

Every day at the war crimes tribunal in The Hague, testimony is offered that reminds one of what is at stake in this discussion of Congressional “conditions” and “cooperation” that can sometimes sound abstract. Occasionally it is the testimony of perpetrators—the two recent plea agreements during the Srebrenica trial in which the carefully planned murder of 7,000 Muslim men and boys is described in painfully precise detail—and sometimes it is the testimony of victims.

Last Thursday, Witness B-1455 described movingly what it was like to be one of 91 men and 150 women and children taken from his village by Serb forces to a local cultural center. While assured no one would be harmed, the men were ordered outside in groups of 10-20 and shot to death, one after another. While shot twice himself, he later managed to crawl into the woods and escape, to testify about it years later.

Thursday’s testimony in the Milosevic trial, like today’s testimony, is central to the entire point of the war crimes tribunal: holding *individuals* responsible for their crimes and not whole societies. Yet by failing to transfer the nineteen Bosnian Serb and Serbian indictees who are either living within their borders or crossing back and forth across the border, the government of Serbia and Montenegro gives the impression that the government believes otherwise and still feels the need to protect the old regime. While there have been some promising statements by the new Defense Minister recently, actual cooperation to date has been very limited, begrudging, and only under pressure.

Following certification last year on May 21, 2002, the new government promised a consistent pattern of cooperation yet again. But other than the arrest of Bosnian Serb Ranko Cesic four days later, there were no other surrenders and no arrests during the rest of 2002. Cooperation on documents, access to archives and witnesses was so poor during the same period, that Prosecutor del Ponte decided she had no choice but to go to the Security Council to recommend sanctions. Only then did document production and access to witnesses improve slightly, but only for a very brief time.

In January 2003, there was one voluntary surrender for which Zoran Djindjic’s government surely deserves credit: that of Milan Milutinovic. Also in January, Vojislav Seselj surrendered with great fanfare, but by all accounts his surrender was self-initiated. In May, Yugoslav Army Captain Miroslav Radic, the first military figure in one year to be transferred and the second of the so-called Vukovar Three, surrendered.

That is, in a year in which a consistent pattern of cooperation had been promised following the last certification, there have been three surrenders and one arrest four days after the last certification. The only arrests that have occurred recently happened when authorities investigating the Djindjic assassination and attempted coup, arrested heavily armed and APC-protected Franko “Frenki” Simatovic and Jovica Stanisic, reportedly for suspicion of involvement in the coup attempt and organized crime.

As Carla del Ponte’s statement at the Helsinki Commission’s briefing on May 15 made clear, authorities in Belgrade specifically asked the tribunal to speed up and issue indictments of the two because they could not be held any longer under domestic law, and the Prosecutor responded by accelerating work on the issuance of their indictments. While it is obviously a good

development that Belgrade is now seeing the value of sending its organized crime figures who are also indicted for war crimes to The Hague, those transfers were clearly a better indication of ICTY cooperation with Belgrade than Belgrade's cooperation with the ICTY.

At a hearing yesterday at the Tribunal, the lead Prosecutor in the Milosevic case, Geoffrey Nice, could not have been clearer with regard to the poor level of cooperation concerning documents and access to archives. Echoing the comments of Carla del Ponte when she appeared before the Commission two weeks ago, he characterized the government's response since the filing of an order compelling production of certain "priority documents" on March 10, as "nil." (At that earlier hearing, the judges had asked Serbia and Montenegro to produce what it could before hearing arguments at yesterday's hearing and none were produced.) Equally disturbing, Mr. Nice noted that it was apparent that Mr. Milosevic was not having the same difficulty gaining access to key documents from persons within the army for his defense, "as well as sensitive information [from inside the government] from the time when he was already in jail." Clearly the government should be providing him the documents he needs for his defense, but it is disturbing, to say the least, that the prosecution is not able to obtain access to the same information.

The arguments of Serbia and Montenegro as to why the nineteen of the twenty fugitives sought by the Tribunal and thought to be either living within their borders or crossing back and forth from Bosnia have not been arrested, boil down to the following rationales: the political environment is fragile and more arrests might upset that stability, the arrests are dangerous, Serbia and Montenegro has done enough already; we don't know where the fugitives are, and, in any event, they are not here.

As to the first point: The new leaders of Serbia and Montenegro have taken some dramatic and impressive steps toward re-establishing the rule of law and furthering democratic reforms since the tragic assassination of Prime Minister Zoran Djindjic on March 12. The black curtain could well have come down again on Serbia in March, but it did not. Indeed, we now know that the intent of the plotters was to create sufficient chaos and panic to install another government of men and not law.

To their immense credit, the citizens of Serbia and Montenegro and their leaders rallied and fought back. By many accounts, it became an "us" or "them" situation, with some seeing clearly for the first time that if they did not expose and attack the tight alliance of organized crime figures, Milosevic-era holdovers and indicted war criminals and their protectors within and without the government, their lives and the October 2000 revolution were at risk.

In March, officials in Belgrade began to say openly for the first time that many of those who opposed cooperation with the international community and the war crimes tribunal in particular—so-called "Hague patriots"—were, in fact, self-interested and corrupt "false patriots." While some western commentators rushed to conclude that Prime Minister Djindjic had been killed because he gave in to pressure to cooperate with the war crimes tribunal, there was little such speculation in Serbia. Instead, there were heartening public acknowledgments of how well-armed organized crime syndicates and their protectors within the government were continuing to rob the Serbian people blind, while wrapping themselves in the mantle of patriotic defiance of the Hague tribunal and other international community "demands". For example, Acting Serbian

President Nataša Mićić stated on March 19, 2003 that “We're not dealing with classic criminals here, but the remnants of the criminal state apparatus of the Milosevic regime,” and added that the much-vaunted patriotism of this mafia, boiled down to “selling drugs to our children and using the money from it for political activities, murders and hiding from The Hague”.

Indeed, in the weeks after the assassination the government took actions that required not only political courage, but physical courage as well, smashing the Zemun gang and enacting internal reforms that promise one day to permit meaningful civilian control over the military and other security services.

Regrettably, after taking those bold measures, their reforms stalled and political attacks began. While the demolition of one organized crime gang and the enactment of legal and bureaucratic changes are to be applauded, there appears little energy now to attack organized crime clans beyond the Zemun gang or to remove the Milosevic old guard from positions of power within the security services, both the police and military, and other ministries and the judiciary. Indeed it appears that the Zemun gang's chief rival, the Surcin gang, along with its contacts in government and the police and military, may now act as the best protection for those wanted by the tribunal.

While individual ministers and Parliament wish to make more progress, many of those old guard are positioned to block the actual implementation of these important legal and bureaucratic reforms as well as real cooperation with the war crimes tribunal. In particular, some of the worst of the Milosevic-era thugs have been installed in key positions of power within the Interior Ministry and the Army. For example, the current head of military intelligence (KOS), Momir Stojanović, served as Security Forces Chief for Kosovo during a period of some of the worst atrocities against civilians in Kosovo. A fellow officer has alleged that he ordered the killings of over 100 Kosovo-Albanians in April 1999. The Interior Minister and Deputy Prime Minister, Dušan Mihajlović, was allied with Milosevic and his wife for years, and is serving as the Chairman of the Board of Jugimport, the trading company responsible for sales of weapons this past fall to Saddam Hussein, as well as shipments to Burma, Libya, and Liberia—all in violation of UN sanctions. According to a new UN report, fifty tons of weapons will be trafficked by Serbia and Montenegro to Charles Taylor's Liberia this summer. And the list goes on.¹[1]

It is unimaginable that Serbia and Montenegro will achieve the goals of progress toward entering the European Union, participation in Partnership for Peace and eventually joining NATO, while these obstructionists are still in power.

The true reformers know this and they need our help in providing the incentives that help them build support within the public for making those difficult changes. The McConnell-Leahy conditionality provision has served this purpose before, and it will serve that purpose now if it is enforced as written.

¹ Beyond Mihajlović, other personnel in the Interior Ministry raise eyebrows: Police General Sretan Lukić who was the Serb Police Chief in Kosovo during the war and was promoted by Milosevic for his deeds there, now serves as the head of the Public Security Department and Deputy Serbian Interior Minister for the nation. (Two of his cousins are among the indicted fugitives believed to cross back and forth between Serbia and Republika Srpska in Bosnia.) Police general Goran Radosavljević commands the Gendarmerie. His record from the Kosovo war is also tainted; he served Milosevic as commander of the police training facility in Petrovo Selo (in Serbia proper), where at least 200 Kosovo Albanians were buried in mass graves.

Political leaders in Serbia and Montenegro cannot say this openly about the upcoming June 15 deadline for obvious reasons, but they have said so publicly and privately in the past. For example, Foreign Minister Goran Svilanovic speaking at the National Press Club in November 2002, urged the lifting of the McConnell-Leahy conditions because in his view they were no longer needed. In doing so, he conceded they had helped Serbia “overcome internal obstacles to Hague cooperation” in the past. Croatian President Stipe Mesic has written eloquently about the role that U.S. aid conditionality under the so-called Lautenberg law played in strengthening the hands of true reformers in Croatia who were able to build the support for transferring indicted war crimes suspects to The Hague and enacting related legal and personnel reforms as a result. No one doubts that the conditions have played a key role in the arrests and transfers of indictees from Croatia and Serbia. Slobodan Milosevic’s arrest at the deadline in 2001 is the most dramatic example of its effectiveness.

Recent polls demonstrate again why that is so. The International Republican Institute/ Strategic Marketing poll shows that cooperation with the war crimes tribunal is still unpopular. But when asked by pollsters if cooperation with the war crimes tribunal were a condition for Serbia to cooperate with the international community, over 64 percent supported cooperation. Obviously, a politician must be careful—particularly in Serbia after decades of anti-western propaganda and NATO’s 1999 bombing—not to look as if he or she is caving to western demands. But these polls reinforce what recent past history has proven about the power of such incentives.

Reformers have in the past been able to build support internally for making the difficult arrests and transfers to the Tribunal by pointing to the inflexibility of those Congressional standards. Doing so has served the interests of Serbia well, not only by freeing up U.S. aid, but, more importantly, by simultaneously getting some of the most corrosive and violent criminals out of the country and exposing the ties between certain elements of the government, organized crime and the military that had been protecting them. That insidious connection between organized criminals and government officials blocking transfers and reform became obvious to all after the Djindjic assassination, the discovery of former President Stambolic’s body and the plot to take over the government.

As to the claim that these arrests may be dangerous, there is little doubt that is the case in regard to those who enjoy protection from heavily armed organized crime figures and their governmental protectors within the security services. But as demonstrated by the arrests of numerous Zemun gang suspects—including Franko Simatovic and Jovica Stanisic—the authorities are quite capable of undertaking such arrests when it serves their purposes.

Further, some of these fugitives appear to be unprotected and living quite openly among the population. We know that at least eight of them are continuing to receive biweekly pension checks from the Veterans Administration. If the postal service can find them, certainly the security services can. While the people of Serbia have endured four wars, the shrinking of their borders, economic deprivation and the collapse of government services, the two institutions that operated robustly throughout this dark decade were military intelligence and police state security. It’s difficult to believe, therefore, that those institutions, at least, are less competent than the postal service in finding these fugitives, even the handful that cross the border to Republika Srpska where the security services have historically been well-integrated with those in Belgrade.

Clearly some within Serbia understand the value of getting rid of these last symbols of Milosevic-era criminality. The Speaker of Parliament, Dragoljub Micunovic has spoken of the need to cooperate with the Tribunal as has the new Defense Minister Boris Tadic. There have likewise been encouraging reforms of the Army of Serbia and Montenegro, such as placing its planning staff under direct authority of the Defense Minister. This makes it easier for cooperation with the tribunal but so did the ouster of Milosevic in October 2000, and Zoran Djindjic's takeover of the Serbian government in January 2001. But no pattern of cooperation with the tribunal ever emerged following these reform milestones and Congress's aid legislation was pivotal to gaining episodic cooperation, most notably the arrest of Slobodan Milosevic. The past two-and-a-half years have demonstrated that Hague cooperation cannot be judged by promising rhetoric and gradual structural reforms, but only by concrete actions that require political will. Perhaps recent bureaucratic and legal changes will lead to a pattern of cooperation but this has yet to be demonstrated.

With support from the U.S. by denial of unworthy certification, from Europeans through conditions attached to EU accession, and the prospect of Partnership for Peace, true Serbian reformers will be emboldened to find the necessary will. Then and only then they can rid their country of the individuals who are keeping it unfairly and disastrously tied to the past.