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# COMBATING GENOCIDE IN DARFUR: THE ROLE OF DIVESTMENT AND OTHER POLICY TOOLS

## HEARING

BEFORE THE

## COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

ON

THE ROLE OF DIVESTMENT AND OTHER POLICY TOOLS TO COMBAT GENOCIDE IN DARFUR

WEDNESDAY, OCTOBER 3, 2007

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# COMBATING GENOCIDE IN DARFUR: THE ROLE OF DIVESTMENT AND OTHER POLICY TOOLS

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**WEDNESDAY, OCTOBER 3, 2007**

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
*Washington, DC.*

The Committee met at 9:37 a.m., in room SD–538, Dirksen Senate Office Building, Senator Robert Menendez, presiding.

**OPENING STATEMENT OF SENATOR ROBERT MENENDEZ**

Senator MENENDEZ. This hearing of the Banking Committee will come to order. Let me start off by thanking Chairman Dodd and the Ranking Member for calling this important meeting.

Last July, Chairman Dodd asked the Senate Majority Leader to expedite Senate consideration of H.R. 180, the Darfur Accountability and Divestment Act, which had just passed the House by a vote of 418–1. The Majority Leader agreed to do so, but apparently objection was raised on the Republican side of the aisle, so the bill remains before the Banking Committee.

It is my understanding that the Ranking Member has expressed to the Chairman some interest in the legislation and requested that the Committee conduct a hearing on the matter, so we are appropriately here today.

Senator Dodd asked that I chair the full Committee hearing this morning, and I am more than happy to do so. I believe that the Chairman hopes to mark up the Sudan legislation later this month and looks forward to working with Senator Shelby and other Members of the Committee to reach agreement on a bipartisan bill to recommend to the full Senate.

Let me formally begin this hearing entitled "Combating Genocide in Darfur: The Role of Divestment and Other Policy Tools" with some opening remarks. We have a very full agenda and witness panels, so I will keep my opening statement brief and ask that it be considered fully in the record.

In 1948, the United Nations adopted the Convention on the Prevention and Punishment of Genocide. In 1948, the world said, "Never again." Never again will we allow genocide to happen.

In 1994, after the genocide in Rwanda, the world said, "Never again" again.

In 1994, after the genocide in the Balkans, the world said, "Never again" again.

In 2004, during the genocide in Darfur, the United States said, "Never again." Yet those words mean nothing unless we take real action to stop genocide.

We are here today to discuss a bill which would take real action by taking real money out of the hands of a genocidal regime, and I personally am here to say that I do not believe we should delay even one more minute. If you were in the camps in Darfur, would you be content with the counsels of patience and delay? If you were in your home living in fear, would you be content with the counsels of patience and delay? If you had seen your entire family slaughtered and were hoping to escape the same fate, would you be content with the counsels of patience and delay? And, frankly, I believe that any more delay continues to put more and more people's lives at risk with each passing day.

In 2006, we were told that it is not time for new sanctions. Early this spring, we were told that it was not time for new sanctions. Now we are being told once again that now is not the time for tightening the economic noose. I personally could not disagree more. I believe now is the time.

I am confident that one tool, the Darfur Accountability and Divestment Act, introduced by Senator Durbin and joined here by Senator Brownback, who both have been incredibly powerful voices on this issue, will force the Khartoum government to negotiate and put an end to chaos and genocide in Darfur.

And, finally, I would like to point to the fact that there is ample precedent for this tool. Many States, cities, universities, and private pensions have taken the initiative and have enacted or are working toward Sudan disinvestment. Over 2 years ago, I sent a letter to all New Jersey Democratic State legislators encouraging them to approve this divestment, and I am proud to report that my own State of New Jersey became the second State to enact this policy.

Since then, New Jersey has identified over $1.4 billion in funds to divest, and of that, $300 million has already been divested. There are currently commitments and discussions for divesting up to another $500 million. That is just one of the many success stories gaining momentum across the country.

So I hope that we can reach the bipartisan agreement that would be so crucial to sending a powerful message to the Khartoum government.

With that, I am happy to recognize the distinguished Ranking Member of the full Committee, Senator Shelby.

## STATEMENT OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Thank you, Mr. Chairman.

Over the past 20 years, we have taken a series of incremental steps with regard to Sudan in an effort to deal with the Government of Sudan's repeated violations of international norms. These measures have included restrictions or prohibitions on foreign aid included in annual appropriations bills as well as congressional action on the Sudan Peace Act of 2002, the Comprehensive Peace in Sudan Act of 2004, and the Darfur Peace and Accountability Act of 2006.

Now, today we are considering requiring corporate divestment from a desperately poor country ruled by a despotic regime. This is not a step that we should take lightly, but it is a step that we should take, and it must receive serious consideration by this Committee today.

I commend the Chairman for scheduling this hearing and assembling the panels that will appear before us today. I also want to join the Chairman in welcoming our colleagues, Senators Durbin and Brownback here, who have more than a passing interest in this legislation and have pushed it forward. They were pushing it hard in July. I was the one that asked for the regular order. We are here today. Let's get this legislation moving.

Thank you.

Senator MENENDEZ. Thank you, Senator.

Senator Reed.

**STATEMENT OF SENATOR JACK REED**

Senator REED. Thank you very much, Mr. Chairman and Senator Shelby. This is a critical issue with respect to our response to the genocide in Darfur, and I want to commend particularly Senator Durbin and Senator Brownback for their leadership on the issue, which stretches over many years. Before this was a front-page issue, this was an issue of concern and of conscience to both these gentlemen. Thank you.

I also want to recognize later in the panel our General Treasurer from Rhode Island, Frank Caprio, who has taken the leadership in Rhode Island of divesting State fund. I thank him for his appearance here today and for his leadership in Rhode Island.

I would like my full statement made part of the record, if possible.

Senator MENENDEZ. Without objection.

Senator REED. And just let me make a point. One of the ways that we can bring pressure to bear on corporations is through the proxy process where shareholders can come forward, demand in the annual meetings that these resolutions be considered, that their companies that they hold shares in are responsible for the investments.

The SEC at this moment is at a very critical juncture with its proposed rule on shareholder access to proxy statements. And some of the pending proposals and the rules suggested by the SEC could seriously undermine the ability of investors to ask companies to take actions on matters like Darfur. So I would suggest—and I know that Chairman Cox is working toward addressing some of these issues—that in a separate effort that if we inspire the SEC to take appropriate action so that individual shareholders can gain access to the proxies, can make these issues part of their deliberations, I think that will complement the legislation proposed by Senator Durbin and Senator Brownback.

Thank you very much, Mr. Chairman.

Senator MENENDEZ. Thank you.

Senator Casey.

**STATEMENT OF SENATOR ROBERT P. CASEY**

Senator CASEY. Mr. Chairman, thank you for being in charge of this hearing. I want to thank Senator Dodd for his leadership in making sure we got this hearing scheduled.

I want to reiterate much of what has been said. I first of all want to commend our two colleagues who are here, Senator Durbin and Senator Brownback, for your leadership on this issue going back years now. We are grateful for that. And I think what brings both of you to this issue and what brings so many people in this room together today is that so many people here for many years have been summoned by your conscience to be here and to work so hard on this issue. And I am grateful for the opportunity to work with many in the Congress, but especially Senator Durbin working on his bill, Senate bill 831.

I think it is critically important that we move forward, not have any more delay, as Senator Menendez said, and not more talk and more discussion. We need to move this legislation to give the Federal Government and to give the world a directive that we are going to use divestment as a tool, as it has been used in many other instances, at long last to use this tool to move an agenda forward.

I was struck by—we saw the story on Monday in a lot of places, but there was an AP story in the Washington Post about the ten peacekeepers who were slaughtered in Darfur. But I just circled something that we have seen over and over again, but just this one line from the Washington Post, and I quote—and this is from Monday, October 1st: "Violence and disease have left as many as 450,000 dead and displaced 2.5 million."

Now, we have heard these numbers over and over and over again, and I will tell you, anyone who comes to that table today and says, well, we have got to slow down, we have got to be patient here, we have to have another round of discussions, we have got to move slowly—anyone who counsels that today has a very high burden of proof today. And I hope that those who counsel that will bear in mind the human tragedy that this is.

So I think that many of you have worked on this long before I got to the Senate, but I am happy to join this effort. And I am grateful for the opportunity to be here today.

Thank you, Mr. Chairman.

Senator MENENDEZ. Thank you, Senator.

Senator Martinez.

**STATEMENT OF SENATOR MEL MARTINEZ**

Senator MARTINEZ. Thank you, Mr. Chairman. I want to add my words of thanks to our colleagues that are here this morning on this very important issue.

I became aware of the dire situation in Darfur while I had the opportunity to work in the Sub-Saharan Africa Subcommittee of Foreign Relations with Senator Feingold, and obviously this is an issue that touches all of us deeply.

I think that the approach that is being suggested here today is appropriate and is timely. I believe that the United States continues and ought to continue to be a moral force in the world, and it is not only about profits, it is also about people. And so I do be-

lieve that it is very appropriate that in this instance we move aggressively toward creating a financial disincentive for people to do business with those who abuse people in such a terrible way.

So I look forward to the testimony from the witnesses, Mr. Chairman and thank you for holding this timely hearing.

Senator MENENDEZ. Senator Bunning.

## STATEMENT OF SENATOR JIM BUNNING

Senator BUNNING. Thank you, Mr. Chairman. Thank you for scheduling the hearing on this very important topic.

Earlier this year, there was an effort in the Senate to move a bill dealing with investments in the Sudan. I thought that was inappropriate because this Committee had not even had one hearing on the subject.

I agree with everyone in this room that States and local governments should be able to spend their money however they see fit. That includes not spending money with certain companies. Certainly, individuals have that same right as well. What I do not agree with is the idea that each State or city should have its own foreign policy.

The Framers of our Constitution wisely gave control over foreign policy to the Federal Government, not to each State. We must speak with one voice, not 50 or 100 voices, when dealing with other nations. Legislation to change that balance is not only a bad idea, but I believe it is unconstitutional.

If States or individuals think our policy toward Sudan is not strong enough, there is a proper way to go about making a change. Just like we have done with other countries, Congress can pass a sanctions law prohibiting some kinds of dealings or all dealings with the Sudan. That is the right approach, not letting each city or State set its own foreign policy.

I look forward to hearing from our witnesses about this topic. I especially want to hear why they believe current sanctions law is not adequate and what, if anything, stands in the way of States, cities, or individuals spending their funds however they see fit.

Thank you again, Mr. Chairman.

Senator MENENDEZ. Thank you, Senator.

With that let me turn to our two colleagues, Senator Durbin and Senator Brownback, who have been incredibly powerful voices on behalf of having action taken to end the genocide in Darfur. Senator Durbin.

## STATEMENT OF RICHARD J. DURBIN, U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator DURBIN. Thank you very much, Mr. Chairman, and to Members of the Committee, this is a hearing that we have been waiting for, and I am so glad that you are doing it today. I thank you so much for taking the time to gather this morning. And I especially thank my colleague, Senator Brownback. We are often faulted in Washington for being too partisan. I am happy to report that from the beginning Senator Brownback and I have worked together on this, as so many in Congress have worked to deal with this.

I have my disagreements with the Bush administration. I think that is a matter of record. But I have said before and I will say again, this President's courage in declaring a genocide in Darfur is exemplary. Too often in the recent past there has been a reluctance and reticence to speak truth to power about issues like genocide. I am happy that President Bush spoke out when he did. I am glad that his statements about that genocide were echoed by his Secretary of State Colin Powell and then later Condoleezza Rice. I have spoken to him personally about this. He has given speeches at the Holocaust Museum just a few months ago. I believe that he is sincere in believing we face an extraordinary, historic challenge. The civilized countries of the world cannot ignore the reality of the genocide in Darfur. And if we cannot ignore that reality, we must do something about it.

I do not think we should believe that the killing and suffering have ended in Darfur. The genocide continues. I do not think we should believe that sending 20,000 or 25,000 peacekeeping forces from the United Nations will bring peace and stability to this region. That force is very small in comparison to a region as large as the State of Texas.

Senator Casey made reference earlier to a news item this week which is troubling. The African Union force is a volunteer force that is working hard in the area, but it is really challenged by the size of the area and the nature of the enemy. Just this last week, Senegalese troops were attacked and ten were killed, and now there is a serious question as to whether Senegal will continue to contribute forces to this peacekeeping force. That is how tenuous this commitment is from those currently serving in Darfur. We should never believe that this issue has been resolved because of the action of the Security Council.

And, third, we have to do what is necessary to put pressure on the government in Khartoum. Time and again—time and again—this government has come forward and said, "We are going to change this situation. We are going to put an end to it." And they have failed utterly to do so. We have to accept our own personal responsibility here. And the question is: What is our responsibility?

In this era of asymmetric challenges to great powers, we have to look to the tools that are available to put pressure for change. What Senator Brownback and I bring to you is one tool that could be used—a tool that will combine a lot of different elements and putting pressure on Sudan to make a change and, more importantly, pressure on Sudan to engage in a peace conference that will bring ultimate peace to this region.

I do not believe the presence of peacekeeping troops will be an easy task so long as the militias run roughshod over these poor people. If we can force the government of Khartoum to move toward a real peace conference and real accommodation, then we might find real peace for these poor people who have suffered for so long.

I will just say in brief summary here, this bill has a number of elements that I hope you will consider:

Requiring the administration to create a list of companies supporting the Sudanese regime. I tried to do this in the supplemental.

Unfortunately, the administration did not respond, did not create the list that we asked for:

Requiring companies supporting the regime to report to the SEC so that the SEC can publish the identities of these organizations.

Requiring the administration to report on the impact thus far of current economic sanctions.

Prohibit the Federal Government contracting with companies who support the regime.

Authorize State and local contract prohibitions for companies supporting the regime.

Authorize State and local governments to divest from companies supporting the regime.

Provide investor safe harbors.

Authorize additional funding for the Office of Foreign Assets Control within the Treasury Department.

Study how the Federal employees' Thrift Savings Plan could create a Terror-Free Investment Fund which would bar Sudan-supporting companies.

And finally, increase civil and criminal penalties for sanctions violators.

All of these things would put teeth in this effort. I have tried, as some of you have tried, to reach out to different groups in my home State urging them to divest. Interesting response. Two major universities, the University of Illinois and Northwestern, said, "We will do it. We are going to divest from any holdings that relate to companies like PetroChina, the largest oil company in the Sudan." I was very heartened by that.

Another university, which I will not name, said they were not going to divest, and I asked the president why, and he said, "It is not our policy to get involved in this kind of a fight." I asked him a couple simple questions: "Do you believe there is a genocide in Sudan?" He said, "I really don't know." And I said, "As the president of a university, you should. The President of the United States believes there is, and I believe there is, and many people do."

Second, "If there is a genocide, what is your responsibility? What is your moral responsibility?" He said, "I can't answer that question."

I was really disappointed by that reply. Perhaps there are others who want to take some refuge in ignorance or avoidance. We cannot afford to. The President of the United States has spoken out that this is a genocide in our time. Now it is our time to act.

Thank you, Mr. Chairman.

Senator MENENDEZ. Thank you.

Senator Brownback.

## STATEMENT OF SAM BROWNBACK, U.S. SENATOR FROM THE STATE OF KANSAS

Senator BROWNBACK. Thank you very much, Mr. Chairman and colleagues. I appreciate your interest and willingness to take this issue up. Senator Shelby and I have spoken several times about it, and I appreciate his interest in and support for it.

I have been to Darfur. I have been to Sudan. Once you are there and you see the people suffering, it is just really hard to say, well, I do not think maybe we ought to do this because it might conflict

with something else. When you see it, then it is one of those things where you say, "I have got to do something." We have got to do whatever we can, given the status that we have in the world. This is the most powerful Nation in the history of mankind. And you have people who have been run out of their villages by militias sponsored by the government put in harm's way, dying in hundreds of thousands, and at the same time we will probably see the Sudanese economy grow by 13 percent this year. That is the level that is projected for what the Sudanese economy will do this year, growing by 13 percent. That is primarily due to investment by Chinese and Malaysian resource companies, primarily oil companies, some of which we are investing in.

We have said often, "Never again," and we have taken up the pledge of "Not on our watch." We also need to take up the pledge "Not on our dime," and that is what we are asking for with this campaign and this effort.

I have to say, I am particularly heartened by young people across America who have constantly been coming to my office saying, you know, we want to see this end, we want to do something about it. And a group of them camped out at my home in Topeka, led by Matthew Vines and other students from Wichita East High School, and pressed the Kansas Legislature until they enacted a divestiture campaign on the Sudan from the Kansas State pension funds. And I said, "God bless them for doing that." This is a group of high school students that see it and say this is terrible and it should not take place and we should not be allowing it to happen and we should divest from it.

The key here for this Committee to consider—and I think Senator Shelby has rightfully pointed out, in the regular order of things—is that we need to act as a Congress to allow this to take place. And that is the key point. Senator Durbin, who has been excellent on this, has been dogged and determined on this, and I applaud his efforts. Now some of these divestiture bills are being struck down by State and Federal courts saying that this steps into the purview of the Congress.

The Congress by this act can explicitly say that the States can do this, and that is one of the key provisions of this bill. One of the key ways the Federal Government can help is to explicitly provide the authorization for States and local governments to divest from Sudan. Doing so would address an objection that has attenuated the success of targeted divestment movements. And so in that sense, then, I would hope it would get to other issues raised by my colleagues that we do not want to have 50 or 100 different foreign policies. No, this is one that is set by the U.S. Congress. It is authorized by the U.S. Congress. Now the States can move forward with it. And I think that is a good, regular-order way to move forward with this. It is a way to get our citizenry involved in a key issue of our time. And I would also hope it would do something that Senator Reid commented about, that it would cause individuals then to start to look at their own investments and things that companies are doing, companies that they are investing in, and saying, again, "Not on my dime." We are going to try to do it as a Federal Government, which we have done through sanctions. We are going to try to do it through the States, through these targeted

divestitures that the Congress would have to allow to take place. And we are going to press it as individuals and with individual companies so that we are not allowing a genocide to take place on our time, on our dime. And I think that should be a simple, strong message.

We are seeing some early results of this in a positive fashion. We have seen companies from the U.K. to Germany to India that have suspended or significantly altered their operations in the Sudan. I think there is good reason to believe that the Government of Sudan has noticed and is nervous somewhat about this. They are not going to say that, but the more we can tighten this, the less they are going to be able to grow that economy, the less money they are going to have to conduct this second genocide.

Now, I want to remind my colleagues, this is the second genocide by this government that was started by Osama bin Laden. This government was started and put into power by Osama bin Laden. They have done a genocide in the South where 2 million people were killed over a long period of time. This government was actively involved in the Sudan Peace Agreement that was negotiated by one of our former colleagues, Senator Danforth. There is now peace in the South. People are starting to rebuild, albeit slowly. Now you are seeing this take place in the west. This is the second genocide. These guys have had plenty of warning.

We need to act to be able to allow this to take place by State and local units of government, and hopefully this will also push into the private sector.

With that, I would just urge my colleagues to act to allow this to take place.

Senator MENENDEZ. Well, thank you both. I just have one quick question. What would you say to the Members of the Committee on the importance of getting a markup before the meeting in Tripoli?

Senator DURBIN. I would say, Mr. Chairman, that this could be an excellent opportunity for real peace to come to the region, as Senator Brownback said, when Senator Danforth led that effort for peace in the South; and the sooner we move on this, even if it is not fully implemented, the stronger the message to Khartoum that we mean business and that we want to see them resolve their own internal difficulties. I do not believe there is anything else that we could do as a Congress more important.

Senator MENENDEZ. Senator Shelby.

Senator SHELBY. Senator Durbin, you are the deputy Democratic leader, the Whip. If we push this bill out of the Committee, which we will, I believe, soon—as soon as Senator Dodd will arrange it—you could get time on the floor, I am sure.

Senator DURBIN. I am going to do my very best. I have a friend named Harry Reid that I will talk to personally about this.

Senator SHELBY. We should do it.

Senator DURBIN. He shares our feelings about this issue.

Senator SHELBY. Thank you.

Senator MENENDEZ. Thank you both for your testimony. We appreciate your leadership as well.

Let me call up our second panel: Jendayi Frazer, who is the Assistant Secretary of State for African Affairs. As Assistant Secretary of State for African Affairs, Dr. Frazer plays a key role in

shaping President Bush's foreign policy toward the Sudan. We welcome the Secretary.

Elizabeth Dibble, who is the Principal Deputy Assistant Secretary for International Finance and Development. Serving in that position, Ms. Dibble oversees the State Department office tasked with protecting U.S. investment abroad, promoting market-based investment standards, and encouraging other countries to adopt policies that create sound investment regimes.

And Adam Szubin, who is the Director of the Office of Foreign Assets Control in the Department of the Treasury. In that position, Mr. Szubin administers America's sanctions policy to advance our Nation's foreign policy and national security objectives. These include programs targeting state sponsors of terrorism, international narcotics traffickers, states active in the proliferation of weapons of mass destruction, and select foreign countries.

We welcome you all to the Committee. Your full statements will be included in the record. We ask you to summarize them in the context of about 5 minutes or so, and we will start with Secretary Frazer.

**STATEMENT OF JENDAYI E. FRAZER, ASSISTANT SECRETARY FOR AFRICAN AFFAIRS, DEPARTMENT OF STATE**

Ms. FRAZER. Thank you, Mr. Chairman, Ranking Member Shelby, Members of the Committee. Thank you for the opportunity to testify on the administration's Sudan policy and specifically our efforts to peacefully end the tragic humanitarian situation in Darfur. Sudan is a top priority for the administration. We appreciate the generous support of Congress as we work to resolve the situation in Darfur which, among many things, has helped us sustain the African Union peacekeepers in Darfur and most recently achieve United Nations Security Council Resolution 1769 authorizing the deployment of 26,000 AU/UN peacekeepers. But, as demonstrated by the tragic events of September 29th with the attack on a camp of the AU Mission in Sudan—AMIS—that resulted in the death of at least 10 AU peacekeepers, there is still a long way to go to achieve peace in Darfur. I look forward to our continued close relationship with Congress as we work together to bring peace to the region.

Mr. Chairman, we are at a critical point in our efforts in Sudan. The large, robust peacekeeping force for Darfur that we have all worked for over the last few years is finally on the verge of deployment. Its first elements are slated to go in before the end of this year. The renewed talks that aim to achieve a lasting political solution in Darfur are expected to begin on October 27th in Libya. This progress, while long in coming, is due in large part to increased international pressure on Sudan, led by the United States.

At the U.N. General Assembly last week, President Bush stated that "America has responded [to the suffering in Darfur] with tough sanctions against those responsible for the violence." The new sanctions he imposed on May 29th targeted 30 Sudanese Government-owned or -controlled companies and three individuals, including two government officials and one rebel leader. These new sanctions, and stepped-up enforcement of existing sanctions on Sudan, are working. To move forward from here, we are working

closely with the United Nations and the AU to implement the agreements, even as we continue to closely monitor the actions of all parties.

We fully appreciate the efforts of American citizens and the Congress to seek additional ways to increase pressure on Khartoum. We are confident that our May 29th sanctions have and are working to provide the necessary pressure. However, we are at a critical moment, and it is important to avoid any actions, including legislative measures, that might set back the progress we have made thus far.

In considering our position, we also have to bear in mind that the Government of Sudan has accepted UNAMID and the need to negotiate a peace deal. At the moment, the main issue is whether rebel factions will be an obstacle to a peaceful negotiated settlement.

We are also concerned that some initiatives to increase economic pressure on Sudan will damage our relationship with our European partners rather than increase pressure in Khartoum and may further complicate efforts to carry out our substantial assistance programs. A welcome and useful initiative at this juncture would be for Congress and other concerned groups to issue statements calling for the rapid deployment of the UN/AU hybrid force and calling on all parties to participate in the political process.

That said, we must be prepared and the administration is willing to impose additional sanctions if the Government of Sudan places roadblocks to the deployment of UNAMID or starts a new military offensive carrying out attacks against innocent civilians.

Today, I will review the present situation in Darfur, our efforts to achieve full implementation of the Comprehensive Peace Agreement, which ended more than 21 years of warfare between North and South, and what further steps are needed to realize our goals. Efforts to end the violence in Darfur and implement the CPA must go hand in hand, and we are willing to exercise pressure to achieve success on both fronts. At the same time, we must also be wary of initiatives that advance peace in one part of the country at the expense of another.

Let me first turn to Darfur. The situation on the ground is chaotic. Tribal conflict, survival-motivated violence, government-backed Janjaweed attacks, clashes between rebel and government forces, and rebel attacks on AMIS continue. Since the beginning of 2007, nearly 248,000 people have been newly displaced from the fighting. This is in addition to the over 2 million people currently living in camps or settlements for the displaced and the over 235,000 refugees in neighboring Chad. On September 29th and 30th, the 7,000-strong African Union Mission in Sudan suffered its greatest loss since its initial deployment in 2004. Armed men from rebel factions viciously attacked the African Union base camp in Haskanita, killing 10 peacekeepers, looting supplies and vehicles, and destroying the buildings. The 150 or so primarily Nigerian peacekeepers fought back, repulsing the first wave of attackers, but in the end were overpowered and forced to evacuate in the early morning hours. We honor the service of those peacekeepers that lost their lives, and our hearts go out to their families.

The tragedy of this attack highlights the urgency to deploy the UN's heavy support package and the UN/AU hybrid peacekeeping mission—UNAMID—to Darfur as soon as possible. The United States has been leading this effort. We have been working with the United Nations to recruit the necessary troop contributors, and with a few exceptions, the U.N. has received an abundance of offers. We are also expanding seven of the African Union's base camps to hold two additional battalions that will serve as protection for the UN's heavy support package units. Among other units, the heavy support package includes engineers from China that will help prepare the infrastructure for larger deployments of peacekeepers early next year. We are also providing training and equipment to African battalions that will deploy as part of the U.N. mission.

Again, the Sudanese Government has publicly accepted U.N. Security Council Resolution 1769 and has pledged cooperation with its deployment. We will hold them to this pledge. The key leaders of UNAMID are already on the ground. The UN/AU Joint Special Representative Adada and UN/AU Force Commander Agwai are already in place. We have warned the Government of Sudan that we are watching closely and that we will insist on nothing less than full cooperation, from flight and customs clearances for U.N. equipment, to the rapid provision of entry visas for deploying personnel.

The heart of the solution in Darfur is an inclusive political agreement, and the United States is sustaining its efforts to achieve that end. There can be no military solution. I was present in Abuja, Nigeria, when the Government of Sudan and Minni Minawi, leader of the Sudan Liberation Movement, signed the Darfur Peace Agreement on May 5, 2006. The DPA is a fair agreement which addresses the core grievances of the people of Darfur. Unfortunately, at the eleventh hour, some parties became intransigent and refused to sign. We have all learned from that process.

The United Nations and African Union are providing renewed leadership, and their efforts are making headway. The new talks are scheduled to begin on October 27th in Libya. The U.N. and AU have incorporated the regional countries into the process and are formulating a mechanism to fully include civil society, tribal leaders, and representatives of the internally displaced persons camp.

Senator MENENDEZ. Madam Secretary, if I could get you to sum up for us.

Ms. FRAZER. Yes, certainly. The first order of business in Libya should be to strengthen the cease-fire monitoring mechanism.

But at the moment, the splintered rebel factions are creating obstacles to a peaceful negotiated settlement. Several of the rebel factions have refused to attend peace conferences, citing untenable conditions, and others are wary of the process. And we are working with other international partners to press all of the rebels to attend the talks.

We have reached a sensitive time in our diplomatic engagement to achieve a successful political process in Libya. We are prepared to apply sanctions to any party that obstructs the peace process. But right now we are trying to work with the government that has accepted UNAMID, that has accepted to go to the peace talks, and we are trying to keep the international coalition that includes the

U.S., the Europeans, the African countries, the Arab countries, and, most importantly, the United Nations and the African Union on board with our effort.

We are concerned about Darfur, but we also have to be concerned about making sure that the Comprehensive Peace Agreement is also fully implemented, and we must ensure that our efforts today will reinforce CPA implementation.

While much has been accomplished during the nearly 3 years since its signing, the progress of the CPA has faltered in areas related to the North-South border, Abyei, oil revenue sharing, and the redeployment of forces. We will continue to lead efforts to address these challenges. Deputy Secretary Negroponte met with the Sudan contact group on Friday, September 21st, to refocus international attention on the CPA, and we are in constant discussion with the government of Southern Sudan, and now Special Envoy Natsios is on the ground today in Southern Sudan pressing for full implementation of the CPA. We will continue to work with the Intergovernmental Authority on Development, the Sudan contact group, as well as the new Special Representative for Sudan, Mr. Qazi, to try to bring renewed focus to implementation of the CPA.

The United States, in conclusion, has and will continue to lead the world in responding to the situation in Sudan. We have provided over $4 billion in assistance to Sudan since 2005. While we are successfully increasing pressure on the Government of Sudan, we must also recognize that these efforts and any future efforts may impact the Government of Southern Sudan, as their delegation told us this week. As part of the CPA, the Government of Southern Sudan receives tens of millions of dollars in oil revenue each month from the central government in Khartoum. This influx of resources is unprecedented in a post-conflict situation and has allowed the Government of Southern Sudan to participate with the international community in the development and reconstruction of Southern Sudan.

We share the commitment of Congress and the American people who are working to see an end to the suffering of the Darfur people. We, together with Congress' ongoing support, will continue to exert all our efforts until the crisis in Darfur is ended and all the people of Sudan can live in peace.

Thank you, Mr. Chairman. I am pleased to answer questions.

Senator MENENDEZ. Thank you. Again, your full statements will be entered into the record, and I would ask you to summarize them in the context of 5 minutes.

Secretary Dibble.

**STATEMENT OF ELIZABETH L. DIBBLE, PRINCIPAL DEPUTY ASSISTANT SECRETARY FOR INTERNATIONAL FINANCE AND DEVELOPMENT, DEPARTMENT OF STATE**

Ms. DIBBLE. Mr. Chairman, Ranking Member Shelby, and Members of the Committee, thank you for the opportunity to appear before you today to discuss some aspects of possible sanctions measures concerning Sudan.

Sanctions seek to change behavior. To be effective, they must be carefully calibrated and coordinated. Naturally, timing and messaging are essential components of this process. The administration

and Congress together need to maintain a unified message on Sudan policy to maximize U.S. influence on the peace process. This is particularly true since the administration and Congress fully share the same objectives in Sudan—in particular, our common desire to end the violence in Darfur.

But sanctions are only one part of the approach which also has to rely upon multilateral diplomacy and eventually changed behavior by the Khartoum regime itself. We have to ensure that our desire to send a strong message via sanctions does not counteract or even overwhelm progress on the political fronts.

We have serious concerns about attempts to apply new sanctions on the Government of Sudan now at this moment. It would send the wrong message to the regime at a time when it is actually being helpful with peace talks and with the African Union/UN peacekeeping force. It would also send the wrong message to rebel movements, one of which just attacked an African Union peacekeeping base and killed 10 Nigerian peacekeepers. The rebels need to join the peace process rather than targeting international forces.

Our most recent action on Sudan sanctions got the attention of Government of Sudan officials without undermining our multinational coalition on Sudan, and it was this increased pressure that helped bring us to where we are today.

Required divestment will be seen by our allies as a U.S. Government action targeting their companies and could affect our ability to obtain cooperation on mutual action with respect to Sudan. Some of these key allies will be providing troops and equipment for the African Union/UN hybrid peacekeeping force.

We need to look carefully at each of the Sudan bills and consider all aspects of their likely impacts, including on Southern Sudan and on multinational coalitions. We need a multinational coalition that includes the Chinese, the Arab world, the Europeans, and the African Union to build peace in Sudan.

We recognize that individuals and particular funds may want to divest certain holdings for a variety of reasons. In fact, we do not take a position on private independent action by individual investors based on private sector research and analysis.

However, the administration is opposed to affirmative Federal legislation that explicitly authorizes divestment campaigns at the State and local level. Sanctions policy needs to respond quickly to rapidly evolving events. Having one unified foreign policy gives us the flexibility to do this. State and local divestment efforts risk creating the appearance of a multiplicity of foreign policies, undercutting our policy flexibility and the clarity of the messages we send foreign governments. They also undermine the President's constitutional responsibilities to conduct foreign affairs for the Nation.

The Sudan bills under consideration all seek ways to use U.S. economic leverage to have an indirect impact on Sudan's leaders by pressuring foreign companies that do business in Sudan. The primary approach in certain bills would have the U.S. Government create a black list. This is the most troubling approach. The administration has consistently opposed all requirements that the President or Treasury or any other U.S. Government entity affirmatively prepare a black list periodically of companies doing business

in Sudan. Such a list would target our allies, impairing multilateral efforts to aid the peace process.

Another concept in play is a new SEC disclosure process. A third concept is an as-of-yet-unarticulated U.S. Government contracting certification procedure and procurement ban on prospective contractors who cannot certify that they either have no specific business activities in Sudan or, if they do, that they meet certain humanitarian criteria. These latter two proposals also pose some concerns, but we remain open to exploring them further as alternatives.

In summary, sanctions are an important policy tool, but they need to be managed with maximum flexibility. Timing is everything, and we believe it is imperative to preserve the President's flexibility to decide when and how to calibrate the application of sanctions to they can work to the maximum advantage.

We look forward to our continued dialog with the Congress to ensure that sanctions are applied at the appropriate time and in ways that do not undermine the multilateral efforts which are essential to achieve our policy objectives for Sudan, including ending the violence in Darfur.

Thank you very much.

Senator MENENDEZ. Thank you, Madam Secretary.

Director Szubin.

**STATEMENT OF ADAM J. SZUBIN, DIRECTOR, OFFICE OF FOREIGN ASSETS CONTROL, DEPARTMENT OF THE TREASURY**

Mr. SZUBIN. Thank you, Mr. Chairman, Ranking Member Shelby, and Members of the Committee. Thank you for your continued and intent focus on the suffering and crisis in Darfur and for the opportunity to speak to you today about the tools we can bring to bear on this difficult problem.

I know that this is an issue of vital and deep immunoglobulin to the Members of this Committee, to Congress, of course, to the administration, and to the American people as a whole. I believe, in fact, that it is a testament to the character of this country that so many people in every part of this Nation feel the suffering of the victims and refugees of Darfur as their own and are seeking desperately to help.

From my first days in this position, I was tasked to develop and apply additional sanctions measures to help alleviate the crisis in Darfur. The President and Secretary Paulson made clear that we should spare no effort and draw on all of our authorities and resources. Our objective has been to encourage a negotiated resolution to this crisis by making clear to the Government of Sudan and other responsible parties that defiance of the international community will come at a heavy cost.

Economic pressure has played a role in encouraging a resolution to this difficult and complex situation. As you know, the United States has had broad economic sanctions directed at Sudan since 1997 based on the Government of Sudan's support for international terrorism and human rights violations. In 2006, we acted with the U.N. to impose targeted economic sanctions against culpable individuals responsible for violence and undermining stability in Darfur.

This past April, on Holocaust Memorial Day, President Bush issued a clear warning to the Sudanese Government: either they would live up to their prior commitments and allow the deployment of a joint UN/African Union peacekeeping force or the United States would impose further economic sanctions on the Sudanese Government and seek a U.N. Security Council resolution to do likewise.

When President Bashir did not follow through, President Bush did. On May 29th, Treasury announced a range of new sanctions. We designated two senior Sudanese Government officials that had acted as liaisons between the government and the Janjaweed militias, including their chief of military intelligence and their minister for humanitarian affairs. We also targeted Azza Air Transport Company, which had been conveying artillery, small arms, and ammunition from Khartoum to Darfur. The government has not been the only culpable party, of course, and we also designated Khalil Ibrahim, the leader of a rebel group responsible for violence in Darfur.

On that same day, we designated 30 additional companies owned or controlled by the Government of Sudan, thereby disrupting their access to the U.S. economy and the U.S. dollar. These companies included five petrochemical companies, Sudan's major telecommunications company, and a company that had supplied armored vehicles to the Sudanese Government for use in military operations in Darfur. In addition to these actions, we significantly stepped up our efforts to enforce sanctions on Sudan sanctions, making this enforcement a top priority within OFAC, my office. We are now aggressively pursuing a number of violators to ensure that compliance with these sanctions is as strong as the sanctions provisions themselves.

Congress and this Committee have played an instrumental role in facilitating these actions. Indeed, just yesterday morning, Congress passed a bill, sponsored by Chairman Dodd, which provides for significantly increased civil penalties for those who violate IEEPA—the core statute under which we impose sanctions against Sudan, as well as terrorist financiers, WMD proliferators, Iran, Burma, and other sanctions targets. Without question, this bill will make our sanctions more effective, and I would like to thank this Committee, as well as others in the House and Senate, including Senators Durbin and Brownback, for their strong and swift support in passing this bill.

Two months after the sanctions I just described, with the leadership of the United States, the U.N. Security Council adopted an important resolution which my colleagues from the State Department have already described. Thus far, there have been positive indicators. As Assistant Secretary Frazer will describe in more detail, the Sudanese Government publicly announced its acceptance of a hybrid peacekeeping force, which is unprecedented. And later this month, she and my colleague, Assistant Secretary Dibble, described the peace conference that will be held in Tripoli, Libya, which will hopefully bring all of the parties of this conflict together and move them in the direction of settlement.

While there have been positive recent developments, the diplomatic road ahead will no doubt require patient and difficult work.

For our part, we stand ready to provide whatever support is needed to pressure those who would stand in the way of peace.

I know that this Committee has been watching these issues very closely and is considering additional Sudan-related measures. I look forward to answering your questions both with respect to the actions we have taken to date and additional policy proposals, and I look forward to continuing to work together with you to address these critically important issues.

Thank you.

Senator MENENDEZ. Thank you, Director.

We will start a round of questioning of about 5 minutes apiece, and then we will see if there is need for a second round. I will start off myself.

Mr. Szubin, in May, the Committee marked up and approved S. 1612, the International Emergency Economic Powers Enhancement Act, which vastly increases penalties on companies that violate U.S. sanctions law. The Senate approved the bill unanimously in June. The House passed it yesterday. The President, I understand, is going to sign it rather swiftly.

Now, your Department strongly endorsed that bill, did it not?

Mr. SZUBIN. Yes, sir.

Senator MENENDEZ. And from what I understand, you all believe that it should be enacted without delay. Is that the case?

Mr. SZUBIN. Yes, sir.

Senator MENENDEZ. Secretary Frazer, the State Department also supported that bill, did it not?

Ms. FRAZER. Yes.

Senator MENENDEZ. And, in fact, not only did you support it, but in view of the fact that the administration wants it enacted into law, that is going to take place even though the talks in Libya are about to happen. Yet you come before the Committee and you collectively cite that you oppose this legislation because, I think, Secretary Dibble, you mentioned timing and messaging.

What is the difference? You have a sanctions regime that you are all enthusiastically pursuing before the peace conference in Tripoli, and yet you are back-pedaling on this effort, particularly as it relates to Sudan.

Mr. SZUBIN. If I could, Senator, the key legislation which the Congress just passed yesterday would enable us to crack down more firmly on those who violate our sanctions, our existing sanctions on Sudan, as well as our other sanctions programs, such as those I mentioned—Iran, Burma, terrorist financing, WMD proliferation, and narcotics trafficking. It is an authority that we have desperately needed for years, frankly. Our sanctions penalties were out of date such that if somebody issued a series of transactions, exported goods, or facilitated financial flows to Sudan that were prohibited, they might get away with a slap on the wrist. And we cannot have our sanctions be viewed as—a penalty would just be a cost of doing business.

So we asked and we were very grateful to Congress for supporting that, but I do not view this measure as coming in any way into conflict with the ongoing diplomatic processes which are going on, as you mentioned, in Libya. What these will do is allow us to enforce meaningful penalties on those who are violating——

Senator MENENDEZ. I fully understand that, but the point is you want that enforcement because you want to send a very clear message that sanctions can work and have a consequence. Is that not the case?

Mr. SZUBIN. Absolutely.

Senator MENENDEZ. Then that is my point. Sanctions can work and they have a consequence. But here, as it relates to Darfur, the State Department seems to mean in its testimony to be overly optimistic and overly sensitive to upsetting the Bashir government.

Isn't it not true, Madam Secretary, Secretary Frazer, that Bashir has time and time again told the international community that he would do X, only to back-pedal and not make that happen?

Ms. FRAZER. Yes. Sanctions——

Senator MENENDEZ. Yes. But the point is then, if the answer to that is yes, then it seems to me that you would want to have all the leverage possible at the end of the day to have him understand that we are serious about the consequences—it does not mean you have to invoke them, but you have a tool in your arsenal, an arrow in your quiver to be able to use. And I do not understand exactly—what I have not heard from any of you, really, outside of the generic context of timing and messaging, you know, the focus of this legislation you really have not attacked in terms of its specifics.

You know, there are four distinct sectors of the Sudanese economy that are linked to supporting policies which have contributed to Darfur policy: oil, mineral extraction, power production, defense. This is not a blanket divestiture measure.

Furthermore, the legislation specifically carves out business investments in the South where we are hopeful for progress.

Thirdly, the legislation before the Committee is specifically written to expire when the requirements for all corresponding Federal sanctions are satisfied.

And, fourthly, in addition to helping apply pressure to the Sudan, the legislation is meant to ensure that socially conscious investors have the right—the right—to refrain from investing in business operations that contribute to genocide.

I cannot quite understand how the State Department comes before this Committee and says this is inappropriate.

Ms. FRAZER. Perhaps I can answer some of what you have asked. I think it is important to be very clear that the sanctions that were imposed on May 29th are having effect, and the enforcement of those sanctions from 1997 has increased and is having an effect, specifically the sanctions that Adam Szubin, I must say, has been really very effectively applying, and which the IEEPA legislation will give him even more ability to tighten the rope around this Government, is the reason why the Government of Sudan has accepted UNAMID today. They are effectively shutting down the banking system in Khartoum today. We have the necessary pressure based on the sanctions that we imposed on May 29th.

And so what I would say is, in terms of the specific legislation, my concern about it is, frankly, the additional work that it is putting on OFAC when we need OFAC to be looking after identifiers of Government of Sudan officials to further tighten the impact on that government instead of going through a list of companies, you know, trying to find a list of companies which have a diffuse im-

pact. What we need is the targeted impact that he is already applying due to the May 29th sanctions, which are having an effect.

The second point I would make in terms of the issue of timing is that indeed we do have to keep this coalition. If the Government of Sudan starts backtracking, which is the way it does—I mean, there is absolutely no doubt about it. This is a government that makes an agreement and then tactically starts to put road blocks in the way. If they start that process, then we have the sanctions necessary, and we may come back to you. In fact, this legislation could be fine-tuned so that we could put the necessary pressure.

I think it is important to say, however, that right now the ball is in the UN's court. The issue of getting those peacekeepers on the ground is really one that we have to put the pressure on the U.N. and keep our dialog with the U.N. That is where the obstacle is, as well as on the peace process. The ball is in the rebels' court on the peace process. And so we need to be clear about when we use the sanctions, it is to impact this government for its negative behavior. But at this moment in time, the ball is not in the Government of Sudan's court.

I am sure that they will backtrack, so I think that we have to be at the ready with new sanctions. But we also have effective sanctions right now that are putting the necessary squeeze on this government.

Senator MENENDEZ. Well, I appreciate your answer. The legislation actually calls for additional assistance to OFAC to be able to meet its challenge. And, second, it seems to me that whatever refinement you want to suggest, you suggest to the authors and to the Committee, because it is my sense that this will move forward.

The distinguished Ranking Member, Senator Shelby.

Senator SHELBY. Thank you.

Do any of you have an estimate of the amount of revenue and the percentage of GDP that the Sudanese Government derives from foreign investment and trade? Do you, Mr. Szubin?

Mr. SZUBIN. I do not.

Ms. DIBBLE. No.

Senator SHELBY. Could you furnish that for the record? Isn't that important? You need to know what they are doing and how important this is to their GDP if it is going to work.

Do you have any idea as to the extent that the Sudanese Government is dependent on funds like that for the financing of its actions in Darfur? In other words, is there a connection between financing their actions and something we can do about it by sanctions?

Mr. SZUBIN. I do not have——

Senator SHELBY. Do you need what I am asking you?

Mr. SZUBIN. Of course, Senator, and I do not have the figures with me today.

Senator SHELBY. Could you furnish that for the record?

Mr. SZUBIN. Yes. It is unquestionably true that foreign investment, particularly in Sudan's petrochemical sector, is the major source of funds for their government, and it allows them——

Senator SHELBY. It is a great percentage of their GDP, is it not?

Mr. SZUBIN. Yes, sir, it is.

Senator SHELBY. And you are really talking about oil and petro dollars, are you not?

Mr. SZUBIN. Yes, and that is one of——

Senator SHELBY. Oil and gas.

Mr. SZUBIN. Exactly. That is one of the reasons we have focused on that sector so intently with our sanctions. So just to give you an example, not only have we recently in May named five of their state-owned petrochemical firms, but in the past, we have gone after conglomerates that the Government of Sudan controls but that are co-owned by Chinese, by the Malaysians, by the Indians, to target all of the major Sudanese petro firms and say, "You are not going to do any business with the United States, and we are going to try to disrupt your business that you are doing anywhere in the world."

Senator SHELBY. Is there evidence regarding the conduct of U.S. and foreign companies operating in the Sudan? In other words, that the companies targeted for divestment at the State and local levels are actually altering their behavior? Is there anything going on there? Do you measure that in any way?

Mr. SZUBIN. With respect to the impact of State divestment?

Senator SHELBY. Yes.

Mr. SZUBIN. I am not aware of that.

Senator SHELBY. You do not have any——

Mr. SZUBIN. I do not have that evidence, no.

Senator SHELBY. Secretary Dibble, China's role is very central to all of this, as some of us see it. How has China reacted to the targeting of PetroChina and its parent company, China National Petroleum Company, by the divestment campaign? Have they changed their behavior in any way, or does oil trump everything, oil and gas? Have you seen any indication that Pakistan, India, Malaysia, or any Federal Government country is incorporated concern for human rights into its foreign investment policy?

Ms. DIBBLE. I am not aware of any specific reaction from the Chinese on this particular issue. I do know that this has—our efforts and our sanctions—and I am talking more broadly than just the Sudan sanctions, but our sanctions across the board have gotten the attention of foreign governments. And as Assistant Secretary Frazer said, you know, we need some of these very governments to help us in the coalition.

So I think they have taken notice of this. I am afraid I cannot quantify what that reaction might be. But I think they have taken notice.

Senator SHELBY. A lot of you here at the table, you are experts on the situation in Sudan because of your professionalism. Could you tell us what form you believe any potential legislation should take? In other words, I believe we are going to pass a strong bipartisan piece of legislation coming right out of this Committee, and it has got to be meaningful. If it is not meaningful, it is useless; it is worthless. It is just a statement with no teeth, and we do not want that.

What do you want? Is the administration out of sync with the Congress on this?

Mr. SZUBIN. I do not think so at all. I think, in fact, in my conversations with your staffs and others on this Committee, we have exactly the same objectives here, which is, How do we get down this very difficult road of a negotiated peace agreement and ensure

that we do not see people veering off the road, as they have in the past? And how do we make sure that people see the costs and the very significant costs of misbehavior? So in terms of being in sync, very much so, Senator.

In terms of what additional legislation would be needed, whenever we have been asked in the past, we said we need stronger penalties. We need to make sure our sanctions are enforced and——

Senator SHELBY. It has got to have teeth, has it not?

Mr. SZUBIN. It has to have teeth, and Congress responded very swiftly, and I just want to thank you all again for the support with respect to that, because we asked and you delivered as quickly as could have been expected.

When it comes to applying additional proposals on top of that, my colleagues from the State Department, of course, talked about the timing and the very delicate process that is coming right now. And what we are hearing from the government, at least what we are hearing right now, is exactly what——

Senator SHELBY. Explain what you mean by "delicate." I mean, people are dying every day.

Mr. SZUBIN. That aspect——

Senator SHELBY. People are looking the other way. So what is delicate about doing something about this or trying to do something about it?

Mr. SZUBIN. This is something where my colleagues will be able to speak more articulately than I, but just to give one example, the U.N. Security Council Resolution 1769, which just passed late this summer, was a 15–0 vote, if I am not mistaken. In other words, we had consensus, including from the Chinese, that we need to deploy peacekeepers, that the situation in Darfur requires a serious response. And that is a remarkable accomplishment thanks to the diplomats sitting at this table and others in our Government.

Senator SHELBY. You do not believe that China has any interest in sanctions against their own China Petroleum Company, do you?

Mr. SZUBIN. I am sure they do not. And these kinds of targets, state-owned companies, present a particularly difficult challenge when it comes to economic pressure. If you take the Malaysian company, Petronas, which is operating there, they are, frankly, not subject to economic pressure. They are not traded on any exchange in the world, certainly not on any U.S. exchange, and U.S. investors are not holding their stock. And so there is a limit to how much pressure we can apply financially to address that situation. I think ultimately it comes down to what can we do diplomatically to convince them to either change their ways or use their influence and their leverage within the Sudanese economy for good and to be pressuring the government that we all need to see a change in behavior, we all need to see peace in Darfur.

Senator SHELBY. Well, whatever we have been doing is not working, is it?

Mr. SZUBIN. Well, I think the recent months——

Senator SHELBY. The slaughter is still going on.

Mr. SZUBIN. The situation there has gone on longer than it ought to have and longer than any of us would have liked to see. The developments over the last few months, which Assistant Secretary

Frazer will speak to, are among the more positive that we have seen recently, and the government seems to be saying what we would like it to. It is a question now of follow-through. I would turn it over to Assistant Secretary Frazer.

Ms. FRAZER. Yes, Senator Shelby, I will speak to specifically the delicacy of this moment in time. I think it is on two levels: one, what is going on in Sudan itself; and, second, in terms of the international coalition, which has been extremely difficult to build.

In the Government of Sudan, it is a very divided government. The pragmatists right now are in the ascendance. They have convinced those who would pursue an end to this through military means that, in fact, allowing the peacekeepers to come in is the right way, going to the negotiating table is the way to end this crisis in Darfur, as well as to end their isolation internationally, at least their isolation in the Western world, because they are not exactly isolated internationally—which comes to my second point, which is the international coalition. The most important thing that we could do today is to get other countries on board with further sanctions, to put multilateral sanctions, because as long as the United States has unilateral sanctions—in fact, we are shutting down their access to the dollar economy, they are just moving it to euros now. You know, they just find banking outlets in the Middle East.

And so we have got to get other governments on board with us, and if we are seeing, as when the Government of Sudan has accepted UNAMID and has accepted to go to the peace table to negotiate peace, if we are seeing this, now imposing yet another set of sanctions when we have very effective ones in place at this moment in time, we probably will lose that international coalition. Or the coalition, which is not very firm anyway, we have to keep it on board. And so that is what we mean by the delicacy of the moment.

But as I said, I think that we have to be ready because we do know the character of this government, which backtracks constantly.

Senator SHELBY. This government is the problem, is it not? They aid and abet the militia. They aid and abet everything. I wish you well.

Thank you for letting me go over on my time.

Senator CASEY [presiding]. Thank you, Senator Shelby.

Senator Reed.

Senator REED. Thank you very much, Mr. Chairman.

Secretary Frazer, do you feel that the recent attack on the peacekeepers force was either condoned or encouraged by elements within the government in Khartoum?

Ms. FRAZER. I do not think it was condoned and I do not think it was encouraged, but it is an interactive process. And I think that there is no justification for the attacks. And one explanation—we are still trying to gather information on what happened and why. But one explanation is that these were break-off rebel groups who were seeking supplies, equipment, and so they attacked the AMIS to get those supplies and equipment.

Another is that when the rebels attacked the government police and killed some 51 police in Kurdufan, the government responded militarily, and that this was then a counterattack with the rebels

believing that AMIS was not—took the side of the government. And so it is the dynamic. And so whereas, I do not think the Government of Sudan aided or abetted or encouraged this attack, I do think that the Government of Sudan's action is part of the context, the reason for this type of back-and-forth between the rebels and their attack on AMIS. It is not excusable.

Senator REED. So your at least working conclusion is that the Khartoum government will cooperate with the deployment of the peacekeeping force.

Ms. FRAZER. My experience is that we will have to continue to put pressure on this government at every moment in time to make sure that they cooperate, because it is a divided government. There are those who support UNAMID fully, and then there are those who absolutely oppose it. And it is a tactically oriented government, and so we have to continue to keep the pressure on the government. That is my experience.

Senator REED. Well, I think we all sort of share your conclusion. I think the debate here is what kind of pressure from what direction, et cetera, because frankly I think the heart of the proposal of Senators Durbin and Brownback and others is that this is more pressure continuously applied, and, in fact, it is the type of pressure that might get their attention since it is not the carefully calibrated pressure that the administration is applying. It is much more blunt. And with all due respect, the "delicacy" and the "regime in Khartoum" are words I do not assume to hear in the same paragraph. But I know what you are saying, you know, that this is a pretty difficult situation to manage.

Director Szubin, the sanctions that are in place today would prevent these companies and individuals from doing business with American companies, and likewise American companies doing business with these individuals and companies. Is that a fair summary?

Mr. SZUBIN. Yes, Senator.

Senator REED. Would it prevent American companies from investing in these companies?

Mr. SZUBIN. Yes, Senator.

Senator REED. So a pension fund in Rhode Island or Illinois now under this could not invest in these companies directly or indirectly. Is that true?

Mr. SZUBIN. Right.

Senator REED. Is that clear to—do you think that is clear to the public out there that this is the case?

Mr. SZUBIN. I think it is, and we engage in a great deal of outreach to try to educate the public, both the normal sectors that we deal with, whether it is the trade community or the financial community, as well as others with respect to what are the contours of our sanctions and what are the prohibitions. But not only can no U.S. person conduct any business or invest with the companies that we have named; they cannot conduct any business with any Government of Sudan-owned or -controlled company, and any assets of those companies have to be frozen if they come into the possession of a U.S. person, which would include a U.S. person overseas. If there is a U.S. bank in Europe or in the Far East that comes into the possession of a wire transfer that is going to one of these com-

panies or coming from one of these companies, that money needs to be blocked and frozen.

Senator REED. So effectively you have a list of these companies. Some of the discussion today is that we do not want a list published of these companies as the legislation would, but there is a list of these companies, correct?

Mr. SZUBIN. Correct. If I could, there are, I think, two different lists that have been discussed. We maintain a list of Government of Sudan-owned companies where we are targeting at Sudan itself. There has been discussion of and I think some of the legislation would call for creating a list of non-Sudanese companies, third-country companies in Europe or elsewhere that are doing business in Sudan—what some people would call a "secondary sanction"—and that list currently does not exist. At least under the Government letterhead it does not exist. I know there are many private nongovernmental groups that look to lists like that, that have developed lists like that, and that are using them.

Senator REED. Well, as I think you suggested in one of your previous responses, most of these Sudanese companies are not listed on any stock market, that there is no ability to invest in that. That is correct, isn't it?

Mr. SZUBIN. By and large, the large petrochemical companies that we are talking about are not listed, certainly not in the United States.

Senator REED. Well, let me ask it another way. That is, are there any companies—this goes to sort of, I think—maybe we already have this policy in place. Are there any companies that are publicly traded that you have listed or put on a sanctions list?

Mr. SZUBIN. I am trying to think, and I do not want to answer incorrectly. I do not know of any of these Government of Sudan-owned companies, and here we are primarily talking about companies that are operating in Sudan, in Khartoum or in the oil fields, that are traded on—certainly not on a U.S. exchange. They would be prohibited from doing that. But I do not know of others that are traded on, say, a European exchange.

Senator REED. It seems to me that, you know, this is a question of how much is enough in some respects, which, clearly, you and your colleagues are trying to put pressure on the regime. But it would seem to me that—and I do not know the direction of investment flows, but whatever inhibitions that are felt by these companies are more than made up with by foreign investors, private companies coming in and putting money into the oil fields. And at the heart of what I think our colleagues are trying to get at is trying to cutoff that flow of funds, too, which would send a very strong signal to the Government of Sudan. But thank you for your efforts.

Thank you, Mr. Chairman.

Senator CASEY. Senator Bunning.

Senator BUNNING. Thank you. I look at the questions that I have, and at least four of them have already been asked.

Why would it be counterproductive to allow States and local governments to make their own laws on businesses dealing with other countries? Any of the above.

Ms. DIBBLE. Senator, we are not opposed to private divestment actions. As some of your colleagues have noted, there is divestment

taking place in various States, and they are looking at this. We have never said we have opposed that. What we are opposed to is legislation that affirmatively authorizes State and local government divestment because of the concern that it creates a multiplicity of State and local government foreign policies that could potentially impact on the President's ability to direct the foreign policy of——

Senator BUNNING. But as long as there is an overriding sanction by the Federal Government, don't the State and local governments have to comply?

Ms. DIBBLE. Yes, they would.

Senator BUNNING. Yes.

Ms. DIBBLE. Yes, they would.

Senator BUNNING. Well, is there anything to prevent State and local governments from going more stringent than the Federal Government?

Ms. DIBBLE. No, and I think in some cases—if I understand the question, Senator, in some cases they are doing that now.

Senator BUNNING. Given the problems that the Securities and Exchange Commission had assembling a list of companies doing business in terrorist countries, could the Government make a more accurate list of companies doing business in Sudan?

Mr. SZUBIN. Well, I will try to answer that. As I mentioned a few moments ago, these lists——

Senator BUNNING. The private——

Mr. SZUBIN. The private lists are out there, and I believe the Sudan Divestment Task Force will be testifying on the subsequent panel. They issue a list that I think is updated quarterly with respect to the activities of foreign companies that are investing in Sudan in particular sectors and that have not complied with a whole set of criteria with respect to their business and their humanitarian profile.

When it comes to the Government going in and trying to reinvent that wheel, issue a list of their own, you sort of get into the question of what are the additional benefits of having a Government list and what costs would come with it. And the costs include the foreign policy concerns of the U.S. beginning to blacklist, if you would, European or Asian companies and exactly those governments whose support we are going to need to keep the pressure on in Khartoum. The costs would also come in the form of just the very serious logistics costs that the Government would bear, logistical hurdles that we would bear in trying to put out this kind of list, because the kinds of information that we draw on in analyzing flows or trade flows into Sudan are, for the most part, classified. So, of course, we are not going to be able to put out information that is derived from classified information.

When we are looking to the public information, which the private sector has access to, we would need to limit ourselves to that which we think is solidly sourced and corroborated and reliable before we could, of course, put a Government seal on it and say here is our list.

So I think at the end of the day, you would see a much shorter list if it came out from the U.S. Government than those which are already in circulation.

Senator BUNNING. Secretary Frazer, I have got to ask you, why is it difficult to get other governments to act in conjunction with the United States if they actually know what is going on in Sudan?

Ms. FRAZER. Senator, unfortunately, many governments do not know what is going on in Sudan.

Senator BUNNING. Well, I mean, we do.

Ms. FRAZER. We do.

Senator BUNNING. And certainly is our credibility that bad—are you as an entity in the State Department so bad at explaining to other governments the horrific goings-on in Sudan right now?

Ms. FRAZER. No. But Secretary Rice has certainly done a lot to build the coalition that led to the 15–0 Security Council resolution that authorized the peacekeeping force. But the Government of Sudan goes to the Middle East, claims its sovereignty, and says to the other countries in the Middle East that they should not have international peacekeepers on their territory. They raise issues of——

Senator BUNNING. But, then, what action should the U.S. Government take toward those other countries, if anything?

Ms. FRAZER. Well, we certainly take action to convince them and we have been successful in building that coalition to convince them to stay with us, and that is what we are trying to maintain. But there are many issues in the world that we need these governments' engagement on. Sudan is one of the issues. And so we have to continue with multilateral diplomacy. And as I said, the Secretary has done an effective job of getting Egypt, Saudi Arabia, Libya, South Africa, and many other countries on board with our approach.

Senator BUNNING. One last question, and I am sorry this is just a little over my time. There are an awful lot of American people that know what is going on in Sudan. What can the average American do to help, in sanctions, in—in other words, you cannot volunteer to go to Sudan as a peacekeeper—or can you? Or what can we as the average Americans do?

Ms. FRAZER. Well, I think the average American, I mean, the young people on our college campuses are being very effective in keeping this issue at the forefront.

Senator BUNNING. Up.

Ms. FRAZER. Absolutely. And from our perspective, helping us to get the resources, you know, with the Congress so that we can be effective in putting peacekeepers in there, building the camps that are going to be necessary for where those peacekeepers are going to live, providing humanitarian assistance that is necessary.

As I said, we provided about $4 billion over the last 2 years to help on the humanitarian situation, the peacekeeping front and the peace process. And so I think that the American public needs to remain engaged the way that they are and keep pressure on us, including the debate that is going on right here today at this Committee. I think that this is effective. It to me is the best of America. We need to look at what are the various tools that we can use to end this genocide in Sudan. And so this is one of a number.

What I am saying is that I think that the sanctions from May 29th have been absolutely effective in changing this government's behavior, and the government is where we need it right now. We

need to keep the coalition together. But I think that the debate that is going on here is a healthy one and an important one, and it is for your deliberation, of course, on what steps further to take. But, that is, the reflection of America is right here, I think, in this room today. So those young people should continue their activism.

Senator BUNNING. Thank you very much, Mr. Chairman.

Senator CASEY. Thank you, Senator Bunning.

I wanted to pick up, Madam Secretary, where you left off. First of all, I want to thank you and your colleagues for being here today and for your public service. Public service is usually difficult. The kind that you are doing is particularly difficult. And we do not want to be too combative here, but I said earlier today that you had a high burden of proof in terms of making your case, and I think that is still the case.

I wanted to highlight just some excerpts of your testimony and then also talk about the legislation and have you react to that.

Secretary Frazer, when you were testifying, you highlighted a number of things. I think you outlined the challenge we have in a very full and significant way. But I was struck by a couple of statements that you made that really, I think, caused me to question why we are having—why there is such a disconnect here in terms of our position in the Congress, or most of the Congress, and the administration's position.

On page 2 of your testimony, you talked about, and I am quoting, "A welcome and useful initiative at this juncture would be for Congress and other concerned groups to issue statements"—to issue statements—"calling for the rapid deployment of the UN/AU hybrid force and calling on all parties to participate in the . . . process." So you called for a statement there.

On the next page, page 3, you highlight, aptly, the chaotic nature of what has been happening on the ground, citing the killing of the 10 peacekeepers.

On page 4, in the first full paragraph, the middle of the page, "we"—meaning the Federal Government, the U.S. government—"insist on nothing less than full cooperation."

And finally, on page 6, you mention that the Federal Government, the U.S. Government has provided over $4 billion in assets to Sudan since 2005.

Secretary Dibble, in your testimony, in the first paragraph, "Sanctions seek to change behavior," which you mentioned. You talk on page 2 about increased pressure that has helped to bring us where we are today.

My point in all of this is that there is some common ground here in the sense that we all agree that sanctions and economic pressure and other kinds of pressure do work, and you are seeing some results from that, and we appreciate that. We appreciate the difficult situation the administration is in and the work that the administration has done to date.

But I have to tell you, when you juxtapose those statements and that, I think, agreement between the debate we are having today, you juxtapose that next to the basic provisions of the Senate—at least the Senate bill that I have cosponsored, Senator Durbin's legislation—and I will just highlight a couple of provisions that were in his testimony and ask you to comment.

One of the elements of this legislation is to first require the administration to create a list of companies supporting the Sudanese regime. I cannot understand why that is a big problem. Also, requiring those companies to report to the SEC. Third on his list, requiring the administration to report on the impact thus far of current economic sanctions. Just asking for the administration to report on the impact.

Further down in his list, authorize State and local governments to divest from companies supporting the regime. I realize that is controversial. I will get back to that in a moment.

Further down the page, increasing civil and criminal penalties for sanction violators.

Another provision, studying how the Federal employees' Thrift Savings Plan can create a terror-free investment fund.

And, finally, with respect to Director Szubin, authorize additional funding for the Office of Foreign Assets Control within the Treasury Department. Now, I have to say I am sure you are not against that provision.

[Laughter.]

Even as we debate.

But my point is that a lot of what is in this legislation is, I think—I should say contains requirements that the Federal Government does every day of the week, requiring something to be studied, requiring a list, monitoring how a particular entity is performing. In this instance, you have sanctions in place, and you have a call for requiring a list of companies. And on top of all that, when it comes to the local and State government impact—I was a State treasurer. We have the State treasurer of Rhode Island here. We know that when you walk in the door and say, you know, we might have to remove or limit our investments in your company, companies respond. We know that. It is human nature.

But for the life of me, I cannot understand why there is such a full-court press against this legislation when you go through the elements of what we are talking about. And I will stop talking in a moment, and I think this required a statement and not a series of questions. But when you consider the frustration, as you have highlighted, the intensity for real concrete action here, demonstrable progress here that so many people feel in our country, and you also consider the fact that what you are saying to State governments, local governments, pension funds, citizens across America, that you have a tool—you are putting a tool on the table, you who are in State and local government and otherwise, and we know that tool probably will work, but we do not want you to use that tool, and we are going to prevent you from exercising that option, I just think it is the wrong policy.

And you talk about having several or many, a multiplicity of foreign policies here. One of the best ways to sing from the same songbook, one of the best ways to unify our efforts is to make sure that the Federal Government gives State and local governments the authority to do what we know can have an impact.

So it is a long, long statement and a long question, but I would like you to take a moment, as best you can, to rebut some of the elements of this bill in addition—or apart from just the State and local government divestment issue. Secretary Frazer?

Ms. FRAZER. I would just say—I think that this is really best handled by my colleagues, but I would just say I support reporting on the impact of current sanctions that is in the bill now, because I think that report would tell you how effective we have been, particularly—the enforcement has gone up significantly, but particularly since May 29th, and how those sanctions are choking this government. So I support that part of the bill.

Senator CASEY. So we have got agreement on that. We have got agreement on that he needs more money for his office.

[Laughter.]

And we agree that economic sanctions and pressure work, so we are making progress.

Ms. DIBBLE. I think there is a lot more common ground, Senator, than perhaps appears. I think we are all working toward the same goal, and the goal is to keep the pressure on the Government of Sudan and to keep the international coalition together. Where we perhaps differ is exactly, you know, how to get there.

I think some of the elements of this legislation—and we have talked a bit about the divestment portion of it. I am sure Adam Szubin is not going to turn down any additional OFAC funding. We do have—the legislation that was passed yesterday puts additional teeth into our existing sanctions.

I think the point is we want to be able to continue to ratchet up and to have the flexibility to apply pressure where we see it is needed at a particular time. I think the evidence since May, when the new sanctions were announced, we have gotten the attention of the Government of Sudan. So I think our existing sanctions are working. I realize there is frustration, and there is frustration on our part as well, that the situation in Darfur is continuing. But we do feel that we are moving in the right direction, perhaps not as fast as either you or we would like to move. But we feel we do have the tools we need right now to continue to maintain that pressure.

Senator CASEY. I have to move on, and Senator Brown has been patiently waiting. Senator Brown.

Senator BROWN. Thank you, Mr. Chairman. I just have one question of Secretary Frazer.

I know of your position. I have read of it. I am sorry I got here late, and I am chairing for Senator Casey in a moment, too. But I know that you think this resolution gets in the way of your diplomatic efforts. What kind of tangible benchmarks of progress can we expect as a result of the conference in Tripoli this month? What should we be looking for so that we can believe that your position is correct?

Ms. FRAZER. Well, frankly, I think that we can look at benchmarks for the conference in Tripoli, but I think that the more important benchmarks are on UNAMID's deployment. And I say that because it is by getting a peace force on the ground that you can create—you can end this chaotic environment, which then puts more pressure on all parties to effectively negotiate.

And so I would suggest that the benchmarks be UNAMID, but if we were going to talk about benchmarks being the Tripoli talks, obviously it is going to be very difficult, because as I said, the key block right now is the rebel groups and their fragmentation. And so trying to get the rebels to the table I think is critically impor-

tant. But that is not going to give you, I think, a benchmark for judging the Government of Sudan's behavior. They can sit back and say that they are fully on board with a peace agreement because the rebels themselves are not coming to the table. If you want something to judge the Government of Sudan's behavior, again, it is UNAMID. That is what matters. Is the government going to allow us, you know, to get the visas necessary? Will the government allow the equipment to come in? Will the government put up road blocks for who the peacekeepers will be? Will they start saying this country is not acceptable, that country is acceptable?

So I would focus on those benchmarks more so than the negotiations because it is the rebels that are the primary problem at this point in time. The government can sit back.

Senator BROWN. Thank you.

Thank you, Mr. Chairman.

Senator CASEY. I think at this moment we will change to the third panel, and Senator Brown will take over at this point.

Thank you.

Senator BROWN [presiding]. Thank you all for joining us. I will introduce each of the—well, I will introduce four of you, and my friend, the senior Senator from Rhode Island, will introduce Mr. Caprio, whom he specifically requested to introduce. And I will remind each of you that your statements are in the record if you would like to not exactly read your statement. It is up to you what you want to do, but we do ask that you keep it under 5 minutes as we proceed.

Bennett Freeman is the Senior Vice President for Social Research and Policy for Calvert Investment. He combines his policy experience as a former Deputy Assistant Secretary of State for Democracy, Human Rights, and Labor with an extensive knowledge of socially conscious financial planning to help administer private asset funds and avoid investments in assets connected with ongoing violence in Darfur. He was with the Clinton administration, I believe.

John Prendergast—there are few Darfur experts more familiar with events on the ground, and he is Co-Chair of the ENOUGH Project. A frequent traveler to the region, Mr. Prendergast has widely published on the Darfur conflict, has led efforts by the International Crisis Group to put forward definitive assessments and recommendations to addressing the ongoing crisis there. He is currently Co-Chair of the ENOUGH Project at the Center for American Progress. Welcome, Mr. Prendergast.

As President of the National Foreign Trade Council, Mr. William Reinsch works to represent the interests of the council's more than 300 member companies. He oversees the NFTC's work in favor of open markets in support of the Export-Import Bank, the Overseas Private Investment Corporation, and many other overseas trade and tax issues of concern to U.S. businesses. During the Clinton administration, he served as the Under Secretary of Commerce for Export Administration. He is also an alumnus of the Senate Banking Committee staff. Nice to see you, Mr. Reinsch.

Adam Sterling serves as Director of the Sudan Divestment Task Force, a project of the Genocide Intervention Network, which works to organize nationwide grass-roots campaigns aimed at imple-

mented targeted Sudan divestment campaigns at the local, State, and national level. Mr. Sterling has received a number of humanitarian awards, also serves as an adviser on Sudan engagement issues to a number of State pension funds.

I thank all of you for your commitment and your very hard work on this very, very, very important social justice issue.

Senator Reed.

Senator REED. Well, thank you very much, Senator Brown. I am privileged to introduce General Treasurer Frank Caprio for the State of Rhode Island. Treasurer Caprio is the eldest child of Joyce and Judge Frank Caprio. His father is more famous, in fact, than the Treasurer because he is not only a municipal judge, but he has his television program in Rhode Island. So tell Judge Caprio we said hello.

His brother, David Caprio, is a State representative, so this is a family that is committed to public service in the State of Rhode Island and has been for several generations, and we treasure their commitment.

Frank is just 41, but has accomplished a great deal already. After Harvard University where he was captain of the baseball team and an All Ivy defensive halfback, he went to Suffolk Law School and got his law degree, served in the Rhode Island House of Representatives for two terms, then the Rhode Island Senate. Throughout his career, he has been committed to advancing the opportunities for Rhode Island citizens, and now as the General Treasurer, he has been a leader in the effort to take effective action against the regime in Sudan and to do his bit to end the genocide there.

I have valued his friendship and support for many, many years, and it is a pleasure, General Treasurer, to have you here today. Thank you, Frank.

Senator BROWN. Mr. Caprio, would you begin? Thank you.

**STATEMENT OF FRANK CAPRIO, GENERAL TREASURER, STATE OF RHODE ISLAND**

Mr. CAPRIO. Thank you, Senator Brown. And, Senator Reed, thank you for that kind introduction. And also, thank you for the invitation to appear here today.

As stressed by Senator Durbin and Senator Brownback, this issue's time has come. The American people, as we know, are fair and caring people, and they have led the way on ending this genocide. The American people know that the children in Darfur, their stomachs are full of fear, but their hearts are full of hope—hope about the issue that we are talking about today.

As an elected official and as an institutional investor of an $8 billion pension fund, I fully recognize my obligations and responsibilities. The management and protection of the funds under my fiduciary responsibility is clear. I am an investor, not a regulator, and as such, I hold the right to direct the fund in as accountable a manner as possible.

I testify before you today not to challenge the Federal Government's exclusive right to conduct the foreign policy of our Nation, but to make the case that not only is the movement of State divestment in concert with our Nation's policy on Darfur, but it is well

within the rights of States with fiduciary responsibilities to their citizens. Let me elaborate on the latter point.

State pension funds, as some of the largest, singularly controlled pools of assets in our country today, have at their service the brightest minds of our financial sectors. We consider market trends history, the climate on Wall Street, and countless other variables, but, most importantly, we consider risk as we devise our strategy for our investments. That strategy is altered as climates change or trends develop. Therefore, as prudent investors, we must be able to adjust accordingly.

The growing divestment movement, now including over 20 States and a multitude of cities and universities, has been cited by several companies as the reason for their decreases in their companies' value and, increasingly, as the reason for their withdrawal from the Sudan.

From a humanitarian perspective, the situation in Darfur is no secret, and we have heard recently, with the panel before us, what actions the Federal Government has taken and recommends.

Targeted divestment not only furthers the objectives of our Nation's foreign policy, but virtually eliminates the States' risks. This approach is directly in keeping with current foreign policy on this issue.

For example, included in our recently passed legislation in Rhode Island is the statement that no company will be targeted that has been explicitly exempted from the U.S. sanctions by the Treasury Department. Additionally, targeted divestment includes a provision that the bill will sunset when either Congress declares the genocide to be over, or when the State Department removes sanctions on the Sudanese Government.

Furthermore, the targeted model protects the States' financial interests by providing an opt-out clause in which States possess the right to cease divestment if it has proven to result in a negative impact on their investment returns.

This legislation in Rhode Island was unanimously passed and immediately signed by our Governor. At its very basis, divestment from Sudan represents a choice by the State to invest its money in concert with the values of its citizens. Accordingly, States possess both the right and the capacity to invest based on social, humanitarian, and financial values, as long as those decisions are consistent with prudent investment standards.

The targeted approach to divestment followed successfully in Rhode Island and other States addresses these concerns while upholding rigorous financial standards. When intelligent policy is found that addresses a humanitarian crisis while mitigating financial risks, I feel action must be taken. Targeted divestment is such a policy, and I am proud to support it.

On the grounds that I am confident that States have not only the fiduciary right but also the responsibility to divest, Federal legislation will end this ambiguity and galvanize the States' right to act on their own as well as in humanity's best interest.

In summary, this action ensures that we will not allow genocide to occur on our watch, nor will we allow genocide to occur on our dollar.

Senator Brown and Senator Reed, thank you.

Senator BROWN. Thank you, Mr. Caprio.

There will be a vote around, we think, 11:30, 11:35, 11:40. We will—oh, they have moved it to 11:55. OK, good. We will not be interrupted at least for the opening statements.

Mr. Freeman.

**STATEMENT OF BENNETT FREEMAN, SENIOR VICE PRESIDENT FOR SOCIAL RESEARCH AND POLICY, CALVERT GROUP**

Mr. FREEMAN. Thank you, Senator Brown and Senator Reed and Members of the Committee, for the chance to testify on behalf of the Calvert Group, a leading family of socially responsible mutual funds, which strongly supports the targeted divestment approach.

Calvert has always operated on the principle that investment can be a positive force in the world. Application of our human rights criteria ensure that our socially responsible mutual funds have no investments in companies that contribute materially to maintaining the Sudanese Government in power. We have sharpened our focus on Sudan as the crisis in Darfur has continued and the Sudanese Government has resisted deployment, until very recently, of the hybrid U.N. peacekeeping force.

We have also been struck by the growing and potential further impact of the Sudan divestment movement, the most significant to have emerged since that directed against apartheid in South Africa.

That is why, at the beginning of this year, Calvert formed a partnership with the Sudan Divestment Task Force, together with the Save Darfur Coalition, to lend analytical and advocacy support to these two groups at a time when their work has gained even greater momentum and urgency. Calvert fully supports the approach of the task force and the coalition to engage with companies where possible, and to divest only when necessary. Targeted divestment focuses on a narrow group of companies, mostly in the oil and infrastructure sectors, that contribute disproportionately to the Government of Sudan's revenue base and in turn help to facilitate its actions in Darfur.

Let me emphasize that we at Calvert undertook a review of the task force's analytical criteria for determining the so-called highest offenders for targeted divestment, and we found that criteria to be realistic, credible, and consistent.

As we pursue divestment, particular care, of course, must be taken to ensure that the legitimate humanitarian needs of the Sudanese people are not harmed. Essential goods and services must continue to flow through the traditional sources that provide aid in Sudan.

With this appropriately sharp focus, the divestment movement has already been making a positive impact both in terms of company decisions and the reactions of the Government of Sudan. The Canadian oil company Talisman withdrew from Sudan in 2002 in the face of divestment pressure; other oil companies have followed. The Government of Sudan has indicated time and again in advertisements in *The New York Times* and other statements its concern over the growing divestment movement.

That pressure increased significantly early this year when two major multinational corporations—ABB and Siemens—followed shortly thereafter by Rolls Royce, indicated their intention to cease operations in the Sudan as the direct result of pressure from the targeted disadvantage movement.

We believe at Calvert that major institutional investors and asset managers should review their portfolios to determine whether they hold any companies on the targeted divestment list, and if they do hold such companies, that they should probe the specific nature of these companies' operations and links to the Government of Sudan. They should then judge whether the companies' continued presence exacerbates the situation in Darfur or instead can be focused in ways that might even help mitigate the humanitarian crisis. If the companies' impact cannot be so mitigated, divestment then, in our view, may then be appropriate.

It is important to note that of the 500-plus companies operating in Sudan, only 24 are currently targeted for engagement and divestment by the Sudan Divestment Task Force model. The narrow focus of the targeted divestment movement's objectives should allay concerns related to the ability of an institutional investment manager to construct a well-diversified portfolio and thus meet fundamental fiduciary responsibility.

It is worth noting that the targeted approach to divestment is uniquely structured to contain clear sunset provisions so that when genocide in Darfur ends, so too, does the basis for divestment.

Let me emphasize that the dynamic interplay of divestment and engagement we believe can and will continue to achieve positive results without compromising the fiduciary responsibilities of money managers.

Calvert is under no illusion that divestment alone can end the killing and suffering in Darfur. But as apparent diplomatic progress is finally being made toward deployment of that hybrid peacekeeping force, now is the time to reinforce—not to diminish—the pressure on Khartoum, especially given the Sudanese Government's record of backtracking that Secretary Frazer acknowledges.

In conclusion, targeted divestment, in our view, is a well-crafted, well-timed tool that combines economic with political pressure. It enables citizens and governments at the Federal, State, and local level, together with corporations and their investors, to make a vital and concrete difference. Moreover, it is the right of investors to ensure that their investments do not support continuing genocide and do support peace and security in Sudan.

Investment decisions matter, and what matters most now is bringing the conflict and abuses to an end by using all of the tools at our disposal to save the people of Darfur.

Thank you again for the chance to testify.

Senator BROWN. Thank you, Mr. Freeman.

Mr. Prendergast.

## STATEMENT OF JOHN PRENDERGAST, CO-CHAIR, ENOUGH PROJECT

Mr. PRENDERGAST. Thanks, Chairman Brown, for the opportunity to figure out or to help figure out what ought to be one of the most

urgent questions of our time: How do we stop the genocide? I would like to enter my written statement in the record and divert a bit.

State and Treasury today argued that more pressure at this time will upset the diplomatic process that is ongoing—"delicate," in their word—and, in fact, upset the international coalition, meaning China. As a former Government official—I also worked with Bennett in the last administration—I understand the imperative of carrying the water of a certain policy up here to the Hill to testify. But this set of testimonies we heard on the previous panel I think flies in the face of 18 years of empirical evidence in Sudan during the life of this regime, the Bashir regime, which demonstrates that the only way to move the Khartoum regime—the only way—and to move the rebels, I might add, is there not just pressure, because that word has been used and bandied about all day today, but escalating pressure. And I think the U.S. Congress has to lead that pressure because the executive branch is not willing to do so for a host of reasons.

These executive branch testimonies we heard also ignore the fact that China has moved its policy in very constructive ways over the last few months, precisely because an international pressure campaign has targeted China's complicity in the genocide. The worst thing we could do now is to let up, because the deadly mistake that has been made for Darfur repeatedly during the last 4½ years is to do precisely as the administration proposes now—to reduce pressure, to let up. That would ensure the same results we have had over the last 4½ years. If Congress backs off now, then we go back to the status quo, guaranteed. History will show.

And I can tell you as a former diplomat also that one of the most effective tools that one can have as an executive branch diplomat working on a peace process is to have the legislative branch behind you threatening and implementing serious measures like the one represented in this divestment bill. These measures provide leverage for our negotiators in Tripoli and our efforts to try to get that hybrid force on the ground ASAP. And they concentrate the minds of those at the negotiating table and those around the negotiating table like those officials coming and visiting from Beijing. It sends the message that gone are the days that there will be no consequences, as Senator Menenedez was saying in his opening remarks, no consequences for committing genocide and crimes against humanity. That indeed will have an impact.

Finally, a 1-minute history lesson. Four times in 18 years, we have managed to be able to change the policies of the Government of Sudan. Conveniently, a bipartisan lesson, twice during the Bush administration, twice during the Clinton administration.

First case, terrorism. As Senator Brownback said at the very beginning of his statement, Osama bin Laden lived in Sudan. They were a major state sponsor of terror in the 1990's, and because of specific multilateral pressures, escalating pressures against the Government of Sudan, they ended their association with these terrorist groups and cut the ties.

Second case, slave raiding. We all remember in the 1990's the horrific stories of the resumption of the slave trade in Sudan. It was because of additional sanctions and additional pressures, particularly through the United Nations Security Council, that the

Sudan Government changed its policies, stopped aiding the militias that were attacking those communities, and the slave raiding ended.

The Bush administration cases are just as compelling. Two years ago, the Bush administration helped lead an international effort to negotiate a deal between the Government of Sudan and another set of rebels in Southern Sudan, as you all know, a war that led to 2 million deaths. And that was a very interesting case because that was part—the pressure was coming primarily from Congress. You passed the Sudan Peace Act. You passed some of the most specific legislation that said it was very clear that if we do not see an end to this war, we are going to get on the side of the rebels. That was a dramatic statement, in effect, that went right to Khartoum. And they understood it, and they made the deal. That is where Congress can really provide leverage to a peace process.

And, finally, the final case, which is the most amazing one, and I think that Senator Casey did a great job pointing out the inconsistency of the testimonies, is the hybrid itself, this AU/UN force that finally the Government of Sudan has accepted to go into Sudan, after years of opposing any kind of U.N. involvement, was because China began to pressure, quietly—they are not going to get on a soapbox and condemn the genocide. They are going to work behind the scenes—as they did, because of this international campaign, led in part by the divestment movement.

It is stunning that they do not see this as a positive. I guess they just have to say these things for diplomatic reasons.

So I would say, I think the lesson is unambiguous, that we ramp up pressure now until the objective is met, and the objective is not met until the genocide ends.

Thank you very much.

Senator BROWN. Thank you, Mr. Prendergast.

Mr. Reinsch.

**STATEMENT OF WILLIAM A. REINSCH, PRESIDENT, NATIONAL FOREIGN TRADE COUNCIL**

Mr. REINSCH. Thank you, Mr. Chairman. Let me say first it is a privilege to appear with John Prendergast. I have followed him over the years. I read his stuff, and I think he is one of the most thoughtful and well-informed analysts of a very difficult problem. That does not mean I agree with him on everything, but it is a pleasure and a privilege to be here with him.

I am the President of the National Foreign Trade Council. Along with our USA Engage coalition, we support multilateral cooperation and economic, humanitarian, and diplomatic engagement as the most effective means of advancing U.S. foreign policy interests and American values. We also support multilateral sanctions, and where I differ with my colleagues here is the question of unilateral versus multilateral action.

There is no question that the situation in Sudan is tragic, or that the United States and the international community must do much more to help. We are all horrified by the tragedy that has unfolded in Darfur that has been well elaborated on by the witnesses. And we certainly respect the motivation of those who want to do something about it. But the challenge for Congress and the administra-

tion is to pursue appropriate means that will actually effect change.

We believe unilateral sanctions are rarely effective in achieving U.S. foreign policy goals. The Peterson Institute for International Economics has concluded that unilateral U.S. sanctions in place from 1970 through 2000 were effective only 19 percent of the time. Sanctions also provide a good excuse for the targeted government to blame its failures on outside pressures and to rally nationalist support for the regime. Additional complications arise when the United States attempts to impose sanctions extraterritorially on companies established in other countries, particularly our allies. Those countries generally oppose such attempts and have enacted blocking statutes and other measures to counteract them, as has happened in the EU and Canada and Mexico and Norway and elsewhere. It also makes their cooperation with us on a multilateral approach much less likely.

Foreign policy measures by States and local governments are even less effective and infinitely more problematic. The Governor and legislature of Texas, Illinois, or California are not the competent bodies to implement U.S. foreign policy, and their narrow divestment or procurement sanctions are unlikely to change the behavior of the target country. In addition, it baffles me why Members of Congress would want to take foreign policy out of their hand and out of the President's hands and subcontract it to local governments.

Sanctions by individual States also interfere with the President's ability to conduct foreign policy and impose enormous compliance difficulties for companies, as each State and local law is inevitably different from the others, creating as many as 50 different foreign policies, each with different rules and different lists of sanctioned companies. State measures also impose compliance costs on businesses. A company could be on a divestment list in New Jersey but not in California, which will put mutual funds in an impossible position, being told to divest to comply with legal requirements in one State but having a fiduciary duty in other States not to do so.

In addition, there are costs to companies and investors in having to monitor, research, and comply with the various laws, which may differ from Federal policy, as well as having to pay the fees they incur when they sell stocks pursuant to a divestment requirement and then buy new ones.

In Illinois, for example, which is the State we are most familiar with since we sued them, the combined lists of so-called forbidden entities doing business in Sudan named 233 companies. Had it not been declared unconstitutional, the law would have affected 581 vendors of investment products, and a screening of Morningstar's database suggested at the time—which was last year—that over 900 equity mutual funds owned at least one forbidden entity.

Now, I understand that Adam's list is much smaller than that, and if the Federal legislation that I assume is going to pass sooner or later were confined to Adam's list, I think it would address many of these problems. But the bills as drafted are not, and I think that is something that the Committee ought to consider carefully.

Neither is divestment free for retirees. In addition to transaction costs, divestment increases the risk to shareholders by limiting the pool of stocks and funds. One consequence of the initial Illinois divestment law, for example, was that many of the small, highly regulated pension funds likely would have had to move out of international mutual funds and into bond funds. At the time that would have cut their annual rate of return by almost half.

Most important, we believe foreign policy sanctions enacted by State and local governments are unconstitutional. In 2000, in Crosby v. NFTC the Supreme Court struck down Massachusetts' Burma sanctions on the ground that they violated the Supremacy Clause of the Constitution. Now, I have a wonderful quote, but it is in my statement, and I do not have time to read it.

Let me make a couple brief comments about the pending legislation. Most of them are about the House-passed bill, H.R. 180. The Senate bill, S. 831, I think has similar deficiencies, although the bill is not exactly the same.

First, I want to commend Adam and the Sudan Divestment Task Force for their work in crafting principles governing their divestment efforts. Their ideas have shaped these pieces of legislation for the better. Unfortunately, we continue to have problems.

First, divestment and procurement bans are likely to face challenges at the World Trade Organization by our trading partners, who will see their extraterritoriality as a violation of our trade commitments.

Second, the bill fails to limit State divestment measures and thus gives the States inappropriate leeway that interferes with the President's ability to conduct foreign policy. Section 4(a) of H.R. 180 states that it is U.S. policy to support State divestment for entities that appear on "any list developed by the State or local government for the purpose of divestment from certain persons." That raises exactly the problem that I just talked about a few minutes ago.

Third, there are parts of the bill where further clarification is needed. For example, in Section 2, using proprietary information to develop a public list poses serious transparency issues, as investors and targets of the list may not be able to access the data to determine why or how an entity was included, or to find out how it might be removed. The very idea of a public list is also problematic since it is often difficult to distinguish with certainty actual business conducted and actual dollars transferred to an investment as opposed to press conferences held to brag about a memorandum of understanding that, in fact, is never acted upon.

Finally, and of great importance to us, the authorization for States to enact procurement bans in Section 9 of H.R. 180 directly contradicts the Supreme Court's decision in the Crosby case. In that case, the Court made abundantly clear with respect to a procurement sanction that the Supremacy Clause protects the flexibility required for the Executive to conduct a coherent foreign policy. Divergent State policy sanctions constrain that, and once again I have a wonderful quote, which I will defer to my written statement, Mr. Chairman.

Beyond these specific concerns, let me close with the slippery slope problem. If Congress encourages States to act on a particular

foreign policy issue through this legislation, it will surely tempt them to pass similar divestment and procurement legislation affecting other foreign policy issues. For example, we have seen this in your own State, Mr. Chairman, in Ohio, which I will get to in a minute. The Sudan Divestment Task Force has done an admirable job in attempting to establish a targeted divestment model. They are making a good-faith attempt to target their efforts specifically at Sudan and to avoid divestment in other situations. Theirs is not the only effort and genocide in Sudan is not the only cause. There are other divestment movements gaining momentum in State legislatures that would target companies doing business in Iran, and other countries, including China. And the advocates of each of those causes believe that their cause is as important as the cause in Sudan.

What happened in Ohio, Mr. Chairman, as you probably know, is that when your legislature took up this issue, there was an amendment in committee to add China to the list—a list that included Sudan and Iran. That amendment failed by two votes, but I suspect that when the opportunity arises again, it will be presented again, and the outcome might be different.

And this is my final point, Mr. Chairman. If the Committee, nonetheless, decides to act favorably on these bills, it would be better policy if it included a clear statement of policy in the bill which would expressly limit the ability of States to impose foreign policy sanctions. Congress should take this opportunity to discourage divestment in any circumstances except those specifically authorized by the Congress in the pending bill or subsequent legislation. By doing so, Congress would preserve the primacy of the Federal Government in making foreign policy and help ensure uniformity in State and local government actions.

We have had the temerity, Mr. Chairman, to provide some language to the Committee staff on that subject, which I hope they will consider.

I do have some other comments about alternatives, but I think in the interest of time, I will stop, and thank you very much for your generosity.

Senator BROWN. Thank you, Mr. Reinsch.

Mr. Sterling.

**STATEMENT OF ADAM STERLING, DIRECTOR, SUDAN DIVESTMENT TASK FORCE**

Mr. STERLING. Thank you, Mr. Chairman, Senator Reed. It is an honor to testify today on behalf of the Sudan Divestment Task Force and Genocide Intervention Network in support of H.R. 180, the Darfur Accountability and Divestment Act. As the director of the Sudan Divestment Task Force, the organization at the forefront of the Sudan divestment movement, I will be addressing the importance of foreign corporate interests, specifically oil companies, in Sudan, and how targeted divestment has already proven successful in encouraging foreign companies to use their enormous leverage to address the crisis in Darfur, and how H.R. 180 will encourage and expand these efforts.

Sudan produces over 500,000 barrels of oil per day and has at least 6.4 billion barrels in proven reserves. In 2006, oil provided

the Sudanese Government with over $6 billion in revenues and accounted for 90 percent of the country's revenue from exports. The extraction of oil requires capital, reserves, and technical expertise, and while Khartoum effectively controls Sudan's reserves, the government relies on foreign companies to translate those reserves into revenue. In fact, Sudan's national oil company, Sudapet, maintains no more than an 8-percent equity share in any of the country's producing oil blocks, yet the government receives a majority of the revenue generated from these oil fields.

Unfortunately, revenue from Sudan's oil has not been used for debt relief or development. Instead, Khartoum has allocated the majority of its revenue for military expenditures. According to a former Sudanese finance minister interviewed by the New York Times, over 70 percent of the government's share of oil profits is spent on its military.

The bottom line is that Sudan's oil industry serves as a financial lifeline to Khartoum, and the foreign companies that support this industry have massive leverage to engage Khartoum and contribute to a peaceful and sustainable solution in Darfur. Targeted divestment, a policy authorized and encouraged by H.R. 180 provides an effective tool to pressure companies to use this leverage in an effective, sustainable manner.

If companies do fail to respond to engagement within a given timeframe and divestment does take place, there is evidence to show that divestment from this very small set of companies will have an extremely minimal impact, if any, on investment returns. I point to a historical analysis presented to you and performed by the Sudan Divestment Task Force with data from Bloomberg that shows that top peer replacements for these companies—and we have a selection of the top highest offenders in Sudan—have consistently performed better over time.

While targeted divestment significantly minimizes any potential harm to investment portfolios, the movement has already proven to have a tangible impact on targeted companies. La Mancha Resources, a Canadian mining company, and the primary foreign player in Sudan's mineral extraction industry, recently took extraordinary steps in response to the situation in Darfur, even though most of its operations take place on the other side of the country. After weeks of engagement with the Sudan Divestment Task Force, the company publicly committed to refraining from new investment in the country until a peacekeeping force consistent with U.N. Security Council Resolution 1769 has been deployed with the full compliance and cooperation of the Sudanese Government and to increase its funding of its humanitarian efforts in Sudan by contributing specifically to projects in Darfur. Additionally, the company's president recently met with Sudan's Minister of Energy and Mining to discuss the situation in Darfur and to encourage the government to fully comply with the implementation of the Security Council resolution. With their substantial leverage in the country, corporations have an extraordinary potential and responsibility to contribute to a solution in Darfur. La Mancha provides a perfect example to demonstrate the power of targeted divestment to generate the pressure necessary for corporations to recognize the urgency in Darfur and to act responsible on this.

Since 2005, 20 States and over 50 universities have adopted Sudan divestment policies, and something that I think will encourage Bill, this movement has rapidly begun to spread through Europe and abroad. In fact, in July, the European Parliament unanimously adopted a resolution calling on European Union members to support targeted Sudan divestment efforts, something we are beginning to see them follow up on.

We appreciate the concerns of the administration regarding the implications of H.R. 180 on the Government of South Sudan and the implementation of U.N. Security Council resolution. And upon close consideration of this bill, Assistant Secretaries Frazer and Dibble will see that most, if not all, of their concerns have been addressed. H.R. 180 simply ensures that States and municipal entities move forward with divestment in a unified and targeted fashion that is consistent with and complimentary to Federal foreign policy. This includes the same carve-outs and protections for South Sudan, as well as exemptions for companies authorized by OFAC to operate in Sudan. And perhaps most importantly, H.R. 180 ensures that divestment policies for State and local entities all expire under the same conditions, benchmarked to Federal actions and statements.

In conclusion, I would just like to point out that the administration's position has been contradictory on this issue. In fact, in February 2007, while speaking at the University of Denver and when asked about the growing Sudan divestment movement, Secretary Frazer stated that, and I quote, "I think it's a very positive force in our republic and internationally." And I would just point out that those statements were made in the middle of a 60-day ceasefire during the Khartoum government and the rebels in Darfur.

Thank you for the time.

Senator BROWN. Thank you very much, Mr. Sterling.

Senator Reed will begin the questioning.

Senator REED. Well, thank you very much, Mr. Chairman.

Treasurer Caprio, thank you for your testimony. You are looking forward now and planning to move forward on this divestiture program, and you are confident that you can make wise judgments that will not inhibit and reduce the financial benefit to the funds that you are managing, that you can in a fiduciary capacity carry this out without doing anything that would jeopardize the funds. Is that your position?

Mr. CAPRIO. Correct, Senator. We are following the scrutinized list procedure, as just elaborated by other witnesses. We have a targeted list of companies. We advised all our money managers that we do not want any investment in any of these companies. We have seen companies such as Rolls Royce PLC recently pull out of the Sudan, citing humanitarian concerns. Siemens, a multinational giant, has also done likewise.

So it is actions like what is going on in Rhode Island and other States and other institutions that are causing these companies that had material operations in the Sudan, that were assisting in the government carrying out this genocide, that is really bringing about the change that we are calling out for.

Senator REED. Well, thank you. Again, I thank all of you gentlemen for your testimony.

Mr. Reinsch, I just want to as sort of a fundamental point, if Congress passes legislation that would effectively authorize the States to conduct these programs, is that your position? Or do you see other challenges?

Mr. REINSCH. Well, we have gotten different views from lawyers as to whether or not congressional action doing that would pass constitutional muster. We have not found any lawyers that believe that it would survive the Foreign Policy Clause of the Constitution. We have gotten different views on whether it would—whether Congress can say it is OK to tell the States or the city of Takoma Park it is OK to preempt us. I mean, why you would want to do that baffles me, but we do have some lawyers who say that if you do that, you know, the Court might respect it. But I do not think that you can get over the hump of the Foreign Policy Clause.

Senator REED. Well, I think others would disagree with you, but that is why there are lawyers. Thank you.

Mr. REINSCH. That is exactly what Senator Baucus told me 3 weeks ago on a different matter. That is why we have lawyers.

Senator REED. But I just want it clear that one of the impediments in your view right now is the lack of a Federal statutory preemption or allowing the preemption by States.

Mr. REINSCH. It certainly makes things worse. One of the things that I commented on was that the risk here is that each State may do it differently. And as they do it differently, they will have different lists. And from the standpoint of fund managers, it puts them in a very difficult position. Federal safe harbor, which is in 180 also, sort of helps because, otherwise, you are in the awkward position of, you know, Mutual Fund X being ordered by the State of California to divest, and meanwhile in New Jersey it does not have, you know—has not ordered that fund to do the same thing because they do not have the same list, and then you have got the potential of shareholders in New Jersey suing the fund for having divested and lowered their return when, in fact, all this fund is doing is complying with California law. So there is an argument for uniformity.

If I may make one more point, though, with respect to the comments from the General Treasurer from Rhode Island, a lot of this has to do with how States regulate their pension funds, and what we learned——

Senator REED. We regulate it very well in Rhode Island.

Mr. REINSCH. Well, I am sure you do, and I am sure Mr. Caprio does.

Senator REED. Indeed.

Mr. REINSCH. But what we learned in the case of Illinois was that one of the elements of good regulation for prudential reasons, not for foreign policy reasons, is that the funds, particularly the municipal funds, if there are any, are very strictly regulated in where they can invest. And they are often precluded from investing in equities directly, and so they buy mutual funds.

Now, what that means is the way the divestment statute works is that the pension fund then has to go to mutual funds that it has invested in and ask the mutual fund to certify that none of the mutual fund's investments are in these companies that are on the list.

In the State of Illinois, where the statute was in effect for some months before the judge threw it out, all but two of the mutual funds that the States' were eligible to invest in in the first place for prudential reasons declined to make that certification. Now, in most cases it was not because they could not; it was because they would not, because it simply was not worthwhile for them to go through the work, and because of the way that States statute was constructed, it was a moving target.

What that meant for the pension funds as a practical matter was not simply that they had to get out of Siemens, you know, or PetroChina. It meant they had to get out of Fidelity Fund. And the way they were regulated meant the only thing they could get into were bond funds because there were no other mutual funds——

Senator REED. I do not mean to cut you off. Time is short. But I think you have made a pretty good case for at least some action at the Federal level, at least in my view.

A final point, Senator Brown. Mr. Prendergast, you have made a very compelling argument that what moves this regime in Khartoum is pressure, and there are technical constitutional arguments about how we should proceed or should we proceed at all. But I would suspect that as we move forward, particularly if we can pass legislation here, that will give the administration at least the psychological and symbolic clout to keep the pressure on. Is that your view, too?

Mr. PRENDERGAST. Strong view, and I think it is not just moving the administration that is crucial. As the Assistant Secretaries stated, we need a multilateral pressure. And what is fascinating about what divestment does, it gives you a two-fer. It helps U.S. policy. It gives the U.S. leverage. But it also puts additional pressure on China. And as they prepared for the Olympics in 2008, as they hire people like Steven Spielberg to present a new face to the world, it really matters to them that they do not have this noose around their neck called Darfur hounding this effort to present this new face.

So it cannot be overstated that while the U.S. Executive branch continues to engage the Chinese quietly and privately, to have the legislative branch and the disadvantage movement hammering away at what the Chinese are doing is a profoundly important consequence to how effective the peace process and the effort to deploy the hybrid force will be.

Senator REED. Thank you very much.

Senator CASEY. Thank you. We have about 8 minutes before the vote, so I will be a little bit late, but I am going to ask a question, and then I would like Mr. Prendergast, Mr. Sterling, and Mr. Freeman, all three to weigh in. Please try to keep it to 2 minutes, if you can. I hate to cut it short like this. Mr. Prendergast, really in follow-up, why don't you answer first, and then Mr. Sterling and Mr. Freeman.

On especially your comments about ramping up pressure, in recent months there has been a great deal of talk from the administration about a Plan B if the Khartoum regime continues to stonewall U.N. efforts. Talk to me about what Plan B should be, especially in light of the Olympics. Even a paper as conservative on China as the Washington Post, their editor wrote an op-ed piece

yesterday saying we should make the Chinese choose between the Olympics and democracy in Burma—an extraordinary thing for that paper to say, which has sort of been an apologist for Chinese human rights behavior, in my view, in the last decade.

If you would comment rolling China into each of those, into that question, if you would, but what you think Plan B should look like, Mr. Prendergast, and then Mr. Freeman and Mr. Sterling. And sorry to truncate it like that.

Mr. PRENDERGAST. That is a very good question. I think first of all, the administration at this hearing overstated the impact of their unilateral sanctions that the President authorized a few months ago. We need to be acting multilaterally. There needs to be a very clear cost to either the government or rebel officials if they obstruct the deployment of this hybrid or if they undermine this peace process. And anyone who does it ought to be sanctioned, but not unilaterally, because the Sudanese Government has basically discounted our unilateral actions. But we need to work multilaterally with China, France, the U.K., in the United Nations Security Council.

We have four-fifths of the permanent five of the Security Council now who are unified in wanting a solution to Darfur. That is unprecedented. Russia is selling arms—they will acquiesce if four-fifths pressure them to do something. So I do not look at them as a strategic partner. But we can work very, very closely.

So Plan B, what gives leverage to the talks and getting hybrid out is working through the United Nations Security Council with China to push Khartoum to do these things. And the most effective way—and I cannot reiterate it enough—is through these continuing and ramping-up efforts all over the world, but led by the divestment movement in the United States against Chinese commercial complicity in the genocide. And this bill frees the thousand points of light that care about this issue in the United States and around the world, to continue to ramp up that economic pressure on China. And it is a fundamentally important tool in getting the Chinese to remain on board with us going forward to get that hybrid force deployed and to get these peace talks concluded in the real peace deal.

Senator CASEY. Thank you.

Mr. Freeman.

Mr. FREEMAN. Thank you, Senator. I cannot support more strongly the view of my friend and former Clinton administration colleague John Prendergast in underscoring the critical importance of the pressure that the current divestment movement exerts not just on the Government of Sudan directly, but indirectly, but ultimately perhaps more powerfully by exerting pressure on the Government of China. This is so timely, and given the Olympics approaching, this is perhaps the most significant leverage that we have.

I would, though, make a quick broader point, and that is, as Chinese oil companies have expanded their presence, not just in Sudan but throughout Sub-Saharan Africa, particularly in the Gulf of Guinea region, there has been tremendous scrutiny of their lack of commitment to clear international human rights standards. And we believe at Calvert that while the primary focus and benefit, of

course, of the current disadvantage movement should be to help end the crisis and killing in Darfur, that this movement might at the same time make a longer-term contribution to helping the Chinese Government and oil companies modify their policies and practices in ways that would be consistent with international human rights responsibilities.

So it is a two-fer, to pick up John's phrase, in terms of the real long-term as well as the short-term benefit here on the table.

Senator CASEY. Thank you.

Mr. Sterling.

Mr. STERLING. Yes, I agree with the preceding comments and would just add that the Plan B sanctions targeted Sudanese companies, private Sudanese companies with little to no global market exposure. So we would encourage focus on foreign companies that are actually bringing revenue into Sudan and do have a global market exposure, which is exactly what H.R. 180 does.

Senator CASEY. Thank you. Thanks to all of you. We all know what Secretary Powell said 3 years ago, that only action not words can win the race against death in Darfur. We appreciate the actions of Mr. Caprio's State, almost two dozen States around the country, and the actions they have taken. This legislation we will move in this Committee, I hope soon, and move it on the floor, and get it enacted into law. And thank you very, very, very much for the work you are doing.

The Committee is adjourned. Thanks.

[Whereupon, at 11:58 a.m., the hearing was adjourned.]

[Prepared statements supplied for the record follow:]

## PREPARED STATEMENT OF SENATOR JACK REED

Good morning. I want to thank Chairman Dodd and Ranking Member Shelby for having this important hearing and welcome our witnesses.

In 1966, after only a decade of peace, civil war began between the North and Southern Sudan and continues to this day, making it the longest running civil war in Africa. In the past twenty years, more than 2 million people have died in Southern Sudan because of the war and famine, and millions have been displaced from their homes.

It is a tragedy that has gone on far too long and it is time for the United States and the world to focus on the situation. I believe that this nation needs to work with the international community in considering all options—diplomatic, economic and even military, to stop the violence and suffering in the Sudan.

Because the United States government has been slow to act, state governments have chosen to take matters into their own hands. Nineteen states, including my state of Rhode Island, have enacted or proposed legislation addressing the divestment of state funds and other investment from Sudan. We will shortly hear from Senators Durbin and Brownback who have introduced legislation authorizing states to adopt such measures prohibiting the investment of state assets in the government of Sudan or in any company with a qualifying business relationship with the government of Sudan. I am proud to be a cosponsor of this legislation and I look forward to working with my colleagues in moving this legislation, and other legislation forward.

Citizens are also taking action. Shareholder resolutions play an important role in addressing critical issues for investors. Consider the issue of Apartheid in South Africa. Throughout the 80's, resolutions were filed with well over 150 companies by investors such as TIAA–CREF, the pension funds of the State of New York and City of New York, and scores of religious investors. The resolutions and public debate, coupled with the divesting of stock by many universities, pension funds, foundations and religious groups, built considerable pressure on companies, which began to withdraw from South Africa as long as Apartheid was in effect. Over 150 U.S. companies pulled up stakes and left South Africa; and the companies that stayed began to lobby strongly for changes in the system.

Last year, a shareholder filed a resolution at Berkshire Hathaway that would have required the company to divest from PetroChina, one of the corporate supporters of the Khartoum regime. As a result, investors engaged management of Berkshire Hathaway in an important discussion about the merits of Sudan divestment during the company's annual meeting in May of 2007. The Sudan divestment resolution filed at Berkshire Hathaway helped to highlight the issue by raising investor, corporate and public awareness. Though the resolution garnered only 3 percent support, Berkshire Hathaway over the months started unloading the Chinese oil company stock.

The SEC is at a critical juncture right now with its proposed rule on shareholder access to the proxy. Some of the pending proposals in the rules proposed by the SEC could seriously undermine the ability of investors to ask companies to take action on critical matters. I know that Chairman Cox is working towards addressing some of the uncertainties with proxy access and I hope that the end result will ensure investors access and not diminish them in any way.

Like the war in Iraq, public opinion is well ahead of Congress regarding the crisis in Darfur. We need to catch up. I believe this hearing is a critical step in moving forward and I look forward to the testimony. Thank you.

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## PREPARED STATEMENT OF SENATOR SHERROD BROWN

Good morning. Thank you all for coming here to participate in this important hearing to examine the role of divestment and other tools aimed at stopping the genocide in Darfur, Sudan.

During the past 20 years, Sudan has suffered from a civil war resulting in the death or displacement of millions, regional and ethnic strife, and, since 2003, in Darfur, 2 million Darfurians have been displaced and as many as 450,000 have perished, *at the hands of their own government.* In response to this atrocity, we here in the U.S. have taken both economic and political action. We put sanctions in place initially in 1997, and then subsequently strengthened them several times. We encouraged the UN to implement an arms embargo in Darfur. We have worked with the UN and the African Union (AU) to negotiate a peace agreement last year. While I applaud these efforts, all of these actions have not yielded the desired result—that is, an end to the genocide in Darfur.

Since the peace deal was signed last year, the situation has actually gotten worse. Just last weekend, AU peacekeepers were the victims of a violent raid by rebel forces, which left at least 10 peacekeepers dead, several severely injured, and scores still missing. News reports indicate that as many as 1,000 soldiers took part in an attack on an AU base, and were equipped with armored vehicles and advanced weaponry, suggesting they are much more sophisticated than anyone ever expected. This violent attack now jeopardizes the implementation of the agreement to bring in a larger UN–AU hybrid force in the coming months. It is clear that the current strategy is not working. "Only *action,* not words, can win the race against death in Darfur." *Action.* Not words. Secretary Powell uttered that statement back in 2004. And here we are in the same situation *three years later.*

To that end, I commend the efforts of groups like those here today to allow states to have the option of being engaged global actors and divest their assets from companies that enable the regime in Khartoum to sustain itself. I thank Senators Durbin, Dodd, and Brownback for their leadership in addressing these issues in the Senate. And I commend and my former colleagues in the House, who overwhelmingly passed a bill that: authorizes states to divest from unethical companies doing business with Sudan; empowers the American public with information on these companies so they can make their own investment decisions; and prohibits federal tax dollars from being used to procure services from companies that do business in Sudan. This stands as a bellwether for how we as Americans take action in a globalized world, where companies and economies are closely interconnected. This concept of targeted divestment of firms—from any country—that are willing to do business with the government of Sudan is quite compelling.

Right now, around 20 states are pursuing initiatives that would divest public pension funds from companies that are willing to work with perpetrators of genocide, and I commend them for their initiative. I certainly do not believe it is the prerogative of this Congress in Washington, D.C. to tell teachers, healthcare workers, and municipal employees in places like Parma Heights or Columbus, Ohio, where they should be investing their precious retirement funds. I hope my colleagues here in the Senate follow the lead of the folks in the House and move quickly to allow states to decide for themselves what is in their own best interests. Thank you.

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## PREPARED STATEMENT OF RICHARD J. DURBIN

U.S. SENATOR FROM THE STATE OF ILLINOIS

OCTOBER 3, 2007

### Introduction

Mr. Chairman, I thank the Banking Committee for holding this hearing today on a crisis that has gone on far too long, on a crisis that simply must not go on any longer. The people of Sudan have suffered drought, famine, genocide, and now utter chaos. The United States has talked for years about putting a stop to it. Yet the crisis continues. We must act, and we must act now.

It was over two years ago when President Bush rightly called what was happening in Sudan by its proper name: genocide. Yet the United States and our allies have not done enough to help stop it, and Sudan continues to disintegrate.

### The origins of the October peace conference

At the end of this month, however, there is another chance. We have another chance to bring all of the warring factions together to agree on a framework for peace in Sudan, a peace that the United Nations peacekeeping force can then help secure. The United States should do everything we can to see that this peace is agreed to, and then work with the global community to ensure that this peace is preserved.

The latest push for peace gained momentum in late July, when the UN Security Council voted to implement a significantly increased United Nations/African Union peacekeeping force.

This peacekeeping force is desperately needed. The United States should work with the UN and the global community to make sure it is implemented as soon as possible. We in the Senate should do our part by ensuring that adequate funds are available to help pay for this critical mission.

But the peacekeepers are only one important step. Sudan first must have a peace to keep, and that requires a long term political agreement among its many factions. That is why peace negotiations are so critical.

UN Secretary General Ban Ki-moon told me in July what he has often said, that ending the violence in Darfur is one of his top priorities. In early September his ef-

forts resulted in the announcement of formal peace talks to begin later this month between the various factions and the Sudanese government.

These negotiations will be a critical step and deserve our strongest support.

**Keeping up the pressure by threatening legislation**

What else can we in the Senate do to help? What can we do to reinforce to the Sudanese that we are watching very closely and we expect all parties to work towards peace? We can prepare legislation that would increase economic pressure on the Sudanese, and be prepared to pass that legislation at any time that the Sudanese might falter on the path to peace.

That is why today's hearing is so critical. Our colleagues in the House have done their part: they passed the Darfur Accountability and Divestment Act 418–1 in July. Today the Senate considers its role. Today this panel will explore legislative options that promise economic penalties against those that do not in good faith pursue peace through dialogue. In the next couple of weeks we hope to create the best legislation we can and move that bill through committee and onto the Senate calendar. The Senate will make it very clear to the Sudanese that we are serious and that a bill is ready to pass if they fail.

What should this bill contain? Concerned members of the House and the Senate, as well as the activists who've kept this crisis at the forefront of our minds, have suggested several means by which economic pressure could be applied, including the following:

- Require the Administration to create a list of companies supporting the Sudanese regime.
- Require companies supporting the regime to report to the SEC so that the SEC can publish a list of these organizations.
- Require the Administration to report on the impact thus far of current economic sanctions.
- Prohibit federal government contracts from being awarded to companies supporting the regime.
- Authorize state and local contract prohibitions for companies supporting the regime.
- Authorize state and local governments to divest from companies supporting the regime.
- Provide investor safe harbors for divestment.
- Authorize additional funding for the Office of Foreign Assets Control within the Treasury Department, so that it can do more to find and punish sanctions violators.
- Study how the federal employee Thrift Savings Plan could create a Terror-Free Investment Fund which would bar Sudan-supporting companies.
- And finally, increase civil and criminal penalties for sanctions violators, which was a proposal that I included in my Sudan Disclosure and Divestment Act and which passed the House yesterday as a standalone measure. I'm happy to say that this method of increasing economic pressure is already on its way to the President for his signature.

My objective in testifying today is not to advocate for a specific set of pressure points, even though I have introduced two bills with Senator Brownback and many others that would increase the economic pressure on the Sudanese regime. I think we should explore all of these suggestions. My objective here is to provide my full support for the Committee's plan to create the best legislation we can to put maximum pressure on all the factions in Sudan to agree on peace. I look forward to working with my colleagues in the Senate—as well as with the House, the advocacy groups, and the Administration—to create the best bill that we can and one that we can all support.

**Conclusion**

Whatever economic pressure we apply, the purpose needs to be clear: the U.S. wants to help bring peace to the region. And we need to apply this pressure with one voice. This chamber, this Congress, and this country will not stand by and watch as chaos and destruction destroy the people of the Sudan. There is a very real opportunity for the peace talks to progress. We urge the Sudanese Government and all other parties to bring a halt to the human suffering and participate fully in the upcoming peace talks. And we will be ready to enact tough new laws, if necessary, to further isolate the country economically if this opportunity comes and goes, with no real change.

Thank you again for holding this hearing, and I look forward to working with the Committee to do our part in bringing peace to the people of Sudan.

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## PREPARED STATEMENT OF SAM BROWNBACK

U.S. SENATOR FROM THE STATE OF KANSAS

OCTOBER 3, 2007

Since 2003, the government of Sudan has waged a genocidal campaign against the people of Darfur. This is the government's second genocide in the last two decades, and the situation worsens each day with innocent men, women, and children being slaughtered by government-sponsored militia groups. In just four years, over 400,000 Darfurian civilians have perished. Moreover, attacks on humanitarian workers in Darfur rose 150 percent from June 2006 to June 2007. Dozens of these workers were kidnapped, assaulted, and raped; their aid convoys ambushed and hijacked. While rebel groups have also been behind many of these attacks, the primary instigator and facilitator of this genocide is the government of Sudan.

Over the last four years the unmatched compassion of the American people has kept this issue at the forefront of the national conscience. The United States has taken the lead internationally in both declaring the atrocities in Darfur a genocide and pressuring the government of Sudan to end the violence. Earlier this year, President Bush implemented additional sanctions as a way of increasing that pressure despite slow diplomatic progress. I, and many of my colleagues, applauded those sanctions as sending a strong signal that the U.S. will pursue even unilateral measures as a way to create pressure to end the violence. Of course, we all agree that the best way to confront this tragedy is through tough multilateral diplomacy, but we cannot remain captive to the slow timetable of the Bashir regime and allied countries that prolong the suffering through self-interest and indifference. At the same time, the Administration, Congress, and all of us can do more.

This year the Sudanese economy will likely grow 13%, much of which as a result of Chinese, Malaysian, and other foreign corporate investment into Sudan's extractive resource and power sectors. Despite U.S. sanctions preventing American companies from investing in Sudan and punitive measures targeting Sudanese companies, foreign oil investment continues. Such investment provides the means for the regime to carry out its campaign of terror. In short, continued economic growth has allowed the regime to act with impunity in Darfur. We must intensify the effort to change the economic calculations of the Khartoum regime.

As the Administration continues the tough work of pushing multilateral diplomacy in the United Nations and through the efforts of Special Envoy Natsios, the rest of us must not hesitate to adopt legitimate measures that could have an impact on shortening the genocide and saving lives. One such measure is targeted divestment.

The principle of divestment is simple—that none of our money and the U.S. Government's money should be invested in the culpable foreign companies that are helping to fuel the genocide. The essence of this approach is that while we have taken the pledge to the people of Darfur of "*not on our watch*," we must also take the pledge of "*not on our dime*." Since the start of a national divestment campaign, States across the country have taken action to ensure that their pension fund dollars are not invested in such companies. I am proud that the State I represent—Kansas—is among the States that have already passed legislation to restrict its Sudan investments.

We are already seeing results. Since the targeted Sudan divestment movement began, several companies from the UK to Germany to India have suspended or significantly altered their operations in Sudan. And there is good reason to believe the Government of Sudan has noticed and is nervous. Clearly, by increasing pressure on foreign companies through divestment, the United States can start to change the economic calculations of the Sudanese regime.

Now that the American people and their representatives in State governments have begun to act, it is time for the United States Government to do its part. One of the key ways for the federal government to help is to explicitly provide authorization for States and local governments to divest from Sudan. Doing so would address an objection that has attenuated the success of the targeted divestment movement and has seen State divestment statutes stuck down in federal courts. Moreover, doing so at the legislative level could help rally the countless individuals—both young and old, from all walks of life, and from around the world—who have engaged in remarkable acts of individual courage in standing up against the genocide in

Darfur. As with Apartheid in South Africa, my hope is that these will all add to a collective force that will finally bring about change in Darfur.

Earlier this year, I had the opportunity to testify before the House Financial Services Committee in support of the Darfur Accountability and Divestment Act, one bill among several before this committee that have been drafted to allow Congress to grant a divestment authorization while still retaining its Constitutional power to regulate foreign commerce. While I understand the Executive branch objects *a priori* to the granting of any divestment authority, I urge Administration officials reconsider their position. The legislation is Constitutional and moral; practical and powerful; limited yet effective.

As members of Congress, we have worked to ensure that the United States remains at the forefront of this fight. It is time again for the United States to show leadership on Darfur. We have a responsibility to ensure that genocide does not continue on our watch or on our dime.

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**Assistant Secretary of State for African Affairs**
**Jendayi E. Frazer**
**Testimony before the Senate Committee on Banking, Housing and Urban Affairs**
**October 3, 2007**

Mr. Chairman, Ranking Member Shelby, members of the Committee, thank you for the opportunity to testify on the Administration's Sudan policy and specifically our efforts to peacefully end the tragic humanitarian situation in Darfur. Sudan is a top priority for the Administration. We appreciate the generous support of Congress as we work to resolve the situation in Darfur which, among many things, has helped us sustain the African Union (AU) peacekeepers in Darfur and most recently, achieve United Nations (UN) Security Council Resolution 1769 authorizing the deployment of 26,000 UN peacekeepers. But, as demonstrated by the tragic events of September 29 with the attack on the AU Mission in Sudan (AMIS) camp in Darfur that resulted in the death of at least 10 AU peackeepers, there is still a long way to go to achieve peace in Darfur. I look forward to our continued close relationship with Congress as we work together to bring peace to the region.

Critical Juncture on Darfur

Mr. Chairman, we are at a critical point in our efforts in Sudan. The large, robust peacekeeping force for Darfur that we have all worked for over the last few years is finally on the verge of deployment – its first elements are slated to go in before the end of the year. The renewed talks that aim to achieve a lasting political solution in Darfur are expected to begin on October 27 in Libya. This progress, while long in coming, is due in large part to increased international pressure on Sudan, led by the United States. At the UN General Assembly last week, President Bush stated that "America has responded [to the suffering in Darfur] with tough sanctions against those responsible for the violence."

The new sanctions he imposed on May 29 targeted 30 Sudanese Government-owned or-controlled companies and three individuals, including two Government officials and one rebel leader. These new sanctions, and stepped up enforcement of existing sanctions on Sudan, are working. To move forward from here, we are working closely with the UN and AU to implement the agreements, even as we continue to closely monitor the actions of all parties.

We appreciate the efforts of some groups to seek additional ways to increase pressure on Khartoum. We are confident that our May 29th sanctions have and are working. We are at a critical moment and it is important to avoid any action – including legislative measures – that might set back the progress we have made thus far. In considering our position, we also have to bear in mind that the Government of Sudan has accepted UNAMID and the need to negotiate a peace deal. At the moment, the main issue is whether rebel factions will be an obstacle to a peaceful negotiated settlement. We are also concerned that some initiatives to increase economic pressure on Sudan will damage our relationship with our key partners rather than increase pressure in Khartoum, and may further complicate efforts to carry out our substantial assistance programs. A welcome and useful initiative at this juncture would be for Congress and other concerned groups to issue statements calling for the rapid deployment of the UN/AU hybrid force and calling on all parties to participate in the political process.

Situation in Darfur and between North-South

Today, I will review the present situation in Darfur, our efforts to achieve full implementation of the Comprehensive Peace Agreement (CPA) which ended more than 21 years of warfare between North and South Sudan, and what further steps are needed to

realize our goals. Efforts to end the violence in Darfur and implement the CPA must go hand-in-hand, and we must be willing to exercise pressure to achieve success on both fronts. At the same time, we must also be wary of initiatives that advance peace in one part of the country at the expense of another.

Let me first turn to Darfur. The situation on the ground is chaotic. Tribal conflict, survival-motivated violence, Janjaweed attacks, clashes between rebel and government forces, and rebel attacks on AMIS continue. Since the beginning of 2007, nearly 248,000 people have been newly displaced from the fighting. This is in addition to the over two million people currently living in camps or settlements for the displaced, and the over 235,000 refugees in neighboring Chad. On September 29 and 30, the 7,000-strong African Union Mission in Sudan suffered its greatest loss since its initial deployment in 2004. Armed men from rebel factions viciously attacked the African Union base camp in Haskanita, killing 10 peacekeepers, looting supplies and vehicles, and destroying the buildings. The 150 or so primarily Nigerian peacekeepers fought back, repulsing the first wave of attackers, but in the end were overpowered and forced to evacuate in the early morning hours. We honor the service of those peacekeepers that lost their lives and our hearts go out to their families. We express our outrage and call upon all parties to adhere to a ceasefire and cease hostilities immediately. Military action will only weaken the position of the party responsible.

The tragedy of this attack highlights the urgency to deploy the UN's heavy support package (HSP) and the UN/AU Hybrid peacekeeping mission (UNAMID) to Darfur as soon as possible. The United States has been leading this effort. We have been working with the United Nations to recruit the necessary troop contributors, and with a

few exceptions, the UN has received an abundance of offers. We are also expanding seven of the African Union's base camps to hold two additional battalions that will serve as protection for the UN's HSP units. Among other units, the HSP includes engineers from China that will help prepare the infrastructure for larger deployments of peacekeepers early next year. We are also providing training and equipment to African battalions that will deploy as part of the UN mission.

Again, the Sudanese Government has publicly accepted UN Security Council Resolution 1769 and has pledged cooperation with its deployment. We will hold them to this pledge. The key leaders of UNAMID are already on the ground. The UN/AU Joint Special Representative, Rodolphe Adada, and UN/AU Force Commander General Martin Agwai are already in place. We have warned the Government of Sudan that we are watching closely, and that we insist on nothing less than full cooperation, from flight and customs clearances for UN equipment, to the rapid provision of entry visas for deploying personnel.

The heart of the solution in Darfur is an inclusive political agreement, and the United States is sustaining its efforts to achieve that end. There can be no military solution. I was present in Abuja, Nigeria when the Government of Sudan and Minni Minawi, leader of the Sudan Liberation Movement (SLM), signed the Darfur Peace Agreement (DPA) on May 5, 2006. The DPA is a fair agreement which addresses the core grievances of the people of Darfur. Unfortunately, at the eleventh hour, some parties became intransigent and refused to sign. We have all learned from that process.

The United Nations and African Union are providing renewed leadership and their efforts are making headway. New talks are scheduled to begin on October 27 in

Libya. The UN and AU have incorporated the regional countries into the process, and are formulating a mechanism to formally include civil society, tribal leaders, and representatives of the internally displaced persons. The first order of business in Libya should be the strengthening of the ceasefire monitoring mechanism.

As I noted, at the moment, the splintered rebel factions are creating obstacles to a peaceful negotiated settlement. Several of the rebel factions have refused to attend peace conferences, citing untenable conditions, and others are wary of the process. Rebel factions that remain outside of the process are not acting in the interests of the people of Darfur they claim to represent. We are working with our international partners to press all the rebels to attend.

We have reached a sensitive time in our diplomatic engagement to achieve a restarted political process in Libya. The Sudanese government and the rebel factions must both be pressed to attend the talks, and we have been sending messages to that end. We will apply sanctions on any party that obstructs the peace process.

Let me now discuss the Comprehensive Peace Agreement, which is central to our efforts to achieve the peaceful, democratic transformation of Sudan and resolution of the crisis in Darfur. The elections called for at every level in 2009, if implemented freely and fairly, can dramatically change the political landscape in Sudan and Darfur and the direction of Sudan's future. We must ensure that our efforts do not undermine the potential of this agreement.

While much has been accomplished during the nearly three years since its signing, the progress of the CPA has faltered in areas related to flashpoint issues along the North-South border, including Abyei, oil revenue sharing, and redeployment of

forces. The United States is leading international efforts to address these challenges and put CPA implementation back on track. We are sending a message to all parties, including those in Darfur, that the international community will stand fully behind the peace agreements it witnesses. Special Envoy Natsios is on the ground in Southern Sudan pressing this point. We have asked the Intergovernmental Authority on Development (IGAD), to host a high-level meeting through its Partners' Forum to call the parties to the CPA to account for progress on implementation. The recent appointment of Ashraf Jehangir Qazi as UN Special Representative for Sudan will also bring renewed focus to CPA implementation.

The United States has and will continue to lead the world in responding to the situation in Sudan. We have provided over $4 billion in assistance to Sudan since 2005. While we are successfully increasing pressure on the Government of Sudan, we must also recognize that these efforts and any future efforts may impact the Government of Southern Sudan (GOSS). As part of the CPA, the GOSS receives tens of millions of dollars in oil revenue each month from the central government in Khartoum. This influx of resources is unprecedented in a post-conflict situation, and has allowed the GOSS to participate with the international community in the development and reconstruction of Southern Sudan.

We share the frustration of Congress and the American people who want to see an end to the suffering of the Darfur people. We, together with Congress' ongoing support, will continue to exert all our efforts until the crisis in Darfur is ended, and all the people of Sudan can live in peace.

Thank you, Mr. Chairman. I will be pleased to answer any questions you may have.

Testimony of Acting A/S Elizabeth Dibble, Bureau of Economic, Energy and Business Affairs
Senate Committee on Banking, Housing and Urban Affairs
October 3, 2007
"Combating Genocide in Darfur: The Role of Divestment and Other Policy Tools"

Chairman Dodd, Ranking member Shelby, and members of the committee, thank you for the opportunity to appear before you today to discuss some aspects of possible sanctions measures concerning Sudan. Sanctions seek to change behavior. To be effective, they must be carefully calibrated and coordinated. Naturally, timing and messaging are essential components of this process. The Administration and Congress need to maintain a unified message on Sudan policy to maximize U.S. influence on the peace process. This is particularly true since the Administration and Congress fully share the same objectives in Sudan, in particular our common desire to end the violence in Darfur.

In recent years, the Administration, with the support of the Congress, has imposed extensive sanctions against Sudan. There can be no doubt regarding the determination of the United States to see effective change in Sudan.

But sanctions are only one part of the approach, which also has to rely upon multilateral diplomacy and, eventually, changed behavior by the Khartoum regime itself. We have to ensure that our desire to send a strong message via sanctions does not counteract or even overwhelm progress on those political fronts. As Assistant Secretary Frazer indicated, we have serious concerns about attempts to apply new sanctions on the Government of Sudan (GOS) at this moment. It would send the wrong message to the regime at a time when it is actually being helpful with peace talks and with the AU/UN peace keeping force. It would also send the wrong message to rebel movements, one of which just attacked an African Union peacekeeping base and killed 11 Nigerian peace-keepers. The rebels need to join the peace process rather than targeting international forces.

Legislative proposals can serve as a useful reminder of what might occur if progress does not continue, but we are concerned about the negative impact of an actual new law at this delicate juncture.

Our most recent action on Sudan sanctions, announced by President Bush on May 29, was carefully targeted and came at a time when the GOS was resisting deployment of UN peace-keepers, undermining the political process, and continuing to carry out a bombing campaign in Darfur. The USG designated 30 companies owned or controlled by the Government of Sudan under Executive Orders 13067 and 13412. These included five petrochemical companies and Sudan's national telecommunications company. These designations got the attention of GOS officials without undermining our multinational coalition on Sudan, and as Assistant Secretary Frazer has stated, it was this increased pressure that helped bring us to where we are today.

In addition to the problem of timing, certain aspects of pending Sudan bills raise broader concerns about unintended consequences. We need to take into account the potential impacts on Southern Sudan as well as reactions by key international partners. A/S Frazer has noted the millions of dollars of taxpayer money that we have invested in trying to help develop Southern Sudan; our sanctions regime already is so broad that it inevitably has negative consequences for the South as well as for its intended target in the North. The Government of Southern Sudan recently sent a high-level delegation to DC to explore ways to mitigate the unintended harm our current sanctions appear to have had in the South. New measures may well compound the South's difficulties in attracting U.S. and foreign investors or even interfere with development assistance projects, if they are not carefully calibrated.

Required divestment will be seen by our allies as a U.S. government action targeting their companies and could affect our ability to obtain cooperation on mutual action with respect to Sudan. Some of these key allies will be providing troops and equipment for the AU/UN Hybrid peacekeeping force.

In a broader spillover effect, such Sudan measures could also jeopardize the cooperation of these key partners on other countries of concern such as Iran, North Korea, and Burma. We need to look carefully at each of the Sudan bills and consider all aspects of their likely impacts, including on Southern Sudan and our multinational coalitions. We need a multilateral coalition that includes the Chinese, the Arab world, the Europeans, and the African Union to build peace in Sudan.

We recognize that individuals and particular funds may want to divest certain holdings for a variety of reasons. In fact, we do not take a position on private independent action by individual investors based on private-sector research and analysis. The message sent by millions of individuals voting with their dollars can be powerful; especially if it is not influenced by U.S. government action. However, the Administration is opposed to affirmative federal legislation that explicitly authorizes divestment campaigns at the state and local level. Sanctions policy needs to respond quickly to rapidly evolving events. Having one unified foreign policy gives us the flexibility to do this. State and local divestment efforts risk creating the appearance of a multiplicity of foreign policies, undercutting our policy flexibility and the clarity of the messages we send foreign governments. They also undermine the President's Constitutional responsibilities to conduct foreign affairs for the Nation. Moreover, such provisions could serve as an undesirable model for other countries to adopt their own legislation, encouraging divestment from companies (including American ones) doing business in other particular countries.

The Department knows that this is not the intent of the concerned citizens, groups, and representatives who back Sudan divestment initiatives, but it is a real concern. We share their desire to stop the violence in Darfur and applaud the way so many have come together to keep the focus on change in Sudan.

Other general concerns about divestment include the prospect that encouraging divestment could be challenged by foreign governments as a secondary boycott. It could also invite such secondary boycotts or other similar action against U.S. firms, or against companies engaged in activities, or doing business in countries, that we strongly support. Politicizing our capital markets also carries longer-term risks to our economy, if it deters foreign investors from using our markets. The Administration has consistently opposed, as a matter of policy, legislative provisions that politicize capital markets.

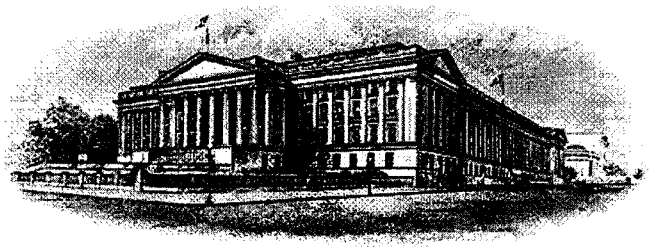
Other provisions of concern which are in some bills remove essential legal protections for workers' retirement security. The Employee Retirement Income Security Act of 1974 (ERISA) requires fiduciaries of private-sector employee benefit plans to act prudently and solely in the interest of the plan's participants and beneficiaries. Bills with "safe harbor" provisions, including for private investment companies, could exempt fiduciaries from

their duties of prudence and loyalty and from prohibitions on self-dealing when divesting the plan from investments or avoiding investing plan assets in blacklisted companies. By removing these essential protections, such a measure could harm workers, retirees and their families, allowing them no recourse for their losses.

The Sudan bills currently under consideration all seek ways to use U.S. economic leverage to have an indirect impact on Sudan's leaders by pressuring foreign companies that do business in Sudan. The primary approach in certain bills would have the USG create a "blacklist." This is the most troubling approach. Another concept in play is a new SEC disclosure process. A third concept is an as yet unarticulated U.S. government contracting certification procedure and a procurement ban on prospective contractors who cannot certify that they either have no specified business activities in Sudan or, if they do, that they meet certain humanitarian criteria. These latter two proposals also pose concerns but we remain open to exploring them further as alternatives.

The Administration has consistently opposed all requirements that the President or Treasury or any other U.S. government entity affirmatively prepare a "blacklist" periodically of companies doing business in Sudan -- such a list would target our allies, impairing multilateral efforts to aid the peace process. The high evidentiary standard that the U.S. government compiler of such a list would need to apply also means that the list would be narrower than ones already developed by NGO's and the private sector.

In summary, sanctions are an important policy tool, but need to be managed with maximum flexibility. Timing is everything, and we believe it imperative to preserve the President's flexibility to decide when and how to calibrate the application of sanctions, so they can work to the maximum advantage. We look forward to our continued dialogue with the Congress to ensure that sanctions are applied at the appropriate time and in ways that do not undermine the multilateral efforts which are essential to achieve our policy objectives for Sudan, including ending the violence in Darfur.



# U.S. TREASURY DEPARTMENT
## OFFICE OF PUBLIC AFFAIRS

**EMBARGOED FOR 9:30 A.M.** October 3, 2007
**CONTACT** Candice Pratsch, (202) 622-3431

**Testimony of Adam J. Szubin,**
**Director**
**(Office of Foreign Assets Control)**
**U.S. Department of the Treasury**

**Before the U.S. Senate Committee on Banking, Housing and Urban Affairs**

Chairman Dodd, Ranking Member Shelby and Members of the Committee, thank you for the opportunity to speak to you today about the Treasury Department's role in addressing the situation in Darfur and the Sudanese Government's support for terrorism, as well as its views regarding the various Sudan-related pieces of legislation that are pending in the Congress. I welcome the Committee's interest in these matters, and want to take this opportunity to thank the Committee for its continued support of Treasury and OFAC and its mission over the years, in particular as we have pursued sanctions against governments like Sudan.

We share an acute concern about the devastating suffering in Darfur, and an understanding that economic pressure can play an important role in bringing about a

political resolution to this complex situation. Secretary Paulson has made it clear that we should spare no effort in using all tools at the Treasury Department's disposal to advance this goal. For OFAC, and for myself in particular, imposing smart and effective pressure on Sudan has been a foremost priority.

**Treasury Department Actions against Sudan**

The Scope of Sanctions

The United States has levied economic sanctions against Sudan since 1997. At that time, the Government of Sudan's support for international terrorism and widespread human rights violations led President Clinton to impose comprehensive trade sanctions against Sudan, and block all property of the Government of Sudan in the United States or within the control of U.S. persons anywhere in the world.

Acting with Congress, President Bush amended these broad sanctions in 2006 to carve out certain areas from our sanctions, notably Southern Sudan and Darfur, provided that the relevant transactions do not involve Sudan's petroleum or petrochemical industries or any property or property interest of the Government of Sudan.

In addition to these comprehensive sanctions, the President recently imposed strict economic sanctions against persons responsible for violence or atrocities in Darfur. Issued in accordance with actions taken by the United Nations Security Council, Executive Order 13400 blocked the property of four individuals connected to the conflict in Darfur. It also authorized the Treasury Department to block the property and interests

in property of persons determined to: constitute a threat to the peace process in, and stability of, Darfur; be responsible for conduct related to the conflict in Darfur that violates international law; be responsible for heinous conduct with respect to human life or limb related to the conflict in Darfur; have supplied, sold, or transferred arms or any related materiel related to military activities to the warring parties in Darfur; or be responsible for offensive military overflights in and over the Darfur region. Treasury's authority applies as well to those determined to have materially assisted or supported, or to have acted for or on behalf of, any of the above.

Recent Actions

A primary objective of these sanctions, of course, has been to alter the behavior of those responsible for the terrible suffering in Darfur, first and foremost the Sudanese Government of President Bashir. This past April, on Holocaust Memorial Day, the President issued a clear warning to the Sudanese Government. Either they would live up to their prior commitments and allow the deployment of a joint United Nations-African Union peacekeeping force, or the United States would impose further economic sanctions on the Sudanese Government and seek a United Nations Security Council Resolution to do likewise.

When President Bashir did not follow through, President Bush did. On May 29, Treasury announced the designation of three additional Sudanese individuals and thirty-one additional Sudanese companies subject to the asset freeze strictures of Executive Orders 13067, 13400, and 13412. We imposed sanctions against three individuals and

one company because of their role in the ongoing violence in Darfur. We designated Ahmad Muhammed Harun, Sudan's State Minister for Humanitarian Affairs, and Awad Ibn Auf, Sudan's head of Military Intelligence and Security, who are among Khartoum's senior leadership and have acted as liaisons between the Sudanese government and the Government-supported Janjaweed militias. We also designated Khalil Ibrahim, leader of the Justice and Equality Movement (JEM), a rebel group that has been responsible for a number of violent incidents, and the Azza Air Transport company, which had been conveying artillery, small arms, and ammunition to Sudanese government forces and Janjaweed militia in Darfur for their activities in Darfur.

Simultaneously, we targeted 30 additional companies owned or controlled by the Government of Sudan, thereby subjecting them to the asset freeze imposed on the Government by Executive Orders 13067 and 13412. These targeted companies included five petrochemical companies, Sudan's national telecommunications company, and an entity that has supplied armored vehicles to the Sudanese Government for military operations in Darfur.

In addition to these actions to strengthen our financial measures against Sudan, we have stepped up enforcement of our Sudan sanctions, and have made such enforcement a top priority within OFAC. While I cannot comment on specific open enforcement cases, I can tell you that we are aggressively pursuing a number of violators to expose and penalize those who are violating our sanctions and deter those who might think of doing so.

In this regard, I would like to thank the Chairman and this Committee for its support in passing S. 1612, the International Emergency Economic Powers Enhancement Act, which provides for increased civil penalties for violations of IEEPA – the statute pursuant to which our sanctions against Sudan are imposed. We have sought these increased penalties in no small part because we faced impediments to obtaining meaningful enforcement of our sanctions against Sudan. The passage of this bill will provide a strong tool to make our sanctions effective.

It can be notoriously difficult to measure and attribute the impact of sanctions, when the ultimate objective is a change in regime behavior. It is certainly true that our sanctions were watched very carefully in Khartoum and taken seriously. Immediately after the sanctions were announced, the Sudanese Government took steps to sell off Government assets that we had identified and its Central Bank imposed broad restrictions on the movement of foreign currency. And, most importantly, we believe that the new U.S. sanctions – and the threat of international sanctions along similar lines – played a role in President Bashir's announcement in early June that Sudan would allow the deployment of a joint African Union-United Nations peacekeeping force in Darfur.

In addition to ensuring that our sanctions have the maximum possible effect on the Government of Sudan (GOS), we are also taking steps to protect the Government of Southern Sudan (GOSS) and humanitarian aid efforts in Darfur and elsewhere. We have prepared regulations that will help clarify the scope of sanctions with respect to South

Sudan, Darfur and other exempt areas, and hope that those regulations will spur interest in investment and economic development in the South. And to facilitate the vital assistance activities of our State Department and USAID colleagues and those in the NGO community, we are licensing humanitarian work. Since January, 2006, we have issued approximately 87 licenses and registered approximately 48 NGOs to conduct this critical assistance work.

**Pending Legislation Concerning Sudan**

We appreciate and share the concerns that animate the various pieces of Sudan-related legislation pending before Congress. Let there be no mistake – these concerns are deeply shared by the Treasury Department and the entire Administration.

A Government-Generated List

In imposing economic sanctions or other measures against Sudan – or any other regime – we must always keep in mind the ultimate goals of those sanctions. While the Department shares the Committee's and the Congress' goal of increasing pressure on the Sudanese government to end the violence in Darfur, we have several concerns with the various legislative proposals that have been introduced and discussed in the Congress.

Of particular concern are the various proposals that would require either the President or the Secretary of the Treasury to prepare a list of all companies engaged in specified business activities in Sudan. The preparation and publication of such a list raise

a series of significant concerns for the Department, and may not add much value, given that non-governmental organizations have produced such lists for purposes of divestment.

A primary concern with the creation of such a list is the impact it is likely to have on our ability to maintain multilateral pressure on the regime in Khartoum. Because of the United States' broad sanctions against Sudan, no U.S. companies are likely to be included on such a list, as investment by such companies in Sudan is generally prohibited absent a license from OFAC. Consequently, the list would consist of foreign companies whose activities in Sudan are most likely legal in their home countries. Such a list likely will be viewed by our allies as a U.S. Government "blacklist" – not of Sudanese government entities – but of other companies based in their nations, and, therefore, as an unwelcome effort by the United States to expand the scope of our sanctions. As a result, such a list seriously risks alienating the very countries whose assistance we need to maintain and increase international pressure on the Bashir regime. These third countries hold important leverage that may be needed to threaten and ultimately impose additional measures against the Bashir regime, should it fail to follow through on its commitments. The promulgation of what will likely be perceived as a U.S. Government blacklist targeted at the lawful conduct of non-GOS companies based in these allied nations, however, risks shifting the focus of the debate from the Bashir government's compliance to the propriety of U.S. actions, and thus jeopardizes the international coalition that has helped bring about the recent positive developments in Sudan. Particularly in light of the current track of negotiations, including upcoming peace talks in Libya later this month, we strongly believe that requiring the promulgation of such a list is unwise.

In addition, creation of such a list raises a host of practical concerns. Any such list created by the U.S. Government will necessarily be incomplete. It would not identify those companies whose involvement in Sudan is not sufficiently established or is known only through classified information. The resultant list would be limited to publicly available information. Such a list would attempt to duplicate similar lists already compiled by non-governmental organizations based on public information but it would likely be less inclusive in light of the government's inability to rely on certain sources of information.

Further, the agency tasked with creating such a list would face difficult issues in determining what type and amount of evidence would suffice to include a company on the list. And, the inclusion or exclusion of certain companies from the list could subject the agency to legal challenges under the Administrative Procedure Act.

Creation of a list would also impose an ongoing, burdensome requirement on the agency tasked with its creation, especially a list that would need to be updated continually or on a regular basis as called for by some legislative proposals. These demands will necessarily divert resources from other important government functions. Indeed, those on my staff who have the most familiarity with Sudan are currently working to target companies and individuals for additional sanctions.

With relevant lists already available from non-governmental sources, all of the above costs would seem to greatly outweigh what incremental benefit a new government-generated list might provide.

Other Policy Proposals

Many legislative proposals would encourage and affirmatively authorize State and local government action. As noted by my State Department colleague, the Administration opposes proposals to authorize divestment by state and local governments, which impair the ability of the president to act on behalf of the nation as a whole and risk creating a multiplicity of foreign policies.

I understand that the Committee is considering alternative proposals to a government-generated list. We look forward to continuing to work with you and your staffs as you consider the costs and benefits of such proposals, and would look forward answering the Committee's questions regarding these issues.

**Conclusion**

We all share the same objective when it comes to Darfur: a negotiated settlement that will bring a stable and lasting peace to Darfur. We remain committed to continuing the constructive dialogue we have had with your staffs on these important issues, as we very much want to ensure that the U.S. Government has all appropriate tools at its disposal to address this situation. Thank you again for the opportunity to testify today about this important issue.

**Written Statement of Rhode Island General Treasurer Frank T. Caprio**

**for the Senate Committee on Banking, Housing, and Urban Affairs**

**Respectfully submitted October 1, 2007**

Mr. Chairman, Members of the Committee:

My name is Frank T. Caprio and I am the General Treasurer of Rhode Island. In this capacity, I manage Rhode Island's pension fund, which encompasses the pension systems of state employees, teachers and many municipal employees, including police officers and firefighters.

The subject of today's testimony, divestment from Sudan, concerns one of the most horrific humanitarian crises in recent history. Statements that decry the current situation in Darfur have resounded from numerous government agencies, organizations, businesses and individuals, who have joined in a strong movement to end the atrocities being executed in this region. History has repeatedly demonstrated that genocide, from the Holocaust to Rwanda, can only persist in the face of inaction by bystanders. Simply put, there are some issues which not only cry out for our attention, but demand our sustained action. I appear before you to testify about the States' role and responsibility in acting against this genocide of our time, which deplorably continues, even as we discuss this issue.

As Treasurer of a state that has successfully passed Sudan divestment policy into law, I can speak to the role that Rhode Island, and all states, can effectively and responsibly assume regarding this issue. First and foremost, I must speak to what is not the role of the states – to undermine, in any way, the provisions of federal foreign policy. It is instead essential for states to work in concert with US foreign policy to supplement the goal of divestment - placing economic pressure on companies with business ties to the Sudanese government and ultimately severing the monetary means that facilitate genocide. In keeping with US foreign policy on this issue, it is incumbent upon the states to pursue divestment, to help close a loophole that allows US investment in foreign companies doing business with the Sudanese government. Most importantly, it is the state's role to work diligently to protect its own financial interests. When a humanitarian crisis escalates to the point where taking action is not only in humanity's best interest, but also in a society's fiscal best interests, then we must act, as guardians and fiduciaries of our states' financial welfare.

There are a number of recognized trends in the financial world which demand attention and detail the sound reasoning for state divestment. Currently, US foreign policy is being undermined by the presence of a sizeable loophole, one which divestment policies close. Sudan is a country absolutely dependent on direct foreign investment. Although American companies are barred from conducting business in the oil-rich country because Sudan is considered a terrorist state, foreign multinational companies provide the Sudanese government with the revenue they desperately need to conduct their expensive genocide. Indeed, a Human Rights Watch report estimated that 60-80% of the oil

revenue which the Sudanese government receives goes directly to the Sudanese military, the very entity perpetrating these crimes[i].

When investments are made, by US entities, in these foreign companies doing business in Sudan, it directly undermines our foreign policy. It is by pursuing the divestment of state funds from these foreign companies that this loophole can ultimately be closed. The passage of targeted divestment policies at the state level supports the original intent of the US sanctions, namely, to cut off monetary support to Sudan's outlaw government.

A second trend that mobilizes the states' responsibility in this matter is popular support of the initiatives. The divestment movement has garnered a dedicated and vast following, with nearly unanimous and consistent public support. To date, twenty states have adopted divestment policies from Sudan, joining an array of universities, municipalities and businesses in placing an imperative on the value of humanitarian aid by choosing divestment[ii].

With all this support, the momentous success of the movement proves that divestment is working. Several major companies, including European powerhouses ABB and Siemens, have pulled out of the country, citing divestment as rationale for their withdrawal[iii]. Rhode Island originally had assets invested in two companies - Petronas Capitol LTD, an oil company that provides refined oil to Sudanese aircraft used to bomb the villages of Darfur and Rolls Royce PLC, a provider of engines used in the oil refineries in the Darfur region[iv]. However, in April 2007, Rolls Royce responded to the pressure by announcing

their gradual withdrawal from business dealings in Sudan, citing humanitarian concerns[v]. It is becoming obvious that the risk of investment in Sudan is too high to justify the pursuit of business in the region. Thus, the divestment movement has influenced large, multinational companies to reconsider this increasing level of risk, by pulling out of Sudan. This is a tremendous victory and a call for states to continue on this course, leading to progress.

Furthermore, it is evident that states possess not only the responsibility but also the right to act. I take my role, as the Chairman of Rhode Island's Investment Commission, to be that of the fiduciary responsible for the protection of the state, teacher, judicial, and municipal state employee pension dollars under my management. Under this structure, all of these funds are commingled as part of a single $8 billion dollar fund which is invested, divested, and administered as an individual participant in the market place. Given the fund's structure, my role with the pension fund is that of an investor, not a regulator, and as such I, and other Treasurers, have the ability to direct funds under our management as we see fit. Should we have the foresight to identify risks to our funds, be it the risk of exposure to sub-prime mortgages, or the questionable and reprehensible investments on the other side of the globe, it is our responsibility to act on that foresight, and to eliminate investments that pose an excessive risk to our fund.

At its very basis, divestment from Sudan represents a choice by the state to invest its money in concert with the values of its citizens. Accordingly, states possess both the right and the capacity to invest based on social, humanitarian and financial values, as

long as those decisions are consistent with prudent investment standards. The targeted approach to divestment, followed successfully in Rhode Island and in other states, addresses these concerns while upholding rigorous financial standards.

When intelligent policy is found that addresses a humanitarian crisis, while mitigating financial risks, action must be taken. The targeted approach to divestment has proven to be a sound policy, ensuring fiscal responsibility, while upholding standards of humanitarian aid that can effectively help the people of Darfur. This approach targets only a scrutinized list of companies that provide the most financial support to the Sudanese government. By cutting off the monetary support from these companies, the Sudanese government subsequently loses its financial hold over the people of Darfur, taking away the funds for their genocide. The selection process for this list of companies involved comprehensive research, including contact with asset managers and pension funds, perusing public company filings, communicating with Sudan experts on the situation in Darfur and contact with the companies themselves. The process identified companies that will effectively alter the resources available to fund genocide, with their divestment from the country.

The targeted approach is directly in keeping with current foreign policy on this issue. For example, it includes a statement, within the legislation, that no company will be targeted that has been explicitly exempted from the US sanctions by the Treasury Department[vi]. Additionally, targeted divestment includes a provision that the bill will sunset when either Congress declares the Genocide to be over, or when the State Department removes

sanctions on Sudanese government[vii]. Furthermore, the targeted model protects the state's fiscal interests by providing an opt-out clause, in which states possess the right to cease divestment, if it has proven to result in a negative impact on the investment returns[viii].

As Treasurer of a state that has recently seen the passage of divestment legislation, I feel that this is a successful means for addressing this issue. The pursuit of legislation by the states, as opposed to an alternative course, is a strategy that confirms the public's support of this issue. When representatives in state legislatures solidify, into the law, the concerns of the people, that action has a tremendous amount of energy and force behind it. Additionally, the targeted legislation provides a safeguard for future support of divestment, by giving a clear mandate to money managers and the state's investors regarding continued action on this matter.

On these grounds and based on our model, we are confident that states have not only the right, but also the responsibility to divest. Federal legislation will end this ambiguity and galvanize the states' right to act in their own, as well as in humanity's, best interests. Further, this action guarantees that we will not allow genocide to occur on our watch, nor will we allow genocide to occur on our dollar.

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[i] http://www.hrw.org
[ii] http://www.sudandivestment.org/statistics.asp
[iii] http://www.sudandivestment.org/statistics.asp
[iv] http://www.ajws.org/uploaded_document/sudan_company_rankings_Aug_2007.pdf
[v] http://www.ajws.org/uploaded_document/sudan_company_rankings_Aug_2007.pdf

[vi] Rhode Island Bill H 5142/ S 0087 pg. 8, lines 15-17
[vii] Rhode Island Bill H 5142/ S 0087 pg. 9, lines 9-24
[viii] Rhode Island Bill H 5142/ S 0087 pg. 10, lines 1-17

Testimony of Bennett Freeman

Senior Vice President, Social Research and Policy, Calvert Group

United States Senate Committee on Banking, Housing, and Urban Affairs

October 3, 2007

Thank you, Mr. Chairman, for the privilege to testify on behalf of the Calvert Group Ltd.[1] at this important and timely hearing on divestment and other tools that can contribute to ending the killing and the humanitarian crisis in Darfur.

I am Senior Vice President for Social Research and Policy at Calvert, a leading family of socially responsible mutual funds that supports the current targeted divestment movement. My testimony will also draw on my perspective from having served as Deputy Assistant Secretary of State for Democracy, Human Rights and Labor under Secretary Albright in the Clinton Administration.

Calvert has always operated on the principle that investment can be a positive force in the world. Application of Calvert's human rights and Indigenous Peoples' Rights criteria ensure that our socially responsible mutual funds have no investments in companies that contribute materially to maintaining the Sudanese government in power. Calvert has sharpened its focus on Sudan as the crisis in Darfur continued and as the Sudanese government resisted deployment of a United Nations peacekeeping force. As a SRI firm

[1] Based in Bethesda, MD, Calvert has the largest family of socially responsible mutual funds in the United States, with a total of 42 mutual fund portfolios and more than $15 billion in assets under management, and over 400,000 investors.

with a long history of shareholder advocacy and a strong commitment to human rights, we wanted to make an even more tangible contribution.

Our involvement in the campaign to end apartheid in South Africa made us familiar with the positive impact that divestment can make. The Calvert Social Investment Fund was the first U.S.-based mutual fund to prohibit investment in companies operating in apartheid South Africa. In the last two years, we have been struck by the growing and potential further impact of the Sudan divestment movement, the most significant to have emerged since that directed at apartheid. Calvert resolved to make the most appropriate contribution we could--above and beyond ensuring that our own funds do not invest in companies materially involved in Sudan--by offering support consistent with our mission and capabilities.

At the beginning of 2007, Calvert formed a partnership with the Sudan Divestment Task Force (SDTF) and the Save Darfur Coalition (SDC). Calvert is proud to lend analytical and advocacy support to these two groups, especially at a time when their work gains even greater momentum and urgency. Calvert fully supports the approach of the Task Force and the Coalition to engage with companies where possible, and divest only when necessary. Targeted divestment focuses on a narrow group of companies, mostly in the oil and infrastructure sectors, that contribute disproportionately to the government of Sudan's revenue base and in turn help facilitate its actions in Darfur.

It is well known that among those targeted for divestment are several major Chinese oil companies that have established a significant presence in Sudan and elsewhere in Africa. While the divestment movement is focused entirely on ending the current crisis in Darfur, it can also exert a longer-term positive influence by calling attention to the human

rights responsibilities those companies must share together with the Chinese government as they extend their global reach. Indeed, the Sudan divestment movement may be a watershed opportunity to engage Chinese companies and the Chinese government on exactly these responsibilities in ways that can encourage them to operate consistent with international human rights standards around the world.

Nonetheless, as we pursue divestment, particular care must be taken to ensure that the legitimate humanitarian needs of the Sudanese people are not harmed. Essential goods and services will continue flowing through the traditional sources that provide aid in Sudan. An example of a company that continues to conduct limited operations in Sudan but is not subject to targeted divestment is 3M Company (MMM), which sells its Scotchshield Safety and Security Window Film to help protect the vehicles of UN aid workers in Sudan. Likewise, food, beverage and pharmaceutical companies are not targeted since their goods and services are critical to the people of Sudan, whether in Darfur or elsewhere.

With this appropriately sharp focus, the divestment movement has already been making a positive impact both in terms of company decisions and the reactions of the government of Sudan. When the Canadian oil company Talisman withdrew from Sudan in 2002 in the face of divestment pressure, other oil companies followed. Soon thereafter, the Khartoum regime entered into negotiations that finally ended the country's 21-year civil war. In 2006, the Sudanese Embassy in the United States spoke out against divestment. A subsequent public relations campaign included a six-page ad in the New York Times promoting Sudan as "a peaceful country" warranting business. These and similar activities indicate the Sudanese government is taking the growing pressure for divestment seriously.

That pressure was increased in January 2007 when two of the world's largest multinationals -- ABB Ltd. and Siemens AG -- announced their intentions to suspend operations in Sudan, apart from those operations consistent with the principles of the United Nations Global Compact. ABB's decision in particular was the outcome of intensive engagement on the part of SDTF and others. ABB had been involved in building Sudan's Merowe Dam and provided support to oil consortiums operating in the country. ABB's suspension of such operations shows that the multi-faceted targeted divestment approach can influence companies to halt activities that support the Khartoum regime.

We believe that major institutional investors and asset managers should review their portfolios to determine whether holdings in any companies which are on SDTF's targeted divestment list are included. If they find that they do hold such companies, they should probe the specific nature of these companies' operations and links to the government in Sudan. They should then make a judgment as to whether the companies' continued presence exacerbates the situation in Darfur, or can instead be focused in ways that mitigate the humanitarian crisis. If the companies' impact cannot be mitigated, divestment may then be appropriate.

It is important to note that of the 500-plus companies operating in Sudan, only 24 are currently targeted for engagement and divestment by the Sudan Divestment Task Force model. The narrow focus of the targeted divestment movement's objectives should allay concerns related to the ability of an institutional investment manager to construct a well-diversified portfolio and thus meet their fundamental fiduciary responsibility. The situation in Sudan is unique in that the 24 targeted companies provide such a

disproportionate level of support to the regime in Khartoum that investor focus on this narrow set can maintain calibrated pressure that will continue to focus the government's attention. It is also important to note that the targeted approach to divestment is uniquely structured to contain clear sunset provisions so that when the genocide ends in Darfur, so does the basis for divestment.

Mr. Chairman, let me emphasize that the dynamic interplay of divestment and engagement can achieve positive results without compromising the fiduciary responsibilities of money managers. The view that fiduciary duty is consistent with consideration of environmental, social, and governance (ESG) factors in investment decision making is supported by a 2005 report published by the major global law firm Freshfields Bruckhaus Deringer, on behalf of the United Nations. The report found that fiduciaries in nine countries, including the United States, have the flexibility to consider ESG issues under the modern prudent investor rule.

Calvert is under no illusion that divestment alone can end the killing and suffering in Darfur. Diplomatic and other forms of political pressure are essential, and the recent vote by the UN Security Council to deploy a peacekeeping force in Sudan reflects the growing consensus in the international community that direct action must be taken to avert further genocide. Diplomacy often requires delicate considerations and difficult trade-offs, not least with respect to matters of timing in particular. As apparent progress is finally being made towards deployment of UN peacekeeping forces in Darfur, now is the time to reinforce -- not diminish -- the pressure on Khartoum.

Targeted divestment is a well-crafted, well-timed tool that combines economic with political pressure. At the same time, it enables citizens and governments at all levels,

together with corporations and their investors, to make a vital difference. Moreover, it is the right of investors to ensure that their investments do not support genocide and do support peace and security in Sudan.

Investment decisions matter, and what matters most now is bringing the conflict and abuses to an end by using all the tools at our disposal to save the people of Darfur.

*Calvert mutual funds are underwritten and distributed by Calvert Distributors Inc., member FINRA, a subsidiary of Calvert Group, Ltd., a UNIFI Company.*

**Senate Banking Committee Hearing**
**John Prendergast**
**Co-Chair of the ENOUGH Project**
**October 3, 2007**

Thank you, Mr. Chairman and members of this esteemed Committee, for the opportunity to share my views on the world's hottest war and what the U.S. and international community can and should do to help end it.

The question our government – both our legislative and executive branches – is faced with today is whether applying further pressure through divestment and other instruments will help or hurt the international community's efforts to end the crisis in Darfur. The administration contends – as it has since the beginning of the Khartoum regime's genocidal counter-insurgency campaign in 2003 – that further pressure will undermine existing diplomatic efforts. My colleagues and I would contend the opposite: that **empirical evidence demonstrates that the ONLY way that the regime and the rebels will allow the UN/AU hybrid force to deploy and the ONLY way a peace deal between the regime and rebels is possible is if multilateral, targeted pressures are INCREASED and combined with assertive and robust diplomacy**.

Without coordinated multilateral pressure, the regime will continue to promote chaos as part of its genocidal divide-and-destroy strategy. Without serious consequences, rebel and government forces will continue to fight each other and attack civilian targets with impunity. Without a cost for obstruction, the regime and rogue rebel elements will not facilitate the full and unconditional deployment of the AU/UN hybrid peacekeeping force. And without an internationally coordinated diplomatic surge, the government and rebels won't take seriously efforts to revive the peace process.

After living, studying and working in Sudan at various times for over two decades, and having negotiated directly with Sudan's leadership and rebels during the Clinton administration, I can tell you that the regime and rebels no longer take our speeches and our threats seriously, and will continue to flout international will until there are specific and escalating costs to their actions. Divestment is an important tool in that required escalation.

I do not tell that to you on a whimsical hope that this behavior might be true. In these matters, I would much prefer to rely on empirical evidence. The preponderance of evidence shows that during the 18 years of its military rule, the regime in Khartoum has only responded to focused international and regional pressure. Four times the regime has reversed its position on a major policy issue, and each of those four times the change resulted from intensive diplomacy backed by serious pressure – two ingredients not consistently applied in the response to Darfur today. The four cases are

a) the regime's support for international terrorist organizations during the early to mid 1990s;
b) its support for slave-raiding militias in southwestern Sudan throughout the 1990s;

c) its prosecution of a war in southern Sudan that took two million Sudanese lives; and
d) its opposition to the deployment of the hybrid AU/UN peacekeeping force.

Once the recent policy history is reviewed and the real lessons learned from the 18 deadly years this regime has been in power, the answers become clear and obvious. Continuing to ignore or defy these historical precedents may condemn hundreds of thousands of Darfurians to death.

**LESSONS FROM HISTORY: POLICIES THAT CHANGED KHARTOUM'S BEHAVIOR**

Since the ruling National Congress Party (NCP – formerly the National Islamic Front) came to power in a 1989 military coup, sound policy choices by the international community have forced the regime to reverse abusive or threatening policies on four separate occasions. The four cases examined here are the regime's support for international terrorism, its pursuit of a military solution in Southern Sudan, its unleashing of militias that led to the resurgence of slavery; and its opposition to the hybrid force. Understanding why regime officials made these U-turns is critical to constructing a successful strategy for Darfur.

**1. Support for Terrorism**

As soon as it usurped control of the country in 1989, the NCP began to cash in on its alliances with terrorist organizations (including al-Qaeda), inviting them to Khartoum, allowing their leaders and operatives to travel on Sudanese passports, and providing space for them to develop safe havens and training camps. Osama bin Laden himself lived in Sudan from 1991 to 1996. Today, however, the U.S. considers Sudan to be a valuable partner in the global war against terrorism.

There were two phases in their shift from a major state sponsor of terror to a cooperative partner in the global counter-terrorism effort. First, during the latter years of the Clinton administration, the regime began to abandon most of its alliances with and support for terrorist groups. The regime kicked bin Laden out of the country, turned over Carlos the Jackal, dismantled much of the al-Qaeda commercial infrastructure, revoked passports of terrorists, and shut down terrorist training camps. Second, during the period after 9/11, regime officials became much more cooperative with U.S. counter-terrorism efforts, providing information on suspects around the world based on their extensive links with these individuals and their networks.

The question is why? What mixture of policies led the regime to drastically change tack – from supporting terrorist networks to actively sharing intelligence with the U.S. government? Three key tactics were at play:

a) Aggressive Diplomacy

The U.S. led diplomatic efforts in both phases to press the regime to change. Without such deep and extensive diplomatic engagement, both with regime officials and with other global counter-terrorism partners, other pressures would not have born fruit. During the 1990s, the Clinton administration worked assiduously through the UN Security Council and with its allies to place multilateral pressure on the Sudanese government to cut its ties to terrorist organizations. During this decade, the Bush administration has worked closely with the Khartoum regime to move beyond simply severing its links with terrorist groups to also providing intelligence on suspects. There was a dedicated clarity to both efforts. In the former case, Clinton administration officials demonstrated that cooperation would result if a unified set of nations pressured the regime in Khartoum to break its links. In the latter case, the Bush administration closely engaged the regime and received some important information in return, according to intelligence officials.

b) Multilateral Sanctions and Condemnation

When the UN Security Council imposed a series of very light sanctions on the regime(restricting diplomatic travel of senior officials and international flights of Sudanese-owned aircraft) for its ongoing support for terrorism (the last straw being Sudan's involvement in the assassination attempt of Egyptian President Hosni Mubarak in Addis Ababa), Khartoum reacted immediately. NCP officials did not then – and do not now – want scarlet letters placed on their shirts. They do not want the restrictions on their travel and assets spotlighting them as international pariahs. As history has shown, this regime responds to targeted punitive measures.

c) U.S. Military Threats

Though distasteful, especially against the current global backdrop of Iraq et al., it is important to revisit the effect of U.S. military threats on the regime's calculations. The U.S. bombing of the al-Shifa factory in 1998 was not supported internationally, and further complicated U.S. efforts at supporting a peace deal in southern Sudan. However, it sent the signal to regime hardliners that the U.S. was willing to use force against Sudan if its interests were threatened. After 9/11 and the U.S. invasion of Afghanistan, memories of the al-Shifa bombing made the few choice comments from senior U.S. officials about whether Sudan should be the next target resonate even more strongly with regime officials. The NCP quickly intensified its intelligence cooperation efforts. The implication: coercive military force should not be ruled out as a means to achieve compliance with a rogue state like Sudan.

**2. Civil War in Southern Sudan**

Five times as many people died in Southern Sudan's civil war than the highest estimates so far for Darfur. Indeed, the war between successive governments in Khartoum and the Sudan People's Liberation Army (SPLA) lasted five times as long as the NCP's scorched earth counterinsurgency against rebels and civilians in Darfur. Major interests were at stake in the South: most of the country's oil reserves are there, and the SPLA was much

more powerful – militarily – than the rebels in Darfur. Nevertheless, in January 2005 the regime and the SPLA signed a major peace deal that effectively ended the war - for now. Again, the question is why? What mixture of policies led the regime to stop prosecuting the bloody war and sign a peace deal?

a) Rebel Unity

Perhaps the most important reason for Khartoum's reversal was the unification of a badly splintered rebellion. In 1991, Khartoum had helped engineer a deadly split in the SPLA. It took years of southern Sudanese reconciliation efforts and extensive U.S. diplomacy to finally pull the SPLA back together. Once they posed a serious military challenge to the regime that brought about a stalemate on the battlefield that, in turn, made an accord possible. Under the late John Garang's leadership, the SPLA was developing alliances with Sudanese opposition movements in the north and what was believed to be simply a "north-south civil war" was transforming into a revolution of the periphery against the center. The military threat posed by that unity, when combined with international pressure and high-level engagement, pushed the regime into genuine negotiations with the SPLA.

b) Intense and Sustained International Diplomacy

The peace process which resolved this war was a product of extensive diplomatic efforts led by Washington over two administrations, bringing together the Inter-Governmental Authority on Development (IGAD), the regional organization for the Horn of Africa, with a tight coalition of international actors, including the UN and key governments.

There was one process, led by an African envoy, and closely backed by a leverage-wielding quartet of states: the U.S., UK, Italy and Norway. Khartoum was not allowed to "forum-shop" for another process in order to divide the internationals, despite the best efforts of Cairo and Tripoli. This model has proven to be effective in Sudan and elsewhere, but four years into the Darfur war it has not been replicated.

c) White House Engagement

President Bush and key cabinet members were personally supportive of the peace process. They made calls, sent letters, and met key combatants at critical junctures. The administration also made an exception to its usual distaste for envoys and named an influential former senator, John Danforth, as its Special Envoy to bring heft to the process. Khartoum got the message.

d) Christians and Congress

Two U.S. groups were instrumental in driving the peace process to its successful conclusion. Conservative Christian groups and a number of highly motivated and invested members of Congress demanded action from the administration. They also provided U.S. diplomats with additional leverage with the Sudanese government by

demanding more radical measures to which U.S. officials could point as possible consequences of the Sudanese regime's intransigence.

e) Divestment

One of the early tools that American activist networks employed was a citizens' campaign – initiated by Smith College Professor Eric Reeves – to demand that state and university pension fund holders sell their stock in Canadian oil company Talisman, which was a primary investor in Sudan's oil sector. A concurrent effort in Congress threatened to de-list any company on the various U.S. stock exchanges that was conducting business to the benefit of the Sudanese regime. This form of indirect pressure influenced investment decisions and increased the potential cost to the NCP if it failed to make peace with the SPLA.

**3. Slave Raiding**

In the 1990s, one of the regime's principal war tactics was to support ethnic-based Arab militias in attacking the villages and people of non-Arab Dinka descent, a precursor to its current support for the janjaweed militias in Darfur. Khartoum's proxy militias were "paid" in the form of whatever booty they stole during their attacks. The militias captured Dinka Southerners by the thousands and enslaved them, fostering a modern day market for human beings. By the end of the 1990s, the raids had stopped and most of the slave trade was shut down.

Yet again, the question is why? What mixture of policies led the regime to stop its support for the militias and effectively end the state-supported slave trade? Three factors combined to bring about this change.

a) Global Campaigning against Slavery

Across the U.S. and Europe, anti-slavery and human rights organizations relentlessly shone a spotlight on the heinous practice and its facilitators in Khartoum. Through a variety of awareness raising tools – including protests and arrests in front of the Sudan embassy, buying the freedom of abductees (which was not without significant controversy), and fundraising drives by schoolchildren – the temperature was turned up on the regime for its role in supporting the resurgence of slavery. The global campaigning by civil society organizations and human rights activists around the world embarrassed the regime and forced it to re-think its war strategy.

b) Vigorous Diplomacy

U.S. and European diplomats strongly engaged the Sudan regime for its role in arming the militias. What often resulted was a good cop-bad cop strategy in which the U.S. publicly hammered the regime for its practices while the Europeans quietly but firmly pressed Khartoum on the issue. The combination, though it could have benefited from

better coordination, allowed for the building of multilateral pressure against one of the regime's central war strategies.

c) U.S. Military Threats

Near the end of the 1990s, U.S. officials examined possible initiatives to help protect civilians in Northern Bahr al-Ghazal, the region of Southern Sudan which experienced the heaviest slave raiding. Though the policy deliberations were confidential, they were leaked to the New York Times and were the subject of discussions between the SPLA and U.S. officials visiting Southern Sudan. Sudanese government officials were unnerved by these consultations, as any efforts to support the SPLA would potentially have given the rebels a tactical advantage, even if the objective was to protect civilian populations. Though the discussions were serious, the threats never materialized into actual decisions to provide assistance. The regime's support for the offending militias ended, soon followed by the end of the practice of slave raiding.

**4. Acquiescence on the AU/UN hybrid force**

A quartet of the U.S., France, the UK and China collectively created the pressure necessary to force Khartoum to accept deployment of the AU/UN hybrid force, as authorized by the UN Security Council at the end of July.

For widely divergent reasons, the four countries with the most leverage in Sudan all have a vested interest in and desire to help bring about peace and stability in Darfur.

- In the U.S., domestic political pressure has increased as an anti-genocide movement continues to develop and demand U.S. leadership and action.
- In France, newly elected President Nicolas Sarkozy and his Foreign Minister Bernard Kouchner have identified Darfur as a high priority, and they have expressed a willingness to pursue the trans-Atlantic cooperation that their predecessors often avoided.
- In the UK, Prime Minister Gordon Brown and his Africa Minister Mark Malloch Brown have demonstrated a strong interest in working closely with their French counterparts to keep the crisis high on their agenda and the pressure up on Khartoum.
- In China, as pressure mounts to tie the 2008 Olympics to Beijing's policies in Sudan and as China's own foreign policy undergoes a thorough review, the Chinese government has increasing reason to use its influence behind the scenes to help move the Khartoum regime to accept a more robust peacekeeping force and adopt more constructive positions on the peace process.

Faced with these developments, it is no coincidence that the Government of Sudan accepted the deployment of the full AU/UN hybrid force. Even just a hint of cooperation among key states can yield results. But more coordinated diplomacy and consistent pressure by senior level policymakers, the latest Sudanese "agreement" on the hybrid is likely to prove short-lived.

Already we have seen serious roadblocks from Khartoum. Regime officials have been deterring the construction of necessary new bases and expansion of those the AU forces are already using; denying the UN full and uninhibited use of airports in Darfur and limited night flight access; refusing permission to the UN to upgrade runways; delaying approval of visa request by UN personnel; and ever more insistently stating that non-African forces are not needed in Darfur. As evidenced by the lessons of the past, a full-court diplomatic press is needed to pressure the Sudanese government to remove these obstacles, and allow for the effective and timely deployment of the hybrid force.

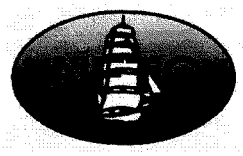
**TOOLS OF PRESSURE**

Divestment is a key form of pressure on the regime as international efforts increase to press for a peace agreement in Darfur, the deployment of the hybrid force, and the implementation of the CPA. Having the legislative branch pressing for more action will actually strengthen the hand of the executive branch as it presses forward with its diplomacy.

There are many other multilateral pressures which have not been utilized to date, and should be deployed against government and rebel officials who – going forward – obstruct the deployment of the hybrid force and progress at the peace talks. Targeted sanctions through the UN Security Council are an important and as yet unutilized or unimplemented tool against significant negative elements. And cooperation with the International Criminal Court is crucial as it attempts to execute its first two warrants and collect further information against other regime, janjaweed and rebel leaders who are responsible for crimes against humanity.

Legislative pressures from the U.S. Congress and multilateral pressures coordinated by the executive branch through the UN Security Council and with the European Union will lead to a much quicker solution in Darfur than the Bush administration's proposed return to quiet diplomacy and constructive engagement. We have a real chance of ending Darfur's long nightmare, but only if we learn the real lessons of the last 18 years: pressure plus diplomacy gets results.

USA*ENGAGE



**Testimony of William A. Reinsch**
President, National Foreign Trade Council
& Co-Chairman of USA*Engage

**Before the Senate Committee on Banking, Housing and Urban Affairs**

**Sudan Divestment Issues:**
**The Darfur Accountability and Divestment Act**
**Wednesday, October 3, 2007**

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify. My name is William Reinsch, and I am the President of the National Foreign Trade Council. Along with our USA*Engage coalition, we support multilateral cooperation and economic, humanitarian and diplomatic engagement as the most effective means of advancing U.S. foreign policy interests and American values. I am here today to express concern about the effectiveness and appropriateness of the sanctions measures under consideration with regard to Sudan.

There is no question that the situation in Sudan is tragic – or that United States and the international community must do much more to help. We are all horrified by the tragedy that has unfolded in Darfur, and we certainly respect the motivation of those who want to do something about it. But the challenge for Congress and the Administration is to pursue appropriate means that will actually effect change.

The problem with the approach passed by the House and now pending in your committee, H.R. 180, is that it is unlikely to have any effect. At the same time, its provisions pose serious foreign policy, Constitutional and compliance concerns.

Unilateral sanctions are rarely effective in achieving U.S. foreign policy goals. The Peterson Institute for International Economics has concluded that unilateral U.S. sanctions in place from 1970-2000 were effective only 19 percent of the time. Sanctions also provide a good excuse for the targeted government to blame its failures on outside pressures and to rally nationalist support for the regime.

Additional complications arise when the United States attempts to impose sanctions extraterritorially on companies established in other countries, particularly our allies. Those countries generally oppose such attempts and have enacted blocking statutes and other measures to counteract them. It also makes their cooperation with us on a multilateral approach much less likely.

Foreign policy measures by states and local governments are even less effective and infinitely more problematic. The governor and legislature of Texas, Illinois, or California are not the competent bodies to implement U.S. foreign policy, and their narrow divestment or procurement sanctions are unlikely to change the behavior of the target country. In addition, it baffles me why Members of Congress would want to take foreign policy out of their and the President's hands and subcontract it to local governments.

Sanctions by individual states also interfere with the President's ability to conduct foreign policy and impose enormous compliance difficulties for companies, as each state and local law is different from the others, creating as many as 50 different foreign policies, each with different rules and different lists of sanctioned companies.

State measures also impose compliance costs on businesses. A company could be on a divestment list in New Jersey but not in California, which will put mutual funds in an impossible position, being told to divest to comply with legal requirements in one state but having a fiduciary duty in other states not to do so. In addition, there are costs to companies and investors in having to monitor, research, and comply with the various laws, which may differ from federal policy, as well as having to pay the fees they incur when they sell stocks pursuant to a divestment requirement and then buy new ones. In Illinois, the combined lists of so-called "forbidden entities" doing business in Sudan named 233 companies. Had it not been declared unconstitutional, the law would have affected 581 vendors of investment products, and a screening of Morningstar's database suggested at the time that over 900 equity mutual funds owned at least one forbidden entity.

Neither is divestment is free for retirees. In addition to transaction costs, divestment increases the risk to shareholders by limiting the pool of stocks and funds. One consequence of the initial Illinois divestment law, for example, was that many of the small, highly-regulated pension funds likely would have had to move out of international mutual funds and into bond funds, at the time cutting their annual rate of return by almost half.

Most important, we believe foreign policy sanctions enacted by state governments are unconstitutional. In 2000, in *Crosby v. NFTC* the Supreme Court struck down Massachusetts' Burma sanctions on the ground that they violated the supremacy clause of the Constitution. The Court declared, "It is simply implausible that Congress would have gone to such lengths to empower the President if it had been willing to compromise his effectiveness by deference to every provision of state statute or local ordinance that might, if enforced, blunt the consequences of discretionary Presidential action."

**The Darfur Accountability and Divestment Act**

With respect to H.R. 180, I first want to commend Adam Sterling and the Sudan Divestment Task Force for their work in crafting principles governing their divestment efforts. Their ideas have shaped this particular piece of legislation for the better. I also want to thank your staff, Mr. Chairman, and Senator Shelby's staff for their hard work in trying to develop a workable bill. Unfortunately, serious problems remain.

**First, divestment and procurement bans are likely to face challenges at the World Trade Organization by our trading partners, who will see their extraterritoriality as a violation of our trade commitments.** Japan and the European Union brought a WTO case against the Massachusetts sanctions on Burma, which was mooted by the Supreme Court's decision in Crosby.

**Second, the bill fails to limit state divestment measures and thus gives the states inappropriate leeway that interferes with the President's ability to conduct foreign policy.** For example, Section 4 of H.R. 180 authorizes divestment for entities that appear on "any list developed by the State or local government for the purpose of divestment from certain persons." Allowing such alternate lists increases the likelihood of divergent state laws, reduces transparency, and has the effect of contracting out our foreign policy to private list-preparing entities which often have financial interests or their own foreign policy agendas. In addition, it appears that the state and local government lists authorized by the bill are neither limited to the sectors specified for the federal list nor provide the same exemptions. That would mean, for example, that states could require divestment from a company operating in southern Sudan pursuant to an OFAC license.

**Third, there are parts of the bill where further clarification is needed.** For example, in Section 2, using proprietary information to develop a public list poses serious transparency issues, as investors and targets of the list may not be able to access the data to determine why or how an entity was included. The very idea of a public list is also problematic, since it is often difficult to distinguish with certainty actual business conducted from meaningless press conferences held to tout a memorandum of understanding that is never acted upon. For example, the SEC's attempt to develop a list proved to be a complete disaster. In addition, the safe harbor provisions of Sections 6 and 7 appear to apply to divestment and procurement pursuant to the federal list but not to lists developed by individual States.

**Finally, and of great importance, the authorization for States to enact procurement bans in Section 9 directly contradicts the Supreme Court's decision in the *Crosby* case.** In that case, the Court made abundantly clear that the supremacy clause protects the flexibility required for the Executive to conduct a coherent foreign policy. Divergent state foreign policy sanctions constrain that. The Court wrote, "Quite simply, if the Massachusetts law is enforceable the President has less to offer and less economic and diplomatic leverage as a consequence." Furthermore, the Court found that state sanctions [quote] "compromise the very capacity of the President to speak for the nation with one voice in dealing with other governments."

Beyond these specific concerns, there is the slippery slope problem. If Congress encourages states to act on a particular foreign policy issue through H.R. 180 or other similar legislation, it will surely tempt them to pass similar divestment and procurement legislation affecting other foreign policy issues.

The Sudan Divestment Task Force has done an admirable job in attempting to establish a targeted divestment model. They are making a good faith attempt to target their efforts specifically at Sudan and to avoid divestment in other situations, but theirs is not the only effort and genocide in Sudan is not the only cause. There are other blanket divestment movements

gaining momentum in state legislatures that would target companies doing business in Iran, and other countries, including China.

If the Committee nonetheless decides to act favorably on H.R. 180, it would be better policy if it included a clear statement of policy in the bill which would expressly limit the ability of states to impose foreign policy sanctions. Congress should take this opportunity to discourage divestment in any circumstances except those specifically authorized by the Congress in H.R. 180 or subsequent legislation. By doing so, Congress would preserve the primacy of the federal government in making foreign policy and help ensure uniformity in state and local government actions.

Nevertheless, I would also urge the Committee to take a step back and reevaluate the impact of this legislation versus its potential costs. There are more effective ways to help the people of Sudan. Organizations like Save Darfur and ENOUGH support a range of other approaches, which are truly multilateral and which might actually have some effect, including fully funding a hybrid Africa Union-UN force focused on civilian protection and urging the Administration to make peace in Darfur a higher priority in its international diplomacy. Likewise, the call by Senators Biden and Lugar for further support for peacekeeping, high-level diplomatic talks, and further multilateral sanctions to bind Khartoum's commitments is a welcome development.

These measures – which would bring the force of the international community to bear on the conflict in Sudan – are more appropriate ways to work towards achieving the outcome that we all desire.

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Testimony of Adam Sterling
Director, Sudan Divestment Task Force, a project of the Genocide Intervention Network
United States Senate Committee on Banking, Housing, and Urban Affairs
October 3, 2007

Thank you, Mr. Chairman; it is an honor to testify today on behalf of the Sudan Divestment Task Force and Genocide Intervention Network in support of HR 180, the Darfur Accountability and Divestment Act.

As the director of the Sudan Divestment Task Force, the organization at the forefront of the Sudan divestment movement, I will be addressing the importance of foreign corporate interests, specifically oil companies, in Sudan, how targeted divestment has already proven successful in encouraging foreign companies to use their enormous leverage to address the crisis in Darfur, and how HR 180 will serve to encourage and expand these efforts.

By any account, Sudan is a poor country. The average yearly income is under $650 and the country's foreign debt exceeds it gross domestic product. Shockingly, and despite these statistics, Sudan produces over 500,000 barrels of oil per day and has at least 6.4 billion barrels in proven reserves. In 2006, oil provided the Sudanese government with over $6 billion in revenues and accounted for 90% of the country's revenue from exports.

The extraction of oil requires reserves, capital and technical expertise, and while Khartoum effectively controls Sudan's reserves, the government relies on foreign companies to translate those reserves into revenue. In fact, Sudan's national oil company, Sudapet, maintains no more than an 8% equity share in any of the country's producing oil blocks, yet the government

receives a majority of the revenue generated from Sudan's oil fields. Unfortunately, revenue from Sudan's oil has not been used for debt relief or development. In fact, since the first barrel of oil was extracted from Sudan, Khartoum has allocated the majority of its revenue for military expenditures. According to a former Sudanese finance minister, interviewed by the New York Times, over 70% of the government's share of oil profits is spent on its military.

The bottom line is that Sudan's oil industry serves as a financial lifeline to Khartoum, and the foreign companies that support this industry have massive leverage to engage Khartoum and contribute to a peaceful and sustainable solution in Darfur. Targeted Sudan divestment, a policy authorized and encouraged by HR180, provides an effective tool to pressure companies to use this leverage in an effective, responsible and sustainable manner.

The targeted model surgically focuses only on the roughly two to three dozen problematic companies that are helping to exacerbate the situation in Darfur without providing benefits to any marginalized populations. It is critical to note that targeted divestment does not broadly force these companies to leave Sudan; it encourages them to use their enormous leverage in a constructive way to contribute to a solution in Darfur and only utilizes divestment if the companies fail to respond.

Furthermore, if companies do fail to respond to engagement within a given timeframe, and divestment takes place, there is evidence to show that divestment from this very small set of companies will have an extremely minimal impact, if any, on investment returns. For example, a historical analysis by the Sudan Divestment Task Force shows that the top peer replacements for these companies have consistently performed better over time (see enclosed chart).

While targeted Sudan divestment significantly minimizes any potential harm to investment portfolios, the movement has already proven to have a tangible impact on targeted companies. La Mancha Resources, a Canadian mining company, and the primary foreign player in Sudan's mineral extraction industry, recently took extraordinary steps in response to the situation in Darfur, even though all of its operations take place on the other side of the country. After weeks of engagement with the Sudan Divestment Task Force, the company publicly committed to refraining from new investment in the country until a peacekeeping force consistent with United Nations Security Council Resolution 1769 has been deployed in Darfur with the full compliance and cooperation of the Sudanese government and to increase its funding of humanitarian efforts in Sudan by contributing to projects in Darfur. This contribution comes in addition to the existing humanitarian efforts the company has been supporting for several years in the area of its operations. Additionally, the company's President recently met with Sudan's Minister of Energy & Mining, Dr. Awad Ahmed al Jaz, to discuss the situation in Darfur and to encourage the Government to fully comply with the implementation of UNSCR 1769. With their substantial leverage in the country, corporations have an extraordinary potential and responsibility to contribute to a solution in Darfur, and to encourage sustainable development and long term peace in Sudan. La Mancha provides a perfect example to demonstrate the power of targeted divestment to generate the pressure necessary for corporations to recognize the urgency in Darfur and act on this responsibility.

Since 2005, 20 states and over 50 universities have adopted Sudan divestment policies. The movement has rapidly spread through Europe: in July the European Parliament unanimously adopted a resolution calling on European Union members to support targeted Sudan divestment efforts. In addition to La Mancha, six major foreign companies, CHC Helicopter, ABB, Siemens, Rolls Royce, ICSA of India, and Schlumberger, have ceased problematic operations in Sudan or

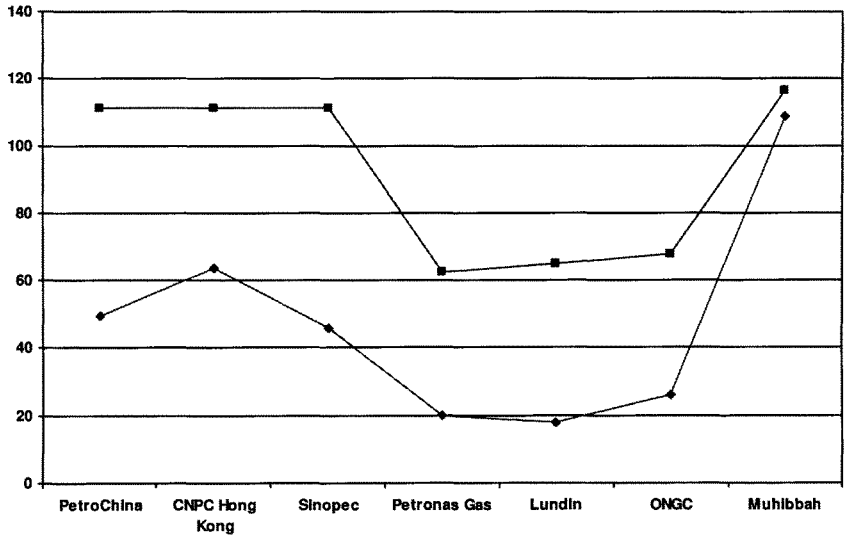
significantly changed their behavior in the country since the proliferation of the Sudan divestment movement.

While the administration has expressed concern that state efforts may conflict with federal ones, HR 180 simply ensures that states and municipal entities move forward with divestment in a unified and targeted fashion that is consistent with and complimentary to federal foreign policy. This includes common carve outs for South Sudan and exemption for companies authorized by OFAC to operate in Sudan. Perhaps most importantly, HR 180 ensures that divestment policies for these local entities all expire under the same conditions, benchmarked to federal actions and statements.

Thank you the opportunity to provide testimony today Mr. Chairman, I am happy to answer any questions you may have.

## 3 YEAR RETURNS

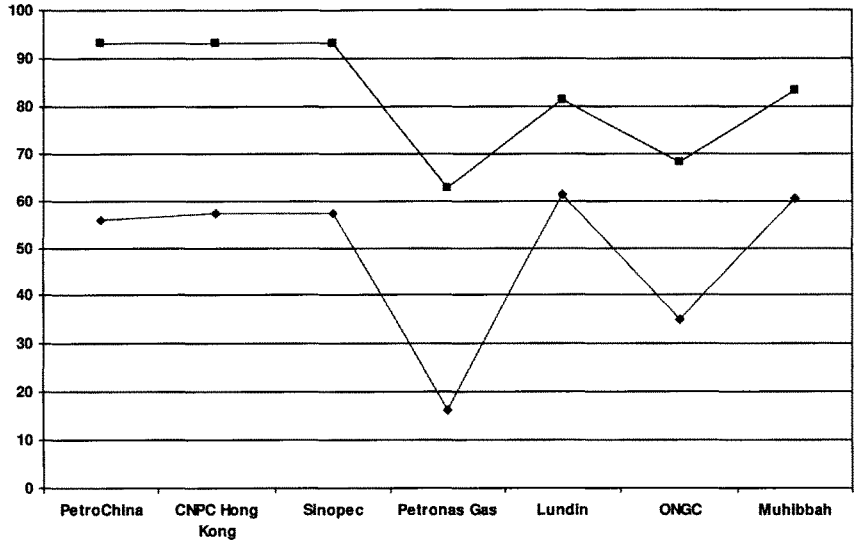
*Highest Offenders in Sudan versus Top Peer Replacements*




Highest Offenders  Peers Replacements

## 5 YEAR RETURNS

*Highest Offenders in Sudan versus Top Peer Replacements*




*Presented by the Sudan Divestment Task Force with data from Bloomberg LP*