



## Mr Benjamin Ferencz's speech

### Seminar

### « 70 years after Nuremberg – Judging crime against humanity »

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In June, 1943, as a soldier in the U.S. Army, I landed on the beaches of Normandy. I saw disabled U.S. tanks mired in the sand and dead soldiers floating in the sea. Despite incredible destruction the joy and gratitude of the liberated French population was unforgettable. As the German Army was



gradually beaten back we liberated the Nazi concentration camps. My assignment was to gather evidence of the atrocities I witnessed: Starving inmates, including French political prisoners who were being worked to death. I had peered into hell. When the war was over I was awarded five battle stars for not having been killed or wounded. However, not all wounds are visible. The inevitable horror of warfare became indelibly ingrained on my mind.

As the International Military Tribunal (IMT) was drawing to a close in Nuremberg in 1946, the United States decided to conduct twelve subsequent proceedings to reveal the basic roots of Nazi bestiality. General Telford Taylor was designated as Chief Counsel for the subsequent proceedings. He persuaded me to return to Germany as a member of his staff. We uncovered, in Berlin, the top secret reports from the eastern front. Special

murder squads called Einsatzgruppen were directed to kill all Jews and Gypsies. I tabulated over a million men, women, and children slaughtered simply because they did not share the race, religion, or ideology of their executioners. Taylor appointed me as Chief Prosecutor in what was the biggest murder trial in human history.

The defendants were accused of crimes against humanity as “part of a systematic program of genocide.” Rafael Lemkin, who had invented the term “genocide,” persuaded me that “genocide” epitomized the essence of the Nazi extermination plans. The judges convicted all 22 defendants and 13 were sentenced to death. The judges recognized that the charge of genocide was based on morality and should be prosecuted even though it was “an innovation in the empire of the law.” I was then 27 years old and it was my first case. I am now in my 97<sup>th</sup> year and I have never ceased trying to create a more humane world governed by the rule of law.

The evolution of International Criminal Law has been a slow and tedious process. We have come a long way since Fyodor Martens persuaded nations at the Peace Conference in The Hague in 1899, that all people remain under the protection of international law, “the laws of humanity, and the requirements of the public conscience.” Many Nobel Prize winners, including Leon Bourgeois from France, Elihu Root from the United States, and countless other distinguished scholars have recognized that there must be new approaches to solve new problems by upholding the principles of humanity and civilization. The inability to respect these principles in action whenever political leaders felt their values were being threatened has led us to the conflicts we still witness throughout the world.

The League of Nations proved inadequate to change national behavior. The United Nations Charter prohibited armed force except in self-defense or with Security Council mandate. The Council, however, has been unable to fulfill its primary purpose of “saving

succeeding generations from the scourge of war.” We need new ways of thinking and acting if we are to protect humankind from itself. Having invented weapons capable of destroying all life on earth I cannot believe that man is unable to avoid that conclusion.

The condemnation of crimes against humanity and the Nuremberg Principles and Tokyo Proceedings represented enormous steps forward in the evolution of international criminal law. Chief U.S. prosecutor Robert Jackson’s opening statement at the IMT trial in 1945, emphasized that crime is committed by individuals and law applies equally to everyone, including “those who sit in judgment.” He called for common sense to replace narrow interpretations primarily designed to preserve the status quo. In a prescient speech in Paris on 25 April 1947, Telford Taylor (we later became law partners in New York) stated, “*that it is in the field of crimes against humanity that international criminal law can make its most valuable contribution to the safeguarding of human dignity and to the peace of the world.*” He concluded that if the legal principles of crimes against humanity could be refined, and “..the nations of the world can establish a permanent jurisdiction for their punishment based on practical, enforceable and enlightened principles, we will have indeed reached a turning point in the history of international law.”

My personal conviction, after a life dedicated to world peace, is that we must change the hearts and minds of the public in order to change the action by political leaders. Deterrence is the primary goal. It will require education at every level, as well as humanitarian interpretations of some overly restrictive views of the law. Nuremberg emphasized the law cannot remain static but must be interpreted to meet the changing needs of a world that is constantly in flux. Since jurisdiction over the crime of aggression has been stalled for over 70 years I have urged that an additional track be found. The International Criminal Court (ICC) statute now prohibits crimes against humanity which includes murder, genocide, and a host of similar atrocities described as “other inhumane acts.” It should also be recognized that illegal war-making, or the illegal use of armed

force, that is not in self-defense or approved by the Security Council, is the supreme international crime which should also be punishable as a crime against humanity. Nations that are not prepared to be bound by the ICC can enact their own national legislation to cover such international crimes. In fact, crimes against humanity should be subject to universal jurisdiction as a peremptory norm from which there can be no derogation. No one should be immune. Those who are responsible for wrongful acts have a moral and legal responsibility to compensate and ameliorate injuries to their victims. That is what law is all about.

Benjamin Ferencz