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International Criminal Law

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COMMITTEE INSIGHTS

International Criminal Law*

During the past year the war in the Persian Gulf kept the activities of the Committee on International Criminal Law largely focused on issues relating to war crimes and international criminal tribunals. Foremost were its efforts in working with the Section to foster the adoption by the House of Delegates of a Report and Recommendation calling for the creation of a blue ribbon committee to explore the establishment of an international criminal court.

I. Task Force on an International Criminal Court

Assisted by Professor Louis B. Sohn and supported by the International Institutions Committee, the Committee on International Criminal Law took the lead in the preparation of a Report and Recommendation calling for the American Bar Association to create a blue ribbon committee to explore the establishment of an international criminal court.

A. ORIGINS

The ABA has been interested in the concept of an international criminal court for many years. However, the last time it affirmatively took any official action was in 1978. At that time the House of Delegates adopted a resolution urging the Department of State to open negotiations for a Convention for the establishment of an International Criminal Court with jurisdiction expressly limited to certain crimes that are terrorist in nature.¹

*Prepared by Stuart H. Deming, chair of the Committee on International Criminal Law.

1. ABA Section of International Law and Practice, Report to the House of Delegates Regarding a Blue Ribbon Committee on an International Criminal Court 1 (Feb. 1978).

The issue was revived in 1989 when Congressmen Jim Leach and Robert Kastenmeier proposed House Concurrent Resolution 66, which stated the sense of Congress to be that the United States "should pursue the establishment of an International Criminal Court to assist the international community in dealing more effectively with those acts of terrorism, drug trafficking, genocide, and torture that are condemned as criminal acts in the international conventions cited in the preamble"² Integral to its establishment were to be "internationally established standards of due process and the rights of the accused to a fair trial" and "guarantees as to the impartiality of its judges."³

After languishing, the bill received renewed impetus in the waning hours of the 101st Congress as a result of amendments proposed by Senator Arlen Specter to the Foreign Operations Appropriations Bill for the 1991 fiscal year. By those amendments, House Concurrent Resolution 66 was revised and adopted by the Congress to provide as follows:

(b) It is the sense of Congress that—

(1) the United States should explore the need for the establishment of an International Criminal Court on a universal or regional basis to assist the international community in dealing more effectively with criminal acts defined in international conventions; and

(2) the establishment of such a court or courts for the more effective prosecution of international criminals should not derogate from established standards of due process, the rights of the accused to a fair trial and the sovereignty of individual nations.

(c) The President shall report to the Congress by October 1, 1991, the result of his efforts in regard to the establishment of an International Criminal Court to deal with criminal acts defined in international conventions.

(d) The Judicial Conference of the United States shall report to the Congress by October 1, 1991, on the feasibility of, and the relationship to, the Federal judiciary of an International Criminal Court.⁴

B. THE RECOMMENDATION

In February of 1991, the House of Delegates adopted the Recommendation sponsored by the Section and the Milwaukee Bar Association calling for a blue

2. American Bar Association, Milwaukee Bar Association, and Section of International Law and Practice, Report to the House of Delegates, Blue Ribbon Committee on the Establishment of an International Criminal Court, 25 INT'L LAW. 810, 811 (1991) [hereinafter Blue Ribbon Committee Report].

3. *Id.* Also:

As part of the process, the President was urged to convene an international conference for purposes of negotiating a multilateral convention establishing an international criminal court. In this regard, the Congress sought a report as to the status of the President's efforts by the conclusion of its second session. Similarly, a report was sought from the Judicial Conference of the United States "on the feasibility of, and relationship to the Federal judiciary of, an International Criminal Court."

Id. (footnotes omitted).

4. 142 CONG. REC. S16216 (daily ed. Oct. 19, 1990) (statement of Senator Specter), *reprinted* in Blue Ribbon Committee Report, *supra* note 2, at 812.

ribbon committee to explore the establishment of an international criminal court.⁵ In addition, in the Report accompanying the Recommendation the desirability was expressed for the committee to address the following issues:

1. Identification and explanation of factors to be considered, both for and against, the establishment of an international criminal court.
2. Preparation of a model for an international criminal court with details as to its jurisdiction and procedure.
3. Recommendations as to whether and, if so, in what manner and to what degree the United States should avail itself of the jurisdiction of an international criminal court.⁶

C. THE TASK FORCE

Known as the Task Force on an International Criminal Court, a nine-member blue ribbon committee has now been created. The Task Force will be chaired by former Attorney General Benjamin R. Civiletti and will include a number of leading members of the bar and former senior government officials. The Committee will be represented on the Task Force by Stuart H. Deming, who was instrumental in forging this initiative.

II. 1991 Committee Activities

With the selection of William M. Hannay to the Section's Council, he is replaced as the chair of the Committee on International Criminal Law by Stuart H. Deming, the vice chair for the past year. The position of vice chair is now filled by two individuals, Charles E. Chamberlain, Jr.⁷ and Jayson L. Spiegel.⁸ As vice chairs, their leadership will be of great assistance in continuing the Committee's activities of the past year.

A. NYU CONFERENCE

In late March, the Section cosponsored a Conference of International Law Experts on the Persian Gulf War, Iraq and International Criminal Law at New York University's School of Law. In addition to the law school, the other cosponsors included the International League of Human Rights and the Jacob Blaustein Institute for the Advancement of Human Rights. Well-attended by

5. The Recommendation adopted by the House of Delegates is reprinted in full in Blue Ribbon Committee Report, *supra* note 2, at 810.

6. Blue Ribbon Committee Report, *supra* note 2, at 813.

7. A former federal prosecutor, Mr. Chamberlain is a partner with Farr & Oosterhouse in Grand Rapids, Michigan.

8. The founder of the District of Columbia Bar's Committee on Law and National Security, Mr. Spiegel is a partner with Jordan Coyne Savits & Lopata in Washington, D.C.

members of academia, there was wide-ranging analysis. In general, the participants expressed strong support for war crimes tribunals arising out of the war in the Persian Gulf.⁹

B. SPRING MEETING

With the Committees on International Institutions and International Courts, the Committee prepared a roundtable for the Spring Meeting to examine the establishment of an international criminal court from the trial bar's perspective. Experts from the Departments of Justice and State, Neil Sher and Bruce C. Rashkow, respectively, were joined by Donald B. Ayer, the former Deputy Attorney General, and Gary P. Naftalis, a leading criminal defense attorney, in serving as panelists.

C. ANNUAL MEETING

In light of continuing developments, the Committee took the lead in organizing a major program on war crimes and international criminal tribunals at the Annual Meeting in Atlanta. Keynoted by Congressman Jim Leach (R-Iowa), the program included a number of distinguished panelists who commented on the various factors to be considered in contemplating the prospect of war crimes trials.

D. FALL MEETING

At the Section's Fall Meeting in Seattle William M. Hannay led a program focusing on criminal law issues in doing business overseas. The program took the form of a roundtable to encourage interchange between the attendees and the speakers.

III. General Information

For further information on the Committee on International Criminal Law, including activities and membership, please contact: Stuart H. Deming, at 1115 Westmoreland Road, Alexandria, Virginia 22308—(703) 765-8112; Charles E. Chamberlain, Jr., at Farr & Oosterhouse, Suite 400, Ledyard Building, Grand Rapids, Michigan 49503-2918—(616) 459-3355; or Jayson L. Spiegel at Jordan Coyne Savits & Lopata, 1030 Fifteenth Street, N.W., Washington, D.C. 20005—(202) 371-1800.

9. While the Section took no position, it was represented at the conference by the Committee on International Criminal Law.