REPORT OF THE STANDING COMMITTEE ON
WORLD ORDER UNDER LAW
AND THE SECTION OF
INTERNATIONAL LAW

RECOMMENDATION*

Be It Resolved. That the American Bar Association approves in principle the concept of a convention which would address the problem of terrorist activities in the Americas in a comprehensive manner along the lines of the attached Model Convention on the Prevention and Punishment of Certain Serious Forms of Violence Jeopardizing Fundamental Rights and Freedoms.

*The recommendation was amended, then approved. See page 288.


2The International Convention Against the Taking of Hostages, signed at New York on December 14, 1979.

REPORT

The United States has ratified several conventions designed to prevent and suppress specific terrorist activities, and has signed another. To date, however, it has not proved possible to draft a comprehensive convention against terrorism in the United Nations. The closest states have come to such a convention is the 1977 European Convention on the Suppression of Terrorism concluded by the Council of Europe. A similar regional convention of comprehensive scope would be highly appropriate for the Americas. This approach would allow members of the Organization of American States to avoid, by merely listing offenses, the perhaps insurmountable problem of defining "terrorism". It would also focus attention on extradition as a primary method of ensuring that the perpetrators of acts of terrorism do not escape prosecution and punishment. To this end, this approach seeks to exclude covered crimes from the political offense exception to the extradition process.

The attached Model Convention on the Prevention and Punishment of Certain Serious Forms of Violence Jeopardizing Fundamental Rights and Freedoms was drafted under the auspices of the Standing Committee on World Order Under Law in consultation with legal scholars. The Standing Committee, along with the Section of International Law, believes that the Model Convention would be suitable, with appropriate drafting changes reflecting further review in the negotiating process, for adoption as a regional convention for the Americas. Such initiatives as this were envisaged by the Report and Recommendation on international terrorism adopted by the Association in February 1981 and reaffirmed herein.

In Article 1, the Model Convention incorporates offenses already incorporated in other anti-terrorist conventions ratified by the United States. Similarly, many provisions in the Model Convention reflect common language appearing in the text of major international conventions. There are also
several innovative provisions, including expansion of the substantive law of terrorism to crimes involving nuclear theft and nuclear sabotage (Art. 1(b), (1) and (2)); emphasis on extradition as the primary method to ensure prosecution of the accused (Art. 3); and increased protection for the rights of the accused, including an advisory role for the Inter-American Court of Human Rights (Arts. 7, 9, 10, 11).

There can be no doubt that US ratification of a convention along the lines of the Model Convention would be constitutional. The constitutional authority would be the same as that for US ratification of other anti-terrorist conventions. Ratification with the advice and consent of the Senate would be an exercise of the treaty power. However, the convention would be non-self-executing and would be dependent upon implementing legislation by Congress to become effective under US law. Implementing legislation, in turn, would be based on the power to punish offenses against the law of nations, as well as on Congress' powers under the Commerce Clause and other provisions of the Constitution.

Charles N. Brower  
Chairman,  
Section of International Law

Richard B. Lillich  
Chairman,  
Standing Committee on World Order Under Law

EXHIBIT

Preface

The Model American Convention on the Prevention and Punishment of Certain Serious Forms of Violence Jeopardizing Fundamental Rights and Freedoms was prepared for the ABA Standing Committee on World Order Under Law by Professor Bert B. Lockwood, Jr., Director of the Urban Morgan Institute of Human Rights, College of Law, University of Cincinnati, while acting as consultant to the Committee. A working group of the Committee, composed of Donald K. Duvall, Professor Richard B. Lillich and Harry A. Inman, Chairman, supervised the project which was financially supported by a grant from the U.S. Department of State.

The model Convention is premised upon the basic concept that each individual is entitled to the right to live without fear, i.e., “The right to life, liberty and security of person.” It incorporates terminology and offenses from other conventions approved by many countries, including the two major aircraft hijacking conventions, the two major diplomatic kidnapping conventions, the Postal Convention prohibition on mail bombs, the recent UN Hostage Convention, the Genocide Convention, the piracy provisions of the Geneva Conference on the High Seas and the 1975 United Nations General Assembly Declaration that lists prohibitions against torture. The modus operandi of the Convention relies upon extradition as an effective means for dealing with violent acts, while safeguarding the rights of the accused by creating a role for the newly established Inter-American Court of Human Rights.

It is the Committee’s hope that this model Convention will be adopted by the countries of the Americas.

Bruno V. Bitter  
Chairman