

**SENATE JUDICIARY COMMITTEE
HEARING ON MILITARY TRIBUNALS
December 4, 2001**

Excerpts

SEN. SPECTER: Let me ask you one further question which is tangential, but what I'd like to have your views on. As we set forth rules for military tribunals, this may have an impact on war crimes tribunals generally as to where we may be heading for an international criminal court, although the United States has not signed on. We haven't had ratification by the Senate or on the war crimes tribunal for Yugoslavia. The war crimes tribunal was the key prosecutor Carla Del Ponte investigated General Wesley Clark on the complaint of Russia and Yugoslavia for possible war crimes and the issues under investigation involve whether NATO had targeted civilians or whether NATO as commanding officer General Clark had been at fault in carelessly targeting, which endangered civilians.

If that kind of a standard is to be employed, making it a fact question for the prosecutor, it seems to me that U.S. military personnel all the way up to four star General Clark would be at risk on a war crimes tribunal, given very, very broad discretion and making it highly unlikely that the United States would or perhaps should ever join an international criminal court. Do you have an opinion or a judgment on that range of discretion for a prosecutor of international tribunals?

PIERRE-RICHARD PROSPER, AMBASSADOR-AT-LARGE, WAR CRIMES ISSUES, U.S. DEPARTMENT OF STATE PROSPER: Senator, that is one of the issues of concern for the administration regarding the ICC, the International Criminal Court and that is the fact that you have or may have a prosecutor that is answerable to no one and will launch off an investigation that could be political investigations and not based in fact or based in law. There is no check to the process.

Another objection that we have to the ICC is the fact that it will exercise jurisdiction over non-party states. As you mentioned, we have not ratified the treaty. The president has not sent it up for ratification but the proponents of the ICC believe that regardless, it can exercise jurisdiction over us just because, just because a document exists and just because other states, 50 states, when it becomes into force, have decided that is the way to go. That is our objection. The safeguards are not in place. The prosecutor is not answerable.