

Hanoi, 30 September 2004

TERMS OF REFERENCE

Workshop “International Experience on Conclusion, Accession and Implementation of International Treaties”

(Hanoi, Vietnam, November 2004)

1. Background

The Ordinance on the Conclusion and Implementation of International Treaties, adopted by the Standing Committee of the National Assembly on 20 August 1998 (replacing the 1989 Ordinance) and the Government’s Decree No. 161/1999-ND-CP enacted on 18 October 1999 stipulate the procedures for the conclusion and implementation of international treaties. The 1998 Ordinance and Decree No. 161/1999 have made important contribution to improving the conclusion and implementation of international treaties, establishing a comprehensive legal framework for the development of friendship and cooperation between Vietnam and other countries. Since the promulgation of the 1998 Ordinance, Vietnam has concluded or acceded to over 700 international treaties, including bilateral, regional and multilateral treaties.

However, as widely acknowledged at a national conference held in June 2004 in reviewing the implementation of existing regulations on the conclusion and implementation of international treaties, the regulations and practice of conclusion and implementation of international treaties in Vietnam have exposed several shortcomings. Some treaty procedures have not been fully observed or implemented. An efficient and co-ordination mechanism between various state agencies for the organisation and monitoring of the implementation of international treaties is lacking. Several important legal issues related to international treaties have not been regulated by the Vietnamese law, including the transformation of international treaties into domestic law. The amendments made in 2001 to the 1992 Constitution and the accession by Vietnam in 2001 to the 1969 Vienna Convention on the Law of Treaties have made some changes regarding the decision-making competence on the conclusion and implementation of international treaties.

In an effort to improve the conclusion and implementation of international treaties in Vietnam, MOFA has been assigned to take lead and co-ordinate with concerned ministries and agencies to prepare the draft Law on the Conclusion, Accession and Implementation of International Treaties to be submitted to the National Assembly.

A proposal on “strengthening of capacity of conclusion and implementation of international treaties in Vietnam” has been submitted by MOFA to MOJ for funding under the umbrella of Project VIE02/015 for LSIDS implementation. As an initial step towards formulating and implementing this proposal and in order to meet the urgent requirements of MOFA in finalising the draft Law and prepare for its

implementation, the Project Inter-agency Steering Committee of Project VIE01/015 has proposed that a workshop on international experience on conclusion, accession and implementation of (including reporting on implementation) international treaties would be held in the 4th quarter of 2004.

2. Objectives and outputs of the workshop

The main objectives of the workshop are as follows:

- a) Enhancing the knowledge of Vietnamese experts on prevailing trends in international practice, particularly United Nations treaty procedures and some selected countries which represent different legal systems in the conclusion, accession and implementation of treaties;
- b) Reviewing the outstanding issues and shortcomings in the regulations and practice in Vietnam with a view to improve the national procedures and mechanism for the conclusion, accession and implementation of international treaties.

Based on presentations, discussions and recommendations of the workshop, concrete outputs will be:

- a) Identification of key problems in current regulations and institutional arrangements for conclusion, accession and implementation of international treaties;
- b) Agreement on a set of recommendations for a road map for strengthening the regulations and institutional arrangements for conclusion, accession and implementation of international treaties;
- c) Recommendations for how Project VIE02/015 for LSDS implementation can support the development and implementation of such a road map.

These outputs will be included in a workshop report to be distributed to relevant ministries and institutions.

3. Contents of the workshop

The workshop will:

- a) Review outstanding issues and shortcomings in the regulations and practice of conclusion, accession and implementation of international treaties in Vietnam; the UN practice on treaty; experience of selected countries (France, Germany, Indonesia and Russia) on the conclusion, accession and implementation of international treaties;
- b) Recommend measures for strengthening the capacity of conclusion, accession and implementation of international treaties, including recommendations on the draft Law;

Presentations and discussions are expected to concentrate on the following key issues:

- a) UN treaty procedures and practice on signature, registration, depositary, ratification/approval, accession, implementation and monitoring of international treaties;
- b) Relationship between international treaties and domestic law;
- c) Transformation of international treaties into domestic law (whether treaties can have direct effect or must be transformed into domestic law; what are the procedures for transformation of international treaties);
- d) International agreements concluded by ministries, agencies, Supreme Court or Supreme Procuracy (whether these agreements are considered as international treaties; principles for the conclusion and implementation; functions of competent authorities in the conclusion, accession, implementation and monitoring the implementation of such agreements);
- e) The roles and functions of competent authorities in the conclusion, accession, organisation of the implementation and monitoring of the implementation of international treaties (authority in charge of overall state management, authorities competent to make decisions on the conclusion, accession and implementation of international treaties; authorities responsible for organising the implementation of international treaties; authorities responsible for reviewing, monitoring the implementation of treaties);
- f) Mechanism and means for increasing the awareness of international treaties in Vietnam;
- g) Ways and means for strengthening Vietnam's participation in the international legal framework in general, including specifically the conclusion, accession and implementation of international treaties.

4. Participants

4.1. Vietnamese participants:

Vietnamese participants will include legal experts from Ministries, agencies concerned with the conclusion, accession and implementation of international treaties (including MOFA and MOJ); some National Assembly deputies; representatives from some local authorities in the North, the Centre and the South and representatives from some academic institutions in Hanoi and Hochiminh City. Some national participants will be invited to address particular substantive topics. Approximately 100 Vietnamese participants will be invited to attend the workshop.

4.2. International resource persons:

4.2.1. Two highly experienced legal experts will come from the Treaty Section of the United Nations Office of Legal Affairs, who will make presentation on the UN treaty procedures for registration, depositary, signature, ratification/accession, implementation and monitoring of international treaties. These two legal experts shall be invited by MOFA with assistance from PMU/UNDP.

In addition, representatives of selected international donor agencies/projects present in Hanoi will be invited to join the workshop.

4.2.2. Four highly experienced experts will come from the Ministries of Foreign Affairs of four selected countries to make representations on their national regulations and practice of conclusion, accession and implementation of international treaties. The four selected countries include France, Germany (with federal regime) which represent the Roman legal system, Indonesia which represents an ASEAN model and Russia, where the legal system which has several similarities to that of Vietnam. It is expected that the Vietnamese participants will draw out some lessons from the experience of such different models and recommend an appropriate model that Vietnam would follow.

Besides, a representative from the Ministry of Foreign Affairs of the Lao's People Democratic Republic will be invited to attend the workshop to share their experience in cooperation with UNDP in implementing the project of strengthening the capacity of Lao's PDR in the conclusion, accession and implementation of international treaties.

International resource persons should prepare their presentations, which should focus on the key issues of the workshop mentioned at Section 3 of this TOR. These international resource persons should make their presentations and discuss at the workshop, including an afternoon session with the Law Drafting Committee and key officials responsible for the implementation of the Law.

MOFA of Vietnam will contact MOFA of the five countries mentioned above for the nomination of appropriate legal experts to attend the workshop.

Costs for the participation of international resource persons:

The workshop budget will cover the costs for the participation of the 7 international resource persons, including:

- Travel by air (return tickets, economy class);
- DSA (at UNDP rate);

Totally about 125 participants will be invited to the workshop.

4.2.3. Facilitators: Four national legal experts, who are good in English, shall be invited to facilitate discussions at of participants at the workshop. Each facilitator will be provided with an allowance at the rate of USD50 per day

5. Management arrangements

The workshop will be organised by MOFA assisted by PMU and UNDP. MOFA (Department of International Law and Treaties) shall be responsible to write up a workshop report.

6. Timing and venue of the workshop

The workshop will be held on 4 –5 November 2004, including an afternoon session for international experts to work with the Drafting Committee and key officials responsible for the implementation of the Law. It is suggested that the workshop will be held at a hotel (such as Melia Hotel)/.

Day 1	
8:00 - 08:30	Registration
08:30 - 09:00	Opening remarks by a Leader of MOFA and UNDP Deputy Representative;
09:00 – 09:30	Introduction, programme and expectations <i>By MOFA - Dep't of International Law and Treaties</i>
09:30 - 10:00	Overview of outstanding issues and shortcomings in the regulations and practice of conclusion, accession and implementation of international treaties in Vietnam <i>By MOFA- Dep't of International Law and Treaties</i> *Q & A
10:00 – 10:30	Coffee break
10:30 – 11:00	General introduction: International treaty law and practice & strengthening the international rule of law. <i>By Dr. Kohona, UN Treaty Section</i> *Q&A
11:00 – 12:00	Presentation by 1 st and 2 nd country representative on national regulations and practice of the conclusion, accession and implementation of international treaties *Q & A
12:00-13:30	Lunch break
13:30 – 14:30	Participation in the multilateral Treaty System <i>By Dr. Kohona, UN Treaty Section</i> *Q&A
14:30 – 15:00	Coffee break
15:00 – 16:00	Presentation by 3rd and 4th country representative on national regulations and practice of the conclusion, accession and implementation of international treaties *Q & A
16:00 – 16:30	Presentation by international expert on different national regulations and practice of the conclusion, accession and implementation of international treaties
16:30 – 17:00	Plenary discussion on how experiences with different national 'models' for conclusion, accession and implementation of international treaties can be applied in the Vietnamese context. <i>Facilitated by international expert</i>

Day 2	
08:00 – 08:30	Recap of Day 1 and kick start of Day 2
08:30 – 09:00	Brief introduction of the draft Law on the conclusion and implementation of international treaties <i>By representative of MOFA- Dep't of International Law and Treaties</i> *Q & A
09:00 – 10:00	Reservations and Declarations <i>By Dr. Kohona, UN Treaty Section</i> *Q&A
10:00 – 10:30	Coffee break
10:30– 11:00	Proposal for strengthening the conclusion and implementation of international treaties <i>(By representative of MOFA- Dep't of International Law and Treaties)</i> *Q & A
11:00 – 12:00	Treaty implementation, including Reporting Obligations <i>By Dr. Kohona, UN Treaty Section</i> *Q&A
12:00-13:30	Lunch break
13:30-14:15	Group work to discuss the draft law and possible models suitable for Vietnam regarding conclusion and implementation of international treaties and (4-5 groups) <i>Facilitated by country representatives, experts and UN treaty experts</i>
14:15 – 14:45	Coffee break
14:45 – 15:45	Presentations of group work and discussion and agreement on key recommendations and road map for strengthening the conclusion and implementation of international treaties <i>By representatives of 4-5 groups</i>
15:45-16:00	Closing remarks <i>By a representative from MOFA</i>
16:00 – 18:00	Working session for international experts to work with the drafting committee on specific aspects of the draft law <i>Facilitated by the chair of the drafting committee</i>