BOOK REVIEW

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The Milosevic Trial Lessons for the Conduct of Complex International Criminal Proceedings by Gideon Boas (Cambridge University Press, 2007) 324 pp

The recent indictment of Radovan Karadzic and his ultimate trial at the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague for alleged war crimes, including genocide, particularly against Muslims, makes this book even more timely. For, as the author makes clear with his dramatic opening statement, 'on 11 March 2006, Slobodan Milosevic died in his bed in the UN Detention Unit in The Hague'.[1] That death, after four years in detention and on trial for 66 count of genocide, crimes against humanity, grave breaches of the Geneva Conventions and violations of the laws and customs of war, 'left a significant hole in the fabric of the development and solidification of international criminal justice'.[2] This book deals with the legacy of Milosevic's trial and his untimely death, dissecting the 'monstrously broad case pressed by the prosecution'[3] together with the intervening death of the prime former head of state being tried for atrocities, with the need to reconsider what constitutes fairness and what constitutes expeditiousness in international criminal trials. Recommendations for reform of future conduct of international criminal trials are set out at the end of the book.

In the author's view, the Milosevic trial got 'off on the wrong foot' (the title of Chapter Two) and was further burdened with case management challenges during the trial (including appearing to change direction in the case management approach). For Boas, the role of the prosecution is particularly significant in the adversarial context of international criminal law,[4] and important policy and strategic areas in the Milosevic prosecution case were 'far from best practice',[5] and even 'seriously threatened the fair and expeditious trial framework within which international criminal trials are

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1 G Boas, *The Milosevic Trial Lessons for the Conduct of Complex International Criminal Proceedings* (Cambridge University Press, 2007) 1.
2 Ibid.
3 Ibid xvii.
4 Ibid 79.
5 Ibid.

conducted'.[6] The primary criticism levelled at the prosecution case concerns its 'zealous and overly expansive, creating a trial that was unmanageably complex and long',[7] particularly through the three indictments against the accused. The book acknowledges the extreme difficulties facing the Tribunal given the accused's stance on the trial.

On the issue of representation of the accused, Boas notes that the ICTY experience in the Milosevic case was one with an 'intransigent accused' who appeared 'motivated not just by a desire to mount a forensic case but to assert a political position'.[8] Further that the Tribunal resorted to 'many different tools … to bolster the accused's representation resources in the Milosevic case',[9] including forms of hybrid representation, despite the accused's being 'truly uncooperative'.[10] Later in the book, Boas reminds us that the ICTY had to take a strong position vis a vis the Milosevic and Seselj cases, in imposing counsel on 'intransigent and manipulative accused'.[11] Such shenanigans pose 'real challenges for the conduct of those trials as well as – crucially – their fair and expeditious conduct'.[12] In Boas' view, less leniency must be accorded further high-level accused such as Milosevic in the future so that they do not take advantage of the 'niceties of the trial process for inappropriate motives'.[13] The recommendations include model ways in which the prosecution case can be focused, comprehensible and manageable, which will reduce trials by appropriate conduct of the parties and control by the court.[14] Reduction in scope of a case, for example, is a primary recommendation, with a flow-on impact on the fairness of the trial due to the enhanced clarity of the prosecution case and the volume of issues and material each must deal with – thus 'less likely to offend the principle of the equality of arms'.[15] The matter of self-representation is characterised as 'a profound procedural challenge to the Milosevic trial' and one that is 'spreading in international criminal law'.[16] Hence post Milosevic the right to self-representation has been qualified, so that representation issues do not 'obstruct the trial process'.[17] A further significant recommendation concerns the 'outdated common law/civil law divide' and the argument that it is 'time for international criminal law to evolve'.[18] Damaska has called the common law/civil law mix a matter of 'evidentiary transplants' and Boas asserts that 'it is in fact time to abandon the preoccupation of international criminal courts and tribunals with this dichotomy and embrace the newly created system of international criminal law as a jurisdiction in its own right'.[19] This will in Boas' view free law makers and interpreters from 'the perceived constraints of principle and procedure derived from national legal precedent'.[20]

The book, while clearly adapted from a PhD thesis, is rather dense in that it provides a great deal of detail, but it has been gleaned out of both academic and practical

6 Ibid.
7 Ibid.
8 Ibid 242.
9 Ibid 243.
10 Ibid 245.
11 Ibid 285.
12 Ibid.
13 Ibid 286.
14 Ibid 275.
15 Ibid.
16 Ibid 285.
17 Ibid.
18 Ibid 286.
19 Ibid 287.
20 Ibid.

experience with much of it gained first-hand when the author worked as Senior Legal Officer of the ICTY and the Senior Legal Adviser to the Chamber on the Milosevic case. Furthermore, this prevailing academic quality will make it resonate with a wide range of students as well as practitioners, and it will be of use in courses such as those in international criminal law, together with international criminal justice and international humanitarian law and also subjects such as victimology (incarnations of which are now taught at many Law Schools/Faculties and in socio-legal studies and criminology). It would appear that there is future interest in this broader perspective of international criminal law and politics. It also would be relevant for international law courses both undergraduate and postgraduate. Overall, while this is perhaps an overly critical appraisal of the Milosevic trial, it nevertheless purports to advance that criticism constructively - with a view to developing crucial lessons for which 'the Milosevic trial … provides a rich and detailed source of law for issues that go to the heart of best practice for the conduct of complex international criminal trials'.[21]

[21] Ibid 285.