

THE HEALTH CARE LIABILITY
REFORM ACT OF 1995

HON. BOB STUMP

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Mr. STUMP. Mr. Speaker, today I am introducing the Health Care Liability Reform Act to establish fundamental tort system reforms.

This legislation will: set a \$250,000 cap on noneconomic and punitive damages; limit attorneys fees to 25 percent of the first \$100,000 and reduce the allowable percentage as the award increases; eliminate the collateral source rule that allows for double recovery; abolish joint and several liability, so only defendants who are actually at fault are liable; require periodic payment of damages over \$50,000; establish a 1 year reasonable discovery rule and 3 year statute of limitation with special exceptions for minors; and require pretrial dispute resolution to encourage reasonable settlement.

Our current medical malpractice system is not effective in compensating injured individuals or at improving the quality of health care. It is a system with powerful incentives for wasteful spending. Plaintiffs are allowed to sue even if the facts do not merit a lawsuit and cash payments of 3 to 4 times claimants' medical bills are awarded. The median verdict in medical liability claims, according to a Jury Verdict Research report jumped by almost \$200,000 in one year from an all time high in 1991 of \$450,000 to \$646,487 in 1992. The General Accounting Office reported that over half of total health care liability costs are spent defending against claims that result in no payment. A RAND Corp. study found that 57 percent of the money spent in health care liability litigation does not reach the injured patient.

Physicians and hospitals are forced to provide care, not for the well-being of the patient, but to protect themselves from lawsuits. Our physicians are the best trained and equipped, yet they are also the most often sued. Claims against doctors rose from 2-per-100 in the 1960's to 16-per-100 in the late 1980's. Physicians fearing malpractice suits are increasingly opting out of high-risk specialties and medicine altogether. Those hurt most are disadvantaged pregnant women, rural communities and senior citizens.

Medical malpractice liability adds at least \$15 billion a year to the cost of health care, according to a recent study by the Competitiveness Center of the Hudson Institute. It is driving up the cost of treatments, services, medical devices and pharmaceuticals and inhibits the research and development of new products. It is a detriment to patients, providers and taxpayers. If we allow this litigation explosion to continue unrestrained, any effort to bring down health care costs and increase access to care will surely fail.

MURDER OF TWO AMERICAN DIPLOMATS IN PAKISTAN LATEST
EXAMPLE OF LAWLESSNESS IN
KARACHI

HON. FRANK PALLONE, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Mr. PALLONE. Mr. Speaker, I call to the attention of my colleagues an article in today's Washington Times entitled "Blood on Karachi Streets Flows From Multiple Feuds." The article, written by John Stackhouse, discussed how Pakistan's largest city has degenerated into a lawless urban battlefield where innocent citizens are killed while the government and the police stand by idly. The latest victims of this sectarian and religious bloodshed were two American diplomatic employees who were brutally murdered yesterday by masked gunmen who ambushed their consular van in broad daylight.

Mr. Speaker, Pakistan for many years has been at the center of terrorism. Islamic militants have operated training camps, where young men have been trained and violence has been exported to many countries, including to India, Egypt, Israel and the United States. Pakistan was the country where those accused of the World Trade Center bombings were recruited and trained. Pakistan was the country where the terrorist who killed five people in front of the CIA fled to. Now, Pakistan has shown that it cannot protect U.S. diplomatic personnel on their way to work in that nation's largest city.

Mr. Speaker, I urge my colleagues to read the Washington Times article. It provides an excellent summary of the reasons behind Karachi's fall into the abyss of lawlessness, violence and terrorism.

I join with all my colleagues in this body, and all Americans, in expressing my deepest sympathies to the families of our diplomats who served their country with great distinction and courage.

BLOOD ON KARACHI STREETS FLOWS FROM
MULTIPLE FEUDS POLITICS, RELIGION, ETHNICITY
FUEL VIOLENCE

(By John Stackhouse)

KARACHI, PAKISTAN—With martyrs, guns and killing sprees, Karachi is no longer simply Pakistan's biggest city and commercial capital. It is a city at war.

The two American diplomatic workers gunned down yesterday were among 164 persons killed in Karachi in the past month in a spiral of violence that is a complex swirl of political, religious, ethnic and criminal currents.

A recent attack on two mosques has pitted the city's Shi'ite and Sunni Muslim sects against each other. Most of the fighting, however, has been between the two main factions of the Muhajir Qaumi Movement, Karachi's leading political force, which represents Urdu-speaking migrants, or "muhajirs," originally from India.

Many fear that if the two battles—one sectarian, the other ethnic—overlap, Karachi will slide toward anarchy.

Already mosques, normally symbols of peace and security, are bolted shut with steel doors, opened only long enough for worshippers to pass weapons checks. At night, the streets have mere trickles of traffic. Many residents are even talking of not celebrating the coming Muslim festival of Eid.

Day after day, in a city once renowned for its seaside tranquility and cosmopolitan

night life, the killings continue, each seeming to set a new standard for senselessness.

In December, seven artisans were shot dead in their shop as they crafted lacework. The same month, on one of Karachi's main roads, seven persons were burned to death in a bus in the early evening. Last week, a passing motorist sprayed bullets in a tailor's shop, killing three persons.

Much of the city's crisis has been laid at the feet of Karachi's police force, which has been both ineffectual and, in some places, linked to criminal gangs.

Although the army ruled the streets of Karachi from 1992 to 1994 in a special operation against urban violence, it pulled out in December—and 437 persons have been killed since.

"I would advise the government to go to the extent of disarming the police," said Nizam Haji, a local businessman who heads a liaison committee between police and civilians. "The police have gone rotten in Karachi. Totally corrupt, incompetent and politicized."

Last month, gunmen opened fire on a crowd across the street from one of Karachi's main police stations, killing 11. Despite several police near the scene, no one fired at the assailants or gave chase. Nor have there been any arrests for the attack, although five police officers were charged with dereliction of duty.

With little law and no order, drug lords and criminal gangs also have taken to Karachi's streets, launching robberies, extortion and retribution killings.

In Pakistan's most international city, the rise of sectarian violence has raised concern about foreign involvement, perhaps even proxy battles.

Sherry Rhemam, managing editor of the Herald, Pakistan's leading newsmagazine, said that Shi'ite factions in the city appear to be backed by Iran, while Sunni gunmen receive money, weapons and training from Saudi Arabia.

There also are concerns that official agencies, perhaps the government itself, has sponsored the terror. Many observers believe the army, during its rule in Karachi, armed and trained a new muhajir faction to launch a fratricidal war among the migrant population.

The new faction is now seen to be supported by the country's infamous intelligence agencies, the same bodies that backed the Afghan mujahideen in the 1980s.

For any Pakistani government, support of the muhajirs is a key to political survival. With about half of Karachi's 10 million people, they hold sway over the country's biggest economic center, as well as the influential southern province of Sindh.

Despite their numbers, though, the muhajirs feel they are marginalized by Sindh's powerful rural elite, which includes the Bhutto family.

"These 2 percent of the population control 98 percent of the country," said Shoaib Bokhari, a muhajir member of the Sindh assembly.

Mr. Bokhari did not deny the muhajir ambition for a new province of Karachi. The city now is administered by the Sindh government, and while the federal government relies heavily on Karachi and its port for tax revenue, it spends little on the thriving commercial center.

The Sindh government also keeps 15 percent of Karachi's property tax, the city's main source of revenue, as a service charge for collecting it. And the province reserves the majority of government jobs, on a quota system, for rural Sindhis, who tend to be less educated than the muhajirs.

While the muhajirs once controlled Karachi's city council, their government was dismissed in 1992. The party's top officials either were arrested or went underground, and the muhajir leader fled to London, where he lives in self-exile.

When the army withdrew from Karachi in December, Prime Minister Benazir Bhutto appointed her helicopter pilot as city administrator and stacked the rest of the city council with members of her Pakistan People's Party.

U.S. ASSISTANCE FOR POSSIBLE
NATO EFFORT TO HELP
UNPROFOR WITHDRAW FROM
BOSNIA AND CROATIA

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 9, 1995

Mr. HAMILTON. Mr. Speaker, last year President Clinton made the commitment to deploy United States forces to assist in a NATO effort to withdraw U.N. peacekeeping troops from Bosnia if this becomes necessary. On March 31, we are approaching a deadline imposed by the Government of Croatia for the beginning of the withdrawal of UNPROFOR from Croatia, to be completed by the end of June. The President still has not committed United States forces to assist in a possible withdrawal from Croatia, in part so as not to prejudice delicate on-going negotiations with the Croatian government.

Given the seriousness and the implications of the President's commitment of United States forces for these possible missions and the dangerous situation in Croatia, I wrote to Secretary Christopher in February setting forth my concerns. I received a response to my letter today. I am including both in the RECORD in order that my colleagues can be informed about the important, serious issues before us.

In the response to my letter Assistant Secretary of State for Legislative Affairs, Wendy Sherman, emphasizes that in assisting the possible pull-out of UNPROFOR, "NATO has no intention of engaging in offensive combat in Bosnia and/or Croatia, or of remaining in the region following the UNPROFOR pull-out."

Assistant Secretary Sherman also stresses that to give our diplomatic efforts a chance to succeed, the administration is not yet making a public case for assistance with the UNPROFOR withdrawal from Croatia. But if there is no alternative, the President will explain to the American people what is at stake, which above all, is "our collective security, as exemplified by mutual commitment to Allies."

In testimony today before the International Relations Committee, Assistant Secretary of State for European Affairs, Richard Holbrooke, gave assurances that United States troops, if they are ever deployed in Bosnia or Croatia, will do so only to help UNPROFOR troops leave, period.

The exchange of letters follows:

COMMITTEE ON
INTERNATIONAL RELATIONS,
Washington, DC, February 22, 1995.

HON. WARREN CHRISTOPHER,
Secretary of State, Department of State,
Washington, DC.

DEAR MR. SECRETARY: On January 3, I wrote to you regarding the President's decision in principle to commit U.S. ground

forces to a future NATO-led operation to support UNPROFOR withdrawal from Bosnia. I appreciated your reply of January 19.

I am writing again because my policy and process concerns about this decision persist. Indeed, they have been sharpened, as a result of: (1) the increasingly fragile situation in Bosnia; (2) information provided to the Committee that the first contingency steps to implement a withdrawal of UNPROFOR from Bosnia are now going forward; and (3) the decision of the Croatian government to terminate the mandate of UNPROFOR in Croatia after March 31, 1995.

I would like to ask a number of questions about U.S. policy:

1. Does the President's commitment to assist in the withdrawal UNPROFOR from Bosnia extend to a withdrawal of UNPROFOR from Croatia as well?

If such a commitment has not been made, is it under active consideration at this time?

What would be the U.S. troop and cost requirements of such an additional commitment?

2. How would a prior withdrawal of UNPROFOR from Croatia complicate an UNPROFOR withdrawal from Bosnia?

How would an UNPROFOR withdrawal from Croatia change the U.S. troop, cost and logistics requirements of a NATO-led operation to support UNPROFOR withdrawal from Bosnia?

3. How does the possibility of renewed fighting in both Bosnia and Croatia affect your estimates of the U.S. troop and cost requirements of a NATO-led operation to support UNPROFOR withdrawal?

If fighting resumes, do you believe that U.S. forces participating in a NATO-led withdrawal of UNPROFOR will be able to keep out of the conflict?

4. I appreciate the Department of State's reply of January 19th, "that the Administration has no intention of keeping U.S. ground forces in Bosnia following a withdrawal operation." I agree with that policy limitation, but I remain concerned about the strong pressures on U.S. ground forces—during and in the aftermath of an UNPROFOR withdrawal—to intervene in the conflict:

To provide humanitarian assistance;

To protect civilian populations; or

To respond to military provocations by parties to the conflict.

How do you address each of these issues, from the standpoint of keeping U.S. forces focused on their mission, and preventing mission creep?

I also want to reiterate my concern, which I know you share, that a commitment to put U.S. ground troops in harm's way is the most serious undertaking a President can make.

To my knowledge, the President has yet to make a public case for sending U.S. ground forces to assist in UNPROFOR withdrawal from Bosnia. Unless or until the President makes the case directly to the American people, I believe there will be little support for his decision in the Congress or among the public at large. I strongly urge the President to state the policy and explain the commitment.

I appreciate your attention to this letter, and I look forward to your answers to the several questions raised.

With best regards,

Sincerely,

LEE H. HAMILTON,
Ranking Democratic Member.

UNITED STATES DEPARTMENT OF STATE,
Washington, DC, March 9, 1995.

DEAR MR. HAMILTON: Thank you for your letter of February 22 to Secretary Christopher, in which you pose additional questions about possible U.S. participation in a

NATO-led effort to help UNPROFOR withdraw from Bosnia and/or Croatia.

Before addressing your questions individually, I would like to stress that the Administration shares your concern over an UNPROFOR pull-out: like you, we fear withdrawal may contribute to a widening of the war in both Bosnia and Croatia. For this reason, we have undertaken an active diplomatic campaign to convince President Tudjman to allow an international peacekeeping force to remain in his country. Assistant Secretary Holbrooke held meetings in Zagreb March 6 to that end.

Because all the Allies agree that an international force should remain in the region, NATO's planning for assistance to UNPROFOR withdrawal has been conducted on a contingency basis only. NATO has taken care to ensure that laying solid groundwork for possible withdrawal does not imply accession to UNPROFOR's departure. President Clinton has avoided making an explicit statement that the U.S. would help facilitate UNPROFOR withdrawal from Croatia so as not to precipitate a pull-out. Practically speaking, if a situation were to develop in Croatia where no alternative to NATO-led withdrawal appeared feasible, as in Bosnia our Alliance commitments would militate in favor of U.S. participation. But let me emphasize that we do not want this to come to pass, and we are pressing Tudjman to moderate his stance so UNPROFOR does not have to leave and NATO does not have to deploy.

You correctly suggest that UNPROFOR withdrawal from Croatia would significantly complicate the situation for UNPROFOR in Bosnia. Evacuation routes through Croatia that soldiers in UNPROFOR/Bosnia would have to use might be harder to secure if UNPROFOR/Croatia were no longer in place. Also, if the Krajina Serbs tried to prevent UNPROFOR withdrawal from Croatia (as they have sometimes threatened), conflict could spill over into the volatile Bihac area, where Bosnian Serbs might feel compelled to support Krajina Serbs, thus endangering UNPROFOR forces in Bosnia.

Because UNPROFOR's departure from one state may bring it under threat in the other, and in response to President Tudjman's stated wish to end UNPROFOR's mandate on March 31, NATO military authorities have been tasked with updating their contingency Bosnia withdrawal plan to include steps to facilitate withdrawal from both countries. NATO's revised plan is scheduled to be ready in mid-March. We do not yet have NATO's final cost estimates, but a team of budget experts from the Department of Defense, the Office of Management and Budget, the State Department, and the National Security Council travelled to Brussels and to AFSOUTH headquarters in Naples the week of March 6 to study existing figures for Bosnia withdrawal and determine whether figures were available for Croatia. Once NATO has released its revised plan, and we have made preliminary decisions on what our response should be, we will discuss funding options with Congress.

As for troop numbers, NATO has not yet asked member states to indicate possible contributions, nor has it projected troop needs. It is worth noting that a significant number of NATO troops facilitating UNPROFOR withdrawal would be reflagged UNPROFOR contingents from Allies already in the region. As with costs, troop needs for a Bosnia-only operation would be somewhat higher than for a Croatia-only operation, and somewhat lower than for an operation to help UNPROFOR withdraw from both states. Again, once NATO has released its revised