

Darfur: the International Criminal Court is wrong

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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.

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The International Criminal Court's (ICC) indictment of Sudanese President Omar al-Bashir was announced on the 15th anniversary of the Srebrenica massacre – a fortuitous coincidence, perhaps, but one that deserves more attention than a random occurrence. The Srebrenica killings gave rise to the tribunal's first conviction for genocide in Europe, against General Krstic, commander of the Serb forces that committed the massacre on 12 July 1995. Since then, all mass crimes can now lead to a charge of genocide. Let's not forget that 7,500 fighting-age men were killed while women, children, injured people and the elderly were evacuated by militiamen. The fact that they saved non-combatants was seen not as an attenuating factor but as an incriminating piece of evidence that indicated the targeting of a certain group – men old enough and able to bear arms – and an intention to kill demonstrated by their logistical preparations.

The aim to annihilate a "national, ethnic, racial or religious" group, which forms the basis of the genocide concept, has thus ceded place to a technical description based on both intention and targeting. It thus strips the concept of its specific meaning as it was used to characterize the crimes committed by the Nazis against the Jews and Hutu Power against Rwandan Tutsis. The Srebrenica case has opened the floodgates to countless similar criminal charges since few wars take place without massacres and no massacre is committed inadvertently.

There is nothing surprising, then, about the ICC's position on the Darfur war. The judges charged Bashir with three counts of genocide: "genocide by killing", "genocide by causing mental and physical harm", and "genocide by deliberately inflicting conditions of life calculated to bring about physical destruction". The targeted populations are Darfur's three major ethnic groups – the Fur Zaghawa and Masalit.

The first two counts are comparable to those brought against Krstic. The third calls for special comment. This count relates to prosecutor Luis Moreno-Ocampo's thesis that the Darfur "genocide" was committed in two consecutive stages: the first during the war and the killings perpetrated in the first eighteen months of the conflict when most of the violence occurred, then a second 'camp' stage where the extermination process continued in the displaced persons camps, no longer through direct violence but through privation and exhaustion.

Yet in these camps, located near Darfur's major cities as well as army garrisons, the largest emergency relief operation since the Second World War was set up. Tens of thousands of people were saved from probable death and over two million received essential aid. Health indicators are much better there than elsewhere in the country. These camps were also - as is always the case – a refuge for the rebel movements, which gained influence and resources. Yet the ICC speaks of "living conditions that will lead to physical destruction" – a sort of Auschwitz of the desert. It should also be noted that the ethnic origins of the Fur, Zaghawa and Masalit living in Khartoum (over one million people) gave these groups no reason for concern during the conflict. Preyed-upon Jews and Tutsis would no doubt have appreciated these conditions.

The ICC's accusation is not only inept, but also an insult to humanitarian, foreign and Sudanese workers, who retrospectively become unknowing accomplices to genocide. If one were to follow the ICC's line of thinking, one would have to conclude that these "useful idiots" of the Sudanese regime, while believing they were saving their fellow human beings, were actually working to build a huge Potemkin village behind which the Darfuri people were being exterminated according to plan. Are they now going to be charged with complicity in genocide? That, in any case, would be the logical conclusion.