

THEORETICAL AND PRACTICAL ISSUES IN ALIGNING VIETNAMESE LEGISLATION WITH INTERNATIONAL LAW IN INTERNATIONAL ECONOMIC INTEGRATION

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In this article, the author attempts to analyze the relationship between Vietnamese legislation and international law in aligning Vietnamese legislation with international law; at the same time, suggest some solutions to perfectionate the Vietnamese legal system commensurate with international law in international economic integration: international law must be a constituent part of Vietnamese law; Vietnamese citizens are entitled to provoke provisions set forth in international treaties to protect their legitimate rights and interests; to restrict independent decrees adopted by the Government; to recognize precedents as a legal source in the legal system of Vietnam; to intensify training and advanced-training as well as to enhance capacity of law enforcement personnel; to develop and put into operation a website that carries on all international treaties to which Vietnam is a signatory, making it easily accessible by all.

1. Obligation to implement international treaties with the “*Pasta Sunt Servanda*” principle

The Vienna Convention 1969 on the Law of Treaties ^(**) codifies and develops a wide range of norms that are considered international customary norms in the area of international treaty. Article 1 of the Convention prescribes clearly: *Treaty is a term used to indicate an international agreement concluded between states*

and other actors of international law and presented in one or more related instruments and can be named whatever its particular designation (convention, treaty, agreement, pact, etc.).

On 10 October 2001, Vietnam was officially admitted to be a member of the Vienna Convention 1969 on the Law of Treaties. The Convention conceptualizes this rule as follows: *“Every treaty in force is binding upon the parties to it and must be performed by them in good faith”*. In international

^(**) The codification of international treaties was discussed early, nonetheless it was done within United Nations system solely. Not until 1969 that the Vienna Convention on the Law of Treaties, which entered into effect in 1980.

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law, there is a fundamental principle that came into being rather early, which is “Pasta Sunt Servanda” principle (this principle connotes that “international commitments must be implemented seriously and in good faith”). Substantive and faithful enforcement denotes that states shall undertake by all necessary means to realize all provisions enunciated in treaties in line with their purposes and operational principles. All parties are requested by the Pasta Sunt Servanda principle to respect international customary norms that are collectively recognized in executing obligations from international treaties. Finally, a crucial point embodied in the Pasta Sunt Servanda principle is non-execution of any provisions in a treaty must be subjected to international law. The Vienna Convention 1969 also provides that parties to a treaty can not provoke their domestic law (public order or non-existence of such provisions) as a mean to justify for failing to implement an international treaty.

From 1995 up to present, Vietnam has placed a stroke of its pen in 1,082 international treaties on economic-trade terms, of which 700 remain valid in trade, agricultural, industrial, maritime, aviation, land-road, railway, employment, fishery cooperation and aquacultural expansion, tourism, health care, financial, credit, investment stimulation and protection, double-

taxation avoidance and intellectual property rights protection fields. These international treaties have contributed to Vietnam’s strengthened and broadened friendships and multi-faceted cooperation with foreign partners, particularly exaggerating international economic integration, intensifying commercial cooperation, drawing investment capital as well as official development assistance.

The National Assembly of the Socialist Republic of Vietnam, at its 7th session of the 11th legislature, adopted the Law on the Signing, Accession and Implementation of International Treaties on 14 June 2005, which entered into effect from 1 January 2006^(*). This is possibly a crucial legal document specifying the signing and implementation of international treaties by the Socialist Republic of Vietnam.

The adoption of this law is of important significance. The Party’s relevant policies and lines were timely incorporated in the law in response to the need for improving the legal framework for international economic integration with a view to mobilizing external sources and maximizing internal sources to build and develop the country. On the other hand, the law contributes to building a consistent legal framework with adequate and detailed provisions on the authority, procedures and formality for the

^(*) This Law replaced the Ordinance of 20 August 1998 on the signing and implementation of international treaties.

signing, accession and execution of international treaties by concerned authorities of Vietnam (National Assembly, Standing Committee of the National Assembly, President of the State, Government, Proposal-making agencies, supervising agencies, examining agencies, agencies monitoring international treaty implementation); overcoming the inconsistency and backwardness in the existing law and the exercise related to international treaties, contributing to increased friendships and international cooperation of Vietnam with foreign partners, boosting the country's international economic integration for national construction and development.

The Law on the Signing, Accession and Implementation of International Treaties indicates clearly Vietnam's policy, which weighs its cooperation with the international community as reflected by the motto "Vietnam is willing to be a friend, a reliable partner"; at the same time, strongly affirms Vietnam's commitment to comply with and ensure the implementation of agreements by the State and the Government of Vietnam with countries, international organizations and other actors of international law. Provisions set forth in the Law concerning the compliance and implementation of international treaties contribute to facilitating international integration of Vietnam, especially its accession to international economic institutions such as the

World Bank (WB), the World Trade Organization (WTO), etc. The Law also ensures its compatibility with provisions enunciated in the Vienna Convention on the Law of Treaties, to which Vietnam is a state party.

To execute international treaties are to require amendments, supplements, denunciation or promulgation of new legal documents by the country. This process is known to making Vietnamese legislation aligned with international law. This undertaking is very important when we realize our international integration policy, particularly in the context of our admission to WTO.

WTO is known to be a multilateral international institution, operating along the rule of market economy. The organization has a rather huge and complicated system of rules, converging varied ideologies and schools of jurisprudence. This is required to govern a multilateral mechanism operating in line with market economy rules (1). Vietnam's admission to WTO is an evidence proving that our legal documents are not incompatible with WTO rules^(*).

Compliance with the commitments to WTO can be seen from a perfectionated legal system. The

^(*) We can not fully confirm this. It is because to fully comply with WTO rules is a challenge in legal activities in Vietnam. To execute our commitments in accession to WTO, we need to continue perfectionating the legal system of Vietnam in order to meet the requirements of WTO.

number of legal normative documents to be amended, supplemented or newly promulgated is not many. So far, the system of Vietnamese laws is basically commensurate with basic principles of WTO. At its 10th session, the National Assembly unanimously adopted a Resolution approving the Protocol for admission to the Agreement establishing WTO. There was an Annex in accompany with the Resolution, which provided direct commitments to be implemented by Vietnam. These commitments differ from existing legal documents (Enterprise Law, Law on Lawyers, Law on Insurance Business, Law on the Promulgation of Legal Normative Documents, Intellectual Property Law, Law on Cinematography). Additionally, pursuant to the commitment roadmap, those provisions in some laws, which are not compatible with WTO rules, are to be revised and supplemented, such as the Law on Special Consumption Tax, Penal Code, Publication Law, Law on Penalty Execution. The National Assembly passed a resolution, which entrusted the Government, Supreme People's Court, Supreme People's Procuracy to review all legal normative documents and make proposals to the National Assembly, the Standing Committee of the National Assembly for possible amendment, supplementation or promulgation of new legal documents in line with commitments made by Vietnam to WTO.

Though the number of laws, ordinance to be revised is not large, there are some legal issues need to be further studied. For instance, the concept "trade" in international law is understood in a very broad sense. However, Vietnamese trade law has a narrow concept on this matter, which in reality cause to erupt not a few problems. Comparing WTO rules on national treatment (NT) with relevant Vietnamese legal provisions, one can see that current Vietnamese law has a provision of general nature on national treatment enunciated in an Ordinance proclaimed in 2002. On the other hand, Vietnam has not had any document giving an explanation of the term, its implication, as well as the operational procedures and application of NT. Furthermore, Vietnam has not provided guidelines for determining and how to apply anti-dumping tax, subsidies and safeguards in accordance with WTO rules. Additionally, more studies need to be done on a series of provisions relating to intellectual property rights, law on investment, transparency, openness, dispute settlement in order to tailor them in tandem with WTO rules.

To fully comply with WTO rules and its commitments, it is a must for Vietnam to recognize the rules of the global trading system. Thus, in the legal proceedings, realizing international commitments, international trade rules set forth by WTO

must be applied to economic, commercial fields within the jurisdiction of Vietnam (2). Nonetheless, priorities should be given to legal reforms to implement at the soonest some requirements posed by WTO, such as non-discriminatory trade; free trade through negotiations, endurance in trade and risk forecast ability; stimulated healthy competition; enhanced economic reform and development. Apart from these principles, WTO also provides other rules, norms and other decisions which are rather complicated, but states members are obliged to comply with. Hence, the development of legal normative documents must be subjected to the rules of the global trading system, incorporating international business norms and rules as well as other legal obligations required by WTO in Vietnamese legal documents. Still, attention should be drawn to avoid economic conflicts, trade disputes that may arise with other states members. This denotes that to adapt to the international playfield after being admitted to WTO, it is imperative to make state agencies of Vietnam adaptable to WTO rules and the modern market mechanism. While strictly implementing WTO rules, Vietnam is also obliged to materialize its commitments with WTO, particularly the commitments relating to the opening of Vietnam's market and services to other WTO members. As such, tariff are subjected to a great

deal of cuts, in the meantime non-tariff measures in goods commerce are removed. One can see that from the revenues for state budget perspective, export-import taxes are not the major revenues source, but it is necessary to make reforms of law on tax in order to increase the revenues from the development of businesses and to expand other revenues sources.

WTO admission is not only to continuously expand the market, but at the same time it is important to protect the country's agricultural, industrial production and young services sector. Thus, legal reforms and implementation of international commitments with WTO must on the one hand accord WTO rules, but on the other aim to protect domestic economic sectors for their development. It is time now to proactively study applicability of WTO rules that allow considerable protection towards domestic economic sectors in line with conditions and membership status of Vietnam in WTO, including the anti-dumping, anti-subsidizing regimes and anti-discriminatory measures in trading and other unhealthy trading measures (3,4).

2. General requirements for aligning Vietnamese legislation with international law in international economic integration

The need for a legal system to be revised and supplemented commences from inner development of the country. At this stage, the national

industrialization and modernization requires us to take break-through steps to achieve the goals set out ahead.

Legislative programmes of action of Vietnam should be formulated in tandem with the following three criteria:

- Firstly, they must be feasible in the legislative context of Vietnam and linked with five-year and yearly legislative programmes of the National Assembly and the NA's Standing Committee as well as programmes and plans of the Government to promulgate by-law normative documents.

- Secondly, the legislative programmes of action must be designed on the basis of the reviews of legal documents undertaken by relevant agencies since 2000 with a view to facilitating international economic integration as well as WTO admission of Vietnam. More importantly, they should be constantly updated with negotiations for WTO admission by Vietnam till present. The reviews are conducted in response to internal demands posed by the industrialization and modernization for national development in recent time. Still, it is also required by the fact of international trade as well as the international economic integration process, in which the legal system of Vietnam needs to be improved and perfectionated to join international economic organizations, particularly WTO. The legislative programmes in the past also bore on the assumed

roadmap for WTO admission by Vietnam in late 2006 and linked under pressure with legislative programmes and plans of the National Assembly, the NA's Standing Committee and the Government in such other fields as cultural, social, security, national defense, foreign affairs, law protection... of the country.

Thirdly, legislative programmes of action should also respond to specified requests from WTO state parties in Vietnam's negotiations; our experiences in implementing commitments arising from the Vietnam-United States of America Bilateral Trade Agreement, ASEAN, APEC... as well as international practices in this matter(5).

Resolution 71/2006/QH11 was a legal normative document that approved the Protocol on Vietnam's accession to WTO. Pursuant to the Law on the Signing, Admission and Implementation of International Treaties, it was a legal act punched by the National Assembly to accept being bound by the international treaty on Vietnam (Article 2, paragraph 7). This is the main function of this sort of resolution. Nevertheless, also according to this Law, when it accepts being bound by the international treaty, in accordance with the requests, contents and nature of the international treaty, the National Assembly can decide whether the whole text or a part of the international treaty to be applied

to agencies, organizations or individuals where provisions set forth in the treaty are inevitable for its enforcement; determine or make proposals for possible revision, supplementation, denunciation or promulgation of legal normative documents that enable the enforcement of the international treaty (Article 6, paragraph 3, Article 33, paragraph 3). On the other hand, the Law on the Promulgation of Legal Normative Documents 2002 prescribes that a legal normative document can only be amended, supplemented, replaced or denounced by another legal normative document issued by the very state agency that had adopted the former (Article 9). Nothing in the Law specifies that the legal normative document to be amended, supplemented, replaced or denounced must be equally configured with its predecessor. Looking into the Resolution 71/2006/QH11, it is obvious that the National Assembly did not act the vested power to amend, supplement other legal documents. Paragraph 2 of the Resolution states as follows: “direct application of commitments made by Vietnam, which are indicated in the Annex of this Resolution, as well as other commitments made by Vietnam to WTO, is stated clearly and in detail in the Protocol, attached Annexes and Final Report of the Working Group on Vietnam’s accession to the Agreement for the establishment of the World

Trade Organization”. As such, the annex only serves as a list of commitments, rather than aims at revising or supplementing other legal normative documents. Where the National Assembly intends to amend, supplement other legal normative documents, it is imperative to comply with provisions stated in Article 9 of the Law on the Promulgation of Legal Normative Documents, which specifies that the document that aims to amend, supplement, replace or denunciate another document must clearly indicate the title, articles or paragraphs included in the document to be amended, supplemented, replaced or denounced.

3. Some suggestions to perfectionate the legal system of Vietnam compatible with international law in the international economic integration process

In the international economic integration process, we hold the view that it is important to be fully and correctly aware of the relevance between international law and Vietnamese legislation. At the same time, it is necessary to undertake measures to align Vietnamese legislation with international law.

1. We need to have a correct view of international law in the on-going international and regional integration process: international law should take precedence over Vietnamese law. International commitments must be observed in line with *Pasta Sunt*

Servanda principle, which is conceptualized in the Vienna Convention 1969 as follows: “Every treaty in force is binding upon the parties to it and must be performed by them in good faith”. Thus, it is a must for the parties to a treaty to fully comply with provisions, clauses agreed by them. Full compliance means the implementation must be substantive and in good faith, rather than formalistic toward treaty-based obligations. To implement the commitments in a substantive and in a good faith manner by the parties is to undertake necessary measures to enforce all treaty provisions in line with its purposes and principles in reality. *Pacta Sunt Servanda* principle requires all parties to respect international customary practices commonly recognized in the implementation of treaty-based obligations.

2. Currently, the position of international treaties to which Vietnam is a signatory or has acceded is not yet clearly prescribed in Vietnamese legislation. Nonetheless, we in fact acknowledge that international norms having been incorporated into the domestic law become essential components of the national law. This viewpoint is virtually agreed by state agencies, legal academics and researchers. Hence, an international treaty enjoys a special status in the legal system of Vietnam.

3. Having signed in or acceded to international treaties, it is important to consider those treaties an integral parcel of Vietnamese legislation. Public agencies and courts can directly apply provisions enunciated in international treaties. Also, citizens have the right to invoke international treaty norms to protect their legitimate rights and interests. This viewpoint should be legalized in the Constitution, being a provision in Chapter V regulating the fundamental rights and obligations of citizens, if the Constitution 1992 to be amended in future.

4. One needs to realize that international law does not only encompass international treaties, to which Vietnam is a signatory or has acceded. Moreover, international law includes international customary practices and treaty norms^(*). Thus, it is radically important to take into account the priority given to international law enforcement (including international treaties and customary practices) against domestic law enforcement, rather than prioritizing solely the international treaties to which Vietnam is a state party.

5. It is a must to fully implement the commitments expressed in accession

(*) In various legal documents of Vietnam, international treaties are more weighed compared to international customary practices. In the meantime, international treaties and customary practices are taken as two fundamental sources and equally authentic.

to WTO. “State parties must ensure that laws, provisions and administrative protocols must be compatible with the obligations bound on them in the agreements”.

6. To align Vietnamese legislation with international law, it is essential to adopt laws that can be directly applicable; to reduce the number of autonomous decrees passed by the Government; to constrain possible promulgation of governmental decrees providing guidelines for the execution of laws adopted by the National Assembly; to lessen and not to issue ordinances by the NA’s Standing Committee. Instead, it is important for the National Assembly to adopt laws that are directly and validly enforceable. Hence, it is necessary to amend the existing provisions in the Constitution 1992 prescribing the mission of the National Assembly, the Standing Committee of the National Assembly, the functions of the Government, and to revise the Law on the Organization of the National Assembly, the Law on the Organization of the Government.

7. It is necessary to consider precedences as a source of Vietnamese legal system^(*). All the judgments

^(*) Currently, precedences are not considered as a source of the law. The common law system regards precedences an important legal source and virtually all legal systems around the world are affected by the common law system. That the Supreme People’s Court

given by courts at all levels, decisions made by state authorities must be made public, unless those subjected to state secrecy rules.

8. It is important to intensify training and advanced training, to strengthen capacity of law enforcement officials.

Law enforcement officials must be equipped with knowledge of international law, international and regional integration. Currently, the propagation, dissemination and education of international treaties by us are still poor. It is highly recommended that the Ministry of Foreign Affairs needs to exaggerate the printing, publication of the Yearbook on international treaties on a regular basis. International treaties to which Vietnam has acceded are hardly found and disseminated. It is even hard for researchers to get access to these treaties. Thus, it is recommended to create a website, which posts all international treaties to which Vietnam is a party, making it be easily accessible by the public. The website shall be maintained by the Ministry of Foreign Affairs.

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