

FINAL REPORT OF WFM MEETING WITH JUAN MÉNDEZ
777 UN PLAZA, NEW YORK, NEW YORK
OCTOBER 15, 2004

Introduction

Juan Méndez was appointed Special Adviser for the Prevention of Genocide on July 12, 2004. The following is a summary of Mr. Méndez's presentation to NGO representatives at the World Federalist Movement on October 15, 2004, regarding his mandate, his recent mission to Darfur and the development of his position.

Juan Méndez has dedicated his legal career to the defense of human rights and has a distinguished record of advocacy throughout the Americas. During the 1970s, Mr. Méndez was a lawyer for political prisoners in his native Argentina. He was arrested as a result of this work and spent over a year in detention, at which point Amnesty International adopted him as a "Prisoner of Conscience."

Since that time, Mr. Méndez has been a leading advocate at several major NGOs, including Human Rights Watch and the Inter-American Institute of Human Rights in Costa Rica. He was Professor of Law and Director of the Center for Civil and Human Rights at the University of Notre Dame from 1999-2004. He was then named executive director of the International Centre of Transitional Justice, an organization dedicated to assisting countries pursuing accountability for past mass atrocities or human rights abuses.

Please note that the following is not intended to represent the verbatim statements of Mr. Méndez; it is a summary of his presentation and the conversation that followed. Any mistakes are the responsibility of the R2P-CS project. The following is based on information as of October 15, 2004, and developments have taken place since then that are not reflected in this report.

Mandate

The source of the mandate for the Special Adviser is Security Council Resolution 1366 (2001) on the role of the Security Council in the Prevention of Armed Conflicts. This resolution includes an expression of willingness by the Council to "give prompt consideration to early warning or prevention cases brought to its attention by the Secretary General" (paragraph 5). Resolution 1366 also "invites the Secretary-General to refer to the Council information and analyses from within the United Nations system on cases of serious violations of international law, including international humanitarian law and human rights law and on potential conflict situations..." (paragraph 10).

The Secretary-General submitted the following outline of the mandate of the Special Adviser to the Security Council on July 13, 2004:

The Special Adviser will (a) collect existing information, in particular from within the United Nations system, on massive and serious violations of human rights and international humanitarian law of ethnic and racial origin that, if not prevented or halted, might lead to genocide; (b) act as a mechanism of early warning to the Secretary-General, and through him to the Security Council, by bringing to their attention potential situations that could result in genocide; (c) make recommendations to the Security Council, through the Secretary-General, on actions to prevent or halt genocide; (d) liaise with the United Nations system on

activities for the prevention of genocide and work to enhance the United Nations capacity to analyse and manage information relating to genocide or related crimes.
UN Doc S/2004/567

The position is similar to Special Rapporteurships, although Special Rapporteurs are not mandated by the Security Council. The terms of reference as expressed in the letter from the Secretary-General (SG) to the Security Council are short, broad, and while open to creative interpretation, do not provide a lot of direction. According to the terms of reference, the Special Adviser is to act as a mechanism of early warning to the SG, and through him to the Security Council. He has two channels to the SG: the Department of Political Affairs and the High Commissioner on Human Rights.

He will be guided by the international definition of genocide, but will not adhere so strictly as to limit his investigations. He would like to act before the Genocide Convention can be invoked, because if it is at the stage of determining whether the Genocide Convention applies, it will be too late for prevention.

The Special Adviser is also mandated to closely follow conflict, particularly armed conflict with an ethnic dimension and conflict that violates the laws of war or the laws of protection of civilians. He will closely track the development of these conflicts in order to determine whether there is a recognizable trend of deterioration that will lead to genocide absent action by the international community. A key challenge will be to generate a database of information based on investigations of conflicts that will form the core of an early warning mechanism. The logic holds that with appropriate, time-sensitive information available on demand, genocide and other mass atrocities can be prevented.

Strategy

The Special Adviser's plan consists of gathering information, analyzing it and developing it into "actionable information," which is information based on research that can be mobilized to determine specific prevention steps. Actionable information will be utilized as a prevention tool when a genocidal trend is recognized and the situation is thoroughly assessed. Information will be gathered from within the UN system – and there is a great deal of information within the UN, but it is not all shared – and also non-UN information.

The early warning system must have a scope of action that is broader and more preventive than recommendations to the Security Council. Because the Security Council generally acts when a conflict is well under way, waiting until the only options for action that remain are through the Security Council may be too late to avoid large scale loss of life. There are other public initiatives that can be taken: influencing public opinion; approaching member states, whose suggestions may influence conditions on the ground; and working with the Office of the High Commissioner on Human rights.

The Special Adviser is maintaining a study of the behavior of governments during relevant conflicts. He will incorporate into his database of information studies of these governments, and will interpret their actions in light of a preventive mechanism. He is currently following conflicts in Northern Uganda, the Great Lakes and several other places. He may meet with state leaders and make recommendations to them, although he recognizes that due to the nature of his mandate (and title), he may not be welcome by state leaders in some conflict zones. He hopes that this will be overcome through diplomacy.

The Special Adviser will have resources for travel and consulting. He will not act only after visiting a situation on the ground; he is also able to act with trustworthy information.

Challenges

Several difficulties must be taken into account in regards to the Special Adviser's ability to carry out his mandate; first the position is part-time. The mandate is very broad, and involves detailed studies of many developing conflicts. The Special Adviser will need to gather *all* relevant information generated by the UN. However, he cannot rely solely on the UN and also wants access to reliable, external and consistent sources of information. For this, he will welcome information from civil society.

Communication with Civil Society

The Special Adviser believes it will be crucial to communicate often with reliable NGOs that produce work that is relevant to the fulfillment of his mandate. While not yet wishing to establish a formal meeting or network structure, he wants to communicate openly and often with NGOs. His work also involves creating a database on specific conflicts, and he wants to have as much reliable information on these conflicts as possible. To use this information, the Special Adviser needs to be assured that it is trustworthy, and there will be a mechanism to maintain the confidentiality of the sources of the information.

Publicizing Information

In terms of publicizing his information, the Special Adviser will first present the information to the UN, and then make it public, as appropriate. The Special Adviser has been told that he will not be censored; and he does not expect that his work will be of a confidential nature. It will therefore be his decision when to go public or not, a decision that is guided by the principle of saving lives. Understanding that it may at times be safer and prevent more atrocities to keep certain information quiet, it will be a matter of timing based on the specific situation that determines when the information will become available to the general public.

The Special Adviser's Mission to Darfur

In September, the SG requested that the Special Adviser and High Commissioner for Human Rights (HCHR), Louise Arbour, traveled to Darfur. Securing permission for the trip was greatly facilitated by the fact that the mission was a request of the SG. The mission was also successful because of the quality and competence of the HCHR staff.

The Special Adviser and the HCHR visited camps of internally displaced peoples (IDPs) and villages in the Darfur region. The purpose of this trip was not to determine whether genocide had occurred or was occurring, but to conduct an investigation on the crisis in order to make recommendations on immediate steps to prevent further atrocities. On the subject of determining genocide, the Special Adviser stressed that it was difficult to get the press to understand that making a statement on the presence or lack of genocide was not, and should not be, part of his job. The determination of whether genocide exists under the current international definition of genocide is politically and technically difficult and can only be made through careful factual analysis. It is unfair to ask anyone other than the international commission of inquiry to make that determination.

The Special Adviser and the HCHR presented their findings to the Security Council on September 30. The number of attacks on IDP villages has decreased since the ceasefire, and the increased access of humanitarian organizations has been instrumental in the decline of human rights violations and the risk of starvation. However, the security situation in Darfur is still dire. Most violent incidents that have taken place since the ceasefire have occurred in areas that are

still not accessible to the UN. Of particular concern to both investigators is the high incidence of rape in IDP camps, even in daylight in cities crowded with camps. Women are in serious danger of rape, particularly when they leave the camps to gather firewood, which is an indispensable form of income to many refugees and IDPs. When asked why the women have to gather wood, most people in the camps replied that if the men went, they would be killed. The HCHR received personal testimonies from many rape victims.

The judiciary response to this and other crimes in Darfur is almost non-existent. The Special Adviser knew of only a few cases of prosecution. The civilians live in an unremitting climate of fear. The Special Adviser stressed that impunity breeds this fear, and impunity must end in Darfur before the civilians can begin to be or feel safe.

On a positive note, the number of attacks does appear to have decreased and the ceasefire monitoring has been a good precedent. He is impressed by what the ceasefire monitors are trying to do, even without much support and the limited mandate.

To address the security problem and the impunity in Darfur, the Special Adviser and the HCHR made several recommendations to the Security Council.

- *There needs to be an increased international police presence.*
Even when police are visible, they do not offer a lot of protection and they are unresponsive to complaints. He recommends an international police deployment to accompany civilian police. This may be the hardest recommendation to follow, as the AU has not developed the capacity and there are not many volunteer officers. Even if it is not easily accomplished, the responsibility of the Special Adviser is to offer the suggestions.
- *There need to be more humanitarian workers.*
Humanitarian aid workers have drastically improved the health and safety of civilians, but it is not enough. There is not a nightly presence in many camps and many camps cannot be serviced or reached.
- *The number of AU troops must increase and their mandate must expand to include the protection of civilians.*
While the African Union troops that are currently deployed are doing a commendable job protecting the monitors, there are too few and their mandate is too narrow in scope. The government of Sudan has agreed to accept up to 3000 troops and the AU is ready to do that. The issue of the mandate must be pressed. The current monitors are only mandated to investigate violations by official parties to the ceasefire agreement; the Sudanese government, the SLM/A and the JEM. They are not mandated to investigate violations by the Janjaweed, as the government refused to take responsibility for the Janjaweed attacks. They claim that it is a conflict between tribal groups; the official version is that this is an ancestral/tribal conflict that got out of hand. Thus, unless there is specific evidence of government cooperation in attacks, for example government bombing, then it is outside the existing mandate. Another aspect is to monitor disarmament, which is not being done.
- *A more specialized Human Rights presence is needed.*
It is absolutely necessary that professional, international, specialized human rights observers are deployed, whose mandate only consists of monitoring human rights

violations. The HCHR has offered to select and provide these observers. These monitors must create a database of specific violations and must take every step to ensure that the information coming from various monitors is internally coordinated and organized, so violations are only recorded once and are recorded accurately. They also must address the relevant authorities to ensure the information is processed and becomes actionable. Human rights observers who specialize in monitoring justice are also needed.