

# Demand for Vietnamese Citizens Protection Abroad and Basis for Protection

Le Mai Thanh<sup>1</sup>

<sup>1</sup> Institute of State and Law, Vietnam Academy of Social Sciences.

Email: lemaithanhvn@yahoo.com

Received on 1 February 2021. Accepted on 5 March 2021.

**Abstract:** The paper analyses the subject of Vietnamese citizens protection abroad and the demands for such protection, as well as the legal basis for this protection from three components: international law, Vietnam's law, and the host country law. These components will be critically discussed on their roles and natures of regulating the protection for Vietnamese citizens abroad. International law defines the right to conduct this protection in the context of the relationship between Vietnam and the host country. Vietnam's law indicates the obligations of the State of Vietnam in protecting its citizens in the relationship between them. The law of the host country (i.e. in the context of this paper it is the country hosting Vietnamese citizens) establishes legal guarantees to exercise the legitimate rights and interests of Vietnamese citizens abroad.

**Keywords:** Vietnamese citizen, legal basis, citizen protection, abroad.

**Subject classification:** Jurisprudence

## 1. Introduction

In the context of international cooperation and globalisation, in addition to 4.5 million Vietnamese residing overseas (including Vietnamese citizens and Vietnamese origin) (The Phong, 2014), the diversification in cause of term residency of Vietnamese citizens increases the need for citizen protection.

Vietnamese citizens, no matter where they live, require State protection; especially when abroad, they are vulnerable and lack of protection comparing to the local. For these Vietnamese citizens, they need not

only protection when their legitimate rights and interests are violated, but also State protection when they face difficulties and cannot settle on their own.

Unlike for citizens within Vietnamese territories, implementation of duty of citizen protection for Vietnamese abroad must not only rely on Vietnam's law but also on international law as well as the applicable laws in the host countries.

Therefore, to ensure effective protection, these bases need to be appropriately utilised. In addition, there must be a channel receive protection requests and sound protection

target timely, and sufficient financial funding in place. Nevertheless, the legal basis is the fundamental factor determines the effectiveness of protection for Vietnamese citizens abroad.

## **2. Vietnamese citizens living abroad and the need to protect them**

### *2.1. Vietnamese citizens abroad*

Different definitions exist for "citizenship", but generally they all gear towards determining the strong political and legal relationship, like "nationality", between an individual and a state. One of those definitions states: "a citizen is a person who is granted the country's nationality by place of birth, or by following the nationality of one or both parents, or is naturalised with adequate rights and responsibilities as a member of that nation" (Cornell Law School, Legal Information Institute).

Unlike a foreigner, a citizen of a country is entitled to receive all legal rights and advantages which that State is granting its people. In return, they have the duty to follow and comply with the laws of their country, or have additional obligations to that country (Business Dictionary).

In line with the above definition of citizenship, Clause 1, Article 5 of the Law on Vietnamese Nationality 2008, (Law No.24/2008/QH12), amended in 2014, (referred hereby as the Law on Nationality) stipulated that persons holding Vietnamese nationality are Vietnamese citizens. Thus, overseas Vietnamese citizens are those holding Vietnamese nationality and being abroad.

The State of Vietnam recognises that Vietnamese citizens can only hold one

nationality i.e. Vietnamese nationality, as per single nationality principle (Article 4 of the Law on Nationality). However, many countries where a large number of Vietnamese is living, such as Canada, the United States, the United Kingdom and some others, recognise dual and multi-nationality (Elma Global). When a Vietnamese citizen is holding another nationality, Clause 1, Article 12 of the Law on Nationality states that all matters arising from having more than one nationality will be settled according to the international treaties which the Socialist Republic of Vietnam has ratified, or if no international treaties signed regulating the issue, it will then be settled according to international practices and customs. In other words, the protection for citizens in this case relies on international law bound with the countries concerned. Where Vietnamese citizens concurrently hold the nationality of the host country, citizen protection request to the State of Vietnam, or any other country state, does not arise in practice, same situation goes to any other country.

In addition to the notion of Vietnamese citizen, there is also the concept of: "Vietnamese people residing overseas are Vietnamese citizens and Vietnamese origin living permanently abroad"; in which, "Vietnamese origin settling abroad are those Vietnamese who once held Vietnamese nationality, and their nationality at birth was determined on the principle of bloodline and their children and grandchildren residing permanently abroad" (Clauses 3 and 4, Article 3 of the Law on Nationality). According to Clause 1, Article 18 of the Constitution of the Socialist Republic of Vietnam 2013, Vietnamese residing abroad

form an integral part of the Vietnamese community. In particular, this includes those do not have any document to prove their Vietnamese identity and nationality but have not been naturalised in their country of residence either. This is the group of stateless Vietnamese origin, an example is some Khmer people of Vietnamese origin in Cambodia (Thanh Xuan, 2019). According to the Cambodian Ministry of Interior, there are over 160,000 people of Vietnamese origin living in this country, concentrated mostly in Phnom Penh, the capital, and five provinces bordering Tonlé Sap Lake, including Kampong Chhnang, Pursat, Battambang, Kampong Thom, and Siem Reap (Van Anh, 2020). Clause 3 Article 17 of the 2013 Constitution stipulates "Overseas Vietnamese citizens are protected by the State of the Socialist Republic of Vietnam". The Constitution concretises that the protected subjects are Vietnamese citizens living abroad, regardless of residency duration. As such, these citizens, not includes persons of Vietnamese origin, settling abroad, have the right to be protected by the State of Vietnam. Vietnamese origin without Vietnamese nationality are not entitled to the above mentioned citizenship protection. However, considering that they are still part of the Vietnamese national community, the State of Vietnam has policies in place to promote and support their integration into the communities where they live on the cooperation basis with the host country. For example, Vietnam and Cambodia agreed on a policy to accelerate the settlement of legal and administrative documents for Cambodians of Vietnamese origin (i.e. who are stateless) in all Cambodian

localities on the basis of the host country law, provided its consistency with international law and customs, the two countries' long-established friendship (A.B, 2019).

In fact, the protection of Vietnamese citizens abroad does not only relate to those holding single Vietnamese nationality, but also to Vietnamese nationals with multiple nationality, or stateless people of Vietnamese descent as previously discussed.

## *2.2. Demand for protection for Vietnamese citizens overseas*

As time goes on, together with many different reasons for Vietnamese to migrate abroad, the need for citizen protection has increased. Overseas Vietnamese citizens are guaranteed human rights in their host countries under international and host country laws. However, they do not enjoy the same rights and benefits the host country offers its own citizens. Therefore, the wish to be protected by the State of Vietnam significantly increases when Vietnamese citizens face difficulties which they cannot resolve themselves, such as during natural disasters, epidemics, conflicts, or crises in the host country, and so on.

In fact, Vietnamese citizens abroad need protection when their fundamental freedoms and rights are restricted; when they face color or nationality discrimination; when their legitimate rights and interests are violated and the legal recourse in the host country also fails; when they face difficulties, like accident or illness, and not being able to secure local support; when their health, lives, and security are put at risk e.g. during epidemics, conflicts, and crises while in their host country.

In addition, citizen protection may also be sought by a certain a group of Vietnamese with specific occupations, such as fishermen or sailors operating in water area belonging to another country territories and jurisdiction. For instance, they may be the fishermen operating in the East Sea (i.e. South China Sea) or sailors working for fishing vessel foreign-owned. They need State protection in case of being arrested and under unfair trial by the coastal nation when they are suspected of illegal fishing in the waters under its jurisdiction; when they are attacked by pirates; or when they fall ill and suffer inhumane treatment by foreign ship owners, etc. In fact, the need to protect Vietnamese fishermen operating in the East Sea is significant, especially when they illegally exploit sea life or encroach on territorial waters of other countries (such as Indonesia, Malaysia, Cambodia, Thailand, the Philippines, Australia, etc.). In the event where fishermen are arrested or mistreated, the Vietnamese Ministry of Foreign Affairs (MOFA) will take appropriate measures to protect them. Action includes: diplomatic communication, sending diplomatic note, sending diplomatic envoy to assess the situation, and appealing for the said fishermen to be humanely treated by all parties (Thanh Nhan, 2020).

Examples of citizen protection activity are illustrated by the following common cases, including, but not limited to:

Issuing passports, travel documents, performing administrative procedures, etc.;

Helping citizens in difficulties, such as with accessing to information, preserving personal documents and assets, etc. when they are incapable of doing by themselves;

Making consular visits when citizens are arrested or detained; diplomatically communicate to ensure individuals are treated humanely with their legitimate rights and interests acknowledged under local or international laws;

Consular protection for citizens in a host country who are victims of deception, seduction, coercive labour, or prostitution; when their lives and health are threatened, their dignity offended; or in a kidnap.

Providing assistance when citizens fall illness, suffer disease, or are in accident (where they cannot handle the matters themselves), or are needing financial support from the State in the event of death while abroad;

- Providing support and protection when citizens are impacted by crisis in the host country, such as armed conflict (e.g. an emergency evacuation campaign was arranged to bring more than 10,500 workers back home to Vietnam in 2011 during Libya's conflicts and civil wars) (Ministry of Foreign Affairs and IOM, 2014); natural disasters and epidemics/pandemics (e.g. from April to the end of June 2020, the Vietnamese authorities organised 39 repatriation flights from 31 countries/territories for 8,856 Vietnamese citizens during the global COVID-19 pandemic) (Special VTV broadcast, 2020); economic crises which lead to widespread job losses, and so on.

In fact, in addition to overseas Vietnamese, different groups of people go abroad for many different reasons. About 500,000 are migrant workers, 200,000 are Vietnamese women who marry foreign husbands, over 100,000 are students who go overseas to study, while more and more are Vietnamese

spending vacation overseas (Vietnam Permanent Mission to the United Nations).

In 2019, protection was granted to 13,643 Vietnamese citizens, 1,760 fishermen with 206 fishing boats, and 961 fishermen received assistance with procedure clearance and support to return to Vietnam after deportation by the foreign nations; 408 fishermen on 36 vessels in distress at sea were rescued and/or supported during storms. The Citizen Protection Call Centre (+844 62 844 844), set up by MOFA's consular department in cooperation with Viettel Telecom, received 5,400 incoming calls in 2019 (an increase of approximately 31% compared to 2018) and 687,956 international roaming messages giving citizen protection from the hotline numbers for citizens departing overseas (Vietnam Permanent Mission to the United Nations).

### **3. Citizen protection and the basis of protection for overseas Vietnamese citizens**

#### *3.1. Protection of citizens abroad*

Before determining the basis of citizen protection, this term should firstly be understood in its relation to the relevant concepts which are "diplomatic protection" and "consular protection".

Theoretically, diplomatic protection has two definitions:

*Firstly*, in the narrow sense of the word, diplomatic protection refers to the intervention by a country to protect the legitimate rights and interests of its citizens abroad against the violation of international law by another country<sup>2</sup> (Consular Department - Ministry of Foreign Affairs, 1998, p.3). According to

Article 1 of the Draft Articles on Diplomatic Protection (proposed and recorded by the International Law Commission in Resolution A/RES/61/35 of the United Nations in 2006), diplomatic protection includes a State, through its diplomatic action or other peaceful means, requesting the host state committing the international violation to be held responsible for the damage caused to its citizen, whether is natural or legal entity, and at the same time requesting the offending state to fulfill its responsibility (The International Law Commission in Resolution, 2006).

*Secondly*, broadly speaking, diplomatic protection can be exercised even there has yet been any violation of international law committed by the host country. This can be in the form of support for, and assistance in, all aspects given by a State to its citizens and legal persons who/which are based in a foreign country when they have exhausted all local remedies.

Meanwhile, consular protection is often used in reference to all the citizen protection and support abroad carried out by the State's representative agencies. Thus, it can be seen that diplomatic protection carries broader connotations than consular protection (Consular Department - Ministry of Foreign Affairs, 1998, pp.4-5). Also, it can be exercised by other authorities in addition to the representative agencies. Basically, both diplomatic and consular protection are flexibly applied in practice, often with lack of clarity; in many cases they are even used interchangeably. Meanwhile, the concept of citizen protection has a corresponding meaning with diplomatic protection in a broad sense. Therefore, in addition to the narrow definition of diplomatic protection

or consular protection, citizen protection also includes all activities supporting citizens abroad in all aspects provided by the State (Nguyen Thi Huong Lan, 2019).

However, according to the author, along with similarities mentioned above, it is necessary to identify the difference between diplomatic protection in the broad sense and citizen protection. Citizen protection is for citizens, while diplomatic protection also covers country's legal persons based in the host country. Diplomatic protection is recognised in the relationship between home and host country of a citizens. While as, citizen protection is understood as the broad sense of diplomatic protection for Vietnamese citizens in particularly, is recognised in the relationship between the State and its citizens.

As per the Constitution and relevant laws, the State of Vietnam applies appropriate measures in accordance with international and host country laws to protect Vietnamese citizens.

In short, Vietnamese citizen protection abroad refers to all the diplomatic, legal, and other peaceful acts of the State on the basis of international laws and in accordance with host country laws, to protect the legitimate rights and interests of Vietnamese citizens who face international law violations by other countries, and/or to promote and assist them when in difficulty, in an accident, in a crisis or at risk and having exhausted all local remedies.

Usually, an eligible request for citizen protection abroad should fulfil certain conditions:

*Firstly*, the nationality of the individual seeking protection must attach with the

country providing the protection, and he/she must not concurrently hold dual-nationality with the host country. His/her nationality must be tight and have its duration lasts throughout the protection period.

*Secondly*, the request for protection must be clear and transparent, submitted directly or indirectly to the citizen protection channel of his/her home country's representative agency, after he/she has exhausted all remedies in the host country, and/or when they are at risk or seriously affected by the crisis in the host country.

*Thirdly*, the protection of citizens abroad must follow international law; it should not contradict the host country laws, and it must be implemented by competent authorities/organisations of the country granting protection.

Citizen protection can include simple administrative measures such as: issuing passports and travel documents; carrying out consular procedures; connecting and sharing information with stakeholders; circulating Vietnamese and host country laws to Vietnamese citizens abroad; providing financial and non-financial assistance for those in difficulty and at risk when they cannot remedy situations themselves; assisting citizens who are severely affected in a crisis; or enforcing diplomatic, legal and other peaceful measures when a citizen's legitimate rights and interests have been infringed by the host country, and the consequences of which cannot be remedied by the host country's measures.

### *3.2. Legal basis of the protection for Vietnamese citizens abroad*

Since the beginning of the 20<sup>th</sup> century, many academics have analysed the bond

between a nation and its citizens through diplomatic protection activities for its citizens abroad. A state has the responsibility to protect its people even outside of its country. The protection for citizens abroad must be based on the principles of international law and relevant national laws (Glahn, G. and James, L. T., 1976) (i.e. domestic law) including which of the country granting protection and of the host country. Some authors also point out the influence and the difference between civil and common law systems in this subject (Edwin, M. B., 1934).

### 3.2.1. Domestic law

In the relationship with its citizens, the State is the responsible party for citizen or diplomatic protection (Clause 3 Article 17 of the 2013 Constitution). Domestic law determines the conditions, scope, and the responsible person for citizen protection abroad.

In traditional common law, the job to protect and execute individual's fundamental rights belongs to the government. In other words, a government has the obligation to protect its people from abuse (Stephen, J. H., 1991, Vol. 41:507, pp.508-570). The right to be protected by his/her government is the right of every citizen (CONG. GLOB, 1866). The primary mission of a government is to try to protect its citizens (CONG. GLOBE, 1867).

Compared to Vietnam's law, the obligation to protect citizens in general as well as protect citizens abroad belongs to the State. The Constitution recognises the rights of Vietnamese citizens living abroad "to be protected by the State" (Clause 3 Article 17 of the 2013 Constitution). Therefore, based

on the relationship between the State and its citizen, the State is responsible to protect its people. The government is responsible for organising and operating the activities of the State representatives abroad and in the international organisations to protect the legitimate interests of Vietnamese citizens (Clause 6 Article 22 of the 2015 Law on Organisation of the Government). The Law on Vietnamese Nationality also recognises the State's responsibility in protecting the legitimate rights and interests of its citizens abroad, and that State agencies in Vietnam and its representatives overseas have the responsibility to enforce such protection by all necessary measures in accordance with the laws of the host countries, international laws and customs (Article 6 of the Law on Vietnamese Nationality).

While the Law on Vietnamese Nationality sets out the responsibility of protecting citizens is within the scope of protecting the legitimate rights and interests of Vietnamese citizens abroad, the 2009 Law on Overseas Representative Agencies of the Socialist Republic of Vietnam (amended and supplemented in 2017) also regulates the authority and responsibilities of representative agencies not to be with consular duties only, but also with supporting and protecting the overseas Vietnamese communities (Articles 8, 9). As such, the responsibility towards citizens is not only limited to protecting their legitimate rights and interests, but also includes providing assistance to those in serious difficulties and cannot resolve themselves, encouraging them to integrate into the host communities (support is needed not only when their rights and interests have not been infringed).

The MOFA, on behalf of the State, manages the citizens protection activities abroad. Within the ministry, the consular department coordinates with domestic and overseas responsible agencies to execute the mission. The consular department and overseas Vietnamese representative agencies include the embassies and consulates general, professional consular offices and honorary consulates of Vietnam. Overseas and domestic agencies coordinate closely to have the appropriate measures to protect the legitimate rights and interests of Vietnamese citizens abroad such as consular and diplomatic communication, finding channels for legal assistance, and financial support, etc.

The responsibility to protect Vietnamese citizens by different groups is also taken by the respective ministries and agencies. For example, the 2006 Law on Vietnamese Guest Workers (No.72/2006/QH11) delegates the responsibility to manage this group of citizens to the Ministry of Labour, War Invalids and Social Affairs (MOLISA) (Clause 2 Article 70), together with the responsibility to protect their legitimate rights and interests under the Vietnamese diplomatic representatives and consular abroads. In countries and territories which are hosting a large number of Vietnamese workers, like Taiwan, the Labour Management Division of the Vietnam Economic and Cultural Office in Taipei is responsible for protecting the legitimate rights and interests of these workers (according to paragraph III.4.a “Guide on Sending Vietnamese Workers to Work in Taiwan” issued by the Department of Overseas Labour, on 24 August 2000).

Regarding adoption, under the 2010 Law on Adoption, the Ministry of Justice is

responsible to manage this group (Clause 2, Article 44), while MOFA is responsible for managing the activities of the Vietnamese representatives abroad to protect the adopted Vietnamese children overseas (Clause 1, Article 48). The Ministry of Justice, as well as the Vietnamese representative agencies based in the countries where the adopted children permanently resides, receives the update from the adoptive parents (once every six months for the first three years of adoption) which has to detail the child’s health, physical and mental status, and the integration progress of the adopted child with the adoptive parents, family and the community surrounding (Article 39).

Regarding an individual’s personal history, the 2014 Law on Civil Status (No.60/2014/QH13) recognises that the authority to register the civil status of Vietnamese citizens abroad rests with the representative agencies (Clause 3, Article 7), while the government Decree No.111/2011/ND-CP of 5 December 2011 on consular certification and legalisation delegates the Vietnamese representative agencies abroad to carry out the above procedures (Clause 2, Article 5). Decision No.05/2013/QD-TTg, issued by the Prime Minister on 15 January 2013, governs the regulation on overseas study of Vietnamese citizens. Under this law, the representative agency is responsible for registering and protecting students overseas and to promptly settle issues relating to their rights and responsibilities (Clause 1, Article 7). In addition, Circular No.10/2014/TT-BGDĐT dated 28 May 2014 promulgating the Regulation on Management of Vietnamese Citizens Studying Abroad, as amended by Circular No.34/2017/TT-BGDĐT, also

delegate the responsibility of managing overseas Vietnamese students to the International Cooperation Department of the Ministry of Education and Training in coordination with the Vietnamese representative agencies abroad (Clause 1, Article 14).

To increase the effectiveness of protection for the overseas Vietnamese citizens, the Migration Crisis Response Centre is under establishment (Hong Anh, 2014). In addition, the Fund for the Protection of Vietnamese Citizens and Legal Persons Abroad (the Overseas Citizen Protection Fund for short) was founded under Decision No.119/2007/QD-TTg dated 25 July 2007 issued by the Prime Minister in order to increase the efficiency of the protection.

The fund operates on a non-profit basis, supporting the activities of the overseas Vietnamese representatives to protect the legitimate rights and interests of citizens, and providing urgent humanitarian assistance to those in serious trouble and cannot resolve issues themselves. The beneficiaries are the Vietnamese citizens abroad, except those with permanent overseas residency backed by insurance abroad. The fund's capital comes from the State budget, grants, financial aid and contributions from the Vietnamese diaspora, and other sources (Article 3 Decision No.119/2007/QD-TTg). The fund is distributed to the following activities: for Vietnamese representatives to help citizens who are in difficulty, in an accident, or at serious risk, when they are unable to overcome the problems themselves; advancing fund for citizens to buy travel tickets home, to pay medical bills or accommodation costs, etc., provided guarantees or other types of repayment

commitments in place (Article 4 Decision No.119/2007/QD-TTg).

Not all countries have such the overseas citizen protection fund at their disposal like Vietnam, and even if they do, the financial support spent can vary. The existing of such fund shows the importance the State of Vietnam places in the citizens protection abroad.

In objectively assessing the legal basis of the protection for Vietnamese citizens abroad, one can, for example, compare at the content and method of citizen protection provided by the Foreign, Commonwealth & Development Office (FCDO) of the United Kingdom, whose some citizens has received quick and effective treatment by Vietnam during COVID-19).

*Firstly*, the British Government upholds the self-responsibility of British citizens when abroad; however, the FCDO can assist those in difficulty.

*Secondly*, the beneficiaries for the FCDO's support are British citizens living in the UK or other countries, excluding those holding citizenship of the host country.

*Thirdly*, the funding for the British Citizen Support Fund does not come from taxes, but from a minimal amount of the partial revenue of the administrative and processing fees from document services, notarisation and passports.

*Fourthly*, depending on the citizen's status, the request location and the circumstances involved that FCDO will assist in different ways, but mostly by providing local information in host country for supporting services such as, lawyers, translators/interpreters, medical facilities, funeral homes, details of specialised agencies for

specific assistance, etc. From a liaison point of view, the FCDO can contact family members and close relatives if individuals are unable to do so themselves; work with local organisations, travel agencies, insurance companies, and other service providers, to provide quick, effective help in the event of an accident that affects British citizens; and contact the governing ministry for citizen assistance in times of crises (besides the usual functions as same as the Vietnamese representatives abroad).

*Fifthly*, the FCDO does not support British citizens in matters such as: paying bills and making arrangements which individuals are supposed to do themselves even when in the UK (such as health insurance/medical services, travel preparation, housing/employment, resolving individual disputes); providing legal advice, translating official documents (which should be done by relevant experts); carrying out criminal investigations, influencing civil and criminal proceedings (interfering in the internal affairs of the host country); guaranteeing the safety for citizens, searching for missing persons (which is the responsibility of the host country); requesting host countries to treat British citizens e.g. those in prison or local hospitals, more favorably than their host country counterparts (unless the treatment is below the minimum standards of the host country) (The Government of the United Kingdom, 2011).

In summary, it is the (domestic) law of Vietnam which is the basis for determining the State's obligations in protecting Vietnamese citizens abroad. Essentially, this obligation is recognised in the relationship between the State and citizens. Domestic

law provides the conditions and scope of protection for Vietnamese citizens abroad as well as the responsibilities of associated entities, such as Vietnamese representatives abroad, respective ministries, agencies, and sectors, plus the methods and measures of the aforementioned protection.

### 3.2.2. International law

International law defines the obligations of nation states to ensure individual (human) rights within their territories and jurisdiction without distinguishing between personal factors such as citizenship (according to Clause 1 Article 2 of the 1966 International Covenant on Civil and Political Rights (ICCPR), and Clause 1 Article 2 of the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR<sup>3</sup>). Therefore, the requests for protection of citizens abroad regarding personal safety, finding missing persons, racial discrimination (based on skin color, nationality, or citizenship), infringement of fundamental rights and freedoms by officials or agencies in their public duties (when human rights are violated) are primarily on the host country. Countries with citizens who become victims in a host country may enforce consular and/or diplomatic (or other) protection measures under international law.

The General Comment No.14 by the Committee on Economic, Social and Cultural Rights (CESCR) (established on the basis of the ICESCR) clearly expresses the international view on the relationship between human rights protection in the host country and the role of the home country in this protection. Accordingly, states are obliged to ensure all their citizens and legal

persons to respect the host countries and its human rights protection, not just only to prevent its citizens' rights from being abused by the host country, through legal and political measures consistent with the United Nations Charter and International Human Rights Law (IHRL) (Business and Human Right Resource Centre).

While the domestic law defines the obligations of the State to protect citizens abroad by its relation with its citizens, international law defines the authority to implement such obligations by its relation with the host country. As per national sovereignty, under the general principles of international law, the protection of citizens abroad needs to comply with certain principles, such as: not interfering in the internal affairs of another country; not using, or threatening to use, force; complying voluntarily with international commitments, abiding by international law and respecting the host country laws; ensuring equal treatment between foreign citizens based in the host country; and so on. According to author Sen B., the right to diplomatic protection (or the right to protect citizens abroad) is exercised when a country's citizens are harmed or injured in the host country (in the 1960s when Sen's book was published, the concept of diplomatic protection was understood in the narrow sense). This legal right is based on international treaties and practices, ensuring that citizens are treated according to the "most-favored nation" (MFN) principle (Sen, B., 1965).

The responsibility to protect citizens abroad belongs to the diplomatic representatives and consulates, recognised not only in

domestic law but in the Vienna Convention on Diplomatic Relations of 1961 (Article 3), and the Vienna Convention on Consular Relations of 1963 (Article 5)<sup>4</sup>. Diplomatic representatives, consulates as well as other competent state agencies use diplomatic, legal, economic (e.g. embargo), and other peaceful measures to protect overseas citizens whose legitimate rights and interests are infringed when they have exhausted all the available remedies in the host country, or to support citizens in difficulty or in grave danger when they cannot remedy the matters themselves.

The right to enforce protection for a country's citizens when abroad is recognised in the relation between the home and the host country, which is the responsible party to ensure individual rights of human within its territory. If the host country fails to do so or does not fully or inappropriately performs its obligations, it is deemed to have violated its duties to respect, protect and secure human rights under international law (as per the ICCPR and the ICESCR). The home country then has the right to protect its citizens when they have unsuccessfully exhausted legal measures of the host country. However, exercising right of citizen protection should comply with the basic principles mentioned above. The nature of a country's right to protect its citizens abroad is reflected in the Draft Provisions on Diplomatic Protection (The International Commission, 28 [2]). This document acknowledges academic opinions and codifies a number of international practices and precedents on a country's right for its citizens abroad to be protected in relation with a host country which violates

international law. However, at the time this paper was published the document has yet to be approved as an international treaty.

### 3.2.3. The law of the host country

As mentioned above, Vietnam's law, as well as international treaties, recognises the law of the host country as one of the bases for protecting citizens abroad. It essentially provides legal guarantees for the exercise of legitimate and legal rights and interests of Vietnamese citizens abroad. In other words, the law of the host country is one of the three elements applied to protect Vietnamese citizens abroad (Article 6 of the Law on Vietnamese Nationality).

The right to protect Vietnamese citizens in the relation with the host country (in accordance with international law) or as per the State of Vietnam's obligation to protect citizens in the relation with its citizens (as per Vietnamese law) must be conducted in accordance with the law of the host country for its sovereignty.

In addition, protecting Vietnamese citizens abroad on the basis of ensuring conformity of, and respect for, the host country law will: (i) avoid violating the principle of not interfering in the host country's internal affairs, and (ii) avoid legal conflicts between the countries concerned when it comes to the process of protecting citizens. Furthermore, the protection can be more effective when the overseas Vietnamese representatives can attend and give citizens timely information, allowing them to benefit from support given by the host country (Nguyen Thanh Mai, 2020). Based on the host country's laws, an overseas

representative agency can determine the conditions of protection for citizens who have exhausted the available remedies in the host country. On the other hand, on the basis of the host country law, Vietnamese representative agencies can cooperate with the host country authorities in the protection of Vietnamese citizens abroad.

## 4. Conclusion

Vietnam is a country with a large number of its citizens residing in many countries and territories, holding different legal status. Therefore, the diverse requirements associated with their protection, together with increasing numbers of migrating Vietnamese, have made it hard to identify the basis of their protection.

While Vietnamese law defines the State's obligation to protect them, such diverse protection needs the support of improved laws, and the creation of a flexible protection mechanism, especially in a crisis situation, such as a 'go to' focal point like the Crisis Management Centre. International law defines the right to protect citizens abroad in relation to the host country. However, for this to be effectively implemented, Vietnamese authorities need to proactively negotiate specialised bilateral treaties with countries hosting large groups of Vietnamese (such as labour/migrant workers, international students, communities which have settled overseas, medical tourists, etc.).

Finally, the protection of Vietnamese citizens abroad must be consistent with the law of the host country. In this aspect,

however, consular offices as well as Vietnamese representative agencies can proactively request host country authorities to provide appropriate treatment, and hence safeguard the legitimate rights and interests of Vietnamese citizens abroad.

## Notes

<sup>1</sup> This paper was published in Vietnamese in *Nhà nước và Pháp luật*, số 9 (389), 2020, then developed into this English version. Translator: Luong Quang Luyen. Language editor: Stella Ciorra.

<sup>2</sup> For further information, please read Madalina Bianca Moraru, *Protection of EU Citizens Abroad: A Legal Assessment of the EU Citizen's Right to Consular and Diplomatic Protection*, Perspectives on Federalism, Vol. 3, issue 2, 2011; Guy I.F. Leigh, *Nationality and Diplomatic Protection*, International & Comparative Law Quarterly, Vol. 20, Issue 3, 7/1971; B. Sen, *Diplomatic Protection of Citizens Abroad*, A Diplomat's Handbook of International Law and Practice, Springer 1965.

<sup>3</sup> Vietnam is a party to these Conventions.

<sup>4</sup> Vietnam is a party to these Conventions.

## References

- [1] Văn Anh (theo Thông tấn xã Việt Nam) (2020), *Tổ chức lớp hỗ trợ người gốc Việt có nguyện vọng nhập quốc tịch Campuchia*, Báo Thế giới và Việt Nam. [Van Anh (according to Vietnam News Agency) (2020), *Organisation of Classes to Support Those People of Vietnamese Origin Who Wish to Be Granted Cambodian Citizenship*, the World and Vietnam newspaper].
- [2] Bộ Ngoại giao và Tổ chức Di cư Quốc tế (2014), Hội thảo *Xử lý khủng hoảng di cư và bảo hộ công dân Việt Nam ở nước ngoài*, Tuy Hòa, Phú Yên. [Ministry of Foreign Affairs and International Organization for Migration (IOM) (2014), Workshop on *Migration Crisis Handling and Protection of Vietnamese Citizens Abroad*, Tuy Hoa, Phu Yen Province].
- [3] Cục Lãnh sự - Bộ Ngoại giao (1998), *Bảo hộ quyền lợi của công dân Việt Nam ở nước ngoài, đề tài nghiên cứu*, Hà Nội. [Consular Department - Ministry of Foreign Affairs (1998), *Protection of the Rights and Interests of Vietnamese Citizens Abroad*, a research project, Hanoi].
- [4] Điều 6 Luật Quốc tịch. [Article 6 of the Law on Vietnamese Nationality].
- [5] Khoản 3 Điều 17 Hiến pháp năm 2013. [Clause 3 Article 17 of the 2013 Constitution].
- [6] Khoản 6 Điều 22 Luật Tổ chức Chính phủ năm 2015. [Clause 6 Article 22 of the 2015 Law on Organisation of the Government].
- [7] Nguyễn Thị Hương Lan (2019), *Cơ sở pháp lý bảo hộ công dân Việt Nam ở nước ngoài*, Báo cáo Hội thảo đề tài cấp Bộ, Viện Nhà nước và Pháp luật. [Nguyen Thi Huong Lan (2019), *Legal Basis for Protection of Vietnamese Citizens Abroad*, Report on the Workshop of the Ministerial-level Research Project, Institute of State and Law].
- [8] Nguyễn Thanh Mai (2020), *Pháp luật và các thiết chế bảo hộ công dân Việt Nam ở nước ngoài*, Hội thảo tại Viện Nhà nước và Pháp luật. [Nguyen Thanh Mai (2020), *Laws and Institutions for Protection of Vietnamese Citizens Abroad*, Workshop at Institute of State and Law].
- [9] CONG. GLOBE, 39<sup>th</sup> Cong., 1<sup>st</sup> Sess. 1293 (1866).
- [10] CONG. GLOBE, 39<sup>th</sup> Cong., 2<sup>nd</sup> Sess. 101 (1867) (remarks of Rep. Farnsworth) (debating Reconstruction Act of 1867).

- [11] Edwin, M. B. (1934), “Protection of Citizens Abroad and Change of Original Nationality”, *Yale Law Journal*, No. 4.
- [12] Glahn, G. and James, L. T. (1976), *Law Among Nations: An Introduction to Public International Law*, 3<sup>rd</sup> ed., New York.
- [13] Sen, B. (1965), “Diplomatic Protection of Citizens Abroad”, *A Diplomat’s Handbook of International Law and Practice*, Springer.
- [14] Stephen, J. H. (1991), “The First Duty of Government: Protection, Liberty and the Fourteenth”, *Duke Journal*, Vol.41:507.
- [15] The International Law Commission (2006), A/RES/61/35, *Draft Articles on Diplomatic Protection*.
- [16] The International Commission, *Draft Articles on Diplomatic Protection with commentaries*, 28 (2).
- [17] A.B (2019), “Chính sách mới thuận lợi hơn cho người gốc Việt đang sinh sống hợp pháp ở Campuchia”, <https://baoquocte.vn/chinh-sach-moi-thuan-loi-hon-cho-nguoi-goc-viet-dang-sinh-song-hop-phap-o-campuchia-97120.html>, truy cập ngày 6 tháng 7 năm 2019. [A.B (2019), “The New Policy Is More Favorable for Those People of Vietnamese Origin Who Are Legally Living in Cambodia”, <https://baoquocte.vn/chinh-sach-moi-thuan-loi-hon-cho-nguoi-goc-viet-dang-sinh-song-hop-phap-o-campuchia-97120.html>, retrieved on 6 July 2019].
- [18] Hồng Ánh (2014), “Bảo hộ công dân ở điểm nóng”, *Người lao động*, <https://nld.com.vn/thoi-su-trong-nuoc/bao-ho-cong-dan-o-diem-nong-20140912222304815.htm>, truy cập ngày 2 tháng 3 năm 2020. [Hong Anh (2014), “Protection of Citizens in the Hotspot”, *Ngươi Lao Dong newspaper*, <https://nld.com.vn/thoi-su-trong-nuoc/bao-ho-cong-dan-o-diem-nong-20140912222304815.htm>, retrieved on 2 March 2020].
- [19] Phái đoàn thường trực Việt Nam tại Liên hợp quốc, “Khai trương Tổng đài bảo hộ công dân Việt Nam ở nước ngoài”, <https://vnmission-newyork.mofa.gov.vn/vivn/Consular%20Services/Protection%20of%20Citizens/News/Trang/Khai-truong-Tong-dai-bao-ho-cong-dan-Viet-Nam-o-nuoc-ngoai.aspx>, truy cập ngày 19 tháng 5 năm 2020. [Vietnam Permanent Mission to the United Nations, “Opening the Call Center for the Protection of Vietnamese Citizens Abroad”, <https://vnmission-newyork.mofa.gov.vn/vivn/Consular%20Services/Protection%20of%20Citizens/News/Trang/Khai-truong-Tong-dai-bao-ho-cong-dan-Viet-Nam-o-nuoc-ngoai.aspx>, retrieved on 19 May 2020].
- [20] Thanh Nhân (2020), “Bảo vệ và hỗ trợ ngư dân hoạt động trong vùng biển Việt Nam”, <https://sngv.quangbinh.gov.vn/3cms/bao-ve-va-ho-tro-ngu-dan-hoat-dong-trong-vung-bien-viet-nam.htm>, truy cập ngày 19 tháng 5 năm 2020. [Thanh Nhan (2020), “Protection of and Assistance to Fishermen Operating in Vietnamese Sea Waters”, <https://sngv.quangbinh.gov.vn/3cms/bao-ve-va-ho-tro-ngu-dan-hoat-dong-trong-vung-bien-viet-nam.htm>, retrieved on 19 May 2020].
- [21] Thế Phong (2014), “Chia sẻ kinh nghiệm bảo hộ công dân Việt Nam ở nước ngoài”, <http://baochinhphu.vn/Doi-song/Chia-se-kinh-nghiem-bao-ho-cong-dan-Viet-o-nuoc-ngoai/208530.vgp>, truy cập ngày 13 tháng 9 năm 2019. [The Phong (2014), “Sharing Experiences in Protecting Vietnamese Citizens Abroad”, <http://baochinhphu.vn/Doi-song/Chia-se-kinh-nghiem-bao-ho-cong-dan-Viet-o-nuoc-ngoai/208530.vgp>, retrieved on 13 September 2019].
- [22] Thanh Xuân (2019), “Triển lãm hướng về những người Việt Nam nghèo tại Campuchia”, <https://anninhthudo.vn/giai-tri/trien-lam-huong-ve-nhung-nguoi-viet-nam-ngheo-tai-campuchia/822016.antd>, truy cập ngày 17 tháng 8 năm 2019. [Thanh Xuan (2019), “The Exhibition

- Geared towards Poor Vietnamese People in Cambodia”, <https://anninhthudo.vn/giai-tri/trien-lam-huong-ve-nhung-nguoi-viet-nam-ngheo-tai-campuchia/822016.antd>, retrieved on 17 August 2019].
- [23] VTV đặc biệt, “Trở về từ vùng dịch”, <https://vtv.vn/video/vtv-dac-biet-tro-ve-tu-vung-dich-446425.htm>, truy cập ngày 1 tháng 7 năm 2020. [Special VTV broadcast, “Back from Pandemic Stricken Regions”, <https://vtv.vn/video/vtv-dac-biet-tro-ve-tu-vung-dich-446425.htm>, retrieved on 1 July 2020].
- [24] Business Dictionary, Definition of “citizen”, <http://www.businessdictionary.com/definition/citizen.html>, retrieved on 2 March 2020.
- [25] Cornell Law School, Legal Information Institute [LII], “US Law”, Wex, Citizen, <http://www.law.cornell>wex>citizen>, retrieved on 2 March 2020.
- [26] Elma Global, “Dual and Multiple Citizenship as a Direct Consequence of Globalization”, <https://www.second-citizenship.org/second-citizenship/dual-and-multiple-citizenship-as-a-direct-consequence-of-globalization>, retrieved on 2 March 2019.
- [27] The Government of the United Kingdom (2011), “Guidance: Support for British nationals abroad: Summary”, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/822887/Support\\_for\\_British\\_Nationals\\_Abroad\\_Main\\_Guide.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/822887/Support_for_British_Nationals_Abroad_Main_Guide.pdf), retrieved on 26 February 2019; <https://www.gov.uk/government/organisations/foreign-commonwealth-office>, retrieved on 26 February 2019.
- [28] News, “How to Apply for And Receive Your 100,000 Yen Handout”, <https://www3.nhk.or.jp/nhkworld/vi/news/backstories/1057/>, retrieved on 14 May 2020.
- [29] Business and Human Right Resource Centre, “UN “Protect, Respect and Remedy” Framework and Guiding Principles”, <https://www.business-human-rights.org/en/un-secretary-generals-special-representative-on-business-human-rights/un-protect-respect-and-remedy-framework-and-guiding-principles>, retrieved on 14 May 2020.