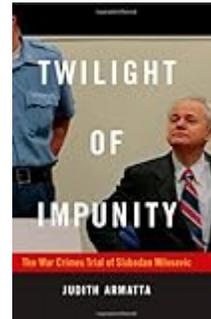




Judith Armatta. *Twilight of Impunity: The War Crimes Trial of Slobodan Milosevic.* Durham: Duke University Press, 2010. 560 pp. \$39.95 (cloth), ISBN 978-0-8223-4746-0.



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Dawn of Accountability

Even before opening Judith Armatta's *Twilight of Impunity: The War Crimes Trial of Slobodan Milosevic*, the reader can glean an understanding of the man profiled. The front cover photograph pictures Milosevic in the International Criminal Tribunal for the former Yugoslavia (ICTY) courtroom with an officer at his side. Milosevic is wearing his red, blue, and white tie (the colors of the Serbian flag) with an arrogant, impetuous smirk on his face. His body language and appearance speak to the character of a man who can commit genocide and crimes against humanity with no remorse. This image speaks almost as loudly as the text of Armatta's book, which tells the story of the trial of Milosevic at the ICTY for his crimes against the Yugoslav people.

Armatta sat in the courtroom as the invited guest of the Coalition for International Justice, a Washington DC-based human rights group. Armatta's invitation came after she spent several years working in the former Yugoslavia. Her work began when she was sent to Belgrade in 1997 by the American Bar Association's Central and East European Law Initiative to help establish an inde-

pendent judges' association. Later, when Montenegro was bombed by NATO, Armatta traveled there to gather information that was later used at the ICTY. Armatta admits that she jumped at the chance to see law applied to the man who had used it as a tool to distort reality at great cost to people and to the rule of law itself and that her account is therefore not entirely objective (p. x). Armatta clearly believes in Milosevic's guilt since she had lived under his rule and seen the havoc he made of people's lives (p. x). Perhaps it would be too much to ask for any truly objective account of the activities of Slobodan Milosevic due to the heinous nature of his actions and his continued denials of responsibility, which, for most people knowledgeable about his actions, make it difficult to stay emotionless.

Instead of following the chronological order of events in the former Yugoslavia, Armatta details the trial as it was presented to the judges and the court. This creates a chronology of its own—that of the ICTY—but does not take away from the impact of the events portrayed or the consequences of the Balkan wars and Milosevic's role in the

violence. For a story of the trial of Milosevic, following the chronology of the prosecution seems logical; Armatta makes clear that there is much more terror to be revealed later.

It might be assumed that this book would be a paean to international justice and the ICTY in particular. But this assumption would be misplaced. Armatta is quite evenhanded in her description of the court and its procedures. The judges who presided at Milosevic's trial receive criticism when deserved—such as in failing to appoint defense counsel for years—and praise when appropriate—as when they deny Milosevic the right to leave the ICTY for medical treatment in Moscow. Judge Richard May, the presiding judge, is often portrayed as more involved and more logical in his approach than his fellow judges. Judge May died before the end of the trial, however, and was replaced by Judge Patrick Robison. Armatta views this transition as an important change in the ICTY proceedings.

It was only after Judge Robison takes the center chair that the court appointed counsel to assist Milosevic in an attempt to secure him a proper defense. Milosevic forcibly argued against this appointment and used it to delay the trial by convincing his witnesses to boycott the tribunal until he was allowed to represent himself again. Since Milosevic did not view the ICTY as a lawful court, his behavior comported with this belief. He repeatedly refused to abide by court rules and procedures and instead used the court and witnesses as a podium to express his political views.

In most courtrooms, Milosevic's failure to follow the rules would have resulted in repercussions and possibly a contempt of court charge. The ICTY failed to respond firmly in most instances to Milosevic's ploys. In Armatta's view the judges of the court gave great latitude to Milosevic because he represented himself and was not expected to know legal rules or obligations. Ultimately, the court may have been trying to convince Milosevic that he was receiving a fair trial, but from the observer's viewpoint the lack of consequences made the ICTY look weak. According to Armatta it also had no beneficial effect on Milosevic's behavior or his treatment of the court.

The impression of Milosevic given at trial is of a man so engrossed in himself that he fails to see the forest for the trees. His choice to represent himself was a double-edged sword; it allowed him an opportunity to assert his political ideology but it also allowed for witnesses to contribute more damning responses when he asked inappropriate questions. For example, in an attempt to show that

killing was directed only toward militias and military men, Milosevic asked one witness if he had checked the pockets of the dead for weapons. The witness response was far more damaging to Milosevic than he might have expected:

Witness: Yes. In case of a few men, when time allowed me, I put my hand into their pockets or whatever, and I didn't find anything. In the case of a little girl, the corpse of a little girl who was about 7 or 8 years old, she had a rucksack, a little bag.

Milosevic: What did she have?

Witness: [â:] She had a UNICEF notebook, A4 format, and in that bag were some colour crayons and a little doll. And in the notebook, there was only the drawing of a house and some little flowers, nothing else. (pp. 100-101)

In some ways, it appears that Milosevic was convicting himself when he acted as his own attorney.

Unfortunately, we will never know whether Milosevic's manipulations would have succeeded because his death prematurely ended the trial. In this way we are left to wonder how the judges would have weighed and interpreted the evidence presented. Milosevic is believed to have entered many fabricated pieces of evidence into the record, which perhaps would have been accepted by a court giving him the benefit of the doubt as a *pro se* defendant. However, behind closed doors and upon deliberation, the judges could instead have chosen to ignore the evidence he introduced or give it little weight. It is this outcome that will never be known. The court might have redeemed its reputation in the eyes of some by disregarding false evidence, though it would likely have caused outrage among Milosevic's defenders in doing so.

International justice is somewhat like making sausage in that in order to accept it you might not want to see how it is made. Armatta pulls back the veil of ignorance by exposing the ICTY, its prosecutors, judges, and *amici curiae* (friends of the court) to the light, and the view we get is not always pretty. While some will be inclined to reject her portrayal, in reality it is the only way to fully understand these international courts. If we cannot accept the facts behind the curtain, warts and all, then we should not promote the use of such tribunals. Overall, the ICTY has produced very good results under the restrictions within which it operates. Milosevic's trial highlighted those difficulties, which included obtaining documents or witnesses from the Serbian government

who did not always cooperate. When justice depends on the cooperation of nations, it is bound to be hamstrung at times.

As Armatta points out in her concluding chapter, however, it is not all bad news. The Milosevic trial achieved several things, among them the exposure of what happened in the former Yugoslavia as the nation collapsed. Those who suffered under Milosevic may not have received the closure of a verdict, but they were able to see Milosevic spend several years in prison and an attempt to hold him accountable for his actions. The symbolic value of the trial cannot be overstated, either. This was the international community holding a former head of state responsible for the most heinous criminal acts known to the world, including genocide and mass violence against civilians. It must also be remembered that while Milosevic may have been the most high-profile defendant, he was not the only defendant. The ICTY has indicted over 160 individuals, has prosecuted and convicted 67, has 28 cases currently active, and has heard over 4,000 witnesses give testimony.[1] As an entity, the ICTY has been relatively successful in bringing criminals to justice. Given his belief that the tribunal was illegitimate, perhaps Milosevic would have liked his trial to leave a dark cloud over the ICTY; instead, his legacy may be that the tribunal functioned as intended by making him face his accusers. His early exit was simply one more gamble that he lost.

As the title implies, holding a head of state accountable for his actions against his own countrymen is a shift in policy that was a long time in coming. The principle of state sovereignty, which was often interpreted as simple impunity, was seen as a barrier to holding many leaders responsible for their actions dating back to the First World War.[2] Nearly a century later, a head of state sat in a courtroom facing several criminal counts for his actions taken as sovereign. Regardless of the outcome, this act may in itself be the lasting significance of the Milosevic trial. Heads of state can no longer hide behind the mantle of sovereignty when their behavior violates international law. If Milosevic's trial informed other dictators that they too would be held responsible for their behavior, then it was a success. There will always be those who look back and see the faults, but that should not deter us from the positives. If Milosevic's trial represents the twilight of impunity, then it also represents the dawn of accountability.

Notes

[1]. United Nations International Criminal Tribunal for the former Yugoslavia Web site, <http://www.icty.org>.

[2]. William A. Schabas, *Genocide in International Law*, 2nd ed. (Cambridge: Cambridge University Press, 2009).

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