



UNIVERSITY OF PUGET SOUND
ASIAN STUDIES PROGRAM
PACIFIC RIM PROGRAM

ASIA WEEK SEMINAR

*

LEGAL AND POLITICAL REFORMS IN VIETNAM TODAY: AN INSIDER'S PERSPECTIVES

Mrs. NGO BA THANH

Doctor in Law, Paris and Barcelona Universities
Master of Comparative Law, Columbia University (N.Y.)
M.P. Chairman of the Law Commission, National Assembly
Socialist Republic of Viet Nam

N.N. 15
32

LAW COMMISSION OF THE NATIONAL ASSEMBLY
SOCIALIST REPUBLIC OF VIETNAM

*

ASIA WEEK SEMINAR
"LEGAL AND POLITICAL REFORMS
IN VIET NAM TODAY:
AN INSIDER'S PERSPECTIVES"

Presented by

Mrs. NGO BA THANH

Doctor in Law, Paris and Barcelona Universities
Master of Comparative Law, Columbia University (N.Y.)
M.P. Chairman of the Law Commission, National Assembly
Socialist Republic of Viet Nam.

Mr. President,

Distinguished Participants,

Dear Friends,

I have much pleasure in associating myself with this "Asia Week" Seminar organised by the University of Puget Sound, Asian Studies Program. I wish to thank the Organisers, especially Prof. David Satterwhite, Director of the Pacific Rim Program, for inviting me to speak. I was so delighted to welcome you and your group of young American students at the

University of Hanoi and then in my home town in Ho Chi Minh City, that my present visit to your University of Puget Sound in the USA, just make me feel at home.

Viet Nam is a country which you are so familiar with that I don't have to further introduce to your academic community. Let me just inform you on the particular subject which you are interested in: "*Legal and Political Reforms in Viet Nam Today: An Insider's Perspectives.*"

RELATIONSHIP BETWEEN ECONOMIC AND POLITICAL RENOVATION

A key political environmental factor in Vietnamese society lies with the 6th Party Congress in December 1986, which initiated an all-round comprehensive, systematic and thorough process of Renovation, with appropriate steps, forms and ways. The relationship between economic renovation and political renovation must be properly handled. The need for renovation in our country arises first of all from economic activities. It is only through economic renovation, hence the gradual improvement of the people's living conditions, that popular confidence in the cause of renovation can be created. Success in economic renovation will create favourable conditions to renovate the political system. However, political renovation cannot wait until the completion of economic renovation. We have to renovate the political system step by step, so that along with the propulsion of economic renovation, political and moral unity of our people and society will be strengthened. *Renovation will not be possible without democratisation of the economy, so as to ensure the role of the people as master of the society in a market-oriented economy, tapping all potentials and encouraging active participation from all economic sectors, with the instrumentality of law.*

This renovation process has gained momentum, in par-

ticular over the past two years and has been institutionalized most recently in the form of a *Law on Private Enterprise, a Companies Law* including *Limited Liability Company* and *Shareholders Company*, a *Housing Law* with the possibility for both Vietnamese and foreign Investors to do business in the field of Real Estate, within the framework of the law.

The door to the outside world has been wide opened, gradually integrating Viet Nam's internal market with external market, foreign and domestic resources, financial and technological have been brought to bear on three priority areas: agriculture, consumer goods and exports. The *Foreign Investment Law of 1987 with some Amendments in 1990*, to make it more attractive, is the leading piece of our Economic Legislation, to take shape under the economic renovation policy, not only because it is considered as one of the most liberal foreign Investment Laws, but also because the amended Law permits private economic organisations of Viet Nam to establish business cooperation relations with foreign investors. This will help raise the share of domestic capital in the whole investment structure of the national economy, and increase the capacity of drawing more foreign investments. This will also create favourable conditions for Vietnamese overseas residents, to either cooperate in Viet Nam with their relatives in private sector, or help them with capital and technology to do business directly with foreign partners. Besides, the *Laws on the Protection of Industrial Property Rights and on Transfer of Technology*, are also quite attractive.

Several important pieces of legislation are to be passed soon: Law on Publishing, Law on Intellectual Property, Ordinances on Bankruptcy, on Consumers' Rights Protection, on Export Processing Zones ...

The 7th Party Congress just held last June, has summed up the renovation process in the past five years, affirmed very important initial achievements, and drawn experience for the

future. We stand for the consistent implementation of the policy for a market-oriented multi-sector economy. All citizens are entitled to law-binding free business to protection of their lawful ownership and incomes. Different forms of ownership may be mixed or integrated with a view to shaping up diversified business organisations. All enterprises, regardless of their ownership relationships, are granted with autonomy in business, cooperation, and competition and are equal before the law.

In order to materialize the great potentials of a multi-sector economy, it is imperative to continue with the abolition of the mechanism based on bureaucratic centralism and State subsidies, with a shift to market mechanism under State management by means of laws, plans, policies, and other instruments. Looking to the market, the enterprises are to select their field of operation, kinds of product, organisational scope, technology and forms with a view the highest efficiency in the context of cooperation and competition.

A developed commodity economy calls for continued overcoming of the state of autarky, partitioning, and close circuitedness. The grassroots units, the sectors, the localities and the whole economy as well are to promote their compartive advantages, constantly enhance the competitive power of products best respond to requirement of production and life, and be strongly and efficiency export-oriented and import-substituting.

To broaden, diversify and multilateralize foreign economic relations on the principles of firm maintenance of our independence and sovereignty, of equality and mutual benefit, to attract external resources with a view to vigorously promoting internal advantages and resources.

RENOVATION OF THE POLITICAL SYSTEM

Our Renovation is a comprehensive and synchronous

process, but we have to take appropriate steps, to aim at selected targets and define the main links for each period. As we have said, at the initial state, we took economic renovation as the keynote, promoting all potentials in order to release productive forces, create abundant products, and meet the urgent needs of the people's life, whereby to restore in an initial degree the people's confidence and instill in them the force to carry out by themselves our thorough process of renovation: *Renovation is an undertaking of the people by the people and for the people.*

Simultaneously with the economic renovation, we have been embarking on the process of renovation in all aspects of social life, gradually restructuring the organisation and mode of operation of the different bodies within the political system, on the basis of expanding the people's self-reliance under a dynamic Rule of Law.

Through this approach, democracy keeps moving: the State and the Citizens display active commitment. Human rights as guaranteed by the Constitution and the Law should not lead anyone to blindly trust in an automatism. The implementation of citizen's rights is to a great extent dependent on people's active involvement and on the action or failure of public authorities and other people. Contradictions may occur due to erroneous decisions, illegal behaviour or undue claims. The new Law on the Press for example, provides that if the press gives false, distorting or denigrating information against a citizen, harming his honour and dignity, the press must make public its correction and apology. If it refuses to do it, the citizen concerned has the right to lodge a protest with the Sponsoring Office of the press organ or filing an action in court.

In our socio-economic environment, democracy and human rights are considered as both rights to protect the individual and rights to participate in fashioning society. They

are designed to enable all people in their own interest to get involved in shaping society, invigorating the Party's leadership, improving the efficiency of the Law-governed State, promoting and supervising Socialist Democracy, indirectly through elected representatives to the National Assembly or the People's Councils, through collective mastery in mass organisations, or through direct participation in public affairs at the grassroots levels, or through both indirect and direct forms of people's power.

Under our people's self-reliance democratic system, the citizens' rights are inseparable from their civic duties, hence, each and every person bears a considerable responsibility for the implementation of human rights; practicing them actively is in itself a major guarantee for these rights. On the other hand, to conceive human rights to participate in shaping society means accepting that the content of these rights undergoes constant development. Laying down and implementing human rights must therefore, never be viewed as something static and complete once it has been performed, but as something which needs to be improved, renewed constantly.

Renovation of the political system is extremely complicated. A hasty acceleration of political renovation without necessary premises, or wrong political renovation will result in political instability, which will subsequently cause numerous difficulties and hindrances to the whole cause of renovation. This is a major lesson drawn from realities in our country, as well as from the experiences of some other countries.

Our country is going through the period of transition to socialism from a once colonized and semi-feudal society, whose economy was characterised in the main by small-scale production, by-passing the stage of capitalist development, undergoing several decades of war which have left heavy consequences. Our deepest aspiration is to build a socialist society along HO CHI MINH's thoughts. For every Vietnamese, HO

CHI MINH's thoughts are extremely close and linked with the people's infinite affection and love for UNCLE HO, in view of his great merits and crystal-clear ethics. Therefore, upholding HO CHI MINH's thoughts as the 7th Party Congress did, conforms to the socialist revolutionary realities of our country and to the feelings of our entire Vietnamese people.

For your easier understanding of our problems, let me quote some remarks made by the Ambassador of Australia in Hanoi, after serving for some years at the Australian Embassy in Saigon before. Addressing himself at the Thai-Australia Chamber of Commerce and at the Australian Chamber of Commerce in Hong Kong, Ambassador GRAHAM ALLIBAND said:

"Apart from Viet Nam's rich natural resources and the economic opportunities stemming from its particular economic needs, there are a number of other general factors which make Viet Nam a potentially attractive environment for Australian investors. A paramount consideration for investors is clearly the political stability of a country. Viet Nam's turbulent history since the Second World War has naturally created a rather negative outside image of Viet Nam. The political upheavals in Eastern Europe and the Soviet Union plus the Tienanmen Square events in China, have added further doubts among many outsiders about Viet Nam's future political stability.

I am no political seer having any secret insight into Viet Nam's future, nor is this address the right place to go into any detailed analysis. Predictions of future political events are exceedingly risky these days, but I am prepared to bite the bullet to say that I believe that Viet Nam is inherently one of the most politically stable countries in Asia. Viet Nam's political, social and economic situation is very different from that of Eastern Europe and the Soviet Union and even from China... Viet Nam has also been through fifty years of upheaval and

conflict. I believe that there is a very widespread yearning in Viet Nam for peace and stability, and above all, for material prosperity... An open-door economy policy has been adopted transforming Viet Nam's economy from an autarkic one into one fully integrated into the international market. The economic collapse of the Soviet Union and the virtual cessation of Soviet aid to Viet Nam have hastened this process. I believe the changes are irreversible as there is simply no other alternative for Viet Nam but to participate fully in the international market place. The current debate is about how much faster and deeper the changes should take place not whether they should be slowed down or reversed. Thus, I believe the risk of unfair nationalization or confiscation of foreign investors' property is negligible in Viet Nam."

I must say that I fully agree with what the Australian diplomat stated. Let me just say that we have added two new articles in the Draft Amendment of the Constitution related to foreign investors:

1) The Socialist Republic of Viet Nam State encourages foreign organisations and private individuals to invest capital and technology in Viet Nam, on the basis of observance of the Laws of Viet Nam and international practices, equality and mutual benefit."

2) The State shall guarantee the ownership of the invested capital, and lawful estates and rights of foreign organisations and private individuals investing in Viet Nam, Enterprises with foreign invested capital shall not be nationalized."

In order to make the State truly an organ of power of the people, by the people and for the people, we must perfect the system of State apparatus, heighten its management effectiveness, combat bureaucratism, arrogance, authoritarianism, corruption... of State bodies and State employees that stand aloof from the people, disregard law and discipline, through the National Assembly's Directives and the people's supervision.

ON THE DRAFT AMENDMENT OF THE 1980 CONSTITUTION

In order to institutionalize the Economic and Political Renovation, a drastic amendment to the 1980 Constitution is needed, especially after the 7th Party Congress.

Upon Report by VO CHI CONG, Chairman of the State Council and Chairman of the Commission for the Amendment of the Constitution, the National Assembly (8th Legislature) at its 9th session, last August, just adopted a Draft Amendment to the 1980 Constitution for subsequent submission to a national consultation, before final vote by the National Assembly at its next session. (December 1990)

Even though the Draft Amendment to the 1980 Constitution covers almost every Chapter—including the political, economic system; Culture, Education, Science and Technology; Defence of the Socialist Homeland; Basic rights and obligations of citizens, the National Assembly with still two options, either a collective (Presidium of the National Assembly) or an individual (President) Head of State, the Government and the local administration; the two most important issues amended are related to the economic regime and the political regime, more precisely the State apparatus.

The renovation advocated by the 6th Party Congress and further developed in the Political Programme of the 7th Party Congress, have to be translated into new or amended provisions of the Constitution. Article 15 of the Draft Amendment for example, provides that: "The Socialist Republic of Viet Nam builds and develops on a long-standing basis a multi-sector commodity economy according to a State-guided and regulated market mechanism, based on the regime of ownership of the entire people, collective and private ownership, with ownership of the entire people and collective ownership, as the foundation."

In order to make the State truly an organ of power of the people, by the people, and for the people, we must perfect the system of State apparatus, thoroughly reform the administrative system from central to grassroots levels, with the Government (instead of the present Council of Ministers) as the highest Executive and Administrative State body, accountable to the National Assembly.

On the renovation of the political system, let me complete my initial report to you by quoting our Party Secretary General DO MUOI, speaking at the opening of the 9th session, of the National Assembly:

"On the relations between the Party and the National Assembly, the Government, the People's Councils and People's Committees, Secretary General DO MUOI said: "The Party does not replace other organisations in the political system. It leads the political system and at the same time belongs to that system. The Party maintains close ties with the people and is subject to their supervision. It operates within the framework of the Constitution and the Law.

The National Assembly's activities should focus on building a law-governing State, capable of setting up a comprehensive legal system to meet the new demands in socio economic development, to manage all fields of a progressive and civilised society and to ensure the effective implementation of the State's policies. We have to ensure the National Assembly's real power and efficacy as stipulated in the Constitution. The National Assembly must be a forum for the people to voice their opinions through their representatives concerning issues of national importance, not only in the adoption of major decisions and strategies and in organizing and implementing them, but also in assessing the activities of the administration, the personnel-staff issue included. All important State questions to be decided by the National Assembly, must be brought up for democratic discussions and the National Assembly must

not be placed before a fait accompli. The National Assembly's Resolutions must be the supreme Order of a binding legal character, which no organisation, nor individual may change or dispense with. All the rights of the National Assembly and its Deputies stipulated by law must be respected and fully exercised."

With the coming renovation of the political system along with the propulsion of economic renovation, through the Rule of Law, the role of the National Assembly as "the highest Representative Body of the people, the highest State authority, and the only body vested with constitutional and legislative authority and with supreme supervision right over all State activities", is also going to be "DOI MOI" through important amendment to the Constitution. The final Draft, after the collection of comments and ideas from the entire people, will have to be presented by the Commission for the Amendment of the Constitution to the National Assembly for discussion and final vote.

Now, let me say a few words regarding our foreign policy:

"We should promptly perceive the complicated developments and profound changes in international relations with a view to defining appropriate foreign-policy decision. In the new conditions we should pay all the greater attention to applying the lesson on combining the strength of our nation with that of our time, our internal strength with international strength, at the service of national construction and defence.

We should help making the United Nations Organizations effectively serve the Objectives of Mankind, namely peace, friendship, cooperation and development. To cooperate with International Financial and Monetary Organisations as well as Specialized Agencies of the United Nations and Non-Governmental Organisations.

"The 7th Party Congress stands for expanding of our relations with all countries regardless of social and political sys-

tem, on the principle of equality, mutual interest, respect for each other's independence and sovereignty. The Congress solemnly declares: Viet Nam wants to befriend with all countries in the international community and joint the other countries in Southeast Asia and the world in actively contributing to the common cause of peace, stability, independence and development... We will push forward the process of normalisation of relations with the United States."

It is my belief that in the course of continuing seminars, exchange of views among scholars, businessmen, students, of the USA and Viet Nam, other seminar-traveling either in Viet Nam or in the United States or elsewhere, will follow my friendship visit and contribution to the success of the "Asia week" Conference organised by the University of Puget Sound. There are small bricks that will build a solid relationship between our two countries, in the best interests of the American and Vietnamese peoples and will serve the cause of peace, stability, cooperation and development in the world.

Let me again express my deep appreciation for your kind invitation, with my best wishes for the success of all your academic endeavours, while looking forward to cooperating with you soon at the University of Hanoi or of Ho Chi Minh City.



NN92.00016