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COMMENTS

The Lifting of the Trade Embargo Between the United States and Vietnam: The Loss of a Potential Bargaining Tool or a Means of Fostering Cooperation?

I. Introduction

On February 4, 1994, the United States lifted a nineteen-year trade embargo that had prohibited virtually all trade between the United States and Vietnam.¹ Under this trade embargo, all U.S. citizens and businesses were barred from exporting or importing any goods from Vietnam.² Moreover, such prohibitions extended beyond the United States to apply to any person or corporation subject to U.S. jurisdiction,³ including all foreign subsidiaries of U.S. firms and any other third parties.⁴ Although its strict regulations loosened in later years, the embargo was adamantly enforced until the day it was lifted.⁵

1. Jim Mann, *Retooling Southeast Asia Geopolitical Map: Global Relations: Lifting the Trade Embargo on Vietnam Gives U.S. New Opportunities in One of the World's Most Dynamic Regions*, L.A. TIMES, Feb. 4, 1994, at A7; Ruth Marcus & Thomas W. Lippman, *Clinton Lifts Vietnam Trade Embargo: President Calls it 'the Best Way' to Ensure Progress on MIA Issue*, WASH. POST, Feb. 4, 1994, at A1. See Foreign Assets Control Regulations, 31 C.F.R. § 500.201 (1983) (prohibiting transfers of credit and banking transactions between Vietnam and the United States); see also Export Administration Regulations, 15 C.F.R. § 785.1 (1993) (pertaining to U.S. exports of technical data to Vietnam). The Trade Embargo between the United States and Vietnam has effectively barred trade with Vietnam since 1975. See Michael J. Scown, *U.S. Embargo Against Vietnam*, 14 E. ASIAN EXECUTIVE REP. 26 (1992); John Boatman, *Sanctions Remain on U.S. Trade With Vietnam*, 11 E. ASIAN EXECUTIVE REP. 25 (1989); Sesto E. Vecchi & Michael J. Scown, *Vietnam's Opening Door: U.S. Embargo Shuts Out Only American Firms*, 11 E. ASIAN EXECUTIVE REP. 20 (1989).

2. Foreign Assets Control Regulations, 31 C.F.R. § 500 (1983).

3. *Id.*

4. Linda Himelstein, *Good Morning, Vietnam*, LEGAL TIMES, Mar. 25, 1991, at 1.

5. See Scown, *supra* note 1, at 26.

Prior to February 4, 1994, much debate raged over whether to lift the trade embargo. Proponents of continued enforcement stressed that the trade embargo should remain until Vietnam furnished a full or satisfactory accounting of all American POWs/MIAs.⁶ In essence, these advocates claimed that the trade embargo was a bargaining tool by which the United States could compel Vietnamese cooperation on the POW/MIA issue,⁷ as well as in other areas, such as Vietnamese conformance with humanitarian practices and compliance with the Paris Peace Agreement regarding Cambodia.⁸ Additionally, supporters of maintaining the trade embargo challenged the potential for economic benefits resulting from investment in Vietnam.

On the other hand, others insisted that the trade embargo between the two countries was a misnomer.⁹ That is, the Vietnamese were already cooperating with the United States to answer all questions regarding American POWs/MIAs and thus, by barring participation in the Vietnamese economic expansion, the United States was only injuring itself.¹⁰ Indeed, these advocates perceived that lifting the trade embargo would evidence cooperation between the United States and Vietnam. As a result, a resolution of the American POW/MIA issue and an

6. Byron Acohido, *Veterans, Boeing Spar on Vietnam Relations*, *Seattle Times*, Apr. 17, 1993, at B6. As of 1992, approximately 2,265 Americans were left unaccounted for as a result of the Vietnam War. Compilation of reports of Allen F. "Gunner" Kent on his trips to Vietnam on the POW/MIA issue, Junior Vice Commander-in-Chief, Veteran of Foreign Wars of the U.S. (VFW) (Nov. 8-25, 1992) (on file with the VFW Washington Office) [hereinafter *Compilations of Reports of Allen F. "Gunner" Kent*]. Of these 2,265 soldiers, 1,657 were presumed to be in Vietnam, 519 in Laos, and 81 in Cambodia. *Id.* See also Roger A. Munson, National Commander, American Legion, *Letter to Editor: Time to Normalize Relations with Vietnam: Hold Out For P.O.W.s*, N.Y. TIMES, July 9, 1993, at A12; *U.S. Wants More Progress on MIAs Before Ending Vietnam Embargo*, *Lord Says*, Int'l Trade Daily (BNA) (July 22, 1993); *Veterans Groups Urge Clinton Not to Lift Vietnam Embargo*, Int'l Trade Daily (BNA) (Apr. 14, 1993).

7. Acohido, *supra* note 6, at B6.

8. In 1978, Vietnam invaded Cambodia and established a fabricated Cambodian government enforced by a Vietnamese military presence. Himmelstein, *supra* note 4, at 1. As Vietnam eventually withdrew its influence from Cambodia, peace talks involving Cambodia and Vietnam were conducted in Paris. *Id.* Adherence to the Paris Peace Agreement, which resulted from these talks, had been one of the conditions established by the United States that had to be met before the trade embargo would be lifted. See *infra* part III.

9. Sally Gelston, *APCAC Lobbies in Washington*, E. ASIAN EXECUTIVE REP., June 15, 1993, at 5.

10. *Id.* at 5. See also *Murkowski Offers Legislation to Lift Vietnam Trade Embargo*, Int'l Trade Daily (BNA) (Apr. 5 1993); Steve Burkholder, *Falling Into Line: Analysts See 'Domino Effect' Aiding Vietnam if U.S. Lifts Embargo*, DALLAS MORNING NEWS, Dec. 7, 1992, at 10; Thomas Lippman, *Vietnam: The Big Buildup Begins: U.S. Firms Get Ready to Act Quickly Once Embargo is Lifted*, WASH. POST, Dec. 6, 1992, at H1 [hereinafter *The Big Buildup*].

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establishment of an acceptable system of humanitarian practices would follow.¹¹

This Comment attempts to fully evaluate the U.S. trade embargo between the United States and Vietnam. First, Part II will discuss the specific regulations imposed under the trade embargo. Part III will then trace the history of the relations between the United States and Vietnam from the date the embargo was first imposed until it was lifted. Finally, Part IV analyzes whether the embargo should have been lifted, while Part V will document the ramifications of the actual lifting of the embargo.

II. Background

A. The Trade Embargo's Prohibitions

Imposed after the conclusion of the Vietnam War in 1975, the U.S. trade embargo was codified under both the Foreign Assets Control Regulations¹² and the Export Administration Regulations.¹³ Such regulations encompassed a broad range of prohibitions.¹⁴ In particular, no U.S. goods were allowed to be exported to Vietnam through third world countries.¹⁵ This prohibition applied to the export of certain foreign manufactured goods produced from original U.S. technical data.¹⁶ The purpose of such a prohibition was to restrict any new technical information from being introduced into Vietnam.¹⁷ Transactions involving transportation or shipping by persons subject to the jurisdiction of the United States were prohibited as well.¹⁸ Finally, financial and commercial dealings, including the transfer of funds, were also prohibited.¹⁹ As a result, all Vietnamese assets present in the

11. See Gelston, *supra* note 9, at A5; *The Big Buildup*, *supra* note 10, at H1.

12. 31 C.F.R. § 500 (1993).

13. 15 C.F.R. § 785.1 (1993).

14. See Foreign Assets Control Regulations, 31 C.F.R. § 500; *Vietnam's Goal is to Attract Investment of \$20 Billion from Foreigners in a Decade*, Int'l. Trade Rep. (BNA) (Apr. 28, 1993) [hereinafter *Vietnam's Goal is to Attract Investment*].

15. Foreign Assets Control Regulations, 31 C.F.R. § 500.204 (1993). As of August 1990, services were included in this export ban because they were considered to fall within the criteria of goods as property. Vecchi & Scown, *supra* note 1, at 20.

16. See Export Administration Regulations, 15 C.F.R. § 785.1 (1993). See also Himelstein, *supra* note 4, at 1.

17. Vecchi & Scown, *supra* note 1, at 20.

18. See Foreign Assets Control Regulations, 31 C.F.R. 500.204 (1993); Export Administration Regulations 15 C.F.R. 781.1 (1993).

19. Foreign Assets Control Regulations, 31 C.F.R. 500.201 (1993).

United States when the trade embargo was established were frozen.²⁰ Furthermore, while travel to Vietnam was not restricted,²¹ many monetary limitations were placed upon U.S. citizens visiting Vietnam. Only non-commercial material of one hundred dollars or less in value could have been removed from Vietnam.²² Additionally, credit and charge cards could not be used to pay for living expenses or goods, and American travelers were restricted to spending no more than two hundred dollars per day.²³ The U.S. government also forbade direct air flight from the United States to Vietnam.²⁴

Not all activities between the United States and Vietnam were prohibited, however. From the beginning of the embargo in 1975 until the lifting of the embargo in 1994, certain exceptions to the embargo's prohibitions were recognized. These exceptions evidenced the expectation of a future free trade arrangement between the two countries.²⁵ For example, prior to the Bush Administration, U.S. companies could educate themselves and keep current with the business climate in Vietnam for future investments.²⁶ However, limitations imposed upon U.S. companies regulated investment preparations so that signing contracts or evidencing any other form of intent to conduct business with Vietnam was not allowed.²⁷

President Bush later amended the trade embargo on December 14, 1992, to allow U.S. companies to sign contracts of intent for commercial dealings that would be implemented once the embargo was lifted.²⁸ U.S. businesses could then negotiate terms and conditions of contracts, produce summaries of business discussions, publish letters of intent, as well as conduct marketing surveys and feasibility studies.²⁹

20. *See id.* This freeze resulted in numerous lawsuits brought to try and reach the frozen assets. *See* *Than v. Blumenthal*, 19 I.L.M. 219 (1980) (representing an action of a principal shareholder of stock in the Vietnamese Dong Phuong Bank who demanded money owed to him by the U.S. Army).

21. ROBERT J. SUTTER, CONGRESSIONAL RESEARCH SERVICE, *VIETNAM-U.S. RELATIONS: THE DEBATE OVER NORMALIZATION* (Library of Congress, 1993). President Carter withdrew the ban on travel to Vietnam by U.S. citizens in 1977. *Id.*

22. Foreign Assets Control Regulations, 31 C.F.R. § 500.563 (1993).

23. *Id.*

24. *Id.* *See also* SUTTER, *supra* note 21, at 3. A few major American airlines did lobby for the rights to fly directly from the United States to Vietnam and back. *Id.* American producers of airplane parts also joined in the lobby efforts. *Id.*

25. *State Department Announces Further Lifting of Blocks to Trade With Vietnam*, Int'l. Trade Daily (BNA) (May 4, 1992).

26. SUTTER, *supra* note 21, at 4.

27. Foreign Assets Control Regulations, 31 C.F.R. § 500.574 (1993).

28. *Id.*

29. SUTTER, *supra* note 21.

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Note that all of these preparatory steps were contingent upon the overturning of the trade embargo.³⁰ Any further steps would have been illegal unless the Office of Foreign Assets Control [OFAC]³¹ or the Department of Commerce gave proper authorization.³² Excluding limited case-by-case exceptions, most applications for authorization for conduct that extended beyond preparatory steps were denied.³³ The only exceptions permitted to the embargo on exports to Vietnam were sales of informational materials that met "basic human needs."³⁴

Penalties for violations of these regulations were sent to the U.S. Treasury Department, which had authority over all financial controls imposed by the trade embargo.³⁵ In an effort to control the growing number of claims of violations of the trade embargo, the U.S. Treasury Department established the Office of Foreign Assets Control [OFAC].³⁶ The Treasury Department, through OFAC, levied strict penalties for violations of the trade embargo.³⁷ These penalties included criminal fines of up to fifty thousand dollars and prison sentences of up to ten years.³⁸ Sanctions were applied primarily to officers and directors of businesses or organizations who knowingly participated in violations of the trade embargo.³⁹

B. The Trading With The Enemy Act

The trade embargo and its implementing regulations, the Foreign Assets Control Regulations, and the Export Administration Regulations,

30. *Id.*

31. The Office of Foreign Assets Control (OFAC) is a special committee of the United States Treasury Department which has the authority to deal with violations of financial controls imposed by the Department of the Treasury, namely violations of the embargo between the United States and Vietnam. *See Boatman, supra* note 1, at 25.

32. Vecchi & Scown, *supra* note 1, at 20.

33. *Id.* at 21.

34. *See U.S.-Vietnam Trade Relations, supra* note 21. The regulations were amended in May of 1992 to allow exports which meet "basic human needs." *See* Foreign Assets Control Regulations, § 500.573; Export Administration Regulations 15 C.F.R. § 785.1 (1993). Because this exception was new and somewhat vague, the bounds of this exception were unclear and the scope of basic human needs was never established. *See id.*

35. Boatman, *supra* note 1, at 15. This includes export controls regulating both U.S. citizens and companies, and third party companies. *Id.*

36. *Id.* at 25.

37. Scown, *supra* note 1, at 26.

38. *Id.*

39. *Id.* The Department of Commerce maintains similar authority to order severe penalties for embargo infractions under the Export Administration Act, 50 U.S.C. App. §§ 2401-2420 (1988). *Id.* Criminal fines could have been upwards of fifty thousand dollars, or five times the value of the export (whichever was less). *Id.* If the transactions were knowingly conducted, the property transfers were deemed void. Scown, *supra* note 1, at 26.

all derive their authority from the Trading with the Enemy Act of 1917.⁴⁰ The TWEA was originally enacted in response to the defeat of Germany after World War I. At that time, the underlying objective of the TWEA was to deny Germany economic stability.⁴¹ Since then, the TWEA has denied economic stability to many other countries labeled as enemies of the United States.⁴²

40. 50 U.S.C. App §§ 1-44 (1988). In particular, the Foreign Assets Control Regulations are authorized by § 5(b) of the TWEA. Section 5(b) of the Act provides:

(b)(1) During the time of war, the President may, through any agency that he may designate, and under such rules and regulations as he may prescribe, by means of instructions, licenses or otherwise—

(A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest, by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; and the President shall, in the manner hereinabove provided, require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in this subdivision either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of this subdivision, and in any case in which a report could be required, the President may, in the manner hereinabove provided, require the production, or if necessary to the national security or defense, the seizure, of any bonds or account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person.

(2) Any payment, conveyance, transfer, assignment, or delivery of property or interest therein, made to or for the account of the United States, or as otherwise directed, pursuant to this subdivision or any rule regulation, instruction, or direction issued hereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect to anything done or omitted in good faith in connection with the administration of, or in pursuance of an in reliance on, this subdivision, or any rule, regulation, instruction, or direction issued hereunder.

50 U.S.C. § 5(b) (1988).

41. Marielise Kelly, *Artwork from "Enemy" Nations: Informational Material Under the Trading With The Enemy Act, A Relic of the Perceived Communist Threat*, *Cernuda v. Heavey*, 720 F. Supp. 1544 (S.D. Fla. 1989), 14 SUFFOLK TRANSNAT'L L.J. 567, 570 (1991).

42. For example, China and Cuba have been named as enemies of the United States in the past,

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Subsequent amendments changed the force of the TWEA, however.⁴³ Indeed, as a result of these amendments, the TWEA has lost the all-encompassing power it once possessed as a tool for denying economic stability to enemy nations of the United States. For instance, in 1977, certain amendments established executive limitations on power so that the President could only impose economic sanctions during times of war.⁴⁴ Despite this amendment, however, sanctions imposed on Vietnam remained in full force because of the establishment of a grandfather clause. Under this grandfather clause, all regulations established before the amendment to the TWEA remained in effect.⁴⁵

Additionally, the TWEA was amended in 1988 to allow the trade of "informational materials" between all countries.⁴⁶ The U.S. Supreme Court then further amended the TWEA by holding that the guarantee of freedom of speech found in the first amendment for the U.S. Constitution extends to non-verbal communications.⁴⁷ A supplemental amendment surfaced in August 1990 and excluded "services" from the embargo because they were considered "property."⁴⁸

C. The Trade Embargo's Termination, Modification, or Repeal

The trade embargo was a powerful and significant controlling device. In contrast, the steps necessary to terminate, modify, or repeal the controls of the embargo were simple and uncomplicated.⁴⁹ First, with regard to termination, the financial controls of the TWEA had to be renewed annually by the President, or the embargo would have lapsed and subsequently expired.⁵⁰ Therefore, if the President had not issued

and the United States subsequently imposed trade embargoes on these countries. *See, e.g.*, Cuban Assets Control Regulations, 31 C.F.R. § 515 (1993).

43. *See* 50 U.S.C. § 5(b)(1) (1988). *See also* Kelly, *supra* note 41, at 570.

44. 50 U.S.C. 5(b)(1) (1988). This change resulted from the growing fears of the possibilities of abuse of power by the President. Kelly, *supra* note 41, at 570.

45. Kelly, *supra* note 41, at 570. The grandfather clause allows for all sanctions previously rendered under the TWEA to stand, regardless of subsequent amendments to the Act. *Id.*

46. *See* 50 U.S.C. app 5(b)(4) (1988). The definition of the term "informational materials" has been hotly debated, and the scope of the term is still uncertain. *See* Cernuda v. Heavey, 720 F. Supp. 1545 (S.D. Fla. 189) (holding that artwork falls within the scope of "informational materials").

47. *See* Doran v. Salem, 422 U.S. 922, 932-933 (1975) (discussing nude dance as a protected form of artistic expression). *See also* Cernuda v. Heavey, 720 F. Supp 1545 (S.D. Fla. 1989) (holding that artwork may be traded).

48. Vecchi & Scown, *supra* note 1, at 22.

49. SUTTER, *supra* note 21, at 2.

50. *Id.* On September 13, 1993, President Clinton chose to maintain the trade embargo for another year. If he had not issued this statement before the end of that day, over a year would have passed since the trade embargo was last ratified, and the embargo would have automatically been

a statement maintaining the trade embargo between the United States and Vietnam within one year of its prior renewal, the trade embargo would have terminated on its own.⁵¹

The trade embargo could just as easily have been modified as repealed. The President could have issued an executive order to lift the prohibitions against Vietnam at any time.⁵² Additionally, the Department of Commerce has the authority to change export controls such as those imposed by the embargo by amending the Export Administration Act,⁵³ or by repealing the administrative orders that created the export controls.⁵⁴ Finally, Congress could have also modified the embargo⁵⁵ through legislation.⁵⁶

III. A History of Relations Between the United States and Vietnam

A. Early Setbacks Following the End of the Vietnam War in the 1970s

The Vietnam trade embargo had been in effect since the communist victory over South Vietnam in April of 1975.⁵⁷ Earlier, under the Paris Peace Agreements of 1973,⁵⁸ the United States agreed to supply Vietnam with aid for reconstruction once the war ended.⁵⁹

Pursuant to this agreement, Vietnam pressed the United States for aid upon termination of the war.⁶⁰ Citing the untruthfulness and unfair wartime practices of Vietnam,⁶¹ then-U.S. President Ford ignored the

lifted. *Id.*

51. *Id.*

52. SUTTER, *supra* note 21, at 3.

53. 50 U.S.C. App. §§ 2401-2420 (1988).

54. *Id.*

55. Scown, *supra* note 1, at 26.

56. SUTTER, *supra* note 21, at 3.

57. *Id.* The Communist Party, in control of North Vietnam, officially seized South Vietnam in April of 1975 and established communist rule in one united nation, Vietnam. *Id.*

58. The United States halted its attack on North Vietnam as a result of the beginning of negotiations in Paris in March 1968. BACKGROUND NOTES—VIETNAM (U.S. Dep't of State, May 1990). The Paris negotiations moved slowly, however. The United States withdrew from ground combat by 1971 pursuant to the agreement. *Id.* Although Hanoi claimed to also be supporting the peace agreement, supplies were sent illegally into South Vietnam. *Id.* As a direct result of these additional supplies, the military holding in South Vietnam collapsed, and Saigon itself fell by April 1975. *Id.*

59. SUTTER, *supra* note 21, at 1. In an effort to coerce Vietnam to end the war, the United States promised to supply Vietnam with money for reconstruction of the country once the war ended. *Id.* The United States refused to follow through on this promise and until the lifting of the trade embargo, no reconstruction aid had been given to Vietnam by the United States. *Id.*

60. *Id.* at 1.

61. More specifically, the United States was irate at Vietnam for its last military assault on South Vietnam, which was an outright violation of the Paris Peace Agreement of 1973. *Id.* at 1-2.

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Paris Peace Agreement and flatly refused to send any aid to Vietnam.⁶² Moreover, he declared that there would be no trade between the two countries until Vietnam accounted for all American POWs/MIAs,⁶³ as well as clearly stating the Vietnamese position in Southeast Asia.⁶⁴ In addition, from 1975 until 1976, the United States vetoed Vietnam's application to the United Nations on three different occasions.⁶⁵

During the Carter administration in 1977, relations with Vietnam improved.⁶⁶ On March 2, 1977, the restrictions against trade were slightly relaxed. Specifically, President Carter withdrew the ban on travel to Vietnam, and dispatched a commissioner to Vietnam to discuss relations between the two countries as well as other common interests.⁶⁷ Further, as a result of these positive steps toward normalization between the two countries, the United States allowed Vietnam admission into the United Nations.⁶⁸

As 1978 approached, however, the promising friendly relations waned. Vietnam abandoned their new-found cooperation by refusing to release any further information on American POWs/MIAs until the United States was forthcoming with the reconstruction aid promised to them under the 1973 Paris Peace Agreement.⁶⁹ Yet, Congress strongly opposed sending any aid to Vietnam, and consequently Vietnam received no aid.⁷⁰

Three subsequent incidents completely demolished all hopes of normalization at that time. First, prior to 1978, discussions and peace talks took place between Vietnam and the Association of Southeast Asian Nations [ASEAN], regarding Vietnam's possible affiliation with ASEAN.⁷¹ Vietnam shocked ASEAN by announcing that it had aligned

62. SUTTER, *supra* note 21, at 1.

63. Because of the high number of U.S. soldiers declared missing in action after the Vietnam war, the Ford administration commanded Vietnam to either return U.S. soldiers or to give an acceptable accounting of their whereabouts. *Id.* Over 2000 soldiers did not return and were unaccounted for at the termination of the war. *Id.*

64. *Id.*

65. *Id.* at 5.

66. SUTTER, *supra* note 21, at 2.

67. *Id.* at 4. Other common interests included facilitating emigration from Vietnam of relatives of Vietnamese-Americans, normalizing immigration of Vietnamese into the United States through the Orderly Departure Program (ODP), resolving issues surrounding Amerasians, and procuring the release of the Vietnamese that were held in prison camps for aiding the United States during the war. *Id.*

68. *Id.*

69. *Id.* See *supra* notes 58, 59 and accompanying text.

70. SUTTER, *note* 21, at 4.

71. *Id.* at 5.

itself as an ally of the Soviet Union.⁷² Consequently, all peace talks between ASEAN and Vietnam were terminated. Moreover, all peace talk between the United States and Vietnam ceased as a result of the latter's alliance with the Soviet Union.⁷³

In addition, in an effort to "air out its countryside," Vietnam exiled thousands of Vietnamese citizens that were of Chinese descent.⁷⁴ This action was a response to the diminished relations between Vietnam and China.⁷⁵ Finding themselves misplaced and without a country, these people became refugees throughout Southeast Asia.⁷⁶

Finally, in 1978, Vietnam invaded Cambodia, deposing the pro-Chinese regime and establishing their own form of government.⁷⁷ The Carter Administration immediately reacted by halting all forms of normalization with Vietnam, subsequently forming an alliance with ASEAN.⁷⁸ The United States labored to send money and aid to the coalition government in Cambodia.⁷⁹ Additionally, the United States and ASEAN joined together to assist the new Chinese refugees that had once been Vietnamese citizens.⁸⁰ As a direct result of the Vietnamese allegiance with the Soviet Union, inhumane treatment of Vietnamese citizens with Chinese origins, and Vietnam's invasion of Cambodia, all contacts and progress toward the normalization of relations between the United States and Vietnam were severed. Relations between the two countries remained nonexistent for almost a decade.

The tense relations between the two continued as President Reagan took office in 1980. At that time, President Reagan issued a statement that announced that no normalization between the United States and Vietnam would take place until Vietnam met certain prerequisites.⁸¹ These prerequisites included (1) withdrawing all Vietnamese forces from Cambodia; (2) helping to establish a peace agreement between Vietnam and Cambodia; and (3) assisting the United States to establish the fullest possible accounting of American POWs and MIAs.⁸² Vietnam did not meet these conditions, and consequently, no progress toward normalizing

72. *Id.*

73. *Id.*

74. *Id.*

75. SUTTER, *supra* note 21, at 5.

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. SUTTER, *supra* note 21, at 5.

81. *Id.*

82. *Id.*

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relations between the United States and Vietnam transpired during the Reagan era.

B. Ongoing Dispute Over POWs/MIAs

One of the most controversial issues surrounding the embargo had been whether U.S. soldiers were held by Vietnam after the Paris Peace Agreement of 1973.⁸³ Although the Vietnamese assert that they returned all American POW's during Operation Homecoming,⁸⁴ speculation exists as to whether the Vietnamese are being completely forthcoming.⁸⁵ Most recently in 1992, Stephen J. Morris, a researcher at Harvard University, found a document in the Moscow archives for the Central Committee of the Soviet Communist Party that was allegedly written during the war by Vietnamese Lieutenant General Tran Van Quang.⁸⁶ The document, known as the Russian Document, is a six-page report titled *Report of the Deputy Chief of the General Staff of the Vietnamese Peoples Army* and dated September 15, 1972,⁸⁷ reads as follows:

The total number of American POW's captured to date on the fronts of IndoChina, in other words in North Vietnam, South Vietnam, Laos, and Cambodia totals 1205 people. Of this number, 671 people were captured in North Vietnam and 143 pilots [were captured] in South Vietnam . . . Officially, until now we published a list of 368 prisoners of war, the remainder we have not revealed. The government of the USA knows well about this, but doesn't know the exact number of POW's.⁸⁸

83. In Paris in 1973, delegates from the United States and Vietnam finally reached certain agreements regarding wartime conduct and promises to be carried out upon the resolution of the war. *Id.* Included in these peace talks was the agreement by Vietnam to return all American POWs to the United States. *Id.* Vietnam kept this promise, and under the venture termed "Operation Homecoming" sent over 2,000 POW soldiers back home to the United States. SUTTER, *supra* note 21, at 6.

84. *Id.*

85. MARK SAUTER & JIM SANDERS, *THE MEN WE LEFT BEHIND: HENRY KISSINGER, THE POLITICS OF DECEIT, AND THE TRAGIC FATE OF POW'S AFTER THE VIETNAM WAR* (National Press Books, 1993).

86. Samuel Francis, *The Tell-Tale Memo on POW's*, WASH. TIMES, Apr. 16, 1993, at F1. Lieutenant General Tran Van Quang was one of the chief leaders for North Vietnam during the war. *Id.* See also Adam Clymer, *Soviet File Feeds Debate on POWs*, N.Y. TIMES, Sept. 9, 1993, at A7; Stephen Engelberg, *Old M.I.A. Theory is Given a New Life*, N.Y. TIMES, Apr. 18, 1993, at 20; Stephen A. Holmes, *Envoy says POW Evidence Undermines Old Russian Report*, N.Y. TIMES, Apr. 21, 1993, at A3; Thomas W. Lippman, *POW Document Renews Bitter Arguments*, WASH. POST, Apr. 14, 1993, at A1.

87. SAUTER & SANDERS, *supra* note 85, at 322.

88. Francis, *supra* note 86, at F1.

One year after the supposed drafting of the Russian document, in 1973, all POWs were supposedly returned home after the Paris Peace Agreement, but only 591 Americans came out of the prisons of Hanoi.⁸⁹ Thus, if this document discovered is authentic and accurate, then there is a question as to the whereabouts of the 614 American prisoners that never returned to the United States during Operation Homecoming.⁹⁰ Moreover, a question also remains as to whether the United States actually knew of the discrepancy that this document indicates.

1. *Authentic Document or Fabricated-Hoax.*—There has been much debate over the authenticity of the document. Indeed, the government in Hanoi issued a statement adamantly declaring it as a “clear fabrication.”⁹¹ Similarly, many experts in the United States have discredited this document.⁹² Still, others have advocated that the document in fact may have been written by General Quang.⁹³ It has also been suggested that the discrepancy in the number of POWs actually returned and the number of POWs referred to in the Russian document may have resulted from the document’s inclusion of Asians who worked with the Americans during the war.⁹⁴

89. *Id.*

90. *Id.*

91. “No Money for Vietnam”, *DAV’s Joseph Andry Says*, NAT’L AMVET, May, 1993, at 3 [hereinafter *No Money for Vietnam*].

92. For example, H. Bruce Franklin, a professor of English at Rutgers University, stated that there are so many inaccuracies within the document that it is impossible to believe its credibility. Steven A. Holmes, *Debate Rises on Hanoi P.O.W. Report*, N.Y. TIMES, Apr. 16, 1993, at A3 [hereinafter *Debate Rises*]. Franklin further proclaimed that this document was “a clumsy fabrication . . . [and] there is just about no fact in the document that correlates with the historical reality.” *Id.* Franklin illustrated this point by stressing the known fact that as the war progressed, a consolidation of Vietnamese prisons took place. *Id.* The document found by Morris, however, states that there was an increase of prisons from four to eleven. *Id.*

93. Zbigniew Brzezinski, National Security advisor to President Jimmy Carter, presented another explanation for the discrepancy in the number of POWs who actually returned to the United States and the number cited in the document. Francis, *supra* note 86, at F2. He contended that the discrepancy is, in all likelihood, a result of the Vietnamese taking hundreds of American POWs and shooting them in cold blood. *Id.* Brzezinski suggested that if this is the true explanation for the discrepancy, then Vietnam should have been able to give the United States the remains of the victims. *Id.* The United States has asked for a full accounting of MIAs, including an accounting of those that are alive, dead, or whose status is unknown. *Id.* To date, remains are still being returned to the United States from Vietnam. *Id.*

94. Francis, *supra* note 86, at F2. Senator Robert Smith (D-NH), among many, stressed the validity of the document. He argued that the statistics show that Asian inclusion as an explanation is an impossibility. *Veterans Groups Urge Clinton Not to Lift Vietnam Embargo*, Int’l Trade Daily (BNA) (Apr. 14, 1993) [hereinafter *Veterans Group*]. Senator Robert Smith, a veteran himself, based his candidacy on attaining the resolution of the POW/MIA issue. *Id.* Smith was one of the most vocal proponents of maintaining the trade embargo, contending that General Quang is the

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Interestingly enough, the Disabled Veterans organization [DAV] issued a statement asserting the document's validity.⁹⁵ This belief resulted from the lack of evidence indicating that the document is not authentic.⁹⁶ Conversely, proponents to lifting the trade embargo doubted the authenticity of the document because they felt that no evidence existed to prove its validity.⁹⁷

Finally, on April 18, 1993, the U.S. press disclosed the existence of this Soviet document to the American public.⁹⁸ Consequently, a convoy sent to Vietnam led by Army General John Vessey⁹⁹ highlighted the Russian document as the focal point of their investigative trip.¹⁰⁰ Upon his return to the United States, Vessey subsequently released statements that cast doubt on the validity of the Soviet report.¹⁰¹ The controversy surrounding the authenticity of the Russian document subsided because of the lack of any new insight into its validity. Questions remain as to whether the document is legitimate. Its legitimacy, in fact, may never be determined.

2. *U.S. Government's Alleged Concealment of Evidence of POWs.*—For years, there had been growing controversy surrounding the handling of the POW/MIA issue by the U.S. government, and this controversy climaxed upon the discovery of the Russian document.¹⁰² Allegations that the United States placed the POW/MIA issue on the back burner multiplied because of insinuations in the Russian document. Specifically, these insinuations suggested that the U.S. government concealed Vietnamese demands for money in exchange for returning American POWs.¹⁰³ Although the U.S. government was quick to deny

author of the document and that the discrepancy in the number of American POW's represents American POWs who were never released by Vietnam. *Id.* In support of this theory, Smith further asserted that "[t]hey always call [the Asian and South Vietnamese forces allied to the United States] puppet forces. Anyone who says that [they are included in the count] is just not familiar with the Communist documents." *Id.*

95. *No Money For Vietnam*, *supra* note 91, at 3.

96. *Id.*

97. *Debate Rises*, *supra* note 92, at A3.

98. SUTTER, *supra* note 21.

99. Vessey is a retired Army General who was appointed special POW/MIA emissary. SAUTER & SANDERS, *supra* note 85, at 321. Vessey has been acclaimed as an honorable man who has done everything possible to account for all American POWs/MIAs. *Id.* at 379.

100. SUTTER, *supra* note 21.

101. *Id.* at 10.

102. SAUTER & SANDERS, *supra* note 85, at 153.

103. SUTTER, *supra* note 21.

all claims against it, many believed that the United States actively withheld information.¹⁰⁴

Even prior to the Russian Document, under the Bush Administration, the Senate established a special committee to investigate the past actions of the U.S. government and to determine whether the government deliberately suppressed investigation into this issue.¹⁰⁵ However, no evidence of any improper actions by the U.S. government was ever discovered.¹⁰⁶

Most of the accusations against the U.S. government in this regard are aimed at the Nixon Administration and in particular, at Henry Kissinger.¹⁰⁷ Allegations have asserted that Kissinger entered into an agreement in 1973 to trade \$3.25 billion in ransom money to Vietnam in exchange for POWs under the false label "reconstruction aid",¹⁰⁸ and Congress, not knowing that the money was actually ransom money, refused to pass the aid package.¹⁰⁹ As a result of Congress' denial of the package, Kissinger did not follow through in the deal to retrieve American POWs.¹¹⁰ Kissinger's response to these accusations was as follows:

There is no excuse, two decades after the fact, for anyone to imply that the last five Presidents from both parties, their White House staffs, Secretaries of State and Defense, and career diplomatic and military services either knowingly or negligently failed to do everything they could do to recover and identify all of our prisoners and MIA's.¹¹¹

In effect, whether the U.S. government was remiss in obtaining a final accounting of American POWs/MIAs depends upon who is asked. The U.S. government asserts that it worked diligently to reach a final accounting for all soldiers deemed POW/MIA, whereas the government opponents assert that the United States was not completely forthcoming with all of the information they possessed on this issue. Like the validity

104. SAUTER & SANDERS, *supra* note 85, at 153.

105. SUTTER, *supra* note 21. Many discredit this committee, stressing that the committee would not dare turn against the government for which it is employed. *Id.*

106. *Id.*

107. SAUTER & SANDERS, *supra* note 85, at 79.

108. *Id.*

109. *Id.*

110. *Id.* Additionally, these advocates asserted that such policies were followed by the Carter and Reagan administrations. Simon Beck, *Vietnam MIA's: Victims of War, Victims of Peace*, S. CHINA MORNING POST, Aug. 29, 1993.

111. SAUTER & SANDERS, *supra* note 85, at 79.

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of the Russian Document, the true role of the U.S. government may never be known.

C. Efforts at Normalization during the 1980s and 1990s

During the Bush Administration, Vietnam and Cambodia finally reached a peace agreement.¹¹² Given the peace agreement and Vietnam's adherence to it, the main goal of the trade embargo between the United States and Vietnam then became the resolution of the POW/MIA issue.¹¹³ Consequently, Vietnam soon expressed a willingness to establish a U.S. office in Hanoi to conduct POW/MIA investigations and other related affairs.¹¹⁴ Vietnamese cooperation resulted in a renewed willingness by the United States to take further measures towards normalizing relations between the two countries.¹¹⁵

As such, in April 1991, President Bush outlined a four-phase agenda that would lead toward normalization between the United States and Vietnam.¹¹⁶ These four phases, titled the *Roadmap*, set forth specific goals that both the United States and Vietnam had to fulfill before the trade embargo would be lifted.¹¹⁷ The *Roadmap*, specifically the American and Vietnamese fulfillment of the objectives set forth in the *Roadmap*, played an extremely important role in the course of the lifting of the trade embargo.¹¹⁸

1. *Phase One*.—Phase One of the *Roadmap* began with the signing of the peace agreement between Vietnam and Cambodia on October 23, 1991.¹¹⁹ Under Phase One, Vietnam was to sign the Cambodian peace accord and was to settle all American POW/MIA cases, specifically the "last known alive" discrepancy cases¹²⁰ and live-sighting reports.¹²¹ Additionally, all American remains were to be returned, and Vietnam

112. SUTTER, *supra* note 21.

113. *Id.*

114. *Id.* at 3. In return for cooperation by Vietnam, the United States sent one million dollars in humanitarian aid to Vietnam. *Id.* This aid was used mostly to purchase prosthetics for orphans and children. *Id.*

115. SUTTER, *supra* note 21, at 3.

116. *Id.*

117. *Id.* See *infra* notes 119-180 and accompanying text.

118. SUTTER, *supra* note 21, at 3.

119. RAYMOND J. AHEARN & ROBERT J. SUTTER, CONGRESSIONAL RESEARCH SERVICE, VIETNAM-U.S. NORMALIZATION: CONSIDERATIONS FOR 1993 16 (Library of Congress, 1993).

120. *Id.* The "last known alive" discrepancy cases are those cases in which the soldier in question was last seen alive, either by being taken as a POW, or in another context. *Id.* Although they were last believed to be alive, POWs were neither returned home under Operation Homecoming nor accounted for in any other way. *Id.*

121. AHEARN & SUTTER, *supra* note 119, at 16.

was to implement the Orderly Departure Program (ODP).¹²² Under the ODP, Vietnam was to allow all U.S. prisoners and all prisoners of U.S. allies detained in Vietnam to return to their respective homes.¹²³ In return, the United States was to lift the twenty-five mile ban in New York which, in effect, barred all Vietnamese diplomats from entering New York.¹²⁴ After completion of these preliminary steps, talks on normalization were to begin and the United States was to permit U.S. citizens to travel to Vietnam.¹²⁵ Also, the United States was to publicize concerns regarding genocide in Cambodia and liberalize U.S. economic relations with Cambodia.¹²⁶ All conditions of Phase One were met by both the United States and Vietnam.¹²⁷

2. *Phase Two*.—Upon the satisfaction of Phase One and the installation of U.N. peacekeepers in Cambodia, Phase Two of the *Roadmap* commenced in the early 1980s.¹²⁸ Directed by Phase Two, Vietnam continued to support the Paris Peace Agreement, and continued advancing toward a resolution of the POW/MIA issue.¹²⁹ In return, the United States established telecommunications with Vietnam.¹³⁰ Additionally, in the expectation of the lifting of the trade embargo, a limited signing of contracts by non-governmental organizations was permitted.¹³¹ Finally, all commercial transactions with Vietnam that met basic human needs were also approved by the U.S. State Department.¹³²

During Phase Two, Vietnam appeared to be particularly cooperative when it assisted the United States in an active pursuit of the “live sighting reports” in 1992. The United States then reciprocated by sending three million dollars to Vietnam for humanitarian aid.¹³³ In addition, on April 13, 1992, the United States permitted the restoration of direct communication links between the two countries,¹³⁴ and on

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. AHEARN & SUTTER, *supra* note 119, at 16.

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.*

131. AHEARN & SUTTER, *supra* note 119, at 16.

132. *Id.*

133. *Id.* at 3. Once again, this aid was generally for prosthetics and aid to abandoned children and orphans. *Id.*

134. *Id.* at 11. Contracts that were developed during this time have since taken effect after the lifting of the trade embargo. AHEARN & SUTTER, *supra* note 119, at 11.

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December 14, 1992, the Bush Administration lifted restrictions barring non-governmental organizations from establishing contracts.¹³⁵

Given the significant concessions from both sides in 1992, Phase Two was successfully completed, and the United States sent a high-level delegation to Hanoi to address the possibilities of completely normalizing relations between the two countries.¹³⁶ At that time, the delegation focused on eliminating the U.S. barriers that prohibited the International Financing Institutions [IFI] from giving any assistance to Vietnam.¹³⁷ The delegation also wanted to allow U.S. firms to open commercial offices in Vietnam.¹³⁸

3. *Phase Three.*—The third phase of the *Roadmap* began once the U.N. procedures and the Cambodian settlement process became settled.¹³⁹ Under Phase Three, the responsibilities and duties of Vietnam were not significantly changed. Vietnam was required to remove all troops from Cambodia while still upholding the Paris Peace Agreement.¹⁴⁰ In addition, good faith efforts to resolve all discrepancy cases and to return the remains of all U.S. POWs/MIAs continued.¹⁴¹

Phase three extended into the Clinton Administration, which endorsed the four stage *Roadmap* introduced by the Bush Administration.¹⁴² Nevertheless, the United States entered the third phase with trepidation. Under Phase Three, the United States was permitted to open a diplomatic liaison office in Hanoi, and was to allow Vietnam to establish an office in Washington.¹⁴³ Vietnam extended such an invitation to the United States, and Clinton sent three permanently stationed delegates to Vietnam.¹⁴⁴ However, the United States failed to reciprocate in extending such an invitation to Vietnam.¹⁴⁵

Phase Three also called for U.S. permission to allow the International Monetary Fund/World Bank (IMF) to offer financial

135. *Id.* at 10.

136. *Id.* at 9.

137. *Id.*

138. *Id.*

139. AHEARN & SUTTER, *supra* note 119, at 16. See also *supra* notes 119-138 and accompanying text.

140. AHEARN & SUTTER, *supra* note 119, at 16.

141. *Id.*

142. SUTTER, *supra* note 21, at 5. The Clinton administration undertook a high-level review of existing policy options in dealing with Vietnam. AHEARN & SUTTER, *supra* note 119, at 1.

143. AHEARN & SUTTER, *supra* note 119, at 16.

144. *Id.*

145. *Id.*

assistance to meet basic human needs to Vietnam.¹⁴⁶ Given Vietnam's cooperation and the cost of political pressure in trying to persuade France and Japan to oppose aid to Vietnam, U.S. resistance to funding to Vietnam was no longer feasible.¹⁴⁷ In addition, many businesses urged President Clinton to allow IMF lending to Vietnam, declaring that aid to Vietnam would "further improve [the United States'] ability to resolve the MIA issue, support human rights, allow U.S. business to compete in Vietnam, and facilitate our humanitarian work in Vietnam."¹⁴⁸ In particular, it was believed that once lending reached Vietnam, projects to build roads, ports, and health care facilities as well as to improve education could begin. This, in turn was to provide many favorable results, including: (1) the creation of a more humanitarian relationship between the two countries; (2) the furtherance of work resolving POW/MIA issues, since funding could be allocated to make remote areas in Vietnam more accessible; and (3) the establishment of another area for foreign investment.¹⁴⁹

Despite these benefits, however, most Veteran groups strongly urged Clinton to resist allowing Vietnam access to the IMF.¹⁵⁰ Primarily, veteran resistance to IMF lending stemmed from the perceived lack of progress by Vietnam to resolve the POW/MIA issue.¹⁵¹ In fact, Clinton described the progress of Vietnam regarding the POW/MIA issue as "simply not sufficient to warrant any change in our trade embargo or any further steps toward normalization."¹⁵²

146. AHEARN & SUTTER, *supra* note 119, at 13. The IMF makes loans at low interest rates that are subsidized by the governments that fund the agency, and the United States is the largest shareholder in the IMF. *Decision on Vietnam Relations Due Soon, Secretary Christopher Says*, Int'l Trade Daily, (BNA) (June 23, 1993) [hereinafter *Decisions on Vietnam*]. Therefore, although the United States does not possess veto power, it does have the authority to prevent lending to certain countries if it can persuade other major shareholders to support such a position. *Id.* The blocked lending to Vietnam from 1975 until September 1993, when Clinton moved to allow IMF assistance to Vietnam, illustrates this authority. *Id.* However, with the then-expressed desires of France and Japan to allow lending to Vietnam, it is debatable whether the United States would have been able to continue to successfully block lending to Vietnam. *Id.*

147. AHEARN & SUTTER, *supra* note 119, at 14.

148. *Decisions on Vietnam, supra* note 146.

149. *Id.* Consequently, by allowing aid to flow to Vietnam through the IMF, President Clinton has effectively established a better mechanism for handling humanitarian concerns. More food, better shelters, and overall better living conditions will be more available to the Vietnamese. *Id.*

150. Senator Smith (D-NH) led this opposition. He advocated maintaining the embargo as leverage until all soldiers have been accounted for and contended that any easing of the trade embargo, including allowing Vietnam access to IMF, would be lost leverage to the United States. *Veteran Groups, supra* note 94.

151. *Id.*

152. *Clinton Open to IMF Loans to Vietnam, Will Not End Trade Embargo or Normalize*, Int'l Trade Daily (BNA) (July 7, 1993). Note that at that time, Hanoi had not accounted for more than

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Thus, Clinton outlined four key areas in which Vietnam had to improve efforts before the embargo would be lifted and before normalization under the *Roadmap* would continue to Phase Four.¹⁵³ First, the remains of all Americans were to be returned, and Vietnam must have established some concrete results of their efforts to recover these remains.¹⁵⁴ Second, there was to be a resolution of the remaining ninety-two discrepancy cases, live sightings, and field activities.¹⁵⁵ Additionally, further assistance from Vietnam toward an investigation for POW/MIA records in Laos was to be established.¹⁵⁶ Finally, there must have been greater efforts to provide all POW/MIA records from their archives so as to reach complete answers.¹⁵⁷ Until there was visible progress in each of these four areas, however, no further steps towards normalization would be taken.¹⁵⁸

Eventually, Clinton lifted the embargo on February 4, 1994, as a part of Phase Three.¹⁵⁹ However, prior to the lifting of the embargo, Clinton sent many high-level delegations to Hanoi and to other sections of Vietnam to investigate the POW/MIA situation as well as to push for further progress on this situation.¹⁶⁰ In March 1993, a Senate Select Committee consisting of various Senators and Representatives travelled

1600 missing Americans. George Gedda, *Clinton Grants U.S. Firms a Limited Role in Vietnam*, REG. CITIZEN, Sep 14, 1993, at 3. Proponents of maintaining the trade embargo advocated preserving the embargo until a full accounting of all MIAs was given by Vietnam. How Vietnam could have gone about such a task was not suggested, however. *Id.*

Moreover, the list of 1600 soldiers still considered missing may not have been accurate. Under those guidelines, unless a live body or identifiable remains are recovered, the person remains on this list. Allen F. "Gunner" Kent, *On His Trips to Vietnam on the POW/MIA Issue*, VFW REP., Dec. 2, 1992, at 11. Thus, without a body or identifiable remains to show the United States, it may have been impossible for Hanoi to cooperate under those guidelines. *Id.*

153. *President's Statement RE: U.S. Policy Toward Vietnam*, 4 DEP'T ST. BULL. 499, 500 (1993) [hereinafter *President's Statement*].

154. *Id.* at 500.

155. *Id.* The discrepancy cases refer to those cases that exist if the Russian Document is authentic. See *supra* notes 91-101 and accompanying text.

156. *President's Statement*, *supra* note 153, at 500. Many American POWs/MIAs are believed to have disappeared in Laos and Cambodia as well as in Vietnam. *Id.*

157. *Id.* All of Vietnam's files from the war were closed to U.S. research until 1988. James J. Kenney, *A Time for Progress...And Patience*, NAT'L AMVET, Summer 1993, at 8. Therefore, the U.S. must be patient because the slow production of information is the result of the beginning of production rather than the result of disinterest. *Id.*

158. SUTTER, *supra* note 21, at 5.

159. See *supra* note 1 and accompanying text. See also AHEARN & SUTTER, *supra* note 119, at 16.

160. SUTTER, *supra* note 21, at 5. Since the late 1980s, many groups have been sent to Vietnam to investigate the POW/MIA issue. *Id.* Presently, over 200 investigations of live-sighting reports alone have been conducted. *Id.*

together to Vietnam.¹⁶¹ Identified as the Congressional Delegation (CODEL), representatives from each of the five main veteran organizations received invitations to join in this trip.¹⁶² Specifically, representatives from Vietnam Veterans of America (AMVETS), and the Veterans of Foreign Wars accepted this invitation.¹⁶³ After visiting Vietnam, CODEL determined overall that it was time for normalization between the United States and Vietnam, given that a full accounting of all bodies from the war would be impossible.¹⁶⁴

4. *Phase Four.*—Vietnam and the United States are currently in Phase Four, which commenced on February 3, 1994, when President Clinton lifted the trade embargo between the United States and Vietnam. Clinton indicated that he lifted the embargo as a result of Vietnam's cooperation in trying to make a full accounting for all American POWs/MIAs, emphasizing that the ensuing economic benefits were not a consideration in this decision.¹⁶⁵ Such a clarification should have come as no surprise, for additional pressures were placed on President Clinton because many people observed the lifting of the trade embargo as an either pro-POW/MIA or pro-business issue.¹⁶⁶

Under Phase Four, the United Nations is to certify free-elections in Cambodia and a new constitution is to be transcribed by a newly-formed Cambodian National Assembly.¹⁶⁷ The POW/MIA issue supposedly resolved, the United States is to establish ambassadorial-level relations with Vietnam and consider granting "most favored nation" status to the

161. Kenney, *supra* note 157, at 8.

162. *Id.* at 8. Senator John Kerry (D-MA) extended these invitations to the five veterans service organizations so that they could participate in the evaluation of the progress being made by the Vietnamese government in resolving the POW/MIA issue. *Id.* The trip was to be made on Memorial Day. *Id.* Kerry is the former chairman of the Senate Select Committee for POW/MIA affairs. *Id.*

163. Kenney, *supra* note 157, at 8. The CODEL consisted of Senator Kerry, General Needham, Al Kent of the VFW, Danny Devine of AMVETS', Senator McCain (R-AZ), Representative Lane Evans (D-IL), and Senator John Glenn (D-OH). *Id.*

164. *Id.*

165. CLINTON LIFTS VIETNAM EMBARGO; EMPHASIZES FURTHER POW/MIA ACCOUNTING, BUREAU OF NAT'L AFFAIRS, DAILY REP. FOR EXECUTIVES, Feb. 4, 1994, at A23 [hereinafter CLINTON LIFTS VIETNAM EMBARGO].

166. As a result of the lifting of the trade embargo, Clinton has set a precedent for other such situations in which moral principles may be placed against corporate interests. *Murkowski Offers Legislation to Lift Vietnam Trade Embargo*, Int'l Trade Daily, (BNA) (Apr. 5, 1993) [hereinafter *Murkowski Offers Legislation*]. Moreover, pressure on Clinton was intensified due to his past unstable history with the armed services resulting from his dodging of the Vietnam draft. *Take the Plunge: Time to End Vietnam Embargo*, REG. CITIZEN, Sep. 18, 1993, at 14 [hereinafter *Take the Plunge*].

167. *Take the Plunge*, *supra* note 166, at 17.

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Vietnamese for trade purposes.¹⁶⁸ Assistance through IMF for non-basic needs as well as for basic needs is also to be considered.¹⁶⁹ As long as Vietnam remains helpful in all relations with the United States at this stage, no additional requirements are to be met.¹⁷⁰

Note that the lifting of the trade embargo has not established normalized relations between the United States and Vietnam, and Clinton has stated that Vietnam must show "more progress, more cooperation, and more answers" regarding the POW/MIA issue before relations will be completely normalized.¹⁷¹ Presently, there still exists numerous restrictions in the area of commercial investment. First, an investment cannot take place without a government license.¹⁷² In addition, most foreign investments require that a partnership be formed with a local Vietnamese partner who is required to consent to all significant decisions in the venture.¹⁷³ Furthermore, because Vietnam is still under a socialist rule where all real property is considered to be owned by the state, secured lending in Vietnam is virtually nonexistent because banks are wary of lending money where they cannot take a mortgage on real property.¹⁷⁴ Most significant, however, is the dearth of a legal course of action should something go awry with any investment.¹⁷⁵

It is true that beyond commercial investigation, most of the main restrictions of the embargo have been eliminated. However, some export controls, such as those on national security-related exports of U.S. origin goods and technology, remain in effect.¹⁷⁶ In addition, property and assets that were frozen under the TWEA at the time the trade embargo was imposed remain frozen.¹⁷⁷ By maintaining this freeze on certain properties, U.S. officials hope to be able to bargain with Vietnam for the return of assets from one country to another.¹⁷⁸

It is important for all foreign investors to be cautious before committing to any investments in Vietnam. First, because the laws are

168. *Id.* at 17. This goal of granting "most favored nation" status to Vietnam is the best possible scenario available.

169. AHEARN & SUTTER *supra* note 119, at 17.

170. *Id.*

171. CLINTON LIFTS VIETNAM EMBARGO, *supra* note 165, at A23.

172. Jonathan L. Golin, *Tiger By The Tail*, ABA JOURNAL, Feb 1994, at 63, 65. The process of obtaining such a license may take as long as six months.

173. *Id.*

174. *Id.*

175. *Id.*

176. Mark Bravin, RISKS, REWARDS IN VIETNAM TRADING; END OF 19-YEAR-OLD EMBARGO PRESENTS NEW OPPORTUNITIES April 25, 1994, at S6.

177. CLINTON LIFTS VIETNAM EMBARGO, *supra* note 165.

178. *Id.*

quickly changing, it is wise to ascertain the current status of these laws before committing to them. In addition, many of the new laws have yet to be implemented.¹⁷⁹ Therefore, the exact application of these laws is unknown. It has been predicted that a full process of normalization is years away.¹⁸⁰ Nonetheless, the lifting of the trade embargo is the first major step in the process to the normalization of relations between the two countries.

IV. Considerations in the Lifting of the Trade Embargo

The controversy surrounding the lifting of the trade embargo had been presented as a situation in which moral principles were placed against corporate interests.¹⁸¹ U.S. business placed great pressure on the United States to lift the trade embargo so that they could compete in the Vietnamese market, while supporters of maintaining the trade embargo responded by presenting the morality of using the embargo as leverage both to obtain an accounting of the POWs/MIAs and to instigate Vietnam to curb its human rights abuses.¹⁸²

A. *The POW/MIA Issue*

Advocates for maintaining the embargo between the United States and Vietnam firmly believed that if the embargo was lifted, the results would have been detrimental to the interests of the United States.¹⁸³ Their first contention was that without the trade embargo, Vietnam would not comply with any U.S. demands, especially those surrounding the POW/MIA issue.¹⁸⁴ These advocates claimed that Vietnam had a history of untruthfulness and that any cooperation by the Vietnamese in the past had been a direct result of the trade embargo.¹⁸⁵ That is,

179. *Id.*

180. *Id.*

181. Acohido, *supra* note 6, at B6. Senator Frank Murkowski (R-Alaska) declared that "[w]hen dealing form isolation, we achieved nothing . . . [w]hen dealing directly we saw progress." *Murkowski Offers Legislation*, *supra* note 166.

182. *Murkowski Offers Legislation*, *supra* note 116. James Brazee, president of the Vietnam Veterans of America, proclaims that "what this has come down to is a choice of economic interest over human lives and suffering . . . [and that] principles of morality should be placed ahead of anybody's economic interests." *Id.*

183. SAUTER & SANDERS, *supra* note 85.

184. SUTTER, *supra* note 21, at 8. *See also* Munson, *supra* note 6, at A12; *U.S. Wants More Progress on MIAs Before Ending Vietnam Embargo, Lord Says*, *supra* note 6; *Veterans Groups Urge Clinton Not to Lift Vietnam Embargo*, *supra* note 6.

185. SUTTER, *supra* note 21, at 8. Doubts of the trustworthiness of the Vietnamese stem from the antics of North Vietnam during the war. Specifically, they broke the Paris Peace Agreement of 1973 by sending supplies illegally into South Vietnam. BACKGROUND NOTES — VIETNAM, *supra* note 58. As a direct result of these extra supplies, North Vietnam was able to bring the collapse of

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Vietnam would be apathetic to the POW/MIA issue without the trade embargo as an incentive for cooperation.¹⁸⁶

Ironically, this assumption is untrue. To the contrary, the Vietnamese worked with the United States in all areas requested under the *Roadmap* so as to lift the embargo.¹⁸⁷ If subsequent opposition had been rendered by Vietnam in any of these areas, the United States had the power to reinstate restrictions on trade between the two countries.¹⁸⁸ Therefore, because Vietnam was quite aware of the possibility of restrictions being reinstated, future uncooperative action was, and still is, highly unlikely.

Nonetheless, supporters of the trade embargo still insisted that the embargo should be maintained until a full accounting of all POW/MIAs was reached.¹⁸⁹ In essence, these advocates maintained that even in light of the trade embargo, Vietnam had not been completely forthcoming with their aid in this matter.¹⁹⁰ As such, advocates not only were asserting that Vietnam failed to cooperate in providing a full accounting of U.S. POW/MIAs, but were insinuating that they flatly did not trust Vietnam.¹⁹¹

Contrary to this conjecture, one of the principal reasons for lifting the trade embargo was the exceptional cooperation that Vietnam showed in trying to satisfy all demands placed upon them by the United States.¹⁹² For example, Vietnam adhered to the Paris Peace Agreement by withdrawing all troops from Cambodia and it consciously attempted to resolve all POW/MIA cases.¹⁹³ Furthermore, immediately prior to the lifting of the trade embargo, Major General Needham, the U.S.

Saigon. *Id.* See also SUTTER, *supra* note 21.

186. SUTTER, *supra* note 21.

187. See *supra* notes 112-180 and accompanying text.

188. See *id.*

189. Roger A Munson, *Time to Normalize Relations With Vietnam; Hold Out For POW's*, N.Y. TIMES, July 9, 1993, at A6 [hereinafter *Time to Normalize Relations*]. As stated by Roger Munson, the National Commander of the American Legion, "To accept anything less [than U.S. prisoners or their remains] is to perpetuate the agony Americans have endured for more than two decades." *Id.* See also Munson, *supra* note 6, at A12; *U.S. Wants More Progress on MIAs Before Ending Embargo, Lord says*, *supra* note 6; *Vietnam Groups Urge Clinton Not to Lift Vietnam Embargo*, *supra* note 6.

190. *Time to Normalize Relations*, *supra* note 189, at A6. According to the proponents of this viewpoint, Vietnam has released less than 1% of the relevant information available to them. *Id.*

191. Acohido, *supra* note 6, at A20. The distrust of Vietnam stems from the activities of Vietnam during wartime. See *supra* note 58 and accompanying text. Indeed, supporters of the trade embargo declared that Vietnam is a "mendacious tyranny." Francis, *supra* note 86, at F1.

192. Compilations of Reports of Allen F. "Gunner" Kent, *supra* note 6, at 2.

193. All of Vietnam's files relating to the war were closed to U.S. researchers until 1988. Kenney, *supra* note 157. Vessey feels that they are doing their best, and that the United States needs to be patient. *Id.*

Commander of the Joint Task Force-Full Accounting (JTF-FA),¹⁹⁴ stated that Vietnamese cooperation was at its peak.¹⁹⁵ All live-sighting investigations were completed¹⁹⁶ and no reports showed live Americans.¹⁹⁷ Additionally, U.S. investigators could travel any place in Vietnam where they suspected they might find POW/MIA evidence or remains.¹⁹⁸ The only areas off limits were certain government and military bases because of the Vietnamese distrust of the intentions of the United States.¹⁹⁹ Finally, the Vietnamese government gave the United States free reign over the war museum archives in Hanoi, which signaled an involvement by the Vietnamese Army to try and finally resolve this issue.²⁰⁰

Still, embargo supporters insisted that if a full accounting could not be had, then at least "sufficient steps" toward a full accounting should be completed before the lifting of the trade embargo.²⁰¹ Thus, Vietnam opened the countryside to Americans in search of POWs/MIAs,²⁰² participated in joint task forces formed to uncover answers,²⁰³ gave most of its records from the war to the United States,²⁰⁴ and allowed the stationing of U.S. diplomats in Hanoi. All of these endeavors were to better accommodate Americans in search of "the truth".²⁰⁵

Despite all efforts taken by Vietnam to resolve this matter, supporters of the embargo remained steadfast in their position that a *full*

194. The JTF-FA, formed in February of 1992, is a command within the Department of Defense that deals exclusively with American POW/MIA issues. Compilations of Reports of Allen F. "Gunner" Kent, *supra* note 6, at 4. The JTF-FA succeeded the Joint Casualty Resolution Center (JCRC) and is based in Hawaii. *Id.* The JTF-FA is composed of almost all active duty military personnel, with a few exceptions for those who also possess needed skills—anthropologists, for example. *Id.* The JTF-FA has four detached locations whose commanders report directly to General Needham in the cities of Bangkok, Hanoi, Vientiane, and Phrom Penh. *Id.*

A smaller unit named the "Stoney Beach Mission" is also located in the U.S. Embassy in Bangkok. *Id.* Currently consisting of five members, this unit collects information on live-sighting of Americans in communist countries throughout Southeast Asia. Compilations of Reports of Allen F. "Gunner" Kent, *supra* note 6, at 5. Specifically, this mission is "to conduct live sightings and last known alive investigations, refugee and displaced person debriefings, orderly departure program screening/debriefing and to conduct other miscellaneous POW/MIA investigations." *Id.*

195. *Id.* at 2.

196. *Id.*

197. Kenney, *supra* note 157.

198. *Id.* at 2.

199. Compilations of Reports of Allen F. "Gunner" Kent, *supra* note 6, at 7.

200. *Id.* at 10.

201. *Time to Normalize Relations*, *supra* note 189, at A6.

202. SUTTER, *supra* note 21.

203. Compilations of Reports of Allen F. "Gunner" Kent, *supra* note 6, at 4.

204. SUTTER, *supra* note 21.

205. *U.S. To Station Envoys in Hanoi As MIA Liaisons*, N.Y. TIMES, July 18, 1993, at B6.

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accounting of all POW/MIAs had to be established before the lifting of the embargo.²⁰⁶ However, it is inappropriate to assume that Vietnam, in a good faith effort, would ever have been able to meet such outrageous demands. The fact of the matter is that the war was long, chaotic, and decentralized in command. Thus, the Vietnamese are equally as unsure as the United States about what actually transpired in many circumstances.²⁰⁷ Also, many records were lost or never existed in the first place.²⁰⁸ Moreover, no systematic recordkeeping existed in South Vietnam until the war was more than half over.²⁰⁹ As such, by maintaining the embargo, the United States seemed to be sending the message that normalization simply was not attainable.²¹⁰

B. Human Rights Abuses

Supporters of the trade embargo also purported that the trade embargo should remain until Vietnam changes its position on human rights issues.²¹¹ The repressive stand taken by Vietnam regarding human rights had been extensively criticized, as Vietnamese human rights abuses encompassed such areas as freedom of speech, press, assembly association, workers rights, and the ability to change the government.²¹² Until these human rights violations ceased, many individuals believed that the embargo should have remained.²¹³ From

206. General John Vessey stated that Vietnam had been bending over backwards to assist the United States in resolving the POW/MIA issue, but that only the facts will show if the cooperation was real. Stephen A. Holmes, *Envoy Says POW Evidence Undermines Old Russian Report*, N.Y. TIMES, Apr. 22, 1993, at A3. Once again, the efforts by Vietnam are judged by what they uncover rather than what they do to uncover it. *Id.* See also Acohido, *supra* note 6.

207. Douglas Pike, *Creeping Toward Relations in Southeast Asia*, *Legal Times*, Jan. 20, 1992, at 26.

208. *Id.*

209. *Id.* As stated by assistant Secretary of State for East Asian and Pacific Affairs Winston Lord: "I don't think any reasonable person could expect to have every last person accounted for before taking further steps [to normalize relations with Vietnam]." *U.S. Wants More Progress on MIA's Before Ending Vietnam Embargo*, *Lord Says*, *supra* note 6.

210. One of the main goals of the embargo was to achieve the fullest possible accounting of American POWs/MIAs. The present Vietnamese government is highly nationalistic and wary of compromise resulting from outside pressures. SUTTER, *supra* note 21, at 7. In light of this fact, the Asia-Pacific Council of American Chambers (APCAC) advised that the lifting of the embargo "could enhance progress in accounting for the soldiers MIA and POW." Gelston, *supra* note 9, at 5.

211. Acohido, *supra* note 6, at B6.

212. AHEARN & SUTTER, *supra* note 119, at 6. For example, freedom of religion has been repressed in Vietnam, but the Vietnamese government has been working to change this so as to accommodate foreign interests. *Id.* Also, no other support but that for the communist party is tolerated. *Id.*

213. *Id.*

this point of view, lifting the trade embargo would send the message of U.S. approval to the actions of Vietnam.

Such an argument is inapposite, however. The Vietnamese were and still are aware of the position taken by the United States, and are not likely to forget this stand simply because the trade embargo has been lifted. More important, now that the trade embargo is lifted, the United States may participate in transforming Vietnam into a country that better respects human rights.

C. *Lost Leverage*

Ross Perot, a 1992 Presidential candidate, was one of the strongest advocates for maintaining the trade embargo.²¹⁴ Specifically, he asserted that by lifting the trade embargo all leverage possessed by the United States over Vietnam would be lost²¹⁵ and consequently the United States would not have the ability to reach a resolution of the POW/MIA issue.²¹⁶ Perot further contended that the United States would be sending a message of condoning Vietnamese actions if the embargo was lifted.²¹⁷ Additionally, he expressed fears that Vietnam would use this lost leverage against the United States.²¹⁸ For example, Vietnam could demand the reconstruction aid promised by the United States under the Paris Peace Agreement of 1973 in exchange for their supplying information regarding American POW/MIAs.²¹⁹

Whether the trade embargo brandished a bargaining tool for the United States against Vietnam is questionable. For example, nineteen years ago, when the United States levied the trade embargo against Vietnam, the embargo was honored by the allies of the United States.²²⁰ Consequently, the embargo effectively inhibited Vietnam from attaining economic stability because Vietnam could not trade with the United States nor with any U.S. allies.²²¹ Immediately prior to the lifting of the embargo, however, the United States was the only country heeding the embargo.²²² The allies of the United States withdrew their

214. Frank Gaffney, *Back on a Slippery Vietnam Slope*, WASH. TIMES, Sept. 14, 1993, at A20. As a veteran himself, Perot wields great support among U.S. citizens, more specifically, among other veterans.

215. *Id.*

216. *Id.*

217. *Id.*

218. SUTTER, *supra* note 21, at 8.

219. Vecchi & Scown, *supra* note 1, at 8.

220. *Id.* at 22.

221. *Id.*

222. *Id.*

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support of the embargo after the withdrawal of Vietnamese troops from Cambodia, and took advantage of the exceptional opportunities for investment in Vietnam.²²³ In actuality, then, the embargo had little effect upon Vietnam because the U.S. companies were easily replaceable.²²⁴

D. Business Investments

Advocates of maintaining the trade embargo questioned whether economic benefits were possible from investment in Vietnam. Claiming that the Vietnamese market was unstable,²²⁵ these advocates asserted that the benefits gained would not outweigh the potential risks.²²⁶ Such risks included the constantly changing Vietnamese legal system, which had obvious affects upon applicable investment laws, as well as the established contracts, which were most often renegotiated.²²⁷ Also, although protections were provided to foreign investors, these protections were often intentionally vague.²²⁸ For example, the laws regulating investment in Vietnam were among the most liberal in Asia because the investor retained all profits.²²⁹ However, profits were unascertainable because the Vietnamese dong, the national currency, is not convertible.²³⁰ As a result, investors were forced to buy products to sell outside of Vietnam, or to leave most of the profits in Vietnam.²³¹ Additionally, although one hundred percent of foreign ownership was permitted, foreign owners had to hire labor through government agencies.²³² This requirement created an increase in prices for the investor because the laborers recruited through the government demanded higher wages.²³³ Thus, investment in Vietnam cost more than an initial glance would suggest.

223. *Id.*

224. *Now Shake Hands With Vietnam*, N.Y. TIMES, Sep. 17, 1993, at A28. See also *U.S. Chamber Calls For Lifting Embargo on Vietnam For Non-Strategic Activities*, Int'l Trade Daily (BNA) Apr. 26, 1991.

225. AHEARN & SUTTER, *supra* note 119, at 11.

226. *Id.*

227. *Id.*

228. *Id.* at 12.

229. *Id.*

230. AHEARN & SUTTER, *supra* note 119, at 12.

231. *Id.* Investors must be creative by buying Vietnamese products with their unconverted profits and selling the products outside of Vietnam to gain realized profits. *Id.* This may be accomplished by buying raw materials in Vietnam and selling them outside of the country, or exporting the middle products of production. *Investment in Vietnam*, 4 FLA. J. INT'L L. 231 (1989).

232. AHEARN & SUTTER, *supra* note 119, at 12.

233. *Id.*

Supporters of the embargo further argued that the conditions of the country were not conducive to business.²³⁴ Years of war and contention among the Vietnamese people left their countryside in a state of disarray, lending greater skepticism to economic benefits from investment in Vietnam.²³⁵ Prior to the lifting of the embargo and at present, the roads, airfields, communications lines, and electricity are all in poor conditions.²³⁶ Furthermore, supporters of the embargo emphasized that the fear of a reoccurring clash between China and Vietnam were real and valid concerns.²³⁷

In response to such arguments, opponents of the embargo reiterated that Vietnam was making great strides in reforming both its economic and political situation so as to stimulate its economy.²³⁸ In particular, Vietnamese efforts were apparent through the instigation of internal political change and economic reform, as well as a greater openness to foreign business and trade.²³⁹ Such efforts are discussed below.

1. *Political Reform.*—Even prior to the embargo's lifting, the Vietnamese Communist Party-dominated regime was slowly losing influence in Vietnam.²⁴⁰ In the late 1980s, the "Old Guard" generation communists²⁴¹ were slowly replaced by a new generation of more liberal leaders.²⁴² The Vietnamese launched a new economic reform program, *Doi Moi* (literally, renovation), to remove certain controls by state-run enterprises.²⁴³ This movement signaled an effort to decentralize the economy and place greater power within market forces.²⁴⁴ On December 18, 1986, Nguyen Van Linh became Secretary General.²⁴⁵ A seventy-one-year-old liberal economic reformist, Linh was the first powerful leader in Vietnam with no prior

234. *Id.*

235. *Id.*

236. *Id.*

237. *Investment in Vietnam*, *supra* note 231, at 284. A clash between Vietnam and China occurred at sea on March 14, 1988, which leaves the possibility of another clash in the future a valid concern. *Id.*

238. AHEARN & SUTTER, *supra* note 119, at 4.

239. *Id.*

240. *Id.* at 6.

241. The phrase "Old Guard" was coined to describe the strong communist leaders that reigned in Vietnam from the time of the takeover in South Vietnam in 1975 until the mid 1980s. *Id.* at 5.

242. SUTTER, *supra* note 21, at 6.

243. AHEARN & SUTTER, *supra* note 119, at 7.

244. *Id.*

245. *Foreign Investment Climate: Facts and Impressions*, E. ASIAN EXEC. REP., June 15, 1989, at 10 [hereinafter *Foreign Investment Climate*].

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ties to Ho Chi City.²⁴⁶ Along with these new liberal leaders came new reformist ideals.

From 1989 to 1991, the collapse of various communist regimes put a halt to the political reform in Vietnam. The Vietnamese, in a desperate effort to maintain and strengthen their communist beliefs, issued a new constitution in April 1992.²⁴⁷ This constitution reaffirmed the political monopoly of the Communist Party, and thus, no opposition to the Communist Party rule in Vietnam was condoned.²⁴⁸ Nonetheless, the control of the Communist Party over the Vietnamese economy was waning.²⁴⁹ Because of the capitalistic market economy that was being implemented in an effort to stimulate their present economy, the Communist party was being shunned.²⁵⁰ The fall of the Soviet Union and the withdrawal of its support from Vietnam should have left Vietnam potentially vulnerable. In addition, the trade embargo imposed by the United States should have added to this vulnerability. However, Vietnam still improved the situation of their economy,²⁵¹ looking to foreign investment to generate their economy.

2. *Economic Reform.*—Vietnam's reintegration into the world economy began in 1986 with the adoption of the "New Thinking" policy.²⁵² Under this policy, Vietnam created incentives to attract foreign investment.²⁵³ To further this economic reform, Vietnam imposed the Foreign Investment Laws [FIL] on December 29, 1987.²⁵⁴ The FIL indicated the growing desire of Vietnam to provide a liberal investment climate for foreign businesses.²⁵⁵ Under the FIL, foreign businesses are allowed to retain one hundred percent of their profits, maintain control of their companies, and give guarantees against nationalization.²⁵⁶ Foreign companies are also given a four-year tax break on top of an import duty holiday.²⁵⁷ Although downfalls to the

246. *Id.* at 10. Ho Chi Minh is the former stronghold of the strict Communist Party and was the former capital of North Vietnam before North and South Vietnam became one united country. *Id.*

247. AHEARN & SUTTER, *supra* note 119, at 6.

248. *Id.* at 5.

249. *Id.*

250. *Id.*

251. *Vietnam's goal is to Attract Investment, supra* note 14.

252. *Ending Vietnam Trade Embargo Held Up by POW/MIA Accounting*, Int'l. Trade Daily (BNA) (Jan. 28, 1992) [hereinafter *Ending Vietnam Trade Embargo*].

253. *Id.*

254. *Foreign Investment Climate, supra* note 245, at 10.

255. *Id.*

256. *Ending Vietnam Trade Embargo, supra* note 252.

257. Burkholder, *supra* note 10, at 10.

system exist, such as the non-convertible Vietnamese dong, the FIL were considered to be the most liberal foreign investment laws in all of Asia.²⁵⁸ While foreign investment has been stimulated by these laws, the laws are far from perfect and many problems exist that need to be changed for future investments.²⁵⁹ More important, though, is that Vietnam is working to bring about these changes, and the transformations are readily apparent.

3. *Opportunities for Foreign Investment.*—Fears were expressed by the supporters of the trade embargo that the physical conditions of Vietnam were not conducive to business and investment. It is true that Vietnam is still a backward country.²⁶⁰ As a nation of seventy million people, Vietnam suffers from poverty due to a lack of resources resulting from decades of war, isolation, and mismanagement.²⁶¹ At an average of 220 dollars per year, the per capita income of Vietnam is one of the lowest in the world.²⁶² The country itself is in need of repair. Only ten percent of the roads are paved, one third of the bridges need to be rebuilt, and brownouts and electrical shortages are common.²⁶³ The attitude on the street is "anything goes if it improves economic conditions for the people [of Vietnam]."²⁶⁴ With President Clinton lifting the block against assistance from IMF, and the added support offered from France and Japan, Vietnam is now better equipped to improve its countryside for business. Money for reconstruction of roads, businesses, and other such necessities is now attainable.

Vietnam has made substantial strides toward full recovery from their depressed state in recent years. Though still under the yoke of communism, Vietnam has adopted a free market for foreign investment in an effort to break out of poverty.²⁶⁵ As a result, foreign investment in Vietnam in 1991 was 1.4 billion dollars, which exceeded total investment during the past three years combined.²⁶⁶ Vietnam's

258. SUTTER, *supra* note 21, at 8.

259. *Foreign Investment Climate*, *supra* note 245, at 10. Areas within the FIL that need to be improved include operations and management of enterprises, repatriation of profits and capital, taxation, import licensing and customs procedures, foreign exchange and labor relations. *Id.*

260. Terry McDermott, *Vietnam MIA documents Could Influence Embargo Decision*, *Int'l Trade Daily* (BNA) (Sept. 10, 1993).

261. *The Big Buildup Begins*, *supra* note 10, at H1.

262. *Id.*

263. McDermott, *supra* note 260, at A1.

264. *Foreign Investment Climate*, *supra* note 245, at 10.

265. *The Big Buildup Begins*, *supra* note 10, at H1.

266. Ajoy Sen, *U.S. Firms Prepare Vietnam Investment — Hanoi*, *REUTER LIB. REP.* (Singapore), Oct. 29, 1992.

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economy grew at a rate greater than eight percent in 1992, even in light of the loss of over 1.8 billion dollars in support from the Soviet Union.²⁶⁷ Recently, Vietnam has experienced an agricultural renaissance, achieving the status of the third largest exporter of rice in the world.²⁶⁸ Consequently, in 1992, Vietnam achieved its first trade surplus since its "independence."²⁶⁹ Thus, boasting a growth rate of eight percent per year with a moderate inflation rate and no international aid, Vietnam has succeeded in virtually stabilizing its economy.²⁷⁰

Furthermore, the possibilities for investments and exploitation of the natural resources in Vietnam are endless. A significant amount of natural resources, most specifically petroleum, gas, and mineral deposits, await exploration in Vietnam.²⁷¹ Additionally, Vietnam has the benefit of an unbeatable strategic location. At the edge of Southeast Asia and with nearly one half of its border as shoreline, the possibilities for U.S. companies are endless.²⁷² This potential for investment and profit has attracted foreign business, and the eagerness of Vietnam to open its doors to foreign investment has allowed Vietnam to reach agreements in over 394 foreign investment projects from 1988 through 1992.²⁷³ Nearly three billion dollars have been committed to Vietnam in foreign investment.²⁷⁴

The economy of Vietnam is presently expanding at a rapid rate, and although Clinton down-played the economic aspects of the lifting of the trade embargo, the possibilities now open for U.S. businesses in Vietnam are extensive. Indeed, because Vietnam possesses great economic potential, fears are voiced that someday Vietnam may become the new "Asian Dragon."²⁷⁵ In fact, prospects for a rapid economic development are actually better in Vietnam than they had been in

267. McDermott, *supra* note 260, at A1.

268. Charles P. Wallace, *Staking a Claim in Vietnam; A Hardy, Young Band of American Entrepreneurs is Camping Out in Hanoi: They're Betting The U.S. Will Lift its Trade Embargo Soon, Giving Them an Inside Track to One of Asias Blossoming Markets*, L.A. TIMES, May 12, 1993, at A1.

269. *Id.*

270. *Id.*

271. SUTTER, *supra* note 21.

272. Jan Yupcavage, Readjustment Counseling Therapist asserts that in 1985, Vietnams beach front property sold for \$40,000 per acre. Today the same piece of property is worth over a million dollars. Says Yupcavage, a veteran himself: "We should have been there." Interview with Jan B. Yupcavage, Readjustment Counseling Therapist of the Vet Center in Harrisburg, PA (October 20, 1993).

273. *The Big Buildup Begins*, *supra* note 10, at H1.

274. AHEARN & SUTTER, *supra* note 119, at 8.

275. Burkholder, *supra* note 10, at 10.

China.²⁷⁶ Now, U.S. citizens and corporations have general authorization to engage in direct transactions involving most Vietnamese assets or entities.²⁷⁷ These wide range of possibilities for U.S. citizens include, but are not limited to direct investments, travel-related transactions, asset transfers, brokering transactions, infrastructure projects, telecommunications, financial services, and consumer products.²⁷⁸ Hence, although the economy may not be one hundred percent stable today, the United States must take the opportunity to invest now, and the lifting of the embargo affords such an opportunity.

V. Conclusion

As a result of the Vietnamese compliance with the demands set forth by the United States, the time had come for the United States to lift the trade embargo it imposed on Vietnam since 1975. At the time of its lifting, the trade embargo offered inconsequential leverage to force Vietnamese compliance with U.S. demands, for the United States was the only country backing this embargo.²⁷⁹ As U.S. companies and technology were easily replaced, the United States only hindered itself by maintaining the trade embargo.²⁸⁰

Now, with this open trade with Vietnam, the possibilities for the United States are endless, and are growing with each new ease on trade. Most important, the lifting of the embargo will promote cooperation and familiarity between the two countries, allowing further advances in both resolving the POW/MIA situation and influencing Vietnam to end its human rights abuses.²⁸¹

The purpose of the U.S. participation in the Vietnamese war was to make South Vietnam safe for capitalism. Thus, no better tribute exists than to undermine the Vietnam of yesterday by supporting the capitalistic Vietnamese economy of today.

Beth Castelli

276. Golin, *supra* note 172, at 63, 65. The Vietnamese people located in the active commercial sections of Vietnam possess sophisticated business skills. *Id.* This is a benefit that the Chinese did not hold. *Id.* In addition, Vietnam has had the example of China from which to learn. *Id.*

277. Bravin *supra* note 176, at S6.

278. CLINTON LIFTS VIETNAM EMBARGO, *supra* note 165. See also Bravin, *supra* note 176.

279. Bravin, *supra* note 176.

280. "Our trade embargo no longer denies Vietnam of goods and services, it only denies Vietnam of American goods and services. In this day of growing trade deficits and high unemployment, it makes little sense to keep America out of promising markets." *Murkowski Offers Legislation*, *supra* note 166.

281. *Kerry Says Vietnam MIA Documents Could Influence Embargo Decision*, Int'l. Trade Daily (BNA) (Sept. 10, 1993).