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INTER-AMERICAN CONVENTION AGAINST TERRORISM  
(TREATY DOC. 107-18).

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JULY 28, 2005.—Ordered to be printed

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Mr. LUGAR, from the Committee on Foreign Relations,  
submitted the following

REPORT

[To accompany Treaty Doc. 107-18]

The Committee 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.

108–721). 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.