



World Chronicle

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“PREVENTING GENOCIDE”

Ten years ago, a genocide was carried out in the African nation of Rwanda. Could world leaders be caught flat-footed again if faced with similar crimes against humanity?

Are there indicators of genocide in the crises currently enveloping the Sudan, Côte d'Ivoire, and the Democratic Republic of Congo? Is 'having the information' about an impending genocide enough to stop it? Do 'scorched earth tactics' and 'ethnic cleansing' have to be defined as 'genocide' before preventive action can be taken under international law?

In this edition of World Chronicle, these difficult questions are explored in the company of the person in charge of sounding the genocide alarm bells for the United Nations: the recently appointed Special Adviser on the Prevention of Genocide, Juan Méndez.

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ANNOUNCER: From the United Nations in New York, an unedited interview programme on global issues. This is **World Chronicle**.

JENKINS: It's been ten years since the world stood by as genocide was carried out in the African nation of Rwanda.

The echoes of that tragedy reverberate still.

Will world leaders be caught flat-footed again when faced with similar crimes against humanity, or can genocide be prevented?

Hello, I'm Tony Jenkins, and our guest on **World Chronicle** today is the person in charge of sounding the genocide alarm bells for the United Nations: he is the Special Adviser on the Prevention of Genocide, Juan Mendez,

Mr. Mendez, welcome. You have been well and truly thrown in at the deep end. Genocides don't happen that often fortunately. You were only appointed this summer but already you are being called by people all over the world to describe what's happening in Sudan as genocide. And the problem seems to be that the definition of genocide is not clear to everybody. An American Supreme Court justice once famously talking about pornography or obscenity said "I know it when I see it". Are we in the same position when it comes to genocide? Can we only say we know it's genocide when we see it or are there some absolute criteria that you can use?

MENDEZ: I think there is a difference. In fact, the international public opinion talks about genocide in much looser terms than the international legal order talks about it. For public opinion genocide is any number of frequent killings. In my terms of reference, however, I'm supposed to be bound by the genocide definition included in the convention of 1949...

JENKINS: Which is?

MENDEZ: Which is that it's a series of acts including killings designed to destroy, in whole or in part, a community designated by its racial or ethnic or religious origin.

JENKINS: In whole or in part... now in Sudan at the moment, the warning bells are going off about the possibility of 350,000 out of a group of about 2 million. That sounds like, the destruction, at least in part, of an entire people. Is that how you see it?

MENDEZ: Yes, I do see it that way, but I'm not in a position to say whether what has already happened in Darfur is or is not genocide. What I am in a position to say, is that there is a clear risk of genocide in Darfur because if those 350,000 people were to die in the next several weeks or months, they would definitely be victims as being part of a community designated by their race or ethnicity or religion. And therefore, we just cannot afford to stand

by and what I can say is that we are nowhere near being in a position to say that we have already prevented genocide from happening in Sudan, therefore we need to act.

JENKINS: That's right. We are joined in the studio Mr. Mendez by Louis Hamann of the Canadian Broadcasting Corporations/CBC, and by Warren Hoge of the New York Times and I think they are probably want to pursue you on just that point...Warren, let's kick it over to you.

HOGUE: Mr. MENDEZ, if you or if the United Nations were to declare the situation in Sudan to be genocide, would that have the effect of opening up avenues of action for governments for international organizations that they would otherwise not be able to pursue?

MENDEZ: I think the genocide convention creates obligations on the international community and on individual states that would be triggered by a declaration that genocide has happened. But importantly we don't really need to first determine that genocide has happened in order to act. On the contrary, we need to act to prevent genocide from happening and by definition if we wait until all the facts are on the ground then it's too late to act. And we do have both legal and moral authority to act before genocide happens not to wait until genocide is in place.

HOGUE: Now, as Tony Jenkins said, a lot of people are saying, in official positions are saying, genocide has already happened, or using this as a way of saying that United Nations ought to act and it's been slothful in not acting so far. John Kerry has said in the campaign for the American Presidency that this is genocide. The United States Congress has officially declared the situation in Sudan to be genocide. This is that loose use of the term that I think you mentioned a few moments ago. Does this tendency,. does this habit of people to point a finger to say, 'its genocide already, you ought to do something', does that put you undue pressure upon you?

MENDEZ: I don't think that's important. I have had to act, you know, whether I'm under pressure or not and I do intend to act. I don't think it makes that much difference on me but I do think that being drawn into emotional arguments or into electoral politics doesn't help. On the other hand I do believe in the good faith of the American leaders. When they talk about genocide in Sudan I know at heart what they have in mind is trying to save lives in Darfur and of course they have a lot of information. So, I don't discount their contributions and I don't think they particularly do any harm. Whether they actually help or not is different question. Probably, they don't help as much as we would like that to help.

HAMANN: Mr. MENDEZ, would you say that the actual current international architecture is well enough equipped to deal, to prevent and stop genocide because the

warning signs don't seem to be the problem. The problem seems to be inaction by the international community. So how would you.....?

MENDEZ: No, in fact I don't think we are well equipped. We are equipping ourselves brick by brick, step by step and we are only in the infancy of being able to respond to genocide as we ought to be able to. At this point, we are still putting our bets on the fact that information is what will help us prevent genocide. That's not borne by the facts, for example, in Rwanda or in Srebreniça where information was available and we still didn't prevent it. But I think the question is more what kind of information, and to borrow from the intelligence community maybe actionable information is what we need. So it's a certain quality of the information, a certain timeliness and a certain analysis of the information that may be able to put international world leaders in a position to say we've got to stop this now before it goes further into genocide.

HOGGE: Does that mean that it would be helpful? A situation that is going on right now is American officials, and I suspect some NGOs also, are actively interviewing victims of the. what we now call ethnic cleansing, possible genocide in Sudan. That strikes me as something that would respond to what you just said that we need to gather information and intelligence. Is that the case? I mean ... can governments be helpful in this way, by simply interviewing people, amassing information, eye witness accounts, that sort of thing?

MENDEZ: Yes, I think not only governments but also any information coming from the NGO community and even from the United Nations own channels of information that we have. The United Nations has, you know, personnel deployed all over the world that has very good access to information on the ground. The problem is, however, that I have to have the responsibility to alert the Secretary-General and through him the Security Council of the situation that is, you know, on the down slope towards genocide, but I also have the responsibility to offer constructive solutions as to how to prevent that from happening. That's what I, more or less, vaguely called "actionable information" and that's not easy because it's difficult to say, what it is that is going to prevent the degradation of a conflict into genocide.

JENKINS: One of the things I notice that you focused on in the course of the past year, which I assume is intended to be as a deterrent, is in going after those who have been responsible for genocide in prosecuting. Do you have any evidence? Is this just a gut instinct that prosecution works, that people who are involved in this are going to pay a price? Do we think that there is any possibility that the political leaders in Sudan fear or have reason to fear that they may have to pay a political... not a political price ...a legal price, I should say, in court, for their deeds or their misdeeds?

MENDEZ: I think the whole idea behind the genocide convention – that it's a convention to prevent and to punish the crime of genocide, is precisely that punishment plays here a preventive role. That's an act of faith. We really don't know whether criminalizing something prevents it from occurring but we do know that the crime of genocide is such an egregious crime that simple justice demands that it cannot go unpunished. Whether that actually also prevents recurrence of the crime, I believe it does. But what really prevents is taking the norm seriously, that is, if the international community really thinks that genocide is as serious as it is, then we really should not, cannot abide by letting the crime of genocide go unpunished, and I clearly believe that one measure of prevention that one can advocate, one should advocate, is investigation of the allegations of genocide, serious investigations of them and punishment where punishment is due.

JENKINS: What you just said....what that makes me think....wonder about, is for example, in the case of the former Yugoslavia, where we have now seen a number of political leaders... I forget the exact figure... I think we are approaching up to something like 30 from all three of the ethnic communities there who have been charged by the international tribunal, many of them jailed, have any studies been done as to the effect on the new generation of political leaders in that part of the world? Do you think they've taken those lessons to heart? Has it changed the political climate in the region?

MENDEZ: Well.... In fact I have seen studies that made the contrary conclusion, that in fact Milosevic's use of the grand standing possibilities of the trial have actually had a bad effect on the conscience of the Serbian people, for example, but I think those are premature and perhaps...

JENKINS: When you say bad effect on the conscience, do you mean it's made them feel less bad but not as guilty as they ought to feel?

MENDEZ: Yes exactly... it reinforces the sensation that the world is against the Serbian people and therefore there wasn't anything wrong with what they did, what the leaders did, but I hasten to add that I think that's a very premature, very preliminary conclusion. I think if we are serious about justice we have to know that there is going to be grand standing and manipulation and we can only test the validity of the trials by the international court for the former Yugoslavia down the road a bit. We cannot, you know, just take the measure, the temperature of a country's public opinion today and say it's been a success or a failure. Justice runs its course and then has effects but doesn't have immediate effects.

HOGGE: Of course, the other way is letting national courts take it up... and I had in mind East Timor where the Indonesian's said, 'leave it to us we'll take care of it'. We've seen the results. A couple of convictions, I think, as recently as a couple of weeks ago turned into

exonerations. Basically the Indonesians have not kept their promise, have they? You cannot let nations take on that responsibility when they say they want to do it without testing it, can you?

MENDEZ: No that's right. We have to put pressure on countries to do the right thing and also to do it right. The case that you mention is of course one of the most signal failures but there are others that are not in that league and even now it only means that in the case of East Timor the international community still owes the victims in East Timor some measure of justice. Unfortunately, even the new East Timorese government is a little reluctant to go into the path of justice but I think we need to continue to insist.

JENKINS: I think that I might take the opposite conclusion..... I know Louis wants to get in, I'll let you in right after the break. This is **World Chronicle** – and we're talking about how to prevent genocide with the UN Special Adviser on the matter, Juan MENDEZ. It's been a little over ten years since the Rwandan genocide took place – here's what UN Secretary-General Kofi Annan has to say about it:-

“The Genocide in Rwanda should never, ever, have happened. But it did. The international community failed Rwanda. That must always leave us with the sense of bitter regret and abiding sorrow. If the international community had acted promptly and with determination it could have stopped most of the killing, but the political will was not there nor were the troops. And if the United Nations, government officials and international media and all the observers had paid more attention to the gathering signs of disaster and taken timely action, it might have been averted.”

JENKINS: You know there is something interesting that Kofi Annan said in that...which is that he said if we had paid attention to the warning signs..etc., etc., genocide might have been averted, he doesn't say it would have been averted. You were talking earlier about how we had the information and nothing happened. Is that the conclusion that we should draw? That no matter how much information we have genocides might well continue to occur in our lifetimes?

MENDEZ: Well yes, if the recent examples are any guidance, we also should draw the conclusion that it is difficult to avert genocide but the fact that it is difficult doesn't mean that we should not continue to try and learn the lessons from the errors of the past but also learn from some successes and there are, fortunately, some minimal successes. The problem is that when you prevent genocide everybody forgets about it because it didn't happen.

JENKINS: Can you name one that we prevented?

MENDEZ: Well, I think the Commissioner for Minorities in Europe provided incredible amount of the diffusing of tensions in all of the Eastern European countries at the break of the

Soviet Empire and in many of those cases we could have had genocide in our hands and the conflict was prevented. Doesn't mean that it's a complete paradise but there are examples of early action that can prevent genocide.

HAMANN: You talked about your mandate and your role, did you think that the job description that you've been given, gives you enough authority, enough influence to move Security Council members to act because, like Kofi Annan just said, they knew what was going on and they didn't muster the political will to do something. So does the job description that you have in front of you give you the necessary influence?

MENDEZ: I don't have any authority. My role is strictly advisory in all kinds of senses. But I think I'm acting on the presumption that the international community is sincere in its self-criticism about what went wrong in Rwanda and Srebreniça and that wants to have a different structure and so I think that my advisory role will be taken seriously at the appropriate time. It's going to be my responsibility to put the appropriate information and the appropriate suggestions for action at the appropriate time and then the decision, of course, will not be mine. But I think there is an awareness in the international community that given all those possibilities action will take place, and it's on that basis that I intend to act.

HOGUE: If you are indeed the early warning system for genocide, how are we going to do that? Are you going to be very public or are you going to give press conferences? Or are you going to point fingers and publish information, or are you going to be a counselor, you are a lawyer after all, to the Secretary-General and conducting all this in private and letting him or the United Nations sound the alarm?

MENDEZ: I asked precisely that question when the job was offered to me because I come from the Human Rights Community and I'm not used to confidential procedures and I don't believe in them. And I was told that they want me to speak whenever I think it's appropriate to speak and that it won't be censored. Now, of course, that puts even more responsibility on me because I also have to be self-conscious of the fact that sometimes speaking out is not the right thing to do. Speaking out can ruin delicate negotiations that are happening and I have to be advised, I have to be aware of what the consequences of my spoken words may be. All in all, however, my instincts are to come up with concrete solutions but also to offer suggestions for things that can be done short of the more politically sensitive actions that everybody expects me to be the one to say that this is the time to send troops or to do this or to do that or sanctions etc, . There are a whole spectrum of actions that the international community can take and the earlier that we provide the warning the less intrusive those actions may be, and it's my responsibility to find the ones that are right at the time and that will do the job of preventing genocide.

HAMANN: Generally speaking, sir, how would you rate how the community, the international community has fared with respect to Darfur? I mean, would you say it's a model to follow? In other words, we heard about it early on, the Security Council seems to have gotten on the issue, the situations is by no means resolved. But, how would you rate...?

MENDEZ: I've been reading back, of course, and I think the situation came a little out of the blue for the international community. It's not easy to....it's not as clear in the case of Sudan, especially since there was a peace process going on with respect to the South that the West was going to erupt in the same way. Nevertheless, I would say that the international community was slow to act originally, then got into high gear and now the results of whether the action is enough or not, it's a little early to say. Again I go back to my main theme, we have not prevented genocide yet in Darfur and we need to act to prevent it. And we need to act very forcefully to prevent it and there are a lot of things that we should demand the government of Sudan to do and to do now that have yet to be done.

JENKINS: Mr. MENDEZ, Warren Hoge suggested earlier that you can't leave these judicial proceedings to national governments, that there has to be some sort of international instance. My feelings is, as I was hearing him saying that, was that in fact the only way that you can really come to terms with what has happened in the past is for nations to internalize and internally digest what they have done and to resolve never again. That is what Germany has done and that since Germany has been an example. Other countries have not followed that route. One could think of Turkey with the genocide of the Armenians, and I'm wondering if you feel that it's part of your role -- one might talk about the Japanese actions during World War II; I don't know if one would want to characterize them as genocidal but hundreds of thousands of Chinese were wiped out and the Japanese have refused to face up to what happened and to admit to what they did. Do you see part of your job as also being going back and trying to get people to look at the genocides of the past and learn the lessons from that?

MENDEZ: Well, my terms of reference don't tell me to look at the past. My terms of reference are prevention not punishment of genocide, but as I said earlier, I feel very strongly that an important element of prevention is making sure that crimes against humanity and war crimes that may or may not amount to genocide but either way they may lead to genocide, punishing them is not only just as a matter of justice, but it is also an important measure of prevention from them deteriorating into something worse. And therefore I believe very strongly that the international community has to press for justice. Either conduct justice by itself with hybrid courts or international courts or the international criminal court or, and rather than or, and press for the domestic jurisdiction to do the same and to do it right. It will never be the case, in ICC, for example, can just basically take away from the domestic jurisdiction the

obligation to punish. In fact, the most harmonious situation is when the international community sets the tone and the pace but the domestic jurisdiction assumes the responsibility for justice and conducts its own trials as well.

HAMANN: You know the tragedy in Sudan obviously looms very large right now as we speak but over the next few months I know you'll be accessing other critical situations. Where else should the world's attention be focusing in terms of potential genocide or....?

MENDEZ: I am looking at several situations but I want to make sure that it's not understood as being a closed list. I'm open to all kinds of suggestions, my mandate is broad and because it is 'early warning' it should include things that are not even close to being genocide now but where populations are at risk.

JENKINS: Can you name a few?

MENDEZ: Well, yes. My main concern right now is in the Great Lakes Region. The episode in Burundi two weeks ago with refugees from Congo is one of those that should merit attention immediately but there is also Uganda, Northern Uganda especially. There is the situation in Côte d'Ivoire. I know that people are going to say "you're

JENKINS: How about Congo?

MENDEZ: Congo I meant.

JENKINS: The international crisis group recently said that cumulatively what's happened for the past six years in Congo is worse than what happened in Rwanda. Could we characterize what has happened in Congo as genocide?

MENDEZ: Well, again it doesn'twe don't necessarily need to reach the conclusion that it is already genocide to act on preventing it from happening. And yes, other than Darfur, one situation that really is capturing my attention is the Great Lakes Region generally. I would not want to characterize it as one country because the populations at risk there belong to several different nationalities. And outside of Africa

JENKINS: Sorry to butt in...but you've had a process now of criminal tribunals in Rwanda, just next door. Is there any evidence that the fact that some of these people that have been brought to trial in Rwanda has had any effect on the people who are responsible for crimes that are either genocide or close to genocide in the Great Lakes Region?

MENDEZ: Well, I think that in the DRC there is some peace processes in place that also call for truth and justice mechanisms - that if we collaborate with the different parties in Congo so that they come up with a serious responsible way of dealing with the crimes of the past, then we will complete the cycle of what the ICTR has done so far and domestic jurisdiction in Rwanda has also done. And I think the examples of the Gachacha trials in Rwanda are also worth looking into to see if they may be imitated and based on community law

and traditional law. I think all those things are part of what we call transitional justice. We have a responsibility to promote them.

JENKINS: Sorry Warren we've just got thirty seconds, left.... I was going to ask the last question, which is – what are the main lessons we can draw from horrors in places like Cambodia, Rwanda and Bosnia? How would you synthesize the lessons of the past?

MENDEZ: Well the lessons of the past are that the international community cannot simply sit by and in front of our eyes seeing our fellow men and women being slaughtered and we have to come to the rescue of people who are in danger. We ought to see them as reflections of us and we ought to see those populations as another neighbor of us that cannot... that we just cannot abide by their slaughter.

JENKINS: Juan MENDEZ, thank you very much for being with us. Thank you for being on **World Chronicle**. Our guest today has been the UN Special Adviser on the Prevention of Genocide, Juan MENDEZ. He was interviewed by Louis Hamann of the Canadian Broadcasting Corporation, CBC and Warren Hoge of the New York Times.

I'm Tony Jenkins, thank you for joining us. We invite you to be with us for the next edition of **World Chronicle**.

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