

AMERICAN BAR ASSOCIATION
SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES
AND
SECTION OF INTERNATIONAL LAW AND PRACTICE

REPORT TO THE BOARD OF GOVERNORS

RECOMMENDATION

RESOLVED, that the American Bar Association urge the United States Government and the Security Council of the United Nations to effect the investigation, and, if warranted, the prosecution and punishment, of persons who have committed war crimes or crimes against humanity in Bosnia-Herzegovina.

BE IT FURTHER RESOLVED, that the American Bar Association offer its immediate assistance to the United States Government and the United Nations to identify qualified lawyers, law professors, and judges who would be willing to participate in any investigations, collection of information, gathering of testimony, and--if warranted--prosecution and trial of persons accused of having committed war crimes or crimes against humanity in Bosnia-Herzegovina, and punishment of those convicted.

REPORT

The United Nations, in October of 1992, initiated an International Commission of Experts to investigate the possibility of war crimes in what was formerly Yugoslavia. Such an investigation may result in the creation of a war crimes commission or tribunal to effect the investigation and, if warranted, the prosecution and punishment, of members of the Serbian government for what they have called "ethnic cleansing" activity against Muslims and Croats in Bosnia-Herzegovina. Such activity, aimed at removing non-Serbs from the area, involves use of artillery and other lethal weapons against civilians; forcible movement or killing of non-Serbs, along with confiscation or destruction of their property; and the killing or the detention, torture, and other severe abuse of civilians in military camps.

Although any investigation also would encompass violations of international law by opposing forces, there already exist several well-documented reports of the Serbs' involuntary transfer of civilian populations for the purpose of making a territory "ethnically pure." These reports document inhumane acts committed against the civilian population; persecution on political or religious grounds; and acts of murder, extermination, and enslavement. These reports include:

- An August 1992 report to the Committee on Foreign Relations of the United States Senate that details specific interviews with victims of and eye witnesses to human rights violations;

- An August 24, 1992, report submitted by a special reporter of the U. N. Commission on Human Rights to the Economic and Social Council of the United Nations concerning the situation of human rights in the territory of the former Yugoslavia and describing the policy of "ethnic cleansing," other serious human rights violations, and difficulties affecting the functioning of humanitarian organizations;

- A statement by Richard Boucher, spokesman for the United States Department of State, Office of Assistant Secretary, dated September 22, 1992, in which the United States transmitted to the U.N. Secretary General its initial report on information

concerning violations of humanitarian law and "grave breaches of the Geneva Conventions." The press reports were limited to those in which the reporter stated that he or she personally witnessed violations of international humanitarian law. The report details by date and description willful killings of civilians and torture of prisoners, as well as abuses of civilians in detention centers. The report further details deliberate attacks on non-combatants and wanton devastation and destruction of property of civilians. Finally, the report details mass forcible expulsion and deportation of civilians;

- A 360-page, August 1992 Helsinki Watch report entitled, "War Crimes in Bosnia-Herzegovina" that provides extensive details of human rights abuses, including summary executions of civilians and persons, "ethnic cleansing" and forcible displacement (including executions, detention and "concentration" camps, confinement to ghetto areas, forcible deportation, and forcible displacement), disappearances, taking of hostages, mistreatment in detention, indiscriminate use of force, attacks on medical and relief personnel and vehicles, attacks on journalists (including killing, disappearances, wounding, arrests, physical or other harassment, and obstruction of freedom of the press), pillage and other destruction of civilian property, misuse of medical facilities, and destruction of a bridge, resulting in the entrapment and ultimate death of many non-Serbians; and

- A September 10, 1992, report of a committee of senior officials of the Conference on Security and Cooperation in Europe (CSCE). The humanitarian mission was headed by Sir John Thomson of the United Kingdom, assisted by Ambassador Kenneth Blackwell of the United States and a group of international legal, medical, and political experts. The principal task of the mission was to survey the human rights situation in Bosnia-Herzegovina through direct observation of detention camps and centers throughout the country. The report states that "the 'ethnic cleansing' operations which are taking place with official connivance or direct support have left people virtually defenseless even in their homes. Murders, rapes, robberies, assaults and beatings are continuing. Those who carry out these activities are also personally known by their victims and

by others in the community. Few have reportedly been brought to justice."

Under Protocol I to the 1949 Geneva Convention, the transfer of civilian populations, except for their own security or military necessity, is prohibited. Under Article 6 of the Charter of the Nuremberg Tribunal, crimes against humanity are defined as "murder, extermination, enslavement, deportation and other inhumane acts committed against any civilian population, before or during the war; or persecution on political, racial or religious grounds in the execution of or in connection with any crime, whether or not in violation of the domestic law of the country where perpetrated."

The United States Senate report to the Committee on Foreign Relations concludes that it is probable that the Bosnian Serb authorities have committed crimes against humanity, as well as war crimes.

The American Bar Association already is on record in support of the Genocide Convention and should take the opportunity provided by the United Nations action in August to help further the cause of human rights. Specifically, the American Bar Association should support the efforts of the United States government and the Security Council of the United Nations to effect the investigation and, if warranted, the prosecution and punishment, of persons who have committed war crimes or crimes against humanity in Bosnia-Herzegovina. Further, the American Bar Association should offer its immediate assistance to the United States government and the United Nations to identify qualified United States lawyers, law professors, and judges who would be willing to participate in any U. N. investigations, collection of information, gathering of testimony, and prosecution and trial of persons accused of having committed war crimes or crimes against humanity in Bosnia-Herzegovina.

Respectfully Submitted,

Janet R. Studley, Chair
Section of Individual Rights
and Responsibilities

Louis B. Sohn, Chair
Section of International Law
and Practice

October 19, 1992

GENERAL INFORMATION FORM

Submitting Entities:

Section of Individual Rights and Responsibilities
Section of International Law and Practice

Submitted By:

Janet R. Studley, Chair
Section of Individual Rights and Responsibilities
Louis B. Sohn, Chair
Section of International Law and Practice

1. Summary of Recommendation(s).

The resolution proposes that the ABA urge the United States Government and the United Nations to determine whether war crimes or crimes against humanity have occurred in recent months in Bosnia-Herzegovina, part of the former Yugoslavia. The resolution further calls upon the ABA to offer assistance to the United States government and the United Nations in identifying attorneys, law professors, and judges who could help with any investigative or prosecutorial activities and trials against those who may have committed such crimes.

2. Approval by Submitting Entity.

By unanimous vote at its fall meeting on Oct. 17-18, 1992, the Council of the Section of Individual Rights and Responsibilities (IRR) approved the report and recommendation in principle, subject to consultation with the Section of International Law and Practice. The Section of International Law and Practice subsequently gave its approval to the proposed recommendation at a meeting of its Council on Oct. 24, 1992.

3. Previous submission to the House or relevant Association position.

None.

4. Existing Association policies

No existing ABA policies address the Bosnian issue *per se*, but several ABA existing policies address the type of human rights and war crimes issues raised in this report and recommendation. Among these policies are the Genocide Convention resolutions

(2/76, 8/88), the Geneva Convention resolution (8/87), the Helsinki Accords resolution (2/78), the resolution supporting the International Covenant on Civil and Political Rights (2/79), and, most recently, the Iraqi War Crimes resolution (8/91). The proposed policy would be consistent with and supplemental to earlier statements on human rights issues and war crimes.

5. Need for Action at This Meeting.

Because of the gravity and the extent of the documented violations of human rights in Bosnia-Herzegovina, the likelihood that such violations will continue as long as the conflict goes on in that area, and the inevitability of even more severe suffering among the non-Serbian population under war conditions as winter approaches, it is imperative that efforts to address the crisis move forward as quickly as possible. Immediate action by the ABA to voice its support and to offer specific assistance in these efforts may prompt more rapid planning and decision making. Delaying consideration of this recommendation until February 1993, when the House of Delegates next meets, instead of approving the recommendation at the November 1992 meeting of the Board of Governors, may result in loss of an opportunity to help at a critical stage of events.

6. Status of Legislation. (If applicable.)

There is no pending legislation on this matter; the 102d Congress has adjourned.

7. Cost to the Association. (Both direct and indirect costs.)

There will be no significant cost to the Association, other than staff and volunteer time required to develop a list of individuals who can provide the desired expertise, forward that list to the appropriate United States and United Nations officials, and assist with contacts as requested.

8. Disclosure of Interest. (If applicable.)

None.

9. Referrals.

This report with recommendation is being submitted concurrently on October 22, 1992, to the Board of Governors and to the Section of International Law and Practice.

10. Contacts. (Prior to the meeting.)

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11. Contact Person. (Who will present the report to the Board.)

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EXECUTIVE SUMMARY

1. Summary of the recommendation.

That the ABA support efforts to address human rights violations and possible war crimes in Bosnia-Herzegovina and, further, that the ABA assist the United States government and the United Nations in identifying legal experts to assist with any investigation and prosecution of individuals accused of war crimes in Bosnia-Herzegovina.

2. Summary of the issue that the recommendation addresses.

In addition to press reports, several reports released by U. S. congressional and administration officials, United Nations officials, and highly respected human rights organizations in recent months indicate the likelihood that war crimes and international human rights violations are being committed against the non-Serbian civilian population of Bosnia-Herzegovina. The United Nations has initiated an International Commission of Experts to investigate allegations of war crimes, but further action is pending.

3. How the proposed policy will address the issue.

The resolution urges the ABA's support of such proceedings and the use of ABA members' expertise to help carry out the work of such a commission. Pursuant to the Genocide Convention and other international human rights principles, the United States should support United Nations efforts to address those possible violations, and the ABA should assist this effort by offering legal expertise, as necessary.

4. Summary of minority views or opposition.

None known.