

TRANSCRIPT

"FROM NUREMBERG TO SYRIA: ONE MAN'S SEARCH FOR JUSTICE"

A Conversation With Ben Ferencz

Moderator: James Goldston

ANNOUNCER:

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JAMES GOLDSTON:

We have the-- distinct honor and great-- pleasure of welcoming-- Benjamin Ferencz-- to be with us today. As you know-- Ben is a hero in his own time. He-- is-- someone who-- studied quite some time ago at Harvard Law School under Roscoe Pound, one of the great legal scholars-- of the age and then-- went off-- with the U.S. Army and ended up as a prosecutor at Nuremberg, and is the last surviving prosecutor from-- those extraordinary times. And-- he's gonna tell us a bit about-- about those times.

And then-- he went on and became a visionary believing that what-- what had happened at Nuremberg-- could in fact give life to a permanent institution. And long before-- states came around to that point of view Ben Ferencz was-- advocating for the idea of a permanent international criminal court. And lo and behold-- he had success. And of course in 1998 states finally-- assigned the Rome Statute. And here we are. We have the court that's come into being.

And we'll talk a little bit about how that court is-- is fulfilling-- its aspirations or Ben's aspirations. So Ben, if could-- ask you to begin-- just to tell folks a little bit about your extraordinary history. I had the great pleasure of-- of hearing it from you-- one-on-one some time ago. And I-- I found myself just so taken with-- the incredible life you-- you've led. But could you tell us about how got to Nuremberg and what that was like?

BEN FERENCZ:

No. (LAUGHTER)

JAMES GOLDSTON:

Okay. Thank you.

BEN FERENCZ:

What's-- what's the statute of limitations for crime is what I wanna know. And the reason I ask that is that my earliest memories begin around the corner on West 56h Street, Hell's Kitchen right around your corner. I was then rather young. It was 94 years ago. (LAUGHTER) And-- I'd already made up my mind that I wasn't gonna go with the gangs. And I was gonna try to stop crime. I thought it was terrible. And-- it was at that time.

It was really a high-density crime area as I found out later when I became a criminologist and had charts. So that if wanna know how to get this job-- all you have to do is have an idea and work at it for about 90 years. (LAUGHTER) Then you'll be invited and given a half a sandwich. (LAUGHTER)

JAMES GOLDSTON:

And not any time to eat it, right? (LAUGHTER)

BEN FERENCZ:

Eat it-- he did offer to carry down my tea. But I said gonna spill it all over myself. However-- so that's gives you a little bit of the beginning. Now--

JAMES GOLDSTON:

Do you have to be so brutally honest? (LAUGHTER)

BEN FERENCZ:

I'm always brutally honest.

JAMES GOLDSTON:

Okay?

BEN FERENCZ:

When I-- I-- I went to City College in New York, Townsend Harris High School which then was a school for a gifted boys. I had never gotten any gifts. I don't (UNINTEL) (LAUGHTER). And--

JAMES GOLDSTON:

And you-- am I right that you-- you spent some time growing up in Hell's Kitchen? (UNINTEL PHRASE)--

BEN FERENCZ:

Yes, absolutely. That's my earliest memories is right here around the corner. They built a police station there in my honor (LAUGH) sometime later. So that would see the connection. You know, it's old home week comin' back here. (LAUGHTER) And to give you some idea of-- I remember on 9th Avenue when the street cars we being pulled by horses. And the tracks are still under the car there. So it takes a while to get things done. (LAUGHTER) However I did-- how much time. When do I have to finish here.

JAMES GOLDSTON:

You're doin' great. You're doin' great?

BEN FERENCZ:

So far I'm doin' great. He wants to stop me after one minute. (LAUGHTER) I wanted to know how long he's-- how long I've got. How much detail should I tell you. I wanna describe the horses. (LAUGHTER) Anyway I-- applied for a scholarship. I applied to Harvard Law School. And they accepted me. I won a scholarship for my exam on criminal law because I knew all about criminals. I didn't know anything about any-- I didn't know a lawyer.

And-- well, the war came along. And-- everybody I knew tried to enlist including me. I thought I would be an airline pilot. Learn the trade. Might use it in later life. But-- they said my foot-- my feet wouldn't reach the pedals. So I was not qualified for that. And-- I-- a navigator, my eyes weren't good enough. And-- I al-- was also wrote first

to the C.I.A. And what-- not the C.I.A. It was the Fe-- F.B.I. at the time-- to get me a job. I spoke French. Learned it in school pretty well.

And I thought they'd drop me behind the German lines in France, occupied France. I would raise hell with the Germans. (LAUGH) And-- they refused because I was security risk. How do you get a security risk. Well, they required that you be a citizen for at least 15 years.

My parents were poor immigrants coming from Transylvania, the home of Dracula. You all know about him. (LAUGHTER) My uncle on my mother's side. And-- (LAUGHTER) they said I hadn't been a citizen long enough. So I was a security risk. Anyway-- I did get in. And the Army-- since I had no money I had to work for a living. I worked at the Divinity School as a busboy-- where they allowed me to eat what was left over. And I could eat in one afternoon enough to keep alive for a week. And-- I got a job as a research assistant to Professor Sheldon Glueck who was doing a book on war crimes. So I read everything in the Harvard Law Library that was on war crimes. I made a summary of every single one. And I became quite knowledgeable on the whole subject of war crimes. So when the Army finally called me-- they recognized this great talent on my part-- Harvard Law School, expert on war crimes. So they made me a private in the artillery. (LAUGHTER)

I was a typist in the supply room and I couldn't type either. So the Army and I didn't get along. (LAUGHTER) I wrote a book *Mein Kampf* it would be against the U.S. Army. (LAUGHTER) However I was mentioning to Jim that yesterday I got a letter from West Point. I did a lecture there about a week ago to the cadets. I'd been there before. Glowing praise. "You're an inspiration. We were only angry when we didn't film the whole thing." He said, "Of course there are some people who have some doubts. But overwhelmingly," he said, "you know, you won the day-- completely."

That was yesterday. I'm busy all the time, working all the time. You won't believe my calendar. I'm going to Madrid in a few days' time to-- there's a big conference there on-- universal jurisdiction problems. Anyway to get back to the story here, so I don't wanna tell you the horrors of war because some of you are still eating lunch. But-- you all know about them.

But-- I landed on the beaches of Normandy. I went through the Marjulon (PH), sacred line, crossed the Rhine on a mountain boat. And-- by that time the Army had been ordered to set up war crimes trials. And a colonel was appointed. And they transferred me from the artillery to General Patton's headquarters. And the colonel said, "I've been directed to-- set up a war crimes program. Your name has been forwarded from Washington." I was then a corporal.

And-- what's a car crime. I believe I was the first person in the U.S. Army to deal with war crimes in World War II. I was the war crimes branch, third U.S. Army. Pretty soon we got some reinforcements. The second man was Robert Novitz (PH), buck private in the engineers. (LAUGH) We spoke Hebrew and we spoke French. And he and I were a team after that. But I was the first guy on the scene.

Anyway one o' the jobs I had besides diggin' up bodies of American fliers who'd been

shot down and try to find the people who had murdered them on the ground when they landed was to go into the concentration camps and-- get the evidence of the crimes. And I did. And-- I don't wanna go into too much detail because I can't. You'll find-- all of these materials are in the Holocaust Museum in Washington.

Some of those including-- the letters I wrote home to my girlfriend-- we didn't have partners in those days, we've been married now I think happily for about 68 years-- describing what I saw and my reaction to it. And-- my reaction in brief was it was quite horrible. It was all quite horrible. People do not in my presence say it didn't happen. That-- no one has dared say anything like that in my presence. It happened. And it happened in ways which are unimaginable to a rational human mind. And of course-- that had a tremendous impact on me.

The war was over. And-- the Nuremberg trials had started. I had been already working on war crimes in the U.S. Army Military Commissions which have been forgotten. There is a photograph in the Holocaust Museum of my hammering up a big sign, U.S. Third Army War Crimes Trials, War Crimes Commission.

And there's where we tried the guards who we captured in the camps-- including the commanders and the people who had murdered the f-- American fliers and British fliers when they came to the ground. And-- some of them I dug up with my hands. (SNIFF) Sorry. Anyway-- the war was over. And I went home-- with 10 million other guys lookin' for a job. And-- I was graduated from the Harvard Law School. And-- I met (UNINTEL)--

JAMES GOLDSTON:

You first-- you first-- didn't you-- didn't you first go into private practice then?

BEN FERENCZ:

No. I came right out of Harvard into the Army. And-- and-- I came back when the war was over, yes. But I hadn't had time to get into private-- I was lookin' for a job. And-- I met a classmate of mine who was the law clerk for Justice Jackson. And-- we met on the corner of 5th Avenue and 42nd Street in front o' the public library.

JAMES GOLDSTON:

Justice Robert Jackson of the U.S. Supreme Court?

BEN FERENCZ:

Robert Jackson, U.S. Supreme Court judge, on leave to become the chief prosecutor for the United States in the International Military Tribunal, IMT, Trial which took

place. And that's the famous trial against Goering and company. That had already started. I had no part of that.

And I met this friend of mine-- Morry Gotner (PH). His name's there and people-- old people here. And I said, "What are you doing?" He said, "I'm the clerk to Justice Jackson. But he's never here. He's up all day in Nuremberg." I said, "Well, I been doin' the same sorta stuff for the Army war crimes trials," which I haven't gone into details. But the war crimes trials, we'll take a minute on that you get your f-- bearings, would be a room little bigger than this, not much necessarily.

And the defendants would be sitting like this way just about the number in this room, a little bit elevated-- like your basketball court. And each one had a big sign on him, you know, with his number, 27 and number 29. And there was a lieutenant here who was the prosecutor. And there was another lieutenant there who was the defense counsel. And there was a judge or maybe three judges in the middle who were the judges. If there was one and that was a higher rank. It was either a captain or maybe a major. And-- far as I could make out none of 'em had any legal experience.

And the trials went like this. I'm lookin' for a victim. "Herr Schmidt, stand up. Stand up, Herr Schmidt. (LAUGHTER) You are accused of being a guard in the Mauthausen Concentration Camp where terrible crimes against humanity were being committed against innocent victims. And they were tortured and brutalized. And you were an accomplice and (UNINTEL) there. What do you have to say for yourself. Guilty or not guilty."

AUDIENCE MEMBER:

Not guilty.

BEN FERENCZ:

Not-- sit down. (LAUGHTER) Next. Come to the next one. "Not guilty. I was only a cook." This Herr Schmidt was short breath. He was short breath-- he was just (UNINTEL PHRASE). Good alibis. "I was a cook. I'm a (UNINTEL) carrying orders," and so on. Then the captain or the major would go to the next room, come back 15 minutes later. "All of the defendants are found guilty and sentenced to death."

Few years, many years later I guess I went to the Landsberg Prison where-- some of my acquaintances had been interred (UNINTEL). And I asked one of the-- officers there, "How many people were executed here at Landsberg?" He said, "About 1,000." That was the trial, an average of about maybe two minutes a person (UNINTEL PHRASE). So nobody knows about that. They don't talk about that. I met a lieutenant colonel who was in charge for the war crimes U.S. Army. A few years later we had lunch together somewhere.

And I started telling her, I said, "You know anything about the Dachau Trials? They

took place in the Dachau Concentration Camp," because that-- we were stationed in Munich. (UNINTEL PHRASE) were there. And that was sorta symbolic. And it was a camp. And it was-- available. And she'd never heard of 'em.

And-- I have searched for my reports. I wrote reports of what I saw in the camp and I collected the evidence including lamp shades, including shrunken heads, including testimony from-- just all kinda fascinating stories which incidentally my name, www.BenFerencz.org, they're all available to you on my website. Everything there is free, all of my books, all my articles, the DVDs, lectures, all of it.

JAMES GOLDSTON:

So-- so-- so then tell us how you got-- 'cause you ended up trying-- the Eisenrotsen Huberman (PH) case, is that right--

BEN FERENCZ:

Camp (UNINTEL)-- yes, not Eisenrotten (UNINTEL)--

JAMES GOLDSTON:

Tell me-- tell me?

BEN FERENCZ:

(LAUGHTER) It's the Einsatzgruppen.

JAMES GOLDSTON:

Okay, so what was that? What was that? Tell us about that--

BEN FERENCZ:

That was a special word to disguise what their action was. Nobody could translate it. Einsatz means action. Gruppen in groups-- literally, action groups. Nobody know what they do. Their assignment was to follow behind the German lines and-- they never said murder-- eliminate every single Jewish man, woman and child that they could lay their hands on. The same for gypsies and the same for any other presumed enemies of the reich. And that's what they did.

Three thousand men divided into four different companies following behind the German lines, Einsatzgruppe A, Einsatzgruppe B, C and D. And every day they sent

Herr Agnus Miller (PH) (FOREIGN LANGUAGE NOT TRANSCRIBED). Try saying that one. (LAUGHTER) Reports from the Eastern front. And-- in those reports they said Einsatzkommando 10 of Einsatzgruppe A under the command of Major or Colonel so-and-so succeeding in eliminating-- the statistics down the line.

I-- one of my research-- as my first assignment when I went back was to get evidence for the 12 subsequent trials which were being planned because the International Military Tribunal trial was-- had a big spotlight. But it didn't explain how a country like Germany, a civilized country, could let that happen. So we wanted to put on trial representatives of industry, doc-- medical profession, the lawyers who perverted the law, the SS that carried it out, the Army who collaborated.

So we set up a series of a dozen trials. Since I was the only one around that had any-- experience as an investigator Telford Taylor, who hired me for the job-- and we were later law partners down here on the-- in (UNINTEL) building-- he said, "You go to Berlin, get all the evidence you can about all these trials." (UNINTEL) the staff about 50, I put 'em all together.

And I sent people to go through the foreign office files, the Gestapo files, the SS files if they were still intact-- many of them were completely shattered or where they had hidden the documents-- and produce the evidence, anything relating to any of these possible charges (UNINTEL) through. And one of my researchers came in with these reports from the-- from the eastern front.

And I took a little hand adding machine. I began to add. When I added a million people killed I said, "That's enough." I got a sample. I flew down to-- Nuremberg. Said-- by that time he was general-- I said, "General, we have to open another trial against these m--" he said, "We can't. The Pentagon hasn't approved it. There's no funds. All the lawyers are assigned. We can't start now with a new trial. They're just be getting rolled with the others."

I said, "You cannot let these mass murderers go free. That's impossible. You can't do that." He said, "Can you do it in addition to your other work?" And I said, "Sure." So he said, "Okay. You got it." So I became the chief prosecutor for United States in what was certainly the biggest murder trial in human history. And what will interest you even more, I rested the prosecution's case after two days. And I didn't call a single witness.

Because I had learned in law school the best evidence is contemporaneous documentary proof. And I had it. Top secret, and I had the real-- and had the distribution list as well, the 99 people who received it, later said they didn't know anything about it. So I rested my case in two days. Convicted all of them. Thirteen of 'em were sentenced to death.

JAMES GOLDSTON:

Did they get fair trials?

BEN FERENCZ:

The trial was absolutely fair. Well, I would put it another way. The trial was absolutely unfair. I'll tell you why. I was a young boy. I was 27 years old then. And-- I had three other assistant lawyers whom I scrounged from some o' the other cases. One of the (UNINTEL)-- (LAUGH) I had one who was pretty competent. The others well, they should dumped 'em long ago. (LAUGHTER)

And on the other side had 22 defendants each one of who was entitled to a defense counsel of his choice and an assistant defense counsel of his choice. So we had 22 defendants with two lawyers. That's 44 lawyers. The best, the cream o' the crop in Germany, 44 lawyers against my first case, totally inexperienced-- prosecutor. Is that fair? Well, why I said yes was because I had the evidence. (LAUGH) I had the document. And all of them-- if I had time I would tell you some more funny stories-- I wanna come to-- what time we have to finish here.

JAMES GOLDSTON:

Oh, we're gonna-- we're gonna go-- we're gonna go on to-- I want you-- get you to the ICC in a couple minutes, so--

BEN FERENCZ:

Yes, (UNINTEL PHRASE) today this all his-- past history. Anyway they were-- all convicted. In fact only four were executed. The rest of 'em-- were given clemency not because the trials were unfair but-- because they were comparing humanitarian considerations. Two guys got different crimes for-- different punishment for the same crime, or s-- family conditions or his health or so and so.

That was to be taken into consideration by a clemency board which was appointed to examine it making specifically sure that they are not to challenge the legality of any conclusion (NOISE) of law or fact by any of the subsequent trials. That's ignored. That was pr--

(OFF-MIC CONVERSATION)

BEN FERENCZ:

Now-- I'm gonna greet Sandra Schulberg, the late Sa-- Sandra Grulberg (SIC). She's still alive. (LAUGHTER) She's the producer of a great film by-- of the International Military Tribunal trial. And she's been pushin' that all around the world very effectively. And-- she's an old friend. And she threatened to come down here and to seize me after this. So, you know what's gonna happen. Anyway so there were are--

JAMES GOLDSTON:

Can I-- can I-- can I ask you a question? When you were doing this trial the way-- the way you described how it happened it seemed very-- I mean, you found this evidence and nobody had prepared for it. And you just said, "Well, I'll do it in addition to my regular work--"

BEN FERENCZ:

Yeah. I did.

JAMES GOLDSTON:

Did it seem to you at that time that you were-- was it clear to you that were you doing one o' the most important things--

BEN FERENCZ:

No. We thought that it would be over and we'd go home and live a normal life. Had no idea-- or no desire to be making history. If someone had said to me, "When you're 95 you'll be tellin' a bunch o' kids in New York to a multi-billionaire how to avoid (UNINTEL)" (LAUGHTER)

JAMES GOLDSTON:

Okay?

BEN FERENCZ:

See he's out of his mind. And I've mentioned you meeting on 42nd Street. And-- and these purely chance encounters which determine your destiny-- in fact. All right, lemme go on now. So we're finished with Nuremberg-- and--

JAMES GOLDSTON:

Then you-- then you went back to private practice, is that correct--

BEN FERENCZ:

Well, then-- no.

JAMES GOLDSTON:

No? I never get it right? (LAUGHTER)

BEN FERENCZ:

You divide my life up into-- into different sections. I'll come to private practice. First segment was getting a good education, learning your stuff. There's no substitute for that. I (UNINTEL) everything. The next thing is winning the war. You think Patton won the war without me. (LAUGHTER) War was over. The next thing is getting a hold of the culprits who caused it so that-- the rest of the world should so-- should know not to try that again. They're not gonna get away with it, not from me anyway.

So the next thing was the deterrent effect of holding responsible the criminals. Then comes the next stop which is often forgotten, was forgotten then too. What about the victims. What do you do for the victims. And-- I was approached. The initiative did not come from me.

But I was approached by a representative of major Jewish organizations in the world saying that they had managed to get a provision into the military government law that property has been taken under duress, which meant Jewish property fundamentally-- could be reclaimed by the owner-- and-- restored to him. And unclaimed and heirless property would go to a charitable organization-- to be used to the benefits-- would be used for the benefit of the survivors.

Well, that sounded, you know, reasonable and very nice. And they said, "We want you to do it. You know your way around the Army." By that time I had been promoted from-- to sergeant. I got outta the Army, was a honorable discharge as a sergeant of infantry. (LAUGHTER) And-- when I went back for the Nuremberg trials they promoted me from sergeant to colonel. (LAUGHTER) I wouldn't go into the Army so they gave me a simulated rank. And-- I had all the rights and privileges of a colonel.

I said, "I-- you mean I can stick it to the lieutenant colonels who've been stickin' it to me for three years." (LAUGHTER) They said, "Yes." I said, "I'll take it." (LAUGHTER) Anyways and I'm pretty sure I got to (UNINTEL) general. But-- but-- this person had said, "You know your way around the Army. You've got a high rank. We want you to do the job. Can you do this."

"We don't have any money-- or can't invest our money in, you know, this sort of goose chase. But we have enough to pay your salary for about six months. And will you do it." And I talked to my wife who was also a refugee from Transylvania. We had been married in New York after the war, right after the war. I finished my education. And as soon as I got a offer a job I-- we got married. (LAUGHTER) It was-- 67, 68 years ago. (LAUGHTER) And we have never had a quarrel. (LAUGHTER)

Anyway they said, "Will you do it?" I said, "Okay." I talked to my wife. I said, "They've come to this thing." And she said, "How long did they ask you to stay?" I

said, "Well, they asked me to promise two years." And I said, "Well--" she said, "Well, I know you. If they say two years one year you'll be finished and then we'll-- we'll postpone it." And so yeah, we can't say no, okay. That, my friends, was the most difficult job of all. Because what we had to do was try to compensate the victims of these terrible crimes against humanity as well.

We began by restoring property. Mission impossible. Properties had been bombed. The currency had been devalued. They were supposed to give back whatever they received. And in exchange for getting the property back they received-- they received 10,000 Reichsmarks. Ten thousand Reichsmarks were only worth 1,000 Deutschmarks.

And they said, "What do you mean? I paid ten. I'm only getting one." Currency conversion. Who bears the risk of the loss. Interesting philosophical problem. The net result, the present possessors of the property said, "Hitler should've killed you too. Because you come the house was bombed. We repaired the furnace. We paid off the mortgage. And now you come and you claim the property which has never been claimed by my friend, Herr Cohen (PH), who fled with the money and he-- he went to Israel."

"And he thanked me." Or, "He went to Brooklyn and he thanked me." Impossible. I soon realized I was generating more anti-Semitism in trying to win the cases in the courts. We had the highest court was-- in an Allied Restitution Court. And-- I don't wanna go into-- we haven't got time to go into it. But-- to create a new legal system in which the victims-- would be compensated directly by the wrongdoing state that flowed after the restitution of real property.

And now the German chancellor said we have to-- terrible crimes had been committed in the name of the German people. And we have-- obligation to try to make amends. And so we worked and negotiated a complete (FOREIGN LANGUAGE NOT TRANSCRIBED), federal restitution of all providing compensation for the individuals survivors. Big, fat thing has been modified several times since then.

An army of bureaucrats. They're dealing with claims. A million claims coming in to be adjudicated. How much was the in-- injuries to the victims. And how do you measure that. How do you measure the value of-- of a person, of a human life. Is grandma worth more than grandpa. All o' these problems, all o' these problems had to be dealt with by a small group who was a part of a team. I was part of a team. But I was an-- an important part o' the team. I was the only one had any real experience in the field.

Well, that program is still going on today. And-- the German government had paid out-- West German government, when they were unified the East Germans came along with the same-- has paid out literally billions and billions of dollars to the individual victims, all of whom say they didn't get enough. And they're right. But then the Germans say they paid too much. And that's-- a political question.

All o' that took place with a country which was not in existence. The new Germany also paid \$3 billion-- I think we had dollars-- to the state of Israel for having given

refuge to the victims-- a state which was not in existence when the crimes occurred-- and on individual basis directly from the government res-- held responsible or agreeing to accept responsibility, all without precedent.

And it was impossible to really carry that out. That's why it's still going 50 years later. We scratched the surface. And the best we could do was to write into the law in article I think it is or the Rome Statue, that the victims are entitled to restitution, compensation and rehabilitation, those three words. I said, "We'll leave it later for the philosophers to work out how you do that in a country which is destitute, bombed out." And they got nothin'. And-- so that was another (UNINTEL).

JAMES GOLDSTON:

All right, so that's-- so that's-- so lemme-- lemme just--

BEN FERENCZ:

Now-- now I'm going home. I'm going home-- (LAUGHTER)

JAMES GOLDSTON:

Wait, wait, wait, wait. We got a few more minutes of your time. So-- so you've just averted to-- to-- to the ICC. So let's just jump forward if we can then. I mean-- extraordinary, extraordinary history you're telling us. You then-- you-- you from this experience and elsewhere you-- you had the dream of an international criminal court. You started writing about it. You wrote books about it. And eventually in the-- in the 1990s it became possible for this to actually come to fruition?

BEN FERENCZ:

Yes.

JAMES GOLDSTON:

Did you-- and what-- what was your r--

BEN FERENCZ:

Let-- lemme put the paste in between. I came-- when-- when this program was in full swing I couldn't afford to feed my family. I had four kids born in Nuremberg. They say, "How'd you do that?" Well, the courts were sometimes in recess. (LAUGHTER) Anyway-- I went home and looked for a job. And-- I had the same experience

(UNINTEL PHRASE) had when you went home. He was gone a long time. The big law firm wanted to know how many clients do you bring. I had no clients.

I-- I had handled a hundreds of thousand Nazi victim's claims. But that was as a underpaid employee of a big organization. And-- so they were not interested. So eventually I went into partnership with Telford Taylor who was doing the same. And he went off to teach at Columbia Law School and then later at Cardozo. And I said, "Aw, the hell with this. I'm gonna go--" my kids were grown. They weren't paying any attention to me anyway. I'm gonna try to save the world. And I was about 50 years old which was about 45 years ago.

And-- I said, "Okay, how do you save the world?" First you study the facts. Where did it happen. I went to the United Nations. I got myself accredited somehow to some of the organizations. I went to the UN Library. I went to the libraries in Geneva. I read everything. And then I began to put 'em together in books, two volumes on defining international aggression, two volume on courts-- on-- on an international criminal court, two volumes on enforcing international law. And then I wrote other volumes to explain the six volumes. (LAUGH)

So-- my wife said, "Nobody's gonna read all those volumes. Write something simple." So I wrote all these books, all of which are available to you free of charge, (LAUGH) at-- and-- so okay. Now we come to the court. It was obvious to me from the beginning-- I-- I didn't-- when I was in law school, if you have international crimes you've gotta have an international court. They were interested in counterfeiting originally.

The thing got hot when Trinidad and Tobago-- the-- man who had been in the government there but where was out of a job, was voted out of office in 1972, we met in Wingspread, Wisconsin for a conference on international criminal law. Professor Luis O. (PH) of Harvard was in the chair. And we began 1972 to talk about creating an international criminal court.

The first assembly of the United Nations had voted for continuation of the Nuremberg principles by creating an international court, preparing a code of crimes, a special committee to deal with aggression. All o' that was a subterfuge and excuse to do nothing which they do and did very well. And-- where they hadn't made any progress on that. So we began to draft statues for a court.

And-- when the man from Trinidad, A.N.R. Robinson-- was prime minister or president-- I don't remember which but he had the power-- he moved it in the general assembly-- of the United Nations to put it on the agenda, an international criminal court. Because he was a state representative they had to accept it. And they began to talk about an international criminal court.

I'm sorry to inform you as I told them in Washington a few weeks ago-- he died in Washington-- he died in Trinidad a few weeks ago. And the president of Trinidad called me up in Washington to tell me. And I informed the-- assembly-- American Society of International Law to pause a moment in memory of a man from a small town, small country whose initiative made it possible to have the International

Criminal Court. People attribute me with the responsibility for that. But-- he was there. And I was there. And-- and he's the guy who put it on the agenda, not me. So I wanna straighten that one out. Okay--

JAMES GOLDSTON:

Lemme-- lemme-- lemme-- lemme if I may just again--

BEN FERENCZ:

(UNINTEL) talk to me.

JAMES GOLDSTON:

Can I just-- can I jump ahead. The court exists. The court's now-- court's now been goin' for more than ten years. And a lot of people are asking questions about how well it's doing. On the one hand people say-- it's only-- it's only got a few convictions-- a few verdicts at all under its belt. It's not doing very well including one-- acquittal. It's-- it's run into problems and criticism for the judges.

Moreover some people feel like-- it's-- it's actually not a j-- not a court that's for everybody. It's only for weak states. The big states have stayed out including the United States. So how well are we approximating what you were hoping for in any event?

BEN FERENCZ:

Well, I will answer your question briefly. But first I have to mention briefly that when they finally reached the point of closing their first case against Mr. Lubanga for stealing child soldiers and putting 'em in the chief prosecutor, Moreno Campo of Argentina, sent me a note saying, "Ben we want you to make the closing statement," which I did.

So the closing remarks were made by me. And I was-- that was the first case of the international criminal court, the first case-- my first case as a lawyer in criminal law was in-- the Nuremberg trial against the Einsatzgruppen. My second case was the first case of the International Criminal Court in the (UNINTEL). In the first one I was 27 years old. In the second one I was 92. (LAUGHTER) So these are the two bookends of the effort to-- create international criminal law.

How is the court doing. Depends how you look at it. I think they're doing terrible. And-- lest you misquote me-- I think under the circumstances it's fantastic the progress that we have made. Because let me deal with the court itself. This is a prototype court. It's the first time in history they've set out to offer their defendant in

complete detail, overlaid detail, all the rights they can possibly conceive of.

And you've hired big staff. And you're out of a big building and so on. For a guy who prosecuted the worst murderers and rested his case in two days and got 100% convictions it must appear to me as being overlaid, overburdened. But I recall that when computers were first invented they couldn't put 'em into a room this size. Wasn't big enough.

Now you reach into your pocket, you know, and you pull it out. And you push a button. And you can talk to your grandmother in China. I would do it but I don't have a grandmother in China. (LAUGHTER) I also don't know how to work the damn thing. (LAUGHTER) But-- but what a change. You know, this enormous thing in your pocket. So don't tell me it can't be done. It's done. I've seen it done. I've seen it happening. I'm a victim of it happening.

So certainly all of these overloaded, untrained, unskilled people-- with all the technology-- they will be cleared away. These are the cobwebs in the way. And I-- I remember the Wright brothers, you know, when they kept fallin' on their head all the time. And they would say, "If God wanted man to fly he would've given him wings." God-- I don't know who gave 'em but there are thousands of planes in the air today. And it was impossible. Reaching for the moon, we've landed our men on the moon flying the American flag. You know, so--

JAMES GOLDSTON:

But the Wright brothers didn't have a lotta people who were actually trying to stop them?

BEN FERENCZ:

I didn't say that. They were competing with them. But even trying to stop them, let's just take that in that-- and explain-- some of the difficulties. That explains why the big powers have not-- come on board. Because they have managed to-- hoodwink the public that it's necessary for their self-defense.

Lemme take a minute on-- on-- on-- my lead defendant, Otto Ohlendorf, Dr. Otto Ohlendorf, very nice man, general in the SS. His reports reported that he killed 90,000 Jews. When asked on the stand, "Is that you? Is it true that you (UNINTEL) killed 90,000 Jews?" He said, "I don't know." "What do you mean you don't know. Is this your report?" "Yes, that's my report. But, you know, the men were inclined to exaggerate the body count."

Okay. What does it tell you. They're bragging about how many they killed. Now if you're ashamed and you're acting under pressure you don't brag about how many you killed. "And-- why did they do that?" "Well, it was self-defense." "Where is your self-defense. Germany attacked France, Belgium, Holland, Norway, Sweden. No-- Poland. Nobody attacked Germany. Nobody's gonna attack Germany."

"Yeah, but we knew that Russia, Soviet Union planned to attack. And therefore we had to preempt 'em by beating to the punch. And that's why we did it." Was preemptive no-- punitive (FOREIGN LANGUAGE NOT TRANSCRIBED) since you're studying German, presumed self-defense was the excuse.

The three judges led by Michael Musmanno of Supreme Court of Pennsylvania wrote a detailed-- rebuttal of that argument saying, "What would the world look like if everybody if you thought that he was gonna be attacked he is justified to go and kill the person first in order to save himself. What would the world look like if that were the rule." The world would look like what it looks like. Why? The United States has the same policy today. They do not preclude-- anticipatory self-defense as an action to be justified in the interest of the United States as determined by the United States.

That puts me in a very awkward position. I'm an American patriot. I'm very grateful for the opportunity I have in the United States and where I began and in poverty all my life. But when I see that the United States would tolerate the same kind of argument for which I actually in the name of the United States obtained a death sentence against a Dr. Otto Ohlendorf-- I don't feel good about that. And-- so that's one o' the difficult problems you have.

However let's go back to-- where we are today. Certainly the big powers oppose it. They live under the absurd notion-- let me first describe the current policy as I see it. Today when two major powers are unable to agree the heads of state, people, crimes are committed by individuals not by theories or organizations, they're committed by individuals. That was one of the Nuremberg principles.

If the two leading individuals are unable to agree what do they do. They take a bunch of young people like you and they send 'em out to kill another bunch of young people like you whom they don't even know for reasons they don't quite understand in a location which they probably never heard of. This is a policy. What kind of a policy is that? That is homicidal. That is genocidal. That is plain stupid. And that's the policy followed by the United States and by all the major powers. So we begin with that.

Do the people want that? I don't believe it. I don't believe it. I don't believe the West Pointers want it. I have the evidence just came into my desk yesterday saying they were so excited about your approach to creating a more humane world. And how do you do that? Well, first of all you have to change the way people think and how people feel. It requires a change of heart and mind.

For thousands of years we have glorified war and the glory of conquest. And war always included rape of women and always will. I was in Berlin shortly after the Russians got in there. They raped everything. It was part o' the victory. So we have to change the way they think about war, to view it not as a heroic act but as a despicable crime as I'm convinced it is as a combat soldier. I have seen the horrors of war close on. And-- every war contains it-- as the Nuremberg (UNINTEL) held aggression was the supreme international crime because it incorporated all the other crimes. And it does.

Everybody's raping, pillaging, burning. This is what happens in war. The social controls disappear. Now because they weren't prepared to surrender the-- what they perceived to be their sovereign right to decide for themselves when they go to war the states, led by the United States, they're a world leader-- said-- "We-- we don't want it."

But how-- you can't say I'm in favor of war. (UNINTEL) was stupid. So you have to say, "Well, it hasn't been defined. You have to define it." Well, did Justice Jackson try people for crime without a definition of the crime? It would it's absurd to make such a thought. Did then the entire general assembly of the other three nations as well that were on the trial, and did the United Nations General assembly approve that? Did 29 other nations sign onto it-- punishment without defining the crime? That's not true. It's false--

JAMES GOLDSTON:

So-- so you're saying you-- you think the ICC should have jurisdiction over a properly-defined crime of (UNINTEL)--

BEN FERENCZ:

Oh, I see-- well, all crimes should be properly defined. Criminal should know when he does the act that this is a punishable--

JAMES GOLDSTON:

No, because some people as you know take the position that aggression is simply not a crime that's appropriate for the ICC--

BEN FERENCZ:

Well, if you--

(JAMES GOLDSTON: UNINTEL)

BEN FERENCZ:

--if you think-- if you think (UNINTEL) making is appropriate, and there are people, I give you the correspondence I read which was quite interesting-- between von Moltke, the hero o' the Prussian War-- Franco-Prussian War, and a guy by the name of Johann Kaspar Bluntschli, Swiss name but he was first professor in Heidelberg. I found the correspondence between in the old library in Heidelberg, one of my searches.

And from Bluntschli writes to the field marshal and he says, "Field Marshal, you were asking me what I'm doing. I'm writing a book. Nations shouldn't go to war anymore. They should come together and settle their disputes in a conference in a peaceful way.

The Field Marshal von Moltke writes back. He says, "My dear Bluntschli, are you out of your mind. What are you saying? To give up what is the most glorious in-- in life, you sacrifice for your country, the camaradschaft (PH), the friendliness with your comrades in war, this is what gives meaning to life. Your idea of a peaceful conference of countries, that's laughable. It would destroy everything that we live for." These views still prevail today.

They prevail also in West Point last week. And the guy who wrote to me, he said, "There are some people of course who don't share your vision." And there always will be some people. But the majority of people of the world, they wanna live in peace. They don't want to be-- go-- heroes and have medals from-- from their shoulders down to their knees.

So we have to change it. And how do you change it? That's where Soros comes in. That's where you come in. (LAUGHTER) I write articles and nobody reads 'em. I put it on my website. I don't know who looks at it. (LAUGHTER) But you have to build new institutions. I'm trying to do that now with the earliest kindergarten, people like you. You're a little past kindergarten but you're still eligible. (LAUGHTER) To begin to see that we must think in terms of tolerance, and compassion and-- and a willingness to compromise with views that you think are not acceptable to you.

Everybody should be able to enjoy the-- the pleasure of being a member of a group, international group or a religious group of their choice. But if they say, "If you don't share my view I'll kill you," that's going a little bit too far. So that's what we gotta do. We're tryin' to build a new way of thinking about war and peace and the relationship of people in one part of the world to another part of the world with completely different ethics, completely different color, from different religion, different nationalism and all that.

JAMES GOLDSTON:

Great. Ben, thank you. Let's-- should we-- should we ask (UNINTEL)-- (APPLAUSE) colleagues have-- questions, comments, you're inspired this extraordinary gentlemen. Anything folks wanna say--

BEN FERENCZ:

(UNINTEL) dumbstruck. (LAUGHTER) They don't--

JAMES GOLDSTON:

You know you'll get an answer that'll be funny and important--

AUDIENCE QUESTION:

So-- so-- so the-- the--

BEN FERENCZ:

Yeah, this my defendant. Herr Schmidt, go ahead--

AUDIENCE QUESTION:

--the not guilty war criminal. So--

BEN FERENCZ:

Okay.

AUDIENCE QUESTION:

The-- the challenge I always have with the pacifist view making all preemptive all illegal all-- of crime, what if the Holocaust had been going on-- with the-- should the outside world have just let the Germans carry on if-- I mean, that wasn't the reason for the war. It's--

BEN FERENCZ:

It's a very-- it's a very good question. It's an excellent question. And I give you an honest answer to it. The honest answer is you can't do anything about it because you haven't built the institutions necessary. You have built a court but you haven't done anything on the enforcement arm. As long as there is no enforcement arm you're not going any place. You need three components of every lawful society.

You need laws to define what's permissible and not permissible. You need courts to determine if they've been violated. And you need a system of effective enforcement. Internationally we are beginning with the laws. We have them now, some of them. They're defective in many ways of course. But we are beginning it. We have courts. We are beginning it. They are defective in many ways. Of course they are. They're prototypes.

Enforcement we haven't started yet. The result is you're on a two-legged stool. You

can't stand on a two-legged stool. You'll fall on your head. We've gotta start building the other things. That takes time. And the enforcement will come not from some academics. It'll come from the people themselves that'll say, "Hell, no I won't go."

JAMES GOLDSTON:

Yes, in the back.

AUDIENCE QUESTION:

I wonder what your thoughts are--

BEN FERENCZ:

Now this ear is 95 years old. So would you please--

AUDIENCE QUESTION:

I wonder what your thoughts are on the-- the--

BEN FERENCZ:

Come around here so I can not only hear you but see you. (LAUGHTER)

AUDIENCE QUESTION:

I wonder what your thoughts are on the-- the truth and reconciliation process in South Africa?

BEN FERENCZ:

What did she say.

JAMES GOLDSTON:

Truth and reconciliation process in South Africa?

BEN FERENCZ:

Well, you see first of all I-- don't like to comment on a situation where I don't know

all the facts. Because the newspaper reports are all tilted where-- in favor of the protagonists. So I can't answer your question. But I can say that the worst thing you can do is to rely upon the parties in a dispute-- to decide whether it's lawful.

Because the one who is the aggressor if you wanna call 'em that or the perpetrator-- of crimes against humanity always thinks he's doing it in the interest of mankind. The victim says, "Oh, no. He's killing me. He is a murderer. You gotta stop him." And the only answer is that if the two parties are unable to agree to a peaceful settlement violence settlement is inevitable. That's the only choice you have left. But we are not doing that.

I mean, we are beginning to do it through the courts, court system, finding the middle ground of somebody else deciding. So you ask me a question. And I say if I were the judge hearing the evidence I would answer your question. But not hearing the evidence I cannot and wouldn't try to answer your question.

JAMES GOLDSTON:

But do you have a view generally about truth processes and how important they are--

BEN FERENCZ:

Of course you should try-- any peaceful means should be tried. Anything short of-- of the violence of war, of horrors of war should be tried. You begin first with discussing it with your adversary. And you don't say, "I know I'm right and you know you're wrong." You say, "Look, can we find a middle ground. You have to give some. We'll give some. Let's call it a compromise."

That calls tolerance of another point of view. These are the ideals which have to be inculcated at a very early stage instead of in every classroom in the United States there's a flag flying, "I pledge allegiance to the flag of the United States of America and to the republic of which it stands, et cetera. One nation, indivisible, liberty and justice for all."

But does that mean all Americans or anybody else. The president ends his speech every time and every president, he says, "God bless the United States of America." What does that sound like to the rest of the world. God bless the United States, the hell with you, you know. (LAUGHTER)

JAMES GOLDSTON:

Okay. Betsy?

AUDIENCE QUESTION:

In the Nuremberg trials some-- some corporate-- some corporate leaders were tried for their-- you-- okay, good-- from the crop corporation for example. And I'm curious to know what you think about-- criminal or civil liability for corporations who are involved in mass atrocities--

BEN FERENCZ:

I think it's horrible. And I tell you why.

JAMES GOLDSTON:

The idea of criminal or civil liability is horrible?

BEN FERENCZ:

The idea of lia-- criminal liability of corporations. You get a crooked bank teller or crooked corporate chief executive who's earning \$100 million a year salary, that's not counting the perks which are worth another \$50 million a year, right, and they screw up. And they do something. And they do something that's terrible. And it's illegal. The first victims are the shareholders. They had nothin' to do with it. They (UNINTEL PHRASE) first thing they do, the old widows who invested and trusted the company.

Crime is committed not by companies but by individuals. You look for the person in that company who was responsible. You fire him. You take his money back and put him in jail. (LAUGH) That's the way you stop that kinda crime, not by letting him keep his money and go off somewhere-- and then you tell the shareholders, "Sorry, the company is liable." Liability is a personal matter. And criminality is a personal matter. And we should, regardless of their position or their-- we should hold them accountable personally for their crimes so that you know that be better off not committing 'em.

JAMES GOLDSTON:

Right. Thank you. Allison?

AUDIENCE QUESTION:

Thank you for your presentation and for your life's work. The first thing I'm gonna do after this--

BEN FERENCZ:

You're welcome.

AUDIENCE QUESTION:

--is-- going to check out your website to see-- (LAUGHTER)

BEN FERENCZ:

Many funny stories there. Read the many stories. They're my career in the U.S. Army, funny things there that has already been made into a book in-- in English. And-- it's not a very good book. And they-- it's been translated literally in French which is very good. And there are a lot of DVDs coming out and films coming out-- *Watchers of the Skies*-- which is already out.

There's one gonna-- opening up in Nuremberg this week-- in the Nuremberg Courthouse. And it's called *Law Not War* which sounds vaguely familiar because that's the caption on my letterhead, on my-- on my-- word-- Law Not War. Those three words, if you can do that-- how the world would change. We would have enough money left. You didn't have this spent on armaments and take care sending you all to graduate school. You'd have enough money left to take care of the old, and the sick and the infirm and they can pay their doctor bills.

And all you have to do is recognize that law-- the rule of law is better than war. And I assure you from my personal experience, you know, even if you get a wrong decision it's better than war. Because there's nothing worse than-- than what I have seen. And worst is yet to come.

We come now from cyberspace. You don't know what hit you. The lights went out and no lights go on. The electricity is cut off. I got that from a general. I was in St. Petersburg, Russia. And I said, "What do you do?" He said, "I'm working on the cyberspace problem." That's one general to another. I said, "Well, what's that?" He said, "Well, you know, we can now have the-- ability to cut of the electrical grid from any city on Earth, on planet Earth."

Said, "No, I didn't know that." So-- I said, "Have you figured out how long people would live if you cut off the electrical grid. I mean, I know if you hang a man it's six or eight minutes before he's pronounced dead. But how long would they live if all the lights went out. The pumps don't work. The phones don't work. The iPhones don't work. The streetlights don't work. Telephones don't work. Hospitals don't work. How long would it take for everybody to be killed?"

He said, "Well, I don't know that." I said, "Well, what's your problem?" He said, "Well, (UNINTEL PHRASE) China." He said-- "The problem is that the Chinese can do the same and so can the Russians." We've got a problem, kids. (LAUGH) You better find a better way of settling your differences. Or one day you won't put on the

lights. And they'll never go on. I'll see you down below. (LAUGHTER)

AUDIENCE QUESTION:

You anticipated my question. Was just-- to find out more-- about your stories. So clearly it's on your website. But I also wanted to ask you, you mentioned (CLEARS THROAT) about the attacks against women in Berlin.

BEN FERENCZ:

What-- what you say.

JAMES GOLDSTON:

In Berlin?

VOICES:

In Berlin.

BEN FERENCZ:

What attacks, you mean-- that-- the one-- yes--

AUDIENCE QUESTION:

The rape you mentioned, yeah. And I'm curious-- to know why you think that wasn't reflected in the charges at Nuremberg?

BEN FERENCZ:

That's why it wasn't reflected in the charges. Because you needed the Russian consent. We couldn't put rape in-- in the International Military Tribunal. We corrected that immediately in the trials under General Telford Taylor. It's been listed as a crime ever since.

But because the Russians were notorious rapists and I was in Berlin very shortly there. I was looking for Hitler. I was at the bunker when they w-- fort was flooded. And-- every German woman, they were hidin' under-- under somewhere. Because it was part of their reward for the war. (UNINTEL) I don't know how many days it went on. But the generals finally (UNINTEL) and said, "Okay, boys, now that's enough."

JAMES GOLDSTON:

Any-- other comments or questions. Erica?

AUDIENCE QUESTION:

I'd be curious-- in your reflections on the-- de facto annexation of Crimea.

BEN FERENCZ:

What.

JAMES GOLDSTON:

The de facto annexation of Crimea by Russia?

BEN FERENCZ:

My sister was born in a small village in Transylvania. I was born in the same bed a year and a half later. When she was born she was a Hungarian. When I was born in the same bed I was a Romanian. The fact that they changed the designation o' the country didn't mean a damn thing to us. (LAUGH) She was still my sister. And I was still her brother.

They don't pack up a country and move it to the other country. It remains. It's who has the name because they hope they'll have some-- better connection with 'em either militarily or economically or otherwise. This is nonsense. We are all inhabitants of one small planet. And I wrote a book on that called *PlanetHood* the theme of which is you must learn to share the resources on our planet so that everyone on the planet can live in peace and dignity regardless of their race or creed. That is the theme of that book. And that remains the theme of my life.

We have to speak in planetary terms. We can no longer think in (UNINTEL PHRASE) where the lines are. What difference does it make my sister's a Hungarian and I'm a Romanian. They both make the same joke. The Hungarians say if you wanna make a Romanian omelet first you steal three eggs (LAUGHTER) and vice versa.

JAMES GOLDSTON:

Well-- Ben, I wanna thank you so much for-- sharing some of your (UNINTEL)--

BEN FERENCZ:

I wanna thank you and the Soros Foundations for the tremendous work that you're doing spending all that money to-- to-- (LAUGHTER) to-- to make it a better world in many ways. All of that is very fundamental at the key point of when they start killing each other. The root cause of what they call war and I used to call it aggression-- I don't call it aggression anymore. (LAUGH) I call it a crime against humanity which is what it is.

And how do you define a crime against humanity. Very simply. The illegal use of armed force. Illegal means it's not in self-defense and it's not approved by the security council of the United Nations. Another way of putting it is the illegal use of force in violation of the UN Charter knowing that it will inevitably kill large numbers of civilians.

That to me is a crime against humanity and should be punishable as a crime against humanity under the terms already accepted on the Rome Statute which lists various crimes against humanity including a catch-all at the bottom, "other inhumane acts." If there is not an other inhumane act included by the deliberate taking armed force and using it knowing it's gonna kill a large number of civilians then good God bless you, you're all gonna be doomed. That is a crime against humanity.

And I'd like to hear some more focus on-- on this type of using the law, the criminal law as a deterrent to that particularly atrocious, the most atrocious of all crimes. And I will be very grateful if Mr. Soros would pass that message on to Mr. Soros. Be happy to talk to him about that. (LAUGHTER)

JAMES GOLDSTON:

Thank you very much. (APPLAUSE)

* * *END OF TRANSCRIPT* * *