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Transcript of Remarks by U.S. Ambassador-At-Large for War Crimes Issues Pierre Prosper, March 28, 2002

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**Reporter:** On Carlo Del Ponte's visit, is the U.S. going to give money to Yugoslavia's children? Is there any chance of tying that to more cooperation from the Yugoslav Government, such as picking up Mladic or giving the Tribunals the trials that she has been asking for?

**Prosper:** We have repeatedly made clear to the officials in Belgrade that we want to see more cooperation and that the decision as to whether or not to certify on the 31<sup>st</sup> of March is contingent upon seeing cooperation that includes access to archives, access to witnesses and the transfer of indictees. Mladic is a name that we frequently mention and discuss with the officials in Belgrade and we let them know that his presence or his reported presence in Serbia and his remaining at large continues to remain a problem and needs to be corrected.

**Reporter:** (Inaudible) Are you afraid that he is going to go to the border, too?

**Prosper:** Well, we haven't given the officials in Belgrade a list to say, "Here, these are the precise steps you need to take." They know what steps they need to take, but we do mention the at-large indictees, which include Mladic. Recognizing that, if we are going to make progress, on this issue at all, these individuals need to make their way to The Hague.

**Reporter:** What kind of money have you spent?

**Prosper:** It's a package. There's some that are in pure dollar amounts and there are different parts. The total may be anywhere near \$40 million.

**Reporter:** All of that would be by the State?

**Prosper:** Most of it.

**Reporter:** Is that a combination of direct aid or different pieces?

**Prosper:** Yes, there are different pieces; I don't have the break down for you but there is a combination of direct aid and pure dollars.

**Reporter:** What about the speculation whether there was some deal between the U.S. and Belgrade? If we got Mladic we could start moving more rapidly towards closing the Court. Apparently Secretary Powell assured that the focus of (inaudible) can you give some indication about some of the other players in the group. Are all of these people to be brought to The Hague before you can really think about shutting its doors?

**Reporter:** Well, we have said to the officials in Belgrade both the President Kostunica and Prime Minister Djindjic as well as in our discussion with the Tribunal that we believe definitely that Karadzic, Mladic, the group of three and other major political and military leaders that are indicted must be brought to the Hague and stand before the Hague. Beyond that there are some low level and mid-level perpetrators that we would be comfortable in the correct environment in seeing them prosecuted in the domestic courts. And that is consistent with what the prosecutor herself was saying -- that she was willing to transfer some of these cases back to the domestic courts, providing that there is the capacity and political will to address this matter.

**Reporter:** There is no will at the moment in any of them?

**Prosper:** Well, we are working on it. The political will is developing, and the capacity is something we, the international community, have a responsibility to (inaudible) and my comments that I made regarding this before the House at the end of February was designed to begin to jump start this process; to begin to look at the targeted aid that would be needed to enhance the capacity; to begin to build the international consensus and movement toward helping developed the institutions and the states.

**Reporter:** Well, in Bosnia, for example, Jacques Klein has been doing it for years and one of the main problems seems to be that the judges were so politically motivated on all sides. (inaudible). I am not sure money (inaudible)

**Prosper:** That's absolutely right. It's not all money; it's a concerted and strategic approach. And what we will do here is give it our best thinking; and we are open to ideas such as creating special courts, special chambers, things of domestic institutions that are insulated from the politics of the state or the region; and will thus be able to adequately address these problems.

**Reporter:** You mean something like Cambodia -- some sort of mix (inaudible) innovative new way (inaudible) Is that what you are talking about?

**Prosper:** Yes, but it depends on the states. In Bosnia it may be something that's high root. It has its roots in domestic laws but it has international participation. I'd have to

look at Jacques Klein and others to see what the best approach is. In Belgrade or in Zagreb it could be something a little different. It could be heavier on the domestic side with international observers, for example. But these are the type of details we will have to work out and develop with the local state.

**Reporter:** on Tribunals (inaudible)

**Prosper:** We are entertaining some requests for U.S. officials to testify, high-level, mid-level.

**Reporter:** Does it involve...

**Prosper:** Well at this time I am not at liberty to give names for a couple of reasons, which I will explain. But we are looking at the request. We are looking at it favorably. We want to be able to do this. We want to be able to help, but there are a couple of things that we need to have clear in our mind. One is the scope of the testimony because we want to be sure it is relevant and that whatever we have to offer can actually help the process. Two, we need to look at it because obviously the official, whomever he or she will be, in their minds will have some sensitive information we need to be concerned with, as to whether or not it should publicly be disclosed. This then gets into the conditions as to the nature of the testimony based on the information as to whether or not it should be done in open court, closed proceedings or half and half. What we have done is we have agreed with the Tribunal to continue to move forward towards this day, but we need to work out the details to make sure that we are all comfortable with the approach and once we see it as a package and make the final determination to inform the Tribunal.

**Reporter:** It'll be one broad (inaudible) it won't be case by case.

**Prosper:** It will be case by case because the information that each official has is different than the other. The engagements that the official may or may not have had with Milosevic or others is different. One thing we want to be sure is that this doesn't turn into a circus.

**Reporter:** Have you asked potential witnesses not to speak about the issue to the media or in general to the court?

**Prosper:** We have not. They understand the issues. We've talked to them and explained to them what our concerns are. In fact, actually, if my memory is serving me well, with each official once they heard that they were wanted or it was requested that they testify, they immediately contacted us knowing that the information is really property of the U.S. government and that we need to work together to determine whether or not it is appropriate for that person to.

**Reporter:** They finally said that there had been other cases where U.S. officials had testified. Is that all closed session? Is it all secret stuff?

**Prosper:** Most of them have been closed session and it's not just U.S. officials. There are officials from other governments that have testified and testified in closed proceedings. I believe there's a possibility of a U.S. military official testifying in open procedures in the coming weeks. We're still working on that. It's a lower level, mid-level person who witnessed a particular act, so it doesn't involve sensitive, diplomatic exchanges.

**Reporter:** This is in the Milosevic case? This is a mid level U.S. military person?

**Prosper:** Yes.

**Reporter:** But prior to this have all testimonies by American officials been closed session? The reason I have the question is that if you had been doing this at some level in the past, why is there a need for it now?

**Prosper:** We have done this in the past and the agreement has been that the scope of the testimony is reviewed and that the person generally testifies in closed proceedings. The Milosevic case is a unique case in that the prosecutor and the Tribunal officials would prefer in this instance that our witnesses testify in open proceeding so that the acts of Milosevic are made known and clear to the general public rather than just to (inaudible).

**Reporter:** Where is this case? Is it in the Kosovo case? The case in which the U.S. military is testifying? Any more details, where and what?

**Prosper:** I can do that later. I just want to make sure it's been signed off.

**Reporter:** On the ICC, we're all waiting to see if a decision has been made to withdraw the signature. You know some people have said that it has been made.

**Reporter:** Invade The Hague.

**Reporter:** The engines are revving up. Just kidding.

**Reporter:** Just snatch a U.S. soldier wherever he may be.

**Reporter:** Do you plan on withdrawing the signature? Is that what you guys are going to do?

**Reporter:** We are in the final stages of our policy review. As you all know, the position of the Administration, as with the prior Administration, is one of opposition, opposing the treaty, believing that it is flawed and has some fundamental problems. In our review what we have done is we have tried to make a determination as to how to implement this policy objective of opposing a treaty. There are a range of options that we have studied. We are in the process of developing a final diplomatic approach that will make our position known, our position clear, and we will articulate our exact steps that we will take

and that we believe are needed in order to not only protect our interests but also confirm our commitment to combating war crimes as they occur.

**Reporter:** Does this review mean getting together with Republicans on the Hill and telling them what part of the many proposals they have, the Administration finds good or finds that it's going to hamper the President's foreign policy such as where you give aid? You know, you don't give any aid to countries that ratify this outside of NATO, which is still quite a few.

**Prosper:** Our review is separate and apart from the American Service Members Protection Act and the concerns on the Hill. While we take them into consideration and factor them in, it's not linked.

**Reporter:** But they tie the President's hands.

**Prosper:** That's why I say they're separate. We have our view on the ICC and we're looking at that to see what we need to do, the steps that we will take in the coming weeks to address this.

**Reporter:** Are you (inaudible) after you finish that?

**Prosper:** The other side of it is addressing the American Service Members Protection Act. Regardless of what our final position or initiative may be towards the ICC, there is the issue of the American Service Members Protection Act. We look at that and two things we're going to act. One is that we agree, in principal, that we need to take appropriate steps to protect our officials from unjustful, unlawful prosecutions. At the same time we believe that the President should have his full constitutional authorities and abilities in conducting foreign policy. With those two views, at present we will review whatever comes out of Congress related to the American Service Members Protection Act and make a decision at that time as to whether he signs it. But at the same time we're engaged. We hear about it - they talk to us. We let them know where we have concerns. We're trying to work together to make sure that whatever comes out is a clear and unbalanced.

**Reporter:** Because I think the President already voiced some concerns about the Protection Act.

**Reporter:** (inaudible) policy review in the last week. High-level discussions on the ICC. I was wondering if you've talked to other allies in Europe, most of whom have ratified the treaty and what their reaction has been and what their advice has been

**Prosper:** Not within the last few days. We have routinely and over the last year had contacts with many of our European friends and allies. They've come in; they've let us know what their view for the ICC is, confirming their commitment to be a part of it. They've expressed to us on many occasions their belief that we should be a part of it and they have asked us to consider in our policy review not taking any steps that they would

feel or deem to jeopardize our relationship. We listen to them, we've recorded everything that they have said to us and have factored them in the policy review process. We feel relatively comfortable that the steps that we will take will be the types of steps that do protect our interests while not unduly offending our allies.

**Reporter:** You said earlier that they keep trying to determine how to implement this policy, but you didn't say whether a decision has been reached. It sounds like Powell is already briefing the British and others that we have already made up our minds and we are going to withdraw our signature to the Treaty. Is that fair to say on the substance of that issue that there is agreement in the government on that? However, you haven't made a decision on how you're going to tell this.

**Prosper:** Two things. One. We are not briefing our allies on this matter. We have not briefed our allies on what it will take, but allies are all reaching out to us, as we note, to try to get a better indication on which way we are going particularly considering the fact that the Prep Com is coming up and the 60<sup>th</sup> ratification is coming up. We have reached an agreement, a position within the government in substance as to what the appropriate approach should be. It is just a matter of now of working on putting the pieces together, the package together, so that we are comfortable with our overall view and overall approach towards the ICC.

**Reporter:** (inaudible) He had been told that the position has been made to unsign the Treaty but that the rhetoric that is going to be used in the next two weeks around the time that happens is going to be carefully guarded, not to (inaudible) between the European Allies and the U.S. Is that a fair assessment by the British Foreign Office?

**Prosper:** I wasn't part of the conversation between the Secretary and Secretary Straw so I cannot say what may or may not have been said. What we have decided to do is to, again, finalize our package; and it will be the type of thing that will not unduly offend our allies and we will make our position known to everyone within the coming weeks, which could take us past the Prep Com.

**Reporter:** Could it happen on the 11<sup>th</sup>? It's one of the thoughts...

**Prosper:** First of all, we haven't said what "that" is. You know there's a lot of speculation and that it may be a signer, but that's not necessarily the position we will be taking. I think it's safe to say the ultimate position will not be made known on the 11<sup>th</sup>, at least officially, and they may not be made known and they may not be made known until after the Prep Com.

**Reporter:** (inaudible) Have you made a decision to unsign the Treaty or are you not going to do that?

**Prosper:** A final decision has not been made and a final decision will not be made until the entire package is put together.

**Reporter:** But you just said that there is agreement on the substance and that wouldn't necessarily mean on language...

**Prosper:** There is substance and there are pieces. There is agreement in substance and agreement on pieces but when you put it together you have to see what it looks like and there's a possibility that positions, decisions or issues may change. We're waiting to see what the entire package looks like and at that time we'll say, "yes, all these components fit and they fit together and that will be what we actually..."

**Reporter:** So it's still possible that that could be pulled from the text?

**Prosper:** Anything is possible. It really is. What's possible is that we will remain a signatory or that we may not sign. That's where we are.

**Reporter:** (inaudible) which is the reason Clinton signed.

**Prosper:** Not necessarily as to why Clinton signed; but we have the Prep Com that is occurring next month in April, and after that once we get the 60<sup>th</sup> ratification I think we'll move into a (inaudible) ... the Assembly of States Parties, which we obviously will not be a part of.

**Reporter:** Right. Right.

**Reporter:** Will you be sending officials to the Prep Com?

**Prosper:** We are studying that issue right now. We have sent officials to the Prep Com last year, at both Prep Coms. It is likely we may send.

**Reporter:** Obviously there is going to have to be some sweeteners in this to make it go down easier. Obviously these Europeans aren't tampering with our position. If you say you're putting together a package that you think can satisfy the Allies, is there any indication what nice things are going to be thrown in? Will there be an announcement about Albright going to The Hague? Is that part of the same debate?

**Prosper:** No, no. Actually, that's separate. The package is not necessarily designed to please our Allies. It's designed to make our position on this broad issue known and make it clear.

**Reporter:** But not to undermine ...

**Prosper:** Our position involves describing what steps we think we need to take in order to protect our interests and then it also will most likely describe our views on accountability on war crimes, which we firmly believe.

**Reporter:** So we might not get this until after the 11<sup>th</sup> you're saying. After the Prep Com. (inaudible)

**Prosper:** Yes.

**Reporter:** And is that because you want to have the option of sending officials to the Prep Com to see what goes?

**Prosper:** No, it's unrelated to that.

**Reporter:** You're not going to rain on their parade on the 11<sup>th</sup>?

**Prosper:** Our decision as to when to roll out our policy is basically based on the practicalities of it and putting the pieces together, and it just so happens that it most likely will not occur until after the Prep Com. It's not by design that we're doing this.

**Reporter:** So the ratification will definitely happen. You will not in any way be able to stop the ratification or try to stop the ratification?

**Prosper:** We will not be trying to stop the 60<sup>th</sup> ratification.

**Reporter:** What about the legislation? Where is that now? Do you think there is going to be an agreement between the House and the Senate considering the Senate's change since it came up?

**Prosper:** It's hard to say. It really is.

**Reporter:** Just background and experience. I get really confused reading the different amendments that go here, that go there.

**Prosper:** It's a moving process, a moving target. The act has come up in both the House and the Senate, in different versions. We have engaged the relevant officials on the Hill regarding this with our views known. We're just waiting to see what they consider the finished product to be and we will engage them on that. We will let them know what our views are. If it moves forward, it moves forward, and at present we'll take the appropriate act at the appropriate time.

**Reporter:** When the U.S. was voted off - not really voted off - but when the U.S. was not given a seat on the latest Human Rights Commission - there was quite a backlash on Capital Hill and there was talk about threatening to pull back some of the dues payment. Do you think the ICC could become a money situation? As far as I know the U.S. would not be bound in any way to spend any money on the ICC other than - there's a small dispute DPI being used during the first meeting in September - (inaudible). Is there going to be a money angle? Do you foresee that possibly coming from Capitol Hill? Are you doing anything?

**Reporter:** Are you going to collectively prevent any U.S. funds being spent on this group?

**Reporter:** Could this harm UN-US relations on the financial front either through the White House?

**Prosper:** We definitely believe that no UN funds should be used to pay for the ICC. The ICC is supposed to be a separate and independent entity. It is not a UN organ or a subsidiary organ. Therefore it is our strong view that not a single dollar from the United Nations should be spent on the traditional. We've been insistent about this from the beginning of the Prep Coms. In viewing the financial framework and structure for ICC, we've made it clear through that entire process that it needs to be separated from the UN and have its own independent funding.

**Reporter:** For as long as it's been separated you're not going to threaten to withhold funds from other UN...

**Prosper:** If it's separated from the UN then our views related to the ICC should have no impact on our views on the United Nations.

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