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### IMPLEMENTATION OF MARINE ENVIRONMENTAL TREATIES IN VIETNAM: PROBLEMS AND RESOLUTIONS

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#### *Abstract*

In order to effectively implement treaties on marine environmental protection, Vietnam has undertaken many measures including legal measures, enforcement, establishment of institutions and propagation of the substantive rules of treaties. However, the effectiveness of implementation is not only reflected in the performance the treaties in good faith, but also in the results of marine environmental protection. Due to some shortcomings, the performance of treaties on marine environment protection in Vietnam has not achieved the stated outcomes. Tackling those shortcomings necessitates a comprehensive and concrete strategy for the protection of the marine environment. Imperative solutions to such drawbacks include: Continuous perfection of laws on marine environment protection; restructuring of the implementation mechanism towards centralization and responsibility clarification; enhancement of international cooperation and more efficient utilization of financial resources; consideration of the prompt and full participation in treaties on marine environment protection.

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**Keywords:** Marine environment, implementation mechanism, international treaties.



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## 1. Introduction

The marine environment not only sustains the habitat for humans by supplying resources, but also constitutes the environment for transportation, tourism, sporting activities and absorbs and assimilates wastes from land-based resources. Nevertheless, elements of the marine environment, marine resources and bio-diversity tend to be severely and increasingly undermined in spite of human efforts in protection.

While marine environment pollution occurs at different levels, including local, national, regional and global levels, the marine environment itself is not divided based on state boundaries, i.e. impacts on the marine environment in one nation or region can spread out to affect other nations or regions. Therefore, efforts of individual states or even individual regions are inadequate to encounter problems of marine environment pollution. Only international cooperation is capable of handling this issue at the global level.

Bearing that in mind, Vietnam has been a party to many international treaties relating to the marine environment protection, including:

- The Convention on Wetlands of International Importance especially as Waterfowl Habitat (RAMSAR), 1971 (accessed August 22, 1988);
- The International Convention for the Prevention of Pollution from Ships (MARPOL) 73/78 (accessed November 10, 1990);
- The International Convention on Load Lines (LOAD LINES), 1966 (accessed November 10, 1990);
- The International Convention on Tonnage Measurement of Ships (TON-NAGE), 1969 (accessed 10, 1990);
- The United Nations Convention on the Law of the Sea (UNCLOS 1982), (accessed Jun 23, 1994);
- The International Convention on Civil Liability for Oil Pollution Damage - CLC, 1992 (accessed Jun 17, 2003);
- The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal 1989 (accessed Jun 11, 1995)

The membership of Vietnam to treaties on marine environmental protection is established mainly by accession without participating in drafting and signing the document.

## 2. Problem Statement

This article analyzes the Vietnam's practice in implementing international treaties on the marine environment protection; secondly, the paper evaluates shortcomings and challenges Vietnam has to tackle; and thirdly, it puts forth solutions for Vietnam to more effectively implement international treaties on the protection of the marine environment.

## 3. Research Questions

**3.1** What measures has Vietnam taken to implement international treaties on the protection of marine environment?

**3.2** Are the measures taken by Vietnam to implement the treaties on marine environmental protection effective?

**3.3** What solutions should Vietnam take to improve the efficiency in implementing international treaties on marine environment protection?

#### **4. Purpose of the Study**

This article targets the search for solutions for Vietnam to more effectively implement international treaties on marine environmental protection

#### **5. Research Methods**

Legal statistics and synthesis are used as methods to generalize the practice of Vietnam in implementing treaties on marine environmental protection.

Analysis and comparation are used to highlight drawbacks and suitable resolutions for Vietnam to enhance the effectiveness in its performance of international treaties on the protection of the marine environment.

#### **6. Findings**

##### **6.1. The status-quo of Vietnam's performance of international treaties on marine environment protection**

According to international treaties, Vietnam is obligated to protect the marine environment with the main subject-matters as follows:

- Initiation of necessary measures for the prevention of the pollution of the marine environment;
- Protection of resources of sea creatures;
- Prohibition of activities under its jurisdictional right or control that can be detrimental to the marine environment of other states or to areas beyond its state jurisdictional right;
- Cooperation in the protection of the marine environment

To undertake these obligations as stated in the treaties, from a legal perspective, Vietnam employs two approaches including direct effects of treaties and transformation of international treaties into the domestic law of Vietnam. Many legal documents on environmental protection in Vietnam share the same prescription that “if international treaties that Vietnam accedes to or concludes provide otherwise, these international treaties take precedence”, for example, Article 2 of the Vietnam Maritime Code 2015 (entry into force on 1 July, 2017); Article 2, Law on the Vietnam’s Sea (entry into force on 1 January, 2013); Article 2a, the Law on Petroleum 1993 (amended and supplemented in 2008); Article 1, Fishery Law 2017 (entry into force on 1 January, 2019). This is exactly the manner in which Vietnam directly applies international treaties on the protection of the marine environment.

Transforming the provisions of treaties into domestic law is the primary means applied by Vietnam to comply with its international obligations. Vietnam has amended, supplemented and enacted legislations in different aspects of the marine environment protection. Up to now, the quantity of existing legal

documents of Vietnam on the protection of the marine environment is outstanding; for example, the Constitution of the Socialist Republic of Vietnam, 2013 (entry into force on 1 Jan, 2014); the Law on the Environmental Protection, 2014 (entry into force on 1 January, 2015); the Law on the Vietnam's Sea, 2012; the Law on Water Resources, 2012 (amended and supplemented in 2017); the Law on Petroleum 1993 (amended and supplemented in 2008); Fishery Law 2017 and diversity of directive legislations enacted by governmental bodies.

The above legal documents of Vietnam have specified many principles of international treaties on the protection of the marine environment, such as the principle of the human right to a clean environment, the precautionary principle, the “polluter pays” principle and so on. Pursuant to these documents, the protection of the marine environment in Vietnam comprises the main fields as follows:

- The protection of ecosystems (mangrove forests, coral reefs, sea-weeds, tidal marshes, river mouths, lagoons, basins, wetlands and related systems);
- The protection of biological resources and fighting against excessive exploitation;
- The protection of sea water quality, the marine environment and anti-pollution.

The protected objects above are in accordance with provisions of the UNCLOS 1982 and other relevant international treaties, eg. Part X, UNCLOS 1982.

Pursuant to international treaties, Vietnam has upgraded and improved standards on the evaluation of environmental impacts, the preventative system against marine pollution from ships, standards on marine safety equipment, sea-vessel registration and certificate issuance for shipment. The Vietnamese government shows a great concern over the protection of biological resources and safety of marine transportation in sea waters within the state's sovereignty and sovereign rights.

In terms of the implementation institution, Vietnam has emphasised the efficiency of the managerial institution of the environment and appointed responsible authorities in the surveillance of the performance of concluded international treaties. For instance, the Ministry of Transport has monitored the execution of most of international treaties on marine pollution. The Ministry of Transportation delegates its bodies to monitor the implementation of Conventions respectively as follows: the Maritime Administration monitors the implementation of Convention COLREG72; the Vietnam Register Administration monitors the implementation of Convention MARPOL 73/78, SOLAS 74, Load Lines 66 and TONNAGE 69; the Vietnam Maritime University monitors the implementation of Convention STCW 78/95. The Ministry of Agriculture and Rural Development is in charge of supervising the implementation of the RAMSAR Convention. The Ministry of Resources and Environment follows up on the implementation of the Basel Convention. Furthermore, Vietnam has allowed the establishment of Offices (such as the Office of the International Maritime Organization (IMO)) in charge of monitoring the implementation of international treaties on the protection of the marine environment in Vietnam. Vietnam has executed synchronically and efficiently National Programmes in Zoning of Marine Preservation Areas; National Plans against Oil Overspill Preparedness; fishery policies and implementation plans.

The system of competent forces in Vietnam with the duties of checking, supervision, detection and handling of violations of prescriptions on the protection of the marine environment comprises:

- The marine police force - to enforce the legal compliance in sea waters between the baselines and outer boundaries of the economic special zones and the continental shelf of Vietnam;

- Specialized inspection (for example the Maritime Inspection, Environment Inspection, Petroleum Inspection) - to review and check vessel fleets to remove sub-standard ships; to issue Certificates for the prevention of environment pollution; to request ships to fully install the oil-filtering systems, safety systems, and records of oil disposal procedures.

The tremendous efforts made by Vietnam in this area can be seen in the following strategies:

- the translation, publication, promulgation and popularization of stipulations of international treaties on the protection of the marine environment;

- the organization of conventions and conferences to execute the implementation and to assess the outcome of the performance of international treaties at the end of certain individual stages;

- the cooperation with nations and international organizations to initiate programmes and projects on the protection of the marine environment, such as the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities in the East Asian Seas (GEF/UNEP);

-the development of regions sensitive to oil overspill with the Kingdom of Norway.

At present, the seas of Vietnam consist of one world heritage, 8 RAMSAR sites, 9 world biosphere reserves recognized by the UNESCO and 16 marine reserves.

## **6.2. Drawbacks in the effectiveness of the implementation of international treaties on the protection of the marine environment in Vietnam**

In order to effectively implement treaties on marine environmental protection, Vietnam has undertaken many measures including legal measures, enforcement, establishment of institutions and propagation of the substantive of treaties. It is necessary to simultaneously implement measures to demonstrate the good faith of Vietnam in fulfilling international obligations to protect the marine environment. However, the effectiveness of implementation is not only reflected in the articulation of the treaties in good faith, but also in the results of marine environmental protection. In fact, Vietnam's marine environment is still at risk. Violations or marine environmental incidents still frequently occur. Vietnam has faced difficulties and shortcomings in its implementation of the above international treaties, of which the most severe difficulties and drawbacks are as follows.

Firstly, the approach of transforming the provisions of treaties into domestic law has the advantage of making the provisions of the treaty become more specific and consistent with internal circumstances but also poses some difficulties for Vietnam. Vietnam has initiated the fairly comprehensive transformation of international treaties on the protection of the marine environment but failed to establish a uniform transformation mechanism. Therefore, the law in Vietnam on the protection of the marine environment has been fractured in multiple documents. For example, although the number of legal documents pertaining to this issue is quite huge, the law in Vietnam now has fallen short of differentiating the “pollution” of the marine environment from the “degradation” of the marine environment and from marine environment “incidents”, of issuing concrete prescriptions on joint collaboration with other countries in the region to prevent, constrain and control trans-boundary pollution sources; of regulating responsibility for damage compensation and coverage of expenses of the marine pollution issuing from neighbouring countries into the seas of Vietnam

Almost all the legal norms on the prevention, handling and correction of the marine pollution are stated in directive legislations. This does not correspond to the spirit of international treaties which require states to enact laws on the prevention of and protest against the marine environment pollution with validity no less than international law regulations (Article 210, the UNCLOS 1982).

Secondly, the performance of the Conventions still has many shortcomings. For example, after many years of the accession to the MARPOL Convention, so far Vietnam has neither enacted any legislation nor had any port equipped with adequate reception facilities for waste water mixed with other oily residues or with oil from vessels as stipulated by the Convention.

The practice has proven that the determination of the marine pollution is extremely problematic. On the other hand, the sea is capable of taking in a considerable quantity of pollutants. Article 194.3 of the UNCLOS 1982 does not completely prohibit the dumping of pollutants in the marine environment but just requires a reduction to the fullest extent in the pollution caused by the waste disposal in the marine environment. This means that, while the marine pollution is prohibited according to the general obligation of the protection of the marine environment, the dumping of wastes to the extent that will not cause any real pollution is still judged as lawful. However, Vietnam has not introduced any concrete standard on the approval of disposal, dumping of wastes and salvage. Resultantly, the competent forces in Vietnam have faced challenges in proof collection and infringement handling, particularly the conduct of dumping of wastes in the marine environment. Legal documents as well as the practice of the prevention of the pollution of the marine environment in Vietnam have just placed emphasis on oil pollutions, whereas the marine environment pollution by waste dumping has not been subject to proper consideration.

Generally, enforcement measures of the law on the protection of the marine environment in Vietnam are mostly inclined towards administrative measures and the monetary fines are not punitive enough. For example, Decree No. 155/2016 / ND-CP November 18, 2016 on sanctioning violations in environmental protection regulates: the maximum fine for an administrative violation in the field of environmental protection is 1,000,000,000 VND for individuals and 2,000,000,000 VND for organizations (equivalent to 45,000 USD and 90,000 USD). However, compensatory measures have not been taken seriously, and even in some cases, there is no compensation. Provisional measures in response to pollution incidents have been poorly developed. On the other hand, while some legal documents regulate a sanction for a certain violation, the level of sanction is different. Violations in the plans against oil spill incident (specified in Article 33 (7) of Decree No. 155/2016 / ND-CP of November 18, 2016) are sanctioned from 25,000,000 VND to 35,000,000 VND for failing plans to rescue oil pollution and chemical pollution from ships approved by state agencies. However, Article 25 (3) of Decree No. 142/2013 / ND-CP dated December 11, 2017 regulates sanction from 10,000,000 VND to 20,000,000 VND for failing plans to respond to oil spill incidents; plans to rescue oil pollution and chemical pollution according to regulations. In general, the system of legal documents on handling violations in marine environmental protection is overlapping and inconsistent.

Thirdly, the promulgation of fundamental subject matter of treaties on the protection of the marine environment has been enhanced; however, the improvement covers only managerial bodies; not spread out to the general public. Consequentially, significant actions detrimental to the marine environment have been committed by fishermen themselves, for example blast fishing and massive sea turtle hunting.

Fourthly, the absence of a specialized body in marine administration constitutes a serious obstacle to Vietnam's implementation of a comprehensive plan on the protection of the marine environment. Vietnam has fallen short of clear-cut delegation to a body in principal charge of collaboration in the performance of the UNCLOS 1982 with regards to the protection of the marine environment.

At present, environment authorities lack the capacity and means to oversee the protection of the marine environment. In reality, the sea in Vietnam regularly suffers from oil pollution without clear origin due to the oil dumping by vessels operating in the sea areas of Vietnam as well as on international marine routes. Cases of compensation for the pollution of the marine environment are not grounded on a properly developed legal basis and lack the involvement of qualified specialists and lawyers in international law.

Fifthly, the marine environment lacks borders like the mainland territory but links intrinsically to adjacent countries. Meanwhile, activities of the preservation and protection of marine resources of Vietnam in border sea areas have fallen short of international connectivity.

### **6.3. Some recommendations for the improvement of the implementation efficiency of international treaties on the protection of the marine environment in Vietnam**

Given the above drawbacks, Vietnam must take institute more concrete measures to enhance the effectiveness in the performance of international treaties on the protection of the marine environment; of these the foremost should be that Vietnam should emphasise the advancement of the legal system and its implementation.

Firstly, Vietnam must improve the legal system for the marine environment protection. Pursuant to the regulations of international treaties and empirical lessons from other countries, Vietnam is in need of the development of a system of legal documents on the prevention of and protests against marine pollution with an appropriate legal status, adequate and detailed subject matter as well as more stringent remedies. In order to achieve such outcomes, Vietnam must:

- Review regulations of international treaties which have not been implemented yet or failed to be implemented properly in view of remedial measures;

- Enact legal documents specifying certain regulations of international treaties as many provisions, in the absence of their detail specification, threaten the uniformity in consciousness and conducts in practice. For example, the law of Vietnam must define damage by the pollution, competence of forces and procedures of the vessel examination under the Convention MARPOL 73/78, time limits for compensation, expenses of cleaning, the correction of incidents, restitution of the marine environment, trans-border pollution sources and so on. In addition, Vietnam needs to specify and tighten a set of general standards relevant to the marine environment, especially standards on the approval of dumping, dumping of wastes and salvage to secure the implementation of Articles 194.3 and 210 of the UNCLOS 1982 and other relevant international treaties; to adopt documents with specific regulations on the marine pollution from land-based sources and pollution from and through the atmosphere. In light of future violations to the marine environment and the inconsistencies in existing legal documents, Vietnam may consider adopting a separate legislation on the protection of the marine environment with rules transforming international treaties to which Vietnam is a party.

Secondly, improvement in the mechanism of implementation of the marine environment protection, including the capacity of its legal enforcement apparatus of law and the consciousness of the people. More specifically:

- Consideration of the introduction of synthetic marine management, the establishment of control centers or inter-disciplinary managerial boards in certain regions, including forces: the marine police, the border military, forces for the correction of incidents of the marine environment pollution, and industry inspections under the control of the Marine Police. This is needed to enhance collaboration among the authorities in principal charge of the implementation of international treaties on the comprehensive and effective protection of the marine environment.
- Improvement of the system of the approval of operations relevant to the marine environment and avoidance of the abuse of licenses. The surveillance and report mechanisms with regards to the usage of licenses must be developed;
- Reinforcement of the establishment and zoning of reservation areas of marine nature for the preservation of functions of the marine ecosystems and the security of the equilibrium between the development (exploitation) and the preservation of the marine ecology;
- Implementation of the widespread control of phenomena causing the marine pollution such as dumping of residual oil; addressing and prevention of the marine environment pollution from land-based sources;
  - Evaluation of the environment impacts of coastal and on-sea construction plans;
  - More proper financial investment in the prevention of the marine environment pollution needs to be made. The practice proves that expenses on the prevention of threats to the environment are generally far less costly than costs involved in the correction of consequences of the environment. In order to create more investment, Vietnam can learn from the experience of developed countries in the collection of fees on the protection of the marine environment to develop a mechanism to regulate the coverage of costs on the protection of the marine environment as well as to take effective advantage of the international assistance and cooperation on the basis of the implementation of the Article 203 of the UNCLOS 1982 and other international treaties with preferential treatments for developing countries.
- Organization of the promulgation to bodies, regions and the population portions, especially the coastal population of the position, significance and fundamental subject-matter of international treaties on the protection of the marine environment which Vietnam has joined and will join.

Thirdly, enhancement of international cooperation in environment protection:

- It is necessary to actively cooperate with other countries, international organizations, non-governmental funds and actively propose investment sources appropriate to the need of the protection of the marine environment in Vietnam. In the meantime, it is required to establish Boards on the project managements to execute and administer more efficiently the above investment sources.
- It is necessary to cooperate with neighbouring countries in the development of trans-border marine protection areas (TBMPA). With regards to sea areas with unambiguous delimitation of sovereignty and sovereign rights, Vietnam can put forth recommendations on the establishment of Particularly Sensitive Sea Areas (PSSA) with neighbouring countries. With regards to disputed marine areas, Vietnam might make suggestions on the cooperation in the establishment of the Marine Peace Park (MPP). Vietnam may

make recommendations for the related parties to consider: applying the Truong Sa MPP cooperation model to the sub-regions or the Truong Sa-wide archipelago as a breakthrough in the nature preservation operation. To implement this operation, Vietnam needs to research the experience of other countries in planning and conducting policies for the border-proximate marine areas.

Besides, Vietnam needs to consider the continuous participation in international treaties on the protection of the marine environment, including the consideration of participation in the following treaties:

- The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter – the London Convention 1972 with its amendments and the 1996 Protocol: At present, the law of Vietnam lacks concrete regulations on marine pollution by dumping of wastes and other matter. Therefore, by participating in the London Convention 1972, Vietnam can transform regulations of international law into its domestic law without many amendments. By joining the above Convention, Vietnam is also entitled to preferential treatments for developing countries, receives international assistance in human resources, technology and in the protection of the marine environment.

- The Convention on the International Oil Pollution Compensation Fund 1992 (the Fund Convention – the FC 1992): This is supplementary to the Civil Liability Convention (the CLC 1992) which Vietnam joined in 2003. The participation in the FC 1992 will assist Vietnam in securing rights of its nationals suffering from damage by pollution from oil overspill from oil-transporting vessels as well as in collecting funds for the purification of the marine environment after the occurrence of the pollution, for the fulfilment of the marine environment protection as stipulated in the UNCLOS 1982. Moreover, this will facilitate a consistent and favourable legal environment for the procedures of petition and compensation settlement within ASEAN (Association of South East Asian Nations) and at the global level.

- The International Convention on Oil Pollution Preparedness, Response and Co-operation (the OPRC 1990): Vietnam is a country with wide sea areas, including regions in which there are operations of oil exploitation and international maritime routes. As a result, by being a member of the OPRC 1990, Vietnam can request assistance from neighbouring countries in the event of severe marine incidents threatening considerably the marine environment in Vietnam. The participation in the OPRC 1990 also offers an opportunity for Vietnam to receive support from international organizations of experience, techniques and technologies for the preparedness for on-sea incidents.

In the future, by continuing to sign conventions on fishery cooperation, and conventions on joint petroleum exploitation with neighbour countries, Vietnam should pay more attention to provisos on the protection of the marine environment to establish a solid legal foundation for the performance of conventions as well as the enforcement of law on environmental protection.

## 7. Conclusion

The participation in and effective implementation of international treaties on the protection of the marine environment are not the only optimal avenue for the protection of the state interests. It is also the responsibility of Vietnam and other nations in the world to preserve the marine environment for future generations. Participation in treaties on marine environmental protection cannot substitute for the enactment of national laws and its implementation. Only with full awareness, a sufficient legal system and effective

implementation, Vietnam will prevent, limit and successfully control pollution of Vietnam's marine environment.

Vietnam has made consistent efforts to implement international treaties on the protection of the marine environment. Some drawbacks of the institution and law are the immediate difficulties that Vietnam has to address. However, it is impossible to tackle environmental problems without overall solutions to handle reasons for environmental degradation. Environmental degradation is the aftermath of a series of factors relating to all fields of the human life, such as society, economy, politics, peace and security. In consequence, the effective implementation of international treaties on the protection of the marine environment demands that Vietnam to adopt a comprehensive and concrete marine and environment strategy.

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