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Foreword

Fritz Weinschenck

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HOLOCAUST AND HUMAN RIGHTS LAW: THE FIRST INTERNATIONAL CONFERENCE

FOREWORD¹

How does one view the final outcome of the German Nazi trials? Why were the expatriation trials of those war criminals who crept into the U.S.A. delayed for so many years? Furthermore, does a country have the right to try criminals like Abbas, Eichmann or Linnas if it neither has jurisdiction over the nationality of the accused nor over the territory in which the act was committed?

These and other fundamental questions concerning the legal side of the Holocaust were discussed at a Boston College Law School Symposium on April 17, 1986, the first international conference of the Human Rights Research Project with support from the legal department of the Anti-Defamation League of B'nai Brith. The discussion moved from such contemporary themes as the Waldheim affair, the Artukovic deportation, and the genocide in Cambodia to legal theories of universal jurisdiction. This controversial issue concerns the question whether any nation has the right, simply because men are deeply moved, to pass final judgment without nationality or territorial jurisdiction.

According to History Professor Henry Friedlander of Brooklyn College and New York attorney Fritz Weinschenk, the German trials have come to an end. At the present time one can no longer expect any useful testimony from witnesses for murder trials, to the extent that they can be reached at all, to describe under oath and with an adequate degree of accuracy, what took place forty years ago. One can assume that in general, with exceptions, most of the criminals were tried and convicted. As Professor Friedlander indicated, there was not a single case in which a defendant could prove that he would have executed the crimes only under duress, intimidation, or danger for his own life.

The expatriation of immigrant criminals who were for the most part Nazi collaborators, and their deportation from the U.S.A., were discussed by Allan Ryan, Jr., former chief of OSI (Office of Special Investigations) and author of *Quiet Neighbors*, and by Bruce Einhorn of the U.S. Department of Justice. Especially noteworthy, as emphasized by the speakers, are the tactics used by the defense attorneys to delay the proceedings for years. The series of proceedings from the immigration judge to the District Court, to the Appeals Court, and possibly to the Supreme Court in Washington, has often resulted in the work of the OSI being criticized and misunderstood by the public. Nonetheless, through the patience and prudence of the permanent staff of trial attorneys under Einhorn's direction, the OSI has achieved remarkable results. The expulsion of the former Croatian interior minister under the Nazi regime, Andrija Artukovic, was the result of its efforts. Artukovic was convicted and sentenced to death in a Yugoslavian court.

Eli Rosenbaum, chief legal counsel for the World Jewish Congress and the official in charge of the Waldheim affair, discussed the marshalling of evidence in the expatriation trials. In order to succeed in getting the expatriation of these defendants, the U.S. Department of Justice must offer inalienable proof that these defendants had kept secret

¹ Portions of this Foreword originally appeared, in slightly different form, in the newspaper entitled Aufbau. They appear here through the permission of the author.

from the immigration visa questionnaires their criminal activity during the Nazi era. To achieve this goal the attorneys must often rely on documents from the Soviet Union and other eastern block nations.

Rosenbaum elaborated on the cooperation of the Soviets. They let cases be heard in their territory, yet under American rules of procedure. They even let original documents be placed at the disposal of the FBI lab in Washington for chemical analysis. Permanent damage to the documents often occurs during the tests to substantiate their authenticity. Certain organizations of eastern immigrants maintain that these proofs of evidence are skillfully designed forgeries by the KGB and that these defendants are the victims of Bolshevism. It is not unusual that these organizations make allegations that are indirectly and sometimes even directly antisemitic. They try through political influence to deprive the OSI of its financial support so as to render it ineffective.

The highlight of the conference was undoubtedly the profound ideological dispute between those legal scholars who advocate that one can pass final judgment on criminals where one finds them, and those who champion the view that without jurisdiction one cannot deprive a man of his freedom and property.

The well-attended conference closed with a discussion of the *Auschwitzlie* that is propagated in neo-Nazi circles and denies that the Holocaust ever took place. The dissemination of this lie has already led to court action in Canada and California. Should one, in the interest of freedom of the press, be satisfied with a protest against this denial of a historical fact, or should one seek legal redress through court action against the propagation of disinformation? This disputed question confronts one with the problem of the absolute freedom of the press.

FRITZ WEINSCHENCK