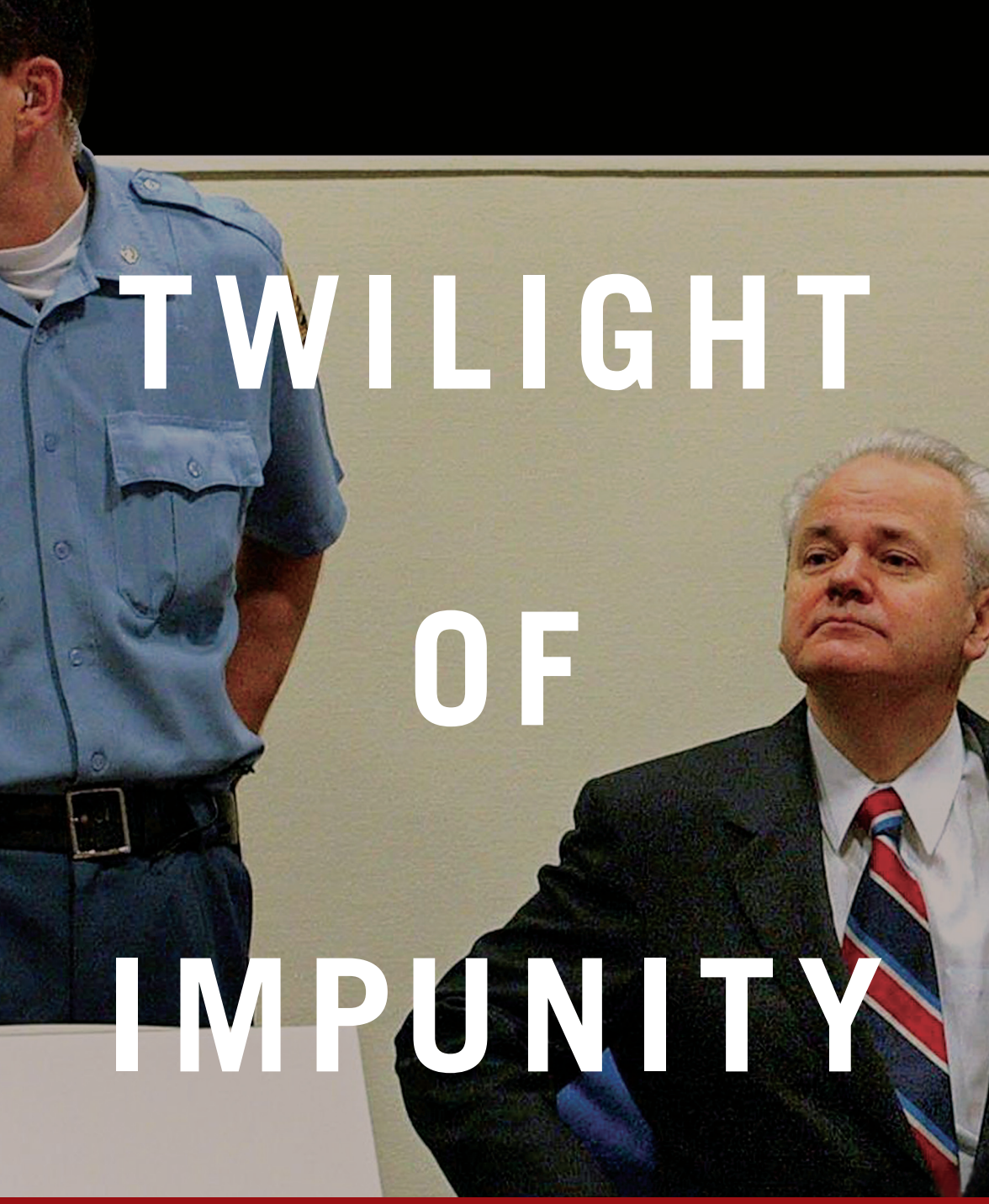

TWILIGHT OF IMPUNITY

The War Crimes Trial of Slobodan Milosevic

JUDITH ARMATTA

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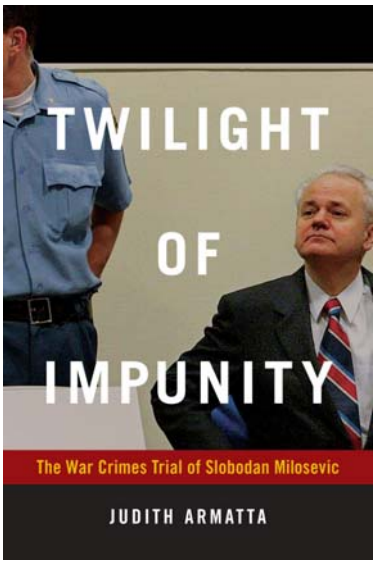
"[An] amazing book. . . . Armatta . . . has brought a boots-on-the-ground understanding of the Balkans from previous work in Serbia, Montenegro, and Macedonia. In her observations, she proves to be an acute student of law, character, strategy, and history. . . . [T]his is a wonderful and important book. Armatta has captured not only the sights and sounds of the court, but also of the Balkans itself, and the book emerges analyzing the biggest themes of international justice. It has enormous implications for the future. . . . Every practitioner and student of international relations should read Armatta's book."—Wesley Clark, *The Washington Monthly*



An eyewitness account of the first major international war-crimes tribunal since the Nuremberg trials, *Twilight of Impunity* is a gripping guide to the prosecution of Slobodan Milosevic for war crimes, crimes against humanity, and genocide. The historic trial of the "Butcher of the Balkans" began in 2002 and ended abruptly with Milosevic's death in 2006. Judith Armatta, a lawyer who spent three years in the former Yugoslavia during Milosevic's reign, had a front-row seat at the trial. In *Twilight of Impunity* she brings the dramatic proceedings to life, explains complex legal issues, and assesses the trial's implications for victims of the conflicts in the Balkans during the 1990s and international justice more broadly. Armatta acknowledges the trial's flaws, particularly Milosevic's grandstanding and attacks on the institutional legitimacy of the International Criminal Tribunal. Yet she argues that the trial provided an indispensable legal and historical narrative of events in the former Yugoslavia and a valuable forum where victims could tell their stories and seek justice. It addressed crucial legal issues, such as the responsibility of commanders for crimes committed by subordinates, and helped to create a framework for conceptualizing and organizing other large-scale international criminal tribunals. The prosecution of Slobodan Milosevic in The Hague was an important step toward ending impunity for leaders who perpetrate egregious crimes against humanity.

Photo by Ron Titus

Judith Armatta is a lawyer and journalist. She served at the Milosevic trial for three years as a legal analyst and commentator for the Coalition for International Justice. She currently lives in Washington and consults on international humanitarian, human rights, and other rule-of-law issues, most recently in the Middle East.

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About Judith Armatta

Judith Armatta is a lawyer, journalist, and human-rights advocate who monitored the trial of Slobodan Milosevic on behalf of the Coalition for International Justice. Her dispatches from The Hague appeared in *Tribunal Update*, published by the Institute for War and Peace Reporting; *Monitor*, a magazine of political commentary published in Montenegro; the *International Herald Tribune*; and the *Chicago Tribune*. Prior to her work in The Hague, Armatta worked for the American Bar Association's Central and East European Law Initiative, opening offices in Belgrade, Serbia (in 1997) and Montenegro (in 1999). During the Kosova War, she headed a War Crimes Documentation Project among Kosovar Albanian refugees in Macedonia. Armatta currently consults on international humanitarian, human rights, and other rule-of-law issues, most recently in the Middle East. Originally from Portland, Oregon, she now lives in Cambridge, Massachusetts.

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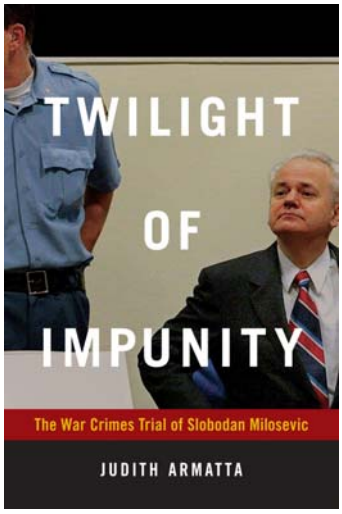
Washington Monthly, July/August 2010

Vague at the Hague

The trial of Slobodan Milosevic was manipulated, protracted, unsatisfying—and absolutely necessary.

By Wesley Clark



Twilight of Impunity: The War Crimes Trial of Slobodan Milosevic
by Judith Armatta
Duke University Press, 560 pp.

Nobel Laureate physicist Richard Feynman describes in his autobiography how, prior to being examined for his doctoral degree, he sat down by himself for a few days and organized everything he knew—and we knew—about physics. It must have been wonderful. And that's just what Judith Armatta has done for the Balkans, the International Criminal Tribunal, and former Serb dictator Slobodan Milosevic, in this amazing book about Milosevic's trial in the Hague. Armatta is a lawyer, journalist, and human rights advocate who monitored the war crimes trial of Milosevic from its inception in 2001 until his death during the trial in 2005. She has brought a boots-on-the-ground understanding of the Balkans from previous work in Serbia, Montenegro, and Macedonia. In her observations, she proves to be an acute student of law, character, strategy, and history.

None of this is easy going. The Balkans is obscure geographically, marginal economically, and loaded with unpronounceable names, often missing vowels. Yet the barbarous inhumanity of some of the participants was shocking, and, at first, ignited widespread media attention. Yet the war—and it was one long war of Serb aggression—was tortuous by design, and, without American ground force casualties, easily ignored by much of the media in the end. In the U.S., efforts to mediate and, ultimately, intervene assumed a partisan character. Even the tribunal has often been publicly derided in the United States. And the trial itself received scant public attention.

Nevertheless, this is a wonderful and important book. Armatta has captured not only the sights and sounds of the court, but also of the Balkans itself, and the book emerges analyzing the biggest themes of international justice. It has enormous implications for the

future. And it's these implications, drawn from the specifics of a decade-long conflict, that warrant the most consideration here.

In the interest of full disclosure: I am one of those who found in the Balkans the equivalent of a "lifetime employment opportunity." In one position I worked to help formulate U.S. policy and mediate an end to the conflict in Bosnia. In a subsequent position I was in charge of implementing the military annex of the peace agreement that I had helped author and subsequently leading NATO military efforts to prevent another round of ethnic cleansing. Finally, as a retired officer, at the time in the midst of my own political campaign for national office, I testified against Milosevic at the tribunal in the Hague. So I was not a disinterested reader here.

As Armatta herself observes, the International Criminal Tribunal was largely a product of weakness, not strength. Irresolution, not conviction. High-minded principles with limited authorities. One could generously acknowledge that it was an effort to enforce international legal principles in practice. Or one could somewhat cynically observe that it was in large measure a way for the great powers to salve their consciences when wrongdoing was undeniable and effective intervention politically undoable.

Actually, it was both. Justices were appointed, procedures developed, evidence collected, indictments issued, and calls for arrests made. Those arrested were detained, arraigned, tried, sentenced, and punished. Yet the arrests took years, and the most notorious criminal of all, Serb General Radko Mladic, is still at large. The procedures proved incredibly time-consuming and troublesome, with Milosevic's trial dragging on for years. The justices themselves sometimes seemed irresolute, as they brought a certain degree of unfamiliarity to crafting a new process. National cooperation was voluntary. Many Americans who could usefully have testified did not do so. Some from the region feared to appear, and when they did, caviled and wavered in testimony. And from the belligerent parties, one state, Serbia, cooperated very little. Evidence was incomplete—some was classified, and governments refused to provide it. Some was potentially embarrassing and was no doubt deliberately withheld—in the case of Serbia, deliberately withheld to protect the accused as well as the state itself. Witnesses were harassed and often humiliated. Above all, for four years, the court allowed itself to appear to be manipulated by the accused.

It was all painful, and far from perfect. Nowhere to be found was the swift and sure justice of Nuremberg or the Philippines after World War II. To outsiders, it must have sounded like famed "Eurobabble," full of obscure names and references, exaggerated politeness, and legal niceties. Glacially, painfully slow, and unsure. Even the chief justice had to be replaced during the trial, and the accused died before a verdict could be rendered. Most unsatisfying. For many of us, reading Armatta's book brings back all the pain of those years in the Balkans and the frustrations of the trial itself. The eyewitness accounts of the torture, maiming, rapes, and murders are no less gruesome for the passage of a decade—millions of lives were ruined. And the account of the trial brings home the sheer mendacity of the Serb army. We always knew they lied. It was a little hard to accept for some of NATO's military; the Serbs stood up straight, wore smart uniforms,

reported to a chain of command, maintained discipline and punctuality, and looked like a military force. But inside they were as rotten as the Gestapo, lying, cowardly murderers and criminals among their top ranks, protected by the trappings of state sovereignty. And Milosevic himself: deceitful, conniving, heartless—a cowardly bully. It is painful to read the words of justices so lacking in "starch" that some allowed themselves to be twisted and manipulated by Slobodan Milosevic.

Nevertheless, this trial may have been one of the most important international events of a new century. A deposed head of state was on trial for genocide. His entire tenure in office was ripped open for public review, at least insofar as the evidence permitted. His victims came face-to-face to confront him with his crimes. His political self-aggrandizement, posturing, and bullying were publicly exposed and debunked. And step by tortuous step, serious charges were being proved. Yes, ultimately the trial was incomplete; through his deliberate risk taking with medications, Milosevic died early and deprived us of the sense of justice that his sentencing and punishment might have conveyed. (Perhaps we can take some small consolation in the fact that he spent the last five years of his life in prison.)

If we take the right lessons away from this trial, we will have decisively shattered the notions of sovereign impunity, even in the ambiguous and deliberately obscure machinations of internal conflict. Those lessons begin with the conduct of the courtroom; a defendant must not be permitted to grandstand, manipulate, and divert the attention of the court, as Milosevic was allowed to do. Require him to speak through counsel; put him in a glass booth; quickly shut down his irrelevancies—justice must appear to be served, not political theater. Interrogatories must be relevant to the proceedings at hand or cut off more quickly.

Judges must not only have a judicial temperament, education, and experience; they must also understand the cultural milieu of the situation, and be strong enough to cut short improper conduct in the court, even from a former head of state. Sometimes we needed from the justices a little more strength of character, and a little less clever understatement.

Also, nations must stretch a little more to provide greater support, especially Western nations, whose norms the court is upholding. Declassifications can be accelerated, witnesses encouraged, and greater priorities accorded international justice. Surely, no element of national power is any more important than law and the legitimacy it confers. But using that power requires attention to its needs. We can do better in the future, and we should.

In particular, we must appreciate the hindrances imposed by sovereign state opposition. As Armatta points out, after the fall of Milosevic, the Serb government established a "cover-up committee," in essence designed to protect Milosevic and Serbia from international justice as much as possible. Documents were denied, false accounts prepared, testimonies falsified, and an entire apparatus of denial and deception perpetuated. The tribunal largely saw through this, but looked to most of us like weaklings for having permitted it in the first place. The West should never have let it happen, and cannot do so again.

The easy cases for international justice, it turns out, are those that follow a decisive military collapse of a regime, like the trial of Saddam Hussein. All the evidence becomes available, and the inhibitions, threats, and intimidation are largely reduced. Popular outrage can also be used to push the process. But in the future, such cases are likely to be the exception, as wars become more often internal conflicts rather than external aggression. And in such circumstances, wouldn't it be wonderful if we could rely more on the deterrent effect of swift and certain justice and less on the mechanics of warfare? But for that, we'll have to really act on the lessons of this trial.

Every practitioner and student of international relations should read Armatta's book. It's a glimpse into the crazy world of state-sponsored criminal violence, and a discovery journey into how to strengthen the reach of international justice. Still, it should also be read with pride, for the West acted—imperfectly and late, yes, but we acted. And ultimately we did stop Milosevic and brought him to trial. He forfeited his life and, ironically, died the way he lived—manipulating, lying, bullying, and heartless. No more fitting end could have emerged. And it will be a powerful beginning of a new era, in places like Darfur and Sudan, if we but have the courage to live the lessons we've learned here.

General Wesley Clark was Supreme Allied Commander Europe of NATO during the Kosovo War from 1997 until 2000.