COUNCIL SUMMARY

1. Who will present recommendation and report?

   David Stoelting, Esq.

2. Brief summary of the proposed resolution.

   Under the resolution, the American Bar Association reconfirms its commitment that the United States Government accede to or ratify the Rome Statute of the International Criminal Court;

   The resolution urges the President of the United States to expand interaction with the International Criminal Court, including cooperation with the Court’s investigations and proceedings;

   The resolution calls on the President of the United States to allow the United States Government to participate in the Assembly of States Parties, including their preparations for a Review Conference to be held in 2010.

3. Goals to be accomplished by the proposal.

   The goals to be accomplished are to have the U.S. government expand its cooperation with the International Criminal Court, particularly with a view towards the United States Government’s participation in preparations for the Review Conference to be held in 2010.

4. Provide a description of any related current ABA policies and how they relate to this policy recommendation.

   In February 2001 the ABA passed a resolution, recommending that the United States accede to the Rome Statute of the International Criminal Court.

   On May 6, 2002 the United States Government filed a communication (Note 7) with the U.N. Secretary General stating that “the United States has no legal obligations arising from its signature on December 31, 2000” and further indicating its “intention not to become a party” to the Rome Statute.

   In the intervening years, although the United States Government continues to formally maintain a policy of disengagement to the Court, administration officials increasingly have made statements recognizing the Court’s role in Darfur and acknowledging the ICC’s importance at the center of an emerging global system of enforcing accountability for atrocities.
A new administration must determine its own policy regarding the Court, including how to proceed in the wake of the May 2002 action of the United States Government (commonly referred to as the “unsigning” of the Rome Statute) and whether and how to participate in the Review Conference scheduled for 2010.

Thus, the Resolution is timely and appropriate in light of intervening events since the prior ABA resolution in 2002.

International Policies adopted by the ABA House of Delegates

2006: Resolution 120B adopted by the House of Delegates Aug. 6-7, 2006 urges the U.S. to support the work of the ICC in Darfur.

2001: Recommend that the US accede to the Rome Statute of the International Criminal Court.

2000: Urge Congress to enact legislation that would require the President to 1) report to the Congress within thirty days after receiving notice from the International Criminal Court Prosecutor that a U.S. National committed an act within the jurisdiction of the Court; 2) take all reasonable steps to assure that the U.S. retains jurisdiction to investigate and, if necessary, prosecute the alleged act; and 3) report promptly to Congress on subsequent actions by the ICC with respect to the alleged act.

1998: Support establishment of a permanent International Criminal Court (ICC) by multilateral treaty to prosecute and punish individuals who commit the most serious crimes under international law, and recommend a continued active role for the U.S. government in negotiating and drafting a treaty to establish the ICC. Suggest that the ICC have automatic jurisdiction over genocide, war crimes, and crimes against humanity, that the ICC’s jurisdiction should complement the jurisdiction of national criminal justice systems, that the U.N. Security Council, states parties to the ICC treaty, and the ICC Prosecutor (subject to appropriate safeguards) be permitted to initiate proceedings when a crime appears to have been committed, and that standards of fairness and due process be protected.

1994: Recommend that the U.S. Government take an active role in establishing an international criminal court based on enumerated principles for consensual and mandatory jurisdiction.

1992: Recommend that the U.S. government pursue the establishment of an international court, so long as the jurisdiction of the court is concurrent with that of member states, no one is tried unless jurisdiction has been conferred upon the court by the state of which he is a national and by the state in which the crime was committed, and the fundamental rights of the accused are protected. Recommend that the U.S. government work toward finding solutions to the numerous important legal and practical issues identified in the reports of the “Task Force on an International Criminal court” and the New York State Bar Association, with a view toward the establishment of an international criminal court.
1991: Establish a Blue Ribbon Committee on the Establishment of an International Criminal Court.

1978: Urge the U.S. State Department to open negotiations for a Convention for the establishment of an International Criminal Court with jurisdiction expressly limited to (a) international aircraft hijacking; (b) violence aboard international; and (c) crimes against diplomats and internationally protected persons.

5. Please identify which Section Committees have reviewed this recommendation and their response(s).

   International Criminal Law Committee
   UN and International Institutions Coordinating Committee
   International Courts Committee.

6. U.S. and other Government views: Identify positions or views of the U.S. government entities, other government and international institutions.

   Opposing Views: Provide a good faith description of controversial aspects of the proposal and potential opposing views. Who will present opposing views to Council?

   Opponents of the resolution may include persons who believe that United States national security interests may be harmed through cooperation with the International Criminal Court.

   Opponents also may include those who believe the ICC may try to assert jurisdiction over U.S. soldiers charged with “war crimes” resulting from legitimate use of force, and perhaps over civilian policymakers, even if the United States Government does not ratify the Rome Statute.

   There has been no identifiable opposition to the resolution in the ABA House of Delegates.

7. Intended Implementation: Describe how the proposal would accomplish its goals, and what steps are intended to implement the proposal if it is adopted.

   To implement the resolution, the President of the American Bar Association and other ABA officials would request the U.S. executive and legislative branches to implement the resolution.