

Executive Summary

The arrest and surrender of Slobodan Milosevic to the International Criminal Tribunal for the former Yugoslavia (ICTY) was a watershed moment for international justice. It was an event many never thought would happen and created both high hopes and a great deal of controversy in the Balkans and beyond. Milosevic's death on March 11, 2006, was an unfortunate end to the "trial of the century." It deprived victims of horrific crimes in the former Yugoslavia of a verdict after the most comprehensive proceedings on the conflicts there. Furthermore, while the four-year duration of the trial and Milosevic's frequent courtroom grandstanding had already raised concerns and questions about the trial, his death ignited a round of criticism about the efficiency and viability of these trials. The criticism was seen by many as a setback for justice through an international criminal tribunal.

Although Milosevic's death—and the absence of a verdict—denied the victims a final judgment, this should not diminish the trial's other accomplishments. As the first former president brought before an international criminal tribunal, the trial of Milosevic marked the end of the era when being a head of state meant immunity from prosecution. Since then other former heads of state, including Saddam Hussein and Charles Taylor, have been brought to justice. Also, even though the lengthy trial process did not lead to a verdict, the information introduced at trial was itself important.

Human Rights Watch has examined a portion of the evidence presented to the court during the Milosevic trial. We believe this evidence should have an effect on how future generations understand the region's history and how the conflicts came to pass: because no truth commission has been established to look into the events in the region, the Milosevic trial may be one of the few venues in which a great deal of evidence was consolidated about the conflicts. The fact that Milosevic had the opportunity to test the prosecutor's evidence in cross-examination enhances its value as a historical record. The evidence will also be useful in other trials at the ICTY.

Court proceedings that required disclosure by the Serbian government of previously withheld material revealed previously unknown information. In response to viewing

the public proceedings, insider witnesses came forward voluntarily and other new material, including a video that showed members of the notorious “Scorpion” unit executing men and boys from Srebrenica, became public for the first time. The airing of the video engendered a great deal of national discussion in Serbia, forcing people to confront the fact of atrocities they had previously denied.

On a broader scale, the Milosevic trial was the first ICTY case in which evidence was introduced relating to all three conflicts: Croatia, Bosnia and Herzegovina,¹ and Kosovo. It is also likely to be the only ICTY trial that comprehensively examines Belgrade’s role in Bosnia and Croatia. Although it was widely assumed that Serbia supported the Serb combatants in the conflicts in Croatia and Bosnia, the full extent of the support and the mechanisms by which it was accomplished were not public until the Milosevic trial. Much of Belgrade’s involvement in the conflicts was deliberately kept secret.

The Milosevic trial opened the door on these state secrets. Evidence introduced at trial showed how those in Belgrade and the Federal Republic of Yugoslavia financed the war; how they provided weapons and material support to Croatian and Bosnian Serbs; and the administrative and personnel structures set up to support the Croatian Serb and Bosnian Serb armies. In short, the trial showed how Belgrade enabled the war to happen. As a former United Nations (UN) official testified, “The [Serbs] relied almost entirely on the support they got from Serbia, from the officer corps, from the intelligence, from the pay, from the heavy weapons, from the anti-aircraft arrangements. Had Belgrade chosen even to significantly limit that support, I think that the siege of Sarajevo probably would have ended and a peace would have been arrived at somewhat earlier rather than having to force them militarily into that weaker position.”²

In addition to helping shape how future generations assess the Balkan wars of the 1990s and Serbia and the FRY’s role in the events, the Milosevic trial offers important procedural lessons for cases of this scope. As the first trial of a head of state and

¹ For the purposes of this report, the terms “Bosnia and Herzegovina” and “Bosnia” are used interchangeably.

² Testimony of David Harland, Trial Transcript, November 5, 2003, p. 28706.

with charges encompassing three conflicts over the course of nearly a decade, this case presented unprecedented challenges for the ICTY. Proving the guilt of a senior official nowhere near the multiple crime scenes and establishing a chain of command in circumstances where no lawful authority existed is very difficult and time-consuming. The magnitude of the case added to the breadth of material that needed to be presented.

Critics of how the case was managed have focused on two areas in particular: the duration of the trial (and specifically the scope of the indictments); and permitting Milosevic to represent himself. The second part of this report examines these and other procedural issues that affected trial proceedings. It is important that national and international courts and prosecutors draw trial management lessons from the Milosevic case. On the basis of our research, Human Rights Watch believes the following lessons are among those worth consideration:

- The charges in the indictment or warrant should be representative of the most serious crimes alleged against the accused.
- Where there is sufficient linkage between the crimes, Human Rights Watch believes that, in addition to reasons of judicial economy, holding a single trial for a series of crimes allegedly committed by a high-ranking defendant has the advantage of ensuring that a complete picture of the individual's overall alleged role in the perpetration of the crimes is presented.
- Expeditious prosecution of complex and serious cases requires an adequate pretrial period to allow for complete disclosure to the defense and translation of prosecution evidence and also to allow both the prosecution and the defense to fully prepare their cases. In a high-profile case where there is public pressure to begin a trial before it is fully trial-ready, courts should resist such pressure and take steps to explain to the public the ultimate benefits and necessity of not prematurely commencing a case.

- The right of self-representation should be subject to the requirement that the defendant be able to fulfill the role as counsel and attend court sessions regularly.
- When an accused represents him or herself, assigning counsel to act as *amici curiae* is an appropriate way of ensuring the accused's rights are protected. In legally and factually complex cases, it is important to have attorneys capable of looking after technical issues that a defendant representing himself may not be capable of handling, to ensure a fair trial.
- Prosecution strategy must ensure that in the trial of a high-level defendant, proof of the criminal command structure is given the appropriate focus and resources in a trial, while balancing the need to present crime scene evidence. This will require hard decisions and a tightly tailored case.
- Trials of high-level suspects will be important for the documentation of events and the creation of an historical record. The efficient prosecution of a case will be a significant factor in the quality of that record.
- Increased use of written testimony was an important change introduced in the Milosevic trial. When a written statement is used in lieu of a direct examination, however, copies should be available to the public in a timely manner so they are able to follow the witness's testimony.
- Use of strict time limits can be an incentive to present an efficient case and is fair to the defense while moving the trial forward.
- All organs of the court should keep in mind the importance of making the proceedings meaningful to the communities most affected by the crimes.