

Laudatio

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Rector Magnificus,
Spectabilis,
Dear Donald Ferencz,
Dear Ms Kaul,
Dear Professor Shapiro,
Dear Dr Frank,
Dear Dr Eick and Dr Bertele,
Dear Dr Wasum-Rainer,
Dear Dr Koch,
Dear Mr Lehrer,
Dear Professor Lehner,
Dear Mr Rackwitz and dear Dr Dittrich,
Dear colleagues from the Faculty of Law
Dear students,
Dear spectators,
and last, but certainly not least,
Dear Dr Ferencz!

If I may, this early, already start with your new full title; let me begin by saying how honored we are that you have accepted our invitation to award you an honorary doctoral degree in recognition of your lifelong engagement for justice.

More than a century ago you were born into a Jewish family in what at the time was Hungary, and what after the Treaty of Trianon became Romania. Sharing the fate of so many Jews, approximately a century ago you had to leave your home with your family for the United States of America. There, you lived the life of immigrants, as so many in the United States. You settled with your parents in the Lower East Side in “Hell’s Kitchen” in Manhattan – as I have read, this was not at all easy and was characterized by bitter poverty. But thanks to your great intellect and determination, you managed to not only be successful at school, but to later also excel in Harvard Law School.

Before Harvard, you studied crime prevention at the City College of New York, and your criminal law exam was such that you were awarded a scholarship for Harvard. There, you studied with Roscoe Pound and did research with Sheldon Glueck, who at the time was writing a book on war crimes. Those two individuals were not only eminent personalities, but Mr. Glueck must have obviously also awakened your special interest in the area of war crimes and their prevention and punishment.

After graduating from Harvard, you joined the US Army. In 1945, you were transferred to the headquarters of General Patton and, already then, you were given the opportunity to get firsthand experience in the field of war crimes. You became a witness to the horrors of Buchenwald, Flossenbürg, Mauthausen and other concentration camps. Only a few weeks after you were honorably discharged from military duty as a Sergeant, you became a member of the Nuremberg prosecution team of Telford Taylor. And after having married your “childhood sweetheart” Gertrude in 1946, you went back to Europe, first for a short honeymoon and then on duty. Later you became chief prosecutor in the so-called “Einsatzgruppen Case” in which all 22 accused men were convicted. We will look into this in more detail a bit later.

After the Nuremberg Trials you stayed in Germany, together with your wife, who sadly passed away a year ago at the age of 99 after 73 years of a very happy marriage. And in the aftermath of Nuremberg, you were instrumental in paving the way for the Reparation Agreement between Israel and West Germany of 1952 and the first German Restitution Law of 1953. In 1956 the family – Gertrude, yourself and by then four children – went back to New York, and you founded a law firm together with Telford Taylor. But it seems you had to go back to other practical work of a lawyer.

From the 1970s on, you started working on the next important task: The establishment of the International Criminal Court. This became reality in 1998 with the adoption of the Rome Statute for the International Criminal Court. It is an ongoing tragedy that your own country has so many difficulties with the ICC that has not dared to ratify the Statute to this day. But let us stop here. What we have heard so far is more than a person can achieve in a lifetime. Of course, Dr Ferencz has had the fortune of very robust health. Reaching the great age of 100 years is something entirely extraordinary. But let’s think beyond that.

Your vita is a long life in service of international justice. And this is the reason why we are so humbled and why we all bow in appreciation of your personality and of your tremendous professional achievements.

Dr Ferencz – if I am allowed to admit that – you are also my personal hero. On a personal note: 20 years ago, as a general international lawyer,

I did intensive research into international criminal law – it was the time of the adoption of the Rome Statute on the International Criminal Court. This research brought me back to the Nuremberg trials. I focused particularly on the Einsatzgruppen Case and the systematic mass killings of Jews and Gypsies through the so-called “Einsatzgruppen zur Säuberung der besetzten Gebiete von marxistischen Volksverrätern und anderen Staatsfeinden” (Intervention groups for the elimination of the occupied territories from Marxist betrayers and other enemies of the State). In these terrible events, an estimated 600.000 to 1 million people were killed. All 22 accused men were convicted, and finally 4 of them were executed. For my research 20 years ago, the questions of the “compulsion to obey orders” and the one of the “putative self-defence” as arguments of the perpetrators who portrayed themselves as “victims” and their defence were of eminent interest. We all know how the Rome Statute has dealt with them. And your straightforward analysis in this respect as chief prosecutor in 1947/48 not only impressed me most during my research. Most of all, it allowed for this new perspective and enables us today to speak frankly of the ICC Statute as a real legal breakthrough.

You achieved much, much more than most people and in particular law professors can achieve in a lifetime. But what impresses me, and I am sure impresses all of us, the most is that Benjamin Ferencz remained a very humble personality. Recently, when interviewed at the occasion of 75 years of the Nuremberg Trial, you said the following: “A human is not genuinely bad – but the circumstances that he/she is thrown into, may force him or her to do terrible and even inhumane things.” And you explained how it can be that people use their position to commit crimes against other human beings. This in no way goes to say that you justified this criminal behavior. But you very correctly pointed out that there are many temptations to which the human nature can be exposed to.

It is very often that I feel very similar. I am particularly very grateful of never having been forced to stand the test of being really politically brave under a real dictatorship, be it fascist or communist, a dictatorship which with its ways “invites”, or rather forces humans to make decisions that are simply inhumane. Yes – I believe you are right – the lesson we must learn is that there is nothing more valuable than human life and dignity, and for this matter, there is nothing more important for our societies than a democracy and governments under the rule of law. Law should govern, not dictatorship. Unfortunately, more than 75 years after the Holocaust, this still remains a very pressing problem. But this is also my personal motive for being active in international law – namely to help ensure that the rule of law governs international relations instead of the use of force.

Dr Ferencz, you are my personal hero also because you have seen the horror called Holocaust, and yet you have not become embittered. Hans-Peter Kaul – a dear friend of yours and the first German judge at the International Criminal Court to whom you paid tribute in a *laudatio* in 2008 during your first contact with our faculty when he was awarded an honorary doctor of the Cologne Law Faculty – has described you as a person with a good sense of humor. And your own conclusion as a lawyer that has seen so many inconceivably horrible situations has been: Let's build institutions that will enable us to overcome these situations. You were successful. And that is wonderful! I may, with your assumed permission, quote two statements of yours:

“Now let us look at the more positive things. The progress toward a world under the rule of law has been fantastic! We now have a truly International Criminal Court for the first time in human history.”

“The most important point of Nuremberg was the conclusion that aggressive war, which had been a national right throughout history, was henceforth going to be punished as an international crime.”

This shows, on the one hand, that Benjamin Ferencz has never given up in pursuing his goals. And that is exactly the reason why you were, on the one hand, the person who made major breakthroughs happen! On the other hand, you know well that the actual breakthrough against the crime of aggression was partly achieved only at the Review Conference of Kampala in 2010. My colleague Claus Kreß has told me about this fascinating conference which he had actively attended – and ever since, more of your dream has come close to becoming reality, although as we must admit that even today, it remains a dream and has not become complete reality. And you are right: It is strikingly true that the international punishment of the crime of aggression that has determined the normal course of international politics for centuries is nothing less than a change of paradigm in international politics and international law – and here, in my opinion, this big word “paradigm” is really justified.

Let me also mention, Ladies and Gentlemen, that Dr Ferencz is a prolific writer, having authored several books and a large number of scholarly articles. Starting in 1940 with “On Criminal Responsibility”, to 1985 “A Common Sense Guide to World Peace”, to 1999 “Telford Taylor: Pioneer of International Criminal Law” and “A prosecutors Personal Account – Nuremberg to Rome”, to mention just a few. To me, Dr Ferencz' contribution to the monumental commentary on the crime of aggression as agreed in Kampala 2010 (edited by Claus Kreß and Stefan Barriga) in the Epilogue is the sum of this wisdom: “The Long Journey from Nuremberg to Kampala” reads itself as a summary of your lifetime achievement with

regard to the inclusion of the crime of aggression in the list of international crimes. Of particular interest for me is the section on “The mentality of Mass Murderers”, exemplified on the defenses in the Einsatzgruppen Trial, given *inter alia* by the head of the accused persons Dr Otto Ohlendorf in terms of “obeying only to superior orders, in self-defense against the Jews who would together with the communists undermine German rulership, and Gypsies who might help the enemies.” Although it was a great success in that all 22 accused persons were finally convicted, you also made it clear that there were about 3000 supporters whom one had decided to not prosecute.

Later in this chapter, you describe the “Road to Rome”. This wonderful account of the negotiations of the Kampala Conference reveals that you are a person of firm inner values, but also a realist with regard to government-to-government politics. Even after Kampala, we are not entirely “there” to integrate “aggression” as a crime into the list of other international crimes of the Rome Statute. Kampala is, so to speak, a new level of the compromise on the way to fully acknowledging aggression as an international crime that must be prosecuted under international law. And we should not forget, as you mention, that even after the crimes of the Holocaust, new crimes of a terrible size were committed in the Former Yugoslavia as well as in Ruanda, and, regrettably, also in other parts of the world.

Your conclusion seems to me like your legacy to future generations: “Peace requires more intensive efforts to ameliorate root causes of discontent that give rise to violence. Tolerance and willingness to compromise are indispensable norms that must be taught by every means and at every educational level. For their own self-interest and to protect the brave young people who do the fighting, nations must stop glorifying war. The prevailing ‘war ethic’ must be replaced by a ‘peace ethic’.”

Ladies and Gentlemen, here is a man, who has seen it all: genocide, crimes of aggression, crimes against humanity, and the disastrous consequences of the war of aggression waged by Hitler and his followers against many countries, a man who actively participated in the liberation of the concentration camps and the Einsatzgruppen Case in Nuremberg, sometimes called the most important mass murder trial ever. Just please try to imagine what all of this means!

One of my colleagues told me that she has put your portrait on top of her lecture scripts on International Criminal Law. What could be nicer than being constantly referred to and being recommended by others to young people who are looking for ideals and heroes.

Dear Dr Ferencz, dear Benjamin, today is your day! But, even more so, it is our day. It is our honor, as a German University, and as a Faculty of Law, to grant this highest academic honor to a person who through his courageous acts has made a great contribution to justice and with this has helped to free our country from the scourge of Nazism. For this, we are wholeheartedly grateful to you!

I am personally extremely indebted that I had the honor to give this speech. May I finally repeat that the Cologne Faculty of Law is of the opinion that Dr Benjamin Ferencz' lifelong engagement in international justice has given a splendid example for the maintenance for international justice. We bow to you and are extremely grateful for you having accepted our little token of appreciation.

Thank you very much!

References:

- Benjamin B. Ferencz*, Epilogue, in: Claus Krefß/Stefan Barriga (eds.), *The Crime of Aggression: A Commentary* (Cambridge University Press, 2016), pp. 1501–1509.
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