

DIPLOMAT
14-4-22

Agent Orange in Vietnam: Legality and US Insensitivity

The U.S. government's claims that it has never deployed chemical weapons has rankled Vietnamese netizens.

By Phan Xuan Dung

On March 18, the Facebook page of the U.S. Embassy in Hanoi published a post pushing back against Russian allegations of American secret development of chemical weapons in Ukraine. The post states that “Russia, not the United States, has a long and well-documented track of using chemical weapons.” Overwhelmingly negative reactions from Vietnamese netizens ensued. Comment after comment on social media lambasted the U.S. for its hypocrisy, recalling the U.S. Army’s deployment of the infamous herbicide Agent Orange during the Vietnam War from 1961 to 1971. But are these netizens correct to talk about Agent Orange as if it were a chemical weapon?

The U.S. argues that Agent Orange is a tactical defoliant, not a chemical weapon, which is legally defined as any toxic chemical intended to inflict death or harm. However, the fact remains that Agent Orange contains one of the most toxic chemicals known to man: dioxin, which is linked to cancers, diabetes, disabilities, and other health problems. The Vietnam Red Cross estimates that 3 million Vietnamese, including 150,000 children, have been harmed by dioxin.

Thus, understandably, the insinuation that the U.S. has no track record of chemical weapons use was perceived as a brazen falsehood by many Vietnamese netizens. One Vietnamese Facebook user received more than 360 likes and reactions for the comment, “You sprayed your toxic dioxin over the Truong Son forest, many of our heroes and soldiers suffered, their children and later generations are suffering the consequences of what you did to our country. We don’t like wars, [but] what the United States did to Vietnam was many times more reprehensible than what is happening in the Russian-Ukrainian [war].” Meanwhile, the comment with the most reactions (more than 620 likes) sarcastically remarked that the U.S. did not use a chemical weapon in Vietnam but instead an “American product” that caused birth defects and disabilities in Vietnamese people.

More broadly, discourse on this war legacy in Vietnam naturally takes the toxicity of Agent Orange for granted, as reflected in how Vietnamese often use the term chat doc da cam (orange-colored poison) instead of chat da cam (Agent Orange) when referring to the herbicide. High-level national committees addressing the issue have names like the National Steering Committee on the Settlement of Post-war Unexploded Ordnance and Toxic Chemical Consequences (Steering Committee 701) and the National Steering Committee for Overcoming Consequences of Toxic Chemicals Used by the U.S. in the War in Vietnam (Steering Committee 33).

Vietnamese are not alone in construing the use of Agent Orange as chemical warfare. In 1967, around 5,000 American scientists, including 17 Nobel laureates, signed a petition condemning the use of “chemical and biological weapons” in Vietnam. In 1969, the United Nations ratified a resolution to outlaw herbicides under the 1925 Geneva Convention. A year

later, Professor Arthur Galston of Yale University coined the term “ecocide” to describe the destructive effects of the American defoliation campaign on the ecology and potentially human health in Vietnam. While the U.S. government insisted that its wartime herbicides were not designed to injure humans, Galston’s concept captured the fact that willful harm done to the environment would eventually lead to human suffering. The use of Agent Orange ended in 1971 after the Nixon’s administration was forced to disclose government-sponsored research which showed the detrimental effects of Agent Orange’s properties.

For many years after the war ended, Washington refused to address the apparent tragedy unleashed by Agent Orange in Vietnam. Frustrated by the lack of U.S. action and acknowledgement, in 2004, the Vietnam Association for Victims of Agent Orange/Dioxin (VAVA) filed a class-action lawsuit against producers of the chemical in the U.S. Federal District Court in New York. The plaintiffs sought compensation from the defendants and accused them of violating customary international laws, including the 1925 Geneva Protocol and the 1907 Hague Convention.

At the request of the judge presiding over the case, the U.S. Department of Justice submitted a Statement of Interest. The statement argued that prior to 1975, the U.S. had not approved the 1925 Geneva Protocol and therefore was not bound by the treaty and that the 1907 Hague Convention only banned toxic chemicals, not defoliants. The court later dismissed the case after deeming that the defendants violated no domestic or international laws.

Vietnamese Agent Orange victims and their advocates were dismayed with the ruling and persisted in their struggle for justice. In May 2009, the International People’s Tribunal of Conscience in Support of Vietnamese Victims of Agent Orange found that dioxin was “a poisoned weapon outlawed both in customary international law and by the Hague Convention of 1907.” The tribunal then concluded that the U.S. was guilty of ecocide and therefore must provide compensation for the victims and their families.

Meanwhile, at the government level, Hanoi and Washington have moved beyond differences over legal liability and managed to engage in practical cooperation to mitigate the consequences of Agent Orange. Since 2007, the United States has provided funds for dioxin remediation in Vietnam and health and disability programs that assist people with disabilities living in heavily sprayed provinces. The U.S. Consolidated Appropriations Act of 2022 allocates \$15 million for “health and disability programs to assist persons with severe physical mobility, cognitive, or developmental disabilities that may be related to the use of Agent Orange and exposure to dioxin.” These gestures connote de facto admission of responsibility for the damage caused by Agent Orange in Vietnam.

However, U.S. Agent Orange assistance has not assuaged Vietnamese victims and their supporters’ demand for accountability. Since 2014, Tran To Nga, a French-Vietnamese victim, through a French court, has been trying to hold former Agent Orange manufacturers responsible for the crime of ecocide. Nga’s unwavering determination in confronting the chemical giants in the name of justice has garnered transnational solidarity in her support and other Agent Orange victims. The Vietnamese government and the VAVA have also publicly endorsed Nga’s lawsuit, which helps keep discussions about Agent Orange lively in Vietnam.

Negative reactions to the U.S. Embassy’s Facebook post show that the U.S. insensitivity to the Agent Orange issue could undercut the Vietnamese people’s generally favorable opinion of the country, in the context of rising concerns about China. Regardless of the legality of Agent

Orange, given the controversies surrounding the herbicide, the United States would be best placed to avoid insinuating that it is not guilty of chemical weapons use.

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