

## **Crimes Against Humanity Benjamin Ferencz Interview**

19 September 2001

**Katy Clark:** Yesterday, Benjamin Ferencz posted a letter on his web page:

**Benjamin Ferencz:** Dear Friends,

Perhaps some of the tears have dried and people can begin to think rationally about the horrors of the past week and what we can do to prevent the recurrence of such tragedies.

**Clark:** Ben Ferencz has spent most of his 82 years doing just that. He was a prosecutor for the United States during the Nuremberg war crimes trials of Nazi leaders. Ferencz's response to the Vietnam War was to withdraw from his private law practice and spend the rest of his life studying and writing about world peace. He founded the Pace Peace Center at Pace University, where he is Adjunct Professor of International Law. Ben Ferencz lives in New Rochelle, New York.

You wrote this letter because you believe that we have a choice between whether our country chooses to resolve disputes on the battlefield or in the courtroom. In other words, law versus war. Is that correct?

**Ferencz:** Yes. I prefer law to war under all circumstances.

**Clark:** And so how does that apply to this particular case in the aftermath of the terrorist attacks?

**Ferencz:** What has happened here is not war in its traditional sense. This is clearly a crime against humanity. War crimes are crimes which happen in war time. There is a confusion there. This is a crime against humanity because it is deliberate and intentional killing of large numbers of civilians for political or other purposes. That is not tolerable under the international systems. And it should be prosecuted pursuant to the existing laws.

**Clark:** So I want to get into that prosecution in just one moment. But first, do you think that the talk of retaliation is not a legitimate response to the death of 5,000 people?

**Ferencz:** It is never a legitimate response to punish people who are not responsible for the wrong done.

**Clark:** No one is saying we're going to punish those who are not responsible.

**Ferencz:** We must make a distinction between punishing the guilty and punishing others. If you simply retaliate en masse by bombing Afghanistan, let us say, or the Taliban, you will kill many people who don't believe in what has happened, who don't approve of what has happened.

**Clark:** So you are saying that you see no appropriate role for the military in this.

**Ferencz:** I wouldn't say there is no appropriate role, but the role should be consistent with our ideals. We shouldn't let them kill our principles at the same time they kill our people. And our principles are respect for the rule of law. Not charging in blindly and killing people because we are blinded by our tears and our rage.

**Clark:** So how would a legal process possibly work? Since there is no permanent international criminal court yet; the U.S. has opposed such a court. Where would terrorists be tried?

**Ferencz:** We must first draw up an indictment of the crime and specify what the crimes were, listing all the names of the related organizations. Not merely the direct perpetrators are responsible but all those who aided and abetted them before or after the crime. These should be listed and described. And then a demand made pursuant to existing United Nations resolutions, calling upon all states to arrest and detain the persons named in the indictment so they can be interrogated by U.S. examiners.

**Clark:** As you know a federal court, a grand jury, indicted Osama bin Laden almost three years ago in the two U.S. embassy bombings in Africa. That was 1998 and we still haven't brought him to trial.

**Ferencz:** What I'm suggesting is that the Security Council of the United Nations can immediately call up -- as they have done in connection with the crimes in Yugoslavia and Rwanda, where over half a million people were butchered -- create an *ad hoc* International Criminal Tribunal to try these criminals on the charges which are applicable under the existing international laws.

**Clark:** So you're saying something that would be akin to an international war crimes court.

**Ferencz:** It would be an international criminal court. Don't use the word "war" crimes because that suggests that there is a war going on and it's a violation of the rules of war. This is not in that category. We are getting confused with our terminology in our determination to put a stop to these terrible crimes.

- Clark:** So what do you say to skeptics who believe the judicial process is inadequate because it is very slow and very cumbersome?
- Ferencz:** I realize that it is slow and cumbersome but it is not inadequate. I say to the skeptics, Follow your procedure and you'll find out what happens. You have seen what happens. We will have more fanatics and more zealots deciding to come and kill the evil, the United States. We don't want to do that. We want to uphold our principles. The United States was the moving party behind the Nuremberg Trials and behind insisting upon the rule of law.
- Clark:** So do you believe that because of the fact that we're dealing with terrorists, we are re-writing the rules to a proper response?
- Ferencz:** We're not re-writing any rules. We don't have to re-write any rules. We have to apply the existing rules. To call them "terrorists" is also a misleading term. There's no agreement on what terrorism is. One man's terrorism is another man's heroism. I'm sure that bin Laden considers himself a saint and so do many of his followers. We try them for mass murder. That's a crime under every jurisdiction and that's what's happened here and that is a crime against humanity.
- Clark:** So Ben Ferencz you were an enlisted man under General Patton, you fought in every campaign in Europe, you've written in your letter in fact about flashbacks that you've had of Normandy, of seeing corpses at Buchenwald, the remorseless Nuremberg defendants who murdered about 100,000 mostly Jewish men, women, and children at Babi Yar near Kiev; now there you are in New York, witnessing this. Yet you close this letter by saying that you have not given up hope. Why not?
- Ferencz:** Of course I have not given up hope. You must never give up hope. Because hope is the engine that drives human endeavor. We have to change the way people think and that can't be done quickly. We must teach them compassion and tolerance and understanding and a willingness to compromise, if necessary. These are all essential things that take generations to develop. And until we do that I'm afraid we'll suffer the consequences. And we see it in what has happened in New York.
- Clark:** Ben Ferencz lives in New Rochelle, New York. He is the author of, among other books, *New Legal Foundations for Global Survival*. Nice to speak with you.
- Ferencz:** A pleasure.
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**Benjamin B. Ferencz:** former prosecutor at the Nuremberg War Crimes Trial, particularly Chief Prosecutor of Einsatzgruppen (22 defendants charged with murdering over a million people, called by the *Associated Press* the biggest murder trial in history). A graduate of Harvard Law School, he served in the Army under General Patton in every campaign in Europe and helped liberate Buchenwald, Mauthausen, and Dachau. Author of numerous books including *Defining International Aggression -- The Search for World Peace* (1975), *An International Criminal Court -- A Step Toward World Peace* (1980), *Enforcing International Law -- A Way to World Peace* (Forward) (1983), *A Common Sense Guide to World Peace* (Preface) (1985), *Planethood: The Key to Your Future* (1991), *New Legal Foundations for Global Survival: Security Through the Security Council* (Summary) (1994), Mr. Ferencz is an Adjunct Professor of International Law at Pace University and founder of the Pace Peace Center, and a Trustee of The Center For United Nations Reform Education.

The above is found in the About [the] Center page of The Center For United Nations Reform Education, containing RESEARCH AND PUBLICATIONS ON IMPROVING THE EFFECTIVENESS OF THE UNITED NATIONS SYSTEM . It's Mission Statement reads:

The mission of the Center for UN Reform Education is to encourage, generate and sustain a serious public discussion of various specific proposals to reform and restructure the United Nations System, all with a view toward improving the effectiveness of that System.

The Center attempts to accomplish its mission through the sponsorship, publication and distribution of carefully researched monographs and papers; through its widely attended public forums, its radio programs and its university conferences; and now, through this newly established Website.

### See Also:

- Benjamin B. Ferencz: Writings and Lectures on the International Criminal Court & World Peace
  - After September 11: Thoughts on Where to Go From Here
  - Biography
  - Articles and Lectures
  - Books
  - Real Audio, Audio and Video Tapes
  - Einsatzgruppen Trial Transcript
  - Ferencz Personal Archives
  - Links to Resources and Documents
  
- Address by Benjamin B. Ferencz, 16 June 1998  
U.N. Diplomatic Conference of Plenipotentiaries  
on the Establishment of an International Criminal Court, July 1998, Rome, Italy  
  
Adopted: Rome Statute of the International Criminal Court, 17 July 1998  
There can be no global justice unless the worst of crimes -- crimes against humanity -- are subject to the law. In this age more than ever we recognize that the crime of genocide against one people truly is an assault on us all -- a crime against humanity. The establishment of an International Criminal Court will ensure that humanity's response will be swift and will be just."

Kofi Annan

- International Law Page