

*Indigenous Australians and the Law* places contemporary issues in their historical context while recognizing that both reconciliation and the disadvantages faced by indigenous Australians remain ongoing concerns in Australian society. Although more attention could have been devoted to recommendations for change, *Indigenous Australians and the Law* encourages the reader to shift from complacency to consciousness of these important contemporary issues.

Allison Finch\*

### **The Milošević Trial: Lessons for the Conduct of Complex International Criminal Proceedings**

**Gideon Boas**

**Cambridge: Cambridge University Press, 2007, pp 324, \$79.95**

*The Milošević Trial* was written by Gideon Boas in response to the problems he observed during the four years he spent as senior legal adviser to the judges of the International Criminal Tribunal for the Former Yugoslavia (ICTY) during the *Milošević* trial. As the title suggests, Boas has sought to address the key issues facing international criminal trials in a comprehensive manner, particularly given that precedent provides very little guidance in addressing the issues that arise in international criminal law. The book consists of five chapters, with a forward by Geoffrey Robertson QC.

Boas begins by identifying fairness and expeditiousness as the critical determinants of the success of an international criminal trial, and these remain the underlying themes of most of his arguments throughout the book. Many of the issues he raises revolve around the interaction or conflict between these two requirements, or the need to balance them in order to achieve, what he terms, 'best practice'. Given that Boas concludes by arguing that the *Milošević* trial was substantially fair, the majority of his analysis tends to focus on identifying factors that hindered expeditiousness, or suggesting changes that would improve it. This focus on expeditiousness is justified on several counts: first, Dr Boas argues that a failure to ensure expeditiousness in the conduct of complex international criminal trials can 'have a negative effect on their fairness' (page 272). This is primarily because the 'longer a trial is allowed to run, the broader its scope, the more voluminous the evidence, the less

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manageable the trial becomes for all involved, particularly the accused' (page 272). As Boas points out, this was clearly evident in the *Milošević* trial, given that the material disclosed to Milošević alone amounted to over 1.2 million pages of documentation. Many of the other arguments supporting more expeditious trials are essentially political, but no less relevant, and revolve around the potential for dwindling international support (and funding) for international criminal trials. Chapter one discusses these principles of fairness and expeditiousness, in particular, their interpretation and application in international criminal law.

The remainder of the analysis in this book is based generally on these principles and may be divided into three broad areas. First, the prosecution's indictments, case strategy and the substance of their arguments are examined in order to determine defects and to suggest improvement (chapter two). In chapter three, the case management challenges experienced during the trial are considered, while chapter four analyses the issues related to representation and resources in international criminal law. Chapter five concludes with six proposals for the reform of the conduct of international criminal trials.

Many of the arguments made concerning expeditiousness and 'best practice' conduct of international criminal courts are justified by Boas' theoretical approach to international criminal trials. As he argues repeatedly throughout the book, the purpose of international criminal trials should be 'primarily forensic in nature – that is, to determine the guilt or innocence of individuals for their role in atrocities' (page 4). He thus specifically rejects alternative justifications of international criminal trials, such as those that argue that they may be 'legitimately viewed as broader sociological and/or political exercises fulfilling a purpose beyond the determination of the guilt or innocence of the accused being tried' (page 4). Boas argues, instead, that trials cannot operate effectively or fairly outside the forensic trial paradigm. Given this perspective, Dr Boas is highly critical of the way the prosecution approached the case, arguing that it was treated more as a truth commission (or perhaps a political exercise) rather than a forensic process. The insistence of the prosecution (refused initially by the Trial Chamber, but allowed by the Appeals Chamber) to join the three indictments into one case, resulting in a case examining three conflicts over eight years and encompassing over 7000 charges in 66 separate counts against one man, is an example of this approach. This demonstrates how unmanageable the case was and illustrates Boas' initial point about the interaction between fairness and expediency. Throughout the book, Boas advocates a new 'restrained and realistic' approach by prosecution to an international criminal case, which would avoid the situation where over 1000 allegations are dismissed mostly because there is no evidence to support them (as in the *Milošević* trial). Further, as is pointed out, such broad and vague prosecution indictments have not only been the province of the *Milošević* trial, but are

a hallmark of most international criminal cases. Clearly, Boas' perspective on the purpose of international criminal trials as being primarily forensic is somewhat controversial, and is not shared by all. However, his critical observations of the prosecution provide a convincing case for approaching international criminal cases in this more limited manner and mesh well with the realities of a system where time, money and fairness are critically important.

The book's strength lies in Boas' experience with the ICTY and his insights into all parts of the trial: the prosecution, trial chamber, appellate chamber and defence. It also has an immediate relevance to contemporary concerns, particularly given the recent capture of Radovan Karadzic. The issues raised in this book are not intended to be limited to ad hoc tribunals either, and the majority are directly applicable to the International Criminal Court (ICC). Given the continued human rights atrocities in many parts of the world, the viability and success of the ICC should be a concern for all members of the international community. Perhaps the greatest weakness of the book is its tendency towards repetition; however it remains a comprehensive, thought-provoking book, which should be read by all those with an interest in justice and international criminal law.

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