

(OAS) SENATE RESOLUTION

Senate Resolution Advising and Consenting to the Treaty on Inter-American Convention Against Corruption

July 27, 2000

Resolved, that the Senate advise and consent to the ratification of the Inter-American Convention Against Corruption, adopted and opened for signature at the Specialized Conference of the Organization of American States (OAS) at Caracas, Venezuela, on March 29, 1996, (Treaty Doc. 105-39); referred to in this resolution of ratification as "The Convention", subject to the understandings of subsection (a), the declaration of subsection (b), and the provisos of subsection (c).

(a) Understandings.--The advice and consent of the Senate is subject to the following understandings, which shall be included in the instrument of ratification of the Convention and shall be binding on the President:

(1) Application of article I. - The United States of America understands that the phrase 'at any level of its hierarchy' in the first and second paragraphs of Article I of the Convention refers, in the case of the United States, to all levels of the hierarchy of the Federal Government of the United States, and that the Convention does not impose obligations with respect to the conduct of officials other than Federal officials.

(2) Article VII ('Domestic Law'):

(A) Article VII of the Convention sets forth an obligation to adopt legislative measures to establish as criminal offenses the acts of corruption described in Article VI(1). There is an extensive network of laws already in place in the United States that criminalize a wide range of corrupt acts. Although United States laws may not in all cases be defined in terms or elements identical to those used in the Convention, it is the understanding of the United States, with the caveat set forth in subparagraph (B), that the kinds of official corruption which are intended under the Convention to be criminalized would in fact be criminal offenses under U.S. law. Accordingly, the United States does not intend to enact new legislation to implement Article VII of the Convention.

(B) There is no general 'attempt' statute in U.S. federal criminal law. Nevertheless, federal statutes make 'attempts' criminal in connection with specific crimes. This is of particular relevance with respect to Article VI(1)(c) of the Convention, which by its literal terms would embrace a single preparatory act done with the requisite 'purpose' of profiting illicitly at some future time, even though the course of conduct is neither pursued, nor in any sense consummated. The United States will not criminalize such conduct *per se*, although significant acts of corruption in this regard would be generally subject to prosecution in the context of one or more other crimes.

(3) Transnational bribery. - Current United States law provides criminal sanctions for transnational bribery. Therefore, it is the understanding of the United States of America that no additional legislation is needed for the United States to comply with the obligation imposed in Article VIII of the Convention.

(4) Illicit enrichment. - The United States of America intends to assist and cooperate with other States Parties pursuant to paragraph 3 of Article IX of the Convention to the extent permitted by its domestic law. The United States recognizes the importance of combating improper financial gains by public officials, and has criminal statutes to deter or punish such conduct. These statutes obligate senior-level officials in the federal government to file truthful financial disclosure statements, subject to criminal penalties. They also permit prosecution of federal public officials who evade taxes on wealth that is acquired illicitly. The offense of illicit enrichment as set forth in Article IX of the Convention, however, places the burden of proof on the defendant, which is inconsistent with the United States

Constitution and fundamental principles of the United States legal system. Therefore, the United States understands that it is not obligated to establish a new criminal offense of illicit enrichment under Article IX of the Convention.

(5) Extradition. - The United States of America shall not consider this Convention as the legal basis for extradition to any country with which the United States has no bilateral extradition treaty in force. In such cases where the United States does not have a bilateral extradition treaty in force, that bilateral extradition treaty shall serve as the legal basis for extradition for offenses that are extraditable in accordance with this Convention.

(6) Prohibition assistance to the international criminal court. - The United States of America shall exercise its rights to limit the use of assistance it provides under the Convention so that any assistance provided by the Government of the United States shall not be transferred to or otherwise used to assist the International Criminal Court agreed to in Rome, Italy, on July 17, 1998, unless the treaty establishing the Court has entered into force for the United States by and with the advice and consent of the Senate, as required by Article II, section 2 of the United States Constitution.

(b) Declaration. - The advice and consent of the Senate is subject to the following declaration:

Treaty interpretation. - The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988, and Condition (8) of the resolution of ratification of the Document Agreed Among the State Parties to the Treaty on Conventional Armed Forces in Europe, approved by the Senate on May 14, 1997.

(c) Provisos. - The advice and consent of the Senate is subject to the following provisos:

(1) Enforcement and monitoring. - Not later than April 1, 2001, and annually thereafter for five years, unless extended by an Act of Congress, the President shall submit to the Committee on Foreign Relations of the Senate, and the Speaker of the House of Representatives, a report that sets out:

(A) Ratification. - A list of the countries that have ratified the Convention, the dates of ratification and entry into force for each country, and a detailed account of U.S. efforts to encourage other nations that are signatories to the Convention to ratify and implement it.

(B) Domestic legislation implementing the convention and actions to advance its object and purpose. - A description of the domestic laws enacted by each Party to the Convention that implement commitments under the Convention and actions taken by each Party during the previous year, including domestic law enforcement measures, to advance the object and purpose of the Convention.

(C) Progress at the organization of american states on a monitoring process. - An assessment of progress in the Organization of American States (OAS) toward creation of an effective, transparent, and viable Convention compliance monitoring process which includes input from the private sector and non-governmental organizations.

(D) Future negotiations. - A description of the anticipated future work of the Parties to the Convention to expand its scope and assess other areas where the Convention could be amended to decrease corrupt activities.

(2) Mutual legal assistance. - When the United States receives a request for assistance under Article XIV of the Convention from a country with which it has in force a bilateral treaty for mutual legal assistance in criminal matters, the bilateral treaty will provide the legal basis for responding to that request. In any case of assistance sought from the United States under Article XIV of the Convention, the United States shall, consistent with U.S. laws, relevant treaties and arrangements, deny assistance where granting the assistance sought would prejudice its essential public policy interest, including cases where the Central Authority, after consultation with all appropriate intelligence, anti-

narcotic, and foreign policy agencies, has specific information that a senior government official who will have access to information to be provided under this Convention is engaged in a felony, including the facilitation of the production or distribution of illegal drugs.

(3) Supremacy of the Constitution. - Nothing in the Convention requires or authorizes legislation or other action by the United States of America that is prohibited by the Constitution of the United States as interpreted by the United States.

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