

CONSTANCY IN CONTEXT

MICHEL FEHER*

1.

Does the violence suffered by the civilian population of Darfur constitute genocide? Since the spring of 2004, this question has been the subject of a debate that is both semantic and pragmatic since it bears at one and the same time on the pertinence of such a label and on the advisability of promoting it. Unlike previous controversies, notably over Rwanda and ex-Yugoslavia, the dispute aroused by the situation in western Sudan does not involve either the establishment of facts or the assigning of responsibility. Even the measures deemed necessary to put an end to the horror are hardly in question. Except for a few isolated voices, all parties agree not only about the frightful toll of the conflict but also about imputing to the governmental forces and their local auxiliaries the bulk of the persecutions inflicted on the Furs, the Masaalits, and the Zaghawas—i.e., the populations among which the two insurgent movements against the Khartoum regime have recruited their fighters. They also agree on demanding that the Sudanese government be dissuaded from forcing the surrender of the rebels by attacking the populations whom these rebels claim to represent.

Consequently, it is not the anatomy of the conflict that causes dissention among those journalists, scholars, diplomats, international civil servants, and non-governmental activists who are all engaged in the debate over the existence of possible genocide in Darfur. Rather, the disagreement that polarizes them consists of a dual dispute over the scope and the performative power that should be granted to the 1948

* This is an English adaptation of the original French version of this essay. Michel Feher, *Constance Déroutante*, 31 VACARME, Spring 2005. Michel Feher is a philosopher and founding editor/publisher of Zone Books, NY. He is also the author of *POWERLESS BY DESIGN: THE AGE OF THE INTERNATIONAL COMMUNITY* (2000), in which he addresses Western officials' responses to post-Cold War conflicts and analyzes the reactions of the left to their respective governments' positions.

Convention on the Prevention and Repression of the Crime of Genocide.¹ The litigants are quarreling over whether the acts of violence perpetrated in Darfur conform to the definition of the crime that the convention calls genocide and also over the efficacy of an approach designed to persuade the representatives of the governments that have signed the convention that it indeed applies to the situation of the provinces of western Sudan.²

Those who favor calling what is happening in Darfur genocide make two claims. First, they contend that the alleged misdeeds of the *janjaweed* militias and their protectors in the Sudanese government—massacres, rapes, burnings of villages, destruction of crops, and drying up of water sources—actually fit within the definition of genocide given by the convention. In their view, these crimes are instances of genocide because they are designed to “Arabize” the region by killing or chasing away a major portion of the “African” inhabitants. Second, they claim that stressing the genocidal nature of these misdeeds is the best way of forcing the “international community” to act. Article 8 of the 1948 Convention stipulates that once they agree to call a certain set of criminal acts genocide, the governments of the countries that have ratified the convention “may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression” of these acts.³

By contrast, the critics of the efforts invested in attaching the label genocide to the situation in Darfur challenge both the efficacy and validity of such a discursive strategy. In the first place, they find it difficult to actually demonstrate that the crimes of militias armed by the Khartoum regime manifest, as Article 2 of the convention states, the intention “to destroy, in whole or in part, a national, ethnical, racial or religious group.”⁴ Consequently, they fear that the zeal deployed in order to portray the violence in western Sudan as a case of genocide might lead those advocating such a strategy to mortgage the credibility of their cause for the sake of increased political and media impact. Finally, from a pragmatic standpoint, they consider it naïve to imagine that once a head of state or government pronounces the word genocide, he or she will necessarily be impelled to demand that the UN Security Council

¹ Convention on the Prevention and Punishment of the Crime of Genocide, *adopted* Dec. 9, 1948, 78 U.N.T.S. 277 [hereinafter Convention on Prevention of Genocide].

² For an illuminating analysis of this debate, see Scott Straus, *Darfur and the Genocide Debate*, FOREIGN AFF., Jan./Feb. 2005, at 123.

³ Convention on Prevention of Genocide, *supra* note 1, art. 8.

⁴ *Id.* art. 2.

assumes its responsibilities. Thus, for the most part, it is neither out of lenience toward the regime of General Al-Bashir nor out of the intention to minimize the seriousness of the situation in Darfur that a number of organizations and individuals involved in human rights and humanitarian activism are refusing to accuse the Sudanese authorities and their accomplices of genocide. Rather, it is because they are convinced that, fragile as it is from a technical perspective, this accusation will not have the anticipated dissuasive effect.

2.

In the context of this debate, Jean-Hervé Bradol, the current president of the French section of Médecins sans Frontières (MSF), wrote an editorial that was published on September 14, 2004, in the daily *Le Monde*.⁵ The purpose of the editorial was to criticize—or even chastise—those humanitarian activists who seek to have the situation in western Sudan recognized as the genocide of the “Africans” of Darfur. Yet, it is important to remember that the author of this piece belongs to an organization that was one of the first to testify before the Security Council both about the atrocities committed by the *janjaweed* and about the links tying these militias to the Sudanese authorities.⁶ Thus, one would have imagined that Jean-Hervé Bradol (informed by the analyses of MSF members present in the region) might have aligned his intervention with others who were reluctant to invoke the 1948 Convention and consequently be content to plead for more prudence. As formulated by representatives of Human Rights Watch and a recent UN report on human rights violations in Darfur, such a plea would argue that, while the war crimes and crimes against humanity committed by the protégés of the Khartoum regime are no less grave than those that do constitute genocide, it nevertheless remains semantically difficult and pragmatically counter-productive to apply the 1948 Convention to them. However, the position adopted by Bradol in his *Le Monde* article is a strikingly different one.

⁵ Jean-Hervé Bradol, *D'un génocide à l'autre?* [From One Genocide to Another?], LE MONDE, Sept. 14, 2004, at 23, available at <http://www.msf.fr/documents/base/2004-09-14-Bradol.pdf>.

⁶ See Ton Koene, Emergency Coordinator, Médecins Sans Frontières, Statement at the United Nations Security Council “Arria Formula” Meeting: The Humanitarian Situation in Darfur, Sudan (May 24, 2004), available at <http://www.msf.fr/documents/base/2004-05-24-KoeneVO.pdf>.

For the president of MSF France, there are two major reasons not to concur with those activists who proclaim that genocide is taking place in Darfur. The first one relates to the racial categories necessarily used to support this thesis. In the convention's terms, only a "national, ethnic, racial or religious group" can be the target of a genocidal enterprise;⁷ therefore, declaring that genocide is happening in the provinces of western Sudan amounts to asserting that "Arab" militias supported by an "Arab" government are trying to destroy "African" tribes. (Since both persecutors and persecuted are Sudanese and Muslims, nationality and religion cannot be invoked; thus, the "genocide" can only be construed in terms of race or ethnicity.) While Jean-Hervé Bradol admits that the actors themselves often echo the presentation of the conflict in racial terms, he nonetheless contends that such a presentation is inadmissible on two counts. First, he considers it to be simply fallacious both because the *janjaweed* are no less "African" than their victims and, more generally, because speaking in terms of Arabs vs. Africans tends to validate the discredited biological concept of race. Second, the president of MSF also questions the motives of those who accuse the Sudanese government and local allies of genocide. What Bradol faults them for is not that they mistakenly believe in the power of a word to force the international community out of its inertia. Rather, the problem for Bradol is that they make it their mission to convince the most eminent members of this community of their obligation to interfere in *every* situation in which human rights are being massively violated. In Bradol's perspective, it is this mission that is the motive behind their decision to resort to a fallacious presentation of the situation in western Sudan. For the president of MSF France, what causes the humanitarians he criticizes to speak of genocide in the case of Darfur derives above all from their faith in "the construction of a new international order founded on a militant promotion of human rights, by force if necessary" whereas "the record of recent international military interventions ought to restrain them from following this route."⁸

Readers familiar with the positions taken by MSF—especially during the first half of the 1990s—are bound to be perplexed by the reasoning of its current president. First, they may be surprised by the proposition that it would be necessary to rehabilitate the biological concept of race in order to justify the existence of genocide in Darfur.

⁷ Convention on Prevention of Genocide, *supra* note 1, art. 2.

⁸ Bradol, *supra* note 5.

No doubt it would be both erroneous and harmful to classify the local populations as “Arabs” or “Africans.” Yet it is fair to say that every genocidal enterprise is predicated on a classification of this type. Those who plan genocides are hardly concerned with the scientific pertinence of the difference they draw between the people they seek to eradicate and the one in the name of which they pretend to act: instead, what they rely upon is a political construction of a world composed of two races or two ethnic groups, of which one is supposed to be healthy but is menaced by the parasitical nature of the other. Thus, it is by no means necessary to give credence to the idea that Hutus and Tutsis are two different ethnic groups; for example, to admit that Rwandan Tutsis were the victims of genocide in 1994. Similarly, today, there is no need to believe that the *janjaweed* and their victims really belong to two distinct racial groups in order to make the claim that the former are committing genocide against the latter.

No less surprising is Jean-Hervé Bradol’s criticism of the objective pursued by those who make such a claim. While the president of MSF France is in line with the guiding principles of his organization when he proclaims that a humanitarian NGO ought to “focus its efforts on providing impartial relief,” it must be recognized that in the past this recipient of the 1999 Nobel Peace Prize did not always consider that being true to its mission should prevent MSF from calling upon political authorities to intervene militarily. In particular, we may recall that between 1991 and 1995 MSF representatives forcefully denounced the pretense of humanitarianism and impartiality invoked by the so-called international community in order to treat both the genocide in Rwanda and the ethnic cleansing in ex-Yugoslavia as if they were natural disasters. For MSF, such a posture constituted nothing less than a dreadful imposture since it allowed Western governments to buy cheap virtue by sending foodstuffs and medicines to places where, in fact, only troops mandated and equipped to quell the violence could have saved the victim populations from their executioners.

With respect to the current situation in Darfur, even if one admits that the massacres to which the Fur, Massalit, and Zaghawa are exposed belong to a different legal category than the extermination of the Tutsis of Rwanda, it still must be asked why the same organization that once invited Europe to oppose Slobodan Milosevic’s plans for the former Yugoslavia by breaking the Serbian military’s siege of Bosnian towns, now considers that it is irresponsible to call for the thwarting of General Al-Bashir’s plans for western Sudan. Although the analogies between

the two conflicts should not be pushed too far, it is nonetheless fair to say that both the tactics and allegations of the Sudanese authorities are reminiscent of Milosevic's. Indeed, like the former Serbian leader, Al-Bashir and his associates not only rely on local militias to accomplish the bulk of the "cleansing" work but they also deny that these militias are operating under their control and claim that their sole preoccupation consists of preserving national unity. Thus, in light of these remarkable similarities between the deeds and rhetoric of the two nationalist leaders, the contrasts between the Jean-Hervé Bradol's 2004 editorial and statements made by his predecessors at the presidency of MSF France should give us pause.

3.

It would be misleading to simply interpret MSF's apparent turnabout as a doctrinal revision—especially since Bradol's editorial lays claim to the guiding principles of his organization. To better understand what these principles are one must go back to 1978 when a group of founding members of MSF, gathered around Bernard Kouchner, left the organization. The split was largely motivated by doctrinal differences, and it prompted those who stayed and managed the organization after 1978 to emphasize the differences between their conception of humanitarianism and that of Kouchner. For the latter, the role of humanitarian activists is not merely to gain access to a population whose survival is threatened but also, and even primarily, to act as a whistleblower and alert the world to the causes of that threat. By contrast, MSF—in its post-Kouchner incarnation—has always maintained that emergency medical intervention is indeed its sole *raison d'être*. As its record amply shows, the specificity of MSF's self-assigned mandate never prevented its representatives from denouncing the intolerable situations that they were witnessing.

Yet, they have remained faithful to the principles that caused them to break with their former associates insofar as what they feel entitled to denounce is strictly limited to what they see as the hindrances and distortions affecting their own rescue work. In other words, while Bernard Kouchner and his followers consider that the ultimate purpose of humanitarian work consists of making a racket designed to arouse public opinion—and thus prompt a reaction from political representatives—for their part, MSF affiliates believe that the opposite is true. The noisy

indignation to which they sometimes resort should, in their view, be conceived as a means of preserving or restoring the conditions to allow humanitarian work.

Central to MSF's conception of humanitarianism is the need to distinguish the vocation of the humanitarian activist from those of the professional politician or the public intellectual. According to this approach, humanitarians must seek to preserve their independence from governmental institutions—or at least refuse to be an instrument of governmental strategies. Yet, according to MSF's perspective, they must also resist the temptation of posing as a moral authority. Why? Because taking advantage of humanitarianism's social prestige to assume the role of civil society's ethical voice would be a crude instrumentalization of their own profession as healthcare givers.

MSF's obsession with its own professional boundaries is not meant to persuade its personnel that they should ignore the political context in which their work takes place. On the contrary, the organization's representatives consider that sticking to their particular point of view is what enables humanitarians to hold political agencies to account. In their view, providing humanitarian relief is not in itself a political activity, in the sense that humanitarians don't choose the people they seek to help according to the cause that these people defend, but the conditions under which humanitarians operate do depend on the conduct of political actors—that is, on whether governmental authorities that are supposed to be subject to the rules of humanitarian law actually abide by them. Thus, from MSF's standpoint, humanitarians are playing their proper part—and are playing that part more efficiently—when they limit their political interventions to exposing the violations of their own prerogatives.

Over the last quarter-century, MSF has considered it both its place and its duty to intervene publicly in three kinds of cases: First, when aid missions are hindered—for instance when troops, regular or not, prevent relief agencies from getting access to the populations in need of humanitarian aid. Second, when aid operations are perverted by political authorities; the classic example of such perversion is that of the Ethiopian government in 1984 when it called on humanitarian organizations to put people back on their feet simply so that they could be deported. Third, when the mantle of humanitarianism is abusively appropriated. Characteristic of Western powers since the end of the Cold War, the appropriation of nongovernmental humanitarianism by governmental agencies is undeniably the chief phenomenon that has

prompted MSF to both voice its outrage and better articulate its doctrine. Thus, it is also by examining the organization's position on this issue that we can understand how Bradol's sense of MSF's doctrinal constancy can be reconciled with the considerable differences between the organization's position regarding the current crisis in Darfur and what MSF representatives were writing about the conflicts of the first half of the 1990s.

4.

In an article dating from 1991 entitled "Contre l'humanitarisme," Rony Brauman—who presided over MSF France from 1982 to 1994—claimed that the public admiration that humanitarian activists had enjoyed since the end of the Cold War presented a major danger for organizations like his.⁹ In Brauman's opinion, the waning lure of revolutionary socialism and, more generally, the growing skepticism toward political ideologies had had the effect of boosting the reputation of humanitarianism. Deemed inspiring and morally exemplary, humanitarian activism compared favorably with partisan militancy, which public opinion alternatively saw as cynical or sectarian.

The problem with humanitarianism's increased appeal, Brauman added, was that governments began to claim the humanitarian label for themselves: rather than simply encourage their constituents to participate in an idealistic venture whose consensual character they praised, the political leaders of rich nations were now taking pains to polish their own images by proclaiming that their policies, too, were motivated by humanitarian concerns. Faced with citizens who, according to every survey, were at the same time annoyed with politicians' jousting, disdainful of visionless leaders and, yet, disenchanted with utopian promises, governments saw the unique blend of impartiality, generosity, and modesty that public opinion attributed to aid-workers as the set of virtues that they would also want to be associated with. Consequently, the post-Cold War era saw the development of a *state humanitarianism*, incarnated in France in the figure of Bernard Kouchner—who was the first French minister in charge of humanitarian action—a development

⁹ Rony Brauman, *Contre l'humanitarisme* [Against Humanitarianism], *ESPRIT*, Dec. 1991, at 77.

that the then-president of Médecins sans Frontières criticized on two counts.

In the first place, Rony Brauman contested that by deliberately blurring the distinctions between their own relief agencies and private humanitarian organizations, governments raised doubts among the aided populations about the status of those aiding them. According to Brauman, making governmental and nongovernmental organizations indistinguishable was dangerous both for recipients and providers of private humanitarian aid: the victims of a conflict might refuse to be cared for by aid workers that they would perceive as the emanation of a foreign power, while the aid workers themselves could become the targets of forces hostile to the governments with whom they would be identified.

Secondly, Brauman accused governments of exhibiting their humanitarian preoccupations in order to deny the political character of their actions and decisions. For the author of “Contre l’humanitarisme,” the very notion of humanitarian crisis, insofar as it applied indifferently to natural disasters and man-made slaughter, enabled Western leaders to respond to the latter as if they were dealing with the former. In other words, adopting the posture of humanitarians solely concerned with saving lives and healing the injured was the rhetorical device that allowed the leading members of the so-called international community to obfuscate the fact that their policies were what governmental policies always are—and for that matter, ought to be: namely, the result of a particular arbitration between the various interests that a government seeks to promote and the values to which it claims to be committed.

Throughout the 1990s and to this day, Rony Brauman and his successors at MSF have relentlessly opposed and exposed the appropriation of humanitarianism by political agencies. Confronted with what they see as an abusive co-optation of their own profession, they have sought to remind political leaders that their prerogatives and responsibilities consist of deciding on how to balance their often conflicting allegiances to the rule of law, their national interests, and the stability of international relations—and, in turn, of letting their constituents decide whether the balancing act they performed was judicious. Assuming these responsibilities, MSF representatives contend, should therefore preclude political decision-makers from identifying their motivation with that of an emergency doctor or a nurse.

Warning against the impostures and dangers born from confusing politics and humanitarianism has undeniably been the main

object of MSF's critical interventions since the end of the Cold War. And on this score, Jean-Hervé Bradol's editorial is no exception. Yet this doctrinal constancy on the part of Médecins sans Frontières must be understood in the context of a significant shift in the purpose for which political authorities resort to the language of humanitarianism.

5.

During the first part of the 1990s, Western governments spoke of the ethnic cleansing campaign in Bosnia and the genocide in Rwanda in terms of "humanitarian disasters" because they did not want to intervene militarily in these two countries. At that time, humanitarianism, conceived as the proper framework to understand and respond to humanitarian disasters, was synonymous with peaceful and impartial compassion for all the victims—at least, that is how European and American leaders wished their citizens to interpret their reluctance to fight Bosnia's ethnic cleansers and Rwanda's genocidal killers. For their part, the detractors of this first use of the humanitarian theme—with MSF in the lead—were quick to denounce the so-called humanitarian concerns affected by the representatives of the international community as a hypocritical attempt to excuse their decision to abandon the Bosnian Muslims and the Rwandan Tutsis to their fate.

Already bracketed at the end of the summer of 1995—when, after the Srebrenica massacre, the siege of Bosnian towns was finally broken—the "humanitarian" motives invoked to rule out a military intervention suddenly gave way to a very different usage of humanitarianism when NATO forces bombarded Serbia and occupied Kosovo in the spring of 1999. In this new context, Western powers certainly did not need to display their humanitarian preoccupation in order to stave off accusations of pusillanimity: they had just invaded a sovereign country without even receiving the approval of the Security Council. However, references to humanitarian concerns did not disappear from their rhetoric—quite the contrary. According to the officials in charge of NATO's intervention in Kosovo, Operation Allied Force was indeed a humanitarian intervention. No longer an excuse for inaction, humanitarianism was now the justification for a military action that could not easily be reconciled with the prescriptions of international law. The same humanitarian solicitude that had dissuaded Western leaders from taking sides and committing their own troops in the regional

conflicts of the early 1990s was now being held as the main reason to designate the guilty party and get militarily involved.

Faced with this remarkable rhetorical shift, MSF responded with impeccable rigor. Despite the organization's previous positions—notably about the failure of the international community in Bosnia and Rwanda—its representatives did not decide to openly support NATO's operation and turn a blind eye to the discursive strategy employed to justify it. Instead, the statement they published in the wake of the intervention claimed that while states were sometimes justified in resorting to force, humanitarian concerns were not what justified their course of action. In other words, "humanitarian intervention" was as much a misnomer as "humanitarian disaster."

However, MSF's problems with abusive appropriations of the humanitarian mantle did not end with Kosovo. Indeed, the Bush administration's campaigns in Afghanistan and Iraq gave a new twist to the co-optation of humanitarianism by governmental agencies. Rather than a motive invoked to justify a military intervention, humanitarian aid became a facet of the recent United States-led wars. As they launched the military operations that would lead to the occupation of Afghanistan and Iraq, George W. Bush and his allies no longer contended, as NATO's representatives did when they occupied Kosovo, that providing humanitarian relief was the purpose of their action. What they claimed instead was that dropping bombs on the one hand, and dropping food and medical supplies on the other hand, were two inseparable dimensions of their struggle against "evil" and its axis. Consequently, the humanitarian NGOs that were present on the ground found themselves embedded in the dual operations—warring and healing—carried out by the United States-led coalition.

Faced with this crude instrumentalization of their activity as well as the colonization of their space, MSF did not only decide to leave the territories governed by the American army and its allies. Convinced that the political context created by the invasions of Afghanistan and Iraq presented an unprecedented danger for private humanitarian organizations, MSF's representatives started to revise their evaluation of "contemporary international military interventions," to quote Bradol's editorial.¹⁰ Such a revision led MSF to firmly distance itself from all those in the humanitarian community who continued to call for such interventions. Back in 1999, Médecins sans Frontières merely stressed

¹⁰ See Bradol, *supra* note 5.

that humanitarianism should never serve as pretext for acts of war—even when the latter were otherwise justifiable. Today, however, the current president of MSF seems convinced that the abusive appropriation of humanitarianism produces such dreadful consequences for humanitarian organizations that it should dissuade them from ever calling for international military interventions.

Hence Jean-Hervé Bradol's animosity toward the efforts deployed to have Darfur recognized as a case of genocide. At a time when the United States and its allies no longer use humanitarian rhetoric to justify their powerlessness but, on the contrary, to magnify their own power, MSF's constant stance is precisely what makes its representatives sound as if they were contradicting their previous positions. As the purpose for which humanitarianism is co-opted by governmental agencies changes from excusing inaction to moralizing military action and even embedding relief organizations, MSF's response to what its representatives see as abusive appropriations of their vocation changes accordingly. Rather than warding off the confusion between state-sponsored massacres and natural disasters, MSF's current priority is to prevent the incorporation of humanitarianism as the moral tenet of an imperial project.

How should one assess the gyroscopic movement produced by MSF's doctrinal constancy? Condoning it amounts to considering that the 1990s are definitely over. By contrast, for those activists who demand that the international community stop the genocide in Darfur, the struggles, the horrors, and the causes that characterized the last decade of the twentieth century are still with us today. No doubt Jean-Hervé Bradol is right to claim that if they fail to acknowledge the post-9/11 context, humanitarian activists are bound to subject their own agenda to the interests of the "axis of good." However, if these same activists overestimate the break between the current decade and the 1990s, they are bound to overlook the lot of those people who have the misfortune to be persecuted by political regimes faithful to the nationalist strategy that NATO's intervention in Kosovo—and the UN intervention in East Timor that took place in its wake—endeavored to defeat. Hence, the tragic neglect of the people of Darfur: their sufferings figure too low among the priorities of the architects of "humanitarian interventions," yet they also come too late to mobilize the critics of humanitarianism's co-optations.