



VIETNAM LAWYERS ASSOCIATION



THE XVIIth IADL CONGRESS



INTERNATIONAL ASSOCIATION
OF DEMOCRATIC LAWYERS

SOME DISCUSSION ON THE RIGHT TO RESIST IN INTERNATIONAL LAW

Dr. Phan Xuan Tuy – Vietnam Public Security Ministry

In a world of peace, cooperation and sustainable development, there are potential, unpredictable threats and challenges, and in which international laws (international laws and international judiciary) continues to play important role to provide legal bases for cooperation amongst legal entities (amongst countries in the first place), towards a world of peace, stability, progress and prosperity.

International law is in reality a strong, sharp tool for international entities to resort to in their application and resolving disputes in the course of international cooperation, and in contribution to the security of each nation and to international justice.

Researching and applying international law on the protection and construction of the nation, effectively engaging into the development of international law system to achieve international justice and progresses is an important task to Vietnam, hence promoting the position and reputation of Vietnam in the international arena.

However, joining and applying international law is not a simple matter. To use international law as a sharp tool to protect national integrity, national sovereignty, interests, and security and contribute to the development of international law in line with common trend requires investment, research and exchanges of expertise in such increasingly diversifying aspects of international laws.

This presentation focuses on discussions on the right to resist in international law (in accordance with national laws) with main contents as follows:

1. Approaches to the right to resistance in international laws

1.1. Resistance in Vietnamese means literally to resist against intrusion. In social term, despite differences in the degree of passiveness and activeness, Resistance is closer to mean “defence” and “counterattack”. In English, the



word “Resistant” – means counter attack, resistance, and durability in resistance. Therefore, Resistant right in general has all the metaphor related to those meanings.

1.2. The right to resistance in international law are an issue not mentioned in large part in scientific terms. However, rules related to the right to resist itself are provided scatteringly in many international laws (including international conventions and international judicial documents, and national law – a basic source of international law).

The right to resistance is most commonly understood as a possibly acceptable treatment of the subjects in international laws in the expression of opinions, standpoints in international issues, and in the application of such measures against behaviours in opposition of the legal interests of such subjects.

Passively, the right to resist in international law is reflected in the application of measures and treatment necessary to the entities subject to international law (in accordance with specific events and international circumstances) to protect their legal rights.

1.3. The right to resistance in international law is subject to many entities defined by international law: nations, countries in the struggle for their self-determination, international organisations, entities and individuals...

Nations are fundamental subjects of international law, and in fact they are engaging increasingly into international judicial relationships. Nations as subjects of international law have the right to resist. In such inter-dependent relationships, provisions on resistance rights are legal bases for countries to undertake their rights and obligations in all international relations. In reality its practice shows that this is a sensitive area which continually affects from a multi-dimension, and directly the relations between nations, and international/national interests and security.

1.4. In Vietnam, Article 14 of the Constitution of the Socialist Republic of Vietnam provides: *The socialist republic of Vietnam undertakes a policy of peace, friendship and broadened cooperation, exchanges with all countries in the world regardless of political and social systems and in mutual respect of*



VIETNAM LAWYERS ASSOCIATION



THE XVIIth IADL CONGRESS



INTERNATIONAL ASSOCIATION
OF DEMOCRATIC LAWYERS

independence, national sovereignty, and territorial integrity; enhancing friendship, equal cooperation for mutual benefits with former socialist and neighbouring countries; actively involve in and contribute to the common struggle of peoples for a world of peace, national independence, democracy and social progress.

Over more than 20 years of national renovation, the Documents passed by the Xth national congress of the Community party continues to affirm the country's consistent foreign policy: *to exercise consistently a foreign policy of national independence, cooperation for peace and development, open foreign policies, multilateralism and diversification of international relations; actively participate in economic integration and at the same time expanding cooperation in other sectors, and continued cooperation in regional and international cooperation.*"

This section was stated in part IX: "*expansion of foreign relations and active international economic integration*" in the political report by the IX Party central committee of 2006. Such content show a strategic vision and crosscutting in all matters of foreign affairs, being a basic for the formulation of foreign policies of Vietnam in a new era. It is by nature a system of ideologies by the Party and the Government of Vietnam in the international arena. Such system has been utilised to give instruction to operations of the party, the State of Vietnam in their relations with foreign partners, in the first place to strengthen and promote the national interests, enabling a stable international environment and bringing about conditions favourable to the renewals of and socio-economic development of Vietnam, at the same time, contributing to the common struggle by the world people for peace, national independence, democracy and social progress.

This system of ideologies of the party and the state of Vietnam has directly influenced the application of the right to resistance taking into account the utility of international law in Vietnam.

2. Legal basic, principles, contents and extent of national resistance right within international law

2.1. Legal bases for national resistance rights in international law



To clarify the legal bases for the application of national resistance right in international law helps improve understanding, awareness and the right use of the right to resist of nations in international law.

The national legal bases within international law is a containment of different international principles provided for national rights to resistance. In the Public International laws, there are two sources of bases: source of reference (international conventions) and non-reference (international customs) – currently, Clause 1 of Article 38 of International Justice Court provides clearly two sources. In international judiciary: they are international conventions, national laws, international customs, jurisdictions of courts and arbitration agencies.

A nation which uses the right to resistance in international law shall have to understand to what extent such right can be utilised, based on the understanding and observation of international law sources. In other words, it is important to clarify the legal bases of the practice of the rights to resistance. This is required of countries to ensure the legality of national treatments, and that concerned subjects are to abide by.

2.2. Principle of national practice of the right to resist in international law

The right to resistance principle in international law is a cross-cutting instruction for the consistent use by countries. In Vietnam, such principles include an in-depth political perspective (such as instructions, foreign policies of the party and the state) and other legal principles.

Legal principles are a component in all provisions of the right to resistance and they are shown in all sources of reference in international law to be abided by when practicing. The legal principles include two components:

Group 1: General principles are fundamental rules of international law to be followed in the course of practice of the right to resistance by countries. They are also fundamental principles rooted from the rules provided in Article 2 of the UN charter, such as:

- All nations are equal to use and benefit from the right to resistance.



- Prohibition of violence, threats of violence in the use of the right to resistance.
- The use of the right to resistance is not in interference in internal affairs of countries.
- The use of the right to resistance is in joint effort and in accordance with international commitments ...

Group 2: Other specific principles are adhered to the national practice of the right to resistance based on specific case, relations and specific issues such as relevant principles of foreign affairs and consular issues (the protection of diplomatic officials); principles related to international civil judicial procedures (such as immunity rights according to international civil judicial procedures); principles related to the use measures against subsidies for imported commodities; and the right to defence in international commercial transactions ... for example: Article 5 of the Ordinance of trade defence in importing commodities into Vietnam provides application principles for the following actions: *defences are used to the extent and degree considered necessary to prevent or reduce serious damages to the domestic production sectors and thus improve domestic competition; the application of defence rights shall be based on assessments provided in Chapter II of this ordinance, except in case of use of temporary defence rights; defence measures are applied in disregard of the origins of imported commodity.*

Accordingly, a country when using the right to resist, under specific cases in relation to international civil judiciary, shall respect the judicial right of immunity granted by a foreign government; or the use of commercial defence right and anti-dumping shall observe regulations related.

All those principles are not self-diminished but enable all countries to perform the right to resistance, and to reduce the scope of such right in international law.

2.3. Content and extent of resistance right of nations in international law



The content of the right to resistance which can be performed by countries is reflected in international law in two aspects: directly and indirectly. Therefore, a nation when utilising the rules of international law, shall perform both direct and indirect provisions of such rights.

- **Direct level:** the provisions provide details of the right to resist of countries. There are not many regulations as such but they all play important role in the process such as Article 51 of the UN Charter provides "*the UN Charter do intervene in the inseparable rights of the UN member countries in their individual or collective defence in case of being attacked by armed forces as long as the UN security council has not carried any measure necessary to protect world peace and security ...*". Article 1 of the Statement on 22 December 1965 by the UN Assembly on the prohibition of intervention in internal affairs, national independence and sovereignty of member countries, states: "*no countries have the right, under any reasons; intervene directly or indirectly in internal affairs and foreign affairs of other countries. Therefore UN member countries not only denounce armed intervention, but all forms of interventions and threats to go against countries' sovereignty...* we can no see that such provision has shown directly the right to resist of countries with following principles: individual or collective right to resist; right to oppose or denounce intervention behaviours...

- **Indirect level,** although provisions are not clearly reflected in international law on resistance rights, the content and spirit of given provisions show a strong expression of country's statement and opinions or national permission to give appropriate treatment to protect legal interests of country in all international relations.

Indirect provisions are now diversified and thus the extent to which their application can be depends on the wide awareness and understanding of international law as well as a high level of creativity in reality.

Common provisions we can see are:

+ Regulations on legal obligations of a subject of international law at national level. Those regulations show that a country has a right to resistance against behaviours, obligations, expressions disrespecting national rights.



+ National obligations show a country's limited rights to resistance.

For example: Clause 2 of Article 7 of the UN Charter provides: *"the UN Charter strictly disallows an organisation to intervene into the affairs under the authority of another country, and does not require a member country to resolve such affairs in accordance with the Charter, but this provision does not apply to the case in which a compulsory action is required following stipulations of Chapter VII"*. Article 41 of Vienna Convention on foreign relations states that: *"all those subject to immunity rights shall respect the laws of receiving country, and this requirement does not affect the immunity rights and privileges. But anyone shall be obliged not to intervene into internal affairs of that country"*. Clause 1 of Article 55 of Vienna Convention on consular affairs states: *"in a case their privileges and immunity rights are not affected, such a person shall respect the law of the consular-accepting country. He/she shall not intervene in the internal affairs of the country"*; Clause 2 Article 55 states *"No consular office shall be used for irrespective consulate activities"*. Or Point C, Clause 1, Article 36 of this convention also states *"Consulate officials shall be allowed to visit a citizen of such consular countries being arrested and detained, communicate, transfer of mails and arrange for a legal representative of such person before law ..."*, However, Clause 2 of Article 36 of this Convention also states *"rights stated in section 1 of this article shall be applied in accordance with the law of the consulate-accepting country ..."*. Through those provisions, we see that the contents although do not point directly to the rights to resistance of countries, they indirectly provide for the consulate-receiving countries to resist and protest against the violations of diplomatic and consulate officials.

The scope of resistance of countries stipulated by international law includes aspects of Public International and Judicial laws. It shall be insufficient to say that countries are entitled to the right to resistance only within public international law as this is the denial of countries as subject of both aspects as well as not in compliance with the law in practice. Recently there have been many commercially-related suits against Vietnamese enterprises, causing tremendous losses to both the enterprises and Vietnam, and that require Vietnam to consider the use of the right to resistance following the rules of international law.

2.4. Forms of resistance of countries in international law



Countries can exercise the right to resistance through their own unilateral legal practice. This is the independence of national will, a legal practice of international meaning in both contents and measure, and executed by a competent authority with a view to creating certain impacts in international relations. It is the expression of protest publicly made and of legal effect; it is the way countries show their will in not recognising a situation, a requirement or a behaviour made by a different entity, so that to protect their possibly violated rights, or against an attitude of agreement in silence or a rejection by an entity in international relations. Or according to Article 4 of the Ordinance on anti-subsidy of commodities imported into Vietnam of 2004, provides that a Vietnamese competent authority may apply subsidy tax in accordance with regulations on anti-subsidy of imported commodities into Vietnam (anti-subsidy tariff is import tax applied in case of imported commodities are subsidized causing a threat of substantial losses to the domestic production sector).

Countries may apply the right to resistance through their own course of actions such as: the right to self-defence or through a coalition with other countries such as the right to collective defence that is to form alliance with other countries based on bilateral international commitment.

In terms of national judiciary (for example in the resolve of sea-bed disputes at the International Court on Marine Laws), countries' right to resistance shall follow related judicial procedures, for example Article 119 of the working regulations of the International Court of Maritime laws provides: *"Within 2 months since the date of filing in accordance with Clause 1 of Article 118, in case the respondent is a member countries filed against by a legal entity of another country relating to a dispute mentioned in point c Article 187 of the Convention, the respondent country may file a suite in accordance with Clause 2 of Article 190 of the Convention to require the sponsoring country of the plaintiff to be present in all procedures related to the plaintiff."*

3. Some measures to ensure a country (Vietnam's) right to resistance in international law

As discussed above, the right to resistance in general and countries' right to resistance in particular in international law is a broad and complicated aspect. There are not many thematic researches in the international legal science, in the



VIETNAM LAWYERS ASSOCIATION



THE XVIIth IADL CONGRESS



INTERNATIONAL ASSOCIATION
OF DEMOCRATIC LAWYERS

mean time, the international legal reality has always set for country to identify and provide the right treatment to this right. Therefore, to ensure the right and effective use of the right to resistance in international law, from a research perspective; I believe there must be multitude of measures to be offered. Some of the fundamental measures include:

- Promote research and exchange of expertise at national and international levels on the right to resistance in general and the right of country in international law under the current context; enable the legal specialists of Vietnam to exchange and get experience at related international forums.

- To establish a Center on International Law Archives as bases for trainings, research and utility of international law in Vietnam.

- Pay more attention to capable researchers and trainers of topics related to international law in order to meet the requirement of the new context, and to train of a good team of specialists with strong theoretical background and experience in international law.

- Invest more in research schemes and the use of international law to protect national sovereignty and security in the context of increasingly international integration. All those schemes shall include a component of research on the right to resistance in international law and its practice in reality by Vietnam.

