

IN MEMORIAM: THE LATE BENJAMIN B. FERENCZ

On April 7, 2023, Benjamin B. Ferencz died peacefully in his sleep at the age of 103. A devoted member of the American Society of International Law, Ben, as we knew him, will be sorely missed for his intellect, his dedication to the international rule of law, his inspiration, his irrepressible sense of humor, and his kindness.

Born on March 11, 1920, in what was then Transylvania (now Romania), Ben's family emigrated to the United States when he was an infant. He grew up poor, in New York City, and was admitted to City College of New York, and then Harvard Law School. He enlisted during World War II and fought in many major battles in Europe, somehow surviving each close encounter. He endured many hardships as an infantryman, and was later tasked with collecting evidence of Nazi war crimes. This led him to the Nazi extermination camps, scenes of death and devastation that stayed with him for the rest of his life.¹ Following the trial of the major war criminals, the United States prepared to prosecute others in what became known as the subsequent trials. Ben took on the prosecution of the *Einsatzgruppen Case*, which charged twenty-two Germans for their role in murdering approximately one million people as "part of a systematic program of genocide," as he called it, with crimes against humanity and war crimes. Ben was only twenty-seven years old at the time of the trial, which he stated was a "plea of humanity to law."² It was his first case. All twenty-two accused were convicted.

Upon returning to the United States after the war, Ben entered law practice alongside his former boss, Nuremberg Prosecutor Telford Taylor, doing run-of-the-mill legal work to support himself and his four children. He was a successful lawyer and did well; and at the same time, he used the experience of World War II to drive a scholarly and activist career for which he would become world famous. He published a series of important books, including *Defining Aggression* (1975), *Less Than Slaves: Jewish Forced Labor and the Question for Compensation* (1979), *An international Criminal Court: A Step Toward World Peace* (1980), a co-authored volume on global governance, *Planethood: The Key to your Future* (1980), *Enforcing International Law – A Way to World Peace* (1983), *New Legal Foundations for Global Survival* (1994), and, most recently, *Parting Words: 9 Lessons for a Remarkable Life*, a short memoir published in 2020. Ben was a gifted writer, who had the capacity to convey deeply complex subjects in simple terms without sacrificing nuance or understanding.

As important as his published work was, his tireless advocacy for a more peaceful world, embodied in the mantra that guided his life "law, not war," are what many will remember him for. I had the privilege to meet him for the first time at the United Nations when I arrived to

¹ BENJAMIN B. FERENCZ, *PARTING WORDS: 9 LESSONS FOR A REMARKABLE LIFE* 73–74 (2020).

² Ferencz Opening Statement at Nuremberg, TRIAL OF THE MAJOR WAR CRIMINALS, Vol. IV, at 494 (1947), at <https://benferencz.org/articles/pre-1970/ferencz-opening-statement-at-nuremberg>.

attend the Preparatory Committee meetings for the International Criminal Court in 1997. Diminutive in height, simply dressed, and always with a jaunty cap on his head, Ben asked me who I was and what I was doing at the United Nations. He promptly handed me a copy of *Planethood*, as well as some other papers, and accompanied me to the meeting. Thus began a friendship and mentorship that endured through many decades. Ben never shied away from advocating for peace, for justice, and for the rule of law. He wrote letters to the editor of *The New York Times* critiquing the notion of a preemptive military strike against Iraq,³ spoke at countless conferences and symposia (including three at my home institution, Washington University School of Law),⁴ exhorted diners at gala dinners at the Holocaust Museum (in Washington and elsewhere in the United States) to support the International Criminal Court and the rule of law, and participated in the closing arguments of the *Lubanga* trial, the first case tried by the International Criminal Court in 2011.⁵ I show the documentary *Prosecuting Evil: The Extraordinary World of Ben Ferencz* to my students each year, and they are amazed at his clarity of vision, energy, and talent.

Ben's vision and capacity to see the potential of humankind were unmatched. Having witnessed the horrors of the Holocaust he devoted his life to establishing institutions and rules that could help humankind escape its worst excesses. In a world too-often swayed by fear and the temptation to look the other way, Ben's moral compass never wavered. He believed in the power of international law, and spoke truth to power, whether it was the U.S. government, colleagues, friends, or crowds of disbelievers.

For decades, Ben's work was unrewarded, and his ideas spurned. It was not until the International Criminal Court was finally established in 1998 that he began to more fully reap the fruits of his long labors, and, ultimately, received many well-deserved honors. Ben was co-awarded the Erasmus Prize together with Antonio Cassese in 2009, was presented with the Great Cross of Merit by the Federal Republic of Germany in 2010, and was awarded the Harvard Law School Medal of Freedom in 2014. In 2015 he was recognized by the French foreign minister as a distinguished veteran of World War II, and in 2017 by the municipality of The Hague, which named the footpath next to the Peace Palace the *Benjamin Ferenczpad* (Benjamin Ferencz Path) He received the Anne Frank Award in 2019 and was awarded the Pahl Peace Prize in 2021. Earlier this year, he was authorized to receive the Congressional Gold Medal, in recognition of his service to the United States and the international community during the post-World War II Nuremberg trials and life-long advocacy for international criminal justice and the rule of law.⁶ He was often accompanied and supported by his son, Don Ferencz, who shares his father's wit and passion, and commitment to a better world.

³ Benjamin B. Ferencz, *Letter to the Editor*, N.Y. TIMES (Aug. 1, 2002), at <https://www.nytimes.com/2002/08/01/opinion/the-baghdad-option-a-debate-gathers-steam.html>.

⁴ See, e.g., Benjamin B. Ferencz, *A World of Peace Under the Rule of Law: The View from America*, 6 WASH. U. GLOB. STUD. L. REV. 663 (2007).

⁵ *Ferencz Closes Lubanga Case for ICC Prosecution* (Aug. 2011), at <https://benferencz.org/articles/2010-present/ferencz-closes-lubanga-case-for-icc-prosecution>.

⁶ Office of Rep. Lois Frankel Press Release, *Bipartisan Bill to Award Last Living Nuremberg Prosecutor the Congressional Gold Medal Included in Fiscal Year 2023 Spending Bill* (Dec. 21, 2022), at <https://frankel.house.gov/news/documentsingle.aspx?DocumentID=3371>.

It is hard to believe that Ben has finally passed. He often joked about his ultimate demise over the past two decades, as he nonetheless continued to write, to travel, to speak, and to inspire, urging the adoption of amendments to the Rome Statute incorporating the crime of aggression into the text at the Kampala Review Conference, speaking out against the unlawful use of force in the world, and even with his punishing travel schedule, always taking time out for a dinner with friends, a phone call, or to dispense his usual piece of advice when faced with any difficulty: “never give up, never give up, never give up!”

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