

# **Against the memorial laws**

2012

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 sur notre website : [www.msf-crash.org](http://www.msf-crash.org)

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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 on our website: [www.msf-crash.org](http://www.msf-crash.org)

# Against the memorial laws

Rony Brauman

On 26 January, the French Senate passed a law criminalising the denial of genocides recognised by Parliament. It thereby approved the bill adopted by the National Assembly on 22 December despite its rejection by the Senate's law committee. The law seeks to criminalise the "denial or gross trivialisation" of the two genocides currently recognised as such by French law, i.e. the Holocaust under the so-called "Gayssot" law of 13 July 1990 and the Armenian genocide under the law of 29 January 2001.

I have already explained in these pages my opposition to memorial laws, aligning myself with legal scholars who believe that while laws may permit, require or prohibit, they are not designed to "recognise" an historic event or fact. I also agree with many historians who believe that it is not the role of a parliament or legal authority in a free State to determine historical truth.

It is up to national and international courts to characterise crimes based on current definitions. For the very reason that a parliament is not a court, the notorious legal scholar Georges Vedel has argued that France's 2001 law on the Armenian genocide violates the separation of legislative and judicial powers doctrine. As a result, the Constitutional Council may still censure this new bill because it is only an extension of the 2001 law, but the French president has already announced that he would submit a new bill. This issue must be darned important for a head of state to devote so much energy during such troubled times. While his anti-Turkish and electoral motivations are only too obvious, I will limit myself here to discussing the insurmountable contradictions of the law itself.

It should be recalled that the terms of the 1948 convention defining genocide were adopted word for word in the statutes of the criminal tribunals for Rwanda and the former Yugoslavia and for the International Criminal Court, subsidiary bodies of the UN Security Council. In both international and French law, genocide is defined as "any criminal activity aiming to destroy, in whole or in part, a particular human group, as such, by certain means. Those are two elements of the special intent requirement of genocide: the act or acts must target a national, ethnical, racial or religious group; the act or acts must seek to destroy all or part of that group<sup>1</sup>".

One need not be a legal scholar to understand that the concept is open to interpretation due to the complexity of violent situations in which these crimes are committed and the malleability of incriminating factors. French law "recognises" two genocides, while the UN, in view of its jurisdictions, acknowledges six: the two mentioned above as well as the Cambodian, Bosnian, Rwandan Tutsi and Sudanese Darfuri genocides. As soon as some are singled out by an official body, the others are relegated to the mass of undifferentiated misfortunes. By seeking to honour the memory of certain groups, we consign others to oblivion.

Moreover, Minister Patrick Ollier made a good point when he referred to the legal harmonisation argument during the parliamentary debates, which were otherwise very interesting. He basically argued that because France recognises two genocides it should penalise denial of the two in exactly the same way. Under the principle of equality before the law, which is difficult to refute, the current momentum for criminalising denial can only continue, set in motion by the very reasoning underlying memorial laws. This law is the fifth to be adopted by the French Parliament. All are interlinked in a flawless process that will keep growing as long as none of them are revoked. With a view to complete legal consistency, the next step will be genocides "recognised" by the United Nations. At least two columns that I published in this honourable magazine will then be punishable by law. Will the reader be able to find them?

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