

COVID-19 AND ITS ABILITY TO INVOKE TO SUSPEND / TERMINATE THE OPERATION OF A TREATY OF A PARTY

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Abstract: *According to the principle of Pacta sunt servanda, a state is obliged to implement in good faith the international treaties to which state is a party. This is one of the fundamental obligations of the party, widely recognized in both the form of international treaties and international custom. However, in certain cases, international law still allows a party to suspend or terminate the implementation of international treaties to which it has signed. Specifically, under the provisions of the 1969 Vienna Convention on the Law of Treaties, a party may invoke the provision of a fundamental change of circumstances to suspend or terminate the performance of a treaty when it satisfies the certain conditions. The purpose of the article is to answer the question whether a party can invoke Covid-19 as a fundamental change of circumstances to temporarily suspend or terminate the operation of a treaty? In the first part of the article, the authors will compare the conditions of the 1969 Vienna Convention on the fundamental change of circumstances with Covid-19 to consider the possibility of invoking Covid-19 as a fundamental change of the situation. Moreover, the article will propose some cases where countries, including Vietnam, can cite Covid-19 as a basis to*

temporarily suspend the operation of the treaty without being considered a violation of the Pacta sunt servanda.

Key words: *Fundamental change of circumstances; Covid-19; restriction on movement; suspending the operation of the treaty.*

Introduction

In March 2020, the World Health Organization (WHO) recognized Covid19 as a global pandemic. Until now, most countries and territories around the world have had many cases of infection and death from Covid-19.

Obviously, Covid-19 has created a global crisis in many aspects, from economic, medical to social... In some cases, the emergence of Covid-19 also affected fulfill the party's international legal obligations. Accordingly, in order to prevent and limit the spread of Covid-19, the party is required to implement many different measures to ensure the safety of the community. Nevertheless, Some international commitments of the party are not able to apply according to these measures.

According to the content of the principle Pacta sunt servanda, all international treaties that come into force are legally binding on the state and the state must implement them in good faith (Article 27 of the 1969 Vienna Convention on the Law of Treaties). However, a party may invoke objective or subjective factors to affect the validity of a treaty without being seen as violating this principle. This can be considered an exception to the principle Pacta sunt servanda. And one of those exceptions is the case of "A fundamental change of circumstances". Under the provisions of the 1969 Vienna Convention on the Law of Treaties, a party may invoke the provision for a fundamental change of circumstances (Article 62) to temporarily suspend or terminate the treaty if all conditions are satisfied, including: (1) the change must be of circumstances existing at the time of the conclusion of the treaty; (2) that change must be a fundamental one; (3) it must also be one not foreseen by the parties; (4) the existence of those circumstances must have constituted an essential basis of the

consent of the parties to be bound by the treaty; and (5) the effect of the change must be radically to transform the scope of obligations still to be performed under the treaty.

1. The “fundamental change of circumstances” clause under the 1969 Vienna Convention on the Law of Treaties

Article 26 of the 1969 Vienna Convention on the Law of Treaties (VCLT) codified one of the fundamental principles of international law, the principle of "pacta sunt servanda" with the content “Every treaty in force is binding upon the parties to it and must be performed by them in good faith.” (Article 26). However, the VCLT also recognizes a number of exceptions that the parties can invoke to suspend or terminate the implementation of the treaty without being considered a violation of this principle, and one of them is the case of a “fundamental change of circumstances”.

According to the provisions of Article 62 of the VCLT, of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless: (a) the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and (b) the effect of the change is radically to transform the extent of obligations still to be performed under the treaty (Clause 1).

In other words, in order to have grounds for suspension/termination of the implementation of the treaty, a party may invoke the provision of fundamental change of circumstances when the following conditions are met:

Firstly, circumstances must change from the time of the treaty's signing and the parties cannot anticipate this change in advance. In other words, the parties cannot anticipate a change in circumstances at the time of the conclusion of the treaty.

In the *Gabčíkovo-Nagymaros Project* between Hungary and Slovakia, Hungary cited a change in environmental awareness and the development of standards and regulations in international environmental law such as a fundamental change of circumstances as a temporary basis construction activities in Nagymaros and Gabčíkovo as prescribed in the Treaty of Budapest on 16th October 1977 on the construction and operation of the Gabčíkovo- Nagymaros Dam System. Specifically, Hungary assumed, for operations in Nagymaros, the country did not have adequate knowledge of the consequences from environmental risks (para 35), for activities at Gabčíkovo, environmental, ecological and water quality impacts were not properly taken into account during the design and construction period, at the same time, due to the complexity of ecological processes and the lack of measurement data as well as related calculations, the impacts on the environment have not been assessed (para 56).

However, in its ruling, the United Nations International Court of Justice (ICJ) asserted that: *"The Court does not believe that new developments in environmental knowledge and environmental law are completely unforeseen. Furthermore, the development of Article 15, 19 and 20, [of the 1977 treaty] was designed to be in line with the change, making it possible for the parties to take into account those developments and apply them when implementing the terms of that treaty* (para 104).

One of the conditions to be considered a fundamental change of circumstances referred to by the ICJ is that "a fundamental change of circumstances must be unforeseen [...]" (para 104).¹

Secondly, the change of circumstances must be fundamental change.

In the *Fisheries Jurisdiction Case*², the Minister for Foreign Affairs of Iceland referred to "the changed circumstances resulting from the ever-increasing exploitation of the fishery resources in the seas surrounding Iceland" (para 35).

¹ Case Concerning the Gabčíkovo-Nagymaros Project, (Hungary v. Slovakia), INTERNATIONAL COURT OF JUSTICE, Judgment of 25 September 1997, General List No. 92
<http://www.icj-cij.org/icjwww/iddecisions.htm>

² United Kingdom of Great Britain and Northern Ireland v. Iceland, Fisheries Jurisdiction Case, Judgment of 2 February 1973

According to Iceland's argument, the development in the fishing capacity of fishing fleets has led to ever-increasing exploitation of the fishery resources in the seas surrounding Iceland; endangering the country, which is particularly dependent on fishing activities to exist. Therefore, Iceland claims that, “because of the vital interests of the nation and owing to changed circumstances, the Notes concerning fishery limits exchanged in 1961 are no longer applicable and that their provisions do not constitute an obligation for Iceland” and “because of the vital interests of the people of Iceland are involved, the country informs the Court that it is not willing to confer jurisdiction on the Court in any case involving the extent of the fishery limits of Iceland” (para 37).

From the point of view of ICJ, if there is any fundamental change such as Iceland's opinion in fishing techniques in the waters around Iceland, those changes might be relevant for the decision on the merits of the dispute, and the Court might need to examine the contention at that stage, together with any other arguments that Iceland might advance in support of the validity of the extension of its fisheries jurisdiction beyond what was agreed to in the 1961 Exchange of Notes. *But the changes cited by Iceland have been completely unable to impact the obligations submitted to the Court's jurisdiction.* Therefore, possible threats to Iceland's essential interests arise as a result of changes in fishing techniques, which cannot form a fundamental change to the termination or existence of the compromise clause establishing the Court's jurisdiction (para.40).

Thus, as explained by the ICJ, a change is considered fundamental if such change is related to the dispute and must completely *affect the obligations to be fulfilled by the treaty.*

Thirdly, the existence of circumstances must be the essential basis for the parties to agree to bind to the treaty.

In order to determine this condition, international courts often incited the subject, the purpose of the treaty to consider the connection between the

circumstances that exist to the object and the purpose of the treaty; thereby, assessing whether such circumstances form an essential basis for the consent of the parties.

In the *Gabcikovo-Nagymaros Project* *giŕa Hungary v. Slovakia*, ICJ has suggested that the political situation is undoubtedly related to the signing of the 1977 Treaty. However, the ICJ asserted that: "The Court recall that the Treaty provided for a joint investment program for the production of energy, the control of floods and the improvement of navigation on the Danube. In the Court's view, the prevalent political conditions were thus not so closely linked to the object and purpose of the Treaty that they constituted an essential basis of the consent of the parties... [] (para 104).

In *Case C-162/96*³, German Federal Finance Court, on the basis of pre-proceedings under Article 177 of the EC Treaty, has asked the European Court of Justice (ECJ) to consider the validity of Council Regulation (EEC) No 3300/91, OJ 1992 L 315 to suspend the application of trade concessions between the European Economic Community and the Federal Socialist Republic of South Africa.

Earlier, on April 2nd, 1980, the European Economic Community and the Socialist Federal Republic of Yugoslavia signed the Cooperation Agreement between two parties. Measures passed within the framework of the Agreement cover the areas of economic, technical, financial, commercial and social cooperation. Throughout 1991, there was conflict in Yugoslavia. In November 1991, the Council represented the Government of Member States through Decision 91/586/ECSC, the EEC suspended the application of the Agreement between the European Community and the Socialist Federal Republic of

³ Judgment of 16.6.1998 – Case C-162/96

Reference to the Court under Article 177 of the EC Treaty by the Bundesfi0nanzhoj for a preliminary ruling in the proceedings pending before that court between A.Racke GmbH&Co. And Hauptzollamt Mainz on the validity of Council Regulation (EEC) No 3300/91 of 11 November 1991 suspending the trade concessions provided for by the Cooperation Agreement between the European Economic Community and the Socialist Federal Republic of Yugoslavia (OJ 1991 L 315, p.1)

<https://curia.europa.eu/juris/showPdf.jsf;jsessionid=7A33E76384C856CF1C396267302D769E?text=&docid=43934&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=12779427>

Yugoslavia (SFRY). On November 11, 1991, the Council passed Regulation No. 3300/91 suspending the Cooperation Agreement between the Community and SFRY (Suspension Regulation).

When the case was brought to the national court of Germany, the parties invoked the provision of the fundamental change of circumstances to consider the validity of the Suspension Regulation.

When the German Federal Court asked the ECJ for review in accordance with the pre-proceedings Regulations of the Council, the ECJ also looked at the conditions to be considered a fundamental change of circumstances in accordance with VCLT regulations. Specifically, the ECJ invoked the purpose of the Agreement to consider whether there was a connection between the circumstances and the signing of the Agreement between the parties or not? Accordingly, the Preamble of the Cooperation Agreement states that the purpose of the signers is to “promote the development and diversification of economic cooperation, trade and finance to promote better balance and improve trade structures, expand volumes and improve the welfare of people” and the parties are aware of “the necessary to take into account the importance of the new situation due to the opening of broad community to better harmonize economic and commercial relations between the Community and the Socialist Federal Republic of Yugoslavia”. Article 1 of the Agreement stipulates that the goal of the Agreement is to “promote overall cooperation between the Contracting Parties with a view to contributing to the economic and social development of the Socialist Federal Republic of Yugoslavia and helping to strengthen relations between the Parties”.⁴ On the basis of reviewing the Preamble and Article 1 of the Agreement, the ECJ affirmed that: *“Given such a broad goal, the maintenance of the peaceful situation in Yugoslavia is indispensable for neighboring relations and the existence of institutions capable of ensuring the implementation of the*

⁴ COOPERATION AGREEMENT between the European Economic Community and the Socialist Federal Republic of Yugoslavia
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A21983A0214%2801%29>

cooperation that the Agreement has set out throughout the territory of Yugoslavia as an essential condition for initiating and pursuing such cooperation” (para.55). Therefore, the ECJ concluded that the Suspension Regulation met the condition that “the existence of circumstances must be the main basis for the parties to agree to bind to the treaty” as provided by VCLT.

Fourthly, the impact of that change fundamentally changes the scope of obligations that must still be fulfilled under the treaty.

In *the Fisheries Jurisdiction Case*, the ICJ explained this condition as follows:

“In order that a change of circumstances may give rise to a ground for invoking the termination of a treaty it is also necessary that it should have resulted in a radical transformation of the extent of the obligations still to be performed. The change must have increased the burden of the obligations to be executed to the extent of rendering the performance something. essentially different from that originally undertaken” (para 43). With this view, in the *Gabcikovo-Nagymaros Project*, The ICJ has argued that the political change in eastern Europe cited by Hungary does not create a complete change in the scope of obligations that the parties must fulfill under the treaty, and that, although the estimated benefits from the project in 1992 have decreased compared to the time of the treaty's signing in 1997, this does not result in a complete change in the obligations of the parties under the treaty (para 104).

2. The ability to invoke Covid-19 as a "fundamental change of circumstances" in accordance with VCLT regulations

The SARS-CoV-2 virus that causes Covid-19, which is a species of microorganism in the Coronavirusfamily. SARS-CoV-2 is suspected to have originated from the modified wildlife coronavirus for transmission to humans. The dual form of the coronavirus that is spreading in India is more likely to infect than other variants, causing many people to get sick quickly, while at the same time being able to affect the effectiveness of the vaccine.

In comparison with the provisions of Clause 1, Article 62 of the VCLT, Covid-19 may be invoked as a fundamental change of circumstances in certain circumstances:

Firstly, the appearance of Covid-19 is completely unpredictable.

So far, we have not found the source of the virus to take measures to prevent radical infection from animals to humans.

Secondly, Covid-19 has spread globally. To date, most countries and territories around the world have been caught up in the pandemic. As of 14:26 GMT on 31th May 2021, a total of 222 countries/territories have recorded cases of Covid-19, of which was **171,135,646** cases, the number of deaths was **3,558,750** people.⁵ 5 countries with the highest number of people infected with Covid-19 in the world were the United States (**34,043,227** sufferer; **609,551** deaths); India (**28,078,497** suffered; **329,590** deaths); Brazil (**16,515,120** suffered; **462,092** deaths); France (**5,666,113** sufferer; **109,402** deaths) and Turkey (**5,242,911** suffered; **47,405** deaths).⁶ *With this terrible level, there are enough grounds to believe that the appearance of Covid-19 is a fundamental change.*

Thirdly, Covid-19 has impacted all sectors around the globe in many areas.

The Covid-19 crisis is having serious consequences for economic activity around the world. A large number of countries are now facing a complex crisis, including a shock of the “health” of the economy, the domestic economies are being disrupted, foreign demands are declining, capital flows are reversing and consumer prices are falling.⁷ According to IMF figures as of June 2020, global output is estimated to have increased by 2.9% in 2019, but is expected to plummet by 4.9% in 2020, much worse than during the financial crisis 2008–09. The growth in most developed economies is predicted to decrease such as the United States (-8.0%), Japan (-5.8%), Britain (-10.2%), Germany (-7.8%), France (-12.5%), Italy (-12.8%) and Spain (-12.8%). Other regions are also forecast to

⁵ <https://www.worldometers.info/coronavirus/>, accessed on 31 May /2021

⁶ <https://www.worldometers.info/coronavirus/>, accessed on 31 May 2021

⁷ Chang Woon Nam, *World Economic Outlook for 2020 and 2021*, CESifo Forum 2 / 2020 , June Volume 21

fall into the same decline as Latin America (-9.4%), Emerging Europe (-5.8%), Middle East and Central Asia (-4.7%), and Sub-Saharan Africa (-3.2%).⁸

Socially, according to the International Labour Organization (ILO) preliminary assessment report, the economic crisis caused by the Covid-19 pandemic could increase by 25 million unemployed globally, compared with 188 million in 2019, while millions more are under-unemployment, reducing working hours and wages. Young people, women, workers with relatively low education and those working in the non-formal are most often hardest hit. Inequality income is likely to increase significantly due to the pandemic. An estimated 95 million more people have fallen below the extreme poverty threshold by 2020 compared to pre-pandemic forecasts.⁹ On the medical side, Covid-19 has caused a global health crisis, upset the preventive medicine system and protect the public health of other countries, the medical examination and treatment system is overloaded and does not meet the requirements.

Covid-19 has created a recessionary spiral with no effective way out: The world economy is falling into a serious recession. In order to get out of the recession, both the world economy and the economy of each country are under pressure to reopen; But reopening the economy, countries have to face the re-emergence of the Covid-19 pandemic, so, they have to "close down" to different degrees, as is actually happening in many countries. Effectively adapting to the "new normal situatuon" when the pandemic persists is a major, synthetic issue, both internationally and within each country. The impact of the Covid-19 pandemic forces countries to set off huge funding from the budget to support businesses and provide social security support packages and; this will lead to a huge budget deficit, seriously affecting development investment in the "post-Covid" period.

⁸ *IMF World Economic Outlook Update June 2020*,
<https://www.imf.org/en/Publications/WEO/Issues/2020/06/24/WEOUpdateJune2020>.

⁹ IMF, *World economic Outlook April 2021*
<https://www.imf.org/en/Publications/WEO/Issues/2021/03/23/world-economic-outlook-april-2021>

With the above effects, Covid-19 really creates a "burden" for countries in solving domestic problems as well as fulfilling certain international commitments that implementing them in the current context is impossible as a result of Covid-19. On other words, *Covid-19 has the potential to fundamentally alter certain national obligations, whose performance has become impossible due to the emergence of this pandemic.*

In particular, one of the obvious and immediate effects of Covid-19 on the world is affecting domestic mobility as well as movement among countries. Since the outbreak of Covid-19, countries have passed many measures to prevent, limiting the spread of Covid-19 among countries and regions, in which, it is common that measures that affect domestic mobility such as social distancing as well as the impact on movement among countries such as border closures, stopping entry activities for foreigners, mandatory quarantine requirements 14 days as before and 21 days as currently for people entering the national territory. These measures are necessary to ensure the safety of the community in the context of the ongoing Covid-19 pandemic. In other words, due to the arrival of Covid-19 and the dangers of this pandemic, countries are forced to take measures that affect the movement of individual citizens of the country as well as foreigners to the national territory to control the epidemic. In this case, *Covid-19 can be considered as a fundamental change of circumstances that affects the implementation of international commitments of the country related to the entry and residence of foreigners.* Because, if the commitment is fulfilled, the country must grant permission to foreigners of other committed parties to enter and temporarily reside in the national territory. But if those foreigners are from a country identified as a place where the epidemic zone is serious, allowing foreigners to enter the country will become a risk of infection, seriously affecting the safety of the country. Therefore, in order to ensure safety, the country may have to suspend the implementation of international commitments on the licensing of foreigners from epidemic areas of entry and temporary residence in the national territory.

3. Invoking Covid-19 to suspend the implementation of a number of treaties for Vietnam

In Vietnam, as of 18:00 on 31th May, 2021, 47 provinces/cities recorded cases of Covid-19 with a total of 7,321 cases and 47 deaths.¹⁰

The COVID-19 pandemic has a very strong, even serious, socio-economic impact on Vietnam, which is concentrated in GDP growth in 2019 of 7.02%, the first six months of 2020 decreased to only 1.81%, that is the lowest rate in the last 10 years (of which the second quarter only increased by 0.36%). Its impact is multi-dimensional on all areas of the socio-economy. Long-term social distancing solutions disrupt supply chains, leading to a sharp decline in both the "demand" and "supply" sides, both in the industrial, agricultural and service sectors, causing a recession in growth, investment and trade, recession in consumption has a great impact on tourism and services.

As said above, Covid-19 makes it possible to fulfill international commitments related to the movement and entry of foreigners in the country's territory because it may pose a risk to the country in disease control activities.

Currently, Vietnam has signed a number of treaties that directly regulate the movement of foreigners to Vietnamese territory, namely those related to the entry and temporary residence of foreigners in the territory of Vietnam.

Among these are treaties in the field of international trade, including commitments related to the entry and temporary residence in Vietnam of certain foreigners who are citizens of signatories such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), ASEAN Agreement on Movement of Natural Persons (MNP). Specifically, according to the provisions of Chapter 12 of the CPTPP Agreement on temporary entry for business visitors, each signatory will make its specific commitment on the temporary entry of business visitors, clearly stating: conditions and restrictions on entry and temporary entry, including length of stay for each group; at the same

¹⁰ <https://ncov.moh.gov.vn>, accessed on 31/5/2021

time, each Contracting Party shall grant temporary entry permits or temporary extension of entry to business visitors of the other Contracting Party in accordance with the commitments it has made (Article 12.4); According to the provisions of the ASEAN Agreement on Movement of Natural Persons (MNP), each member state, in accordance with its Schedule of Commitments, will allow natural persons of other States, including business visitors, services under a contract, an intra-corporate transferee may enter and reside temporarily in his or her territory when he or she completes the application procedures for an immigration applicant and meets all the requirements. conditions for entry or temporary residence of the country (Article 4). To implement the above Agreements, Vietnam has issued specific commitments on temporary entry for business visitors of the signatories under the CPTPP Agreement¹¹ and Agreement on Movement of Natural Persons (MNP) ¹². For example, according to Vietnam's commitment to temporary entry for business guests, service offerors of CPTPP signatory may enter and grant residence permits in Vietnam for no more than 6 months provided that such services are not directly sold to the public and the offerees are not directly involved in providing services.

In order not to be considered a violation of the treaty, Vietnam can invoke Covid-19 as a fundamental change of circumstances to *temporarily suspend* the implementation of commitments on temporary entry for business visitors of the signatories within a certain period of time.

The grounds for this invoking are:

Firstly, there have been more than 200 countries and territories where Covid-19 cases have appeared, including all members of CPTPP as well as MNP. In particular, there are countries where the number of new cases has increased

¹¹ VIET NAM'S SCHEDULE OF COMMITMENTS FOR TEMPORARY ENTRY FOR BUSINESS PERSONS
http://cptpp.moit.gov.vn/data/e0593b3b-82bf-4956-9721-88e51bd099e6/userfiles/files/12-A_%20Viet%20Nam%20Temporary%20Entry%20for%20Business%20Persons.pdf

¹² VIET NAM'S SCHEDULE OF MOVEMENT OF NATURAL PERSONS COMMITMENTS
https://asean.org/wp-content/uploads/images/2013/economic/asean_mnp_agreement/ASEAN%20MNP%20Schedule%20-%20Vietnam.pdf

very quickly as is the case with Indonesia, the Philippines, Malaysia, Thailand ... According to statistics as of 31th May, 2021, the number of new cases in Indonesia, the Philippines, Malaysia, Thailand is 1,821,703 cases, 1,230,301 cases, 572,357 cases and 159,792 cases.¹³

Secondly, in Vietnam, Covid-19 is also very complicated. Up to date, five new variants of the SARS-CoV-2 virus have appeared in Vietnam, including D614G from Europe (epidemic in Da Nang), B.1.1.7 from the UK causing an outbreak in Hai Duong, B.1.351 from South Africa on a South African patient (BN1422), entered Noi Bai airport from South Africa on 19th December, 2020, A.23.1 from Rwanda, Africa at Tan Son Nhat airport (Ho Chi Minh City), B .1.617.2. from India¹⁴. This new virus differs from the previous one, especially the danger of spreading faster, stronger and potentially aggravating the disease. In the report of the Ministry of Health, there are new people who have been exposed to the case for 1-2 days who have had symptoms of the disease, the rate of complications related to the lungs is quite high.¹⁵

If the situation of the Covid-19 epidemic becomes more complicated in the member States of the agreements related to the movement and entry of foreigners in Vietnam, the implementation of commitments to grant permits for foreigners to enter and temporary residence in Vietnam will pose a high risk for Vietnam in not being able to control and limit the infection. In other words, Covid-19 has caused the continuation of these international commitments to be fundamentally changed compared to the time of signing. That is, instead of removing barriers to promoting the liberalization of service trade among members as the purpose of these commitments, their implementation during the pandemic can cause the epidemic to spread and the country cannot effectively respond to the epidemic. Therefore, Vietnam can temporarily suspend the implementation of its

¹³ <https://www.worldometers.info/coronavirus/>, accessed on 31/5/2021.

¹⁴ https://moh.gov.vn/tin-lien-quan/-/asset_publisher/vjYyM7O9aWnX/content/viet-nam-a-ghi-nhan-4-bien-chung-cua-virus-sars-cov-2
<https://nhandan.com.vn/tin-tuc-y-te/phat-hien-bien-chung-sars-cov-2-o-an-do-tai-viet-nam-644135/>, accessed on 14/5/2021.

¹⁵ <https://trungtamytebache.vn/vi-sao-cac-bien-chung-sars-cov-2-dac-biet-nguy-hiem-khi-vao-viet-nam.html>, accessed on 14/5/2021.

commitments to suspend entry for citizens of member States subjects to these treaties in order to ensure the safety of Vietnam. The duration of the temporary suspension will depend on the evolution of Covid-19, the development of the global health system in response to the pandemic, and the ability to control and treat epidemics at member states.

In accordance with the provisions of the 1969 Vienna Convention, when suspending the implementation of these treaties on the basis of invoking Covid-19 as a fundamental change of circumstances, Vietnam should notify other contracting parties of the grounds for suspension as well as the specific contents of this measure (Article 65). In addition, the notification must also be carried out in accordance with the provisions of the relevant treaties. For example, in accordance with CPTPP, the Trans-Pacific Partnership Council consists of government representatives of parties at the ministerial level or senior officials who have the function of considering issues related to the implementation of the Agreement (Article 27.2), so the suspension of the implementation of commitments related to the suspension of entry for business guests of the contracting parties is also should be notified to the Council.

Conclusion

The Covid-19 pandemic broke out in Wuhan (China) at the end of November 2019, then quickly spread to the whole country. Until now, scientists have been unaware of this pandemic as the origin of SARS-CoV-2 virus has not been fully identified and more seriously, there are no specific drugs for prevention and treatment. The outbreak, rapid spread and emergence of many new variants of the SARS-CoV-2 virus have changed daily life around the world. Covid-19 has directly created a global health crisis, and at the same time has led to serious impacts on the economy and society of each country.

However, not in all cases we can invoke Covid-19 as a fundamental change of circumstances to affect the validity of international treaties. Although the emergence of Covid-19 is a completely objective factor that cannot be foreseen

by the country, according to VCLT regulations, it is only possible to invoke Covid-19 as a fundamental change of circumstances to wish that Covid-19 actually becomes a "burden" for the country, causing the implementation of international commitments to be fundamentally changed compared to the original implementation.

At this time, there is one thing that most countries in the world have in common in the response to Covid-19 is the application of measures that directly affect the movement among countries, among regions, even, internal movement of the country to prevent the spread of the epidemic. Obviously, Covid-19 has made freedom of movement as before a risk of spreading the disease. In the event that a country has international commitments regarding the movement of individuals among countries, the implementation of these commitments in the context of Covid-19 can have serious consequences for the safety and security of the country. In other words, Covid-19 causes the continued implementation of these international commitments to be fundamentally changed from the time it was signed when it was not achieved or only achieved at a low level the goal of promoting the liberalization of service trade among its members, on the contrary, which can cause the epidemic to spread and the country to be unable to respond to the epidemic.

As a result of this fact, countries, including Vietnam, may, when necessary, can invoke Covid-19 as a fundamental change in circumstances to suspend the implementation of treaties relating to the free movement of natural individuals if the continued entry of foreigners, residing in the territory of the country as committed to put the country at risk of being unable to control the pandemic.

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