

A Human Rights Aspect: The Preparation for the International Non-Governmental Tribunal on the Crimes Against Humanity and the War Crimes in the Chechen Republic

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Since July of 1995, on the initiative of a number of Russian non-governmental organisations, the Glasnost Public Foundation has been making preparations for the holding of the international Non-Governmental Tribunal on the Crimes Against Humanity and War Crimes in Chechnya. One of the missions of the tribunal is to put forward the issue of the personal responsibility of the top Russian officials for the mass crimes against humanity and war crimes which were committed in the course of the Chechen war. The question of personal responsibility, apart from its moral meaning, has real historical significance: never in Russian history has the idea of the personal responsibility of top officials been realised in practice. In order to accomplish this, the Tribunal has to expose the mechanism by which modern authority has carried out their decisions that resulted in such high numbers of human casualties. An international legal condemnation of the actions of the top Russian authority could prevent a repetition of such crimes in other regions of Russia.

On July 15, 1995 a roundtable discussion was held in Moscow. It focused on a wide range of issues, primarily involving the juridical aspects of the problem. The participants included prominent Russian lawyers, State Duma deputies, UN international law experts, human rights activists, representatives of the Glasnost Public Foundation, Memorial, Glasnost Defense Foundation, and others. Materials collected by the Commission of Public Investigation were presented there. The Commission consisted of a number of well-known human rights activists, lawyers, and State Duma Deputies. The Commission has been active since the very beginning of the war. It created a sizeable data bank on the Chechen events, including mass media information, testimonies of witnesses, and other materials; in total, more than 3000 documents.

The Roundtable voiced proposals on working out the structure of the International Non-Governmental Public Tribunal and discussed its possible membership. The Organising Committee of the Tribunal was set up as follows: Serge Grigoriants (Chairman), President of the Glasnost Public Foundation; Va-

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leri Borchtchev, State Duma Deputy; Tatiana Kuznetzova, lawyer; Kronid Lubarsky, Editor-in-Chief of the journal, "Novoe Vremya"; Naym Nim, Russian writer; Mara Polyakova, Doctor of Law, Professor; Anatoli Pristavkin, Russian writer; Vladimir Oyvin, on behalf of the Glasnost Public Foundation; Aleksei Simonov, on behalf of the Glasnost Defence Foundation; Alexander Tkatchenko, on behalf of Russian PEN; and Andrei Paramonov, Secretary of the Organising Committee. The materials of the Roundtable discussion have been published.

The Organising Committee appealed to a number of prominent lawyers, political activists and NGO activists from various countries to be members of the International Non-Governmental Public Tribunal. It has received the consent of Lord Nicholas Bethell, former Vice-Chairman of the Sub-Committee on Human Rights of the European Parliament; Ken Coates, Member of the European Parliament, and former Chairman of the Sub-Committee on Human Rights of the European Parliament; Jean-Francois Deniau, former State Secretary for Foreign Affairs of France; Harold Elletson, Member of the House of Commons of the British Parliament; Hans Goran Frank, a Swedish lawyer; Paul Goble, former Deputy State Secretary of the United States; Algirdas Endriukaitis, Member of the Seimas of the Republic of Lithuania; Yuri Kalmoukov, former Minister of Justice of the Russian Federation, former member of the Security Council of the Russian Federation; Robert Kouchner, Honorable Chairman of the Civil Actions Association; Jan Olszewski, former Prime Minister of Poland; Yuri Orlov, Professor, Honourable Chairman of the International Helsinki association; Boris Pankin, former Minister of Foreign Affairs of the USSR; Jean-Francois Revel, French philosopher and writer; Zbigniew Romaszewski, Senator of the Polish Seim; Elie Wiesel, American writer and Nobel Prize Winner.

On the invitation of the Organising Committee, a number of experts on international law and politics are taking part in the work for preparation of the Tribunal, among them: Sergei Alekseev, Professor of Law and Member-Correspondent of the Russian Academy of Sciences; Ruslan Akhtakhanov, Ph. D., Chairman of the Democratic Progressive Party of the Chechen Republic; Igor Blischtchenko, Professor of Law and expert on international law of the UN; Ikhvan Gerikhanov, Doctor of Law, Chairman of the Constitutional Court of the Chechen Republic; Alexander Larin, Professor of Law; Ernst Orlovsky, lawyer; and Reverend Georgi Edelstein, a priest of the Russian Orthodox Church.

In September 1995, there was a working meeting of the lawyers-experts, where a draft of the Charter of the International Non-Governmental Tribunal was created. In the beginning of October, the representatives of the Glasnost Public Foundation had legal consultations in the USA regarding the Charter and the organising procedure of the Tribunal. The first (preliminary) public hearing of the International Tribunal on Chechnya was held on December 15-16,

1995 in Stockholm with support from the Olaf Palme International Center. The members of the Tribunal who took part in the hearing were Yuri Orlov, Boris Pankin, Zbigniew Romaszewski and Algirdas Endriukaitis. The Charter and the Investigation Procedure of the Tribunal were adopted in whole after being debated by the members and experts of the Tribunal during the closed part of the session, and the decision to institute the Tribunal was adopted. The materials of the Stockholm session have been published as the second volume on the Tribunal. The Chechen Tribunal Association, a non-governmental organisation to support the Tribunal, has now been registered in Stockholm.

In accordance with the preliminary version of the Tribunal presented at Stockholm, all decisions should be carefully considered from the legal point of view, so to that end, the Organising Committee has planned to hold at least four rounds of witness questioning. In the opinion of the experts, the Tribunal must be held in accordance with the norms of European justice. Therefore, in order to observe the legal principles of this procedure, the participation of judges, i.e. members of the Tribunal, in the preliminary investigation process is not advised. Otherwise, despite the public nature of the undertaking, it could be accused of procedural violations. Therefore, the creation of a group of independent observers from prominent foreign and Russian lawyers, and political and public figures is planned. The materials of all these hearings, as well as the indictment prepared by the Prosecutors Committee, will be presented to the members of the Tribunal a month before the main session of the Tribunal. The final verdict will be reached there. A month before the main session of the Tribunal, the indictment from the Prosecutors Committee will also be presented to the defendants.

In accordance with the Investigation Procedure of the Tribunal, all questionings of witnesses are conducted by the Prosecutors Committee. The Prosecutors Committee consists of State Duma Deputy Valeri Borchtchev, State Duma Deputy Galina Starovoitova State Duma Deputy (1993-1995), Justice Colonel Vladimir Gritsan (Chairman), lawyer Tatiana Kuznetsova and Professor Mara Polyakova. From February 20-24 and from April 21-25 of this year, the first two round of questioning were held in Moscow. On May 25-27, the third round of questioning was held in Prague under support of the Czech TV Foundation "People in Need", and the last round took place on August 22-28 in Khasavurt (Dagestan) and Grozny. The questioning was conducted in the presence of representatives of the group of independent observers consisting of Igor Blichtchenko, Professor of Law, an expert on international law of the UN; Boris Zolotukhin, lawyer, State Duma Deputy (1993-1995); Ikhvan Gerikhanov, Doctor of Law, Chairman of the Constitution Court of Chechnya; Vladimir Stupishin, Extreme and Plenipotentiary Ambassador; foreign lawyers: Daniel Rothstein; Dr. Karl A. Eckstein; Andre Seipt; Corinna M. Wissels; Nan Burns

and Daniel Matthew, the representatives of the American Bar Association; Mariana Katsarova, a representative of Amnesty International; Abrar Mir, a representative of the War Crimes Watch (UK); and others. Claës Palme, a prominent Swedish lawyer, has been the head of this group since the February hearing. The lawyers of the party injured during the Chechen war were Karina Moskalenko and Akhmed Umaev. More than two hundred and sixty witnesses have been questioned in all. Among the witnesses testifying at that hearing were Sergei Kovaley, State Duma Deputy, former Chairman of the Human Rights Commission of the President; Emil Payin, an adviser to President Yeltsin and former Vice-Chairman of the Analytical Centre of the President; Iusup Soslambekov, former Chairman of the Parliament of Chechnya; Ruslan Khasboulatov, former Chairman of the Supreme Soviet; Otto Latsis, former Member of the Presidential Council; Leonid Smirniagin, Member of the Presidential Council; Anatoli Shabad, State Duma Deputy (1993-1995); Arkadi Iankovsky, State Duma Deputy; Alexander Osovtsov, State Duma Deputy; Lev Ponomarev, State Duma Deputy (1993-1995); Umar Khanbiev, Chief of the Military Hospital in Tzatzan-Urt; inhabitants of Grozny, Sernovodsk, Samashki, Khasavurt and other towns and villages of Chechnya and Dagestan; Russian and foreign journalists and human rights observers; representatives of "Memorial"; the Committee of Soldiers' Mothers; Quakers; Buddhist monks; and many others.

In the opinion of lawyers present at the questioning, the results of the investigation -including the received testimonies, photos, videos and material evidence - appears so significant from a juridical point of view that we are looking into the possibility of handing over a number of the documents to the Council of Europe and the European Court on Human Rights, and are appealing to the Prosecutor-General of the Russian Federation on the question of carrying out an examination into some of the facts. Some people are interested also in conducting an independent examination of some of the material evidence. The International Tribunal aspires to do its investigation into all the circumstances surrounding the instigation and conducting of the war with great juridical thoroughness.

Regarding the issue of personal responsibility for the crimes against humanity and war crimes, the Tribunal bases itself on the Charters of the Nuremberg Tribunal and the Hague Tribunal on War Crimes in the Former Yugoslavia. Article 7.3 of the last Hague Tribunal establishes the responsibility of the commanding officer for the criminal acts of his subordinates "if he knew or should know that the subordinate was going to or has committed such offence or the commanding officer took no necessary or reasonable measures to prevent such offences or punish their perpetrators". The second direction of the tribunal activity is determined by Russia's membership in the EC and its

commitments stemming from it. Point 7 in chapter 7 of the Conclusion #193 of the Parliamentary Assembly of the EC concerning Russia's application to membership in the EC Says that, "persons found guilty of human rights violations, particularly those linked with Chechnya, would be brought to legal responsibility". At the moment, the Organising Committee is preparing for publication the received testimonies and materials. The indictment is also under preparation. At the same time, in co-coperation with the International Roundtable for Peace in Chechnya and Democracy in Russia, the Organising Committee works toward holding the main session of the International Non-Governmental Tribunal on Chechnya in London, during December of this year.