

**CONSTITUTIONAL REVISION IN
VIETNAM: RENOVATION BUT
NO REVOLUTION**

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CONSTITUTIONAL REVISION IN VIETNAM: RENOVATION BUT NO REVOLUTION

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I. Introduction

On April 18, 1992, the Socialist Republic of Vietnam formally adopted a new Constitution.¹ Editorials in *Nhan Dan*, the Party daily, and *Quan Doi Nhan Dan*, the army daily, hailed the promulgation of the 1992 Constitution as an important milestone in the building of the Vietnamese state and its socialist legal system.² Old laws were to be amended and new laws were to be drafted to implement or, as the Vietnamese say, "concretize"³ the provisions of the new Constitution. According to *Nhan Dan*, the 1992 Constitution was to become the "true legal basis for (the) comprehensive renovation of the country under the Party leadership."⁴ *Quan Doi Nhan Dan* expressed similar sentiments, noting that Vietnam was "in a period of dynamic renovation".⁵

In essence, "renovation" is what Vietnam hopes to achieve by revising its Constitution. Since the late 1980s, Vietnam has embarked on a program of extensive economic reform known as *doi moi*. *Doi moi* literally means "new change" or "new thinking", but is most frequently translated as renovation.⁶ Under *doi moi*, Vietnam aims to remodel its economic sector and some aspects of its political sector to invigorate the country while leaving the state's essential socialist framework and goals unaltered. Vietnam's 1992 Constitution institutionalizes the *doi moi* or renovation campaign.

As explained by Vo Chi Cong, a key Party advisor and the chair of Vietnam's Constitutional Amendment Committee,

After more than ten years of implementing the 1980 Constitution ... it was found that some stipulations of the 1980 Constitution, especially those of the economic system, were not consistent with the law on production relations and the capability and nature of the production force. ... For this reason, we were unable to release all production forces and develop all the potential of society. Moreover, during the 1980s, our nation was hit hard by a prolonged socioeconomic crisis.⁷

In the 1980s, Vietnam was one of the poorest countries in the world. Its economy suffered from high unemployment, inadequate food production and soaring inflation.⁸ Low labour productivity, the under-utilization of resources and a cumbersome state bureaucracy hampered production in both the country's agricultural and industrial sectors.⁹ In addition, sustained involvement in regional military conflicts diverted necessary resources from improving the economic and industrial infrastructure.¹⁰

The failings of Vietnam's centrally planned economy were publicly acknowledged by the Vietnamese Communist Party at its Sixth Party Congress in December 1986.¹¹ Following this meeting,

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Vietnam embarked on its program of economic reform or *doi moi*.¹² Under *doi moi*, the Party implemented market-oriented measures designed to improve agricultural production, increase the availability of consumer goods, promote exports and reduce inflation.¹³ Farmers were given the right to withdraw from collectives and individual farm families were permitted to lease land.¹⁴ A more liberal foreign investment law was enacted in 1987¹⁵ and private corporations were legitimized in 1988.¹⁶ The Party leadership realized that "while socialism remained an ideal, the benefits of market economics and individual initiative were essential if Vietnam was to resolve its dire economic problems."¹⁷

However, *doi moi* was not without its opponents. Economic reform was initially hampered by strong opposition from conservative Party members, bureaucrats and military officials who were concerned about the "extent to which the Party's institutional role and prerogatives would need to be altered to accommodate change."¹⁸ Eventually the dire state of Vietnam's economy prevailed. At its Seventh Party Congress in 1991, the Vietnamese Communist Party reiterated its commitment to socialism, but placed renewed emphasis on the need to establish a market-centred economy as a necessary transitional step to socialism.¹⁹ After 1991, *doi moi* was pursued with increased vigour.²⁰

The provisions of Vietnam's newest Constitution affirm the commitment to building a market-oriented, multi-sector economy which encourages individual initiative and private enterprise. The drafters of the 1992 Constitution have tried to remodel Vietnam's economic structure by providing for a wide range of economic freedoms and by overhauling the state administrative structure so that economic decisions can be made with greater efficiency. Yet, in contrast to the fundamental nature of these economic reforms, renovation efforts have resulted in changes of limited significance in the political sector. The 1992 Constitution attempts to restructure Vietnam's central government institutions; however, it does little to diminish the power and control of the Vietnamese Communist Party. Despite constitutional references to the "rule of law", the Party retains its ability to rule by fiat. Vietnam's recent constitutional revision illustrates the country's commitment to economic reform so long as it stops short of introducing revolutionary change into Vietnam's political system.

The purpose of this paper is to examine the key provisions of Vietnam's 1992 Constitution in their historical, economic and political context and to show that renovation, rather than revolution, was the guiding principle behind the constitutional amendments. The paper is divided into four

sections. The first section focuses on Vietnam's constitutional history, the second on the constitutional revision process, and the third on the Constitution's economic impact. The final section provides an analysis of the constitutional changes in Vietnam's political sector.

II. The Constitutional History of Vietnam

A. State Constitutions and Socialist Practice

State Constitutions in socialist countries differ in status and purpose from their counterparts in Western democracies.²¹ In a Western democracy, the Constitution "is a statement of the will of the people to be governed in accordance with certain principles held as fundamental".²² Western Constitutions attempt to "define the boundaries between state and society, setting out areas of state function and, more particularly, areas in which the state may not encroach upon private activity."²³ The rights and freedoms included in a Western Constitution serve to limit the arbitrary use of state power by the government.²⁴ The legal framework established by the Constitution is the supreme law of the state and as such cannot be altered by the normal legislative process.²⁵ Constitutions in most Western democracies enjoy a high degree of stability.²⁶

In contrast, state Constitutions in socialist countries "are not intended to serve as permanent documents reflecting the timeless political and philosophical values of a given society."²⁷ They do not seek to regulate relations between state and society,²⁸ nor do they have a determinative legal function. In fact, socialist Constitutions often bear "little relation to the actual functioning of the system."²⁹ They are enacted by the country's supreme legislative body and changed with relative ease.³⁰ The primary purpose of a socialist Constitution is "to chart the progress of that society as it evolves through stages of growth to a final state of classless communism".³¹ Socialist Constitutions are simply not static documents. At each stage of the communist revolution, a new Constitution is written to establish the policies of that stage, to motivate the populace and to set forth the objectives to be achieved in preparation for the next stage. As M. Beresford explains, "stability in the (socialist) Constitution and unconditional adherence to its provisions are therefore not considered necessary, or even desirable, goals."³²

B. The Pre-1992 Constitutions of Vietnam

In keeping with socialist constitutional practice, socialist Vietnam has had four Constitutions since its declaration of independence in 1945.³³ Vietnam's first Constitution was enacted in 1946, the second in 1960, the third in 1980 and the fourth in 1992.³⁴ Each Constitution was enacted to

mark the attainment of a new stage in the Vietnamese revolution and each was enacted by Vietnam's supreme legislative body, the National Assembly, without referenda or referral to regional or local governments.

The 1946 Constitution was adopted by the National Assembly of the then-named Democratic Republic of Vietnam³⁵ on the eve of renewed hostilities with the French colonial regime based in southern Vietnam. The Constitution was drafted with the intent of building a Vietnamese "united front" to secure complete independence from colonial rule. Hence, the provisions were moderate so as to appeal to a

broad spectrum of Vietnamese society.³⁶ Democratic freedoms were promised³⁷ and the sanctity of private property was guaranteed.³⁸ In fact, the 1946 Constitution gave

a generally 'Western democratic' impression to the reader in that it (did) not deal in economic theories and (did) not make use of stereotyped communist phrases, such as the 'working people' or the 'victory of the dictatorship of the proletariat'.³⁹

While the preamble to the first Constitution stated that the country was "entering a new phase"⁴⁰, no reference was made to the ultimate goal of transforming Vietnam into a communist state. At this stage of the Vietnamese revolution, and with southern Vietnam under foreign control, nationalist interests took precedence over class interests and socialist dogma.

After the French defeat at Dien Bien Phu in 1954, Vietnam was formally divided into two separate zones of North and South.⁴¹ The separation was described in the Geneva Peace Accord as provisional and national elections were scheduled for 1956. When it became apparent that the elections would not be held, North Vietnam decided to draft a new Constitution.⁴² This new Constitution was to combine the desire to begin creating a socialist society in the North⁴³ with the need to continue soliciting southern support for reunification.⁴⁴ The new Constitution took three years to draft⁴⁵ and was eventually promulgated on January 1, 1960.

The 1960 Constitution represented a "radical departure" from the 1946 Constitution.⁴⁶ Unlike its 1946 predecessor, the 1960 Constitution expressly dealt with economic theories and used communist phrases and ideas.⁴⁷ Article 9, for example, announced that North Vietnam was "advancing step by step from people's democracy to socialism." The 1960 Constitution described the various functions of the state's executive, legislative and judicial bodies; however, the all-important role of the Party⁴⁸ was not mentioned anywhere in the body of the Constitution. In practice, final authority on all matters remained with the Party.⁴⁹ Perhaps, the reason for such an omission is, as W.J. Duiker suggests, that "the regime wished to avoid alienating moderate elements

in the South at the opening of what would eventually become known as the Vietnam War."⁵⁰

With the withdrawal of the United States and the reunification of North and South in 1975,⁵¹ Vietnam required a new Constitution to reflect yet another stage in its development. The task of redrafting the Constitution began in 1976 and was completed in 1980.⁵² At the Party's Fourth National Congress in 1976, the Party leadership decided to adopt an accelerated program of socialist transformation.⁵³ Vietnam's goal, to become a truly socialist regime by the end of the 1980s, was reflected throughout the 1980 Constitution. Moreover, unlike the 1960 Constitution, the 1980 Constitution expressly recognized the pivotal, political role of the Vietnamese Communist Party.⁵⁴ In article 4 the Party was described as the

"only force leading the state and society, and the main factor determining all successes of the Vietnamese revolution."

In 1946, 1960 and 1980, Vietnam followed the traditional socialist practice of enacting a new Constitution to record a perceived transition from one stage of revolution to another. Given this historical context, foreign observers and investors must view Vietnam's 1992 Constitution and its support for the creation of a market-oriented economy with caution. The 1992 Constitution should not be interpreted as Vietnam's abandonment of socialist goals and principles. As stated by Vo Chi Cong, "although the new development period has the character of a turning point, the direction of social development in our country remains unchanged, ie. to continue the transition to socialism..."⁵⁵

III. The 1992 Constitution of Vietnam: The Process of Revision

According to Vo Chi Cong, the National Assembly intended to "revise" the 1980 Constitution, rather than promulgate a new Constitution.⁵⁶ Vo Chi Cong emphasized that "the continuity and successiveness of the Vietnamese Constitutions, particularly between the 1980 Constitution and the amended one, must be respected and thoroughly understood."⁵⁷ However, the 1992 Constitution so significantly changes the content of the previous 1980 Constitution as to be virtually a new document. As noted by L. Do, only 12 of the 1992 Constitution's 147 articles remain unrevised from the 1980 Constitution.⁵⁸

The process of revising the 1980 Constitution began in 1988,⁵⁹ but as with *doi moi*, the revision process was only "pushed in earnest" after the Vietnamese Communist Party's Seventh Party Congress in 1991.⁶⁰ Following this meeting, Vo Chi Cong, in his position as chair of the Constitutional Amendment Committee, publicly announced the four key principles that would guide the revision process.⁶¹ First and foremost, the Party was to remain as the leading force of the state

and society. Second, the political system was to remain unilocular,⁶² with no separation of powers among the executive, legislative and judicial branches. Third, Vietnam was to remain a "socialist democracy"; and fourth, the new Constitution was to reflect the Party's commitment to renovation.

The revision process involved four drafts⁶³ and a seemingly high degree of public participation.⁶⁴ The draft Constitutions were prepared by the Constitutional Amendment Committee which had been established by the National Assembly in 1989 and was comprised of senior Party and government officials.⁶⁵ A first draft was submitted to high and middle-ranking Party cadres⁶⁶ for comment in May 1991, followed by a second draft being presented to the National Assembly in July.⁶⁷ This draft was then submitted to the Party's Central Committee⁶⁸ to ensure approval at the highest political levels of the concepts and orientations in the Constitution.⁶⁹ A third draft was circulated for public comment in January 1992, with a fourth draft going to the National Assembly for its approval in April. After three weeks of debate in the National Assembly, the revised Constitution was adopted unanimously.⁷⁰

IV. The 1992 Constitution of Vietnam: Renovation in the Economic Sector

Fundamental constitutional change is clearly evident in the 1992 provisions respecting Vietnam's economic structure. Seven new articles have been added to the chapter on the economic system and all previous provisions in the 1980 Constitution on economic matters have been revised.⁷¹ Under new article 15, Vietnam has affirmed its support for the development of a multi-sectoral, commodity economy based on market principles. It also recognizes that this new economic structure will depend on three systems of ownership, hence three economic sectors: state ownership,⁷² collective ownership and private ownership. This differs from the 1980 Constitution which only recognized the first two economic sectors.⁷³

However, these changes are subject to two qualifications. The 1992 Constitution stipulates that state and collective ownership must remain as the core of Vietnam's economic structure and that greater economic diversity must be based on "state management and socialist orientations."⁷⁴ Thus, the private sector economy can exist to complement or supplement the socialist public sector economy, but the state ultimately exercises supervision and control over the private economy.

Vietnam's new Constitution also signals a relaxation of state interference in production and business. Under article 19, state economic establishments are given a right of autonomy in making production decisions while becoming responsible to state administrators for the results of their operations. Under article 21, "individual and private capitalist economies may choose their own forms of production and business and may set up trade businesses without any limit on the scope and

areas of operations." The qualification is that the businesses must be "beneficial to the nation and the people."⁷⁵

The economic chapter in Vietnam's 1992 Constitution also reaffirms the country's desire to increase the inflow of foreign investment and aid. Articles 16 and 24 suggest that the promotion of expanded economic, scientific and technical cooperation and exchanges with non-communist countries has gained Vietnamese acceptance. The Constitution specifically encourages foreign organizations and individuals to invest capital and technology in Vietnam.⁷⁶ In return, the Constitution promises to "guarantee the right of ownership of the legitimate capital, property and other interests of foreign organizations and individuals."⁷⁷ It further stipulates that "business enterprises with foreign invested capital shall not be subject to nationalization."⁷⁸ The 1992 Constitution also extends an explicit invitation to overseas Vietnamese to invest in Vietnam.⁷⁹

As for the highly contentious issue of land ownership,⁸⁰ Vietnam has, within the socialist construct, instituted a measure of reform. As in other socialist legal systems, individuals in Vietnam do not have the right to own, sell or inherit land.⁸¹ Article 17 of the 1992 Constitution affirms that lands will continue to be "under the ownership of the entire people". However, the Constitution provides a compromise in article 18 through the allotment of land by the state for use on a "stabilized and long-term basis." It is this right of land-use, rather than the land itself, that can now be transferred by sale or inheritance.⁸² In addition, the 1992 Constitution prohibits "the nationalization of legal property"⁸³ and provides for the payment of compensation based on market values when property is expropriated for state purposes.⁸⁴

As demonstrated by past Constitutions, Vietnam is not adverse to relaxing socialist economic tenets when more pressing political goals are sought to be accomplished. A good example is Vietnam's 1946 Constitution which guaranteed the sanctity of private property at a time when the newly-established regime needed the support of all segments of Vietnamese society, including landowners, in its struggle against the French.⁸⁵ In fact, nationalist goals were so paramount in 1946 that the Constitution did not contain a single reference to the goal of building a socialist society.⁸⁶ Vietnam's 1960 Constitution also provides a good illustration. In 1960, Vietnam was, according to its Constitution, "advancing step by step from people's democracy to socialism by developing and transforming the national economy along socialist lines."⁸⁷ However, the goal of reunifying North and South Vietnam was paramount. To foster support within the more commercially-oriented South, North Vietnam's Constitution directed that certain capitalist activities could continue since "national capitalists" had the right "to own means of production and other capital".⁸⁸ Moreover, peasants had

the right to own land⁸⁹ and citizens had the right to possess and inherit private property.⁹⁰ Only "undeveloped land" was reserved for state ownership.⁹¹

Clearly, the changes in Vietnam's economic structure are a sign of economic renovation; however, foreign investors and others should not interpret the 1992 Constitution as an abandonment by Vietnam of economic socialism.

V. The 1992 Constitution of Vietnam: Renovation in the Political Sector

In contrast to developments in Eastern Europe and the former Soviet Union, and more like its Chinese neighbours, the Vietnamese Communist Party is determined to retain its monopoly on political power. In fact, several commentators have suggested that Vietnam's refusal to initiate fundamental political reforms is precisely because of the recent events in the former communist countries.⁹² Vietnam fears that a weakening of Party hegemony will lead to instability or *bat an*.⁹³

During the Party's 1991 meeting, General Secretary Nguyen Van Linh, the leading advocate of *doi moi*,⁹⁴ vigorously opposed political pluralism and the development of a multiparty opposition system. Linh argued that

to accept the multiparty system of opposition is to create conditions for the reactionary forces of revenge within the country and from abroad to rear their heads immediately and legally to operate against the homeland, the people and the regime. Our people definitely reject this.⁹⁵

But, this was not rejected by *all* the people. Requests were made by some Vietnamese citizens for a degree of political pluralism to be included in the 1992 Constitution.⁹⁶ In the end, the Party's position prevailed. The new Constitution does not provide for a multiparty political system. There has been a slight modification in the constitutional description of the role of the Vietnamese Communist Party. Article 4 now states that the Party is the "leading force of the state and society" rather than the "only force leading the state and society."⁹⁷ However, the Constitution's preamble provides a clearer summary of the party-state relationship, stating that "the Party is the leader, the people the master, the state the manager." Article 4 states that "all Party organizations operate within the framework of the Constitution and the law."⁹⁸ At first glance, this might suggest that Vietnam is developing a Western-style system of government based on the principle of constitutionalism. However, a similar provision was included in the Soviet Union's 1977 Constitution without precluding rule by Party fiat.⁹⁹ It was suggested that the Soviet provision simply meant that Party members were to guide, rather than administer, state affairs.¹⁰⁰ The explanation for

the provision in Vietnam's 1992 Constitution is similar. According to Politburo member, Vo Tran Chi, article 4 means that "the Party leads the legislative branch by its guidelines and resolutions and through its politically prestigious organizations and members."¹⁰¹

Several commentators have suggested that, under the revised Constitution, the Vietnamese Communist Party will continue to guide state policy, but will no longer interfere in the day-to-day administration of the government.¹⁰² However, to assess the validity of this thesis, one must closely examine the constitutional reorganization of Vietnam's key legislative, executive and judicial institutions.

A. The National Assembly

The National Assembly is Vietnam's supreme legislative body.¹⁰³ It is responsible for the enactment and observance of the Constitution and the law.¹⁰⁴ However, as noted by L. Do, the powers of the National Assembly "are not limited to legislative duties, but extend to government organization,

policy making and leadership control."¹⁰⁵ As stated in article 83 of the 1992 Constitution, the National Assembly

... is the sole constitutional and legislative agency. It decides the fundamental foreign and domestic policies; the socio-economic, national defence, and security tasks; the main organizational and operational principles of the state machinery; and the social relations and activities of the citizens.

In addition, the National Assembly has the power to exercise its "supreme right of supervision over all operations of the state".¹⁰⁶ This power includes the power to elect, dismiss and impeach the President, Prime Minister and Chief Justice of Vietnam.¹⁰⁷

The role of the National Assembly as prescribed by the 1992 Constitution is essentially the same as that prescribed in the 1960 and 1980 documents, with two potentially important exceptions. For the first time the National Assembly has been granted policy-making authority over matters of defence and internal security, as well as, matters of national finance.¹⁰⁸ Included with this new financial authority is the power "to decide on state budget estimates and state budget distributions" and "to institute, revise or repeal taxes".¹⁰⁹ It is not yet known whether the National Assembly will have the opportunity to fully exercise these new powers.

The National Assembly is composed of 395 deputies.¹¹⁰ Under article 86 of the 1992

Constitution, the deputies of the National Assembly must meet twice a year;¹¹¹ however, there is no stipulation in the Constitution as to the length of these meetings. If the past is any indication, future National Assembly meetings will be brief and uneventful.¹¹² However, there is one reform introduced by the 1992 Constitution which may result in a more effective National Assembly. Under the 1992 constitutional structure, a proportion of National Assembly deputies will be selected to work on a full-time basis to oversee government operations and to manage the affairs of the National Assembly committees responsible for drafting new legislation.¹¹³

Notwithstanding the creation of a professional corps of deputies, the 1992 Constitution does little to diminish the predominant role of the Party in Vietnam's legislature and polity. Since 1945, the National Assembly has served as a rubber-stamp body for decisions previously made by the highest organs of the Party.¹¹⁴ As explained by W.J. Duiker,

Party control was established at the start, through the electoral process. While deputies to the National Assembly ... were elected on the basis of universal suffrage, with voting equal, direct and secret, in practice the elections were controlled by the Party.¹¹⁵

Candidates for deputy positions were nominated by the Party organizations at the local levels and most, if not all, positions were won by Party members or supporters.

Following the promulgation of the 1992 Constitution, a new election law was passed to allow independent candidates to contest the National Assembly elections for the first time.¹¹⁶ However, the results of the 1992 election suggest that the new election law will not lead to significant political reform. According to press reports,¹¹⁷ forty-four people tried to run as independent candidates, but only two survived the complex screening process controlled by the Party-dominated Vietnam Fatherland Front organization which managed the elections.¹¹⁸ The election campaign that followed "was tightly controlled and excited little interest."¹¹⁹ Both independent candidates lost, resulting in a National Assembly dominated by Party members.¹²⁰

According to some observers, the National Assembly "has become an increasingly important platform in recent years for (deputies) to criticise unpopular policies and incompetent or corrupt officials."¹²¹ But, given the aims of *doi moi*, criticism of incompetence, corruption and other detriments to Vietnam's economic success would hardly be discouraged by the Party. More telling is the fact that deputies have not gone so far as to criticise the central role and leadership of the Party. If future elections follow the example of the 1992 election, the National Assembly will continue to be controlled by Party members and, as stated by Politburo member Vo Tran Chi, Party members in the National Assembly must refer to Party resolutions and make their proposals accordingly.¹²² Upon careful analysis, the 1992 Constitution does not introduce significant reforms to Vietnam's National

Assembly.

B. The Prime Minister, the President and the Standing Committee

Under the 1992 Constitution, Vietnam has restructured its central administrative and executive institutions with the goal of enhancing the state's managerial effectiveness. The motivation for this restructuring lies in Vietnam's poor economic performance during the 1980s - a performance which many attributed to the cumbersome and inefficient nature of the collective leadership structure which Vietnam had adopted in its 1980 Constitution.¹²³ The 1980 government structure resulted in too many Party officials holding dual or overlapping positions within the central government apparatus, which in turn resulted in an uncertain division of responsibilities and a virtual paralysis in state policy-making.¹²⁴ The changes brought about by the 1992 Constitution aim to streamline the central decision-making process, clarify the chains of command and reduce bureaucratic overlap.

Prior to 1992, the highest executive and administrative body in Vietnam was the Council of Ministers. The Council was a powerful, albeit cumbersome, entity comprised of a chair, several vice-chairs and the heads of the various government ministries, as well as the heads of a host of government agencies which duplicated and supervised the activities of the ministries.¹²⁵ Members of the Council were elected by and accountable to the National Assembly, and by law, most members served simultaneously as deputies in the National Assembly.¹²⁶

In revising its Constitution, Vietnam has abolished the Council of Ministers and, in its place, adopted a cabinet-style government headed by a Prime Minister who is elected by the National Assembly. The ministers of the government are chosen by the Prime Minister, subject to their ratification by the National Assembly.¹²⁷ The Prime Minister, deputy prime ministers and ministers collectively form what is termed the "government" in Vietnam.¹²⁸ The government is responsible to the National Assembly; however, unlike the Council of Ministers, members of the government must "of necessity" not serve simultaneously as National Assembly deputies.¹²⁹ According to article 109 of the 1992 Constitution, the task of the government is to "exercise unified managerial control over the implementation of political, economic, cultural, social, national defence, security, and foreign affairs of the state" and to "ensure the effectiveness of the state machinery from the central down to the grassroots level".

On paper, the Prime Minister has far more effective control over the governing of Vietnam than did the chair of the Council of Ministers. The Prime Minister has the power to not only select ministers, but also dismiss the chairs and vice-chairs of the local people's committees which govern

the provinces and cities.¹³⁰ Moreover, the Prime Minister has the power to rescind the decisions, directives and circulars of both the ministers and the local people's committees.¹³¹ With these powers, the Prime Minister can ostensibly ensure that all economic reform initiatives sponsored by the central government are fully supported by Vietnam's ministers and local government officials.¹³²

However, after witnessing the dismantling of the Soviet Communist Party by powerful individuals such as Gorbachev and Yeltsin, Vietnam's constitutional reformers had second thoughts about giving too much power to any one individual.¹³³ Consequently, the 1992 Constitution reinstates the office of President to offset the powers of the newly-established position of Prime Minister. Under both the 1946 and 1960 Constitutions, Vietnam had established the office of President to accommodate the powerful and symbolic figure of Ho Chi Minh.¹³⁴ After Ho's death in 1969, the Presidency devolved into a purely ceremonial office, and in 1980, it was replaced with a collective executive body called the Council of State.¹³⁵ Under the 1992 Constitution, the Presidency has returned as an active participant in Vietnamese politics and the Council of State has been abolished.

According to articles 102 and 103 of the 1992 Constitution, the President is elected by the National Assembly to serve as the head of state and the Commander-in-Chief of the armed forces. The President's power derives from the capacity to recommend to the National Assembly the election, and more importantly, the removal of the Vice-President, the Prime Minister and the Chief Justice of the Supreme People's Court.¹³⁶

The third central Vietnamese institution deserving comment is the National Assembly's Standing Committee. The Standing Committee was first established under Vietnam's 1960 Constitution, only to be abolished under the 1980 Constitution when its duties were assumed by the Council of State. In revising the 1980 Constitution, Vietnam has reestablished the Standing Committee as the operative body when the National Assembly is not in session.¹³⁷ Under the 1992 Constitution, the Standing Committee is comprised of members of the National Assembly who must not be serving concurrently as ministers in the government.¹³⁸ The powers of the Standing Committee are narrower in scope than those of the former Council of State. Whereas the Council of State was able to issue decrees on its own initiative, irrespective of subject matter, the Standing Committee may only issue orders "on those issues assigned by the National Assembly".¹³⁹

The structure of Vietnam's central state apparatus has clearly been reorganized by the 1992 Constitution. Cumbersome collective bodies have been replaced by individuals in order to establish

clearer lines of authority and accountability. However, the restructuring may be more a paper reality than a practical reality. In September 1992, the National Assembly met "to pass a number of laws defining the organization and duties of the government and to elect a new state leadership."¹⁴⁰ But, the leadership "turned out to be less 'new' than anticipated."¹⁴¹ Both the size and the membership of the cabinet government were largely unchanged from that of the previous Council of Ministers. In fact, only two of nineteen ministers were new¹⁴² and all but four were members of the Party's Central Committee.¹⁴³ Vo Van Kiet, a leading reform advocate, was renamed to the prime-ministerial position and General Le Duc Anh, a reputed conservative, was named President, presumably to ensure balance. In addition, new laws governing Vietnam's executive did not allow the Prime Minister any more latitude than under the old system and the power of the central government to intrude on local interests remained limited.¹⁴⁴

C. The Judiciary

Despite an increased emphasis on the rule of law, Vietnam's judicial system remains largely unchanged by the 1992 Constitution. The Vietnamese judiciary is a hierarchical and centralized system consisting of a Supreme People's Court in Hanoi, local people's courts at each administrative level, and several military tribunals.¹⁴⁵ Disputes are adjudicated by judges and "people's jurors"¹⁴⁶ who have the same powers as judges.¹⁴⁷ Decisions are made collectively and by majority vote.¹⁴⁸ All lower court and tribunal proceedings are subject to the supervision of the Supreme People's Court, which is described in the Constitution as the "highest juridical body" in Vietnam.¹⁴⁹

Under previous Vietnamese Constitutions, judges and jurors were elected for terms of office that corresponded to that of the electing state organ. For example, judges of the Supreme People's Court were elected by the deputies of the National Assembly and served a term equal to that of the National Assembly.¹⁵⁰ The 1992 Constitution makes no mention of the election of judges. Article 128 states that "the systems of appointment, dismissal and demotion; the office term of judges; the electoral system and term of office of people's jurors of the people's courts at all levels will be defined by law".¹⁵¹ This provision suggests that jurors will be elected and judges will be appointed. According to the former head of the National Assembly's Judicial Committee, the appointment of judges will "ensure (the) selection of competent professional judges having high prestige and credibility."¹⁵² However, the new Constitution still provides for the election of Vietnam's highest judicial officer, the Chief Justice of the Supreme People's Court.¹⁵³

The 1992 Constitution does provide for a measure of more direct political supervision over the judiciary. Under article 135, judges of the local people's courts are "responsible and accountable"

to the local people's councils and the judges of the Supreme People's Court are "responsible and accountable" to the National Assembly and its Standing Committee.

Included in Vietnam's constitutional description of its judicial system are the state prosecutorial offices, the so-called People's Organs of Control. Under the 1992 Constitution, the People's Organs of Control continue to be responsible for ensuring the "strict and uniform observance of law" by all government bodies, all government employees and all citizens.¹⁵⁴ Local procurators are appointed by the Chief Procurator of the Supreme People's Organ of Control,¹⁵⁵ who in turn is elected by the National Assembly.¹⁵⁶ Each procurator is subject to the leadership of the procurator of the next higher Organ of Control, with the Chief of the Supreme Organ of Control being held accountable to the National Assembly.¹⁵⁷ Procurators are independent of local government control. In practice, the People's Organs of Control duplicate the work of the courts given that their prosecutorial and investigative responsibilities can extend to include all citizens.

In Western democracies, the judiciary plays a crucial role in the political system, interpreting the Constitution and protecting the citizens from arbitrary state action. In countries, such as the United States, the judiciary also maintains the balance between the executive and legislative branches of government. But, in countries following a socialist legal model, the judiciary has a more limited role. Its primary function is to serve the interests of the state in the transition to socialism.¹⁵⁸ In doing so, the courts form an integral, unseparated part of the political-state apparatus. It is consistent with this model that, under Vietnam's 1992 Constitution, there continues to be no independent judicial review in Vietnam and no separation of executive, legislative and judicial powers.

D. Evaluation

Vietnam's renovation efforts in the political sector focused on bringing about a clearer assignment and definition of responsibilities among Vietnam's key institutions. There was no intention to unsettle the power of the Vietnamese Communist Party; nor was there any intent to significantly alter the existing governmental structure, except to make it more efficient and cognizant of economic change.

VI. Conclusion

Renovation, but no revolution, remained the guiding principle for revising Vietnam's Constitution. The 1992 Constitution reaffirms Vietnam's pledge to institute economic reform and to encourage much-needed foreign investment, provided the political monopoly of the Vietnamese

Communist Party remains unaffected. Any political reforms brought about by the new Constitution are designed more to enhance the state's managerial effectiveness than change the actual nature of the political system.

Yet, despite the Party's intentions, the revision of Vietnam's Constitution may have opened the door to bolder political reforms in the future. If the renovation of the economic sector is successful, Vietnam's citizens may find themselves in a position to demand a subsequent renovation in the political sector. In addition, the intended delegation of more administrative responsibility to state organizations may cause a significant change in the balance of actual political power between Party and state. If the 1992 Constitution is fully implemented, state organizations may gain more responsibility for the administration and implementation of policy decisions made by the Party. In practical terms, this is power that the state organizations have never had before. However, foreign investors and others must also be aware that if the 1992 Constitution does open the door to bolder political reforms, it may also open the door to future instability in Vietnam akin to that experienced in Eastern Europe and the former Soviet Union.

Notes

1. The 1992 Constitution was enacted by the National Assembly on April 15, 1992 and promulgated on April 18, 1992: "National Assembly Passes Constitution" Voice of Vietnam (Hanoi) (15 April 1992); reprinted in Foreign Broadcast Information Service, East Asia Series [hereinafter "FBIS-EAS"], 15 April 1992, 057; "Papers Hail Promulgation of New Constitution" Voice of Vietnam (Hanoi) (18 April 1992); in FBIS-EAS, 28 April 1992, 049. For an English version of the 1992 Constitution, see A.P. Blaustein and G.H. Flanz, eds, *Constitutions of the Countries of the World* (New York: Oceana Publications Inc., 1992), Supplemental Volume.
2. "Papers Hail Promulgation", *supra*, note 1 at 049.
3. *Ibid.*
4. *Ibid.*
5. *Ibid.*
6. See D. Tonkin, "Whither Vietnam?" (1992) 23 *Asian Affairs* 295 at 296 and C.A. Thayer, "Political Reform in Vietnam" (1993) 70 *Current Affairs Bulletin* 22 at 22. Some authors interpret *doi moi* to mean "renewal": R.J. Cima, "Vietnam's Economic Reform: Approaching the 1990s" (1989) 24 *Asian Survey* 786 at 789.
7. "Vo Chi Cong Discusses New Constitution" Voice of Vietnam (Hanoi) (2 January 1992); in FBIS-EAS, 10 January 1992, 066.
8. See generally: Cima, *supra*, note 6.
9. *Ibid.* at 786.
10. According to a 1987 article by D.M. Finkelstein, the Vietnamese army absorbed 30% to 50% of Vietnam's annual national budget. Finkelstein, "Vietnam: A Revolution in Crisis" (1987) 27 *Asian Survey* 973 at 983.
11. R.A. Scalapino, *The Last Leninists: The Uncertain Future of Asia's Communist States* (Washington: Center for Strategic and International Studies, 1992) at 30.
12. For a discussion of the political reforms that have accompanied *doi moi*, see generally: C.A. Thayer, "The Challenges Facing Vietnamese Communism" in K.S. Sandhu, ed., *Southeast Asian Studies 1992* (Singapore: Institute of Southeast Asian Studies, 1992) 349-364 and G. Porter, "The Politics of "Renovation" in Vietnam" (1990) 39 *Problems of Communism* 72-88. On *doi moi* generally, see also: W.S. Turley and M. Selden, eds, *Reinventing Vietnamese Socialism: Doi Moi in Comparative Perspective* (Boulder: Westview Press, 1993).
13. Scalapino, *supra*, note 11 at 31.
14. *Ibid.*
15. Vietnam's revised Law on Foreign Investment was promulgated on December 29, 1987. The new law permitted foreign businesses and investors to operate in Vietnam via joint state-private ventures and via wholly foreign-owned corporations. See generally, Van Uu Nguyen, "Foreign Investment in Vietnam Through Business Cooperation Contracts" (1994) 28 *International Lawyer* 133; J. Gillespie, "Foreign Investment in SR Vietnam Revisited" (1990) 18 *International Business Lawyer* 416; W.G. Vause, "Doing Business with Vietnam - Prospects and Concerns for the 1990s" (1989) 4 *Florida International Law Journal* 231 and C. Ngo, "Foreign Investment Promotion: Thailand a Model for Economic Development in Vietnam" (1992) *Hastings International and Comparative Law Review* 67 at 71-85.

16. Scalapino, *supra*, note 11 at 31.
17. Tonkin, *supra*, note 6 at 296.
18. Cima, *supra*, note 6 at 789. Also see: W. Duiker, "Vietnam: A Revolution in Transition" in K.S. Sandhu, ed., *Southeast Asian Affairs 1989* (Singapore: Institute of Southeast Asian Studies, 1989) at 359-360.
19. Scalapino, *supra*, note 11 at 32-3. For a complete discussion of the developments in Vietnam in 1991, see D. Pike, "Vietnam in 1991: The Turning Point" (1992) 32 *Asian Survey* 74.
20. More recent reports indicate that Vietnam is enjoying modest economic success: M. Hiebert, "Better Times" *Far Eastern Economic Review* (27 May 1993) 59 and M. Hiebert, "Fragile Success" *Far Eastern Economic Review* (28 January 1993) 43.
21. A concise comparison of Anglo-American and Soviet attitudes to constitutions is provided in W.E. Butler, *Soviet Law* (London: Butterworths, 1983) at 135-136.
22. See: *Reference Re Language Rights Under the Manitoba Act, 1870*, [1985] 1 S.C.R. 721 at 745; 19 D.L.R. (4th) 1 at 19 (S.C.C.).
23. M. Beresford, *Vietnam: Politics, Economic and Society* (New York: Pinter, 1988) at 98.
24. See: P.W. Hogg, *Constitutional Law in Canada*, 3d ed. (Scarborough: Carswell, 1992) at 33-3.
25. This is the essential difference between a written Constitution and regular legislation. Written Constitutions in Western democracies have elaborate amendment procedures, requiring a combination of legislative action, regional government approval and popular referenda. For a discussion of the Australian, American and Canadian constitutional amendment procedures, see generally Hogg, *supra*, note 24 at 4-10 to 4-13.
26. For example, the Constitutions of Canada, Australia, France and the United States.
27. W.J. Duiker, "The Constitutional System of the Socialist Republic of Vietnam" in L.W. Beer, ed., *Constitutional Systems in Late Twentieth Century Asia* (Seattle: University of Washington Press, 1992) at 331.
28. Beresford, *supra*, note 23 at 99.
29. *Ibid.* See also, comments regarding the Constitution of the People's Republic of China by W.C. Jones, "The Constitution of the People's Republic of China" in Beer, *supra*, note 27 at 57-60.
30. In Vietnam, the National Assembly can amend the Constitution with a supporting vote of at least two-thirds of its members: Article 88 of the 1992 Constitution. In the People's Republic of China, the power to amend the Constitution is exercised by the National People's Congress, the highest organ of state power: Article 62 of the 1982 Constitution of the P.R.C., reprinted in Blaustein, *supra*, note 1, Volume IV. There is no requirement in either country to hold national referenda or seek regional government approval.
31. Duiker, *supra*, note 27 at 331. Concerning changes in the Soviet Constitution, see Butler, *supra*, note 21 at 137-138 and for the P.R.C., see Jones, *supra*, note 29 at 60-74.
32. Beresford, *supra*, note 23 at 98-99.
33. There were also two Constitutions promulgated in non-communist South Vietnam between 1954 and 1975.

34. English language versions of the 1960 and 1980 Constitutions are reprinted in Blaustein, *supra*, note 1, Historic Constitutions Volume. The 1946 Constitution is included in appendix 1 of B.B. Fall, *The Viet-Minh Regime: Government and Administration in the Democratic Republic of Vietnam* (New York: Institute of Pacific Relations, 1956) at 156-164. For a Vietnamese analysis of the three Constitutions, see Pham Van Bach and Vu Dinh Hoe, "The Three Successive Constitutions of Vietnam" (1984) 1 *International Review of Contemporary Law* 105.
- Some commentators refer to Vietnam's second Constitution as the 1959 Constitution. For clarification, Vietnam's second Constitution was enacted on December 31, 1959 and promulgated on January 1, 1960. See B.B. Fall, "North Viet-Nam's Constitution and Government" (1960) 33 *Pacific Affairs* 282 at 284.
35. Despite legislative approval from the National Assembly, the 1946 Constitution was never officially promulgated. Duiker, *supra*, note 27 at 359 (note 3) and R.F. Turner, *Vietnamese Communism: Its Origins and Development* (Stanford: Hoover Institution Press, 1975) at 64.
36. Duiker, *supra*, note 27 at 331.
37. For example, the 1946 Constitution provided for freedom of speech, press and assembly: R.J. Cima, *Vietnam: A Country Study* (Washington: U.S. Government Printing Office, 1989) at 204.
38. Article 12 of the 1946 Constitution stated: "The right to private property is guaranteed." Bach and Hoe, *supra*, note 34 at 107.
39. B.B. Fall, "Constitution-Writing in a Communist State: The New Constitution of North Viet-Nam" (1960) 6 *Howard Law Journal* 157 at 159 (quotes in original).
40. Bach and Hoe, *supra*, note 34 at 106.
41. For further details on the First Indochina War and the Geneva Peace Accord, see generally Cima, *supra*, note 37 at 54-60.
42. Beresford, *supra*, note 23 at 100. The fact that South Vietnam became a Republic by popular referendum in 1955 may also have been a motivating factor. Fall, *supra*, note 39 at 158.
43. Some steps had already been taken. Land reform was completed and the majority of peasants had been placed in low-level collectives. See Duiker, *supra*, note 27 at 331 and Beresford, *supra*, note 23 at 100.
44. In its preamble, the 1960 Constitution described itself as "a Constitution for the building of socialism in North Vietnam and for the struggle for the reunification of the country and the completion of the Popular Democratic National Revolution".
45. Reasons for the delay are given by Beresford, *supra*, note 23 at 101.
46. See generally the writings of B.B. Fall for a full discussion of the 1960 Constitution. Fall, "North Viet-Nam's New Draft Constitution" (1959) *Pacific Affairs* 178, and notes 34 and 39.
47. Fall, *supra*, note 46 at 178.
48. The party was called the Vietnamese Workers' Party at that time.
49. Cima, *supra*, note 37 at 205.

50. Duiker, *supra*, note 27 at 332. This view also receives support from the economic provisions of the 1960 Constitution, as discussed below.
51. For an account of the origins of American involvement in Vietnam, see generally S. Karnow, *Vietnam: A History* (New York: Viking Press, 1983).
52. For a discussion of the redrafting process and the contents of the 1980 Constitution, see Duiker, *supra*, note 27 and Beresford, *supra*, note 23 at 102-114.
53. Duiker, *supra*, note 27 at 333 and Cima, *supra*, note 37 at 205.
54. Curiously, no reference is made either to the 1980 Constitution or to its express recognition of the role of the Vietnamese Communist Party in Oskar Weggel, "The Vietnamese Communist Party and Its Status Under Law" in D.A. Loeber, et al, eds, *Ruling Communist Parties and Their Status Under Law* (Boston: Martinus Nijhoff, 1986) at 411-419.
55. "Vo Chi Cong Article Views Revised Constitution" Vietnam News Agency (Hanoi) (4 January 1992); in FBIS-EAS, 6 January 1992, 074.
56. *Ibid.*
57. "Vo Chi Cong Discusses", *supra*, note 7 at 066.
58. L. Do, "Vietnam's Revised Constitution: Impact on Foreign Investment" in C.A. Thayer and D.G. Marr, eds, *Vietnam and the Rule of Law* (Canberra: Australian National University, 1993) at 116. However, Do submits that "judging by the proportion of unchanged or revised articles compared to the number of newly introduced ones, the Constitution appears essentially to be a re-draft of the 1980 Constitution."
59. D.R. Avery, "Vietnam in 1992: Win Some; Lose Some" (1993) 33 *Asian Survey* 67 at 68.
60. *Ibid.* and see Pike, *supra*, note 19.
61. "Vo Chi Cong on Constitutional Amendments" Vietnam News Agency (Hanoi) (29 July 1991); in FBIS-EAS, 29 July 1991, 071.
62. Unilocular is the term used in Pike's interpretation of Vo Chi Cong's statement. Pike, *supra*, note 19 at 77.
63. The only substantial difference between the four drafts was the elimination of the Council of State. The Council was included in the first draft, but dropped from the final version. The Council of State was, in effect, the collective presidency of Vietnam. "Dropping of State Council from Constitution Urged" Voice of Vietnam (Hanoi) (6 February 1992); in FBIS-EAS, 12 February 1992, 070.
64. For example, 1.4 million suggestions were reportedly made by citizens in Hanoi. "People Contribute to Draft Constitution" Voice of Vietnam (Hanoi) (6 March 1992); in FBIS-EAS, 11 March 1992, 067. D.R. Avery suggests the public debate was orchestrated: Avery, *supra*, note 59 at 68; but R.H.H. Khng suggests that "the publicized debates were, in parts, substantive enough to show that it was not entirely a managed affair": R.H.H. Khng, "The 1992 Revised Constitution of Vietnam: Background and Scope of Changes" (1992) 14 *Contemporary Southeast Asia* 221 at 228.
65. "Vo Chi Cong Discusses", *supra*, note 7 at 066. In addition to chairing the Constitutional Amendment Committee, Vo Chi Cong was an advisor to the Party's Central Committee and chair of the Council of State.

66. Cadres are Party members in leadership positions within the Party organization. Cima, *supra*, note 37 at 197.
67. Khng, *supra*, note 64 at 222 and "Vo Chi Cong Discusses", *supra*, note 7 at 066.
68. Political power in the Vietnamese Communist Party is formally vested in the Central Committee, a body elected by the National Party Congress. The real decision-making body of the Central Committee is the Political Bureau or "Politburo", which is composed of the Party's highest ranking members: Cima, *supra*, note 37 at 196.
69. "Vo Chi Cong Discusses", *supra*, note 7 at 066.
70. "National Assembly Passes Constitution", *supra*, note 1 at 057.
71. Khng, *supra*, note 64 at 223.
72. This is described in article 15 as "ownership by the entire people".
73. See article 20 of the 1980 Constitution.
74. Article 15 of the 1992 Constitution.
75. Article 21 of the 1992 Constitution.
76. Article 25 of the 1992 Constitution. On foreign investment generally in Vietnam, see *supra*, note 15.
77. *Ibid.*
78. *Ibid.*
79. *Ibid.* For more information on Overseas Vietnamese investment, see M. Hiebert, "Wooing Them Home: Overseas Vietnamese Cautious About Investment" *Far Eastern Economic Review* (23 January 1992) 18.
80. Given that 75% of Vietnamese are farmers, the question of land use is of prime importance. M. Hiebert, "The New Charter: Economic Freedom Offset by Party's Political Role" *Far Eastern Economic Review* (30 April 1992) 20. On land law generally in Vietnam, see: Nguyen Qui Binh, "Real Estate Laws in Vietnam" in Thayer and Marr, *supra*, note 58 at 148-150.
81. Generally on property in socialist legal systems, see: E.B. Pashukanis, "A Course on Soviet Economic Law" in P. Beirne and R. Sharlet, eds, *Pashukanis: Selected Writings on Marxism and Law* (Toronto: Academic Press, 1980) at 320-335. See also: Butler, *supra*, note 21 at 169-171.
82. According to M. Hiebert, "some of the most heated debates in the assembly centred on the question of farmers bequeathing land, which remains the property of the state, to their children. Many delegates wanted to include the right of inheritance but, following last minute pressure from the party, the assembly voted only to allow farmers to "transfer the right to use land," which can include the right of inheritance." "The New Charter", *supra*, note 80. According to Ngo Ba Thanh, the former head of the Judicial Committee of the National Assembly, "a more comprehensive leasehold system of land usage is likely to be introduced, which might allow the buying and selling of land leases, the inheritance of land use by immediate descendants and eventually the use of leasehold as a mortgage." Ngo Ba Thanh, "The 1992 Constitution and the Rule of Law" in Thayer and Marr, *supra*, note 58 at 92.

A similar compromise was adopted by the People's Republic of China in 1988 when it amended article 10 of its 1982 Constitution to allow transfers of the right to the use of land. Blaustein, *supra*, note 30 and Jones,

- supra*, note 29 at 74.
83. Article 23 of the 1992 Constitution. However, the Constitution does not define what is meant by "legal property".
84. *Ibid.*
85. Duiker, *supra*, note 27 at 331.
86. *Ibid.*
87. Article 9 of the 1960 Constitution. In advancing directly from people's democracy to socialism in 1960, Vietnam was departing from socialist precedent. Both the Soviet Union and China went through a period of economic moderation before launching the process of socialist transformation that Vietnam attempted to launch in 1960. See Duiker, *supra*, note 27 at 359 (note 7).
88. Article 16 of the 1960 Constitution.
89. Article 14 of the 1960 Constitution.
90. Articles 18 and 19 of the 1960 Constitution.
91. Article 12 of the 1960 Constitution.
92. M. Hiebert, "Rewriting the Future: Party's Latest Draft Political Report Criticised" *Far Eastern Economic Review* (7 March 1991) 28; Tonkin, *supra*, note 6 at 297 and B. Womack, "Reform in Vietnam: Backwards Towards the Future" (1992) 27 *Government and Opposition* 177 at 185.
93. Pike, *supra*, note 19 at 75.
94. C.A. Joiner, "The Vietnam Communist Party Strives to Remain the Only Force" (1990) 30 *Asian Survey* 1053 at 1055.
95. As cited in Scalapino, *supra*, note 11 at 59. A slightly different translation is included in Womack, *supra*, note 92 at 177-8. On pluralism, see also: G. Porter, *Vietnam: The Politics of Bureaucratic Socialism* (Ithaca: Cornell University Press, 1993) at 96-100. The Vietnamese Communist Party's rejection of pluralism or even power sharing is hardly surprising. Even less so, given the following description of the Party's power by Weggel, *supra*, note 54 at 416:
- "In modern Vietnam the state is managed in a remarkably unparticipatory way. There is neither formal opposition to check the Party leadership nor a second chamber to screen its proposals. Neither is there a federal Constitutional Court nor an Administrative Court to rap its knuckles, nor any notion of separation of powers. There are no election campaigns, and leading politicians generally are spared any embarrassment by citizens' initiatives. Party policy is never criticized by the press; on the contrary, even the press is at the constant disposal of the VCP as a device for purveying all kinds of justifications."
96. The debate over pluralism was publicly acknowledged by Vo Tran Chi, a member of the Politburo, presumably acting with the Party's approval, in an interview with *Saigon Ghai*: "Vo Tran Chi on Democratic State" *Saigon Ghai* (Ho Chi Minh City) (15 February 1992) 1, 5; in FBIS-EAS, 17 March 1992, 055.
97. The latter is the description in the 1980 Constitution.

98. An attempt to amend article 4 to read "all party organizations *and members* operate within the framework of the constitution and the law" was unsuccessful: Khng, *supra*, note 64 at 226 and M. Hiebert, "Cutting Red Tape: Review of Constitution to Streamline Government" *Far Eastern Economic Review* (22 August 1991) 11.
99. The Soviet provision read: "All Party organizations shall function within the framework of the Constitution of the U.S.S.R." See J.N. Hazard, "The Common Core of Marxian Socialist Constitutions" (1982) 19 *San Diego Law Review* 297 at 307.
100. See M. Lesage, *La Constitution de L'USSR 7 October 1977: Texte et Commentaries* 31 (1978), as cited in *ibid.* at 307.
101. "Vo Tran Chi", *supra*, note 96 at 055.
102. "The New Charter", *supra*, note 80 at 20 and Avery, *supra*, note 59 at 68.
103. Under article 83 of the 1992 Constitution, the National Assembly "is the people's highest representative agency", "the highest organ of state power" and "the sole legislative and constitutional agency".
104. Under article 84(1) of the 1992 Constitution, the National Assembly has the power to "draw up and amend the Constitution, make and amend laws, and decide on law-building programs." Under article 84(2), the Assembly has the power "to exercise the supreme right of supervision over the observance of the Constitution, the laws and National Assembly resolutions." Under article 84(9), the Assembly has the power "to abrogate those documents of the President of state, the National Assembly's Standing Committee, the government, the Prime Minister, the People's Supreme Court and the Supreme People's Organ of Control, which are at variance with the Constitution, the law, and the National Assembly resolutions."
105. Do, *supra*, note 58 at 117. With respect to government organization, the National Assembly can define the powers of state bodies, establish or dissolve ministries, and assess the performance of the government and ministers. With respect to policy making, the Assembly can define the state plan, create taxes and control foreign policy. With respect to leadership control, the Assembly can appoint the President and Prime Minister, supervise the provincial people's committees and abrogate decisions of state organizations that are inconsistent with the Constitution, enacted laws and Assembly resolutions.
106. Article 83 of the 1992 Constitution.
107. Article 84(7) of the 1992 Constitution.
108. Avery, *supra*, note 59 at 69.
109. Article 84(4) of the 1992 Constitution.
110. Under the new election law of 1992, Vietnam reduced the number of deputies in the National Assembly from 496 to 395. Thayer, *supra*, note 6 at 25.
111. Article 86 also states that extraordinary sessions of the National Assembly may be convened at the request of the National Assembly Standing Committee, the President, the Prime Minister or at least one third of the total number of National Assembly deputies. According to D.R. Avery, efforts to have the Assembly meet more often failed to gain enough support in the constitutional amendment process. Avery, *supra*, note 59 at 69.
112. Past National Assemblies have reportedly met for about four weeks each year. M. Hiebert, "Election Strategy: No Threat to Communist Party Rule in July Polls" *Far Eastern Economic Review* (9 July 1992) 21.

113. The exact number of full-time deputies has yet to be determined. Thayer, *supra*, note 6 at 25. However, M. Hiebert reports that up to one-third of National Assembly deputies will work on a full-time basis: "Election Strategy", *supra*, note 112 at 21.

In the past, National Assembly deputies often occupied several positions in government, including directorships in local state enterprises. As C.A. Thayer notes, "there were huge demands on an individual's time, not to mention possible conflicts of interest": Thayer, *supra*, note 6 at 25.

114. Duiker, *supra*, note 27 at 338.

115. *Ibid.*

116. "National Assembly Election Law Detailed" Voice of Vietnam (Hanoi) (21 April 1992); in FBIS-EAS, 28 April 1992, 056. The rules and procedure respecting independent candidates are prescribed in Chapter V of the Election Law entitled "Standing for Elections, Recommending Candidates, and Holding Consultative Conferences to Recommend Candidates for Election of Deputies to the National Assembly."

117. See M. Hiebert, "Letting Off Steam" *Far Eastern Economic Review* (30 July 1992) 10.

118. As noted by C.A. Thayer, "mass organizations and other groups at national, provincial and local levels were intimately and intensely involved in the process to select suitable qualified candidates, and the personal lives and backgrounds of potential candidates came under close scrutiny. Potential candidates were required to win majority support in their workplace and in their place of residence in order to qualify for selection." Thayer, *supra*, note 6 at 25.

As explained by M. Hiebert, the "complex screening procedure gives the ruling communist party many different ways of blocking a candidate who might give the country's leaders a hard time." "Election Strategy", *supra*, note 112 at 21.

119. Avery, *supra*, note 59 at 69.

120. Over 92% of the deputies elected were Party members. The remaining 8% were "approved" by the Party. All of the sixty members of the Party's Central Committee who stood for election, including nine members of the Politburo, were elected. Thayer, *supra*, note 6 at 25.

121. "Election strategy", *supra*, note 112 at 21.

122. "Vo Tran Chi", *supra*, note 96 at 055. Vo Tran Chi then stated that Party members "must lead debate in publicly elected agencies in a democratic and constructive manner to institutionalize the Party's resolutions, guidelines and policies into codes and texts of law which are approved by the National Assembly."

123. Thayer, *supra*, note 6 at 24.

124. *Ibid.*

125. "Cutting Red Tape", *supra*, note 98 at 11.

126. The Law on the Organization of the Council of Ministers of 1981, as cited in Duiker, *supra*, note 27 at 340.

127. Article 114(2) of the 1992 Constitution.

128. Articles 109 and 110 of the 1992 Constitution.

129. Article 110 of the 1992 Constitution.
130. Article 114(3) of the 1992 Constitution. Local government in Vietnam is the responsibility of popularly elected people's councils. The people's committees are the party-dominated executive bodies of the councils.
131. Article 114(4) of the 1992 Constitution.
132. According to L. Do, these powers are likely the result of "anecdotal evidence that in recent years certain investment projects supported at the national level did not proceed due to a lack of enthusiasm or cooperation by local governments...": Do, *supra*, note 58 at 120.
133. Khng, *supra*, note 64 at 227 and Thayer, *supra*, note 6 at 24.
134. Duiker, *supra*, note 27 at 340.
135. Article 98 of the 1980 Constitution.
136. Article 103(3) of the 1992 Constitution.
137. Articles 90 and 91 of the 1992 Constitution.
138. Article 90 of the 1992 Constitution.
139. Article 91(4) of the 1992 Constitution.
140. Avery, *supra*, note 59 at 69.
141. *Ibid.*
142. *Ibid.*
143. Thayer, *supra*, note 6 at 26.
144. Avery, *supra*, note 59 at 69.
145. In addition, the National Assembly has the power to create "special tribunals" at its discretion. Article 127 of the 1992 Constitution. Vietnam is currently working towards establishing a separate court system to deal effectively with commercial disputes. Do, *supra*, note 58 at 120.
146. The term "people's assessor" was used in previous constitutions.
147. Articles 128 and 129 of the 1992 Constitution. The number of judges and jurors sitting at any given trial is not specified.
148. Article 131 of the 1992 Constitution.
149. Article 134 of the 1992 Constitution. Under the Constitution, the Supreme People's Court is to supervise the special tribunals, unless the National Assembly decides otherwise. However, in practice, the supervisory authority of the Supreme People's Court is greatly reduced by the administrative control exercised by the Ministry of Justice over the activities of the judiciary. M. Sidel, "The Re-Emergence of Legal Discourse in Vietnam" (1994) 43 *International and Comparative Law Quarterly* 163 at 170.

150. Beresford, *supra*, note 23 at 114.
151. Article 128 of the 1992 Constitution.
152. Ngo Ba Thanh, *supra*, note 82 at 112.
153. Article 84(7) of the 1992 Constitution.
154. Article 137 of the 1992 Constitution.
155. Article 138 of the 1992 Constitution.
156. Article 84(7) of the 1992 Constitution.
157. Articles 138 and 139 of the 1992 Constitution.
158. Duiker, *supra*, note 27 at 347.