

REPORT OF THE STANDING COMMITTEE ON  
WORLD ORDER UNDER LAW

RECOMMENDATION\*

*Be It Resolved*, That the American Bar Association favors the accession of the United States to the American Convention on Human Rights and urges the Senate of the United States to give its advice and consent to ratification of the Convention subject to the following reservation and statement of understanding:

"The Constitution of the United States and Article 13 of this Convention contain provisions for the protection of individual rights, including the right to free speech, and nothing in this Convention shall be deemed to require or to authorize legislation or other action by the United States which would restrict the right of free speech protected by the Constitution, laws, and practice of the United States."

"The United States understands that the fairness doctrine, as judicially interpreted in light of the requirements of the United States Constitution, meets the requirements of Article 14, and that the second sentence of paragraph 1 of Article 4 does not apply to lawful abortions."

*Be It Further Resolved*, That copies of this resolution be forwarded by the Secretary of this Association to the President of the United States and the Chairman and members of the Foreign Relations Committee of the United States Senate.

REPORT

The American Convention on Human Rights,<sup>1</sup> which was negotiated in 1969 by members of the Organization of American States, including the United States, entered into force on July 18, 1978, in accordance with Article 14 of the Convention. To date, thirteen of the 25 American States have acceded to the Convention, including Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Panama, Peru and Venezuela.

On June 1, 1977, President Carter signed the Convention on behalf of the United States, consistent with the Administration's

support of human rights as a fundamental tenet of American foreign policy. On February 23, 1978, the President submitted the Convention to the Senate for its advice and consent, together with three other human rights treaties.<sup>2</sup> As stated by the President in his letter of transmittal to the Senate (Attachment B), "United States ratification of the Convention will give us a unique opportunity to express our support for the cause of human rights in the Americas." Respect-

<sup>2</sup>The International Convention on the Elimination of All Forms of Racial Discrimination (approved by the House of Delegates in August 1978), the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

\*The recommendation was withdrawn. See page 245.

<sup>1</sup>For full text of the Convention, see Attachment A.

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of Governors for widespread the Committee's Discussion draft recommends changes in the Code of Professional Responsibility to establish names that will acquire a meaning understood by both lawyers and judges. It also makes recommending the use of these names. We will analyze comments received on Draft II before making a report to the House of Delegates anticipated to be made at its meeting in August 1979.

The Committee is currently drafting a Draft III which will propose a Specialization detailing minimum standards for recognition as a specialist. A proposal will be circulated in the spring of 1979 and will be discussed for much of the discussion at the National Invitational Specialization Conference which will be sponsored by the Committee. Approval for wider circulation is sought from the ABA Board of

Each year, the Standing Committee on World Order Under Law has published three more editions of the Bulletin. The Bulletin's state-by-state analyses of human rights activities, have proven an effective means of communicating current developments in the field to the growing number of people who are interested in specialization. The Bulletins are viewed as comprehensive specializations available; state bars proposing human rights programs to their state. Submit copies of Information Bulletin to the Justices to aid them in their decisions.

DAVID R. BRINK

Chairman

ing all four treaties, including the Convention, the President further stated that the "great majority of the substantive provisions . . . are entirely consistent with the letter and spirit of the United States Constitution and laws."

Whenever a provision of the Convention was, in the opinion of the Department of Justice and the Department of State, possibly in conflict with United States law, the President recommended a reservation, understanding, or declaration as set forth in the State Department report (Attachment C) submitted with his letter of transmittal. Of the 11 reservations, understandings, and declarations recommended by the President at the suggestion of the State Department, the Committee recommends only one reservation and two understandings, with modifications, as being legally necessary or desirable as discussed below.

In the Committee's view, the only Convention provisions requiring a reservation, declaration or statement of understanding are those which contravene the Constitution. Convention provisions which do not conflict with the Constitution, but which may conflict with United States law or practice, raise policy questions which properly should be considered on their merits by the Congress. The Committee believes that the ABA should focus on the strictly legal aspects of the Convention, and leave the legislative policy considerations for the appropriate governmental bodies to determine.

Consistent with this belief, the Committee recommends one reservation (Article 13) and two statements of understanding (Articles 14 and 4) respecting the rights to free speech and to life as legally necessary to avoid Constitutional conflicts. The eight additional reservations, understandings and declarations proposed by the Departments of State and Justice are largely based on their apparent determination that provisions of the Convention that may be in conflict with United States law or practice, no less than those in conflict with the Constitution, should not be considered by the Senate in determining the international obligations of the United States. The Committee disagrees. Whether or not the Senate wishes to consent to a treaty provision requiring legislation to establish on the domestic level additional or different rights in an area of proper federal jurisdiction should be decided on the merits, including national interest considerations, of each provision and not generally by reference to a constitutionally inapplicable standard, e.g., conformity to existing legislation.

#### Purpose and Provisions of the Convention

As stated by the President, the American Convention on Human Rights contributes significantly to the developing international law of human rights by recognizing on the international level human rights that are, for the most part, already enjoyed by U.S. citizens under the Constitution and laws of the United States.

One intention of the Convention, as stated in its preamble, is "to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man." The Convention recognizes that these essential rights are not derived from one's being a national of a certain state, but are based upon attributes of the human personality, thereby justifying international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American States.

The Convention contains 82 articles divided into three parts: state obligations and rights protected, means of protection, and general and transitory provisions. The first 32 articles provide nondiscriminatory, non-self-executing guarantees of fundamental civil and political rights, including juridical personality (Art. 3), freedom from slavery (Art. 6), right to privacy (Art. 11), freedom of religion (Art. 12), expression (Art. 13), assembly (Art. 15), and association (Art. 15), and the rights to due process and equal protection of the law (Arts. 24 & 25).

Part I also contains, in effect, a *non-self-executing provision* of general applicability (Art. 2) and a provision for the progressive achievement, "by legislation or other appropriate means," of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States, as amended (to which the United States is a party) (Art. 26). There is also a provision for *suspension of guarantees* during time of war, public danger or other emergencies (Art. 27) and a *Federal-State clause*, which takes account of and is in the interest of federal systems such as the United States (Art. 28).

Parts II and III of the Convention establish the machinery for assuring and monitoring compliance. Thus, the *Inter-American Commission on Human Rights* (Arts. 33-51) is empowered to receive complaints from individuals or groups or, upon appropriate declaration (Art. 45),<sup>3</sup> from States re-

<sup>3</sup>In his letter of transmittal, President Carter

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President, the American Human Rights contributes developing international laws by recognizing on the human rights that are, for example, enjoyed by U.S. citizens and laws of the

the Convention, as stated in the Preamble: "to consolidate in this framework of democratic a system of personal liberties based on respect for the dignity of man." The Convention guarantees these essential rights are necessary for a national of a State to be based upon attributes of equality, thereby justifying the Convention in the form of a supplementing or complementing law of the domestic law states.

Article 1 contains 82 articles directed to state obligations and means of protection, and other provisions. The first two are nondiscriminatory, non-derogable rights of fundamental rights, including juridical rights, freedom from slavery (Art. 11); freedom of movement (Art. 12); expression (Art. 13), and association (Art. 14). Article 25 provides for due process and equal law (Arts. 24 & 25).

Article 1, in effect, a non-self-executing provision of general applicability for the progressive legislation or other application of the rights implicit in the Charter of American States, which the United States is a party to. There is also a provision for emergency derogations during time of national emergency, which is in the interest of the United States

of the Convention establish or assuring and monitoring, the *Inter-American Human Rights* (Arts. 1 & 2) to receive complaints from groups or, upon approval (Art. 45),<sup>3</sup> from States by submission, President Carter

regarding violations of the rights protected by the Convention. The Commission's powers are limited to requesting information from the State whose compliance with the Convention is in question; requesting assistance for carrying out any necessary investigation, and making recommendations and public reports on unresolved cases.

The Convention also provides for an *Inter-American Court of Human Rights* (Arts. 52-73), which assumes jurisdiction over cases by voluntary declaration of the States or by special agreement between the parties to a dispute. The seven-judge Court has power to issue temporary or permanent injunctions in appropriate cases, as well as to restore the right or freedom denied to the injured party.

As previously noted, while the Convention is basically consistent with the Constitution, laws and practices of the United States, some of its provisions appear to conflict with the Constitution, existing laws and practice in certain areas. These provisions are discussed below, including three deemed to be violative of the Constitution and thus requiring a reservation or understanding, and the eight which may conflict with existing domestic laws and practice as to which the Committee believes no reservations, understandings or declarations, are legally necessary or desirable.

#### Non-Self-Executing Character of the Convention

Article 2 of the Convention requires States to "undertake to adopt, in accordance with their constitutional processes and other provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms" set forth in the Convention when their existing laws do not do so. Although this language suggests that the substantive provisions of the Convention are not self-executing, the State Department has recommended a declaration stating that "(T)he United States declares that the provisions of Articles 2 through 32 of this Convention are not self-executing."

There is no doubt that the U.S. delegation participating in negotiation of the Conven-

tion indicated that, if the Senate ratifies the Convention, the United States will file its declaration under Art. 45 recognizing the competence of the Inter-American Commission on Human Rights to receive charges by one State that another State is violating the Convention.

tion intended Article 2 to set forth the principle that ratifying States need not consider the Convention to be self-executing.<sup>4</sup> This view of the Convention generally as being non-self-executing is strengthened by certain of its provisions (e.g., Art. 17(4)) which by their own terms require implementing legislation. The Committee considers the intention of the parties to be determinative of the non-self-executing nature of the Convention's provisions, thus rendering the proposed declaration superfluous. Accordingly, any doubts as to the internal applicability of the Convention should be left to the Courts to decide.

#### Right to Life Provisions

Article 4 consists of five numbered paragraphs which raise questions concerning abortion and the death penalty. As to Article 4, the State Department's proposed reservation states that "United States adherence to Article 4 is subject to the Constitution and other law of the United States." Article 4(1) provides that the right to life "shall be protected by law and, in general, from the moment of conception," and that "No one shall be arbitrarily deprived of his life." While some may construe this provision as an absolute prohibition on abortions (which would be unconstitutional under *Roe v. Wade*, 410 U.S. 113 (1973)), the official report of the Convention makes it clear that Article 4(1) was not accepted as preventing member States from dealing with abortion according to their respective national laws,<sup>5</sup> i.e., abortions lawful under domestic law are permissible. Nevertheless, to preclude any possible constitutional conflict, the Committee recommends a statement of understanding that "the second sentence of paragraph 1 of Article 4 does not apply to lawful abortions."

No other provisions of Article 4 require a reservation under the Constitution. Article 4(2) permits the imposition of capital punishment "for the most serious crimes," limited to those crimes to which such punishment is presently applicable. Other Article 4

<sup>4</sup>Report of the United States Delegation to the Inter-American Convention on Protection of Human Rights (submitted to the Secretary of State by Ambassador Richard D. Kearney, Chairman, United States Delegation, April 22, 1970).

<sup>5</sup>Actos & Documentos, Conferencia Especializada Inter-Americana Sobre Derechos Humanos, 121; OEA/Ser. K/XVI/1.2 (1973).

limitations on the death penalty include prohibition of its reenactment in States that have abolished it (par. 3), prohibition of its imposition for "political offenses or related common crimes" (par. 4), or upon persons "under 18 years of age or over 70 years of age" and pregnant women. While these limitations may not be in accord with the existing law and practice in all jurisdictions in the United States, they do not drastically or unreasonably circumscribe the present freedom of States to impose capital punishment. Furthermore, the State Department's overbroad reservation would unnecessarily negate provisions which are consistent with underlying basic policies and shared values in this area which, at least, deserve to be considered by the Senate as possibly warranting encouragement and the opportunity for progressive development. The Committee therefore deems the proposed reservation to Article 4 (with the exception of the second sentence of paragraph 1) as unnecessary and undesirable.

#### Right to Humane Treatment

Article 5, consisting of six paragraphs on the right to humane treatment, bans cruel, inhuman or degrading punishment, and requires that persons deprived of their liberty be treated with respect for the dignity of the human person (Par. 2). It also provides that accused persons, except in unusual circumstances, are to be segregated and treated separately from convicted persons, (par. 4); that minors subject to criminal proceedings be separated from adults and brought before specialized tribunals as speedily as possible (par. 5); and that punishment consisting of deprivation of liberty have as an essential aim the reform and social readaptation of prisoners (par. 6).

Since the standards specified in pars. 4, 5, and 6, in some cases go beyond existing laws and practice in the United States, the State Department proposed the following statement and reservation: "The United States considers the provisions of paragraphs (4) and (6) of Article 5 as goals to be achieved progressively rather than through immediate implementation, and, with respect to paragraph (5), reserves the right in appropriate cases to subject minors to procedures and penalties applicable to adults."

The Committee considers the proposed statement and reservation to be unnecessary and undesirable for a number of reasons. By virtue of the non-self-executing and federal clauses (Arts. 2 and 28) of the Convention, the provisions of Article 5 can be considered

as goals for progressive achievement, thus rendering the proposed statement and reservation essentially superfluous. Furthermore, Article 29(b) of the Convention provides that no provision of the Convention shall be interpreted to restrict the enjoyment or exercise of any right or freedom recognized by the laws of any State Party.

#### Right to Personal Liberty

Article 7, on the right to personal liberty, bars arbitrary arrest or imprisonment; requires that any person detained be informed of the reasons for his detention and promptly notified of any charges against him; and requires trial within a reasonable time, with recourse to a competent court to decide on the lawfulness of the arrest or detention. Paragraph (7) provides that no one is to be detained for debt, except under "orders of a competent judicial authority issued for nonfulfillment of duties of support."

The State Department has proposed a statement of understanding that this latter provision (the second sentence of paragraph 7) "applies to orders of any competent judicial authority, whether or not issued for fulfillment of duties of support." While the purpose in thus extending the exception to the principle against imprisonment for debt is unclear, it may be intended to permit imprisonment for contempt of court. But if this is the intent, no reservation or understanding is needed since imprisonment for contempt is not imprisonment for failure to pay a debt, i.e., the proposed understanding is unnecessary to preserve the power of the Courts for contempt. If the intent or effect of the proposed understanding is to broaden judicial authority to imprison for debt, the proposal is undesirable as unjustifiably retrogressive and anachronistic.

#### Right to Fair Trial

Article 8 sets forth the several procedural and other requirements necessary for a fair trial, including an independent and impartial tribunal, a presumption of innocence, language assistance if necessary, prior notification in detail of charges, adequate time and means for preparation of a defense, right to counsel of accused's own choosing or provided by the State, right to examine witnesses in Court and to obtain their appearance, right against self-incrimination, and the right of appeal.

The State Department's proposed understanding would make clear that par. 2(e) does not require the provision of court-

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appointed counsel for petty offenses or  
when the defendant is financially able to re-  
tain counsel; that par. 2(f) does not preclude  
requiring an indigent defendant to make a  
showing that the appearance of a witness is  
necessary; and that par. 4 limits the prohibi-  
tion of double jeopardy to cases where the  
judgment of acquittal has been rendered by a  
court of the same governmental unit (Fed-  
eral or a constituent unit) which is seeking a  
new trial for the same cause.

In the Committee's view, none of these  
savings-clauses are required by the Con-  
stitution, and some are inconsistent with the  
trend of legal developments in the United  
States. Also, the proposed statement with  
respect to court-appointed counsel and wit-  
ness appearances appears unnecessary in  
view of the reasonable limitations presently  
permitted on the right of subpoena and the  
unlikelihood of a financially capable defend-  
ant seeking a court-appointed counsel. The  
proposal limiting the double jeopardy provi-  
sion is undesirable on the merits because it  
is an unjust regressive principle in the con-  
text of international and comparative law.

#### Freedom From Ex Post Facto Laws

Article 9 prohibits ex post facto laws and  
requires as well that the benefit of any statu-  
tory restrictions in the penalty for crimes be  
applied retroactively. To obviate the need  
for compliance with the latter provision re-  
specting retroactive effect, which goes be-  
yond existing United States law, the State  
Department proposed a reservation assert-  
ing non-adherence to the third sentence of  
Article 9.

Since this proposed reservation is not re-  
quired either by the Constitution or by the  
national interest, the Committee submits  
that it is also undesirable on the merits. It  
is difficult to envisage any reason why persons  
who have been punished under statutes  
made less onerous should not benefit from  
the legislature's perception of the desirabil-  
ity of lessening the prescribed punishment.  
United States law should be able to accom-  
modate this enlightened principle of law  
without reservation.

#### Right to Compensation

Article 10 provides that "Every person  
has the right to be compensated in accord-  
ance with the law in the event he has been  
sentenced by a final judgment through a  
miscarriage of justice." Since United States  
law (28 U.S.C. §§ 1495 and 2513) provides  
only a limited right to recovery, available to  
innocent persons who have been unjustly

convicted and imprisoned, and not to those  
whose improper conviction was due to pro-  
cedural errors alone, the State Department  
proposed a statement of understanding that  
the aforesaid United States Code provi-  
sions meet the requirements of Article 10.

The Committee concludes that no such  
statement is necessary in view of the broad  
language of Article 10, which can accommo-  
date the pertinent U.S. Code provisions.

#### Freedom of Thought and Expression

Article 13 protects freedom of thought and  
expression, including the right to seek, re-  
ceive, and impart information and ideas of  
all kinds, regardless of frontiers. Paragraph  
(2) states that these rights "shall not be sub-  
ject to prior censorship," but shall be sub-  
ject to subsequent imposition of liability in  
order to ensure respect for the rights or  
reputations of others; or the protection of  
national security, public order, health or  
morals. Par. (3) provides that the right of  
expression may not be restricted by indirect  
methods, such as the abuse of government  
or private controls over information media.  
Under par. (4), public entertainment may be  
subject by law to prior censorship "for the  
moral protection of childhood and adoles-  
cence." Par. (5) stipulates that "any pro-  
paganda for war and any advocacy of na-  
tional, racial, or religious hatred that consti-  
tute incitements to lawless violence or to  
any other similar illegal action against any  
person or group of persons on any grounds  
including those of race, color, religion, lan-  
guage, or national origin shall be considered  
as offenses punishable by law."

Believing that pars. (2) and (5) raise ques-  
tions under the First Amendment to the  
Constitution, the State Department pro-  
posed the following reservation: "The  
United States reserves the right to permit  
prior restraints in strictly defined circum-  
stances where the right to judicial review is  
immediately available; the United States  
does not adhere to paragraph (5) of Article  
13."

In the Committee's view, no reservation  
respecting par. (2) is warranted. While there  
is a presumption against the constitutional  
validity of any type of prior censorship or  
restraint, courts in the United States have  
recognized exceptions relating to the obliga-  
tions of the government to provide a fair trial  
and to protect national security in time of  
war or emergency.<sup>6</sup> Similarly, the Conven-

<sup>6</sup>E.g., *New York Times Co. v. United States*,  
403 U.S. 713 (1971); *Nebraska Press Assn.*  
*v. Stuart*, 427 U.S. 539 (1976).

tion (Articles 8, 15, 27 and 32) permits prior censorship in these same exceptional circumstances consistent with the traditional primacy given freedom of expression in American public policy.

It is also arguable that no reservation is required to paragraph (5) because, at the behest of the United States delegation, it was amended in order to meet the requirements laid down in *Brandenburg v. Ohio*, 395 U.S. 444 (1969). However, in view of the chilling effect on free speech implementation this paragraph may produce, the Committee favors a reservation expressed in the same way as the reservation made by the United States to the similar Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination, stating: "The Constitution of the United States and Article 13 of this Convention contain provisions for the protection of individual rights, including the right to free speech and nothing in this convention shall be deemed to require or to authorize legislation or other action by the United States which would restrict the right of free speech protected by the Constitution, laws, and practice of the United States."

#### Right of Reply

Article 14(1) provides that "[a]nyone injured by inaccurate or offensive statements or ideas disseminated . . . by a legally regulated medium of communication has the right to reply . . ." Article 14(3) provides that "every publisher and every newspaper, motion picture, radio and television company, shall have a person responsible who is not protected by immunities or special privileges."

Believing that the right to reply in Article 14(1) goes beyond existing United States law and that Article 14(3) does not provide for the immunity which government publishers enjoy under United States law, the State Department proposed the following reservation and understanding: "The United States does not adhere to paragraph (1) of Article 14, and understands that paragraph (3) of that Article applies only to non-governmental entities."

In *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 444 (1969), the Supreme Court held that the fairness doctrine and personal attack rules of the Federal Communications Commission were constitutionally permissible. While the fairness doctrine appears to substantially meet the requirements of Article 14(1), the latter provision might prevent the Supreme Court from overriding its *Red*

*Lion* decision (as it suggested it might do, if the fairness doctrine resulted in less coverage of controversial issues) without violating the Convention. Also, the scope of the right to reply provided in Article 14 is broader than that currently required by the fairness doctrine, perhaps unjustly so. Accordingly, the Committee favors a statement of understanding stating: "The United States understands that the fairness doctrine, as judicially interpreted in light of the requirements of the United States Constitution, meets the requirements of Article 14."

The Committee opposes the proposed understanding that Article 14(3) not be construed to require the government to name an individual responsible for any of its publications as being unsound as a matter of policy. In short, the responsibility of the government as a publisher should be established as a matter of substantive law.

#### Rights of the Family

Article 17 requires that the family unit be protected by society and the State (par. 1). No marriage is to be entered into without the free and full consent of the intending spouses (par. 2). States are obligated to "take appropriate steps to ensure the equality of rights and adequate balancing of responsibilities of the spouses as to marriage, during marriage, and in the event of its dissolution." (par. 4). Par. 4 also requires that children are to be protected "solely on the basis of their own best interests" upon the dissolution of a marriage. Par. 5 mandates equality of legal rights for legitimate or illegitimate children.

Noting that the United States has been moving towards these goals, but has not yet fully achieved them, the State Department proposed the following statement: "The United States considers the provision of paragraphs (4) and (5) of Article 17 as goals to be achieved progressively rather than through immediate implementation."

The Committee perceives no necessity for such a statement since Article 17 essentially confirms the right of privacy with respect to family life. Par. 4 is not inconsistent with this principle since it only requires "appropriate steps" to be taken in ensuring equality of the spouses and the protection of children. Furthermore, Article 29 requires that no provision of the Convention shall be interpreted to restrict the enjoyment of any freedom recognized by the laws of the State or by virtue of another treaty.

it suggested it might do, if it resulted in less coverage (without violation). Also, the scope of the provided in Article 14 is currently required by the perhaps unjustly so. Committee favors a statement stating: "The United States interprets the fairness doctrine in light of the United States Constitutional requirements of Article 14." The proposed Article 14(3) not be considered by the government to name an individual for any of its publication as a matter of policy. The possibility of the government should be established as an active law.

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res that the family unit be entered into without the consent of the intending States are obligated to steps to ensure the equal and adequate balancing of the interests of spouses as to marriage, and in the event of its dissolution. Par. 4 also requires that the family be protected "solely on the basis of the best interests" upon the dissolution of the marriage. Par. 5 mandates equal rights for legitimate or illegitimate children.

The United States has been unable to achieve these goals, but has not yet achieved them, the State Department is following statement: "The United States considers the provision of paragraph (5) of Article 17 as goals to be achieved progressively rather than as a one-time implementation."

The United States perceives no necessity for amending Article 17 since Article 17 essentially provides for privacy with respect to the family and it is not inconsistent with Article 17 as it only requires "appropriate steps" to be taken in ensuring equality and the protection of children. Article 29 requires that the United States Convention shall be in effect and the enjoyment of any rights shall be guaranteed by the laws of the State or other treaty.

### Freedom of Movement and Residence

Article 22 provides for freedom of movement and residence. Par. 8 of this Article prohibits the deportation or return of an alien to any country where "his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions."

The State Department points out that United States law and the Protocol Relating to the Status of Refugees, to which the United States is a party, permits immigration officers, in their discretion, to deport persons even to countries in which their lives or freedom are so threatened if such persons have committed a serious crime or are considered a danger to the security of this country. To remove this apparent conflict, the Department proposed the following statement: "The United States considers that its adherence to the Protocol Relating to the Status of Refugees constitutes compliance with the obligation set forth in paragraph 8 of Article 22."

The Committee deems such a statement unnecessary and undesirable. The statement would create problems of interpretation since the pertinent provisions of the Protocol Relating to the Status of Refugees (Article 33(2)) incorporated by reference by Article 1 of the Protocol, creates an exception to the general rule of non-expulsion for refugees reasonably believed to constitute a danger to the community or security of the country. There is no good reason here to discriminate between aliens and refugees, and even if the intention of the statement is to include all aliens (whether or not refugees) the standard of "danger to the community" is so vague in the criminal law context as to be subject to constitutional challenge. In any event, the proposed statement is not required by the Constitution and may be unnecessary when paragraph 8 is fairly read in the context of paragraphs 3 and 6 of Article 22.

### Conclusion

Pursuant to the United Nations Charter, the United States has pledged to promote the observance of human rights and fundamental freedoms. The American Convention on Human Rights is a means of putting into effect this pledge.

As President Carter stated in an address to the United Nations in 1977:

"The search for peace and justice also means for human dignity. All the signatories of the UN Charter have pledged

themselves to observe and to respect basic human rights. Thus, no member of the United Nations can claim the mistreatment of its citizens is solely its own business. Equally no member can avoid its responsibilities to review and to speak when torture or unwarranted deprivation occurs in any part of the world.

"The basic thrust of human affairs points toward a more universal demand for fundamental human rights. The United States has a historical birthright to be associated with this process.

"We in the United States accept this responsibility in the fullest and the most constructive sense. Ours is a commitment and not just a political posture. I know perhaps as well as anyone that our own ideals in the area of human rights have not always been attained in the United States, but the American people have an abiding commitment to the full realization of these ideals. And we are determined, therefore, to deal with our deficiencies quickly and openly. We have nothing to conceal."

To fulfill this commitment President Carter has urged the Senate to ratify the American Convention on Human Rights. Prompt ratifying action by the Senate will demonstrate effective United States support for human rights and representative democracy in the Americas.

This Recommendation requests ratification of the Convention subject to the reservation and the understandings pertaining to Articles 13, 14, and 4, respectively, which deal with the right of free speech and the right to life. For the reasons set forth in this Report, there are no substantial constitutional or other legal objections to the United States' ratification to warrant the imposition of any additional reservations, understandings, or declarations to the Convention.

This Convention has already come into force by virtue of its acceptance and ratification by more than the required number of eleven American States. Failure to ratify this Convention would damage the credibility of the United States in its efforts on behalf of human rights in the Americas. The time is ripe for the American Bar Association to take leadership in supporting this Convention which it should properly do by adopting the resolution recommended by this Report.

BRUNO V. BITKER

Chairman