

THE BROOKINGS INSTITUTION

Brookings Briefing

DARFUR, WAR CRIMES, THE INTERNATIONAL CRIMINAL
COURT, AND THE QUEST FOR JUSTICE

Friday, February 25, 2005

The Brookings Institution
1775 Massachusetts Avenue, N.W.
Washington, D.C.

[TRANSCRIPT PRODUCED FROM A TAPE RECORDING]

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P R O C E E D I N G S

MR. NIVOLA: Good morning, and thank you for coming. I'm Pietro Nivola, the director of the Governance Studies Program here at Brookings. Welcome to the first of our 2005 Judicial Issues Forums. We're planning to hold a number of sessions like this on various topics in the course of the year, so stay tuned and keep checking our Web site.

Today's discussion is about Darfur and the judicial miasma, if I can use that term, that the international community has once again got itself into in the face of a massive human rights crisis. The time for concerted international response to the nightmare in the Sudan seems long overdue. At a minimum, that response should include swift prosecution of the worst war crimes, yet somehow even that *de minimis* measure remains in limbo. To help us understand why and what the realistic options might be for breaking the impasse, we've assembled a first-rate panel of experts today who generously agreed to come here and discuss the situation.

Our panelists include--and this is not necessarily in the order of their remarks--first of all, Pierre-Richard Prosper, who is the president's ambassador-at-large for war crimes issues. In the late 1990s, Ambassador Prosper was one of the U.N.'s war crimes prosecutors for the atrocities in Rwanda. Then we have Elisa Massimino, who's the director of the Washington office of Human Rights First and also a lecturer at the George Washington University Law School. We also have with us John Prendergast. Mr. Prendergast is an advisor to the International Crisis Group and served as an expert on Sudan in the Clinton administration's National Security Council. We're also supposed to

be joined by Jemera Rone, a specialist on the Sudan from Human Rights Watch.

Hopefully she'll arrive in time to contribute. She's not here yet.

Stuart Taylor, of the National Journal and who's a nonresident senior fellow with us, too, and who organizes our Brookings Judicial Issues Forums, will moderate the discussion. And thank you all very much for joining us.

MR. TAYLOR: Thank you for being here. Some of us will stay in our seats because C-SPAN tells us that works best.

Genocide. After the Holocaust, the world said never again, yet it's happened again and again and again. The most conspicuous examples, Cambodia in the '70s; Rwanda 1994--800,000 people butchered, mostly with machetes, while the world watched helplessly; the south of Sudan, 2 million dead--civil war, murders; and now the west of Sudan, Darfur, where, from the best information I have, the range of people killed so far is in the 80,000 to two or three hundred thousand range, almost 2 million driven from their homes, killing continuing at about 10,000 a month, according to most estimates. That's 320 a day. That's 20 every hour and a half, which happens to be how long we're going to be here this morning.

And the big question is, what is the world going to do about it? What is the United States going to do about it? With the help of my more expert National Journal colleague, Corine Hegland, I identified what I thought would be the ideal panel of four experts. With a lot of luck, those are the four people you see before you. The format will be Ambassador Prosper will speak for 10 minutes, and then each other panelist will speak

for five minutes, then another five minutes for Ambassador Prosper. Then I will ask questions for awhile, and then we'll have questions from the floor.

Without further ado, let's go to the people who know things. Ambassador Prosper.

AMBASSADOR PROSPER: Thank you, Stuart, and thank you to Brookings for hosting this event.

It's clear that we're here to talk about a matter of critical importance, and that is finding a resolution to the problem in Sudan--finding a way not only to bring peace, but to end the violence, end the atrocities, and hold the perpetrators accountable.

Now, we know from looking at the events in Sudan that Sudan has been a problem state for quite some time. As Stuart just told us, there was a civil war between the north and south, where approximately 2 million people died. Fortunately, in that area we're moving towards peace with a peace agreement, but the problems in Sudan persist. And they persist in the area of Darfur, which is about the size of the State of Texas.

Currently in Darfur there are hundreds of thousands, even millions, of people who are at risk, based on the violence that has occurred. There is a conflict that has complex roots between the nomadic Arab herders and African farmers, but it is also a conflict that is being used as a wedge by the government in order to prevent the African farmers from gaining more momentum in the peace talks that have occurred.

The government of Sudan has acted aggressively against the African farmers, who seek a seat at the table in a north-south type of agreement. What they have done and what we have seen in the past few years is a pattern of atrocities, a pattern that

is consistent with what we saw in the north and south. There are women that are being raped. There are countless civilians that are being murdered. There are people who are being branded. Villages are destroyed completely. Food supplies are destroyed. Livestock is either taken away or killed. Persons are left displaced throughout the country. The numbers are staggering. The numbers that we see are about 1.8 million people displaced, at least. There are current figures out there that say that 70,000 people have died. We won't know the true extent of the crimes or the amount of people that have died until a full-blown accounting takes place.

Last year, we looked at this--Secretary Powell looked at this and made a determination that a genocide has occurred in Sudan. We made the determination based on the facts that I just articulated, but also based on the fact of the actions of the government in response to these abuses.

You see, most of these crimes have been committed by a militia, an Arab militia known as the Janjaweed. The Janjaweed has been supported by the government, in fact created by the government, and has received some encouragement by the government to commit the acts in Darfur. They received some aerial support from the government as the Janjaweed went in and destroyed these villages. But in response, the government has yet to rein in the Janjaweed despite the fact that the international community, through the Security Council, has spoken out and asked them to do so. The government has not arrested the key Janjaweed leaders and brought them to justice.

Last year, when we saw a humanitarian crisis, where people in the IDP camps--internally displaced camps--were suffering from malnutrition, lack of medicines,

lack of water, there was obstruction by the government in not allowing the humanitarian assistance to go in. Now fortunately, some of that has been remedied. It's been remedied by a concerted effort by the international community, a concerted effort by the African Union, and by the fact that the government is now allowing humanitarian assistance to go through.

But atrocities do still continue. We, the United States, have played a leadership role in this area to try to bring a remedy to the problem. President Bush was the first leader, the first head of state to publicly condemn the actions of the government and the Janjaweed in Sudan. Secretary Powell last year asked a team to go to N'Djamena, Chad, in April to help broker a peace agreement in Darfur. We led the efforts in the Security Council to bring a series of resolutions to the table to be voted upon, that called for immediate action not only in stopping the atrocities, but also to open up the humanitarian corridor.

We also called upon the United Nations to launch an investigation through the Commission of Inquiry into the events that occurred in Darfur. All along throughout this process, we also provided a substantial amount of humanitarian assistance. Between the years 2003 and 2005, we have given up to \$567 million of aid. We had also provided up to \$42 million for the African Union forces to go into Darfur to not only monitor the situation, but help protect the population. And we have more funds that we are dedicating to the process.

But again, the key discussion here today is Now what? What do we do about it? We know that there's still violence, there are still atrocities continuing. And we know that people need to be held accountable.

Currently in the Security Council we have a resolution that we are discussing that is designed to go after some of the perpetrators and is designed to try to curb the situation to bring peace. It is a resolution that is calling for up to 10,000 U.N. peacekeepers to go into Sudan, primarily in the south, but we also want them to be able to deploy to Darfur, as appropriate and as is needed. It is a resolution that also calls for these peacekeepers to cooperate and work with the African Union monitors and forces that are there in Darfur that are seeking to remedy the situation. It is a resolution that seeks sanctions, measures against selected individuals as a way of targeting them in order to, again, rein in the violence. It seeks to have travel bans. It seeks to have some sort of asset freezures so that we can at least begin to go after these individuals. It is also a resolution that recognizes the need for accountability.

We want to move forward with this resolution now because we feel that it is important that we take the immediate steps that will bring an end to the violence; that is, fortifying the peacekeeping mission in Darfur, the African Union mission; bringing in U.N. peacekeepers in the south; and the targeted sanctions that I discussed. The accountability question is something that we are discussing on a parallel track and will need to be addressed.

Now, you know there's a debate out there regarding what mechanism is the best mechanism for achieving accountability. Our position regarding the

International Criminal Court is well known, and I will not discuss it here. However, what we are proposing is an alternative to the ICC. The Commission of Inquiry and others are recommending that the ICC pursue justice here, but we believe there is a better way.

The way that we are suggesting is that the United Nations Security Council mandate and create a tribunal, under Chapter 7 authority, that is an African Union and United Nations hybrid type of tribunal, where the African Union has a leadership role, a fundamental role in achieving justice and accountability for the events on its continent. You see, the African Union has created a leadership role in Darfur today, and what we want to do is to preserve, respect, and protect that leadership role and encourage it at all times. But we recognize that assistance may be needed, and that is why we propose partnering it up with the United Nations, with the secretary general, Kofi Annan, so that you have the best of both worlds--a strong African role and the United Nations presence to help with the questions of capacity.

Our proposal is one where we believe this court could be based in East Africa, building off the infrastructure of the Rwanda tribunal in Arusha. The Rwanda tribunal has space and capacity that can be drawn from. In the past few years, the Rwanda tribunal has improved in efficiency to the extent that it has issued 11 judgments in 14 months, with two on the way. It is also currently in the process of moving towards its completion strategy, which is seeing a draw-down in personnel, personnel that can be moved over, if you will, to the Sudan tribunal process and be put immediately to work. By using the Rwanda tribunal and having it based in Africa, we believe that we are

beginning to have a process that will establish the seeds of the rule of law on the African continent. There will be an African voice and African ownership in the process.

Now, our concern philosophically with the ICC in this particular area is the fact that the ICC is far away. It is based in The Hague. The people of Africa will not be there to see justice as it's being administered. There will not be a strong African presence in the process. While the ICC does have some African personnel, it is not the same as having an African Union institution involved fundamentally in the aspects of justice, making some of the key decisions, and being responsible for the effective administration of justice.

That is what we want to do. We believe that by having the African Union play a strong role, not only does it benefit Darfur, but it has a lasting and long-term benefit to the continent and to the union. It builds the institutional capacity so that the African Union can deal with these problems in the future itself. We don't want to be in a situation where we see the question of justice in Africa being exported, or outsourced, to The Hague. That is not where we should be. If we all believe in the rule of law, if we all believe in the promotion of the rule of law in Africa, we have to encourage it at all times and we have to endorse and support an African role and responsibility.

Currently, with the International Criminal Court, we are seeing a pattern that we find troubling as it relates to Africa. The International Criminal Court is now seized with, is looking at four cases. It is looking at the Democratic Republic of the Congo, it is looking at the question of Uganda, it is looking at the question of the Central African Republic, and now it is going to look at the question of the Ivory Coast. Is this a

message that we want to send in the African continent, that whenever there's a judicial problem, atrocities being committed, justice needs to be exported to The Hague? We say no. We say we have to build the capacity and work with it locally to make it happen. We recognize that it is hard work, but the long-term benefit outweighs the immediate satisfaction of sending a case to The Hague.

Additionally, we don't think that the court in The Hague, the ICC, will be able to handle these cases. It's already dealing with four conflicts and if you add the question of Sudan in there, it would be five. It would burst at the seams. So we recognize that when you have this long-term vision of how to best deal with atrocities throughout the world and on the African continent, that there is a need for burden-sharing. And the way to do it is by encouraging domestic responsibility and encouraging a regional response that broadens the reach of the rule of law.

Now, there are many details that we can go into about this idea, the pros and cons of our approach, the pros and cons of the ICC, which I'm sure we'll discuss throughout the panel today. But the key factor here is that the alternative approach that we are proposing has merit. The alternative proposal that we are proposing is one that is designed to address not only the immediate problem, but is more of a long-term vision and solution in order to help the African Union build capacity and help Africa deal with some of these problems itself.

I look forward to hearing from my colleagues on the panel today. I know they've got some different views, which we'll discuss. But I think at the end of the day you'll see that there are two ideas on the table, ideas that have merit.

Thank you.

MR. TAYLOR: Ambassador Prosper, thank you very much for that lucid explanation, which to me was thoroughly compelling. We'll see if it was thoroughly compelling to John Prendergast from the International Crisis Group, who will go next.

MR. PRENDERGAST: He's a compelling guy, but I have to say a couple of other things. Last night Stuart sent us a nice e-mail in which he said that Ambassador Prosper--it's hard for me to call my basketball buddy "ambassador," but I'll try. He said that he would lead off and, you know, give an overview of the situation in Sudan and then make a defense of the Bush administration's record, and have about 10 minutes to do so. Well, of course I could only respond that it would take a hell of a lot longer than 10 minutes to defend that record. And then I asked Pierre if he would allow me to tell you all what his reply to my response was, but he declined to give me permission.

Anyway, I want to delve into the broader policy questions first and then allow my colleagues who follow me to go more specifically and deeply into the ICC debate. I think that this debate, this ICC debate that we're currently engaged in--as the genocide debate has been--are ultimately to some degree diversions of our attention and energy from the main questions which in fact Pierre did put out on the table: What do we do now to stockpile the atrocities that are being committed now? And, perhaps even more compellingly, something we haven't even started talking about, what do we do now to prevent a famine from engulfing Darfur and driving the current mortality rates--which the only estimate we have is 10,000 people a month dying--far beyond what they are at the present? The only thing I would say that is worse than genocide is famine on top of

genocide, and that's what we're staring at as the possibility emerges in the coming months that localized, severe, acute food insecurity is going to transform into larger famine conditions in parts of Darfur, in the most conflict-affected areas.

If we don't answer these questions correctly and muster the political will to then implement the answers, hundreds of thousands will assuredly die in the coming year. The stakes, simply put, couldn't be higher.

I think it's time for the Bush administration and the broader international community to step back for a second and acknowledge that its policy, its current policy, particularly the U.N. Security Council's current policy of barking without biting, issuing these resolutions that threaten to do X, Y and then never end up doing Z, which they've threatened to do, this barking without biting has been a grotesque failure for the people of Darfur. When you invoke the Genocide Convention and then not undertake the assertive action to fulfill the responsibilities of that convention, that may in fact potentially, arguably, be worse than not having used the term at all.

On my three trips in the last six months into Chad, into the refugee camps and into Darfur itself, the disappointment amongst the Sudanese survivors of these atrocities is palpable. Their hopes were lifted so much and so cruelly, in fact, by the invocation of the term "genocide," only to have these hopes dashed in the yawning chasm of inaction. Unlike Rwanda and the 100 dramatic days of 1994, this crisis has unfolded now over 23 months. Not one punitive measure has been imposed against the perpetrators, the orchestrators of the atrocities in Sudan, the government there.

We in fact know what to do. We know how to stop these crimes. We've had time to study, to analyze and look at the history. The road map is, I think, crystal clear. It involves three priorities, three overall policy priorities that need to be focused on now.

The first priority--and there's no difference of view, I think, between Ambassador Prosper and I--is civilian protection, how do you protect people. That has to be what we're all about now. The slogan which has great resonance, "African solutions for African problems," has produced so far a 2,000-strong force in an area the size of Texas. First of all, ladies and gentlemen, genocide is not an African problem; it is a global problem. Second, the AU force did not receive the diplomatic backing it needed fully in the middle of last year because of a divided international community, and thus finally negotiated a mandate with the government of Sudan that focuses on the observation of the cease-fire rather than the protection of civilians.

In other words, every day, when women are faced with that "Sophie's choice" that you've all heard expressed so many times, where they choose whether or not they're going to go out to get that firewood so that they can cook the little bits of food aid that they're getting from the international community and face the likelihood or possibility that they will be raped, that we cannot and have not and so far have chosen not--to put a finer point on it--we've chosen not to deploy international force to protect those women from being raped so they can feed their families.

The U.N. Security Council, therefore, has to work with the African Union--in other words, together; diplomacy; aggressive, robust diplomacy between the African

Union and the United Nations Security Council--to enhance that mandate now and expand the number of troops on the ground, whether they're all African Union troops or whether they're supplemented by the U.N. forces, as Ambassador Prosper is intimating that the Security Council would like to see happen, or if NATO gets involved, as the secretary general has suggested and many others now in the last week or two have suggested. These patterns of the deployment of force, it's the troop deployment patterns that matter. Do we deploy the troops to protect civilians, or do we deploy them largely to protect the monitors to go and take pictures of what's going on and then keep them confidential unless they get leaked to a guy like Nick Kristof? The current U.N. Security Council resolution does not do that. We need to do that.

Second priority is comprehensive peace. We continue to allow the government of Sudan to play the north-south agreement that Pierre referred to against the peace efforts that are ongoing in Darfur. The result is what I think is a bifurcated policy that is less and less relevant to the Darfur crisis and directly jeopardizes the implementation of that north-south agreement. We need to be able to go vertical, north-south, at the same time as we go horizontal, east-west. We need a high-level envoy, someone of a very senior stature like Senator-then-Ambassador Danforth was for the administration in the first term, with resources at his or her disposal, that is supporting the implementation of the vertical, the north-south agreement, at the same time as we much more actively support the AU-led mediation in Darfur and the horizontal problem, the center with the west.

There needs to be, I think, the same kind of high-level commitment to Darfur now as there was during the first term in this administration for the north-south process, where you had the secretary of state admirably--nearly every day, as far as we could tell--engaging one way or another in support of that peace deal.

The current peace process for Darfur is in tatters. It is directionless. I don't know who leads it. It lacks that kind of specific person, like General Sumbeiywo has been for the process that resulted in agreement between the SPLA and the government. If anyone can name who's leading that process now, you get a star. It lacks international community leverage, like was built for the process in Kenya for the north-south deal, and it lacks the seriousness of the parties. They're simply not engaged. Again, there is no consequence for this kind of bleeding process. There is a gaping wound which just sits there and we continue to apply humanitarian band-aids.

The third and final priority that I would stress is perhaps the most important in influencing the calculations of the regime in Sudan. And that is the issue that brings us here today, I think, and that is accountability. Bringing accountability to the table is done most efficiently by imposing the targeted sanctions that Pierre talked about in his introduction that are in the U.N. Security Council resolution now, but have been in it before and the United States has withdrawn them in the face of Chinese opposition, in the face of Russian opposition. So we need to keep those on the table. The travel ban of senior officials, the asset freeze against those regime officials, as well as a larger arms embargo for the government. You need to put that scarlet letter on the government of Sudan.

We have empirical evidence that when you place a scarlet letter on the regime, it changes their behavior. In the 1990s, a simple travel ban was imposed on senior regime officials for their activities in support of international terrorism. As a result of that simple U.N. Security Council-sponsored travel ban, they dismantled the infrastructure in Sudan for al Qaeda, they booted Osama bin Laden out of the country, they ended most of their ties with the other terrorist groups that they had associated with. This is very specific evidence that this government is malleable to real punitive measures. We haven't even tried this approach that has proven, dramatic results. That is a failure of leadership of the first order of magnitude, I would argue.

The other way to introduce accountability is to refer the case to the International Criminal Court. And I would refer you all to Samantha Power's February 10 op-ed in the New York Times. It's a perfect argument. Additional material that is more elaborate is what Jemera has produced for the Human Rights Watch. These are very, very good arguments, and we need to listen to them.

Let me conclude, then, by saying if the Americans and Europeans can come together around the Security Council resolution that Pierre talked about and come up with a compromise in that Security Council resolution, a package that includes on the one hand what the Americans want, which is the targeted sanctions, on the other hand what some of the Europeans want, which is the ICC referral, it will be very, very difficult for China and Russia to reject this kind of a compromise package point-blank. They don't like to use the vetoes. They love to threaten it, they don't like to use it. We need to start using U.S. leverage in the way we use it for Syria, for Iran, for North Korea, and

particularly for Iraq. We need to start playing chicken with the Chinese and seeing if they back down. And we need to start acting like we mean what we say when we invoke sacred words like "genocide."

Thank you.

MR. TAYLOR: Thank you very much, John Prendergast. Next, Jemera Rone of Human rights Watch--we're very lucky to have her with her with us--will speak, a leading expert on the Sudan.

MS. RONE: Thank you very much for asking me. I'm sorry I came a little late.

I must say, I'm really, really disturbed and very, very upset that the situation in Darfur has gone on as long as it has. This time last year we were talking about how bad it was going to be in Darfur if people could not return to the lands from which they had been forcibly expelled, if they couldn't return and start planting. Well, they didn't return last year and start planting because even though the Security Council passed various resolutions, they were totally ignored by the Sudanese government and they were not enforced by the international community.

Now we're again in the same situation, where we are looking at another planting season and people are still not there, they're not back on their lands. They're now facing a very, very serious hunger problem, as John has referred to--the U.N. is calculating it's going to affect maybe 4 million people. They can't plant. And if they can't plant, they don't eat and nobody else eats, either. So in addition to having all their property burned and looted and their family members killed and being exposed to

disease, rape, continued killing and brutality in the displaced persons camps, they're nowhere. They're economically destroyed. This is a situation that's affecting 2 million people immediately and other millions who are living near them.

This is intolerable. And we have watched this build up for the past year. When the Security Council took its first resolution in April last year, there were about a million people who were internally displaced. Well, now we're talking about 1.8 million people and another 200,000 people in exile in Chad. That's just about double. By the time we get to April, which is the anniversary of the first resolution on Darfur, it's going to be double what it was. It's really not acceptable. We've been futzing around for a long time with all kinds of half-hearted measures, and as the saying goes, half-hearted measures avail you nothing. We haven't seen the kind of progress that we need to see at all to stop the killing and to reverse the ethnic cleansing.

The U.S. has been very good on this for the most part. It's been pushing actively. The U.S. has gone out in front of other international actors. It's said that this is a case of genocide, based on a very extensive survey that was done in Chadean refugee camps. The U.S. has said that its policy is to reverse the ethnic cleansing. This is very good. We think that should be our overwhelming desire and objective in this whole project, is to reverse the ethnic cleansing, to put people back in the situation that they were.

But to do that, we need two things. Right now, we're dead in the water with both of them. One--and I'm repeating, I'm sure, a lot of what John has already said--but one is to beef up the force, the African Union force that is there. The other thing is to

prosecute the guilty. Those two things must go together. Otherwise, the people that are committing and continue to commit these abuses on the ground are not going to feel any fear, they are going to be under no restraint. There is no possibility that the Sudanese government will ever, ever prosecute them. We have seen that. They have been told by the U.N. months and months ago to prosecute the Janjaweed. They're not even--the U.N. isn't even actually formally asking the Sudanese government to prosecute its own soldiers or anything, or air force, or other people who are guilty in this whole chain of events. But they're not going to even touch the Janjaweed, the militia that has been doing a lot of the dirty work for the government, because they're government allies and they're protected.

The only legal deterrent that we're ever going to have is international prosecution. And international prosecution is a real deterrent. It really does work. If we can get some kind of international court going, that is going to put the fear of God into all kinds of people in a way that we have never seen in Sudan. The fact is that now in Khartoum people are worried. They're talking about "la hague," The Hague--they might have to go to The Hague. They're really worried. They're giving interviews to the newspaper; people in government are saying they will not tolerate any kind of international trials for Sudanese. Moussa Hilah, who's one of the most notorious of the leaders of these militia, is making all kinds of statements, saying "the government made me do it" and, number two, "I won't tolerate being prosecuted outside of Sudan."

But there is great worry. This is a very effective deterrent and it's one of the few things that the international community can do, which is to see that there's some

kind of international prosecution. Somehow we know how to do courts, we know how to do law, we know how to do evidence, we know how to give people their attorney, we know how to go through the whole process and be fair and have judges and have appeals and have rules of evidence. We can do that. That is manageable. That is not beyond the pale. It seems impossible for the international community to mount any kind of effective military protective force. It's been a real failure so far in all kinds of situations, not just Sudan. But Sudan is suffering the same fate, or worse than other situations have suffered.

In Sudan, we have the African Union willing and very good on its feet and very flexible soldiers who will push the mandate a lot farther than the U.N. or the EU would. However, there are not enough of them. We are looking to the African Union to come up with thousands of soldiers. The Sudan government has said they would allow 3,500. Well, there are only 1,800 on the ground. And that's been--you know, for the last six months they've been trying to get up to the 3,500. We have to face the fact sooner or later that Africa is still a very poor continent. There are not huge standing armies. They don't have massive resources to keep large numbers of troops on standby. If they have the armies, it's usually because they're involved in some conflict or another, either internally or externally. They don't have a lot of resources to do this. It's not just a question of material resources. The U.S. and the EU and other countries have been pretty good about coming up with a lot of help and logistics and equipment and so forth for the African Union force.

There just is not a lot of available manpower in Africa that can be deployed now, and we need it now. This is another planting season that's going under the

bridge. We're losing out. We're losing every day because ethnic cleansing is being consolidated in Darfur. Property has changed hands. People are being kept from returning to their homes. When I was there in Darfur in October, I talked to someone who was trying to return. Many people have tried to return home. It is not a winning proposition.

This man had gone back--first of all, the government encouraged them to go back, so he and his brother went back. They went to go see the grave of their mother, primarily, because she was killed when the Janjaweed attacked. But they also wanted to see if it was possible for them to start farming again on the land that they and their family and others in their family had been farming for generations. Well, it wasn't. One of their neighbors, who was with the Janjaweed, was farming on their land, which was not bad land. And he threatened them and he told them they didn't belong there, this was not their land anymore, and they just had to go and live in the displaced camp.

So he went back. There was no one to make it any different. Even when people return and they find people on their land and they try to get the local police to intervene, the local police are not enough. They're not enough in numbers. The Janjaweed come in mass numbers. And anybody that is arrested by the police, they tell the police you let them go, or you let our cattle go--if they round up cattle that have been trampling the fields--or else. And the police give in. There are just not enough soldiers in the world, I think, and certainly not in Sudan to effectively make sure--certainly not on the ground now to really protect people who need to get back to their homes.

So we're back to the same conundrum. We need more forces and we need an effective prosecution, a real threat that the people who have been lawless until now, who have been getting away with a crime spree, are brought to justice and that they feel that they are going to be brought to justice if they continue, and that they feel exposed and endangered and that they start to go underground.

Now, as far as the African Union, the African kind of solution and things like that that we've heard a little bit about in terms of a court, there's no there there. This is not an actual proposition. This is not a real--this is an idea in the clouds. This does not have any teeth, it doesn't have any bite, it doesn't have any body. It is not substantial. There isn't anything there. This is an idea. There is no criminal court sitting for Africa that can try people for war crimes. There's a human rights court, but that's a civil court. There is nothing on the drawing board.

The temporary court that's in Arusha, that's an ad hoc court for Rwanda, has been under pressure for a long time, has been accused by this administration and by this ambassador of not being a very good court. It's been improved a little bit, but they have their hands full. They're trying the genocide in Rwanda. They're not finished with that. They're supposed to be, but, I mean, it takes quite a while and it's quite expensive. They don't have the facilities, even. They're building new court rooms now to try to expand, to try the cases that they have. They have a deadline. They have to be finished by a certain time. They're not even going to be able to make that unless they transfer some of the cases that are there now back to domestic courts in Rwanda.

This is not an alternative. This doesn't--you know, it's not even--there's no flesh or bones or anything on it. It's an idea. It's nice, it sounds good, African solutions and so on and so forth. But as John has pointed out, genocide and crimes against humanity, war crimes, ethnic cleansing, these are things that are international crimes, and the international community really should be taking responsibility for them.

The Africans themselves have welcomed the International Criminal Court. At least 26 countries have ratified it. This is a sign of a great deal of acceptance in Africa of the International Criminal Court. Four countries in Africa have already invited the International Criminal Court to take jurisdiction of cases within their countries--DRC, Uganda, the Ivory Coast, and the Central African Republic. They seem to think this is a good court for African cases. It's only when you have a government like Sudan that won't sign the statute and will not have--doesn't want any prosecution. It's not just the international court, it's any court--they have the same opposition. They don't want any kind of prosecution at all, whatsoever.

The only fly in the ointment so far on the prosecution side is, really, the United States policy, which has really nothing to do with Darfur. It is something that is determined by U.S. analysis and looking in its own best interests and so forth. But Darfur and Sudan have become a priority for this administration, have become the priority in Africa. It would be tragic at this time if this priority were let to fall. This is the time when there should continue to be a united international community that gets behind a forceful prosecution.

The International Criminal Court is ready. It has facilities. Key to the Sudan government--as a really good measure of prevention and deterrence, these items are very key: that you have a court that does not have an end date. These ad hoc courts always have to fold up sooner or later. Everybody knows that. Countries wait them out. And that is something that we've seen again and again that the Sudan government is capable of and happy to do.

Another thing is a standing institution that has rules, that has staff, that has procedures--procedures to request supplies, that, you know, people know where the bathroom is, all this stuff. This takes years to get up and started no matter what court you're talking of. We've already gone through this with several ad hoc courts in the world, and that is why many people wanted to have the International Criminal Court.

The other thing is the cost. The U.S. may be facing the cost of this entire ad hoc court if it goes ahead on its own, because nobody else is on board this court right now. The Europeans want the International Criminal Court because they and others, Latin Americans and many Asians and other African countries, have seen this as a solution, instead of for every great crisis having to build yet another building or get more--you know, go out to some country and rent more facilities and hire the staff, hire the investigators, hire everybody from scratch, draw up the laws, draw up the statutes, draw up the rules of procedure.

You have a standing institution that is for the world, and the cost is borne by the United Nations, not by one country that may run out of money, that may get tired of it, that may have budget crunches, that may have other priorities. We need something

that is an institution, that's standing, that's going to last, that the government and other people know is not going to go away when the international interest goes away, that this is an institution that is a court, that it stays focused on its business of trying cases and bringing the guilty to justice. That's what we hope will be the outcome from the International Criminal Court. With an ad hoc court, that is a much less likely possibility. It's not that it's impossible, it's just much less likely.

I think I should wind up now. But I want to--I just want to try to bring people's focus back to looking at what really is good for Darfur, for the people in Darfur. They are thrilled with the idea of an international court, someone to try the people who have been persecuting them badly for the last two years. They have no justice coming whatsoever from their own government. They have been--the government of Sudan has had the opportunity to try people. It hasn't. The International Commission of Inquiry for Darfur was tasked to look at how effectively the Sudanese courts were dealing with it and they concluded "not at all."

So there's only one forum to get justice for the people of Darfur and to really effectively bring about the halt to the kind of atrocities that we're seeing, and that's an international forum.

Thank you.

MR. TAYLOR: Thank you very much, Jemera Rone.

Our last speaker is Elisa Massimino of Human Rights First, formerly the Lawyers Committee for Human Rights, who's an expert on international law, the International Criminal Court. I'll ask you in particular, Elisa, since we haven't focused on

it so far, to address the administration's position that the ICC, the international court, is an illegitimate institution that claims powers that violate the administration's view of international law, including the power, without any Security Council vote, to prosecute American soldiers, for example, American officials, for actions they may take in countries that ratified the ICC. Is there anything to this objection? And what relevance does it have to the Darfur question?

MS. MASSIMINO: Great. And I'll try to keep it to five minutes because I know we want to get to questions. I may actually have a shot at doing that since I'm not an expert on Darfur. I'm really quite honored and pleased to be on a panel with my colleagues who are experts on Darfur, to hear more about the disaster that continues to unfold there.

I really want to start, though, by commending the United States and Ambassador Prosper in particular, for its leadership on Darfur. I really think that has to be our starting point. There is no other government that's done more to put the crisis in Darfur on the international map and to keep attention on Darfur. That's why, when Stuart invited me to be on this panel, I said, you know, can we focus on what the solutions are, the range of solutions, because it is, as Jemera said, tragic to be in a position where the focus, the negative focus so much is now on the government that's done so much to try to solve the situation in Darfur.

As an representative of an organization who has worked for more than a decade for the establishment of the International Criminal Court, I want to start by saying that the ICC is not the solution to the problem in Darfur. I think we all recognize that.

But I also don't think that anybody disputes that justice and accountability have to be part of the solution. The question we're facing now is what form does that take. I think probably the best argument that the form it should take is the ICC is that the victims in Darfur want it and the Janjaweed fear it. And that should tell us something. I hope we'll have a lively back-and-forth about this.

But I want to use just a few of my five minutes to address this question that Ambassador Prosper raised about the appropriateness of an international institution. And in fact, I think I probably part ways with everybody on this panel on this particular point, and that is genocide, war crimes, these are international crimes. It was the reason that the ICC was created. But I don't think that the goal is to always put those problems before the ICC. In fact, the ICC, as I understand it, is in large part intended to create a dynamic that will develop national institutions' capabilities of dealing with these and to only step in when that capacity is lacking, as it clearly is in Darfur. So yes, it was the impetus for creating the ICC, but I would not be happy with a world in which these kinds of cases always ended up in The Hague. The design of the institution as a whole is to force governments to deal with these problems when they can and step in when they can't.

And where I part ways, I think, with Ambassador Prosper--and I want to really point this out. I left a copy of the Darfur Consortium statement that was released this week out on the table, and I hope you'll pick it up if you haven't already.

Ambassador Prosper talked a lot about the need for an African solution, the importance of developing African capacity to deal with these problems in their judicial system,

developing those capacities, and maintaining a strong African role. And I agree with all of that. I think those are laudable goals. They're long-term goals, but they're important.

But what I want to point out is that, to build on what Jemera said, as she mentioned, 26 African countries have ratified the ICC. The Darfur Consortium is a group of more than 40 African and international civil society groups and human rights groups who came together on the side of a meeting in September of last year to create a group of African NGOs that focus specifically on solving the problems of Darfur. And in their statement that they released this week in Cairo, they call the ICC an African court. Very much embrace--and in a very practical way. This is, I think, one of the problems with the United States position right now--they see this as the solution to their problem. And as John mentioned, Samantha Power's excellent op-ed points out how much the issue of The Hague is on the minds of both victims and perpetrators in Darfur. It really is no surprise that the Darfur Consortium calls the ICC an African court. Benin, who's the current president of the Security Council, is already on record as calling for a Security Council referral to the ICC, and 11 others on the Security Council. South Africa supports referral to the ICC.

So this argument that it's somehow a version of colonialism, that it looks bad for the ICC to be dealing with primarily African situations, I think, just doesn't--is in itself a bit patronizing and doesn't hold up to the views of the people who are really most invested in solving these problems.

And finally, I just want to put on the table a challenge to this position of the United States that a Security Council referral would help legitimize the International

Criminal Court and that the U.S. doesn't want to do this. I've heard Ambassador Prosper say this. I just would posit that that train has already left the station. The court is a reality. It's a serious institution doing its work with broad international support. And, you know, there are 97 ratifications of the ICC statute, and that's growing all the time.

So I just--I would commend to you the op-ed by Jack Goldsmith, former Justice Department lawyer in the Bush administration, who says, really, this is a squandering of U.S. leadership, to have the ideological opposition to the ICC derail U.S. leadership on Darfur. In fact, what's most strange about it is that the mechanism that we're talking about here for the situation of Darfur to get to the ICC, the Security Council referral mechanism, is in fact the provision that the U.S. most fought for and wanted. In fact, if this were the only way that situations could get to the ICC, the U.S. would probably be a party to the ICC right now. So it's particularly strange that the U.S. is taking such an absolutist view of this, when you look at, on the other side of the balance, what's at stake in Darfur.

I really feel like if what we're talking about here is the risk that the U.S. might be proven wrong about the ICC, if that's really what we're talking about, that the victims in Darfur shouldn't have to pay the price for that gamble.

MR. TAYLOR: Thank you very much. Ambassador was to have five minutes to respond. On the one hand, we're over time, so you probably have a lot more than five minutes of things to respond to. It would be good to get to questions. So I'll let you mediate that.

Let me put two questions on the table of my own. As I read the back-and-forth between ICC and the Arusha tribunal, it's complicated. There are arguments on both sides. One thing that strikes me is that any new tribunal, ad hoc, would be temporary and would be under some pressure to wrap up before too much time passes. The ICC is permanent. If I'm an official in Sudan who could be a target, I know that the ICC could be pursuing me for the rest of my life. I can't count on, well, this will go out of business before my government does. What about that?

And second, a question that may seem kind of far-fetched to experts but I think strikes a lot of more casual observers. It comes in the shape of a Washington Times op-ed by Jeffrey Kuhner of the Ripon Society. And I'll just quote one sentence: "An intensive bombing of government military targets across Sudan would cripple the regime and janjaweed ability to prey upon defenseless Darfurians." Now, we do have bombers. And we use them in various other settings without U.N. support, including Kosovo. And we assembled a coalition of the willing to invade Iraq. What about that kind of option? Are we really down to talking about war crimes prosecutions as a deterrent? Is that all we can do?

Sir.

AMBASSADOR PROSPER: Well, thank you. And thank you for the rebuttal time. I think there's a number of things to respond to.

I think, you know, as a portion of deterrence we need to recognize that prosecution is not always a deterrent. I mean, that's the reality. We only need to look at the tribunal in The Hague for the former Yugoslavia, recognize it was created in 1993,

that you had Srebrenica occur in 1995. Or Kosovo occur later, in '99. So we know that. We also know that the ICC is engaged in investigating the events in the Congo. They gained jurisdiction last year, yet atrocities continue today. So I think we do need to focus on the important elements, and that is what steps we can take to actually prevent the abuses.

The AU is going to have to look at this particular question of whether to expand the military response. Right now, they do have a mandate that allows them to protect civilians. And as we said, we're trying to get U.N. peacekeepers in there, up to 10,000, that can be deployed also into Darfur. So we'll have to look at that.

Now, the question regarding the court and its longevity, part of our idea in creating this AU-U.N. tribunal is that it can evolve into the permanent African court of justice which the African Union wants. This is part of the capacity building. The AU has already determined that they want this court to sit in East Africa. The Rwanda tribunal is in East Africa. There are facilities there that can be used, shared and ultimately become part of the process. So I think if you have this court that is created now, it evolves into the permanent AU court, and has the permanency and longevity that is being discussed here today.

But I think I do have to take, you know, exception with some of the things that were said here today because I think, to be frank with you, there are some factual errors there. While Benin in the Security Council has said they could support an ICC referral, they're not advocating an ICC referral. South Africa has not come out to say that they want an ICC referral. No government as governments have come out and said this.

Yes, there are countries that have signed up to the ICC, but there is a healthy discussion and debate as to what to do and whether we should be focused on building capacity within the AU to deal with this problem.

Now, I don't think that this idea is an idea in the clouds, because there are some tangible elements to it. The fact is, is that you have an infrastructure in place in the Arusha tribunal that has many of the same things that are within the ICC--meaning there is a procurement mechanism in place, there are court rooms in place, there are offices in place and more space that Tanzania could give as appropriate. So there is a springboard that one can launch from.

Now, when people attack our proposal, they attack it because they say, well, the ICC is ready and our idea is not. I would disagree. I would say that, with our proposal, we have more resources available than the ICC. The ICC only has one court room in The Hague right now, and it's dealing with four conflicts. The ICC only has 54 investigators. Fifty-four for four conflicts, and if you had Sudan, that would be five. One only needs to look at the Rwanda event or the Yugoslav event to recognize how many investigators are actually needed. Both of those tribunals at maximum performance had about 100 investigators for a single conflict.

If the ICC were to accept the Sudan situation, it would have to take all the resources that it has, focus it on Sudan, and then double it. I know this. I've worked on these issues. And as was mentioned, I was a prosecutor with the Rwanda tribunal, the first prosecutor to deal with these cases, a genocide case, and recognize the resources that are needed. The ICC does not have the resources in place. So it is a myth to say that it is

ready to go. It doesn't have offices in Africa. It doesn't have a range of relationship agreements to navigate through Africa, as does the Rwanda tribunal.

Now, we have criticized the Rwanda and Yugoslav tribunal in the past, and I did particularly myself. But that criticism was based on two grounds. One, there were some defense attorneys that were engaged in illicit or corruption type of activities, which the Security Council addressed and got them to remedy. Secondly, we criticized the pace because we wanted it to recognize it was an ad hoc tribunal and should be mission-oriented and move toward completion. We never criticized the work. We never criticized the overall performance. We were nudging it towards conclusion of its mandate, which is what it is doing now.

Now, the dates that are proposed for both tribunals of 2008 and 2010 are goals. They're not mandatory, where all of a sudden the lights are turned off at that time. They're goals. And we want them to pursue these people, and they will. The transferring of cases to national jurisdiction is part of the completion is part of the completion strategy, because we recognize that now Rwanda, Bosnia, Croatia, and ultimately, hopefully, Serbia will have the political willingness and capacity to do domestic prosecutions. That's something we should be encouraging and we want to see happen.

Now, when you look at the ICC, one only needs to look at its own report from the budget committee of last year, November of last year. It recognizes some of the problems we're talking about. It recognizes the insufficient personnel, that it will need more. But it also expresses concern over the lack of African and Asian representation in the tribunal. It recognizes that. So what we are trying to do is to do something that will

take into consideration the AU leadership role and get them the support that they need so that they can do it. It's not simply an African Union tribunal. It's an African Union tribunal and a United Nations tribunal working together, that will involve in time into the permanent AU infrastructure.

Now, when we talk about the ICC--and I heard some folks say here that it's been invited in by countries and it promotes domestic action. I think we really need to take a hard look at that and ask ourselves is it in fact true that it promotes domestic responsibility. I think to date the answer to that question is no. Why do I say that? Look at the situation in Uganda, for example.

Uganda invited the ICC in, as was correctly stated. But the ICC violated its own terms, the terms articulated in the treaty, because there was no showing that Uganda is unable to prosecute the events that occurred on their territory. Keep in mind, Uganda is a functioning state, it's got a functioning judiciary, it can draw from the commonwealth. There was no showing. There was no showing that Uganda is unable in the original sense, meaning as far as them being perpetrators and want to allow impunity, to prosecute people. To the contrary, Uganda wants these people prosecuted. So if the ICC was truly about promoting domestic responsibility, it would not accept a case like Uganda. If it was truly about promoting domestic responsibility, it would look in the Congo and recognize that there are deficiencies, but it didn't make recommendations as to how the international community can help them build the capacity so that there's local action, so that people see justice occurring on their soil.

So what we're talking about is a broader philosophical view. And that's what this is about.

There's no disagreement here on the need for accountability. There's no disagreement here that there needs to be an external response to the situation in Sudan. But the question is do we want to promote local or regional responsibility or role in the pursuit of justice. We believe we do. Because if you do that, there is an ownership element to it. If you do that, there is a visibility associated with it which allows for the victims and the survivors to see it and to feel that, yeah, they're a part of justice.

When I was with the tribunal, I saw the impact that an external had on Rwanda, and we saw it in the Balkans as well. People don't feel that they have an ownership element to the process. It's an external solution, other people doing it on their behalf. They can accept it or reject it. But when you're part of it, you've got a stake in it, you have a role to play, and you have the responsibility of ensuring that it is done properly. This is what we're trying to promote.

So I do believe that the approach that we have is not an idea in the clouds. There is an infrastructure there that can be drawn from. There are 88 investigators now, half of whom will be available later in the year and be tailored over. So when you look at this, again, we have an idea that we believe is solid on the merits and it has the philosophical advantage of promoting the local responsibility, which I think we can all agree is necessary.

So the question I put back to the table is, with our concept, if it is--let's forget about the details for a moment and assume that it can be done feasibly, is this a

concept that the panelists can accept, or are they attached to or married to the ICC to such an extent that our proposal is off the table whether or not it is feasible?

MR. TAYLOR: Thank you, Ambassador.

We have about 16 minutes. I'll ask just a couple of questions, and then we'll go the floor. I'd like to ask Jemera Rone this. Critics of the ICC approach have made two points that I'd like to hear your response to. One is the cynical view that these are Europeans who haven't lifted a finger, these nations, to do anything in the Darfur trying to shift the international political onus through this problem to the United States by waving around the symbolic idea of war crimes prosecutions. One of these days they won't be effective. I think you've addressed that to some extent, but a little more.

And two, a specific criticism by Brett Schaefer of The Heritage Foundation. In a recent paper he writes that the ICC prosecutor received referrals to investigation alleged crimes in Uganda and the Congo, and the referrals were January 1, 2004, and April 19, 2004. The prosecutor took six months to open an investigation in Uganda, took more months to designate judges, and still has not prosecuted anyone a year later. And a somewhat similar story in the Congo. Could you address those points?

MS. RONE: I'll try to address them briefly. On whether or not going to the ICC is not some attempt to shift the onus by the West. Frankly, I don't understand that argument. I think that it's up to everyone, it's up to all countries to do the most that they can. And certainly assuring prosecution is a very vital part of the solution to this problem, and it is no small thing. There are many things that have to be done. This is one of them. It's not that you have to choose between beefing up the African Union or

having an international court. You've got to do both things. And if you're not making very much headway on one thing, it's even more imperative to move forward on the other thing.

As for the heel-dragging or the time that it's taken for the International Criminal Court to investigate and indict in the DRC and Uganda, I'm not sure that that time period that has elapsed is very material. We're not defending the ICC per se. It's not that everything that the ICC does we think is right. There's a lot that we have criticized about the ICC and things that we don't like about them. It's just these are the existing mechanisms that are ready to go, and this is by far the superior one. And in the case of the DRC and Uganda, these are the first cases that the ICC has taken up and it's just that much further along the way in terms of getting itself into a regularly functioning court. If it takes up Darfur now, it will be that much more capable and experienced, having had the experience already with DRC and Uganda.

I'd also like to point out that if there is going to be some sort of hybrid AU-U.N. court created in the future, that is going to be an invitation for bureaucratic negotiations that last years. Because the AU and the U.N. both have their own infrastructure and they're going to have a lot of discussions about how to share resources and direction and control and management and so forth. So with the standing court, there is not that same long discussion that has to go on.

Thank you.

MR. TAYLOR: Thank you. And one question for John Prendergast. If the president of the United States called you and you had one minute in which to tell him what he should do about Darfur, what would you tell him?

MR. PRENDERGAST: Well, I would say, first of all--this doesn't count against my minute--I did have my minute with the president. I was at some signing ceremony. I somehow snuck into the White House and went to some bill-signing deal and he saw me across the room and came over. Later, one of his aides told me that he thought I was Bono.

[Laughter.]

MR. PRENDERGAST: So I had my chance, you know, my moment. Otherwise, certainly, Pierre is not going to bring me in for that moment with the president. And I told him what I would tell him now, which is--and Jemera and I are two sides of the same coin. It's very simple: Protection and accountability. We need to beef up the African Union forces. We don't have to tell everybody how to suck eggs, they just have to suck eggs. We have to increase that mandate. The mandate is not civilian protection, it is protecting people under immediate threat. That's Chapter 6 and a half. That's not Chapter 7. That's not deploying troops in order protect those women who are going out to get firewood. It's not deploying troops in order to protect the villages that haven't yet been destroyed or where people are trying to go back to plant.

So protection is one half, the other half is accountability. Even if we can't get agreement on this international prosecution, we've got to start moving on the targeted sanctions. If we fail to get the Chinese to agree--let's see, I have 10 seconds left. If we

fail to get the Chinese to agree on the Security Council, then let's get 20 or 30 or 40 countries to go with us and start imposing those punitive measures.

MR. TAYLOR: I wasn't really looking at my watch. I had a little--

MR. PRENDERGAST: Oh, yeah, sure.

[Laughter.]

MR. TAYLOR: Let's go to the floor. And let's have, please, short questions and short answers because we only have 10 minutes. And please identify yourself, if you will.

QUESTION: I'm Jane Bussman from The Independent. This question is for the ambassador.

We all know what the Bush administration's problem with the International Criminal Court is. It's a court that tries criminals. You say that The Hague is no good because it's a long way from Africa and the Africans won't be there to see it. Well, A) we have television, and B) at least it exists. If 10 people were murdered in the time it took you to say that the International Criminal Court isn't the place to prosecute-- they're murderers--and Africans welcome the ICC, who is George Bush to tell them that they don't know their own mind?

AMBASSADOR PROSPER: Well, I think we need to reverse the question as well. I mean, I think there's an assumption by ICC supporters in Europe that this is what the Africans want, they want the ICC. Just because they signed up to the treaty doesn't mean they want it for this particular set of events. I think it will be instructive when we hear the AU speak out on this, because we do know that they are

seriously looking at this issue, they want to have an African court of justice, and they want to maintain a fundamental AU role in the process. Now, with all those elements floating in there, they seem to be pointing in a different direction.

You know, now, television, I think you only need to ask the people in Rwanda and Yugoslavia do they feel that justice is close to them because they can access it perhaps on TV or on the radio. And, you know, I think you'll hear a different type of response. I've seen it. I've been on the hills of these various villages in the Balkans, in Rwanda, in Asia, Sri Lanka. And you do have to ask yourself, for example a farmer in Sri Lanka, if that were where the events were, will he or she have any idea that justice is occurring on his or her behalf when it's 10,000 miles away. I don't think so. So we have to move it a lot closer.

QUESTION: Brett Schaefer of The Heritage Foundation. I just want to point out also that 26 countries in Africa may be parties to the court, but that means half aren't. So that's one thing.

Also, I want to pose the question that was asked by Stuart to the ambassador, but ask it to the three other folks as well. And that is, would you support a unilateral action to intervene in Darfur or a coalition of the willing to intervene in Darfur if you can't get a Security Council action? Everybody's agreed that the most imminent priority is to stop the violence, stop the atrocities. That will be the first step.

MR. TAYLOR: Would either of you like to take that on?

MR. PRENDERGAST: Oh, yeah.

[Laughter.]

MR. PRENDERGAST: But he did ask the ambassador, and then I'll answer after him.

AMBASSADOR PROSPER: I think what we need to do is we need to honor and respect the leadership role of the African Union. I mean, they have visited this issue, they have established a mandate for their forces. We obviously need to consult with them and encourage them to take the corrective and aggressive measures that are necessary. But if this is something that they believe is appropriate, then obviously that's something as a union that we can follow and respect. But again, we're working on a parallel track in the Security Council and also are watching the African Union, helping the African Union in their effort and their mandate.

MR. PRENDERGAST: I think it would be grotesquely irresponsible at this point to press for a military action as a first resort. There is a continuum of actions that need to be taken up the chain that should be pursued first, all the things we've talked about today. Unilateral military action now, before we've tried any of these steps up the continuum, in violation of international law and in the aftermath of Iraq, I think would be disastrous and would actually make matters in the short run if our objective really is to protect civilians in Darfur. We have to start moving up that continuum of punitive actions before we then move to more aggressive and threatening postures.

QUESTION: But you agree that the Security Council has not yet taken action, has not yet authorized the troops that are there to protect those that are being assaulted, subject to the atrocities that are there. The Security Council really doesn't show any real willingness to provide that sort of a mandate, nor have they authorized a

significant increase in the troops that are present there to try and protect the victims. So what is the next step? A coalition of the willing does not necessarily have to mean a full military invasion. It could be just peacekeepers provided outside of the rubric of a U.N. authorization.

MR. PRENDERGAST: The next step is the first step. We haven't taken the first step yet. The United States hasn't yet, as I said, pressed in Beijing, pressed in Moscow to get the kind of even initial steps that Pierre is talking about, those target things. If we don't try that, then we will have simply prematurely capitulated. Let's get on the playing field. Let's start the game. We haven't even started. We haven't even started moving on the chain of accountability and the chain of protection that is so important. And if at the end of the day all these actions fail--actions, not words; actions, not intentions--then I think we will have to then start to marshal ideas about the possibility of specific kinds of military action that would protect people ultimately from their destruction.

MR. TAYLOR: Elisa has a point.

MS. MASSIMINO: Just two quick things on that. First of all, I agree with everything John said. But it's also, as the proposal for the ad hoc, impractical in this situation. I mean, as former Secretary Armitage told us when we were talking about this, he said it is a fantasy to think about, you know, any U.S. involvement on boots on the ground or even bombing of Sudan right now. We are too over-extended. So I think that's the--you know, we have to focus on what's going to work and what's going to work quickly. These other--you know, developing capacity and all that, those are all very, very

important. But right now we're talking about Darfur and the disaster. And the best way to get to the point where we can start to pressure Beijing is to get past this ridiculous impasse on the ICC and put the ball back in the game so that we can retain that leadership and make--isolate China on this issue, and then see where we are.

QUESTION: My name is Mary Mullen and I worked with the Bosnia Support Committee. With both these courts, the problem is the apprehension of the people you're indicting. I mean, in Bosnia Karadzic and Mladic were indicted 10 years ago, and they're still at large. Charles Taylor is still at large and Nigeria has no plans on turning him in to the court and Sierra Leone. So I would just like to know how you're going to apprehend--I mean, what is the way with this ICC court? Is it going to have any sort of marshal's service or rapid reaction force? How are they going to get some of the people, especially very high-level people that are indicted as war criminals? How are they going to get them into the court? I mean, it just seems that they don't do that.

MS. RONE: Well, that may have to come, as it did in Bosnia, very slowly. There are a lot of different alternatives. But it is better to have an outstanding indictment and to have somebody trying to live underground and removed from positions of power while various economic and political sanctions are applied and arms are twisted and the diplomatic community works full-time on that. It's far better to have that situation than to not even have the process started, not to have any investigations or indictments or naming of the guilty or trials of other people that can be indicted. It's not to say that it's an easy task. It's not easy to do at all. But it is something that we can do.

It is feasible. And it takes continued pressure and continued concern by the international community.

I just want to say one last thing about the court being nearby. It is good to have a court where people can actually see and participate in justice. But that is not going to happen in Sudan. You're not going to get a Sudanese tribunal unless there's a change of government, and we're not in that business, as far as I know. There's not going to be a trial in Sudan that the victims in Darfur are going to feel does them any good at all. And the ICC has the capacity to rent offices anywhere in the world. If they wanted, they could have offices in Chad, in Khartoum, and Darfur, in the Central African Republic. There's no barrier to them setting up a court room in other localities.

MR. TAYLOR: We only have a minute and I'm going to assume the moderator's prerogative to ask the last question. I'll ask the ambassador.

Suppose you had your one minute with the president and he didn't--he probably would even have to confuse you with Bono to get you in there. And he said this to you. He said, Listen, I've got my problems with the ICC, but what I really want to happen is for people to stop being murdered in Darfur. Can we put aside the problems we have with the ICC and address this question: Which would be more effective in doing that, between the ICC and the ad hoc tribunal? Suppose we could negotiate some non-precedent deal with the ICC. Would that be worth doing, or do you really believe an ad hoc tribunal in Arusha is more likely to get the job done?

AMBASSADOR PROSPER: Well, two points. Number one, I don't understand why the debate on the mechanism needs to precede the conversation on

peacekeepers and sanctions. I don't understand that. I think what we need to do is work on the peacekeepers and sanctions first and ask our European colleagues to separate the accountability mechanism question to a later discussion a week or two weeks down the road. So let's not tie them up, and deal with the important question first.

Secondly, now, which one would be more effective? I would argue that our proposal would be, because it goes back to a question that was just raised about apprehension. One thing the ICC will not have if it goes down that road is the United States. It will not have the political support of the United States, it will not have the financial support of the United States, it will not have the evidentiary support of the United States. Now, we know in looking at these tribunals and war crimes issues throughout the world that one of the biggest enforcement arms of these tribunals has been the United States. The people have been brought to justice in the former Yugoslavia by our not only working with NATO but our diplomatic engagement with the countries there. The people have been brought to justice to the Rwanda tribunal because the United States--and I know John knows this--with our active Rewards for Justice Campaign, we were able to bring key leaders in.

And this is what we would be able to bring to this AU-U.N. tribunal aspect. The United States would be part of it. So you would have universal support for this accountability process here. You have universal--because not only the United States, but the Africans would be invested, the AU would be invested in the process as well. The problem with the ICC is you're not going to have full investment by the international

community. And it leaves and it begs the question as to the question of enforcement.

Who is going to get these people before the bar of justice?

MR. TAYLOR: Thank you. And I'd like to thank all our panelists for a very civil and informative discussion of a very difficult and urgent problem. This is about genocide. Let's hope the news is better a year from now.

[Applause.]
