

## REPORT NO. 3 OF THE SECTION OF INTERNATIONAL LAW

### RECOMMENDATION\*

*Be It Resolved*, That the American Bar Association favors the accession of the United States to the International Convention on the Elimination of All Forms of Racial Discrimination and urges the Senate to give its advice and consent to ratification of the Convention subject to the following understanding, reservations and declaration.

(a) The United States understands its obligation to enact legislation and take measures under paragraph (1) of Article 2, subparagraphs (1)(c) and (1)(d) of Article 2, Article 3 and Article 5 to extend only to governmental or government-assisted activities and to private activities required to be available on a non-discriminatory basis as defined by the Constitution and laws of the United States.

(b) The Constitution of the United States and Article 5 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.

(c) The United States shall implement all the provisions of the Convention over whose subject matter the Federal Government exercises legislative and judicial administration; with respect to the provisions over whose subject matter constituent units exercise jurisdiction, the Federal Government shall take appropriate measures to the end that the competent authorities of the constituent units may take appropriate measures for the fulfillment of this Covenant.

(d) The United States declares that the provisions of Articles 1 through 7 of this Convention are not self-executing.

### REPORT

The International Convention on the Elimination of All Forms of Racial Discrimination was unanimously adopted by the General Assembly of the United Nations on December 21, 1965. The United States participated in drafting the Convention and joined in this unanimous adoption of the Convention by the United Nations General Assembly. The Convention was signed for the United States on September 28, 1966.

On February 23, 1978, the President sent this treaty to the United States Senate for its advice and consent to ratification (United States Constitution, Article II, Section 2).

The Convention came into force on January 4, 1969, when, as provided by Article 19 of the Convention, twenty-seven (27) member states had ratified or acceded thereto. The following ninety-eight (98) nations have ratified, acceded or succeeded to the Convention: Algeria, Argentina, Australia, Austria, Bahamas, Barbados, Belgium, Bolivia, Botswana, Brazil, Bulgaria, Burundi, Canada, Central African Republic, Chad, Chile, Costa Rica, Cuba, Cyprus, Czechoslovakia, Denmark, Ecuador, Egypt, Ethiopia, Fiji, Finland, France, German Democratic Republic, Federal Republic of Germany, Ghana, Greece, Guinea, Guyana, Haiti, Holy See, Hungary, Iceland, India, Iran, Iraq, Italy, Ivory Coast, Jamaica, Jordan, Kuwait, Laos, People's Democratic

\*The recommendation was approved. See page 588.

Compiled by:  
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International Legal Exchange  
May 1978

<sup>1</sup>For Soviet seminar series; Multi-Regional Project; Latin American Project; and Brazilian Comparative Law Project.

<sup>2</sup>Contributions from private law firms and the Coca Cola Company in support of Soviet Seminar Series.

<sup>3</sup>Tinker and Luce Foundations' support for International Business Transactions Project.

<sup>4</sup>For Soviet Seminar return visit by American delegation; Multi-Regional Project; Latin American Seminar Project; and Latin American Project (one country).

<sup>5</sup>As recommended by the Finance Committee in May 1978.

<sup>6</sup>Foundation and corporate support for International Business Transactions Project.

Republic of Yemen, Lebanon, Lesotho, Liberia, Libyan Arab Republic, Luxembourg, Madagascar, Mali, Malta, Mauritius, Mexico, Mongolia, Morocco, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Pakistan, Panama, Peru, Philippines, Poland, Qatar, Romania, Rwanda, Senegal Seychelles, Sierra Leone, Somalia, Spain, Sudan, Swaziland, Sweden, Syrian Arab Republic, Togo, Tonga, Trinidad and Tobago, Tunisia, Union of Soviet Socialist Republics, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Cameroon, United Republic of Tanzania, Upper Volta, Uruguay, Venezuela, Yugoslavia, Zaire, Zambia.

#### Purposes and Provisions of the Convention

The Convention is designed to forbid racial and ethnic discrimination in all fields of public life. Its terms closely parallel United States constitutional and statutory law as interpreted by the courts.

Articles 1 through 7 contain the substantive provisions. Article 1 defines "racial discrimination" but specified that this does not include distinctions made by a State Party between citizens and non-citizens. Article 2 specifies steps to be taken to eliminate racial discrimination.

Article 3 prohibits racial segregation and apartheid. This should be read in conjunction with Article 5 which enumerates certain fundamental rights, the enjoyment and exercise of which must be protected against abridgement by racial discrimination, including the right to housing, employment and access to any place or service intended for use by the general public.

Certain people feel that under these Articles, the Convention would interfere with the right of American citizens freely to choose their associates in close personal relationships. In response to these feelings, the first recommended reservation would have the United States state that its obligation to enact legislation would extend "only to governmental and government assisted activities and private activities required to be available on a non-discriminatory basis as defined by the Constitution and the laws of the United States." I believe this reservation clearly deals with the "Mrs. Murphy's boardinghouse" argument which has been handled successfully under domestic law.

Article 4 condemns propaganda and organizations based on racial hatred or superiority. However, paragraphs (a) and (b) of the

Article provide for restriction of the dissemination of ideas which would violate the freedom of expression and association guarantees of the Constitution. This argument is directly answered by the proposed reservation which reads as follows: "The Constitution of the United States and Article 5 of the Convention contain provisions for the protection of individual rights, including the right of 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."

Articles 6 and 7, require States to provide effective protection and remedies, through the competent tribunals and other government institutions, against acts of racial discrimination which violate the Convention and undertake active programs to combat racial discrimination and prejudice.

Articles 8 through 16 constitute the administrative and enforcement provisions of the Convention. A Committee on the Elimination of Racial Discrimination is established. States Parties submit reports for consideration by the Committee, describing the measures they have adopted which give effect to the provisions of the Convention. The Committee may make recommendations based on the reports and information received from States Parties. A procedure is also established permitting States Parties to submit complaints to the Committee alleging that other States Parties are not giving effect to the provisions of the Convention. A conciliation procedure constitutes the central mechanism for settling such disputes. No legally binding recommendations or awards are permitted.

Article 14 permits, but does not require, a State Party to declare that it recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals, within the jurisdiction of that State Party, claiming to be victims of a violation by that State Party of any of the rights set forth in the Convention. Individual complaints may be considered by the Committee only after all available domestic remedies have been exhausted.

Article 16 confirms that the procedures for resolution of disputes and complaints provided in the Convention are additional to rather than substitutes for other procedures agreed to by the States Parties.

Articles 17 through 25 are the final clauses. Article 22 provides that any dispute with respect to the interpretation or application of the Convention which is not settled

restriction of the dis- which would violate the sion and association Constitution. This argu- s answered by the proposed reads as follows: "The United States and Article n contain provisions for ividual rights, including ech, and nothing in this deemed to require or to 1 or other action by the 1 would restrict the right ed by the Constitution, of the United States." equire States to provide and remedies, through nals and other govern- gainst acts of racial: dis- violate the Convention e programs to combat 1 and prejudice. h 16 constitute the ad- orcement provisions of ommittee on the Elim- iscrimination is estab- ; submit reports for com- mittee, describing the adopted which give ef- ns of the Convention. y make recommenda- eports and information Parties. A procedure is nitting States Parties to the Committee alleging ies are not giving effect he Convention. A con- constitutes the central ing such disputes. No mmendations or awards

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by negotiation or by the procedures provided for in the Convention shall at the request of any party to the dispute be referred to the International Court of Justice unless the disputants agree to another mode of settlement. This is a usual provision found in many multi-state agreements.

One principal argument that opponents of the Convention have raised is that the Convention would circumvent the bicameral nature of the Government. This is answered by the proposed declaration which would state that the "United States declares that the provisions of Articles 1 through 7 of the Convention are not self-executing." This would leave any further implementation of the Convention to the domestic legislative and judicial process.

Another argument in opposition is that the Convention would violate the distribution of powers by the federal government and the individual states. There is a proposed reservation which would deal with those provisions of the Convention which impose obligations whose fulfillment is dependent upon the legal power of the state and local governments as well as that of the federal government. This reservation reads as follows: "The United States shall implement all the provisions of the Convention over whose subject matter the Federal Government exercises legislative and judicial administration; with respect to the provisions over whose subject matter constituent units exercise jurisdiction, the Federal Government shall take appropriate measures, to the end that the competent authorities of the constituent units may take appropriate measures for the fulfillment of this Covenant."

#### Conclusion

Pursuant to the United Nations Charter, the United States has pledged to promote the observance of human rights and fundamental freedoms without distinction as to race. The International Convention on the Elimination of All Forms of Racial Discrimination is the 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 demonstrate this commitment, . . . I will work closely with our own Congress in seeking to support the ratification . . . (of) the Treaty for the Elimination of All Forms of Racial Discrimination. . . ."

This recommendation requests ratification of the Convention subject to the understanding, the two reservations and the declaration prepared by the Department of State whose letter of submittal to the President dated December 17, 1977, states that the Department of Justice is of the view that with them "there are no constitutional or other legal objections to the United States ratification."

This Convention is widely accepted throughout the world, as evidenced by the fact that 98 states have become party thereto. Failure to ratify would damage the image of the United States—as Adlai Stevenson put it, "in the court of world opinion." Accordingly, the American Bar Association should adopt the resolution recommended by this report.

HENRY T. KING, JR.

Chairman