

CRS Report for Congress

Received through the CRS Web

Balkan Cooperation on War Crimes Issues

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Summary

In December 2005, top Croatian indicted war crimes fugitive Gen. Ante Gotovina was arrested in Spain and transferred to the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague. Six indictees remain at large, including wartime Bosnian Serb leaders Radovan Karadzic and Gen. Ratko Mladic. In late 2004 through early 2005, a combination of intensified international pressure and deadlines associated with Euro-Atlantic integration processes prompted a spate of transfers of persons indicted for war crimes to the tribunal. Full cooperation with ICTY has been established as a key prerequisite to further progress toward a shared long-term goal for the western Balkan countries: closer association with and eventual membership in the European Union (EU) and NATO. This report will be updated as events warrant. See also CRS Report RS21686, *Conditions on U.S. Aid to Serbia*, by Steven Woehrel.

Introduction and U.S. Concerns

From late 2004 to early 2005, a steady stream of individuals charged with Balkan war crimes turned up at the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague. Factors contributing to this inflow included intensified international pressure and deadlines associated with the European integration process. The European Union (EU) and NATO have explicitly conditioned closer association with the western Balkan states (mainly Serbia and Montenegro, Bosnia and Herzegovina, and also Croatia) on their respective levels of cooperation with ICTY. To varying degrees, conditionality policy has held up Euro-integration processes in the western Balkans that would otherwise likely have gone forward.

Most of the recent transfers of indicted persons have come from Serbia or the Republika Srpska (RS) entity within Bosnia and Herzegovina, both parties with the greatest number of suspects and the weakest cumulative record of cooperation with ICTY. Other prominent surrenders have included the former Prime Minister of Kosovo's governing institutions and the former Bosnian Muslim (or Bosniak) Army chief. However, some top-ranking remaining war crimes suspects, including Radovan Karadzic and Gen. Ratko Mladic, have eluded capture for a decade.

Meanwhile, ICTY operations are beginning to wind down after a dozen years in operation. ICTY Chief Prosecutor Carla del Ponte prepared the Tribunal's final indictments in late 2004 and the last war crimes indictments were unsealed and made public in March 2005. Under its "completion strategy," ICTY had planned to conclude all initial trials by 2008 and all court proceedings by 2010. However, due to a variety of factors, ICTY officials have extended their estimate for a completion date by at least one year. The ICTY President has stated that the goal of completing trials by the end of 2009 would depend on how soon Karadzic and Mladic are captured.¹

U.S. Administration and congressional interest in levels of Balkan cooperation with the Tribunal stems from longstanding U.S. support for ICTY and insistence that the top-ranking indicted persons be turned over to The Hague. The United States supports the region's Euro-Atlantic aspirations, including closer ties to and possible membership in NATO; however, U.S. officials argue that the capture and transfer of remaining indictees is necessary, long overdue, and a pre-condition to further Euro-Atlantic integration. In legislation, Congress has annually conditioned U.S. assistance to Serbia on ICTY cooperation. Under the FY2006 foreign aid appropriations (P.L. 109-102, H.R. 3057), funding for Serbia is conditional on the President's certification that Serbia is cooperating with ICTY, including the surrender and transfer of indictees Mladic and Karadzic. The Bush Administration has also supported the Tribunal's completion strategy to conclude activities by 2010.

Chronology of Recent Transfers²

12/10/05 — Croatian Gen. Ante Gotovina was transferred to The Hague. Spanish authorities arrested Gotovina in the Canary Islands on Dec. 7. Gotovina's indictment charges him with crimes against humanity and violations of the laws or customs of war in relation to the 1995 Croatian "Storm" offensive against Croatian Serb-held territory in the Krajina region.

09/16/05 — Former Bosnian Serb paramilitary leader Sredoje Lukic was transferred to The Hague from the RS. His indictment from 1998 charges him, his cousin Milan Lukic, and Mitar Vasiljevic (already in custody) with war crimes committed by their paramilitary group in the Visegrad area from 1992 to 1994. Milan Lukic was arrested in Buenos Aires, Argentine, on August 8, and his transfer to The Hague is pending.

08/25/05 — Russian authorities announced the capture of indicted former Bosnian Serb military police officer Dragan Zelenovic in Siberia. ICTY is still awaiting his extradition from Russia.

04/25/05 — General Nebojsa Pavkovic, former Serbian Army chief of staff, arrived at The Hague. He is the third Serbian general under the October 2003 indictment against four generals to come into custody. He is charged with alleged crimes relating to Serbian military and police operations in Kosovo in 1998-1999. ICTY's provisional release of Pavkovic in September was held up in appeal; he was eventually released pending trial on Nov. 21.

04/14/05 — Former Bosnian Serb officer Vujadin Popovic surrendered to The Hague. He is charged with genocide and war crimes related to the 1995 Bosnian Serb attacks on Srebrenica.

¹ Address by Judge Fausto Pocar, ICTY President, to the U.N. Security Council, December 15, 2005, available at [<http://www.un.org/icty/>].

² Details of the indictments can be found at the ICTY home page [<http://www.un.org/icty/>].

04/07/05 — Former Bosnian Serb commander Milorad Trbic arrived at The Hague and is charged in the same indictment as Vinko Pandurevic (see 03/23).

04/04/05 — Former Serbian special police General Sreten Lukic was transferred to The Hague from a Belgrade hospital where he had undergone vascular surgery. Lukic is charged with crimes allegedly committed by forces under his command in Kosovo in 1999. Lukic was granted provisional release on October 3.

04/01/05 — Former Bosnian Serb special police commander Ljubomir Borovcanin arrived at The Hague from Belgrade. His indictment from 2002 charges him with individual and command responsibility for crimes relating to the 1995 Bosnian Serb offensive in eastern Bosnia.

03/24/05 — Former Macedonian Interior Minister Ljube Boskovski was transferred to The Hague from Croatia, where he had been incarcerated on charges unrelated to the ICTY indictment. His ICTY indictment cites charges relating to the unlawful killing of ethnic Albanian civilians in northern Macedonia during the 2001 conflict.

03/23/05 — Former Bosnian Serb General Vinko Pandurevic was transferred to The Hague. Gen. Pandurevic served as a brigade commander of the Bosnian Serb Army (VRS) and is charged with genocide and crimes against humanity relates to the 1995 massacre in Srebrenica.

03/17/05 — Former Bosnian Serb Chief of Security Drago Nikolic arrived at The Hague. Nikolic is charged with genocide and crimes against humanity for his alleged individual criminal role in the 1995 Srebrenica assault.

03/16/05 — Former Macedonian police officer Johan Tarculovski arrived at The Hague. Along with former Macedonian Interior Minister Ljube Boskovski, Tarculovski is charged with unlawful attacks on civilians during the 2001 conflict.

03/14/05 — Former Bosnian Serb Chief of Police Gojko Jankovic was transferred to The Hague from Banja Luka.³ He is charged with war crimes allegedly committed in the 1992 attack on the Bosnian town of Foca.

03/11/05 — Former Bosnian Serb Interior Minister (MUP) Mico Stanisic was transferred to The Hague. He is charged with war crimes and crimes against humanity relating to his role in commanding and directing Bosnian Serb police actions against non-Serb populations in Bosnia during 1992. ICTY provisionally released Stanisic on July 22.

03/09/05 — Ramush Haradinaj arrived at The Hague after resigning from his position as Kosovo Prime Minister the previous day. The indictment against former Kosovo Liberation Army commander Haradinaj and two of his subordinates (Lahi Brahimaj and Idriz Balaj, who turned themselves in with Haradinaj) cites charges of war crimes perpetrated against Serbs and others in Kosovo in 1998. Haradinaj was granted provisional release, with conditions, on June 6.

03/07/05 — General Momcilo Perisic, former Chief of the General Staff of the Yugoslav Army, surrendered to The Hague. He is charged with 13 counts of crimes allegedly committed in Sarajevo, Zagreb, and Srebrenica. The tribunal granted Perisic provisional release on June 9.

02/28/05 — General Radivoj Miletic, former Bosnian Serb army chief of operations, arrived at The Hague after surrendering to Serbian government authorities. His indictment, shared with

³ Jankovic was reportedly one of several Serbian indictees who had sought and received refuge in Russia for years. See Ed Vulliamy, "Russians Accused of Sheltering War Crimes Suspects," *The Guardian* (U.K.), Mar. 15, 2005.

Milan Gvero (below), relates to war crimes allegedly committed in Srebrenica in 1995. Miletic was provisionally released on July 22.

02/28/05 — General Rasim Delic, former Chief of the General Staff of the Bosnian Army, departed Sarajevo for The Hague, and is charged on the basis of his command authority with four counts of violating customs of war in 1993 and 1995. Delic was granted provisional release on May 6.

02/24/05 — Milan Gvero, a former VRS commander, arrived at The Hague from Belgrade. He is charged with individual criminal responsibility for crimes allegedly committed in the Srebrenica region in 1995. Gvero was provisionally released on July 22.

02/03/05 — General Vladimir Lazarevic, former commander of the Yugoslav Army Pristina Corps, arrived at The Hague. Lazarevic is one of the four Yugoslav Army generals indicted by ICTY in October 2003 for alleged crimes committed in Kosovo. ICTY provisionally released Lazarevic and three other suspects on April 15.

Remaining Suspects at Large

By mid-December 2005, six known indicted suspects remained at large. After the capture and transfer of Ante Gotovina, the short list for most concerned parties comprises the top two remaining suspects: former Bosnian Serb leaders Radovan Karadzic and Gen. Ratko Mladic. The indictments against Karadzic and Mladic charge the former Bosnian Serb leaders with genocide, crimes against humanity, and violations of the laws or customs of war as part of the Bosnian Serb campaign in 1991 to 1995 to control territory and drive out non-Serb populations from Srebrenica and other areas.

Besides one suspect thought to be hiding in Russia, ICTY Chief Prosecutor Carla del Ponte charges that the remaining five suspects, including Mladic and Karadzic, remain “within reach” of authorities in Serbia and the RS. Throughout much of 2005, numerous news stories reported possible sightings of Karadzic and Mladic and unconfirmed surrender negotiations with local authorities. Statements by several officials heightened expectations that Mladic or Karadzic would be caught in time for the 10-year commemoration of Srebrenica in July, but no arrest or surrender of either fugitive occurred. “Deadlines” of October and December have also been voiced. Many Serbian leaders and even relatives of the accused have publicly urged Karadzic to surrender voluntarily.

Policy Implications

The European Union, United States, and Office of the High Representative in Bosnia, often in conjunction with ICTY’s Office of the Prosecutor, have frequently wielded explicit conditionality policies in order to foster improved Balkan cooperation with ICTY. Securing the region in a stable and prosperous Euro-Atlantic zone, as opposed to an area of incomplete postwar transition susceptible to destabilizing trends or criminal elements, remains a shared goal. On the incentive side, officials have expressed continued support for the Euro-Atlantic aspirations of the western Balkan states and for moving forward in these integration processes, some of which have lagged primarily over limited ICTY cooperation. All of the western Balkan states have made closer ties to NATO and especially the EU a key strategic priority. At the same time, officials also emphasize that these processes cannot be completed until the Balkan states adhere to

standards on international commitments and the rule of law, especially with regard to meeting obligations on ICTY cooperation and overcoming the legacy of the wartime years. European leaders are also somewhat constrained by recent setbacks within the EU over constitutional reform and widespread popular unease about further EU enlargement.

Bosnia and Herzegovina. Bosnia and Herzegovina has sought membership in NATO's Partnership for Peace (PfP) program and a Stabilization and Association Agreement (SAA) with the European Union. The EU concluded an SAA Feasibility Study for Bosnia in November 2003 and identified 16 priority reform areas that have become a blueprint for Bosnia's ongoing reform process. At the same time, limited cooperation with ICTY, especially by the Republika Srpska (RS), has contributed to a slowdown in the association process. Until January 2005, RS authorities had not turned over a single indicted suspect, and ICTY officials have since reported little effort by the RS to locate or arrest Radovan Karadzic. The ICTY issue also provided High Representative Ashdown justification for exercising his authority to remove obstructionist officials, freeze assets, and even re-shape governing institutions especially in the defense and security sectors, segments of which were thought to support war crimes fugitives.⁴ The status of Karadzic will remain a key challenge for Bosnia's authorities as well as for the EU military force and residual NATO presence in Bosnia, whose mandates include apprehending persons indicted for war crimes. The EU opened SAA negotiations with Bosnia in November 2005 after Bosnia's leaders agreed to pursue police reforms; however, Bosnia is not expected to gain entry into NATO's PfP program until Karadzic's status is resolved.

Croatia. Croatia's largely positive record of cooperation with ICTY — as well as considerable advancements in economic and institutional reforms — enabled it to progress steadily in the EU integration process in recent years. Croatia signed an EU Stabilization and Association Agreement in October 2001 and applied for EU membership in February 2003. In June 2004, the EU named Croatia a candidate country for membership and in December 2004 agreed to open accession negotiations in March 2005, provided that Croatia continued to cooperate with ICTY.

Croatia's one outstanding issue pertaining to ICTY concerned the unresolved situation with Gen. Gotovina. In March, EU members indefinitely postponed the opening of accession negotiations with Croatia and created a special task force to assess Croatia's ICTY cooperation on a regular basis. The Croatian government adopted an Action Plan to increase efforts to track down Gotovina. ICTY Prosecutor del Ponte frequently criticized Croatia's efforts to locate, arrest, and transfer Gen. Gotovina, and questioned Zagreb's "genuine willingness" to do so. However, in a last-minute turnaround, del Ponte reported "full" cooperation with Zagreb on October 3, which paved the way for the EU

⁴ Beyond the issue of extradition, a recent achievement in Bosnia was the inauguration in March 2005 of the War Crimes Chamber of the State Court of Bosnia and Herzegovina, which is expected eventually to take over for ICTY prosecution of war crimes in Bosnia. ICTY has referred two cases to the Bosnian war crimes chamber thus far.

to formally open accession negotiations with Croatia.⁵ Gotovina's capture has resolved the ICTY matter for Croatia.

Serbia and Montenegro. Despite Serbia's notable achievement of extraditing wartime Serbian leader Slobodan Milosevic to The Hague in 2001, Serbia's level of cooperation with ICTY has generally been lacking, according to most assessments. Beginning in late 2004, the Kostunica government substantially increased its efforts to encourage the voluntary surrender of indicted persons, even while it has not abandoned its reluctance to make arrests. Politically, the Kostunica government is constrained to some extent because it is supported in parliament by Milosevic's Socialist Party (SPS) and because the SPS and the much larger nationalist Radical Party (SRS) vehemently oppose forced indictee transfers to The Hague. However, the extent of Kostunica's political vulnerability over ICTY cooperation is open to debate, especially in view of strong domestic support for EU integration and diminishing public opposition to Serbian cooperation with ICTY.

Serbia's cooperation with ICTY has been a sore spot in its foreign relations for the past few years. In accordance with annual foreign aid appropriations legislation, the United States suspended portions of bilateral assistance to Serbia over war crimes issues in FY2004 and FY2005. In 2004, Serbia and Montenegro was twice denied entry into Partnership for Peace despite having made some significant progress in defense reforms. Serbia and Montenegro lagged behind other western Balkan states in the EU's Stabilization and Association process, the precursor to closer EU association and targeted EU assistance.⁶ In April 2005, in recognition of Serbia's substantial progress in cooperating with ICTY, the European Commission approved its Feasibility Study on the SAA, and the EU Council called for stalled SAA negotiations to begin; SAA talks opened in October. In June, visiting U.S. Undersecretary of State Nicholas Burns announced in Belgrade that about \$10 million in previously suspended U.S. assistance to Serbia would be released in recognition of Serbia's progress on ICTY cooperation, while noting the expectation that Belgrade would "take the final step" and send Mladic to The Hague. In December, the ICTY Prosecutor reported that Serbia's cooperation has deteriorated with respect to the remaining fugitives and access to documents.

⁵ EU officials denied that the decision on Croatia was made in exchange for Austria's acceptance of opening accession talks with Turkey, but several media commentators questioned the "suspiciously expedient" circumstances. Del Ponte later reported that her assessment of Croatia's "full cooperation" came after she was given information that Croatian authorities had located Gotovina in Spain.

⁶ Complications arising from the state of the Serbia and Montenegro union had also presented some obstacles to EU integration.