

VIETNAMESE LAW AND ASSESSMENT OF THE LEGAL SYSTEM IN VIETNAM IN COMPARISON TO THE UNITED NATIONS CONVENTION AGAINST TERRORISM

*Le Thi Van Anh **

I. GENERAL INTRODUCTION

Terrorism is a transnational organized action against the UN's principles and purposes which are to maintain international peace and security and settle international disputes by peaceful means. In recent years, terrorism has increasingly become an urgent global issue. Beside the great loss of people and property, terrorist activities also cause a permanent alarmed and fearful state for the world community. Therefore, preventing and suppressing terrorism is the common task of nations worldwide, of which the UN plays the central role. With its roles and responsibilities, since its establishment, the UN and other international organizations have issued 13 multilateral conventions and protocols related to the prevention and suppression of terrorism in relation to different areas of international affairs.

Along with many other countries worldwide, the Government of Vietnam has been actively participating in the fight against terrorism. This is shown in the persistent policies of the State and the Government in fighting crime in general and terrorism in particular. Vietnam considers terrorism as indefensible and strongly condemns and suppresses it, especially when this crime is used against ordinary people. Vietnam has acceded to and fully implemented 8 of the 13 Universal Conventions/Protocols on combating terrorism. Vietnam is actively considering the possibility of acceding to the remaining treaties. Vietnam has issued many legislative regulations related to the prevention of terrorism. Additionally, new documents on preventing international terrorism are being considered, amended and affixed in order to enhance the effectiveness of terrorism prevention and suppression in Vietnam and to cooperate with other countries in combating international terrorism in the region and all over the world.

Presently, Vietnam has some legislative regulations related to preventing terrorism including the Common law and the Procedural law. The most important ones are the Penal Code and Criminal Procedure Code. The present Penal Code of Vietnam has articles related to preventing terrorism. These articles can be divided into two kinds: the first one directly relates to terrorist acts and the second one refers to acts which are not for the purpose of terrorist prevention but can be applied to examine penal liability of those committing terrorist acts according to Vietnamese law and international conventions on terrorism prevention.

II. VIETNAMESE LAW ON TERRORISM

A. Penal Code of the Socialist Republic of Vietnam

1. Crimes Directly Related to Terrorism are Defined in the Penal Code as Terrorism (Article 84) as follows:

1. *Those who intend to oppose the people's administration and infringe upon the life of officials public employees or citizens shall be sentenced to between twelve and twenty years imprisonment, life imprisonment or capital punishment.*
2. *In the case of committing crimes by infringing upon physical freedom and/or health, the offenders shall be sentenced to between five and fifteen years of imprisonment.*
3. *In the case of committing crimes by threatening to infringe upon life or committing other acts of moral intimidation, the offenders shall be sentenced to between two and seven years of imprisonment.*
4. *Those who terrorise foreigners in order to cause difficulties to the international relations of the Socialist Republic of Vietnam shall also be penalized according to this Article.*
Pursuant to the Penal Code of Vietnam, terrorism includes one of four following acts:

* Expert, Department for Criminal and Administrative Legislation, Ministry of Justice, Vietnam.

- Infringing upon the life of officials, public employees or citizens;
- Infringing upon physical freedom and/or health of officials, public employees or citizens;
- Threatening to infringe upon life of officials, public employees or citizens;
- Intimidating the morale of officials, public employees or citizens.

Also, pursuant to paragraph 4 of this article, when the above acts are taken against foreigners in order to cause difficulties to the international relations of the Socialist Republic of Vietnam, offenders shall be penalized according to this Article. However, the said-above acts are considered as terrorism pursuant to the Penal Code of Vietnam if they are taken with the aim of opposing the people's administration or causing difficulties to the international relations of the Socialist Republic of Vietnam. Therefore, if acts of murder, inflicting injury, threatening to murder or inflicting injury or intimidating morale of Vietnamese officials, citizens or foreigners are taken but not for the two above purposes, they do not commit the crime of terrorism but other correlative crimes provided in the Penal Code such as murder (Art. 93), threatening to murder (Art. 103), intentionally inflicting injury on or causing harm to the health of other persons (Art. 104), illegal arrest, custody or detention of people (Art. 123). The Penal Code of Vietnam also has an article on conducting bandit activities (Art. 83) with some similarities to terrorism in Article 84. It has acts of murder in order to oppose the people's administration, but the difference is that these acts are taken by armed groups in mountainous, marine and other difficult to access areas.

2. Crimes Which are Not for Terrorism Prevention Purposes but can be Applied to Examine the Penal Liability of Those Who Commit Terrorism are Regulated in the Penal Code as Follows:

- (i) Hijacking aircraft, ships (Art. 221). This crime relates to terrorism, especially to the current situation when international terrorists hijack aircraft or ships to attack targets on land. The content of this article is as follows:

1. *Those who use force, threaten to use force or use other tricks to appropriate aircraft or ships shall be sentenced to between seven and fifteen years of imprisonment.*
2. *Committing the crime in one of the following circumstances, the offenders shall be sentenced to between twelve years and twenty years of imprisonment:*
 - a) *In an organized manner;*
 - b) *Using weapons or dangerous means;*
 - c) *Inflicting injury on or causing harm to the health of other persons;*
 - d) *Dangerous recidivism.*
3. *Committing the crime and causing human death or other particularly serious consequences, the offenders shall be sentenced to twenty years of imprisonment, life imprisonment or capital punishment.*
4. *The offenders may also be subject to probation or a residence ban for between one and five years."*

Hence, if a person commits acts of using force, threatens to use force or uses other tricks to appropriate aircraft or ships they are considered as committing this crime, regardless of whether they appropriate aircraft or ships for any purpose. If terrorists use the above tricks to appropriate aircraft and ships for terrorist purposes, they will be sentenced pursuant to this article, not to Article 84. Therefore, Article 221 can be applied to punish terrorists with strict penalties even though it is not called terrorism.

- (ii) Illegally manufacturing, stockpiling, transporting, using, trading in or appropriating military weapons and/or technical means (Art. 230) and Illegally manufacturing, stockpiling, transporting, using, trading in or appropriating rudimentary weapons or support devices (Art. 233) are two crimes related to arms control, military weapons and technical means. These crimes punish acts of violating the system of controlling military weapons, civil weapons and technical means which terrorists often use to commit crimes in general and terrorist crime in particular. Vietnamese law does not allow people to trade in weapons and does not allow normal people to use weapons. Thus, all acts from illegal manufacturing, stockpiling, transporting, using, trading or appropriating weapons are considered as crimes, pursuant to the Penal Code. In fact, people using weapons to commit a certain crime (usually violent crimes such as murder, intentionally inflicting injury,

plundering property) shall be examined for penal liability for two crimes: the main crime and the crime of illegally using weapons.

- (iii) Illegally manufacturing, stockpiling, transporting, using, trading or appropriating explosive materials (Art. 232) and illegally producing, stockpiling, transporting, using or trading in inflammables, toxins (Art. 238) are two crimes related to controlling explosive materials, inflammables and toxins. These materials are controlled and used under strict procedures because if terrorists seize them, they can threaten the community's safety.
- (iv) Laundering money and/or property obtained through the commission of crime (Art. 251) is the crime provided in order to prevent money laundering. Accordingly, those who, through financial and/or banking operations or other transactions, legalize money, property obtained through the commission of crime or use such money and/or property to conduct business activities and other economic activities are liable to between one and five years of imprisonment. If they commit the crime in particular circumstances, the offenders are liable to between 8 to 15 years of imprisonment.

Besides, the Penal Code also regulates some other crimes which can be applied to examined penal liabilities of those committing acts of terrorism, such crimes as amending and/or using certificates and papers issued by agencies and/or organizations (Art. 266); forging seals and/or documents of agencies and/or organizations (Art. 267); and illegally leaving or entering the country (Art. 274). Apart from that, the Penal Code of Vietnam also defines other cases such as the preparation for the commission of a crime, incomplete commission of a crime and complicity. These can be applied to offenders who commit crimes in general and terrorist crime in particular.

B. The Penal Procedure Code of the Socialist Republic of Vietnam

The Penal Procedure Code (2003) has one part (Part 8) which regulates some matters of international cooperation in criminal proceedings. This part has two chapters: chapter 36 regulates mutual legal assistance and chapter 37 defines criminal extradition. This part provides provisions which are common principles for international cooperation in criminal proceedings; for the implementation of mutual legal assistance in criminal matters; for criminal extradition in order to examine penal liabilities or execute judgments; cases of denying extradition, exchanging criminal files, material evidence, property and money related to the case.

III. ASSESSMENT ON THE COMPATIBILITY BETWEEN VIETNAMESE LAW AND THE UNITED NATIONS CONVENTIONS AGAINST TERRORISM

A. International Treaties that Vietnam has Acceded

As said above, preventing terrorism is the central task of the United Nations. The purpose of this organization is to maintain international peace and security. Therefore, to fully implement its purpose, the United Nations may carry out activities in order to eliminate the risks threatening peace, prevent invasion/war, enhance human rights and help develop economies.

In recent times, the United Nations has carried out many activities in order to confront threats of terrorism. One of the remarkable achievements is issuing the system of international treaties related to the prevention and suppression of terrorism.

As with many other countries worldwide, Vietnam is actively preventing and suppressing terrorism. Thus, Vietnam has acceded to 8 of 13 Universal conventions/protocols related to terrorism.

1. The United Nations Conventions that Vietnam has Acceded

- (i) Convention of Offences and Certain Other Acts Committed on Board Aircraft, 1963;
- (ii) The Hague Convention for the Suppression of Unlawful Seizure of Aircraft, 1970;
- (iii) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971;
- (iv) Conventions on the Prevention and Punishment of Crimes against International Protected Persons including Diplomatic Agents, 1973;
- (v) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Unlawful Acts against the Safety of Civil Aviation, 1988;

- (vi) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988.
- (vii) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, 1988;
- (viii) International Convention for the Suppression of the Financing of Terrorism, 1999.

2. The United Nations Conventions/Protocols that Vietnam is Considering Acceding to

- (i) Convention on the Marking of Plastic Explosives for the Purpose of Detection, 1991;
- (ii) International Convention for the Suppression of Terrorist Bombings, 1997;
- (iii) International Convention against the Taking of Hostages, 1979;
- (iv) Convention on the Physical Protection of Nuclear Material, 1979;
- (v) Security Council Resolution 1373 (2001).

Thus it can be said that the Government of Vietnam is making great efforts in cooperation with the world community to combat international terrorism.

B. Assessment of the Legal System in Vietnam in Comparison with the UN Convention against Terrorism

1. The Definition of ‘Terrorism’

The world community has not had a common and acceptable definition of ‘terrorism’ even though great efforts have been made to define this crime. However, the content of international legal documents refer to ‘terrorism’ as a criminal act in order to cause a fearful state in the public, a group of people or certain people for political purposes.

The current Penal Code of Vietnam does not have any articles which define ‘terrorism’ or ‘terrorist crime’. However, according to Article 84 of the Penal Code (1984), terrorism is considered as the act of infringing upon the life of other people; threatening to infringe on the life of other people or other acts of moral intimidation in order to oppose the people’s administration or to cause difficulties to the international relations of Vietnam.

2. Obligations Regulated in International Documents of Preventing Terrorism

Each international treaty related to preventing terrorism has its own object and scope of adjustment. However, the common purposes of these documents are preventing international terrorism and preserving peace and security. Therefore, some common obligations that these international documents require of States Parties are as follows:

- (i) Making a list of organizations and individuals performing acts of terrorism
Relating to this obligation, it is possible to say that Vietnam has not discovered any group involved in terrorist activities like Al-Qaeda or Taliban. However, this does not mean that Vietnam will never have such kinds of organizations and organizations or individuals that indulge and finance international terrorist organizations in the future. Vietnamese law does not allow any person to establish an organization with the aim of committing criminal acts. Although there is no article in the Penal Code regulating the crime of establishing a criminal organization, but any member of that organization who commits crime will be prosecuted for their crimes with the aggravating circumstance of it being an organized commission of a crime. Vietnam has been in cooperation with the international community in making and supplementing lists of organizations and individuals involved in acts of terrorism, preventing terrorists arriving and leaving Vietnam.
- (ii) Criminalizing acts of terrorism and other acts related to terrorism
Normally, in order to implement international treaties, the States Parties need to incorporate the regulations of those conventions into their national law. Many international treaties related to preventing terrorism state that States Parties have obligations to criminalize acts of terrorism. These are compulsory obligations that States Parties have no choice but to criminalize acts of terrorism. The Penal Code of Vietnam was issued in 1999, two years before the terrorist attack on September 11 in the USA. At that time, Vietnam’s law makers did not have in mind international and brutal terrorist attacks. Thus, international terrorism is not regulated in the Penal Code. Article 84 regulates terrorism in order to defend national security but not to prevent international terrorism as in related international legal documents. These international documents state that the purpose of preventing terrorism is preserving not only one’s national security but also regional and international peace and security. As stated above, Article 84 only applies to acts of terrorism which are against the people’s administration or cause difficulties to the international relations of the

Socialist Republic of Vietnam. Therefore, acts of collecting money, formulating plans, inciting, assisting by other means terrorists which are carried out in Vietnam but for terrorist targets in other countries and are not directed against Vietnam or intended to cause difficulties for international relations of Vietnam, have not been proceeded because Vietnam lacks the legal basis to examine penal liabilities pursuant to Article 84. The penal liabilities examination in the above case is in contrast to the basic content of the Penal Code of Vietnam which is "a crime is an act dangerous to the society prescribed in the Penal Code" (Art. 8). This principle is very close because the crime is regulated by the law and in the Penal Code, not in another legal document. Presently, the penal law of Vietnam does not allow any correlative law principle to examine anyone.

As for criminalizing the act of financing for terrorism, the Penal Code of Vietnam does not have any article regulating this crime. Those who finance for act of terrorism defined in Article 84 are prosecuted pursuant to this article as helpers (pursuant to Art. 20). However, they are only prosecuted if there is enough evidence that the act constitutes terrorism as in Article 84 of the Penal Code. Therefore, the act of financing international terrorism in other cases cannot be examined according to the present provisions in the Penal Code of Vietnam.

Relating to the obligations of criminalizing act of laundering money, the present Penal Code of Vietnam has appended one article (Art. 251) which regulates the crime of legalizing money and/or property obtained through the commission of crime. Accordingly, those who through financial and/or banking operations or other transactions, legalize money and/or property obtained through the commission of crime or use such money and/or property to conduct business activities or other economic activities shall be punished. At present, the Government of Vietnam has issued a Decree on the prevention of laundering money in order to strictly control financial transactions through the banking system and to report suspicious transactions to authorized agencies like the Police and Institute of Procuracy. These are the basis for investigation and examination of acts of laundering money pursuant to Article 251 in the Penal Code. The act of laundering money is an independent crime, therefore, it can be applied to examine anyone, including terrorists, providing that the person commits the crime described in Article 251 and money and/or property are obtained through the commission of crimes regulated in the Penal Code of Vietnam.

Terrorists often use forged certificates, paper or passports when moving from one country to another in order to avoid the control of authorized agencies. From that fact, international Conventions require States Parties to have measures against forging public certificates and papers and using them for terrorism purposes. To meet this demand, the Penal Code of Vietnam has three articles that regulate this. They are Article 266 – amending and/or using certificates and papers issued by agencies and/or organizations, Article 267 – forging seals and/or documents of agencies and/or organizations and Article 268 – Appropriating, trading in, destroying seals and/or documents issued by State agencies and/or social organizations. These articles prevent and restrain acts of using forged certificates to trick authorized agencies. Thus, Vietnam now has legislative tools to prevent acts related to forging State certificates. These can be applied to combat terrorism. Though, in comparison with related international conventions, these articles in Vietnam have one basic difference relating to whether a person commits a crime or not. International conventions do not require the users of forged certificates to commit a crime and to cause serious consequences. Whereas, the Penal Code of Vietnam regulates those who commit crime when they use forged documents, certificates to commit illegal acts, causing serious consequences or they have already been administratively sanctioned for such acts but continue to commit them. It is possible to say that, international conventions are stricter than the Penal Code of Vietnam.

(iii) Establishing jurisdiction over terrorist offences

Relating to this matter, Vietnam's current legal documents in general have met demands of international conventions on the prevention of terrorism. The Penal Code of Vietnam regulates jurisdiction to criminal acts in Article 5 and 6 of the Penal Code.

According to Article 5, all criminal offences committed in the territory of the Socialist Republic of Vietnam are subject to Vietnam's jurisdiction. For foreigners who commit offences in the territory of Vietnam but are entitled to diplomatic immunity or consular immunities under Vietnamese laws, international treaties which Vietnam has signed or acceded to or international practices, their criminal liability shall be settled through diplomatic channels. Article 6 of the Penal Code regulates Vietnamese citizens who commit offences outside the territory of Vietnam and states they may be

examined for penal liability in Vietnam according to the Penal Code. This provision also applies to stateless persons who permanently reside in Vietnam. Foreigners who commit offences outside the territory of Vietnam may be examined for penal liability according to the Penal Code of Vietnam in circumstances provided for in the international treaties which Vietnam has signed or acceded to.

(iv) International cooperation in preventing terrorism

Terrorism is a transnational crime; therefore, no single nation can prevent terrorism effectively if it does not have close cooperation with other states. Hence, international cooperation is important and has been defined in relevant international terrorism prevention documents.

Defining the importance of international cooperation in combating international crime in general and terrorism crime in particular, Part 8 of the Penal Procedure Code of Vietnam (Chapter 36 and Chapter 37) regulates international cooperation in criminal proceedings. This part provides the basic principles for international cooperation's between Vietnam and foreign countries in criminal proceedings. This is the legal basis for Vietnam's competent authorities to carry out mutual legal assistance in criminal issues, extradition of criminals and extradition of offenders to foreign countries. Pursuant to the provisions in the Penal Procedure Code of Vietnam, mutual legal assistance in criminal matters between Vietnam and other countries is implemented on the basis of international conventions that Vietnam is a contracting party, on the principle of reciprocity and international practices. Therefore, the competent authorities of Vietnam can implement a request of mutual legal assistance in criminal matters with states that Vietnam has not signed a convention on the principle of reciprocity but in contravention of the laws of the Socialist Republic of Vietnam, international laws and international practices. Relating to criminal extradition, Article 344 in the Criminal Procedure Code does not allow extradition in some cases in which the extradited person is Vietnamese, the person has been examined and sentenced pursuant to Vietnam's law or the extradition may lead to restrictions on that person due to reasons of nationality, ethnicity, race, religion, social background or political viewpoints.

Also, at this moment, Vietnam has signed 14 bilateral treaties of mutual legal assistance of criminal cases, of which 13 treaties contain provisions of mutual legal assistance and criminal extradition. Moreover, apart from 8 international conventions related to the prevention of terrorism, Vietnam has signed the UN Convention for fighting against transnational organized criminals and the UN Convention for fighting corruption, which have many provisions on mutual legal assistance and criminal extradition.

IV. CONCLUSION

Vietnam is fully aware of the potential dangers and consequences of terrorism acts in all areas of life in all states. In that spirit, Vietnam stresses that states need to maintain consistent positions on terrorism, in particular "not supporting, harbouring and indulging terrorists or terrorist attempts against international peace and security". However, to combat terrorism effectively and thoroughly, Vietnam is making efforts with the following activities:

- First, amending and appending the Penal Code, in particular Article 84, with the intention of widening the scope of its application towards international terrorism in the spirit of international conventions and protocols and Resolutions of the UN General Assembly and the Security Council. Moreover, it is necessary to append to Vietnam's Penal Code the crime of financing terrorism. This will regulate those who finance or raise funds or property for terrorists. It also amends and appends crimes of amending and/or using certificates and papers issued by agencies and/or organizations on the direction that only using such certificates with the purpose of crime is enough to penalize, even if it hasn't led to any serious consequences.
- Second, Vietnam is on the way to compiling a law on mutual legal assistance and shall issue a law or ordinance on the extradition of criminals in the near future to have a basis in implementing international obligations related to mutual legal assistance in criminal matters and criminal extradition.
- Third, Vietnam is actively concentrating great efforts to research the content and consider the possibilities of acceding to the last four international conventions related to the prevention and suppression of terrorism that Vietnam has not been a member.