How Not to Try A Former Head of State:
Lessons From the Trial
of Slobodan Milošević

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Lessons From the Milosevic Trial

Two Key Issues:

- Complexity of the case against Milošević
- Self-representation
Complexity of the Case

Prosecution Case from Feb 02 – Jun 04 involving:

• almost 350 witnesses

• more than 32,000 pages of transcript

• more than 1,000,000 pages (excluding videos, photographs and maps) of potentially exculpatory material disclosed to the accused;
Milošević not accused of physical perpetration of any of the crimes but:

- Participation in a Joint Criminal Enterprise
  Or
- Superior Responsibility
  (as alternative bases of responsibility)
Complexity of the Case

Prosecution required to prove beyond reasonable doubt both:

- The actual crime base; and
- The accused’s criminal responsibility for the alleged crimes.
Complexity of the Case

Original plan to prosecute Kosovo only

But joinder of 3 Indictments:

- Requested by Prosecution
- Refused by Trial Chamber
- Overruled by Appeals Chamber
66 Counts Across 3 Indictments:

- Croatia (32 counts)
- Bosnia (29 counts)
- Kosovo (5 counts)
Complexity of the Case

Very few counts relate to specific incidents in particular municipalities (e.g. Dubrovnik, Sebrenica, Sarajevo)

Overwhelming majority of counts allege patterns of behaviour across multiple municipalities
Complexity of the Case

An example from the Croatia Indictment:

… from 2 to 24 October 1991, JNA troops systematically plundered public, commercial and private property in the towns and villages of Brgat, Cilipi, Dubravka, Gruda, Moccici, Osojnik, Slano, Donja Ljuta, Popovici, Mihanici, Drivenik, Konavle, Plat, Cepikuce, Uskoplje, Gabrili, Pridvoje, Molunat, Donja Cibaca, Karasovici and Zvekovica. Much of this property was transported to Montenegro in JNA military vehicles.
Complexity of the Case

An example from the Bosnia Indictment:

…the wanton destruction and plunder of the public and private property of the Bosnian Muslim, Bosnian Croat and other non-Serb populations within the territories of Banja Luka; Bihac; Bijeljina; Bileca; Bosanska Gradiska; Bosanska Krupa; Bosanski Novi; Bosanski Samac; Bratunac; Brcko; Cajnice; Celinac; Doboj; Donji Vankuf; Foca; Gacko; Sarajevo (Hadzici); Sarajevo (Ilidza); Sarajevo (Ilijas); Kljuc; Kalinovik; Kotor Varos; Nevesinje; Sarajevo (Novi Grad); Sarajevo (Novo Sarajevo); Prijedor; Prnjavor; Rogatica; Rudo; Sanski Most; Sipovo; Srebrenica; Teslic; Trebinje; Visegrad; Vlasenica; and Zvornik. This intentional and wanton destruction and plunder was not justified by military necessity.
Complexity of the Case

- 3 indictments combined contain > 7,000 allegations of fact;

- Prosecution indicated that it would have preferred more time to present its case;

- Chamber Decision on ‘No Case to Answer’ resulted in the removal of over 1,000 allegations of fact from the indictments for want of evidence adduced by the Prosecution.
Allowing Milošević to be self-representing excessively prolonged proceedings:

- cross-examination took significantly longer than examination-in-chief;
- 65 trial days were lost to the accused’s ill-health;
- trial reduced to three sitting days per week to accommodate the accused’s health.
• Milošević had a vested personal interest in prolonging proceedings

• Combination of complexity of the case and self-representation provided ample opportunity to ‘wind down the clock’
Lessons from the Milošević Trial

The ICTY already applying lessons from the Milošević Trial in other cases:

• Denial of self-representation in the Šešelj Case;

• Narrowing of Kosovo Indictment in the ‘Kosovo 7’ Case (Milutinović et. al.)
Lessons from the Milošević Trial

Key challenges in balancing fairness and expedition:

• joinder of indictments?

• fewer representative counts?

• preventing an accused from controlling proceedings.
Lessons from the Milošević Trial

Contrast with the trial of Saddam Hussein:

- death penalty for single count of crimes against humanity in Dujail;
- imposition of death penalty precluding the trial on additional counts;
- serious criticisms of aspects of the conduct of the trial.
Lessons from the Milošević Trial

Was the Milosevic Trial an abject failure?:

- no judgment after 4 years and millions of dollars;

  but:

- no immunity for a former head of State;
- accused in custody and on trial for final years of his life;
- detailed evidentiary record;
- some witnesses afforded an opportunity to testify against Milošević;