

CRS Report for Congress

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Conditions on U.S. Aid to Serbia

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Summary

In each of the past six fiscal years (FY2001-FY2006), Congress has conditioned U.S. aid to Serbia on a presidential certification that Serbia has met certain conditions, including cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY). The second session of the 109th Congress may consider similar certification provisions in the FY2007 foreign aid bill. Supporters of aid conditionality say such provisions may have spurred Serbia's cooperation with the Tribunal. While the certification process continues to enjoy support in Congress, the Administration appears to favor ending it soon. This report will be updated as events warrant. For more information on Serbia and Montenegro, see CRS Report RL30371, *Serbia and Montenegro: Current Situation and U.S. Policy*, by Steven Woehrel.

Background

In each of the past six fiscal years (FY2001-FY2006), Congress has conditioned U.S. aid to Serbia after a certain date of that year on a presidential certification that Serbia has met three conditions. They are cooperating with the International Criminal Tribunal for Yugoslavia (ICTY); ending support for separate Bosnian Serb institutions; and protecting minority rights and the rule of law, including the release of political prisoners. The provision also has recommended that U.S. support for loans from international financial institutions to the Federal Republic of Yugoslavia (the now-defunct federation of Serbia and Montenegro) be conditioned on the certification. The certification does not apply to aid to Montenegro, now Serbia's partner in a loose union simply called "Serbia and Montenegro," or Kosovo, which is nominally a Serbian province but is administered by a U.N. mission. The provision also has not applied to humanitarian or democratization aid to Serbia.¹ The amounts of aid affected by these conditions may be relatively modest in the context of the global U.S. aid program, but are significant for Serbia and

¹ Another provision in foreign operations appropriations bills in recent years has dealt with U.S. aid to Serbia (in the FY2006 bill, it is Section 561). It has conditioned U.S. aid to all countries, entities and municipalities in the region on cooperation with the ICTY. However, this provision has not been the main stumbling block to aid to Serbia, due to extensive use by the Administration of waiver authority in the legislation.

Montenegro. In FY2001, the United States provided \$133.8 million in aid to Serbia, and \$106.7 million was provided in FY2002. The Administration allocated \$110 million for Serbia for FY2003 and \$95 million in FY2004. The FY2005 foreign aid measure provided \$73.6 million for Serbia, and the FY2006 bill provided \$70 million. SEED aid is being used to help Serbia establish a free market economy, including advice on restructuring the banking sector, privatizing large firms, assisting legislative and judicial reform, and providing credit facilities to help small business and develop a mortgage market. Other SEED aid is aimed at strengthening democratic institutions and civil society, including local government. The certification process typically affects only a modest portion of the amount allocated for any given year, due to the deadline being set in March of the fiscal year or later, and the exclusion of humanitarian and democratization aid.

In addition to U.S. bilateral aid, the aid conditions have said that the United States “should” vote against financing from the international financial institutions, a key source of funding for Serbia. However, despite this provision, Serbia’s non-cooperation with the ICTY does not seem to have affected its access to international loans, such as those from the IMF and World Bank. Moreover, the European Union, a key aid donor, has not explicitly conditioned its aid to Serbia on war crimes cooperation.

On the other hand, the impact of the aid conditions are boosted by Western policies that limit Serbia’s Euro-Atlantic integration until Belgrade cooperates with the ICTY. The United States has ruled out Serbia’s membership in NATO’s Partnership for Peace program until indictee Ratko Mladic is in ICTY custody. Although the European Union opened talks on a Stabilization and Association Agreement with Serbia and Montenegro in October 2005, it has said that it will not sign the agreement unless Serbia cooperates with the ICTY. Both of these programs are stepping stones to possible NATO and EU membership for Serbia in the future.

Serbian Compliance FY2001-FY2005

Since the overthrow of the Milosevic regime in late 2000, Serbian cooperation with the ICTY has followed a similar pattern each year: Serbia delivers several indictees to the Tribunal just before or, at most, a few weeks after the certification deadline. The Administration makes the certification as required by the legislation, and urges Serbia to do more, in particular calling for the surrender of Mladic and fellow indictee Radovan Karadzic. However, Serbian cooperation then slows, with Serbian leaders claiming that political and legal obstacles preclude greater efforts. Nevertheless, more indictees are delivered as the next deadline for certification approaches, and so on.

For example, the conditions on U.S. aid to Serbia were an important factor in the timing of the arrest of Milosevic by Serbian police on April 1, 2001, one day after the March 31 certification deadline set by the FY2001 legislation. When making the certification on April 2, Secretary of State Colin Powell warned that U.S. support for an international aid conference for Serbia would depend on Milosevic’s delivery to the Tribunal. Milosevic was delivered to the Tribunal in The Hague on June 28, 2001, one day before the donors conference. Serbian cooperation then decreased significantly. The FY2002 deadline passed without certification, but Serbia encouraged six indictees to surrender to the Tribunal in late April and early May 2002. The Administration made the FY2002 certification on May 21, 2002.

The FY2003 foreign aid appropriations measure was included as part of the Consolidated Appropriations Resolution for FY2003 (P.L. 108-7). The bill contained certification provisions on aid to Serbia similar to the FY2001 and FY2002 bills, and required the President to make the certification by June 15, 2003. In a demonstration of the power of dangerous forces threatening cooperation with the ICTY and democracy in Serbia, on March 12, 2003, Serbian Prime Minister Zoran Djindjic was assassinated. Investigators discovered that the crime was committed by organized crime figures who reportedly feared prosecution for war crimes and other criminal activities. Djindjic's murder appeared to galvanize Serbian leaders in the fight against organized crime leaders and war criminals. Indictees Miroslav Radic, Veselin Sljivancanin, paramilitary leader Franko Simatovic, and former intelligence chief Jovica Stanisic were turned over to the ICTY in May and June 2003. Secretary of State Powell made the FY2003 certification on June 15, 2003.

It should be noted that ICTY cooperation is only one of the three conditions for U.S. aid to Serbia. However, in FY2001-FY2003, the Administration accepted the assurances of Serbian authorities that they had ended support to separate Republic Srpska institutions (which had included paying the salaries of RS army officers). Neither this condition, nor the third condition, dealing with minority rights and the release of ethnic Albanian political prisoners, has proved to be a stumbling block to certification, particularly after the release of Kosovar prisoners from Serbian jails in March 2002.

The FY2004 foreign operations appropriations bill (incorporated into H.R. 2673, an omnibus appropriations bill) contained the same certification provisions as previous years, requiring the President to make the certification by March 31, 2004. The Administration did not make the FY2004 certification and suspended \$16 million in FY2004 aid to Serbia.

The FY2005 foreign aid appropriations were incorporated into an omnibus spending bill (P.L. 108-447). It contained the same certification process as previous years, with a deadline of May 31, 2005. In January 2005, the Administration announced that because there had been "no improvement" in Belgrade's cooperation with the Tribunal, the United States would withhold \$10 million in FY2005 aid from Serbia. U.S. Ambassador to Serbia and Montenegro Michael Polt said that the aid cuts could lead to the withdrawal of U.S. technical advisors from Serbian ministries working on such issues as World Trade Organization membership and economic reform. However, an Administration spokesman noted that the remaining portion of the \$73.6 million in aid to Serbia would still go to "organizations and programs outside of the central government that are committed to reform."²

On June 9, 2005, the Administration certified that Serbia had met the conditions set out in the FY2005 legislation, freeing up the \$10 million that had been suspended in January. In the first half of 2005, Serbia transferred 14 indictees to the ICTY, according to ICTY Chief Prosecutor Carla Del Ponte. However, Del Ponte and U.S. officials continued to note with regret that Mladic and Karadzic were still at large.

² Statement by Richard Boucher, Spokesman, January 13, 2005, from the State Department website [<http://www.state.gov>].

FY2006 Legislation and Serbian Compliance

The conference version of FY2006 foreign operations appropriations bill (H.R. 3057) was approved by the House on November 4 and the Senate on November 10. It was signed by the President on November 14, 2006 (P.L. 109-102). Section 563 contains the Serbian aid conditions. The provision conditioned U.S. aid to Serbia after May 31, 2006, on “(1) cooperating with the International Criminal Tribunal for Yugoslavia, including access for investigators, the provision of documents, and the surrender and transfer of indictees or assistance in their apprehension, including making all practicable efforts to apprehend and transfer Ratko Mladic and Radovan Karadzic, unless the Secretary of State determines and reports to the Committees on Appropriations that these individuals are no longer residing in Serbia; (2) taking steps that are consistent with the Dayton Accords to end Serbian financial, political, security and other support which has served to maintain separate Republika Srpska institutions; and (3) taking steps to implement policies which reflect a respect for minority rights and the rule of law.” It says the Administration “should” vote for loans and aid for Serbia and Montenegro from international financial institutions after May 31, 2006, if the certification is made. The aid conditions do not apply to Montenegro, Kosovo, humanitarian aid, or assistance to promote democracy.

The provision is identical to that in FY2005, with a few exceptions. First, it specifically names Karadzic as well as Mladic as persons Serbia should detain. Second, it allows the Administration to issue a certification even if the two men are not transferred, if it determines that the two are not living in Serbia. (The exact whereabouts of the two men are uncertain. Mladic is widely assumed to be living in Serbia under the protection of former and serving military and security officials. Most speculation on Karadzic’s location places him in Bosnia.)

In a December 2005 report to the U.N. Security Council, ICTY Chief Prosecutor Carla Del Ponte said Serbia’s cooperation with the Tribunal had “deteriorated” since her last report in June 2005, which provided an upbeat assessment of Serbian compliance. She said that, although some government agencies are cooperating well with the ICTY, the Army of Serbia and Montenegro has been particularly unhelpful, including on such issues as access to documents. Moreover, Del Ponte said the Serbia continues to lack a “serious” action plan to transfer the remaining fugitives to the Tribunal. Of the six remaining fugitives sought by the ICTY, Del Ponte said that Mladic, Karadzic, and three other indictees are “within reach” of Serbian authorities (the sixth indictee is in Russia).³ In January 2006, the Serbian government admitted that Mladic had been drawing a Serbian Army pension as late as mid-November 2005.

U.S. Policy

Although it has used the aid conditions to extract at least partial Serbian cooperation with the ICTY, the Administration has shown signs of impatience with the certification process and what the Administration believes is the seemingly open-ended nature of the ICTY’s prosecutions. The Administration favored shifting responsibility for prosecuting all but a handful of major war crimes cases from the ICTY to Serbian courts. The United

³ For a transcript of Del Ponte’s remarks to the Security Council, see the ICTY website, [<http://www.un.org/icty>].

States, along with other countries, successfully pushed for the adoption of U.N. Security Council Resolution 1503 in August 2003. The resolution calls for ICTY to complete its trials by 2008 and all appeals by 2010. The United States is assisting Serbia's efforts to prosecute war criminals itself by providing assistance in such areas as helping to set up witness protection programs, providing training to judges and contributing funds to help establish a new Serbian court to try organized crime and war crimes cases.

In addition to the aid conditions, the Administration has also used positive inducements to show Serbia the benefits of a better U.S.-Serbia relationship that would follow from ICTY cooperation. For example, in November 2003, the Administration certified that Serbia and Montenegro is eligible for Normal Trade Relations (NTR) with the United States. The FRY's NTR status was suspended in 1992, in response to its role in the war in Bosnia, according to the terms of P.L. 102-420 (106 Stat. 2149). The legislation permits the Administration to restore NTR to Serbia and Montenegro if the President certifies that the FRY had ceased armed conflict with other peoples of the former Yugoslavia, agreed to respect the borders of the former Yugoslav states, and ended support to Bosnian Serb forces.

Administration officials say the move was made in response to the improved situation in Serbia, especially in defense reform and cutting links between the Serbian and Bosnian Serb armed forces. Serbian officials hailed the restoration of NTR, saying it would give a significant boost to Serbia's exports to the United States in such areas as furniture, hunting rifles and pharmaceuticals. One Serbian leader added that the granting of NTR was more important to Serbia than the aid certification issue.⁴ In June 2005, after the FY2005 aid certification, the Administration announced that it had granted duty-free treatment to some products from Serbia and Montenegro under the Generalized System of Preferences (GSP).

Some have argued that certification has played an important role in encouraging Serbian leaders to deal with difficult issues that they would have rather avoided. Serbia's democracy will be healthier in the long run, proponents of certification say, if Serbs come to terms with the war crimes issue, especially since those supporting the war criminals continue to be threats to reform and reformers, as demonstrated by the murder of Prime Minister Djindjic. On the other hand, it can be argued that while they may be positive for Serbia in the long term, the aid conditions have been a domestic political liability for Serbian reformers. Serbian leaders complain that what they see as unending Western demands upon them reduce their credibility in the eyes of the Serbian public. Cooperation with the Tribunal has aggravated tensions among reformers, but it should be noted that it is only one of many issues dividing them, which include poor economic performance, scandals, and personal ambitions of their leaders. Moreover, skeptics of the certification process claim that it hinders accomplishment of the most important U.S. goal in the region, which is the Euro-Atlantic integration of Serbia and other countries in the region.

The FY2004 and FY2005 certification provisions and resulting suspension of some U.S. aid to Serbia were slower to improve Serbian cooperation with the ICTY than in past years, although some cooperation did eventually take place. A key reason is the political situation in Serbia. The current Serbian government, elected after December 2003

⁴ Tanjug news agency dispatch, November 2, 2003, as carried by BBC Monitoring International.

elections, is a minority government of democratic parties, led by Prime Minister Vojislav Kostunica, leader of the moderate nationalist Democratic Party of Serbia (DSS). The most controversial aspect of the government is its dependence on support from the Milosevic's Socialist Party of Serbia (SPS), which does not have ministers in the government but provides it with a majority in parliament. SPS leaders have repeatedly threatened to bring down the government if it transfers indictees to the Tribunal. If the government falls in 2006, it could be replaced by one headed by the ultranationalist Radical Party, particularly if the issue of Kosovo's status, currently under negotiation, is settled in a way that most Serbs see as a defeat for Serbian national interests. The Radical Party would be unlikely to cooperate with the ICTY. On the other hand, a victory by the pro-Western Democratic Party, headed by Serbian President Boris Tadic, could lead to better ICTY cooperation.