LAW ENFORCEMENT

Against Terrorism

Inter-American Convention Between the
UNITED STATES OF AMERICA
and OTHER GOVERNMENTS

Signed at Bridgetown June 3, 2002
NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966
(80 Stat. 271; 1 U.S.C. 113)—

“. . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”
MULTILATERAL

Law Enforcement: Against Terrorism

Inter-American Convention signed at Bridgetown on June 3, 2002;
Transmitted by the President of the United States of America
to the Senate November 12, 2002 (Treaty Doc. 107-18,
107th Congress, 2d Session);
Reported favorably by the Senate Committee on Foreign Relations
July 26, 2005 (Senate Executive Report No. 109-3,
109th Congress, 1st Session);
Advice and consent to ratification by the Senate
October 7, 2005;
Ratified by the President November 2, 2005;
Instrument of Ratification deposited
with the Organization of American States General Secretariat
November 15, 2005;
INTER-AMERICAN CONVENTION AGAINST TERRORISM

THE STATES PARTIES TO THIS CONVENTION,

BEARING IN MIND the purposes and principles of the Charter of the Organization of American States and the Charter of the United Nations;

CONSIDERING that terrorism represents a serious threat to democratic values and to international peace and security and is a cause of profound concern to all member states;

REAFFIRMING the need to adopt effective steps in the inter-American system to prevent, punish, and eliminate terrorism through the broadest cooperation;

RECOGNIZING that the serious economic harm to states which may result from terrorist acts is one of the factors that underscore the need for cooperation and the urgency of efforts to eradicate terrorism;

REAFFIRMING the commitment of the states to prevent, combat, punish, and eliminate terrorism; and

BEARING IN MIND resolution RC.23/RES. 1/01 rev. 1 corr. 1, "Strengthening Hemispheric Cooperation to Prevent, Combat, and Eliminate Terrorism," adopted at the Twenty-Third Meeting of Consultation of Ministers of Foreign Affairs,

HAVE AGREED TO THE FOLLOWING:

Article 1
Object and purposes

The purposes of this Convention are to prevent, punish, and eliminate terrorism. To that end, the states parties agree to adopt the necessary measures and to strengthen cooperation among them, in accordance with the terms of this Convention.

Article 2
Applicable international instruments

1. For the purposes of this Convention, "offenses" means the offenses established in the international instruments listed below:


2. Upon depositing its instrument of ratification to this Convention, a state party that is not a party to one or more of the international instruments listed in paragraph 1 of this article may declare that, in application of this Convention to such state party, that particular instrument shall be deemed not to be included in that paragraph. The declaration shall cease to have effect as soon as that instrument enters into force for that state party, which shall notify the depositary of this fact.

3. When a state party ceases to be a party to one of the International instruments listed in paragraph 1 of this article, it may make a declaration, as provided in paragraph 2 of this article, with respect to that instrument.

Article 3
Domestic measures

Each state party, in accordance with the provisions of its constitution, shall endeavor to become a party to the International instruments listed in Article 2 to which it is not yet a party and to adopt the necessary measures to effectively implement such instruments, including establishing, in its domestic legislation, penalties for the offenses described therein.

Article 4
Measures to prevent, combat, and eradicate the financing of terrorism

1. Each state party, to the extent it has not already done so, shall institute a legal and regulatory regime to prevent, combat, and eradicate the financing of terrorism and for effective international cooperation with respect thereto, which shall include:
a. A comprehensive domestic regulatory and supervisory regime for banks, other financial institutions, and other entities deemed particularly susceptible to being used for the financing of terrorist activities. This regime shall emphasize requirements for customer identification, record-keeping, and the reporting of suspicious or unusual transactions.

b. Measures to detect and monitor movements across borders of cash, bearer negotiable instruments, and other appropriate movements of value. These measures shall be subject to safeguards to ensure proper use of information and should not impede legitimate capital movements.

c. Measures to ensure that the competent authorities dedicated to combating the offenses established in the international instruments listed in Article 2 have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed under its domestic law. To that end, each state party shall establish and maintain a financial intelligence unit to serve as a national center for the collection, analysis, and dissemination of pertinent money laundering and terrorist financing information. Each state party shall inform the Secretary General of the Organization of American States of the authority designated to be its financial intelligence unit.

2. When implementing paragraph 1 of this article, states parties shall use as guidelines the recommendations developed by specialized international and regional entities, in particular the Financial Action Task Force and, as appropriate, the Inter-American Drug Abuse Control Commission, the Caribbean Financial Action Task Force, and the South American Financial Action Task Force.

Article 5
Seizure and confiscation of funds or other assets

1. Each state party shall, in accordance with the procedures established in its domestic law, take such measures as may be necessary to provide for the identification, freezing or seizure for the purposes of possible forfeiture, and confiscation or forfeiture, of any funds or other assets constituting the proceeds of, used to facilitate, or used or intended to finance, the commission of any of the offenses established in the international instruments listed in Article 2 of this Convention.

2. The measures referred to in paragraph 1 shall apply to offenses committed both within and outside the jurisdiction of the state party.

Article 6
Predicate offenses to money laundering

1. Each state party shall take the necessary measures to ensure that its domestic penal money laundering legislation also includes as predicate offenses those offenses established in the international instruments listed in Article 2 of this Convention.

2. The money laundering predicate offenses referred to in paragraph 1 shall include those committed both within and outside the jurisdiction of the state party.
Article 7
Cooperation on border controls

1. The states parties, consistent with their respective domestic legal and administrative regimes, shall promote cooperation and the exchange of information in order to improve border and customs control measures to detect and prevent the international movement of terrorists and trafficking in arms or other materials intended to support terrorist activities.

2. In this context, they shall promote cooperation and the exchange of information to improve their controls on the issuance of travel and identity documents and to prevent their counterfeiting, forgery, or fraudulent use.

3. Such measures shall be carried out without prejudice to applicable international commitments in relation to the free movement of people and the facilitation of commerce.

Article 8
Cooperation among law enforcement authorities

The states parties shall work closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offenses established in the international instruments listed in Article 2. In this context, they shall establish and enhance, where necessary, channels of communication between their competent authorities in order to facilitate the secure and rapid exchange of information concerning all aspects of the offenses established in the international instruments listed in Article 2 of this Convention.

Article 9
Mutual legal assistance

The states parties shall afford one another the greatest measure of expeditious mutual legal assistance with respect to the prevention, investigation, and prosecution of the offenses established in the international instruments listed in Article 2 and proceedings related thereto, in accordance with applicable international agreements in force. In the absence of such agreements, states parties shall afford one another expeditious assistance in accordance with their domestic law.

Article 10
Transfer of persons in custody

1. A person who is being detained or is serving a sentence in the territory of one state party and whose presence in another state party is requested for purposes of identification, testimony, or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offenses established in the international instruments listed in Article 2 may be transferred if the following conditions are met:

   a. The person freely gives his or her informed consent; and
b. Both states agree, subject to such conditions as those states may deem appropriate.

2. For the purposes of this article:
   a. The state to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the state from which the person was transferred.
   b. The state to which the person is transferred shall without delay implement its obligation to return the person to the custody of the state from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both states.
   c. The state to which the person is transferred shall not require the state from which the person was transferred to initiate extradition proceedings for the return of the person.
   d. The person transferred shall receive, for time spent in the custody of the state to which he or she was transferred, credit toward service of the sentence being served in the state from which he or she was transferred.

3. Unless the state party from which a person is to be transferred in accordance with the present article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the state to which that person is transferred in respect of acts or convictions prior to his or her departure from the territory of the state from which said person was transferred.

Article 11
Inapplicability of political offense exception

For the purposes of extradition or mutual legal assistance, none of the offenses established in the international instruments listed in Article 2 shall be regarded as a political offense or an offense connected with a political offense or an offense inspired by political motives. Accordingly, a request for extradition or mutual legal assistance may not be refused on the sole ground that it concerns a political offense or an offense connected with a political offense or an offense inspired by political motives.

Article 12
Denial of refugee status

Each state party shall take appropriate measures, consistent with the relevant provisions of national and international law, for the purpose of ensuring that refugee status is not granted to any person in respect of whom there are serious reasons for considering that he or she has committed an offense established in the international instruments listed in Article 2 of this Convention.
Article 13
Denial of asylum

Each state party shall take appropriate measures, consistent with the relevant provisions of national and international law, for the purpose of ensuring that asylum is not granted to any person in respect of whom there are reasonable grounds to believe that he or she has committed an offense established in the international instruments listed in Article 2 of this Convention.

Article 14
Nondiscrimination

None of the provisions of this Convention shall be interpreted as imposing an obligation to provide mutual legal assistance if the requested state party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, or political opinion, or that compliance with the request would cause prejudice to that person's position for any of these reasons.

Article 15
Human rights

1. The measures carried out by the states parties under this Convention shall take place with full respect for the rule of law, human rights, and fundamental freedoms.

2. Nothing in this Convention shall be interpreted as affecting other rights and obligations of states and individuals under international law, in particular the Charter of the United Nations, the Charter of the Organization of American States, international humanitarian law, international human rights law, and international refugee law.

3. Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including the enjoyment of all rights and guarantees in conformity with the law of the state in the territory of which that person is present and applicable provisions of international law.

Article 16
Training

1. The states parties shall promote technical cooperation and training programs at the national, bilateral, subregional, and regional levels and in the framework of the Organization of American States to strengthen the national institutions responsible for compliance with the obligations assumed under this Convention.

2. The states parties shall also promote, where appropriate, technical cooperation and training programs with other regional and international organizations conducting activities related to the purposes of this Convention.
Article 17
Cooperation through the Organization of American States

The states parties shall encourage the broadest cooperation within the pertinent organs of the Organization of American States, including the Inter-American Committee against Terrorism (CICTE), on matters related to the object and purposes of this Convention.

Article 18
Consultations among the parties

1. The states parties shall hold periodic meetings of consultation, as appropriate, with a view to facilitating:
   a. The full implementation of this Convention, including the consideration of issues of interest relating thereto identified by the states parties; and
   b. The exchange of information and experiences on effective means and methods to prevent, detect, investigate, and punish terrorism.

2. The Secretary General shall convene a meeting of consultation of the states parties after receiving the 10th instrument of ratification. Without prejudice to this, the states parties may hold consultations as they consider appropriate.

3. The states parties may request the pertinent organs of the Organization of American States, including CICTE, to facilitate the consultations referred to in the previous paragraphs and to provide other forms of assistance with respect to the implementation of this Convention.

Article 19
Exercise of jurisdiction

Nothing in this Convention entitles a state party to undertake in the territory of another state party the exercise of jurisdiction or performance of functions that are exclusively reserved to the authorities of that other state party by its domestic law.

Article 20
Depositary

The original Instrument of this Convention, the English, French, Portuguese, and Spanish texts of which are equally authentic, shall be deposited with the General Secretariat of the Organization of American States.

Article 21
Signature and ratification

1. This Convention is open for signature by all member states of the Organization of American States.

NOTE: English text will be printed in this publication.
2. This Convention is subject to ratification by the signatory states in accordance with their respective constitutional procedures. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.

Article 22
Entry into force

1. This Convention shall enter into force on the 30th day following the date of deposit of the sixth instrument of ratification of the Convention with the General Secretariat of the Organization of American States.

2. For each state ratifying the Convention after deposit of the sixth instrument of ratification, the Convention shall enter into force on the 30th day following the deposit by such state of its instrument of ratification.

Article 23
Denunciation

1. Any state party may denounce this Convention by written notification to the Secretary General of the Organization of American States. Denunciation shall take effect one year following the date on which notification is received by the Secretary General of the Organization.

2. Such denunciation shall not affect any requests for information or assistance made during the time the Convention is in force for the denouncing state.
CERTIFICATE

Luis Toro, Acting Director of the Department of International Law of the Secretariat for Legal Affairs of the Organization of American States,

HEREBY CERTIFIES THAT:

1. In accordance with Article 112.f of the Charter of the Organization of American States, the General Secretariat of the Organization serves as depositary of Inter-American treaties and agreements, as well as the instruments of ratification thereof;

2. The Inter-American Convention Against Terrorism was signed on June 3, 2002 at the Thirty-second Regular Session of the General Assembly of the Organization of American States;

3. In accordance with Article 21, this Convention is open for signature by all member states of the Organization of American States;

4. The Inter-American Convention Against Terrorism was signed by the Government of the United States on June 3, 2002;

The undersigned is here issuing a certified copy of the Inter-American Convention Against Terrorism in Spanish, English, Portuguese and French.

August 26, 2002.

Luis Toro
Director (ai)
Department of International Law
The Convention on Foreign Relations, to which was referred the Inter-American Convention Against Terrorism (Treaty Doc. 107-18) (hereafter “Convention”), signed at Bridgetown, Barbados on June 3, 2002, having considered the same, reports favorably thereon with an understanding as indicated in the resolution of advice and consent, and recommends that the Senate give its advice and consent to ratification thereof, as set forth in this report and the accompanying resolution of advice and consent.

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I. PURPOSE

The Convention was negotiated under the auspices of the Organization of American States (“OAS”) in the aftermath of the September 11, 2001 terrorist attacks on the United States and is designed to strengthen prohibitions against acts of terrorism and promote international cooperation in investigating and prosecuting such acts.
II. BACKGROUND

The Organization of American States was meeting in Lima, Peru on September 11, 2001, and was the first international organization to condemn the terrorist attacks on the United States. In response to the attacks, the OAS Foreign Ministers, at a meeting of consultation on September 21, 2001, instructed the OAS to negotiate the Convention. Following three rounds of negotiations held between November 2001 and March 2002, the Convention was adopted on June 3, 2002 at the thirty-second regular session of the General Assembly of the OAS in Bridgetown, Barbados and signed by thirty OAS member states, including the United States. It entered into force on July 10, 2003, and is open to ratification by all OAS member states. Currently, thirty-three OAS member states are signatories and twelve are parties, including Canada and Mexico.

III. SUMMARY OF KEY PROVISIONS OF THE CONVENTION

A detailed article-by-article discussion of the Convention may be found in the Letter of Submittal from the Secretary of State to the President, which is reprinted in full in Treaty Document 107–18. A summary of the key provisions of the Convention is set forth below.

The core obligation of the Convention is that parties “endeavor to become a party” to 10 international counter-terrorism treaties (listed in Article 2) already in force that address specific subject areas, such as hijacking, hostage-taking, bombing, attacks on diplomats, and financing of terrorism. The Convention then requires that parties “adopt the necessary measures to effectively implement” these instruments. The Convention permits each state to declare that the obligations contained in the Convention will not apply to the offenses set forth in one or more of the listed counter-terrorism instruments if it is not yet a party to the instrument or ceases to be a party. The United States is already a party to all 10 instruments, and therefore it does not need to make such a declaration.

The Convention contains additional provisions requiring parties to take specific measures to facilitate the prevention, prosecution and punishment of the offenses established in the international instruments listed in Article 2, including: developing domestic regimes to track and combat the financing of terrorist activities; expanding bases for seizure and forfeiture of funds and other assets; expanding predicate offenses for money laundering; enhancing cooperation on border controls and among law enforcement authorities; establishing a mechanism for transferring persons in custody for identification, testimony or other types of assistance; and denying refugee status or asylum in appropriate cases (as provided in Articles 12 and 13).

Several articles of the Convention address aspects of cooperation between parties. Article 9 requires all parties to “afford one another the greatest measure of expeditious mutual legal assistance with respect to the prevention, investigation, and prosecution” of offenses under the Convention in accordance with existing treaties or, in the absence of applicable treaties, with domestic law. The
United States has mutual legal assistance treaty relationships, either through bilateral mutual legal assistance treaties or the Inter-American Convention on Mutual Assistance in Criminal Matters, with 25 OAS member states. In cases where there is not a treaty, assistance would be provided by the United States in accordance with 28 U.S.C. section 1782. The Convention specifies, in Article 14, that parties are not obliged to provide mutual legal assistance in cases where the requested state has substantial grounds to believe that the request was made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality, ethnic origin, or political opinion, or that complying with the request would prejudice that person’s position for any of these reasons.

Article 10 of the Convention establishes a procedure for persons in custody in the territory of one party to be transferred to another party, with the consent of that person and the agreement of the two states, for the purpose of assisting in the gathering of evidence for the investigation or prosecution of any of the offenses covered by the Convention. This provision is similar to provisions found in many bilateral mutual legal assistance treaties to which the United States is a party. Article 11 of the Convention further establishes that for offenses covered by the Convention, a party may not decline a request for extradition or for mutual legal assistance on the ground that the offense in question was a political offense, an offense connected with a political offense, or an offense inspired by political motives. As a result, a person whose extradition is sought for an offense covered by the Convention may not successfully rely on the defense of political offense to avoid extradition. Although the more recent multilateral counter-terrorism conventions contain this limit on the political offense exception, including it in this Convention ensures that it will apply, as between the parties to this Convention, also to the offenses established in the earlier multilateral counter-terrorism instruments. It bears emphasis that the Convention itself does not provide a basis for extradition, which would be governed by existing bilateral extradition treaties.

The Committee notes that Articles 10 and 11 of the Convention are intended to operate in the same way as similar provisions contained in bilateral extradition and mutual legal assistance treaties. As with such provisions in bilateral treaties, these provisions are self-executing. They will be implemented by the United States in conjunction with applicable federal statutes. Additionally, the Executive Branch has indicated that they are not intended to create any private rights of action. The Committee notes that the lack of a private right of action does not affect the ability of persons whose extradition is sought to raise any available defenses in the context of the extradition proceeding.

IV. IMPLEMENTING LEGISLATION

No implementing legislation is required for the Convention.

V. COMMITTEE ACTION

The Committee on Foreign Relations held a public hearing on the Convention on June 17, 2004, at which it heard testimony from representatives of the Departments of State and Justice (S. Hrg.
On July 26, 2005, the Committee considered the Convention and ordered it favorably reported by voice vote, with the recommendation that the Senate give its advice and consent to its ratification, subject to the understanding contained in the resolution of advice and consent.

VI. COMMITTEE RECOMMENDATION AND COMMENTS

The Committee on Foreign Relations believes that the proposed Convention is in the interest of the United States and urges the Senate to act promptly to give advice and consent to its ratification, subject to the understanding contained in the resolution of advice and consent. The Committee believes the Convention will provide a modest but useful means to expand and facilitate counter-terrorism cooperation with other states in the hemisphere, provided that other OAS member states become party to the international treaties set forth in Article 2. The Committee urges the Executive Branch to encourage other OAS member states to adhere to those treaties.

The proposed understanding to the Convention is designed to clarify U.S. obligations pertaining to the use of the term “international humanitarian law” in paragraph 2 of Article 15 of the Convention. Because the United States armed forces do not use this term, the understanding provides that the United States will interpret the term consistent with its understanding of the term “law of war.” This understanding was recommended by the Executive Branch when it transmitted the Convention to the Senate.

VII. TEXT OF RESOLUTION OF ADVICE AND CONSENT TO RATIFICATION

Resolved (two-thirds of the Senators present concurring therein),

SECTION 1. SENATE ADVICE AND CONSENT SUBJECT TO UNDERSTANDING

The Senate advises and consents to the ratification of the Inter-American Convention Against Terrorism (the “Convention”), adopted at the thirty-second regular session of the General Assembly of the Organization of American States meeting in Bridgetown, Barbados, and signed by the United States on June 3, 2002 (Treaty Doc. 107–18), subject to the understanding in Section 2.

SECTION 2. UNDERSTANDING.

The advice and consent of the Senate under section 1 is subject to the following understanding, which shall be included in the United States instrument of ratification:

The United States of America understands that the term “international humanitarian law” in paragraph 2 of Article 15 of the Convention has the same substantive meaning as the law of war.