With the Congressional deadline of March 31 looming, it is clear that the Serbian and Yugoslav governments have come nowhere close to complying with the Congressionally imposed standard requiring cooperation with the International Criminal Tribunal for the former Yugoslavia before substantial U.S. bilateral and multilateral economic assistance may be extended. There have been many excuses from Belgrade, but little action. A presidential certification of Serbian and Yugoslav compliance under Section 594 of the 2001 Foreign Operations Assistance Act, despite Belgrade's failure to make any serious efforts at cooperation with the tribunal, would have grave consequences for reform and stability in Serbia and throughout the region.

There are at least six, and as many as 15 publicly indicted war criminals in Serbia. Five months after Slobodan Milosevic was overthrown, and two months after the installment of a new government in Serbia, Belgrade has yet to detain any indictees, let alone transfer any to The Hague. The recent opening of a tribunal office in Belgrade is welcome, but it has been plagued with bureaucratic obstacles and does not represent significant progress. Indeed, a high-level tribunal source tells us that the level of cooperation from Serbia is the same now as when the office was open under Milosevic – a time when investigations were limited to crimes against Serbs and could generally proceed only when investigators were accompanied by Serbian officials.

The lack of concrete progress on tribunal cooperation is likely due to Yugoslav President Vojislav Kostunica's sincere nationalist convictions that the tribunal is anti-Serb and unjust because it has not investigated the 1999 NATO intervention, an action Kostunica has called "senseless, unnecessary, irresponsible and largely criminal." Kostunica has explicitly linked the tribunal's refusal to investigate alleged NATO war crimes to his refusal to transfer Slobodan Milosevic to The Hague.1

This core belief of Kostunica's — that Belgrade should not cooperate with an "anti-Serb" tribunal — has been cloaked in numerous other, more reasonable sounding excuses designed to ease pressure from the West. Indeed many of these excuses seem to have found resonance within the State Department, leading to public statements from State Department officials urging a lenient interpretation of the March 31 criteria. However, these excuses, like the contention that the tribunal is anti-Serb, do not stand up to scrutiny.

There is a reasonable concern among many in Washington that applying too much pressure on Belgrade to fully comply with its tribunal obligations could spark a nationalist backlash and undermine reformers — but the evidence is to the contrary. An opinion poll conducted in Serbia last month showed that 66 percent of respondents favored the transfer of indictees to The Hague, with 60.3 percent specifically supporting the transfer of Milosevic to The Hague. Over half (51 percent) of those polled thought their government would transfer Serbian indictees to the tribunal.2 The Serbian and Yugoslav justice ministers and the Yugoslav Deputy Prime Minister

have in the past spoken in favor of full compliance with the tribunal. In short, there is a majority constituency in Serbia that supports full compliance with the tribunal, but compliance will only materialize if the March 31 deadline is publicly wielded as leverage to pressure hard-liners in the leadership.

President Kostunica, Serbian Prime Minister Zoran Djindjic, and others have claimed that the Serbian constitution forbids delivery of Milosevic and other Yugoslav nationals to The Hague. This assertion has been given credence by some western policymakers, but this assertion is false. Serbian constitutional experts, among them Yugoslav Justice Minister Momcilo Grubac, have pointed out that the constitution forbids extradition of Serbian citizens to other states, but not their transfer to an international tribunal.

Another excuse raised in Belgrade and sometimes echoed here and in Europe, is that the new governments face daunting tasks — economic and political reform, the unrest in Southern Serbia, relations with Montenegro and the future of Kosovo — and that compliance with the tribunal, therefore, cannot be a priority. However, hard-liners in the new Serbian and Yugoslav leadership must be made to realize that fulfilling their commitments to the UN Tribunal is not inconsistent with addressing what they regard as more important priorities. In fact ridding Serbia of war criminals well connected with organized crime organizations will aid political and economic reform, and strengthen the rule of law. The new leadership in Serbia and Yugoslavia currently enjoys widespread popularity. If it can not deal with the war crimes issue now, then it will be all the more difficult down the road when the public becomes impatient with the pace of economic recovery, as has been the pattern in all Eastern European countries in transition.

Many have argued that Serbia should not be required to send Milosevic to The Hague, but should be allowed to try him itself on other charges, or host a trial in Serbia run by the international tribunal. Contrary to suggestions otherwise, the Chief Prosecutor at the tribunal, Carla Del Ponte, has stated unequivocally that the tribunal will not hold a Milosevic trial for war crimes outside of The Hague, and that Milosevic must first face trial there for war crimes before facing other charges in Belgrade. The Tribunal's position is well founded in law. Security Council resolutions established and then reinforced the tribunal’s primacy of jurisdiction over domestic prosecutions for war crimes in the former Yugoslavia. Furthermore, conditions for a safe and fair trial in Belgrade are nowhere near adequate. Protection for witnesses, prosecutors and judges would not be guaranteed, especially given the level of nationalist vitriol directed at the tribunal by President Kostunica and others. Kosovo Albanian, Croatian, Bosnian Muslim, and even Serb prosecution witnesses would doubtless fear for their safety, especially since violent mafia organizations thought to have links to the accused continue to flourish in Serbia. Even a domestic trial of Milosevic on corruption charges held now would be dangerous and difficult, more so now than later because the long process of judicial reform has only just begun.

Furthermore, the same rules that apply to Zagreb and to Sarajevo should apply to Belgrade. Most prosecutions for war crimes in Croatia and Bosnia are being handled through their domestic systems. Where the Tribunal has exerted primacy, however, those governments have transferred indictees. In earlier years when Croatia did not do so, the international community — led by the U.S. — exerted strong conditionality on economic assistance.

If Belgrade does not fulfil the Congressional criteria for funding by March 31 and the Administration chooses to certify it anyway based on a weak standard of "progress" based principally in wishful thinking rather than facts, there will be serious negative ramifications for stability in Serbia and the Balkans, and for U.S. policy options there.

A spurious certification would undermine the real reformers in the ruling coalition — the same individuals who also have sought more aggressive reforms in other areas. By coddling Kostunica and other hard-liners at the expense of more pragmatic and less nationalist members of the ruling coalition, the mistake of U.S. policy toward Russia in the early 1990s is repeated. By putting support for individual leaders above support for policies, we are in danger of undermining true reformers who would otherwise rise to the top.

The current Croatian government has faced strong western pressure and taken genuine political risks to comply with the Hague tribunal. Creating a separate standard for Serbia will fuel nationalist anger within Croatia against the reformist government in Zagreb and teach that obstructing tribunal compliance might have been a reasonable alternative to the reformist approach.

An unearned presidential certification of Serbia's compliance with the criteria crafted by Congress would undermine efforts in Serbia at establishing the rule of law. Serbia has an unambiguous legal obligation to fully comply with the tribunal. If it feels it can skirt the law with a wink and a nod from the U.S., then the message will just be reinforced that it is acceptable for nationalist policy desires to take precedence over laws — a concept that Belgrade must overcome if it is to progress and become a stable democracy.

Finally, an unearned presidential certification of Belgrade's compliance with the tribunal would undermine the crucial NATO missions in Bosnia and Kosovo, prolonging the need for U.S. troops there. Not only has the new leadership in Belgrade failed to turn over any of the publicly indicted Bosnian Serb war criminals in Serbia, but in January Yugoslav President Vojislav Kostunica even went so far as to raise the prospect of granting them political asylum in a bid to protect them from prosecution.3 Among those Bosnian Serb indictees still in Serbia is wartime army commander Ratko Mladic, indicted for genocide for among other things, the Srebrenica massacre. NATO sources have also reported that the indicted wartime Bosnian Serb leader Radovan Karadzic also spends time in Serbia. Until these men are arrested and transferred to The

Hague, they will lend hope and power to ultranationalist forces in Bosnia, destabilizing the country and delaying the day when U.S. troops can leave.

Likewise, Belgrade's failure to transfer to The Hague the five leaders publicly indicted for war crimes in Kosovo — among them Slobodan Milosevic — only feeds acceptance among ethnic Albanians for the current wave of extremist acts in Kosovo, Southern Serbia, and Macedonia. Rewarding nationalist policies in Belgrade not only sidelines Serbian reformers, but also moderate forces in the Albanian community.

In adopting Section 594 as law, Congress has provided a service to the true reformers in the DOS coalition and to the citizens of the former Yugoslavia by explicitly setting forth the minimum standards for eligibility for U.S. bilateral and multilateral economic assistance.4 This law has impressively defined and guided the international debate about aid to the region. Without it, there is little doubt that the debate about progress by the new government, within and without Belgrade, would be even less rigorous than it now appears to be.

It would be a great mistake now for Congress to allow the Administration to define the law so loosely to deprive it of any meaning in the mistaken notion that now is the time for carrots instead of sticks. That tack has been tried in U.S. Balkans policy before and it does not work. Holding firmly and consistently to standards does.

The language of the law is clear. It requires that the President certify, "that the Federal Republic of Yugoslavia is … cooperating with the International Criminal Tribunal for Yugoslavia including access for investigators, the provision of documents, and the surrender and transfer of indictees or assistance in their apprehension." If Congress accepts a lesser standard for certification, it is sending a troubling message to the new Administration, to leaders in the Balkans who have met their obligations to the Tribunal, to reformers within Belgrade who understand this fundamental obligation and, most importantly, to the hundreds of thousands of people in the region who lost relatives, homes and livelihoods in the worst carnage on European soil since World War II. The first Bush Administration stood up for these victims before by vigorously supporting the establishment of the Tribunal. Now is not the time to abandon them by interpreting this straight-forward standard in anything less than a rigorous, common-sense way.

Cooperation cannot be certified now because it does not exist.