

# 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 five fiscal years (FY2001-FY2005), 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 109<sup>th</sup> Congress is considering similar certification provisions in the FY2006 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, as well as shifting responsibility for prosecuting war crimes from the ICTY to local courts. 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*.

### Background

In each of the past five fiscal years (FY2001-FY2005), 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.<sup>1</sup> The amounts of aid affected by these conditions may be relatively modest

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<sup>1</sup> Another provision in foreign operations appropriations bills in recent years has dealt with U.S. aid to Serbia (in the FY2004 bill, it is Section 570). It has conditioned U.S. aid to all countries, entities and municipalities in the region on cooperation with the ICTY. However, this provision (continued...)

in the context of the global U.S. aid program, but are significant for Serbia and 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 (P.L. 108-447) provides \$73.6 million for Serbia. 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.<sup>2</sup>

The certification process typically affects a relatively 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.

While these sums may not be especially large, the impact of the aid conditions can be magnified by a provision that if Serbia does not meet them, the United States should vote against financing from the international financial institutions, a key source of funding for Serbia. Moreover, while the European Union has not explicitly conditioned its aid to Serbia on war crimes cooperation, EU officials have made clear to Serbian leaders that a closer relationship with the EU, including a Stabilization and Association agreement that could lead to eventual membership, requires Serbian cooperation with the ICTY. The United States and its allies have also conditioned Serbia and Montenegro's participation in NATO's Partnership for Peace program on cooperation with the ICTY.

U.S. conditions on aid to Serbia may have had a significant impact on Serbian cooperation with the Tribunal. Since the coming to power of Serbian democrats 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. 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 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. After the FY2002 deadline passed without certification, in April 2002 the Yugoslav parliament passed a law on cooperation with the ICTY, although the law was criticized as flawed and unnecessary by the ICTY, the United States and other Western countries. Nevertheless, it provided the domestic political context in Serbia for six indictees to surrender to the Tribunal in late

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<sup>1</sup> (...continued)

has not been the main stumbling block to aid to Serbia, due to extensive use by the Administration of waiver authority in the legislation.

<sup>2</sup> USAID Budget Justification to the Congress, Fiscal Year 2004, Annex III Europe and Eurasia.

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.

Secretary of State Colin Powell visited Belgrade on April 2, 2003, to demonstrate U.S. support for Serbia in the wake of Djindjic's murder. Secretary Powell also discussed the need to transfer former Bosnian Serb army chief Ratko Mladic and two other indictees, Miroslav Radic and Veselin Sljivancanin, former Yugoslav Army officers wanted for crimes committed in Vukovar, Croatia. Djindjic's murder appeared to galvanize Serbian leaders in the fight against organized crime leaders and war criminals. 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, but said that Serbia and Montenegro still needed to demonstrate their full cooperation to the ICTY, including the transfer of Mladic and former Bosnian Serb leader Radovan Karadzic.

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.

## **FY2005 Legislation and Serbian Compliance**

The FY2005 foreign aid appropriations were incorporated into an omnibus spending bill (P.L. 108-447). It contained the same certification process as the FY2004 bill. The provision conditioned U.S. aid to Serbia after May 31, 2005, on "(1) cooperating with the International Criminal Tribunal for Yugoslavia (ICTY) 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; (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, including the release of political prisoners

from Serbian jails and prisons.” It says the Administration “should” vote for loans and aid for Serbia and Montenegro from international financial institutions after May 31, 2005, if the certification is made. The conference report deleted a Senate provision to deduct from U.S. aid to Serbia an amount equal to Serbian government aid to indicted war criminals.

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.”<sup>3</sup>

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. Administration officials cited Serbia’s transfer of a large number of ICTY indictees to the Tribunal as justification for the certification but noted with regret that Mladic and Karadzic were still at large. On June 9, Undersecretary of State Nicholas Burns said in Belgrade that the Administration believed that Serbia is working “very seriously” to find Mladic and that Belgrade would make a “sincere attempt” to capture him or have him voluntarily surrender. He said the United States was “confident” Mladic’s days of freedom “were numbered.” In July 2005, Burns said that the United States was willing to open a “new and expanded relationship” with Serbia once Mladic is transferred to the ICTY.

In a June 13, 2005, report to the Security Council, ICTY chief prosecutor Carla Del Ponte said that there had been a “major change” in Serbia’s cooperation in the Tribunal. She said access to witnesses and to military and other government documents “is continuously improving” but “remains very slow and cumbersome.” She noted that since December 2004, Serbia, sometimes with the assistance of Bosnian Serb leaders, transferred 14 indictees to the ICTY. However, Del Ponte stressed that of the ten remaining indictees at large, seven of them (including Karadzic and Mladic) are “within reach of Serbian authorities.” She said that Serbian pledges to deliver these men to the Tribunal appear to be hampered by Serbia’s unwillingness to detain them, relying instead solely on the prospect of voluntary surrenders.

## **FY2006 Legislation**

On June 28, 2005, the House passed H.R. 3057, the FY2006 foreign operations appropriations bill. Section 563 of the bill contains the same certification provisions as in FY2005, with the President required to make the certification by May 31, 2006. The Senate passed its version of H.R. 3057 on July 20. The Senate’s Serbian aid certification provision (Sec. 6063) differs from the House version in that it specifically names

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<sup>3</sup> Statement by Richard Boucher, Spokesman, January 13, 2005, from the State Department website [<http://www.state.gov>].

Karadzic as well as Mladic as indictees that Serbia must turn over to the Tribunal. However, the Senate provision provides for an exception if the Administration determines and reports to the Appropriations Committee that neither man is “residing” in Serbia. The committee report accompanying the bill expressed the Committee’s willingness to drop the certification provision if substantial progress is made in ICTY cooperation, including the transfer of Mladic and Karadzic. The Senate bill recommends \$75 million in aid for Serbia, \$15 million more than the Administration’s request. The House bill does not earmark or recommend a specific aid amount for Serbia.

## **U.S. Policy**

Although it has used the aid conditions to extract at least partial Serbia 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 favors 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 investigations by 2004, its trials by 2008 and all appeals by 2010. U.S. war crimes envoy Ambassador Pierre-Richard Prosper and other Administration officials have suggested that if Ratko Mladic were turned over to the Tribunal, it would create a new, more positive environment in cooperation with the ICTY that could result in the remaining Serbian indictees being tried in Serbian courts.<sup>4</sup> 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.

On November 3, 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.<sup>5</sup> 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

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<sup>4</sup> Discussions with Administration officials, November 2003.

<sup>5</sup> On March 5, 2003, the House passed H.R. 1047, which, among other provisions, would permit the President to restore Normal Trade Relations (NTR) status to Serbia and Montenegro, notwithstanding the provisions of P.L. 102-420 (106 Stat. 2149). The Senate has not approved similar legislation.

was more important to Serbia than the aid certification issue.<sup>6</sup> The Administration is also considering whether to grant duty-free treatment to some products from Serbia and Montenegro under the Generalized System of Preferences (GSP), but no decision has been taken on the issue.

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 many of the war criminals continue to be threats to reforms 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.

On December 28, 2003, Serbia held parliamentary elections. The main winner in the election was the strongly nationalist and anti-ICTY Serbian Radical Party, which won 82 of the 250 seats in the body. On March 3, 2004, the Serbian parliament approved a minority government of democratic parties, led by Prime Minister Vojislav Kostunica, leader of the Democratic Party of Serbia (DSS). The most controversial aspect of the new 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 any more indictees to the Tribunal. The anti-ICTY mood in the parliament was underlined by the parliament's passage on March 30, 2004 (i.e., one day before the certification deadline) of a law, supported by Kostunica, to provide Serbian government payments to ICTY indictees. However, the law's implementation was suspended by the Serbian Constitutional Court on the grounds of its unconstitutionality.

In contrast to past years, the FY2004 and FY2005 certification provisions and resulting suspension of some U.S. aid to Serbia were slow to improve Serbian cooperation with the ICTY. One possible reason is the political situation in Serbia noted above. The government is weak and therefore reluctant to take politically risky steps on ICTY cooperation, and Kostunica is disinclined to do so in any case. One bright spot is the victory of Democratic Party leader Boris Tadic in Serbian presidential elections in June 2004. President Tadic favors cooperation with the ICTY. Another possible factor hindering Serbian compliance with the certification provision is that Serbia's non-cooperation with the ICTY does not seem to have affected its access to international loans. Serbia's ability to secure critically needed international loans (as well as continued EU aid to Serbia) may reduce the political impact of the U.S. aid certification provision.

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<sup>6</sup> Tanjug news agency dispatch, November 2, 2003, as carried by BBC Monitoring International.