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# The Draft Law on Association in Vietnam: Legal, Political, and Practical Norms Under Debate

*Thi Thanh Phuong Nguyen-Pochan*

## INTRODUCTION

The drafting of a Law on Association was initiated in Vietnam in the early 1990s, in the aftermath of socio-economic reform which had enabled the Communist regime to open up the country to the global economy.<sup>1</sup> The long process of drafting the law—kicked off in 2003—has been supervised by the Ministry of Home Affairs.<sup>2</sup> The draft was submitted twice to the National Assembly (NA): first in 2006, then in 2016. The latest version<sup>3</sup> was withdrawn from the NA's consideration in 2016, after numerous delegates had objected to its inconsistencies. Thus, the draft law, though it has been under discussion for twenty years, has yet to be passed.

Why is this law so trying for the Vietnamese legislature? This chapter argues that the difficulty may stem from the tension of norms—both in theoretical and practical terms.

<sup>1</sup> The reform, called *đổi mới* (Renovation), was launched by the 6th National Congress of the Communist Party of Vietnam (CPV) in 1986.

<sup>2</sup> This ministry is responsible for State management and administrative procedures for associations and NGOs.

<sup>3</sup> According to Wells-Dang (2022), the draft law was modified more than thirty times up to 2016; the NA mentions only seven versions of the draft.

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From a legal and political point of view, the bill has triggered lively debates on how to define the right to form associations, and how to regulate their activities. In this regard, there may be a tension stemming from the confrontation between the model of liberal democracy and that of illiberal authoritarianism, which, in Vietnam, refers to the Soviet ideological framework of a “socialist law-based state”, and also, arguably above all, to the Chinese model.

From a practical point of view, there have been major changes to the context of associations in the past decades: the increasing integration of Vietnam into the world economy resulting from the socio-economic reform of the late 1980s (*đổi mới*); the advent of foreign donors in the 1990s; a flourishing civil society since the 2000s; rapid economic growth; and, significantly, the emergence of divergence and conflict within the regime which, although not new, has recently heightened (Heng, 2004; Kerkvliet, 2014, 2015, 2019; Thayer, 2009; Wells-Dang, 2012, 2014, 2022). Socio-economic and political change poses new challenges to the Party-State. To cope with the resulting tensions, the authorities have adopted a pragmatic approach combining firmness with flexibility—a delicate balance.

Structured in three parts, this chapter will examine the tension of norms that have risen to the surface in connection with the regulation of associative activities in Vietnam. First, I shall discuss Vietnam’s socialist rule of law state, before assessing Chinese influence on the Vietnamese legal system. Next, I shall examine in detail the 2016 Draft Law on Association and the intense debates it triggered. Finally, I will discuss how the conflict of norms play out in practice, and the pragmatic approach adopted by the authorities toward associations.

## LEGAL AND POLITICAL NORMS IN VIETNAM

### *From “Socialist Legality” to “Socialist Rule of Law State”*

The concept of rule of law was put forth by Ho Chi Minh in 1919 in his famous “Eight-Points Demand of The Annamese People”, a document in which he requested that the French colonial administration apply the “rule of law” in Vietnam (Ngô, 1993: 85). The Communist Party of Vietnam (CPV), founded by Ho Chi Minh in 1930, was aware early on of the need of building a society that would be regulated by a Constitution and laws. After the Declaration of Independence in 1945, one of the urgent tasks of the provisional government was to draft a Constitution. Until now, Vietnam has adopted four Constitutions; in 1946, 1980, 1992, and 2013. The first two Constitutions, of 1946 and 1980, laid the foundations for Vietnam’s modern legal system, but their legal framework was incoherent, especially regarding the economy.

The CPV’s Third National Congress of 1960 officially endorsed “socialist legality” (*pháp chế xã hội chủ nghĩa*), a Soviet model which was summarized by Gillespie (2010: 78) along four main lines: (1) the absolute leadership of the

Party; (2) law is not above, but rather emanates from the State; (3) the Party and the State have prerogative powers to substitute policy for law; and (4) individual rights give way to the collective public good. The 1980 Constitution then introduced the principle of proletarian dictatorship, its Art. 4 affirming that the CPV is “the only one leading force over the State and the whole society”. Human rights were absent from it, because the Party promoted collective interests rather than individual rights.

Socialist legality prevailed until the 1991 collapse of the Soviet Union. At the beginning of the 1990s, Vietnam’s integration into regional and international frameworks entailed a challenge to socialist legality. When the policy of Renovation was introduced in 1986, the “rule of law” had been “adopted as a Party objective” (Thayer & Marr, 1993: 5). The 1991 Seventh National Party Congress formally endorsed the new doctrine of “the rule of law state” (*nhà nước pháp quyền*), which was subsequently incorporated into the 1992 Constitution (Art. 2). The Political Report to the National Congress stressed that “it needed to turn policies and guidelines into laws” (Central Committee of the CPV, 1991), marking an important turning point. “The concepts of the ‘socialist-oriented’ market economy and the socialist law-based state have been hailed as the most important theoretical achievements of the CPV” (Bui, 2014: 78).

The rule of law, which excludes “the idea of any exemption of officials or others from the duty of obedience to the law” (Dicey, 1959 [1885]: 203), stems from liberal political discourse. The “socialist rule of law state”, while seeking to be in line with this universalistic discourse, was merely the updated version of socialist legality, whose core principles remain unchanged: Art. 4 of the 1992 Constitution reaffirms the leading role of the CPV, maintaining the principle of the unity of power and rejecting the check and balance system. For Gillespie (2004: 152), the rule of law is instrumentalized in Vietnam as “a convenient rubric to smuggle socialist legality and liberal democratic ideas” into a “rule of law” discourse: juxtaposing liberal democratic norms with Soviet socialist legality, the “socialist rule of law state” is an oxymoron.

From another viewpoint, Bui (2014: 84) argues that the socialist rule of law state is a response to “reconcile inherent tensions” in the Vietnamese Party-State. Bui points out three of these: (1) Party leadership *vs.* State power; (2) the Party’s guidelines *vs.* the Constitution and laws; and (3) the Party-State’s interests *vs.* human rights’ concerns. To manage these tensions, the Party has sought to establish “a formal normative structure to check bureaucratic powers”, that is “a collection of norms and institutions that can regulate and prescribe behavior, constitute identities, and shape the interests of social and political actors” (Bui, 2014: 83).

The first tension concerns how to redefine the relationship between the Party and the State. Traditional practices such as “criticism and self-criticism” and “Control Committees” at every level of Party organization no longer seem

sufficient to control the state apparatus.<sup>4</sup> The term “control of power” (*kiểm soát quyền lực*) was first introduced in the 2011 11th Congress Resolution. The 2013 Constitution provides that “it is requested that the legislative, executive, and judicial branches co-ordinate, allocate and carry out the control of powers among them” (Art. 2), however, they are limited by the Party leadership (Art. 4).

From this perspective, the CPV’s efforts to transform guidelines and resolutions into laws can be interpreted as an attempt to keep the state under its control. Thus, Vietnam is not a “rule of law state” but one of “rule by law”—since the law is not above, but emanates from, the Party-State. Fu Hualing’s remark on China can also apply to Vietnam: “Law did not only represent the new normative order, but a new way of thinking, a new religion [...] Law was replacing the failed political ideology to legitimise the Party-State” (Gillespie & Chen, 2010: 12).

The last tension concerns human rights (*nhân quyền*). This term appeared for the first time in the 1992 Constitution (Art. 50). Since then, the authorities have enacted many directives regarding human rights (Quản lý nhà nước, 2019). Yet, for the Party, the topic is clearly not easy to handle: “The State should be prepared to express willingness to co-operate in international relations in defense of human rights, and, at the same time, to combat plots looking to take advantage of this issue against us” (CPV Directive No. 12, 12th July 1992). So, how does the Party-State reconcile universalist values with socialist legality? And how to define the respect of human rights as the Party-State rather than promote state and collective interests?

Similar to the “rule of law”, the notion of “human rights” also stems from liberal universalist discourse, as enshrined in the UN’s 1948 Universal Declaration of Human Rights. Vietnam has ratified the majority of the UN human rights treaties (Nghia et al., 2021; OHCHR, 2022). In 2013, Vietnam was elected to the UN Human Rights Council (UNHRC) for the 2014–2016 term, and, in 2022, elected again for the 2023–2035 term (Hunt, 2013; Umair, 2021). Yet, there is an implementation gap between discourse and practice: the Vietnamese state ratifies human rights treaties, but fails to fulfill the obligations of these entail. As of 2020, a total of 266 human rights activists were imprisoned (Kvanvig, 2022).

The Asian values discourse has provided an important ideological weapon against international criticism of Vietnam’s human rights record.<sup>5</sup> During the negotiations for the 2012 ASEAN Human Rights Declaration, Vietnam “allegedly sided with states such as Singapore and Malaysia in advocating for

<sup>4</sup> The CPV’s “control committee” and “criticism and self-criticism” invoke the supremacy of political legitimacy over legality (Dittmer, 1973; Marangé, 2006).

<sup>5</sup> This was “an argument against the universality of human rights, which sparked controversy and criticism of cultural relativism” (Kvanvig, 2022: 106), and has been a convenient resource for authoritarian states in the region. See also Mark Thompson’s contribution in the handbook.

derogations and exception on the basis of public morality and national security” (Kvanvig, 2022: 107). By promoting “Asian values”, the CPV strives to exert a hegemonic influence on citizens’ conscience, to convince them to move away from the universalistic discourse which it considers to be abstract and far removed from Vietnamese reality.

Yet both the socialist law-based state and Asian values fail to attune to civil society:

[...] the rule of law requires a characterisation that is not only legal, but also ethical and political where the limitation of the state is effective: the antagonism of the sovereignty of the state is the sovereignty of the man and the citizen. In a state that recognises it, the sovereignty of the state must yield to the human and citizen’s rights. (Colas, 1992: 305–306)

The contradictory attitude of the CPV toward human rights helps explain its difficulties in translating the universal ideals enshrined in the Constitution into concrete laws, which is illustrated by the drafting of the law on association. Before discussing this point, let us examine another source of legal borrowing for Vietnam.

### *The Influence of the Chinese Model on the Vietnamese Legal System*

Despite political dispute regarding how to define socialism during the Soviet-China split and virulent anti-China nationalism in Vietnam, China’s influence on Vietnam’s political, cultural, and legal system is substantial. “China and Vietnam have much in common – a Confucian past, socialist-influenced legal systems, and rapidly developing economies and societies” (Gillespie & Chen, 2010: 2).

Vietnamese rulers have regularly borrowed from Chinese political and legal models: “All but one of the 398 articles in the Gia Long Code, enacted during the Nguyen Dynasty in the early nineteenth century, were either identical to, or closely based on, the Qing Code”; in the modern age, “four of the six basic principles in the *đổi mới* policy drafted by the Party in 1986 reflect reforms previously introduced by Deng Xiaoping in China”; and today, “Vietnam has copied China’s multilateral trade policy, export orientation, open economy, protection for selected state-owned enterprises, and developmentalism” (Gillespie & Chen, 2010: 8).

For a long time, however, the law has been marginalized in favor of customary law, village and family lineage self-regulation, or moral precepts imbued with Confucian values (Gillespie, 2010; Ngô, 1993; Sidel, 2008). This results from the entrenched predominance of the Confucian doctrine of “governance by ethics”. Largely inspired by the writings of Chinese Communist theorist Liu Shaoqi, Ho Chi Minh’s writings such as “Revolutionary Morality”

(1958), or “Improving Revolutionary Morality, Sweeping Clean Individualism” (1969), highlighted leadership by revolutionary moral principles (Liu, 1939, 1951).

In a way, the regular borrowing of Chinese models conveys the Vietnamese rulers’ deference, even allegiance, toward China, a country which they consider to be prestigious, successful, and morally or spiritually superior—even at the tensest moments of their relationship.<sup>6</sup> Whatever the reasons for borrowing, Vietnam finds itself in an asymmetrical relationship with China (Table 5.1).

Sharing a similar modernization vision which encourages economic and material progress without embracing social and political pluralism, China and Vietnam both exhibit illiberal constitutionalism. The two Party-States recognize freedom of expression, association, and demonstration in their respective Constitutions, but apply control and censorship in laws and bylaws.

Though Vietnamese lawmakers have in many aspects followed the Chinese path, they have also borrowed from other external sources to avoid repeating China’s mistakes. During the 1990s, “lawmakers increasingly borrowed capitalist laws either directly from multilateral international institutions such as

**Table 5.1** Examples of Vietnamese borrowings from Chinese models

<i>Areas</i>	<i>Vietnam</i>	<i>China</i>
Economic reforms	Reforms launched in 1986	The “Open door” policy initiated by Deng Xiaoping in 1978
Foreign investment	1987 Foreign Investment Law	1979 Sino-Foreign Equity Joint Venture Law
Foreign relations	“Multidimensional approach” or “friend-to-all” policy after the collapse of the Soviet Union	The “Open door” and Deng’s modernization rationale
Control of the press	2016 Press law	2002 Regulations on Publication Administration
Control of Internet	2018 Cybersecurity laws	2016 Cybersecurity laws
Internal migration control	Household registration system	Household registration system (Hardy, 2001)
Chinese conditioning	Rural land reforms (1954–1956) Current economic and infrastructure projects: bauxite mining in the Central Highlands, the Cat Linh–Ha Dong metro line in Hanoi, the North–South expressway	Military and rural assistance Soft loans, infrastructure investments, or free trade

<sup>6</sup> Following the 1979 Sino-Vietnamese War, bilateral relations were only normalized in 1991.

the World Bank and UNDP, bilateral agencies such as USAID and DANIDA, or via third Party Asian counties, especially Japan” (Gillespie & Chen, 2010: 8). Despite the domination of state ideology, some transnational ideas gained currency for regulatory controls over the private sector.

Thus, two key differences between Vietnam and China should be noted. First, Vietnamese leaders do not look to the law as an important means of restoring social and political stability. By contrast, their Chinese counterparts take a more radical viewpoint on using law to maintain social order (Nicholson, 2010). Second, “non-state actors in Vietnam appear to exercise more influence over government policy than their counterparts in China” (Gillespie & Chen, 2010: 8). Scholars highlight the influence of local NGOs or GONGOs in Vietnam on policy-making and law-making processes, and bilateral agencies also play a central role in advocating law reform and improving the rule of law in Vietnam (Nguyen, 2010). These two differences allow us to understand the pragmatic attitude of Vietnamese authorities toward the application of law in practice, despite the widespread borrowing of Chinese legal models.

## LEGAL NORMS: THE 2016 DRAFT LAW ON ASSOCIATION

### *Comparing the Legal Frameworks Regulating Association in Vietnam and China*

The first regulation on association in Vietnam was Order No. 102 of 1957, signed by Ho Chi Minh; it severely limited rights to assembly and organization. Although rudimentary, it laid the foundation for control policy in the decades that followed. Groups perceived as potential political threats were strictly controlled and punished.<sup>7</sup>

The law on association was meant to replace the highly restrictive 1957 Order. In the meantime, the 2003 Decree No. 88 “Regulations on organization, activities and management of association”, later replaced by the 2010 Decree No. 45, have been used as the guiding regulatory documents for associations. These Decrees closely match the 2016 Draft Law on Association. All these regulatory documents are quite similar to China’s 1998 Order No. 250, “Regulations and Management of Social Organizations”.

In this part, I shall compare the latest version of the Vietnamese draft law on association of 2016 and China’s 1998 Order No. 250, focusing on four major areas: how these define associations, the legal status of associations, regulatory requirements, and registration and management procedures (Table 5.2).

<sup>7</sup> For example, the group of liberal intellectuals from the *Nhân Văn–Giai Phẩm* movement in Hanoi (1956–1957), the Club of Former Resistance Fighters (founded in May 1986), the Freedom Forum (early 1990s), the Unified Buddhist Church of Vietnam (founded in 1964 and outlawed since 1981), *Việt Tân* (Vietnam Reform Party, founded on 10 September 1982), Bloc 8406 (founded on 8 April 2006). See Abuza (2001); Thayer (2009, 2010).



Table 5.2 Comparing the Vietnamese and Chinese legal frameworks for associations

	Vietnam	China
<b>Legal frameworks</b>		
<b>Constitution</b>		
<b>Law</b>	<b>2003, Art. 25</b> Recognize freedom of speech, press, assembly, association, and demonstration	<b>2004, Art. 35</b> China's 1998 Order No. 250
<b>Definition of association</b> ("social organisation" in China's 1998 Order No. 250)	<b>2016 Draft Law on Association</b> <b>Art. 4</b> "Voluntary" and "nonprofit" groups, formed by citizens to realize a shared objective	<b>Art. 2</b>
<b>Legal status</b>	<i>Distances associations from political power</i> <b>Art. 2</b> Exclude six key Party-led mass organizations <sup>8</sup> <i>Citizenship (compulsory)</i> <b>Art. 4</b> <i>Exempt from the right to form associations</i> <b>Art. 8</b> Detainees, those sentenced, those who lack civic competence, civil servants working for the army or in areas related to state secrets, associations which join or are funded by foreign organizations	<b>Art. 2</b> "All groups other than state organs" <b>Art. 2</b> No mention

<sup>8</sup> Vietnam's Front Fatherland, Labor Unions, Farmers Association, Communist Youth Union, Vietnam Women Union, and Veterans Association.

	Vietnam	China
<i>Legal frameworks</i>		
<b>Management procedures</b>	<p><i>Particularly long (between 3 and 6 months)</i></p> <p><i>Dual management</i></p> <p><b>Art. 12</b> The Ministry of Home Affairs (national level) and the People's Committees (local level)</p> <p><b>Art. 29</b> The competent ministerial or equivalent bodies in the areas of their competences</p> <p><i>First stage</i></p>	<p><b>Art. 6</b> Registration and management agencies (RMAs): the Ministry of Civil Affairs and its local branches</p> <p>Professional Leading Units (PLUs) empowered by the State Council or local government<sup>9</sup></p>
<b>Two-stage registration</b>		(continued)

<sup>9</sup> PLUs serve as the relevant leading units of social organizations in related trade, scientific or other professional areas.

Table 5.2 (continued)

Vietnam	China
<p><b>The 2010 Decree No. 45</b> (<i>Current legal document</i>)</p>	<p><b>Art. 9</b> An applicant social organizations must be investigated and approved by a PLU and must send a preliminary application to RMA</p>
<p><b>Art. 6</b> An applicant association must form an establishment committee which requests the recognition of a national, provincial, or lower-level ministry or department (depending on the scope of the association)</p>	<p><b>Art. 11</b> Once a document of approval from the PLU has been obtained, the social organization must supply the RMA with the required documents</p>
<p><b>The 2016 draft law</b> <i>The establishment committee is removed but other procedures remain unchanged</i></p>	<p><b>Art. 12</b> Within 60 days of receiving the documents stipulated in Art. 11, the RMA must decide whether or not to approve the registration of an organization</p>
<p><b>Art. 11</b> Within sixty days of receiving the completed application, the competent bodies stipulated in Art. 12 will consider a possible approval. Written reasons are to be provided if the application is refused<sup>10</sup></p>	<p><b>Art. 13</b> The RMA will not approve the registration preparation if the objectives and area of work applied for do not comply with Art. 4<sup>11</sup></p>
<p><i>Second stage</i></p>	<p><b>Art. 14</b> Within six months following the approval of its preliminary application by the RMA, the social organization must hold a general meeting of its members to pass a charter and apply for a final registration with the RMA</p>
<p><b>Art. 14</b> Within 60 days of receiving the association registration certificate, the association's members must hold a general meeting to announce the creation of association and to pass a charter. The certificate will otherwise expire</p>	

<sup>10</sup> The prohibitions stipulated in Art. 9 are often used, i.e., “associations must not undermine national sovereignty and security, oppose the interests of the State and society, harm the unity, the cultural tradition and nation”.

<sup>11</sup> I.e., “oppose the basic principles of the constitution, harm the unity, security or ethnic harmony of the State, or the interests of the State and society, or the lawful interests of other organizations and citizens, or offend social morality” (Art. 4).

<i>Legal frameworks</i>	<i>Vietnam</i>	<i>China</i>
<i>License granting</i>	<b>Art. 12</b> The association registration certificate	<b>Art. 16</b> Social organization legal entity registration certificate
<b>Supervision phase</b>	<b>Art. 18</b> Associations must organize a general meeting (mandate cannot exceed 5 years) Within 30 days following the mandated meeting, the association must report on it to competent bodies, as stipulated in Art. 3	<b>Art. 31</b> Social organizations must submit an annual work report on the preceding year to their PLU and to the RMA The RMA will then carry out an annual review <b>Regulation Nr. 6</b> Causes for sanction <sup>12</sup>
<b>Regulatory requirements</b>	<b>The 2010 Decree 45, Art. 5</b> ( <i>Current legal document</i> ) A national-level association must have at least 100 members, a provincial-level association at least 50 members, and a district-level association at least 20 members <b>The 2016 Draft law, Art. 10</b> An association must have its head office in Vietnam, a charter, and more than 7 founders	<b>Art. 10</b> An organization must have more than 50 individual members or more than 30 institutional members, or, if it has both individual and institutional members, a total of at least fifty The organization's name must comply with the law and statutory regulations and must not offend public morality

<sup>12</sup> “If a social organization’s activities oppose other laws or regulations, it will be dealt with by the appropriate national agencies; if the relevant national agencies consider the social organization should be closed down, the RMA will cancel the registration” (Art. 34).

The definition of association seems in both regulatory documents (the Vietnamese draft law of 2016 and China's 1998 Order No. 250) aligned with the liberal perspective laid out in France's 1901 Law on Association: "an association is an agreement by which one or more persons bring together, in a permanent manner, their knowledge or their activities for a non-profit purpose" (Art. 1). The liberal framework distinguishes between civil society, belonging to the private domain, and the political sphere, as the domain of the state (Habermas, 1978: 16). This presupposes that the state is "constituted as an impersonal locus of authority" (Calhoun, 1992: 8). The strong sense of privacy was a "crucial contribution of capitalism to civil society", providing "opportunities for *contesting* as well as *securing* the legitimacy of the system" (Eley, 1992: 324).

China's 1998 Order No. 250 terms "social organization" as "all groups other than state organs" (Art. 2), and Vietnam's 2016 Draft Law on Association explicitly excludes six key Party-led mass organizations (Art. 2). This seems to suggest that the State and Party are kept outside of the scope of associations. However, in both cases, this says little about the organizations' relative independence and their interactions with the Party-State. Indeed, in Vietnam, the exemption of the six mass organizations was interpreted by opponents as a preferential treatment, because these mass organizations will not be controlled.

Despite a public/private distinction borrowed from liberal democratic ideas then, we find illiberal ideas and authoritarian regulations. While in liberal democracies, every citizen can form an association, in illiberal authoritarianism, the mere status of ordinary citizen is not sufficient to obtain the right to do so. In both the Vietnamese and Chinese cases, control measures over association are translated into regulatory requirements, dual management, two-stage registration, and permanent supervision. This is in line with Sidel's (2020) argument that the Vietnamese Party-State maintains firm control over time through key methods dating from the 1950s: on the one hand, a "long and difficult process of approval" and "continuing control and supervision"; and, on the other hand, a "traditional mechanism of dual control" by a government management agency as well as a ministry or agency in a professional area related to the association.

### *The Draft Law on Association Under Debate*

The draft law on association was first released in 2005 by the Office of the Government in Hanoi for consultation, to collect opinions. The main objection raised was that the draft law retained the same control mechanism as the 2003 Decree No. 88. The debate reached its climax when a group of specialists, supported by VUSTA (the Vietnamese Union of Science and Technology), "wrote their own alternative draft law on association and formally made it available for discussion" (Sidel, 2020: 3). In the alternative draft law, the administrative procedure was much closer to a liberal "registration model"

than an “approval model”—the “asking-approving” mechanism (*cơ chế xin cho*) which is typical of socialist bureaucracy (VIB online, 2006).

In 2015, a public consultation was launched and the entire content of the draft law on association made available online. Hundreds of conferences and thousands of scientific and press articles on the draft law followed. According to Mr. Nguyễn Vi Khải, a former member of the Prime Minister’s Studies Committee, “this would be the record in terms of discussion for a draft law that does not serve life and therefore could not be accepted” (VnEconomy, 2018). For opponents, the draft conceived of the right to association as a “favor” granted by the Party-State to associations, and not as a fundamental human right. Cao Vũ Minh (2016), editorial secretary of *Legislative Studies* magazine, argued that “the draft law seems to maintain the old management thinking and thus create a big contradiction between the principle whereby ‘citizens have the right to do everything not prohibited by law’ and management through administrative procedure” (Cao, 2016). Mr. Cao also highlighted the “loose framework” of the draft that “gives the government too much power to interpret and translate law into decrees” in its own favor.

Lawyer Trương Hồng Quang (2014) believed that it is necessary to reconsider the concept of “association” before drafting the law, stating that: “The definition of association and other issues related to association should be set within a conceptual framework dedicated to civil society” (Quang, 2014). In his words, the concept’s meaning changed once it was introduced in Vietnam: “in the world, association is considered as one of the components making up civil society in relation to the state and the market. Yet in our country, it is one of the components constituting the political system including the Party, the State, the Fatherland Front, and other mass organizations” (Quang, 2014).

The point most criticized in the draft has been the issue of the “legal status” of an association. Recent Vietnamese NGOs are mostly unregistered, use digital technology, and are politically engaged. Many groups conduct actions that are explicitly anti-government and dissident but operate virtually rather than directly. They are part of an informal civil society which scholars have termed “political civil society” (Kerkvliet, 2015; Thayer, 2009). The authorities do not recognize these groups, charging that they carry out subversive activities for political purposes that undermine national security and solidarity. The groups’ cyber-activism is regularly attacked by the state. While the public learns about these groups via the internet, it is impossible to obtain accurate statistics on the number of them.<sup>13</sup> By preventing such groups from obtaining

<sup>13</sup> For example: Vietnamese Women for Human rights Association (*Hội Phụ nữ nhân quyền*, founded in 11/2013), Association of Former Prisoner of Conscience (*Hội Cựu tù nhân lương tâm*, 2/2014), League of Independent Vietnamese Writers (*Văn đoàn độc lập*, 3/2014), Independent Journalists Association of Vietnam (*Hội nhà báo độc lập*, 7/2014), Green Trees (30/3/2015), etc.

“legal status”, the Party-State outlaws their activities.<sup>14</sup> This discriminatory practice runs counter to Vietnam’s commitment to human rights treaties. One example demonstrates the point.

By 2019, Vietnam had ratified seven out of the eight fundamental conventions of the International Labor Organization (ILO), most recently (2019) the convention 98 (Right to Organize and Collective Bargaining Convention) with convention 87 (Freedom of Association and Protection of the Right to Organization Convention) scheduled to be adopted in 2023 (ILO, 1948, 1949, 2022; RFI, 2022). In 2018 and 2020, Vietnam successively ratified the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the European Union Vietnam Free Trade Agreement (EVFTA). These two international agreements put pressure on the Vietnamese State to reform its Labor Code. In November 2019, the NA adopted an amendment to the Labor Code, which established that an employee has

the right to participate in, adhere to, work within organizations representing employees, professional organizations and other groups as regulated by law; the right to request for and participate in dialogue, exercise democratic charter and collective negotiation with the employer. (Art. 5)

Shortly after the NA’s approval, *Vietnam News*, the main English language newspaper of the state’s *Vietnam News Agency*, announced that Vietnam allows “independent unions”, but stressed that “the representative organization, however, would only be considered legal when it obtained a license from a competent authority” (VietNam News, 2019). According to Buckley (2022), the Labor Code:

allows, for the first time, workers to form Worker Organizations (WO) not affiliated to the Vietnam General Confederation of Labor. But to claim that WOs are independent unions is a significant misinterpretation (or perhaps in some cases a deliberate misrepresentation). They are not unions. WOs are only allowed to be formed at the individual enterprise level and are more limited in what they can do compared to unions. Unions, on the other hand, are part of the VGCL [Vietnam General Confederation of Labor] and therefore embedded in the countrywide structures of the Confederation.

Indeed, Vietnam has not allowed independent labor unions. The Vietnamese Independent Union (VIU), founded in 2020, is not recognized by state authorities, which have even accused it of being a reactionary and subversive organization (Vnunion, 2023). The VIU underwent severe stigmatization by state-owned media, for example, the ultra-conservative People’s Police Newspaper (*Công an nhân dân*):

<sup>14</sup> But not all unregistered associations are outlawed: “There are more than 200.000 unregistered community-based organizations throughout the country, which operate effectively and violate no law” (Wells-Dang, 2022: 74).

[...] the so-called “Vietnamese Independent Union” is an illegal organization. In fact, this is a pretext used by hostile forces and opponents to form an organization to undermine our Party and State. In recent times, some self-proclaimed “independent”, “democratic”, “human rights” organizations are appearing [...] Their shared purposes are to erase the leading role of our Party, to distort and slander the political system, and to conduct activities against the state’s organs. (Hai, 2021)

Despite the hostile attitude toward civil society in official media outlets, dissenting voices could still be heard through them. *Dân trí*, a rather reformist newspaper, reported the comments by Mr. Trần Ngọc Hùng, president of the Vietnam Federation of Civil Engineering Associations, who was pleased that the draft had failed to be passed because of its “many inconsistencies and inconveniences”. He was quoted as saying that “among 33 articles of the draft, only two regulate the interests of the associations’ members. The other regulations are related to state management, many of which are unnecessary and interfere too much with the activities and charters of associations” (*Dân trí*, 2018).

## NORM CONFLICT AND STATE PRAGMATISM

### *Subtle Changes to the Rules of the Game*

Social organization in Vietnam must be examined against a historical backdrop of relative local autonomy, based on clan or communal and religious structures, in the context of a centralized national political system. Since 1945, the CPV kept strong control over society through its mass organizations. Following the *đổi mới*, social urban-based organizations came into being, but they were still highly restricted; in short, “there is no organized democratic political tradition” in Vietnam (Wells-Dang, 2014: 162).

In the wake of *đổi mới*, the arrival of a multitude of foreign donors helped develop the voluntary and nonprofit sectors. The number of registered NGOs rose from under 200 in the late 1990s to approximately 1700 by 2010; at the end of 2014, government sources stated that there were 52,565 social organizations of all types: mass, professional, and community organizations ranging from communal level to national level (Wells-Dang, 2014).

The first Vietnamese NGO (VNGO) was formed in the early 1990s when International NGOs (INGOs) began to establish their representative offices. Most VNGOs were led by “academic or former government officials with sufficient connections to enable them to register with supervisory state agencies” (Wells-Dang, 2022: 73).<sup>15</sup> About a hundred in all, these VNGOs acted like independent organizations, in terms of setting their own agenda and raising

<sup>15</sup> For example: the Research Center for Gender and Development, the Rural Development Services Center in Hanoi, and the Social Development Research Consultancy in HCMC; Fund for Young Talents of Vietnam supported by Prime Minister Võ Văn Kiệt, the Vietnam Fund for Supporting Technological Creations backed by General Võ Nguyên



funds. Sidel (1997) also mentions professional and business associations, which often serve to represent the interests of younger entrepreneurs and their allies within the regime (scientists, economists, and others), as well as farmer associations, collectives, ethnic and clan groups, and religious groups, that scholars refer to as Community-Based Organizations (CBOs).

In the early 2000s, there came a second generation of VNGOs which were driven by younger, well-educated founders. Most founders had studied overseas or worked with international agencies. These VNGOs were mostly urban-based, although they carried out projects in rural areas. The most recent VNGO generation, emerging in the 2010s, has broken the NGO mold: “influenced by opportunities on the Internet and in social media, many start-up groups have organized virtually, sometimes choosing to remain unregistered” (Wells-Dang, 2022: 74). Many of the latest VNGOs have been highly politically engaged and acted via political discussion forums on *Facebook* and blog sites (Nguyen-Pochan, 2021). They thereby revived political civil society.

Donors consider Vietnam, although still ruled by the CPV, as a post-socialist country in transition. Among foreign donors are global institutions, bilateral partners, and INGOs. They operate through two different approaches. The economic top-down approach, of neo-liberal global institutions, consists in strengthening state governance and transparency as a remedy to state weakness, corruption, and incompetence; conversely, the political bottom-up or grassroots approach, driven mainly by INGOs, consists in developing participative democracy given the weakness of civil society.

The arrival of INGOs created tension as the state did not allow independent VNGOs to work with them. To coordinate the activities of INGOs with those of VNGOs, the state in 1989 established the People’s Aid Coordinating Committee (PACCOM) under the Vietnam Union of Friendship Organizations (VUFO). PACCOM was responsible for assigning geographic areas and counterpart organizations to the INGOs, and for inserting NGO aid into the state budget. International aid therefore operates in terms of friendship between nations and peoples, rather than between individuals (Salemink, 2006: 106–107). Foreign donors are most often obliged to work with mass organizations, especially the Vietnam Women’s Union.

With hindsight, we may note that Vietnamese civil society is not the real beneficiary of international aid, training, and expertise programs. Rather, these benefit local authorities, mass organizations, and depoliticized VNGOs.

### *The Party-State’s Ambiguous Attitude Vis-à-Vis Civil Society*

Scholars disagree over the existence and expressions of civil society in Vietnam. Some focus on the repressive state apparatus (Thayer, 2014), others pay greater attention to varying degrees of tolerance toward dissent in practice

Giáp or Programme Volontaire de Vulgarisation des Progrès Scientifique-Techniques pour les Familles Rurales backed by former Foreign Minister Nguyễn Cơ Thạch.

(Kerkvliet, 2014), to the rapid growth of CBOs, or to various forms of networks and coalitions (Wells-Dang, 2014).

The divergence of views stems from the Party-State's ambiguous attitude vis-à-vis civil society, namely, the former's dual strategy of both encouraging and controlling the latter. To cope with the new tensions which have arisen from the management of associations, the authorities have adopted a pragmatic approach which combines firmness with flexibility.

The 2010 Decree 45 established a new category of association named "organizations with special characteristics" (*Hội có tính chất đặc thù*). These have privileges such as "participation in consulting, providing feedback, and examining various policies, programs, projects, and plans of government agencies" on issues within their prescribed sphere of activities, in accordance with the prime minister's regulations. Decree 45 also stipulates that the government provides budget funding to these organizations (Art. 34 and 35).

The 2016 Draft Law does not mention "organizations with special characteristics", but stipulates that

The Prime Minister recognises the charters of the Vietnamese Union of Science and Technology, the Vietnamese Union of Friendship Organizations, the Vietnamese Union of Literature and Arts Associations, Vietnam Chamber of Commerce and Industry, Vietnam Writer's Association, Vietnam Journalists Association, Vietnam Lawyers Association and Vietnam Red Cross Association. (Art. 15)

In fact, these organizations are major "umbrellas" or GONGOs (Government-organized NGO), namely state agencies which vouch for associations. To obtain legal status, a VNGO must be recognized by a state agency of the ministry or department that supervises its scope of activity. The VUSTA and its provincial cells (USTAs) are the most important umbrellas for the VNGOs. In 2010, there were an estimated 1700 VNGOs, out of which 600 were registered under the VUSTA (Wells-Dang, 2022: 74).

Due to the influence of such state-run associations, some of which have liberal leanings, some scholars (Sidel, 2020; Wells-Dang, 2012, 2014, 2022) propose to examine Vietnamese civil society from a Gramscian hegemonic perspective, through complex interactions within the elite sphere (whether political, intellectual, or scientific). Wells-Dang (2012) coins the term "informal path-breakers" for GONGOs capable of influencing top-down decision-making and policies. The VUSTA, as mentioned above, played an important role in the debate on the draft law on association. It has organized a plethora of conferences on the draft law and put pressure on the government to suspend it (Pháp Luật, 2016). A related example is the 2008–2009 campaign against the government's bauxite mining project, in which several state officers were involved, including General Võ Nguyên Giáp.

If the preferential treatment toward "organizations with special characteristics" seems to suggest relative flexibility, firmness is exercised through

a case-by-case policy applied to other associations, based on bylaw regulations.<sup>16</sup> Bylaw regulations strictly control, for example, associational activities which involve “foreign elements” (e.g., international funding and international conferences). The 2010 governmental Decision No. 76 (“The regulations on organization and management of international workshops and conferences in Vietnam”) singled out certain “sensitive topics”, such as “issues of politics, national security, national defense, nationality, religion, human rights, territorial boundaries, or state secrets”, the organization of conferences on which must be decided by the prime minister (Art. 3, Decision 76). Bylaw regulations also restrict the freedom of research. In July 2009, the prime minister issued Decision No. 97, limiting the issue-areas research organizations were allowed to engage in, and the rights of such organizations to voice criticism against government policies. It was clearly aimed at organizations including the Vietnam Institute of Development Studies (IDS), led by some leading intellectuals and technocrats, which operated with the implicit sponsorship of former Prime Minister Võ Văn Kiệt.

## CONCLUSION

Confirming a Gramscian reading of Vietnamese civil society, the difficulty in passing the draft law on association arguably stems from tension within the state’s elite sphere. Some GONGOs and experts, exhibiting a more liberal-leaning view of the role of civil society, such as the VUSTA, have been able to influence the decision-making process and prevent the approval of the draft law because it was not modified following the more liberal design of VUSTA’s alternative draft.

In principle, civil society associations without exception want a less restrictive and more liberal law on association. Thus, the debate on the draft law might primarily reveal the CPV’s internal split between a liberal wing and a conservative one. While the former has advocated for reform and decentralization of the state, and greater freedom of association, the latter has sought to strengthen the CPV’s centralized leadership. Scholars and experts have long detected signs of this internal split. Koh (2001: 534) mentions “the pluralistic tendency under an umbrella of authoritarianism”. Vuving (2017: 426) observes a cohabitation of four major currents: conservatives, modernizers, moderates, and rent-seekers. The long-standing rivalry between the conservative Nguyễn Phú Trọng, CPV General Secretary, and the rent-seeking oriented liberal former Prime Minister Nguyễn Tấn Dũng is a frequently cited case. Vuving (2017: 422) analyzes that “Trọng is a Confucian, who is loyal to his principles, while Dũng is capitalist, who is loyal to his profits”. Such power

<sup>16</sup> For example, the 1996 governmental Decision No. 340 “the Regulations on the operations of foreign NGOs in Vietnam”, the 1999 Decree No. 177 “the Regulations on organization and operations of charity and social funds” or the 2009 Decree 93 “the Regulations on management and use of INGO aids”.

struggles might suggest a pluralization within the elite sphere and more expansive civil society networks. Thus, the tensions arising from the draft law on association concern political and legal norms, which are also attached to the struggle for power within the Communist regime, as well as the struggle for the expansion of Vietnamese civil society.

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