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VIETNAMESE LAW ON ANTI-TERRORISM

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1. General impacts

One of the issue which attracts a great deal of attention from international community in this decade was the war on terror. Such war was started out long ago but escalated especially after the 9/11 incident in 2001 which caused severe consequences and serious threat to the US's national security and that the US has been leading the war to date. Ever since then, in various territories and countries, international organizations and researchers have given a special attention to terrorism. The result was a change in perception, attitude and actions around this war. With such changes, many events happened in many regions, countries and territories (including bloodshed incidents in political and religious conflict countries or territorial fight for autonomy) were seen as actions of terror. Some states were even considered as terrorists or harbouring terrorists. There arises new theory on terrorism, terrorist crimes, terrorist criminals and terrorist-harbored crimes...

The United Nations has had 13 international conventions on anti-terrorism. Those laws have been more or less interpreted into countries' national laws. However, so far there is not yet an broad definition of terrorist crimes, terrorism, and actions of terror defined by international law. Countries with different polity, legal standpoints, international reputation, and possibility of terrorist actions... shall have different standpoints and implications over terrorism. Such standpoints articulated around in the first place are to protect the national righteous interests, especially national security interests. International and national law can distinguish terrorism based on: political purpose (political terrorism) and non-political purpose. But in a war against terrorism, political terrorism is always the first concern, a threat to the national stability and might, and potential impacts on regional or global political atmosphere. Besides, there are terrorist cases labeled with politics to deal with political purposes.

The war on terror has been spreading all over the globe and tends to be mandantory to all countries, otherwise countries can be viewed as running counter common interests, even as financial sponsors of terrorists, harbouring terrorist and terrorist complice. To Vietnam, the war on terror has made some impacts and Vietnam's decision to join was based on rationales of a world of



peace and progress. In reality, there are no incidents in Vietnam found to be a case of terrorism, but there are some people arrested by Vietnamese police authorities for suspects of terrorist conspiracies.

2. Vietnam's standpoints

Vietnam reserves a manner of harmonised, humanistic foreign relations, and peace loving which are forged over thousands of years in history. The Government of Vietnam vehemently refutes and opposes all action of terrorist nature and taking terrorism as a way to handle social and political differences. Vietnam considers terrorism a potential threat to peace, security and stability in the world at the moment. Vietnam proactively joins the struggle against all actions of terror. Vietnam also strictly observes its duties as committed in anti-terrorism international conventions to which Vietnam is a signatory.

Vietnam has made its statement against taking terrorism as a way to intervene into internal affairs of countries. Counter-terrorism must respect the UN Charter and fundamental principle of international laws, national sovereignty and the desire for peace, stability and development of the humanity. Vietnam strongly opposes the use of terrorism to pose threats and attacks into other countries' internal affairs, while condemning the use or threat of weapon of mass destruction and mass killing, and nuclear weapon in the first place to initiate terrorist activities or under the name of terrorism.

In response to the terrorist incidents happened in the world and some terrorist attempts in Vietnam, Vietnam has made clear expression that it strongly opposes all terrorist activities and activities targeting national security, and attempts to intervene and violate national sovereignty. Vietnam considers terrorism as a crime, and the position on this crime is consistently expressed in the common sense against all kind of crimes. This opinion is reflected in all resolutions and documents of the Communist party of Vietnam and the national laws of Vietnam which are: safeguarding national security, political stability, suppress all attempts and actions of intervening into national affairs, violating national sovereignty, preventing all type of crimes, social problems and maintaining social order.

Vietnam has neither developed a definition of terrorism, but listed the so-called terrorist actions. Terrorism is viewed as a complicated concept which is still being debated at international level, and appears hard to come to any world commonly accepted definition. Although most countries approve anti-terrorism, *"they have not been able to agree on what terrorism is, or all understand what it*



means terrorism they just can speak it out – therefore, there are people who said they are against terrorism, but act just like terrorists”⁽¹⁾.

3. Vietnamese law on terrorism

The provisions for terrorism have been mentioned for long in Vietnam and continue to be upgraded, perfected and they are the legal basis for investigations, prosecutions and judgment of terrorist, and for cooperation in defense and anti-terrorism.

Article 84 of the Criminal Code of the Socialist Republic of Vietnam was approved in 1999 and is the highest legal document which regulates terrorism. The law has defined terrorism as follows:

- “1. Any person who goes against the people’s government and pose threat to the life cadre, state employees or citizens, shall be subject to punishment of 2 to 20 years in imprisonment, life or death sentence.*
- 2. Violations relate to physical and health conditions shall face 5 to 15 years in imprisonment.*
- 3. Violation in the case of posing threats to human life or other behaviours with mental threat shall face punishment of 2 to 7 years in imprisonment.*
- 4. Foreign terrorists who obstruct the international relations of the Socialist republic of Vietnam shall be subject to punishments under this Article.”*

Therefore, according to the standpoint of the law of Vietnam, terrorism is violent acts intended to destroy the life and physical health of people (or other mental threats), going against people’s government. Terrorism is also seen as one of those acts which obstruct foreign relations of the Socialist Republic of Vietnam. Other violent activities which infringe the life, health, freedom and property of individuals and organizations for the purpose of mental threatening, forcing organizations and individuals to do or not to do something as required by the individual terrorists or the terrorist organisation though are not mentioned in details in criminal law of Vietnam, but shall be criminally punished, and in some cases, following specific provisions, can be seen as guilt-increased evidence.

⁽¹⁾ Nam Hồng, Quang Lợi, Lê Duy Hòa, Terrorism and counterterrorism (reference book) Volume 3 - a infinite war, Labour publisher, Hanoi, 2003, p. 130.



On 15 November 2007, the Prime Minister of the Socialist Republic of Vietnam has issued instructive No. 25/2007/CT-TTg on the anti-terrorism and prevention in the new context. Under the instructive, terrorism is seen as actions of individuals and organizations in and outside the country to use explosives, weapons and hazards, information technologies to attack government offices, foreign offices in Vietnam, and to conduct assassinations, take hostages, control people or vehicles, destroy public facilities and premises of national security, pose threats to public orders, human lives, assets, mental conditions of cadres, citizens, foreign interests in Vietnam, against people's governments, threats to national security, and obstructions to foreign relations of the State of Vietnam.

Therefore, understanding about terrorism under the current context has been broadened as compared with that of Article 84. Apart from public terrorism, international terrorism, there are other behaviours against the State. Vietnamese legal researchers and legislators are proposing new laws on anti-terrorism.

The National Assembly has agreed to put into the agenda of law and legislation during the XIIth Session a Law on Anti-terrorism and Prevention. Details of such Law shall provide for:

- + Definition of Anti-terrorism;
- + Action of terrorism;
- + Terrorism prevention measures:
- + Anti-terrorism measures;
- + Resource mobilisation for prevention and fight against terrorism;
- + Duties of government agencies, organizations and individuals in the fight against terrorism;
- + International cooperation on Anti-terrorism.

Most recently, when the NA debated amendments to the 1999 Criminal Code, the Government of Vietnam has made a proposal to amend the Article on terrorism.

According to the new proposed amendments by the government to the NA terrorism be switched from the Chapter of national security violations to public



order and public safety, and that the purpose of terrorism is “to cause public frustration or force the government or international organisation do or not do some certain things”. At the same time, the acts of terrorism are also broadened to include:

- + Infringement on the life of others or destruction of national security facilities and systems, and other national infrastructure;
- + Infringement on body freedom, physical health, property, destruction of public facilities and facilities of national security, and other nationally ranked infrastructure;
- + Threats to do one of the above-mentioned behaviours;
- + Provoke others to do one of the three above-mentioned behaviours.

When it was debated by the National Assembly, the NA members showed a great concern and proposed three options:

- + Option 1: There are two separate regulations on terrorism in the 2 chapters mentioned above. One is to keep terrorism under the Chapter of violations of national security, and changed the name to “*Terrorist crime against people’s government*”. Two is to add “*Terrorist crimes*” under the Chapter of public order and safety as follows:

“Article 230a. Terrorist crime

1. *Any person intends to cause public frustration or force the government or international organizations to do or not to do something which can pose threat to human lives or destroy national infrastructure and security facilities, and other nationally-ranked infrastructure, shall face punishment of 2 to 20 years in imprisonment, life or death sentence.*
2. *Violations to physical health, bodies, property or illegal possessions of property, causing destruction to national security facilities and nationally-ranked infrastructure, shall face punishment of 5 to 15 years in imprisonment.*
3. *Violations in the attempt to do one of the behaviours mentioned in the clause 1 and 2 of this Article, shall face punishment from 2 to 7 years in imprisonment.*



4. Violations in the course of provoking to do one of the behaviours mentioned in the clause 1, 2 and 3 of this Article, shall face punishment from 1 to 5 years in imprisonment.

5. Violators may be denied citizenship from 1 to 5 years, put under house arrest and travel prohibition, confiscation a part of or all assets."

+ Option 2: No changes be made, all provisions are kept unchanged in the current criminal code. When the Law on anti-terrorism and prevention has been approved, the Criminal code shall be changed accordingly.

+ Option 3: A proposal to make a separate chapter on terrorist crimes.

Based on rationales of the explanation, adjustments and changes to the draft amendments to the Criminal code, the NA's Standing Committee observes that definition of terrorism under the current Criminal code is narrow to the purpose, targets, and behaviours of terrorism, while international conventions on terrorism to which Vietnam has ratified have placed terrorism in relation to many other dangerous crimes such as drug trafficking, human trafficking, money laundering with broad areas of regulations... a regulation on terrorism is to ensure not to affect criminal regulations in the prosecution of terrorist acts against people's government, and to response to the needs of anti-terrorism in the new situation as well as enable international cooperation in anti-terrorism. Regulations on terrorism under the current Criminal Code with objectives to protect national security and prevention of crimes against people's government shall have hindrances on crime prevention and international cooperation against terrorism, especially the laws on criminal extradition, while international laws provide a wider scale of regulating terrorisms, and the intended crime is not against people's government, but the objectives of this type of crime is public safety and order. Therefore, the author supports option 1 and believes this is the most reasonable option.

4. How terrorist behaviours as defined by international conventions are interpreted in the law of Vietnam

Currently, there are various opinions that Vietnam has not fully provided for the purpose and behaviours of terrorism, and that there is a need to broaden the scope of terrorist-related regulations. Such opinions are justified, especially there is a wish to similarise Vietnamese criminal laws with that of the international system, providing favourable conditions for Vietnam in international cooperation in anti-terrorism. The author shares part of those opinions that it is necessary to broaden scope of purpose and details of such



regulation, but it is also important to take into account the perception of the Party and State of Vietnam on anti-terrorism under the current legal conditions and the context of Vietnam.

The United Nations has approved 13 international conventions relating to terrorism prevention in which Vietnam has ratified 8 Articles. Those international conventions are focused on behaviours, including:

- Terrorist acts related to ships and aviation safety. According to Vietnam's criminal code, this type of behaviours can be prosecuted under the following behaviours: violation of aviation navigation (Article 216); the take-over of ships and aircraft (Article 221); Aircraft control in violation of navigation regulation of the Socialist Republic of Vietnam (Article 222).
- Terrorist behaviours related to the safety of maritime route and infrastructure on the continent banks. According to the Criminal Code, this type of behaviours can be prosecuted for: taking over ships and aircraft (Article 221); Control of marine vehicle in violation of maritime regulations of the Socialist Republic of Vietnam (Article 223); Destruction of materials, technical infrastructure of the Socialist Republic of Vietnam (Article 85); intended destruction of property (Article 143).
- Terrorist behaviours related to human lives, physical health and freedom of people. According to the Criminal Code of Vietnam, those behaviours can be prosecuted for: Murder (Article 93); Intentionally causing injuries or destruction of physical health of other (Article 104).
- Terrorist behaviours related to the illegal use of dangerous and mass destruction weapons. According to the Criminal Code of Vietnam, those behaviours can be prosecuted for: production, transport, store and trade or illegal possession of military supplies and vehicles (Article 230); production, stockpiling, transport, illegal use and trade of explosive (Article 232); production, stockpiling, transport, illegal use and trade of radiation (Article 233); production, stockpiling, transport, illegal use and trade of flammable and poisonous items (Article 238).



- Terrorism sponsorship. According to the criminal law of Vietnam, this behavior can be prosecuted for the acts of terrorism (Article 84), and can be undertaken for the same crime as complicity (Article 20).

The question now is when joining the international commitment, will Vietnam be able to direct criminal charges to the behaviours described in the international conventions and whether it is to 'localize' international regulations and mainstream into the legal system of Vietnam.

According to reports by judicial agencies of Vietnam, all terrorist or terrorist-oriented behaviours defined by international conventions and agreement to which Vietnam has ratified or joined, when happen in Vietnam, can be regulated by the current criminal code of Vietnam without any negligence.

5. Sponsorship of terrorism

Currently the Criminal code of Vietnam does not provide for terrorist sponsorship. Acts of sponsoring terrorists, according to criminal law of Vietnam shall be considered as complicity. Vietnam's National Assembly is considering whether this should be clearly given in the criminal code, if yes, how to define it? This question is not yet answered as the National Assembly is having a debate and discussions about it.

Under the current Criminal Code there is a provision for 'complice' and this provision is in exchange with terrorist-related details. As defined by the law of Vietnam, complicity is when there are two or more people intentionally carry out the same crime. A complice is the one who does at least one of the following behaviours: masterminders, leaders, commander or invokers, deceivers, and force other to commit crimes; *enabling material or spiritual conditions for the commitment of crimes.*

In the 1999 international Convention on the oppression of terrorist-related sponsorship, it provides that a person be considered a violator if he/she supplies or mobilise money under any form for such purpose or knows that part of the money shall be used and constitute a terrorist-related acts or other crimes with a terrorist purpose.

As we have observed, from the outset, the supply and mobilisation of money under any forms belonging to the behaviours of *enabling material and spiritual condition for the acts of terrorism.* Subjectively, the object which take



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the terrorist acts with an intention knows that part of the sponsored money be used for terrorist purposes or other activities of terrorist nature. It also means that the person who wish to know or knows in advance how part of or the whole money to be sponsored shall be used, but decided to sponsor.

Therefore, sponsorship of terrorists as stated in the Convention is a in fact complice as defined by the criminal law of Vietnam. Anyone sponsoring terrorists shall be tried as complice of terrorism according to criminal law of Vietnam.

