

INTERNATIONAL LAWYER

A Dialogue with Judicial Wisdom



Professor Dr. Nguyen Hong Thao

INTRODUCTION

It is a great honor for us to invite Professor Nguyen Hong Thao of the National University of Hanoi to <International Lawyer: A Dialogue with Judicial Wisdom> as the first Vietnamese lawyer to our Journal. Professor Thao was born in 1957 in Vietnam. He went to the Navy College of Bacu (former-Soviet Union) and studied international law at the University of Paris I Panthéon-Sorbonne where he received a Ph.D. in 1996.

After returning home, Professor Thao has been both researching and practicing law from various positions. He teaches international law at the National University of Hanoi and the Diplomatic Academy of Vietnam. Today, Professor Thao is serving as the Vietnamese Ambassador extraordinary and plenipotentiary to Malaysia. In addition, he has been actively working for global and regional organizations, such as the Asian Society of International Law, the Development of International Law in Asia Association, the Regional Network on the Legal Aspects of Marine Pollution, and GEF/UNDP/IMO Regional Program for the Prevention and Management of Marine Pollution in the East Asian Seas.

Professor Thao is truly an authority on Vietnam's foreign policy and attitude to international law, particularly dispute settlement and ocean affairs. As a leading law of the sea scholar in the region, he has published many papers and books in this field in English, French and Vietnamese. It is worth to mention that 'Le Vietnam et ses différents maritimes dans la mer de Bien Dong (Mer de Chin Méridionale),' which was part of his Ph.D. thesis, was awarded the prize of L' Institut du droit conomique de la mer.

As a senior international lawyer in Viet Nam, Professor Thao is highly respected by the students, colleagues and friends, both at home and abroad. But whenever I contacted him, I found him really humble and very responsible. Please enjoy the exciting life story and the insightful personal opinions of Professor Nguyen Hong Thao on different aspects of international law discussed in this interview.

QUESTIONS & ANSWERS

1. *Hello, sir! Welcome to <International Lawyer>! It is a great honor for us to have this opportunity to interview such a highly renowned international legal*

scholar as well as a diplomat. You are the first Vietnamese international lawyer we have had the pleasure to interview. Let's begin with somewhat personal questions. Please tell us about your early years. Where were you born? And please provide us a brief family history.

First and foremost, I would like to express my appreciation for the editors and readers of Journal of East Asia and International Law for granting me this great honor. Viet Nam and South Korea has established diplomatic relations for the past twenty-three years and the exchange of legal scholars between the two sides has indeed contributed greatly to the development of this relationship for mutual benefits.

I was born in 1957 in the northern province of Phu Tho, which is considered as the cradle of Vietnamese nation. In 1974, I enrolled myself in the Navy and graduated as Navigator Engineer in the former Soviet Union in 1982, and then joined the Truong Sa brigade of transportation. In 1991, I returned from the military service. In 1996, I defended my Ph.D. thesis at Paris I, Panthéon-Sorbonne University, France on the subject involving Viet Nam's Laws of Sea. Since then I have been teaching and researching at Hanoi National University, Diplomatic Academy of Viet Nam and Hanoi Law University as well as serving in the Executive Council of the Asian Society of International Law. I am married and have two children.

2. You started your professional career as a naval officer of Vietnam. Then, you became an international lawyer. What led you to study international law? Who were your mentors during your Ph.D. study and how about their teaching?

When I was still a school boy I also had a desire of learning and teaching laws. Due to the wars, however, our generation had the primary responsibility to enroll to the army for national defense. After the wars, international law was crucially important for our country and served as an essential instrument for the cause of national defense and development, as Viet Nam wanted to be friends of all nations in the world as well as an active member of the international community. That is why I chose international law with a focus on maritime affairs which had not been fully developed yet in Viet Nam at that time, with the aspiration of being able to contribute to the cause of national construction and defense. Fortunately, I went to Panthéon-Sorbonne and was supervised by two eminent professors of international law of the sea, namely Prof. Jean-Pierre Quéneudec, who used to be the Head of

French Delegation to participate in the Third United Nations Conference on the Law of the Sea in 1973-1982, and Prof. Laurent Lucchini, Head of International Law Faculty of Paris I Panthéon-Sorbonne University. As a first generation Vietnamese student to study international law in France since reunification, I faced with various challenges, especially the matter of languages. However, I also had many good friends and generous teachers who helped me very much. Because international law would indeed require huge knowledge, I had to try my best. I used to remain in Cujas Library near to Panthéon from early morning to late night. That was not only a challenging time for my student's life, but also was a sweet memory with a lot of experiences. In particular, I had chance to know deeply about the international sharing and sentiments. I am absolutely satisfied with my choice despite late starting. The precious assistance of my supervisors, teachers and friends provided me a concrete foundation for my career later.

3. As an international lawyer, you have developed an impressive career. You have researched and practiced law as a scholar and diplomat. What is the main difference between these two roles? Which do you personally prefer?

Since 1996, fortunately, I have had opportunities to participate in negotiations on border and territorial issues between Viet Nam and its neighboring countries. It was the time when Viet Nam made great efforts to solve the territorial disputes by peaceful means in conformity with international law, aiming at creating a peaceful and stable environment for national development and the Doi Moi (Renovation) Cause. We concluded the Agreement on delimitation of the Exclusive Economic Zone ("EEZ") and Continental Shelf with Thailand in 1997, Agreement on Delimitation of Territorial Waters, EEZ and Continental Shelf in the Tonkin Gulf with China in 2000, Agreement on Delimitation of Continental Shelf with Indonesia in 2003, Supplementary Treaty to the 1985 Treaty on Delimitation of National Boundaries with Cambodia in 2005, Treaty of Delimitation on National Boundaries with Laos in 2006, Protocol on Land Border Demarcation and Marker Placing with China in 2008. Earlier, we also signed the Agreement on Joint Exploitation with Malaysia in 1992. Most of these agreements were concluded and implemented after the United Nations Convention on the Law of the Sea ("UNCLOS") of 1982 came into effect in November 1994. In addition, the South China Sea issues and the Association of South East Asian Nations ("ASEAN") always served as attractive points of international and regional community. This working environment created favorable condition for me to translate the knowledge that I had acquired into the

reality as well as create and make full use of initiatives to handle the highly topical and cutting-edge issues. At the same time, I also lectured at many Vietnamese and international universities, carried out various researches, and participated in academic conferences. Unlike the thorny struggle for national interests of diplomats at the negotiation table, the teaching and research seems a little bit more peaceful, thus providing me more chances to exchange views, review the experiences to develop theories, knowledge, thus contributing to science and international law. Especially, communication with younger generation inspired me to renew myself to continuously enhancing and developing international law in Asia into same level with other law associations and centers in Europe and the United States. I enjoy both positions as one would complement the other. I feel indeed happy and thankful to my life with an opportunity to join in the different and challenging but exciting circles as a diplomat and as a scholar at the same time.

4. Many people are interested in the Vietnamese attitude toward international law. When was Viet Nam first exposed to modern international law? Is the French tradition still influential? How about current international law scholarship in Vietnam?

Viet Nam has always been viewed as a resilient nation, struggling for independence, territorial integrity and sovereign equality. She always provides the general value of international law. International law can be thus said to go in parallel with the history of national construction and defense of Viet Nam. Due to the French influence, civil law system is still dominant in Viet Nam. However, common law system has been gradually expanding its influence since regaining her national sovereignty.

Viet Nam has been always trying to resolve international disputes peacefully through international law as shown at Genève Conference in 1954, Paris Conferences in 1973 and 1991. As a member of the United Nations, Viet Nam joined many international organizations and international conventions on economy, environment, human rights, etc. Today, there are various tertiary education institutions providing international law teaching such as Hanoi National University, Ho Chi Minh City National University, Hanoi Law University, Ho Chi Minh City Law University, Diplomatic Academy of Viet Nam, Judicial Academy, etc. There are around 1000 students pursuing courses on international law every year from both Viet Nam and foreign countries. Also, around 200 permanent lecturers are teaching international law at different Vietnamese universities and a significant number of

visiting professors from foreign countries are also delivering lectures in the country. Besides, Vietnam is a member of the Asian Society of International Law.

5. There has historically been a negative view toward international law among Asian people who were colonized; they used to say, “international law is even weaker than a cannon.” The Vietnamese, however, are enough to be praised as the only people in Asia who defeated the western imperialism by themselves. Do you think international law played any role in the course of the anti-imperialist struggle against France and the United States? If so, in what sense? If not, how could Asian people overcome such a pessimistic position toward international law?

I would agree that in the past, there were indeed a pessimistic position toward the role of international law among the Asian community. That was originated from some specific factors. First, international law from the West did not protect interests of colonial peoples. Second, even though international law is generally applied, it is necessary to consider specific characteristics of each continents and regions. *E.g.*, the practices of human rights in Asia had certain different aspects from other regions such as Europe or the US. Third, international courts and arbitrations were totally controlled by the western countries. Such western domination has been gradually changing in recent times when eminent Asian judges began to holding positions in the international courts and arbitrations, such as Ignacio-Pinto (Sri Lanka), Choon Ho Park (South Korea), Xue Hanqin, Zhiguo Gao (China), Shigeru Oda, H. Owada (Japan), Nagendra Singh (India), etc. Asian countries have also been invoking their rights through international judicial institutions as shown in the Preah Vihear Temple case (Thailand v. Cambodia) in 1962 and 2013(ICJ), the Sovereignty over Sipadan and Ligitan case (Malaysia v. Indonesia) in 2001(ICJ), and the Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge case (Malaysia v. Singapore) in 2008(ICJ). Recently, the Philippines filed an application to the International Tribunal on the Law of the Sea (“ITLOS”) against China. Universalizing and promoting international law, supporting and encouraging all nations to respect international law serve as important measures to help Asian countries to overcome their reluctance and pessimistic views on international law. In parallel, the United Nations, international organizations, and international judicial institutions should play an active, objective and unbiased role to facilitate the promotion and implementation of international law, for the sake of peace, stability and development, as well as fighting against any intention to use and threats to use

violence in international relations.

As a small country having critical geopolitical location, Viet Nam has been often trapped between super powers. As a result, people in Viet Nam should be both cooperating and struggling simultaneously to protect their sovereignty. International law has been an important tool in these courses. President Ho Chi Minh, who was also the first Minister of Foreign Affairs of Viet Nam, proposed the principle of Viet Nam's diplomacy, i.e., "from an unchanging stance, respond to ten thousand changes." However, he always referred to the 'consistent position' as to the fundamental principles such as sovereign equality, independence, peace, and self-determination of each nation. It is impossible to attain freedom and happiness without independence and sovereignty which will serve as the firm ground to stable development and harmonization of the world. Both can help us to successfully handle every plot in international relations. 'Unchanging stance' is to use peaceful measures to solve international issues, which have always been complicated and inevitably changing in international relations.

6. Self-reliance or self-determination is a fundamental principle of postwar international law and relations. There used to be critical debates regarding self-reliance in Korea, being influenced by powers such as the US, China, Russia and Japan. Vietnam is under similar pressure by the US, China and Russia. I think Vietnam has been successful in implementing foreign policy with self-reliance in this difficult position. Would you tell us about the guiding principle of foreign policy-making of Vietnam?

Viet Nam is located next to the South China Sea, an important pivot of Asia Pacific region as well as blood vessel line for international trade and navigation. This geopolitical location brings to Viet Nam both opportunities and challenges in relations with big powers. Asia Pacific is becoming the most powerful and influential region in the 21st century from political, economic and military perspectives. Today, twenty-one APEC member nations are contributing up to 54% total GDP of the world.¹ The ASEAN Community with the population of 600 million is getting more importance in the region. No wonder the hegemonic powers should keep eyes open on our region. As shown in human history, small countries like Viet Nam were often controlled by the gigantic ones without any responsible measures for limiting their powers. Past experiences teach us that international law is the most efficient and

¹ APEC, What is Asia-Pacific Economic Cooperation?, available at <http://www.apec.org/about-us/about-apec.aspx> (last visited on Mar. 30, 2014).

practical means to hit the balance of powers between the two sides.

7. Vietnam is in a very delicate position on the South China Sea with China (culturally), Russia (strategically) and the US (economically). What are reasons d'etre of these countries in the South China Sea from your perspective? What do you expect in regard to the future relations between Vietnam and these partners?

The current situation in the East China Sea and the South China Sea is quite complicated. If the concerned parties disrespect international laws, peace, stability and the development of the region would be deteriorated. Viet Nam's position on the South China Sea issue can be shown clearly in the speech by Prime Minister Nguyen Tan Dung at the Shangri-La Dialogue in Singapore on May 31, 2013. He said:²

In global history, many nations have suffered from irreparable losses when they fell victim to power politics, conflict and wars. In today's civilized world, the UN Charter, international law and the universal principles and norms serve as the common values of all humanity and must be respected. This also represents the precondition for the building of strategic trust. Competition and engagement are by themselves normal facts in the course of cooperation and development. Yet if such competition and engagement embrace calculations that are only in one's own interest, without equality, respect of international law or transparency, then strategic trust could in no way be reinforced, and there could be a chance for the rise of division, suspicion and the risk of mutual containment, thus adversely affecting peace, cooperation and development. The unpredictable developments in the Korean Peninsula; sovereignty and territorial disputes from the East China Sea to the East Sea (South China Sea) that are evolving with great complexity, threatening regional peace and security - firstly maritime security and safety as well as the freedom of navigation - have indeed caused deep concern to the international community. Somewhere in the region, there have emerged preferences for unilateral might, groundless claims, and actions that run counter to international law and stem from imposition and power politics. We should realize that such challenges and risks of conflict are not to be underestimated. We all understand that if this region falls into instability and especially, armed conflicts, there will be neither winners nor losers. Rather, all will lose. Suffice it to say, therefore, that working together to build and reinforce strategic trust for peace, cooperation and prosperity in the region is in the shared interest of us all. For Vietnam, strategic trust is perceived, above all, as honesty and sincerity. Secondly, to build strategic trust, we ourselves need to abide by

² Le Dinh Tinh, *Vietnam's Prime Minister Speaks at Shangri-La 2013*, THE DIPLOMAT, June 5, 2013, available at <http://thediplomat.com/2013/06/vietnams-prime-minister-speaks-at-shangri-la-2013> (last visited on Mar. 30, 2014).

international law, to uphold the responsibilities of nations, especially of major powers, and work to improve the efficiency of multilateral security cooperation mechanisms. We attach special importance to the roles played by a vigorously rising China and by the United States - a Pacific power. We would expect and support the roles of the United States and China, once their strategies and actions conform to international law and respect the independence and sovereignty of nations, to not only bring about benefits to them, but also to contribute genuinely to our common peace, cooperation and prosperity. Throughout her thousands of years of history, Vietnam has suffered numerous pains and losses due to wars. Vietnam always aspires to peace and desires to contribute to the consolidation of peace and enhancement of friendship and development cooperation in the region and the world. To have a genuine and lasting peace, the independence and sovereignty of any country, whether large or small, must be respected; and differences in interests, culture, etc. must be subject to open and constructive dialogues of mutual understanding and mutual respect.

8. Vietnam was reunified through the national liberation wars. Would you evaluate the wars from a viewpoint of international law? What kind of international legal questions did the Vietnamese society and government face through the process of political and social integration? And how did Vietnam resolve these problems?

Human beings were victims of horrible wars in centuries. The UN Charter declares to handle the international dispute by peaceful manner. Over the past half a century, mankind has made great efforts to restrain war under the UN system. Many enforcement mechanisms come into effects. The UN Security Council, international organizations, international judicial bodies, and civic societies have been working for the peace and security enthusiastically. Many international crises have been resolved by international law. Nonetheless, cloud of war still remains in many parts of the world due to the conventional power politics as well as newly emerging terrorism. Viet Nam will take it for granted to removing these threats against people in this century.

During the process of global integration, moreover, Viet Nam has been facing many challenges in areas of environment, human rights, economic integration, territorial disputes, and armed conflict. In the course of handling with these matters, Viet Nam will be always respecting the principles of international law for friendly relations among the nations.

9. As shown at "Pivot to Asia" by President Barack Obama, in the 21st century, the United States is more balancing on Asia than the past decades. Many people

say that Asia is promising and fruitful in the future. On the other side, however, tensions are escalating between the States in the region. The revival of Japanese militarism especially in this Abe administration is a serious point of contention. Commenting the current tension between Japan and China as a 'similar situation' between Britain and Germany before World War I, Japan Prime Minister Shinzo Abe did not rule out even a possibility of 'inadvertent' military conflict between China and Japan. How do you expect the future of East Asia? Do you predict any armed clash in this region?

With the new doctrine, "Pivot to Asia," the Obama administration will be more focusing on Asia; it is a different direction from the conventional American foreign policy concentrating on Europe in the past. New bipolar system has already set up in this region with President Xi Jin Ping's 'China's dream' in the other side. In addition, Japan's position for a 'normal State' is another threat to peace and stability of Asia. Viet Nam would respect their interest if they comply with international law. The imperialistic position of the past century such as "survival of the fittest" should be eliminated in the 21st century's international relations. The peace and stability in Asia will serve as a precondition for prosperity of all Asia Pacific nations including the US, China, Japan, Korea and Viet Nam. If wars break out, there will be no winners, but losers only. Therefore, we must respect each other's political and economic interests under international law and restraint the extreme nationalism. All of us should realize the common goal for removing the war in human society. The clear-sighted leadership and the strategic trust between countries will prevent war in East Asia. We should learn how to turn a big matter into a small one and small matter to nothing, in order to prevent military conflicts.

10. Although you are a truly successful international lawyer, I do not think your life track was an easy one; you lived through a horrible war. How did you overcome the difficulties you faced? What do you think is the most important value for the younger generation of East Asia to keep in mind for peaceful co-existence?

Asia is the cradle of the ancient civilizations of mankind. However, it lost the pioneer position due to the colonial experiences and horrible wars. In the 21st century, Asia-Pacific countries could make a chance to break new ground and lead the world. That was due to the extraordinary efforts of the nations that have overcome the miserable and oppressed past. They will be moving toward a new

global order based on mutual equality and respect under international law. The Asian norms and values such as peaceful co-existence at Bandung Conference in 1955, principles of consensus and respecting domestic jurisdiction of ASEAN in 1967, non-proliferation of nuclear weapons in Kuala Lumpur in 1972, indeed contributed greatly to peace and prosperity. Despite challenges, our future is promising. The first bricks have been built for the glorious history of the next generations. This vision will come true under international law.

Interview by Eric Yong Joong Lee with the assistance of Thang Nguyen Dang

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