

the 'roving eye' reports...

Dr. Lyal S. Sunga

...an interview with Hong Kong University's "HOT" human rights professor

Dr. Lyal S. Sunga, B.A. (Carleton), LLB (Osgoode Hall), LLM (Essex), Ph.D (Geneva), is the Director of the Master of Laws Programme in Human Rights at Hong Kong University's Faculty of Law as well as Acting Director of the Centre for Comparative and Public Law. He is the author of two books: *Individual Responsibility in International Law for Serious Human Rights Violations* (1992) and *The Emerging System of International Criminal Law: Developments in Codification and Implementation* (1997).

I have always been very interested in Human Rights issues, but like many, I have been rather wary of getting 'too involved' politically. However, after speaking to Dr Sunga I am now convinced that even a tiny effort does not go unnoticed. That's why I have taken the liberty of asking Dr Sunga some questions...

Dr Sunga, would you please introduce yourself and describe your role and interest in the advancement of Human Rights and your work at the United Nations?

Well, I guess that as a Canadian of Asian descent, I've always been interested in how people of different backgrounds get along together and in Canada we were fortunate to have since 1971 an official policy of multiculturalism within a English-French bilingual framework. I became aware that, even relatively tolerant Canada has seen some rather shameful periods of human rights abuse or neglect. And it makes you wonder, if people's rights can be violated even in your own peaceful country, what must it be like to suffer in countries that may not be so tolerant or peaceful? It was while doing my LLB, that I sensed that human rights cannot really be tackled solely within the domestic legal context since human rights standards are universal. That is why the international law of human rights is so important.

How did you end up at the United Nations?

A bit by accident! In August 1994, I travelled to Geneva to conduct research. It was only a few weeks after the Rwandan genocide in which around one million innocent civilians were slaughtered. The UN was looking urgently for someone with expertise in international criminal law which was rather rare in those days. Some people in the UN were aware of my first book - my Doctorate thesis on individual responsibility for serious human rights violations. So the UN High Commissioner for Human Rights - it was Mr. Jose Ayala Lasso - asked me whether I would assist the UN Security Council's Commission of Experts on Rwanda to investigate facts and responsibilities and to recommend measures to bring the perpetrators of the genocide and associated violations to justice. My job was to advise the Commission of Experts on international human rights,

humanitarian law and international criminal law, and to assist the Commission in preparing its reports for submission to then Secretary-General Boutros Boutros Ghali. The Secretary-General introduced our report to the Security Council which accepted the recommendations and established the International Criminal Tribunal for Rwanda. Its work completed, the Commission of Experts was dissolved on 30 November 1994, but the UN asked me to stay on which I did for the next seven years.

That's quite a jump - from University teaching to investigating genocide in Rwanda!

True - researching genocide is one thing, investigating mass graves quite another! It was quite shocking to see the merciless slaughter of so many thousands of innocent civilians, including women, children and the elderly. No one who has experienced the horror of the Rwandan slaughter can possibly doubt the urgency of ensuring better human rights protection in Rwanda and elsewhere. In future, the world simply cannot stand by with its arms folded when it becomes clear severe violations are about to be perpetrated.

What else did you do at the UN?

A lot of different things. I worked on the emergency situation of the Great Lakes region of Africa for several years, then became Coordinator ad interim of the Asia-Pacific Geographic Team in the Office of the UN High Commissioner for Human Rights and I serviced a broad range of special procedures mandates of the Commission on Human Rights. I assisted the Commission on Human Rights Special Rapporteurs on Rwanda and on Iran, the Independent Expert on the right to restitution for gross violations of human rights, as well as the Special Rapporteur on Human Rights and Terrorism of the Subcommission on the Promotion and Protection of Human Rights. I also advised the Office on the human rights situation in Indonesia, East Timor, Afghanistan, and I represented the Office of the High Commissioner in the Rome Diplomatic Conference to establish a permanent international criminal court and in New York. More recently, I worked on the World Conference against Racism preparations which were

quite interesting, but I moved to Hong Kong before the Conference actually took place in Durban, South Africa.

After all that, why did you leave the UN and join Hong Kong University's Faculty of Law?

Actually, I never completely left teaching even when I was at the UN. I was a frequent lecturer to Masters and Doctorate students from all over the world who came to the UN's Graduate Study Programme in Geneva, and some time back, I taught international criminal law in Helsinki which I really enjoyed. However, the more teaching and publishing I did, the more I thought of rejoining academia so I could savour the freedom it affords. Coincidentally, at the time that I wanted to move back to University teaching, Hong Kong was looking for a new Director of the LLM Programme in Human Rights.

Would the ICC be a viable alternative to special war crimes tribunals like the ones for Yugoslavia and Rwanda? What difference would it make to try someone after atrocities? Isn't prevention better than cure?

Well, the ad hoc international criminal tribunals for the former Yugoslavia and Rwanda, and indeed, those at Nuremberg and Tokyo, were basically retrospective in the sense that they tried to enforce individual criminal responsibility once the major part of violations had already been committed. It was too late in Rwanda and the former Yugoslavia to do much prevention although it was critical to make the point that in future perpetrators cannot expect to get away with murder. But of course prevention is much better than cure and that is a large part of the rationale to establish the permanent International Criminal Court which will have prospective competence and can therefore exert more deterrent force as part of conflict prevention.

What would you say to someone who comes from a country where human rights are stifled, if not non-existent? Words of encouragement or action?

It really is a personal decision. However, it can be prudent to remember not to say 'I am ready to lay down my life for human rights' in situations where there are plenty of people around who say 'Good. I am ready to take your life' since dead people usually make less effective human rights activists! Efforts to promote and protect human rights remain inherently political and ideological and as such, they have to be carried out in a strategic manner. There are times when arguments for human rights can be particularly effective and others when they seem to fall on deaf ears. But the thing is to try to stand up for human dignity because persistent human rights consciousness is hard to suppress in the end even for military Governments. Ultimately, no Government can rule by force alone - it has to have at least a minimum of legitimacy which means it must pay at least some regard to human rights standards, because these days, human rights has become a very important part of the political equation domestically and as a matter of for-

eign policy and diplomatic relations. Remember that human rights activists, like construction workers, usually have to work in teams to get anything done, so every single person's efforts can count a great deal towards improving the overall situation.

What prospects are there in the world today for Human Rights lawyers, save for research and NGO work which may be neither prestigious nor well-paid?

Oh, there are many, many opportunities to contribute to better human rights observance in ways big or small and they can all be important. There can be no question that the efforts of human rights activists in all countries have helped improve the daily life of people. But torture, slavery and forced labour, racism, enforced and involuntary disappearances, summary executions, and the big crimes of genocide, war crimes and crimes against humanity, are still perpetrated on a frightfully large scale and the challenges that remain are enormous. However, Governments increasingly are realizing that they cannot violate or ignore human rights with impunity and 'human rights' has become an important part of the contemporary vocabulary. There are opportunities to contribute to the human rights cause in the UN, in regional organizations (although Asia is the only continent without a regional human rights organization!) or for non-governmental organizations so many of which are doing splendid work. There is no shortage of need or opportunity to work in human rights. I would even say that those who have the privilege of access to education have a moral obligation to contribute at least a little to the rights of others. After all, you would not like to be in the shoes of the victim, and the infringement of one person's human rights anywhere in the world means we are all a little less free.

Finally, how has the world changed since the events of September 11th? Would it not be ironic that terrorists and war criminals must be afforded the same human rights as everyone else?

The world certainly seems different after this terrible terrorist attack! If we consider that terrorists try to destroy human rights and the rule of law, I think it would be more ironic if democratic Governments themselves were to undermine human rights and the rule of law at home in fighting terrorism since that might inadvertently achieve the goal of terrorists! It is precisely in these trying moments that the human rights even of persons suspected of fomenting terror or committing other crimes must be carefully observed. The real test is how Government and society protect the human rights of those whom it may not like and even of its enemies because human rights are not just for your friends.

Sow-Yee Wong