

## CASE STUDY ILLUSTRATING THE SHORTCOMINGS OF INTERNATIONAL CRIMINAL LAW: CHECHNYA

Anywhere, anytime I could recognize that soldier. I want him and the others responsible for the deaths of the people to be punished. I am ready to repeat my testimony anywhere, in any court. “Ibragim I,” recounting the murder of his uncle Ahampash Dudayev.

Don’t you dare touch the soldiers and officers of the Russian army. They are doing a sacred thing today—they are defending Russia. And don’t you dare sully the Russian soldier with your dirty hands! Major-General Vladimir Shamanov, commander of the troops at Alkhan-Yurt, dismissing calls for accountability for the abuses committed there.<sup>1</sup>

### INTRODUCTION

Khashiyev fled Grozny, the capital of Chechnya, when the fighting started,<sup>2</sup> leaving his brother to look after their property.<sup>3</sup> When he returned several months later, he found his brother dead in a garage near their home.<sup>4</sup> Khashiyev could see numerous gunshot wounds, bruises, and broken bones.<sup>5</sup> His brother’s body had been mutilated, parts of his skull had been smashed, and several of his fingers were missing.<sup>6</sup> Khashiyev filed a complaint with the local Russian prosecutor, asking for a criminal investigation into the death of his brother.<sup>7</sup> After a cursory review, however, the prosecutor refused to open an investigation.<sup>8</sup> He claimed he could not find *corpus delicti* in the actions of Russian soldiers.<sup>9</sup> Failed by the Russian criminal justice system, Khashiyev’s only hope for seeing those responsible for his brother’s death punished lay in the international

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1. “*No Happiness Remains*” *Civilian Killings, Pillage, and Rape in Alkhan-Yurt, Chechnya*, 12 HUMAN RIGHTS WATCH Apr. 2000, available at [http://www.hrw.org/reports/2000/russia\\_chechnya2/Rusch004.htm#P52\\_1657](http://www.hrw.org/reports/2000/russia_chechnya2/Rusch004.htm#P52_1657) (last visited Jan. 29, 2005) [hereinafter *No Happiness Remains*].

2. See *infra* Part I (discussing the Chechen Wars).

3. Khashiyev v. Russia, (No. 57942/00) Eur. Ct. H.R. (2002), at <http://www.echr.coe.int/eng> (last visited Oct. 28, 2004).

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

criminal law system. But is the international criminal law system capable of providing criminal accountability for atrocities committed in Chechnya?

This Note argues that, for jurisdictional reasons, the current international criminal law system is powerless to reach the Russian soldiers, military officers, and government officials responsible for the atrocities committed against Chechen civilians.<sup>10</sup> In spite of the recent formation of various international tribunals and courts of both general and narrow jurisdiction, there are still shortcomings in the international criminal law system that prevent it from reaching every international atrocity. These shortcomings effectively provide impunity for those responsible for the atrocities in Chechnya.

This Note will proceed in four parts. Part I will provide an overview of the devastation inflicted upon Chechen civilians during the two Chechen Wars.<sup>11</sup> Part II will examine these criminal acts in the context of the Russian Criminal Code and will assess the ability of the Russian criminal system to effectively prosecute breaches of the Code.<sup>12</sup> Part III of this Note will examine the atrocities committed in Chechnya as breaches of international criminal law.<sup>13</sup> In particular, Part III will examine a sample of the specific breaches of international criminal law committed by Russian soldiers, military officers, and government officials.<sup>14</sup> Finally, Part IV will identify the specific jurisdictional barriers that prevent any international criminal tribunal or court from prosecuting those responsible for the Chechen atrocities.<sup>15</sup>

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10. It is undisputed that Chechen rebel fighters have also committed acts amounting to breaches of Russian domestic law and international criminal law. *See, e.g., Memorandum on Accountability for Humanitarian Law Violations in Chechnya*, HUMAN RIGHTS WATCH Oct. 20, 2000, at <http://www.hrw.org/campaigns/eu-summit/chech-memo-1020.htm> (last visited Jan. 29, 2005) (noting Chechen forces have repeatedly violated international law by “summarily executing servicemen . . . physically abusing civilians, and violating civilian immunity.”). The scope of this Note, however, is limited to breaches committed by individual Russian soldiers, military officers, and government officials against Chechen civilians. This Note will not address claims victims may have against the State of Russia.

11. *See infra* notes 16–76 and accompanying text.

12. *See infra* notes 79–150 and accompanying text.

13. *See infra* notes 153–270 and accompanying text. This Part will provide only a sample of the potential breaches of international criminal law that occurred and are occurring in the Chechen conflicts. In particular, I will address war crimes and crimes against humanity. In addition, however, one might also argue that Russian forces have committed violations of the laws and customs of war and even genocide, for example. *Chechen Body Urges EU to Condemn Russia for War Crimes*, BBC MONITORING (Caucasus), Nov. 27, 2004.

14. *See infra* notes 153–270 and accompanying text.

15. *See infra* notes 272–355 and accompanying text.

## I. THE CHECHEN WARS

The Chechen Wars have taken a devastating toll on both Chechnya's innocent civilians and the country's infrastructure. In this part, I will first provide a brief history of the two Chechen Wars and the tensions leading up to the conflicts. Second, I will present a picture of the devastation inflicted upon Chechen civilians.

### A. History

There has been a long history of animosity between Chechnya and the Kremlin. The territory of Chechnya resisted Russian military advances until 1859, when it was finally captured by Russia.<sup>16</sup> However, once under Russian domination, unrest was always brewing.<sup>17</sup> The tensions between Chechnya and the Kremlin intensified during World War II.<sup>18</sup> Stalin, fearing the Chechens were aiding the German enemy, ordered the entire Chechen population deported to Kazakhstan.<sup>19</sup> During the twelve year exile, it is estimated that at least one fifth of the population died from starvation, cold, or disease.<sup>20</sup> Undoubtedly, this tragic event continues to invade the collective memory of much of the Chechen population and provides much of the impetus for Chechnya's quest for independence from Russia.<sup>21</sup>

With the collapse of the Soviet Union in 1991, the Russian officials overseeing Chechnya were pushed from power.<sup>22</sup> Into their place stepped Dzhokhar Dudaev, a Chechen fighter pilot in the Russian army.<sup>23</sup> Dudaev quickly organized and won elections in Chechnya.<sup>24</sup> Shortly after taking the presidency, he declared Chechnya's independence from Russia.<sup>25</sup> President Yeltsin, embroiled in his own political power struggle at the time, did not meaningfully respond to the claim for Chechen independence until 1994.<sup>26</sup> At that time, he sent Russian military forces into Chechnya to

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16. Svante E. Cornell, *The War Against Terrorism and the Conflict in Chechnya: A Case for Distinction*, 27:2 FLETCHER F. WORLD AFF. 167, 169 (2003).

17. *Id.*

18. *Id.*

19. *Id.*

20. Johanna Nichols, *The Chechen Refugees*, 18 BERKELEY J. INT'L L. 241, 243 (2000).

21. Cornell, *supra* note 16, at 169.

22. Thomas D. Grant, *A Panel of Experts for Chechnya: Purposes and Prospects in Light of International Law*, 40 VA. J. INT'L L. 115, 132 (1999).

23. *Id.*

24. MATTHEW EVANGELISTA, *THE CHECHEN WARS* 19 (2002).

25. *Id.*

26. Cornell, *supra* note 16, at 169.

reassert control over the territory.<sup>27</sup> This marked the beginning of the First Chechen War.<sup>28</sup>

The Russian military sought to reassert control in Grozny and capture Dudaev.<sup>29</sup> Heavy fighting ensued from 1994 through 1996.<sup>30</sup> Finally, in April of 1996, Russian forces succeeded in killing Dudaev and capturing Grozny through intense aerial bombings.<sup>31</sup> As a result of the bombings, the city was virtually destroyed.<sup>32</sup> It is often recounted that during the heaviest shelling in Grozny, the number of explosions per day was at least fifty times that of the heaviest shelling in Sarajevo.<sup>33</sup> Furthermore, Russian forces indiscriminately killed civilians and destroyed villages throughout Chechnya.<sup>34</sup> It is estimated that some 20,000 civilians were killed and hundreds of thousands were forced to seek refuge outside of Grozny during the siege.<sup>35</sup> In spite of this devastating loss, the Russian military was eventually defeated.<sup>36</sup> Chechen fighters succeeded in retaking Grozny in August of 1996.<sup>37</sup> The war was a public disaster for Yeltsin.<sup>38</sup> Faced with upcoming elections, he began to withdraw his troops after their defeat in Grozny.<sup>39</sup> The war ended shortly thereafter with the Khasavyurt Peace Accords.<sup>40</sup> These Accords purported to afford Chechnya de facto independence, but ultimately delayed discussions of status until 2001.<sup>41</sup> The First Chechen War was marked by awful atrocities committed against the civilian population.<sup>42</sup> Horrific accounts of murder, rape, torture, and

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27. *Id.*

28. *Id.* at 170.

29. *Id.*

30. See EVANGELISTA, *supra* note 24, at 33–45, for a detailed examination of this fighting.

31. *Id.* at 42–44.

32. See Olivia Ward, *War Without Mercy: War Without End*, TORONTO STAR, June 11, 1995, available at 1995 WL 5999425.

33. Cornell, *supra* note 16, at 170 (citing Charles Blandy, *The Battle for Grozny*, 7(2) JANE'S INTELLIGENCE REVIEW 53–56 (1995)); see also EVANGELISTA, *supra* note 24, at 144 (citing DAVID REMNICK, RESURRECTION: THE STRUGGLE FOR A NEW RUSSIA 263–64 (1997) (“At the height of the shelling of Sarajevo there were thirty-five hundred detonations a day, while in Grozny the [1995] winter bombing reached a rate of four thousand detonations an hour.”)).

34. Cornell, *supra* note 16, at 170.

35. *Id.*

36. *Id.*

37. *Id.*

38. See Anand M. Kandaswamy, *European Institutions*, 28 YALE J. INT'L L. 579, 599–600 (2003) (reviewing EVANGELISTA, *supra* note 24).

39. *Id.* at 599.

40. EVANGELISTA, *supra* note 24, at 44–45. The Khasavyurt Peace Accords were signed in August 1996. *Id.*

41. *Id.* at 45.

42. See, e.g., Ward, *supra* note 32; *Refugees Accuse Russian Troops, Allege Atrocities in Chechnya Town*, PLAIN DEALER, Apr. 10, 1995, at 4A, available at 1995 WL 7103492.

destruction have emerged.<sup>43</sup> To this day, many Chechens still await justice for the wrongs inflicted upon them during the first war.<sup>44</sup>

General Aslan Maskhadov was elected President of Chechnya in 1997 following the signing of the Khasavyurt Peace Accords.<sup>45</sup> With the territory in ruins and the economy devastated, Maskhadov had his work cut out for him.<sup>46</sup> He was ultimately unable to create a functioning government and never gained control over the territory.<sup>47</sup> Chechen bandits engaged in kidnappings and killings to make money.<sup>48</sup> Russians, Chechen civilians, and even Westerners were kidnapped and either ransomed or killed.<sup>49</sup> Islamic militants united with these bandits in opposition to Russia.<sup>50</sup> This group of militants and bandits effectively provoked another Russian invasion when they crossed over into the neighboring Muslim republic of Dagestan in August of 1999, hoping to unite it with Chechnya.<sup>51</sup>

President Vladimir Putin responded by launching a massive military campaign aimed at reasserting Russian control over Chechnya.<sup>52</sup> Thus, the Second Chechen War began in 1999, and continues today.<sup>53</sup> Seeking to reduce its losses, Russia has used long-range weapons aimed at eliminating rebels in a given targeted territory.<sup>54</sup> Such indiscriminate weapons, however, have resulted in a significant number of civilian casualties.<sup>55</sup> Moreover, like the First Chechen War, the second conflict has

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43. See sources cited *supra* note 42.

44. See sources cited *supra* note 42.

45. Phil Reeves & Mary Dejevsky, *Analysis Chechnya: The Bloody History of a People with an Unquenchable Thirst for Independence*, RUSSIA WEEKLY No. 229, Oct. 29, 2002, available at <http://www.cdi.org/russia/229-8.cfm> (last visited Jan. 29, 2005); see also Cornell, *supra* note 16, at 167.

46. Reeves & Dejevsky, *supra* note 45.

47. See EVANGELISTA, *supra* note 24, at 46–59, for an overview of the Maskhadov administration.

48. Reeves & Dejevsky, *supra* note 45.

49. *Id.*

50. EVANGELISTA, *supra* note 24, at 46–47, 71–73.

51. *Id.* at 63–65.

52. *Id.* at 65. In August 1999, then-President Boris Yeltsin appointed Vladimir Putin as prime minister of Russia. *Id.* Yeltsin resigned four months after the Second Chechen War began. *Id.* at 64. Putin took over as interim president in December 1999 and was formally elected president in March 2000. *Id.*

53. *Id.* at 64–65.

54. See, e.g., Henry Meyer, *Bloody Russian Storm of Chechen Capital a Costly Lesson in Urban Warfare*, AGENCE FRANCE-PRESSE, Apr. 5, 2003, available at 2003 WL 2772073.

55. See, e.g., David Hoffman, *Attack on Chechen Civilians Confirmed; Red Cross Says Convoy that Included Clearly Marked Vehicles Hit by Russians*, WASH. POST, Oct. 31, 1999, at A31, available at 1999 WL 23312396; *Russia Pounds Chechen Targets, Denies Attacking Refugee Convoy*, ST. PETERSBURG TIMES, Oct. 30, 1999, at 2A, available at 1999 WL 27325918.

invoked another round of civilian murder, rape, torture, and destruction.<sup>56</sup> Russia now claims to control Grozny; however, sporadic guerrilla fighting continues even today.<sup>57</sup>

### B. *The Devastation*

The wars in Chechnya have been particularly violent for civilians. The Chechen government and most human rights groups estimate that between 25,000 to 40,000 civilians have been killed or have disappeared throughout the two wars.<sup>58</sup> There have been accounts of mass murders, forced disappearances, rapes, and torture.<sup>59</sup> One of the documented mass murders occurred in the village of Novye Aldi.<sup>60</sup> At least fifty civilians were murdered there and many more simply disappeared.<sup>61</sup> Abulkhanov was one of the dead.<sup>62</sup> A Russian soldier approached the sixty-eight year old man in a courtyard near his home.<sup>63</sup> The soldier threatened to kill Abulkhanov if he did not take out his teeth and give the soldier his money.<sup>64</sup> Abulkhanov did not immediately understand what the soldier was asking, and as a result, was shot execution-style.<sup>65</sup> The soldier then ordered a civilian woman nearby to drag his body into a basement.<sup>66</sup> Many other civilians in Novye Aldi faced a similar fate.<sup>67</sup>

Some of the most egregious crimes have been committed in Russian “filtration camps.”<sup>68</sup> The Kremlin and the Russian military created these

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56. See sources cited *supra* note 55; see also *Isayeva v. Russia*, (No. 57947/00) Eur. Ct. H.R. (2002), at <http://www.echr.coe.int/eng> (last visited Jan. 29, 2005); *Yusupova v. Russia*, (No. 57948/00) Eur. Ct. H.R. (2002), at <http://www.echr.coe.int/eng> (last visited Jan. 29, 2005); *Bazayeva v. Russia*, (No. 57949/00) Eur. Ct. H.R. (2002), at <http://www.echr.coe.int/eng> (last visited Jan. 29, 2005); *3,000 Civilians Killed in Chechnya—Public Figures*, INTERFAX (Moscow), Nov. 11, 1999, available at 1999 WL 29978056.

57. Cornell, *supra* note 16, at 172.

58. Nichols, *supra* note 20, at 250 n.15.

59. See generally COMMITTEE ON LEGAL AFFAIRS AND HUMAN RIGHTS, Report, *The Human Rights Situation in the Chechen Republic*, Doc. 9732 (Mar. 13, 2003), available at <http://www.europarl.eu.int/meetdocs/delegations/russ/20030409-Tchechenie/05.pdf> (last visited Jan. 29, 2005) [hereinafter *Human Rights Situation in the Chechen Republic*].

60. *Id.* at paras. 20–22.

61. *Id.*

62. ANNA POLITKOVSKAYA, *A DIRTY WAR* 312 (John Crowfoot trans., 2001) (1999).

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. See generally POLITKOVSKAYA, *supra* note 62.

68. EVANGELISTA, *supra* note 24, at 154; *Hundreds of Chechens Detained in “Filtration Camps”*, HUMAN RIGHTS WATCH Feb. 2000, at <http://www.hrw.org/press/2000/02/Chech0218.htm> (last visited Feb. 8, 2005).

camps as a place to send Chechen civilians to determine if they were true civilians or Chechen rebels.<sup>69</sup> Chechen civilians from the ages of ten to sixty were arrested in their homes, on the streets, and at Russian checkpoints and were sent to various filtration camps located throughout Chechnya.<sup>70</sup> The filtering process itself often consisted of extracting false confessions through brutal torture.<sup>71</sup> The experience of Lom-Ali is indicative of the awful torture inflicted upon civilians.<sup>72</sup> Lom-Ali was only fifteen years old when he was detained by Russian forces.<sup>73</sup> He was sent to a Russian filtration camp where he was subjected to brutal torture in an attempt to coerce him into admitting that he was a Chechen rebel.<sup>74</sup> Russian guards hammered him to a wall with kebab sticks, chained him to a post and beat him until his ribs were broken, stubbed out cigarettes on him, suffocated him in a polythene bag, and tied a noose around his neck, continually tightening it until he lost consciousness.<sup>75</sup> Unfortunately, stories of such horrendous torture in Russian filtration camps are quite common.<sup>76</sup>

Civilians in Chechnya have endured years of violence and terror at the hands of Russian forces. These gruesome stories are just two of thousands. More of these stories will be told throughout this Note as I examine Russian breaches of domestic and international law.

## II. JUSTICE IN THE RUSSIAN CRIMINAL SYSTEM

In theory, the Russian Criminal Code (hereinafter the “Code”) criminalizes the horrific acts committed against Chechen civilians during the Chechen Wars.<sup>77</sup> In practice, however, the Russian criminal justice system has proven itself both unwilling and unable to provide justice. The first section of this Part will examine probable breaches of the Code resulting from the atrocities committed by Russian soldiers, military officers, and government officials during the Chechen Wars. The second

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69. *Chechen Rebel President Says Russian Amnesty Will Not Stop War*, BBC MONITORING (Central Asia), June 19, 2003, available at 2003 WL 58936090.

70. *Id.*

71. *Id.*

72. A. Gekhoyeva, *Rebel Site Claims Russian Troops Torture Children in Chechnya*, BBC MONITORING (Caucasus), Jan. 19, 2004. The child tortured, described in this article, lived to tell his story. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. See generally Ugolovnyi Kodeks RF arts. 111, 112, 115, 116, 117, 131, translated in CRIMINAL CODE OF THE RUSSIAN FEDERATION (William E. Butler ed., 1999) [hereinafter UK RF].

section of this Part will demonstrate the inability of the Russian criminal justice system to successfully impose accountability on those responsible.

#### *A. Breaches of Russian Criminal Law*

Many of the atrocities committed against Chechen civilians are specifically criminalized in the Code.<sup>78</sup> This section will examine a sample of the substantive breaches of the Code committed by Russian soldiers, military officers, and government officials.

The Code provides several provisions under which Chechen victims might seek to prosecute those responsible for the wrongs they have suffered.<sup>79</sup> These provisions would apply to the actual perpetrators of the criminal act—often Russian soldiers or military officers.<sup>80</sup> Potentially applicable substantive crimes include homicide,<sup>81</sup> intentional causing of harm to health,<sup>82</sup> beating,<sup>83</sup> torture,<sup>84</sup> and rape.<sup>85</sup> All of these crimes carry hefty prison terms, and some even carry a possible death sentence.<sup>86</sup> Often

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78. *Id.*

79. *Id.* The victims of atrocities in Chechnya can initiate criminal proceedings through written complaints to the prosecutor's office. Ugolovno-Protssessual'nyi Kodeks RF art. 108, *translated in SOVIET CRIMINAL LAW AND PROCEDURE: THE RSFSR CODES* (Harold J. Berman & James W. Spindler trans., 1966) [hereinafter the UPK RF]. In addition, criminal proceedings can be instituted by complaints from citizens, social bodies, articles in the press, or discovery by investigators, prosecutors or courts. *Id.* Under the Russian Code of Criminal Procedure, a "victim" is either the individual against whom the crime was committed, or if that person died, the family and friends of that individual. UPK RF art. 53.

80. *See generally* UK RF chap. 5.

81. UK RF art. 105 (homicide).

82. UK RF art. 111 (intentional causing of grave harm to health); UK RF art. 112 (average harm to health); UK RF art. 115 (light harm to health).

83. UK RF art. 116 (beating).

84. UK RF art. 117 (torture).

85. UK RF art. 131 (rape). Article 357 also criminalizes genocide. UK RF art. 357. Some scholars and observers argue that the Russian government has committed genocide against the Chechens. *See, e.g.,* Nichols, *supra* note 20, at 250–53. Others maintain that the Russian government was motivated only by a nationalist desire to preserve Chechnya as part of the Russian Federation. *See, e.g.,* Trent N. Tappe, Note, *Chechnya and the State of Self-Determination in a Breakaway Region of the Former Soviet Union: Evaluating the Legitimacy of Secessionist Claims*, 34 *COLUM. J. TRANSNAT'L L.* 255, 255–58 (1995).

86. UK RF arts. 105, 111, 112, 115–117, 131. Under the Russian Criminal Code, homicide is punishable by eight years to life in prison or by the death penalty. *Id.* art. 105. Intentional causing of grave harm to health is punishable by two to fifteen years in prison. *Id.* art. 111. Intentional causing of average gravity harm to health is punishable by a term of imprisonment from three months to five years. *Id.* art. 112. Intentional causing of light harm to health is punishable by labor in a work house for up to one year or imprisonment for two to four months. *Id.* art. 115. A conviction for beating is punishable by up to six months in a work camp or imprisonment up to three months. *Id.* art. 116. Torture is punishable by a prison term of up to seven years. *Id.* art. 117. A rape conviction is punishable by a term of three to fifteen years imprisonment. *Id.* art. 131.

these provisions impose heavier sentences for crimes committed “for reasons of nationality, racial, or religious hatred or enmity or blood vengeance.”<sup>87</sup> Although none of these provisions specifically addresses individuals acting in their official capacity, it is unlikely the Kremlin would ever defend one of its soldiers by arguing that rape or torture was officially sanctioned.<sup>88</sup>

The conviction of Russian Colonel Yuri Budanov provides a good example of how the Russian Criminal Code can impose criminal accountability, even on Russian military officers.<sup>89</sup> Budanov was convicted of the murder of eighteen year old Elza Kungayeva, a Chechen.<sup>90</sup> Budanov admitted to killing Kungayeva, but claimed he did so because he believed she was a rebel fighter.<sup>91</sup> Kungayeva’s parents claimed a drunken Budanov kidnapped their daughter from their home and then raped and strangled her.<sup>92</sup> At his trial, Budanov was convicted under Articles 126 (kidnapping), 105 (murder), and 286 (abuse of office) of the Russian Criminal Code.<sup>93</sup> Ignoring Budanov’s account of the incident, the Kremlin denounced his actions, never once insinuating that he was acting in his official capacity.<sup>94</sup> Unfortunately, as will be shown in section B below, the Budanov case is a rare, unprecedented example of the Russian criminal system providing justice and accountability.<sup>95</sup>

The substantive provisions discussed above enable victims to institute criminal charges against those directly responsible for the wrongs they have suffered.<sup>96</sup> However, as these atrocities were being committed, there were often other soldiers or military officers sitting in the shadows,

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87. UK RF art. 105; *see also* UK RF art. 111 (grave harm). This is relevant if one wants to make a claim that Russia has committed genocide against those of Chechen ethnicity. The arguments for and against the claim that Russia committed genocide, however, are beyond the scope of this Note.

88. The criminal trial of Colonel Yuri Budanov in Russian domestic courts indicates that Russian military soldiers and officers who commit criminal offenses outside the scope of their official capacity can be prosecuted under domestic criminal law. Lyuba Pronina, *Budanov Jailed for 10 Years in Retrial*, MOSCOW TIMES, July 28, 2003, available at 2003 WL 66304069.

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*; *see also* Andrew Yurkovsky, *Mirror of a War*, WORLD PRESS REVIEW ONLINE, Jan. 30, 2002, at <http://www.worldpress.org/Europe/921.cfm> (last visited Jan. 29, 2005).

93. *Russian Officer Budanov Stripped of Office and Awards*, BBC MONITORING, July 25, 2003, available at 2003 WL 58978899; *see also* Yurkovsky, *supra* note 92.

94. *See, e.g.*, Pronina, *supra* note 88; *Yastrzhembsky Comments on Col. Budanov’s Sentence*, INTERFAX (Moscow), July 25, 2003, available at 2003 WL 60847015.

95. The initial 2001 trial of Colonel Budanov marked the first time a federal officer was indicted for committing a crime in Chechnya in either war. John Crowfoot, *Postscript* to POLITKOVSKAYA, *supra* note 62, at 320.

96. *See supra* notes 79–87 and accompanying text.

watching the atrocities take place, and even helping to facilitate the crimes.<sup>97</sup> Chechen victims may be able to bring these soldiers and officers to justice as conspirators under the Russian Criminal Code.<sup>98</sup> Article 33 of the Code defines a conspirator to a crime as any individual who “has facilitated the commission of a crime by advice, instructions, the granting of information, means, or implements for committing the crime or by the elimination of obstacles. . . .”<sup>99</sup> A conspirator to a crime will be liable under the Code to the extent of his participation.<sup>100</sup>

To date there does not appear to have been any accessory convictions of military officers or government officials for their roles in the various atrocities. However, under the Russian Criminal Code, the possibility remains that such individuals could eventually be held accountable.<sup>101</sup> For example, conspirator charges might be appropriate against the Russian military officers who ordered the bombing of the civilian convoy at the Kavkaz-1 checkpoint outside of Grozny.<sup>102</sup> In this case, thousands of civilians from Grozny were told there would be a “humanitarian corridor” opened for their safe passage out of the war zone.<sup>103</sup> As advised, the civilians gathered in their cars at the checkpoint, waiting to pass.<sup>104</sup> However, instead of safe passage, the convoy was told to return home.<sup>105</sup> As they were slowly moving back toward Grozny, two Russian bombers flew in and dropped several bombs on the convoy of cars.<sup>106</sup> Many were killed and wounded.<sup>107</sup> In addition to those who actually dropped the bombs, the military officers or government officials who gave the instructions to bomb the convoy could also be charged as conspirators under the Code, provided they facilitated the commission of the crime by giving the pilots instructions to bomb the convoy and the means to do so.<sup>108</sup>

It is evident that the Russian Criminal Code does provide a body of law criminalizing many of the atrocities committed against Chechen

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97. See *infra* notes 102–08 and accompanying text.

98. See UK RF arts. 32, 33.

99. UK RF art. 33.

100. UK RF arts. 33, 34.

101. See *supra* notes 98–100 and accompanying text.

102. *Isayeva, supra* note 56; *Yusupova, supra* note 56; *Bazayeva, supra* note 56.

103. *Isayeva, supra* note 56; *Yusupova, supra* note 56; *Bazayeva, supra* note 56.

104. *Isayeva, supra* note 56; *Yusupova, supra* note 56; *Bazayeva, supra* note 56.

105. *Isayeva, supra* note 56; *Yusupova, supra* note 56; *Bazayeva, supra* note 56.

106. *Isayeva, supra* note 56; *Yusupova, supra* note 56; *Bazayeva, supra* note 56.

107. *Isayeva, supra* note 56; *Yusupova, supra* note 56; *Bazayeva, supra* note 56.

108. UK RF arts. 33, 34.

civilians.<sup>109</sup> The substantive law covers not only those who actually carried out the criminal acts, but also those who were conspirators to the acts.<sup>110</sup> In theory, this means that Russian soldiers, military officers, and government officials who either committed or assisted in such crimes can be brought to justice. In reality, as the next section will illustrate, criminal investigations against Russian soldiers, military officers, and government officials rarely result in formal charges or convictions.

### *B. Failure of the Russian Criminal Justice System*

In spite of the hope for criminal prosecution offered by the fairly comprehensive Russian Criminal Code, the Russian criminal justice system has proven itself unwilling and incapable of providing accountability for the atrocities committed against Chechens.<sup>111</sup> The Russian military prosecutor's office often boasts that by December of 2000, it had opened 748 criminal cases against servicemen for abuses committed in Chechnya.<sup>112</sup> On closer look, however, it become apparent that the majority of cases involved only minor military offenses, such as loss of army property or improper handling of weapons.<sup>113</sup> Only thirty-seven cases actually related to incidents in Chechnya.<sup>114</sup> This dismal record really is not one to boast about. In this section, I will examine possible reasons why the Russian criminal justice system is so ineffective in prosecuting those responsible for Chechen atrocities. In particular, I will isolate two barriers that appear to prevent the adequate functioning of the Russian criminal justice system: (1) the Russian military's attitude of impunity fostered by the Kremlin,<sup>115</sup> and (2) the general ineptitude of the prosecutors and investigators.<sup>116</sup> These two barriers serve to effectively disable the Russian criminal justice system and protect Russian servicemen from prosecution for their criminal acts.

The first barrier to justice is the general sense of impunity held by the Russian military. The general unwillingness of the Kremlin to impose

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109. See *supra* notes 79–87, 98–100 and accompanying text.

110. See *supra* notes 79–87, 98–100 and accompanying text.

111. See *infra* notes 112–14.

112. *Military Prosecutors Opened 748 Cases Against Servicemen in Northern Caucasus*, INTERFAX (Moscow), Dec. 28, 2000, available at 2000 WL 31376027; Crowfoot, *supra* note 95, at 320.

113. Crowfoot, *supra* note 95, at 320.

114. *Id.*

115. See *infra* notes 117–40.

116. See *infra* notes 141–50.

criminal liability on the military fosters this attitude of impunity.<sup>117</sup> The Kremlin has preferred to turn a blind eye or to put the blame on the other side.<sup>118</sup> The Kremlin bestows virtual impunity in two ways: public denials of civilian atrocities,<sup>119</sup> and direct commands to local prosecutors to halt investigations.<sup>120</sup> These acts have three unfortunate effects. First, those Russian servicemen responsible for civilian attacks escape criminal liability.<sup>121</sup> Second, with immunity from prosecution for earlier transgressions, Russian forces assume a lasting sense of impunity that allows them to commit similarly atrocious acts without fear of prosecution. Finally, with direct denial of civilian atrocities from the Kremlin or with direct instructions from the Kremlin to cease further investigation, local prosecutors and investigators are essentially coerced into ignoring the thousands of claims filed by Chechen victims.<sup>122</sup>

A striking example of impunity fostered by public denials from the Kremlin is the case of the destruction in Alkhan-Yurt.<sup>123</sup> Alkhan-Yurt is a small village south of Grozny.<sup>124</sup> After taking the village, Russian soldiers, under the command of General Vladimir Shamanov, engaged in “[systematic] looting and burning . . . killing everyone in their way.”<sup>125</sup>

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117. POLITKOVSKAYA, *supra* note 62, at 313–15. In addition, the Russian “Law on the Suppression of Terror” grants servicemen immunity from “moral damages” caused in the conduct of a “counter-terrorist operation.” *Sobr. Zakonod. RF*, 1998, No. 130-FZ, available at <http://www.legislationline.org/view.php?document=55618> (last visited Oct. 28, 2004) [hereinafter *Sobr. Zakonod. RF*, 1998, No. 130-FZ]; see also Tom Parfitt, *Moscow Theater Siege Victims Take Fight to Human Rights Judges After Failing in the Russian Courts*, DAILY TELEGRAPH (London), Aug. 10, 2003, available at 2003 WL S9318766.

The Kremlin has consistently called the Second Chechen War a counter-terrorist operation, and thus, soldiers often receive impunity from moral damages under that law. *Sobr. Zakonod. RF*, 1998, No. 130-FZ, *supra*, art. 21; see also Barry Schweid, *U.S. Adds Basayev to Terror Blacklist*, ST. PETERSBURG TIMES, Aug. 12, 2003, available at 2003 WL 64989915 (discussing the Second Chechen War as anti-terrorism operations). This in turn has probably helped to foster a broader sense of immunity.

It should be noted that there have been clear instances of terrorism by Chechen separatists. See, e.g., Paul Quinn Judge, *They are killing Us All*, TIME, Sept. 13, 2004, at 42, available at 2004 WL92184231 (describing the Beslan elementary school seizing, the most recent terrorist incident in Russia that resulted in the deaths of over 300 children and adults). This Note, however, deals only with the actual armed conflicts occurring from roughly 1994 through 1996 and 1999 through 2000.

118. See, e.g., POLITKOVSKAYA, *supra* note 62, at 313–15; see also EVANGELISTA, *supra* note 24, at 150–51.

119. See, e.g., *infra* notes 123–28 and accompanying text; Vladimir Radyuhin, *Russia Denies Massacre Report*, THE HINDU, Dec. 25, 1999, available at 1999 WL 30090269; see also EVANGELISTA, *supra* note 24, at 150–51.

120. See, e.g., *infra* notes 129–33 and accompanying text.

121. See *supra* notes 112–17 and accompanying text.

122. See generally POLITKOVSKAYA, *supra* note 62, at 314–15.

123. Radyuhin, *supra* note 119.

124. *No Happiness Remains*, *supra* note 1.

125. *Id.*; see also POLITKOVSKAYA, *supra* note 62, at 116–19.

Russian forces killed at least twenty-three civilians and raped several more.<sup>126</sup> Immediately after the atrocity, the Kremlin publicly denied that Russian forces committed criminal acts against the civilians in the village.<sup>127</sup> But the Kremlin did not stop there. Rather than hold General Shamanov criminally responsible for the massacre, Russian President Boris Yeltsin proceeded to award Shamanov the “Hero of Russia” medal for his distinguished military service.<sup>128</sup> To this day no Russian soldier has faced criminal prosecution for his role in the Alkhan-Yurt atrocity.

The Kremlin’s directive to cease investigation of the abuses committed in Novye Aldi provides a good example of impunity achieved through the direct demands of the Kremlin. Russian reporter Anna Politkovskaya carefully detailed the civilian atrocity in Novye Aldi, which remains beyond the grasp of the criminal justice system because of the direct demands of the Kremlin.<sup>129</sup> Russian soldiers entered the town in December of 1999, only to find that the Chechen rebel fighters had already fled the city.<sup>130</sup> Nevertheless, the Russian forces unleashed a violent assault on the civilians remaining in the town, bombing the village for an entire month.<sup>131</sup> At least seventy-five civilians were killed and the village was demolished.<sup>132</sup> One year after the atrocity there still had been no investigation.<sup>133</sup> Not a single witness had been interviewed.<sup>134</sup> Original death certificates were collected and reissued with no entry for “cause of death.”<sup>135</sup> The prosecutor’s office told the victims that they were “monitoring the situation.”<sup>136</sup> Others who inquired were told that an investigation is impossible because Chechen custom does not allow bodies to be exhumed.<sup>137</sup> Some in the prosecutor’s office, speaking anonymously, said there was “pressure from the very highest authority and orders have been given to halt the investigation.”<sup>138</sup> Putin did not want to enrage

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126. POLITKOVSKAYA, *supra* note 62, at 116–19.

127. Radyuhin, *supra* note 119.

128. Ian Traynor, *Moscow Makes Heroes of its War Generals*, THE GUARDIAN, Dec. 29, 1999, available at 1999 WL 25755241; see also *Oral Intervention at the 57th Session of the U.N. Commission on Human Rights*, HUMAN RIGHTS WATCH Mar. 2001, available at [http://www.hrw.org/press/2001/04/un\\_oral9\\_0405.htm](http://www.hrw.org/press/2001/04/un_oral9_0405.htm) (last visited Oct. 28, 2004) [hereinafter *Oral Intervention*].

129. POLITKOVSKAYA, *supra* note 62, at 309.

130. *See id.* at 309–15.

131. *Id.* at 310.

132. *Id.*

133. *Id.* at 313.

134. *Id.*

135. *Id.*

136. *Id.* at 314.

137. *Id.*

138. *Id.* at 314–15.

military leaders.<sup>139</sup> There were also claims that military officials threatened prosecutors not to investigate.<sup>140</sup> In this case, through direct demands, the Kremlin granted impunity upon those responsible for the atrocity.

The second barrier to the effective operation of the Russian criminal justice system is the half-hearted nature of investigations undertaken by government prosecutors and investigators.<sup>141</sup> Prosecutors appear willing to abandon inquiries against servicemen at the first minor bump in the investigation.<sup>142</sup> In addition, investigations are often “incomplete, haphazard, or suspended altogether.”<sup>143</sup> There are often unexplained delays in investigations and only weak attempts to locate witnesses, victims, and evidence.<sup>144</sup> For example, the Russian human rights organization Memorial Human Rights Center documented a case in which a military prosecutor was investigating the disappearance of three young Chechen men.<sup>145</sup> The Russian soldiers who were suspected in their disappearance refused to appear before the prosecutor for questioning.<sup>146</sup> Instead of pursuing the soldiers, the prosecutor determined that the crime was committed by “unidentified individuals in camouflage uniforms” whose identities “could not be established.”<sup>147</sup> The case was then closed.<sup>148</sup> This incident is illustrative of a much wider pattern of incomplete investigations.<sup>149</sup>

Thus, the reality of the situation is that the Russian criminal system is, in the majority of cases, unable to impose accountability on those responsible for atrocities committed against Chechen civilians. In light of the dismal prospects for prosecution from the Russian criminal system,

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139. *Id.* at 315.

140. *Id.*

141. Crowfoot, *supra* note 95, at 320.

142. See, e.g., MEMORIAL HUMAN RIGHTS CENTER, *The Status of Investigations Into Crimes Against Civilians Committed by Representatives of Federal Forces on the Territory of the Chechen Republic During the Course of Military Action 1999–2001*, (May 2001), available at <http://www.memo.ru/eng/memhrc/texts/status.shtml> (last visited Oct. 28, 2004).

143. *Oral Intervention*, *supra* note 128.

144. See, e.g., *Isayeva*, *supra* note 56.

145. MEMORIAL HUMAN RIGHTS CENTER, *supra* note 142.

146. *Id.*

147. *Id.*

148. *Id.*

149. See, e.g., EVANGELISTA, *supra* note 24, at 155 (noting that two years into the second war Chechen civilians had filed more than 1000 complaints with the proper authorities, from these complaints, only eleven soldiers were convicted of crimes); see also *Isayeva*, *supra* note 56; *Yusupova*, *supra* note 56; *Bazayeva*, *supra* note 56. In these cases, the European Court of Human Rights described the insufficient efforts taken by Russian prosecutors and investigators to resolve the applicants' complaints of criminal violations.

many victims have given up on criminal justice and now seek civil damages in the European Court of Human Rights in Strasburg.<sup>150</sup> The international criminal law system, however, also provides another possible avenue for pursuing criminal prosecution.<sup>151</sup> This system has been developed with the aim of stepping in to provide criminal justice when the domestic system cannot. The next Part of this Note will examine some of the breaches of international criminal law committed by Russian soldiers, military officers, and government officials.

### III. BREACHES OF INTERNATIONAL CRIMINAL LAW

Despite clear violations of the Russian Criminal Code, the Russian criminal justice system has proven incapable of imposing criminal accountability on those responsible for atrocities committed in Chechnya.<sup>152</sup> However, when the domestic crime also constitutes an international crime, the international criminal law system is designed to fill the gaps left by the domestic system. This Part will demonstrate that, in addition to Russian criminal law, the abhorrent acts of the individuals responsible for atrocities in Chechnya also constitute breaches of international criminal law. In particular, I will show that individual Russian soldiers, military officers, and government officials have breached international criminal law by committing both war crimes and crimes against humanity.

#### A. War Crimes

War crimes are “*serious violations*” of customary international law<sup>153</sup> or treaty law that have been criminalized.<sup>154</sup> Generally, two requirements

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150. Crowfoot, *supra* note 95, at 322; *see also supra* notes 3, 56, 144; Akayeva v. Russia, (No. 57945/00) Eur. Ct. H.R. (2002), at <http://www.echr.coe.int/eng> (last visited Oct. 28, 2004); Malcolm Hawkes, *A Tribunal for Chechnya?*, MOSCOW TIMES, Mar. 31, 2003, available at 2003 WL 66306279.

151. *See infra* Part III.

152. *See supra* notes 111–49.

153. Customary international law is an international practice or norm that has become binding on states over time. MARK W. JANIS, AN INTRODUCTION TO INTERNATIONAL LAW 44–48 (4th ed. 2003). An international practice becomes customary international law when two conditions are met. *Id.* First, the practice must be a general practice. *Id.* at 46. Second, states must comply with the practice out of a sense of legal obligation. *Id.* When these two conditions are met, the customary international law will bind those states who did not dissent during its formation. RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 101 cmt. b (1987). The development of customary international law is a complicated process that is beyond the scope of this Note. It is sufficient to note, however, that many international criminal laws are widely held to be customary international law. JANIS, *supra*, at 48.

154. ANTONIO CASSESE, INTERNATIONAL CRIMINAL LAW 47 (2003).

must be met for a serious violation of international law to be considered a war crime: (1) there must be a “serious infringement of an international rule” contained in an applicable treaty or a customary international law; and (2) “the violation must entail . . . the individual criminal responsibility of the person breaching the rule.”<sup>155</sup> These two requirements ensure that the international rule has been criminalized and therefore that breach of the rule constitutes a war crime.<sup>156</sup> This section will show that Russian soldiers, military officers, and government officials committed war crimes through serious breaches of international treaty law. In reaching this conclusion, the section will proceed in two subsections. The first subsection will identify the relevant treaty law and examine how it applies to the atrocities committed in Chechnya. The second subsection will assess how the treaty operates to impose accountability on the individuals responsible for serious breaches.

The first step in identifying the heinous acts committed by Russian soldiers, military officers, and government officials during the two Chechen wars as war crimes is to find a “serious infringement of an international rule” that is contained in a treaty or customary law.<sup>157</sup> The relevant international rules covering the Chechen atrocities are contained in the 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War (hereinafter “Geneva Convention”).<sup>158</sup> The Geneva Convention is a multilateral treaty signed by a majority of states in the world.<sup>159</sup> The Soviet Union ratified the treaty in 1954.<sup>160</sup> As the

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155. *Id.* (citing Prosecutor v. Duško Tadić, (No. IT-94-1/AR72), Appeals Chamber, (Oct. 2, 1995), at <http://www.icty.org> (last visited Oct. 28, 2004)). Under *Tadić*, there are three requirements: (1) the war crime must be a “serious infringement” of an international rule; (2) the rule must be derived from an international treaty or customary international law; and (3) the violation must entail the imposition of individual criminal responsibility. *Id.* For purposes of this Note, requirements (1) and (2) have been combined.

156. CASSESE, *supra* note 154, at 50.

157. *Id.* (citing *Tadić*, *supra* note 155).

158. Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Oct. 21, 1950, 75 U.N.T.S. 287 [hereinafter Geneva Convention]. Russia ratified the Geneva Convention in 1954. See INTERNATIONAL COMMITTEE OF THE RED CROSS, *States Party to the Geneva Conventions and Their Additional Protocols*, (Feb. 6, 2004), available at <http://www.icrc.org> (last visited Oct. 28, 2004) [hereinafter ICRC]. Because Russia is a party to the Geneva Convention, it is bound by its provisions and will be liable for any breaches. JANIS, *supra* note 153, at 9–16. In addition, Article 3 of the 1949 Geneva Convention is now considered customary international law, and would be binding on Russia even if it were not a party to the treaty. THEODOR MERON, *WAR CRIMES LAW COMES OF AGE* 238–39 (1998). The ICJ explicitly recognized Article 3 as customary international law. *Military and Paramilitary Activities (Nicar. v. U.S.)* 1986 I.C.J. 14, para. 114 (June 27).

159. See generally Geneva Convention, *supra* note 158. Geneva Convention ratification information is available at <http://www.icrc.org> (last visited Oct. 28, 2004).

160. ICRC, *supra* note 158.

successor state to the Soviet Union, Russia became bound by the terms of the treaty.<sup>161</sup>

Within the Geneva Convention, Article 3 and Additional Protocol II (hereinafter “Protocol II”) are the specific provisions that contain the relevant substantive international criminal rules.<sup>162</sup> Article 3 and Protocol II are of particular importance for three reasons. First, these provisions contain rules specifically forbidding the types of atrocities committed in Chechnya.<sup>163</sup> Second, these provisions address the treatment of civilians.<sup>164</sup> And finally, these provisions apply to internal conflicts.<sup>165</sup> Article 3, in relevant part, states:

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms . . . shall in all circumstances be treated humanely . . .

To this end, the following acts are and shall remain prohibited at any time . . .

(a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture . . .;

(b) Taking of hostages;

(c) Outrages upon personal dignity, in particular humiliating or degrading treatment;

(d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court. . . .<sup>166</sup>

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161. JANIS, *supra* note 153, at 9–10; *see also* THOMAS BUERGENTHAL & SEAN MURPHY, PUBLIC INTERNATIONAL LAW IN A NUTSHELL 126–28 (2002) (noting that Russia was accepted by the United Nations and other states as the “successor to the treaties to which the Soviet Union had been a party”).

162. Geneva Convention, *supra* note 158, art. 3; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, Dec. 7, 1978, 1125 U.N.T.S. 609 [hereinafter Protocol II]. Russia ratified Protocol II on September 29, 1989. For ratification information see <http://www.icrc.org> (last visited Oct. 28, 2004).

163. Geneva Convention, *supra* note 158, art. 3; Protocol II, *supra* note 162, arts. 4, 13, 14.

164. Geneva Convention, *supra* note 158, art. 3; Protocol II, *supra* note 162, arts. 4, 13, 14.

165. Geneva Convention, *supra* note 158, art. 3; Protocol II, *supra* note 162, arts. 4, 13, 14.

166. Geneva Convention, *supra* note 158, art. 3.

Protocol II elaborates on the types of acts forbidden. For example, Protocol II specifically prohibits pillaging and designates rape as a form of “[outrage] upon personal dignity.”<sup>167</sup> Article 13 of Protocol II also provides that the “civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.”<sup>168</sup>

Thus, the Geneva Convention explicitly prohibits the types of heinous acts that were committed against Chechen civilians.<sup>169</sup> Acts such as murder, torture, and summary executions are specifically forbidden by the Geneva Convention.<sup>170</sup> For example, Russian soldiers and military officers violated Protocol II’s prohibition on pillaging when they looted and destroyed the village of Alkhan-Yurt.<sup>171</sup> Colonel Budanov violated Article 3’s prohibition on “murder of all kinds” when he murdered Elza Kungayeva.<sup>172</sup> Similarly, the 1999 Russian aerial bombing attack on a convoy of civilian refugees fleeing war-torn Grozny flagrantly violated both Article 3 and Protocol II’s prohibitions on violence to life and person, and also constituted an attack on a civilian population under Article 13 of Protocol II.<sup>173</sup> These are just a few examples of the many atrocities committed against Chechen civilians in violation of the Geneva Convention.

Violations of Article 3 and Protocol II are generally considered to be serious infringements of international rules when “the international community would have an important interest in prosecuting the violators, especially when the criminal justice system of the state where the offenses were committed . . . [has] failed to act.”<sup>174</sup> In the case of atrocities in Chechnya, the international community has periodically expressed outrage at the mistreatment of Chechen civilians and the failure to prosecute those responsible.<sup>175</sup> For example, the Council of Europe issued a draft

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167. Protocol II, *supra* note 162, art. 4.2 (e), (g).

168. *Id.* art. 13.2.

169. Geneva Convention, *supra* note 158, art. 3; Protocol II, *supra* note 162, arts. 4, 13, 14.

170. Geneva Convention, *supra* note 158, art. 3.

171. *See supra* notes 123–26; Protocol II, *supra* note 162, art. 4.2(g). This incident was first mentioned in Part II.B.

172. *See supra* notes 90–95; Geneva Convention, *supra* note 158, art. 3.1(a).

173. *Isayeva, supra* note 56; *Yusupova, supra* note 56; *Bazayeva, supra* note 56; Geneva Convention, *supra* note 158, art. 3.1(a); Protocol II, *supra* note 162, art. 4.2(a).

174. MERON, *supra* note 158, at 260; *see also Statute of the International Criminal Tribunal for Rwanda*, U.N. SCOR, 49th Sess., 3453rd mtg., U.N. Doc. S/RES/955 (1994), art. 4 [hereinafter the ICTR Statute]. Article 4 of the ICTR Statute adopts Article 3 of the Geneva Convention and Protocol II as its definition for war crimes. *Id.*

175. *See, e.g.,* Elizabeth Olson, *U.N. Commission Censures Russia for Rights Abuses in*

resolution criticizing the failure of the Russian domestic system to prosecute those responsible for the atrocities.<sup>176</sup>

In addition to prohibiting many of the violent acts committed by Russian soldiers, military officers, and government officials, the Geneva Convention is also relevant because it specifically addresses the mistreatment of civilians. Section 1 of Article 3 specifically notes that the Article addresses criminal acts committed against “persons taking no active part in the hostilities. . . .”<sup>177</sup> Similarly, Protocol II also addresses the treatment of “[a]ll persons who do not take a direct part or who have ceased to take part in hostilities.”<sup>178</sup> The atrocities addressed in this Note are those committed against Chechen civilians. Therefore, the Geneva Convention, and in particular Article 3 and Protocol II, provide applicable international rules.

The Geneva Convention is also applicable to the Chechen atrocities because it specifically addresses internal armed conflict.<sup>179</sup> Article 3 applies only “[i]n the case of armed conflict not of an international character.”<sup>180</sup> Because Chechnya is a republic of Russia and not a sovereign state, the conflict is not of an international character.<sup>181</sup> In

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*Chechnya*, INT’L HERALD TRIBUNE, Apr. 21, 2002, at 4, available at 2001 WL 4854032. The U.N. Human Rights Commission condemned the Russian atrocities on several occasions and expressed concern over the lack of investigations by Russia. *Id.* In addition, the Organization for Security and Cooperation in Europe (OSCE) also condemned Russian atrocities and the clampdown on the civilian population, urging a legal probe. *OSCE Chief Raps Russia Over Chechnya, Moldova*, AGENCE FRANCE PRESSE, Nov. 28, 2000, available at 2000 WL 24769697.

176. Hawkes, *supra* note 150. The Council even went one step further, calling for the creation of an International Tribunal to prosecute those who committed war crimes under the Geneva Convention. *Id.*

177. Geneva Convention, *supra* note 158, art. 3.

178. Protocol II, *supra* note 162, art. 4.1.

179. Geneva Convention, *supra* note 158, art. 3. Protocol II does not specifically state that it applies to “internal armed conflict.” See generally Protocol II, *supra* note 162. Article 1 of Protocol II, however, indicates that the Protocol supplements Article 3 of the Geneva Convention, which, as noted above, applies to internal armed conflict. *Id.* art. 1. Furthermore, Protocol II states that it applies to “[a]rmed [c]onflicts . . . which take place in the territory of a High Contracting Party between its armed forces . . . or other organized armed groups. . . .” *Id.*

180. Geneva Convention, *supra* note 158, art. 3. Also, Protocol II states that the Protocol “shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.” Protocol II, *supra* note 162, art. 1. This provision merely reinforces the requirement in Article 3 that there must be an actual armed conflict.

181. The First Chechen War was fought with the aim of achieving Chechen sovereignty. See *supra* notes 22–28. The war ended with the Khasavyurt Peace Accords that purported to give Chechnya provisional independence. See *supra* note 40. Ultimately, however, the question of status was delayed until 2001. See *supra* note 41 and accompanying text. In the period after the first war, however, no countries or the U.N. recognized Chechnya as a sovereign state. Dmitry Litvinovich, *Chechnya: Information*, PRAVDA ONLINE, Nov. 14, 2002, at <http://english.pravda.ru/hotspots/2002/11/14/39481.html> (last visited Oct. 28, 2004). Chechnya never gained full sovereignty; therefore the

addition, the conflict is generally considered to be an “armed conflict.”<sup>182</sup> As noted above, the First Chechen War was fought over Chechen independence.<sup>183</sup> The Second Chechen War began as an attempt to contain Chechen rebels after an incursion into Daghestan, and then melded into a war to reassert Russian control over the republic.<sup>184</sup> In both wars, heavily armed Russian military forces invaded Chechnya.<sup>185</sup> Thousands of uniformed soldiers were dispatched, bombers were employed to drop bombs over towns, missiles were targeted at selected sites, and tanks rolled into suspected rebel strongholds.<sup>186</sup> Based on these facts, it seems evident that the Chechen Wars are correctly classified as “armed conflicts.”<sup>187</sup>

The second step in successfully characterizing the Chechen atrocities as war crimes is establishing that individual criminal responsibility can be imposed for a serious breach of the international rule.<sup>188</sup> In this case, it is necessary to establish that Article 3 and Protocol II of the Geneva Convention impose individual criminal responsibility. Admittedly, nothing in the Geneva Convention itself refers specifically to individual criminal responsibility.<sup>189</sup> However, the view held by the majority of the world

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conflict was not of an international character and thus falls within Article 3 of the Geneva Convention.

182. See *infra* notes 183–87 and accompanying text.

183. See *supra* notes 25–27 and accompanying text.

184. See *supra* notes 51–52 and accompanying text.

185. *Russian Troops Inside Chechnya*, CNN, Oct. 1, 1999, available at <http://www.cnn.com/WORLD/europe/9910/01/russia.chechnya.02> (last visited Oct. 28, 2004). See generally Cornell, *supra* note 16, at 170–74.

186. Yuri v. Ushakov, *Humanitarian and Legal Aspects of the Crisis in Chechnya*, 23 FORDHAM INT'L L.J. 1155, 1164 (2000).

187. In an attempt to avoid liability under the 1949 Geneva Convention, the Kremlin has attempted to define the conflict as a “counter-terrorist operation,” rather than an internal armed conflict. See, e.g., Thomas Marzahl, *Keep Anti-Terrorism Campaign Within International Law*, AGENCE FRANCE PRESSE, Feb. 3, 2002, available at 2002 WL 2331527.

One Russian official, testifying before the European Union, described Chechnya as an “aggressive center of international terrorism and political extremism.” *EU Council Chairman: Russian EU Membership Possible in ‘Not Too Distant Future,’* DIE PRESSE (Vienna), Aug. 28, 2001 (in German), available at [www.ichkeria.org/a/2001/8/new2908-en85218.html](http://www.ichkeria.org/a/2001/8/new2908-en85218.html) (last visited Oct. 28, 2004). However, as noted in *Prosecutor v. Jean-Paul Akayesu*, the determination of whether a conflict is an “armed conflict” is an objective judgment. *Prosecutor v. Jean-Paul Akayesu*, (No. ICTR-96-4-T), Trial Chamber, (Sept. 2, 1998), para. 603, at <http://www.ictt.org> (last visited Oct. 28, 2004) (holding “on the basis of objective criteria, both Common Article 3 and Additional Protocol II will apply once it has been established there exists an internal armed conflict which fulfills their respective pre-determined criteria.”). Therefore, it would be irrelevant how the Kremlin characterizes the conflict. *Id.* A thorough analysis of the Kremlin’s claim is beyond the scope of this Note. But, for the purposes of this Note, I will assume the more likely conclusion that Russian military actions in Chechnya constitute an “armed conflict.”

188. See *supra* note 155.

189. See generally Geneva Convention, *supra* note 158.

today is that individual criminal responsibility is created under Article 3 and Protocol II of the Geneva Convention.<sup>190</sup> For example, several international criminal tribunals created to prosecute war crimes have found that Article 3 and Protocol II of the Geneva Convention impose individual criminal responsibility.<sup>191</sup> The International Military Tribunal at Nuremberg (hereinafter “Nuremberg Tribunal”) concluded that an absence of provisions concerning punishment for breaches in a given international rule does not prevent a finding of individual responsibility.<sup>192</sup> The Nuremberg Tribunal ultimately ruled that “[c]rimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced.”<sup>193</sup> More recently, the statute of the International Criminal Tribunal for Rwanda (hereinafter “ICTR”) also specifies that individuals may be tried for breaches of Article 3 and Protocol II of the Geneva Convention.<sup>194</sup> In addition, the International Criminal Tribunal for Yugoslavia (hereinafter “ICTY”), in *Tadić*, affirmed that both Article 3 and Protocol II impose individual criminal responsibility.<sup>195</sup>

Accepting that Article 3 and Protocol II of the Geneva Convention impose accountability on individuals, it is necessary to identify the individuals who can be held accountable. Under the doctrine of command responsibility, not only is the individual who actually perpetrated the crime held responsible, but also those military officers and government officials who ordered or facilitated the criminal activity.<sup>196</sup> The doctrine of command responsibility would impose liability on a Chechen

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190. For example, Meron contends that “[t]hose who reject common Article 3 and Additional Protocol II as a basis for individual criminal responsibility tend to confuse criminality with jurisdiction and penalties.” MERON, *supra* note 158, at 239. Dissenters argue that until customary law has established that Article 3 and Protocol II create individual criminal responsibility, the principle of *nullem crimen sine lege* prevents their application. *Id.* at 235–38.

191. *See infra* notes 192–95.

192. MERON, *supra* note 158, at 190; *see also* INTERNATIONAL MILITARY TRIBUNAL, THE TRIAL OF MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL, Nuremberg, 14 November 1945–1 October 1946, Part 22, at 445, 467 (1950).

193. *Id.* at 447.

194. ICTR Statute, *supra* note 174, arts. 4, 7.

195. *Tadić*, *supra* note 155, para. 129 (“we have no doubt that [breaches of Article 3] entail individual criminal responsibility, regardless of whether they are committed in internal or international armed conflicts.”).

196. JOHN R. W. D. JONES & STEPHEN POWLES, INTERNATIONAL CRIMINAL PRACTICE 424 (3d ed. 2003). Jones and Powles note that the idea of command responsibility was first clearly articulated and used by the Nuremberg Tribunal following World War II. *Id.* Under this doctrine, in certain circumstances civilian and military commanders will be held responsible for the criminal actions of their subordinates. *Id.* For a more detailed explanation of the development and implementation of the doctrine of command responsibility, see *id.* at 424–44.

commanding officer or government official who knew, or should have known, that his subordinates were about to commit one of the criminal acts articulated in the Geneva Convention, and failed to take action to prevent the crime.<sup>197</sup> There is some dispute as to whether Article 3 and Protocol II of the Geneva Convention allow for command responsibility.<sup>198</sup> However, both the ICTY and the ICTR have incorporated command responsibility into their statutes and apply that doctrine to Article 3 and Protocol II.<sup>199</sup> The ICTY appellate chamber specifically took up the issue in 2003.<sup>200</sup> The appellate chamber affirmed that command responsibility does apply to breaches of Article 3 and Protocol II.<sup>201</sup>

Thus, it appears that military officers and government officials, as well as individual soldiers can be prosecuted for war crimes under Article 3 and Protocol II of the Geneva Convention.<sup>202</sup> For example, in the case of the mass murder and destruction at Alkhan-Yurt, the following military parties could be prosecuted for war crimes: (1) the individual soldiers responsible for the actual murders and pillaging, (2) General Shamanov, who was responsible for the troops and allowed the atrocity to occur, and (3) any Russian political leaders who had knowledge of the abuses but failed to take necessary and reasonable measures to prevent it.<sup>203</sup>

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197. *Id.* Jones and Powles note that both the ICTR and the ICTY statutes adopt the doctrine of command responsibility. See ICTR Statute, *supra* note 174, art. 6.3 (the fact that any violation “was committed by a subordinate does not relieve his or her superior of criminal responsibility . . .”); *Statute of the International Tribunal for the Former Yugoslavia*, U.N. SCOR, 3217 mtg., U.N. Doc. S/RES/827 (1993), art. 7.3, (amended by U.N. SCOR Res. 1166, 1329, and 1411) [hereinafter ICTY Statute] (the fact that any violation “was committed by a subordinate does not relieve his superior of criminal responsibility . . .”). In addition, the Rome Statute of the International Criminal Court also provides for command responsibility. See *Rome Statute of the International Criminal Court*, July 1, 2002, art. 28, available at <http://www.un.org/law/icc> (last visited Oct. 28, 2004) [hereinafter the ICC Statute] (stating, “A military commander or person effectively acting as a military commander shall be criminally responsible for crimes . . . committed by forces under his or her effective command and control” and in any other non-military superior and subordinate relationships “a superior shall be criminally responsible for crimes . . . committed by subordinates under his or her effective authority and control . . .”). For more detailed analysis of command responsibility in these tribunals, see JONES & POWLES, *supra* note 196, at 424–34, 441–42.

198. JONES & POWLES, *supra* note 196, at 430–35.

199. ICTY Statute, *supra* note 197, art. 7; ICTR Statute, *supra* note 174, art. 6. Both the ICTY Statute and the ICTR Statute incorporate Article 3 of the Geneva Convention into their war crimes provisions. Thus, the doctrine of command responsibility applies to Article 3 breaches. See also JONES & POWLES, *supra* note 196, at 408–12.

200. See *Prosecutor v. Hadžihasanović et al.*, (No. IT-01-47-AR72), Appeals Chamber, (July 16, 2003), at <http://www.icty.org/Supplement/supp43-e/hadzhasanovic.htm> (last visited Oct. 28, 2004).

201. *Id.* The Appeals Chamber ruled that “the fact that it was in the course of an internal armed conflict that a war crime was about to be committed or was committed is not relevant to the responsibility of the commander.” *Id.* para. 20.

202. See *supra* notes 188–201 and accompanying text.

203. See *supra* notes 123–28 and accompanying text.

This discussion demonstrates that individual Russian soldiers, military officers, and government officials have committed war crimes through serious breaches of international criminal law embodied in Article 3 and Protocol II of the Geneva Convention. Torture in filtration camps, pillaging of towns, summary execution of prisoners, and raping of villagers all constitute war crimes capable of prosecution under the Geneva Convention. As a result, Chechen victims of these war crimes may seek justice in the international criminal system. The problem is whether a tribunal exists with competence to prosecute these crimes. That issue is addressed in Part IV below.

### *B. Crimes Against Humanity*

Unlike war crimes, crimes against humanity are not codified in international treaty law.<sup>204</sup> Instead, the substantive aspects of the offense have developed over time to become customary international law.<sup>205</sup> Because crimes against humanity are not definitively codified, courts and tribunals are able to inject slight nuances into the definitions of crimes against humanity they choose to adopt.<sup>206</sup> Generally, however, crimes against humanity can be described as “serious [attacks] on human dignity” that are part of a “widespread or systematic practice” directed toward the “civilian population.”<sup>207</sup> This section will apply this definition to demonstrate that Russian soldiers, military officers, and government officials are responsible for crimes against humanity as a result of the atrocities they inflicted upon Chechen civilians. In making this assertion, this section is broken down into four subsections. The first subsection will explore what constitutes a “serious attack on human dignity” and assess whether such attacks have occurred in Chechnya.<sup>208</sup> The second subsection will examine the requirement of a “widespread or systematic practice” and will apply that definition to the situation in Chechnya.<sup>209</sup> The third subsection will briefly address the requirement that the attacks be directed

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204. CASSESE, *supra* note 154, at 64.

205. *Id.* at 64–65; *see also* MERON, *supra* note 158, at 233.

206. Compare ICTR Statute, *supra* note 174, art. 3, with ICTY Statute, *supra* note 197, art. 5. The ICTR Statute requires a widespread or systematic attack based on “national, political, ethnic, racial, or religious grounds.” ICTR Statute, *supra* note 174, art. 3. The ICTY, however, only requires discrimination if the charge is persecution. ICTY Statute, *supra* note 197, art. 5.

207. CASSESE, *supra* note 154, at 64. It should also be noted that under customary international law, crimes against humanity can unquestionably be committed in the context of an internal armed conflict, such as the Chechen Wars. JONES & POWLES, *supra* note 196, at 185–86.

208. *See supra* notes 204–07; *see infra* notes 209–25.

209. *See infra* notes 226–60.

toward a “civilian population.”<sup>210</sup> Finally, the fourth subsection will address which individuals can be held responsible for crimes against humanity.<sup>211</sup>

### *1. Elements of a Serious Attack on Human Dignity*

In order for Russian forces and government officials to be held responsible for crimes against humanity, they must have committed “serious [attacks] on human dignity.”<sup>212</sup> Ten specific criminal acts have been singled out as serious attacks on human dignity: (1) murder; (2) extermination; (3) enslavement; (4) deportation; (5) imprisonment; (6) torture; (7) sexual violence; (8) persecution; (9) forced disappearance; and (10) other inhumane acts of a similar character and gravity.<sup>213</sup> These criminal acts have been defined as serious attacks on human dignity by both the case law put forth by the various international tribunals that have operated since World War II and the statutes of those tribunals.<sup>214</sup> Many of

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210. See *infra* notes 261–67.

211. See *infra* notes 268–70.

212. CASSESE, *supra* note 154, at 64.

213. *Id.* at 74–80; see also ICTR Statute, *supra* note 174, art. 3; ICTY Statute, *supra* note 197, art. 5; ICC Statute, *supra* note 197, art. 7.

214. CASSESE, *supra* note 154, at 74. For case law on extermination, Cassese cites *Kambanda v. Prosecutor*, (No. ICTR-97-23-A), Appeals Chamber, (Oct. 19, 2000), at <http://www.ictor.org> (last visited Jan. 5, 2005).

For case law on enslavement, Cassese cites *Prosecutor v. Kunarac and Others*, (No. IT-96-23), Trial Chamber, (Feb. 22, 2001), para. 539, at <http://www.un.org/icty/Kunarac/trialc2/judgement/Kun-tj010222e-1.htm> (last visited Jan. 5, 2005) (holding “enslavement as a crime against humanity in customary international law [consists] of the exercise of any or all of the powers attaching to the right of ownership over a person.”).

For case law on deportation, Cassese cites *Prosecutor v. Krstić*, (No. IT-98-33-T), Trial Chamber, (Aug. 2, 2001), para. 521, at <http://www.un.org/icty/krstic/trialC1/judgement/krs-tj010802e-1.htm> (last visited Jan. 5, 2005) (“deportation . . . relate[s] to the involuntary and unlawful evacuation of individuals from the territory in which they reside” to another country).

For case law on imprisonment, Cassese cites *Prosecutor v. Kordić & Čerkez*, (No. IT-95-14/2-T), Trial Chamber, (Feb. 26, 2001), at <http://www.un.org/icty.kordic/trialc/judgement/kor-tj010226e-1.htm> (last visited Jan. 5, 2005) (“the term imprisonment . . . should be understood as arbitrary imprisonment, that is to say, the deprivation of liberty of the individual without due process of law, as part of a widespread or systematic attack directed against a civilian population.”).

For case law on torture, Cassese cites *Prosecutor v. Delalić and Others*, (No. IT-96-21-T), Trial Chamber, (Nov. 16, 1998), at <http://www.un.org/icty/celebici/trialc2/judgement/cel-tj981116e-1.htm> (last visited Jan. 5, 2005). Defining torture as:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

these enumerated criminal acts mirror those provided in the Geneva Convention as war crimes.<sup>215</sup> In fact, international criminal law makes “no distinction between the seriousness of a crime against humanity and that of a war crime.”<sup>216</sup> Thus, once a criminal act is found to be a war crime, it has met the “serious attack on human dignity” requirement for crimes against humanity.<sup>217</sup>

Reports from Chechnya indicate that Russian forces have committed serious attacks against the human dignity of Chechen civilians.<sup>218</sup> One stark example of such an attack is the torture of Chechen civilians sent to Russian filtration camps. The case of Zelimkham is illustrative.<sup>219</sup> Fifteen Russian military policemen took Zelimkham from his home to the International filtration camp.<sup>220</sup> At the camp, guards severely beat and sodomized him to coerce him into signing a confession stating that he was a Chechen rebel fighter.<sup>221</sup> Customary international criminal law has

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*Id.* para. 456.

For case law on sexual violence, Cassese cites *Jean-Paul Akayesu*, *supra* note 187, para. 10A (“acts of sexual violence include forcible sexual penetration of the vagina, anus or oral cavity by a penis and/or of the vagina or anus by some other object, and sexual abuse, such as forced nudity.”).

For case law on persecution, Cassese cites *Prosecutor v. Kupreškić and Others*, (No. IT-95-16-T), Trial Chamber, (Oct. 6, 1998), at <http://www.un.org/icty/kupreskic/trialc2/judgement/kup-tj000114e-1.htm> (last visited Jan. 5, 2005) (defining persecution as “the gross or blatant denial, on discriminatory grounds, of a fundamental right, laid down in international customary or treaty law, reaching the same level of gravity as the other acts prohibited in Article 5” of the ICTY Statute).

Finally, Cassese notes that forced disappearance is defined by the ICC statute, *supra* note 197, art. 7(2)(i):

“Enforced disappearance of persons” means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

*Id.* In addition, the ICC Statute also defines other inhumane acts. *Id.* art. 7(1)(k) (defining inhumane acts as “intentionally causing great suffering, or serious injury to body or to mental or physical health.”).

215. See Geneva Convention, *supra* note 158, art. 3; Protocol II, *supra* note 162.

216. *Prosecutor v. Tadić*, (No. IT-94-1-T), Appeals Chamber, (May 7, 1997), para. 69, at <http://www.un.org/icty/tadic/appeal/judgement/tad-asj000126e.htm> (last visited Jan. 5, 2005), cited in JONES & POWLES, *supra* note 196, at 183.

217. JONES & POWLES, *supra* note 196, at 185–86. If a Russian soldier is convicted of a war crime for the rape of a Chechen woman, he has also committed a serious attack against the human dignity of that woman. *Id.* This satisfies the first requirement for breach of a crime against humanity. *Id.*

218. See generally POLITKOVSKAYA, *supra* note 62; see also *infra* notes 219–25 and accompanying text.

219. *Torture in the OSCE Region: Briefing of the Commission on Security and Cooperation in Europe*, 106th Cong. (2d. Sess. 2000) (testimony of Maureen Greenwood, Advocacy Director, Europe and the Middle East, Amnesty International), available at <http://www.csce.gov/pdf/062200brf.pdf> (last visited Oct. 28, 2004).

220. *Id.*

221. *Id.*

defined torture as consisting of the intentional infliction of severe pain or suffering in order to punish, intimidate, discriminate, or obtain information or a confession.<sup>222</sup> Here Zelimkham endured severe physical pain and suffering through the beatings and sodomy.<sup>223</sup> The torture was intended to extract a confession of involvement with the Chechen rebels.<sup>224</sup> The treatment of Zelimkham thus constitutes a serious attack against human dignity in the form of torture. This is just one example of the many Chechens who endured torture in the Russian filtration camps and a single case of countless serious attacks against the human dignity of Chechen civilians.<sup>225</sup>

## 2. *Widespread or Systematic Practice*

The existence of a serious attack on human dignity is not enough, however, to constitute a crime against humanity.<sup>226</sup> The serious attack on human dignity must also be part of a widespread or systematic practice directed toward a civilian population.<sup>227</sup> To constitute a crime against humanity, the offense cannot be “limited to a sporadic event” but rather, must “be part of a pattern of misconduct.”<sup>228</sup> A widespread attack is one that is “directed against a multiplicity of victims.”<sup>229</sup> A crime may be “widespread” by the “cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude.”<sup>230</sup> On the other hand, a systematic attack is one that is “carried out pursuant to a preconceived policy or plan.”<sup>231</sup> There are generally four requirements that must be met for an attack to be considered systematic: (1) there must be a political objective or plan behind the attacks; (2) the criminal acts must be either “on a very large scale against a group of civilians” or “repeated and continuous” acts linked to one another; (3) there must be substantial use of public or private resources, such as the military; and (4) high level

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222. *Jean-Paul Akayesu*, *supra* note 187, para. 681.

223. *See supra* note 219.

224. *See supra* note 219.

225. *See supra* note 219; *see also* POLITKOVSKAYA, *supra* note 62, at 311–12.

226. *See supra* note 207 and accompanying text.

227. CASSESE, *supra* note 154, at 64.

228. *Id.* at 65.

229. *Prosecutor v. Kayishema & Ruzindana*, (No. ICTR-95-1-T), Trial Chamber, (May 21, 1999), at <http://www.ictor.org/ENGLISH/cases/KayRuz/judgement/index.htm> (last visited Oct. 27, 2004), *cited in* JONES & POWLES, *supra* note 196, at 192.

230. *Prosecutor v. Blaškić*, (No. IT-95-1-T), Trial Chamber, (Mar. 3, 2000), para. 206, at <http://www.icty.org> (last visited Oct. 27, 2004), *cited in* JONES & POWLES, *supra* note 196, at 192.

231. *Kayishema*, *supra* note 229, para. 123, *cited in* JONES & POWLES, *supra* note 196, at 192.

government officials or military officers must be involved in the creation of the political objective or plan.<sup>232</sup>

To demonstrate a widespread or systematic attack, it is not necessary to affirmatively establish the existence of a formal state plan or policy to target a civilian population.<sup>233</sup> Rather, a policy or plan can be inferred from the pattern of inhumane acts that occurred.<sup>234</sup> When attacks on human dignity occur on a widespread or systematic basis, that alone demonstrates a policy or plan to commit the acts, regardless of whether it is formalized.<sup>235</sup> Thus, as a practical matter, requirements (1) and (4) for establishing a “systematic” attack are considered fulfilled when requirements (2) and (3) have been met.<sup>236</sup>

The Kremlin and the Russian media are largely silent on the extent of the attacks targeting Chechen civilians. However, the European Parliament has issued a comprehensive account of the large-scale nature of the attack on Chechen civilians.<sup>237</sup> There have been at least four documented mass killings of Chechen civilians in the second war.<sup>238</sup> These include the atrocities committed in Alkhan-Yurt, Staropromyslovsky, Novye Aldi, and Mesker-Yurt.<sup>239</sup> These four incidents resulted in the mass murder of more than 150 Chechen civilians, the majority shot at close range.<sup>240</sup> In addition to these mass murders, mass graves have been found in Chechnya.<sup>241</sup> The largest mass grave held fifty-one bodies, and several smaller graves have also been discovered.<sup>242</sup> Individual corpses are routinely found along the road, in open fields and forests, and in shallow graves.<sup>243</sup> An undetermined number of Chechens have simply “disappeared.”<sup>244</sup> Chechen President Akhmad Kadyrov recently estimated that 3,000 Chechens have

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232. JONES & POWLES, *supra* note 196, at 192 (citing *Blaškić*, *supra* note 230, para. 203).

233. JONES & POWLES, *supra* note 196, at 195–96 (citing *Prosecutor v. Tadić*, (No. IT-94-1-T), Trial Chamber, (May 7, 1997), para. 653, at <http://www.icty.org> (last visited Jan. 5, 2005) (holding a policy of widespread and systematic attack “need not be formalized and can be deduced from the way in which the acts occur. . .”)); *Kayishema*, *supra* note 229, para. 126 (holding an informal plan “instigated or directed by a Government or by any organization or group” is sufficient to meet the requirement of a political objective or plan).

234. *Id.*

235. *Id.*

236. *Blaškić*, *supra* note 232, para. 204.

237. *Human Rights Situation in the Chechen Republic*, *supra* note 59. The European parliament is the legislative body of the European Union.

238. *Id.* para. 13.

239. *Id.*

240. *Id.* at paras. 14–24.

241. *Id.* para. 25.

242. *Id.*

243. *Id.*

244. *Id.* para. 34.

disappeared since the Second Chechen War began in 1999.<sup>245</sup> The Chechen rebel health minister puts the number of the disappeared at 20,000.<sup>246</sup> In addition, torture and rape of civilians is also commonplace, especially in the filtration camps.<sup>247</sup> An accurate number of civilians killed, disappeared, or otherwise forced to endure serious attacks on human dignity might never be available. However, most reports estimate the number to be at least 20,000 and potentially as high as 200,000.<sup>248</sup>

Based on this evidence, it appears that the attack on Chechen civilians seems to be both widespread and systematic.<sup>249</sup> The attack appears to be widespread because it is directed at a multiplicity of victims.<sup>250</sup> Specifically, it is likely that at least 20,000 civilians were killed or have disappeared at the hands of Russian forces.<sup>251</sup> The cumulative effect of the murders, disappearances, rapes, and torture indicate a widespread pattern of targeting Chechen civilians.<sup>252</sup> The attack can also be characterized as systematic.<sup>253</sup> The Kremlin and military officials have not formally announced a plan or policy of targeting Chechen civilians; however such a plan can be inferred from the repeated and continuous attacks targeted toward the civilian population.<sup>254</sup> Moreover, substantial public resources have been used to target Chechen civilians.<sup>255</sup> For example, Russian military forces are used to torture and kill civilians in the filtration camps, which themselves were built with public funds.<sup>256</sup>

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245. *3,000 Disappeared in Chechnya*, INDEPENDENT (London), Mar. 19, 2004, at 21, available at 2004 WL 73457024.

246. *Chechen Rebel Health Minister Calls on U.N. to Broker Talks with Russia*, BBC MONITORING (Caucasus), Jan. 23, 2004.

247. See *supra* notes 68–76 and accompanying text; see also *Human Rights Situation in the Chechen Republic*, *supra* note 59, at paras. 40–44.

248. Nichols, *supra* note 20, at 250. Nichols notes that the Chechen government estimates 25,000 to 40,000 civilian deaths or disappearances as of May 2000. *Id.* at 250 n.15; see also PROJECT PLOUGHSHARES, *Armed Conflict Report 2004: Russia (Chechnya)*, at <http://www.ploughshares.ca/CONTENT/ACR/ACR00/ACR00-Russia.html> (last visited Oct. 27, 2004); AMERICAN ENTERPRISE INSTITUTE FOR PUBLIC POLICY RESEARCH, *Catastrophe in Chechnya: Escaping the Quagmire*, (Dec. 2003), available at <http://www.aei.org/events/filter.,eventID.675/summary.asp> (last visited Oct. 27, 2004); Martin Sieff, *Analysis: Putin Fires Generals Over Chechnya*, WASH. TIMES, July 20, 2004, available at <http://washingtontimes.com/upi-breaking/20040719-041142-8528r.htm> (last visited Feb. 8, 2005).

249. See *supra* notes 238–48 and accompanying text.

250. See *supra* note 248 and accompanying text.

251. See *supra* note 248 and accompanying text.

252. See *supra* notes 238–48 and accompanying text.

253. See *supra* notes 231–32 and accompanying text.

254. See *supra* notes 238–48 and accompanying text.

255. See *supra* notes 68–70 and accompanying text (explaining that the use of Russian armed forces and the construction of Russian filtration camps constitutes expenditures of substantial public resources).

256. See *supra* notes 68–70 and accompanying text.

The “widespread and systematic” requirement also has implications regarding the required intent of the accused. To be found guilty of crimes against humanity, the accused must both “know that there is an attack on the civilian population” and “know that his act fits in with the attack.”<sup>257</sup> It does not matter if the attack against human dignity was committed for purely personal reasons, provided the accused knew of the two conditions noted above.<sup>258</sup> To satisfy the knowledge requirement, the accused must simply have “actual or constructive knowledge of the broader context of the attack.”<sup>259</sup> It is of no consequence whether the accused actually “intended to support the regime carrying out the attack.”<sup>260</sup> It is likely that individual Russian soldiers, military officers, and government officials were aware of a broader attack on the civilian population when individual attacks on human dignity were committed. However, ascertaining the intent of those responsible is an individualized inquiry best undertaken during an investigation and trial for crimes against humanity.

### 3. *Directed Toward a Civilian Population*

As noted above, crimes against humanity are serious attacks on human dignity directed at a “civilian population.”<sup>261</sup> This requirement needs only brief explanation. “Civilians” are those who “are not taking any active part in the hostilities.”<sup>262</sup> It appears that a large number of victims of the Chechen atrocities are civilians.<sup>263</sup> They took no part in the hostilities and were victimized in their homes, on the streets, and at Russian

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257. CASSESE, *supra* note 154, at 82; *see also* JONES & POWLES, *supra* note 196, at 197 (citing *Tadić*, *supra* note 233, para. 659 (holding “the perpetrator must know that there is an attack on the civilian population, know that his act fits in with the attack and the act must not be taken for purely personal reasons unrelated to the armed conflict.”)).

258. JONES & POWLES, *supra* note 192, at 197 (citing *Prosecutor v. Tadić* (No. IT-94-1/AR72), Appeals Chamber, (July 15, 1999), para. 255, at <http://www.icty.org> (last visited Jan. 5, 2005) (holding “crimes against humanity can be committed for purely personal reasons, provided it is understood that . . .” the perpetrator knew there was an attack on the civilian population and knew how his act fit in with the broader attack)).

259. JONES & POWLES, *supra* note 196, at 198 (citing *Kayishema*, *supra* note 229, para. 134).

260. JONES & POWLES, *supra* note 196, at 198 (citing *Blaškić*, *supra* note 230, at paras. 254–56).

261. *See supra* note 207.

262. JONES & POWLES, *supra* note 196, at 189 (citing *Akayesu*, *supra* note 187, para. 582).

263. *See generally* POLITKOVSKAYA, *supra* note 62; *see also* Cornell, *supra* note 16, at 172–74; Nichols, *supra* note 20, at 250. The Kremlin, however, vehemently denies that a large number of civilians have been killed in the fighting. *See, e.g., In Chechnya, Tales of Victory, Horror*, ST. PETERSBURG TIMES, Feb. 22, 2002, available at 2002 WL 5598023; *Civilian Casualties Mounting in Chechen Fighting*, HUMAN RIGHTS WATCH Nov. 1, 1999, available at <http://www.hrw.org/press/1999/nov/chechb1101.htm> (last visited Oct. 28, 2004).

checkpoints.<sup>264</sup> The determination of whether a “population” has been targeted is a subjective test.<sup>265</sup> When the perpetrators themselves identify a specific group to target, that group constitutes a population for purposes of crimes against humanity.<sup>266</sup> Observers have noted that Russian forces appear to target the entire ethnic Chechen population, indicating that Russian soldiers, military officers, and government officials do have a specific group they are targeting—ethnic Chechen civilians.<sup>267</sup> The subjective considerations of the accused, however, are best assessed during an investigation and trial.

#### 4. *Who Can Be Held Responsible*

Finally, it is necessary to specify who exactly may be held responsible for crimes against humanity. Similar to the development of war crimes as individual offenses, the various statutes and case law arising from the recent international criminal tribunals have solidified the notion that crimes against humanity are crimes perpetrated by individuals.<sup>268</sup> In addition, international legal scholars, as well as the statutes and case law from these tribunals, have unanimously agreed that the doctrine of command responsibility applies to crimes against humanity committed during internal armed conflict.<sup>269</sup> For example, the statutes of both the ICTY and the ICTR specify that individuals may be tried for crimes against humanity, and further provide that command responsibility will apply.<sup>270</sup> As such, individual Russian soldiers directly responsible for

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264. See *supra* note 263.

265. JONES & POWLES, *supra* note 196, at 190 (citing Prosecutor v. Nikolić, (No. IT-94-2-R61), Trial Chamber (Oct. 23, 2001), para. 26, at <http://www.icty.org> (last visited Oct. Jan. 5, 2005) (holding a civilian population is targeted when target population is “specifically identified as a group by the perpetrators” of the crimes against humanity)).

266. *Id.*

267. See, e.g., *Rebel Web Site Carries Appeal for International Conference on Chechnya*, BBC MONITORING (Caucasus), Dec. 28, 2003.

268. See ICTY Statute, *supra* note 197, art. 7 (“A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime”); ICTR Statute, *supra* note 174, art. 6 (“A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in Articles 2 to 4 of the present Statute, shall be individually responsible for the crime.”); ICC Statute, *supra* note 197, art. 25.2 (“A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute.”); see also *Tadić*, *supra* note 258, para. 129.

269. See *supra* note 201 and accompanying text; see also JONES & POWLES, *supra* note 196, at 408–12.

270. See *supra* note 268.

carrying out serious attacks on human dignity that they know to be part of a widespread or systematic pattern of attack targeted at the Chechen civilian population can be held accountable. In addition, military officers and government officials who explicitly or implicitly condoned, planned, or facilitated the widespread pattern of attacks on human dignity can also be held responsible for crimes against humanity.

This part of the Note has identified possible breaches of international criminal law committed by Russian soldiers, military officers, and government officials during the Chechen Wars. In particular, I have argued that Chechen civilians have been the victims of both war crimes and crimes against humanity. The next part will identify and assess the courts and tribunals presently available to prosecute these crimes.

#### IV. SEEKING JUSTICE

Thus far this Note has established that Russian soldiers, military officers and government officials have breached international criminal law.<sup>271</sup> Specifically, these individuals have committed various war crimes and crimes against humanity. Unfortunately, simply establishing clear breaches of international law does not result in automatic criminal prosecution of those responsible. There must also be a court or tribunal with jurisdiction to prosecute individuals for breaches of international criminal law. This part will explore the three types of tribunals currently available to prosecute breaches of international criminal law and explain the jurisdictional barriers that prevent each of these tribunals from providing criminal justice for Chechen victims.

##### *A. International Criminal Court*

The International Criminal Court (hereinafter “ICC”) is a permanent international criminal court created by multilateral treaty.<sup>272</sup> The ICC was designed to provide criminal prosecution for “serious crimes of international concern” when domestic criminal systems are unable or unwilling.<sup>273</sup> In particular, the ICC has jurisdiction to prosecute both war crimes and crimes against humanity.<sup>274</sup> In spite of this, however, the ICC

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271. See *supra* notes 153–270.

272. M. CHERIF BASSIOUNI, INTRODUCTION TO INTERNATIONAL CRIMINAL LAW 499 (2003).

273. *Id.* (citing ICC Statute, *supra* note 197, art. 1).

274. ICC Statute, *supra* note 197, art. 5 (“The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes. . . (b) Crimes against humanity; (c)

does not have jurisdiction to prosecute Russian nationals.<sup>275</sup> This section will explore the sources of personal jurisdiction conferred under the treaty and explain why this jurisdiction does not reach Russian nationals.

The ICC has two sources of jurisdiction.<sup>276</sup> The first is jurisdiction based on consent.<sup>277</sup> Consent is inferred when a state ratifies the ICC treaty and thereby becomes a party.<sup>278</sup> Consequently, the ICC has consent-based jurisdiction when: (1) the crime occurred on the territory of a state that is a party to the treaty; or (2) the person accused is a national of a state that is a party to the treaty.<sup>279</sup> Russia, expressing concern over encroachment on sovereign rights, has not ratified the ICC treaty.<sup>280</sup> Therefore, the Court does not have consent-based jurisdiction over crimes committed in Russia or by Russian nationals.<sup>281</sup>

The second source of jurisdiction is found under Article 13 of the ICC Statute.<sup>282</sup> The ICC has jurisdiction to prosecute when a case has been “referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations.”<sup>283</sup> This form of jurisdiction is not consent-based. If the Security Council decides to refer a case to the ICC prosecutor, the Court is not limited by whether or not the crime occurred on the territory of a state-party or whether the accused is a national of a state-party.<sup>284</sup> Chapter VII bestows on the Security Council the power to take measures to ensure international peace and security.<sup>285</sup>

Prior to the creation of the ICC, the Security Council acted under its Chapter VII powers to create international tribunals to prosecute war crimes and crimes against humanity committed in the former Yugoslavia

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War crimes . . .”).

275. *See infra* notes 276–90.

276. ICC Statute, *supra* note 197, arts. 12, 13.

277. *Id.* art. 12 (“A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in article 5.”).

278. *Id.*

279. *Id.* at art 12.2.

280. *See* Stanislav Kondrashov, *Superpower and Superpeople*, CDI RUSSIAN WEEKLY, July 10–16, 2002, available at <http://www.cdi.org/russia/214-4.cfm> (last visited Oct. 27, 2004). For ICC ratification information, see <http://www.un.org/law/icc/statute/rome.htm> (last visited Jan. 5, 2005). Russia signed the treaty on September 13, 2003, but has yet to become a party through ratification.

281. ICC Statute, *supra* note 197, art. 12.

282. *Id.* art. 13.

283. *Id.* art. 13(b).

284. *Id.* art. 13; *see also* BASSIOUNI, *supra* note 272, at 515.

285. U.N. CHARTER art. 39 (“The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.”).

and Rwanda.<sup>286</sup> Because the conflicts in Yugoslavia and Rwanda were also internal armed conflicts of a nature similar to the conflict in Chechnya, it is likely the atrocities committed in Chechnya would also be considered a threat to international peace and security and therefore within the Security Council's Chapter VII jurisdiction.<sup>287</sup> In spite of this, it is unlikely the Security Council would refer crimes arising from the situation in Chechnya to the ICC. Any action of the Security Council under Chapter VII requires that the five permanent members act unanimously.<sup>288</sup> Russia is a permanent member, and therefore it is doubtful that Russia would vote in favor of referring a crime involving one of its nationals to the ICC.<sup>289</sup> This would be tantamount to an admission that Russian domestic courts are incapable of providing justice.<sup>290</sup>

Even if Russia were to agree in the Security Council to refer a criminal case to the ICC, the ICC only has jurisdiction to hear cases involving criminal acts occurring after the statute of the Court went into effect.<sup>291</sup> Thus, any crimes occurring before July 1, 2002 would not be under the jurisdiction of the ICC.<sup>292</sup> In sum, it appears that the ICC does not provide a viable forum to prosecute breaches of international law arising from the Chechen conflict.

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286. ICTR Statute, *supra* note 174, at preamble (“As amended by the Security Council acting under Chapter VII of the Charter of the United Nations. . .”); ICTY Statute, *supra* note 197, at preamble (“Having been established by the Security Council acting under Chapter VII of the Charter of the United Nations. . .”).

287. MERON, *supra* note 158, at 228.

288. U.N. CHARTER art. 27, para. 3. There are five permanent members on the Security Council: China, France, Russia, the United States, and Great Britain. *Id.* art. 23, para. 1. Each permanent member of the Security Council has the authority to veto any provision before it. *Id.* art. 27, para. 3.

289. Given Russia's outrage at the suggestion by the Council of Europe that an international tribunal be formed to address crimes committed in Chechnya, it is unlikely Russia would vote in the Security Council for such a tribunal. See *Mironov Rejects Idea of International Tribunal for Chechnya*, ITAR TASS, May 22, 2003, available at 2003 WL 55521303. Chairman of the Federation Council, Sergei Mironov, stated that the Russian domestic criminal system is “in line with the ideals of the Council of Europe” and therefore does not need outside interference. *Id.*

290. *Id.* Mironov noted that “[a]ll the needed legal structures have been created in Chechnya. Courts and public prosecutor's offices are working. Criminals are called to account without fail. . . . This is why any appeals for the creation of tribunal could only evoke perplexity. . . .” *Id.* Abandonment of these legal structures in favor of an international tribunal would indicate that these structures are inadequate.

291. ICC Statute, *supra* note 197, art. 11.1 (“The Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute.”).

292. *Id.*; see also William W. Burke-White, *A Community of Courts: Toward a System of International Criminal Law Enforcement*, 24 MICH. J. INT'L L. 1, 6 (2002). The First Chechen War lasted from roughly 1994 through 1996. The Second Chechen War began in 1999 and came to an unofficial end in roughly 2001. See *supra* notes 30, 53, 57. Any crimes committed during the sporadic fighting that has ensued since July 1, 2002 could be tried by the ICC provided the Court was able to obtain jurisdiction over Russian nationals.

### *B. International Ad Hoc Tribunals*

International ad hoc tribunals are temporary tribunals created under the Security Council's Chapter VII powers.<sup>293</sup> Two recent international ad hoc tribunals are the ICTY and ICTR.<sup>294</sup> Both of these tribunals were created to fill gaps left by the respective domestic criminal justice systems, which were incapable of effectively prosecuting those responsible for serious breaches of international law.<sup>295</sup> Ad hoc tribunals consist of judges selected from the international community as a whole and have jurisdiction over only certain crimes committed during specific conflicts.<sup>296</sup> In theory, an international ad hoc tribunal could be created to fill the void left by the failure of the Russian criminal system to prosecute those responsible for Chechen atrocities. In practice, however, the creation of such a tribunal is infeasible. This section will examine how international ad hoc tribunals are formed and explain why the formation process effectively bars the creation of a similar tribunal for Chechnya.

International ad hoc tribunals can be created in two ways.<sup>297</sup> The first is through a treaty.<sup>298</sup> Russia could enter into a treaty with various other countries or the U.N. to create an international ad hoc tribunal with jurisdiction to prosecute serious breaches of international law occurring in Chechnya.<sup>299</sup> This method of formation is unlikely to occur, however, because it requires the consent of Russia.<sup>300</sup> As noted above, Russia is unlikely to consent to the formation of a tribunal to prosecute Russian nationals for atrocities committed in Chechnya because such consent would amount to an admission of serious shortcomings in the domestic criminal system.<sup>301</sup>

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293. See *infra* notes 306–11 and accompanying text; see also ILIAS BANTEKAS & SUSAN NASH, INTERNATIONAL CRIMINAL LAW 339–40 (2003).

294. BANTEKAS & NASH, *supra* note 293, at 393–94.

295. See CASSESE, *supra* note 154, at 336, 339.

296. ICTR Statute, *supra* note 174, art. 1 (“The International Tribunal for Rwanda shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States between 1 January 1994 and 31 December 1994 . . .”); ICTY Statute, *supra* note 197, art. 1 (“The International Tribunal shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 in accordance with the provisions of the present Statute.”).

297. BANTEKAS & NASH, *supra* note 293, at 339.

298. *Id.*

299. *Id.*

300. See *supra* notes 288–90 and accompanying text.

301. See *supra* notes 288–90 and accompanying text.

The second method requires the Security Council to act pursuant to its Chapter VII powers. As noted above, within Chapter VII, Article 39 of the U.N. Charter vests the Security Council with the power to take measures to ensure international peace and security.<sup>302</sup> Article 41 further provides that the Security Council may decide what “measures not involving the use of armed force” are necessary to maintain that peace and security.<sup>303</sup> In creating the ICTY and the ICTR, the Security Council acted under its Article 39 and 41 powers.<sup>304</sup> Because this method of creation requires the action of the Security Council pursuant to Chapter VII, the problem of the veto resurfaces.<sup>305</sup> Any resolution by the Security Council to form an international ad hoc tribunal for Chechnya must be unanimously accepted by the five permanent members.<sup>306</sup> As noted above, it is unlikely Russia would admit to the incapacities of its own criminal system and vote for the creation of a tribunal.<sup>307</sup>

In 2002, Ilyas Akhmadov, the Foreign Minister of Ichkeria, a republic within the Chechen Republic, called upon the U.N. General Assembly to create a tribunal for Chechnya akin to the ICTY and ICTR.<sup>308</sup> To sidestep the inevitable Russian veto in the Security Council, Akhmadov called on the General Assembly to use its Article 22 powers under the U.N. Charter to create a “subsidiary organ.”<sup>309</sup> The current structure of the U.N. Charter,

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302. See *supra* note 285.

303. U.N. CHARTER art. 41.

304. BANTEKAS & NASH, *supra* note 293, at 339–42.

305. See *supra* notes 288–90 and accompanying text.

306. U.N. CHARTER art. 27, para. 3 (“Decisions of the Security Council on all other [non-procedural] matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members . . .”).

307. See *supra* notes 288–90 and accompanying text. Because of the veto power, the five permanent members of the Security Council can essentially insulate their nationals from facing accountability before an ad hoc tribunal. U.N. CHARTER, art. 27, para. 3. Many scholars have expressed concern with this problem. For example, Theodore Meron noted his unease “about the selectivity involved in a system where the establishment of a tribunal for a given conflict depends on whether consensus to apply Chapter VII of the U.N. Charter can be obtained.” MERON, *supra* note 158, at 230.

308. Ministry of Foreign Affairs of the Chechen Republic of Ichkeria, Official Statement, *International Tribunal for Chechnya* (Mar. 23, 2002), available at [http://www.chechnya-mfa.info/print\\_news.php?func=detail&par=49](http://www.chechnya-mfa.info/print_news.php?func=detail&par=49) (last visited Oct. 27, 2004); see also KAFKAS VAKFI CAUCASUS FOUNDATION, *Call Upon U.N. to Found International Tribunal* (Mar. 28, 2002), at [http://www.kafkas.org.tr/english/ajans/2002/mart/28.03.2002\\_Call\\_upon\\_U\\_N\\_to\\_found\\_International\\_tribunal.htm](http://www.kafkas.org.tr/english/ajans/2002/mart/28.03.2002_Call_upon_U_N_to_found_International_tribunal.htm) (last visited Jan. 6, 2005).

The Council of Europe has also called upon the international community to consider creating an ad hoc tribunal to prosecute war crimes and crimes against humanity in Chechnya. See Human Rights Situation in Chechnya, EUR. PARL. RES. 1323 (Apr. 2, 2003), available at <http://assembly.coe.int/Documents/AdoptedText/TA03/ERES1323.htm> (last visited Oct. 27, 2004).

309. See *supra* note 308.

however, does not provide the General Assembly with authority to create such a tribunal.

Article 22 grants the General Assembly the power to “establish such subsidiary organs as it deems necessary for the performance of its functions.”<sup>310</sup> The words “necessary for the performance of its functions” provide an impossible barrier for Akhmadov. The General Assembly has no adjudicatory powers under the U.N. Charter.<sup>311</sup> The General Assembly cannot create a subsidiary organ to perform a function that the General Assembly itself does not have the authority to perform.<sup>312</sup> Thus, a subsidiary organ can be given judicial jurisdiction “on the national plane of [a] member State” only when the principle organ itself has that jurisdiction.<sup>313</sup> Because the General Assembly does not have the authority under the U.N. Charter to exercise judicial powers over the territory of another state, it does not have the authority under Article 22 to create a subsidiary organ with criminal jurisdiction over the atrocities committed in Chechnya.<sup>314</sup>

The Security Council, however, does have authority to create its own subsidiary organs with criminal jurisdiction.<sup>315</sup> Like the General Assembly, the Security Council is granted authority under Article 29 to create “such subsidiary organs as it deems necessary for the performance of its functions.”<sup>316</sup> However, unlike the General Assembly, the Security Council is granted adjudicatory powers under the U.N. Charter.<sup>317</sup> These adjudicatory powers are found in Chapter VII.<sup>318</sup> Chapter VII of the U.N. Charter confers on the Security Council the powers necessary to maintain international peace and security.<sup>319</sup> This grant of power has been broadly interpreted to provide the Security Council with legislative, administrative, enforcement, and judicial powers that can be exercised by U.N.

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310. U.N. CHARTER art. 22. Article 7 of the U.N. Charter provides that subsidiary organs may be established under the principle organs of the United Nations. U.N. CHARTER art. 7, para. 2. The principle organs include the General Assembly and the Security Council. *Id.* art. 7, para. 1.

311. CHARTER OF THE UNITED NATIONS, A COMMENTARY 427, para. 22:25 (Bruno Simma ed., Oxford 2002).

312. *Id.* at 223, para. 7:24.

313. *Id.*

314. *Id.* at 223, para. 7:24, 427, para. 22:25. Simma states “Art[icle] 22 does not offer a sufficient legal basis to establish an International Court of Criminal Justice as a subsidiary organ. Article 22 only allows the transfer of such powers to subsidiary organs as the GA itself possess.” *Id.* at 427, para. 22:25 (citations omitted).

315. *Id.* at 223, para. 7:24; *see also* U.N. CHARTER arts. 7, 39, 41.

316. U.N. CHARTER art. 29.

317. *See generally* U.N. CHARTER arts. 23–51.

318. U.N. CHARTER arts. 39, 41.

319. *See generally* U.N. CHARTER chap. VII.

peacekeeping forces or subsidiary organs.<sup>320</sup> The Security Council has used its Article 29 and Chapter VII powers in the past to establish the ICTY and ICTR discussed above.<sup>321</sup> Specifically, these tribunals are subsidiary organs of the Security Council created under its Article 41 powers to “decide what measures not involving the use of armed force are to be employed” in the maintenance of international peace and security.<sup>322</sup> As subsidiary organs, the tribunals are vested with the judicial power given to the Security Council under the broad grant of authority provided in Article 39 to maintain international peace and security.<sup>323</sup>

In summary, Article 22 does not provide authority for the General Assembly to create an international tribunal with criminal jurisdiction.<sup>324</sup> The General Assembly simply does not have judicial powers under the U.N. Charter, and therefore is unable to create a subsidiary organ with such powers.<sup>325</sup> In contrast, the Security Council does have adjudicatory powers and has used these powers to create the ICTY and the ICTR.<sup>326</sup> To create an international tribunal under the U.N. with criminal jurisdiction for the crimes committed in Chechnya, action by the Security Council would be necessary.<sup>327</sup> As noted above, with Russia’s veto power on the Security Council, such action is unlikely to occur.<sup>328</sup>

### C. Internationalized Domestic Courts

Internationalized domestic courts are “judicial bodies that have a mixed composition.”<sup>329</sup> The courts themselves sit in the state where the crimes occurred, but the judges are culled from both the domestic system and the international community.<sup>330</sup> In addition, these mixed courts have jurisdiction to prosecute both international and domestic crimes.<sup>331</sup>

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320. CHARTER OF THE UNITED NATIONS, A COMMENTARY, *supra* note 311, at 223, para. 7:24, 451, para. 24:20.

321. U.N. CHARTER art. 41. The *Tadić* opinion handed down by the ICTY has also affirmed that the Security Council has the jurisdiction to create such tribunals under its Article 41 powers to decide what “measures not involving the use of force” to employ. *Tadić*, *supra* note 155, at paras. 28–36.

322. U.N. CHARTER art. 41; CHARTER OF THE UNITED NATIONS, A COMMENTARY, *supra* note 311, at 743, para. 41:19.

323. CHARTER OF THE UNITED NATIONS, A COMMENTARY, *supra* note 311, at 223, para. 7:24.

324. *See supra* notes 310–14 and accompanying text.

325. *See supra* notes 310–14 and accompanying text.

326. *See supra* notes 315–23 and accompanying text.

327. *See supra* notes 315–23 and accompanying text.

328. *See supra* notes 288–90 and accompanying text.

329. CASSESE, *supra* note 154, at 343.

330. *Id.*

331. BASSIOUNI, *supra* note 272, at 568. Thus, such courts are endowed with jurisdiction over the types of substantive crimes committed in Chechnya (i.e., war crimes and crimes against humanity).

Unfortunately, the methods used to form internationalized domestic courts have limited use in the case of Chechnya.<sup>332</sup> This section will examine the two ways in which internationalized domestic courts can be formed and will explore why neither would be successful to create a mixed court to prosecute those responsible for atrocities committed in Chechnya.

The first method used to create an internationalized domestic court is a treaty between the U.N. and the domestic government.<sup>333</sup> The Sierra Leone Special Court was created in this manner.<sup>334</sup> In the case of Sierra Leone, President Ahmed Tejan Kabbah explicitly asked the U.N. to join Sierra Leone in creating a tribunal to try those responsible for breaches of both international criminal law and Sierra Leone domestic law committed during the civil war.<sup>335</sup> The Security Council then authorized the U.N. Secretary General to work with representatives from Sierra Leone to create the statute for the mixed tribunal.<sup>336</sup> Thus, in order for this method to result in an internationalized domestic court for crimes committed in Chechnya, the Kremlin would have to agree to enter into a treaty with the U.N.<sup>337</sup> As noted above, it is doubtful Russia would admit that its own domestic system is incapable of dispensing justice.<sup>338</sup> Consequently, it seems unrealistic to expect the creation of an internationalized domestic court through a treaty between Russia and the U.N.

The second method for creating an internationalized domestic court generally arises in situations where a new state is emerging.<sup>339</sup> With this method, the U.N. Security Council, acting pursuant to its Chapter VII powers, creates an interim administration to bring order to a war torn territory.<sup>340</sup> The interim administration is vested with the power to establish a viable judicial system to prosecute criminal cases arising from prior unrest.<sup>341</sup> The East Timor Special Panels provide a good example of

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*See, e.g.*, Statute of the Special Court for Sierra Leone, Aug. 14, 2000 (amended Jan. 2002), arts. 2, 3, available at <http://www.sierraleone.org/specialcourtstatute.html> (last visited Oct. 27, 2004).

332. *See infra* notes 333–52.

333. BANTEKAS & NASH, *supra* note 293, at 397.

334. *Id.*

335. *Id.* at 397–98.

336. *Id.* at 398.

337. *Id.*

338. *See supra* note 288–290 and accompanying text.

339. *See, e.g.*, BANTEKAS & NASH, *supra* note 293, at 401–05. This method was used to create the East Timor Special Panels during East Timor's transition to independence. *Id.* at 401–03. In addition, the same process was used to establish the Kosovar Judicial System. *Id.* at 404–05. Kosovo is presently still part of Serbia, but the territory is currently pushing for independence. *Id.*

340. BASSIOUNI, *supra* note 272, at 553–54, 559.

341. *Id.* at 554–55, 559–60.

how this process operates.<sup>342</sup> The U.N. Security Council, acting under its Chapter VII powers, established a transitional administration in East Timor to help the newly independent country complete its devolution from Indonesia.<sup>343</sup> In trying to stabilize the country, the U.N. transitional leaders established the East Timor Special Panels to prosecute those responsible for serious crimes committed during the Indonesian occupation.<sup>344</sup> The goal was to help develop the East Timor judicial system, and to bring those individuals responsible for genocide, war crimes, crimes against humanity, and serious domestic crimes to justice.<sup>345</sup>

There are two reasons why it is unlikely an internationalized domestic court in Chechnya would be established in this manner.<sup>346</sup> First, Chechnya is considered to be a territory within Russia.<sup>347</sup> The U.N. does not presently recognize Chechnya as a sovereign state, and nor did it even after the First Chechen War, when tentative independence was established.<sup>348</sup> Thus, it is unlikely the U.N. Security Council would push to establish an interim administration in Chechnya, as Chechnya is not transitioning to independence. Secondly, even if the Security Council did wish to establish an interim administration in Chechnya, Russia would have veto power over any resolution to establish such an administration.<sup>349</sup> The power to create an interim administration falls within the Security Council's Chapter VII powers to ensure international peace and security.<sup>350</sup> Thus, the Security Council's five permanent members would have to unanimously agree on the resolution.<sup>351</sup> Agreeing to such a resolution would be tantamount to Russia granting Chechnya independence.<sup>352</sup> Given the lengths Russia has taken to prevent the secession of Chechnya,<sup>353</sup> it is unlikely an internationalized domestic court for Chechnya could be established in this way.

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342. See *infra* notes 343–45 and accompanying text.

343. BANTEKAS & NASH, *supra* note 293, at 401–03; see also U.N. S.C. Res. 1272 (Oct. 25, 1999); U.N. S.C. Res. 1264 (Sept. 15, 1999), para. 3.

344. See *supra* note 343.

345. See *supra* note 343.

346. See *infra* notes 347–51 and accompanying text.

347. See *supra* note 181 and accompanying text.

348. See *supra* note 181 and accompanying text.

349. U.N. CHARTER art. 27, para. 3.

350. See generally U.N. CHARTER chap. VII; see also U.N. S.C. Res. 1272 (Oct. 25, 1999) (establishing a U.N. Transitional Administration in East Timor).

351. U.N. CHARTER art. 24, para. 2, art. 27, para. 3.

352. U.N. Transitional Administrations are designed to help a territory during the process of decolonization or secession. See, e.g., BANTEKAS & NASH, *supra* note 293, at 401.

353. See *supra* notes 16–76 and accompanying text.

In conclusion, it appears that the methods used to create internationalized domestic tribunals prevent such a court from being created to try crimes committed in Chechnya. The major obstacle is the necessity of the Kremlin's acquiescence, both for creation via treaty and creation via transitional administration.<sup>354</sup> For reasons described above, such acquiescence is unlikely.<sup>355</sup>

#### CONCLUSION

This Note has demonstrated that Russian soldiers, military officers, and government officials have committed serious breaches of both Russian domestic criminal law and international criminal law. Chechen civilians have endured great pain and suffering at the hands of Russian forces. In spite of these blatant breaches of criminal law, however, the majority of those responsible will never face criminal punishment. The Russian domestic criminal system is incapable of imposing accountability on those responsible due to impunity granted by the Kremlin and half-hearted efforts at prosecution.<sup>356</sup> Unfortunately, the international criminal law system is equally incapable of providing justice because of severe jurisdictional barriers.<sup>357</sup> It appears that for the present, Chechen victims who are denied criminal justice in the Russian domestic system will not see responsible parties criminally prosecuted in any forum.<sup>358</sup>

*Stacie Powderly\**

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354. *See supra* notes 337, 51 and accompanying text.

355. *See supra* notes 338, 52 and accompanying text.

356. *See supra* notes 79–150 and accompanying text.

357. *See supra* notes 272–355 and accompanying text.

358. As noted above, this Note addresses the availability of criminal justice within the Russian domestic and international criminal law systems. Victims of atrocities in Chechnya can seek civil justice through suits at the European Court of Human Rights. *See supra* note 150 and accompanying text. In addition, Chechen victims might also bring claims based on breach of the International Covenant on Civil and Political Rights, Mar. 23, 1976, 999 U.N.T.S. 171, G.A. Res. 2200A (XXI), U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966). These claims would be brought before the Human Rights Committee, which has jurisdiction to hear individual complaints of those who claim to be victims of a violation of the Covenant by a State party. Optional Protocol to the International Covenant on Civil and Political Rights, Mar. 23, 1967, 999 U.N.T.S. 302, G.A. Res. 2200A (XXI) U.N. GAOR Supp. (No. 16) at 59, U.N. Doc. A/6316 (1966) art. 1. The Human Rights Committee generally awards compensation to the victim in the event a state violation is found. *See, e.g.*, Daniel Monguya Mbenge v. Zaire, Comm. No. 16/1977, Human Rights Comm. (Sept. 8, 1977), U.N. Doc. Supp. No. 40 (A/38/40) at 134 (1983).

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