

The Katyn Case: Working to Learn the Truth

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The Katyn case is emblematic of the USSR- and Russia-Polish relations, being a culmination and a symbol of a decades-long bilateral conflict between the two neighboring and mutually antagonistic peoples. The whole thing was started by the Molotov-Ribbentrop Pact and the September 17, 1939, “liberation campaign” as its important element, during which the Red Army, as it swept through Poland, detained numerous Polish servicemen and civilian administrative and governmental personnel, who were sent (often by fraud) to concentration camps. Ordered just to preclude their own disarmament, the Polish military units in most cases offered no resistance; some were even expecting joint operations to be mounted against the invading German forces. They “surrendered” to the Red Army, doing that, as a rule, on a voluntary basis. The Polish High Command believed that they would be allowed to cross the southern border so as to continue preparing to fight for Poland’s independence. But it was precisely on this ground, as the “Beria memorandum” of March 5, 1940 alleged, that they should be executed by shooting. A recent collective work published by the Institute of Russian History, RAS, replaced the “liberation campaign” by a somewhat more correct “Polish” and even, quite openly, “military” campaign.¹

Let it be stressed that both the Politburo of the Central Committee of the *VKP (b)* and the Soviet military command referred to the Polish concentration-camp inmates as prisoners of war, not internees, even though there had been no official declaration of war. The captive Poles were given this status after the Soviet sweep through a portion of Polish territory and their own handover to the People’s Commissariat of Internal Affairs (*NKVD*). The camps were given that name as early as on September 19, when Lavrenty Beria issued an order to that effect.²

Currently we know the number and the social composition of the Poles that manned the concentration camps for POWs: the rank-and-file and junior command personnel that formed the majority of 2.5 hundred thousand prisoners were sent to labor camps organized by the Main Directorate for the Camps (*GULAG*), the Main Economic Directorate of the *NKVD*, the People’s Commissariat of Jus-

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tice, and some other agencies. They were used as a workforce by the administrations of more than 130 camps. Following a thorough selection, a number of POWs were assigned to three new special *NKVD* camps located at Starobelsk (Ukraine), Kozelsk and Ostashkov (both central Russia). These were reserved for officers (both cadre and mobilized reservists) and some selected civilians, mostly government personnel, including even some accountants. In fact, those Polish citizens, almost 22,000 in number, were denied the prisoner-of-war rights and all came to be executed in secrecy between April and May, 1940. Their extermination by the *NKVD* formed the basis of the Katyn case.

Katyn, a small railway station near Smolensk, has been famous over the decades precisely because the first mass burial was discovered there in the fall of 1943. The name is now used to denote the secret shootings whose victims were buried in huge ditches found in the Katyn woods, but also there were mass graves in the green belt of Kharkov and at the village of Mednoye near Tver (formerly Kalinin): 21,857 inmates of Camp Kozelsk (4,431), Camp Starobelsk (3,820), and Camp Ostashkov (6,311), plus 7,805 from prisons in Western Ukraine and Western Byelorussia, whose graves are yet to be found. The figures are derived from the memorandum of March 3, 1959, that USSR *KGB* Chairman Aleksandr Shelepin sent to Nikita Khrushchev as the latter, in a bid to cover the traces, was considering whether or not to destroy the record files of the executed Poles. That was due to be presented, Shelepin indicated, as done “by the decision of the *Special Troyka* of the USSR *NKVD*” that acted on the basis of the “CPSU Central Committee Resolution of March 5, 1940.”³

The period from spring 1943, when some Polish workers in the service of Organization Todt (a German road-building and maintenance firm) discovered the Katyn graves and the Germans first made the fact public, through the Nuremberg Trials, at which the USSR briefly put the matter on the agenda and as rapidly withdrew it, and to the early 1950s (the starting point in the work of US Congressional Commission under Ray J. Madden) was when the “Soviet official version” (that put the blame on the Germans who allegedly had staged the executions in 1941) took shape and was vigorously upheld. The counterpropaganda drive involved dissemination of the findings of Nikolay Burdenko’s Commission that performed the “services” orchestrated selective and hasty exhumation followed by the presentation of a forged documented report. The latter appeared in the form of two pamphlets: *Truth about Katyn* and *Report of the Special Commission for the Investigation of the Circumstances of the Execution by the German Nazi Invaders of Captive Polish Officers in the Katyn Woods*.⁴ The official version was further reinforced in 1953 by the *Greater Soviet Encyclopedia* that put it down as an indisputable ideological truth and “authoritative” information of standard quality for the censorship. Thus a strict ban was imposed on any doubts or quests for the truth. But this did not last long either. In the USSR, this theme was soon made off limits to all mass media and came to be deleted from encyclopedias and dictionaries.

It was only in the wake of the 20th CPSU Congress that reports appeared about Polish contemporary rallies and meetings, leaflets and publications that

gave vent to pent-up tensions generated by the erstwhile conflict situations. The Katyn crime theme inevitably reemerged as well. In Poland, UK and other countries it blazed the trail for decades, particularly so during crisis developments.⁵ The Soviet embassy in Warsaw used to send anxiety-filled reports to Moscow. The whole amount of information was made strictly classified. The secrecy was extended both to the CPSU Central Committee and the state security agencies. Already in the perestroika period, a ranking *KGB* officer, G. Zhukov, the wartime commissioner responsible for organizing foreign military units in the USSR and Stalin's personal representative for Polish affairs, said confidentially to P. Kostikov, head of the Polish sector at the CPSU Central Committee, that "in the *NKVD*, like in the *KGB*, it was strictly forbidden to have any discussions on Katyn, be it even as a German crime."⁶

Studying this theme became only possible in the latter half of the 1980s, when there cropped up, though with much difficulty, certain conditions for a critical reappraisal of the past. On April 21, 1987, the 42nd anniversary of the Treaty of Friendship, Cooperation and Mutual Help between the USSR and Poland, USSR President Mikhail Gorbachev and Polish President Wojciech Jaruzelski signed a Declaration on Soviet-Polish Cooperation in the Area of Ideology, Science and Culture. It was decided that the two nations would establish a joint scientific commission designed to study the history of their relations, which commission subsequently played an important role within the context of cooperation. Where the Katyn question was concerned, not only did it prove unstudied, it was also the most difficult of the difficult problems in the entire history of relations. Meanwhile, the USSR's party and state leadership, who closely supervised the Commission's transactions, did all they could to prevent it from clarifying the matter. Its access to sources was reduced to the material of the Burdenko Commission.⁷ Its Soviet co-chairman, Georgy Smirnov, who was new to the problem and wished to form an unprejudiced view, set up, within the Soviet half of the bilateral Commission, a three-person sub-commission on Katyn (Valentina Parsadanova, Yevgeny Skripilyov, Inessa Jazhborovskaya) and appointed himself its head. Formerly an influential aide to Gorbachev, he invited the directors of archives and recommended that they make some Katyn materials available to a group of researchers. This made it possible for Parsadanova to launch a successful search for documents related to the Katyn crime in the Special Archive. The new opportunities were also of much help to Yury Zorya, the son of Nikolay Zorya, aide to Roman Rudenko, the USSR's Chief Prosecutor at the Nuremberg Trial, who was on a team that was preparing Nuremberg Trial materials for publication by the *Yuridicheskaya literatura* Publishers.

Being constantly in receipt of reports on both the bilateral Commission's work and the Polish moods, Valentin Falin, the then head of the International Department at the CPSU Central Committee, would prepare, starting from March 1989, and send for consideration by the Central Committee and personally President Gorbachev some secret memoranda on the growing tensions in Poland in connection with the Katyn problem. There was evidence, he wrote, demonstrating the inconsistency of Burdenko's arguments (the overwhelming

majority of Poles were sure that “it had been done by Stalin and Beria, while the crime itself had been committed in the spring of 1940,” for which the Polish side provided the proof⁸). A reaction, he claimed, was in order lest the bilateral relations should suffer.⁹ In his memoirs he came to this conclusion: “Where politics and relations with the Soviet Union are, there, for the Pole, is Katyn.”¹⁰

On March 22, Foreign Minister Eduard Shevardnadze, Valentin Falin and USSR *KGB* Chairman Vladimir Kryuchkov expressed this view: “Possibly it is more expedient to say what the matter was in reality and who specifically was to blame for what had happened, and to close the issue on that.”¹¹

This was followed by the assignments of March 31 being issued to a number of high-ranking party and state officials, and by a briefing note entitled “On the Matter of Katyn” of April 22, 1989. The USSR Prosecutor’s Office and the *KGB* were instructed to jointly carry out “a thorough check” and “a clarifying investigation of all the circumstances of what had happened” at the three special camps of the *NKVD* so that an appropriate publication should appear in the press prior to April 27 and 28, when Jaruzelski was expected to pay a working visit to the USSR. The Central Committee’s resolution said that the check should produce some results before August 1. The task of looking for documentary materials was imposed on the Main Archive Directorate under the USSR Council of Ministers and the USSR Committee for Television and Radio Broadcasting. Two central newspapers, *Pravda* and *Izvestiya*, were instructed to cover those undertakings.¹²

On February 22, 1990, Falin reported to Gorbachev some results of the scientific search in the Special Archive. It was established that the inmates of the three special camps had “departed” and had “subsequently never figured in the statistical reports.” The prison records of those at Camp Starobelsk had been destroyed, while records from the other two had been handed over to the Main Directorate for the Affairs of Prisoners of War. To back his conclusion regarding the necessity of “somehow sorting out our stand,” Falin referred to the findings in Zorya’s expert report: his collation of lists of departees from Camp Kozelsk and identification lists of spring 1943 “showed the existence of direct concurrences,” which was evidence of an “interconnection of the resultant events.” The said materials called into question the veracity of the Burdenko “report” and enabled the conclusion that “it was done by the *NKVD* and personally by Beria and Merkulov.” This situation “would hardly let us stick to the former versions any longer and evade drawing the bottom line,”¹³ he summed up.

By that time, the Katyn outrage called forth a surge of newspaper coverage by a number of Moscow-based journalists that relied on information leaks from Poland. Vladimir Abarinov wrote in *Literaturnaya gazeta*, Gennady Zhavoronkov in *Moskovskiy novosti*, Lev Elin in *Novoye vremya*, Nikolay Yermolovich in *Izvestiya*, and so on. Andrey Lipsky penned an introductory article, “An Echo of Tragedy at Katyn,” to the translation of the Polish expert report that was printed by the bilateral Commission.¹⁴ The honest and courageous Abarinov published the first book on the theme, *The Katyn Labyrinth*, which resulted from a journalistic investigation of his own.¹⁵ It would seem that the truth about the crime was about to be revealed. But a different line prevailed at that time in the

CPSU leadership. Gorbachev was familiarized with the contents of Sealed Envelope No. 1—the “special file” stamped “no references authorized”—that was kept in the archive of Sector VI, Special Department, CPSU Central Committee. The file contained the Resolution of the Politburo of the *VKP(b)* Central Committee of March 5, 1940 and the Shelepin memorandum on its execution, to wit, the fundamental Katyn stuff. The General Secretary also perused the falsified findings of the Burdenko Commission, a fact confirmed by a reproduction of his reasoning in a background note compiled by the Institute of General History, USSR Academy of Sciences (writer Natalya Lebedeva). Ultimately, as testified by Gorbachev’s aide Valentin Aleksandrov, he was willing to drop the Katyn case altogether.¹⁶

Promising the Poles to reveal the truth about the Katyn crime, he took a stance summarized by his phrase “let the scientists dig.” It was suggested that the Soviet part of the Commission should turn to the public at large for all kinds of information that might help in “revealing the truth.” To be sure, the suggestion was rejected by the Polish part of the Commission. The fear that the circumstances of the “Katyn case” would come to the surface and by extension implicate the Soviet party and state leadership generated another problem, the so-called “Anti-Katyn,” with its supporters seeking to gloss the truth over and avoid recognizing the Soviet side as being to blame for the secret, criminal, mass shooting of the Polish prisoners of war. A “balance” had to be found, they believed, as they braced up to launch a “counterclaim.” The whole thing was set off by USSR President Gorbachev’s order of November 3, 1990, that contained a long list of assignments to the Soviet ministries and agencies. Its Item Eight was addressed to the USSR Prosecutor’s Office that was urged to speed up its investigation into the Katyn case and tender an appropriate final statement. Simultaneously, however, its Item Nine instructed a number of agencies and organizations to find “archive materials related to events and facts from the history of Soviet-Polish bilateral relations that resulted in damage being done to the Soviet side.”¹⁷

A spotlight was turned on the fate of captive Red Army servicemen that were taken prisoners by the Poles in the 1919-1920 war. It was believed that it could serve as a political “counter” to Katyn. In his memoirs, Smirnov writes this: “I was being cajoled into putting on the agenda, in our turn, the issue regarding the bad treatment of Soviet prisoners of war in [19]21.”¹⁸ But he did not think it necessary to create another conflict for the sake of “zeroing out” the number of victims and balancing out the claims to the USSR.

The work that Parsadanova and Zorya did in the Special Archive resulted in an official handover to the Polish side of the list of departees from Camp Starobelsk, the orders for the departure from the two other special camps, and a number of other amply illustrative materials. The act took place on April 13, 1990, during the meeting in Moscow of President Gorbachev and President Jaruzelski. A *TASS* report confirmed the acknowledgment of guilt by the Soviet side (the guilt of Beria, Vsevolod Merkulov, and their underlings), something that opened the way to historians’ publications.¹⁹ Later, this time in connection with the “CPSU case,” “Envelope No. 1” was found in the Presidential Archive, which

contained the decisive document, the Resolution of the Politburo of the Central Committee of the *VKP (b)* of March 5, 1940, with an instruction to the USSR *NKVD* to consider the cases of more than 25,000 persons “through a special procedure, with the use of the capital punishment, an execution by shooting,” this “without the arrested men being summoned to appear, or the charges, the order to end the enquiry and the writ of indictment being presented.” The approximate number of the same categories of Polish prisoners (as specified in Beria’s presentation), who were kept in the three special camps and in prisons in Western Byelorussia and Western Ukraine, was set at 25,000. In accordance with Beria’s instruction of March 7, what was needed for the executions were just certificates that the *NKVD* was due to draw up within five days. Coming to the public knowledge were documents on the dispatch of transport to the execution site and reports on the criminal order being carried out.²⁰

The press in Russia occasionally tends to list the entire population of the three camps as belonging to the officer cadre of what was inferred to be an enemy army; this tendency is meant to vindicate their execution without trial or investigation. In fact, however, only two of these were for servicemen, and professional soldiers made up just 44.9% of the body. The majority—55%—were induction-age men mobilized all over the country to oppose, after a crash course of training, the German invasion that began on September 1, 1939. Prevailing among them were civilian professionals—teachers, doctors, engineers, agronomists, priests, journalists, public figures and politicians. There were writers and poets, dozens of university professors and lecturers, including world-famous scientists. It was they who were executed at Katyn, as well as some aged retirees, including disabled persons who were detained during an all-out registration drive.²¹ Do we need to say that this juggernaut rolled over much of the Polish intellectual elite or to explain why the whole of Poland feels the Katyn issue so painfully to this day? It affects the fates of people of all ethnic groups and beliefs, who live in that country, not only Roman Catholics and Protestants, but also Orthodox Christians and Greek Catholics—Ukrainians, Byelorussians and Russians, as well as Jews, Germans, Lithuanians, Czechs and others, whose names and professions are chiseled on the monuments in the memorial cemeteries at Katyn, Mednoye, and in the green belt of Kharkov.

The joint Soviet-Polish scientific Commission on the history of relations between the two countries finished its work at the turn of the 1990s shortly before the disintegration of the USSR and the demise of the Polish People’s Republic. The Katyn investigation, from the point of view of law, was continued by an inquiry team of the Main Military Prosecutor’s Office of the Russian Federation (*GVP*), which brought a lawsuit (#159) on the shooting of Polish POW’s from the special camps of the *NKVD* in April and May, 1940. Lawyers, historians, doctors and other specialists did much to discover the truth about that crime, which work was finally accomplished in the early 1990s.

Exhumation of victims from the three camps was performed on the discovered sites of mass shootings. An extremely complicated range of works that was undertaken over there exposed the Burdenko Commission’s false claim that the

Polish servicemen had been executed by the Germans during the occupation as a premeditated falsification (Burdenko himself admitted as much in his later years). A huge collection of convincing evidence was put together; dozens of accomplices and witnesses of the crime, silent for years, were questioned. Their testimonies were videofilmed and subsequently published. There are pointers to the actual shooters; we have confessions of D. Tokarev, chief of *NKVD* Directorate for the Kalinin Region, who took part in the reprisals, M. Syromyatnikov, formerly of Kharkov *UNKVD*, and others. The files of the Main Directorate of the *NKVD* for the Affairs of Prisoners of War were made available for study, and its former head, P. Soprunenko, testified. Its funds revealed lists of the executed identical to those compiled in the course of the 1943 exhumation (performed by the Technical Commission of the Polish Red Cross under German supervision), which were published by the Poles.

Confirming the attribution of the crime was the incontestable fact that the German force had barely reached (to be immediately repelled from) Kalinin (now Tver), where 6,311 Camp Ostashkov inmates were shot dead and dumped into ditches near the village of Mednoye. As recommended by the two presidents, a joint edition (now accomplished), *Katyn: Documents of the Crime*, was conceived and formalized by the agreements of April 27, 1992, and June 11, 1992, between the archive services of the two countries.²²

As the Constitutional Court considered the “CPSU case,” it also looked into the Katyn crime, though mostly from the angle of who bore the political responsibility for its concealment. Its legal aspect was left untouched. Those problems were broached in the press in the course of a polemical controversy between Feliks Rudinsky and Aleksandr Larin.²³

The body of Katyn documents pointing to its true masterminds and culprits, one that had been presented to the court, was handed, on October 14, 1992, to President Leh Walesa of Poland by President Yeltsin’s Special Envoy Rudolf Pikhoya. Among other things, it contained the Resolution of the Politburo of the *VKP(b)* Central Committee of March 5, 1940, with the signatures of Stalin and some other members of his inner circle, and USSR *KGB* Chairman Shelepin’s memo of March 3, 1959, to Khrushchev on steps to destroy the traces of the Katyn crime. Both the certified photocopies and translations of 42 authentic documents from the Presidential Archive’s “Special File” were for the first time published in Poland.²⁴ The two main documents—the Politburo Resolution and the report on its implementation in spring 1940—were published in Moscow by Mikhail Semiryaga.²⁵ At the same time, a fuller edition of the documents, *The Katyn Case. Can We Put a Full Stop?* appeared in *War Archives of Russia*.²⁶

Interviewed by the Polish TV on October 17, 1992, Boris Yeltsin outlined the Russian position on the matter as follows: “Russia cannot assume the responsibility for the Katyn crime. This was done by the Party, this was done by totalitarianism.”²⁷ Both presidents came to terms that Poland would not lodge any pecuniary claims against Russia. It must be stressed that the Russian official version of the Katyn crime was declared mandatory as having been given a legal and political confirmation.

The legal estimate was confirmed by the exhumation of the burials and a report by a scientific expert commission of August 2, 1993. Compiled by lawyers, historians and doctors, this document emphasizes the primacy of international law and throws light on a set of issues arising in connection with the detention, in the latter half of September, 1939, and in the subsequent period, of Polish citizens as prisoners of war and on whether or not it was legal to hold them as such. Consideration was given to the circumstances, under which homicide had occurred, as well as to its reasons and motives. The “official Soviet version,” one based on the Burdenko Commission’s falsifications, was debunked, and conclusions were drawn as to who the true perpetrators of the crime were and as to their liabilities.²⁸

The official Yeltsin visit to Warsaw in August 1993 culminated in the signing of a Russian-Polish declaration, which in particular said this: “In an atmosphere of mutual understanding and goodwill, there were clarified the circumstances of the Katyn crime, the perpetrators of which would be punished.” The declaration spoke about an intention to restore justice “in respect of the victims of the Stalinist reprisals and crimes.”²⁹ While readjusting the ribbons of a wreath commemorating the victims of Katyn at the memorial cemetery in Warsaw, Yeltsin uttered, “Forgive, if you can.”

But the culmination of the Katyn case was an impasse. The entire inferiority of Russia’s contemporary legislative and judicial system came to light at the final stage, particularly on June 13, 1994, when the procedural ruling to terminate the investigation into Criminal Case #159 was being delivered. Considering the lack of mechanisms for enforcing the preeminence of international law, a provision enshrined in the new RF Constitution, it was impossible to pass a full-blown and comprehensive judgment that would include a clear definition of both the circumstances and reasons and motives of the crime as well as a reproduction of its Soviet qualification as a crime of genocide, one recognized by all the parties at the Nuremberg Trial (regardless of who it was attributed to). Besides, there was still a strong tradition to use, while rehabilitating victims of the Stalinist reprisals, a qualification that reduced this kind of crimes to malfeasance in public office (abuse of power). An added hindrance was the difficulty in finding the needed documents and continuing the inquiry in three new countries that sprang up after the disintegration of the USSR. For example, the Byelorussian list of former political prisoners is yet to be found.

On May 22, 1995, Yeltsin told Wałęsa that the materials of the *Troyka* and reports on the execution of its orders, as ascertained by experts, were destroyed in 1959.³⁰ The circumstances of the investigation and the accompanying struggles were covered in detail in two books written by Anatoly Yablokov,³¹ who headed the investigation, and three experts of the Main Military Prosecutor’s Office (*GVP*).

In the meantime, the *Gazeta Wyborcza*, along with Channel One of the Polish Television and Polish Radio One, held a two-year plebiscite (1998 and 1999) to find out what the Polish people saw as the main achievement of the past decade. The absolute majority said that it was the “divulgence of the truth about

Katyn.” In 2000, state memorial complexes were established in the Katyn woods and at the village of Mednoye near Tver; a component of these are Polish military cemeteries that were designed by winners in the national contests and built with Polish money.

But the case could have hardly been regarded as finally dismissed. The matter of “outstanding accounts” was mentioned both during the visit that President Vladimir Putin paid to Poland in 2001 and in the subsequent period. Putin promised to recompense the losses of the deported Polish citizens (including more than 25,000 families of the prisoners of the special camps) on the same legal grounds as Soviet citizens. (The amount of the compensations would thus approximately equal that of the travel fees for those who would decide to come down and register their bids, thus denuding of any sense the initiative that anyway proved impracticable because of there being neither the needed documents nor witnesses).

The promise to give the Polish side the documents that were in possession of the RF *GVP* was partly carried out, with Russia’s Chief Military Prosecutor, Aleksandr Savenkov, handing over 67 volumes out of 183. As to the rest, he said, it could not be transferred as containing data that fell in the category of state secret. On September 21, 2004, the *GVP* ruled to close the case. It was terminated in respect of “concrete individuals” recognized as guilty of “exceeding their powers of office in connection with their demise.” The persons in question were not named. The materials of the case (which were declassified and transferred piecemeal, in the early 1990s, to the Polish side in keeping with the bilateral agreement) and the ruling to terminate it were reclassified. For this reason, we now lack the trustworthy information on the legal grounds for the termination of the case, on the persons recognized as guilty of having committed the crimes, and on facts revealed by the investigation. On March 11, 2005, Savenkov went on record as saying that the *GVP* had established no acts of genocide committed against Polish citizens.

The last few years saw a number of relatives of the executed as well as Memorial, the international human rights society, lodge lawsuits urging to recognize the casualties as victims of political reprisals and to have them rehabilitated. They also demanded that the *GVP* ruling in the case and other materials be declassified. But Moscow’s Khamovniki Court declined the suit on the motive that this kind of complaints could only be lodged by those whose rights had been actually breached; other lawsuits ran counter to Russia’s legislation. In effect, this meant that the complaints must be addressed by the men who were shot in 1940.

The Prosecutor’s Office flatly refused to consider the political rehabilitation of the dead, this on the pretext that their bodies supposedly had not been identified. In keeping with the law, however, it should have either withheld the rehabilitation or admitted the need for it. If in the beginning the prosecutors recognized that the Polish officers had been shot, then later they claimed that it could not be stated with certainty whether or not this had taken place. In the meantime, the investigations offer sufficient evidence pointing to a mass-scale execution: at Katyn, 2,870 victims were identified out of those on the shooting lists. Partial

identifications were repeatedly held from 1943 on, but a complete one, considering the crime's scale, was believed to be impossible. By now, the crime being as old as it is, the opening of the burials, either partial, or in full, has become totally inexpedient, for identification is practically impossible because of soil conditions and the decomposition of the remains.

During subsequent considerations, it was claimed that supposedly there were no "criminal cases or other documents stating that reprisals were used against the Polish officers." But the decision to use capital punishment "in accordance with a special procedure," one handed down on the basis of certificates, was nonlegal and required a specific approach, as in the case of the shooting of the Royal Family in 1918. It is no secret for anyone that the files were destroyed on purpose. It is also incorrect to invoke the 1926 Criminal Code that did not contain the *corpus delicti* and its qualifications corresponding to the nature and scale of what was to be perpetrated. Next, there followed fruitless applications to other levels of the judiciary and to the Moscow Regional Military Court.

Speaking at a session of the Khamovniki Court on October 24, 2008, the prosecutor made an important statement that all attempts to solve the problem by the ordinary judicial methods were doomed to failure. Some prospects do exist, he said, but "not at the judiciary level"; the necessary condition for that is an involvement of the state authorities.³² The conclusion that the Katyn case, to be accomplished, needs a show of the high political will seems quite reasonable.

Currently the Katyn lawsuits are in the European Court of Human Rights at Strasbourg. The European Convention on Human Rights prescribes the protection of life and consideration of the circumstances of death of each person, particularly if a crime was committed by the authorities. Given the breach of the right to a fair trial (the refusal by the Russian judiciary to grant the suits), the descendants of the dead applied to the European Court of Human Rights (ECHR). The court decided in favor of a speedy procedure (in view of the descendants' old age) to prepare for the consideration of their complaints about relatives being denied the documents and the refusal to recognize the descendants as an aggrieved party. Their lawsuit was backed by the Government as "a third party." The ECHR may rule to meet the demands and impose a fine. The Russian press would occasionally bandy around an overblown figure of likely compensation claims running into millions of euros. In this connection, a representative of one of the Katyn families that applied to Strasbourg, Witomila Wolk-Jeziarska, declared on behalf of her relatives that they intended to settle for a symbolic sum of one euro.

The lack of a full-blooded legal, moral and political culmination in the Katyn case remains a painful issue obstructing the normalization of bilateral relations between Russia and Poland. While the case was winding its way through the corridors of the courts, Russian public opinion was exposed to ever new manipulations. More than that, there appeared some scope for new falsifications. A "basis" of this kind was built for various historically and morally dubious versions: the scientific approach, the legal and scientific arguments were allegedly of interest to a narrow group of specialists, while being of no consequence for public opin-

ion. All manner of political speculations were put in opposition to the scientific investigations. Ignoring the established facts, a number of current and former politicians would not shrink from patent fakes and garbling. To win dubious popularity, they are ready to drag in the mud the scientifically and legally confirmed position of their country.

Forgeries and the tendency to replay the Stalin-era myths and falsifications are characteristic of Yury Mukhin's writings devoted to the Katyn case.³³ Their echoes can be found in fiction-like journalism of Stanislav Kunyaev and in the novel *The Generalissimo* by Vladimir Karpov.³⁴ Vladislav Shved and Sergey Strygin seek to create the illusion of plausibility by stating at first that they are supporters of the official position which became established in Russia in the 1990s. Later, by skillfully deluding the reader, they make him doubt the veracity of the investigation's arguments. Peddled as "mysteries of Katyn" is the long disproved reasoning in favor of the falsified statement issued by the Burdenko Commission.³⁵ They seek to portray thousands of discovered and published original documents, expert reports by lawyers and scientists, witness testimonies, and even exhumation materials as fabrications and baselessly "lower" the number of victims of the Katyn crime to one or two thousand. In so doing, they demagogically claim that they are ready to resume the investigation, something that allegedly would make it possible to overturn the now established truth. Pretending to pursue the struggle in the scientific field, those supporters of the repressive Stalinist regime seek to glorify Stalin and to manipulate public opinion. Their aim is to deform it and to undermine the legal arguments.

Pursuing the same end is Stalin's grandson, Yevgeny Dzhughashvili, who lodged several lawsuits, in Moscow, against *Novaya gazeta* and its writer A. Yablokov and against the Federal Archive Agency (*Rossarkhiv*) following the publication on its website of some Katyn documents that he branded as falsified and discrediting Stalin's honor in connection with his role in the shooting of Polish prisoners of war. He lost the first case. The court refused to consider the second claim.

As Anti-Katyn of sorts, the opposition has long been using a counterclaim in respect of the Red Army fighting men, who allegedly died in Polish captivity after the 1920 war. Without any proof, their number was blown up from year to year; some authors have multiplied the figure by three to five times to 60-80 and even 100 thousand, even though the latest detailed bilateral publication of the original documents demonstrated that it had not exceeded 20 thousand.³⁶ Moreover, there were no shootings. The main causes of the deaths were epidemics that the troops had brought in their trail from the warfronts, food and medicine shortages, congestion, and the like: some former German concentration camps were where even a number of WWI prisoners lingered. The reader will find a well-argued discussion on this theme in the Russian-Polish edition *White Spots—Black Spots. Complicated Issues in Russo-Polish Relations*.³⁷

The proposal to resume exhumations in order to prove "the Germans as being to blame" is an attempt to torpedo or at least to delay a dignified culmination of the Katyn case. It is common knowledge that the Anti-Katyn supporters are keeping mum about two other similar *NKVD* camps and burial sites, includ-

ing the special camp near Ostashkov, where the German force even did not have any time to gain a foothold. The deceased Communist legislator, Viktor Ilyukhin, who headed the State Duma Committee for Legislation and State Building, periodically held meetings of those who supported the concept and even founded the Katyn Committee. Its latest meeting took place on April 19, 2010, already after the 70th anniversary of Katyn. The materials have been published. They contain a letter to President Dmitry Medvedev that was posted on the CPSU website.³⁸ At the CPSU's initiative, the ITRK Publishers put out the collection *Germans at Katyn. Documents on the Shooting of Polish Prisoners of War in the Fall of 1941*,³⁹ designed to once again take the Katyn case back to the Burdenko Commission's falsifications.

The prehistory in this event is the following. In the run-up to the Nuremberg Trial, an attempt was made to legalize the "Soviet official version." Yet, despite understandings with the allies, some convincing Polish stuff on Katyn was circulated, thus resulting in the version losing its trustworthiness. The Tribunal authorized witnesses to be called to testify. Stalin urgently established a commission to direct the Soviet representatives at the Nuremberg Trial, with Andrey Vyshinsky as its head. Vyacheslav Molotov was instructed to order the heads of the law enforcement agencies to prepare additional materials and witnesses to back that version. This was promptly done (and the Anti-Katyn supporters are currently seeking to use the material). At Nuremberg in the meantime, an aide to Soviet Chief Prosecutor Rudenko, Nikolay Zorya, who was supposed to testify before the Tribunal on the Katyn affair but had a fitting idea about it, applied to the USSR Prosecutor General, Konstantin Gorshenin, requesting to be immediately recalled to Moscow for a report to Vyshinsky as regards his doubts. He was turned down and found dead next morning in his hotel room. There were several explanations for his death: carelessness while cleaning his personal weapon, suicide, and murder. The *GVP* failed to definitively establish the circumstances of his demise. Whether it was done in order to intimidate the personnel or this was what happened in reality, it was rumored that Stalin had ordered to "bury [him] like a dog." It was only years later that his son found some eyewitnesses and his father's grave at a cemetery for the Red Army rank-and-file in Leipzig.⁴⁰

Right now, the Russian leadership, in connection with its participation in the 70th anniversary of Katyn and subsequent events, has set a course for improving Russian-Polish relations and closing the Katyn problem. While attending, on April 7, 2010, a commemorative ceremony at the memorial complex of Katyn, Prime Minister Putin said this: "Decades of cynical lies sought to besmirch the truth about the Katyn shootings... We have no moral right to leave the weight of mutual distrust to the future generations. In the modern world, in the 21st-century Europe, there is just no alternative to true good-neighborliness between the peoples of Poland and Russia."⁴¹

On October 20, 2010, when an away meeting of the Munich Conference was held in Moscow, President Medvedev said with regard to Katyn that there was a real new chance "to close a number of very sad pages and to do that consciously, and to do that graciously," something that was a duty of both the Russian and the

Polish leaderships. He confirmed his earlier position that was set forth in his interview with *Izvestiya*: “Up till now ... people in all earnestness are holding debates on who made the decision to execute the Polish servicemen. Even despite the fact that the relevant materials have been made available, I have issued an instruction to demonstrate all of that again. But the discussions are still in progress. Why? Because this theme, first, was concealed, and, second, it was presented from an absolutely false position. Here is a case of falsified history for you! After all, it is not only those over the hill, not only those living in other countries, who allow falsifications of history to take place. We ourselves did allow a falsification of history.”⁴² On familiarizing himself in the Internet with the CPSU stance on Katyn, he stressed that Russia would not renounce an open dialogue with Poland whatever attempts are made by a portion of the public to refute the investigation results.⁴³ The President acknowledged the true role of Stalin and his underlings in the Katyn crime, and the fact of the erstwhile falsification and the necessity to divulge the full truth by providing all the necessary documents. His position was instrumental in that the Polish side was handed, on April 8, September 23, and in early December, 2010, the first three sets of *GVP* investigative documents.

This position guarantees optimal progress towards the final termination of the Katyn case. The Smolensk accident made it even more urgent and gave a second wind to the settlement of the entire gamut of Katyn problems as a condition for normalizing bilateral Russian-Polish relations.

On November 26, 2010, the State Duma held a vote on and approved by an absolute majority (with 12.7% against) its Statement “On the Katyn Tragedy and its Victims.” The fact of state-sponsored terrorism in regard to the Poles was for the first time acknowledged at that level in the face of Russia’s public. The former admissions (those by Gorbachev and Yeltsin) were addressed to the Poles and had almost no repercussions in Russia. Now the situation saw a dramatic turn. It was publicly acknowledged that “not only do those published materials, which were kept for years in the secret archives, reveal the scale of that horrible tragedy, but they also testify that the Katyn crime was perpetrated on the direct orders of Stalin and other Soviet leaders.” It was stressed that the mass-scale persecutions of citizens of one’s own country and of foreign citizens were incompatible with the idea of rule of law and of justice. Clarifying the circumstances of the extermination of Polish citizens in consequence of “the totalitarian state’s arbitrary rule” would be continued, it said, and the honest names of those who perished at Katyn and in other places would be restored. Those people were “with an exhaustive obviousness rehabilitated by History itself.”⁴⁴ But an official rehabilitation was still an open question.

There is an assumption that the Prosecutor’s Office was justified in rejecting the genocide charge because this concept was first introduced in the domestic criminal law by art. 357 of the RF Criminal Code (in its 1996 version), and came into force in 1997. Based on the retroactivity principle of the criminal law (art. 9, 10 of the RF Criminal Code), some people claim that the new criminal law imposing liabilities for the crime of genocide cannot be applied to actions committed in 1940, because it was put into force as late as in 1997. One might agree with that if

the case in point were an ordinary criminal offense. But the general principles of law are only effective until a concrete rule of behavior is established within the norm of law, which may differ from the general principles. In reality, the concept and definition of genocide were first established by international law whose norms were recognized by the Soviet Union and later by the Russian Federation, even though they were not codified in the domestic criminal legislation. The RF Constitution says this: "The generally recognized principles and norms of international law and the international agreements signed by the Russian Federation shall be a component part of its legal system. If an international agreement signed by the Russian Federation establishes rules other than those envisaged by law, the rules of the international agreement shall be applied" (Part 4, art. 15, RF Constitution).

The agreement signed on August 8, 1945, by the governments of the USSR, the USA, Great Britain and Northern Ireland, and the provisional government of the French Republic founded the International Military Tribunal (IMT) and approved its Charter. Art. 6 of the IMT Charter mentioned some new types of crimes, like crimes against peace, war crimes, and crimes against humanity, which had been applied to actions committed long before the Charter came into force. Considering the agreement, the Soviet State itself gave a legal estimate to the 1940 crimes against the Polish people. It was the USSR that suggested qualifying the shooting of the Polish prisoners of war in the Katyn woods under art. 6 of the IMT Charter. Fearing exposure, however, the Soviet delegation thought it wiser not to insist on the "German culpability" and the issue was withdrawn from the agenda. To this day, there is no open or well-argued refutation of this qualifier. It follows from a March 4, 1965 decree of the Presidium of the USSR Supreme Soviet that the effective domestic legislation included such items of *corpus delicti* as crimes against peace, crimes against humanity, and war crimes, which should be qualified under art. 6 of the IMT Charter and should entail criminal punishment "irrespective of the date of their commission." Under the Convention on the Prevention and Punishment of the Crime of Genocide of December 9, 1948 (ratified by the USSR on March 18, 1954) genocide means acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such. As it follows from Criminal Case #159, the intent to destroy a large group of Polish citizens was motivated by class as well as national and ethnic considerations. Considering the scale of the killings committed, they can be qualified as genocide. In keeping with the Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity of November 26, 1968 (ratified by the USSR on March 11, 1969), no statutory limitations shall apply to the following crimes, "irrespective of the date of their commission: (a) War crimes as they are defined in the Charter of the International Military Tribunal ... (b) Crimes against humanity ... as they are defined in the Charter of the International Military Tribunal ... and the crime of genocide as defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide..." Thus, there are actually no legal obstacles to qualifying the "Katyn crime" under articles of the IMT Charter in Nuremberg and in accordance with the international norms regarding liability for the said crimes.

The Polish side is dissatisfied with both the dismissal of the case and the qualification of the crime. In keeping with the Polish legislation, it regards it as genocide. The Polish Prosecutor's Office included in its lawsuit a charge postulating "the destruction of a Polish national group."⁴⁵ The Polish Institute of National Memory accepted a decision, on November 30, 2004, to start an investigation of its own, which purports to identify those who issued the orders and carried out the executions. By now, the Institute has amassed a vast amount of evidentiary material. On March 22, 2005, the Sejm urged the disclosure of the whole truth about the Katyn tragedy, the release of the entire body of investigative documents, and the recognition of the mass killing of Polish POW's as genocide.⁴⁶ In March 2006, the Polish authorities declared that they were considering a possibility of having this crime recognized as an act of genocide by an international forum.⁴⁷

On April 11, 2011, President Dmitry Medvedev and President Bronislaw Komorowski held a meeting at Katyn, a sequel of sorts to the 70th anniversary of the tragedy, which was disrupted by the Smolensk plane crash causing President Leh Kaczinski's death. The political will displayed by the Russian leadership is a guarantee that a full-blooded legal solution and the final termination of the Katyn case are in the offing.

NOTES

- 1 *The 70th Anniversary of the Beginning of World War II: Studies, Documents, Commentaries*, Moscow, 2009 (in Russian).
- 2 *Katyn. Prisoners of an Undeclared War. Documents*, Moscow, 1997, pp. 67-70 (in Russian).
- 3 *Ibid.*, p. 601.
- 4 *Truth about Katyn*, Moscow, 1943; *Report by the Special Commission for the Investigation of Circumstances of the Shooting by the German Fascist Invaders in Katyn Woods of Captive Polish Military Officers*, Moscow, 1944(both in Russian).
- 5 See: *Zbrodnia katyńska. Bibliografia 1940-2010*, Warszawa, 2010.
- 6 See: I. Jazhborovskaya, A. Yablokov, V. Parsadanova, *The Katyn Syndrome in Soviet-Polish and Russian-Polish Relations*, Moscow, 2009, p. 208 (in Russian).
- 7 G. Smimov, *Lessons of the Past*, Moscow, 1997, p. 222 (in Russian).
- 8 *War Archives of Russia*, 1993, Issue 1, pp. 152-155 (in Russian). Falin told Gorbachev that a secret report had been received a year ago, which covered the participation of the Polish Red Cross in the April-May, 1943 exhumation of the burials at Katyn near Smolensk (*ibid.*, p. 153).
- 9 *Ibid.*, pp. 153-155.
- 10 V. Falin, *Without Allowances for Circumstances*, Moscow, 1999, p. 406 (in Russian).
- 11 *War Archives of Russia*, 1993, Issue 1, p. 155 (in Russian).
- 12 *Ibid.*, pp. 156-158.
- 13 *Ibid.*, pp. 162-164.

- 14 *Historians Answer Questions*, Issue 2, Moscow, 1990 (in Russian).
- 15 V. Abarinov, *The Katyn Labyrinth*, Moscow, 1991 (in Russian). See also a new, amended edition: W. Abarinov, *Oprawcy z Katynia*, Krakow, 2007.
- 16 *The Katyn Syndrome...*, pp. 300-301.
- 17 Gorbachev's order of November 3, 1990. See: "Secret Documents from Special Files," *Voprosy istorii*, 1993, No. 1.
- 18 G. Smirnov, op. cit, p. 222.
- 19 Yu. Zorya, A. Prokopenko, "The Nuremberg Boomerang," *Voенно-istorichesky zhurnal*, 1990, No. 7; Yu. Zorya, "Director of the Katyn Tragedy," *Beria: The End of Career*, Moscow, 1991; N. Lebedeva, "The Katyn Tragedy," *Moskovskie novosti*, 1990, No. 12; Idem, "Let's Talk Once Again about Katyn," *ibid.*, No. 18; idem, "On the Tragedy at Katyn," *Mezhdunarodnaya zhizn*, 1990, No. 5; idem, *Katyn: Crime against Humanity*, Moscow, 1994; See also: *Novoye vremya*, 1990, No. 16; *Novaya i noveyshaya istoriya*, 1990, No. 3; and others (all in Russian).
- 20 *Katyn: Prisoners of an Undeclared War*, pp. 384-390, 524, and others.
- 21 *The Katyn Syndrome...*, pp. 104-105.
- 22 Published in two volumes in Russian was an abridged version of the joint four-volume edition: *Katyn. Prisoners of an Undeclared War: Documents and Materials*, Moscow, 1999; *Katyn. March 1940—September 2000. The Shooting. Fates of the Survivors. The Echo of Katyn. Documents*, Moscow, 2001. The Polish edition contains mostly Russian texts and is quite accessible for the Russian reader. See: *Katyn. Dokumenty zbrodni*, t. 1-4, Warszawa, 1995-2006.
- 23 F. Rudinsky, "The Katyn Tragedy: Investigation Must Be Continued," *Pravozashchitnik*, 1998, No. 1; idem, "The CPSU Case" in the Constitutional Court. Notes by a Participant in the Trial, Moscow, 1999, pp. 306-322; A. Larin, "One-Sidedness and a Prejudiced Selection of Facts Would not Lead to the Truth," *Pravozashchitnik*, 1998, No. 3 (all in Russian).
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- 26 *War Archives of Russia*, 1993, Issue 1. For a selective publication, see: *Katyn. Prisoners of an Undeclared War*.
- 27 N. Bukharin, *Russian-Polish Relations: The 1990s—the Early 2000s*, Moscow, 2007, p. 111 (in Russian).
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- 30 *Katyn. March 1940—September 2000. The Shooting. Fates of the Survivors*, pp. 582-583.
- 31 See: I. Jaźborovskaja, A. Jabłokow, J. Zoria, *Katyn: zbrodnia chroniona tajemnicą państwową*, Warszawa 1998; *The Katyn Syndrome...*
- 32 A. Voronov, "The Polish Officers Were Shot without Reprisals," *Kommersant*, October 25, 2008 (in Russian).
- 33 Yu. Mukhin, *The Katyn Labyrinth*, Moscow, 1995; Idem, *Anti-Russian Meanness. A Scientific and Historical Analysis*, Moscow, 2003 (both in Russian).

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- 37 *White Spots—Black Spots. Complicated Issues in Russian-Polish Relations*, Moscow, 2010 (in Russian).
- 38 *Secrets of the Katyn Tragedy. Materials of a Roundtable on the Theme “The Katyn Tragedy: Legal and Political Aspects,” Held at the State Duma of the Federal Assembly of the Russian Federation on April 19, 2010*, Moscow, 2010 (in Russian); www.kprf.
- 39 *Germans at Katyn. Documents on the Shooting of Polish Prisoners of War in the Fall of 1941*, Moscow, 2010 (in Russian).
- 40 I. Jaźborovskaja, A. Jabłokov, J. Zoria, op. cit., s. 162-166; *The Katyn Syndrome...*, pp. 188-194.
- 41 Chairman of the Government of the Russian Federation Vladimir Putin, jointly with Prime Minister Donald Tusk of Poland, attended the commemorative ceremony at the memorial complex of Katyn on April 7, 2010. The Putin address can be found on www.premier.gov.ru.
- 42 President of Russia’s official website is www.kremlin.ru.
- 43 *Verbatim Report on the Meeting with Participants in the Munich Conference on Security Policy Issues, October 20, 2010*, <http://news.kremlin.ru/transcripts/9299> (in Russian).
- 44 “On the Katyn Tragedy and its Victims. Statement by the State Duma on the Shooting in the Katyn Woods,” <http://www.polit.ru/dossie2010/11/26/katyn/html> (in Russian).
- 45 “Katyn osadzimy,” *Gazeta Polska*, December 9, 2004.
- 46 “To nie byte zwykła wojenna tragedia,” www.gazeta.pl (March 22, 2005).
- 47 “Rosja musi wyznawać prawdę,” *Rzeczpospolita*, March 6, 2006.

Translated by Aram Yavrumyan