

HUMAN RIGHTS WATCH

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Brussels, March 26, 2007

To: Commissioner Olli Rehn, Commissioner for Enlargement
To: Chancellor Angela Merkel, Presidency of the Council of the European Union
To: Javier Solana, EU High Representative for the Common Foreign and Security Policy

Your Excellencies,

Re. EU Approach to Cooperation of Serbia with ICTY

Human Rights Watch is writing to ask you to exercise your leadership to ensure that the European Union maintains a principled and consistent approach towards Serbia in relation to its cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY). While the desire not to further complicate the ongoing negotiations in Belgrade over the formation of a new government is understandable, it is critically important for the European Union (EU) and its institutions to reaffirm that impunity for war crimes and genocide is incompatible with the values of the Union, and that full cooperation with the International Tribunal for the Former Yugoslavia (ICTY) is the key for Serbia to have closer ties to the EU.

Human Rights Watch is extremely concerned about the indications from the EU in recent weeks that it may be prepared to resume negotiations with Serbia in the absence of full cooperation with the ICTY. In our assessment, such a move would undermine efforts to move Serbia towards a stable and democratic future based on respect for human rights and the rule of law, and significantly increase the risk that war crimes suspects in Serbia indicted by the ICTY will never face justice.

As you know, in May 2006, the Commission, supported by the General Affairs and External Relations Council (GAERC),¹ decided to suspend the negotiations of the Stabilization and Association Agreement (SAA) with Serbia in light of the successive governments' continuous failure to cooperate with the Tribunal. In particular, Commissioner Rehn, you singled out Serbia's failure to transfer to the custody of the ICTY wartime

Bosnian Serb Commander Ratko Mladic. The Commission's regular annual progress report on Serbia in November 2006 emphasized that full cooperation with the ICTY is a precondition for the resumption of SAA talks.²

Since that time Serbia has made no progress towards full cooperation, including transferring Mladic to the ICTY. The ICTY prosecutor continues to denounce forcefully Serbia's lack of cooperation.³ Despite Serbia's presentation of an Action Plan to apprehend Mladic in July 2006, there has been no tangible progress or evidence of any real commitment to implement it. Moreover, on February 26, 2007, the International Court of Justice (ICJ) ruled that Serbia's failure to transfer Ratko Mladic to the ICTY amounted to a violation of its obligations under the Convention on Genocide. The Court also ordered Serbia to transfer to the ICTY individuals indicted for genocide and to cooperate fully with the Tribunal.

The ICJ decision underscores the fact that almost 12 years after the Srebrenica massacre, its indicted architects Ratko Mladic, and Bosnian Serb wartime President, Radovan Karadzic, remain at large. In addition to Mladic, four other war crimes suspects indicted by the ICTY are believed to be in Serbia.

There is nothing to indicate progress towards full cooperation on Serbia's part. Yet there are signs that the EU may be prepared to water down its insistence on full cooperation as a precondition for resuming talks with Serbia.

It is our understanding that institutionally the decision to resume SAA talks lies with the Commission. Commissioner Rehn, you recently expressed publicly the Commission's eagerness to resume talks provided Belgrade takes a number of steps,⁴ including that a future Serbian government express publicly its commitment to cooperate with the ICTY. This is set against the backdrop of the decision by NATO (which shares many member states with the European Union) in November 2006 to admit Serbia to the Partnership for Peace programme, notwithstanding its lack of progress on ICTY cooperation. EU Foreign Affairs Ministers in conclusions adopted in February 2007 supported the resumption of talks by the Commission provided a new government in Serbia "shows clear commitment and takes concrete and effective action for full cooperation with the ICTY."⁵ While the nature of that commitment and action are not defined, the conclusions of the Council suggest that action short of full cooperation may be sufficient for talks to resume.

In the assessment of Human Rights Watch, full cooperation is best demonstrated by the arrest and the transfer of Ratko Mladic and other fugitives believed to be on Serbian territory. It is crucial that the EU maintains and communicates a very high threshold of what "full cooperation" with the ICTY entails. Over the years, successive Serbian officials have made repeated declarations and promises regarding full cooperation with the ICTY in general and the transfer of Mladic in particular, often with little result. While a public declaration of commitment by a new Serbian government would be a welcome signal, it hardly qualifies as a "dramatic improvement of cooperation with the ICTY,"⁶ that would warrant resumption of the SAA talks. Similarly, reforming and improving coordination between police and intelligence services responsible for locating fugitives is an important prerequisite for progress but does not guarantee that they will deliver results. In this regard, a more convincing indicator would be for the

Serbian president to request and share with the ICTY regular and detailed intelligence reports of investigative steps taken to locate fugitives.

The Office of the Prosecutor at the ICTY remains best placed to evaluate whether full cooperation is achieved. We urge the Commission to consult the ICTY Prosecutor, and to take into account her assessment of Serbia's cooperation, before making any decision on the resumption of SAA talks.

We urge the German EU presidency and EU Member States to give their strong support for the resumption of talks to be conditioned on full cooperation with the ICTY, and to dispel publicly the current ambiguity about the EU's continuing commitment to justice for serious crimes committed in the Balkans during the past decade. In particular, we urge you, Chancellor Merkel, to meet with prosecutor Del Ponte and discuss these pressing issues. A principled and consistent position is absolutely essential for the credibility of the EU in the Balkans and its capacity to motivate positive change in the future.

Human Rights Watch is convinced that the prospect of closer relations with the EU, through the Stabilization and Association process, has served as the single most important catalyst for positive change in the Western Balkans region. We understand that it has been suggested by some in Brussels that asking Serbia to transfer Mladic as a condition for resuming SAA negotiations demands more from Belgrade than was expected of Croatia, for whom the transfer to the ICTY of Croatian General Ante Gotovina was a precondition for EU candidate status rather than SAA talks. What the case of Gotovina actually demonstrates is the value of a clear, firm and consistent position on the part of the European Union as regards ICTY cooperation, since there is little doubt that without firm EU pressure Gotovina would never have been brought to justice.

The EU cannot ignore the plight of thousands of victims and their families still waiting for justice. Paying lip service to cooperation with the ICTY in the context of talks with Belgrade would send a very negative signal in Serbia as to the seriousness of the EU's demands regarding the transfer of fugitives and ultimately, regarding Serbia's needed commitment to justice, the rule of law and respect for human rights. It would be a self-defeating strategy that would only serve to strengthen the less progressive forces in Serbia, who believe they can outwait the ICTY, currently engaged in a completion strategy, and continue to shelter "national heroes" who are indicted war criminals.

Human Rights Watch strongly believes that accountability for serious past crimes through fair trials is the foundation for successful post-conflict reconstruction based on the rule of law and respect for human rights. Serbia's full cooperation with the ICTY, as well as a commitment to fair domestic war crimes trials, would demonstrate its maturity and commitment to embrace fully the values of the European Union. Conversely, Serbia's failure to cooperate with the ICTY impedes the normalization of its relations with the other countries of the region.

As pointed out in the EU presidency statement reacting to the ICJ's decision in the genocide case, it is time for Serbia to "distance itself from the crimes committed by the Milosevic regime"⁷ and engage firmly in a European, democratic future. This change can only be achieved through facing these crimes and seeking justice for them, not by

continuing to protect war criminals. That in turn depends on the EU providing principled and consistent leadership on these matters.

We thank you for your attention and look forward to a prompt clarification of the EU's stance on this important issue.

Sincerely,



Kenneth Roth
Executive Director



Lotte Leicht
EU Advocacy Director

cc: EU Ministers of Foreign Affairs

¹ GAERC, Brussels, 15 May 2006, Conclusions on the Western Balkans
http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/gena/89618.pdf, (accessed on March 23, 2007).

² "The Commission stressed its readiness to resume negotiations as soon as full cooperation with the ICTY is achieved", European Commission, "*Serbia 2006 Progress Report*", p.5
http://ec.europa.eu/enlargement/pdf/key_documents/2006/Nov/sr_sec_1389_en.pdf (accessed March 23, 2007)

³ "Del Ponte urges EU Serbia caution", BBC News, 31 January 2007
<http://news.bbc.co.uk/2/hi/europe/6318041.stm> (accessed March 23, 2007).

⁴ In a press conference after the EU Troika meeting with Serbia early March 2007, Commissioner Rehn cited the following actions: the new government makes a formal commitment to arresting fugitives in their work program, competent and committed people are placed in the right governmental positions to enable full cooperation with the ICTY, the competent authorities working on fugitives' arrest are well coordinated, Serbia grants full access to documents and files. GAERC, EU-Serbia Troika, Brussels, March 6 2007, audio files,
http://consilium.europa.eu/cms3_fo/showPage.asp?id=997&lang=NL&mode=g, (accessed on March 23, 2007).

⁵ GAERC, 12 February 2007, Conclusions on the Western Balkans
http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/gena/92758.pdf, (accessed on March 23, 2007).

⁶ "Our initial goal of concluding the negotiations by the end of 2006 is still within reach, but only if there is a dramatic improvement in cooperation with the ICTY so that the negotiations can resume without delay," "Statement of Commissioner for Enlargement Olli Rehn", Commissioner for Enlargement, May 3, 2006,
<http://www.delscg.cec.eu.int/en/news/news/final20060503/final20060503.htm> (accessed March 23, 2007)

⁷ "EU Presidency statement on the International Court of Justice's judgment," EU German Presidency 2007, 26 February 2007, http://www.eu2007.de/en/News/CFSP_Statements/February/0226Serbien.html (accessed March 23, 2007)