

ACCOUNTABILITY FOR
WAR CRIMES:
PROGRESS AND PROSPECTS

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**ACCOUNTABILITY FOR WAR CRIMES:
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TUESDAY, MAY 11, 1999

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ACCOUNTABILITY FOR WAR CRIMES:
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TUESDAY, MAY 11, 1999

COMMISSION ON SECURITY AND COOPERATION IN EUROPE
WASHINGTON, DC

The Commission met at 2:00 p.m. in room 2255, Rayburn House Office Building, the Honorable James C. Greenwood, Commissioner, presiding.

Commission Members present: Hon. Christopher H. Smith, Chairman; Sen. Frank R. Lautenberg, Ranking Member; Hon. James C. Greenwood; and Hon. Benjamin L. Cardin.

Witnesses: Nina Bang-Jensen, Coalition for International Justice; Jennifer Green, Staff Attorney, Center for Constitutional Law; and Dr. Paul R. Williams, American University.

OPENING STATEMENT OF
HON. JAMES C. GREENWOOD, COMMISSIONER

Mr. GREENWOOD. Good afternoon. I'm Congressman Greenwood from Pennsylvania, and our Chairman will probably walk in as soon as I start speaking so I thought that might be the best way to get him here. He is a little bit late. He was on the Senate side, and was detained, so I think out of respect and courtesy for our witnesses and others we'll at least introduce our witnesses.

I'd also like to note, some of the other members of the Commission that we had anticipated being here are conferees on the emergency Kosovo supplemental which is incorporating some language with regard to the tribunal, so they are excused, at least temporarily, for their absence.

Our hearing today will examine the principal forum where war criminals are being called to a camp of the International Criminal Tribunal for the former Yugoslavia. I regret that Judge McDonald, President of the Tribunal, had a last minute change in her schedule requiring her to be in New York today.

We are pleased to have with us today Nina Bang-Jensen, Special Counsel for the Coalition for International Justice, who is an authority on the work of the Yugoslav and Rwandan Tribunals. Ms. Bang-Jensen will share with us her insights on the achievements of that tribunal, as well as the challenges it still faces. We also look forward to her views on current international efforts to gather evidence on atrocities in Kosovo.

We will also examine two other fora, where efforts are underway to achieve some accountability for war crimes. Jennifer Green, a Staff Attorney with the Center for Constitutional Law, will discuss efforts to hold suspected Yugoslav war criminals to account in U.S. courts. Ms. Green has extensive experience in human rights advocacy and litigation in this country.

We'll also hear from Dr. Paul Williams, Professor of Law and International Relations at American University. He was formerly with the State Department's Legal Advisor's Office, and is co-author of *War Crimes and Individual Responsibility: A Prima Facie Case Against Slobodan Milosevic*. Dr. Williams is co-counsel for Bosnia-Herzegovina, in its suit against Serbia and Montenegro before the International Court of Justice, and will discuss the ICG's role in adjudicating responsibility for war crimes.

And, we welcome Senator Lautenberg and Representative Cardin. Do you have an opening comment?

Mr. CARDIN. Thank you very much, Mr. Chairman.

As the Senator is arriving, let me first say how important we think this hearing is. Holding those who are responsible for war crimes is one of our major objectives to make sure that we successfully complete our mission in Kosovo. If there is any potential settlement of the Kosovar situation that does not include holding those accountable for their war criminal activities it is not a satisfactory solution.

This Commission has been very vigil in that request. And, therefore, I think this hearing is particularly important for those of us who serve on this Commission.

Let me just stress that I think our nation has had a very proud record in regards to the War Crimes Tribunal. We have offered strong political and financial support to the workings of the Commission—to the Tribunal, and we have been very active, particularly in the Bosnian Peace Accords, to make sure that those that are responsible, that the governments cooperate with the Hague in making sure they are held accountable.

So, I think we have a proud record in this nation, we want to make sure that record continues.

Mr. Chairman, I might say that I am concerned about some recent reports from the people at the War Crimes Tribunal that the information being made available by our country may not be adequate as far as evidence is concerned, and I'm going to be very interested as to the observations of our witnesses today as to whether our nation is cooperating as fully as they should in making sure that the tribunal has the information necessary, not only to indict, but to carry on the trial and get convictions of those who are responsible for those activities.

And then lastly, let me say I was very concerned that when the group of Foreign Ministers met, when they issued their general principles on the political solutions to the Kosovo crisis, they did not mention holding those accountable for their criminal activities as part of the principles for a political solution. That has me deeply troubled.

So, I'm very interested in the observations of our witnesses today, and I can assure everyone here that there are many members of Congress who will be looking very closely at how we proceed on helping the War Crimes Tribunal and to hold everyone who is responsible accountable for their criminal activities.

Mr. GREENWOOD. I thank the gentleman.

Senator Lautenberg?

**STATEMENT OF HON. FRANK R. LAUTENBERG,
RANKING MEMBER**

Senator LAUTENBERG. Thanks very much, Mr. Chairman, and let me first apologize for not being able to stay, but I did want to be here to hear the witnesses and to say a few words and participate fully, because I think this issue is a critical issue.

I have been an author of war crimes legislation to block any support for countries that give any assistance to war crimes, by either not actively pursuing them, or deliberately turning them over, and I've been fully supportive of the war effort because I think this is a kind of a benchmark about what the next century and life hereafter is going to look like if we permit these kinds of atrocities to take place and do nothing about it. It is tantamount to an endorsement of the kind of behavior that says, if you can't win it through political or negotiated means, then take whatever means you can, terror and violence among them.

So, I'm very encouraged by the fact that we are hearing from these witnesses, and to be able to put some force behind the capacity of the War Crimes Tribunal to get those people into custody, get them prosecuted.

Everyone knows that war crimes have been committed by all parties, and rather than condemn a whole people, an ethnic group or particular religious group, if we single out those individuals who have participated actively in either the planning or the delivery of atrocious behavior that we have to get them to trial, and it will mean something.

I was in—I've been in the area twice and am planning to go this weekend, I was in Bosnia in July last year, Albania and Bosnia, and in November in Montenegro, Kosovo and in Belgrade where I met with the Deputy Prime Minister, who dismissed any suggestions that their behavior was unacceptable. But, I saw them at the exhumation of the grave from Srebrenica, a mass grave from Srebrenica, where remains still had hands tethered behind their backs and holes in their skulls where bullets had entered from the rear. Certainly, this was not a military conflict, this was persecution, harassment of individuals, and the crimes are so atrocious as to be hard to believe.

So, I think we should make certain that we get on with what we have to do, in terms of shoring up the tribunal. I met with Judge Arbour, with Senator Specter a couple of weeks ago. We asked her to see if the pace could be accelerated. They need resources, we are discussing a supplemental today in the Senate that has an opportunity to earmark some funds specifically for the tribunal, and I would ask unanimous consent that my full statement be included in the record.

I'd like commend to you and other members of this Commission to push forward, make sure that we are unrelenting in terms of the apprehension and prosecution of these individuals who would commit these horrible, deeds, and let the world know that this is an unacceptable manner of behavior, and that the free world, the civilized world, is going to do something about it every time we see it, and this is one, I think, exceptional chance to change the tenor of things.

So, thank you very much.

Mr. GREENWOOD. Thanks, Senator Lautenberg, and without objection his statement will be entered into the record.

I thank the witnesses for your presence and your patience, and having already accomplished the introductions, I'd like to ask Ms. Bang-Jensen to begin her testimony.

**TESTIMONY OF NINA BANG-JENSEN,
COALITION FOR INTERNATIONAL JUSTICE**

Ms. BANG-JENSEN. Thank you, Congressmen, and Senator.

It's an honor to be appearing before the Commission on Security and Cooperation in Europe to discuss the International Criminal Tribunal for the former Yugoslavia, because there's simply no other Congressional institution that has done more to promote the rule of law and justice in the former Yugoslavia. This Commission knows better than others what successes can eventually come from tilting at large, solidly-built windmills. In fact, when skeptics question the sense of trying to promote peace and stability in the Balkans by holding individuals criminally accountable in an international war crimes tribunal, we all take comfort in remembering the power of Yuri Orlov's toast at the formal creation of the first Helsinki Committee in Moscow: to the success of our hopeless task.' Considering what Yuri Orlov's task' looked like in 1976, bringing some justice and accountability to the former Yugoslavia through a broadly-supported, politically popular international tribunal does not seem quite so impossible.

The six-year old International Criminal Tribunal for the Former Yugoslavia does enjoy remarkably broad support. The United Nation's Security Council created the Tribunal, as you know, on May 23, 1993 by an overwhelming vote in response to the international outcry over the shocking extent of war crimes and other violations of international humanitarian law in Bosnia, Croatia and the rest of the former Yugoslavia. In the Secretary General's report accompanying the Security Council resolution the Tribunal's purposes are identified as, and I think this is important to note when we think of Kosovo, contributing to the restoration and maintenance of peace' and facilitating the cessation of violations of international humanitarian law.

The Tribunal has the authority and responsibility for prosecuting and trying any persons who may be responsible for serious violations of international humanitarian law during the armed conflicts in the former Yugoslavia since 1991. Indisputably then, it has jurisdiction over Kosovo. International humanitarian law is the body of law that governs the manner in which wars and other armed conflicts are conducted and, specifically, attempts to prescribe how combatants must conduct themselves and how unarmed civilians must be treated in such conflicts. The basic purpose of these laws is to protect civilians from inhumane acts such as murder, torture, rape, enslavement, deportation and starvation during armed conflicts. The law, as some of you know, comes from several sources, the Geneva Conventions, the Genocide Convention and what are known as principles of customary international law that are, in part, incorporated in the Tribunal's authorizing statute.

The Tribunal has a mixed, but still promising record.

Six years ago the Hague-based Tribunal had no courtrooms, no judges, no prosecutor, no defense counsel and no defendants. The Tribunal is now an operating judicial institution housed in a former

insurance-company building, where 14 judges from 14 different countries hear cases brought by a multinational prosecutorial staff. The procedures, practices and regrettably slow pace that characterize the Tribunal's operations reflect the mixed legal traditions among the judges, a bureaucracy unfortunately characteristic of all too many international organizations that must operate by consensus and the fact that this is the first truly international criminal tribunal without institutional precedent.

The Tribunal has publicly indicted 84 individuals in 25 indictments, including ten people who have been indicted for genocide. (Indictments against approximately 16 defendants have been dropped because of lack of evidence or death.) Trials against 8 people have been completed and four trials against nine defendants are ongoing. There have been five convictions, two documented confessions, and one acquittal. A total of 26 people are in custody. Since the Tribunal's current Prosecutor adopted a strategy, however, of not publicly announcing indictments in order to better facilitate arrests, we don't really know the total number of persons who have been indicted, nor do we know all their identities.

There's no doubt that the Tribunal has in its short life contributed enormously to the advancement of international law. Theodor Meron, whom some of you know from NYU's Law School, one of the leading scholars in international humanitarian law, has credited the Tribunal with establishing more legal precedents in the past five years than arose in the half century since Nuremberg. These precedents can and will be borrowed productively in other judicial settings to reign in and hold accountable violators of international humanitarian law. But the question really remains whether the Tribunal has lived up to the high hopes many had for it in the former Yugoslavia.

One of the Tribunal's principal failings to date is not its own. It simply does not have in custody the major perpetrators of the worst atrocities in the former Yugoslavia, in contrast to the Tribunal for Rwanda which has in custody most of the major perpetrators, and they actually have convictions for genocide already. Many of the most notorious actors in Bosnia, including Bosnian Serb leader Radovan Karadzic and Bosnian Serb General Ratko Mladic who have both been indicted for genocide, are still at large, even though each has been within regular sight of heavily-armed and well-trained NATO soldiers. Mladic, as you probably also know, is now thought to be in Serbia. Since the Tribunal does not have its own police force, it must rely on the political will of nations to execute Tribunal orders to arrest the indicted. Until political leaders are willing to conclude that the benefit of making those arrests outweighs the risk of sustaining casualties, the Tribunal will be a paper tiger, regardless of how much financial support, intelligence assistance and rhetoric are sent its way.

The Tribunal's public record with regard to Kosovo to date has been a disappointment. The Tribunal has been slow to react visibly to the crisis in Kosovo. While Belgrade has blocked Chief Prosecutor Louise Arbour and her investigators from entering Kosovo and has refused to cooperate with the Tribunal in any fashion, the Tribunal was slow to redirect necessary resources to interview the thousands of deportees who have been escaping from Kosovo with accounts of horrific atrocities during the past 15 months. Recently, the Tribunal has diverted substantial investigative resources to try to address the immediate

crisis of gathering evidence from those deported violently from Kosovo, many of whom are potential witnesses whose stories risk becoming tainted by collective memories or retelling and many of whom may be virtually impossible to find in several months as they move among the camps and around the world.

Our organization, the Coalition for International Justice, is one of the many groups that is attempting to help the Tribunal with the daunting, highly labor-intensive task of interviewing deportees in the refugee camps and private homes in Macedonia and Albania. We have worked with the Tribunal through our representative in The Hague and with Assistant Secretary Harold Koh's office and others within the U.S. Government and with the OSCE to prepare a form for interviewing deportees that is intended to elicit the kind of information that will be helpful in selecting witnesses and building cases for the Tribunal. The American Bar Association's Central and East European Law Initiative is lending us its volunteer attorneys who have substantial experience in the region to coordinate with indigenous non-governmental organizations in Albania and international non-governmental organizations in Macedonia, who are all conducting interviews and processing the information.

This Commission has done much already to bolster and publicize the work of the Tribunal. Individual members can be additional helpful in the following ways:

1. You can make a request or urge your colleagues on the Intelligence Committees, I know Senator Lautenberg sits on one of the committees, to request a classified briefing concerning the status of the U.S. Government's case against Slobodan Milosevic. It's simply not clear how the Administration is generating information that supports U.S. Government allegations that Milosevic's forces are massively violating international humanitarian law, and that Milosevic is aware of and responsible for the actions of those forces. Such an inquiry should include an assessment of whether the U.S. Government's current strategy for collecting and organizing intelligence information is sufficient to build an effective case against Milosevic. Clearly the decision to prosecute at the Tribunal is the Prosecutor's decision, and her's alone, but we ought to know whether the U.S. Government is providing information sufficient in its view to support an indictment and subsequent prosecution. This is particularly important and well within Congress' oversight responsibility, since the Chief Prosecutor has complained publicly that she's not receiving intelligence information she needs while U.S. Government officials insist they are cooperating completely. Nothing will concentrate the minds of policy makers and intelligence analysts, all of whom have many competing and legitimate responsibilities and limited resources, than an inquiry such as this one through the Intelligence Committees or through GAO.

2. You can communicate to the White House that you believe that risks inherent in arresting major indicted war crimes suspects in Bosnia are outweighed by the risk of inaction. The architects of the Bosnian genocide, Ratko Mladic and Radovan Karadzic, need to be arrested. Slobodan Milosevic obviously took heart in the failure of Western powers to arrest high-level indicted persons and that clearly played a part in his calculus to so violently call the West's bluff in Kosovo.
3. You can support efforts, as I know Senator Lautenberg and Congressman Smith have already, and Congressman Cardin as well, and I hope Congressman Greenwood will also, to provide additional funds to support Tribunal investigations in Kosovo, and additional resources to the Human Rights and Democracy Fund, because we really don't have any way of documenting in a methodical way human rights abuses in Kosovo. We have lots of different groups doing it, but the U.S. Government should serve as a repository too, with the help of NGOs and international organizations, to collect the information and help provide identity documents to these refugees, whose passports, property titles, identity papers, were stripped from them when they were deported. Obviously, it is particularly important for the OSCE with regard to any future elections, since these people cannot prove who they are or where they live.
4. As many of you have done before, you can support reauthorization of the Lautenberg Amendment in the Foreign Operations Appropriations bill, which directs that U.S. bilateral and multilateral economic reconstruction assistance not go to indicted war criminals or to projects in municipalities that are failing to cooperate with the Tribunal in the arrest of indicted persons.
5. Perhaps most importantly, and some of you have addressed this already, I'm happy to hear, in your opening remarks, you can publicly oppose any shortsighted 'peace plan' that might undermine the Tribunal's authority by offering Slobodan Milosevic de facto immunity from prosecution by, for example, allowing him to be transported to a friendly third country that will not honor any future arrest warrant the Tribunal may issue. After all the promises we and the international community have made to the people of the former Yugoslavia about bringing those responsible for their misery to justice at the Tribunal, a 'peace' that would allow the architect of four wars and a serial ethnic cleanser to slip away as if there were no tribunal at all will not be a lasting peace.

Thank you.

Mr. SMITH. Thank you very much, Ms. Bang-Jensen, for that testimony, and I'd like to ask Ms. Green if she would proceed.

I would ask unanimous consent that my opening statement be made a part of the record. I regret that I wasn't here to open the hearing as I was at Human Rights Day proceedings regarding Vietnam that was being held on the Senate side. I was in a long line to speak. I should have simply left, but I didn't. I do apologize.

Senator LAUTENBERG. I am going to move just that, and I'm going to have to leave. Thanks, Mr. Chairman, good luck to you.

Mr. SMITH. Thank you, Mr. Lautenberg.

Ms. Green?

**JENNIFER GREEN, STAFF ATTORNEY,
CENTER FOR CONSTITUTIONAL LAW**

Ms. GREEN. In 1976, 17-year-old Joel Filártiga was tortured to death in Paraguay by a police officer, Americo Noberto Peña-Irala. Peña-Irala subsequently fled Paraguay and was found living in Brooklyn, New York.

In 1992 and 1993, thousands of women and men in Bosnia-Herzegovina were subjected to murder and torture, including brutal sexual assault, by Bosnian Serb forces. The head of the Bosnian Serb forces, Radovan Karadzic, came to New York in early 1993, supposedly to negotiate at the United Nations. Many believed he was there many believed to buy time for his troops while he was at the United Nations. Many believed he was there to buy time for his troops while conducting a propaganda tour and raising funds for his forces.

In 1995, Keal Mehinovic, a man who was tortured in Bosnia as part of the genocide, was admitted to the United States as a refugee. In January, 1998, he learned that his torturer had also been admitted to the United States.

Joel Filártiga's family traced his murderers to New York, where the Center for Constitutional Rights searched for a legal strategy to bring Peña-Irala to justice. CCR's efforts led to a landmark decision, *Filártiga v. Peña-Irala*, the first successful use of a 200-year-old law of the Alien Tort Claims Act, to enable victims of international human rights violations to sue in U.S. courts. This is based on a provision of the First Judiciary Act of 1789, which allowed an alien to bring a tort, which was a violation of the law of nations. The 2nd Circuit Court of Appeals established the precedent that torture was a violation of the law of nations, and that an alien had a right to bring a case in a U.S. federal court for such an international human rights violation.

Since the Filártiga case was decided, a series of lawsuits have led to multimillion dollar judgments against human rights violators. The principle that the Inspector General of Police, who personally tortured a 17-year-old son of an opposition leader to death, was expanded to include liability for command responsibility by an Argentinian General, Suarez Mason, a former dictator of Haiti, General Prosper Avril, and in 1995 was expanded to include a legal ruling on the command responsibility of Radovan Karadzic for genocide, war crimes and crimes against humanity.

Jane Doe v. Karadzic was filed in February, 1993, as I mentioned, when Karadzic was in New York. The case was brought as a class action on behalf of the victims of genocide, war crimes, crimes against humanity, and other human rights atrocities committed by the forces of Radovan Karadzic

Karadzic's attorney filed a motion asking the trial court to dismiss the case, and a similar case brought in March 1993, when Karadzic returned, by Professor Catherine MacKinnon and the National Organization of Women Legal Defense Fund on behalf of a group of women survivors and organizations.

In September, 1994, a year after both sides had finished submitting required legal papers to the court, the trial judge ruled against us and dismissed both cases. The judge claimed the law on which we based our lawsuits did not apply to Karadzic because he was not a representative of a legitimate, internationally-recognized government.

We appealed the decision. In October, 1995, the federal appellate court reversed the lower court decision, ruling that certain abuses, such as genocide and war crimes, violate international law, no matter who commits them, indulging Radovan Karadzic who was not a member of any recognized government.

In addition, the Court ruled that since Karadzic was describing himself as a head of state and committing atrocities in the name of the so-called "Republika Srpska," he was violating international law. Since he was holding himself out to be the head of the de facto state, he could also be liable under that principle.

In addition, and very significant to what's going on in Kosovo, the ruling allows us to put on evidence that Karadzic acted with the assistance of Serbia, and thus Karadzic under color of law of Yugoslavia, or in connection with Milosevic's forces.

And finally, the case broke new ground in establishing the principle that genocide can include sexual violence, such as rape.

Karadzic's attorney appealed to the U.S. Supreme Court, trying to reverse the appellate court's decision, but on June 17, 1996 the Supreme Court rejected this petition.

The cases then went into the phase of discovery, the information-gathering stage before trial. On February 3, 1997, the court ordered Karadzic to apply for a visa to come to the United States for a face-to-face deposition, and to answer the plaintiffs' request for documents and written questions.

On February 28, 1997, Karadzic and his lawyer wrote letters to the court, informing the court that they would no longer respond to the demands of the court.

As mentioned above, the case was filed as a class action, potentially representing all victims of Bosnian Serb forces. The class action proceeds through class representatives who work with the attorneys on behalf of the class. The class in this case was defined as all women and men who suffered rape, summary execution, or other torture or cruel, inhuman and degrading treatment inflicted by the Bosnian Serb forces under the command and control of the defendant between April, 1992 and the present.

On December 2, 1997, the court ruled that the lawsuit should proceed as a class action, stating that this procedure would allow the fairest distribution of any of Karadzic's assets that might ultimately be recovered.

The case is now in notice phase of a class action, whereby we are providing notice to the members of the class so that they can participate in the case.

After this phase is completed, we'll ask the judge for a hearing on liability. Because of Karadzic's failure to respond, the judge could hold Karadzic in default. A default judgment would mean that the court would be able to make a judgment based on the facts that we submit to it.

Whether a proceeding is a default or not, whether Karadzic or Karadzic's attorney continues to attempt to try to get them to participate in the proceeding, such a hearing will allow us to prove the case through the submission of both oral testimony and written affidavits. Our goal is to make a formal record of the atrocities, with as much attention in this country and elsewhere.

We also believe that because Karadzic has thus far been able to avoid detention by the International Criminal Tribunal for the Former Yugoslavia, that the case represents an important opportunity to hold him accountable in a judicial forum.

Furthermore, we hope that a positive ruling on evidence presented in this case will provide further pressure on the international community to follow up on the Tribunal's indictment and actually arrest, try and punish him for his crimes.

In addition, as I mentioned, and this is to echo Nina's point, some of the evidence which we initially presented to the Court of Appeals to allow us to proceed on the question that Karadzic was acting in connection with the Government of Yugoslavia, included information in the hands of the U.S. Government. In 1994 President Clinton provided notice to Congress that the Government of the Federal Republic of Yugoslavia continued its actions and policies in support of groups seizing and attempting to seize territory in Croatia and Bosnia-Herzegovina by force and violence. The 1993 human rights report submitted by the State Department commented, "The Belgrade regime sustained military, economic and political support for ethnic Serbs responsible for massive human rights abuses and acts of genocide in Bosnia-Herzegovina," thus the U.S. Government had information about Milosevic's role in the commission of human rights violations. Again, to echo Nina's point, ignoring those violations and allowing them to go unpunished and unchecked has led us to similar atrocities in Kosovo.

Besides the need to prosecute Milosevic, there is the need for prosecution of those on the level below Karadzic. The third case that I mentioned is against a man named Nikola Vukovic, who was a guard in a prison camp in the town of Bosanski-Samac. He was charged with genocide, war crimes, crimes against humanity and torture when someone called up a refugee living in the United States and said, "Remember that guy who was beating you, well, he's in the United States."

This is a serious problem which we know contributes to the insecurity of the refugee community here. Last week, there was a series of articles which ran in the Boston Globe which indicated that this is not a unique set of circumstances. Our organization has represented three women from Ethiopia. One went to work one day and saw the man who had tortured her working in the same hotel

The Boston Globe reported that a lot of Bosnians were admitted really quickly and almost no background checks were made. Preliminary investigations by the Boston Globe found three cases where perpetrators of atrocities in Bosnia had been admitted into the United States. So, whereas it is important to process refugees quickly, their safety is at stake if we do not exclude the aggressors. There has to be strong examination of what the immigration processes are, and also what action will be taken in cases in which alleged war criminals have been allowed into the United States.

There are several provisions in U.S. law which allow criminal prosecution. For example, 18 U.S.C. 2340 allows for prosecution for the crime of torture. This allows prosecution of acts of torture committed after November 20, 1994. This, obviously, applies to a lot of what we

are discussing today. Further, 18 USC 1091 allows for prosecution of the crime of genocide, while 18 USC 2441 allows for the prosecution of war crimes.

It is incumbent on the U.S. Government to do more than look on as individuals bring civil actions, and then move to enforce the judgments, but also to take affirmative steps to move forward with a system of accountability with criminal actions and assist with the enforcement of judgement.

I would now like to turn for a moment to the enforcement of judgments. The series of cases which we brought under the Alien Tort Claims Act, and then ultimately the Torture Victim Protection Act, has resulted in billions of dollars in judgments: for example, \$10.4 million in the and \$10.4 million for the Filártiga case, \$47 million in a case against Hector Gramajo, a former Minister of Defense in Guatamala. The assistance of concerned members of governments is critical for the enforcement of these judgements because a lot of the assets are not in the United States, but they are abroad.

We have information about Karadzic's assets, but it will ultimately take political pressure to try and shake loose those assets, and to make sure that Karadzic is not allowed to profit from his atrocities. This is particularly significant since the ICTY does not have authority to provide compensatory damages.

Finally, on the principle that no one is above the law, I think we also have to look to the current situation in Kosovo and the current issue of war crimes by the United States/NATO forces. The High Commissioner on Human Rights recently stated that, "that in the NATO bombing of the Federal Republic of Yugoslavia large numbers of civilians have incontestably been killed, civilian installations targeted on the grounds that they are or could "be of military application, and NATO remains the sole judge of what is or is not acceptable to bomb.

I think we are now in the unfortunate circumstance of a mission that has ostensibly humanitarian objectives has had consequences which now appear as if they could be in violation of international humanitarian law, specifically, Protocol 1 of the Geneva Convention, which protects the civilian population in times of war, Article 57 talks about affirmative steps that the military must identify and distinguish civilian targets. It's not a defense to state, "We didn't know," when information readily available to the offending party would have disclosed the civilian nature of the target. Article 51 of Protocol 1 prohibits indiscriminate attacks, described as those which are of the nature to strike military objectives and civilians or civilian objects without distinction. And, Article 51.5.B prohibits an attack which may be expected to cause incidental loss of civilian life.

I think I will close my remarks there. Thank you.

Mr. SMITH. Ms. Green, thank you very much for your testimony.
Dr. Williams?

**DR. PAUL R. WILLIAMS, PROFESSOR OF LAW
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Dr. WILLIAMS. Thank you, Mr. Chairman.

I would like to thank the members of the committee for the invitation to participate in this very important hearing concerning the need to hold individuals responsible for war crimes. My brief presentation will focus on the efforts of the Government of Bosnia and Herzegovina

to use the International Court of Justice to hold the Government of Yugoslavia responsible for the war crimes and crimes of genocide which it has committed against the people of Bosnia and Herzegovina.

Let me first begin with a little background. In 1993, during the height of the Yugoslav conflict, the Government of Bosnia filed suit against the Government of the Federal Republic of Yugoslavia in the International Court of Justice. In its pleadings submitted over the last 6 years, the Bosnian Government has asked the court to find and declare that between April, 1992, the beginning of the conflict, and December, 1995, the signature of the Dayton Accords, that Serbian forces, under the command and control of the Yugoslav Government, engaged in a campaign of genocide against the non-Serb population of Bosnia and Herzegovina.

Now, there are a number of rationales which support the filing of this case before the International Court of Justice. First, Bosnia has filed this case primarily to create an accurate historical record of the responsibility of Yugoslavia for the genocide in Bosnia. Such a record is indispensable in the process of reconciliation, which until the Kosovo conflict was slowly developing in the region.

By clearly establishing the responsibility of the Yugoslav state institutions, as opposed to the collective responsibility of the Serbian people for the genocide in Bosnia, the court can enable the process of reconciliation to move beyond broad recriminations and it can lay the foundation for rebuilding the mutual relations among the people of Bosnia.

Second, the adjudication also serves the very necessary purpose of operating as a cathartic process for the victims of genocide and providing them with an opportunity to publicly recount the atrocities committed against them and their families and to have this evidence assessed by an independent judicial organ.

Finally, the case was initially designed to defer future acts of genocide by the Yugoslav state institutions in areas such as Kosova and Vojvodina by publicly detailing the Serbian plans for an ethnically pure greater Serbia, and by identifying and aiding in the delegitimization of those institutions primarily responsible for the crimes of genocide.

It should be noted that although the International Criminal Tribunal for the Former Yugoslavia plays a role in creating an accurate historical record, it does so only for those cases in which it exercises custody over the defendants. The ability of the Tribunal to serve the other purposes of justice I have just outlined has been inhibited by the surprisingly limited number of indictments issued by the Tribunal, the even fewer number of indictees in custody and the apparent unwillingness of the prosecutor to aggressively pursue investigations of the prominent role of Yugoslav institutions in genocide, and finally the political unwillingness of the prosecutor to consider indicting the Yugoslav political leadership, in particular, President Slobodan Milosevic for crimes committed by his forces in Bosnia.

Let me now provide give you with a brief overview of the substance of the case, which has been presented in over 1,200 pages before the International Court. There are three parts. In the first part, Bosnia and Herzegovina details the Serbian plans for ethnically pure greater Serbia, and outlines Serbian preparations for the genocidal offensive. These preparations included the early drafting of the so-called

FRAME, F- R-A-M-E, memorandum, which envisioned the arming of paramilitary, the incitement to genocide, the actual distribution of weapons to paramilitary operations such as Arkan's Tigers, and the restructuring of the chain of command of the Bosnian-Serb Territorial Defense forces to report directly to the General Staff of the JNA, and finally the direct involvement of the JNA in early acts of genocide against the people of Bosnia.

The second part of the case presents a detailed cataloguing of the crimes of genocide, which include the widespread and systematic killing of civilians, the specific targeting of political, commercial and medical elites, widespread and systematic torture and infliction of mental anguish, the organization of an intricate network of concentration camps, the systematic destruction of cultural property, the utilization of mass rape as a tool of terror, and the forced expulsion of entire communities.

The third part of the case sets forth a meticulous detailing of the role of the Yugoslav Government in carrying out its plan of genocide to create an ethnically pure greater Serbia. Specifically, these acts include the active and direct JNA military involvement in the crimes of genocide before May of '92, the wholesale transformation of the JNA into the Bosnian-Serb Army, the re-introduction of regular JNA army units and special forces into Bosnia to aid specifically in the commission of acts of genocide, in particular the Srebrenica massacre, and in the financial and logistical support of the paramilitary units operating out of Serbia.

Let me turn now to the activities of the United States Government related to this case. Despite the very strong and very public support of the United States for the work of the Yugoslav Tribunal, both in terms of political and financial support, the United States and other allied countries have exhibited a strange lack of enthusiasm for the case, with the United States notably failing to publicly declare its support for the case and failing on a number of occasions to comply with Freedom of Information Act requests seeking unclassified and declassified information.

Even more surprising, on a couple of occasions a high ranking U.S. diplomat has, at the behest of Slobodan Milosevic, encouraged the agent for the Government of Bosnia to drop the case. This lack of public support for the case by the U.S. Government is even more surprising, given that at a time when Yugoslavia is suing NATO in the International Court of Justice, the most pointed counter suit would rest with the fact that Yugoslavia is committing genocide in Kosova just as it did in Bosnia and Herzegovina. Moreover, the United States can readily argue that the compelling justification for NATO action rests with the fact that given the genocide committed against the people of Bosnia, the International Community has every reason to conclude that Yugoslavia is now committing genocide against the people of Kosova.

The rationale for the lack of public support for the case and the pressure to drop the case are related to the United State's Government's ongoing attempts to accommodate or to 'appease' the Serbian Nationalist regime and the regime of the Republika Srpska. Rather than to confront those regimes in a manner necessary to ensure the implementation of the Dayton Peace Accords and the cessation of the ongoing process of Balkan destabilization sponsored by

Milosevic and his regime, this reluctance to support the case can be perceived as part of a larger U.S. policy, not to publicly identify the atrocities of Kosova as amounting to genocide, and not to publicly identify Slobodan Milosevic as legally responsible for those crimes.

There's also the concern or the observation that some U.S. Government officials are likely sensitive to the fact that if the International Court of Justice finds that genocide was, in fact, committed against the people of Bosnia from early 1992, this will politically incriminate those individuals who assiduously denied the occurrence of genocide and argued against the necessity of military intervention.

Let me conclude with some implications for the crisis in Kosova. The Bosnian case against Yugoslavia should serve to remind the U.S. Government that the ethnic cleansing and the genocide now occurring in Kosova is a mere repeat of the genocidal acts carried out against the people of Bosnia and is part of a larger plan for an ethnically pure Serbia which involves future acts of ethnic cleansing and genocide against the non-Serb populations of Vojvodina, Sandzak, and possibly Montenegro and Macedonia.

The Bosnian case against Yugoslavia should also serve to blunt recent suggestions that Kosova be de facto, partitioned as part of a Dayton-like peace settlement, as this would further perpetuate the interest of the Serbian Nationalist regime, and not only build upon, but actually ratify the use of genocide as a means of creating an ethnically pure greater Serbia.

To bring an end to the current crisis in the Former Yugoslavia, the United States must do many things. A first, and long overdue, step would be for the U.S. Government to publicly announce its support of the Bosnian case and to actively provide the Bosnian Government with all unclassified or declassified information necessary to begin the de-legitimization of the Serbian Nationalist regime responsible for crimes of genocide.

Thank you.

Mr. SMITH. Dr. Williams, thank you very much for your testimony. Let me begin the questioning.

Ms. Bang-Jensen, in your testimony you pointed out that the Chief Prosecutor had complained publicly she is not receiving the intelligence information she needs, while U.S. Government officials insist they are cooperating completely.

I know that in closed hearings and open hearings for the last several years I have raised that question as to why we have not gathered a dossier, a fact file filled with intelligence information to give to the prosecutor and the Tribunal. I have been told bluntly, and matter of factly, they have no such file. Now, that may have changed as of last week, last month. When I've asked in numerous hearings I was told that no such thing existed, so much so that last year Senator D'Amato and I offered a resolution to each House, admonishing the Administration to collect such a file as these terrible crimes proliferated. To the best of our knowledge, we know of nothing yet. I would love to be informed that they have a file filled, and that they are aggressively collecting the documentation. I would appreciate your elaboration on that contradiction.

Let me provide a little more context. When I tried to enhance the amount of money that the United States would provide the Tribunal for both the Rwandan atrocities and the Bosnian and Croatian war

crimes, I was opposed by the Administration. As a matter of fact, the talking points (which were being read verbatim by some of my Republican colleagues) from Legislative Affairs were focused on why we needed more burden sharing. While I would agree in theory that we need better cooperation, we were losing evidence. We were losing the ability to really get the war criminal investigations jump started. I suggested that we call the funding a bridge loan. The administration still opposed it, which I found incredible.

This Commission, in previous years, heard from the precursor of the War Crimes Tribunal, from the man that actually headed up the U.N. effort, who said the Tribunal was designed to fail. They would do a certain amount, pay lip service to the Tribunal, and then underfund the organization, adding to the concerns that for the biggest fish, in this case Slobodan Milosevic, little has been done.

Could you elaborate on some of the things the Chief Prosecutor has said, because we can't have this contradiction.

We had an opportunity after Bosnia to really go after Slobodan Milosevic, the evidence was staring us in the face, at least I believe it was, and yet we seem to have punted.

Ms. BANG—JENSEN. Well, what she said most recently, and I share your frustration, I can assure you, but what the Prosecutor has said most recently is that the intelligence information she's getting is aggregate information; it's information that's already been analyzed and doesn't include the kind of raw data that she needs.

She's also said that a lot of the information, I'm actually not clear whether she has said this or we have learned it from other sources, that much of the information, if not all the information, going from the U.S. Government, is going pursuant to what's called Rule 70 of the Tribunal's procedures, which says that information that's provided by a government in a secret form can only be used as a lead to find additional evidence that then can be presented in court.

Obviously, if we have a decision at the top of the U.S. Government to declassify information that could be used, not only to produce leads, but that could be used in the courtroom as evidence, but that would move the ball forward dramatically.

Mr. SMITH. Doctor Williams?

Dr. WILLIAMS. Mr. Chairman, if I could briefly address that.

In 1992, then Secretary of State Lawrence Eagleburger, publicly identified Slobodan Milosevic as an individual responsible for war crimes in the territory of the Former Yugoslavia. Presumably, he would not have done that unless there was sufficient evidence to make such a public declaration with respect to a head of state.

I think the primary reason why the U.S. Government has been reluctant to provide such information to the Tribunal is that it would undermine their perceived efforts to implement the Dayton Accords, which is in a sense a process of accommodation or appeasement to the Milosevic regime, and it would inhibit their efforts now which they are undertaking to again accommodate or appease Milosevic in the Kosova crisis.

The difficulty with this approach is that we had a crisis in Slovenia, we had a war in Croatia, we had a war in Bosnia, we now have a war in Kosova, the cost to stop this genocide gets higher and higher every time. The cost of stopping a war in Vojvodina, Montenegro and Macedonia will be even higher.

Mr. SMITH. I think it's worth noting for the record that on April 5th, Secretary of State Madeleine Albright said, when asked if Milosevic were a war criminal, they said, "Technically he is not a war criminal because the War Crimes Tribunal that has a legal process has not indicted him." You can't have it both ways, and, frankly, I get very angered. I do think it's a bipartisan reaction, at least I hope it is. We had an opportunity, a window, before the Kosovo crisis spilled into the debacle that it has turned out to be, to really take effective action, and that's why we were doing what we did last year. We said here's a window, we don't know what's going to happen next. Look what has happened which, perhaps, nobody could have predicted in the extremities that it has taken.

Let me just ask you about the IDPs. Right now there's anywhere from 820 to 850,000 internally displaced persons. If anyone has any indication as to whether those people are dead, dying, suffering, we know they are suffering, so that's a given, they've been uprooted, and another 600,000 to 700,000 who are outside the country.

Now, the standard response is that this would have happened anyway, which is a stretch and certainly I'm not sure it's supported by the facts. Maybe it would have, but what I find so disconcerting about this is that there was no plan for what to do once the bombing began. There was no fire wall to protect the Kosovar Albanians, and I got that from the very top. We were in Brussels with Majority Leader Dick Armey, and I asked that very question. Where was the plan? If you attack over here and the bully wants to vent his anger on the people that we claim to support and I do believe it's sincere that we care about them. Where was the protection for them in the first place, if you are going to attack?

Secondly, then I'll yield to my distinguished colleague, Mr. Cardin, I was in Stenkovec, along with 18 of my other colleagues, and we fanned out and we talked to people. I went to the medical tents, talked to individuals, and I found that in trying to find out whether or not we were really gathering information for war crimes, it didn't seem (A) organized—it didn't seem at all like they had it together, and (B) there are too few people, obviously, that are deployed doing this.

I even found some hostility among some of the very good and committed humanitarian people, like Doctors Without Borders. I talked to one of their doctors who said, "They've been through enough, they don't need to relive the experience." I said, "Just detailing what has happened might help begin the healing process." Justice might become part of the healing process, but there was a little bit of animosity and some felt that we should bygones be bygones, let's just deal with the issues of healing, rather than getting justice.

So, could you talk about how well or poorly that's being done in Macedonia?

Ms. BANG—JENSEN. Yes, I can speak to the second question, because we have people on the ground interviewing people, or rather, screening people for eventual in-depth interviews by Tribunal staff.

There is always a dichotomy between the humanitarian groups and human rights groups. The humanitarian groups feel a very strong need to protect their neutrality, and to protect the people they are serving. Those of us in the human rights field get frustrated with that, get frustrated with their unwillingness to take hard stands with regard to force and that sort of thing. But on the other hand, speak-

ing as a new entrant into the human rights community, the human rights community's unwillingness to step up to the plate and recognize and say forthrightly that sometimes force is necessary, is frustrating as well.

Most of the groups, though, on the ground, the international human rights groups, are more than happy to cooperate. They don't necessarily want to share their information with governmental entities, but they seem willing to share it either with us or with the Tribunal.

Dr. WILLIAMS. If I could briefly touch on the lack of a plan for the results of the NATO bombing. The essential reason is that post 1992, in order to rehabilitate Milosevic so that he could sign the Dayton Accords, the Department of State came up with a list of talking points, and these talking points referred to him as a partner in peace, an individual who we could deal with, a necessary individual, and the difficulty was that the Department of State began to believe those talking points, and that there was a general conception within the Department of State and the Executive Branch that all Milosevic needed was a bloody nose so that he could then justify some type of international protectorate force in Kosova, or the implementation of a Rambouillet type of proposal, and that is one of the difficulties in dealing with the crisis in Former Yugoslavia, is the public presentation, and then there's the policy, and that public presentation and that policy have begun to merge in a way which is not effective for ending that crisis.

Ms. GREEN. I think an issue, too, was the thinking that some sort of pin-prick bombings would give Milosevic a bloody nose and then he would stop. I think what that analysis did was it applied misperception that bombing was successful in bringing Milosevic to the table in Dayton, ignoring that there was a different confluence of factors which led to Dayton.

In the case of Bosnia, Milosevic's forces were in a weakened position at that point. There was increased international pressure on him. He didn't place the same value on the territory in Bosnia as there is in Kosovo. I refer to a good article by David Rhodes, who was a Christian Science Monitor journalist in Bosnia now with The New York Times in the International Herald Tribune analyzing the mistaken analogy between the use of strategic bombing in Bosnia as opposed to Kosovo.

I also think that there wasn't a direct link between what the goals were and what the strategy used was, and that we moved too quickly, not exhausting the different possibilities for accomplishing the stated objectives of trying to protect people. For example, did Rambouillet offer any sort of possibility for placing U.N. forces on the ground to protect the Kosovars? There was another mistaken leap made from the fiasco of the safe havens policy in Bosnia, which wound up with U.N. troops standing by and watching people being massacred. Instead of adapting U.N. forces so as to provide safe havens where people were actually protected, we are in the situation, as I discussed before, where NATO forces are in violation of international humanitarian law.

Mr. SMITH. Wasn't it true that there were ground forces, Operation Storm, in the Croatian counteroffensive? What seems to have been left out of this discussion was that it wasn't bombing in isolation that led to Dayton. It was the fact that Milosevic's forces were routed, and that he was facing ground troops; it wasn't U.S., but it was Croatia.

Mr. Cardin.

Mr. CARDIN. Let me thank our Chairman, not only for his questions, but for his observations, and you are absolutely correct, there is bipartisan support for your statements.

We are concerned as to whether the Administration is placing a high enough priority on assisting and making sure that the War Crimes Tribunal can carry out its mission, and that's reflected in the way that it looks like information is being made available to the War Crimes Tribunal, and the statements that have been made as to a framework for an eventual peace agreement. So, I share your concern. I think there are members on both sides of the aisle that are—we don't question the Administration's sincerity of the importance of the War Crimes Tribunal, but whether it's been placed as a high enough priority on the list of items that are presently under active consideration.

With that in mind, let me just agree first with Ms. Bang-Jensen's final comment, when you say a peace that would allow the architect of four wars, a serial ethnic cleanser, to slip away as if there was no Tribunal at all will not be a lasting peace. I agree with that completely, that we would fool ourselves if we think that we'd work out some peace agreement that does not deal with holding Mr. Milosevic accountable will be a lasting peace. It won't be a lasting peace.

But, I also understand the difficulty of trying to apprehend some of these indicted criminals today. I think we've missed opportunities in the past, and that was wrong, we should have taken advantage of opportunities that we did have. Currently, though, it would be very difficult for us to go into Serbia to try to apprehend the indicted criminals.

But, let me talk about Mr. Milosevic for a moment, if I might. We don't know whether he's indicted or not, because of the way in which indictments are currently being handled, but I'm curious as to your view as to whether the Tribunal should consider using its procedure under Rule 61 to hold special proceedings, sometimes called 'super indictments,' where you could bring some of the information to the public as to why we believe Mr. Milosevic is, in fact, a war criminal and needs to be indicted. You can't try in absentia under the rules, but you can hold these super indictments, which may try to isolate Mr. Milosevic as a credible individual to carry out a peace agreement in that region, as many of us believe would be very difficult.

So, should we be pressing the War Crimes Tribunal to use that type of procedure in regards to Mr. Milosevic?

Ms. Bang-Jensen: I certainly would be happy to see it. The so-called Rule 61 procedure was used very effectively in regards to Karadzic and Mladic. It isolated them and took them off the political scene.

It's a tricky thing to try to pressure the War Crimes Tribunal, as we've discovered. It prizes their independence, sometimes to the point of paralysis. So, yes, we should encourage them, but they will ultimately make the final decision.

Mr. CARDIN. Ms. Green, I saw you nodding.

Ms. GREEN. Yes, I was just going to say that you can encourage them more effectively than we can, so I would encourage you to encourage them.

Mr. CARDIN. Dr. Williams?

Dr. WILLIAMS. If I could add something briefly to that. The U.S. Government should encourage the Tribunal to hold a Rule 61 hearing. The U.S. Government can do its own pseudo-Rule 61, as long as the information is declassified or unclassified there's nothing which prevents the U.S. Government from making public, in an organized fashion, this file of evidence, they hopefully have one now, for Milosevic and for the other actors in his Serbian Nationalist regime, and that is something that Congress could encourage the Administration to do.

Mr. CARDIN. We've been talking about the United States, I'm curious as to what are some of our allies—or, whether they are making better efforts or worse efforts in this regard. I notice that on April 17th, the British Foreign Secretary, Robin Cook, announced the employment of David Cowan as the British War Crimes Coordinator, who will be responsible for passing on information that the Brits get to the War Crimes Tribunal.

It appeared in that statement that, perhaps, Great Britain is making a stronger effort than we are in identifying an individual to make specific information available. I know we have David Scheffer, who has that responsibility, but it looked like that Britain was putting a higher attention to this issue.

Any observations? Is this happening?

Ms. BANG—JENSEN. Well, I've read a little bit about the British position, and certainly it was encouraging that they selected someone with an intelligence and defense background, which I think is helpful.

The War Crimes Office here is tiny, and David Scheffer doesn't have the authority to direct someone at DIA to devote the personnel or resources to produce information that we request.

To the extent that this position allows this official to strongly suggest or direct intelligence services or others within the government to produce information, that would obviously be an improvement.

But, I will note that statements from the British Government officials have been so much more forthright than our officials. Speaking as a lawyer, you almost have a sense that there are too many lawyers advising top level officials in the U.S. Government. The hesitancy to call Slobodan Milosevic a war criminal is silly. Of course, you can say that at the same time, you state that ultimately the prosecution and conviction of Milosevic is up to the Tribunal. To hesitate to call someone who just expelled hundreds of thousands of people at gun point from their homes a war criminal is absurd.

Mr. CARDIN. I think we've all been listening to some of the broadcasts from Great Britain and have applauded some of the comments Tony Blair has made in that regard.

Ms. Green, let me turn to the refugees for one moment. You raised somewhat of a chilling concern, and that is in our desire for humanitarian assistance, allowing so many refugees into our country, are we running the risk that some potential war criminals may be included in the people who are coming here or seeking refugee status, since

they have no papers, the papers have all been taken away, we know very little about them. Is it possible that we are allowing people to come into this country who are potential war criminals?

Ms. GREEN. Yes, that is very possible, and the Boston Globe story actually illustrates this point. The Globe interviews an INS, anonymous official, who said that there just wasn't sufficient screening. When the official was asked about two members of what is called the *manacos*, the "maniacs," a paramilitary group in Prijedor, where the Omarska concentration camp was, he said, well if I had known, if I would have thought about this, this person wouldn't be qualified for refugee status." There do have to be screening mechanisms. Obviously, when there's the desire to get people in quickly, to get them out of a dangerous situation quickly, it is a very hard call, because of the tension between the objectives of humanitarian assistance and accountability for those who commit human rights abuses.

Maybe there is some preliminary screening that can be done, but there's also a need for effective processes once an alleged human rights violator is identified here in the United States.

We've got the horror story of the Ethiopia case mentioned earlier, in which the Court awarded a \$1.5 million judgement against a man discovered in a hotel where one of the refugees he tortured was working. The defendant was held liable for torturing the woman, but was granted citizenship, because the group that we were talking to in INS didn't talk to the Naturalization Unit. So now we are in the process of having to de-naturalize the man. There have to be some sort of processes established in the United States INS so that people can be identified and investigated. Obviously, all due process considerations, must be taken into account to avoid abuses, including false charges. But measures must be taken when a perpetrator is found in our midst.

The Rwanda Tribunal provides a good example. The U.S. Government effectively responded to the extradition request by the Tribunal of an alleged perpetrator of the genocide who was found in Texas.

Mr. CARDIN. Lastly, if I might ask Dr. Williams a question. I agree with you on the Rule of Law and national reconciliation, that it's very important that all this be documented and people be held accountable, that we are talking about people, not states, and that's absolutely accurate. But, does that hold true for us being more aggressive with the KLA or potential war criminals from the Albanian ethnic background? You didn't mention that at all in your presentation.

Dr. WILLIAMS. Yes. I'm very glad you asked that question. I served as the legal counsel to the Government of Kosova during the Rambouillet Accords, and there were two important elements of these Accords, the first of which were the existing war crimes provisions. They were fairly moderate, and I was quite surprised and quite pleased that the entire delegation, even those five members from the KLA, acknowledged that those war crimes provisions must remain in the Rambouillet Accords.

Also, from my experience during the Dayton Accords, I proposed a number of additional measures relating to war crimes, which could cut vis-à-vis the Serbians as well as the KLA. The Kosova delegation moved these proposed changes forward, and they were rejected by the U.S. Government.

There are allegations that the KLA has engaged in war crimes. Those must be investigated by the War Crimes Tribunal. I believe that the Government of Kosova and the members of the KLA would like to see that process go forward. No one wants war criminals operating within their ranks. It does inhibit reconciliation, it does inhibit the return of refugees, and it inhibits the building of a civil society, and so far they've been publicly committed to that, and it's important to encourage them to continue to be publicly committed.

Mr. CARDIN. Thank you.

Thank you.

Mr. SMITH. Thank you, Mr. Cardin.

Mr. Greenwood?

Mr. GREENWOOD. Thank you, Mr. Chairman.

This is a fairly speculative question, I guess, but the Administration believes that one of the possible two outcomes of the bombings is that the Yugoslav/Serb military will be so degraded that the balance of power would shift and the KLA would swoop down and drive them out of Kosovo and theoretically have some kind of a military conquest.

And, under that scenario, Milosevic could himself wind up a prisoner of war, and if you are the Administration you would probably want to have a big fat dossier to supply to the Tribunal to improve the case.

On the other hand, if that doesn't happen, and you've got to negotiate your way to an end to this thing, you probably would be embarrassed as to the question of what we do with that dossier when you are negotiating a peaceful conclusion.

So, do you think that that's part of the problem here, that the Administration is afraid to acknowledge that it has gathered the information that would support the premise that Milosevic is a war criminal and couldn't be in a position of having acknowledged that it has all of this material and then negotiates a settlement in which there is a peace plan but he's not brought to justice?

Ms. BANG-JENSEN. The underlying premise of your question is that they have collected this, and that they have it somewhere. I don't know that we know that. As to the larger question you are asking, that very well could be part of their fear, or part of their inertia in producing information to the Tribunal; that they don't want to be in the uncomfortable position of negotiating with someone who could be indicted.

Mr. GREENWOOD. Do any of the other witnesses care to comment?

Dr. WILLIAMS. Okay.

There are two options for resolving the conflict in the Former Yugoslavia. Either Milosevic and the Serbian Nationalist regime are defeated or they are accommodated and appeased. In the Bosnia crisis, the Administration chose the route of accommodation and appeasement. It appears that the Administration is again moving in that direction. As noted by the other Congressman, Great Britain has chosen the alternative path, that of defeating the Serbian Nationalist regime. That is why they have been very public in identifying Milosevic as a war criminal, in calling this genocide, whereas, the U.S. Government talks about indications of genocide, and the technicalities of war crimes.

I think that there is still some hope in that the U.S. Government has not yet settled on what we are going to defeat Milosevic or we are going to accommodate and appease. I think within the next week or so is when this debate will be taking place within the Administration. If the Tribunal comes out and indicts Milosevic in the next week or so, or unseals its indictment that will go a long way to moving the U.S. Government towards a policy of defeating the Nationalist regime.

Mr. GREENWOOD. Let me ask just a technical question of Ms. Bang-Jensen. In your testimony you made reference to trials against 16 people which have been completed, and then you go on to say that there have been five convictions, two confessions and one acquittal, which adds up to eight. What is the status of the others?

Ms. BANG-JENSEN. Some have not been—sentencing has not been issued, and some are on—I think that's what it is, or I've made a mathematical error. Yes, after a conviction, then there's a pause, and then there's a sentencing procedure.

Mr. GREENWOOD. So, have there been any sentences?

Ms. BANG-JENSEN. Yes, there have been.

Mr. GREENWOOD. And, what have those sentences been?

Ms. BANG-JENSEN. To American ears thy sound light. The longest was in the Yugoslav Tribunal, was 20 years for Mr. Erdemovic. In the Mr. GREENWOOD. And, he was convicted of?

Ms. BANG-JENSEN. It was Crimes Against Humanity at least. I will have to check for you. I can do that right now.

Mr. GREENWOOD. Let me ask a question of Dr. Williams. I may be the only one who is not familiar with this document, but you made reference to the so-called FRAME memorandum, and you described what it envisioned, et cetera, but could you fill me in, at least, on what the FRAME memorandum is, and who its authors were, and do you have copies of this? You referred to 1,200 pages.

Dr. WILLIAMS. Yes. The FRAME memorandum, there is an outline of the substance of the memorandum included in the brief that the Bosnian Government has filed with the International Court of Justice. It's normal rules of the court that these briefs remain confidential. We are working to hopefully change that in this case, because there are 1,200 pages of documents which—

Mr. GREENWOOD. Is FRAME an acronym?

Dr. WILLIAMS. FRAME is an acronym, and it's an acronym for something in Serbian, so I can't tell you exactly what it stands for, but it essentially was a twofold plan. One is the ideological plan of a greater Serbia, which was ethnically pure, which contains almost no non-Serbs. The other element was the very detailed means of getting to that objective, and citing genocide, organizing paramilitaries in Bosnia and Croatia, organizing civilian self-defense units, transforming the territorial defense units into active brigades, arming them, financially supporting them, and creating a command and control structure which would link back up to Belgrade.

So, it was, essentially, we need the greater Serbia which is definitely pure, because of historical reasons, past atrocities, ideology, and this is how you accomplish it. It's very similar to the document which is rumored to be in the Department of State's position for Kosovo, called the "Horseshoe memorandum," which would, in a sense,

be the way of ethnically cleansing Kosova, first sending in the paramilitary, followed by the regular army, followed by the Ministry of Interior forces.

So, there is a detailed framework for accomplishing the crimes of genocide and ethnic cleansing in Bosnia, as there apparently is in Kosovo as well.

I will speak with the Bosnian Government to see if it's possible to make public that information by some other means.

Mr. GREENWOOD. Thank you.

A question that I'd like to ask each of the witnesses to respond to, if they choose, and that is, what evidence is there that Belgrade was preparing to execute this mass wave of ethnic cleansing prior to NATO's air strikes, and does this include evidence that the wave would have been executed, even if the air strikes had not taken place? It seems it's an open question, and the general debate on this question and this issue is, to what extent, had there been no bombing, would things have occurred at least as swiftly and as atrociously as we have, or to what extent, and it may be very difficult, but it's again a speculative question.

Ms. BANG—JENSEN. Again, of course it is speculative, but a lot was going on in the year before 300,000 people were internally displaced, there were a series of atrocities, but most importantly between the ending of the Rambouillet negotiations and the Paris negotiations, 40,000, I think I have the figure correct, 40,000 Serb forces massed on the border and started moving into Kosovo and cleared out swaths of territory very quickly, before the bombing even started. They brought in heavy artillery, all sorts of heavy weaponry, all in violation of the October agreement between Milosevic and Ambassador Holbrooke.

So, it seemed pretty clear that there was going to be a massive military action there, and reportedly we knew from a document, the Operation Horseshoe document, that this was part of the plan since early last year.

Mr. GREENWOOD. You just referred to the Operation Horseshoe document, and I forget how Dr. Williams characterized it, but I thought you said that this was something that allegedly the Administration has in its possession?

Dr. WILLIAMS. Yes, at least the Washington Post has reported that the U.S. Government has in its possession the Horseshoe document, which would lay out the plan of action.

Mr. GREENWOOD. Great.

Dr. WILLIAMS. And, that they would have it over—and this is speculation hearsay, I want to be clear on that—that they have had it in the past year, and that they've acquired this document through East European security services, which had obtained it from the Government in Belgrade.

Mr. GREENWOOD. But, none of the witnesses have seen the document.

Dr. WILLIAMS. No, I have not seen the document.

If I could add just a footnote to Nina's presentation. I would refer the committee to the reports of the KVM, the Kosova Verification Mission the unarmed mission, which was a result of the Milosevic-Holbrooke deal in October of '98, and to Ambassador Walker's public comments that ever since day one of the institutionalization of his

mission there was an increasing escalation. There was never a compliance with the OSCE agreement, in fact but there was an increasing escalation of the atrocities being committed against the Kosovars and the repositioning of troops which culminated in 40,000 after the Rambouillet Accords.

And, in listening to his public comments on this, it seemed to be fairly compelling that there was a program which was going to be put into place of some nature related to genocide and ethnic cleansing in the spring.

Mr. GREENWOOD. I yield back, Mr. Chairman.

Mr. SMITH. Thank you very much, Mr. Greenwood.

Let me ask a few follow-up questions. It's been rumored or suggested that Louise Arbour may take a post back in Canada, a high judicial appointment. If she does that, what might that do with the prosecution, the whole War Crimes Tribunal efforts? Who then gets to pick her successor? Do the Russians and others have any say in picking the successor that might complicate things, in terms of going after Milosevic?

Ms. BANG-JENSEN. Yes, the timing of her departure, or rumored departure, is terrible. It would have a terrible effect on the prosecutions and investigations ongoing now.

The selection of the prosecutor is done by the Security Council, and we know from the experiences in picking the first prosecutor that it can take tremendous political maneuvering to get someone who is acceptable to all members of the Security Council. It took 15 months to find Justice Goldstone, for example.

Mr. SMITH. Has she indicated one way or the other? Has she tried to squash the rumors?

Ms. BANG-JENSEN. She hasn't.

Mr. SMITH. Is there an appointment open in Canada?

Ms. BANG-JENSEN. There is, and the rumor is that they are looking for a French-speaking woman, and so—and there are also rumors that she's wanted this for a long time. Her official answer is, it's not appropriate for me to comment since it hasn't been offered to me.

Mr. SMITH. Ms. Green, you mentioned some of those torturers or people who have committed crimes that made it into this country. I was at Fort Dix last week, along with Reps. Jim Saxton and Bob Franks, when about 400-plus people came through, most of them were families. Do you have any evidence that the screening process this time is not adequate?

I was actually in a tent where they were doing screening. Again, it looked like they were overburdened, they were working almost out of a shoe box. I exaggerate a little bit, of course they had a computer, but it didn't seem as if they really had the number of people or the time to do proper screening. Those coming in certainly looked like families in tact, five and six members of a family were getting off together holding arms and legs, you know how young children clutch.

But, I could certainly see how someone could slip in. Even a KLA member who then, obviously, looks the part of an ethnic Albanian, because or she is, might have committed atrocities.

Have you gotten any response back from the Department as to what steps they might take to retard that?

Ms. GREEN. I actually don't have any information about the current family members coming in. I could try and follow up.

Mr. SMITH. We will, too, because I think that's an important part of what we want to be all about as well, especially since they are coming through an area that's adjacent to my district.

Do any of my colleagues have any additional questions?

Mr. CARDIN. If I could just ask one question, and Ms. Bang-Jensen really wet my appetite as to how we can proceed in trying to influence the War Crimes Tribunal when they are independent, which is true, and we want them to be independent.

We understand the political structure of our government and it's fair game to criticize or to do what we can in order to try to get our government to do what we think is right. And, I think we know what means are available for us to be effective in that regard. We're the NATO allies.

But, the War Crimes Tribunal truly is an independent body, which we want to remain an independent body, and we want them to make their judgments as they see are in the best interest of justice.

But, I think it's in everyone's interest if they would work in a faster way as it relates to Mr. Milosevic and in a more visible way.

So, can you give us some advice, any one of the three, as to what we could do that could be effective in trying to achieve those objectives with the War Crimes Tribunal?

Ms. BANG-JENSEN. Well, I think some of the things that Congress has already done have had their effect. Calling for the indictment of Milosevic in both the House and the Senate I think did not go unnoticed by the Tribunal. Laying out where we think the evidence lies now, explaining to people what command responsibility means, that kind of thing will necessarily find its way to The Hague. They are human and they have responsibility, and they have to recognize though they, perhaps, don't recognize as much as they should that even though they should make prosecutorial decisions independent of political considerations, and make their determinations in an unbiased legal and just way, they are wholly dependent on the cooperation of states in order to execute their orders.

So, they can be a little too pristine about their not wanting to acknowledge that they ultimately have to rely on political institutions. They have to go to countries for intelligence information, go to countries for apprehension.

Mr. CARDIN. Thank you.

Ms. GREEN. As we were discussing earlier, there is also the need to press for the release of information that the U.S. Government has, and to release this information in a way which puts the maximum amount of pressure on the Tribunal and the international arena in general. There is the need to go beyond merely providing a lead, and to make the information available in the public arena.

Dr. WILLIAMS. There are three specific things that the U.S. Government could do, to overlap a little bit with what Nina and Jennifer just said. The first is to change the yellow light, or maybe even the red light, that the U.S. Government has given to the Tribunal in terms of indicting Milosevic, change that to a green light, make public statements that the U.S. Government believes that it would, in fact, be constructive, if he were indicted, if there was suitable evidence and the Tribunal complied with all its procedures, the U.S. Government would welcome that, and would then not negotiate with an individual who had been indicted for war crimes.

The second thing is that they could publicly support the case that Bosnia and Herzegovina has brought against Yugoslavia in the International Court of Justice, and they could publicly call for other states to bring a similar case against Yugoslavia for the genocide committed in Kosova, although Kosova can't do it because it's not a state, Albania, other states of the U.S. allies could bring a case under the Genocide Convention against Yugoslavia. The U.S. Government itself could bring a similar case.

And then thirdly, the U.S. Government could make public its act of turning over information to the Tribunal, again, to indicate that it has this information, has turned it over. The British have been, in a sense, sending a political signal to the Tribunal by appointing Mr. Gowan and by publicly turning over this information, as I believe the Germans and the French have as well.

Mr. CARDIN. Thank you.

Mr. SMITH. Surely if the Special Prosecutor can engage in the theatre which he did, and bring to the Congress all those boxes, with regards to the President, such a thing could be done against Slobodan Milosevic.

Let me also mention that later on this week I intend on reintroducing an updated version of the resolution, hopefully, to put the House on record, again, asking, admonishing, requesting, petitioning, begging use any word you want that the Administration, the Tribunal, and all the international community work to bring an indictment against Slobodan Milosevic. I would hope that we could move that resolution quickly. It would be referred to my subcommittee, where I can promise we will act promptly; hopefully the Committee Full Committee will as well.

Just two very brief questions. Ms. Green, you referenced those people slipping in. Who were they? I didn't read the *Boston Globe* article, so I'm at a loss. How did they get in, since Serbs were pretty much precluded as a category from coming in? How were they able to slip through the net, if there was a net? Secondly, if there was a determination that this was genocide—which seems to have been avoided with due diligence thus—triggering the Convention, what would be our obligations under that Convention (if this was branded genocide)?

Ms. GREEN. This goes to the point which various people have mentioned at different points, which is that liability for refugee status is not just a matter of ethnicity. One person who should be deported and prosecuted was, in fact, a Muslim, a Bosnian Muslim, who joined a paramilitary group. Another was Nikola Vukavic, the defendant in Atlanta. He is a Serb who is married to a Muslim, and people in mixed marriages have been and should be allowed in. So screening can't be linked to mere ethnicity.

Ms. BANG-JENSEN. The Genocide Convention obligates all signatories to act to prevent or punish genocide. It doesn't have to be genocide before you act to prevent it, obviously. And, we have been a signatory of the Genocide Convention since 1988, when President Reagan signed it into law.

Dr. WILLIAMS. I would just add that in addition to the legal element, the legal requirement to prevent and punish crimes of genocide which would be invoked if the G word were used, there is also the moral imperative. Once you call it genocide you cannot negotiate with this individual, you must promote the democratic transformation of the regime which is responsible for that genocide.

Mr. SMITH. Do either of my colleagues have anything further?

APPENDICES

OPENING STATEMENT OF
HON. CHRISTOPHER H. SMITH, CHAIRMAN

A few years ago, Judge Richard Goldstone, who was then serving as the first Chief Prosecutor of the International Criminal Tribunal for the Former Yugoslavia, was asked to speculate on how long it might take the Yugoslav Tribunal to complete the tasks that it had been assigned. He speculated the process might take five years - five years from the time hostilities would cease, he hastened to add. Unfortunately, hostilities have not ceased. On the contrary, efforts by Milosevic's troops to force Kosovar Albanians from the region have continued, in spite of the current military campaign, and brutal crimes against civilians have escalated.

Regrettably, in spite of all that has happened in Bosnia and now Kosovo, the United States administration still seems to cling to the idea that Milosevic is someone with whom we can cut a deal. On April 5, when Secretary of State Albright was asked if Milosevic is a war criminal, she stated, "Technically he is not a war criminal because the War Crimes Tribunal, that has a legal process, has not indicted him." On April 7, White House spokesman Joe Lockhart refused to reject the possibility of conducting negotiations with Milosevic. More recently, on April 30, Secretary Albright was again pressed on this point at a joint press conference she held with Chief Prosecutor Louise Arbour. When Secretary Albright was asked about the politics and ethics of negotiating with an indicted war criminal, in the event Milosevic would be indicted, she responded: "I've been asked a number of times whether we would talk to Milosevic. I think that one can separate . . . his alleged actions from the necessity at some stage that one might have to speak to him. 'Negotiate' is a different word." Is this Administration playing word games again?

Frankly, I find the Secretary's statement truly disappointing. The Secretary seems to be saying that we won't "negotiate" with Milosevic, but we'll "talk" to him. If the difference escapes me, it probably escapes Milosevic, too.

In the 105th Congress, both the House and Senate overwhelmingly passed a resolution calling for a thorough review by the United States of all information we may hold relating to Milosevic's culpability as a war criminal with the view to his possible indictment. I am hopeful that the 106th Congress will reiterate this call.

Of course, I hope that the Tribunal will publicly indict Milosevic, and soon. But in the meantime, this administration should stop holding up the absence of an indictment as an excuse for possibly resuming a dialogue with Milosevic. All those responsible for war crimes in the ongoing conflict must be held personally accountable for their actions.

Our hearing today will examine, first, the principal forum where war criminals are being called to account, the International Criminal Tribunal for the Former Yugoslavia. I regret that Judge McDonald, President of the Tribunal, had a last minute change in her schedule, requiring her to be in New York today. We are pleased, however, to have with us today Nina Bang-Jensen, Special Counsel for the Coali-

tion for International Justice, who is an authority on the work of the Yugoslav and Rwandan Tribunals. Ms. Bang-Jensen will share with us her insights on the achievements of that Tribunal as well as the challenges it still faces. We also look forward to her views on current international efforts to gather evidence on atrocities in Kosovo.

We will also examine two other fora where efforts are underway to achieve some accountability for war crimes. Jennifer Green, a staff attorney with the Center for Constitutional Law, will discuss efforts to hold suspected Yugoslav war criminals to account in U.S. courts. Ms. Green has extensive experience in human rights advocacy and litigation in this country. We will also hear from Dr. Paul Williams, a professor of Law and International Relations at American University, formerly with the State Department's Legal Advisor's office and co-author of "War Crimes and Individual Responsibility: A Prima Facie Case Against Slobodan Milosevic." Dr. Williams is co-counsel for Bosnia-Herzegovina in its suit against Serbia-Montenegro before the International Court of Justice and will discuss the ICJ's role in adjudicating responsibility for war crimes.

**WRITTEN STATEMENT OF
SENATOR BEN NIGHTHORSE CAMPBELL,
CO-CHAIRMAN**

Mr. Chairman:

Thank you for calling this hearing on a topic that is important now and likely to be even more critical as the search for a diplomatic solution to the Kosovo Conflict continues. I regret that the distinguished Judge Gabrielle Kirk McDonald, who is the President of the International Criminal Tribunal for the Former Yugoslavia, and who was originally scheduled to be with us today as our lead witness, has encountered an unavoidable scheduling conflict that has prevented her attendance at this hearing.

However, I am very pleased that we have before us as witnesses today leading experts on the subject of holding war criminals accountable. Our witnesses are Nina Bang-Jensen, who is Special Council for the Coalition for International Justice; Jennifer Green, who is a Staff Attorney with the Center for Constitutional Law; and Dr. Paul Williams, who is Professor of International Law at American University. I welcome them all and look forward to hearing their views on this important topic.

Before we continue, I want to discuss my concern about the impact a settlement will have on the objective of holding war criminals accountable, if the International Criminal Tribunal's jurisdiction over suspects and indictees within the territory of Serbia and Montenegro remains under challenge, access by tribunal investigators to places, persons, and information relevant to their inquiries is denied, and authorities refuse to apprehend indictees and turn them over to the Tribunal.

There is very little question that war crimes and crimes against humanity have been committed by Serbian forces in Kosovo. There is too much information on the public record alone to doubt this. A strong argument can be made that genocide has been committed. It is likely, as Tribunal investigators work their way through refugee reports and receive information from NATO nations participating in Operation Allied Force, and enter Kosovo itself under any settlement, that leaders and members of the Serbian government and Serbian forces serving in Kosovo will be indicted.

Once the indictments are issued, what happens next? How to the Kosovar Albanians who have been victimized receive justice? Doing justice remains essential for peace in Bosnia-Herzegovina, and will be just as important to establishing a lasting peace in Kosovo.

I want to remind everyone that Article XIII, paragraph 4 of the Dayton Accords provides in relevant part that "All competent authorities in Bosnia and Herzegovina shall cooperate with and provide unrestricted access to . . . the International Tribunal for the Former Yugoslavia; and any other organization authorized by the U.N. Security Council with a mandate concerning human rights or humanitarian law."

Will there be a similar provision in whatever agreement ends the Kosovo Conflict? I have read the statement issued by the Group of 8 foreign ministers last Friday at the end of their meeting in Bonn, Germany. Nowhere in the seven points they agreed upon and called "general principles on the political solution to the Kosovo crisis," was there a mention of the Tribunal, of the need to investigate the crimes

that have been committed, or of a way to hold to account the persons who committed those crimes. This is a startling and important omission, especially in light of the rhetoric on this subject in NATO leaders' speeches.

When the Kosovo Conflict ends, Serbian forces withdraw, an "international security presence" enters Kosovo, evidence of war crimes, crimes against humanity, and genocide is found and the Tribunal issues indictments, will the indicted persons be shielded by the Serbian government from apprehension and prosecution, just as the Serbs now reportedly shield General Ratko Mladic and Arkan, who were both indicted for crimes committed during the Bosnian war?

If this situation should come to pass, it cannot help the cause of peace in the Balkans. It would be hard to convince Kosovar Albanians who have lost family members to Serbian war crimes, crimes against humanity, and genocide to surrender their arms, and more importantly, to give up their burning desire for revenge against the Serbs, once it becomes clear that justice will not be done and that the international community will do nothing to change that situation.

It is fair to ask whether, without justice, there can be lasting peace in Kosovo.

Thank you, Mr. Chairman.

**WRITTEN STATEMENT OF HON. STENY H. HOYER,
RANKING MEMBER**

Mr. Chairman, as early as mid-1992, Members of this Commission were among the very first to call for the establishment of a tribunal to hear charges that atrocities were being committed during the course of the Yugoslav conflict. We welcomed and supported the initiative taken later that year by three special OSCE rapporteurs—it was then still called the CSCE—Hans Correll, Helmut Tuerk, and Gro Hillestad Thune, who wrote a report laying out their vision for such a court. That OSCE document was introduced by Sweden to the U.N. Security Council and helped spur the work that ultimately led to the foundation of the International Criminal Tribunal for the Former Yugoslavia.

The Commission has continued to follow closely efforts undertaken by the international community to hold war criminals personally accountable for their actions and we have held several hearings to examine these issues, including with Cherif Bassiouni, who headed the U.N. Commission of Experts which preceded the Tribunal. Many Commission Members have also worked hard to ensure that the Tribunal has the financial resources and political support it needs to execute its tasks effectively.

Certainly, considerable progress has been made in advancing this cause. There are currently 59 people under public indictment and, of those, nearly half are in custody in The Hague; a half dozen trials have been completed, nearly a dozen other trials are underway, and nearly a dozen other people have trials pending. Obviously, more needs to be done to apprehend the 31 suspects who remain at large before the Tribunal and, it would seem to me, we should expect additional indictments to be forthcoming. I certainly share Chairman Smith's conviction that Milosevic should be indicted and I hope the administration will take every step necessary to ensure that whatever evidence we have that might support an indictment of Milosevic or any other suspect will be made available to the Tribunal on an urgent basis.

Whatever successes the Tribunal has had, it has not been sufficient to deter the current crisis in Kosovo. More than a million men, women and children are on the move, terrorized out of their own homes. Some of the same names we knew from the Bosnian conflict - not only Milosevic, but Mladic, Arkan, and others - have resurfaced again.

I look forward to hearing from each of our witnesses on the efforts to hold war criminals accountable - before the Yugoslav Tribunal, before U.S. or other national courts, or before the International Court of Justice.

**WRITTEN TESTIMONY OF NINA BANG-JENSEN,
COALITION FOR INTERNATIONAL JUSTICE**

**HOLDING WAR CRIMINALS ACCOUNTABLE:
THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE
FORMER YUGOSLAVIA**

It is a honor to be appearing before the Commission on Security and Cooperation in Europe to discuss the International Criminal Tribunal for the former Yugoslavia, because there is no other Congressional institution that has done more to promote the rule of law and justice in the former Yugoslavia. This Commission knows better than others what successes can eventually come from tilting at large, solidly-built windmills. Indeed, when skeptics question the sense of trying to promote peace and stability in the Balkans by holding individuals criminally accountable in an international war crimes tribunal, we all take comfort in remembering the power of Yuri Orlov's toast at the formal creation of the first Helsinki Committee in Moscow: "to the success of our hopeless task." Considering what Yuri Orlov's "task" looked like in 1976, bringing some justice and accountability to the former Yugoslavia through a broadly-supported, politically popular international tribunal does not seem quite so impossible.

The six-year old International Criminal Tribunal for the Former Yugoslavia does enjoy remarkably broad support. The United Nation's Security Council created the Tribunal on May 23, 1993 by an overwhelming vote in response to the international outcry over the shocking extent of war crimes and other violations of international humanitarian law committed in Bosnia, Croatia and rest of the former Yugoslavia. In the Secretary General's report accompanying that Security Council resolution identifies the Tribunal's purposes as "contribut[ing] to the restoration and maintenance of peace" and facilitating the cessation of violations of international humanitarian law.

The Tribunal has the authority and responsibility for prosecuting and trying any persons who may be responsible for serious violations of international humanitarian law during the armed conflicts in the former Yugoslavia since 1991. International humanitarian law is the body of law that governs the manner in which wars and other armed conflicts are conducted and, specifically, attempts to prescribe how combatants must conduct themselves and how unarmed civilians must be treated in such conflicts. The basic purpose of these laws is to protect civilians from inhumane acts such as murder, torture, rape, enslavement, deportation and starvation during armed conflicts. The law come from several sources, including the Geneva Conventions and the Genocide Convention and principles of customary international law and is significantly incorporated in the Tribunal's authorizing statute.

The Tribunal has a mixed, but still promising record.

Six years ago the Hague-based Tribunal had no courtrooms, no judges, no prosecutor, no defense counsel and no defendants. The Tribunal is now an operating judicial institution housed in a former insurance-company building, where fourteen judges from fourteen different countries hear cases brought by a multinational prosecutorial staff. The procedures, practices and regrettably slow pace that characterize the Tribunal's operations reflect the mixed legal tradi-

tions among the judges, a bureaucracy unfortunately characteristic of international organizations that must operate by consensus and the fact that this is the first truly international criminal tribunal without institutional precedent.

The Tribunal has publicly indicted 84 individuals in 25 indictments, including 10 people who have been indicted for genocide. (Indictments against approximately sixteen defendants have been dropped because of lack of evidence or death.) Trials against sixteen people have been completed and four trials against nine defendants are on-going. There have been five convictions, two documented confessions and one acquittal. A total of twenty-six people are in custody. Since the Tribunal's current Prosecutor adopted a strategy of not publicly announcing indictments in order to better facilitate their arrest, we do not know the total number of persons who have been indicted, nor their identities.

There is no doubt that the Tribunal has in its short life contributed enormously to the advancement of international law. Theodor Meron of New York University's Law School, one of the leading scholars in international humanitarian law, has credited the Tribunal with establishing more important legal precedents in the past few years than arose in the half century since Nuremberg. These precedents can and will be borrowed productively in other judicial settings to reign in and hold accountable violators of international humanitarian law. But the question remains whether the Tribunal has yet lived up to the high hopes many had for it in the former Yugoslavia.

One of the Tribunal's principal failings to date is not its own. It simply does not have in custody the major perpetrators of the worst atrocities in the former Yugoslavia. Many of the most notorious actors, including Bosnian Serb leader Radovan Karadzic and Bosnian Serb General Ratko Mladic who have both been indicted for genocide, are still at large, even though each has been within regular sight of heavily-armed and well-trained NATO soldiers. Since the Tribunal does not have its own police force, it must rely on the political will of nations to execute Tribunal orders to arrest the indicted. Until political leaders are willing to conclude that the benefit of making those arrests outweighs the risk of sustaining casualties, the Tribunal will be a paper tiger, regardless of how much financial support, intelligence assistance and rhetoric are sent its way.

The Tribunal's public record with regard to Kosovo to date has been a disappointment. The Tribunal has been slow to react visibly to the crisis in Kosovo. While Belgrade has blocked Chief Prosecutor Louise Arbour and her investigators from entering Kosovo and has refused to cooperate with the Tribunal in any fashion, the Tribunal did not quickly redirect necessary resources to interview the thousands of deportees who have been escaping from Kosovo with accounts of horrific atrocities during the past fifteen months. Recently, the Tribunal has diverted substantial investigative resources to try to address the immediate crisis of gathering evidence from those deported violently from Kosovo, many of whom are potential witnesses whose stories risk becoming tainted by collective memories or retelling and many of whom may be virtually impossible to find in several months as they move among the camps and around the world.

Our organization, the Coalition for International Justice, is one of many groups that is attempting to help the Tribunal with the daunting, highly labor-intensive task of interviewing deportees in the refu-

gee camps and private homes in Macedonia and Albania. We have worked with the Tribunal through our representative in The Hague and with Assistant Secretary Harold Koh's office and others within the U.S. government and OSCE to prepare a form for interviewing deportees that is intended to elicit the kind of information that will be helpful in selecting witnesses and building cases for the Tribunal. The American Bar Association's Central and East European Law Initiative is lending us its volunteer attorneys who have substantial experience in the region to coordinate with indigenous non-governmental organizations in Albania and international non-governmental organizations in Macedonia in conducting interviews and processing the resulting information.

This Commission has done much already to bolster and publicize the work of the Tribunal. Individual members can be additionally helpful in the following ways:

1. You can make a request or urge your colleagues on the Intelligence Committees to request a classified briefing concerning the status of the U.S. government's case against Slobodan Milosevic. It is not clear how the Administration is generating information that supports U.S. government allegations that Milosevic's forces are massively violating international humanitarian law and that Milosevic is aware of and responsible for their actions. Such an inquiry should include an assessment of whether the U.S. government's current strategy for collecting and organizing intelligence information is sufficient to build an effective case against Milosevic. Clearly the decision to prosecute at the Tribunal is the Prosecutor's decision and hers alone, but we ought to know whether the U.S. government is providing information sufficient, in its view, to support an indictment and subsequent prosecution. This is particularly important and well within Congress's oversight responsibility since the Chief Prosecutor has complained publicly that she is not receiving the intelligence information she needs while U.S. government officials insist they are cooperating completely. Nothing will concentrate the minds of policymakers and intelligence analysts, all of whom have many competing responsibilities and limited resources, than an inquiry such as this through one of the Intelligence Committees or through GAO.
2. You can communicate to the White House that you believe that risks inherent in arresting major indicted war crimes suspects in Bosnia are outweighed by the risks of inaction. The architects of the Bosnian genocide, Ratko Mladic and Radovan Karadzic, need to be arrested. Slobodan Milosevic obviously took heart in the failure of Western powers to arrest high-level indicted persons and that clearly played a part in his calculus to so violently call the West's bluff in Kosovo.
3. You can support efforts to provide additional funds to support Tribunal investigations in Kosovo and additional resources to the Human Rights and Democracy Fund to document human rights abuses in Kosovo in a comprehensive and methodical fashion and assist international organizations, including the OSCE, in providing identity documents to refugees whose passports, identity papers and property titles were stripped from them when they were deported.

4. As many of you have done before, you can support re-authorization of the Lautenberg Amendment in the Foreign Operations Appropriations bill, which directs that U.S. bilateral and multilateral economic reconstruction assistance not go to indicted war criminals or to projects in municipalities that are failing to cooperate with the Tribunal in the arrest of indicted persons.

5. Perhaps most importantly, you can publically oppose any short-sighted “peace plan” that might undermine the Tribunal’s authority by offering Slobodan Milosevic de facto immunity from prosecution by allowing him to be transported to a friendly third country that will not honor any future arrest warrant the Tribunal may issue. After all the promises we and the international community have made to the people of the former Yugoslavia about bringing those responsible for their misery to justice at the Tribunal, a “peace” that would allow the architect of four wars and a serial ethnic cleanser to slip away as if there were no Tribunal at all will not be a lasting peace.

Thank you.

**WRITTEN TESTIMONY OF DR. PAUL R. WILLIAMS,
AMERICAN UNIVERSITY**

The International Court of Justice Case between Bosnia and Herzegovina and The Federal Republic of Yugoslavia Concerning the Commission of Crimes of Genocide Against the Bosnian People

I would like to thank the members of the Helsinki Committee for the invitation to participate in this very important hearing concerning the need to hold war criminals accountable for the atrocities they commit. My brief presentation will focus on the efforts of the Government of Bosnia and Herzegovina to use the International Court of Justice to hold the Government of Yugoslavia responsible for the war crimes and crimes of genocide it committed against the citizens of Bosnia and Herzegovina.

Ambassador Mohamed Sacirbey, the Agent for the Case, has asked that I send his regrets for not being able to attend today's hearing as he is currently in the Hague addressing matters relating to the recent filing of a cast by Yugoslavia against NATO. I will return to this matter in more detail later.

BACKGROUND

In 1993, during the height of the Yugoslav conflict, the Government of Bosnia and Herzegovina filed suit against the Government of the Federal Republic of Yugoslavia in the International Court of Justice. In its pleadings submitted over the last six years, the Bosnian government has asked the Court to find and declare that:

between April 1992 (the beginning of the Bosnian war) and December 1995 (the conclusion of the Dayton Accords) Serbian forces engaged in a campaign of genocide against the non-Serb population of Bosnia and Herzegovina; and

The Federal Republic of Yugoslavia bears responsibility for these and related violations of the Genocide Convention.

CURRENT STATUS:

On April 8, 1993 the Court issued a preliminary injunction, ordering Yugoslavia to to cease and prevent all acts of genocide in Bosnia. Subsequent to that ruling, Yugoslavian forces continued to direct and support crimes of genocide in Bosnia-Herzegovina, and in the winter of 1998 embarked on a similar course of action in Kosova.

As of May 1999, each party has filed their written pleadings and have begun preparing for oral argument, which is likely to occur in the autumn of 1999.

RATIONALE FOR FILING CASE:

Bosnia and Herzegovina has filed this case in order to create an accurate historical record of the responsibility of Yugoslavia for the genocide in Bosnia and Herzegovina. Such a record is indispensable in the reconciliation process, which, until the Kosova conflict, was slowly developing in the region. By clearly establishing the responsibility of Yugoslav state institutions, as opposed to the collective re-

sponsibility of the Serbian people, for the genocide in Bosnia, the Court can enable the process of reconciliation to move beyond broad recriminations and lay the foundation for the rebuilding of mutual relations among the people of Bosnia.

The adjudication also serves the very necessary purpose of operating as a cathartic process for the victims of genocide by providing them an opportunity to publicly recount the atrocities committed against them and their families and to have this evidence assessed by an independent judicial body. Finally, the case was initially designed to deter future acts of genocide by the Yugoslav state institutions in areas such as Kosova and Vojvodina by publicly detailing the Serbian plans for an ethnically pure greater Serbia, and by identifying and aiding in the delegitimization of those institutions primarily responsible for crimes of genocide necessary to implement these plans.

It should be noted that although the International Criminal Tribunal for the Former Yugoslavia plays a role in creating an accurate historical record, it does so only for those cases in which it exercises custody over the defendant, or where it has held an extensive Rule 61 hearing in which it presented the evidence in its possession in order to confirm an indictment.

The ability of the Tribunal to create an accurate historical record, serve as a cathartic process for the victims and operate as a deterrent has also been inhibited by the surprisingly limited number of indictments issued by the Tribunal, the even fewer number of indictees in its custody, the unwillingness of the Prosecutor to aggressively pursue investigations of the prominent role of Yugoslav institutions in the genocide, and finally the political unwillingness of the Prosecutor to consider indicting the Yugoslav political leadership, in particular Slobodan Milosevic.

OVERVIEW OF THE SUBSTANCE OF THE CASE:

The substance of the case can be divided into three parts. In the first part, Bosnia and Herzegovina details Serbian plans for an ethnically pure greater Serbia, and outlines Serbian preparations for the genocidal offensive. These preparations included the drafting of the so-called FRAME memorandum which envisioned the arming of paramilitaries and civilian organizations and the incitement to genocide, the actual distribution of weapons to paramilitary operations such as Arkan's Tigers by the Yugoslav Ministry of the Interior, the purging of the Yugoslav National Army (JNA) of non-Serb officers, the disarmament of non-Serb Bosnian Territorial Defense forces, the restructuring of the chain of command of Bosnian-Serb Territorial Defense forces to report directly to the General Staff of the JNA in Belgrade, and the direct involvement of JNA forces in early acts of genocide against the people of Bosnia and Herzegovina.

The second part of Bosnia and Herzegovina's case presents a detailed cataloging of these crimes of genocide, which include the widespread and systematic killing of civilians and non-combatants, the specific targeting of political, commercial and medical elites, widespread and systematic torture and infliction of mental anguish, the organization of an intricate network of concentration camps, the systematic destruction of cultural property, the utilization of mass rape as a tool of terror, the forced expulsion of entire communities, the

encirclement, shelling and starvation of other communities such as Sarajevo, and the entire extermination of still other communities such as Srebrenica.

The third part of Bosnia and Herzegovina's case sets forth a meticulous detailing of the role of the Yugoslav government in carrying out its plan to use genocide to create an ethnically pure greater Serbia by actively aiding, supervising, and directing the crimes of genocide against non-Serbs. Specifically, these acts included: active and direct JNA military involvement in crimes of genocide before May 1992, the wholesale transformation of the JNA into the Bosnian Serb Army, the re-introduction of regular JNA army units and special forces into Bosnia to aid in the commission of acts of genocide - in particular the Srebrenica massacre, the continued supply of weapons, ammunition, and logistical support, the financial and logistical support of paramilitaries operating out of Serbia proper, the detailing of JNA officers to Bosnian Serb units, and eventually the exercise of direct command and control over the Bosnian Serb Army.

ACTIVITIES OF THE UNITED STATES RELATED TO THE CASE:

Despite the strong support of the United States for the work of the International Criminal Tribunal for the Former Yugoslavia, both in terms of political and financial support, the United States and other allied countries have exhibited a strange lack of enthusiasm for the case, with the United States notably failing to publicly declare its support for the case, and failing to comply with Freedom of Information Act Requests seeking unclassified and declassified information. Even more surprising, on a couple of occasions a high ranking U.S. diplomat has at the behest of Slobodan Milosevic encouraged the Bosnian Government to drop the case.

The lack of public support for the case by the United States Government is even more surprising given that at a time when Yugoslavia is suing NATO in the International Court of Justice, the most pointed counter-suit would rest with the fact that Yugoslavia is committing genocide in Kosova, just as it has in Bosnia and Herzegovina. Moreover, the United States could readily argue that the compelling justification for NATO action rests with the fact that given the genocide committed against the people of Bosnia the international community has every reason to conclude that Yugoslavia was now committing genocide against the people of Kosova.

The rationale for the lack of public support for the case, and the so called "private" pressure to drop the case are related to the United States Government's ongoing attempt to "accommodate" or "appease" the Serbian nationalist regime in Serbia and the regime in the Republika Srpska rather than confront those regimes in the manner necessary to ensure the implementation of the Dayton Peace Accords and the cessation of the ongoing process of Balkan destabilization being instigated by the Milosevic regime.

This reluctance to support the case can thus be perceived of as part of the larger U.S. policy not to publicly identify the atrocities in Kosova as amounting to genocide, and not to publicly identify Slobodan Milosevic as an indictable war criminal.

The reluctance of the United States to support the case also rests with the fact that some officials are uncomfortable with the state of Bosnia and Herzegovina engaging in independent actions which can

not be micro-managed by the United States and other members of the international community. For instance, the President and Prime Minister of Bosnia recently publicly declared Bosnia and Herzegovina's support for the NATO action in Kosova in order to prevent another genocide. The Office of the High Representative issued a public letter rebuking them for this declaration of support, contending it was not proper for them to be making such remarks.

Some United States Government officials are also likely sensitive to the fact that if the International Court of Justice finds that genocide was in fact committed against the people of Bosnia from early 1992, this will serve as an "indictment" of those individuals who assiduously denied the occurrence of genocide and who argued against the necessity of military intervention.

IMPLICATIONS OF THE CASE FOR THE CRISIS IN KOSOVA

The Bosnian case against Yugoslavia should also serve to remind the United States Government that the ethnic cleansing and genocide now occurring in Kosova is a mere repeat of the genocidal acts carried out against the people of Bosnia and Herzegovina and is part of a larger plan for an ethnically pure Serbia which involves future acts of ethnic cleansing and genocide against the non-Serb populations in Vojvodina, Sandzak, and possibly Montenegro and Macedonia.

The Bosnian case against Yugoslavia should also serve to blunt recent suggestions that Kosova be de facto partitioned as part of a peace settlement, as this would further perpetuate the interests of the Serbian nationalist regime, and not only build upon, but actually ratify the use of genocide as a means of creating an ethnically pure greater Serbia.

To bring an end to the current crisis in the former Yugoslavia the United States must do many things. A first and long overdue step would be for the United States to announce publicly its support of the Bosnian case, and to actively provide the Bosnian government with all unclassified or declassified information necessary to begin the delegitimization of the Serbian nationalist regime responsible for genocide.

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