

Comment: Will Milosevic Escape Genocide Charge?

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Milosevic is likely to go to prison for a long time, but probably not for his most serious alleged crime.

The Milosevic prosecution is nearly at an end and the question being asked increasingly in the corridors of the Hague tribunal is whether the former Serbian president will escape the most serious accusation against him - the charge of genocide.

This idea sounds odd: after all, prosecutors appear to have assembled a mountain of evidence showing he supplied weapons, money, fuel and soldiers to the Bosnian Serb forces.

Also indisputable is the extent of the killings, torture, rape, mutilation, imprisonment and terror inflicted on hundreds of thousands of civilians by these forces.

Yet genocide is a difficult charge to prove. Not only do you have to establish the crime took place, but also that there was an intention to commit it.

Terrible as it was, ethnic cleansing was not necessarily genocide: the object, a defence lawyer could argue, was not to wipe out non-Serbs, but simply move them.

The same applies to the detention camps. To those who survived them, the torture and brutality were unsurpassed. Yet once again, a defence could claim that the camps were not genocidal in their intention. They were set up as detention camps, not extermination camps.

A second problem is getting inside the mind of Milosevic. Even if you can prove that crimes he had responsibility for amount to genocide, how can you prove this secretive man had genocidal intentions? Prosecutors have yet to find orders that he issued for genocide. Possibly they do not exist - Milosevic was famous for giving his instructions verbally.

Genocide has so far been proven in one Bosnian war crimes case - the massacre of up to 8,000 Muslim men and boys at Srebrenica in 1995.

But the evidence so far does not indicate Milosevic directed the operation: to the Bosnians Serbs he supplied men, weapons and fuel - former EU negotiator Lord Owen recently testified that the 1Bosnian Serb war machine would have ground to a halt if Milosevic had cut its supply lines.

This supply operation may mean he is guilty of complicity in genocide. It may not be enough evidence to convince the judges that Milosevic is guilty of it.

Of course, this may not matter. He is still expected to go to jail for a long time - almost certainly he will die there. Many people think that the huge amount of evidence assembled make it almost certain he will be convicted of crimes against humanity, violations of the laws and customs of war, and grave breaches of the Geneva conventions.

But in this trial, appearances count for a lot. And opponents of the tribunal may say that the failure to convict the biggest defendant of the most serious crime is a failure of the system.

His backers may also draw support from such a failure.

Milosevic's support is an enduring mystery: even ignoring war crimes, Milosevic has a record of betraying all who align themselves with him.

He betrayed his broadcaster, Dusan Mitevic. He betrayed his mentor, Ivan Stambolic. He betrayed the army - leading them into four wars and losing them all. He betrayed the Serbs in Croatia and Kosovo, most of whom have fled their homes. Nationalists like Dobrica Cosic were used, then betrayed. Even men in his inner circle, like former Yugoslav president Borisav Jovic, ended up being discarded when Milosevic no longer had need of them. The entire middle class in Serbia and Montenegro saw its savings stolen and jobs destroyed by ruinous wars and gangsterism.

Yet Milosevic remains a hero to many: perhaps this is because some Serbs feel they have no other friends in the world: not the West, which bombed Belgrade, and not Russia, which failed to prevent it. Such supporters will celebrate if Milosevic escapes the genocide charge.

This problem highlights the two trials of Milosevic, and their contrasting fortunes. The trial itself is going well. Evidence is stacking up, and it seems hard to imagine a defence that can cope with it.

But there is another trial, the trial in the court of public perception, and this is more tangled: this one is taking too long, Milosevic has proved a charismatic opponent of the prosecutors, and his ill health has caused further delays. It is expected to last until at least 2006, not counting appeals.

This in turn has helped to cause tension with the UN Security Council, which, led by American pressure, wants the tribunal to stick to its completion strategy closure deadline of 2010. And it seems this deadline cannot be met.

The Milosevic trial is only part of the problem of too much work and too few resources that is confronting the tribunal.

And the court is now facing criticism that, in trying to combat these problems, it is giving out sentences for plea bargains that are too light.

Certainly defendants should be encouraged to admit their crimes, but not if this means giving them light prison terms.

With the Milosevic case, and with the rest of its workload, the tribunal should avoid taking short cuts. If necessary, cases can be transferred to Balkan war crimes courts now being set up across former Yugoslavia.

And the court should remember the words of Judge David Hunt, who retired this month. He issued a dissenting opinion which many saw as a warning against any compromise on justice.

The opinion warned about an appeals decision that might favour the prosecution over the defence.

"The Majority Appeals Chamber Decision," he wrote in his dissenting opinion, "and others in which the Completion Strategy has been given priority over the rights of the accused will leave a spreading stain on this Tribunal's reputation."

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