



**‘Those who have suffered want speedier justice’
Yogesh Pawar
December 11, 2010**

International prosecutor at the United Nations Assistance to Khmer Rouge Trials, Andrew Cayley is an English barrister and writer who has spent 16 years as counsel for major international criminal trials since World War II.

He is currently based in Phnom Penh, Cambodia, at an UN-assisted court charged with prosecuting those responsible for the deaths of over two million during the Khmer Rouge reign. A former British army officer, University College, London graduate and Royal Military Academy, Sandhurst pass-out, Cayley has prosecuted those responsible for the murder of over 10,000 in Srebrenica in Bosnia Herzegovina in July 1995.

In the Srebrenica case, the prosecuting team secured the first conviction for genocide in Europe since the Nuremberg trials. Cayley also led the International Criminal Court’s investigation and first prosecution case for events in Darfur between 2002 and 2004. DNA caught up with Cayley when he was in Mumbai.

**Aren’t UN-backed initiatives like the Khmer Rouge Trials past their ‘use-by-date’?
Do they really make a difference?**

I can completely understand this question. People who have suffered and are dealing with trauma want to see speedier justice and when that does not happen, cynicism and scepticism can creep in. But, if anything, the importance of these processes has only been heightened, especially after the collapse of Yugoslavia in 1995. While there is a case to build on that and do better, it may not be correct to write it off completely.

From the Nazi pogroms against Jews to the horrific genocides in Cambodia and Bosnia just a decade ago, why are initiatives like tribunals not acting as deterrent enough? Is mere shaming of regimes the right intervention strategy, since bringing the actual perpetrators to book cannot be possible?

You are right that the initiatives do not always have the mandate to prosecute the actual perpetrators. This is more in the way of maintaining pressure on the administrations that this issue will go to the International Criminal Court. The impending embarrassment can work as an advantage as the regimes accept that there has been genocide or gross violation of human rights. Take the case of the Cambodia where, between 1975 and 1999, as many as two million people were killed. While a million of them were actually killed, the others died after being sentenced to hard labour. Or Srebrenica in Bosnia Herzegovina in July 1995 — as many as 10,000 Muslim men and boys were killed in a span of five days. It was deeply disturbing to see this happen in the Europe of the 90s. Yet the prosecuting team secured the first conviction for genocide in Europe since the Nuremberg trials. When British soldiers were found to have been involved in the human rights violations in Iraq, the government had to ensure the guilty were punished.

We know 114 countries have joined the International Criminal Court, including nearly all of Europe and South America, and roughly half the countries in Africa. Yet, how can we expect this to have an effect when many of the big nations on both sides of the development-divide have still not ratified the treaty for various reasons?

Yes, it is a stumbling block that we do not have some really big players like China, India, Iraq, Israel, Libya, Qatar and the US as part of this process but we are working towards it. In most cases like Darfur, when we are told that the intervention is a case of too little, too late; there does not seem to be enough appreciation that in such matters the complaint comes to us only when the UN Security Council refers it to us. Since one permanent member wanted to veto the move for this case to be handed to us, it dragged on. But yes, precious time and many more lives were lost.

But isn't that a problem then, as narratives in foreign policy, commerce and human rights contradict each other? How does this play out?

I agree with you. Sometimes, when commercial considerations are overriding, some regimes will try to curb the criticism or avoid it for the fear that this will affect the trade ties. Look at David Cameron's statements about China. Right now, the economy of the West is not in the best of health and those countries are all out to woo India and China whose economies are booming; a lot of care is taken to ensure that nothing affects trade ties. While Cameron's praise for the Chinese enterprise was up there (pointing at ceiling), his criticism of that country's human rights record was quite feeble (pointing at floor).

India, as you mentioned, is not part of the International Criminal Court? What according to you are some of the concerns that prevent India from coming on board? What efforts are being made to address these concerns?

India has often voiced its concerns over sovereignty issues. It fears that Kashmir — the continued military presence in the Valley, the human rights violations, the extent of displacement for 'development' projects and the state's strategy to quell the alienation and dissent — could be taken up at the international level. There have been attempts at both appreciating where India comes from and assuaging some of its concerns. We would like India to be on board and know that it eventually will.

How soon do you think that could happen?

Well, it will take time... another fifty years at least but we know India will come around.

Which are some of the bigger events in India that are disturbing, given their human rights ramifications?

India witnessed its first genocide at the time of Partition, the aftermath of which is witnessed even today. The country has witnessed innumerable cases of genocide, right from the anti-Sikh riots in 1984 to Gujarat in 2003. Mass killings and destruction of property have left behind devastating consequences for the victims, leaving them with lasting wounds and a feeling of hurt. These are events which the international community is concerned about.

There is a feeling, even among the human rights lobbies in the world, that the International Criminal Court has a skewed way of determining what construes as a problem needing intervention. Issues which the West thinks are important are the only ones that get highlighted.

We've heard that criticism too, along with voices that Judeo-Christian values are being foisted upon cultures which have their own understanding of these issues. One can only say that we want to see a liberal and democratic world free of persecution. That cannot be a bad thing universally.