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Op Ed

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The trial of Slobodan Milosevic before the International Criminal Tribunal for the Former Yugoslavia (Tribunal) has become a battleground pitting international justice against the will of one individual, the Accused.

From the outset, Milosevic has refused to accept the legitimacy of the Tribunal and its right to put him on trial. Consequently, he refuses to defend himself against the 66 counts of war crimes, crimes against humanity and genocide with which he has been charged.

As he told the Court from the beginning, however, he will use any opportunity to make his political case to the public. For this reason, he refuses to be represented by counsel. Since ICTY rules allow an accused to represent himself, Milosevic uses that procedure to secure a platform from which to denounce those who have called him to account. He is not interested in answering the charges, but in bringing charges of his own.

The Trial Chamber allowed him to proceed, hoping he would come to participate in the process rather than obstruct it. The Court's overall concern was and continues to be securing a fair trial -- for the accused, the victims and the public.

It soon became obvious Milosevic was neither capable of nor interested in defending himself against the very serious charges. He used cross-examination to make speeches, intimidate witnesses and ask irrelevant, repetitious questions. While the late Judge Richard May, then presiding, tried to focus him on relevant issues, Milosevic continued to pursue his own purposes.

Adding to the problem was Milosevic's severe hypertension, exacerbated by stress, which caused the trial to be interrupted twelve times for a loss of 66 days. The Court reduced its normal five-day schedule to three half days a week. Despite this and after a six month hiatus following the close of the Prosecution's case, medical specialists concluded Milosevic's health had deteriorated to such a degree he was no longer fit to conduct his own defense.

After a "radical review" of the trial and Milosevic's health, the Court decided the Accused required the assistance of counsel for the trial to go forward in a fair and expeditious manner. When Milosevic refused to appoint counsel of his choosing, the Court appointed the two friends of the court (*Amici Curiae*) who, under the Court's direction, had been raising issues supportive of the defense throughout the trial.

The Court's decision brought it into direct conflict with Milosevic. He strongly objected to presenting his case through appointed counsel and refused to cooperate. At least two

hundred sixty-five of his witnesses declared they would only testify if the Court allows Milosevic to "defend" himself.

Milosevic's witnesses thus joined him in defying the Court's authority. While public debate focuses on the right to defend oneself, the real issue is, as Milosevic has said from the beginning, the legitimacy of the Tribunal. If one accepts, as has been established, that the Tribunal is a duly constituted legal institution, then its rules and the orders of its judges must be followed. As with any court, its rules provide the method to challenge judicial decisions, i.e. by appeal to a higher court. While the issue of imposed counsel is being appealed, there is no reason to expect that Milosevic and his witnesses will abide by the Appeals' Court decision unless it is decided his way.

What it comes down to is that Milosevic will have his forum on his terms or he will not participate. It is not the right to defend himself that he champions. That would require an acknowledgment of the Tribunal's legitimacy. While the Tribunal cannot force him to participate, they can refuse to be his instrument for advancing his agenda and undermining their authority.

The Tribunal's fundamental responsibility is to justice. That requires a fair and expeditious trial for the accused, even if he wants something different. It also requires a fair and expeditious trial for the public and the victims. If Milosevic is allowed to coopt the trial for his purposes, the public and the victims will be denied their legitimate forum.

While this impasse is new on the stage of international justice, it is a harbinger of what will come as other former state leaders are called to account for violations of international humanitarian law. We can expect that they, too, will not bow to judgment, but will attempt to use the trial as a platform to advance a political agenda. They, too, will question the legitimacy of any institution that seeks to hold them accountable on behalf of powerless victims for crimes that offend our humanity. It is incumbent on this Tribunal to stand up to Milosevic, assert its authority and bring the world one step closer to the rule of law.

