

## Benjamin Ferencz

Throughout the twentieth century there were demands to prosecute war crimes and grave human rights violations before an international criminal court. After the Second World War the Allied powers put this idea into practice when they established the International Military Tribunal in Nuremberg. The Nuremberg Trials became a central point of reference for activists who, since the end of the Sixties, lobbied for a permanent international criminal court. Benjamin Ferencz (\* 1920), who had been chief prosecutor of the Einsatzgruppen-Prozess in Nuremberg against SS-Officers responsible for mass executions of Jews in Eastern Europe, became one of the most persistent proponents of a permanent international criminal court. In 1997/98 he participated in the negotiations on the so called Rome Statute which established the International Criminal Court. His biography therefore links Nuremberg with the efforts that led to the foundation of the ICC. The interview concentrates on the first part of Ferencz' life.

## Interview

Das Interview fand am 2. Dezember 2013 in Frankfurt am Main statt, wo Ferencz sich anlässlich der Verleihung der Dag-Hammarskjöld-Ehrenmedaille der Deutschen Gesellschaft für die Vereinten Nationen aufhielt. Der Termin war von Norbert Frei in die Wege geleitet worden, der Ferencz persönlich kennt. Dessen erste Reaktion auf die Anfrage lautete: »I've been interviewed to death«. Entsprechend routiniert berichtete er Daniel Stahl und Annette Weinke zwei Stunden lang über die Zeit bis Ende der vierziger Jahre. Ein Gespräch über die zweite Phase seines Lebens war aus zeitlichen Gründen nicht möglich. Das Interview fand um die Mittagszeit in einem Raum des Fritz Bauer Instituts im IG-Farben-Haus statt.

### Benjamin Ferencz

So let me begin. I can begin at a very convenient starting point, which would be the Nuremberg trials, by way of background, if you want to get some background.

### Daniel Stahl

Yes, please.

### Ferencz

Okay, then I should begin with my birth. I was born on March 11th, 1920. My name is Benjamin Ferencz, which is a Hungarian name. In German it is Franz, in English it is France and the Pope has recently adapted it as Franziscus, because it goes into the original. It is the same as Francis of Assisi, known as a very benevolent Christian leader. I was born at a place which, when I was born, was called Romania, my sister who was born in the same house a year and a half earlier was born in Hungary. It was a time after the First World War when the area which was Transylvania – you all know about Dracula, I think he was my uncle on my mother's side – was given from Hungary to Romania. It was a little village. The Jews were persecuted, there was no way of making a living there. My young parents decided they would have to try to get out somewhere, like the emigrants of today go to America. My father had been trained as a shoemaker, and he was very proud of the fact

that he could make a pair of boots out of a cow's hide. He assumed everybody in America would need boots. He was unaware that New York did not have very many cows running around and people did not wear boots. However, when they had two young children, my older sister a year and a half older than me, and two little babies, they left for America, travelling in December, on the open deck of a so-called passenger ship. The only reason they went third class was because there was no fourth class. I spent much of that time on the deck, wheezing.

We arrived at New York harbour with no money, no language, a few relatives who could put us up for a night or two. My father soon discovered he could not find any work as a shoemaker. He did not speak the language, he did not know how to run the machines, and we were very lucky that some charitable person offered him the opportunity to become a janitor at some of the houses in a very bad neighbourhood in New York. We could sleep in the cellar. So my earliest memories begin in a basement below ground, in a cellar, in a tenement area, in a place known as Hell's Kitchen, because it was one of the most densely inhabited areas with, I later found out, one of the highest crimes rates in the United States. I would say that very early on I decided that I would like to do something about crime prevention, because I was a mascot for various gangs. Italian gangs were beating up the Irish gangs, the Irish gangs were beating up the Italian gangs, and I did not care much for it. I was a very small person, so gang warfare was not exactly my thing. I went to public schools in New York, which were not very good, except as I got older, about ten, twelve, thirteen years old, when we moved out of Hell's Kitchen.

My parents were divorced when I was six years old, because they had been a pre-arranged marriage before they were born. They were second cousins, and the parents had said, if you have a boy, and I have a girl, they will be married, which was customary, and so they were. And for ten years they endured that fairly well, but they really did not get on. And so they divorced and promptly thereafter each one married a mate of his or her own choice. And so I had two sets of parents. My stepfather was a very nice man, very attached to children, he had no children of his own, had never been married, and my father did the same. Then he had two other children by his second wife, and then we got to be all good friends. And that worked out quite all right.

When I was thirteen years old I was attending a good school in the Bronx. The teacher and the principal decided that I was an unusual child, to put it that way, and they called my mother in – my father and stepfather were not available. They decided that I should go to a special school, the only one of its kind in the United States. It was known as Townsend Harris Preparatory School, preparatory for the college of the city of New York. If you got in there, and you finished an accelerated curriculum, you would automatically be accepted at the City College. The City College was a free institution, which in those times was very rare anywhere. My studies were geared toward social sciences, not the actual sciences, and I received a Bachelor of Social Science degree, where my studies also always focussed on crime prevention, race relation, and sociology. When my college was coming to an end, I wanted to attend the best law school there was. I had no idea what that was. I did not know any lawyers. I knew a lot of criminals but I did not know any lawyers. So I wrote to Harvard Law School and I did not apply any place else, and I was accepted. I do not know why, because in a subject which I was not interested in I did not do particularly well. I certainly

should not have flunked botany, and calculus, and some other subjects.

The area in which I lived was a high crime area. Everybody was beating up or killing or robbing somebody. It was a good environment to learn about crime.

**Stahl**

Why did you become interested in crime prevention?

**Ferencz**

Because of the area in which I lived, primarily. It was a high crime area. Everybody was beating up or killing or robbing somebody. I did not like it. I thought that was not nice. And I went with the gangs, and the police were considered the enemy. I was the watchdog, they would play crafts on the sidewalk, throw up the dice and put a few nickels or pennies in, and I was on the corner. I would see the cop coming and say: »Cheezit, the cops are coming!« They would run away and the cop would chase them. And if they chased far enough, I would pick up the money. But if the cop got there first, he picked up the money. So the police were the enemy. A situation like that of the Mafia in Italy in later years. But it was a logical connection, really, in terms of my personal experience, which was limited. And it was a time of prohibition, breaking the law was considered a good thing, everybody was going to these speakeasies, gambling, a lot of crime in the streets, shooting in the neighbourhood, things like that.

**Annette Weinke**

So it was part of your environment, basically.

**Ferencz**

It was a good environment to learn about crime. However, I got a scholarship as a result of my first exam at Harvard in criminal law. I was still in my first semester when Japan attacked the United States at Pearl Harbour. Everybody I knew volunteered to join the military service, including me. I wrote first to the FBI. I had learned to speak French at school and I was pretty good at it. The Germans had occupied France, and it was anticipated that they would attack England fairly soon. I thought, well, if they drop me in behind the German lines in France and teach me how to use dynamite, I would be a pretty good catch. I could raise hell with the Germans. And the FBI said no, they could not accept me. I was a security risk. One had to be a citizen for at least fifteen years before they would accept you. My father had applied for citizenship immediately after having learned how to read a little bit, and I had only been a citizen for about thirteen years. So I was disqualified.

Then I wanted to be a pilot. I would not want to join the Navy. I thought, as an airman you do not get wounded, you get killed, one way or the other. I did not like the idea of being wounded and I did not like the idea of drowning. I liked swimming, but I did not like swimming in the middle of the Atlantic Ocean. So I applied for the Air Force. And first, they said I was not qualified, because I was too short; my feet could not reach the pedals. Then I applied for a navigator. Then my eyes were not good enough, I missed something on the line. I expected then to be called up in the draft, in which everybody was required to do

military service. I packed up my bags after the first semester and went home. At that time home was in New York, and I was in Cambridge, Massachusetts. Nothing happened. My mother said: »Look, go back to school. If they need you, they will call you.« That was a good mother's advice, so I went back to school. But I expected to be called in any day, and I continued to try getting into different branches where they could make use of my services. To cut a long story short, two more years went by, I finished Harvard Law School more or less, and immediately went to this fellow from the draft board and said: »What is keeping you? What is holding you up?« And they said: »Okay, we will draft you.«

**Weinke**

When was that?

**Ferencz**

This was in 1943. We had not yet invaded Europe. But there was an interesting sideline there which has not been recorded by me elsewhere. Maybe one of the Benny stories that I have written.<sup>[1]</sup> The man in charge of the draft board asked me: »How did you do in law school?« I was surprised at the question: »Well, I did all right.« »Do you want another postponement, until you take your bar exam?« I said: »No, I can do that in the Army.« And he said: »You know, I was in your shoes in the First World War. I became a captain in the air force and lost my leg.« I noticed then that he was limping. »When you came in, I decided it would not happen to you what happened to me. I have been holding your papers.« Some of these things I am still moved by. The chance, here is this draft boarder, I have never seen him before in my life, and I was never to see him again after that, but he made a difference in my life, because he held my papers until I finished law school. And that, of course, was an indicator that unexpected, strange happenings can have a vital impact on your future life, which no one could possibly plan for and anticipate. Anyway, I should also mention that when I was at Law School I had no money at all. First, Harvard gave me, to reflect my grading, a job as an assistant, to train other students in brief writing. They paid some money for that. To eat, I went to the divinity school, which had a cafeteria, near to the law school. I would say: »Look, I have no money, but I will work.« Then they would say: »It is okay, you can come in after the end of lunch and you can help clean up the dishes and be a busboy. Whatever is left, you can eat.« So I could go in after lunch and eat enough to last me for a week.

**Weinke**

In one of your interviews you mentioned that you took courses with Sheldon Glueck.<sup>[2]</sup> Is that correct?

**Ferencz**

Yes, I was just about to tell about one of the things that I discovered. I was looking for ways to get some money. The government would give a grant to a student if he was working as an assistant to a professor. I thought that was a good idea. I got myself qualified for it, but I had to find a professor. One of my most admired professors was Roscoe Pound,<sup>[3]</sup> who was internationally famous as an international jurist. He was jurist prudence, which I studied with him. I went to see him. At that time he was an old man, he could hardly see. He had an eye shield for which he was famous, and he held a book up next to his nose to read. I said: »I would like to work for you, and I can help you.« »What can you do for me?« »I will find

you books, and I will help you in any way you like.« He said: »No, I cannot accept that.« »It will not cost you anything.« »No, the knowledge cannot go from your head into my head, it has to go from my eyes.« And he was quite right. Then, I went to Sheldon Glueck. I got my scholarship on my exam in criminal law, and he was teaching criminal administration and things like that. He was also doing a book on war crimes,<sup>[4]</sup> because the war had broken out. He needed a research analyst. When I told him it was free, he hired me free. That was worthwhile. That was worth every penny. I did the research for him, for that book on war crimes.

War crime was a totally new field. I had read everything to be found on war crimes at the Harvard Law Library.

#### Weinke

At that time, was it normal to have any kind of discussion with your professor about problems of the prospect of having war crimes tribunals? Or would this be a strange idea, because at that time there was a stark hierarchy.

#### Ferencz

Sheldon Glück and his wife were made famous by following 500 criminal careers, and they did not know that much about war crimes. He had a brother who was a psychiatrist, and he wrote a book on mental disorder in criminal law. But war crime was a totally new field. I had read everything to be found on war crimes at the Harvard Law Library, I went way back, in French or in English. As a matter of fact, it was there that I came upon a book by Vespasian Pella,<sup>[5]</sup> who was a Romanian diplomat who wrote a book on *La criminalité des états et le droit pénal de l'avenir*. It impressed me very much because it seemed to be common sense. At that time, the international crime which was most distressing was that one country would counterfeit the currency of England. Usually, British pounds were like the Dollar, like the deutsche Mark was a few years ago. This counterfeiting was the big crime, international crime. And the gist of what he said was, if you have international crimes, you need the international court. Because if a country has somebody who is counterfeiting currency, it will try him. But the governments are not going to try themselves, and somebody else would not have the power to stop them. So you need an international court. That made an impression on me, and I suppose that is the origin of the thought that we need an international criminal court to cope with international crimes.

#### Weinke

Were you aware of the fact that Glück was trying to expand the idea of war crimes under the impression of Nazi communality in Eastern Europe?

#### Ferencz

I do not think your statement is quite accurate. I do not think he was trying to expand the area of criminality. We did talk about aggression. I did write some newspaper articles and little things at the time. I think it was interesting for him to be dealing with a different facet of criminal law. I did not detect in him really any long-term world view of permanent international criminal jurisdiction. But his book dealt with who is the aggressor, as well, so that was of interest to me. There was not too much to read on this subject, it was fairly new.

I knew they had attempted to try the Kaiser after the First World War, and all the discussions there. I knew the minutes of all the meetings between the different nations, and he was certainly aware of that. He used that as an example of how efforts failed because of lack of political will on the part of the victorious allies to hold accountable the Kaiser, primarily, and the whole list eventually, as you know. I am sure the compromise was reached and they were going to go to Germany again when they refused to hand over their criminals. The Germans then tried a list of about 200 of their own criminals, so-called, those designated by the allies for trial in Europe at the Supreme Court in Leipzig. I had the minutes of the meetings of those trials. I had never studied German, but all of this was in French, as it was the language of diplomacy. And there was a lesson to be learned from it. The German trials were fast, a few people were convicted. If you ask the Americans to try the Americans in Guantanamo or other places, you know, it is not the logical way to proceed. The logical way to proceed is to have an international, impartial, confidential tribunal to deal with criminals if you want to deter from crime.

**Stahl**

Was there a personal reason why you wanted to do something on war crimes, or was it just to get a job?

**Ferencz**

Well, it is a mixture. Primarily, it was not to starve to death. That was a rather compelling motive. I needed a job, I had no money, and Sheldon Glück paid me after the government got through with the grants which covered what my minimum expenses were. I stayed after the semester was over, for about a month, doing research for him. He paid me with a cheque, and said: »This is your first earnings as a lawyer, 30 dollars.« My rent was 28 dollars. So it did not leave me much to eat either. But I was always interested in crime prevention. I did not think in terms of war crimes. When I read about war crimes, it was a natural thing for me to think about. As a young boy, I had no knowledge of war or war crimes, other than that there was a terrible war and the Germans were terrible. That was about the extent of my knowledge.

So here I am. The Army recognised my talent: Harvard Law School, honour graduate, expert on war crimes, so they made me a private in the artillery. That is the lowest rank you can get. And after about a month they promoted me to private first class because I was the only one who could read. And my own career was very interesting, because I was a diligent fighter against the American Army. I had no complaint about the Germans, they were over there, but the American Army seemed to think I was the primary enemy. At least my first Sergeant felt so. He was a man of such sterling character that seriously, if I had had a choice of killing him or killing all of who had murdered 90.000 Jews, I would have killed the Sergeant first. He delighted in just tormenting me, and torturing me: »You are the Harvard man, do this, do that again.«

**Weinke**

So you were picked out?

**Ferencz**

I was resented, because I was a Harvard man. He just tried to give me the dirtiest jobs he

could possibly give me. And it was no pleasure. I bore it with patience, what else could I do? I will give you an example. I applied immediately for officer training school. I went through the procedures, and finally I had to appear before a board of officers. The officer in charge was Colonel Hickman. He sat next to me at Harvard Law School. He asked: »Ben, what are you doing here?« I answered: »I want to get out of there, I want to be a listed man.« »You are in, next.« When my first sergeant got the papers, before we shipped overseas, he asked: »You want to be an officer?« He tore the papers up and threw it into the garbage: »The only way you will get out of this outfit is in a box.«

**Weinke**

Were there class conflicts within the Army at that time?

**Ferencz**

He was a natural bully, he was tall, six foot two, and he bragged how he beat up his wife regularly, who was in Texas: »I let her have it!« You know, that sort of a man, he was a beast. He was a bully and a beast, and I, of course, struck back as best I could. When we were going overseas, he got seasick, and I would say: »Sergeant, you look like you are turning green. Do you need some food? We have got some nice greasy slop. I will bring you some green frankfurters. »I will kill you, I swear, I will kill you«. So it was not a one way street. But in retrospect, I survived him as well as the other officers doing the same thing to me. And I was fighting back. And you will find some of those among my Benny Stories. In meinem Kampf against the American Army I usually won. And when the war was over, that is a good example, I wanted to go home. I had joined the Army to help win the war. The Army wanted to keep me. I said: »No Sir, I am leaving.« I stowed away on a ship, and I went back to the United States, and Bing Crosby had sung a hundred times »She'll be Home for Christmas«. I was home for Christmas.

**Weinke**

A happy ending after all.

**Ferencz**

Well, happy ending, it was a little bit exaggerated, but anyway. My career in the Army was notable from my fighting against the American Army more than the German army.

I think I was the first man in the United States Army to deal with war crimes.

**Stahl**

And then you joined the Judge Advocate Section of the Third Army.

**Ferencz**

I was in the artillery as a Corporal. I had written an article which was published in the leading criminology journal, the Journal of Criminal Law and Criminology, on the rehabilitation of army offenders. The signature of the author of that article, in the most learned criminology journal in the world, was Sergeant Benjamin Ferencz of 15th AAA Gun Battalion. One day around the middle or end of 1944 – we were already in Luxembourg,

and I was in an office building on Adolf-Hitler-Straße – I got a notice. One of the officers came and said: »We have the notice to send you to General Patton's<sup>[6]</sup> headquarters.« I did not know why. I got there to report to the Judge Advocate Section. There I met a Lieutenant Colonel who said: »We have instructions to set up a war crimes branch. The President of the United States has agreed.« As odd as it may seem to you now, he asked: »What is a war crime?« He had no idea what a war crime was, because they were used to deal with a war: with absent without leave, conduct on becoming an officer, a gentleman desertion... aggression or crimes against humanity – never heard of. Of course not, you go see a psychiatrist about aggression, but they had no idea. And so I said: »Well Sir, sit down, I will explain it.« And I think I was the first man in the United States Army to deal with war crimes. It is conceivable that the Seventh Army, which came on war crimes later, may have been doing the same thing, I do not know. But to my knowledge, I was the first man in the American Army to deal with the question of war crimes.

At that time I was a Corporal, originally assigned to the artillery. They changed that to the infantry because they could not have anybody in the judge advocate section who was not an officer. And they did not have anybody. And I was a Corporal. Eventually, they promoted me to Sergeant. When they brought my Lieutenant Colonel a full grade up to a Full Colonel, he gave me three stripes and said: »I know this is the result of your work, and I want you to wear this.« And in my typical, arrogant way – I look back at it with shame and regret – I said: »Sir, I cannot wear that. The work I do, if they know my rank I cannot work. I cannot accept that, I am not going to wear it.« And I did not. He was very offended by that. He was a West Pointer,<sup>[7]</sup> he would never reject a promotion.

I carried on my work with the full authority of General Patton. I had a notice, a letter sent to whom it may concern. The rank was crossed out. »Benjamin Ferencz is on assignment for this headquarters as a war crimes investigator. He is authorised to go anywhere and interrogate anybody, all units are directed to give full assistance for the Commanding General.« Then it was signed and with Stempel. I carried that around with me throughout the whole war.

**Weinke**

But there was no authority you could address in case ... if some problems occurred?

**Ferencz**

No. Let me just finish this story of this pass, because it is a very good story. That pass was on display at the United States Holocaust Museum. There were secrets on both sides, next to it was the secret gasification list, lifted on a certain date recently, or when they posted that on the wall. What makes it interesting is: I wrote it. That was my authorisation when I went to concentration camps.

**Weinke**

So you wrote your own authorisation?

**Ferencz**

I wrote my own authorisation. I found a Lieutenant to put the Stempel on and sign it. And with that, I had the full power and authority of General Patton, and I acted it. I went in, I



would find a Lieutenant Colonel, I said I want ten mentors around that building immediately and nobody gets in or out without my permission. »Yes Sir!« I had very few occasions to really show it. But it enabled me to do what any high ranking officer would be required to do.

**Weinke**

Would you say that this whole first phase was rather some kind of improvisation?

**Ferencz**

Yes of course, total improvisation. To illustrate: I was the only man doing war crimes. But soon thereafter, it was maybe a couple of weeks, they signed a second man to me. His name was Jack Nowitz, he was a Private, the lowest rank you can possibly get. He was a year law graduate, he spoke several languages, and he was working on the engineers. When he showed up, he was covered with mud and he saluted me. I said: »Do not salute me, sit down.« And he said: »I am assigned here, what am I supposed to do?« We were getting reports coming in of what we later called allied flyer cases. Planes would be flying overhead, they were shot down for some reason or other, pilots parachuted out and landed on the ground. They were almost invariably beaten to death by German mobs. There were exceptions. Some landed on a field, somewhere on a farm. There were no men around. The farmer was off somewhere fighting in Russia or some place. His wife welcomed them and used them and even hid them occasionally. But by and large the general action was that the flyers came down, they were beaten to death by the women mostly, or by the Beamten who were around – police, chief or firemen – and we would get this report. I would jump into my jeep and go out to where it had happened and collect evidence from the people. I put them in a little room somewhat like this one and said: »Now everybody is going to sit down and write out exactly what happened.« I used an interpreter, usually one of the people there. »Do you speak English? Okay, you are my translator, come on in. Now you tell them all that they have to write out exactly what happened. Conceal nothing, tell the full story. I want to know who did what and when, why.« There would be twenty people in the room, and I would say: »Anybody who lies will be shot.« Today the human rights people would say: »Oh my god, you did not say that!« Yes, I did say that. What did you expect me to say? That you are not going to get any dessert tonight? What did you expect me to say? I saw many signs, Bekanntmachungen, Todesstrafe, they went hand in hand. And I knew about reciprocity. I said, people have got to tell the truth. I did not shoot them, but I threatened to shoot them. Now if that would be a war crime, I hope the statute of limitations would protect me. But that is the reality. People who criticise some of the things going on in Guantanamo – which deserves criticism, of course – do not realise what it is really like in war. They really do not, and they can hardly imagine it. That is the truth of it.

Anyway, that is how it got to twenty statements. I would say: »Read it to me!« and it was okay. But I knew right away, if there were twenty statements, and ten or fifteen of them were the same, and five said, I was not there, I was at my mother's funeral, or I was just picking flowers or something like that, I knew you got the picture. Then I would write a report, saying: »This is what happened, and I have the following witnesses.« Or I tried to catch the criminal, and go to the house, kick the door in, because if I knocked at the door he would be out of the window, and pick up whatever evidence, for example a bloody shirt in Groß-Gerau, where he said: »Das habe ich bespritzt mit amerikanischem Blut.« They were

then the basis for subsequent trials, which took place at the Dachau concentration camp.<sup>[8]</sup>

These were the early trials, about which people know nothing. And it is, just as well, nothing to be proud of, but it is a reality of war. And the Germans did not bother with trials. If you were a Jew, they killed you outright. I was very well aware of that. But of course, that was happening at the front, on some poor old lady or some poor girl there. There was no sense of outrage at the women who came out, that they had been bombed the day before, in the Groß-Gerau cases. Some babies had been killed in the air raid and so on. So it is not that you are completely without menschlicher Verstand, but it is a different setup. It is a different kind of world, a different kind of thinking if you get into that kind of situation.

So let us go on from the Dachau cases. They may just as well be forgotten, they put ten, twenty people into a room: »Herr Schmidt, you are accused of having been a guard at Buchenwald concentration camp. You were committed. People were tortured, beaten, starved to death. What have you got to say for yourself?« »I was not there, I am a cook, I was always against it, I had superior orders, what did you want me to do, I was always very kind...« You know, all kinds of stuff. »Okay, that is all, next.« And so the judges went down the list. They were usually with no legal training at all: one Lieutenant for the defence, one Lieutenant for the prosecution, a Captain maybe for the judge.

**Weinke**

So was this some kind of conveyor belt procedure?

**Ferencz**

Oh yes, one after the other. »What else do you have to say?« And they all had the same sort of thing. There was a limited number of alibis, and they were all lying. I saw them in the camps. That is another story. These trials lasted – somebody wrote a book, I do not think it is quite accurate – about a minute a piece, per person. I think it was a bit more than that, not too much more. The Captain and the others would go out, come back and ten minutes later say: »We find all of you guilty, and you are all sentenced to death.« They were transported to Landsberg.

**Stahl**

And how, at that time, did you perceive these trials in Dachau?

**Ferencz**

Well, first of all, I was not part of those trials, because I was already on my way home. I was there for the beginning of them, and the International Military Tribunal was also just beginning. It is a difficult question to answer, how did I perceive them? I recognised, of course, that these were military trials under wartime conditions. It was not the sort of trial that you would have in the United States at an ordinary criminal court or any court. But my only desire was to get the hell out of Germany, as fast as possible. I did not stay there to moan about what was happening to these guards, whom I had seen at the camps. If the inmates had got him, they would have killed him faster than you would ask them their names.

**Weinke**

You described this in one of your interviews,<sup>[9]</sup> that you saw a group of ex-prisoners who killed their former guard.

**Ferencz**

Well, yes, if the inmates were in the condition to kill the guards, and they could catch him, they killed him. First grouch the eyes out and then cut him up, or something like that. The inmates who were capable of doing that were former Russian soldiers, some got out of the camps or they had fought against the fascists in the war in Spain and so on. In prison, in the concentration camps, the average Jewish inmate, they had been worked to death, and very few were in a condition to go and chase some guards.

**Weinke**

So when you first had the opportunity to see a camp from the inside, was this some kind of motivation for you to pursue this kind of trials?

**Ferencz**

No. I did not have any ambition to stay in Germany and try Germans. None whatsoever. I wanted to get out of Germany and never to go back.

I just wanted to get out of Germany and never to go back. That was my goal. I had no desire to set new standards in international criminal law, or against war criminals, or anything of that kind.

**Stahl**

But in the Benny Stories you write: »My only wish now is to get into the concentration camps.«

**Ferencz**

Oh yes, that was when I was in the Judge Advocate Section. I was doing the allied flyer cases and I was doing the office work: writing up the reports and preparing for trials. One day I told the Colonel who had offered me the sergeant stripes – he was a decent enough fellow – that I wanted to go back to the concentration camps. I had already run into a sub camp of Buchenwald. I said: »Just turn me loose and let me go, and I will bring back the reports of what is going on.« And he recognised that. Of course he was offended because I had rejected my promotion, but he did not respond. He did not say: »Arrogant bastard, get out of here!« or something. So I got a jeep. I was classified as a jeep driver. I painted on the jeep »Immer allein. Out of my way«, and off I went. Whenever I got a report of a concentration camp, I went there as quickly as possible. If you got there a couple of days later, everything was destroyed, all the files. I was late getting into Berchtesgaden, it was a waste of time because I could not get there. So I just wanted to get out of Germany and never to go back. That was my goal. I had no desire to set new standards in international criminal law, or against war criminals, or anything of that kind. Nothing. I wanted to have nothing more to do with it.

**Weinke**

So what changed your mind then?

**Ferencz**

I was back a couple of weeks and I got the telegram from the Army saying: »Please, we would like to talk to you, Sir.« They had never called me »Sir« before. I met Colonel Micky Marcus. He was a Westpoint Jewish boy from New York, who had a similar background to mine. He had been a boxer under various names and was a tough guy. He wanted me to go back for the Dachau trials. I said: »No way am I going back to Germany again.« He said: »We need you, Benny, we need you.« »Three years you did not need me, now you need me? The only way you can get me to go back to Germany is you have to declare war on Germany again and be losing.« »We will make you a Full Colonel.« »In the Army? No way! I do not trust the Army.« He said: »Well, we will give you assimilated rank, similar to a Full Colonel and you can quit anytime you want.« I said: »Now you have got a deal.«

I then called the lady who had been waiting for me for about ten years and said: »How would you like to go to Europe for a brief honeymoon?« It was my intention to go back to Germany only for the sole purpose of getting even with the US Army for what they had done to me for three years and have a nice honeymoon. Then I would go back home and resume the normal life of a lawyer in crime prevention, in juvenile delinquency or something of that kind. So I agreed with him that he would make me a Full Colonel, and I could quit at any time. That was a sweetheart deal because they needed me. They did need me. By that time I already had a reputation as the guy who was doing all the reports. I was writing up the reports, and the name was always that of the superior officer, my name does not appear on any of those reports. If they ever find them, they may find my initial in the corner somewhere. But then an interesting thing happened. I was hijacked. General Telford Taylor was then a Full Colonel. He was a Harvard lawyer and had been working for the US government before. During the war he had been an intelligence officer in England. He was on Robert Jackson's<sup>[10]</sup> staff during the International Military Tribunal in Nuremberg. The United States decided – Jackson himself was not so keen – that there should be subsequent proceedings, as they called the trials. The snapshot given by the first international military trial was only a quick snapshot and it did not really explain how it could be that a civilised country like Germany would allow such a thing to happen. You had to really look deeper into the scene in order to come up with a comprehension of how it could happen. Taylor certainly recognised that. The US government said, »Okay, let us have some more trials.« The British did not want any, the French did not want any, and the Russians said: »We will do our own trials.« They did not need any help from anybody. So the Americans decided they were going to have twelve trials, and they would begin with the doctors who performed medical experiments on concentration camp victims.<sup>[11]</sup>

**Weinke**

So Taylor hired you.

**Ferencz**

Micky Marcus said: »Taylor wants to talk to you.« So I went to Taylor, and he said: »Well you know, we have perceived you with additional trials. Would you consider going back for those trials?« »What do you have in mind?« »Well, you know, we have trials going and I have been checking up on you. I get reports that you are occasionally insubordinate.« I said »That is not correct, Sir. I am not occasionally insubordinate. I am usually insubordinate. I do not obey any orders which I know are stupid or illegal. I have been checking up on you,

too. I do not think you are going to give me any of those orders.« He said: »You go with me.« So I was hired.

**Stahl**

Did your perception of international law change already at that time?

**Ferencz**

I had no perception of international law. International law at Harvard Law School meant you were training to be a diplomat. You learned all about treaties, and what treaties cover and how they are ratified, and what the significance of it is. But beyond the stuff to be a diplomat, Harvard Law School did not teach you anything.

**Weinke**

When were you aware of the fact that maybe this Nuremberg experiment was international law in the making and that you were part of this?

**Ferencz**

No. It was just an extension of the Dachau trials, and I did not want to have anything to do with it but to have a good time. I did not want to create law. I did not stop to think about it. I was thinking only one thing: »I can get even with the Army. They can send me back. I will spend six months, or three months there... For me that was the important thing. How soon can I get in and get out. And well – I have to jump ahead for your readers – I came back ten years later with four children born in Nuremberg. So the best laid plans do not always work out that way. We are now at being hired by Telford Taylor, to go back.

**Weinke**

You were assigned for a special trial, one of the twelve trials.

**Ferencz**

No, not so schnell. Because you have to really understand a little bit more if you really want to know how these things evolved. You have to understand my motivation. My motivation was to go and have a nice short honeymoon, and that is that. I had no intention whatsoever. I wanted to go back and be a lawyer. I thought I would be working for the government at the department of justice on juvenile crimes and things of that kind. That is what I saw as a potential. Certainly not a career in Germany, when I had never studied German at all, and where that took me and how it spun itself out, for the Wiedergutmachung and for the rehabilitation, and for claims, Entschädigungen, and all that.

So I came back to Germany with Telford Taylor. They were hiring a number of young lawyers, mostly young lawyers who either were unemployed or had been in Europe or had not yet been settled in anywhere – by and large, the most of the staff. Taylor said: »Look, you are the only one who has experience. I will send you to Berlin. We have to get the evidence. We have a number of suspects in different fields, based upon public records.« We would have a case against the justice ministries. There was a film justice at Nuremberg, Marlene Dietrich, you may remember. Then we had a case against the SS and the foreign office ministers, against the doctors, and against the generals, the military. And that was the

plan. I was supposed to go and find the evidence to support these crimes. Well, the place to go is Berlin, because that is where the central was, where the files were, what was left of them. So I was sent to Berlin, and he said: »Take whatever staff you need.« I quickly put the staff together. My wife was also employed there, and I had a staff of about 50 people. And I assigned different people to the different cases. One with medical experience to check out the hospitals, the foreign ministry the way the documents are, and all the rest of it. The first office we had was in the Harnack-Haus in Berlin. It had been a very nice building before we bombed it. I talked to a General so that we could stay there. I had a picture of President Truman on the wall, which I had picked up from the floor. They signed me to an office next door to General Clay,<sup>[12]</sup> and I immediately commandeered a bunch of colleagues. I was assigned a Maybach cabriolet, which had been owned by Göring or somebody like him before me. We lived it up in Berlin.

The researchers were all former Germans who had fled, mostly; 90 percent of them, I would say. I had a couple of Americans who had studied German. They would report in. The system was that we would write up something which had been prepared while I was in touch with Sheldon Glück. He was helpful on that: Staff Evidence Analysis – SEA-Reports – which was one page like this with a description of the document, the data, the document classification – secret, geheim or Reichstag and so on – and a brief summary of what was to be found in the document and what was relevant in connection with the trial. We would shoot that down to Nuremberg from Berlin by courier. The planes were flying, nothing else would move really. Then, if the lawyer who got it would say: »Good, I want the original on this one« or »I want some more on developing this line«, then we would comply. It was team work.

I became the Chief Prosecutor in the biggest murder trial in human history.

I was in Berlin when one of my researchers, a Swiss national, I remember it now, came in and showed me a sample in a big heavy Leitz Ordner. He said that they had found three of these Ereignismeldungen aus der UDSSR – daily reports of how many people had been killed, by which unit, who had been the officer in charge, total up to this date, killed by Einsatzkommando soundso, Einsatzgruppe<sup>[13]</sup> A B C or D. It was a clear case of absolute cold-blooded mass murder, before we knew the word genocide. I had one look, and I took the next plane to Nuremberg. »General, Sir, we have to put on another trial.« »Why?« »Look here! This is the evidence. Calculated, deliberated, planned mass murder, and I know who the officer on charge is, I know the total, I know what unit he is with. All I have to do is send out an arrest order, arrest as many of these Einsatzkommandos as we can, and we go to trial.« »We cannot do it. The Pentagon has not approved. We have a programme and we do not have staff.« I said »It is an easy case.« »Can you do it in addition to your other work?« And I said: »Yes sir.« »Okay, you are in.« He assigned a Lieutenant Colonel to be my assistant, to carry on in Berlin, and I became the Chief Prosecutor in the biggest murder trial in human history. As I said to Moreno Ocampo:<sup>[14]</sup> I rested my case two days. I did not call a single witness. I convicted them all.

#### Weinke

So all the future defendants were already in American and British captivity?

**Ferencz**

Pretty much, yes. Sure, we did not go out, we sent out a list, an order, to all the prisoners of war camps saying: »We are looking for any members of the following groups« – Einsatzgruppen and so on, and they would report in. Some had already been in Nuremberg, had been interrogated in connection with the trials against Paul and some of the other defendants. So it was an easy case. Of course I had no experience whatsoever.

**Weinke**

But there was no kind of discussion among several officials or so, should we do it, are there reasons against it?

**Ferencz**

No. It was decided by Telford Taylor, and after we had talked about it for maybe ten minutes, he said: »Put it on James McHain« who was in charge of the case against high-ranking officers of the SS. McHain was also a lawyer whom he knew from Washington. He had worked for the government and did not know a damn thing about criminal law. But he was a very nice fellow from Carolina. I said: »Jim, I am going to take on this trial, this is what I intend to do.« And he said: »Do whatever you want.«

**Weinke**

So this means that Taylor had absolute confidence in you that you would actually succeed?

**Ferencz**

Well, I would say, yes, but that would be an exaggeration. I mean, he did in fact, you know. We were law partners later, we jumped out of an airplane together, as you know from the Benny Stories. We got to be very close friends until he died. So of course he had enough confidence. He was not just throwing it out. He knew my background, he knew that I had got a scholarship in Harvard for my knowledge of criminal law, and he knew my experience. I was the only experienced lawyer around, except for a guy like Kempner, who was working for the Germans. But most of them had no idea about anything. Some were good lawyers, some were mediocre. He did not want to put any more money in. I said: »Do not worry about that. I will take care.« I borrowed a couple of lawyers who were going to be fired anyway because they were incompetent, and I set it up. We began shovelling the stuff back and forth. When I was ready to go to trial, of course, I left Berlin and was working out of Nuremberg.

**Weinke**

At a later point, did you talk to Taylor about this particular experience, and did he ever mention that he was already under political pressure at that time?

**Ferencz**

At that time there was no political pressure of any kind. If there was political pressure, it was not political pressure on Telford Taylor. He would tell the President of the United States to drop dead if he tried to give him an order to do something which he did not think was right.

**Weinke**

But there were already voices in the US saying that actually this whole trial program was counterproductive and should be abandoned.

**Ferencz**

Yes, but not on Telford Taylor. He was a man of really sterling character, ein absolut integrier Mensch. He resented McCloy's<sup>[15]</sup> clemency<sup>[16]</sup> much more than I did. I thought he was being too harsh on McCloy. But Telford Taylor was a very unusual man, and he was an excellent lawyer for one thing, and absolutely straight. You could not put political pressure on him. He went to Vietnam at the height of the War.

The best evidence is contemporary in these documents, top secret. Why do I want to contaminate it by bringing in a witness?

**Weinke**

Could you tell us a little bit about the Jewish dimension of this Einsatzgruppen trial? Because on the one hand you mention that you based the whole trial on documents, which makes sense. But retrospectively, would you say that its public significance would have been different if you had included at least some witnesses? Today, such witnesses are a very important part of these international trials.

**Ferencz**

No. I will tell you why. I could have had a hundred witnesses. Each one would come in and swear that that particular defendant murdered his mother. And they would believe it. The DP camps were crowded with people, some of them had a list saying »Wer kennt diese Mörder?« They were already themselves trying to assemble people who recognised and knew them. The survivors were so terrified, and the people in uniform were so brutal and so similar, that every witness could be challenged for the accuracy of his or her description. They were herded like cattle, pushed into gas vans. If anybody survived that kind of treatment and said: »Yes, I recognise him.«, it would be almost incredible, because they were so frightened and beaten all along the way. And I did not need them. The best evidence is contemporary in these documents, top secret. Why do I want to contaminate it by bringing in a witness? Any clever lawyer will soon make him or her look like a liar. What for? I did not need them. The case was so overwhelming. That was even before I did know about the Wannsee Protokoll, which of course was held as unquestionable. I thought about calling witnesses. I recognised that this was an unusual thing, but I was that kind of a guy. I said: »I do not need it. I do not care what the precedents are, they can bring their witnesses, I am not bringing a guy up there to cross-examine the hell out of some poor guy whose mother and father have been killed and expect him to give you a credible testimony which is absolutely correct with no lies and no mistakes. How is he going to stake a chance on that? Why should I? I had an absolutely overwhelming case. I had a thousand documents. Each one supported the other one. I would play one defendant against the other. I was ready to play that game, and I did very effectively. I would say, you know so-and-so, he said yes. Is he an honest man? He said, yes, sure he is an honest man. You trust him? Yes. Well, he said he killed 50.000 Jews, do you think that is correct? Well, if he said so, I do not know. And I would begin to play one against the other one, and I knew that game.



**Weinke**

But retrospectively, would you consider it a mistake not to have allowed amici curiae to the general programme of Nuremberg?

**Ferencz**

In general, I would say the cases should not need any amici, but in this context it never came up. Maybe in the foreign ministry case you might want some experts on some thing or other. But with this kind of trial, to confuse it by bringing in third parties who were neither defendants nor prosecutors, I would think it would have been a mistake. And it never really came up. And if it had come up, it would have been dismissed by me and by Taylor too, I am sure.

**Stahl**

Why did you use the term genocide in your opening statement? This was a new term, actually.

**Ferencz**

This was a new term, and some of the researchers have said that it was the first time it was used in the opening of a trial. I used it because I knew Raphael Lemkin. He gave me his book *Axis Rule in Occupied Territory*. It is probably now in the Holocaust Museum in Washington, which has taken most of my archives of that period. The term was so very appropriate for the Einsatzgruppen. It was classical genocide. And I've been saying in many speeches since then: »The victims were murdered because they did not share the race or the ideology of their murderers.« I thought that was a terrible thing then. I think it is a terrible thing now. I have been trying to create the rule of law to prevent that from happening again, by deterring at least to some extent the circumstances which give rise to this type of brutality. And that has become part of my soul. I suppose the drama has an impact as well. That is what I have been spending my time on. I have been spending the last 60 years on, I suppose, trying to deter people from committing these horrible acts. Because of my background, because of my training, because of my reasoning, I recognised that one way of deterring people from behaving in ways which are disapproved of is to let them know they will be held accountable. That it will be recognised and they will have to appear at a court of law, and they will have to be punished for such behaviour. The goal is not vengeance, as I said in the opening statement. I made that absolutely clear in the first sentence. Then I went on to describe genocide. What I was trying to do was an appeal of humanity to law. And when I had my second international criminal law case at the age of 92,<sup>[17]</sup> I repeated the same thing, at the request of Moreno Ocampo. I said »Look, I do not want to be quoting myself.« And he answered: »Ben, you have to. That is you.« And I did. Mine is a plea of humanity to law.

I was disappointed that the Nuremberg holding, that aggression was a supreme national crime, has in effect been repudiated by the United States and other countries.

The important thing for me now and why I am here in Frankfurt now is not that I care about medals. I do not care if I met your President the other day. I had a very nice meeting

with him for an hour unter vier Augen, very useful, very nice.<sup>[18]</sup> He is a very nice man, he shares my goals, and that is good. But the important thing now for me is this: more than any other human being I have been working on the criminalisation of the crime of aggression. Claus Krefß<sup>[19]</sup> has got his big book coming out on it. My Blog gives you my view. I do not go into paragraph one and five or anything else. My goal is the same as it was when I was 27: to help move towards a more humane and peaceful world. I have seen the horrors of war. I do not know if anybody has seen more of these horrors than I have and lives to tell the tale. I have known the mass murderers. I have heard their unrepentant lies. I have dedicated my life and all my earthly possessions to this cause of creating a more humane world.

I was disappointed that the Nuremberg holding, that aggression was a supreme national crime, has in effect been repudiated by the United States and other countries, although Robert Jackson, who was our chief prosecutor on leave from the US Supreme Court, was an outstanding jurist, widely recognised as being competent throughout the world. It was his statement, often repeated, that aggression is the supreme international crime, as I know it is, and that is because all the other crimes are committed during a war. Rape is a token of war. The victors have traditionally expected to rape all the women they could. You saw it here in Germany. You saw it in Berlin, when the Russians came in. Nuremberg did not list rape as a crime, because it was such a common thing that it went with war. I find that completely abhorrent. I know that if we could end war, we would come to the question of how to do it, what a difference it would make, not only women who are not raped, also those comfort women like the Japanese had. But if you could, what would you save on the costs now which you waste on armaments which you cannot use. You could use it for the social welfare of the people and eliminate the causes which give rise to violent conflicts. What a different world we could have.

The current system is that there is no international court which has jurisdiction, to which two leaders of different states or different groups can turn if they cannot agree. Instead, what they do, they take their young people, and they send them out to kill other young people they do not even know. And most of them do not know why. And this is the system. That is crazy, in my opinion it is absolutely genocidal crazy. And yet, it has been the tradition for thousands of years. It cannot go on like this. Our capacity to kill human beings on this planet has reached a point where many nations, the United States included, Russia and China included, have the capacity today to cut off the electrical grill on planet earth. They can shut off the electricity in any city. In my judgement it would take a week or two before everybody in that city is dead, without any of the nuclear weapons or bombs. We have the capacity to kill by sending up a robot plane without a man in it, that lands at a distant place, aiming at a particular target, knowing that it is going to kill a large number of innocent people.

That is the world in which you live today, my young friends. You have got to change it. I am in my 94th year now. I am not talking for myself. I have seen the horrors of war and I know the rational of killers, and still many people have similar views. I see you have got to change your way of thinking. You have got to change your way of dealing with armed conflict, and I have come to the personal conclusion that we have to give that crime a new name. Genocide was a good description. But we have to be more specific. It took the United

States 40 years to ratify the Genocide convention, a disgrace to our country. It is full of loopholes as well. So we have got to change it. And I would like to see a description which says: illegal use of armed force. By illegal I mean it is not in self-defence, and it is not authorised by the Security Council. The illegal use of armed force by a leader, knowing that it will inevitably kill large numbers of innocent civilians, is a crime against humanity in the truest sense of the word. All of humanity is affected by that, and as a crime against humanity, if it can be written into the local domestic criminal statutes of nations which are ready to give up their so-called sovereign right to go to war, if it would be adapted by them, it will have some deterrent effect. And the more nations do that, it will eventually seep into the big powers who are not yet ready to do that, because they think it is a sovereign right to go and kill lots of innocent people because their leaders think that they do not follow their ideas or whatever it is. So I am striving for a new concept which holds accountable the individual leaders who knowingly use armed force. It also covers armed groups. They do not have to be a nation, they can be what you call a terrorist group or a group of fanatics or whatever you want to call them. If they deliberately, knowingly, kill large numbers of innocent people, defy the United Nations charter which allows self-defence and which also requires the consent of the Security Council, if there is no self-defending issue. This is the kind of crime which should be condemned universally. The big powers are not ready to do it now.

I made a mistake. I was trying to build an umbrella to cover the whole world. That was too much. There were too many big powers not yet ready. But if you begin on a smaller scale, take those who are ready, and many of them are ready, and we are already making a list of who are ready to do it. Germany, fortunately, is one of the leaders now: Judge Hans-Peter Kaul<sup>[20]</sup> with whom I had dinner a couple of days before we went to this meeting in Frankfurt. The Germans have given me their highest civilian award, the Medal of Honour, which is a remarkable thing, too.<sup>[21]</sup> That shows Germany is changing. The young people like you are not to be blamed for the mistakes of their grandparents, but you are already in the forefront. The fact that we are sitting here, in Frankfurt, and are being interviewed by a representative of an Arbeitskreis concerned with stopping war making is itself an indicator of what has to be the future. So I want to encourage anybody who reads your papers to recognise. It is not what you call the crime that counts, but what you do that counts. And if what you are doing is having innocent people killed by other innocent people, young people going out, killing other people they do not know, that is a crime and should be deterred by being denounced as a crime and treated as a crime – internationally as well as nationally. If you do that, I promise not to come back and haunt you. So I have given you my epilogue and you have to keep laughing on the outside if you are crying on the inside. That is it, the world in which we live. All right, now you have specific questions?

### **Weinke**

What I am interested in is how you started. At some point you started contemplating about these issues of peace and war again. You told us that you were a partner together with Telford Taylor. I was wondering what kind of influence he had on your politicisation, on your actual work.

### **Ferencz**

I would say there was no political influence. He did what he did, that was what he felt like

and that was what he wanted to do. We disagreed on some points, for example...

**Weinke**

This is what I am interested in, the points you disagreed on.

**Ferencz**

The ultimate goals were identical. We wanted crimes against humanity to cease, and we wanted wars to cease. But we disagreed on a thing like McCloy's clemency action. He felt that McCloy had pulled the rug out from under Nuremberg by releasing the criminals prematurely.

**Weinke**

Yes, he was very frustrated about it.

**Ferencz**

Well, he was very frustrated about it. I knew some things that he did not know. I had worked with McCloy on the issue of Wiedergutmachung, which later was setting him up a very impossible job, too: To go into Germany which had been totally destroyed and try to get compensation for hundreds of thousands of people who had nothing but a tattoo on their arm, find compensation and create a programme for that, and then carry it out, which was supposed to take ten years. It is still running, sixty years later. So when I got to know McCloy in that context, he was very helpful to me. He was very close with Adenauer. Without Adenauer nothing would have happened. A devout Catholic, CDU member, he brought the government with him. For this programme, which was not very popular in Germany, it was so unpopular we never even mentioned that it was happening at all. I never issued a press release in my life.

The differences came when Taylor was angry with McCloy. I knew McCloy quite well. And I was under pressure from the Jewish organisations to persuade him not to show any clemency but to carry out the executions. They were my boys. The thirteen defendants of the Einsatzgruppen-Prozess were sentenced to death. This was my case. And my connection with McCloy at that time was in connection with the problems of Wiedergutmachung. Your finance minister Fritz Schäffer would say: »Das übersteigt unsere Leistungsfähigkeit.« To translate it, that exceeds our capacity to pay. That was the answer to everything we wanted to put in. And I would go and talk to McCloy about that and say: »Look, I realise that Germany's reputation will depend on what they do about their victims – their acceptance in the world community. I want them to do the right thing. And he supported me in everything, I cannot think of a single step when McCloy did not accept my point of view. And years later, when he retired, and he had written his own memoirs, we were talking on the phone. He said: »Ben, you never steered me wrong.«

McCloy's clemency action was a mistake, I think, in the terms that I knew who the murderers were. The clemency board never looked at the record because they were under instructions from McCloy to accept the Nuremberg findings of fact and law. They were not supposed to challenge the Nuremberg findings of fact and law. That was in a secret document which I obtained, not from McCloy, but surreptitiously, his instructions to his clemency board. They were to consider only things such as discrepancies in sentences for

the same crime, family circumstances which would justify humanitarian concerns. Those were his instructions, and that is what he believed in, that is what he carried out. He made mistakes in my judgement. Some I knew, some of the defendants thought the biggest bloodhounds were let off easier. McCloy was not responsible for the overall policy of just closing up the whole programme. That was Washington, the Pentagon, the political influence of not antagonising the German Army and accusing them against the Russians and so on. It did play a role in closing down all the programs, including the Dachau trials. At Dachau, in the midst of the trial the Colonel in charge said to the defendant: »I got orders, the trials are over, go home.« That is how those trials ended.

The subsequent proceedings under Telford Taylor were carried out. Taylor was mad at me and said: »Look, McCloy knew what he was doing.« I said: »No, I will prove to you he did not. In his sentencing, McCloy carried out two or three of the executions. If he is acting for political reasons, under pressure from the SPD as well, the Catholic Church at all sides, he wouldn't execute any of them.« Germany had abolished the death penalty, Mrs. McCloy was of German origin, all these people were claiming not to execute anybody. But they executed a few of them. McCloy said: »Look, I have a clemency board, whatever they decide, I follow.« They did not look at the records. They did not even open the files. I was in the legal division. We prepared all the files for them. I wrote to the judges on the clemency board and said: »I am still here in Germany.« I was working out of Nuremberg still at that time. »If you have any questions, I will be available to answer them for you.« I got back a letter from a clerk saying: »We are not hearing from any of the prosecutors. We only want to hear from the defence council.« It is outrageous, if you are talking about a review. But their feeling was, it is not a review. We are bound to accept the facts and the judgements. All we have to take into account is the other things. We do not have to talk to the prosecution about personal sentence and so on. So that was the setup. The public misunderstood it. They treated it as though it was a review and a repudiation of Nuremberg, which it was not.

#### **Weinke**

But did this lead to some alienation between you and Taylor?

#### **Ferencz**

No, alienation only to this extent, not really alienation. But when I wrote my book *Less than Slaves* – which was published by Harvard University Press, won some prizes and had a highly excellent review in the *New York Times* – I was telling the story of how German industry behaved. I also told the story of McCloy releasing Krupp, giving him back his assets, for example, two billion Marks worth of assets, when the Jews were being asked to pay for their own expenses of getting back whatever property was being stolen from them. I discussed that with McCloy, and he was always very sympathetic and very kind. So when I wrote my book I asked Telford to do the introduction for me. He said: »I cannot do the introduction with this McCloy stuff in there, because I do not agree with you, abandon that.« So I took it out and put it down in a footnote, where I made reference to in this secret document. I think, I am not sure any more. So we had a different point of view, but we were very close friends. Estrangement is not the right word. We were very close friends always.

A friend told me: »You know, the President had two piles on his desk, one big one against the Court, and a little one in favour of the Court. The

article you wrote with Robert McNamara was on the side to be signed, and he signed.«

**Weinke**

Was there also some kind of dissent with regard to the American involvement in Vietnam?

**Ferencz**

Not a difference between me and Telford, we both agreed it was a criminal matter. One day I had a telephone call, I was not at home, my wife took the call from the retired Secretary of Defence, Robert McNamara,<sup>[22]</sup> who was Secretary of Defence under President Johnson. My wife said that I was not home. McNamara was on his way to China. Next week I got another call from him. He said: »Mr. Ferencz, I would like you to write an Op-Ed piece for the New York Times, which you and I will both sign, urging the United States to create an international criminal court.« I said: »Under Republican Senator Jesse Helms, the United States was absolutely opposed to any foreign courts trying us Americans.« Anyway, McNamara wants me to write this, urging the American President to sign onto the court. I said: »Mr. Secretary, that is very strange to me, are you not aware that if we had such a court, you might be one of the first defendants?« »I know that.« He was there in the Vietnam War. »Then why do you want me to have such a court?« He said: »I did not know it was illegal. I did not know. I thought it was self-defence, or something or other.« So I wrote the piece, and it was published as I wrote it, one word was changed, but that was not significant. It was on President Clinton's desk when he called in his ambassador David Scheffer, who was in charge of war crimes, on New Year's Eve, and he said: »I want you to fly down from Washington to New York on New Year's Eve. That is the last official act. I am holding the United Nations open and sign for the United States onto the International Criminal Court«, which he did. David Scheffer was also the whole time a friend of mine. He told me: »You know, the President had two piles on his desk, one big one against the Court, and a little one in favour of the Court. Your Op-Ed piece with McNamara was on the side to be signed, and he signed.«

So in the United States we had a division of opinion, as to whether it should be signed. I got to know McNamara better later. He made a movie on his opinion, and he said: »If I had known that it was illegal what we were doing in Vietnam, I would not have supported the war. When we knew we were already losing the war and we could not win, I wanted to get out. But the political pressures were such that we stayed in. I would have hoped that I could point to some law which would say it was illegal, it would have helped.« Telford Taylor went to Vietnam. He wrote his book Nuremberg in Vietnam in which he said the United States forgot the lessons in Vietnam that they tried to teach the rest of the world in Nuremberg, which was true. But again, an important point which I would like to stress here: It is not the United States, and it is not Germany, and it is not France or anything. You cannot characterise a democracy as the country. The United States are a great democracy, as some of the others are. It is normal that there can be differences of opinion within a country. And it is unfair, and incorrect, to take one small segment and say, the United States or France, or anybody else. There are some people in the United States who absolutely reject my conception of what a peaceful world should be like. They say no, we are a sovereign independent state, based upon what the conditions have been for the last several

thousand years. Therefore we are not going to surrender this right to decide for ourselves when we go to war and when we do not go to war. Nobody else should decide that except us. That is a strongly held opinion by many Americans, not by all Americans. Not by a long shot. I have lectured to the military at Westpoint. I have read to the Air Force Academy. I have read to the veterans at the Library of Congress on Veterans Day, and I get standing ovations from the military because I tell them honestly that I am there because I do not like seeing them coming home in parts or in a body bag. And they know it is true, because I was awarded five battle stars for not having been killed in any major battle of the war. And so there is a strong body of American opinion, but we need two thirds in order to accept a treaty, two thirds is a lot of senators. It is an overwhelming majority. And politically we cannot get it.

So maybe the atmosphere will change, I hope it will change. I think it will change. I hope we do not have to go through what Germany went through, and what Japan went through before they wrote into their constitutions that they are not going to war anymore. Because there are other opinions, and that is what education is about. And that is what I am trying to do: Train young people like you to pick up this flag – if you can call it that, up against symbols, people die for flags – pick up this argument of being humane and rational in the interest of everybody. It saves everybody money, it saves lives. That is my Petition, as you would say. I am glad to have an opportunity that my friend Claus Kreß and my friend Hans-Peter Karl are strictly, absolutely on board for this. I am sure that your new President will also support the humanitarian goals which I have conveyed and which I am sure your Arbeitskreis also conveys.

**Stahl**

Did you pay some attention to international criminal law during the Fifties?

**Ferencz**

I always paid attention to this. I have not stopped paying attention for my life.

**Stahl**

In which way?

**Ferencz**

I wrote articles, I did lectures, I did television shows.

**Stahl**

During the Fifties, I mean.

**Ferencz**

All the time. Ever since I was a soldier I have been trying to avoid war.

**Stahl**

If one looks through your articles, one finds that you have this 1968 article on War Crimes Law and the Vietnam War,<sup>[23]</sup> and to me it seems like this was the first time that you were dealing with this issue since the Nuremberg Trials.

**Ferencz**

No. I had to make a living. I stayed in Germany, I did a Wiedergutmachungs-Programm, which I think was a very unique accomplishment, under the circumstances. So I was away for ten years. During that time I had enough problems here in Germany, I had no worry about going to war, there was no threat from Germany, and it was fully occupied. To give you some idea of the dimension of that problem: When I left Germany in 1957 or so, the German government had already paid out about 50 billion Marks in compensation, a lot of money. And the program is still running today, it has not been completed. It was time for me to go home, I had four children born here and I had to go home and try to make a living. I had seen the dimension of the problem. I had a staff of about 1.200 people, because it is not only negotiating the Wiedergutmachung in the Lastenausgleichs-Gesetz and the Wiedergutmachungs-Gesetz but to set up a legal aid society and our institutional organisation. We had headquarters here in Frankfurt, we had three offices in Israel, we had offices in New York, we had offices in California, we had offices in Latin America, we had offices in Johannesburg, we had offices all around to help the victims with their claims and forward them in. So it was not just winning the war and punishing the criminals but helping the victims, which was the next step. Not worrying about a war in Vietnam or elsewhere in the world. Of course I was absolutely opposed to the war, and I wrote an article on that, compensating victims of the crimes of war. That is on my website, I hope, in which I said it was not a German problem. I wrote that the United States were shooting people in a ditch. I said that is a crime. The soldier who did that was wearing the uniform of the United States. The United States owes those people something. I was writing that at the University of Virginia. I deliberately put it in where the CIA sits. So it is not that suddenly I had a gap in my life. There has never been a gap in my life. There has always been a pursuit of these clear cut goals. Deter the criminals from any other crime, help the victims, and prevent it from happening again. So this has been a clear line in my life, and I am still at it. And I intend to continue at it.

**Stahl**

When did you start to see the Vietnam War as a war crime?

**Ferencz**

Always. Anytime you go to war, with that kind of a situation, whether it is Korea, Vietnam or any place else, I think the use of armed force to obtain a political goal is a filthy, dirty, rotten way of proceeding. It should be condemned as a crime against humanity. That is my feeling ever since I have been a soldier. I know that is true, because I have seen it, I have witnessed it, and I have witnessed the consequences of it.

**Weinke**

Were you not concerned about this sentiment of anti-Americanism which came out at that time?

**Ferencz**

I am very concerned about it. I know very well. Everyone in America was proud to be an American after the war, everybody loved the Americans. Today, they are seen by many people as hypocritical, domineering people who try to control the world, be policemen of the world although nobody has elected them. But that is also unfair, because a few people



get the spotlight by outrageous behaviour. The majority of the people, whether they are Germans or Americans or Vietnamese or anybody else, want to live in peace and quiet and enjoy a quiet life. The use of armed force to obtain a political goal should be condemned as an international crime and a national crime. If the big nations are not ready, let the small nations do it. And if you get enough of them, the big ones will come. They will come. They will have to come. Otherwise they will wipe each other out worse than Japan. They will kill themselves with their own weapons.

**Stahl**

The Russell Tribunal<sup>[24]</sup> tried to do this.

**Ferencz**

No, that was a communist fraud. I investigated that myself. I am a big admirer of Bertrand Russell.<sup>[25]</sup> But they used him. He was an old man then. I went to London to visit the Russell Tribunal. I got to a very small office, half of the size of this room. They had printing presses for printing propaganda, and they had a list of spontaneous uprisings which were being planned. One of them was in Berlin. And I was going to be in Berlin at that time. So I said, if they know a spontaneous uprising is going to happen in Berlin, I want to be there. I was staying at a Hotel at the Kurfürstendamm, and sure enough, as scheduled by the Russell Foundation two months before, they came out and they started making noise. The police came with horses to spritz them all, and I went down to join them in the street. I got a Spritz too. So the Russell Tribunal is not to be taken seriously as a representative of anybody but a very extreme left wing group.

**Weinke**

One last question: Do you think that legal schools, that they do have a special responsibility for questions of...

**Ferencz**

Absolutely. It is primarily a legal problem. I will come back with something which I think you should be asking about. It is a matter of law. Law is what we use. I am a rule of law man. My slogan on my website is »Law, not war«. You have these three words that would change the world if you would do that. If you have a dispute, go to law. You may have miscarriages of justice. It will happen. But it is always better than war. Particularly modern warfare is much worse than the old one, and it was terrible enough, believe me. I am looking at young people, you do not really know what war is like. I do. So law is an answer, it does not solve all the problems. It is not going to stop all the rapes. But what would happen if you said rape is no longer punishable in this city of Berlin or wherever. You would have a rise in crime. So we must not anticipate perfection that is going to end all crime. It will not. Cain slew his brother Abel. People will still be criminals. But if law does not have a deterrent effect, what do you need law for then? We have a criminal law, which we know from experience it does deter a great deal of crime. It depends on how much abhorrence the public will give to that particular offence. And we have seen that. Women had no right to vote in America. I had never seen a woman at school until I was twelve years old. Harvard Law School would not admit women. Of all things, my goodness! The first judges, thinking of the international court, the first six of them were women. I would say, they are not going to let a man on.

So the world is changing. It is changing for the better, it is changing very slowly, so they do not notice it. And it is unfortunate if you cease only the difficult points. I make the point that the International Criminal Court, which some think is my baby, is a monster of course, it is too much, too complicated. I will be coming together with Fatou Bensouda,<sup>[26]</sup> and Moreno Ocampo, we are buddies practically. He said: »Ben, we are taking over.« We have to recognise that it is a long process, and we are never going to get perfection. It is always going to be a process. And law plays an important role at deterring and educating people as to what the public is able to and what is tolerable. And that keeps changing. And there will always be people who do not agree. There will always be criminals. I can tell you from my childhood experience, of the kids being mean and rotten, no matter what you do, and I work with juvenile delinquents. I work at reform schools and so on. But most people are decent and kind people, and we should not be intimidated by the small minority, because then it is hopeless.

And I was speaking about the International Criminal Court. The Court is too big, too complicated, too expensive, too slow for a guy who finishes his case in two days, and it sees nine years before you put it out on trial. But it is a prototype. We are beginning. There was a time when a computer would not fit in this room. The computers were so big. Now you take a little thing and you put it in your pocket. What a difference in a relatively short period of time! It will be the same with justice in the courts. Either we will kill everybody on this planet, which is possible – I hope you will have more intelligence than to do that - or you will solve these problems. And we are on the way of solving it. My own opinion, and nobody has worked harder than I have, is that our progress has been fantastic. Because when I began, some very wise people said: »Ben, forget it, they will never accept a Court.« And I said »Well, they will. Or I will go down trying.« We have a Court, and the Court honours me. They even send me people to interview me, who want to know. I was in Cologne when Claus Kress and company gave Hans-Peter Karl an honorary doctor´s degree. I made a speech there for them. This has happened in my lifetime to a little boy from a village in Transylvania. And the German government gives this Jewish boy their Verdienstkreuz Erster Klasse. It is fantastic, it is incredible.

**Weinke**

Yes, it is reason to be optimistic.

**Ferencz** You have to be realistic, that is true. But you have to work at it. It does not come easily. So you keep going, just keep going. And on that happy note we go to lunch.

**Weinke**

Thank you very much.

## Fußnoten

1. Benny Stories, the autobiographical text is the basis of Tom Hofmann's book Benjamin Ferencz. Nuremberg Prosecutor and Peace Advocate (2014).
2. Sheldon Glueck (1896-1980), 1925-1963 Professor at the Harvard Law School.
3. Roscoe Pound (1870-1964), 1910-1964 Professor at the Harvard Law School.
4. Sheldon Glueck: By what Tribunal shall War Offenders be Tried? Cambridge, Mass. 1943; Sheldon Glueck: War Criminals. Their Prosecution and Punishment. New York 1944.
5. Vespasian Pella (1897-1960), Romanian diplomat and Professor of law at the University of Bucharest.
6. George Smith Patton (1885-1945), Commander of the Third Army.
7. Graduate of the United States Military Academy at West Point (USMA).
8. Between November 1945 and December 1947 the US conducted at the former concentration camp Dachau a series of military trials against guards, medical personnel, members of SS units, and various German civilians indicted for war crimes.
9. Washington Post, July 24, 2005.
10. Robert H. Jackson (1892-1954), 1945-1946 US chief prosecutor at the International Military Tribunal at Nuremberg.
11. The subsequent Nuremberg Trials were a series of twelve US military tribunals that took place between 1946 and 1949 in Nuremberg.
12. Lucius D. Clay (1898-1978), 1947-1949 head of the Military Government of the United States in occupied Germany.
13. Einsatzgruppen were squads composed primarily of SS and police personnel with the task to combat »racial or political enemies« found behind German combat lines in East Europe.
14. Moreno Ocampo (\*1952), 2003-2012 first Chief Prosecutor of the International Criminal Court at The Hague.
15. John J. McCloy (1895-1989), 1949-1952 first US High Commissioner for Germany.
16. In 1951 John McCloy reduced the sentences of 79 German war criminals. 30 convicted criminals were released immediately.
17. When in August 2011 the first case before the International Criminal Court came to an end, Benjamin Ferencz gave the prosecution's closing statement.
18. In December 2013 Benjamin Ferencz received the Dag-Hammarskjöld medal of the United Nations Association of Germany. On that occasion he was received by the German President Joachim Gauck.

19. Claus Kreß (\*1966), since 2004 Professor of international criminal law at the University of Cologne.
20. Hans-Peter Kaul (1943-2014), 1996-2003 head of the German delegation in the negotiation process of the Rome Statute of the International Criminal Court; 2003 to 2014 judge at the International Criminal Court.
21. In 2010 Benjamin Ferencz was awarded the Große Verdienstkreuz der Bundesrepublik Deutschland for his engagement for international law.
22. Robert S. McNamara (1916-2009), 1961-1968 US Secretary of Defense.
23. Compensating Victims of the Crimes of War, in: The Virginia Journal of International Law 12 (1972), pp. 343-356.
24. In 1966 and 1967 the Russell Foundation organized two Tribunals to denounce the war crimes committed by the US Army in Vietnam.
25. Bertrand Russell (1872-1970), philosopher, writer and political activist, who campaigned against World War I, National Socialism and nuclear armaments.
26. Fatou Bensouda (\*1961), since 2012 Chief Prosecutor at the International Criminal Court.

## Zitation

Lebensgeschichtliches Interview mit Benjamin Ferencz, 2.12.2013, in: Quellen zur Geschichte der Menschenrechte, herausgegeben vom Arbeitskreis Menschenrechte im 20. Jahrhundert, URL: [www.geschichte-menschenrechte.de/benjamin-ferencz/](http://www.geschichte-menschenrechte.de/benjamin-ferencz/)