



CRS Report for Congress

Balkan Cooperation on War Crimes Issues

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Summary

Balkan cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague remains an issue of ongoing U.S. and international concern. By January 2008, only four indicted individuals were still at large, although two of them included top wartime Bosnian Serb leaders Radovan Karadzic and Gen. Ratko Mladic, both under indictment since 1995 for genocide and crimes against humanity. Full cooperation with ICTY has long been a key prerequisite to further progress toward a shared goal for the western Balkan countries: closer association with and eventual membership in the European Union and NATO. This policy of conditionality has affected Serbia the most, but also other western Balkan countries. Some critics charge that conditionality policy has outlived its usefulness, while others insist that the remaining indicted suspects — especially Mladic and Karadzic — face trial before ICTY closes its doors in 2010 or 2011. The second session of the 110th Congress is likely to consider recurring legislation on linking U.S. assistance to Serbia with ICTY cooperation. This report will be updated as events warrant. For related information, see CRS Report RS21686, *Conditions on U.S. Aid to Serbia*, by Steven Woehrel.

Introduction and U.S. Concerns

The European Union (EU) and NATO have long 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 the International Criminal Tribunal for the former Yugoslavia (ICTY). To varying degrees, conditionality policy has held up Euro-integration processes in the western Balkans that would otherwise likely have gone forward, but has also provided a key incentive for the Balkan states to meet their obligations with respect to ICTY and facilitate the apprehension of indicted suspects.

Fifteen years after its inception, ICTY is preparing to wind down its proceedings. Longtime ICTY Chief Prosecutor Carla del Ponte stepped down in January 2008 and was succeeded by Belgian lawyer Serge Brammertz (who recently headed a U.N. commission

investigating the murder of former Lebanese Prime Minister Rafiq Hariri). Del Ponte unsealed ICTY's last war crimes indictments in March 2005; by the end of 2007, the tribunal had completed proceedings for 111 of 161 indicted suspects. Under its "completion strategy" devised in 2004, ICTY was slated to conclude all initial trials by 2008 and all court proceedings by 2010. This timetable may slip a little, although ICTY officials still expect to complete all initial trials by 2009 and appeals by 2011 through recent improvements in efficiency and court proceedings. Further delay may result if the remaining four suspects are not soon detained and transferred. Above all, however, ICTY officials have urged the Security Council not to close the tribunal's doors before Karadzic and Mladic are brought before The Hague, and not to let their trials become victim of the tribunal's completion strategy.¹

The tribunal's most high-profile trial, against former Serbian leader Slobodan Milosevic, ended without a verdict after Milosevic's death on March 11, 2006, by a heart attack while in custody. Another prominent case, the trial of Serbian Radical Party political leader Vojislav Seselj, opened in November 2007. Another major trial of ethnic Albanian rebel fighters including former Kosovar Prime Minister Ramush Haradinaj commenced in March 2007.

U.S. Administration and congressional interest in Balkan cooperation with the tribunal stems from longstanding U.S. support for ICTY and insistence that the top-ranking indictees be turned over to The Hague. The United States also supports the region's Euro-Atlantic aspirations, including closer ties to and possible membership in NATO. U.S. officials have long viewed full ICTY cooperation to be a pre-condition to further Euro-Atlantic integration; this policy was relaxed slightly at the November 2006 NATO summit in Riga, when three Balkan states were invited to join Partnership for Peace. The Bush Administration has also supported the tribunal's completion strategy. In annual appropriations bills, Congress has conditioned some bilateral U.S. assistance to Serbia on the Administration's certification of ICTY cooperation. Most recently, in May 2007, the Secretary of State suspended a portion of FY2007 funds for Serbia, but released the funds in July 2007 after certifying improved cooperation with ICTY. The second session of the 110th Congress may again consider certification requirements for aid to Serbia.

Summary of Recent Transfers

In June 2007, Serbia facilitated the transfer of two more fugitive suspects to The Hague: former General Zdravko Tolimir (a top aide to Gen. Mladic) and Vlastimir Djordjevic, a former Serbian police commander. Their arrests came shortly after a new Serbian government was formed and paved the way for forward movement in Serbia's negotiations with the EU on an association agreement. In the previous year, two Bosnian Serb suspects were handed over. From late 2004 to early 2005, a spate of transfers of mainly Bosnian Serb indictees took place, many the result of voluntary surrenders negotiated by Serbian authorities. In addition, some top former Yugoslav Army generals surrendered, as did former Kosovo Prime Minister Ramush Haradinaj. Former Croatian General Ante Gotovina was arrested in late 2005. With respect to Serbia, ICTY officials

¹ For example, see statement by Judge Fausto Pocar, ICTY President, to the U.N. Security Council, December 10, 2007, available at [<http://www.un.org/icty/>].

have welcomed Belgrade's repeated expressed commitment to fulfill its obligations to cooperate with the tribunal, even while they have criticized Belgrade's reliance on negotiated surrenders rather than arrests.

Remaining Suspects at Large

The last remaining indicted war crimes suspects at large are former Bosnian Serb leaders Radovan Karadzic and Gen. Ratko Mladic; Goran Hadzic, former political leader of breakaway Serbs in Croatia; and Stojan Zupljanin, former Serbian police commander in Croatia. The indictments against Karadzic and Mladic charge them 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.²

In her final address to the Security Council in December 2007, former ICTY Chief Prosecutor Carla del Ponte focused almost entirely on the issue of the remaining fugitives. She decried Serbia's failure to take action to arrest and transfer the remaining suspects. Despite expressions of optimism earlier in the year, she reported in December no evidence from Serbia of a clear roadmap, any serious leads, or any serious efforts to arrest the four fugitives — in short, no full cooperation with ICTY.³ She has maintained that Mladic and Karadzic are “within reach” of authorities in Serbia.⁴ In the past few years, several news stories reported sightings of Karadzic and Mladic and unconfirmed surrender negotiations with local authorities. In Bosnia, NATO and European Union forces have conducted numerous operations targeting associates of the fugitives.

Policy Implications

The United States and the European Union, often in conjunction with ICTY's Office of the Prosecutor, have frequently wielded conditionality policies in order to foster improved Balkan cooperation with ICTY. On the incentive side, western officials have expressed 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, western officials also emphasize that the Balkan states must 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.

U.S. and EU policy on ICTY cooperation and Euro-Atlantic integration continues to come under scrutiny. In late 2006, NATO agreed to invite Serbia and Bosnia (in addition to Montenegro) to join Partnership for Peace without the capture of Mladic and Karadzic, long viewed as a prerequisite to joining this program. Similarly, the EU resumed stalled SAA negotiations with Serbia in June 2007, after Belgrade made further

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

³ Statement by ICTY Prosecutor Carla Del Ponte, December 10, 2007.

⁴ For example, see Assessment and report of the President of ICTY provided to the Security Council pursuant to paragraph 6 of resolution 1534 (2004), S/2007/663, November 12, 2007.

progress in bringing suspected war criminals to The Hague. Some observers believe that, in view of the imminent prospect of Kosovo declaring independence and breaking away from Serbia, western institutions need to reach out to Serbia to sustain its western integration prospects and association. Others, including ICTY officials, believe that the longstanding conditionality policy of the EU has proven to be the most effective tool to bring about arrests and transfers of war crimes suspects, and needs to be maintained in order to finally bring about the arrests of Ratko Mladic and Radovan Karadzic. In the 110th Congress, Members of Congress may once again consider ICTY conditionality policy in the context of appropriations for bilateral U.S. assistance to Serbia.

The inability to apprehend Mladic and Karadzic may also bear consequences for the tribunal's plans to complete its operations on schedule and close down in the next few years. Russia, for example, firmly opposes any further prolongation of ICTY's mandate, while ICTY officials insist that the tribunal cannot close before Mladic and Karadzic face trial at The Hague.

Bosnia and Herzegovina. Bosnia and Herzegovina has sought membership in NATO's Partnership for Peace (PfP) program and completion of a Stabilization and Association Agreement (SAA) with the European Union. For years, limited cooperation with ICTY, especially by the Republika Srpska (RS), contributed to a slowdown in both efforts. Until January 2005, for example, RS authorities had not turned over a single indicted suspect. The ICTY issue also provided former High Representative Ashdown justification for removing obstructionist officials, freezing assets, and even re-shaping governing institutions especially in the defense and security sectors. The EU opened SAA negotiations with Bosnia in November 2005 after Bosnia's leaders came to a preliminary agreement on police reforms; stalled reforms in the police and other sectors have presented obstacles to concluding the SAA, although incomplete ICTY cooperation may also present an unfulfilled requirement. As noted earlier, Bosnia gained entry into NATO's PfP program in late 2006. The ICTY prosecutor has recently reported improved cooperation by Bosnia, and Bosnia's current leadership supports in principle the arrest of any of the remaining fugitives. ICTY has also praised the work of Bosnia's war crimes chamber of the state court of Bosnia in its proceedings with war crimes trials that had been transferred from ICTY.

Croatia. Croatia had a largely positive record of cooperation with ICTY since 2001 except for one high-profile case involving indicted Gen. Ante Gotovina. In March 2005, EU members indefinitely postponed the opening of membership talks with Croatia and created a special task force to assess Croatia's ICTY cooperation. The Croatian government adopted an Action Plan to increase efforts to track down Gotovina. ICTY Prosecutor del Ponte reported "full" cooperation with Zagreb on October 3, paving the way for the EU to formally open accession negotiations with Croatia. Gotovina's subsequent capture largely resolved the matter of ICTY cooperation for Croatia, with the exception of some outstanding issues on access to government documents.

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 had remained limited in the ensuing years, according to most assessments. Beginning in late 2004, the Kostunica government substantially increased efforts to encourage the voluntary surrender of indicted persons, leading to the transfer of over 15 indicted accused. Nevertheless, the government remained ambivalent about

arrests. In particular, Serbia's security services were thought to be actively resisting efforts to assist in apprehending Mladic. After the formation of a new Serbian government (headed by President Tadic's Democratic Party) after January 2007 elections, Belgrade has emphasized the need to resolve the ICTY fugitive issue for good. By mid-year, the ICTY prosecutor reported notable progress in Serbia's level of cooperation, including political commitment, new governing structures to facilitate capture, and more responsiveness to tribunal requests for documentation. She and other officials have also noted that an early 2007 judgment by the International Court of Justice, in which Serbia was faulted for not preventing genocide during the 1995 Srebrenica massacre, has further underscored Belgrade's obligation to cooperate fully with ICTY in bringing those charged with genocide to justice.⁵ Nevertheless, by the end of the year, the issue of the remaining fugitives persisted, and ICTY officials emphasized that full cooperation would not be considered met until Mladic and Karadzic were in The Hague.

Serbia's cooperation with ICTY has been an intermittent sore spot in its foreign relations. In accordance with annual foreign aid legislation, the United States suspended portions of bilateral assistance to Serbia over war crimes issues in FY2004, FY2005, FY2006, and most recently in May 2007, affecting a small portion of FY2007 funds (which was released in July 2007). Serbia and Montenegro had long been denied entry into Partnership for Peace, despite having made some significant progress in defense reforms, until the 2006 NATO summit. The ICTY cooperation issue also affected Serbia and Montenegro's path toward EU accession.⁶ The EU opened SAA negotiations with Serbia in October 2005 but suspended the talks in May 2006, explicitly over the issue of ICTY cooperation. One year later, Brussels agreed to resume SAA talks with Serbia, given Belgrade's mid-year progress in furthering ICTY cooperation, and "initialed" an accord in November. Brussels will deliberate signing the SAA by the end of January 2008, with ICTY cooperation again likely to present an issue for debate among EU member states, especially in view of concurrent developments regarding Serbia's political situation and Kosovo's expected declaration of independence.

⁵ Ibid. See also Marlise Simons, "Mixed ruling on genocide still puts pressure on Serbia," *New York Times*, March 6, 2007.

⁶ Complications arising from the state of the Serbia and Montenegro union had also presented some obstacles to EU integration. With the separation of Montenegro from the union in May 2006, both countries have pursued independent paths toward EU integration. Montenegro signed its own SAA in October 2007.