

BOOK REVIEW

***THE MILOŠEVIĆ TRIAL — AN AUTOPSY*, TIMOTHY WILLIAM WATERS (ED) OXFORD UNIVERSITY PRESS, 2013, ISBN 978-0-19-979584-0**

The trial of Slobodan Milošević before the International Criminal Tribunal for the Former Yugoslavia ('ICTY') was in many ways an extraordinary event. Milošević was the only head of state indicted to appear before the tribunal, he represented himself at the trial and, after four years of hearings, he died before a verdict could be reached. Timothy Waters' edited volume of essays¹ aspires to present a 'diverse range of views'² on the ICTY's 'flagship trial',³ which was 'seen as the culmination of the tribunal's work, an indictment of the Serbian war project, and a summation of Yugoslavia's dissolution'.⁴ Its 28 contributors come from various professional and overlapping backgrounds. Waters, an academic lawyer who also worked at the ICTY where he helped draft the Kosovo indictment of Milošević, provides five of the book's 34 chapters. Nine of the other contributors, one of whom was also a prosecution witness in several cases before the tribunal, worked for the ICTY in various capacities.

The book is divided into six sections, dealing with six different, but not mutually exclusive, themes. Part One, written by Waters, deals with the background material and serves as the setting for the remaining parts. Its four chapters cover the historical background to the Yugoslav conflict, the establishment of the ICTY, a brief biography of Milošević and an overview of the whole trial. In covering this material, Waters provides a generally objective account. However, although victims of the conflict are generally referred to as 'displaced persons', Krajina's displaced Serbs might object to Waters' tone in his assertion that Croatian forces 'retook the entire Krajina, from which the Serb population fled'.⁵ Later, Waters refers to 'the departure of most of [Croatia's] prewar Serb minority'.⁶ Kosovo Serbs might take offence when Waters, immediately after referring to 'displaced Kosovar Albanians', states that as a result of Kosovar Albanian violence against them, 'large parts of the Serb population fled or resettled'.⁷ Such descriptions leave an impression that there were few or no Serb victims of the Yugoslav wars of the 1990s. This is reinforced more dramatically in Part Three of the book, which explores the reaction to Milošević's trial among Bosniaks, Kosovar Albanians and Croats, who are earlier

¹ T W Waters (ed), *The Milošević Trial — An Autopsy* (Oxford University Press, 2013).

² T W Waters, 'Preface: A Trial Terminated' in Waters above n 1, xvi.

³ Ibid xv.

⁴ Ibid xviii.

⁵ T W Waters, 'The Context, Contested: Histories of Yugoslavia and Its Violent Dissolution' in Waters, above n 1, 24.

⁶ Ibid 28.

⁷ T W Waters, 'The Context, Contested: Histories of Yugoslavia and Its Violent Dissolution' in Waters, above n 1, 29.

described by Waters as ‘the victim populations’.⁸ Apparently, Serbs who had ‘fled’ or ‘departed’ or ‘resettled’ from these areas were not ‘victim populations’. This is not to deny the importance of the chapters dealing with the Bosniaks, Kosovar Albanians and Croats. They show that the trial achieved little by way of reconciliation, a fact readily conceded by Waters when he writes that ‘[t]here is little evidence that reconciliation is occurring in the former Yugoslavia, or that individuals are converging on a common vision of the conflict, let alone that the ICTY contributed to such a process’.⁹ This is also confirmed by empirical studies which, in the case of Bosnia, demonstrate that attitudes of its three national groups have remained essentially unchanged since the eruption of the conflict in 1991. Deep historical, cultural and religious divisions remain with Bosniaks and Croats seeing the conflict as a war of aggression, and Serbs tending to see it as a civil war.¹⁰ That significant reconciliation would result from the work of the ICTY was realistically never going to occur. As Waters notes, ‘the ICTY was first and foremost a court charged with trying individuals accused of committing violations of recognized international law’¹¹ and, based upon the evidence collated in this book, the optimism of many at the time the ICTY was established that it would contribute to post-conflict reconciliation was clearly misguided.

Part Five of the book, which deals with the reaction to the trial in Serbia, is focused on the debate within Serbia’s liberal intelligentsia about the country’s recent past, responsibility for war crimes committed during the Yugoslav wars and the role of the West in Serbia’s political processes. One will find nothing in this book about the impact of the Yugoslav wars and the ICTY trials on the displaced Serbs from Bosnia, Kosovo and Croatia who found themselves as refugees in Serbia. In this respect, interviews with these people show that little, if anything, has been achieved towards reconciliation and that they are more inclined to support more overtly nationalist political parties than their Serbian hosts.¹²

Part Two of the book deals with the course of the trial with a focus on the issue of Milošević’s self-representation and the decision to join proceedings in relation to Croatia, Bosnia and Kosovo into a single trial. The aim here was to establish that the disparate events in these three indictments were all part of a single joint criminal enterprise. As Gideon Boas points out, the joinder decision of the Appeal Chamber, as well as its rulings on self-representation, created ‘a slow-acting poison’ that ‘did much to ensure the trial would outlast its subject’.¹³

Part Four of the book looks at what conclusions can be drawn from the fact that Milošević died before the trial was concluded. Chapters by Waters and Jens Meierhenrich focus on the 2004 Motion for Acquittal, which was the only pre-judgment determinative ruling of the Chamber in

⁸ Waters, above n 1, xxii.

⁹ T W Waters, ‘Dead Man’s Tale: Deriving Narrative Authority from the Terminated Milošević Trial’ in Waters, above n 1, 298.

¹⁰ See Roland Kostić, ‘Nationbuilding as an Instrument of Peace? Exploring Local Attitudes towards International Nationbuilding and Reconciliation in Bosnia and Herzegovina’ (2008) 10 *Civil Wars* 384–412.

¹¹ T W Waters, ‘The Forum: The International Criminal Tribunal for the Former Yugoslavia’ in Waters, above n 1, 35.

¹² See Mila Dragojević, *The Politics of Social Ties: Immigrants in an Ethnic Homeland* (Ashgate, 2014).

¹³ Gideon Boas, ‘Slow Poison: Joinder and the Death of Milošević’ in Waters, above n 1, 119.

the Milošević case. Waters describes it as an ‘ersatz judgment’¹⁴ that ‘has been deployed to tell a story about Milošević’s guilt or innocence and craft a final judgment in the eyes of the world’.¹⁵ These authors rightly recognise that the ruling on the Motion was not a legal judgment and cannot be seen as one establishing Milošević’s guilt. However, Meierhenrich’s argument that the judgment ‘went a long way to restoring confidence in the legitimacy of international adjudication at the ICTY’¹⁶ is one that is unlikely to resonate with those who have criticised the legitimacy of the ICTY and the manner in which it has conducted its proceedings. Their views are not represented in this volume of essays.¹⁷ Four further chapters in this part deal with the value of the evidence produced during not only the trial of Milošević, but also other trials before the tribunal. All four contributors note the obvious point that the evidence, while important, is also incomplete and that future historians must tread carefully when using it. Christian Axboe Nielsen suggests that the ICTY has produced ‘a *reasonable* first draft’ of the Yugoslav wars that is in accord with the vast scholarly literature produced to date.¹⁸ However, the supposed authority that Milošević wielded over the so-called ‘Serbian war project’, which formed the basis of the joint criminal enterprise of which the prosecution alleged Milošević was ‘architect and presiding genius’¹⁹ is questioned by Marko Prelec. Were that the case, Prelec observes, Milošević would have compelled the Bosnian Serbs to accept the Contact Group plan in 1994.²⁰

Part Six of the book deals with the legacy of the trial on the jurisprudence of the ICTY and on international criminal law more generally. Florence Hartmann’s contribution asks whether subsequent trials before the ICTY have established what Milošević’s death before a verdict in his trial precluded, namely, proof of the existence of the joint criminal enterprise that was at the heart of the prosecution’s case against Milošević. The conclusion she reaches is that:

Instead of focusing attention on those who masterminded mass violence far from the battlefield, the ICTY has turned into the leading tool to promote narrow standards of liability that shift guilt away from the leaders operating far removed from the crime base, and back onto people who made no decisions but carried out plans developed by others.²¹

Hartmann adds that ‘the Prosecution seemed more interested in securing convictions — though it hardly succeeded in that — than in lifting the veil of deception’.²²

In his Preface to this bulky tome, Waters states that, as ‘the first comprehensive cross-disciplinary assessment’ of Milošević’s trial, the book seeks to achieve the following: determine

¹⁴ Waters, ‘Dead Man’s Tale: Deriving Narrative Authority from the Terminated Milošević Trial’ in Waters, above n 1, 312.

¹⁵ Ibid 296.

¹⁶ Jens Meierhenrich, ‘Beyond the Theater of International Justice: The Rule 98bis Decision in *Milošević*’ in Waters, above n 1, 325.

¹⁷ See, eg, John Laughland, *Travesty: The Trial of Slobodan Milošević and the Corruption of International Justice* (Pluto Press, 2007).

¹⁸ Christian Axboe Nielsen, ‘Can We Salvage a History of the Yugoslav Conflicts from the *Milošević* Trial?’ in Waters, above n 1, 348.

¹⁹ Marko Prelec, ‘Body of Evidence: The Prosecution’s Construction of Milošević’ in Waters, above n 1, 359.

²⁰ Ibid 376.

²¹ Florence Hartmann, ‘Abdicated Legacy: The Prosecution’s Use of Evidence from *Milošević*’ in Waters, above n 1, 483.

²² Ibid.

the role of historical truth-telling in war crimes trials; measure the impact of trials on communities directly affected by the war; refine courtroom strategies and design of war crimes trials; and examine access to evidence by researchers, victim communities, and other courts.²³ As 'the first comprehensive cross-disciplinary assessment' of Milošević's trial, the book is a valuable contribution to the literature on the Yugoslav wars of the 1990s. Although it is not as comprehensive as it claims to be, it nevertheless is a useful and thought-provoking collection of essays that future scholars, especially those dealing with issues relating to international criminal law, will need to consult.

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²³ Waters, above n 1, xvi.