

Thank you, Mr. Chairman, Commission members and representatives, for inviting me to address you today and for convening a briefing on the important topic of Serbia and Montenegro's progress toward satisfaction of the human rights conditions required for continued U.S. aid.

Section 578 of the U.S. government's foreign operations appropriations act has been one of the most effective pieces of human rights legislation enacted by this Congress in recent years. It has been effective because it specifically identifies required reform, sets a deadline, and backs it up with clear consequences for inaction. But perhaps most important has been Congress' active engagement in monitoring implementation of the law. Congress has patiently insisted on concrete action to match Serbia's reformers' words, and accordingly deserves credit for the difficult but essential steps Serbia has taken toward accountability for the past and human rights guarantees for the future.

Experience has taught us that these last days before the certification decision—this year scheduled for June 15—are critical for the reform process. In these weeks, the spotlight shone from Washington concentrates minds in Belgrade and invariably yields a reform blitz. Although each year has produced welcome steps, much remains to be done. Rather than rest on our laurels and relax this effective conditionality, now is the time to redouble our efforts and see the job through.

My testimony this morning identifies a set of immediate positive steps that Human Rights Watch believes the U.S. government should expect prior to any positive certification decision. They touch on three issues identified in section 578—cooperation with the International Criminal Tribunal for the former Yugoslavia, rule of law, and respect for minority rights.

Cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY)

The past year has seen continued stutter-step progress toward cooperation with the ICTY and accountability for war-time atrocities. Still missing is the clear political leadership to ensure that all those responsible for war crimes are held accountable.

Cooperation through arrests of indictees and access to documents

Much has been made of Serbia amending its law on cooperation with the Tribunal to permit cooperation on indictments issued after enactment of the law. Never required for cooperation in the first place, this law has always been a straw man. Little credit should be given to the government for fixing this flawed law—a problem they themselves created in the first place.

Since the U.S. government certified a year ago, four indictees have been transferred to the Hague. Still, in the territory of Serbia and Montenegro, as many as a dozen indictees remain at large, reportedly including one of the most culpable alleged war criminals, former Bosnian Serb General Ratko Mladic. A few weeks from now we will mark the eighth anniversary of the Srebrenica massacre, where as many as 7,000 Bosniac men were slaughtered. Eight years, and the mastermind of that atrocity continues to flaunt international efforts to hold him accountable.

At the same time, access to documents sought by the ICTY from the authorities of Serbia and Montenegro remains incomplete. To the extent that the government of Serbia and Montenegro has security concerns regarding the disclosure of some of its documents, these can be addressed through proceedings contemplated under rule 54 bis of the tribunal rules of procedure and evidence.

The stakes are high, and patience should be running out. The continued lack of full cooperation risks undermining important trials currently under way in the Hague, not to mention wasting tribunal resources by necessitating separate trials of co-defendants.

Cooperation on Domestic War Crime Trials to Complement the ICTY

Concerns about arrests and access to documents should remain paramount in your assessment of Serbia and Montenegro's cooperation with the ICTY. At the same time, the US government and the ICTY itself are increasingly interested in promoting domestic war-crime trials in Serbia and Montenegro, to complement or supplant proceedings against mid-tier indictees at the ICTY. In this context, the U.S. government's assessment of Serbia's cooperation with the ICTY and its commitment to the rule of law should encompass its efforts to seek justice for war crimes in its domestic courts.

The prosecution of war crimes cases faces significant impediments in the form of a generalized lack of political will and the specific failure of the police to provide evidence to the prosecutor's office. A striking illustration of the lack of commitment to domestic accountability processes is the case of mass graves in Serbia, exhumed in 2001 to reveal up to six hundred bodies of Kosovo Albanians, and yet, no formal investigation has been initiated.

The alleged involvement of suspected war criminals in the March 12 assassination of Prime Minister Zoran Djindjic has to some extent changed the previously indifferent attitude within the Serbian society and political leadership toward accountability for war crimes. It is still unclear, however, whether war-crimes trials will continue to take place sporadically, or the government has decided to take serious steps to bring the perpetrators of war crimes to justice.

U.S. government officials have told Human Rights Watch that the state prosecutor is preparing new high-profile war-crime cases. But at a recent meeting in Belgrade with a Human Rights Watch delegation, Serbian Deputy Justice Minister Dusan Protic said that he thought it unlikely that there would be any new war crime trials this year. Representatives of the ICTY and OSCE, as well as the head of the leading Serbian human rights group Humanitarian Law Center, have also expressed pessimism about additional trials in the near future—particularly if pressure for cooperation with the ICTY abates. The Office of the United Nations High Commissioner for Human Rights (UNHCHR) has closely monitored the developments regarding the mass graves discovered in Batajnica, a Belgrade suburb, containing some 500 bodies of Kosovo Albanians killed in 1999, and the UNHCHR has concluded that the police have been obstructing any meaningful investigation into the underlying crime.

The unwillingness on the part of the police and the army to cooperate in war crimes proceedings is only one among many serious obstacles to successful war crimes prosecutions in Serbia. The

domestic war crime trials held so far have suffered from an absence of adequate witness protection measures, poor preparation of the prosecution's cases, and a lack of mechanisms facilitating testimonies of key witnesses from other parts of the former Yugoslavia (Kosovo and Bosnia and Herzegovina). The Serbian government has not made serious efforts to address these obstacles. The draft law on war crime trials, currently prepared by the Serbian government, contains only a few rudimentary witness protection mechanisms.

In light of the foregoing, in the context of its certification decision under section 578 of the Foreign Operations Appropriations Act, factors that the U.S. government should consider in connection with any decision on certification, include:

- Arrest of former Bosnian Serb General Ratko Mladic and commitments to apprehend all indictees remaining in the territory of Serbia and Montenegro within one year.
- Confirmation from the Prosecutor of the ICTY that, other than issues subject to judicial proceedings pursuant to Rule 54 bis of the tribunal rules of procedure and evidence, she is receiving full cooperation with ICTY document requests.
- Adoption of the draft law on war crime trials and a commitment to urgently adopt a comprehensive and effective witness protection law.
- Issuance of indictments or other concrete and verifiable evidence of progress on domestic investigations into prominent alleged war crimes, including Batajnica (mass graves in Belgrade's suburbs, containing some 500 bodies of Kosovo Albanians killed in 1999), the Bitiqi Brothers (U.S. citizens of Albanian origin, allegedly killed by the Serbian police in 1999), and Ovcara (killing of 200 Croats near Vukovar in 1991).

Rule of Law

The extent to which the authorities of Serbia and Montenegro are committed to hold war criminals accountable in their domestic courts is relevant not only to an assessment of their cooperation with the ICTY, but also to their commitment to the rule of law.

An equally important test of the rule of law in Belgrade is the manner in which the government has responded to assassination of Serbian Prime Minister Zoran Djindjic in March of this year.

Certainly the circumstances immediately following Djindjic's assassination warranted declaration of a state of emergency and a relaxation of certain human rights requirements. Indeed, human rights law contemplates and allows such measures in times of public emergency. But importantly, that law specifies that derogation from international standards must be strictly limited to such measures as are necessary and that certain obligations—such as the prohibition against torture—may not be disregarded regardless of the public emergency.

Against this backdrop, Human Rights Watch has serious concerns about the manner in which the government has conducted itself during the state of emergency. Some of those detained in the

post-assassination investigation are criminal elements that have had nothing but a corrosive effect on the rule of law in post-Milosevic Serbia. But it does little for the rule of law to combat those elements in an indiscriminate or abusive manner.

During the post-assassination investigation, also known as Operation Sabre, approximately 10,000 people were detained and held incommunicado, without access to lawyers or family members, in some cases for up to two months. As of early May, 1000 remained in custody.

Access to detention facilities for international organizations was initially limited but has improved in recent weeks, most notably with visits by the UNHCHR and the OSCE. Human Rights Watch and Serbian human rights organizations have sought and been denied an opportunity to visit the detainees to monitor their treatment.

Consistent reports from those released suggest widespread abuse of detainees, in some cases amounting to torture. Such abuse was facilitated by the state of emergency, which authorized incommunicado detention for up to 30 days. In April, the Serbian parliament adopted a new law on organized crime to permit such detention for up to 60 days, in clear violation of the standards of the Council of Europe, which Serbia joined in April.

In the context of the U.S. government's assessment of progress toward the rule of law in Serbia and Montenegro, attention should be paid to efforts to address these concerns, in particular:

- Amendment of the law on organized crime to prohibit incommunicado detention and otherwise bring the law in compliance with Council of Europe standards.
- Ratification of the European Convention on Human Rights; and signature and ratification of the European Convention for the Prevention of Torture.

Minority rights

A final area of concern identified in Section 578 is minority rights. In this area, the main issues relate to the treatment of ethnic Albanians in southern Serbia and Serbia's Roma population. On February 13, 2002, the federal parliament adopted a Law on the Rights and Freedoms of National Minorities. The law was prepared with the assistance of the Council of Europe and the OSCE, and it provides for broad protection of minority rights. Nonetheless, as detailed below, discrimination and tensions persist and could be fruitfully addressed in the context of the U.S. government's bilateral dialogue with the Belgrade authorities on the section 578 conditionality.

Ethnic Albanians in Southern Serbia

"Southern Serbia" is an area bordering on Kosovo. Ethnic Albanians constitute 90 percent of the population in the municipality of Presevo, 60 percent in the municipality of Bujanovac, and 30 percent in the municipality of Medvedja.

During 2000 and the first half of 2001, a small-scale armed conflict between the Serbian police and local Albanians, assisted by some Albanians from Kosovo, erupted in a three-mile wide strip between Kosovo and the rest of the area. Hostilities ended in March 2001, when the Albanian rebels agreed to disarm and the government declared an amnesty. By May 2001, the Yugoslav army reoccupied the area, as agreed with the international forces in Kosovo (KFOR). The peaceful solution has been a major positive achievement of the post-Milosevic government in Serbia.

On July 28, 2002, the first-ever free elections in the three municipalities took place, resulting in victories for ethnic Albanian parties in Presevo and Bujanovac. The elections were free and fair, as acknowledged by the observers from the Council of Europe and the Organization for Security and Cooperation in Europe.

The peace has not been utterly unbroken, however, and certain tensions remain. At the end of 2002 and during January and February 2003, on several occasions unknown perpetrators threw explosive devices at, or planted bombs under, objects belonging to moderate Albanians, including those who participated in the multiethnic police established in 2001-02. At the beginning of February [2003], unknown gunmen in Bujanovac killed an Albanian employee in the Serbian State Security Service. On February 8, 2003, the Serbian police arrested twelve Albanians and kept seven of them in detention, on charges of illegal possession of arms and conspiracy to carry out hostile activities against the state. Over the course of the next five days, Albanians in Bujanovac and Presevo staged peaceful protests in response. In some villages they also set up roadblocks on the route connecting the area with Kosovo.

The EU monitors based in the area immediately visited the locations in which the arrests took place, and found that the police conducted the weapons search and the arrests in a professional manner, without unnecessary destruction of objects or an excessive use of force. The government, however, enraged local Albanians by referring to those arrested as “terrorists,” before any court has established that they violated the law. Of the seven detained, three have been released; two have been sentenced to serve minor prison terms on illegal arms possession charges; and two remain in detention and under investigation.

Prior to and after the February crisis, the persistent problem in the area has been discrimination in employment in the public enterprises, an inheritance from the Milosevic era. In Bujanovac, there are ten such enterprises, and the presence of ethnic Albanians among the employees is glaringly low. By way of illustration: of the 153 workers in the company “Komunalac,” only four were Albanians as of November 2002; in “Gumplastik,” there were only three Albanians among the 150 employees; in “Mega,” ten Albanians worked along with 140 Serbs; and, in “Duvanska” tobacco company, there were 155 Serbs and fifteen Albanians.

Little progress has been made in the reform of school curriculum, which ignores Albanian culture and history. The government has also done little to build or repair the infrastructure in the Albanian villages in the area.

The heavy presence of “gendarmerie” (special Serb police units) has been the constant source of a discontent among the local Albanians. The government claims, arguably with some merit, that

their presence is indispensable due to the consistent security threat represented by the so-called Albanian National Army (ANA), whose members are allegedly present on the Kosovo side of the border and occasionally penetrate into Serbia proper. The authorities have blamed the “Albanian extremists” for the explosions and the assassination of the Albanian policeman in February.

While Southern Serbia remains a relative success story on minority rights, the tensions that emerged in February 2003 highlight the importance of progress on the Albanian minority’s longstanding grievances with respect to employment and educational opportunities. In this connection, the CSCE may wish to promote the engagement of the OSCE High Commissioner on National Minorities in this region.

Roma rights

Police brutality against Roma is a persistent problem, and discrimination against Roma in various fields of public life remains widespread. Prosecutors continue to dismiss complaints of discrimination or simply fail to take any action to address them, and legal provisions against discrimination remain inadequate.

Thousands of Roma families, many of them displaced from Kosovo, continue to live in makeshift settlements in the vicinity of towns, without electricity, running water, or sewers, or access to public health and education services. Authorities have attempted on several occasions to evict the families from one such settlement in Belgrade, without providing them with adequate alternative accommodation. In September and October, 2002, the affected Roma staged large protests in Belgrade, and the authorities postponed the eviction until such time as alternative accommodation could be found, but by mid-November the companies owning the land plots evicted all displaced Kosovo Roma from the settlement, using threats and employing excavators to destroy the Roma shacks.

Thank you, Mr. Chairman, Members of the Commission, for this opportunity to share with you these observations. I sincerely hope they contribute to your consideration of conditions Serbia and Montenegro’s in light of the requirements of Section 578.