

ARTICLE

The Limits of Vietnam’s Incrementalism towards the Abolition of Capital Punishment for Drug Offenses

Tien Duc Nguyen* and Thu Thuy Thi Tran**

Institute of State and Law, Vietnam Academy of Social Sciences; University of Campania ‘Luigi Vanvitelli’ and Public International Law Division, Hanoi Law University

Corresponding author. E-mail: ng.tien.duc@gmail.com

(First published online 16 September 2022)

Abstract

International law has ruled out the application of the death penalty on drug offenses. Despite failure to meet the threshold to be categorised as one of the ‘most serious crimes’, the practice of capital punishment for drug offences in many parts of the world continues to dismay human rights activists and practitioners. This article aims to exhibit a dynamic view on drug offences under Vietnamese law. It contends that the nation’s understanding of the severity of drug offences has witnessed incremental changes corresponding with international standards, although not completely compatible. Drawing on comparative scholarship, the article then moves on to ask whether there is any room left for the total abolition of capital punishment for drug offences. It suggests that Vietnam’s incrementalism towards abolition has reached its bounds. Renovation in the understanding on the severity of drug crimes is very much needed to re-fuel the abolitionist movement in the country.

Introduction

For the abolitionist movement against the death penalty, Asia, home to the majority of mankind, is seen as ‘the next frontier’.¹ The region’s strong resistance to change arouses great interest of not only practitioners but also scholars in a bid to understand what the main causes are and how to rectify the status quo. This makes the continent a crucial laboratory for abolitionism. The trajectory of the death penalty in Asia will unveil whether the campaign against the state killing that has gained momentum since World War II is truly a global phenomenon.

With regard to capital drug offences, Southeast Asian nations are notorious for their zero-tolerance approach. Specifically, eight out of eleven countries retain the death penalty for drug-related offenses. The high number of death sentences for drug criminals and executions in those countries during 2015–2019 are a serious provocation to the global abolitionist movement.²

*Research fellow, Institute of State and Law, Vietnam Academy of Social Sciences; PhD Candidate, University of Campania ‘Luigi Vanvitelli’, Italy. The authors would like to thank the Editors of the Asian Journal of Comparative Law and the anonymous reviewers for constructive and helpful comments on various drafts of this article. Special thanks to Mr. Shazny Ramlan for superb editing assistance, professionalism, and care.

**Lecturer (LLM), Public International Law Division, Hanoi Law University.

¹David Johnson & Franklin Zimring, *The Next Frontier: National Development, Political Change, and the Death Penalty in Asia* (Oxford University Press 2008).

²See Amnesty International’s annual global report series Death Sentences and Executions for the years 2015 (Amnesty International ‘Death Sentences and Executions Report 2015’ <<https://www.amnesty.org/en/documents/act50/3487/2016/en/>> accessed 2 Jun 2022); 2016 (Amnesty International, ‘Death Sentences and Executions 2016’ <<https://www.amnesty.org/en/documents/act50/5740/2017/en/>> accessed 2 Jun 2022); 2017 (Amnesty International, ‘Death Sentences and Executions 2017’ <<https://www.amnesty.org/en/documents/act50/7955/2018/en/>> accessed 2 Jun 2022); 2018 (Amnesty International,

Those countries could be grouped into three categories: Abolitionist (Cambodia, the Philippines, Timor-Leste); De facto abolitionist (Brunei Darussalam, Lao PDR, Myanmar); Retentionist (Indonesia, Malaysia, Singapore, Thailand, Vietnam). While not all of them carry out executions of drug offenders in practice, a commonality among these nations is that drug-related offenses are considered the most serious crimes. Hence, in their view, drug offenses should be punishable by the death penalty. This interpretation of international law, however, is ill-founded.³

Death penalty for drug offenses frequently tops the international agenda. In response to robust calls for its abolition, a United Nations General Assembly's moratorium resolution was passed resoundingly on 17 November 2020 with 120 nations voicing support.⁴ For its part, three Southeast Asian nations (Cambodia, Malaysia, Philippines) explicitly endorsed the resolution, while Singapore and Brunei voted against it; the rest abstained. The moratorium vote denotes the common view of the international community against the application of the death penalty. Also, it demonstrates Southeast Asian countries' obsession with the death penalty, despite tireless efforts for change.⁵ Evidently, there is much work to be done before Southeast Asian countries can give up their appetite for capital punishment.

The structure of this article consists of three main parts. The proceeding section will provide the starting point from the perspective of international law and Vietnamese criminal law. It reaffirms that the application of the death penalty is subject to very rigorous safeguards as provided under international human rights law. Accordingly, drug offenses do not meet the thresholds of the 'most serious crimes'. This is a dynamic process of learning and opinion-shifting, rather than an abrupt change. This dynamic change is also witnessed in the case of Vietnam. The country has made effort to restrict the use of capital punishment on drug offenders, moving closer to be in line with international law. This shift is made incrementally alongside the process of international socialisation and the willingness to reshape its punitive approach to drug offences. Drawing on comparative scholarship, the section thereafter probes the question of whether there is any room left for the abolition of capital punishment for drug crimes. It concludes that although many factors relevant in other countries on this subject-matter bear little relevance to Vietnam's current context, but the total abolition of capital punishment for drug crimes is possible, albeit slim. Concluding remarks will be provided with key recommendations for Vietnam if capital drug crimes remain in its law.

The focus of this article is the death penalty for drug crimes. In the interest of clarity, an advocate for the abolition of capital drug offenses would denote reductionism rather than abolitionism. However, even reductionism may help spark the spill-over effect on the death penalty practice. Murder and drug offenses attracts most of the death sentences meted out in Vietnam's justice system. This is in part owed to the widely-held belief that those are heinous and punishable by death for the purposes of deterrence. Rethinking the seriousness of drug crimes can possibly (and hopefully) give rise to a grander discourse on the death penalty and its deterrent effect in the Vietnamese context.

'Death Sentences and Executions 2018' <<https://www.amnesty.org/en/documents/act50/9870/2019/en/>> accessed 2 Jun 2022); 2019 (Amnesty International, 'Death Sentences and Executions 2019' <https://www.amnesty.org/en/documents/act50/1847/2020/en/>> accessed 2 Jun 2022) and 2020 (Amnesty International, 'Death Sentences and Executions 2019' <<https://www.amnesty.org/en/documents/act50/3760/2021/en/>> accessed 2 Jun 2022); Cornell Center on the Death Penalty Worldwide 'Database' <<https://deathpenaltyworldwide.org/database/>> accessed 2 Jun 2022.

³Office of the UN High Commissioner for Human Rights (OHCHR) Regional Office for South-East Asia, 'Drug-related Offenses, Criminal Justice Responses and the Use of the Death Penalty in South-East Asia' (2018) <<http://files.server.idpc.net/library/drug-offences-death-penalty-in-south-east-asia.pdf>> accessed 31 Jan 2022.

⁴UN General Assembly, Moratorium on the use of the death penalty, 26 Feb 2020, A/C3/75/L41 <<https://undocs.org/A/C.3/75/L.41>> accessed 1 Feb 2022.

⁵Sebastian Strangio, 'Explaining southeast Asia's addiction to the Death Penalty' (The Diplomat, 25 Nov 2020) <<https://thediplomat.com/2020/11/explaining-southeast-asias-addiction-to-the-death-penalty/>> accessed 1 Feb 2022.

The Dynamics of International Law and Vietnam's Law on Capital Drug Crimes

International Law and the Abolition of the Death Penalty on Drug Crimes: A Big-bang Moment or Progressive Learning?

Although the question of whether international law forbids the imposition of the death penalty on drug crimes is settled, there is a need to briefly review the development of international standards on this issue for the purpose of discussing a possible change in the case of Vietnam.

To start with, human right to life is protected under the international bill of rights. As a legally binding document, Article 6 of the *International Covenant on Civil and Political Rights* (ICCPR) protects everyone's inherent right to life as well as impose legal limits on the application of the death penalty. Despite abolitionist efforts during the drafting process of the ICCPR,⁶ the proposal did not solicit sufficient support, though the attempt was not entirely fruitless as it resulted in a compromise between the abolitionist and retentionist camps.⁷

The threshold for the application of the death penalty is entrenched in Article 6(2) concerning 'the most serious crimes'. At the time of entrenchment, it was an innovation because flexibility was given to states to interpret the limitation provided their national circumstances. Yet this has also become a source of intense controversies due to the generic and ambiguous scope of the term. Many states availed themselves of this leeway to justify the retention of capital drug crimes while repelling the propensity for abolitionism.⁸ Singapore is a typical example. Facing relentless criticisms from the international community, it vehemently rejects the narrow interpretation of 'the most serious crimes' which excludes drug crimes.⁹ It follows that a large number of countries still hold the view that drug offenses satisfy the threshold of this category.

To rewind a bit, the UN Human Rights Committee's (HRC) early view on capital drug crimes was ambivalent. In country reports, the body implied that the use of the death penalty against drug trafficking was not incompatible with the spirit of Article 6(2) of the ICCPR. For example, while Bolivia's imposition of death sentences on drug crimes came to the attention of the HRC, the body omitted when addressing the country's report.¹⁰ One of the very first documents for condensation of the body's view on the application and interpretation of the ICCPR, the 'General Comment No. 6' of 1982, touched upon the right to life. Regrettably, the Committee did not address the term 'most serious crimes' in details.¹¹ This opened the floodgate for member states to advance their own classification of crimes, justifying the zero-tolerance approach to drug offenses.

Together with the development of international law and increasing assertiveness, the HRC have repeatedly voiced its opposition against capital drug crimes. The HRC has made it clear that 'drug-related offenses' do not meet the threshold of 'most serious crimes' within the ambit of Article 6(2).¹² To put the quarrel to bed, the HRC's 'General Comment No. 36' of 2019 on the

⁶For example, see the amendment made by Uruguay and Colombia (UN Doc A/C3/L644) during the drafting of the ICCPR as discussed in: UN General Assembly, 'Agenda Item 33: Article 6 on the Draft Covenant on Civil and Political Rights (E/2573, Annex I B) (continued)', UN Doc A/C3/SR814 (19 Nov 1957) <<https://digitallibrary.un.org/record/863164?ln=en>> accessed 8 Jun 2022.

⁷William A Schabas, *The Abolition of the Death Penalty in International Law* (Cambridge University Press 2002) 96.

⁸Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary* (2nd rev edn, Engel 2005) 141.

⁹Ministry of Home Affairs, 'Singapore-The Death Penalty: A Hidden Toll of Executions' (Press Release, 30 Jan 2004) <<https://www.nas.gov.sg/archivesonline/speeches/record-details/77734712-115d-11e3-83d5-0050568939ad>> accessed 7 Jul 2022.

¹⁰UN General Assembly, 'Report of the Human Rights Committee', UN Doc A/44/40 (29 Sep 1989), 95 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N89/229/15/IMG/N8922915.pdf?OpenElement>> accessed 2 Jun 2022 (Bolivia's country report). See also *ibid* paras 507–508 (Mauritius' country report).

¹¹See UN Human Rights Committee, 'CCPR General Comment No 6: Article 6 (Right to Life)' (30 Apr 1982) <<https://www.refworld.org/docid/45388400a.html>> accessed 2 Jun 2022.

¹²See eg, UN Human Rights Committee, 'Concluding Observations, Sri Lanka', CCPR/C/79/Add.56 (27 Jul 1995), para 14 <https://www.hr-dp.org/files/2014/03/07/Sri_Lanka_-_1995.pdf> accessed 2 Jun 2022; UN Human Rights Committee, 'Concluding Observations, Thailand', CCPR/CO/84/THA (8 Jul 2005), para 14 <<https://www.refworld.org/docid/43f2ff76a.html>>; see also UN Human Rights Committee, 'Concluding observations on the second periodic report of Thailand',

right to life explicitly pronounces that the category of ‘the most serious crimes’ must be interpreted restrictively and correspond only to those of extreme gravity such as intentional killing.¹³ Hence, regardless of divergent understandings on the severity of drug crimes, the HRC is of the view that without an intention to cause loss of human life the gravity of such crimes do not amount to the category of the ‘most serious crimes’ and should not be punishable by death.¹⁴ The imposition of the death penalty on drug crimes is thus incongruous with Article 6 of the ICCPR.

Despite the explicit call for the abolition of capital punishment for drug crimes, an elephant in the room is that the authority of the outputs produced by treaty-based bodies is subject to controversy. One of the main contentions is that the instruments of treaty-based bodies, the HRC for example, are void of legal force.¹⁵ In the traditional school of international law, states assume interpretative responsibility, thus *their* definition of ‘most serious crimes’ trumps that of the HRC.¹⁶ It is unnecessary to address this debate in length here. Clearly, the view above continually demonstrates the state-centric approach to international law and treaty interpretation. It fails to adequately factor in non-state actors’ interests and understanding of international law, as well as that of other relevant actors, to ensure the implementation of international law.

For what it is worth, the obscurity of legal binding value does not deprive the HRC’s outputs of their legitimacy.¹⁷ On the contrary, the Committee’s interpretation still enjoys legitimacy for its standing – as the only body tasked with interpreting the Covenant – and pluralist drafting process.¹⁸ We subscribe to John Tobin’s thesis of the ‘interpretive community’ where states are central – but

CCPR/C/THA/CO/2 (25 Apr 2017), para 17 <<https://www.ohchr.org/en/documents/concluding-observations/ccprthaco2-concluding-observations-second-periodic-report>> accessed 2 Jun 2022. This view is also held by the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, who on several occasions reminded States that international law ‘requires that capital punishment for drug trafficking be abolished and that death sentences already imposed for drug trafficking be commuted to prison terms.’ See UN Human Rights Council, ‘Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston – Addendum’, A/HRC/11/2/Add1 (29 May 2009), 188 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/136/62/PDF/G0913662.pdf?OpenElement>> accessed 2 Jun 2022. In 2008, in their letter to the UN Commission on Narcotic Drugs (the UN’s drug policy-making body), the Special Rapporteurs on Torture and the Right to Health suggested that the ‘weight of opinion indicates clearly that drug offenses do not meet the threshold of “most serious crimes” to which the death penalty might lawfully be applied’. See ‘UN Human Rights Experts Call upon CND to Support Harm Reduction: Letter to the Commission on Narcotic Drugs from UN Special Rapporteurs’ (Human Rights Watch, 10 Dec 2008) <<https://www.hrw.org/news/2008/12/10/un-human-rights-experts-call-upon-cnd-support-harm-reduction>> accessed 5 Feb 2022.

¹³See UN Human Rights Committee, ‘General Comment no 36, Article 6 (Right to Life)’, CCPR/C/GC/35 (3 Sep 2019), para 35 <<https://www.refworld.org/docid/5e5e75e04.html>> accessed 5 Feb 2021.

¹⁴*ibid.*

¹⁵See generally *Kavanagh v Governor of Mountjoy Prison* [2001] IEHC 77. In that case, the High Court of Ireland suggested that the HRC’s outputs have nothing more than the moral authority. Some commentators opine that the Committee’s outputs are of recommendatory nature, see eg, Dominic McGoldrick, *The Human Rights Committee – Its Role in the Development of the International Covenant on Civil and Political Rights* (Cambridge University Press 1991) 347; Makau wa Mutua, ‘Looking Past the Human Rights Committee: An Argument for De-Marginalizing Enforcement’ (1998) 4 Buffalo Human Rights Law Review 231.

¹⁶This view was advanced by the United States in its 2006 dialogue with the Human Rights Committee that ‘only the parties to a treaty were empowered to give a binding interpretation of its provisions.’ UN Human Rights Committee, ‘Summary Record of the 2380th Meeting: Consideration of Reports Under Article 40 of the Covenant: Second and third periodic reports of the United States of America’, UN Doc CCPR/C/SR2380 (27 Jul 2006), 8 <http://www.bayefsky.com/summary/usa_ccpr_c_sr_2380_2006.pdf> accessed 2 Jun 2022.

¹⁷Legal legitimacy is distinct from normative legitimacy. While the former flows from a legal source, the latter is concerned with whether the contents of the General Comments are sufficiently persuasive to induce compliance. For further analysis, see Daniel Bodansky, ‘The Legitimacy of International Governance: A Coming Challenge for International Environmental Law?’ (1999) 93 American Journal of International Law 596, 604.

¹⁸Helen Keller & Leena Grover, ‘General Comments of the Human Rights Committee and their legitimacy’, in Helen Keller & Geir Ulfstein (eds), *UN Human Rights Treaty Bodies: Law and Legitimacy* (Cambridge University Press 2012) 127–192.

not exclusive – actors in treaty interpretation.¹⁹ Apart from states, non-state actors, especially treaty-based bodies, have their stake in carving out and attributing a meaning to relevant human rights. A human rights norm does not necessarily hold *the* determinate meaning. Rather, the accepted meaning of a human right will be that which ‘attracts and achieves dominance over all other alternative understandings within the relevant interpretive community.’²⁰ This creates way for an evolutionary interpretive process where new understandings of any human right will arise over time.²¹ More than merely giving or communicating a meaning, the HRC’s interpretation should be seen as a dialogical process in which actors engage and seek to persuade the interpretive community to adopt a norm. It serves as an act of persuasion, ‘an attempt to convince the relevant interpretive community that a particular meaning from within a suite of potential meanings is the most appropriate interpretation to adopt.’²² This denotes a communitarian model of international law which ‘vindicates values and pursues interests which cannot be said to be strictly an aggregation of distinct national interests.’²³

In this light, General Comment No. 36 is seen as an embodiment of that learning process, in which the HRC has gathered sufficient evidence to express its evolutionary view on capital punishment for drug crimes and the international consensus on this matter.²⁴ That, despite the ‘zero-tolerance’ grounds for this punishment, retentionist States still see a rise in drug trafficking.²⁵ Take Indonesia as an example: the deterrence effect of capital punishment was brought into question given that the high profitability of engaging in the drug trade continued to worsen the problem.²⁶ In addition, a grave concern stands as drug traffickers are just the tip of the iceberg, and drug lords remain in the periphery.²⁷ As a result, the kingpins continue to benefit on the back of the vulnerable. According to a 2007 UN General Assembly resolution, ‘there is no conclusive evidence of the deterrent value of the death penalty and that any miscarriage or failure of justice in the

¹⁹John Tobin, ‘Seeking to Persuade: A Constructive Approach to Human Rights Treaty Interpretation’ (2010) 23 *Harvard Human Rights Journal* 201, 204.

²⁰*ibid* 207.

²¹It is axiomatic that the treaty-based bodies’ interpretation must meet certain quality requirements in order to attain normative legitimacy. Four criteria should be met include (1) the interpretation must be principled, (2) the body’s reasoning must be clear, practical, and coherent, (3) they are consistent with obligations under international law, and (4) contextual sensitivity to each State and the international legal order. See Tobin (n 19).

²²Tobin (n 19) 207

²³Joseph Weiler, ‘Prolegomena to a Meso-theory of Treaty Interpretation at the Turn of the Century’ (Paper presented at the NYU Institute for International Law and Justice Legal Theory Colloquium ‘Interpretation and Judgment in International Law’, NYU Law School, 14 Feb 2008) 16, cited in Tobin (n 19) 209.

²⁴There is scant evidence in other international treaties to suggest drug offenses deserves to be regarded as ‘the most serious crimes’, those concerning international criminal law. As observed by William Schabas, ‘international crimes’ are so heinous that they touch upon the concerns of the international community. This category includes genocide, crimes against humanity, war crimes and the crime of aggression, and shall be subject to the jurisdiction of the International Criminal Court (ICC). To be sure, during the drafting process of the Rome Statute, the backbone document of the ICC, there were various attempts to include drug offenses within the ICC’s jurisdiction. However, such attempts failed to garner support from the international community, and its insertion was eventually set aside. This failure indicates a lack of consensus on the definition of drug offenses and their seriousness under international criminal law. See William A Schabas, *An Introduction to the International Criminal Court* (Cambridge University Press 2011) 69. Further, State practice and laws on capital drug offenses are far from coherent and clear to produce a binding customary norm. The definition of drug offenses diverges considerably even in the legislation of retentionist countries. Rick Lines has concluded that the divergent thresholds for a capital drug offense in national legislations reflect the disagreement and incoherence among retentionist countries on whether drug offenses are indeed of the most serious nature. This suggests a lack of general consensus at best, and arbitrariness at worst, in the making of drug laws and policies at the national level. See Rick Lines, ‘A “Most Serious Crime?” – The Death Penalty for Drug Offenses and International Human Rights Law’ (2010) 21 *Amicus Journal* 21.

²⁵Sidney Harring, ‘Death, Drugs and Development: Malaysia’s Mandatory Death Penalty for Traffickers and the International War on Drugs’ (1991) 29 *Columbia Journal of Transnational Law* 365–401.

²⁶Colman Lynch, ‘Indonesia’s Use of Capital Punishment for Drug Trafficking Crimes: Legal Obligations, Extralegal Factors, and the Bali Nine Case’ (2009) 40 *Columbia Human Rights Law Review* 523, 523–527. See also International Narcotics Control Board (INCB), *Report of the International Narcotics Control Board for 1994* (United Nations 1995).

²⁷Michael Hor, ‘Misuse of Drugs and Aberrations in the Criminal Law’ (2001) 13 *Singapore Academy of Law Journal* 54.

implementation of the death penalty is irreversible and irreparable.²⁸ As also noted by the Human Rights Council, capital punishment for drug offenses are disproportionately punitive with little evidence to buttress its aim of deterring their commission.²⁹ Therefore, proponents of capital punishment should consider it, to quote Roger Hood, ‘useless cruelty’.³⁰

Vietnam’s Incrementalism Towards the Abolition of Capital Punishment for Drug Crimes

The nascent state of Vietnamese criminal law was mainly driven by class struggle. In 1945, the nation under the leadership of the Vietnamese Communist Party succeeded in declaring its independence from the French coloniser. Amidst the volatility of the war for independence, the newly-born State of Viet Nam was predetermined to keep all French-made legal documents in place, including the Criminal Code, because of a lack of resources for building a brand-new comprehensive criminal system. Subsequently, the State quickly adopted a harsh stance against crimes, especially counter-revolutionary elements and the bourgeois, in an attempt to protect the fruit of the proletarian revolution and also ensure a crime-free communist ideal.³¹ Death sentences were deemed a ‘necessary evil’ to that end. Against that backdrop, the number of capital crimes from 1945 to 1959 rose to 53.³² Between 1959 and 1985, this number dropped to 35 due to the suspension of colonial law.

Ten years after national reunification, Vietnam enacted a comprehensive criminal code in 1985.³³ Still bearing a strong imprint of class struggle, compounded with major socio-economic change, the 1985 *Criminal Code* reserved death sentences for 44 crimes, making up for 20.5 per cent of the Code’s 216 provisions – an 25 per cent compared to the Code’s predecessor.³⁴ As suggested by John Quigley, the use of the death penalty in Vietnam during this time was profoundly shaped by its political ideology and economic circumstances.³⁵

For drug-related offenses, the Vietnamese regime adopted a distinct approach.³⁶ This is evinced by the fact that the Code imposed the death sentence on one drug crime only, namely for organising the illegal use of narcotic drugs (Article 207), which was characterised as a ‘very serious’ crime under the chapter titled ‘Offenses Against Public Order’. Nevertheless, the perils of rampant drug-related activities made law-makers rethink their approach, and in 1989 the Code was amended to introduce the death penalty for a wide range of drug crimes including for the illegal production,

²⁸UN General Assembly, ‘Moratorium on the use of the death penalty’, A/RES/62/149 (18 Dec 2007) <<https://undocs.org/en/A/RES/62/149>> accessed 1 Feb 2022.

²⁹See UN General Assembly, ‘Moratorium on the use of the death penalty: Report of the Secretary-General’, A/73/260 (27 Jul 2018) para 60. See also UN Human Rights Council, ‘Question of the death penalty: Report of the Secretary-General’, A/HRC/33/20 (12 Jul 2016) para 62; UN General Assembly, ‘Moratorium on the use of the death penalty’, A/RES/71/187 (19 Dec 2016) (see seventh preambular paragraph); Roger G Hood, *The Question of the Death Penalty and the New Contributions of the Criminal Sciences to the Matter: A Report to the United Nations Committee on Crime Prevention and Control* (UN Committee on Crime Prevention and Control 1988).

³⁰Roger Hood & Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (Oxford University Press 2008) 7.

³¹John Gillespie, ‘Changing Concepts of Socialist Law in Vietnam’, in John Gillespie & Pip Nicholson (eds), *Asian Socialism Legal Change: The Dynamics of Vietnamese and Chinese Reforms* (Australian National University Press 2005); Maria Łoś, *Communist Ideology, Law and Crime: A Comparative View of the USSR and Poland* (Macmillan Press 1988).

³²Tran Kien & Vu Cong Giao, ‘The Changing Nature of Death Penalty in Vietnam: A Historical and Legal Inquiry’ (2019) 9 *Societies* 7.

³³John Quigley, ‘Vietnam at a Legal Crossroads Adopts a Penal Code’ (1988) 36 *American Journal Comparative Law* 351; Phuong-Khanh T Nguyen, ‘The Criminal Code of the Socialist Republic of Vietnam’ (1987) 13 *Review of Socialist Law* 103, 103–105.

³⁴In the 1985 Criminal Code, the death penalty was provided in 29 articles, making up for 15% out of the total 195 articles on crimes. However, after four amendments (1989, 1991, 1992, and 1997), the number of articles providing for the death penalty under the 1985 Criminal Code had grown considerably.

³⁵John Quigley, ‘Vietnam’s First Modern Penal Code’ (1988) 9 *Journal of International Comparative Law* 143.

³⁶Hoa Phuong T Nguyen & Gregory L Rose, ‘Criminalization of Drug Trafficking in Vietnam: Developments and Challenges’ (2016) 29 *Columbia Journal of Asian Law* 146.

stockpiling, transport, and trading in narcotics (Article 96a) which was provided in the chapter on ‘Offenses Against National Security’. In 1997, the Code was amended for a second time to introduce two more drug crimes punishable by death: the illegal appropriation of narcotics (Article 185e) and coercing and inducing other persons into the illegal use of narcotics (Article 185m). This amendment also aggravated the punishment for the illegal use of narcotics by imposing the death penalty (Article 185i). Strikingly, drug crimes were addressed in a separate chapter from other categories of crimes, namely ‘Drug-related Offenses’. Declassifying drug crimes from being concerns of national security have strong implications since that category was normally characterised as concerning the most serious crimes that are punishable by death. The introduction of a new chapter on drug-related offenses denoted that, in the view of the legislators, drug crimes were of a different nature. Ever since then, the chapter on drug crimes has been maintained in later criminal codes.

Nevertheless, the use of the death penalty has witnessed a major decrease since 2000s. With the migration of new concepts such as ‘market economy’, ‘the rule of law’, and ‘human rights’, Vietnamese criminal law was given a new look. The underlying foundation of the death penalty shifted towards a more humane, human-rights-based stance as opposed to being primarily retributive.³⁷ Part of the reason to explain this departure is Vietnam’s attempt to mingle with the international community for strategic purposes. By making itself exposed to international law issues, including international dialogues about human rights,³⁸ the ruling party is incentivised to play by commonly-recognised rules. To put changes in motion, the Party’s Political Bureau issued two important normative documents, ‘Resolution No. 08 on Forthcoming Principal Judiciary Tasks’ (2002) and ‘Resolution No. 49 on Judiciary Reform up to 2020’ (2005). These resolutions were issued with a view to gradually reduce the use of the death penalty.³⁹ This development should be seen in light of Vietnam expressing its willingness to be bound by international human rights treaties in 1982, particularly the ICCPR.⁴⁰

This reductionist trend made incremental progress. The 1999 *Criminal Code* that replaced its 1985 predecessor, comprised 24 chapters and 267 provisions, was a progressive, albeit minor, step toward the abolition of the death penalty, especially for drug-related offenses. Accordingly, the death penalty no longer applied to the crime of coercing and inducing other persons into illegal use of narcotics (Article 200). This Code was later amended in 2009, and the drafting process of the amendment was illuminating. Invoking the danger and interrelatedness of all drug crimes, many law-makers lambasted the proposal to split up the crime of ‘illegally stockpiling, transporting, trading in or appropriating narcotics’ into two provisions, ie, the crime of illegally stockpiling, transporting narcotics on the one hand, and the crime of illegally trading in or appropriating narcotics on the other.⁴¹ This was considered a step to reshape the punitive approach to each category – a basis for the abolition of the death penalty. But some law-makers strongly opposed the amendment and regarded the abolition of capital punishment for drug crimes as a ‘retrogression’ in light of drug

³⁷Tran & Vu (n 32) 1–5.

³⁸Tim Lindsey & Pip Nicholson, *Drugs Law and Legal Practice in Southeast Asia: Indonesia, Singapore and Vietnam* (Bloomsbury Publishing 2016) 272; See also Daniel Pascoe, ‘Explaining Death Penalty Clemency in the Socialist Republic of Vietnam from 1986 to 2015’ (2016) 10 *Vienna Journal on International Constitutional Law* 165. Pascoe argues that since the Đổi Mới reforms in 1986 the Executive has shown willingness to reprieve a large minority of prisoners sentenced to death through Presidential clemency, even though executions themselves have continued unabated.

³⁹In the context of Vietnam’s Party-State, the Party’s lines normally precede and pave the way for the State’s documents and their implementation. This is especially true in light of significant changes, reflecting the principle of the Viet Nam Communist Party’s leadership under Article 4 of the 2013 Vietnamese Constitution.

⁴⁰Hai Thanh Luong, ‘The Application of the Death Penalty for Drug – Related Crimes in Vietnam: Law, Policy and Practice’ (2014) 17 *Thailand Journal of Law and Policy* <<http://thailawforum.com/articles/Vietnam-death-penalty.html>> accessed 2 Jun 2022.

⁴¹Tran & Vu (n 32) 16.

offenders' 'fiendish plot'.⁴² This proposal did not solicit enough support for approval. Regardless, the National Assembly managed to abolish capital punishment for the crime of organising the illegal use of narcotics, citing the State's refined understanding of 'most serious crimes' in light of international human rights law.⁴³ To justify the proposal, a Ministry of Justice delegate stated before the National Assembly that this proposal was the result of a thorough study and critical evaluation of three elements: the severity of the offense, the deterrent effect, and the global trend towards abolitionism and restriction of the death penalty.⁴⁴ Hence, drug crimes punishable by death under the amended 1999 Criminal Code was reduced from seven to five.

Another radical development was displayed by the change of the method of execution and the reclassification of offenders subject to the death penalty. The brutality of death by firing squad had been subject to heated public debates.⁴⁵ This led to the employment of lethal injections since 2011 as Vietnam's execution method so as to mitigate any adverse impacts on both death row inmates and the execution officers.⁴⁶

The reductionist trend became increasingly visible in recent times. The enactment of the *Constitution of the Socialist Republic of Vietnam 2013* ('the Constitution') was the founding stone for various legal reforms, including the *2015 Criminal Code*. As the human right to life was constitutionally entrenched for the first time,⁴⁷ the making of the constitution sparked scholarly interests in the tension between the inherent right to life and the practice of the death penalty in Vietnam, which then re-emerged in the drafting debate on the Code. Eighteen capital crimes were retained in the 2015 Code as they were characterised as the worst types of crimes. These include to crimes involving national security, murder, war crimes, crimes against humanity and drug-related crimes. For capital drug crimes, departing from its predecessor, the 2015 Criminal Code assigned different levels of seriousness to the crimes of stockpiling, transporting, trading, and appropriating narcotic drugs. It thus separates these crimes into three provisions. Notably, the death penalty can be imposed against the crimes of illegally producing narcotics (Article 248(4)), illegally transporting narcotics (Article 250(4)), and illegally trading narcotics (Art 251(4)), while the crimes of illegally stockpiling and appropriating narcotic drugs were exempt from the death penalty. Therefore, currently, there are only three capital drug crimes in Vietnam.

The drafting process of the new Criminal Code was indicative in that reductionism was fuelled by rule of law and human rights principles,⁴⁸ however rhetorical it was. In its explanatory report on the amendment of the 1999 Criminal Code, the Government showed readiness to renew the punitive approach to criminal punishment in order to strike a balance between deterrence and human rights protection as entrenched in the Constitution and the international human rights treaties to which Vietnam is a State-party.⁴⁹ In this vein, the human rights argument seemed to gain currency in the death penalty discourse. Also, it bears noting that the law-makers and the government appeared to be on the same side in terms of restricting the use of the death penalty and observing higher

⁴²Minh Thúy, 'Đại biểu Quốc hội tranh luận về án tử hình [The National Assembly Members Debate on the Use of the Death Penalty]' (VnEconomy, 14 Nov 2008) <<https://vneconomy.vn/doanh-nhan/dai-bieu-quoc-hoi-tranh-luan-ve-an-tu-hinh-2008111402395241.htm>> accessed 7 Feb 2022.

⁴³Tham ô, hối lộ sẽ không còn án tử hình? [Bribery and Corruption to Be Free from the Death Penalty?]' (Thư Viện Pháp Luật, 4 Apr 2009) <<https://thuvienphapluat.vn/tintuc/vn/thoi-su-phap-luat/thoi-su/-9588/tham-o-hoi-lo-se-khong-con-an-tu-hinh>> accessed 7 Feb 2022.

⁴⁴ibid.

⁴⁵Lindsey & Nicholson (n 38) 277–278.

⁴⁶Decree 82/2011/NĐ-CP on the Execution in the form of Lethal Injection, which is replaced by Decree 43/2020/NĐ-CP (8 Apr 2020); The Law on the Enforcement of Criminal Sentences 2019, art 82(1).

⁴⁷Vietnamese Constitution 2013, art 19.

⁴⁸Chính phủ, Tờ trình về dự án Bộ luật hình sự sửa đổi [The Government's Explanatory Report on the Amendment of the 1999 Criminal Code]' (Ban Quản lý Lăng Chủ tịch Hồ Chí Minh, 27 Apr 2015) <<https://www.bqlang.gov.vn/142-du-thao-bo-luat-hinh-su-sua-doi/4093-to-trinh-ve-du-an-bo-luat-hinh-su-sua-doi.html>> accessed 7 Feb 2022.

⁴⁹ibid.

Table 1. The Changes to Capital Drug Crimes in Vietnam's Criminal Codes

No.	1985 Criminal Code (Amended 1997)	1999 Criminal Code (Amended 2009)	2015 Criminal Code
1	Illegally producing narcotics Art 185(b)	Illegally producing narcotics Art 193(4)	Illegally producing narcotics Art 248(4)
2	Illegally stockpiling narcotics Art 185(c)	Illegally stockpiling, transporting, trading in or appropriating narcotics Art 194(4)	Illegally transporting narcotics Art 250(4)
3	Illegally transporting narcotics Art 185(d)	-	Illegally trading in narcotics Art 251(4)
4	Illegally trading in narcotics Art 185(d) ⁵⁰	-	-
5	Illegally appropriating narcotics Art 185(e)	-	-
6	Organizing the illegal use of narcotics Art 185(i)	-	-
7	Coercing, inducing other persons into illegal use of narcotics Art 185(m)	-	-

thresholds for its use in consideration of the global movement against capital punishment.⁵¹ Moreover, the list of those exempted from the death penalty should be expanded to exhibit the humanitarian nature in Vietnam's approach to criminal punishment.⁵² Besides this, recent concerns on miscarriages of justice have fuelled support for the abolition of the death penalty.⁵³ As Vu Cong Giao and Nguyen Thuy Duong have pointed out, miscarriage of justice takes shape in the use of torture and coercion into giving false confessions, officials' misconduct (ie, by prosecutors, police, or the members of the judiciary), inadequate legal representation, public or political pressure to expedite a case; and prejudice against drug offenders.⁵⁴ However, as shown below, against the backdrop of the popular and elites' support, it remains unclear as to whether this argument can gather steam in advancing the abolitionist trend in Vietnam.

The Abolition of Capital Drug Crimes in Vietnam: Hitting a Brick Wall?

This section now turns to examine how change towards abolition can be made in compliance with international law, and in particular, probe the question of whether there is any room left for the abolition of the death penalty in Vietnam. The first subsection investigates the agents required to foster this change, and the next subsection discusses the case of Vietnam. In general, this section demonstrates how Vietnam's

⁵⁰In English versions of the Criminal Code, this provision may be labelled as Article 185(dd).

⁵¹ibid.

⁵²ibid. Exceptions to the application of the death penalty extend to those under the age of 18 at the time of the commission of the crime, pregnant women and those with children under 36 months of age, persons aged 75 years and above: Criminal Code 2015, art 40(2).

⁵³Phạm Văn Beo, 'Xóa bỏ hay duy trì hình phạt tử hình đối với một số tội phạm cụ thể? [Abolition or Retention of the Death Penalty against Certain Offenses]' (2015) 20 *Journal of Legislative Studies* <<http://lapphap.vn/Pages/tintuc/tinchitiet.aspx?tintucid=208505>> accessed 21 Feb 2022.

⁵⁴Vu Cong Giao & Nguyen Thuy Duong, 'Criminal Justice or Criminal Injustice? Reflection from Debated Death Penalty Cases in Vietnam' (Paper presented at the 'Death Penalty in Asia: Law and Practice' Online Conference co-hosted by the University of Melbourne, Vietnam National University Hanoi School of Law, Anti-Death Penalty Asia Network (ADPAN) and Graduate Academy of Social Sciences, Vietnam, 18–19 Feb 2021) 9–10 <https://law.unimelb.edu.au/__data/assets/pdf_file/0007/3607189/Vu-Cong-Giao_Nguyen-Thuy-Duong.pdf> accessed 2 Jun 2022.

dialogical engagement with international actors has helped, to a certain extent, refine its understanding of capital drug crimes. However, its compelling effect on abolitionism remains to be seen.

The Determinants for Abolitionism

In recent times, the body of comparative scholarship on the practice of death penalty have been burgeoning. Relevantly, drawing on national trajectories, scholars have found a link between abolitionism and the emergence of certain catalysts.⁵⁵ These include political transformation, political leadership, economic development, the increasing awareness of human rights, external pressure, regional dynamics, and low execution rates.

First, political transformation indicates an abrupt moment when a country in the reconstruction process attempts to move away from its deplorable past.⁵⁶ In this light, the death penalty is considered an arbitrary device of the repressive establishment to silence critics. Adopting international human rights norms strengthens the newly instated regime's legitimacy and facilitates the transition process. South Africa is a textbook example of the abolition of capital punishment during the early stage of democratisation, and demonstrated the hope to untether itself from the heinous Apartheid regime. In contrast, Japan missed its opportunity for abolition as the ruling party's ideology (which supported capital punishment) remained strong even after its defeat in the Second World War; and the US, the helping hand in Japan, deemed it to not be a pressing issue at the time either.⁵⁷

Second, political leadership is an important element. Regardless of prevailing public opinion, leaders with progressive agendas are expected to reform criminal penalties.⁵⁸ However, top-down change would bring into question the democratic roots of that change. During the process of abolishing capital punishment, political leaders should facilitate the change of the people's perception towards this issue in order to consolidate support for reform.

Third, economic development is seen as a force driving countries away from the death penalty.⁵⁹ With the emergence of new social classes, economic development is arguably an important factor in pushing for more liberal reform. This development process also creates higher accessibility to education, which in turn can condition society to treat each other in a more tolerant and humane manner. However, quantitative studies have found no strong correlation between economic development and societal favourability of the death penalty.⁶⁰

The fourth recurring factor is the framing of the death penalty as a human rights issue, rather than a matter of criminal justice. This way of framing decentralises the exclusive power of a State in dictating on its criminal law and policy, and makes the death penalty a reputational issue. As the jurisprudence of UN and treaty-based bodies become crystal clear with regard to drug offenses, States are faced with the dilemma of abiding by international law or coming under fire in international forums.

A fifth and relevant factor is external pressure. As observed by Hood and Hoyle, the European Union has been highly active in exerting political pressure.⁶¹ Sangmin Bae has made similar remarks about the role of the European Union in persuading and compelling countries such as

⁵⁵Dave McRae, 'Indonesian Capital Punishment in Comparative Perspective' (2017) 173 *Bijdragen tot de Taal-, Land- en Volkenkunde* 1.

⁵⁶Johnson & Zimring (n 1).

⁵⁷See David Johnson, *The Culture of Capital Punishment in Japan* (Palgrave 2020) 1–18.

⁵⁸Eric Neumayer, 'Death Penalty: The Political Foundations of the Global Trend Towards Abolition' (2008) 9 *Human Rights Review* 241, 250–251; David F Greenberg & Valerie West, 'Siting the Death Penalty Internationally' (2008) 33 *Law & Social Inquiry* 295.

⁵⁹Johnson & Zimring (n 1).

⁶⁰Greenberg & West (n 58) 320; Neumayer (n 58) 259.

⁶¹Roger Hood & Carolyn Hoyle, 'Abolishing the Death Penalty Worldwide: The Impact of a "New Dynamic"' (2009) 38 *Crime and Justice* 1.

Poland and Ukraine into abandoning the death penalty whilst on their way towards gaining full EU membership and integration.⁶²

A sixth factor is regional dynamics. This involves States mimicking their neighbouring countries, in terms of policy-making, especially where they face similar circumstances and similar policy choices.⁶³ Thus, the enactment of binding, regional human-rights charters, or participation in bilateral and multilateral dialogues can increase the likelihood of abolition.⁶⁴ Relevantly, the absence of intra-regional pressure in Asia is seen as a catalyst for the retention of the death penalty in most States in the region.⁶⁵

Finally, existing low execution rates are an indicator to show a State's reluctance in killing its citizens. As observed by Johnson and Zimring, the majority of countries that reached full abolition were able to do so at 'practically no pecuniary cost and without the need to refashion their systems of criminal justice or crime control' owing to their low rates of execution.⁶⁶ In a similar vein, Hood and Hoyle opine that abolition is possible if the death penalty can no longer prove its practical role in the criminal justice system.⁶⁷ This may be facilitated further by a change in the criminal context, such as crime rates dropping sharply.⁶⁸ However, other commentators remain suspicious of the effect of this factor as they argue that conducting fewer executions does not trigger much attention and opposition against the death penalty, resulting in less incentive to abolish it.⁶⁹

From a different perspective, these factors can be divided into two categories on the basis of the direction of their impacts: domestic and international. While some pressures towards abolition are exerted from above with the omnipresence of international actors, others manifest at the domestic level. All of these factors contribute towards spurring a State to abandon the death penalty. Needless to say, in certain countries, some determinants are compelling enough to drive the government toward abolition; while in others, despite the emergence of many of these same factors, ceasing of state-sanctioned killing in this manner is far from sight. For example, Dave McRae submits that albeit various robust catalysts, Indonesia's execution of fourteen drug offenders in 2015 put on the brakes on the country's abolitionist movement.⁷⁰ Hence, those determinants are suggestive of a possible change rather than an assurance of change.

Contextualising Vietnam's Trajectory Toward Abolishing the Death Penalty for Drug Offenses

Having those determinants for abolition in mind, this subsection aims to probe into whether Vietnam has any space to root out the death penalty against drug crimes. As it suggests, international socialisation plays a pivotal role in reshaping Vietnam's understanding on the severity of drug crimes. But some bounds are seen. Without continuing to 'renovate'⁷¹ its own understanding, the country remains resistant to abandoning the death penalty for drug criminals.

First, Vietnam has a long communist history. The collapse of communism in Europe wracked the brains of many Vietnamese communist leaders about how to save the regime from ideological crisis.

⁶²Sangmin Bae, 'South Korea's De Facto Abolition of the Death Penalty' (2009) 82 *Pacific Affairs* 407; Sangmin Bae, *When the State No Longer Kills: International Human Rights Norms and Abolition of Capital Punishment* (SUNY Press 2007) 110–114.

⁶³Neumayer (n 58).

⁶⁴Sangmin Bae, 'Human Security, Capital Punishment, and East Asian Democracies', in Benny Teh Cheng Guan (ed), *Human Security: Securing East Asia's Future* (Springer 2012) 217–230.

⁶⁵ibid; Johnson & Zimring (n 1).

⁶⁶Johnson & Zimring (n 1).

⁶⁷Hood & Hoyle, 'Abolishing the Death Penalty Worldwide' (n 61).

⁶⁸Bae, *When the State No Longer Kills* (n 62) 27.

⁶⁹Greenberg & West (n 58) 335.

⁷⁰McRae (n 55).

⁷¹We consciously use the term 'renovation' given its peculiarity in Vietnam's context. While 'revise' and 'revision' seem to denote a more neutral tone, 'renovation' itself is often associated with liberal-oriented changes, including but not limited to economic matters. Our suggestion is that a progressive mentality in the country is much needed for abolitionist purposes.

But it was also a blessing in disguise. The crisis was the main catalyst for structural reforms and the democratisation process that has been put in motion by the regime since 1990s. The resilience of the regime is partly attributed to its openness to change as an appeal to foreign resources.⁷² However, despite reform efforts, the ruling party's conception of democratisation and democracy is somewhat different from the convention in constitutional liberalism.⁷³ Sporadically, Vietnamese leaders implicitly reject pluralism and Western-style democracy, claiming them to be unfit for Vietnam's idiosyncratic cultural and political climate.⁷⁴ The Leninist principle of democratic centralism is widely practiced within the State's power structure.⁷⁵ Without any disruptions to this status quo, the prospect of regime change is not in sight.

Second, in Vietnam, reforms are often elite-led.⁷⁶ At first, the *Đổi Mới* initiatives were limited to the economic sphere. Nonetheless, the country's political and legal systems were not immune to the demands of reform,⁷⁷ and a comprehensive overhauling of the legal system and institutions ensued. Socialist market economy, rule of law, human rights, and democracy became the buzzwords of a new era. Criminal law was renovated with new values such as human rights and restorative justice being included and regarded as foundational.⁷⁸ The two most recent iterations of the Criminal Code – that of 1999 and 2015 – witnessed considerable contraction in the number of capital drug offenses.

However, the drafting process of the 2015 Criminal Code hinted at some adversarial factors. Despite unsubstantiated evidence, many legislators were of the view that capital punishment for drug crimes might produce some deterrent effect to stem its spread.⁷⁹ The retributive stance still bears a strong imprint as legislators often claim that the death sentence is the proportionate punishment for heinous crimes, including those relating to narcotics.⁸⁰ Moreover, Vietnam's death penalty is carried out behind closed doors and the law strictly prohibits the disclosure of any information concerning the death penalty. This makes data on the death penalty in Vietnam a state secret and remains unknown to the general public. In all, these denotes the Vietnamese government's paternalistic policy stance, which in turn poses hurdles to efforts that can spark discourses on the nature and use of the death penalty in the domestic context.

Third, Vietnam has reaped a bounty of economic fruit since its bold Renovation program in 1986, together with surprisingly outstanding records of poverty alleviation and access to a decent standard of education. To be fair, grand structural reforms had major effects on the nation's legal system and thinking,⁸¹ but the Vietnamese economy remains relatively small, fragmented,

⁷²Martin K Dimitrov, 'Understanding Communist Collapse and Resilience', in Martin K Dimitrov (ed), *Why Communism Did Not Collapse: Understanding Authoritarian Regime Resilience in Asia and Europe* (Cambridge University Press 2013) 6–9.

⁷³See generally John Gillespie & Albert HY Chen (eds), *Legal Reforms in China and Vietnam: A Comparison of Asian Communist Regimes* (Routledge 2011).

⁷⁴See Bui Ngoc Son, *Constitutional Change in the Contemporary Socialist World* (Oxford University Press 2020) 141–200.

⁷⁵Vietnamese Constitution 2013, art 8.

⁷⁶Michael Dowdle, 'Introduction to Part II: Developing an administrative law system', in John Gillespie & Albert HY Chen (eds), *Legal Reforms in China and Vietnam: A Comparison of Asian Communist Regimes* (Routledge 2011) 105–108.

⁷⁷Tran & Vu (n 32) 13.

⁷⁸Đào Lê Thu, 'Xu hướng quốc tế hóa của luật hình sự Việt Nam và vấn đề đặt ra cho lập pháp hình sự [The Internationalization Trend of Viet Nam's Criminal Law and Issues for the Criminal Law Making]' (2020) 412 *Journal of Legislative Studies* <<http://lapphap.vn/Pages/tintuc/tinchitiet.aspx?tintucid=210569>> accessed 20 Feb 2022.

⁷⁹Đại biểu Quốc hội tranh luận về đề xuất bỏ án tử hình với 7 tội danh [The National Assembly Members Debate on the Proposal for Abolition of 7 Capital Crimes]' (Voice of Vietnam News, 26 May 2015) <<https://vov.vn/chinh-tri/quoc-hoi/dai-bieu-quoc-hoi-tranh-luan-ve-de-xuat-bo-an-tu-hinh-voi-7-toi-danh-403629.vov>> accessed 20 Feb 2022.

⁸⁰*ibid.*

⁸¹See generally Pham Duy Nghia & Do Hai Ha, 'The Soviet Legacy and Its Impact on Contemporary Vietnam', in Hualing Fu et al (eds), *Socialist Law in Socialist East Asia* (Cambridge University Press 2018) 97–132; Spencer Weber Waller & Lan Cao, 'Law Reform in Vietnam: The Uneven Legacy of Doi Moi' (1997) 29 *New York University Journal of International Law and Politics* 555.

and reliant on foreign export markets despite experiencing miraculous growth.⁸² A fragile economy reliant on foreign trade might render the country weak when resisting universal norms considering its vulnerability to international sanctions. This explains the State's willingness to learn from the international community, and bring its laws and institutions closer to be in line with international standards without giving up political power.

With higher accessibility to education, the Vietnamese people are better equipped to meet the world's needs in various sectors. It bears noting that they were actually inspired by the idea of human rights and fundamental freedoms from their own fight for national independence. In his extensive study, Bui Ngoc Son argues that despite the international criticisms of Vietnam's human rights records, human rights have secured a solid footing in its four constitutions over the past sixty years.⁸³ As the State gradually loosens its control on many policy fronts, the country has seen a considerable rise in human rights discourse among policy-makers, scholars, and ordinary people.⁸⁴ Therefore, framing an argument against the death penalty in human rights language has a great effect in catching the attention of the State. This has been witnessed in the deliberation of the National Assembly on the drafting of the constitution and laws.⁸⁵

However, the effect of this factor should not be overstated since public and elite opinions remain nuanced. As indicated in some surveys, public opinion on the death penalty is mixed and even conflicting.⁸⁶ In one of the rare surveys on this topic, Vu Thi Thuy found that, in 2006, 91 per cent of respondents expressed support for the death penalty; this number climbed to 94 per cent in 2016.⁸⁷ More relevantly, in a recent survey co-sponsored by the United Nations Development Program (UNDP), the European Union and Vietnam on the possibility of the abolition of the death penalty for drug crimes, it was found that less than 15 per cent of Vietnamese respondents supported such a change.⁸⁸ This is partially attributed to the fact that drug crimes and criminals are continually vilified in mass media. Narcotic drugs and criminals are depicted as 'white death' and thugs who disperse suffering and despair onto the innocent.⁸⁹ In this light, public security and safety are compromised by the grave consequences of drug crimes, resulting in the 'loss of many souls', 'futureless people', and 'domestic decay'.⁹⁰ In addition, depicting drug crimes in moral language

⁸²Le Hong Hiep, 'Vietnam's Over-reliance on Exports and FDI' (ISEAS Yusof Ishak Institute Perspective no 96, 2 Sep 2020) <https://www.iseas.edu.sg/wp-content/uploads/2020/09/ISEAS_Perspective_2020_96.pdf> accessed 20 Feb 2022.

⁸³Bui Ngoc Son, 'The Global Origins of Vietnam's Constitutions: Text in Context' (2017) 2 University of Illinois Law Review 525.

⁸⁴ibid 484–485.

⁸⁵See generally Giao Cong Vu & Kien Tran, 'Constitutional Debate and Development on Human Rights in Vietnam' (2016) 11 Asian Journal of Comparative Law 235; Bui (n 83).

⁸⁶Tran & Vu (n 32) 21–23.

⁸⁷Vu Thi Thuy, *Limiting the Death Penalty in Vietnamese Criminal Law: Changes from the Criminal Code 1999 to Criminal Code 2015* (Ho Chi Minh City Law University 2017).

⁸⁸Nguyen Thi Thanh Hai, Nguyen Van Hoan & Nguyen Minh Khue, 'On the possibility of Viet Nam ratifying the Second Optional Protocol to the International Covenant on civil and political rights aiming at the abolition of the death penalty' (EU Justice and Legal Empowerment Programme, Oct 2019) <[https://www.vn.undp.org/content/dam/vietnam/docs/Publications/Death%20Penalty%20Report%20\(ENG\).pdf](https://www.vn.undp.org/content/dam/vietnam/docs/Publications/Death%20Penalty%20Report%20(ENG).pdf)> accessed 21 Feb 2022.

⁸⁹See eg, 'Nổi đau từ "cái chết trắng" [Suffering from the "White Death"]' (Vietnamese Communist Party Online Newspaper, 5 Jun 2019) <<https://dangcongsan.vn/xa-hoi/noi-dau-tu-cai-chet-trang-524583.html>> accessed 20 Feb 2022; 'Trả giá cho kẻ buôn bán cái chết trắng [Payback to Those Sells the "White Death"]' (The People's Court of Dak Lak Province, 31 Dec 2020) <<http://toaandaklak.gov.vn/tin-xet-xu/tra-gia-cho-ke-buon-ban-cai-chet-trang-5283.html>> accessed 20 Feb 2022; 'Bản án thích đáng cho những kẻ gieo "cái chết trắng" cho xã hội [Adequate Sentences for Those Dispersed the "White Death" into the Society]' (The People's Procuracy of Gia Lai Province, 1 Oct 2020) <<http://vksquangngai.gov.vn/index.php/vi/news/Phap-Luat-Doi-Song/Ban-an-thich-dang-cho-nhung-ke-gieo-cai-chet-trang-cho-xa-hoi-2886/>> accessed 20 Feb 2022.

⁹⁰Phó Chủ tịch Quốc hội: "Gia đình có con em nghiện ma túy thì tan cửa, nát nhà" [Vice Chairman of the National Assembly: "Families with Addicted Children Are Destined to be Doomed"] (Thanh Tra, 11 Sep 2020) <<https://thanhtra.com.vn/chinh-tri/doi-noi/pho-chu-tich-quoc-hoi-gia-dinh-co-con-em-nghien-ma-tuy-thi-tan-cua-nat-nha-171057.html>> accessed 20 Feb 2022.

and war metaphors has been a way to rally the popular support for anti-drug campaigns, transforming such campaigns into wars against 'evil'. This narrative continues to hold the public hostage in fear of the perils arising from drugs, and thus enhances the appetite of the majority in Vietnam for the zero-tolerance of the death penalty as a measure against these crimes.

Although not explicitly expressed, Vietnam is an advocate for cultural relativism, supporting ideas such as the 'Asian values' concept to subdue the undesirable influence of the global human rights movement and abolitionist trend.⁹¹ It follows that while a 'naturalist' view of human rights has gained currency, the statist approach to individual rights remains strong in Vietnamese legal culture.⁹² However, the claim that Asian values and Confucianism promote the death penalty is a fallacy or misinterpretation of doctrine. As argued by Sangmin Bae, traditional Confucian doctrine actually deems the death penalty neither necessary nor desirable in countries that govern benevolently and virtuously.⁹³ Indeed, "If excellent people managed the state for a hundred years, then certainly they could overcome cruelty and do away with executions" – how true this saying is!, wrote Confucius.⁹⁴

Nevertheless, external pressure seems to be a relevant factor in the Vietnamese context where abolition is concerned. For strategic reasons, international acceptance matters a great deal to Vietnam in its international integration strategy and survival. The country has committed itself to playing by international rules, and various legal reforms have thus ensued as a result. To be sure, policy-makers are acutely aware of State obligations under international law. For instance, during the drafting of the 2013 Constitution, the international bill of rights was heeded thoroughly. Some constitutional drafters availed themselves of international human rights treaties of which Vietnam is a signatory, and use them as a benchmark to ensure the Constitution's compatibility with the country's international obligations.⁹⁵

Human rights dialogues between Vietnam and her peers, and with international bodies, have also burgeoned. Annual bilateral talks have been held between Vietnam and the United States, European countries, Australia, and Canada on various human rights issues of mutual concern, ranging from the rule of law and freedom of religion to freedom of expression and labour rights.⁹⁶ The death penalty regularly tops the discussion agenda between Vietnam and Australia, the European Union, Norway and Switzerland.⁹⁷ In light of Vietnam's desire to gain international credibility, Vietnamese officials have adopted a cooperative attitude toward these dialogues, resulting in the subsiding of emphasis on public security as a justification for retaining the death penalty. The mechanisms of dialogue and persuasion have also been used by Vietnamese and foreign scholars,

⁹¹The Bangkok Declaration 1993; See also Ngo TM Huong, Vu Cong Giao & Nguyen Minh Tam, 'Asian Values and Human Rights: A Vietnamese Perspective' (2018) 2 Journal of Southeast Asian Human Rights 302.

⁹²For a discussion, see Bui Ngoc Son, 'Globalization of Constitutional Identity' (2017) 26 Washington International Law Journal 463.

⁹³Sangmin Bae, 'Is the Death Penalty an Asian Value?' (2008) 39 Asian Affairs 47.

⁹⁴Confucius, *Analects: With Selections from Traditional Commentaries* (Edward Slingerland tr, Hackett Publishing Company 2003) 144, cited in Bae (n 94).

⁹⁵See Bui (n 93) 505–506.

⁹⁶John Gillespie, 'Human Rights as a Larger Loyalty: The Evolution of Religious Freedom in Vietnam' (2014) 47 Harvard Human Rights Journal 139.

⁹⁷See eg, European Union, '8th EU-Vietnam Human Rights Dialogue' (Press Release, 4 Mar 2019) <https://eeas.europa.eu/delegations/timor-leste/59036/8th-eu-vietnam-human-rights-dialogue_de> accessed 2 Jun 2022; Australian Government, 'Australian Statement on the 15th Annual Australia-Vietnam Human Rights Dialogue' (Press release, 31 Aug 2018) <<https://www.dfat.gov.au/news/media/Pages/australian-statement-on-the-15th-annual-australia-vietnam-human-rights-dialogue>> accessed 2 Jun 2022; Sippachai Kunnuwong, 'Human Rights Dialogue between Norway and Vietnam' (ScandAsia, 11 Dec 2012) <<https://scandasia.com/human-rights-dialogue-between-norway-and-vietnam/>> accessed 2 Jun 2022; Swiss Federal Department of Foreign Affairs, 'Dialogue between Switzerland and Vietnam on human rights' (Press release, 15 Mar 2008) <<https://www.admin.ch/gov/en/start/dokumentation/medienmitteilungen.msg-id-17832.html>> accessed 20 Feb 2022.

the UNDP, Amnesty International, and other non-governmental organisations to capture the attention of the State and urge its action on this matter.⁹⁸

At the international level, Vietnam has engaged in dialogue with international bodies such the HRC through its country reports,⁹⁹ and the Human Rights Council through the Universal Periodic Review (UPR).¹⁰⁰ In three UPR cycles (2009, 2014, 2019) and country reports to the HRC in fulfilling the periodic report obligation (2001, 2017), Vietnam's progress towards death penalty reductionism could be observed. Noteworthy is the fact that despite its continued citation of popular opinion to brush off critics, Vietnam's responses to the recommendations of peers and international bodies on the issue have been increasingly engaging and constructive.¹⁰¹ During its third UPR cycle, the Vietnamese delegation stated:

[G]iven the country's particular circumstances, the death penalty remained a necessary measure to prevent the most serious crimes, in line with article 6 of the International Covenant on Civil and Political Rights ... Viet Nam is currently studying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.¹⁰²

This statement shows that the dialogic learning process undertaken by the Vietnamese government has an effect on her perception of the use of the death penalty. It resonates with her voting patterns on moratoriums concerning the use of the death penalty in the UN General Assembly from 2007 to 2016. Vietnam's retentionist neighbours such as Brunei Darussalam, Malaysia and Singapore – fervent supporters of capital punishment – have consistently voted against the General Assembly's resolutions on the death penalty, while Lao PDR (de facto abolitionist) and Vietnam have abstained on all resolutions.¹⁰³ As observed by Pascoe and Bae, abstention is 'a temporary and politically safe choice during a time of change',¹⁰⁴ which is most often exercised by de facto abolitionist countries or those considering a move toward becoming abolitionist either in law or in practice. These indicate that Vietnam has remained on the fence on reconciling global abolitionist norms and its domestic interests. In so doing, it has chosen the 'temporary safe choice' to buy time for learning and possibly reshaping its perception of this policy. This view echoes the observation made by Lindsey and Nicholson in 2016 that with an increasing willingness to blend in and learn from the international community, Vietnam has emerged as one of the Southeast Asian countries with more likelihood to limit this form of state killing.¹⁰⁵

⁹⁸See 'Amnesty International - Vietnam Dialogue on human rights' (Viet Nam Union of Friendship Organizations, 4 Mar 2014) <<http://vufo.org.vn/Amnesty-International---Vietnam-Dialogue-on-human--rights-03-198.html?lang=en>> accessed 21 Feb 2022.

⁹⁹See OHCHR, 'UN Human Rights Treaty Bodies – Treaty Body Database: Vietnam' <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=En&CountryID=192> accessed 20 Feb 2022.

¹⁰⁰UN Human Rights Council, 'Universal Periodic Review - Viet Nam' <<https://www.ohchr.org/EN/HRBodies/UPR/Pages/VNindex.aspx>> accessed 20 Feb 2022; UN Human Rights Committee, 'Concluding observations of the third periodic report of Viet Nam', CCPR/C/VNM/CO/3 (25 Mar 2019) <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FCO%2FVNM%2FCO%2F3&Lang=en> accessed 2 Jun 2022.

¹⁰¹On its first cycle of the UPR in 2009, the Vietnamese delegation stated that: 'Public opinion in Viet Nam is not yet ready for the complete removal of the death penalty': see UN Human Rights Committee, 'Report of the Working Group on the Universal Periodic Review: Viet Nam', A/HRC/12/11 (5 Oct 2009), para 76.

¹⁰²UN Human Rights Committee, 'Report of the Working Group on the Universal Periodic Review: Viet Nam', A/HRC/41/7 (28 Mar 2019), para 22.

¹⁰³OHCHR Southeast Asia Regional Office (n 3) 34.

¹⁰⁴Daniel Pascoe & Sangmin Bae, 'Idiosyncratic Voting in the UNGA Death Penalty Moratorium Resolutions' (2021) 25 *The International Journal of Human Rights* 974.

¹⁰⁵Lindsey & Nicholson (n 38) 11.

However, external pressure is a wild card. Vietnam stands out from the others such as Poland in the way that there is no regional or international mechanism with teeth that could compel it towards heading in a single direction. So far, Vietnam has ratified seven out of nine core international human rights treaties,¹⁰⁶ but it always puts forward reservations on dispute settlement mechanisms entailing a binding decision.¹⁰⁷ These claw-back clauses serve as a face-saving provision to shield Vietnam from harsh critics and adverse legal consequences that might be produced by these mechanisms. It, therefore, signifies that while the country pushes hard for international integration, this process also has its limits. As long as a possible policy change imperils the regime's legitimacy, it is unlikely to be adopted. It goes without saying that the Party-State that claims to be the vanguard of the Vietnamese people¹⁰⁸ sees drug offenses as social evils jeopardising people's life and social security on a large scale. Therefore, death is viewed as the proportionate punishment for drug offenders; otherwise, its legitimacy as a paternalistic State would come into question.

Worse yet, regional inertia could consolidate the zero-tolerance approach to drug offenses. It is no secret that Southeast Asian leaders do not show much empathy towards drug criminals. The populist Philippine President Rodrigo Duterte won a landslide election for having earned the reputation as 'The Punisher' in his relentless war on drugs.¹⁰⁹ As a consequence, the country has seen the resurgence of the death penalty debate on legal and socio-political fronts.¹¹⁰ Departing from its voting record, the Philippines abstained in 2016 from a moratorium resolution sponsored by the UN General Assembly. In March 2021, a bill to reintroduce the death penalty for drug crimes was approved by the Philippine House of Representatives and is now awaiting the Senate's vote.¹¹¹ Malaysia adopts a hard stance against drug criminals by imposing the mandatory death penalty for related offenses. A Malaysian official even publicly stated that the abolition of the death penalty would be a 'step backward' in their war against drugs.¹¹² In the first half of 2015, global attention was drawn to Indonesia's execution of fourteen drug offenders, representing an abrupt departure from the country's previous record of two death sentences a year on average.¹¹³ Citing drug crimes to be of the most serious nature, perhaps Singapore is the most vocal in invoking the sovereignty principle to ward off external intervention in its policy-making.¹¹⁴ Likewise, in

¹⁰⁶OHCHR, 'Country Information: Viet Nam' <<https://www.ohchr.org/EN/Countries/AsiaRegion/Pages/VNIndex.aspx>> accessed 20 Feb 2021.

¹⁰⁷Trinh Hai Yen, 'Viet Nam', in Simon Chesterman, Hisashi Owada & Ben Saul (eds), *The Oxford Handbook of International Law in Asia and the Pacific* (Oxford University Press 2019) 493–495.

¹⁰⁸Vietnamese Constitution 2013, art 4.

¹⁰⁹Reuters, 'The bloody reign of Rodrigo Duterte "The Punisher"' <<https://www.reuters.com/investigates/special-report/philippines-duterte-photos/>> accessed 22 Feb 2022.

¹¹⁰Grace Keane O'Connor, 'Adoption of Bill Allowing the Imposition of the Death Penalty for a New Crime' (World Coalition, 30 Apr 2021) <<https://worldcoalition.org/2021/04/30/adoption-of-bill-allowing-the-imposition-of-the-death-penalty-for-a-new-crime/>> accessed 24 Feb 2022.

¹¹¹Republic of the Philippines Commission on Human Rights, 'Statement of Commissioner Karen Gomez-Dumpit on the Passage of House Bill No. 7814, providing for the 'Presumption Of Guilt' and Reintroduction of the Death Penalty as amendments to the Comprehensive Dangerous Drugs Act of 2002' (3 Mar 2021) <<http://chr.gov.ph/statement-of-commissioner-karen-gomez-dumpit-on-the-passage-of-house-bill-no-7814-providing-for-the-presumption-of-guilt-and-reintroduction-of-the-death-penalty-as-amendments-to-th/>> accessed 7 Jun 2022.

¹¹²IGP: Cops back death sentence review, but total scrapping a step backward' (Malay Mail, 27 Aug 2015) <<https://www.malaymail.com/news/malaysia/2015/08/27/igp-cops-back-death-sentence-review-but-total-scrapping-a-step-backward/959075>> accessed 24 Feb 2022.

¹¹³Kate Lamb & Claire Phipps, 'Indonesia executions: 14 people who could face the firing squad this week' (The Guardian, 27 Jul 2016) <<https://www.theguardian.com/world/2016/jul/27/indonesia-executions-firing-squad-this-week>> accessed 24 Feb 2022.

¹¹⁴See UN Economic and Social Council, 'Letter dated 27 June 1997 from the Permanent Mission of Singapore to the United Nations Office at Geneva addressed to the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions', UN Doc E/CN.4/1998/113 (5 Dec 1997) <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G97/144/15/PDF/G9714415.pdf?OpenElement>> accessed 2 Jun 2022. It should be noted that death penalty activism in Singapore has become increasingly visible. As domestic politics and litigation against the death penalty gain some steam in Singapore,

addressing international criticism, Vietnam has availed itself of the similar reasoning.¹¹⁵ In 2016, ASEAN leaders vowed their commitment to ‘a zero-tolerance approach in realizing the regional vision of a drug-free ASEAN.’¹¹⁶ Besides ASEAN, China is also an influential retentionist country in Asia. Given the two countries’ similar political and cultural climate, Vietnam has learnt from and mirrored some of China’s legal developments.¹¹⁷ Despite their convergence towards reductionism,¹¹⁸ China’s continued resistance against the abolition of the death penalty applicable to drug crimes might consolidate the hard-line approach of the Vietnamese authorities on this matter. Thus, the wars on drugs in Asia have become increasingly intense and perplexing. A common variable is that in advocating for the zero-tolerance punishment against drug criminals, these countries have frequently resorted to populist sentiment and the demonisation of drug criminals.¹¹⁹ This has helped produce a strong democratic base for their retention. Ironically, ‘regional dynamics’ seems to be an impeding factor, rather than facilitating factor, for the abolition of capital drug offenses in Vietnam.

The last determinant is the number of executions, which does not seem favourable for abolitionists either. Murder and drug crimes are two categories of criminal offences accounting for the most death sentences in Vietnam.¹²⁰ But gathering data on this matter is tricky because they constitute state secrets. According to his own counting, Luong Thanh Hai has noted that over the eight-year period of 1993–2001, as many as 1,179 people were sentenced to death at trial in the first instance (about 147 people per year).¹²¹ Between 2001 and 2010 (excluding 2003 and 2004 for which there is no data), the number of death sentences was 1,421 (about 177 a year).¹²² Drug crimes make up a significant fraction of the death sentences. It is suggested that between 2001–2010, 40.04 per cent of death sentences were handed down to drug offenders.¹²³

In addition, illicit production of and trafficking in narcotic drugs have been a perennial woe in Vietnam. The country is located in the vicinity of the Golden Triangle, an intersection between Myanmar, Laos and Thailand, which is a hyperactive hub of the drug trade and drug trafficking. Between 2007 and 2017, there were 151,570 drug-related cases (account for 19.29 per cent of total criminal cases) involving 192,577 drug offenders (15.92 per cent of all defendants).¹²⁴ Of these, illegally transporting and trading in narcotic drugs are the most common offences, making up 99.35 per cent of all drug-related cases and involving 99.14 per cent of all

this might be the harbinger of ‘the beginning of the end.’ See Michael Hor, ‘Confronting Capital Punishment’, in Roger Hood & Surya Deva (eds), *Confronting Capital Punishment in Asia: Human Rights, Politics, Public Opinion and Practices* (Oxford University Press 2013) 141–167.

¹¹⁵FM spokesperson: Vietnam pushes ahead with legal reform’ (VCCI, 12 Apr 2019) <<https://en.vcci.com.vn/fm-spokes-person-vietnam-pushes-ahead-with-legal-reform>> accessed 2 Jun 2022.

¹¹⁶Leaders to promote drug-free ASEAN’ (Philstar Global, 9 Sep 2016) <<https://www.philstar.com/headlines/2016/09/09/1621898/leaders-promote-drug-free-asean>> accessed 25 Feb 2022.

¹¹⁷Jorn Dosch & Alexander L Vuving, ‘The Impact of China on Governance Structures in Vietnam’ (German Development Institute Discussion Paper no 14/2008) <https://www.die-gdi.de/uploads/media/DP_14.2008.pdf> accessed 25 May 2021; Tran & Vu (n 32).

¹¹⁸See Michelle Miao, ‘Examining China’s Responses to the Global Campaign against the Death Penalty’, in Roger Hood & Surya Deva (eds), *Confronting Capital Punishment in Asia: Human Rights, Politics, Public Opinion and Practices* (Oxford University Press 2013) 46–66.

¹¹⁹Michelle Miao, ‘The Penal Construction of Drug-related Offenses in the Context of “Asian Values” – The Rise of Punitive Anti-Drug Campaigns in Asia’ (2018) 1 International Comparative, Policy & Ethics Law Review 46, 60–66.

¹²⁰Tran & Vu (n 32) 15–16.

¹²¹Luong (n 40).

¹²²ibid.

¹²³ibid.

¹²⁴Đỗ Thành Trương, ‘Một số vấn đề về tình hình tội phạm ma túy trên toàn quốc 2007-2017 (Phần 1) [Issues on the Situation of Drug Crimes Nationwide in 2007-2017 (Part 1)]’ (The Supreme People’s Procuracy of Viet Nam, 21 Nov 2018) <<https://www.vksndtc.gov.vn/thong-tin/mot-so-van-de-ve-tinh-hinh-toi-pham-ma-tuy-tren-to-d12-t7697.html>> accessed 20 Feb 2022.

suspects.¹²⁵ Worse yet, these numbers are just ‘the tip of the iceberg’ given that cunning traffickers always have their way to evade law enforcement agencies.¹²⁶ This volatile drug environment has fuelled the authority’s call for the retention of drug crimes that attract the death penalty.

Conclusion: what now?

It is evident that the abolitionist trend has gained traction worldwide in the 21st century. Asia, a region of stalwart supporters of the death penalty, has become ‘the next frontier’ for human rights activists, and a laboratory for scholars to gauge incentives and trade-offs behind a nation’s policy action. It is clear that abolitionist campaigns have faced various hurdles in this ‘battlefield’ as many countries still retain a disproportionately punitive approach to criminal offenses, especially those involving narcotics. To be sure, international law is not on their side. The HRC has elucidated the nature of ‘the most serious crimes’ in light of international human rights standards, which precludes the application of the death penalty on drug offenses. But opposition and resistance in Asia remains substantial.

In Vietnam, the abolitionist movement have met resistance from the dominant public opinion and the State’s tough stance on crime deterrence. On the international stage, Vietnam does not face any international or regional enforcement mechanisms. Clearly, the country, geographically adjacent to retentionist countries, has little incentive to expedite its work towards death penalty abolition. The durability and resilience of the Party-State is remarkable, and abrupt change to the constitutional order is highly unlikely. On top of that, the situation of drug crimes in the country is highly complicated and volatile. All these compounded will certainly complicate the issue and water down domestic abolitionist efforts in times to come.

The justifications for capital punishment in Vietnam resemble those of retentionist countries, including a popular appetite for punishing wrong-doers and deterring crimes. This view is deeply embedded in their cultural norms, traditions, and customs.

Grappling with the shifting sands of public attitudes is, however, tricky. In a study of seventeen retentionist countries, Steven Stack has made two insightful conclusions.¹²⁷ First, people living in a retentionist country tend to support capital punishment.¹²⁸ It is suggested that people are guided by their shared cultural norms. This explains why popular support for the death penalty in a retentionist country remains high despite the presence of the many determinants elaborated above. Strong public sentiment in favour of the death penalty often lends support to retentionist States in justifying its use. However, it bears noting that public poll respondents are generally ill-informed about the practice of the death penalty.¹²⁹ In many instances, people form their opinion without a clear understanding of the issue.¹³⁰ Put differently, people’s attitude towards the death penalty is widespread yet superficial; but, their attitudes are also subject to changes as they increasingly acquire knowledge of the relevant facts.¹³¹ Therefore, public opinion on this matter is characterised as, in Herbert Haines’ words, ‘a mile wide and an inch deep.’¹³²

¹²⁵Đỗ Thành Trương, ‘Một số vấn đề về tình hình tội phạm ma túy trên toàn quốc (2007-2017) (Phần 2) [Issues on the Situation of Drug Crimes Nationwide in 2007-2017 (Part 2)]’ (The Supreme People’s Procuracy of Viet Nam, 21 Nov 2018) <<https://vksndtc.gov.vn/thong-tin/mot-so-van-de-ve-tinh-hinh-toi-pham-ma-tuy-tren-to-d12-t7698.html>> accessed 20 Feb 2022.

¹²⁶Hai Thanh Luong, ‘Why Vietnam Continues to Impose the Death Penalty for Drug Offenses: A Narrative Commentary’ (2021) 88 International Journal of Drug Policy no 103043, 5–6 <<https://www.sciencedirect.com/science/article/abs/pii/S0955395920303819>> accessed 2 Jun 2022.

¹²⁷Steven Stack, ‘Public Opinion on the Death Penalty: Analysis of Individual-level data from 17 Nations’ (2004) 14 International Criminal Justice Review 69.

¹²⁸ibid 86.

¹²⁹For a thorough study of public opinion on the death penalty, see Hood & Hoyle, *The Death Penalty* (n 30) 350–381.

¹³⁰Bae (n 62) 117.

¹³¹ibid 117.

¹³²Herbert H Haines, *Against Capital Punishment: The Anti-Death Penalty Movement in America, 1972–1994* (Oxford University Press 1996) 164.

Stack's second conclusion is that each year subsequent to the abolition of the death penalty can lower the level of support someone has of the death penalty.¹³³ This resonates with Hood and Hoyle's hypothesis that since the abolition of the death penalty, people are prone to deem the punishment unnecessary and 'of the past' over time.¹³⁴ The wider implication is that a change at the top might likely trigger a change at the bottom.¹³⁵ For example, support for capital punishment in the UK has been shrinking since its abolition in 1965, from 75 per cent in 1983 to 65 per cent in 1996 and 48 per cent in 2015.¹³⁶ Data and statistics of other countries also buttress this observation.¹³⁷ Perhaps, as Zimring opines, 'the presence or absence of a death penalty may not be a very important issue to the man in the streets'.¹³⁸ It is therefore critical for abolitionist movements to secure the support of elite decision makers, particularly those of influence and those who administer the criminal justice system.¹³⁹

Abolitionism in relation to capital drug crimes in Vietnam is progressing incrementally. Clearly, a single cause is too little to induce state compliance with international norms. In the case of Vietnam, a compound of many factors – predominantly political leadership, human rights dialogues and external pressure – might have produced such an effect. The State has adopted human rights norms through a process of socialisation and learning, in which Vietnamese policy-makers dialogically engage with international actors and peers to reshape their understanding of drug crimes as the 'most serious crimes' on which the death sentence can be imposed. This change has mostly been made at the top rather than from the bottom due to its strictly secret nature. Therefore, while the penalisation of drug crimes in Vietnam has incrementally moved towards compliance with international standards, the move has not been entirely consistent.

That said, in its the latest UPR cycle, Vietnamese authorities have continued to demonstrate their willingness to engage in a learning process and harmonise domestic laws with international standards.¹⁴⁰ The insights of elites, especially those with relevant practical knowledge and theoretical understanding, also have a major impact on drug policy making.¹⁴¹ In a recent interview by Nguyen T. Thanh Hai and others, many Vietnamese judicial and public security officials are resistant to the abolition of the death penalty for now, citing the pressing need to address rising drug crime rates in the country.¹⁴² However, this view is hard to reconcile in relation to Laos, Myanmar and Thailand, which also are also located in the intersection of the Golden Triangle, but rarely execute drug offenders. Put differently, Vietnam's drug crime rates continue to grow despite the death penalty in place. While this poses another knotty question for policy-makers regarding the deterrence effect of the death penalty, to be fair, Vietnamese officials have acknowledged the tension between the death penalty and the human right to life. Therefore, they are generally of the view that the death penalty should be restricted and eventually abolished in its entirety in the future.¹⁴³

To that end, as suggested by various international bodies and peers,¹⁴⁴ Vietnam should make its statistics and data on the death penalty publicly available and accessible so as to renew public and

¹³³Stack (n 128) 87–88.

¹³⁴Hood & Hoyle, *The Death Penalty* (n 30) 376.

¹³⁵David Garland, *Punishment and Modern Society: A Study in Social Theory* (University of Chicago Press 1990) 246.

¹³⁶'Support for death penalty drops below 50% for the first time' (BBC News, 26 Mar 2015) <<https://www.bbc.com/news/uk-32061822>> accessed 20 Feb 2022.

¹³⁷Hood & Hoyle, *The Death Penalty* (n 30) 376–377.

¹³⁸Franklin E Zimring, *The Contradictions of American Capital Punishment* (Oxford University Press 2003) 23.

¹³⁹Hood & Hoyle, *The Death Penalty* (n 30) 353.

¹⁴⁰'Report of the Working Group on the Universal Periodic Review: Viet Nam' (n 103).

¹⁴¹Hood & Hoyle, *The Death Penalty* (n 30) 357.

¹⁴²Nguyen, Nguyen & Nguyen (n 88) 33–35.

¹⁴³ibid.

¹⁴⁴See eg, 'Universal Periodic Review - Viet Nam' (n 101); 'Concluding observations of the third periodic report of Viet Nam' (n 99) paras 23–24; OHCHR Southeast Asia Regional Office (n 3) 49.

scholarly interests in this issue. Discourses may take place at two levels, international and national. Internationally, an open and constructive discourse would facilitate Vietnam's learning process. It will give the impression of a responsible nation trying to bring its legislation in line with universally recognised standards. In return, this process helps buttress the international integration process to which Vietnam is aspiring. Additionally, a nationwide survey on drug control measures in relation to three capital drug crimes is imperative to grasp the fine-grained picture of Vietnam. The existing surveys are outdated and lacking focus on the death penalty. The findings of these new surveys can serve as a springboard for constructive and evidence-based dialogue between relevant stakeholders. This in turn would cement the democratic foundation for potential change.

Besides this, while remaining on the fence, Vietnam should put out a moratorium on the execution of death sentences for drug crimes. It bears noting that in its 2008 human rights dialogue with Switzerland, Vietnam's delegation stated that it was examining the possibility of a provisional moratorium.¹⁴⁵ For some reason, this has not been materialised after more than a decade since then. Vietnam has shown continuous hesitation to commit, as reflected in its voting patterns on the UN General Assembly's moratorium on the death penalty since 2007.¹⁴⁶ To be sure, becoming a de facto abolitionist country could be seen as a win-win for all stakeholders. On the one hand, without officially relinquishing its policy-making prerogative, the paternalistic State remains strong in the eyes of the people in Vietnam's war against drugs. On the other hand, this move signifies the country's respect for human rights norms to which it has committed at the international and constitutional levels. Also, it exhibits its convergence towards universal standards to garner acceptance and recognition from the international community for strategic purposes.

Regardless of Vietnam's chosen path towards eventual abolition of the death penalty, Confucius' advice on the punishment should be strongly considered by the Vietnamese government – that, '[i]f excellent people managed the state for a hundred years, then certainly they could overcome cruelty and do away with executions'.¹⁴⁷

¹⁴⁵'Dialogue between Switzerland and Vietnam on Human Rights' (n 98).

¹⁴⁶OHCHR Southeast Asia Regional Office (n 3) 34.

¹⁴⁷Confucius (n 95).