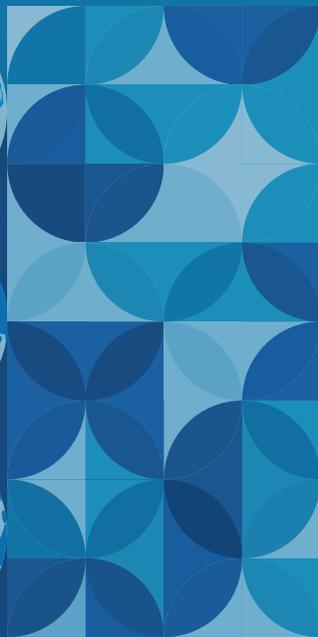


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# Legal Hedging: Power Acceptance and Rejection in Sino-Southeast Asian Ties

**Trang (Mae) Nguyen** is an Associate Professor of Law at Temple University Beasley School of Law and a 2022–23 Wilson China Fellow



## Abstract:

This research paper examines Southeast Asian states' use of law as a tool to both enmesh and resist the outsized impact of the People's Republic of China (PRC). This use of law—what I call “legal hedging”—combines strategies of power acceptance and rejection as a “bundled” foreign policy to at once take advantage of deeply enmeshed economic ties with China while hedging the risk of domination. Studies on Southeast Asia and its regional institutions, most prominently the Association for Southeast Asian Nations (ASEAN), have tended to emphasize pragmatism as the major mode of engagement with China. It would be remiss, however, to gloss over the dense network of laws and agreements that undergird this important relationship, as well as the nuanced ways in which Southeast Asian states use international law to advance their interests. Through case studies of Indonesia, Vietnam, and Cambodia, this paper analyzes how these states implement hedging strategies through selective partnership with China and the Western legal order, deliberate multilateralism, and pursuit of new legal innovations. Taken together, the legal strategies of Southeast Asian states suggest a robust, highly functional regional model that merit careful study. Importantly, they also demonstrate a subtle use of law and policies unique to Asian regionalism that does not cater to either the Washington Consensus or the Beijing Consensus but aims to selectively cooperate with both.

## Policy Implications and Key Takeaways

1. “Legal hedging” is a prominent strategy used by Southeast Asian states to both enmesh and resist China's influence. By combining strategies of power acceptance and power rejection, Indonesia, Vietnam, and Cambodia each attempt to capture the benefits of the deeply enmeshed economic ties with China while simultaneously hedge the risk of Chinese ambition. As participant states in the Regional Comprehensive Economic Partnership (RCEP), China's Belt and Road Initiative (BRI), and the Sino supply chain networks, these states have benefited from the infrastructural, legal, and business linkages with China. At the same time, they have adopted robust strategies of “power rejection” hedging through engagement in multilateralism and selective embrace of the liberal legal order.

2. Taken together, the legal strategies of Southeast Asian states demonstrate a subtle use of law and policies that does not cater to either the Washington Consensus or the Beijing Consensus but aims to selectively cooperate with both. This suggests a highly functional regional model that may offer lessons for other states in their dealings with China.
3. To US policymakers, this model of legal hedging offers a number of policy implications:
  - a. First, despite conventional wisdom on Southeast Asia's relatively inactive participation in international law, we are seeing increasing participation and innovation in tandem with the region's economic rise. As such, opportunities exist for the United States to align its interests with Southeast Asian countries in supporting the revitalization of the region's economic and geopolitical rise, as an effective form of strategic competition with the PRC.
  - b. Second, to be effective, the United States' engagement with Southeast Asian states needs to start from a basis of understanding of these states' use and vision of the international legal order. As the case studies show, Southeast Asian states, not unlike other secondary states, prefer a pluralist vision of international law, even if they may at times embrace the alternative model offered by big authoritarian powers such as China. Such instinct to stay embedded in multiple legal orders stems from Southeast Asian nations' wariness of being overdependent on any single outside force and of being pressured to take side in great-power rivalries. Providing the space for these states to embrace aspects of the current US-led legal order would thus enable their continued engagement.
  - c. Third, it is critical for US policymakers to appreciate the legal and economic enmeshment of Sino-Southeast Asian economic ties, in order to ensure the effectiveness of US policies and enhance US competitiveness in the region. As one example, the dense linkages of the Sino-Southeast Asian supply chains can pose difficulty for the

United States and other countries in enforcing tariffs and import exclusion on Chinese products. Effective enforcement may require cooperation from Southeast Asian host states. Additionally, the RCEP's liberalizing rules-of-origin regime will create barriers for US suppliers when trying to access ASEAN and Asian trade blocs. The United States will thus need to strengthen its trade and economic presence in Southeast Asia to overcome these structural barriers—as it already started doing through the Indo-Pacific Economic Framework for Prosperity, the Just Energy Transition Partnership, and other initiatives.

- d. Fourth and finally, Southeast Asian states should be recognized on their own strength—that is, not just as a region to be won over, but as important international actors with significant experience on how to construct consensus and manage great-power conflicts. As is the ASEAN Way, Southeast Asia's method is careful, sometimes ambiguous, and particularly sensitive to the reality of power disparity—a stark contrast to the narrative of democracy-versus-autocracy dichotomy. As with any model, while such a method may not transplant well to other contexts, it can at least offer valuable lessons to other countries, the United States included, in a new era of strategic dealings with China.

## Introduction

This research paper examines Southeast Asian states' use of law as a tool to both enmesh and resist the outsized impact of the People's Republic of China (PRC). This dual use of "legal hedging" combines strategies of power acceptance and rejection as a "bundled" foreign policy to at once take advantage of deeply enmeshed economic ties with China while hedging the risk of domination.<sup>1</sup> Through case studies of Indonesia, Vietnam, and Cambodia, this paper analyzes how these states implement hedging strategies through selective partnership with China and the Western legal order, deliberate multilateralism, and pursuit of new legal innovations. Taken together, the legal strategies of Southeast Asian states suggest a robust, highly functional regional model that merit careful study. Importantly, they also demonstrate a subtle use of law and policies unique to Asian regionalism that does not cater to either the Washington Consensus or the Beijing Consensus but aims to selectively cooperate with both.

This paper proceeds in four parts. Part I turns to the theory of hedging and argues that Southeast Asian states, in general, tend to advance a nuanced use of international law and policies to "hedge" the risk of big powers' domination. Instead of formal participation in international legal frameworks, such as treaty ratification or litigation before international tribunals (though these instances do happen), hedging states may prefer a more subtle use of international law and institutions to maintain "strategic ambiguity" vis-à-vis outside powers. By advancing a "bundle of policies" approach that combines "power acceptance" and "power rejection" behaviors, these states seek to both take advantage of China's economic opportunities while resisting its pressure.

Part II and Part III then turn to investigate "power acceptance" and "power rejection," respectively. Part II examines the deeply enmeshed economic ties between China and Southeast Asian nations through trade and supply chain linkages as a major form of power acceptance. Southeast Asian countries, including Indonesia, Vietnam, and Cambodia, have all benefited from downstream supply chain architecture from China, in particular the infrastructure, legal, and business network that propel the region's economic rise. This section focuses on two salient features of the Sino-Southeast Asian supply chains: a liberal rules of origin regime under the Regional Comprehensive Economic Partnership (RCEP) and a network of densely

weaved infrastructure, including the proliferation of supply chain cities and special economic zones throughout Southeast Asia.

Even as Southeast Asian countries seek to take advantage of Chinese economic links, they also engage laws and policies to resist China's domination—a form of “power rejection” hedging. Each state's ability to hedge, however, varies based on complex internal and external factors, including domestic politics, historical ties, relative strength of regional and international partnerships, among others. Part III highlights two notable forms of “power rejection” hedging from Vietnam, Cambodia, and Indonesia: engagement in multilateralism through diverse partnerships, notably in trade, and selective embrace of the liberal legal order. For Indonesia, one form of such engagement has been its projection of its democratic values in multilateral forums, even as it articulates critiques of financial institutions with regards to global inequalities. For Vietnam and Cambodia, the South China Sea disputes showcase these states' careful and nuanced maneuvers against China within the power-sensitive ASEAN Way of doing international law.

While each Southeast Asian country is unique in its approach and relation with China, these three countries make interesting case studies because they represent a diverse range in political systems, regional positions, and attitudes towards China. Indonesia is Southeast Asia's leading regional power who has been increasingly vocal on the need to reform existing international institutions. Vietnam is one of the few socialist countries left in the world. Despite sharing an ideological root with China, its strong identity of resistance against Chinese domination coupled with strong emphasis on economic development has led to its eagerness in deepening ties with multiple economic partners. Cambodia, on the other hand, is regarded as one of China's “client state”; yet even it strives for some degrees of autonomy in fear of domestic discontent. These three countries thus display a range of hedging abilities and behaviors, highlighting just a taste of the diversity that is characteristic of Southeast Asia.

Part IV steps back from the analysis to offer several implications to US policymakers. Among other takeaways, it points out that despite conventional wisdom on Southeast Asia's relatively inactive participation in international law, we are seeing increasing participation and innovation in tandem with the region's economic rise and eagerness to take part in shaping a changing international landscape. As such, opportunities exist for the United States to align

its interests with Southeast Asian countries in supporting the revitalization of the region's economic and geopolitical rise, as an effective form of strategic competition with the PRC.

## I. Legal Hedging: A Theoretical Framework

This Part lays out the theoretical framework of “legal hedging” as an analytical tool to understand Southeast Asian states’ strategies towards China. While all states, big and small, can display hedging behaviors, this strategy is often associated with non-dominant states, with special prominence in Southeast Asia.<sup>2</sup> This paper focuses on the roles of law in executing hedging strategies—what I call “legal hedging.” Specifically, I focus on the roles of law in executing a dual hedging framework of both power acceptance and power rejection—through selective partnership and collaboration as well as selective resistance and counterbalancing partnership vis-à-vis outside influence.<sup>3</sup>

First, as a general definition, to hedge means “to protect oneself from losing or failing by a counterbalancing action” by “making transactions on the other side.”<sup>4</sup> In finance, hedging refers to strategies to limit risk by placing a bet in the opposite direction in case market conditions change.<sup>5</sup> In international relations discourse, hedging refers to state behaviors that feature a mix of cooperative and confrontational elements to avoid overreliance on any outside force—sometimes also called “multilayered” or “omnidirectional.”<sup>6</sup> Hedging is fairly young as a matter of theory—it took on prominence in the post-Cold War era, as an alternative to the two realist theories of bandwagoning (aligning with the dominant state) and balancing (aligning against the dominant state through alliances).<sup>7</sup> As the 1990s ushered in flourishing trade and globalization, it soon became clear that the bandwagoning-balancing dichotomy no longer captured the complexity of state behaviors in a time of declining military risks and deepening economic ties. Hedging thus emerged as a useful concept to articulate the space between these extreme poles.

At its core, hedging is a “bundles of policies” approach to manifest “deliberate ambivalence” or “strategic ambiguity” towards one or more major powers.<sup>8</sup> The goal is to cultivate a state’s ability to flourish without overreliance on any particular external force. As such, hedging states strive to display “a middle position that forestalls or avoids having to choose one side at the obvious

expense of another.”<sup>9</sup> Critically, hedging is distinct from non-alignment in that, rather than seeking neutrality through non-engagement, weaker states are actively engaging with multiple partners and pursuing deep enmeshment. In other words, while non-aligned states deliberately stay out of the arena to avoid entanglement, hedging states do not shy away from engaging with both sides. By design, hedging is also “policy without pronouncement,”<sup>10</sup> as doing otherwise would defeat the purpose of deliberate ambiguity. As a result, hedging behaviors are often not transparent or easily discerned. Seemingly idiosyncratic or contradicting conducts may not make sense when viewed in isolation but may fit a theme of hedging-driven behaviors when viewed holistically.

As one main mode through which state leaders communicate a nation’s policies and values, laws play a critical role in a state’s manifestation of hedging, both as acceptance and rejection of the outside power’s influence. “Power acceptance” refers to laws and policies that, to a varying degree, signal the hedging state’s acquiescence of the external influence, often done through selective partnership, collaboration, and deference where the outsized role of the external power is acknowledged. “Power rejection,” on the other hand, refers to laws and policies that advance nuanced resistance. This can be done directly through counterbalancing partnership and measures, or subtly through diversification of partnership and multilateralism. Moreover, legal hedging may be related to the same issue (for example, security) or spanning across issues (for example, economic and security linkage). The latter rings particularly true to the reality of today’s globalization, where states pursue both security and non-military interests such as trade and investment, and the concept of security is manifesting in areas well beyond military threats, including in international economic law, critical supply chains, and data governance.<sup>11</sup>

The following sections analyze power-acceptance and power-rejection laws and policies, respectively, through the case studies of Indonesia, Vietnam, and Cambodia. With distinct political systems, regional positions, and attitudes towards China, these three countries display a range of hedging abilities and behaviors, highlighting the diversity that is ubiquitous of Southeast Asia.

## **II. Legal Hedging as Power Acceptance: Sino-Southeast Asia's Economic Links**

This section examines the deeply enmeshed economic ties between China and Southeast Asian nations through trade and supply chain linkages as a form of power acceptance. Southeast Asian countries, including Indonesia, Vietnam, and Cambodia, have all benefited from downstream supply chain architecture from China, in particular the infrastructure, legal, and business network that propel the region's economic rise. Here, I focus on two salient features of the Sino-Southeast Asian supply chains: a liberal rules of origin regime pursuant to RCEP and a network of densely weaved infrastructure.

### **A. Rules of Origin**

Today's trade and tariff regime is governed by a system of "origin certifications" that create a fictional legal nationality for consumer goods—known as the rules of origin (ROOs) regime.<sup>12</sup> Akin to passports, certificates of origin declare the "nationality" of the product to satisfy customs and trade requirements. ROOs vary by trade agreements and are designed to ensure that a certain percentage or portion of content of any good has to come "from" production within the member states to benefit from preferential tariffs.<sup>13</sup> As such, ROOs create one major way to incentivize local production. Globalization, however, has presented considerable challenges to trade law. The current system of ROOs is often criticized as cumbersome and ill-suited for the reality of today's global supply chains, where complex networks of global production make it difficult, if not impossible, to determine the 'nationality' of any particular product.<sup>14</sup>

The Sino-Southeast Asian supply chains are remarkable in the pioneering of an innovative, more liberal, and more flexible ROO design through the RCEP. Currently the world's largest free trade agreement, the RCEP partners Southeast Asian nations with the PRC, as well as Australia, New Zealand, Japan, and the Republic of Korea. Notably, it creates a free trade relationship for the first time among the three East Asian powerhouses. One critical feature is the creation of a "cumulative" ROO regime, which enable a single certificate of origin for goods originating from the entire RCEP bloc.<sup>15</sup> Such regime enables companies to easily ship products among RCEP countries without having to worry about country-specific rules or cumbersome criteria

for certain manufacturing steps—as has long been the challenge with ROOs in existing free trade agreements.<sup>16</sup>

As a result, companies operating in the region can enjoy greater options and flexibility in designing and optimizing their supply chains. Multinationals that export to RCEP countries would further benefit from establishing supply chains within and across the bloc to take advantage of preferential tariff.<sup>17</sup> The RCEP is poised to increase the ease for Chinese companies to invest in regional markets, while other member countries also benefit from market access into China, as well as Japan and South Korea. Vietnam, for example, has already observed substantial increase in its export to RCEP countries as compared to the CPTPP.<sup>18</sup> Indonesia, as Southeast Asia's largest economy, has been eager to upgrade its supply chains into higher-end products and gain better access to China's strong consumer market.<sup>19</sup> Cambodia, too, has leaned heavily into trade with China through both the RCEP and the 2022 Cambodia-China Free Trade Agreement.<sup>20</sup> For Cambodia, Chinese engagement has been critical to temper the effects of economic pressures and sanctions from the European Union and the United States, imposed due to Cambodia's concerning human rights record.<sup>21</sup>

Ease of doing business aside, a cumulative ROO regime can also impact other areas of international law. As one example, it may make it harder for the United States to impose sanctions on Chinese products such as those originating from the Xinjiang Uyghur Autonomous Region. In the apparel and textile context, suppliers have already started to reconfigure their supply chains and route them through other countries to get around sanction measures.<sup>22</sup> The RCEP's liberal cumulative ROO rules would lower the costs of such reconfiguration. Under current US laws, both the Xinjiang withhold release orders and the Uyghur Forced Labor Prevention Act hinge on US importers' ability to trace the origin of their products and to produce documents demonstrating that those products do not involve forced labor.<sup>23</sup> This complex documentation regime likely requires cooperation from local suppliers and host countries, whose control over and proximity to the production process reasonably enable greater supply chain traceability compared to end-of-chain buyers and importers.<sup>24</sup>

## **B. Supply Chain Cities and Infrastructure**

Chinese investment and infrastructure represent another form of power acceptance by host countries in Southeast Asia. Consider, for example, the model of special economic zones (SEZs) and “supply chain cities” that were the signature of the PRC’s Reform and Opening era, which have now proliferated throughout Southeast Asia and beyond.<sup>25</sup> “Supply chain cities”—a modern reincarnation of the once-popular “company towns” of the industrializing West—have become a staple infrastructure of Chinese manufacturing multinationals. In these communities, an enterprise or a group of enterprises operates and controls an entire dwelling area, providing not only employment but also housing, public services, education, healthcare, entertainment, and more. A prominent example is Foxconn’s electronic equipment plant in the Longhua Science and Technology Park in Shenzhen, China—its largest plant worldwide. Dubbed a “forbidden city,” over 1,000 security guards staff the complex, which together with fingerprint scanners and ID checkpoints, keep order, ward off curious reporters, and prevent leaks of highly anticipated consumer products.<sup>26</sup> In addition to its dozens of assembly lines and dormitories, Longhua has a fire brigade, a hospital, restaurants, banks, a grocery store, and its own TV channel. Workers typically work exceedingly long hours during shifts where no talking or eating are allowed, eat subsidized meals, and can choose to live rent-free in company dormitories inside the walled-off compound.<sup>27</sup> A series of Foxconn workers’ suicides have been attributed to the high-stress work culture and subpar living conditions of the Longhua campus.<sup>28</sup> While originating in China, this model of supply chain cities has proliferated across Southeast Asia and beyond as companies diversify to new locations in search of lower wages and more favorable environments. This has significant implications on human rights, employment law, and sustainability concerns.<sup>29</sup>

The proliferation of supply chain cities is part of a broader infrastructure vision by Chinese and Southeast Asian leaders that privilege regional ties. Unlike the old company towns of the West, which largely served a single, vertically integrated corporation, modern factory towns are often international hubs, carefully curated as part of transnational commerce. These communities are usually located in tax-favorable locations that are designated economic zones, industrial zones, or free trade zones, sometimes governed under distinct bodies of law. These special administrative areas not only enable economic development but

also act as “regulatory laboratories” to test controversial policies such as land auctions, wholly foreign-owned companies, or labor market liberalization without the state having to commit to large-scale changes.<sup>30</sup> In China, many supply chain cities are located within its several SEZs and bonded zones, first created in 1979 as part of Deng Xiaoping’s “Open Door” policy.<sup>31</sup> An early adopter, Vietnam has designated over 150 industrial parks, mostly located along its coastal provinces, governed under “carve-out” regulations that are separate from its prevailing regulatory framework.<sup>32</sup> In Indonesia, while the first SEZ was not in operation until 2015, Indonesian leaders have coupled such development with a policy priority to build up roads, ports, railways, and power plants as a core part of its engagement with the PRC’s Belt and Road Initiative.<sup>33</sup> Indonesia’s high-profile Jakarta-Bandung High Speed Railway project, for example, had attracted funding bids from both Japan and China, with the final bid awarded to the PRC after it announced a highly favorable deal with the Jokowi administration.<sup>34</sup> Indonesia is now the second largest recipient of BRI infrastructure funding by project value, just after Pakistan, and hosted the third highest number of BRI projects, following Pakistan and Cambodia.<sup>35</sup>

Taken together, Sino-Southeast Asian economic ties can be viewed as examples of host countries’ “power acceptance” of China’s influence and economic acumen. Indonesia, Vietnam, and Cambodia, together with other ASEAN states, are part of Asia’s newly emerging economic regionalism, which encompasses infrastructure projects under the BRI, supply chain architecture and linkages, as well as legal innovation such as the cumulative ROO regime under the RCEP. As companies increasingly turn to Southeast Asia as an alternative global supply base, the model of supply chain cities and carved-out zones is poised to take on increasingly important roles in the global economy, both for their production efficiencies and concerns regarding workers’ rights.

### **III. Legal Hedging as Power Rejection: Diverse Partnerships and Selective Embrace of the Liberal Legal Order**

As Southeast Asian countries seek to take advantage of Chinese economic links, they also engage laws and policies to resist China’s domination—a form of “power rejection” hedging. Each state’s exercise of hedging and degree of

success is based on complex internal and external factors, including domestic politics, historical ties, relative strength of regional and international partnerships, among others. This section highlights two notable forms of “power rejection” hedging from Indonesia, Vietnam, and Cambodia: one, engagement in multilateralism through diverse partnership and, two, selective embrace of the liberal legal order.

### **A. Multilateralism Through Diverse Partnership**

Indonesia, Vietnam, and Cambodia have all sought to diversify relations with other partners, especially through trade and security cooperation. Indonesia has been pursuing an “active and independent” foreign policy, which focuses on strengthening its autonomy and unique identity as a Muslim-majority democracy in the international order.<sup>36</sup> A key convenor of the 1955 Asian-African Bandung Conference and founding member of the non-aligned movement, Indonesia has continually articulated a commitment for sovereignty and non-intervention while simultaneously seeking to deepen ties with the United States, Australia, India, and other external powers in the post-Cold War era.<sup>37</sup> For example, as the 2011 Chair of the East Asia Summit—the premier forum for ASEAN regional security—Indonesia welcomed, for the first time, participation from the United States and Russia, as it previously supported the inclusion of Australia and India.<sup>38</sup> It also announced the adoption of the Principles for Mutually Beneficial Relations, known as the Bali Principles, which highlights the country’s belief that regional stability can be achieved through ASEAN’s process of “omni-enmeshment” to draw major powers into adopting regional norms.<sup>39</sup>

Such strategy is also reflected in Indonesia’s infrastructure policies, where its leaders have carefully managed competition between Japan and China. While leveraging Japan to obtain a more favorable offer from China in the construction of the Jakarta-Bandung railway, Indonesia simultaneously courted Japan with another mega railway project, the Jakarta-Surabaya line, motivated at least in part by domestic concerns about the BRI’s economic statecraft.<sup>40</sup> Though having two different railway standards and technologies can be challenging, by diversifying Indonesia appears to be able to attract both Chinese and Japanese investments and engages both in negotiation for better terms. While the fate of the Jakarta-Surabaya line remains uncertain,

Indonesia's maneuvering between Japan and the PRC shows an example of how a middle power may perform "power rejection" at the same time that it performs "power acceptance" vis-à-vis China.

Vietnam, too, has been actively seeking a multilateral approach through its aggressive free trade strategies. It is a member country of the CPTPP, the RCEP, as well as the European Union (EU)-Vietnam trade and investment agreements. The latter set up a permanent dispute resolution mechanism, with tribunal members appointed in advance by the EU and Vietnam, and incorporate the rules on transparency recently adopted by the United Nations Commission on International Trade Law.<sup>41</sup> The agreements, once effective, will supersede existing bilateral investment treaties concluded between EU member countries and Vietnam. This makes Vietnam among the first countries to sign up for the new multilateral investment court mechanism and marks a significant, proactive change in the single party-state's engagement with formal international institutions.

Vietnam has also significantly shored up its relationship with the United States. Following President Biden's visit to Hanoi in September 2023, the two countries elevated their diplomatic ties to the highest level of "comprehensive strategic partnership," a status Vietnam maintains with China, Russia, India, and South Korea. In addition to stronger military-to-military cooperation and bilateral capital flows, Vietnam has been selected as a US strategic partner in the semiconductor industry and the Just Energy Transition Partnership for climate change—two areas of priority for the Biden administration.<sup>42</sup> Notably, Biden's delegation to Hanoi included executives from top US chip-making and technology companies, suggesting the significant role of these industries in future cooperation.<sup>43</sup> Taken together, Vietnam has demonstrated highly active hedging behaviors with partners across ideological aisles, true to its style of multidirectional foreign policy.

Compared to Vietnam and Indonesia, Cambodia's heavy dependence on Chinese investments for poverty reduction, long seen as a measure of legitimacy for former Prime Minister Hun Sen's regime survival, naturally leads to its strong embrace of the BRI and narrows the space for hedging. Even then, Cambodia's initial enthusiasm was tamped down due to concerns about debt distress risk and anti-China discontent. The PRC's monopoly on investment in several key sectors in Cambodia—Chinese companies, many of which are

state-affiliated enterprises, own around 90% of textile firms and nearly all hydropower plants in Cambodia—has long caused tension in domestic politics.<sup>44</sup> As China also receives the largest share of land grants for economic development, displacement caused by BRI-related infrastructure development continues to cause tension.<sup>45</sup>

## **B. Selective Embrace of the Liberal Legal Order**

Selective embrace of the liberal legal order represents another form of power rejection hedging by the three states. For Indonesia, such engagement is driven by its national ethos as a “home-grown” democracy, having emerged from internal conflicts and through political and economic reforms.<sup>46</sup> In the world stage, Indonesia has built an identity as an active supporter of democratic values in various international forum. Since 2008, it has convened the Bali Democracy Forum, a platform to share experience among experienced and young democratic states.<sup>47</sup> It played a critical role in supporting the discourse on democracy and human rights in the drafting of the ASEAN Charter, and was active during its leadership tenure at the United Nations Human Rights Council.<sup>48</sup> At the same time, Indonesia has also insisted that democracy does not simply equate to the Western model. Core to Indonesian leaders’ vision is equitable development. As such, Indonesia has become increasingly vocal in its critique of financial institutions such as the World Bank and the International Monetary Fund for their failure to reduce global inequalities.<sup>49</sup>

For Vietnam and Cambodia, the South China Sea dispute presents an apt case study for their judicious engagement with international law as a way to push back against China’s encroachment, while seeking to isolate maritime tensions from dense Sino economic and political ties. In its bid to protect its maritime interest, Vietnam departed from ASEAN’s long-standing principle of regional harmony and consensus to advocate for a multilateral approach.<sup>50</sup> As ASEAN’s 2010 chair, it zealously, if informally, encouraged regional outsiders such as the United States, Japan, and Australia to intervene.<sup>51</sup> Vietnam’s effort appeared successful when then-US Secretary of State Hillary Clinton declared at the ASEAN Regional Forum that the United States had “national interests” in the freedom of navigation in the region.<sup>52</sup>

US intervention put pressure on the PRC to restart committee-level meetings at ASEAN, rather than maintain its preferred method of bilateral

dialogues. Unlike the Philippines, Vietnam stopped short of fully availing itself of international legal institutions, though it appeared to lay some preparation groundwork. Vietnam's March 2020 note verbale, the latest in a series of note verbale battles, laid out, for the first time, its legal position, including an acknowledgement of the U.N. Convention on the Law of the Sea (UNCLOS) as the "sole legal basis" for dispute resolution.<sup>53</sup> Significantly, by articulating a legal basis for Vietnam's position, the note verbale would fulfill the "exchange of views" prerequisite for submitting to an UNCLOS tribunal's jurisdiction—a signal that Vietnam may be laying the groundwork for a possible future claim.<sup>54</sup>

Even Cambodia, deemed the PRC's "client state," has felt some need to distance itself from China's strongman stand in the South China Sea, following backlash both at home and abroad. As ASEAN chair in 2012, Cambodia came under fire for thwarting Vietnam and the Philippines' push for a unified regional position on the dispute, resulting in ASEAN's first-in-history failure to produce a joint statement at the Foreign Ministers Summit and sparking criticism of the organization's waning relevance.<sup>55</sup> Cambodia, however, did sign on to a major ASEAN's joint statement in June 2020. This statement was crafted by Vietnam but endorsed unanimously by other member states. It explicitly affirmed, for the first time, that "UNCLOS sets out the legal framework within which all activities in the oceans and seas must be carried out."<sup>56</sup> Though it sounded rather mild and without direct reference to the *Philippines v. China* arbitration, the joint statement marked ASEAN's hard-won unified rejection of China's territorial claim.

The South China Sea disputes thus demonstrate the nuanced modes of dispute resolution that secondary states such as Vietnam and Cambodia may choose to utilize. Subterranean to formal mechanisms (and therefore, uncaptured by official data), these modes are nonetheless tethered to the democratic-led international legal order, occupying the space *between* the formality of international adjudications and private negotiations. Vietnam's note verbale posture and Cambodia's finally signing on to ASEAN's June 2020 statement showcase these states' careful, evolving maneuvers against the PRC's ambition, within the power-sensitive ASEAN Way of doing international law.

## IV. Conclusion & Implications for US Policymakers

This research paper examines Southeast Asian states' dual use of "legal hedging" as a way to both enmesh and resist China's influence. By combining strategies of power acceptance and power rejection, Indonesia, Vietnam, and Cambodia attempt to both capture the benefits of deeply enmeshed economic ties with China while hedging the risk of Chinese ambition. As participant states in the RCEP, China's BRI, and the Sino supply chain networks, these states stand to benefit from the infrastructural, legal, and business linkages with China, including through legal innovation such as the cumulative rules of origin regime under the RCEP. At the same time, these states are also wary of the risk of Chinese domination and have adopted robust strategies of "power rejection" hedging through engagement in multilateralism and selective embrace of the liberal legal order. Taken together, the legal strategies of Southeast Asian states demonstrate a subtle use of law and policies that does not cater to either the Washington Consensus or the Beijing Consensus but aims to selectively cooperate with both. This suggests a highly functional regional model that may offer lessons for other states in their dealings with China.

To US policymakers, this model of legal hedging offers four policy implications. First, despite conventional wisdom on Southeast Asia's relatively inactive participation in international law, we are seeing increasing participation and innovation in tandem with the region's economic rise and eagerness to take part in shaping a changing international landscape. As such, opportunities exist for the United States to align its interests with Southeast Asian countries. By supporting the revitalization of the region's economic and geopolitical rise, the United States can build diverse alliances with this important region, as an effective form of strategic competition with the PRC.

Second, at a macro level, to be effective, the United States' engagement with Southeast Asian states, as with any partnership, needs to start from a basis of understanding of these states' use and vision of the international legal order. As the case studies show, Southeast Asian states, not unlike other secondary states, prefer a pluralist vision of international law, even if they may at times embrace the alternative model offered by big authoritarian powers such as China. This instinct to stay embedded in multiple legal orders stems from Southeast Asian nations' wariness of being overdependent on any single outside force and of being pressured to take side in great-power rivalries. Providing

the space for these states to embrace aspects of the current US-led legal order without taking on all of it would thus enable their continued engagement.

Third, it is critical for US policymakers to appreciate the legal and economic enmeshment of Sino-Southeast Asian economic ties in order to ensure the effectiveness of US policies and enhance US competitiveness in the region. For example, the dense linkages of the Sino-Southeast Asian supply chains pose a challenge for the United States and other countries in enforcing tariffs and import exclusion on Chinese products. Understanding the ways in which Chinese materials are routed and processed through Southeast Asia can be helpful for US policymakers in designing effective sanctions, including identifying the cooperation needed from Southeast Asian host states. Another example is the RCEP's liberalizing rules-of-origin regime that privileges materials, goods, and services originating from within member countries. As the United States is not a member of either the RCEP or the CPTPP, US suppliers will be severely disadvantaged when trying to access ASEAN and Asian trade blocs. As part of its geopolitical bid, the United States will need to strengthen its trade and economic presence in Southeast Asia to overcome these structural barriers—as it already started doing through the Indo-Pacific Economic Framework for Prosperity, the Just Energy Transition Partnership, and other initiatives.

Fourth and finally, from the perspective of secondary states, one hopes that US policymakers can recognize Southeast Asia for its own strength—that is, not just as a region to be won over, but as an important international actor with significant experience in constructing consensus and managing great-power conflicts. As is the ASEAN Way, Southeast Asia's method is careful, sometimes ambiguous, and particularly sensitive to the reality of power disparity—a stark contrast to the narrative of democracy-versus-autocracy dichotomy. As with any model, while such a method may not transplant well to other contexts, it can at least offer valuable lessons to other countries, the United States included, in a new era of strategic dealings with China.

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## Notes

1. This framework is adapted from the work of scholar Cheng-Chwee Kuik, “How do Weaker States Hedge? Unpacking ASEAN States’ Alignment Behavior Towards China,” *Journal of Contemporary China*, 25:100 (2016), 500–514; Cheng-Chwee Kuik, “Hedging in Post-Pandemic Asia: What, How, and Why?,” *Asian Forum*, June 6, 2020.
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would be violating the interests of other countries as well. This is the ideal strategic option for Vietnam. It is also the most practical.” Carlyle Thayer, “Sino-Vietnamese Relations: The Interplay of Ideology and National Interest,” *Asian Survey*, 34:6 (1994), 513–528 (quoting former Vietnamese Ambassador Nguyen Hong Thach).

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