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War Crimes Prosecutor Payam Akhavan Speaks about his Global Fight for Human Rights

Interview With Payam Akhavan (Part One)

Fazel Hosseini

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Payam Akhavan is a leading international lawyer and scholar of human rights. He was the first war crimes prosecutor at the United Nations Tribunals for Yugoslavia and Rwanda, and served as counsel in several high profile cases, including the International Criminal Court proceedings against the Lord's Resistance Army commanders for forced conscription of Ugandan child soldiers. Dr. Akhavan is also the Co-Founder and President of the Iran Human Rights Documentation Centre. He has been selected by the World Economic Forum as a Young Global Leader for his contributions to human rights. Dr. Akhavan earned a Doctorate in Juridical Sciences from Harvard Law School. He has taught at Yale Law School and currently teaches at McGill University in Montreal.



Let me begin with a personal question: what made you interested in human rights? What was the driving force?

That is a difficult question to answer because one's interest in human rights and in fighting for justice is often sparked in subconscious ways. Also, subsequent encounters in the pursuit of these ideals open new dimensions, new understandings, which take on a life of their own.

Clearly, my personal experience being raised in a Baha'i family in Iran has a lot to do with my life-long obsession with human rights. The historical memory of violent persecution; of tens of thousands of Baha'is killed in 19th century Iran; of my pregnant great-grandmother who miraculously survived when she jumped out of the balcony of her home to escape an angry mob in the city of Yazd; of the systematic killings of Baha'i leaders after the 1979 revolution; the profound effect it had on my parents when they lost their relations; the feelings of betrayal; the moving story of the 16 year old girl from Shiraz, Mona Mahmoudnejad, who was executed in 1983 solely because of her beliefs... I was the same age at the time and realized that all that separated me from her, my spiritual sister, was circumstance, the fact that we had the good fortune of migrating to Canada before the same fate could fall upon us. These intimate encounters with persecution, exclusion and exile, have had a profound and lasting influence on me.

My life in Canada was not always that easy, especially after the 1979 revolution, when public ignorance about Iran was transformed into hatred. Back then, Canada was not nearly as multicultural as it is today. Iranians were perceived as bearded terrorists or wife-beating fanatics. The distortions of the media, which only took interest in Iran through the prism of hostage-taking and war, did not help dispel these misconceptions. As an Iranian Baha'i living in Canada, my fate was that of the perpetual minority, the subject of constant discrimination. While these were painful experiences in childhood, they

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awakened a passion for understanding and justice, for which I am very grateful. While ease and comfort or success and social status can often lead to complacency, suffering and struggle can push us to excel.

My upbringing also instilled in me a sense that the greatest achievement is to be of service to humanity. My parents' commitment to philanthropy and egalitarianism and their belief that everyone matters (regardless of wealth or status) influenced me greatly. Unfortunately, the stratified Iranian culture is too often preoccupied with rank rather than the inherent rights of every human being.

As a law student, I realized that what matters most is to make a difference, to help the dispossessed. The injustices in the world are so overwhelming, so enraging, that it is unacceptable, indeed immoral, not to fight for justice with every bit of one's strength. For me, a sense of righteous rage has been very important, because human rights work can be incredibly disappointing and disheartening.

Working with the United Nations in Bosnia-Herzegovina, I witnessed first-hand the horrors of "ethnic cleansing" of Muslims. I learned to connect the dots. Hatred and violence is the same everywhere, even if its form may be different. I also realized that there is a deep bond, which unites all peoples. In places as diverse as Rwanda, Guatemala, Cambodia, and Uganda, there were fabulous people motivated by ideals, with rich spirits overflowing with humanity. Even if we could not speak the same language or share the same culture or social status, there was a transcendent force that united us. The concept of global citizenship, that we are all the leaves of one branch, and the fruits of one tree, was transformed from an abstract idea to a living and powerful reality.

I am a professor at McGill University and I have completed my doctorate at Harvard University, but I feel that all of the knowledge that I have gained is irrelevant if I fail to embrace the oneness of humankind. The Hadith says that "knowledge is a single point but the ignorant have multiplied it."

I learned that human rights is about our inherent dignity, our shared humanity, and that fighting for the dignity of others is as much about recognizing our own dignity, that indifference to other people's suffering. We cannot be fully human until we see other people's struggles as our own. The irony is that in our materialistic North American lifestyles, we consume more and more, and we are less and less happy, and this paradox reminds me of Rumi's poem "*dardeh bidardi aalajash atash ast*" ["The antidote to the pain of painlessness is fire"].

You were the first war crimes prosecutor at the International Criminal Tribunal of the UN for Former Yugoslavia and Rwanda. How did you end up there?

As a law student in the late 1980s, I focused on how, despite all the international human rights laws and treaties that we have, governments are capable of committing mass murder with impunity. If laws are violated, the perpetrator should be punished. I was perplexed by the fact that the likelihood of being arrested for stealing a bicycle is greater than being arrested for genocide! In my 1990 Harvard thesis on enforcement of international human rights law, I called for the establishment of international courts that could deliver justice for the victims. At that time, when the Cold War was just about to end, the political context for creation of such institutions did not yet exist. This issue was of historical interest due to the legacy of the Nuremberg Tribunal which prosecuted the Nazi leaders after the Second World War. By 1991 however, the world had fundamentally changed, and the circumstances were propitious for the establishment of an international criminal tribunal. The Soviet Union had been dismantled, bringing an end to the Cold War which for so long had paralyzed the United Nations. Amidst the euphoria and the sense that history had come to an end with the triumph of western liberalism, the Yugoslav war broke out, and the ugly specter of ethnic cleansing and genocide once again plagued

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Europe.

I worked at a human rights institute in Denmark at the time and was asked to participate in a high-level diplomatic mission that would look into humanitarian law violations in Bosnia-Herzegovina and make recommendations for action. As a young lawyer just out of law school, I was very excited about this opportunity. The head of the mission, Ambassador Hans Corell of Sweden, who went on to become the United Nations Legal Counsel, was very receptive to my ideas. We feared that we would simply be yet another mission stating the obvious, somehow a mere pretense of concern. We knew there were massive atrocities against Bosnian Muslims who faced extermination at the hands of the vastly more powerful Serb forces but we feared that the world was not willing to intervene to stop the ethnic cleansing. Mere condemnation has no effect on brutal warlords. Only if they realize that they will be held individually accountable will it be possible to effectively implement humanitarian law. Much to the surprise of the governments that sent us, we recommended the establishment of an international criminal tribunal to prosecute the perpetrators of ethnic cleansing and genocide. Once the idea was circulated, it gained increasing support. The momentum eventually resulted in the establishment of the UN tribunal at The Hague.

By achieving indictments of previously untouchable Heads of State and other officials such as Slobodan Milosevic, the Yugoslav Tribunal revolutionized international law, and led to the establishment of the Rwanda Tribunal after the horrific genocide of 1994 that claimed one million lives. The International Criminal Court, a permanent body, was established in 1998 after the Rome Diplomatic Conference. The Yugoslav Tribunal was the catalyst, largely because the victims were European, and the Western powers had to act. If the atrocities were in Africa or elsewhere, they would be more readily tolerated as inescapable realities.

Having been one of the architects of the Yugoslav Tribunal, I was subsequently hired as the first war crimes prosecutor, when the building which housed the tribunal was still largely empty, and the prospect of arresting anybody, let alone Milosevic, was unrealistic in the midst of a raging war. When I entered the tribunal, I had a vague sense that I was part of something great, something historic, but I was so overwhelmed by the amount of work and responsibility that I was entrusted with as a young inexperienced lawyer, that I had little time to dwell on the glory. The pressure to get the tribunal off the ground and to make it a credible institution was daunting. There were many politicians who thought that indicting warlords was a bad idea, that it was an expression of naïve idealism that was an impediment to negotiating a cease-fire. Yet others actually supported Milosevic and his gang of criminals. There was tremendous pressure to produce, to write legal memoranda, to investigate the crimes in a legally credible fashion, and to indict leaders before they could extract amnesty. Sometimes I would stay at the office for two or three days without going home, and I had to do the work of several people with little or no support. Things became better later when we received more resources, but initially, it was very difficult.

Prior to coming to The Hague, I had been in Bosnia-Herzegovina with the United Nations as a human rights monitor, and I had witnessed terrible, unspeakable crimes. I had seen families that had been burnt alive in their homes, a dead mother holding her infant in her arms, unthinkable cruelty, sights that I will never forget, and which filled me with both grief and rage. Thus I entered The Hague with a sense of purpose, because I had experienced first-hand the reality of injustice. The laws on the books were not merely abstract concepts and theories, but a living force, a source of justice and equity.

People imagine that the Tribunal was somehow glamorous. I am often approached by people who have a very romantic image of what it was like to be the first war crimes prosecutor in those days. But it was a great burden, both in terms of physical and emotional exhaustion. It also a great privilege, to be fortunate enough to be a pioneer in such an important field of international law, to build the basis for future generations, in the

hopes they will not live in a world where genocide is committed with impunity.

It was also an interesting experience being a Canadian-Iranian in the midst of Europeans, and the mixed preconceptions they had about my competence. Oddly, in an institution dealing with crimes arising from discrimination, people were grossly ignorant of other cultures. I was confronted by stereotypes and misconceptions that I thought would not exist in such an institution. It was also a struggle, both as a young person, and as an Iranian, to earn the respect of others, who often did not want to recognize that somebody who represented the uncivilized orient in their cultural imagination, could actually play a key role in the institution.

I had a very close relationship with the first Chief Prosecutor, Richard Goldstone of South Africa, with whom I became good friends and who consulted with me on several important matters. I was also pleasantly surprised by the appointment of the second Chief Prosecutor, Louise Arbour, who had been my professor at Osgoode Hall Law School in Toronto. She was simply great and our friendship lasts to this day. I was lucky to have the support of special friends in those circumstances, because we were under such tremendous pressure. The experience of fighting for justice against overwhelming odds, of listening to the heart-breaking accounts of the victims, all of those circumstances create a very strong and intimate bond that is not easily forgotten. But I was often frustrated by the apparent indifference of some colleagues to the suffering of the Bosnian people. For some this was just a job, or it was a prestigious job, but somehow the empathy with the victims was sometimes lost as some people focused on self-promotion and their careers. Given my personal experience, I think I understood at least in a general sense, what it means to be a persecuted minority, to face violence and lose your loved ones, to live in exile in the West where most people have no idea where you come from, what life you have left behind. I felt a combination of grief and rage, of existential angst and professional satisfaction, of pondering the limits of human nobility and cruelty. My eyes were opened to so many extreme dimensions of life, and in a sense, I lost my innocence in those years and became a more sober adult, though all the time fighting to maintain a sense of idealism against a daily bombardment of evil and cynicism.

The first atrocities in the Balkans were committed as early as in 1991. Milosevic became a 'target' of Western powers in 1999 as he moved towards Kosovo. What took these powers so long to act upon their international obligations to stop Milosevic and his ethnic cleansing machine?

When the Yugoslav war broke out in 1991, the West was still in a post-Cold-War euphoria, identified by Francis Fukuyama as “The End of History” and the triumph of Western liberalism. The Europeans were discussing the Maastricht Treaty and a closer union in which there would be a common foreign policy. The Yugoslav war shattered this illusion and exposed some of the deep rivalries and Machiavellian postures of the European powers. In particular, a newly unified and resurgent Germany was perceived as a threat to the British, French and Russians. These powers were paranoid that Bosnia would somehow become an Islamic Republic – a ludicrous notion considering their thoroughly European sensibilities. In response to German support for Slovenian and Croatian independence, they became apologists for Milosevic and downplayed the gravity of the “ethnic cleansing” campaign.

In a sense, there was a retrograde response, reminiscent of the balance of power politics of Europe at the outset of the First World War, when the assassination of Archduke Ferdinand of Austria by a Serbian nationalist ignited a global conflagration. In the name of containing German, and Turkish or broader Islamic influence in Europe, or in order to maintain stability in the Balkans, Milosevic was viewed as a necessary if not desirable strongman. The Yugoslav war was completely preventable. The underlying conflict was the need to redefine the federal constitution in light of post-communist realities. If Milosevic and Tudjman had been two responsible leaders like DeClerk and Mandela in

South Africa, instead of inciting ethnic hatred and violence, there could have been a peaceful transformation or constitutional redefinition in Yugoslavia.

A sequence of events and possibilities led to the transformation of Milosevic from respected Statesman to war criminal. Leaders like Milosevic were linked to the rapid escalation of ethnic war in the Balkans, to the threat of spillover from Croatia to Bosnia, and then to Kosovo. The corresponding fear of a regional Balkan war, a massive exodus of refugees and a rise of criminality stemming from war profiteering also helped to tip the balance. There was a realization that removing extremist leaders was indispensable to the long-term stability of Europe. The convergence of realpolitik and human rights, of power realities and ideals of justice, that resulted in the phenomenal success of the Yugoslav Tribunal beyond anything that we could have imagined at the outset.

If our leaders had the foresight, they would see that in other hot-spots, such as Iran where the predominant issue appears to be nuclear containment or stability of oil supplies, there is a direct link between internal repression of human rights and the militarization of government expressed through the pursuit of an aggressive foreign policy. Like Yugoslavia, stability in Iran and the wider Middle East can only be achieved through a democratic transformation and respect for human rights, and this ultimately is a struggle within the nations affected, though the international community can make a considerable difference by helping tip the balance of power against authoritarian conservative elements and in favor of pro-democracy or pro-human rights groups.

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