

Comment: A Necessary Gamble

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The Milosevic trial is a long and torturous process that must pay off if future war crimes proceedings are to succeed.

Slobodan Milosevic's call for a two-year break to work on his tribunal defence is a reminder of just how unwieldy his trial threatens to become.

He told the court on September 2 that a man conducting his own defence faces a nightmare task. He must sift through half a million documents, then find a way to interview potential witnesses from former Yugoslavia and around the world to find out which ones are suitable to be called to give evidence - all while sitting in a Dutch jail cell.

Prosecutor Geoffrey Nice was soon on his feet to point out that while Milosevic has no lawyer to assist him, he has a whole battery of legal experts he can draw on in Belgrade.

Secondly, Nice stated that a defence case is by its nature simpler than the prosecution. Assuming he has the truth on his side, all the defendant need do is refute the prosecution's allegations, using witnesses and documents to give support. There is little need for Milosevic to investigate anything.

And third, normal trials in courts around the world have no such break - defence is expected to follow prosecution.

The judges seemed to agree. They threw out the two-year request on the spot - although they are likely to accept a more modest delay, of perhaps a few months.

Milosevic has a reputation for throwing obstructions in the way of the court. He does not recognise the tribunal, spurns the offer of a lawyer, and even refuses to wear translation headphones.

But many observers think Milosevic has a point. Whatever you think of him, the trial must be fair. The bedrock of this tribunal remains that a defendant, even one choosing to represent himself, is entitled to fully defend himself.

Put another way, the system must be fair, even if you feel some of the people using it are not.

The problem with this trial is its sheer scale. Milosevic is charged with war crimes spanning three separate conflicts, and the charge sheet alone occupies 125 pages. Even this slimmed-down prosecution case is unlikely to end before December - 22 months after it started.

For prosecutors, there is the worry that Milosevic brings to bear all the stalling tactics now available.

He has the right to the same court time - presumably 22 months - and can call the same number of witnesses. And if he wants to derail the process, he has plenty of opportunities.

First, his witnesses are likely to include Jacques Chirac and Bill Clinton, but other names - such as Tony Blair - may be thrown into the ring, tying the court up in knots as it tries to decide if it has the right to demand they attend.

Second, Milosevic can exploit the opportunity to call the same number of witnesses - likely to be more than 150 - as the prosecutors.

If he wants to, Milosevic can cause chaos. His witnesses could delay turning up, fall sick, disappear or even run up huge room service bills in Hague hotels - anything to add to the time and cost of this huge trial.

The ultimate nightmare for the prosecutors is that it drags on so long that Milosevic becomes too sick to continue - or even dies.

And the longer the trial goes on, the more pressure the prosecutors will feel over their most crucial decision of them all - the decision to try Milosevic for war crimes in three separate conflicts.

In fact, they could have probably jailed him for crimes carried out in Kosovo alone. The case here is the easiest to prove, because Milosevic had direct command of units blamed for committing atrocities.

But the prosecutors have sound reasons for wanting to examine Bosnia and Croatia too, as there is little sense in bringing justice to the victims of atrocities in Kosovo if you do not also do the same for those in Bosnia and Croatia.

Also, this trial offers a one-off chance to fully explore the complex web of blame for the Balkan wars.

But it remains a gamble. While a trial for Kosovo only would have been manageable, dealing with all three conflicts is a huge undertaking, and one which is likely to go on for a further six years.

If this gamble works, and Milosevic is found guilty for crimes committed in all three wars, this will be a landmark in the history of jurisprudence. But if the process proves unwieldy, clumsy, expensive and muddled, it will throw a shadow over the whole idea of war crimes trials.

There are plenty around the world - including various warlords - who would be happy to see the whole concept of war crimes justice fail.

All one can say for sure is that the stakes have never been higher.

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Location: Balkans
Kosovo
Croatia
Bosnia and
Herzegovina

Focus: International Criminal Tribunal for the former
Yugoslavia

