

An hourglass-shaped graphic with a globe inside. The top bulb is dark blue, and the bottom bulb is light blue. The globe is centered in the narrow neck of the hourglass. The top bulb has a dark blue cap. The bottom bulb has a light blue cap.

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*Yugoslavia War Crimes Tribunal: Current Issues for  
Congress*

Julie Kim, Foreign Affairs, Defense, and Trade Division

Updated May 23, 2002

**Abstract.** Congress has not had to consider ratification of U.S. participation in the Yugoslavia Tribunal, since it was not established by treaty, and in general has been supportive of the Yugoslavia Tribunal's activities. With many Members of Congress either vehemently opposed to or wary of the International Criminal Court, some observers have expressed concern that any debate in Congress about the ICC might have an adverse effect on future congressional support for the operations of the Yugoslavia Tribunal.

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# Report for Congress

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## Yugoslavia War Crimes Tribunal: Current Issues for Congress

Updated May 23, 2002

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# Yugoslavia War Crimes Tribunal: Current Issues for Congress

## Summary

The International Criminal Tribunal for the former Yugoslavia, established by U.N. Security Council resolutions in 1993, was the first international war crimes court to be founded since the post-World War II period. It is charged with prosecuting persons responsible for war crimes committed in the former Yugoslavia since 1991. To date, the Yugoslavia Tribunal has publicly indicted over 100 persons for crimes relating to the conflicts in Croatia, Bosnia, and Kosovo. Over 40 persons are currently in proceedings at The Hague. Dozens more are under public or secret indictment, and the Tribunal's Chief Prosecutor continues to investigate charges against additional suspects. The Yugoslavia Tribunal is separate from and unaffiliated with the International Criminal Court established by the Rome Treaty of 1998, and launched by over 60 countries in April 2002.

On June 28, 2001, former Yugoslav leader Slobodan Milosevic was transferred to The Hague. The trial for Milosevic, the only head of state to stand before an international court for war crimes, commenced in February 2002 and is expected to last a couple of years. Some of Yugoslavia's new democratic leaders had resisted his extradition but yielded to international pressure on the eve of an international conference on financial assistance to Yugoslavia. Pressure was again applied to Belgrade in April 2002, when the United States suspended bilateral financial assistance to Serbia because of its limited cooperation with the Tribunal beyond Milosevic's transfer. In response, Belgrade passed new legislation to allow the transfer of war crimes suspects to The Hague and has called on 23 named indicted suspects to surrender voluntarily or be subject to arrest.

The lingering presence of persons indicted and suspected of war crimes has been detrimental to the peace process in Bosnia, by most assessments. The two top remaining indicted suspects, former Bosnian Serb leaders Radovan Karadzic and Ratko Mladic, remain at large. NATO peacekeeping forces in Bosnia have seized over twenty alleged war criminals since 1997; however, NATO efforts to seize Karadzic in eastern Bosnia in early 2002 were unsuccessful.

After Milosevic's fall from power in late 2000, the Clinton Administration removed economic sanctions against Serbia and began to provide economic assistance authorized by Congress to Serbia. However, Congress mandated a deadline of March 31, 2001, for Belgrade to comply with commitments to cooperate with the Tribunal, or face a funding cut-off. In April, the Bush Administration certified that Belgrade was meeting these commitments, but continued to pressure Belgrade to demonstrate further progress, especially the transfer of Milosevic (which took place in June). Facing a similar deadline the following year, the Administration held off certification of Serbian compliance with the Tribunal until May 21, when it cited recent measures of progress by Belgrade and released remaining unobligated U.S. assistance to Serbia for FY2002. While it has consistently supported the Yugoslavia Tribunal over the years, the United States is opposed to the establishment of the International Criminal Court and formally renounced the ICC treaty in May 2002.

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# Yugoslavia War Crimes Tribunal: Current Issues for Congress

## Introduction

During the course of a brutal war in Bosnia-Herzegovina, the U.N. Security Council founded an international tribunal in 1993 at The Hague (the Netherlands) to bring to justice individuals responsible for war crimes and crimes against humanity within the territory of the former Yugoslavia since 1991. Stating that the tribunal would contribute to the restoration and maintenance of peace, the Security Council established the court without waiting for a peaceful settlement to the Bosnian conflict. The Yugoslavia Tribunal was the first war crimes court to be founded since the Nuremberg and Tokyo Tribunals after World War II.<sup>1</sup>

The war in Bosnia ended in late 1995 with the signing of the Dayton peace agreement and the deployment of a NATO-led peacekeeping force to Bosnia. A few years later, violent conflict broke out in the Serbian province of Kosovo, leading ultimately to a NATO-led air operation and the establishment of an international protectorate for Kosovo in 1999 and a second NATO-led peacekeeping force in the Balkans. Though some violence and tensions have continued elsewhere (such as in Macedonia in 2001), relative peace and greater stability have facilitated Tribunal activities and investigations into the earlier wars. The number of indicted persons put in custody at The Hague has gradually but steadily increased. To date, however, dozens indicted (publicly or secretly) as war criminals remain at large and Tribunal prosecutors continue to investigate war crimes suspects. In some cases, local authorities have resisted the transfer of such persons (some of whom have held high political or military positions) to The Hague. International forces have detained and transferred several charged with war crimes, but have been unwilling to hunt them down systematically.

Experience of the past several years has shown that pursuit of justice with regard to war crimes is not an abstract exercise but one with direct policy consequences. In Bosnia, persons indicted for war crimes, though barred by the international community from holding political office, often continue to bear significant political and economic influence, promote extremist views, or otherwise present obstacles to progress. In turn, lack of progress in achieving self-sustaining peace reduces the likelihood of withdrawing international peacekeeping forces. International officials

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<sup>1</sup> The U.N. Security Council later established the Rwanda Tribunal, which is separate from the Yugoslavia Tribunal, but which shares the Prosecutor. It has also agreed to establish a war crimes tribunal for Sierra Leone. None is directly affiliated with the International Criminal Court, established by the Rome Treaty in 1998, which will come into force on July 1, 2002.

charged with administering former war-torn territories say that the continued presence of those charged with war crimes “undermines the establishment of rule of law, inhibits inter-ethnic reconciliation, prevents victims from reaching psychological closure and holds back region’s political future.”<sup>2</sup> Richard Holbrooke, former U.S. Representative to the U.N. and lead negotiator at the Dayton peace talks, called the continued presence at large of the top indicted war criminals a “symbol of defiance against the international community.”<sup>3</sup>

Another policy consequence has become evident as Yugoslavia’s successor states have attempted to normalize relations with the international community and integrate into western institutions. Cooperation by states of the former Yugoslavia with the Tribunal has in some cases become a precondition to international acceptance and external financial assistance. Under the Milosevic regime, the Federal Republic of Yugoslavia’s refusal to cooperate at any level with The Hague kept the FRY from access to international loans and re-entry into international organizations. Under the controversial leadership of Franjo Tudjman until late 1999, Croatia maintained a difficult relationship with The Hague Tribunal, which limited the depth of its relations with the European Union and NATO.

The fate of Slobodan Milosevic, indicted for war crimes, has been a prominent policy issue since the dramatic end to his regime in late 2000. On the one hand, international leaders have sought to reward and assist the new democratic governments in Serbia and Yugoslavia, which preferred to see Milosevic tried at home for domestic crimes and opposed his extradition. On the other hand, many consider Milosevic to be the single most culpable war criminal and ultimately responsible for the highest level of war crimes throughout the former Yugoslavia. Full cooperation with the Tribunal by Belgrade, assumed to include the transfer of Milosevic, was a precondition to U.S. support for international economic assistance to the FRY. Observers differed in their views on how much and how quickly the new democratic regime in the FRY should fulfill its commitments with respect to the Tribunal, and what means of influence the international community should exercise to encourage or compel progress in this area. Milosevic’s swift transfer to The Hague on June 28, 2001, paved the way the following day for holding an international donors’ conference for Yugoslavia, which raised over \$1 billion in aid pledges. Milosevic’s trial, the first of its kind for a former head of state, opened on February 12, 2002, and is expected to last more than one year.

The United Nations established the Yugoslavia Tribunal as an *ad hoc* court under a specific and limited mandate. In contrast, the International Criminal Court, which was officially launched in April 2002, is a standing international judicial body with much broader jurisdiction separate from the Yugoslavia Tribunal.<sup>4</sup> Congress

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<sup>2</sup> Klein, Jacques Paul, Special Representative of the U.N. Secretary-General, December 12, 2000.

<sup>3</sup> “Holbrooke Speech on 5<sup>th</sup> Anniversary of Dayton Agreement,” U.S. Department of State, November 17, 2000.

<sup>4</sup> President Clinton signed the Rome Treaty on December 31, 2000, shortly before leaving office. For further information on the treaty, see The Rome Statue of the International (continued...)

has not had to consider ratification of U.S. participation in the Yugoslavia Tribunal, since it was not established by treaty, and in general has been supportive of the Yugoslavia Tribunal's activities. With the Bush Administration as well as many Members of Congress vehemently opposed to the ICC, some observers have expressed concern that this position might weaken continued U.S. support for the operations of the Yugoslavia Tribunal. The Bush Administration has pressed for the Yugoslavia Tribunal to conclude its mission within the next five to six years.

## Background and Overview of Tribunal Activities<sup>5</sup>

The international Tribunal for the former Yugoslavia (formally, the "International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991") was established by U.N. Security Council Resolution 827, passed by unanimous vote on May 25, 1993. The resolution invoked Chapter VII of the U.N. Charter relating to acts of aggression and threats to peace and security.

The Tribunal has the authority to prosecute persons responsible for serious violations of international humanitarian law committed in the former Yugoslavia since 1991. Individuals can be charged with one or more of the following offenses: grave breaches of the 1949 Geneva Conventions; violations of the laws or customs of war; genocide; and crimes against humanity.<sup>6</sup>

Member states' obligations to the Tribunal are expressed in several places. U.N.S.C. Resolution 827 calls upon all states to cooperate fully with the Tribunal and its organs. Article 29 of the Tribunal's statute requires that states cooperate with the Tribunal in the investigation and prosecution of war criminals. It says that states must comply with Tribunal requests for information on the location of persons, evidence, documentation, and the arrest, detention, and transfer of accused persons to the Tribunal. Article 9 of the statute states that the Tribunal shares jurisdiction with the national courts of the former Yugoslav countries, but that The Hague Tribunal had primacy over them and may request that a national court defer to its jurisdiction. The Tribunal has neither police forces of its own to arrest war criminals nor enforcement powers to remedy situations of non-compliance, but it can report violations to the Security Council. Over twenty states, including the United States,<sup>7</sup> have enacted implementing legislation, in accordance with Resolution 827. Such

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<sup>4</sup> (...continued)

Criminal Court: selected legal and constitutional issues, CRS Report RL30091, February 22, 1999. Neither the Clinton nor the Bush Administration has sought its ratification. The Bush Administration formally renounced the Rome Treaty in May 2002.

<sup>5</sup> For additional background on the creation of the Tribunal and discussion of its statute and rules, see *Bosnia War Crimes: the International Criminal Tribunal for the Former Yugoslavia and U.S. Policy*. CRS Report 96-404F, updated April 23, 1998.

<sup>6</sup> See Appendix 1.

<sup>7</sup> 18 U.S.C. 3181.

legislation usually relates to the detention and extradition of indicted persons, seizure of evidence, and enforcement of sentences.

The Tribunal comprises three main divisions -- the judicial Chambers (including three trial chambers and one appeals chamber), the Office of the Prosecutor, and the Registry. The Tribunal President, since November 16, 1999, is Claude Jorda, of France. Since September 15, 1999, the Chief Prosecutor is Carla del Ponte, of Switzerland, who is simultaneously Chief Prosecutor of the Rwanda Tribunal. The U.N. General Assembly elects fourteen judges who serve four-year terms. In November 2000, the Security Council approved the appointment of 27 additional temporary (*ad litem*) judges in order to improve the efficiency of the court. The U.N. General Assembly elected the 27 temporary judges for four-year terms on June 12, 2001. Two additional appeals judges were brought in from the Rwanda Tribunal, bringing to sixteen the total number of ICTY permanent judges. The Tribunal employs over 1,000 staff.

The Tribunal is financed through a separately assessed account outside of the regular U.N. budget. Its budget for the last three years was: \$94.1 million in 1999, \$95.9 million in 2000, and \$96.4 million in 2001.<sup>8</sup> The Tribunal also has a trust fund for collections of voluntary cash and service contributions from member states, which as of May 2001 held nearly \$32 million in contributions.

As of May 2002, over 100 persons have been indicted, over 60 have been brought into custody, and over two dozen have been found guilty. Over 40 persons are currently in custody at The Hague. A small number of the indicted has been acquitted and some have had their judgements overturned in appeal. Sentences for those found guilty have ranged from five to forty-six years of imprisonment.

Several landmark judgements were issued in 2001. On February 22, the Tribunal convicted and sentenced three Bosnian Serbs (Dragoljub Kunarac, Radomir Kovac, and Zoran Vukovic) charged with crimes against Bosnian Muslims in the municipality of Foca in 1992 and 1993. It was the Tribunal's first conviction of rape and sexual enslavement as crimes against humanity. On February 26, 2001, the Tribunal found two Bosnian Croats (Dario Kordic and Mario Cerkez) guilty of crimes relating to the ethnic cleansing campaign against Bosnian Muslims in the Lasva valley. Kordic was the first civilian leader to face trial. On August 2, the Tribunal found Radislav Krstic, a Bosnian Serb commander, guilty of carrying out genocide committed at Srebrenica in July 1995. The judgement was the first affirming the charge that genocide took place during the Bosnian conflict. On October 23, an appeals chamber of the Tribunal reversed a conviction for the first time, overturning a guilty judgement of three Bosnian Croat defendants.

The strategy of the office of the Prosecutor has evolved since the founding of the court. In view of the non-compliance by the former Yugoslav parties (especially in the Republika Srpska) in apprehending and turning over persons indicted for war crimes, the Prosecutor began in mid-1997 to seek sealed indictments. This change spawned a greater number of arrests of accused individuals (unaware of their indicted

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<sup>8</sup> ICTY home page, [<http://www.un.org/icty>]

status) by international forces. Voluntary surrenders also increased after this development, with some suspects preferring to go before The Hague rather than wait for arrest.

The focus of the Tribunal's investigations and indictments has also shifted, by design, from low-ranking perpetrators to individuals holding the highest military or political command authority and therefore the greatest responsibility for war crimes. Because of the very large number of suspected low-level war criminals ("subordinates who carried out the orders"<sup>9</sup>), the Tribunal has largely left prosecution of these individuals to national or local authorities.<sup>10</sup> The highest ranking person in custody is former Serbian and Yugoslav President Slobodan Milosevic, who was transferred in June 2001; his trial commenced in February 2002. Even as the Prosecutor's office continues to prepare indictments (for example, against ethnic Albanians for crimes committed against ethnic Serbs in Kosovo after June 1999), the Tribunal aims to complete all of its current investigations by 2004. Given its growing caseload, the Tribunal is also considering transferring some suspects in custody back to their national authorities for prosecution.

As part of its investigative function, the Tribunal's Prosecutor's office has conducted several exhumations, first in Bosnia, but also in Croatia, Kosovo, and Macedonia. Forensic teams in Kosovo exhumed remains of 2,730 bodies at 246 grave sites in 1999, and completed work in 2000. In July 2001, Tribunal officials said that a total of 4,392 bodies in Kosovo had been exhumed. In April 2001, ICTY forensics investigators began excavating grave sites in Knin, Croatia, a former stronghold of rebel Serb forces in Croatia. In April 2002, an ICTY forensic team began exhuming bodies from the Macedonian village of Ljuboten, where Macedonian security forces allegedly killed ethnic Albanian civilians.

The Tribunal's most recently published annual report, from September 2001, said that the two main difficulties facing the court were the number of accused still at large and the need to find resources to permit the accused to be tried within a reasonable amount of time.<sup>11</sup> The report said that Tribunal activities could conclude by 2007, if procedural reforms are implemented (see section on Tribunal procedures, below) and if no further conflict breaks out in the former Yugoslavia. The Bush Administration has strongly advocated working toward concluding the Tribunal's mission within this time frame.

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<sup>9</sup> ICTY Eighth Annual Report, September 17, 2001.

<sup>10</sup> "War crimes tribunal to issue more indictments," *Jane's Intelligence Review*, June 2000.

<sup>11</sup> Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, A/56/352, September 17, 2001.

## Current Policy Issues

Since the inception of the Yugoslavia Tribunal, the international community has maintained that all those indicted as war criminals should either surrender or be transferred by local police or international forces, and brought to The Hague. Cooperation with the Tribunal by local authorities has increased in recent months, leading to the transfer of more war crimes suspects to The Hague. Those in favor of bringing all remaining indicted suspects to The Hague say that their arrest and transfer would remove the influence of nationalist hardliners from the local political environment throughout the former Yugoslavia and thereby assist non-nationalist forces. It might promote peace implementation efforts and facilitate some reconciliation among the former warring communities. On the other hand, attempts by international forces to hunt down accused war criminals may lead to greater casualties. Loyalists to high-ranking persons charged with war crimes might try to undermine reformist governments or instigate renewed violence. An influx of several more indicted persons at The Hague might also overburden the operations of the Tribunal. Continued international support for the Tribunal is a precondition to future Tribunal activities. This section examines the current state of play concerning the Tribunal in several policy dimensions.

### Milosevic and Tribunal Relations with Yugoslavia

Even prior to the 1999 Kosovo war, Belgrade's lack of cooperation with the Tribunal was a major factor impeding normalized relations between Yugoslavia and the west. For years, the international community conditioned the lifting of an "outer wall" of sanctions - which prevented FRY membership in international organizations and withheld access to multilateral aid - on Belgrade's meeting international obligations to cooperate with the Tribunal. Under Milosevic, the FRY remained intransigent and obstructionist with regard to Tribunal activities. Milosevic frequently denounced the Tribunal as anti-Serb and a NATO tool. Tribunal officials repeatedly reported on the FRY's disregard for its international obligations and denounced Belgrade's efforts to bar Tribunal investigators from Yugoslav territory, including Kosovo.<sup>12</sup>

**Fall of Milosevic.** Elated and surprised by Milosevic's swift fall from power in October 2000, the international community quickly embraced the new Yugoslav government under President Vojislav Kostunica in the hopes of consolidating a democratic transformation of Serbia. Belgrade's prior contentious relationship with The Hague Tribunal was long held up as a key factor justifying Serbia's international isolation. The Kostunica government expressed interest in improving relations with the Tribunal, but resisted demands that it extradite Milosevic. Western governments appeared, at least at first, to be granting the new Yugoslav leadership some leeway in their demands for handing over indicted war criminals to The Hague. However, U.S. law and Bush Administration policy set a deadline for Belgrade to demonstrate cooperation with the Tribunal, using U.S. aid and U.S. support for international aid

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<sup>12</sup> In addition to the general obligations on cooperating with the Tribunal, several U.N. Security Council resolutions on Kosovo in 1998 called on the Tribunal to investigate war crimes in Kosovo and required Belgrade to fully cooperate with its efforts.

as leverage. Above all, the United States sought a commitment by Belgrade to hold Milosevic accountable for war crimes before the U.N. tribunal.

Shortly after Vojislav Kostunica came to power as FRY President in October 2000, replacing Milosevic, the international community eagerly embraced the FRY with promises of aid and integration in international organizations. Yugoslavia was swiftly and without condition reinstated into the United Nations, the Organization for Security and Cooperation in Europe (OSCE), the Stability Pact for Southeastern Europe, the International Monetary Fund (IMF), and the European Bank for Reconstruction and Development. Kostunica's Democratic Opposition of Serbia (DOS) party secured a decisive victory in the Serbian parliamentary elections on December 23, and Zoran Djindjic of the DOS became Serbian Prime Minister.

The new Yugoslav and Serbian governments expressed a keen interest in addressing the crimes of the Milosevic regime, but with a focus on crimes relating to corruption, misuse of public funds, electoral fraud, political assassinations, and other domestic misdeeds. They argued that Milosevic should be held accountable for these crimes before domestic legal institutions. The ruling DOS was split on whether Milosevic should eventually be transferred to The Hague, with Kostunica perhaps the most opposed to extradition and the most critical of the Tribunal, which he claimed had an anti-Serb bias. Former FRY Prime Minister Zoran Zizic of the Montenegrin Socialist People's Party (previously allied with Milosevic's party) also strongly opposed extradition. In contrast, the Serbian government under Prime Minister Djindjic was more amenable to the idea of Milosevic's extradition. Serbian officials promoting economic reforms warned that foreign assistance necessary for economic reforms would be jeopardized unless the FRY accepted full cooperation with the Tribunal.<sup>13</sup>

Yugoslav and Serbian officials pointed to two impediments to Milosevic's extradition. First, they said that the Yugoslav constitution did not permit the extradition of a Yugoslav citizen to a foreign court. Second, Yugoslav authorities argued that extraditing Milosevic before he faced criminal charges at home would only make a martyr of the former leader. They also said that the transfer of Milosevic would be destabilizing to the new Yugoslav and Serbian governments. Some observers speculated that the DOS sought to maintain good relations with Milosevic-era holdovers in the army and police, many of whom assisted the DOS in overthrowing Milosevic, but who are themselves likely suspects for war crimes.

The patience of the international community, meanwhile, began to wear thin in early 2001. In January, the Yugoslav authorities placed Milosevic under house arrest and established 24-hour police surveillance on his residence. On April 1, Milosevic surrendered to Serbian police after a tense two day stand-off between Milosevic's armed guards and the police. Milosevic pleaded not guilty to charges of financial crimes, misuse of power, and resisting arrest. Tribunal officials viewed Milosevic's arrest as a positive development. The Tribunal requested that the Yugoslav authorities serve Milosevic with his arrest warrant based on his indictment for war crimes. Tribunal prosecutors said they expected Milosevic to be brought to the

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<sup>13</sup> Beta news agency/BBC Monitoring, January 26, 2001.

Tribunal to face war crimes “within months” or by the end of the year. However, Serbian and FRY officials made no link between Milosevic’s arrest and his transfer to The Hague. Moreover, criminal investigations into his domestic financial charges became stalled over a lack of evidence.

**Transfer of Milosevic to The Hague.** Prior to Milosevic’s arrest, the Serbian and Yugoslav governments took limited steps to improve relations with the Tribunal. First, Blagoje Simic, a Bosnian Serb (living in Belgrade) wanted for war crimes, surrendered voluntarily to The Hague, the first suspect to do so from Serbia. On March 20, Serbian and FRY Justice Ministers Vladen Batic and Momcilo Grubac visited the Tribunal for the first time. They held discussions with the Chief Prosecutor on the status of the draft law on cooperation with the Tribunal and pledged to take measures to expel non-FRY citizens indicted for war crimes from Serbia. On March 23, Yugoslav authorities arrested Milomir Stakic, former Bosnian Serb mayor of Prijedor and wanted under secret indictment for war crimes, and transferred him to The Hague. FRY President Kostunica sharply criticized the arrest and called it “an exception.” In contrast, Tribunal Prosecutor del Ponte called it the first concrete example of cooperation by Belgrade.

After Milosevic’s April 1 arrest, Belgrade took additional steps relating to war crimes issues. In April, the Yugoslav military prosecutor announced that nearly 200 Yugoslav Army officers had been charged with war crimes committed in Kosovo. In May, the Serbian government publicized the exhumations of several mass grave sites in Serbia holding Kosovo Albanian victims that had been transferred from Kosovo. With extensive Serbian media coverage, the mass graves for the first time provided irrefutable evidence of war crimes to the Serbian people. Additional mass grave sites in Serbia have since been discovered, with as many as 1,000 bodies unearthed thus far.

The main focus of the government’s agenda with regard to war crimes issues was draft legislation on cooperation with the Tribunal, which the government argued was necessary to allow for the extradition of Milosevic or any other indicted suspect in Yugoslavia. FRY President Kostunica came out in favor of the draft law, although he made no commitments on Milosevic’s eventual extradition. Tribunal officials supported passage of the law, but emphasized that the actual transfer of suspects to The Hague was what was required. The draft law stalled in parliament, however, when the Montenegrin Socialist People’s Party, one of the federal government coalition members, opposed it. That party, headed by Predrag Bulatovic, a former Milosevic ally, pledged to block passage of the bill in the federal parliament.

International pressure continued to build on Belgrade as plans got under way to hold a critical donors’ conference for Yugoslavia by the end of June, where over \$1 billion in aid pledges was expected to be raised. The United States conditioned its participation in the conference on Belgrade’s further progress in cooperating with the Tribunal.

After dropping the draft bill on June 23, the FRY cabinet instead adopted a decree formalizing cooperation with the Tribunal, paving the way for the extradition of indicted war crimes suspects. The decree established the procedure of cooperating with the ICTY and provided for meeting “international obligations for the state

resulting from U.N. Security Council resolution 827 and the statute of the ICTY, founded by the United Nations.”<sup>14</sup> International leaders welcomed the decree, but U.S. officials still held out the possibility of not participating in the aid conference or conditioning the release of any aid funds on further evidence of Belgrade’s cooperation with the ICTY.

Milosevic’s actual extradition was not expected for several days or even weeks, given the time expected for Milosevic’s legal challenge to the decree. On June 28, the Yugoslav constitutional court suspended the decree in order to consider its constitutionality. In a surprise move, the Serbian government overrode the FRY court’s order, justifying the decision on the basis of a provision in the Serbian republic constitution, and handed Milosevic over to ICTY officials on June 28. Milosevic was flown first to Tuzla, Bosnia, and then on to The Hague.

Explaining the decision to transfer Milosevic on Serbian television, Serbian Prime Minister Djindjic said that not undertaking this measure would have had major negative consequences for the country. FRY President Kostunica, who was reportedly not informed in advance of the transfer, sharply criticized the abrupt decision, which he called lawless and hasty, with potentially dangerous consequences. An immediate fallout after Milosevic’s transfer was the downfall of the DOS-led federal government. DOS’ partner in the federal government, the Montenegrin Socialist People’s Party, withdrew from the coalition and FRY Prime Minister Zizic of the Socialist People’s Party (SNP) resigned from his post on June 29. However, a new federal government comprising the same coalition parties was approved in July. The handover of Milosevic heightened tensions between rivals Djindjic and Kostunica.

**Milosevic at The Hague.** Milosevic is the first former head of state to be tried for war crimes. At several pre-trial hearings held shortly after his transfer in June 2001, Milosevic challenged the legality of his detention and refused to enter a plea or accept a court-appointed defense team. He argued that the Tribunal itself was an illegitimate creation of the U.N. Security Council that had no authority to try him. The Tribunal rejected his objections and appointed three international lawyers to provide advice for the defense.

In October and November 2001, the Prosecutor prepared two additional indictments against Milosevic for alleged war crimes committed during the 1991-1992 conflict in Croatia and the 1992-1995 war in Bosnia. The Bosnia indictment included charges of genocide as well as all of the other crimes under the Tribunal’s jurisdiction. Milosevic is accused of having political control over the Serbian police and Yugoslav Army forces that took part in the ethnic cleansing campaigns.

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<sup>14</sup> Agence France-Presse, June 23, 2001.

In December, a three-judge panel ruled that Milosevic should be tried in two separate proceedings - one for charges relating to Croatia and Bosnia, and another for the Kosovo conflict. Upon appeal, the Tribunal decided to hold a single trial for all three indictments, as requested by the Prosecutor. Chief Prosecutor del Ponte argued that the three conflicts together were part of "one strategy, one scheme" of Milosevic's to create a Greater Serbia. Combined, Milosevic faces a total of 66 counts of war crimes, crimes against humanity, and genocide.

Milosevic's trial commenced in mid-February 2002. His trial is expected to last at least two years; the prosecution has one year to present its case. The prosecution has begun its case with testimony relating to the Kosovo indictment, and will later move on to the indictments for the conflicts in Croatia and Bosnia. Its challenge will be to establish a clear chain of command and decision-making authority from the conflict areas to Milosevic. Without recognizing the court's legitimacy, Milosevic has managed to put on an aggressive defense by attacking his accusers, NATO, and witnesses for the prosecution (including current Kosovo President Ibrahim Rugova). Observers have speculated that Milosevic's aim is to portray himself, as a representative of the Serbian people, a victim of western aggression and thereby gain sympathy before a domestic Serbian audience.

### Summary of ICTY Charges Against Milosevic

**Kosovo:** The indictment charges Milosevic and four aides with five counts of war crimes and crimes against humanity in the campaign against ethnic Albanians in Kosovo during January - June 1999.

**Croatia:** The indictment charges Milosevic, working with others, with individual criminal responsibility for 32 counts of war crimes, crimes against humanity, and grave breaches of the Geneva Conventions during the forcible removal of Croat and other non-Serb populations from Croatia between August 1991 and June 1992.

**Bosnia:** The indictment contains 29 counts, including two for the charge of genocide, and others for crimes against humanity, grave breaches of the Geneva Conventions, and violations of the laws or customs of war. It charges Milosevic, working with others, with the joint criminal enterprise entailing the forcible removal of non-Serbs from Bosnia and Herzegovina from August 1991 until December 1995.

Source: Reuters, 12/11/01; ICTY homepage.

**Status of Other Transfers and Other Measures.** In March 2002, the Serbian government adopted the Tribunal's statute. On April 11, the Yugoslav government and parliament approved a bill on cooperation with the Tribunal which would allow for the extradition of war crimes suspects to The Hague. Hours after parliament passed the bill, former Serbian Interior Minister and indictee Vlastimir Djokovic fatally shot himself outside of the parliament building as a form of protest. The Yugoslav government then published a list of 23 suspects indicted by the ICTY and demanded that they surrender. The list included ten Yugoslav citizens and thirteen Bosnian Serbs from Croatia or Bosnia. Within days, six of the suspects declared themselves prepared to go to The Hague. By the end of May, five were in custody at The Hague: Momcilo Gruban (former Bosnian Serb prison camp warden); Milan Martić (former Croatian Serb rebel leader); Mile Mrksić (former JNA general); Dragoljub Ojdanić (former JNA general); and, Nikola Sainović (former Serbian

Deputy Prime Minister). The sixth, Vladimir Kovacevic, a former JNA officer, was scheduled to arrive shortly.

For the remaining seventeen indicted suspects, the Yugoslav Justice Ministry issued indictments for their arrests, though authorities have yet to arrest any. The list includes top Bosnian Serb suspects Radovan Karadzic and Ratko Mladic, neither of whom is not expected to surrender, and the current Serbian President, Milan Milutinovic, whom Belgrade authorities claim enjoys immunity while he holds office (his term expires at the end of the year).

The fourteen others still at large include:<sup>15</sup>

Ranko Cesic - indicted for killings near Brcko, Bosnia	Mitar Rasevic - indicted for killings in Foca prison, Bosnia
Gojko Jankovic - indicted for rape and torture in Foca, Bosnia	Seselin Sljivancanin - indicted for killings at Vukovar, Croatia
Sredoje Lukic - indicted for killings at Visegrad, Bosnia	Radovan Stankovic - indicted for rape and torture in Foca, Bosnia
Milan Lukic - indicted for killings at Visegrad, Bosnia	Savo Todovic - indicted for killings in Foca prison, Bosnia
Zeljko Meakic - indicted for war crimes at Omarska camp, Bosnia	Milan Zec - indicted for murder and attacks on Dubrovnik, Croatia
Vinko Pandurevic - indicted for genocide in Srebrenica massacre, Bosnia	Dragan Zelenovic - indicted for rape and torture in Foca, Bosnia
Miroslav Radic - indicted for killings at Vukovar, Croatia	Stojan Zupljanin - indicted for genocide in western Bosnia

Tribunal officials have urged prompt action by Belgrade on the remaining transfers and greater cooperation on providing ICTY investigators access to government archives. They and human rights organizations contend that Yugoslavia's cooperation in these areas has not been adequate.<sup>16</sup> The Yugoslav government has recently established a National Council on Cooperation with the ICTY, which is headed by FRY Foreign Minister Goran Svilanovic, and has pledged greater cooperation with The Hague on all war crimes issues.

## Dayton Implementation

Many individuals indicted for war crimes committed in Bosnia, including some of the highest-ranking former Bosnian Serb leadership, have yet to be held accountable for crimes allegedly committed during the Bosnian war. International officials responsible for overseeing peace efforts in Bosnia warn that the continued presence of war criminals has hindered reconciliation and integration of formerly

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<sup>15</sup> Reuters, April 23, 2002.

<sup>16</sup> See Human Rights Watch, press release, May 21, 2002.

warring communities, and has bolstered hardliners.<sup>17</sup> Some observers also argue that the surrender or capture of the most prominent Bosnian war crimes suspects would facilitate a swifter termination of the NATO peacekeeping operation in Bosnia.

In November 1995, leaders from Bosnia, Croatia, and the Federal Republic of Yugoslavia agreed to a detailed peace agreement negotiated in large part by U.S. envoy Richard Holbrooke. Signatories to the Dayton accords committed themselves to cooperate with The Hague Tribunal. Article IX of the General Framework Agreement states that: "The Parties shall cooperate fully with all entities involved with implementation of this peace settlement...pursuant to the obligations of all Parties to co-operate in the investigation and prosecution of war crimes and other violation of international humanitarian law." Several other provisions in the Dayton accords repeat the obligation of the parties to cooperate fully with the Yugoslav Tribunal and allow unrestricted access to Tribunal officials. Annex 4, the constitution for Bosnia, bars persons indicted by the Tribunal from holding political office in Bosnia.

Primary responsibility for implementation of all aspects of the Dayton accords, including bringing war criminals to justice, lies with local authorities. Some local authorities in many parts of Bosnia, however, have been the most resistant to peace and reform and unlikely to cooperate with the Tribunal. Moreover, Croatian President Franjo Tudjman and FRY President Slobodan Milosevic, both signatories to Dayton, did little to promote cooperation with the Tribunal in its allegations of war crimes committed by Bosnian Croats or Serbs, respectively. Many observers believed that both Milosevic and Tudjman should have been indicted for their respective roles in supporting proxy Bosnian Croat and Bosnian Serb forces during the Bosnian war. Milosevic was indeed later indicted for crimes committed in Kosovo, Bosnia, and Croatia; Tudjman died in late 1999 before facing indictment.

Since Dayton, the record of cooperation with the Tribunal by the former Yugoslav parties has been mixed. For the period of 1999-2000, the Tribunal noted significantly improved relations with Croatia since the death of Tudjman and the emergence of a pro-Western integration government in Zagreb. The Tribunal also reported more modest improvements in its relations with Republika Srpska, although authorities there had yet to arrest a single war criminal. Several locally elected leaders in the Republika Srpska are alleged to be under investigation for war crimes.<sup>18</sup> Tribunal officials have called the Republika Srpska the "last safe haven" for indicted suspects in the former Yugoslavia.

In January 2001, former Bosnian Serb President Biljana Plavsic voluntarily surrendered herself to The Hague after learning of the existence of an indictment against her and warrant for her arrest. Her indictment had been issued under seal in April 2000, shortly after the arrest by SFOR of former Bosnian Serb Assembly

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<sup>17</sup> For further information on developments in Bosnia, see CRS Report RL30906, Bosnia-Herzegovina and U.S. Policy, March 28, 2001.

<sup>18</sup> The International Crisis Group named individuals in 18 RS municipalities allegedly connected to war crimes in "War Criminals in Bosnia's Republika Srpska," ICG Balkans Report No. 103, November 2, 2000.

President Momcilo Krajisnik. Reportedly, NATO military officials warned her that she would be apprehended by SFOR if she did not go to The Hague voluntarily.<sup>19</sup> At her initial hearing, Plavsic pleaded not guilty to the charges against her. She is to be tried jointly with Krajisnik. In August 2001, the Tribunal approved her temporary release prior to her upcoming trial.

In August 2001, Bosnian Federation authorities arrested three former Bosnian Army commanders charged by the Tribunal with having committed war crimes in central Bosnia against Bosnian Serbs and Croats in 1993 and 1994. Wanted under a sealed indictment that had reached the Bosnian government one week earlier, the three (Gen. Enver Hadzihasanovic, Gen. Mehmed Alagic, and Col. Amir Kubura, all formerly part of the Bosnian Army's 3<sup>rd</sup> Corps), were the first former Bosnian Army commanders to appear before the court. The arrest fueled speculation that former Bosnian President Alija Izetbegovic, considered to have been closely involved in the 3<sup>rd</sup> Corps' operations during the war, may also be indicted.<sup>20</sup> The timing of the arrests, falling on the same day as the sentencing of Bosnian Serb Gen. Krstic for genocide, was interpreted by some as an attempt to demonstrate the Tribunal's even-handedness vis-à-vis the former warring sides.<sup>21</sup>

Over six years after Dayton, the Bosnian war's most prominent of those charged with war crimes - former Bosnian Serb leader Radovan Karadzic and General Ratko Mladic - remain at large. Karadzic is thought to be residing in the Republika Srpska, occasionally visiting Montenegro, while Mladic is reportedly in Serbia. The continued presence of Karadzic and Mladic represents the "greatest single failure" of Dayton, according to former U.S. Ambassador to the United Nations Richard Holbrooke, who negotiated the Dayton accords. In July 2001, some news media reported that SFOR had attempted (but failed) to seize Karadzic in the Foca region of eastern Bosnia.<sup>22</sup> Additional unsuccessful attempts were reported in February and March 2002.

In the November 2000 general elections, Karadzic's party, the nationalist Serbian Democratic Party (SDS) emerged as the strongest party in the Republika Srpska, winning 31 of 83 seats in the entity assembly. Tribunal Prosecutor del Ponte attributed the hardliners' strong showing in the November 2000 Bosnian elections to "the lack of resolve shown by the international community with respect to apprehensions" of indicted war crime suspects.<sup>23</sup> After the elections, the international community exerted pressure on the Bosnian parties to prevent the extreme nationalist parties (who together won less than 50% of the vote for the first time since Dayton) from forming governments. International officials threatened to withhold any further reconstruction aid from entities whose governments included parties supporting war

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<sup>19</sup> "Former U.S. ally to face U.N. court," *Washington Post*, January 10, 2001.

<sup>20</sup> The Republika Srpska government has charged Izetbegovic with war crimes and has sent information to the Tribunal Prosecutor's office for its investigation into Izetbegovic.

<sup>21</sup> "In Bosnia, a wider war-crimes net," *The Christian Science Monitor*, August 24, 2001.

<sup>22</sup> *The Observer* (London), July 15, 2001.

<sup>23</sup> Address to the Security Council by Carla Del Ponte, November 24, 2000.

criminals, such as the SDS.<sup>24</sup> At the behest of the west, RS Prime Minister Mladen Ivanic of the moderate Party of Democratic Progress removed an SDS member from his proposed government. In the Federation, a new Alliance for Change moderate coalition emerged with a slight majority over the formerly dominant Croat and Muslim nationalist parties.

Following Milosevic's transfer to The Hague in late June 2001, RS President Mirko Sarovic expressed a new willingness to improve relations with the Tribunal and announced that he would submit to parliament a bill on cooperation with the international Tribunal. On October 2, the Republika Srpska parliament passed a law on cooperation with the Tribunal by a one-vote majority. While the RS authorities have yet to detain any indicted war crimes suspects, one Bosnian Serb suspect, Dusan Knezevic, surrendered on May 18, 2002. Knezevic faces 46 counts of war crimes in two indictments relating to alleged atrocities committed at two Bosnian prison camps, Omarska and Keraterm, in 1992.

In May 2002, the international High Representative in Bosnia established a state court that is to include a war crimes division that would have the capability of prosecuting war crimes offenses. The judges are likely to be a mix of international and local judges.

## **Role of International Forces and Tribunal Relations with NATO**

The Tribunal has no military or police forces of its own to detain or arrest those indicted for war crimes. The primary responsibility for arresting war criminals lies with the local authorities. Neither SFOR nor KFOR has a mandate with the specific authority to hunt down war criminals, a task which military commanders generally see to be more suitable for police. However, SFOR and KFOR units are permitted to detain indicted persons when they come into contact with them in the course of their normal duties.<sup>25</sup> The NATO forces in Bosnia and Kosovo also provide security and intelligence assets for Tribunal investigators.

During the one-year term of mission of IFOR (December 1995 to December 1996), NATO forces refrained from arresting any indicted war crimes suspects. NATO action against war criminals increased once the Tribunal began issuing sealed indictments, which left suspected war criminals unaware of their indicted status. In July 1997, SFOR undertook its first operation to detain two suspected Bosnian Serb criminals, both under sealed indictment. One of the two was killed in the operation. Since then, SFOR units have detained and transferred to The Hague more than twenty additional suspects, not including two more who were killed in the course of action. Nineteen of those currently being detained at The Hague have been arrested by SFOR. The most prominent war crimes suspect apprehended by SFOR thus far is

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<sup>24</sup> Reuters news wire, December 18, 2000.

<sup>25</sup> In early 1996, NATO and the Tribunal agreed that NATO forces would assist Tribunal investigators, detain any accused persons they came across, and transfer them to the Hague.

Momcilo Krajisnik, former President of the Bosnian Serb assembly, who was taken by surprise in a pre-dawn raid on his home in April 2000.

The rise in operations beginning in 1998 to detain and transfer indicted persons suggested to some observers that SFOR was taking a more aggressive interpretation of its mandate with regard to war criminals. However, arrests by SFOR have declined since mid-2000, and SFOR has no authority in Serbia, where several suspects reside. In February and March 2002, French and German SFOR forces launched two unsuccessful operations to arrest one of the most wanted indicted persons, Radovan Karadzic, who was reportedly located in eastern Bosnia. A U.S. official reportedly blamed a French officer for revealing the operation to the Bosnian Serbs; NATO has not confirmed the charge, but has begun an inquiry into the incident.<sup>26</sup>

According to Tribunal officials, the arrest policy is tightly controlled by national governments, which insist on signing off on each mission to apprehend a war criminal.<sup>27</sup> British SAS forces have organized and led most of SFOR's operations against war criminals and are viewed to be the most aggressive on this front and experienced in such operations. The U.S. and French governments, in contrast, are

**SFOR's Arrests of Persons Indicted for War Crimes  
(as of 04/25/2002)**

<b>Name of Indictee</b>	<b>Description</b>	<b>Date of Detention</b>	<b>Status</b>
Simo Drjlaca*	Bosnian Serb public security chief in Prijedor	07/10/97	killed during arrest attempt
Milan Kovacevic*	Bosnian Serb leader in Prijedor	07/10/97	died in custody, 01/08/98
Vlatko Kupreskic	Bosnian Croat Defense Council member involved in attacks on Ahmici-Santici	12/18/97	sentenced to 6 years; on appeal, found not guilty
Anto Furundzija*	Bosnian Croat special commander of military police	12/18/97	sentenced to 10 yrs; serving sentence in Finland
Goran Jelusic	Bosnian Serb camp guard at Luka	01/22/98	sentenced to 40 yrs; awaiting transfer
Miroslav Kvocka	Bosnian Serb commander of the Omarska camp	04/08/98	sentenced to 7 yrs

<sup>26</sup> AFP newswire, March 4, 2002; *The New York Times*, March 5, 2002.

<sup>27</sup> *Jane's Intelligence Review*, June 2000.

<b>Name of Indictee</b>	<b>Description</b>	<b>Date of Detention</b>	<b>Status</b>
Mladen Radic	Bosnian Serb shift commander at Omarska camp	04/08/98	sentenced to 20 yrs; filed appeal notice
Milojica Kos	Bosnian Serb Omarska camp shift commander	05/28/98	sentenced to 6 yrs; filed appeal notice
Milorad Krnojelac*	Bosnian Serb commander of Dom camp	06/15/98	sentenced to 7.5 yrs
Stevan Todorovic	Bosnian Serb police chief in Bosanski Samac	09/27/98	sentenced to 10 yrs; serving sentence in Spain
Radislav Krstic*	Bosnian Serb Army Drina Corps commander during fall of Srebrenica	12/02/98	sentenced to 46 yrs; filed appeal notice
Dragan Gagovic	Bosnian Serb police chief in Foca	01/09/99	killed during arrest attempt
Dragan Kolundzija	Bosnian Serb shift commander at Keraterm camp	06/07/99	sentenced to 3 yrs; released in 12/2001
Radoslav Brdjanin*	RS Deputy Prime Minister	07/06/99	trial ongoing
Radomir Kovac	Bosnian Serb military police commander in Foca	08/02/99	sentenced to 20 yrs; appeal pending
Damir Dosen	Bosnian Serb shift commander at Keraterm camp	10/25/99	sentenced to 5 yrs
Stanislav Galic*	Bosnian Serb Army commander in Sarajevo	12/20/99	trial ongoing
Zoran Vukovic	Bosnian Serb military police commander in Foca	12/23/99	sentenced to 12 yrs; appeal pending
Mitar Vasiljevic*	Bosnian Serb paramilitary member in Visegrad	01/25/00	awaiting judgement
Dragoljub Prcac	Bosnian Serb Deputy Commander of Omarska camp	03/05/00	awaiting judgement
Momcilo Krajisnik*	Bosnian Serb Assembly President	04/03/00	pre-trial stage

Name of Indictee	Description	Date of Detention	Status
Dragan Nikolic	Bosnian Serb commander at Susica camp	04/21/00	pre-trial stage
Dusko Sikirica	Bosnian Serb camp commander at Keraterm	06/25/00	sentenced to 15 yrs
Janjo Janjic	Bosnian Serb commander in Foca	10/13/00	killed resisting arrest
Dragan Obrenovic	Bosnian Serb commander in Srebrenica	04/15/01	pre-trial stage
Vidoje Blagojevic	Bosnian Serb commander in Srebrenica	08/10/01	pre-trial stage
Momir Nikolic*	Bosnian Serb commander in Srebrenica	04/01/02	pre-trial stage
Currently, 19 of this list are in custody at The Hague.			

\* under previously sealed indictment

considered to be less willing, for different reasons, to risk their forces in the pursuit of war criminals in their sectors of SFOR.<sup>28</sup> Observers have attributed this limited political will to Washington's "zero casualties" policy for its armed forces deployed in peacekeeping operations, and to France's longstanding sympathies toward Serbia.<sup>29</sup> U.S. and French reluctance to go after Karadzic and others in Bosnia, however, may have faded, as recent attempts to seize him have demonstrated.

Tribunal officials frequently point to SFOR's critical role in apprehending indicted persons. The Tribunal's annual report of 2000 stated that success in detaining indicted war crime suspects that year was the direct result of increasing cooperation of troop-contributing states in collaborating in the arrest of the accused and in the collection of evidence.<sup>30</sup> Since then, however, the Prosecutor has pressed western governments for greater support and resources for additional captures, and has repeatedly expressed concern to the Security Council about the declining rate of arrests of war criminals in Bosnia, with very few occurring since mid-2000. The Prosecutor has long appealed for the creation of a special task force to pursue indicted war crimes suspects, but NATO has not supported this proposal.

<sup>28</sup> "Is Dayton Failing?: Bosnia Four Years After the Peace Agreement," International Crisis Group Balkans Report No. 80, October 28, 1999.

<sup>29</sup> *The Sunday Telegraph* (London), March 26, 2000.

<sup>30</sup> Tribunal Report, A/55/150, August 7, 2000, p. 10.

The Tribunal's relations with NATO countries became strained over The Hague's decision to review NATO's actions during the Kosovo war in 1999. Citing allegations and information supplied by the Yugoslav and Russian governments as well as non-governmental organizations that NATO violated international humanitarian law during Operation *Allied Force*, the Prosecutor initiated the investigation process into these charges. Tribunal officials claimed that the court had jurisdiction over all war crimes committed in the former Yugoslavia and referred to the Prosecutor's duty, under the Tribunal's statute (Article 18.1), to initiate investigations, assess information received, and decide whether or not to proceed with an indictment. In response, the United States declared that "any inquiry into the conduct of (NATO's) pilots...(was) completely unjustified."<sup>31</sup> In June 2000, the Prosecutor concluded that NATO had not deliberately targeted civilians or unlawful military targets and that therefore there was "no basis for opening an investigation into these allegations or others related to the NATO bombing."<sup>32</sup>

In January 2001, Tribunal Prosecutor del Ponte stated that the use of depleted uranium munitions by NATO during *Allied Force* could also fall within the Tribunal's jurisdiction, if international investigations and surveys could confirm that depleted uranium shells directly caused disease among NATO's soldiers or the local populations in the former Yugoslavia. Thus far, scientific and medical studies have not proven any link between exposure to depleted uranium and the onset of disease.

## Tribunal Procedures and Reforms

After a slow start, the workload of the Yugoslavia Tribunal has steadily increased in recent years. An increasing number of indicted suspects have surrendered or been turned over to The Hague. In addition, the Tribunal Prosecutor is continuing investigations into many more individuals, including in Kosovo and Macedonia. Once in custody, individuals may face, on average, 10 months of pre-trial preparations and over 12 months of the actual trial. A June 1998 report by the General Accounting Office (GAO) concluded that the Tribunal lacked the resource capacity needed to carry out its existing workload (which has since increased).<sup>33</sup> GAO predicted that additional indictments would overwhelm the Tribunal. A 2001 report by the non-governmental Institute for War and Peace Reporting noted that several trials may have to be repeated, given the Tribunal's practice of opening trials as individual indicted persons are transferred to The Hague, rather than waiting for all of the defendants cited in a particular indictment to come into custody. The report predicted that new trials for some of the same cases may therefore have to be launched as more suspects are brought to The Hague.<sup>34</sup>

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<sup>31</sup> "U.S. denounced U.N. probe of NATO bombing," *The Washington Times*, December 30, 1999.

<sup>32</sup> The Prosecutor's full report is available at [www.un.org/icty](http://www.un.org/icty)

<sup>33</sup> Former Yugoslavia: War Crimes Tribunal Workload Exceeds Capacity. United States General Accounting Office. GAO/NSIAD-98-134. June 1998.

<sup>34</sup> Institute for War and Peace Reporting, *Tribunal Watch*, June 4-9, 2001.

In the last few years, the Tribunal has planned for and implemented some measures to improve the efficiency of its proceedings. In May 2000, Tribunal President Jorda presented to the Security Council a plan to improve the operations of the Tribunal.<sup>35</sup> Jorda projected that, without the reforms, the Tribunal might complete its mission by the end of 2016 at the earliest. With the reforms, the projected caseload could be completed by 2007. The reforms called for speeding up the pre-trial preparation of cases, increasing trial capacity through the creation of a pool of additional temporary (*ad litem*) judges, and amending rules of procedure to expedite trial proceedings. Other reform options, such as holding trials in alternative locations, creating a second tribunal, or transferring the ICTY's caseload to the International Criminal Court, were not endorsed. The Security Council approved the changes to the Tribunal's statute in Resolution 1329 on December 5, 2000. In January 2001, the Tribunal established a coordinating council and a management committee to facilitate the work between the Tribunal's three offices. In June, the General Assembly elected 27 persons to serve in the pool of *ad litem* judges.

As a result of these reforms, Tribunal officials have reported that procedures have become streamlined, the pre-trial phase has been expedited, and the trial capacity has been enlarged. Tribunal officials aim to complete all investigations by 2004 and finish all trials by 2008 (assuming all remaining accused are arrested in a timely fashion). The Tribunal has also begun to consider ways to "relocate" cases involving less prominent suspects to the national courts of the former Yugoslav states, to allow the ICTY to focus on the highest-profile cases.

Some observers consider premature any projections on closing out proceedings of the Yugoslavia Tribunal. Political changes in Croatia and Serbia have increased the Tribunal's access to additional evidence that has already led to more investigations and more indictments. No indictments have yet been issued for crimes committed against ethnic Serbs in Kosovo, or for the ethnic violence in Macedonia. On February 21, 2001, U.N. Secretary-General Annan recommended that no termination date for the Tribunal be determined, in view of the fact that peace had not been restored in the former Yugoslavia. Nevertheless, Tribunal officials recognize the need to look to conclude the Tribunal's mission within a reasonable time frame. They therefore urge that remaining indicted persons at large be brought before the Tribunal as soon as possible. Sustaining international support and resources for the Tribunal will likely be a key challenge if investigations lead to indictments against substantially more individuals.

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<sup>35</sup> Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, A/55/382-S/2000/865, September 14, 2000.

## Other Countries' Views

In 1993, all members of the U.N. Security Council, including the Permanent Five (Britain, China, France, Russia, and the United States), voted in favor of the resolution founding the Yugoslavia Tribunal. Tribunal judges and over 1,000 staff represent 77 countries from around the world. In contrast to the United States, many of the European NATO allies support the establishment of an International Criminal Court and have ratified the Rome Treaty.

The United States has been the country most insistent on linking aid and normalized relations with Serbia to compliance on commitments to the Tribunal. European countries, in contrast, appeared more eager to dismantle sanctions (which their leaders argued were ineffective and damaging to neighboring states), and resume trade and economic relations with the FRY. After Dayton, the European allies normalized relations with the Milosevic regime, while the United States continued to withhold diplomatic recognition from the FRY as well as access to international financial assistance. Since the fall of Milosevic from power in late 2000, the European Union has refrained from explicitly linking EU aid to Milosevic's extradition or establishing any cut-off date for economic aid. Visiting Belgrade in February 2001, EU ministers said that they expected Belgrade to cooperate fully with The Hague and that Milosevic should be extradited to The Hague, but gave no specific time frame or deadline for such cooperation to occur. The EU made plans to go ahead with the June 2001 donors' conference for Yugoslavia, with or without the participation of the United States, which had conditioned its presence on Belgrade's further progress in cooperating with the Tribunal. The EU provided about half of the total amount of pledges at the donors' conference.

The Russian government has become increasingly critical of the Tribunal, especially after the court began to focus on the conflict in Kosovo. Historically, Russia has had good relations and close ties with Serbia. The Russian government condemned The Hague's indictment of Slobodan Milosevic in May 1999, calling it "politically motivated" and disruptive to international diplomatic efforts (with which Russia was closely involved) to find a political solution to the conflict.<sup>36</sup> Vehemently opposed to NATO's Operation *Allied Force*, Russia supported Milosevic with loans and fuel deliveries during the conflict. In May 2000, Dragoljub Ojdanic, FRY Defense Minister (former Army Chief of Staff) and indicted for war crimes by The Hague, openly attended the inauguration of Russian President Vladimir Putin in Moscow. Upon international outcry, Russian Foreign Minister Igor Ivanov said that the invitation to Ojdanic had been issued by mistake. However, Ivanov also harshly criticized the Tribunal for acting like a political, rather than judicial, institution, with an anti-Serb bias.<sup>37</sup> The Russian government opposed western calls for Yugoslavia to extradite Milosevic to The Hague. In February 2001, top Russian officials called for the Tribunal to be shut down, claiming that it had an anti-Serb bias and that it was

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<sup>36</sup> ITAR-TASS news agency, May 27, 1999.

<sup>37</sup> "Russia slams war crimes tribunal," *Financial Times*, May 25, 2000.

no longer needed after the emergence of democratic governments in the region. In June, Russia urged the FRY government not to extradite Milosevic to The Hague.

The Tribunal's previous Chief Prosecutor, Louise Arbour, had openly criticized the French government's level of support to the Tribunal and once called the French sector of SFOR a "safe haven" for war criminals.<sup>38</sup> Of the major western powers involved in the Balkans, France has the reputation of being the most sympathetic to the Serbs based on France's longstanding ties to Serbia. Most of the publicly indicted war crime suspects at large are Bosnian Serbs who reside in the French sector of SFOR (MND-SE). In mid-1997, NATO reportedly shelved a plan to capture Radovan Karadzic in the French sector after the United States discovered that a French military officer had been holding secret meetings with Karadzic.<sup>39</sup> In contrast to Arbour, current Tribunal Chief Prosecutor Carla del Ponte has reported improved Tribunal relations with France. In April 2000, a French commando team in SFOR raided the home of Momcilo Krajisnik, the highest-ranking war criminal suspect captured to date. Some media reports speculated that the operation was carried out in part to quell criticism about French complacency about the presence of war criminals in its sector. French officials have emphasized France's longstanding political and financial support for the Tribunal on a number of occasions. A French judge, Claude Jorda, took over the Tribunal Presidency in late 1999. Still, Karadzic's continued presence at large in the French-led sector leads some observers to question France's interest in his capture. Allegations of a French role in revealing SFOR arrest operations to Radovan Karadzic in early 2002, which have been denied by Paris, have reinforced this perception.

## U.S. Policy

The United States has been a strong supporter of the international Tribunal for the former Yugoslavia since its inception. The Clinton Administration maintained that the only place for indicted war crime suspects is in The Hague, but generally remained reluctant to engage U.S. forces in SFOR in operations to seize war criminals. In mid-1998, the Administration reportedly shelved plans for U.S. troops in SFOR to detain Radovan Karadzic, although U.S. officials have denied this report.<sup>40</sup> In 2001, a French general also alleged that the United States blocked IFOR from arresting Karadzic and Mladic in 1996, despite several opportunities.<sup>41</sup>

In May 22, 1997, President Clinton appointed David Scheffer to be the first U.S. Ambassador-at-Large for war crimes issues. Ambassador Scheffer handled issues relating to violations of international humanitarian law worldwide, and led the U.S. participation in the negotiations on establishing a permanent International Criminal

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<sup>38</sup> *The Daily Telegraph*, March 26, 2000.

<sup>39</sup> "Secret meetings foiled Karadzic capture plan," *Washington Post*, April 23, 1998.

<sup>40</sup> "U.S. cancels plans for raid on Bosnia to capture 2 Serbs," *New York Times*, July 26, 1998.

<sup>41</sup> "U.S. not keen to nab Bosnian Serb leaders in 1996," *Agence France-Presse*, February 8, 2001.

Court.<sup>42</sup> With regard to the Balkans, Ambassador Scheffer coordinated U.S. support for the Yugoslav Tribunal and projects seeking accountability for war crimes in conflict areas. In January 2001, Secretary of State Albright nominated Scheffer to become a judge at the Yugoslav Tribunal; in February, however, Albright's successor in the Bush Administration, Secretary of State Colin Powell, reversed this decision and nominated international law expert Theodor Meron to the post. Meron was elected to the Tribunal in March. Also in March, President Bush nominated Pierre-Richard Prosper to succeed Scheffer as U.S. Ambassador-at-Large for war crimes issues. The announcement countered earlier speculation that the Bush Administration would eliminate this post. The Senate confirmed Mr. Prosper's nomination on July 11, 2001.

After bringing Milosevic to Dayton as a peace broker in 1995, the Clinton Administration gradually distanced itself from the Milosevic regime and worked to increase diplomatic and economic pressure on Milosevic in response to the Kosovo war in 1998 and 1999. Belgrade's poor record of cooperation with the Tribunal and Milosevic's 1999 indictment for war crimes were held up as barriers to normal FRY relations with the United States and access to U.S. aid. Clinton Administration policy was that Milosevic should be "out of power, out of office, and in The Hague." In May 1999, the U.S. State Department launched the War Crimes Rewards Program. The program, which remains active, offers to pay rewards of up to \$5 million for information leading to the arrest and/or conviction of indicted persons.

U.S. policy on the linkage between sanctions and the Tribunal changed after the ouster of Milosevic and democratic election of FRY President Kostunica. On November 17, 2000, the United States established full diplomatic relations with the Federal Republic of Yugoslavia for the first time since the conflicts in the former Yugoslavia began. The United States announced a \$45 million emergency food aid package for Serbia.<sup>43</sup> Before leaving office, President Clinton lifted remaining bilateral trade and economic sanctions against Yugoslavia. Some sanctions still applied to individuals such as Slobodan Milosevic and about 80 of his associates, preventing them from obtaining U.S. visas or engaging in transactions with U.S. companies. The measures to lift sanctions against Yugoslavia were taken without apparent regard for the Administration's earlier insistence that Belgrade first demonstrate cooperation with the Tribunal.

Some analysts questioned whether the Bush Administration would continue to support the Yugoslavia Tribunal, given its steadfast opposition to the International Criminal Court. A looming legislative deadline of April 1, 2001, for the President to determine whether or not Belgrade was cooperating sufficiently with the Tribunal

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<sup>42</sup> The United States voted against the Rome Treaty to establish the International Criminal Court in July 1998. According to the State Department, the United States determined at the time that, as created under the statute, the ICC could pose an unacceptable risk to U.S. military personnel and to the President's ability to deploy forces to protect U.S. and global interests. However, President Clinton ended up signing the Rome Treaty on December 31, 2000, just before the end of his term.

<sup>43</sup> For additional information on U.S. aid to Yugoslavia, see CRS Report RS20737, "The Federal Republic of Yugoslavia: U.S. Economic Assistance," updated August 16, 2001.

to allow the continuation of U.S. aid to Serbia (see legislative requirement, below) became a key early indicator of the Bush Administration's position on the Yugoslavia Tribunal. In two visits to Washington in February and March 2001, Serbian Prime Minister Djindjic pleaded Serbia's case for more time to demonstrate cooperation with the Tribunal and for the government to pursue domestic legal proceedings against Milosevic. In March, U.S. Ambassador to the FRY William Montgomery presented to FRY and Serbian leaders a list of actions that would contribute to a positive certification on cooperation with the Tribunal by the end of the month. The list reportedly said that Milosevic should be arrested and imprisoned, and that at least one indicted persons be transferred to The Hague, among other actions.<sup>44</sup>

On April 2, the Secretary of State issued a certification that determined that Yugoslavia had met the criteria to allow the continuation of U.S. aid to Serbia in FY2001. However, the certification conditioned U.S. support for the June 29 international donors' conference on Yugoslavia on continued progress toward full cooperation with the Tribunal.<sup>45</sup> In June, the Administration welcomed Belgrade's progress in cooperating with the Tribunal and in initiating proceedings for Milosevic's extradition. On June 27, Secretary of State Powell decided to send a U.S. delegation to the June 29 donors' conference in Brussels. The conference, held one day after Milosevic was handed over, raised over \$1.2 billion in donor pledges. The United States pledged over \$180 million in bilateral assistance.

On June 28, President Bush issued a statement applauding the transfer of Milosevic to The Hague. Bush pledged U.S. assistance to the people of Yugoslavia as they undertake difficult democratic and economic reforms. After the start of Milosevic's trial in early 2002, the Administration agreed in principle to allow current and former U.S. officials to provide testimony, if necessary.<sup>46</sup>

With similar legislative requirements passed for Fiscal Year 2002 (see section on Congress, below) the debate over U.S. aid to Serbia and Belgrade's cooperation with the Tribunal was revived in early 2002. On April 1, 2002, the State Department announced that Secretary of State Powell had decided to defer a decision on whether to certify that Yugoslavia had met the criteria, outlined in legislation, for the continuation of U.S. assistance to Serbia after March 31, 2002. The lack of certification effectively suspended further allocation of U.S. assistance designated for Serbia for the rest of Fiscal Year 2002, or about \$40 million. The Administration did not publicly specify what measures must be taken by Belgrade for the Secretary to be able to certify Yugoslavia's compliance. It welcomed, however, Yugoslavia's publication in April of a list of 23 indicted war crimes suspects that should be turned over to The Hague. In a letter to President Kostunica dated April 27, President Bush

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<sup>44</sup> "U.S. makes arrest of Milosevic a condition of aid to Belgrade," *New York Times*, March 10, 2001.

<sup>45</sup> U.S. Department of State, press statement, April 2, 2001. The President had delegated the function of providing this determination to the Secretary of State on March 22.

<sup>46</sup> *The Washington Post*, March 21, 2002.

reportedly appealed for greater cooperation with The Hague Tribunal.<sup>47</sup> On May 21, on the occasion of a visit to Washington by Serbian President Zoran Djindjic and FRY Foreign Minister Goran Svilanovic, Secretary of State Powell announced his certification of Yugoslavia's cooperation with ICTY. The Secretary noted the recent number of surrenders that have taken place, Belgrade's passage of new laws, indictments issued, and other examples of improved cooperation.

The United States financially supports the Tribunal through annual UN-assessed contributions and voluntary contributions of goods and services (including cash, equipment, and detailed personnel). The annual assessed U.S. financial contribution has increased nearly every year, corresponding to the steady growth in the Tribunal's budget. From 1994 through 2002, the U.S. assessed contribution totaled \$120 million. In addition, the United States has contributed approximately \$13 million to ICTY's Voluntary Fund.

Testifying before a House committee in February 2002, Ambassador-at-Large for War Crimes Issues Pierre-Richard Prosper stated that the Bush Administration's goal was to see both the Yugoslavia and Rwanda Tribunals reach a successful conclusion. He called on the Tribunals "to begin to aggressively focus on the end-game and conclude their work by 2007-2008."<sup>48</sup> He criticized some of the shortcomings of the Tribunals, such as poor management, high costs, and slow proceedings. He said that sovereign states should be responsible for criminal prosecution of war criminals and not be dependent on international tribunals. He said the United States would assist states to rebuild their own judicial systems to enable them to hold accountable lower-level perpetrators of war crimes.

Prosper's statement was the first by the Bush Administration to put forward a timetable for closing out the war crimes tribunals and appeared to reflect the Administration's negative views on future international tribunals as well as the International Criminal Court (which the Administration formally renounced on May 6). Observers speculate that the Administration will be satisfied with the work of the Yugoslavia Tribunal once the two most wanted suspects, Radovan Karadzic and Ratko Mladic, are brought before The Hague.<sup>49</sup> Some observers have criticized the Administration's talk of winding down the Tribunal's operations as premature, just as Milosevic's trial was getting under way. They note that, in any case, the U.N. Security Council would need to vote on the issue before closing down the Yugoslavia Tribunal.<sup>50</sup>

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<sup>47</sup> AP, April 27, 2002.

<sup>48</sup> Statement of Pierre-Richard Prosper, Ambassador-at-Large for War Crimes Issues, U.S. Department of State. February 28, 2002.

<sup>49</sup> *The Wall Street Journal Europe*, March 1, 2002.

<sup>50</sup> *The New York Times*, March 2, 2002.

## Congressional Response

Members of Congress have been generally supportive of the Yugoslavia Tribunal since its founding in 1993. Over the years, some Members have expressed concern about the slow start with which the Tribunal began its operations and the continued presence of indicted war crime suspects in Bosnia. In the past, Congress has passed legislation calling for the United States to provide resources and intelligence information to the Tribunal. Congress has passed annual legislation imposing restrictions on U.S. assistance to former Yugoslav states harboring war criminals. Many in Congress have praised the efforts by NATO forces to seize indicted suspects in Bosnia. Others have expressed concern about the potential for “mission creep,” with SFOR forces possibly being exposed to greater danger in their efforts to pursue war criminals.

In 1999, many Members expressed anger at the Tribunal Prosecutor’s stated intention to review allegations of war crimes committed by NATO forces (mainly U.S.) during Operation *Allied Force*. Former Senate Foreign Relations Committee Chairman Helms said it was outrageous for a U.N. body to judge the conduct of U.S. soldiers.<sup>51</sup> In addition, support in Congress for the Yugoslavia Tribunal has not translated into support for the 1998 Rome Treaty that established the International Criminal Court. After President Clinton signed the Rome Treaty in December 2000, several Senators said that they would oppose U.S. ratification of the treaty, were it to come before the Senate.

Each year, Congress responds to the Administration’s request for funding for the Tribunal in the annual Departments of Commerce, Justice, and State Appropriations bill (often referred to as CJS appropriations). U.N. - assessed contributions are provided for in two accounts: Contributions to International Organizations (CIO) and Contributions for International Peacekeeping Activities (CIPA). In addition, Congress authorizes funds for a U.S. voluntary contribution to the Tribunal in the annual Foreign Operations Appropriations bill.

For FY2001, appropriators recommended about \$66 million for the assessed contributions to all of the war crimes Tribunals in FY2001 (including the Rwanda Tribunal and upcoming Cambodia and Iraq Tribunals). The Senate appropriations committee reported concern that the Tribunal budgets were “out of control.” It also criticized the Yugoslav Tribunal Prosecutor’s attempt to investigate NATO for Operation *Allied Force*.<sup>52</sup> An estimated \$12 million was allocated for the Yugoslavia Tribunal in the CIO account and \$13.5 million for it in the CIPA account for FY2001. For FY2002, the Administration has increased its request to \$16 million in the CIO account and \$17.2 million in the CIPA account. Congress passed H.R. 2500, the FY2002 CJS appropriations bill, with the requested funding levels for the international tribunals, in November 2001 (P.L.107-77).

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<sup>51</sup> “Tough U.N. prosecutor faces a political challenge in the U.S.,” *Boston Globe*, September 25, 2000.

<sup>52</sup> Report to accompany H.R. 4690, Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriation Bill, 2001. Senate Committee on Appropriations. Report 106-404. September 8, 2000.

**U.S. Assessed Contributions to ICTY**  
(over three fiscal years, in \$ millions)

	FY2001 (actual)	FY2002 (estimate)	FY2003 (request)
CIO (int'l organizations)	10.6	13.1	14.0
CIPA (int'l peacekeeping activities)	12.1	17.2	14.7

In the foreign operations appropriations bills for Fiscal Year 2001 and 2002, Congress authorized the President to draw down up to \$30 million of commodities and services for the U.S. voluntary contribution to the Yugoslavia Tribunal (P.L. 106-429 and P.L. 107-115). The FY2002 foreign operations appropriations bill (P.L. 107-115) included \$30 million in drawdown authority.

The 106<sup>th</sup> Congress also passed legislation regarding the Yugoslav Tribunal that tied U.S. aid to Belgrade's cooperation with the war crimes Tribunal. While welcoming the dramatic changes to the Serbian political scene in October 2000, some Members have urged that further economic benefits, especially through the international financial institutions, should hinge on Belgrade's willingness to surrender persons indicted for war crimes to The Hague.<sup>53</sup>

In the Foreign Operations Appropriations law for FY2001 (P.L. 106-429) Congress provided up to \$100 million for assistance for Serbia (Sec. 594).<sup>54</sup> The appropriation marked a dramatic shift from prior legislation that focused primarily on imposing economic sanctions against Serbia. However, no funds were to be available after March 31, 2001, unless the President certified that the Yugoslav government had met certain conditions, among them cooperating with the Yugoslav Tribunal.<sup>55</sup> Cooperation was defined to be access for Tribunal investigators, the provision of documents, and the surrender and transfer of indictees or assistance in their apprehension. U.S. support for loans and assistance from international financial institutions was also subject to these conditions. In the same law (Sec. 564), Congress, repeating a provision that has been in place since the Dayton agreement, restricted bilateral and multilateral assistance to countries or entities providing sanctuary to persons indicted for war crimes. The countries and entities were defined

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<sup>53</sup> "No handouts without a handover," *New York Times* op-ed by Senators Mitch McConnell and Patrick Leahy, October 16, 2000.

<sup>54</sup> For more information on U.S. aid to Yugoslavia, see CRS Report RS20737, *The Federal Republic of Yugoslavia: U.S. Economic Assistance*, by Curt Tarnoff, updated June 5, 2001.

<sup>55</sup> The other conditions were that the FRY take steps to end support for separatist Republika Srpska institutions in Bosnia, and take steps to implement policies on respecting minority rights. The restrictions were not to apply to Montenegro, Kosovo, humanitarian assistance or assistance to promote democracy in municipalities.

to be Serbia, Bosnia, Croatia, Kosovo, Montenegro, the Bosnian Federation, and the Republika Srpska. The section exempted humanitarian, refugee, and democratization assistance, as well as some other categories. The Secretary of State may waive the restrictions under certain conditions (and has done so on numerous previous occasions, especially in connection with U.S. aid to the Republika Srpska).

The FY2002 appropriations measures included similar provisions. Section 584 of P.L. 107-115 said that “funds appropriated by this Act may be made available for assistance for Serbia after March 31, 2002,” if the President determined and certified that Yugoslavia was cooperating with the Tribunal, taking steps to end support to separatist Bosnian Serbs institutions, and implementing policies on minority rights and the rule of law. The provision also applied to U.S. support for multilateral loans and assistance to Yugoslavia. The other section relating to restrictions on aid to countries assisting or harboring war criminals (Section 581) was modified and streamlined from the previous year’s legislation. It would restrict aid unless the Secretary of State determined that the relevant countries or entities were cooperating with the Tribunal and implementing the Dayton accords. Humanitarian and democratization aid were exempted and the Secretary of State could waive the provision if such assistance was determined to be in the U.S. national interest.

Members of Congress warmly greeted Slobodan Milosevic’s transfer to The Hague in June 2001. In the House, Representative Gallegly introduced H.Res. 200, a bill supporting and commending the Serbian people and their leaders for Milosevic’s transfer. On July 18, the Senate passed S.Res. 122 (co-sponsored by Senators McConnell and Leahy), which recognized the courage of Serbia’s democratic leaders and expressed the Sense of the Senate that the United States should remain committed to providing assistance to Yugoslavia.

On February 28, 2002, the House International Relations Committee held a hearing on the U.N. criminal tribunals for Yugoslavia and Rwanda. Committee Chairman Hyde and other Members praised some of the Yugoslavia Tribunal’s achievements, especially the detention of Slobodan Milosevic. They also pointed out some policy inconsistencies that have become evident, such as U.S. support for these tribunals but not for the International Criminal Court. The hearing featured testimony from the U.S. Ambassador-at-Large for War Crimes Issues and a panel of outside witnesses.

## Appendix 1. ICTY Jurisdiction

According to its Statute, the Yugoslavia Tribunal has the authority to prosecute and try four kinds of crimes:

### Article 2: Grave breaches of the Geneva Conventions of 1949

The International Tribunal shall have the power to prosecute persons committing or ordering to be committed grave breaches of the Geneva Conventions of 12 August 1949, namely the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

- (a) wilful killing;
- (b) torture or inhuman treatment, including biological experiments;
- (c) wilfully causing great suffering or serious injury to body or health;
- (d) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- (e) compelling a prisoner of war or a civilian to serve in the forces of a hostile power;
- (f) wilfully depriving a prisoner of war or a civilian of the rights of fair and regular trial;
- (g) unlawful deportation or transfer or unlawful confinement of a civilian;
- (h) taking civilians as hostages.

### Article 3: Violations of the laws or customs of war

The International Tribunal shall have the power to prosecute persons violating the laws or customs of war. Such violations shall include, but not be limited to:

- (a) employment of poisonous weapons or other weapons calculated to cause unnecessary suffering;
- (b) wanton destruction of cities, towns or villages, or devastation not justified by military necessity;
- (c) attack, or bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings;
- (d) seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science;
- (e) plunder of public or private property.

### Article 4: Genocide

1. The International Tribunal shall have the power to prosecute persons committing genocide as defined in paragraph 2 of this article or of committing any of the other acts enumerated in paragraph 3 of this article.

2. Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children of the group to another group.

3. The following acts shall be punishable:

- (a) genocide;
- (b) conspiracy to commit genocide;
- (c) direct and public incitement to commit genocide;
- (d) attempt to commit genocide;
- (e) complicity in genocide.

#### **Article 5: Crimes against humanity**

The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population:

- (a) murder;
- (b) extermination;
- (c) enslavement;
- (d) deportation;
- (e) imprisonment;
- (f) torture;
- (g) rape;
- (h) persecutions on political, racial and religious grounds;
- (i) other inhumane acts.