

Slobodan Milosevic

John Laughland, *Travesty: The Trial of Slobodan Milosevic and the Corruption of International Justice*, Pluto Press, 232 pages, hardback ISBN 9780745326368 £50.00, paperback ISBN 9780745326351 £14.99

John Laughland's superb new book, *Travesty: The Trial of Slobodan Milosevic and the Corruption of International Justice*, is the fourth important critical study of the issues pertaining to the Balkans wars that I have reviewed. The earlier three were Diana Johnstone's *Fools' Crusade* (2002), Michael Mandel's *How America Gets Away With Murder* (2004), and Peter Brock's *Media Cleansing: Dirty Reporting* (2005). It is an interesting and distressing fact that none of the three earlier books has been reviewed

in any major US paper or journal, nor, with the exception of *Z Magazine* (and *Swans* and *Monthly Review*, which later ran a fuller version of the Johnstone review), in any liberal or left journal in the United States (including *The Nation*, *In These Times*, *The Progressive*, or *Mother Jones*). This is testimony to the power of the established narrative on the recent history of the Balkans, according to which Clinton, Blair and Nato fought the good fight, though coming in late and reluctantly, to halt Serb ethnic cleansing and genocide managed by Milosevic, with the bad man properly brought before a legitimate court to be tried in the interest of justice.

This narrative was quickly institutionalized, with the help of an intense propaganda campaign carried out by the Croatian and Bosnian Muslim governments (assisted by US PR firms), the United States and other Nato governments, the Nato-organised and Nato-servicing International Criminal Tribunal for the Former Yugoslavia (ICTY, or Tribunal), and the Western media, which quickly became co-belligerents in this struggle. This informal collective focused on numerous stories and pictures of suffering victims, on one side only and devoid of context. In commenting on the parade of witness victims, Laughland notes that ‘Indictments [by the ICTY] are drawn up with little or no reference to the fact that the acts in question were committed in battle: one often has the surreal sensation one would have reading a description of one man beating another man unconscious which omitted to mention that the violence was being inflicted in the course of a boxing match.’ But this stream of witnesses, that the defence could duplicate in its turn if given the opportunity – and Milosevic did with a video presentation of badly abused Serbs for several hours towards the beginning of his trial – is effective in demonisation and helped mass-produce true believers who viewed any contesting argument or evidence as ‘apologetics for Milosevic’.

‘Much ICTY funding comes from the United States government or its agencies such as the Orwellian sounding United States Institute for Peace. There has also been funding from George Soros’ Open Society Institute ... Carla del Ponte rattled the begging bowl and said that the work of the ICTY was intended to deliver profits for private companies: “It is dangerous for companies to invest in a state where there is no stability, where the risk of war is high, and where the rule of law doesn’t exist. This is where the long-term profit of the United Nations’ work resides. We are trying to help create stable conditions so that safe investments can take place. In short, our business is to help you make good business ... international justice is cheap ... our annual budget is well under ten per cent of Goldman Sachs’ profit during the last quarter. See, I can offer you high dividends for a low investment”’.

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This consolidation of a party line has been reinforced by a virtual lobby of institutions and dedicated individuals ready to pounce on both the deviants who challenge the new orthodoxy as well as the media institutions that on rare occasion allow a questioning of the ‘truth’. The refusal to review these dissenting books and to deal with the issues they raise is also testimony to the cowardice and self-imposed ignorance of the media, and especially the liberal-left media, unwilling to challenge a narrative that is false at every level, as is spelled out convincingly in the three books reviewed earlier and once again in *Travesty*.

Laughland’s *Travesty* focuses on ‘The Corruption of International Justice’ displayed in the Tribunal’s performance in the seizure and trial of Milosevic, but in the process the book covers most of the issues central to evaluating the Balkan wars and the role of the various participants. The institutionalised lies are dismantled one after the next. On the matter of ‘international justice’, Laughland stresses the fact that the Tribunal is a political court with explicit political objectives that run counter to the requirements of any lawful justice.

This political court was organised mainly by the United States and Britain, countries that now freely attack others, but seek the fiction that will give their aggressions a *de jure* as well as quasi-moral cover. For this reason the rules of the Tribunal stood Nuremberg on its head. The Nuremberg Tribunal tried the Nazi leaders for their planning and carrying out the ‘supreme international crime’ of aggression. But the Tribunal Statute doesn’t even mention crimes against peace (although with Kafkaesque hypocrisy it claims to be aiming at protecting the peace). Thus, Laughland notes, ‘instead of applying existing international law, the ICTY has effectively overturned it’. The dominant powers now wanting to be able to intervene anywhere, the new principles to be applied were a throwback to the Nazis in disrespect for international borders. Laughland says that ‘the commitment to non-interference in the internal affairs of states, reaffirmed as part of the Nuremberg Principles in the United Nations Charter, is an attempt to institutionalise an anti-fascist theory of international relations. It is this theory which the allies destroyed in attacking Yugoslavia in 1999’. And it is this anti-fascist theory that the Tribunal and humanitarian interventionists have abandoned, opening the door to a more aggressive imperialism.

The International Criminal Tribunal for the former Yugoslavia was established not by passage of any law or signing of an international agreement (as in the case of the International Court of Justice) but by the decision of a few governments dominating the Security Council, and Laughland shows that this was beyond the authority of the Security Council (also shown in another outstanding but politically incorrect and neglected work, Hans Kochler’s *Global Justice or Global Revenge?* [Springer-Verlag Wien, 2003]). It was also established with the open objective of using it to pursue one party in a conflict, presumed guilty in advance of any trial. The political objectives were allegedly to bring peace by punishing villains and thus serving as a deterrent, but also to serve the victims by what Laughland calls ‘the therapeutic power of obtaining convictions’. But how can you deter without a bias against acquittal? Laughland also notes that ‘The heavy emphasis on the rights of victims implies that “justice” is equivalent to a guilty

verdict, and it comes perilously close to justifying precisely the vengeance which supporters of criminal law say they reject'. 'Meanwhile, the notion that such trials have a politically educational function is itself reminiscent of the "agitation trials" conducted for the edification of the proletariat in early Soviet Russia.'

Laughland features the many-levelled lawlessness of the Tribunal. It was not created by law and there is no higher body that reviews its decisions and to whom appeals can be made. The judges, often political appointees and without judicial experience, judge themselves. Laughland points out that the judges have changed their rules scores of times, but none of these changes have ever been challenged by any higher authority. And their rules are made 'flexible', to give efficient results; the judges proudly noting that the Tribunal 'disregards legal formalities' and that it does not need 'to shackle itself to restrictive rules which have developed out of the ancient trial-by-jury system'. The rule changes have steadily reduced defendants' rights, but from the beginning those rights were shrivelled: Laughland quotes a US lawyer who helped draft the rules of evidence of the Tribunal, who acknowledges that they were 'to minimise the possibility of a charge being dismissed for lack of evidence'.

Laughland notes that the Tribunal is a 'prosecutorial organisation' whose 'whole philosophy and structure is accusatory'. This is why its judges gradually accepted a stream of rulings damaging to the defence and to the possibility of a fair trial – including the acceptance of hearsay evidence, secret witnesses, and closed sessions (the latter two categories applicable in the case of 40 per cent of the witnesses in the Milosevic trial). Tribunal rules even allow an appeal and retrial of an acquitted defendant – 'in other words, the Tribunal can imprison a person whom it has just found innocent'.

Laughland's devastating analysis of the Milosevic indictment and trial is a study in abuse of power in a politically-motivated show trial, incompetence, and faux-judiciary malpractice. The first indictment, issued in the midst of the Nato bombing war, on 27 May 1999, was put up in close coordination between the Tribunal and US and British officials, and its immediate political role was crystal clear – to eliminate the possibility of a negotiated settlement of the war and to deflect attention from Nato's turn to bombing civilian infrastructure (a legal war crime, adding to the 'supreme international crime', both here protected by this body supposedly connected to 'law' and protecting the peace!). The later kidnapping and transfer of Milosevic to The Hague was a violation of Yugoslav law and rulings of its courts. The Tribunal's Nato service and contempt for the rule of law was manifest.

The original indictment of Milosevic dealt only with his responsibility for alleged war crimes in Kosovo. But as Laughland points out, the wild claims of mass killing and genocide in Kosovo were not sustainable by evidence, and Nato bombing may have killed as many Kosovo civilians as the Yugoslav army. This accentuated the problem that if the Milosevic indictment was limited to Kosovo it would be hard to justify trying him for Kosovo crimes but not Nato leaders, a point even acknowledged by the Tribunal prosecutor. So two years after the first indictment, but after Milosevic's kidnapping and transfer to The Hague, the

indictment was extended to cover Bosnia and Croatia. A bit awkward, given that back in 1995 when Mladic and Karadzic were indicted for crimes in Bosnia, Milosevic was exempted. There was also the problem that the Bosnian and Croatian Serbs were not under Serb and Milosevic authority after the declared independence of Bosnia and Croatia, and Milosevic fought with them continuously in an effort to get them to accept various peace plans 1992-1995 (documented in Sir David Owen's *Balkan Odyssey*, another important book neglected perhaps because of its contra-party line evidence).

So the prosecution sought to make the case for 'genocide' by belatedly making Milosevic the boss in a 'joint criminal enterprise' (JCE) to get rid of Croats and Muslims in a 'Greater Serbia'. The initial indictments that confined his alleged crimes to Kosovo never mentioned any participation in a 'joint criminal enterprise' or drive for a 'Greater Serbia'. So the prosecution had to start over in collecting evidence for the crimes, 'joint criminal enterprise', and Greater Serbia aims in Bosnia and Croatia and tying them to Milosevic. Guilt decision first, then go for the evidence, was the rule for this political court. The trial moved ahead while the 'evidence' was still being assembled. Most of it was the testimony of scores of alleged witnesses to alleged crimes, a large majority with hearsay evidence, and almost none of it bearing on Milosevic's decision-making or differentiating it from what could have been brought against Izetbegovic, Tudjman or Bill Clinton. Laughland shows very persuasively that the inordinate length of the trial was in no way related to Milosevic's performance – a lie beloved by Marlise Simons of the *New York Times* and the mainstream media in the United States in general – it was based on the fact that this was a political trial that inherently demanded massive evidence, and the prosecution, unprepared and struggling to make a concocted charge plausible, poured it on, trying to make up for lack of any documentation of their charges of a Milosevic-based plan and orders with sheer volume of irrelevant witnesses to civil warfare and Kosovo-war crimes and pain.

A key element in the prosecution case was the belated charge that Milosevic was involved in a 'joint criminal enterprise' with Serbs in Croatia and Bosnia to get rid of non-Serbs by violence, looking towards that Greater Serbia. The concept of a 'joint criminal enterprise' is not to be found in prior law or even in the Tribunal Statute. It was improvised to allow the finding of guilt anywhere and anytime. You are part of a 'joint criminal enterprise' if you are doing something bad along with somebody else, or are attacking the same parties with somebody who does something bad. With that common end you don't even have to know about what that somebody else is doing to be part of a 'joint criminal enterprise'. Laughland has a devastating analysis of this wonderfully expansive and opportunistic doctrine, and his chapter dealing with it is entitled 'Just convict everyone', based on a quote from a lawyer-supporter of the Tribunal who finds the 'joint criminal enterprise' a bit much. Milosevic probably would have been convicted based on this catch-all, or catch anyone, doctrine. Of course, it fits much better the joint and purposeful Clinton, Blair, Nato attack on Yugoslavia, or the Croats US-supported ethnic cleansing of Serbs from Croatian Krajina in August 1995, but there is nobody to enforce the 'joint criminal enterprise'

against them, whereas we have the Tribunal to take care of US and Nato targets!

Laughland has a fine chapter on Greater Serbia, which shows that Milosevic didn't start the break-up wars (even quoting prosecutor Nice admitting this), that he was no extreme nationalist and that accusations about his speeches of 1987 and 1989 are false, that his support of the Serbs in Croatia and Bosnia was fitful and largely defensive, and that he was not working toward a Greater Serbia but at most trying to enable Serbs in a disintegrating Yugoslavia to stay together. During Milosevic's trial defence, Serb Nationalist Party leader Vojislav Seselj claimed that only *his* party sought a 'Greater Serbia', as the Croats and Bosnian Muslims were really Serbs with a different religion and his party fought to bring them all within Serbia – Milosevic only wanted the Serbs stranded in the breakaway states to be able to join Serbia. At that point the prosecutor Geoffrey Nice acknowledged that Milosevic was not aiming for a Greater Serbia, but, in Nice's words, only had the 'pragmatic' goal of 'ensuring that all the Serbs who had lived in the former Yugoslavia should be allowed ... to live in the same unit'. This caused some consternation among the trial judges, as Milosevic's aggressive drive for a Greater Serbia was at the heart of the Tribunal case. You never heard about this? Understandably, as the *New York Times* and mainstream media never reported it, just as they never tried to reconcile Milosevic's support of serial peace moves with his alleged role as the aggressor seeking that Greater Serbia.

There is much more of value in *Travesty* and I can't do it justice even on the issues discussed here. This is a wonderful book that should be on the reading list of everyone looking for enlightenment on the confused and confusing issues involving the Balkan wars and 'humanitarian intervention'. It helps shred the notion that the Nato attacks were based on a morality that justified over-riding sovereignty and international law, and it shows decisively that the Tribunal is a completely politicised rogue court that is a 'corruption of international justice'.

As Laughland emphasises (and Johnstone and Mandel do as well), the Nato war and the work of the Tribunal in running interference for that war, were very helpful in setting the stage for George Bush's wars in Afghanistan and Iraq and possibly, also, Iran. It was treated then, and remains treated today, as a 'good war', a 'humanitarian intervention'. So those who swallowed the standard narrative, built on lies, at best failed to see the continuity between Clinton and Bush, and the service of the former and the publicists of the 'good war' in removing the protection of the 'anti-fascist theory of international relations' that protected small countries from Great Power aggression, and unleashing the rule of the jungle.

Edward Herman

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Michael Barratt Brown adds:

The trial of Solobodan Milosevic went on for four whole years, from February 2002 until his death in his cell in The Hague on 11 March 2006. It accumulated 50,000 pages of transcripts and the evidence of 300 witnesses with masses of files, DVDs, exhibits and documentation. Even a cursory reading of this material, which

I attempted while the trial was proceeding (see my Spokesman pamphlet *The Trial of Slobodan Milosevic*, 2005) revealed that the attempt to pin responsibility for genocide on Milosevic and the Serbian Government was failing. Much more authoritative judgment came later from the International Court of Justice to which the Government of Bosnia and Hercegovina had appealed.

The announcement by the World Court represents a very serious conviction of the Bosnian Serb army, but it leaves Milosevic and the Serbian Government unconvicted of complicity in or commissioning a genocide while criticising their failures to prevent genocide or punish it. What John Laughland's book then makes clear is what he calls 'the travesty of justice' in the very establishment of the International Criminal Tribunal for the former Yugoslavia and in its procedures and above all in the attempt to undermine the very basis of international law. In ten short chapters he exposes one by one the falsity of the claims made by Nato to justify the bombing of Yugoslavia.

The moral of this whole Yugoslav story is that such an attack of one state upon another, unless authorised by the United Nations, remains illegal and no appeal to 'higher law' can justify it. For any state, however powerful, to claim such higher authority undermines the whole basis of international law. This is what the United States has claimed, first in Yugoslavia, then in Afghanistan and Iraq – a new world order in which, as the first Chief Prosecutor of the Tribunal, Louise Arbour, put it, 'We have passed from an era of cooperation between states to an era in which states can be constrained'. We are left with the frightening question 'Where next?'