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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 mid-June 2008, only three 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. Serbian authorities arrested longtime fugitive Stojan Zupljanin near Belgrade on June 11, 2008, the first capture of a major war crimes suspect in about a year. Full cooperation with ICTY has long been a key prerequisite to advancing the shared goal of closer association with and eventual membership in the European Union and NATO for the western Balkan countries. This policy of conditionality has affected Serbia the most, but also other western Balkan countries to varying degrees. Some critics charge that conditionality policy has outlived its usefulness, while others insist that the remaining indicted suspects — especially Mladic and Karadzic — should face trial before ICTY closes its doors in 2010 or 2011. The second session of the 110th Congress is likely to consider foreign aid legislation that includes recurring provisions linking U.S. assistance to Serbia with ICTY cooperation; many Members also maintain an interest in NATO and EU enlargement processes. This report may 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 tied their enlargement policies with respect to their western Balkan states with assessments of their cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY), established in 1993 to address serious violations of international humanitarian law that occurred during the violent conflicts in the former Yugoslavia. Cooperation on war crimes judicial proceedings has been seen as an obligation of the countries in the region and a prerequisite to closer association with the EU and NATO. On numerous occasions, ICTY conditionality policy has held up Euro-Atlantic integration processes for some western Balkan countries that would otherwise likely have gone forward. The policy has also

arguably 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 continues to prepare for its eventual closing. Longtime ICTY Chief Prosecutor Carla del Ponte stepped down in January 2008 and was succeeded by Belgian lawyer Serge Brammertz (who had previously 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 mid-2008, the tribunal had completed proceedings for 113 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 almost all initial trials by the end of 2009 and appeals by 2011. Improvements in efficiency and court proceedings have facilitated adherence to planned timetables, as has the Tribunal's ongoing efforts to refer some cases to domestic courts in the region. However, further delays may result if the remaining three suspects are not soon detained and transferred. Above all, 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 to date, 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. Most recently, in April 2008, the Tribunal acquitted and released former Kosovar Prime Minister Ramush Haradinaj of all charges of alleged crimes against humanity; the court's office of the prosecutor has said it would appeal the judgment. A second co-defendant in the Haradinaj case was also acquitted, while a third was sentenced to a six-year prison term.

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, although it appears to have relaxed this policy somewhat since late 2006, when NATO invited Serbia and Bosnia-Herzegovina to join the alliance's Partnership for Peace program. 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. 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 Serbia in foreign aid legislation.

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[1] For example, see statements by Judge Fausto Pocar, ICTY President, to the U.N. Security Council, June 4, 2008, and December 10, 2007, available at [http://www.un.org/icty/].

Summary of Recent Transfers

On June 11, 2008, Serbian authorities arrested Stojan Zupljanin, one of four remaining ICTY fugitives, in his home near Belgrade. Zupljanin put up no armed resistance, but initially claimed he was a victim of mistaken identity. Zupljanin was a security and police commander and aide to wartime Bosnian Serb leader Radovan Karadzic. His indictment from 1999 charges him with war crimes and crimes against humanity committed against Muslim and Croat communities in northwestern Bosnia. Bosnian Serb authorities said they had exchanged information with Belgrade that facilitated Zupljanin's arrest. Belgrade has begun extradition proceedings to transfer Zupljanin to The Hague.

In June 2007, Serbia facilitated the transfer of two 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 that year 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 have welcomed Belgrade's repeated expressed commitment to fulfill its obligations to cooperate with the tribunal, even while they have criticized Belgrade's tendency to rely on negotiated surrenders rather than arrests. ICTY officials warmly welcomed Serbia's arrest of Stojan Zupljanin in June 2008, which they said confirmed the Prosecutor's assertion that the remaining fugitives were "within reach" of Belgrade.

Remaining Suspects at Large

The last remaining indicted war crimes suspects at large are former Bosnian Serb leader Radovan Karadzic, Gen. Ratko Mladic, and Goran Hadzic, former political leader of breakaway Serbs 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 repeated assertions that both Mladic and Karadzic were within reach of authorities in Serbia. In the past few years, several news stories reported sightings of Karadzic and Mladic and unconfirmed surrender

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[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.

negotiations with local authorities. In Bosnia, NATO and European Union military forces have conducted numerous operations targeting associates of the fugitives. The arrest of Zupljanin in June 2008 has fueled increased speculation about possible further arrests of the remaining three top suspects.

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, even though Mladic and Karadzic remained at large. Similarly, the EU resumed stalled SAA negotiations with Serbia in June 2007, after Belgrade made further progress in bringing suspected war criminals to The Hague. Some observers believe that, in view of Kosovo's declaration of independence in February 2008, 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 continue to 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 couple of 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. In recent years, a major goal held by Bosnia and Herzegovina was to achieve membership in NATO's Partnership for Peace (PfP) program and to complete 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 presented obstacles to concluding the SAA, although

incomplete ICTY cooperation was also viewed as an unfulfilled requirement. Bosnia finally signed an SAA in mid-June 2008. As noted earlier, Bosnia gained entry into NATO's PfP program in late 2006 and in 2008 NATO invited Bosnia to enter into an "intensified dialogue" with the alliance. The ICTY prosecutor has cited improved cooperation from 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 emphasized the need to resolve the ICTY fugitive issue for good. By mid-year in 2007, 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 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, further underscored Belgrade's obligation to cooperate fully with ICTY in bringing those charged with genocide to justice.[4] As noted above, the June 2008 arrest of Zupljanin was received very positively in many foreign capitals. Nevertheless, the issue of the remaining three fugitives persists, and ICTY officials emphasize that full cooperation would not be considered met until Mladic and Karadzic are 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 again 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,

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

until the late 2006 NATO summit. At NATO's April 2008 summit in Bucharest, alliance members conveyed their desire to intensify relations with Serbia, which had cooled primarily over hard feelings by Belgrade over U.S. and other European recognition of Kosovo's independence in February 2008.

The ICTY cooperation issue has also had a big impact on Serbia and Montenegro's path toward EU accession.[5] 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. After a long debate, EU members agreed to sign the SAA with Serbia in late April 2008, a move seen as an effort to boost pro-European forces in Serbia in advance of early parliamentary elections in May. Before ratifying the SAA, however, EU members will again take into account an assessment of Serbia's cooperation with ICTY. Some analysts believe that Serbia's ambitious drive to achieve EU candidate status within a short period of time may drive further moves by Belgrade to close in on the remaining fugitives.

[5] 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.