

## **Genocide: upping the stakes**

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Le *Centre de réflexion sur l'action et les savoirs humanitaires* (CRASH) a été créé par Médecins sans frontières en 1999. Sa vocation : stimuler la réflexion critique sur les pratiques de l'association afin d'en améliorer l'action.

Le Crash réalise des études et analyses portant sur l'action de MSF dans son environnement immédiat. Elaborées à partir des cadres et de l'expérience de l'association, ces textes ne représentent pas la « ligne du parti » MSF, pas plus qu'ils ne cherchent à défendre une conception du « vrai humanitaire ». Leur ambition est au contraire de contribuer au débat sur les enjeux, contraintes, limites – et par conséquent dilemmes – de l'action humanitaire. Les critiques, remarques et suggestions sont plus que bienvenues, elles sont attendues.

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The Crash carries out in-depth studies and analyses of MSF's activities. This work is based on the framework and experience of the association. In no way, however, do these texts lay down the 'MSF party line', nor do they seek to defend the idea of 'true humanitarianism'. On the contrary, the objective is to contribute to debate on the challenges, constraints and limits –as well as the subsequent dilemmas- of humanitarian action. Any criticisms, remarks or suggestions are most welcome.

# Genocide: upping the stakes

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The “Sudan affair” is far from over. I described in a recent issue of this journal<sup>1</sup> how an ethnist interpretation (“Arabs against blacks”) of the conflict in Darfur and its qualification as genocide are dead ends. The gravity of the accusation, voiced primarily by the American authorities and the European Parliament, has prompted me to return to it. It is important to remember that the term genocide refers to “any criminal undertaking intended to destroy either all or part of a particular type of human group, as such, by certain means. The special intent required for the crime of genocide is twofold: the act or acts must target a national, ethnic, racial or religious group; and the act or acts must seek to destroy all or part of this group.”<sup>2</sup>

The first person in Europe accused of crimes of genocide was General Radislav Krstic, the man in charge of Serbian forces during the massacre of 8,000 Bosnian Muslims in Srebrenica, in July 1995. “You agreed to evil... You are guilty of having agreed to the plan to conduct mass executions of all the men [in Srebrenica] of fighting age. You are therefore guilty of genocide, General Krstic,” the President of the court, Judge Almiro Rodrigues, told the defendant.<sup>3</sup> The fact that women, children and old people were spared and that the wounded were evacuated clearly did not excuse such a terrible massacre, but made such a charge problematic at the very least. As the victims were assassinated on the basis of their membership of a group (in this case, male Bosnian Muslims old enough to bear arms), the act was, however, qualified as a genocide, following some very detailed and yet highly unconvincing arguments. The existence of logistical preparations (vehicles, fuel and equipment for digging mass graves), for example, was deemed sufficient to prove an intent to destroy the group which, as we know, is essential for a classification of genocide.

But a mass crime is never committed accidentally! It is the result of a planned action, and therefore necessarily involves intent. And a group, even when it is stable, is always an arbitrary construction: it is by definition the product of a number of attributes selected from amongst others, such as age, social status, religious affiliation, geographical location, skin colour and many other things. On the basis of such a precedent, any crime causing a “substantial number” of victims from a group established in accordance with stable criteria could be classified as genocide. From Liberia to Chechnya and Burma to the two Congos, the number of situations giving rise to such an accusation will increase. There is no doubt about the particular moral gravity of the planned physical destruction of a human group. There are, on the other hand, good reasons to be sceptical about the ability of justice to take full account of the gravity of “these crimes that can be neither punished nor pardoned” (Hannah Arendt).

It is possible that the Krstic case was only a stepping-stone to get to Milosevic and bolster the accusation of genocide against him. It is clear that the Darfur question is now a significant electoral issue in the USA, mobilising Christian conservatives to vote for George Bush and African-Americans for John Kerry. Crimes against humanity have been committed in both Srebrenica and Darfur, and it is right that the world should not be unmoved by such events. Upping the judicial stakes, however, driven by considerations that have little to do with the law, does a disservice to

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<sup>1</sup> “Genocide, a word with many meanings”, *Alternatives Internationales* no. 16, September 2004

<sup>2</sup> Extract from the decision of the ICTY: Prosecutor v/Radislav Krstic: ICTY-IT-98-33-T, Chamber 1, Judgment, 2 August 2001

<sup>3</sup> Cited by Samantha Power, “A Problem From Hell, America and the age of genocide” Pub. Perennial, New York, 2003.

international justice by undermining its credibility. More seriously, it increases radical fervour by removing any possibility of compromise, since there cannot be any negotiation with perpetrators of genocide. Either you fight them to the bitter end, or you die. The enemies of the International Criminal Court will be rubbing their hands in glee. They are the ones who gain the most from an escalation of this kind.