the weapons ban was outwardly portrayed by the Obama administration as part of normalizing relations between the two countries.²¹² President Obama insisted that lifting the arms embargo was not part of a strategy to contain China, but rather "one of a series of steps toward helping nurture a strong and secure Vietnam capable of defending itself and playing a greater role in the region."²¹³

China is increasingly aggressive in trying to control nearly all of the South China Sea. For this reason, Vietnam constitutes a strategic location for the United States and aligned with former President Obama's

²¹¹ Parameswaran, Prashanth. "The Case for Lifting the US Vietnam Arms Embargo." *The Diplomat*. The Diplomat, 21 May 2016.

²¹² Calamur, Krishnadev. "Why Obama Is Overlooking Human-Rights Worries in Vietnam." *The Atlantic*. Atlantic Media Company, 24 May 2016.

²¹³ Parameswaran, *op. cit.*

“pivot to Asia” strategy. Lifting the embargo would, therefore, advance the relationship between the United States and Vietnam, both symbolically and substantively.²¹⁴ The weapons ban lift indicates normalization of relations between the United States and Vietnam. The Honorable David B. Shear, former U.S. Ambassador to Vietnam, noted that the United States would proceed with the weapon sales at a pace that is comfortable and appropriate to both parties.²¹⁵ At the time, President Obama insisted that the resolution should not be interpreted as a *carte blanche* for weapons sales to Vietnam and that each arms sale to Vietnam would be decided on a case-by-case basis following a careful review.²¹⁶ One should not expect a major increase in U.S. defense sales to Vietnam immediately; however, in the long run, the lift of the weapons ban will ensure that Vietnam has full access to the weaponry and equipment it needs to defend itself and eradicate the lingering remnant of the Cold War.

What Are the Human Rights Implications?

When President Obama announced the end of the arms embargo on Vietnam, he did so despite pleas from human-rights groups to delay the decision until the Communist regime released political prisoners.²¹⁷ While Vietnam’s human rights record has steadily improved, it is still among the worst countries when it comes to civil liberties. In Vietnam, the state controls all print and broadcast media, and authorities actively silence critical journalists and bloggers through arrest, prosecution, and other means of harassment.

In recent years, Human Rights Watch, an international nonprofit, nongovernmental human rights organization, has estimated that Vietnam has imprisoned more than one hundred political dissidents and has cracked down on dissenting citizens. The organization also estimates that in 2016 at least nineteen people, including prominent bloggers were sentenced from twenty months to nine years in prison for their blogging or peaceful rights campaigning.²¹⁸ Furthermore, there are frequent state sanctioned physical assaults against human rights bloggers and campaigners. Human Right Watch also reported that police frequently use excessive force to disperse pro-environment marches in Hanoi and Ho Chi Minh City—many protesters were beaten and detained for hours.²¹⁹

John Sifton, the Asia Policy director of Human Rights Watch, pointed out that the U.S. government has been telling Vietnam that they need to show progress on human rights if they are to be rewarded with

²¹⁴ Ibid.

²¹⁵ "Beyond the Embargo: The Future of U.S.-Vietnam Relations." *Asia Society*.

²¹⁶ Harris, Gardiner. "Vietnam Arms Embargo to Be Fully Lifted, Obama Says in Hanoi." *The New York Times*. The New York Times, 23 May 2016.

²¹⁷ Calamur, *op. cit.*

²¹⁸ "Vietnam: End Crackdown on Bloggers and Activists." *Human Rights Watch*. N.p., 12 Jan. 2017.

²¹⁹ Ibid.

closer military and economic ties. Concerning the lifting of the arms embargo, Sifton noted that “President Obama just gave Vietnam a reward they don’t deserve.”²²⁰ Sifton was speaking of the fact that during President Obama’s visit, civil society groups were prevented from meeting with him. He added that, “detaining or preventing civil society from meeting President Obama is not just an insult to the president, it’s also a human rights abuse in itself, a deprivation of the right to freedom of expression and freedom of movement... Vietnam has demonstrated that it doesn’t deserve closer ties with the United States.”²²¹ He further noted that the Vietnamese government has not repealed any repressive laws, nor released any significant number of political prisoners. Human Rights Watch is highly critical of the end of arms embargo. The group is a longtime critic of Vietnam’s poor treatment of opposition leaders and ethnic and religious minorities.

The U.S. government must make incremental steps in lifting the weapons ban because pushing too hastily will exacerbate any lingering mistrust on Vietnam’s part. Also, any U.S. evaluation of Vietnam’s human rights record must be fair and realistic in acknowledging the progress Hanoi has made and the challenges that remain in the context of the country’s domestic political environment.²²² Supporters of the end of the weapons ban assert that there are still ways for the United States to exert leverage on Vietnam with respect to legitimate U.S. human rights concerns. Even with a full ban, the process requires Congressional approval under U.S. law. U.S. Ambassador to Vietnam, Ted Osius stated that Congress still has to vote on all weapons deals with Vietnam. He noted that United States will have a greater role in helping to influence Vietnam’s improvement of human rights conditions.²²³ This strategy would give the United States the ability to still tie rights improvements to particular issues.

Overall, despite the lifting of the lethal weapons ban, it appears that the U.S. government still has leverage with the Vietnamese and can use the closer relationship and normalization of relations to work with Vietnam to improve its human rights conditions. Ultimately, the end of the arms embargo was a symbolic move on the part of the U.S. government in order to normalize relations with Vietnam and strengthen the partnership. Perhaps the U.S. government considered China and its aggressive nature in regards to the South China Sea and sought to strengthen ties with Vietnam to balance its friendly neighbor to the north. Going forward, the U.S. government will work with the Vietnamese on legal reform and passage of key laws on freedom of religion association. Human rights remains a crucial issue for U.S-

²²⁰ Harris, *op. cit.*

²²¹ *Ibid.*

²²² Parameswaran, *op. cit.*

²²³ Meeting with Ambassador Ted Osius, *op. cit.*

Vietnam dialogue, and the results of President Obama's visit in May 2016 expose the understanding on both sides that human rights will remain a significant issue for the future.

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