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Conditions on U.S. Aid to Serbia

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Abstract. Since FY2001, 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 110th Congress may consider similar certification provisions in the FY2009 foreign aid legislation. Supporters of aid conditionality say such provisions may have spurred Serbia's cooperation with the Tribunal. Serbian cooperation with the ICTY may also be affected by the status of Serbia's Kosovo province. The Serbian government and parliament have threatened to sharply downgrade relations with any country that recognizes Kosovo's independence. If the United States and most European Union countries recognize Kosovo, as they are expected to do in early 2008, Serbia cooperation with the ICTY might cease, at least for a time.

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CRS Report for Congress

Conditions on U.S. Aid to Serbia

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Summary

Since FY2001, 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 110th Congress may consider similar certification provisions in the FY2009 foreign aid legislation. Supporters of aid conditionality say such provisions may have spurred Serbia's cooperation with the Tribunal. Serbian cooperation with the ICTY may also be affected by the status of Serbia's Kosovo province. The Serbian government and parliament have threatened to sharply downgrade relations with any country that recognizes Kosovo's independence. If the United States and most European Union countries recognize Kosovo, as they are expected to do in early 2008, Serbia cooperation with the ICTY might cease, at least for a time. This report will be updated as events warrant. For more information on Serbia, see CRS Report RS22601, *Serbia: Current Issues and U.S. Policy*, by Steven Woehrel.

Background

Since FY2001, Congress has conditioned part of U.S. aid to Serbia after a certain date of the 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 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 certification process

¹ Another provision in foreign operations appropriations bills in recent years has dealt with U.S. aid to Serbia (in the FY2008 Consolidated Appropriations Act, it is Division J, Section 658). 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,

typically affects only a modest portion of the amount allocated for any given year, due to the deadline being set in the spring of the fiscal year, 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.

Serbian Compliance FY2001-FY2007

For most of the period since the overthrow of the regime of Serbian strongman Slobodan Milosevic 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 shortly 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 former Bosnian Serb army chief Mladic and former Bosnian Serb leader 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. Indictes 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.

due to extensive use by the Administration of waiver authority in the legislation.

It should be noted that ICTY cooperation is only one of the three conditions for U.S. aid to Serbia. However, 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 P.L. 108-199, 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.

The FY2006 foreign operations appropriations bill (P.L. 109-102) conditioned U.S. aid to Serbia’s central government 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 did not apply to Montenegro, Kosovo, humanitarian aid, or assistance to promote democracy.

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

The provision was 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, perhaps crossing the border into Serbia at times.) In January 2006, the Serbian government admitted that Mladic had been drawing a Serbian Army pension as late as mid-November 2005. On May 31, 2006, the Administration, in compliance with the certification provision in the FY2006 foreign operations appropriations bill, suspended \$7 million in U.S. aid to Serbia, due to its failure to cooperate with the ICTY.

The House-passed version of the FY2007 foreign operations appropriations bill (H.R. 5522) contains a certification provision very similar to the FY2006 bill. Section 562 blocks aid to Serbia's central government unless the certification is made by May 31, 2007. However, it omits specific reference to Karadzic as a person Serbia should detain, while retaining the mention of Mladic. The Senate did not pass an FY2007 foreign aid bill before the end of the 109th Congress. Section 563 of the version of H.R. 5522 reported by the Senate Appropriations Committee conditions aid to Serbia's central government on ICTY cooperation by May 31, 2007, "including access for investigators, the provision of documents, timely information on the location, travel, and sources of financial support of indictees, including Radovan Karadic, and the surrender and transfer of indictees or assistance in their apprehension, including Ratko Mladic." Unlike the House version, the section retains a specific mention of Karadzic but appears to soften it by tacitly acknowledging that Mladic might be easier for Serbian authorities to apprehend than Karadzic.

The 109th Congress did not complete an FY2007 foreign aid bill before it adjourned. FY2007 foreign operations were funded through February 15, 2007 by a continuing resolution (P.L. 109-383) and then through the rest of the fiscal year by another continuing resolution (P.L. 110-5). However, the terms of the continuing resolution carried forward the FY2006 Serbia aid conditions through FY2007. On July 3, 2007, the Administration certified that Serbia had met the aid conditions in the legislation, and released \$6 million in aid that had previously been suspended. In justifying the move, the Administration pointed to the June 2007 arrest and transfer to the Tribunal of Zdravko Tolimir and Vlastimir Djordjevic, two Serb suspects wanted by the ICTY. At present, four ICTY suspects, all Serbs, are still at large, including the two most important ones, Karadzic and Mladic.

FY2008 Legislation

Division J of the Consolidated Appropriations Act of 2008 (P.L. 110-161) includes FY2008 foreign aid appropriations. Section 699D permits U.S. aid to Serbia after May 31, 2008 if Serbia meets certain conditions. The section also says that the Administration "should" vote for loans and assistance for Serbia in international financial institutions after this deadline if it meets the aid conditions.

The most important condition, as in past years, is "cooperating with the International Criminal Tribunal for the former Yugoslavia including access for investigators, the

provision of documents, timely information on the location, movement, and sources of financial support of indictees, and the surrender and transfer of indictees or assistance in their apprehension, including Ratko Mladic and Radovan Karadzic.” Two other conditions, also part of the aid conditions in previous years, are also included. They are “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 “taking steps to implement policies which reflect a respect for minority rights and the rule of law.” These latter two conditions have not been invoked to deny aid to Serbia in recent years. As in past years, the provision exempts humanitarian aid, assistance to promote democracy, and aid to Kosovo from the conditions laid down in this section.

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 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 country’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 it 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.³ 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).

³ Tanjug news agency dispatch, November 2, 2003, as carried by BBC Monitoring International.

In a move that surprised some observers in its suddenness, the Administration reversed long-standing policy in November 2006 and offered support for Serbia's membership in NATO's Partnership for Peace (PFP) program. The United States had previously conditioned Serbia's participation in PFP on Mladic's transfer to the Tribunal. Serbia joined PFP in December 2006. PFP is aimed at helping countries come closer to NATO standards and at promoting their cooperation with NATO. PFP membership is a prerequisite if a country wishes to join NATO in the future.

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 corruption 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.

Observers believe the U.S. decision to permit Serbia to join PFP without transferring Mladic to the ICTY was intended to help pro-Western parties in Serbian parliamentary elections to be held on January 21, 2007. However, the elections did not result in a marked improvement of the share of the vote won by democratic parties. Nevertheless, after months of wrangling, a new government of democratic parties was formed on May 15, 2007. The new government vowed to cooperate fully with the ICTY. While the government has taken positive steps in transferring Tolimir and Djordjevic, there still may be obstacles to full cooperation, including the transfer of the remaining four indictees. One is tension within the government. The Democratic Party of President Boris Tadic and the G17 Plus Party see ICTY cooperation as a more important priority than the nationalist Democratic Party of Serbia, led by Prime Minister Vojislav Kostunica.

More important, however, may be the impact of international efforts to determine the status of Serbia's Kosovo province. The United States and its key European allies are likely to recognize Kosovo's independence in early 2008. The Serbian government and parliament have threatened to sharply downgrade relations with any country that does so. Therefore, if the United States and its allies were to recognize Kosovo, Serbia cooperation with the ICTY might cease and Serbia's prospects for Euro-Atlantic integration would suffer a serious blow, at least for a time.