THE AD HOC TRIBUNALS ORAL HISTORY PROJECT

An Interview with

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International Center for Ethics, Justice and Public Life

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Q1: This is an interview with Benjamin B. Ferencz for the Ad Hoc Tribunals Oral History Project at Brandeis University’s International Center for Ethics, Justice and Public Life. The interview takes place at the Ethics Center offices in Waltham, Massachusetts on November 7, 2014. The interviewers are Leigh Swigart and David Briand.

Ferencz: I hope I don't disappoint you, because I know very little about the temporary [United Nations] Security Council tribunals. I know a lot about the ICC [International Criminal Court], I know a lot about what the world needs, I know what we have to build on, so if my answers to your questions appear to be wandering off a bit it's because there is a message that I want to deliver. It's a message which is consistent, which I hope would be approved by Brandeis, certainly, and also by the members of the staff, and that is we're trying to get a more humane and peaceful world governed by the rule of law. This is my guiding star.

I'm ninety-five years old. I'm going to start my ninety-sixth year in a few months. I'm happily wed to a girl also from Transylvania, who is also the same age—a little bit older. She had a birthday last week, but she's showing her age. She has lost her eyesight, beginning to get a little shaky, and I have to have somebody with her all the time. I try to
spend as much time as I can there. She's in Florida; I have a home in New Rochelle
where I've lived for over fifty years. All my stuff is there. I work alone except for my son,
Don, who's here. He has been hit with a serious disease—he fell in love. [Laughter] He
got remarried, so he's busy being a human being—not like his father, who's a mashugana
[madman].

Q1: Busy day?

Ferencz: Oh, let me take a look. I don't know what day it is; I don't know what month it
is. [Joking] Let's see—9:40 this morning, we started late. I went to the Divinity Center
[Harvard Divinity School], where I had a very interesting meeting with the Dean of the
Divinity School. Excuse me, I'm wrong. It was not 9:00, it was 8:45.

Q1: You started early.

Ferencz: Eight forty-five, I met Dean Hempton of the Harvard Divinity School—a very
interesting discussion. The issue was how do we engage the religious community of the
world to recognize the role that law can play—criminal law in particular—as a deterrent
to the illegal use of armed force?

Q2: Oh, that's an interesting question.
Ferencz: It's not just condemnation, but let them know the responsible persons will go to jail. If they use armed force knowing that it will kill many innocent civilians and it has not been done in self-defense and not been done pursuant to Security Council authorization, it's illegal. It's a crime against humanity and it should be punished as such. This is my message, and this comes about after having been known at the UN [United Nations] as "Mr. Aggression" because there's nobody in the world who has spent more time trying to get aggression penalized than I have. Nobody has written more, spoken more, or worked harder, and now I've said, "Okay, I know when I've been knocked down three times, I get the point. I better find a better way."

I'm looking for a better way. I have found what should be a better way—instead of calling it the crime of aggression, I'll call it a crime against humanity, which is what it is, and have it punished as such. You bypass the Security Council if you do that because they only get involved in the crime of aggression, and you have no statute of limitations. You have something of greater public appeal because they can understand crimes against humanity. Aggression, they say, "Well, go see a psychiatrist." The next string to my bow is to treat it as a crime against humanity, and at the same time extend it further and treat illegal war-making, illegal use of armed force—the term war itself is a problem—illegal use of armed force should be punishable under principles of universal jurisdiction. If piracy is the seizing of somebody's ship—it's a crime which should be punished and can be punished universally anywhere by anyone who apprehends the pirates—why isn’t killing thousands of people also a crime? Is that not as important?
I have these two additional steps to take in my hierarchy of how to change the way the world deals with the inhumane acts that you'll want to talk about, which are illustrated by the decisions of the courts in Rwanda and Yugoslavia, and the other courts. This is the goal, the distant goal, to be built on these immediate practical steps, because the world is not yet organized to cope with it. We had to create special tribunals and now they're dissolving the tribunals. Where does it leave us? Back in the hole. So you've got to build something permanent that will remain. That's my song. You can ask me all the questions you want—that's the answer you'll get. [Laughter]

Q1: Alright.

Q2: That's interesting, and I know that there are—

Ferencz: Meanwhile, I'll stir my tea.

Q2: Yes. It’s been very problematic getting the crime of aggression defined and accepted under the Rome Statute. Do you think when we look at the Rwandan tribunal, the Yugoslav Tribunal with [Slobodan] Milošević, or with the high political leaders in Rwanda, would it have been easier to convict them under the crime of war-making or aggression than of genocide or—?
Ferencz: No, of course not. You wouldn't convict them at all of the crime of aggression; it's an internal civil war situation. A crime of aggression is being dealt with as something between nation states, so it would not be applicable.

Q2: So it's only—aggression is only inter-state war-making—

Ferencz: That's all.

Q2: —it can't be an internal conflict.

Ferencz: As it now stands, the crime of aggression, you can opt out and you can opt in. It's a treaty crime; in other words, it binds only those who sign the treaty. The terms of the treaty in its most recent draft are, "If you don't want it, you don't sign it. If you do sign it you can still opt out. If they accuse you of the crime you can opt out." What the hell kind of a law is that?

Q2: That does not seem like it would be very effective. [Laughs]

Ferencz: I said, "I'm tired of playing all these games, boys. I'm ninety-five years old. I've been playing this game long enough—fifty years with you. I'm going to show you a shortcut. I'm going to take an express train. I'm going to take the crime against humanity and I'm going to go on that." Now, for amusement, Samantha Power, who's a lovely lady—she and I co-star in a movie which is opening up in Boston tomorrow.
Q2: We saw that, yes.

Q1: The [Raphael] Lemkin movie *Watchers of the Sky*.

Ferencz: Yes. Anyway, I met with her when she first got into office. She said, "Ben, do you think you can do an end run around the United States by changing the name of the baby from aggression to crimes against humanity?" I said, "No Samantha, I'm not going to do an end run. I'm going to go right through the middle. I'm going to go through saying this is the crime—crime against humanity." Let all the senators from Alabama, Texas, Tallahassee, or I don't care where say they're not in favor of punishing those who commit crimes against humanity. They can say that aggression hasn't been defined, therefore we don't deal with it, which is actually a subterfuge. They don't want it, and for that reason they have tried every dirty trick in the book to not be bound by giving jurisdiction to any international court to determine when the United States, Russia, China, and all the others that oppose it decide that it's in their national interest to go to war. They have not yet recognized that that's a very dangerous policy.

They still think that power will count. They're badly mistaken and they should know it, but they're so accustomed for thousands of years of thinking that war-making is the way to glory. "Hooray for the flag"—it's marching music. They can't get out of that thinking mode. There's where our problem lies and that's what I'm working on.
Q2: Yes.

Ferencz: And, okay, it's important to know history and it's important to know about the Holocaust, but it's more important to prevent it from happening again, and that's what I'm doing. [Laughs]

Q2: Yes, and it's very impressive that you have so much energy to put into this, and that you're still thinking ahead.

Ferencz: I don't know what she's saying because the hearing aid only picks up half of it, but that's alright. I guess she was saying, "Hooray for you." [Laughter]

Q1: Basically, yes.

Ferencz: That’s it.

Q1: At one point you called—I believe it was in the lecture series for the UN audio visual archive, you called the ad hoc tribunals—what did you say, baby steps? You called them newborn babes, I think is what you called them?

Ferencz: Well basically the whole thing is newborn babes.

Q1: Do you still see them that way? How do you think about them now?
Ferencz: Well that was before they were created. Are we recording now?

Q1 and Q2: Yes.

Ferencz: Oh, well I'm sorry that I have subjected you to that diatribe—

Q1: Not at all.

Ferencz: —so early in the day.

Q1: That's what oral history is all about—an open conversation.

Ferencz: If I had realized that you were recording me I would have tried to be more elegant and more direct, or began with your question. I am familiar of course with the origins of, first, the international criminal tribunal for the crimes committed in Rwanda. I think the fact that the international community allowed those crimes to happen, knowing that it could happen and probably would happen is a disgrace to our entire civilization. If after the Nazi Holocaust they allowed a holocaust to take place in Rwanda when the tips and the information were all there—that there was a great danger of that—is a shame to the legal community and to the whole civilized world community. The meager effort to belatedly—after eight hundred thousand people were butchered with such sophisticated weapons as machetes, it's almost incredible to think that we dare to call ourselves a
human society. It was an inhumanity that is absolutely intolerable and not understandable. Now, you had a question? [Laughter]

Q1: Originally you referred to them as newborn babes, but they weren't there before. They're a step. So I was wondering about your time—they were established in the early 1990s, so we were curious about your interactions with the UN at that time period and what was your reaction to the establishment of the ad hocs? Significant moments in time—?

Ferencz: Let me roll it back for you. I appreciate what you're doing. I appreciate your interest in the subject. It's a subject which has interested me for at least half a century. At a certain point I was a graduate of Harvard Law School. I just came from there now. They have awarded me a prize; the last time they gave that honor was to Nelson Mandela. I feel honored to be trailing in such revered footsteps of someone I much admired. I am now at Brandeis University. [Louis D.] Brandeis was one of my most admired judges. [Benjamin N.] Cardozo, and Brandeis, and [Oliver Wendell] Holmes [Jr.]—their portraits hung in my law office at all times. I'm honored to be in a university that has been given his name with an opportunity to share my views with what I hope will be a large enough audience.

The temporary tribunals have to be understood by the background. The principle moving party at that time—and at this time—has always been the United States. The United States had some unfortunate experiences. When the rangers in a glider were shot down
over—you remember the name of the town. My battery for names—I’m ninety-five—has run down. In North Africa—

Q2: Oh, in Somalia.

Ferencz: Somalia. No, was it Somalia or was it—? I forgot now where it was. They were shot down and we saw films of them being dragged through the streets of Mogadishu, is where it was. That shocked the American public enormously. There are our soldiers on a humanitarian mission and they get shot down and dragged through the streets. How could that happen? American women in particular were outraged. Then we had the next events with the rape of maybe ten thousand women in the former Yugoslavia. That caused the American women—God bless them—to rise up and say, "Do something." What can we do? We can't do anything. Look what happened—we had to send a plane, a Black Hawk helicopter. They shoot it down in Mogadishu; they grab our soldiers. What can we do in the former Yugoslavia?

They moaned about that and they said, "Let's buck the problem to the United Nations. Let them do something." The United Nations of course is not an independent organization; it's a creature of the member states, and that's all. They can do no more than what the members would authorize. The member states in their ultimate wisdom said let it go to the legal department, so it went to the legal division of the United Nations. The legal division of the United Nations bucked it down to "Who on our staff knows anything
about setting up a court?" There was one young lady there, and she held her hand up—
her name was Virginia Morris—and she said, "I do."

When I first met Virginia Morris, which was shortly before that, I was looking for some
books in the UN library. They said she might have it, and I went over and I said, "Look,
I'm Ben Ferencz. I'm trying to find certain books."

She said, "Are you the one who wrote the book on the international criminal court?"

I said, "Yes, I'm the one."

She said, "You know, I bought the two volumes with my own money." [Laughs]

"Oh," I said, "a girl who spends her own money on buying two of my books, she must be
a very bright girl." So they bucked it down to Virginia Morris. In the book on the
international criminal court, I had assembled all the documentation of previous efforts to
create an international criminal court, which sent me back to 1952 and different United
Nations things, and other people. Everything was packed in there. The book was really a
short book with a lot of documents. So she began to work on it, and she became the key
player on preparing the first draft for the International Criminal Tribunal for Yugoslavia.
Then it went through. We had other people who were general counsel, and Manoush
Arsanjani was her superior in handling the thing. They all got behind it.
It so happened that I was attending a meeting of the International Law Commission in Geneva. I'm not a member of that or any other organization. I do not represent anybody; nobody in the world pays me at all for presenting humanity because humanity doesn't have a credit card account. [Laughter] But they all know me because I go to the meetings. At the time it was more open; now the security is tight. I was down there and the message came through to the International Law Commission that the Security Council, I think—it may have been the General Assembly, I'm not sure anymore—had accepted the draft definition for the creation of an International Criminal Court for Yugoslavia. They faxed it through to Geneva. I was standing there as it was coming in on the machine. The secretary of the UN from the codification division who was there took the pages as they came over and she handed it to me, and she said, "This is your work." I was very touched by it. Of course it wasn't my work; it was a combination of the work that many other people before me had done, but it was a very touching moment for me.

I then arranged for her to publish a book on it, together with Michael [P.] Scharf, who was then with the State Department, ready to leave it. The publisher was Oceana Publications. They had published some of my books, and I knew Phillip Cohen very well—the publisher. I said, "I got another book for you," and I wrote the introduction to the book. So I had a history of it that the other people from whom you'll take an oral history cannot have, and very few of them will know.
Q2: Well, that's why we wanted to speak with you. Do you think when the ICTY was formed, and then the ICTR, did they look like what you had imagined an international criminal tribunal or court to look like?

Ferencz: My only experience with an international court was the only international criminal court that existed, and that was the Nuremberg tribunal. The Nuremberg tribunal was in fact a model of the goals we were trying to achieve, and the definition of crimes was aggression and war crimes, crimes against peace, which was what they called it—what was later called, unfortunately, aggression. Caused a lot of confusion. So I had these models.

The International Military Tribunal was followed by twelve subsequent trials. The man appointed to direct those trials was Telford Taylor, who had been in the military as a colonel doing intelligence work, and when he was appointed by President [Harry S.] Truman to take over from Justice [Robert H.] Jackson, he was elevated to a rank of general. I first met him—and I go into it because you're doing an oral history and you want it. After the war was over—World War II in Europe was over—I went home. Ten million other soldiers looking for a job, and I was a graduate of the Harvard Law School.

The army had recognized my talent as an expert on war crimes because I had done the research for a book on war crimes for one of the professors. With that background, that knowledge, the army in its infinite wisdom made me a private in the artillery, about which I knew absolutely nothing and couldn't have cared less. However, in that same
capacity I joined them as we landed on the beaches of Normandy, where the Germans were waiting to kill us. I was present in every battle of the war to the final Battle of the Bulge, and in the last several months of the war I was reassigned from the artillery to General [George S.] Patton's headquarters.

They had been directed to set up a war crimes unit—set up trials. They knew very little about it—in fact they knew practically nothing about it—but they had been directed to set up something to try the war criminals. I landed in General Patton's headquarters. I was met by a colonel. He said, "I've been directed to set up the war crimes group and your name has been forwarded from Washington." He said, "What's a war crime?" He had no idea. They were familiar with conduct unbecoming an officer, with desertion, with absence without leave, but war crimes—they never heard of such a thing.

Q1: But you had.

Ferencz: But I had. [Laughter] Indeed I had. I said, "Sit down, colonel. I'm going to give you an education."

Q1: It might take a while, but here it goes.

Ferencz: Pretty soon it got to a point where I said, "Look, I cannot do my job wearing the insignia of a corporal." They promoted me to sergeant and I said, "I can't wear a sergeant's stripes either. Just turn me loose." The judge advocate section had only officers
and the reason I didn't get to be an officer is another story. I had a first sergeant that I'd rather kill him than any of my defendants. He was a mean son of a bitch [Laughs] and when I was to be transferred out to go to an officer training course he tore up my application, threw it in my face and said, "You'll only get out of here in a box." That was repeated in several different instances.

Anyway, there I was, trapped, a prisoner of the United States Army. [Laughter] I proceeded to go into the concentration camps we liberated—with all the horrors, which I need not recount here, including the Allied flyer cases where we shot down our own planes because we had incompetent people on all sides. Either the planes weren't giving us the right signal that they were "friendly fire" or our machines didn't work, or like probably what happened in the Dutch plane which was recently shot down. I had to go out and dig up the bodies, find them. When it was the flyers themselves I had to find pieces of the body, look for a fingerprint if I could find it. I’d be happy if I could find a clump of hair, something like that. In the trials themselves, in the preparation for that, I had to dig up bodies of soldiers. You have to dig them up by hand because you can't use a pick. You don't know if you hit the body, you have to—it looks like a bayonet wound, it looks like a bullet hole. I am by temperament not inclined to do that sort of thing. [Laughs] I'm also a lousy digger. [Laughs]

That was my background of war-making itself. I received a telegram from Washington after I got back, very shortly thereafter. One of my buddies from law school—we weren't in the same class; he was in the class behind me, but we were in the same rooming
house—he was the clerk to Justice Jackson. I asked him how things were going. We met by chance on 42nd Street and 5th Avenue—an illustration of how chance comes in here, unpredictable. I said, "What are you doing? What are you up to?" I told him what I was up to and he said, "Well, I'm Justice Jackson's secretary, but he's often away at the Nuremberg Trials," and so on. He said, "They could use a guy like you. You have the experience in the field with this in the army."

I was discharged as a sergeant of infantry, given an honorable discharge—which I thought was very dubious [Laughs]—and five battle stars for not having been killed in any of the major battles of the war. I thought that was a good idea. Instead of just rewarding those who are dead, how about those who didn't get dead? [Laughter] Anyway, I got a telegram. "Dear Sir"—they had never called me "sir" in all the years I was in the army—"we'd like to interview you." I came up for an interview—I'll cut the story short because it doesn't relate to your subject particularly—and I was hired by Telford Taylor to go back with him to Nuremberg to set up the subsequent proceedings as they were called. And I did. I put together a staff of about fifty people, began going through the files of the foreign ministry, the Wehrmacht, and whatever else that had not been bombed the hell out of in Berlin, and collecting whatever evidence could be used, and we shipped it back to the lawyers in Nuremberg who were assigned to do any one of the twelve cases.

One of my researchers came on the reports of the special extermination squads that nobody can pronounce, so I won't put it on tape. Their mission was to go behind the German lines as they entered Poland and the other countries, which they expected to
sweep over, and murder—they never used the word "murder," kill—they never used the word "kill," and eliminate every single Jewish man, woman and child, and gypsy they could lay they hands on, and anybody else they considered a threat. Their reports, which I tabulated on a little hand-held machine—when I reached a million people murdered, based on their reports—top secret reports being sent to Berlin from the field, with the name of the commander, the name of the unit, the time, the place and the number—I put them together, I took a sample, went down to Nuremberg, and I said, "General, we've got to put on a new trial."

He said, "We can't. It hasn't been approved by the Pentagon." He said, "The lawyers are already assigned. They're beginning to work on the cases. We don't have any room for any more cases."

I said, "It's impossible. We're going to have to put on a new trial. We're not going to let these guys go."

He said, "Can you do it in addition to your other functions?"

I said, "Sure."

He said, "Okay, you got it, okay?" I thereby became the chief prosecutor for the United States in what was undoubtedly the biggest murder trial in human history. It was my first case. I was twenty-seven years old. Not knowing all the intricacies of the law, I rested the
prosecution’s case in two days. I didn't call a single witness, I said, "I don't need them.
Witness testimony is fallible. I have contemporaneous documentary proof. That's the best
evidence available. It's marked 'Top Secret,' and I got the name of the commander. That's
all I need." [Laughs]

Q1: They were very fastidious record keepers.

Ferencz: Yes. Ninety-nine copies. I had the distribution list.

Q2: Were the defendants in the *Einsatzgruppen* trial, were they surprised that they had
been indicted for this? What was their attitude?

Ferencz: It varied, I cannot say 'their' attitude, because there were differences. They
ranged from one guy who said, "What, Jews were shot? I hear it here for the first time."
That was the only time in that trial when I felt like jumping over the podium, and gauging
out his eyes. [Laughs] You know, or putting an ice pick in one ear and through the other
one. [Laughter] Otherwise, they justified what they did. They said, "It didn't happen. It
was superior orders."

The best, most sophisticated and the most honest response to that—and that's important
for your records for all trials—was the testimony of my lead defendant, Otto
Ohlendorf—Dr. Otto Ohlendorf, father of five children, a handsome young man,
inelligent. He explained his mentality, which was reflective really of the mentality of
most of the people whom I indicted. I selected the defendants on the basis of their education and on the basis of their rank. I had I think six or nine generals and I also—. Most of them had doctor degrees, and one of them had two doctor degrees—Dr. Dr. [Emil Otto] Rasch. He killed 33,771 Jews on 29 and 30 November, 1941, in a place outside of Kiev that got famous as Babi Yar. He did the Babi Yar job. I had him and I had his reports.

Anyway, so that's how I got involved. To go back to your question—a long answer—of what precedents did I have to guide me in connection with my opinion, we were making law as we went. We were dedicated, good lawyers—with some exception, of course. We had a big staff—determined to give the defendants an absolutely fair trial, and I think we did. I wrote a Law Review article on that, "Nuremberg Trial Procedure and the Rights of the Accused," which showed that we gave them the kind of a trial that they, in the days of their pomp and power, never gave to anyone, and we tried to do that. We even bent over backwards, and in my case particularly the judge overruled every objection I made. Hearsay evidence, all kinds of normally inadmissible evidence—he held it admissible, everything admissible. I was quite annoyed with him, Judge Michael Musmanno of the Superior Court of Pennsylvania. This guy doesn't know the rules of evidence. He can't put that in evidence. I just came from Harvard Law School. I got a scholarship on my exam on criminal law. I was very annoyed with him.

When the sentencing came and the judgment came—it was a very detailed judgment, an excellent judgment—he said, "For the crimes of which you have been convicted,
Ohlendorf, this court sentences you to death by hanging. Next, death by hanging. Death by hanging." In his mind—I learned it later and then we became friends; before that I was mad as hell—he was saying, "Look, they think they're in front of a jury. They're not going to fool me with those phony affidavits and all of those lies. I could see right through them. Let them talk, let them talk. I'll have the last word." And he did. He went into a monastery for a week—he was a devout Catholic—to confer with his priest, and he came back and down the list, thirteen of them death by hanging, which was more severe than I would have given.

With that kind of a background, what did I think of the new tribunals? Nuremberg was unique. Some of the big powers didn't really want it. The United States wanted a subsequent trial. The other countries didn't—the occupying powers. They had a couple of them but their heart wasn't in it, and still isn't in it. We had no real precedents; we made the law as we went along, but it was not victor's justice at all. The accusation that it was victor justice—you know when a policemen arrests a criminal, it's victor's justice. What can they expect them to be? Who's going to try them, themselves? We tried that for the First World War; it didn't work. It was a very fair trial and the procedures were very fair.

We gave the defendants copies of every piece of evidence we intended to introduce at least thirty days in advance. They could choose counsel of their choice—the best German and Nazi lawyers they could find. Each one had an assistant, so I had twenty-two defendants, I had at least forty German lawyers, and on my side there was me with no experience whatsoever and three other lawyers. Two of them were castoff—nobody
wanted them—and one of them looked pretty good—the guy from Czechoslovakia—and that's it. So it was unfair; I was outnumbered, outgunned ten to one by the numbers of the lawyers. I could have complained it was unfair but I didn't. You know why? I had the evidence. [Laughs] So I didn't care how many lawyers they had. [Laughs] I was a fresh brash young kid, which I still am. [Laughs] So there it was.

Now, back to Yugoslavia. Yugoslavia is a result of the failure of the United States to repeat its mistake of going into Mogadishu. It was a newborn babe—literally it was a newborn babe. That kind of an intervention in a civil war, and us coming in there and trying to set it up, was bound to be very difficult. Now this is for the record, which I hope will appear in your final essay—there has never been and never will be a war without atrocities. Every war there ever was and ever will be will have atrocities, and the biggest atrocity of all is going to war in the first place. Rape has always been a prize of war, and will continue to be a prize of war. Anybody who knows what Berlin looked like when the Russians got in will know what that means, and what happened to the German women in Berlin. They were begging for an American to come and rescue them.

So what do you do? You have a new situation, horrible crimes being committed. Big powers are not prepared to intervene, or at least the United States—certainly not the others. As poor Mr. [Roméo Antonius] Dallaire found out, they'll send nominal peace keepers wearing blue helmets, as though that would protect them from a machete, from a thousand mobsters coming after them and so on. What else could they do? They didn't have an independent army, which you're supposed to have according to the UN Charter.
They disregarded it. They didn't have disarmament—they disregarded it. The Security Council, which was supposed to save succeeding generations from the scourge of war, saved their own political position as the answer to any problem. They failed miserably to carry out their basic obligation under the charter. It's the world in which we live.

So we got a court, and hooray, we finally had a court of sorts. No experience, but rape is rape, murder is murder, and if you lock people up in a church and you set fire to the church, as was the case often, what do you do? It's a terrible crime. Who do you hold accountable for it? And these are people on a rampage. What about the guys who planned it, perpetrated it, who never left their office? The Schreibtischtäter, as the Germans called them—the "desk criminals" who never leave the office. We began to run into the problems which in the past had never been dealt with by a court at all. You went to war; the other one declared they surrender; you do what you have to do—reparations or whatever—and that's over. The world was moving, the scene was changing, and we began to turn finally to the rule of law. As was to be expected—we see it now with the International Criminal Court that was followed by a similar court, Rwanda, all based on the same model—Yugoslavia and Rwanda—and all the other subsequent courts.

What is amazing—if we have so many courts today, we had none when I went to law school. We had none. There were no women in my class. Now I just came from the office of the charming dean, Martha—Martha [Laughs] Minow, a lovely lady, dean of the Harvard Law School. Her predecessor now sits on the Supreme Court of the United States. The first group of lawyers elected to the International Criminal Court as judges—I
was in Florida listening to it, following it on my computer, and listening to my son who was there following it in the UN itself, and the first six judges were all women. I said, "They're not going to let a man on the bench." [Laughter]

Q2: Yes, that is extraordinary because I know they do—in the statute they do specify there has to be some gender balance.

Ferencz: My point is that things are changing; they are moving forward and forward for the better. As I said in my opening statement, it was a plea of humanity to law. [Luis] Moreno Ocampo was impressed with that, and he insisted that I repeat it again later in the court, and I said, "I don't want to quote myself." It was the awakening of the human conscience during my lifetime. It's been a long life, and it's been a slow awakening, and there's been ups and downs, but there's been a spiraling upward in the recognition, as I had called for when I was twenty-seven. I said, "These people were murdered because they didn't share the color or the religion, or the race of their executioners." I thought when I was twenty-seven that it was a horrible thing. I have never changed that point of view and I'm now ninety-five.

I've tried to do what I could in order to use the rule of law as a protection for the human rights of all people, and I welcome the humanitarian effort which exists here at Brandeis University, and in Harvard University, and in Cardozo University, and other universities where I go and I try to help as best I can. There is a remarkable success story despite the fact that it's too expensive, it's too complicated, the lawyers are not trained, the judges
could be better, etcetera, etcetera. That's nothing. That's not important. They are newborn
babes; they will grow. One day they will walk, one day they will run, and one day they
will help you. So that is my philosophy, and that is my observation of what the facts are.
It's a unique point of view because I was there at the beginning, at the inception, and I'm
very pleased with the way it has gone. Of course, there are many things which I think
should have and can and will go better in the years to come, but the foundation has been
laid. The cathedral of the law will be built one stone at a time, and it's under construction.
I thank you and everybody at Brandeis and the other universities for making that
possible. And I drink my tea.

Q2: I just want to come back to this idea of the development of international criminal law
institutions over the twentieth century and into the twenty-first. It seems like there's a
couple of different ways that you could evaluate the success of the Yugoslav and
Rwandan tribunals—one is how fair and thorough their proceedings were; another one is
how they helped spur the development of a new body of law; and I guess another way is
to think about how they were the training ground for lawyers, for judges, for prosecutors,
for registrars who then moved into the International Criminal Court. So I wonder, when
you look at the ad hoc tribunals now that they’re about to close down, what do you think
about their success and their failures?

Ferencz: I think their existence is itself a success. Their eagerness to close reflects the
current political atmosphere of powerful states, which are still reluctant to run the risk of
being tried in an objective tribunal for some of their behavior. They were really
temporary courts set up to deal with a special situation, and we need permanent courts—a follow-up of Nuremberg. What we need even more than that—. Every lawful society requires three basic components—one, laws to define what's permissible and what's not permissible; two, you need courts to serve as a forum for settling disputes, or for interpreting the laws and what they mean. We are beginning with the courts that you are describing. But there's also a third step necessary in this, and that is enforcement, and there we have not yet begun. We are standing on a two-legged stool. The laws are there—weak. The courts are there—even weaker. The enforcement leg—missing! [Q2 Laughs] So what do you expect? [Laughs] You stand on that object, you fall on your head.

Until such time as we recognize this trilogy, which I have synthesized in some of my books—I've written many books—until that's recognized, we're unable to solve the conflicts because we don't have the tools to do the job. We are building some of the tools and we're ignoring the others. Very dangerous at a time when our capacity to kill is jumping by leaps and bounds. We can kill people by pushing a button and it goes and finds an apartment house and it kills the guy we're after, and maybe only ten, twenty or thirty other people—but that's collateral damage, that's okay. [Sarcasm] That changes homicide into some kind of a blessing as though having good intentions eliminates the crime. That is nonsense. And that is the current status of the world order.

So, what can we do about it? First of all you can recognize it. That's the beginning of wisdom—get to the truth, find the facts. If you can't get the facts you can't decide it
fairly, no way. If you have a prisoner of war and he's wounded, and you shoot him and then you kill him and then you stomp on him, you're committing a lot of crimes. Whether it be called a civil war or a terrorist attack or anything else, the perpetrator is committing an act which is reprehensible to such a degree it threatens everybody, it's a crime against humanity because it seems to glorify something which should be despised. That is the current state of the world today, and it requires knowledge and awareness of what's happening not to be mislead by slogans and symbols and marching bands and flags flying, but the human impact of all of these things. In the last analysis it's a human problem, and in the last analysis the third leg of that tripod will be enforcement. If the governments don't do it, the humans will. That will be the court of last resort.

We're seeing that beginning too in different places. It began in Vietnam—"Hell no, we won't go." The president of the United States quit. The secretary of defense came to me and he asked me to write an op-ed piece urging the president of the United States to support the International Criminal Court. The very last act of Bill Clinton when he went out of office was to instruct his ambassador David [J.] Scheffer to go hold open the UN and go down on a Sunday night in a snowstorm and sign for the United States that we're in favor of the court. Why was it left for the last minute? Because he was going out of office and he knew if he stayed and did it while he was in office, he would—in the words of Jesse [A.] Helms [Jr.], who had controlled the Senate, "Over my dead body." You know, "This will not stand."
Of course, a few months later he sent John [R.] Bolton out who said, "There is no such thing as international criminal law. I revoke the president of the United States’ signature," making us the laughing stock of the world. That's the world in which we live, my friends. You live—you're a young fellow. You, you're a young girl. I'm an old man. [Laughs]

Q2: You said that you are going to be sharing a podium with Samantha Power, and given the passion she has for human rights, and preventing genocide, I'm curious about what it's like for her to represent the United States at the UN [Ferencz laughs] and this idea of what it would take to convince the United States to be a player in this really important area of international criminal justice?

Ferencz: When I spoke to Samantha Power, who I've much admired since her earliest books on human rights, it was a brief encounter. She didn't have much time and I didn't have much time, and then we chatted a little bit and then she said that she was familiar with what I was up to. She had been briefed by her staff. She said, "Ben, do you think you're really going to be doing an end run around the United States by calling it a crime against humanity instead of aggression?" I said, "No, Samantha, I'm not going to do an end run around the United States. I'm going to go right down the middle. I'm going to call it a crime against humanity. If the senators from Alabama and Mississippi want to say they don't want to punish crimes against humanity, let them say so. Let them say so. We'll take it up in the street." She sort of smiled and I said, "Wherever you can, support crimes against humanity."
I've seen several of her speeches since then. She refers to things as a crime against humanity—not as a punishable crime under the statute and all that, but as a crime against humanity. Quiet, slip it in quietly. That's what we have to do. We have to slip it in. I have exactly the place and the time and the wording. It's simple.

We now have a definition of crimes against humanity in the Rome Statute, which has been adopted. It lists murder, rape, deportations, all kinds of stuff, and other inhumane acts which cause grave suffering. The "other inhumane acts" is a catchall clause because no one can anticipate what new forms of crimes against humanity will be invented tomorrow, and it's a logical and necessary clause. I will put in "and other inhumane acts such as the illegal use of armed force in violation of the UN Charter." That's all. That's an example. What has happened if you can get that in? You elevate it. What does it mean in substance? "In violation of the UN Charter" means self-defense is permissible. It means if the Security Council decides in its power to intervene, they can, but short of that it's a crime against humanity as another inhumane act. If murder of one person can be a crime against humanity, why not the murder of a thousand people, or ten thousand people? I stumped Leila [Nadya] Sadat, who was writing a book on it with that question. She thought about it and she said, "Ben, you're right. I'm with you."

Q2: Who was it that said—somebody after the Rwandan genocide—that "the murder of one person is a crime; the murder of a million people is a statistic." It's like people can't even imagine the—
Ferencz: That's right, it's a statistic. If you murder one you get sentenced to prison or something; if you murder a thousand you get promoted to general. It's crazy. There’s nothing more absurd than the present system of, if the heads of state can't agree, they take nice young people like you, send them out to kill nice young people like him who they don't even know, who may have done no harm, never may have harmed anybody, with instruction to kill him. Then they see who's standing at the end and they say, "We won." What the hell did they win? Death is the only victor in war, and they have to recognize that.

There are certain fundamentals they have to recognize. You cannot kill an ideology with a gun. People who are ready to die and kill for their particular ideology, whether it be political or religious or nationalistic or anything, they're not going to be intimidated by the threat of imprisonment. You have to have a better idea and the only way to have a better idea is to put them on trial, let them state their case, let the public judge for themselves which is the better view in the public interest. If you do, I have faith the public will do the right thing. But you can't conceal it and lie to the public and hope to come up with the correct and just solution. We are in an evolutionary stage and that's why I'm so happy to talk to young people, because I know it will take more time.

When I was awarded this gold medal—whatever it is—this morning by the Harvard Law School and Martha Minow, there was in the audience a very nice lady and she heads an organization called Facing History and Ourselves. They are trying to train teachers—they have a roster of some thirty thousand or more teachers—in the principles of compassion,
compromise, and consensus—a real consensus on substance. They're reading the right texts on that, saying the use of force has got to be a very last resort and all that. She's working on it and I'm doing whatever I can to help.

I had this morning a meeting with the dean of the Divinity School and I said, "What is the Divinity School doing to mobilize the religious community to recognize that the principles of one of your key actors—this guy who was born in Jerusalem [Laughs] who wanted peace on earth—what are you doing to use the deterrent effect of the law to encourage them to stop killing people?" I was very delighted to find that he was completely sympathetic with the idea. He recognized that it had not been discussed or considered in legalistic criminal law terms and that this was a new approach to it, which has its pros and cons. There are no jobs waiting for people; there is nobody trained in it yet, and I'm trying to train them. Everything that you do here too, even just studying the history or the background, lends a receptivity on the part of the dispassionate listener to move in the direction of a more humane world. And we need a more humane world. The world in its present condition, I'm leaving. [Laughter]

Q2: I hear a crowd downstairs that I think has assembled to greet you, Ben.

Ferencz: That's it. Cheers. Now you've gotten as much out of me as I think you can effectively use.

Q1: Unless there's anything else that you wanted to say in closing.
Ferencz: Well, in closing let me just say that the temporary tribunals set up by the Security Council were an emergency measure of being able to move quickly on situations where the big powers—personal, political interests were not involved to a degree to cause them to try to block any action. That was a unique situation at the time, but it set a very useful precedent in applying the rule of law to a situation that was intolerable, and we had to respond to it. Not to respond is to encourage it. Those who do not enforce the law encourage more criminality.

It was a very useful thing, and some of the judges have been excellent. I know Theodor Meron—Professor Meron very well. He's a very fine man and we're fortunate to have him there as a judge and as a wrap-up man. Judge [Antonio] Cassesse and I shared the Erasmus Prize given by the Queen of Holland, and he unfortunately died. There are some very fine people who are working on this. It's not easy to reverse traditions that go back thousands of years, but it can be done, and it is being done. I'm very encouraged by the progress that's been made and I want anybody who hears this to take heart. Don't give up. That's my slogan, three pieces of advice—never give up, never give up, never give up.

And at that point I give up this discussion. Goodbye. [Laughter]

Q2: Thank you very much.

Q1: Yes, thank you so much.
Ferencz: Okay. You didn't get to put in any questions; I didn't give you a chance. [Joking]

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