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Shara Abraham

*American University Washington College of Law*

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## Chechnya: Between War and Peace

by Shara Abraham\*

On March 3, 2000, Russia declared the official end of the second war in Chechnya, the first of which occurred from 1994–1996. Yet one year later, the Russian military continues to carry out its campaign against Chechen independence with brutality. The war in Chechnya has cost thousands of lives, displaced thousands more, and has severely damaged the republic's infrastructure. As was the case during the first war, during the second Chechen conflict the Russian military has perpetrated horrors upon the civilian population in Chechnya—from torture and beatings in notorious “filtration camps” to indiscriminate shelling and bombings, forced repatriation, and arbitrary detention and arrest.

Russia is a member of the Council of Europe, a State Party to the European Convention on Human Rights and Fundamental Freedoms (European Convention), a State Party to the Geneva Conventions, and a signatory to the Convention on the Prevention and Punishment of the Crime of Genocide. Accordingly, Russia is obligated to respect human rights and humanitarian law guaranteed by these instruments. Russia's military offensive in Chechnya has resulted in blatant violations of these international legal obligations.

Thus far, the Russian legal system has proven to be ineffective in bringing about accountability for Russia's human rights and humanitarian law violations in Chechnya. Equally disturbing is the international community's failure to demand accountability from Russia. Fear of angering and antagonizing Russia has all but paralyzed the international community, as evidenced in part by its failure to demand Russian compliance with a UN Commission on Human Rights resolution condemning the atrocities in Chechnya. Consequently, Russia has been able to violate international human rights and humanitarian law with impunity. Yet there are other mechanisms available for pursuing justice in Chechnya. For instance, the UN Security Council might establish an international criminal tribunal for Chechnya akin to the international criminal tribunals for the former Yugoslavia and Rwanda. Additionally, the UN could establish an international commission of inquiry or prosecute Russia before the International Court of Justice. Outside the UN system, the European community might bring an inter-state complaint against Russia before the European Court of Human Rights.

### Historical Background

The self-proclaimed Chechen Republic lies in the northern Caucasus region—bordered by Russia to the north and Georgia and Azerbaijan to the south—and is home to nearly one million Chechens. During the Stalinist era (1924–1953), Chechens, along with other minority groups, were deported to Central Asia and Siberia. In the late 1950s, Soviet authorities permitted Chechens to return to their homeland. Having been deprived of their land and economic resources, for decades the Chechens sought independence from the Soviet Union and, after it dissolved, from the Russian Federation.

In December 1994, Russian troops invaded the separatist Chechen Republic. Three factors supported the invasion: Chechnya's vast oil resources and the presence of oil pipelines on its territory, Chechnya's strategic location in the Caucasus mountains, and the fear that permitting Chechnya's secession would set a

precedent for other republics to secede. Two years of bitter fighting ensued. By August 1996, Aslan Maskhadov, the leader of the Chechen rebel forces, and Russian General Alexander Lebed negotiated an agreement providing for a withdrawal of Russian troops. The agreement notably postponed a decision on Chechnya's constitutional status until 2001. The following winter, Maskhadov won the presidential elections and became president of Chechnya's separatist government. Six months into his presidency, Maskhadov and then Russian president Boris Yeltsin signed a formal peace treaty ceasing the Russian offensive in Chechnya, officially ending the first war. While the peace treaty left open the question of Chechnya's independence, Russia agreed to abide by norms of international law and not exercise force to settle disputes. In the ensuing years, Chechnya has existed under a *de facto* independence.

By August 1999, the Chechen conflict was re-ignited. The renewed fighting was in part a response to Chechen aggression in neighboring Dagestan and in part to a series of bombings in Moscow and other Russian cities, which the Russian government blamed on Chechen separatists. On September 15, 1999, CNN's Moscow Bureau reported that dozens of suspects and stockpiles of explosives had been seized in connection

with the bombings. Having won the presidency largely because of his opposition to Chechen independence, Russian President Vladimir Putin has consistently sought to validate Russia's presence in Chechnya by labeling it an “anti-terrorist operation [that] must be followed through to the end.”

### Violations of Humanitarian Law

The war in Chechnya is characterized by egregious violations of international humanitarian law. The Russian military has perpetrated violent crimes upon the civilian population in Chechnya, including mass killings, deliberate and indiscriminate shelling and bombing of civilian areas, arbitrary arrest and detention, torture and beatings, systematic rape, and forced repatriation from neighboring Ingushetia into the Chechen war zone. Exacerbating the already dangerous situation, Chechen fighters have used civilians as human shields. Chechen forces also have summarily executed Russian soldiers in contravention of humanitarian law. According to numerous non-governmental organizations, however, Russian forces have committed the majority of abuses.

Russian military tactics adhere to a pattern of directly targeting civilians. These tactics breach the requirement enumerated in Article 48 of the First Additional Protocol to the Geneva Conventions. Article 48 provides that “[i]n order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.” As part of its campaign in Chechnya, however, the Russian military has carried out three large-scale civilian massacres. Through detailed interviews with over 500 witnesses, Human Rights Watch documented these massacres. In the village of Alkhan-Yurt, Russian troops killed 17 civilians during a looting spree and burned homes and raped several women. In the Staropromyslovski district of Grozny, Russian

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Photo courtesy of Human Rights Watch

Russian military forces in Chechnya.

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soldiers have murdered more than 50 civilians since taking control of the district. In the Aldi district of Grozny, Russian forces shot more than 60 civilians who were waiting in their streets and yards for soldiers to check their resident documents. Additionally, on October 29, 1999, a Russian air attack in the Ashkoy Martan district hit a humanitarian convoy which, according to Amnesty International, included vehicles clearly marked with the Red Cross emblem. This particular attack violates Article 16 of the Fourth Geneva Convention, which stipulates the wounded and sick are to be afforded “particular protection and respect,” as well as Article 21, which explicitly states that vehicles conveying the sick and wounded are to be respected and protected.

In its brutal campaign against Chechen separatists, the Russian military has concentrated on the civilian population in the besieged Chechen capital of Grozny. In December 1999, Russian aircrafts dropped leaflets over Grozny, warning civilians the Russian military would consider those remaining past December 11, “terrorists and bandits [who] will be destroyed by artillery and aviation.” The Russian military evidently showed no regard for those who were too sick or frightened to leave, or simply had not seen the leaflet. According to Amnesty International, even when Chechens attempt to flee via “safe corridors,” Russian troops continue to carry out direct attacks on civilians. Consequently, civilians have effectively been trapped for months behind front lines.

The most egregious humanitarian law violations occur within the detention centers known as “filtration camps.” Russian troops often detain Chechens for not having proper registration papers and a residence permit, or based on suspicion of being a separatist fighter. Women and children often are detained on suspicion of being related to a Chechen fighter. The Russian government has used various tactics to conceal the existence of these detention centers. For instance, the Russian government temporarily removed hundreds of detainees from the notorious Chernokosovo camp during a visit from Council of Europe monitors. NGOs have gleaned information about these camps from survivors.

As reported by Amnesty International, upon arrival at the “filtration camps,” detainees are forced to run through a gauntlet of guards who beat detainees with nightsticks, clubs, and metal bars. Within these makeshift facilities, Chechen men, women and children are routinely and systematically raped, beaten, and brutally tortured with electric shocks and tear gas. Often confessions of being a guerrilla fighter are extracted dur-

ing beatings and torture. Russian practices in these “filtration camps” violate various provisions of the Geneva Conventions, including Article 3(1) of the Fourth Geneva Convention, which prohibits violence to life and person, cruel treatment and torture, and “outrages upon personal dignity.”

These acts by Russian forces in Chechnya constitute grave human rights abuses and violate Russia’s humanitarian law obligations under the Geneva Conventions, which protect civilians and other non-combatants during armed conflict. Pursuant to the Conventions, Russia is obligated to focus attacks on combatants and undertake safeguards to protect civilians. Moreover, Russia did not invoke Article 15 of the European Convention, which provides for a right of derogation of international humanitarian law and permits partial limitation of civilian rights during war or a state of emergency. By failing to secure the right of derogation, Russia has breached numerous provisions of the European Convention, including Article 3, prohibiting torture or inhuman or degrading treatment or punishment, and Article 5, which protects the right to life and security of person.

### **The Elusiveness of Accountability within the Russian Legal System**

Russia has thus far failed to establish a meaningful accountability process. In addition to regular law enforcement agencies, Russia established three bodies to deal with human rights abuses in Chechnya—the Office of the Special Representative of the President of the Russian Federation for Ensuring Human and Civil Rights and Freedoms in the Chechen Republic (Office of the Special Representative); a purportedly independent national commission, headed by former Justice Minister Krasheninikov; and a State Duma Commission on Normalizing the Socio-Political Situation and Human Rights in Chechnya.

The inefficacy of these agencies largely is due to their limited mandates. They can neither subpoena evidence or witnesses, nor submit evidence to prosecutorial authorities. Further, the agencies have not established cooperative relationships with domestic prosecutorial agencies. The Office of the Special Representative, however, has secured the release of many Chechen detainees in Russian custody and has handled individual complaints, placing emphasis on those involving food, housing, identity papers, and other necessities. Moreover, this agency has established a cooperative working relationship with the Council of Europe by permitting the deployment of three European experts to assist with investigations. Yet the Office of the Special Representative cannot investigate complaints of abuse by Russian forces, nor can it compel the prosecutorial authorities to investigate allegations of abuse. Even more troubling is a rejection by the agency’s director that atrocities have occurred. In contrast, Aleksander Tukashov, head of the State Duma commission, recently acknowledged Russia’s violations of international humanitarian law during the two Chechen wars. Despite these acknowledgments, procedural barriers have rendered the State Duma commission equally ineffective in pursuing investigations and prosecutions. A January 24, 2001, joint statement by human rights organizations noted that the purportedly independent national commission now appears to be defunct.

Russian prosecutorial authorities and government ministries also are inadequate. Following the massacre in the Aldi district of Grozny, the Russian Ministry of Defense issued a denial: “These assertions are nothing but a concoction not supported by fact or any proof.” As reported in *Novaya Gazeta*, a Russian newspaper, the Prosecutor’s Office received a strict order from Moscow to slow down the investigation of the Aldi massacre and to cease distributing official documents confirming the massacre occurred

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to prevent victims' families from presenting such documents as evidence to international organizations.

The current inefficacy of the Russian domestic legal system dates back to the aftermath of the first Chechen war, when Russia did not prosecute any of its military personnel for violations of humanitarian law. According to the International Helsinki Federation, Russia's main military procuracy, or prosecutorial office, opened and investigated 1,500 criminal cases against Russian soldiers serving in Chechnya. The procuracy convicted only 27 conscripts or *kontraktniki* (a soldier hired on contract by Russian armed forces). Only six of the 27 convictions involved crimes against the civilian population.

There is no indication that this time Russian investigations will be any more effective in bringing perpetrators to justice. United Nations High Commissioner for Human Rights Mary Robinson stated, "Russian investigations into atrocities in Chechnya have simply not been credible. The United Nations must seize the initiative here—not hand it back to Moscow." The facts support the High Commissioner's argument. As reported in the *Washington Post*, of the 2,121 crimes by the Russian military against Chechen civilians, only 34 have gone to court. There has not been a single prosecution for the three civilian massacres.

### Response of International Community

During the 1994–1996 Chechen war, the international community repeatedly condemned the atrocities, but remained silent when Russia failed to initiate investigations or punish perpetrators of humanitarian crimes. The international community's relative silence is a familiar response. Once again Russia has failed to prevent, investigate, or punish perpetrators of humanitarian crimes. Despite Russia's failure to account for its atrocities, the international community again has refrained from demanding accountability. The only concrete measure signifying international opposition to Russia's actions in Chechnya occurred in April 2000, when the Council of Europe suspended the Russian delegation's right to vote.

On January 25, 2001, the Council of Europe restored Russia's voting rights, retreating from the semblance of a harsh stance toward Russia. Advocacy organizations labeled the restoration of voting rights a propaganda victory for Russia. In the week leading up to the vote, Putin announced a troop reduction and approved a new structure for the Chechen civilian government. Additionally, Putin transferred control of the offensive in Chechnya from the military to the Federal Security Service, successor to the KGB. A recent *Washington Post* editorial surmised this shift meant the war will be "less conspicuous and even more directly under Mr. Putin's control." Yet in spite of the skepticism surrounding these recent offerings by Putin, the Council restored Russia's voting rights.

The West's response to the Chechen war is contradictory. During the war in Kosovo, British Prime Minister Tony Blair remarked, "[t]he principle of non-interference [in other countries' affairs] must be qualified in important respects. [War crimes, acts of genocide and serious violations of human rights,] can never be an internal matter." Where Russian violations in Chechnya are concerned, however, the international community has failed to demonstrate the same resolve. As with the first war, the international community's passiveness enables Russia to continue its brutal campaign in Chechnya with impunity.

International efforts to put an end to the atrocities have been limited to non-binding resolutions. In April 2000, the European Union sponsored a resolution condemning the atrocities in Chechnya, which the UN Commission on Human Rights adopted at its 56th session. Specifically, the resolution deplored human-

itarian law violations in Chechnya and called upon the Russian government to immediately establish a national, broad-based commission of inquiry and to investigate and prosecute, in full compliance with international law, alleged violations of human rights and breaches of humanitarian law. The resolution also called on Russia to cooperate with intergovernmental and non-governmental agencies seeking to conduct their own inquiries in Chechnya and to grant immediate and unrestricted access to the UN High Commission for Refugees and the International Committee for the Red Cross. Nearly a year later, Russia has refused to implement the resolution's key provisions.

### Possible Mechanisms for Demanding Accountability

#### *Pursuing Accountability within the UN System*

In recent years, the UN Security Council created two ad hoc international criminal tribunals—the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). Additionally, there has been discussion about creating ad hoc tribunals for East Timor, Cambodia, and Sierra Leone. Although there is little movement toward creating such a tribunal for Chechnya, a substantial body of evidence exists documenting Russian atrocities, including statements and field orders from Putin and military officials, the ultimatum issued to the Grozny populace, reports of independent press and NGOs, and witness testimony. Further, the establishment of the ICTY and the ICTR set a precedent for judicial intervention on the territory of a third party where war crimes and human rights violations occur.

Russia's position on the UN Security Council effectively thwarts international efforts to hold it accountable. To be precise, Russia's veto power threatens to obstruct any legal mechanism within the UN system. Just as Russia vehemently opposed the establishment of the ICTY, clearly it would oppose the establishment of a tribunal for Chechnya.

Reluctance to deal harshly with Russia compromises the international commitment to protecting human rights and denigrates the credibility of international bodies. As Holly Cartner of Human Rights Watch stated, "If the UN tosses the ball back to the Russians, it will have abdicated its solemn responsibility to safeguard human rights. If it [the UN Commission on Human Rights] fails to launch its own investigation in Chechnya, it has foresworn its most important duty." The Council of Europe's recent decision to restore Russia's voting rights most likely marks a retreat from any attempts to sanction Moscow.

A second option, advocated by NGOs, is the creation of an international commission of inquiry. This commission would investigate alleged violations of human rights and breaches of humanitarian law to establish the truth and identity of those responsible. A thorough and transparent investigation by the UN would grant Western nations unprecedented access to Chechnya, including the "filtration camps." Further, such a commission would signal disapproval of Russia's conduct in Chechnya. These factors likely would deter at least some atrocities and save innocent Chechen civilians. An international commission of inquiry also would preserve a historical record, which would facilitate future prosecutions.

The International Court of Justice (ICJ) is another possible forum for pursuing claims against Russia. Pursuant to Articles 36(1) and 40(1) of the ICJ Statute and Article 38 of the ICJ Rules, formal charges have been filed with the ICJ against President Putin and other Russian leaders. Other potentially liable parties include former president Boris Yeltsin, army commander Viktor Kazantsev, armed forces Chief of Staff Anatoly Kvashnin, and General Vladimir Chamanov. The ICJ lawsuit—*Chechnya v.*

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*Russia*—charges Putin and the Russian government with genocide in violation of Russia’s obligations under the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. The Chechen suit makes the following allegation of genocide: “[t]he Russian Federation and the former Soviet Union have ruthlessly implemented a systematic and comprehensive military, political and economic campaign with the intent to destroy in substantial part the national, ethnical, racial and religious group known as the Chechen People.” An American lawyer, Francis Boyle, filed the lawsuit on behalf of the Chechen government. Boyle previously won a case for the Republic of Bosnia and Hercegovina against Serbia and former Serb president Slobodan Milosevic. While the lawsuit currently is pending, at the very least the ICJ should grant Chechnya’s request for provisional measures, which are detailed in its complaint. The Chechen government requested the following provisional measures: the Russian government should immediately take all measures to prevent commission of the crime of genocide, and ensure that any military, paramilitary, police or irregular armed units do not commit any acts of genocide. Article 41 of the ICJ Statute justifies provisional measures “where there is urgency in the sense that action prejudicial to the rights of either party is likely” before a final decision is rendered.

#### *The European Court of Human Rights*

Holding a permanent member of the UN Security Council accountable for human rights and humanitarian law violations within the UN system may be unattainable, thus requiring other legal mechanisms. The European Court of Human Rights (European Court) is another possible venue for pursuing accountability. As a signatory to the European Convention, Russia is subject to the European Court’s jurisdiction. Chechens have begun filing complaints with the European Court alleging violations of their rights under the European Convention. The European Court has agreed to hear numerous cases, including a complaint involving the Staropromyslovski massacre. Through interviews with survivors, Human Rights Watch compiled details about the massacre, in which nearly 40 civilians were summarily executed. In another complaint, Sasita Khasuyeva, a Chechen nurse, has brought a claim against the Russian government for the murder of six patients and the forced disappearance of 61 other patients. According to Khasuyeva’s claim, Russian troops attacked a hospital convoy clearly marked with white flags.

Additionally, the United States might encourage its European allies to bring an inter-state complaint before the European Court. The complaint would charge Russia with violating its international treaty obligations. The guarantors of the European Convention could display tremendous resolve by launching

an interstate complaint. The European Union has long been a proponent of humanitarian law. It supported the creation of the International Criminal Court (ICC) and the ICTY, and deployed monitors to document the atrocities in the former Yugoslavia. United opposition to Russia would be fitting as Europe celebrates the 50th anniversary of the European Convention.

The only remaining question is whether a human rights court can apply humanitarian law to determine whether there has been a human rights violation. While this is an issue of first impression for the European Court, the Inter-American Commission on Human Rights (IACHR) has dealt with this issue. In the 1997 *La Tablada* case, the petitioners invoked various rules of international humanitarian law to support their allegations that state agents used excessive force and illegal means to recapture the *La Tablada* military base. The IACHR determined it was “necessary at times to apply directly rules of international humanitarian law or to inform its interpretations of relevant provisions of the American Convention [on Human Rights] by reference to these rules.” The IACHR further noted that the American Convention and humanitarian instruments share a “common nucleus of non-derogable rights and a common purpose of protecting human life and dignity.” During situations of internal armed conflict, the Commission argued, these branches of international law converge and reinforce each other. The IACHR’s findings certainly could instruct the European Court’s determination of its competence to adjudicate humanitarian law.

The ICC provides another potential forum for addressing Chechen claims against Russia. Russia is a signatory, but has not ratified the Rome Statute. Should the Rome Statute acquire the requisite 60 ratifications, Chechen claims could be adjudicated before the ICC.

#### **Conclusion**

It remains to be seen what course of action the international community will choose to pursue accountability. Ensuring truth and justice is necessary to building long-term peace in the region. Whatever path it chooses, the international community must insist on a credible, impartial, and transparent accountability process. ☹

*\* Shara Abraham is a J.D. candidate at the Washington College of Law and a senior articles editor for the Human Rights Brief.*



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well-being of both present and future generations. The fact that lawmakers have not adequately addressed these issues through comprehensive and binding human rights instruments means that policy makers will continue to be able to carry out unsound super-infrastructure projects like the Three Gorges Dam in non-participatory, repressive ways that result in the displacement of millions, the endangerment of future generations through massive habitat and species destruction, and the loss of cultural heritage resources vital to understanding human history.

Although policy makers favoring large dam construction are responding to the genuine needs of their citizens, large dams clearly do not always offer the best available solution. International human rights law needs to provide better protection for these emerging human rights threatened by dams so that policy makers can conduct balanced assessments of what truly is in the public’s interest. ☹

*\* Sarah C. Aird is a J.D. candidate at the Washington College of Law and a staff writer for the Human Rights Brief.*