

Summary Report – Workshop “International Experience on the Conclusion, Accession and Implementation of International Treaties”, Hanoi, 4-5 November 2004

The Ministry of Foreign Affairs of Vietnam (MOFA) with the support of UNDP, the Finnish Government and the Swedish Government organized a workshop on “International experience on the conclusion, accession and implementation of international treaties” (workshop) in Hanoi. The objective was to benefit from the experience of experts from other countries and from the United Nations prior to Vietnam presenting its draft law on treaties for approval to the National Assembly. It is expected that the National Assembly will complete its consideration of the draft law by the middle of 2005. Experts were present from France (Mr. Bodeau, Legal Department, Ministère des Affaires Étrangères), the Russian Federation (Mr. Tarabrin, Deputy Head, Treaty Division, MFA), Indonesia (Mr. Jailani, Head, Treaty Division, MFA) and Laos (Mrs. Kittavong, Deputy Head of Treaty Division, MFA). The Treaty Section/OLA was represented by Mr. Palitha Kohona (Chief, Treaty Section) and Mr. Smith (Legal Officer). The UNDP was represented by Mr. Nandy (Deputy Resident Representative) and Ms. Katrine Pedersen. A large number of participants represented Vietnam including, Mr. Vu Dzung (Deputy Minister of Foreign Affairs), Mr. Le Cong Fung (the First Deputy Minister of Foreign Affairs), Mr. Vu Mao (Chairman, Foreign Relations Committee, National Assembly), Mr. Hoang The Lien (Deputy Minister, Ministry of Justice), Mr. Tran Duy Thi (Director General, Department of International Law and Treaties, MFA), Ms. Thi Ninh (Vice Chairman, Foreign Relations Committee, National Assembly) and senior officials from other ministries. Reflecting the importance that the Vietnamese authorities attached to the workshop, no effort was spared in providing all necessary facilities and generous hospitality to the international participants.

2. In his opening address, Mr. Vu Dzung emphasized the need for Vietnam to establish a reliable treaty framework (including mechanisms for effective domestic implementation) in view of the pressures and opportunities presented by globalization, the increasing integration with the ASEAN, the growing importance of ASEM, and Vietnam’s impending entry into the WTO. It was important to ensure that the proposed law on treaties reflected the best advice that could be obtained and establish a reliable framework for Vietnam in its conduct of international relations, in particular, its expanding economic relations.

3. Mr. Nandy underlined the spectacular progress made by Vietnam in realizing the Millennium Development Goals and emphasized the need to define the roles of the executive, the National Assembly and the courts in the conclusion, participation in and effective implementation of treaties by Vietnam. UNDP will continue to extend its assistance to Vietnam in these areas. Vietnam was a party to the key Human Rights treaties. He also noted that the fact that this workshop was being held indicated the level of interest in Vietnam in promoting public participation and transparency.

4. Mr. Tran Duy Thi also emphasized the importance of treaties as Vietnam progressed further to develop its international relations (702 bilateral treaties have been

concluded since 1989) and the need to ensure that the proposed law reflected the best framework. He identified a number of areas in the draft law which required further attention, inter alia:

- Treaties concluded by ministries and other entities without reference to MOFA and the need to establish an appropriate oversight mechanism with regard to treaty making;
- The situation with regard to treaties concluded by the State, the Government and other entities.
- Registration - Although Vietnam had concluded 702 treaties since 1989, only a handful has been registered with the UN;
- Question of interpretation;
- Reservations and objections – these are not properly examined.

Dr. Hoang Anh and Dr. Tuyet Mai (MOFA) also raised a number of issues arising from the draft law during their presentations.

5. The international experts, Mr. Tarabrin, Mr. Bodeau, Mr. Jailani and Ms. Kittavong described the treaty practices of their respective countries. The following comments, inter alia, were of particular interest. In the Russian Federation, treaties are an integral part of the legal system and constitute superior law. International law questions are interpreted by the MFA. Since reservations require legislative approval which might take time, the Russian Federation tends to make political statements rather than reservations. He also observed that Russia is going through a process of preparing to accede to the Rome Statute of the ICC. Mr. Jailani noted that in Indonesia, every treaty requires parliamentary approval. Ms. Kittavong observed that Laos is examining the ICCPR and ICESCR with a view to ratification. In Laos, much more work needs to be done to enhance awareness of treaties (Two seminars/workshops have been conducted in Vientiane). In France, treaties can not over ride the Constitution. Where a treaty is inconsistent with the Constitution, the Constitution will need revision prior to its ratification. This is not a frequent occurrence. Mr. John Bentley commented on the US/Vietnam bilateral trade agreement.

6. The UN team touched upon the Depositary practice of the Secretary-General, including reservations and declarations, the registration practice of the Secretariat, general principles of treaty law relevant to the functions of the Secretary-General and the Secretariat, reporting requirements, under certain treaties and technical assistance available through the UN system. Particular emphasis was placed on the need to consolidate and advance the international rule of law. The UN contribution, also included comments on some of the provisions of the draft law as they related to the functions of the Secretary-General as depositary and the central role of the Vienna Convention on the Law of Treaties 1969 (VCLT) in providing the framework for the conclusion and implementation of treaties. A number of Vietnamese participants posed incisive questions seeking elaboration on the practice of the Secretary-General and the Secretariat. The UN contribution the workshop received favorable comment from a number of participants and the chairman.

Observations

- The draft law has resulted from diligent hard work and broadly reflects the principles incorporated in the VCLT. It also seeks to facilitate Vietnam's efforts to integrate further with the international community, in particular, its efforts to join the WTO, integrate further with ASEAN, develop wider economic linkages and advance economically.
- Since the draft law was originally compiled in Vietnamese, certain unclear expressions may be the result of the translation process. These may require further refinement.
- It was noted that enhancing consistency between the draft law and the general rules of treaty law and practice, including the principles incorporated in the VCLT, would contribute to greater harmonization, and consequently, to advancing the international rule of law which was a key objective of the United Nations.
- The value in compiling a guide to the treaty practice of Vietnam was noted. The treaty practices of other countries could be useful in this respect.
- Vietnam's efforts to enhance wider awareness of treaties concluded and increase transparency are very encouraging. The need to register bilateral treaties pursuant to Article 102 of the Charter was emphasized.
- The Treaty Section/OLA offered its assistance in the areas of treaty law and practice in developing the draft law, to the extent possible – (further information on available assistance is accessible from the OLA Legal Technical Assistance website – untreaty.un.org).

Palitha T.B. Kohona, Chief
Treaty Section
11 November 2004