

**NORMATIVE BASIS OF THE PROSECUTION  
OF INTERNATIONAL CRIMES UNDER THE LEGISLATION  
OF THE REPUBLIC OF UZBEKISTAN**

## A. Introduction<sup>1</sup>

### **General information**

The Republic of Uzbekistan is a state in the central part of Eurasia. It borders upon Kazakhstan on the north and north-west; upon Kyrgyz Republic and Tajikistan on the south and south-east; upon Afghanistan upon the south and upon Turkmenistan on the south-west. The territory of the State is 447,400 sq. km. The capital is Tashkent. The State's territorial structure is 12 regions, Tashkent and the autonomous Republic of Karakalpakstan. The population is 26,383,000 persons (data of 2006). The official ("state") language is Uzbek. No religion is proclaimed as official<sup>2</sup>.

The Constitution of the Republic of Uzbekistan was passed on 8 December 1992; the document was amended mainly in the part pertain to the presidential authority and the duration of his / her stay in power<sup>3</sup>.

According to the Constitution (1992) the Republic of Uzbekistan asserts it is a sovereign democratic state, proclaims its adherence to human rights and principles of democracy, recognises the primacy of the universally recognised norm of international law<sup>4</sup>.

The Constitution of Uzbekistan contains no information whether the State is unitary or federal. Art. 70 states that the "sovereign Republic of Karakalpakstan forms part of the Republic of Uzbekistan" but the legal doctrine holds the opinion that Uzbekistan is a unitary state which covers an autonomous entity as a part.

According to art. 15(1) of the Constitution, its provisions and the normative acts corresponding to it, is the acting law in the Republic of Uzbekistan<sup>5</sup>. The Constitution does not touch upon the issues of the fulfilment of its international obligations and does not regulate the implementation process.

**Criminal legislation** The criminal legislation of Uzbekistan, as well as other States CIS members, comprises of the Penal Code (PC)<sup>6</sup>. No other sources of criminal law, except the Penal Code, exist.

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<sup>1</sup> This section of the Country report draws upon information posted at: <http://www.britannica.com/nations/Uzbekistan>

<sup>2</sup> The majority of the population confesses Sunni Islam, however the proportion of other confessions is also quite considerable.

<sup>3</sup> Law of the Republic of Uzbekistan № 470-II of 24 April 2003

<sup>4</sup> Preamble of the Constitution of the Republic of Uzbekistan

<sup>5</sup> A detailed classification of sources of the law is contained in the Law «On Normative Legal Acts» of 14 December 2000. Under the Law, the Constitution represents the supreme legal authority; it is followed by Laws of the Republic of Uzbekistan, and thereafter by by-laws: regulations of the Oliy Majlis (the supreme legislative body), decrees of the President, regulations of the Cabinet of Ministers, normative legal acts of Ministries, State Committees and agencies, normative legal acts of local State authorities.

<sup>6</sup> Art. 1 of the Penal Code ("Penal Code of the Republic of Uzbekistan"): "1. The penal legislation of the Republic of Uzbekistan is based upon the Constitution and generally recognized norms of international law and consists of the present Code".

The acting Penal Code of the Republic of Uzbekistan entered into force on 1 April 1995 and was repeatedly amended for the reasons linked, mainly, with the liberalisation of the criminal legislation.

The Penal Code regards as of paramount certain objectives: protection of personality, its rights and freedoms against criminal encroachment, protection of interests of the State and society, protection of property, natural environment, safety of mankind, prevention of crimes, upbringing law-abiding citizens<sup>7</sup>.

The Uzbek Penal Code is based on the principle of territorial and national jurisdiction<sup>8</sup>. The universality principle is not implemented into the national legislation.

The penalty system which is determined in the Code has the following structure: a) fine; b) deprivation of a certain right; c) correctional labour; d) job limitations; e) arrest (i.e. holding a person in the close custody for six months<sup>9</sup>); f) sending a person to the disciplinary unit; g) deprivation of liberty; h) death penalty<sup>10</sup>. The deprivation of a military or a special rank as well as the deprivation of a certain right are referred to the supplementary penalties. (art. 43, p. 2).

According to art. 15 of the Penal Code, all crimes are divided into several groups: 1) the crimes which do not pose a large social danger (penalties are the deprivation of liberty up to three years, and up to five years for the crimes committed by negligence); 2) less grave crimes (the deprivation of liberty up for the period from three to five years); 3) grave crime (the deprivation of liberty for the period from five to ten years) 4) particularly grave crimes (the deprivation of liberty for the period from ten years)

**Criminal Procedure Code.** The criminal procedure in the Republic of Uzbekistan is regulated by the Criminal Procedure Code (CPC) which entered into force on 1 April 1995<sup>11</sup>. Despite the existence a number of new democratic principles and norms of criminal proceedings in the texts of the Constitution and the CPC, the new criminal proceeding legislation keeps succession of the Soviet criminal legal procedure. The proclaimed aim to achieve the common balance of the defence's and prosecution's procedural rights has not been realised yet.

**Penal Executive Code was approved by the Uzbek Law № 535-II on 30 August 1997.**

**Corpus delicti of international crimes in the current criminal legislation.** Chapter VIII of the Penal Code ("Crimes against peace and security of mankind") embodies 8 articles:

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<sup>7</sup> Art. 2 of the Penal Code of the Republic of Uzbekistan

<sup>8</sup> Arts. 11, 12 of the Penal Code of the Republic of Uzbekistan

<sup>9</sup> Art. 48 of the Penal Code of the Republic of Uzbekistan

<sup>10</sup> Art. 43 of the Penal Code of the Republic of Uzbekistan; this type of punishment has been abolished as of 1 January 2008.

<sup>11</sup> Law «On the Approval of the Criminal Procedure Code of the Republic of Uzbekistan» of 22 September 1994, № 2013-XII

- "Propaganda for war" (art. 150);
- "Aggression" (art. 151);
- "Violation of the laws and customs of war" (art. 152);
- "Genocide" (art. 153);
- "Mercenarism" (art. 154);
- "Joining and / or recruitment for the military service, for the security bodies, for police, military justice and other similar bodies of foreign states" (art. 154-1);
- "Terrorism" (art. 155);
- "Excitation of national, racial or religious hatred" (art. 156).

All above mentioned *corpus delicti* were included in the original Criminal Code's edition which was passed in 1995, i.e. before the ICC Rome Statute had been adopted. The amendments, adopted afterwards, related to the mitigation of penalties for the indicated crimes; the wordings of the corresponding articles were not practically revised<sup>12</sup>. Uzbekistan has signed the Rome Statute, but it has not still ratified the treaty. Moreover, in 2002 Uzbekistan and the USA concluded the bilateral agreement on the mutual obligations not to extradite each other's citizens to the ICC<sup>13</sup>.

However, this agreement concluded after the Republic of Uzbekistan had signed the Rome Statute, seems to be contrary to the object and purpose of the international treaty<sup>14</sup>. In this regard, for the purpose of the present report, it makes sense to comment the *corpus delicti* of the international crimes which are covered by the Uzbek Penal Code from the viewpoint of the ICC Rome Statute, above all, and from the viewpoint of the national criminal legislation and criminal policy, taking into account the substance of the sources of international law.

It should notice that *after* the Penal Code had been passed, Uzbekistan ratified a number of the international treaties relevant to the present report<sup>15</sup>. By virtue of the principle of good faith observance of international obligations (*pacta sunt servanda*), those treaties, after having entered into force, must have corrected the content of the corresponding blanket norms of the Uzbek Penal Code to some extent.

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<sup>12</sup> Exceptions are Art. 154 («Mercenarism»), whose part 2 was introduced by the Law of the Republic of Uzbekistan № 535-II of 30 August 2003; Art. 155 («Terrorism»), whose part 1 was amended by the Law of the Republic of Uzbekistan № 254 of 29 August 2001;

<sup>13</sup> *Agreement regarding the surrender of persons to the International Criminal Court*, signed at Washington on 18 September 2002, entered into force on 7 January 2003.

<sup>14</sup> In accordance with Art. 18 of the Vienna Convention on the Law of Treaties, a State is obliged to refrain from acts which would defeat the object and purpose of a treaty when: (a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification.

<sup>15</sup> Convention on the Prevention and Punishment of the Crime of Genocide (succession: 9 September 1999)

## **B. International Crimes and their implementation in the national legislation**

### **I. Genocide**

#### **I.1. *Corpus Delicti* and sources of law**

The *corpus delicti* of genocide is spelled out in art. 153 of the Penal Code of the Republic of Uzbekistan:

Genocide, i.e. the deliberate infliction of creation of the live conditions calculated to the total or partial physical destruction of a group of persons on the national, ethnic, racial or religious ground, the total or partial physical extermination of them, forcible diminution of child-bearing or transferring children of the group to another group and giving an order to commit such crimes [...]

To a considerable degree the wording corresponds to the definitions included in art. 2 of the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, and in art. 6 of the ICC Rome Statute<sup>16</sup>. In particular, the Penal Code's definition reflects such essential elements of the crime of genocide as:

- Belonging of victims of the crime to a certain national, ethnic, racial or religious group;
- Direct intention to eradicate such a group, in total or in part.

At the same time, the crime's actus reus (объективная сторона) contains a number of discrepancies to the international requirements; Uzbek law-maker has formulated it before the ratification / signing to the Convention and Rome Statute but did not bring the wording to conformity with art. 2 of the Convention and art. 6 of the Statute. Therefore, it differs from the conventional definition somehow on many parameters:

- According to the international definition of the crime, genocide is *the commitment of acts* which are enumerated in the dispositions of art. 2 of the Genocide Convention and art. 6 of the Rome Statute. The Uzbek law-maker does not give the crime's definition as such but lists acts that form the crime of genocide: 1). deliberate infliction of creation of the live conditions calculated to the total or partial physical destruction of a group of persons on the national, ethnic, racial or religious ground; 2). total or partial physical extermination, 3).

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<sup>16</sup> The texts of both documents are identical:

'genocide' means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group".

- forcible diminution of child-bearing; 4) or transferring children of the group to another group 5). giving an order to commit such crimes<sup>17</sup>.
- The Uzbek Penal Code does not use the wording «killing members of the group» which contains in art. 2 of the Genocide Convention and in art. 6 of the Rome Statute what is an essential discrepancy to the international standards in the given context: according to the texts of the Rome Statute and the Genocide Convention, the commitment of even *few* killings is sufficient for the recognition a certain act as genocide provided that the commitment of those acts were directed to the extermination of the group as such. In its turn, the Uzbek law-maker criminalises as the crime of genocide “total or partial physical extermination [such a group of persons]” what sets quite a high threshold of the recognition an act as the crime of genocide.
  - It is vague whether the wordings “forcible diminution of child-bearing” and «measures aimed at the prevention of childbirths»<sup>18</sup> should be considered as equal on meaning;
  - Art. 153 of the Uzbek Penal Code does not cover the infliction of serious bodily harm or mental distortion [on members of such a group] and does not consequently qualifies this acts as the crime of genocide. Despite the fact that the Penal Code contains a series of articles which set the responsibility for the intentional infliction of body harm (art. 104 «intentional grave body harm», art. 105 «intentional medium grave body harm»), the indicated articles can barely be considered in aggregate with art. 153 of the Penal Code.
  - In the last alternative disposition, the wording “giving an order to commit such crimes” is an essential addition to the Convention’s provisions<sup>19</sup>.

Taking into consideration the above circumstances, it seems that in the case of the applicability art. 153 in the judicial practise (so far, there has not been such practice) the court will proceed from the case’s factual circumstances and apply its own criminal law in the light of the corresponding international legal experience.

In accordance with art. 17(1) and 18 of the Penal Code, subject to criminal liability for the crime of genocide are sane natural persons who, at the time of committing the crime, have attained the age of sixteen years.

## **I.2. Foreseen legal consequences**

The Uzbek Penal Code refers the crime of genocide, as well as the other crimes which are being considered in the present report, to the particularly grave crimes which are punished with the deprivation of liberty for the period from ten to twenty years.

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<sup>17</sup> Art. 153 of the Penal Code of the Republic of Uzbekistan

<sup>18</sup> Art. 2(d) of the Convention on the Prevention and Punishment of the Crime of Genocide, ст. 6(d) of the Rome Statute

<sup>19</sup> The text of the Convention on the Prevention and Punishment of the Crime of Genocide makes no reference to ordering the commission of genocide in the list of criminal acts, and neither does Art. 6 of the Rome Statute; however, the latter defines the issuance of an order as a punishable crime under the general principles of criminal law (Art. 25 of the Rome Statute).

In respect to the qualification of the particularly grave crimes, the establishment of measures of accountability for their commitment, execution of punishment and cancellation of conviction, the Penal Code provides the following legal consequences:

- (1) criminal liability for the preparation of the crime and attempting to commit it (art. 25(3));<sup>20</sup>
- (2) non-applicability of statutory limitations to persons who have committed crimes against the peace and security of mankind (art. 64(7));<sup>21</sup>

## II. Crimes against Humanity

### II.1. *Corpus delicti* and sources of law

The Penal Code does not operate with the notion “crimes against humanity” in the sense of the contemporary international criminal law and, in particular, in the sense of para 1 art. 7 of the Rome Statute of the International Criminal Court. Starting from the definition, the distinguishing characteristics of the crimes against humanity are: (1) their addressing against any civilians; (2) wide-ranging or (3) systematic character of the attack in the framework of which they are committed; (4) deliberate character of the attack. That is to say, crimes against humanity is *per se* the combination of wilful offences which are united in a single whole by the common intention and by the “context of the organised violence”<sup>22</sup>, which allow encroaching on the fundamental rights of victims who belong to a group with a definite membership and are large enough in numbers. Starting from the logic of the Uzbek criminal legislation, one can suppose that a complexly compound offence which might be qualified as a crime against humanity under international law, from the point of view of the Uzbek criminal law would be, most likely, considered either as the repetition of crimes (art. 32(1),<sup>23</sup> or as the continuous crime (art. 32(3)<sup>24</sup>), or as the aggregation of crimes (art. 33(1)<sup>25</sup>).

The comparison of the Uzbek Penal Code’s articles and art. 7 of the Rome Statute and other international treaties’ provisions are given below:

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<sup>20</sup> Art. 25(3) «Liability for the preparation of a crime and for an attempted crime shall incur on the basis of the same article of this Code’s Specific Part as for a complete crime ».

<sup>21</sup> Art. 64(7): “No statutory limitations... shall apply to persons who have committed crimes against the peace and security of mankind ”.

<sup>22</sup> G. Werle, *Principles of International Criminal Law* ...

<sup>23</sup> Art. 32(1): “The repeatedness of crimes is the commission of two or more acts foreseen by the same part, article or, in cases specifically provided for in the present Code, by different articles of the Specific Part, for neither of which the person has been convicted”.

<sup>24</sup> Art. 32 (3): «[a] crime, which consists of a number of identical criminal acts, which are covered by a common intention and directed at a common goal, and which make up, as a totality, a unified continuous crime».

<sup>25</sup> Art. 32(1): “An aggregation of crimes is the commission of two or more criminal acts, which are foreseen by different articles or different parts of the same article of this Code’s Specific Part, for neither of which the person has been convicted and for which he or she is liable to punishment ”.

- *murder* – art. 97 of the Penal Code «Wilful killing »;
- *extermination* – the Penal Code criminalises this offence but not in connection with the crimes against humanity but as the violation of laws and customs of war: art. 152 (“Violation of laws and customs of war”) provides the sanction for the “physical extermination of civilian population”. Besides, art. 153 (“Genocide”) also criminalises the “total or partial physical extermination of any group”<sup>26</sup>;
- *enslavement* – art. 135 “Recruiting people for the exploitation”<sup>27</sup>, art. 138 “Enforced unlawful deprivation of liberty”<sup>28</sup>;
- *deportation or forcible transfer of population* – the offence does not criminalise as a crime against humanity; art. 152 of the Penal Code (“Violation of laws and customs of war”) says about the “driving the civilian population away for the enforced works or other purposes”;
- *imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law* - art. 138 “Enforced unlawful deprivation of liberty”;
- *torture* – art. 110 “Torment”<sup>29</sup>; art. 235 «Employment of torture and other cruel, inhuman and degrading human dignity types of treatment and punishment” gives the determination to the crime: “unlawful mental or physical influence on the accused, defendant, witness, victim or another participant of the criminal procedure or the convicted serving his sentence, their close relatives by means of threats, striking blows, beatings, torments, causing suffering or other unlawful acts committed by investigators, prosecutors or other officials of the law-enforcement body or organisation in order to receive information, confession in the commitment of crimes, their unauthorised punishment for a committed act or for coercing them into committing any acts”<sup>30</sup>

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<sup>26</sup> However, this article mentions, as a definitional aspect, the extermination of such a group on the basis of nationality, ethnicity, race or religion. Extermination as a crime against humanity does not necessarily require such discriminatory grounds.

<sup>27</sup> Art. 135(1): «Recruitment of people for exploiting them sexually or otherwise, committed by fraud...»

<sup>28</sup> When such a deprivation of liberty aims at enslaving a person / a group of persons.

<sup>29</sup> Art. 110(1) defines torment as «systematically beating or performing other actions»

<sup>30</sup> The disposition of this article does not correspond in several ways to article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment. First of all, article 253 only includes in the range of the crime's victims participants of a criminal procedure, whilst the Convention suggests that any person may fall victim to torture (nevertheless, it should be taken into account that, for the purpose of the Rome Statute, the notion of «torture» is defined as « the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused». Thus, the Code does not contradict the Statute in this regard). Further, the notions of “unlawful impact” and “unlawful acts” contained in article 253 do not correspond to the spirit of art. 1(1) of the Convention and may cause a false perception that there exist «unlawful torture» and «lawful torture». Besides, art. 235 considerably narrows down the purpose of inflicting

- *rape* – art. 118 Rape”,
- *sexual slavery, enforced prostitution* – art. 135 “Recruitment people for exploitation”, art. 138 “Enforced unlawful deprivation of liberty”<sup>31</sup>
- *forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity* – the Penal Code does not contains such provisions, apart from art. 138 “Enforced unlawful deprivation of liberty”;
- *Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender ... or other grounds ...* – the Penal Code does not contain an article which would criminalise the present offence. Art. 156 “Indictment of national, racial or religious hatred” is the most similar to the mentioned *corpus delicti*<sup>32</sup>. The Commentary to art. 156 implies that the subject of the perpetrator of the crime can be both public officials and individuals. Moreover, both offences committed in individual capacity and the crimes committed by the organised group on previous concert will be considered as crime; in this regards the mentioned factors will be the aggravating circumstances. Coming of any consequences is not necessary for the *corpus delicti*; it is regarded as completed since the moment of the commitment of acts mentioned in the disposition of the article.
- *enforced disappearance of persons* – art.135 “Kidnapping”<sup>33</sup>;
- *the crime of apartheid* – is not provided by the Penal Code;
- *Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health* - art. 104 “Wilful grave body harm”, art. 105 – “Wilful body harm of medium grave”, art. 110 – “Torment”).<sup>34</sup>

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torture, speaking only of extracting information or confession, or of inflicting punishment, whilst the Convention contains a broader list of purposes. Finally, art. 235 excludes the participation of third persons as victims or perpetrators, should they act upon orders issued by persons acting in their official capacity.

<sup>31</sup> If such a deprivation of liberty pursues the goal of turning a person into a sexual slave.

<sup>32</sup> Art. 156 (2):«Intentional acts, which humiliate the national honour and dignity, insult citizens’ feelings in relation to their religious or atheistic convictions, perpetrated with the purpose of inciting enmity, intolerance or division against groups of the population on national, racial, ethnic or religious grounds, as well as limiting, directly or indirectly, rights or establishing direct or indirect advantages on the basis of their national, ethnic affiliation or attitude towards religion».

<sup>33</sup> However, art. 137 of the Penal Code of the Republic of Uzbekistan defines «kidnapping» in a much broader way that art. 7 of the Rome Statute does, since the latter mentions, as a necessary element, the participation of the State or of a political organization in the enforced disappearance of people, whilst art. 137 criminalises the kidnapping of people generally. In this regard, it might not be quite clear whether this article might apply for the purpose of qualification of a crime against humanity.

<sup>34</sup> It seems that the elements of crimes foreseen by articles 104, 105 and 110 do generally correspond to the standards of art. 7(1) of the Rome Statute, but their titles are different, for objective reasons.

## II.2. Foreseen legal consequences

In conclusion, one can make the interference that criminal legislation of Uzbekistan, not providing the category of crimes against humanity as such, nevertheless does cover a certain scope of substantive remedies for the prevention and criminal prosecution of the most part of general crimes which can form *actus rea* of crimes against humanity.

From the point of view of the criminal law of Uzbekistan, general crimes which have been considered in the present subsection of the report are the crimes of medium gravity, grave crimes and particularly grave crimes. The qualification of an offence in accordance with this or that paragraph of the corresponding article of the Penal Code will depend on presence or absence of the circumstances which would aggravate the responsibility and punishment (art. 56),<sup>35</sup> and on whether one or another form of multiple offences takes place. At the same time the absence of the category of crimes against humanity can create certain difficulties of substantive and processing sense at the application of law.

## III. War crimes

### III.1. *Corpus delicti* and sources of law

*Corpus delicti* of war crimes which are criminalised in Uzbekistan, are reflected in art. 152 of the Penal Code ("Violation of laws and customs of war"<sup>36</sup>):

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<sup>35</sup> Art. 54 ("Circumstances which aggravate the responsibility and punishment"):

- "1. Circumstances, which aggravate the punishment, are crimes committed:
- a) against a pregnant woman, if the perpetrator knew of her pregnancy;
  - б) against a minor, an elderly person or a person who was finding himself or herself in a helpless condition;
  - [...]
  - г) with overly cruelty;
  - д) in a generally dangerous way;
  - [...]
  - и) using the conditions of a social calamity or in the period of a state of emergency, or in the process of mass disorder;
  - [...]
  - л) on the grounds of racial or national enmity or division;
  - [...]

<sup>36</sup> The Republic of Uzbekistan participates in the following treaties relevant for the purpose of the present section (the indicated dates are ones of ratification, accession or, where appropriate, succession):

- Geneva Convention for the Protection of Victims of War of 12 August 1949 and their Additional Protocols of 8 June 1977 (8 October 1993);
- Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict and Protocol thereto of 14 May 1954 (20 February 1996);
- Convention on the Prohibition of Bacteriological (Biological) Weapons of 10 April 1972 (11 January 1996);
- Convention on the Prohibition of Environmental Modification Techniques of 1976 (26 May 1993);
- Convention on the Rights of the Child of 20 November 1989 (26 June 1994);

“Violation of laws and customs of war which are displayed in torment, physical extermination of civilian population or prisoners of war, hijacking of civilian population for enforced works and other purposes, use of means of warfare prohibited by international law, meaningless destruction of towns and settlements, plunder of property, as well as giving the order to commit these acts...”

It should be noted that art. 152 of the Penal Code *does not differentiate international and non-international armed conflicts*. Consequently, the commitment of war crimes in the conflicts of both types entails the criminal liability considering the scope of international law applicable in these situations.

The comparative analysis of art. 152 of the Penal Code and art. 8 of the Rome Statute demonstrates that the criminal legislation of Uzbekistan partially coincides with the Statute’s provisions:

#### 1. *Torment*<sup>37</sup>.

1.1. In international armed conflicts including grave breaches of the Geneva conventions of 1949<sup>38</sup> and other serious violations of the laws and customs applicable in international armed conflict: torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health<sup>39</sup>; subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons<sup>40</sup>.

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- Convention on the Prohibition of Chemical Weapons of 13 January 1993 (23 July 1996).

Source: Advisory Service on International Humanitarian Law of the International Committee of the Red Cross ([www.icrc.org/eng/](http://www.icrc.org/eng/))

<sup>37</sup> The notion of «torment», due to its inconsistency, causes quite a number of questions as to what constitutes torment, and whether «torment» is synonymous to «torture». In English and French, these terms are absolute synonyms. The Uzbek legislator, though, distinguishes between these notions: torment is defined in a rather broad way (art. 110(1)): «systematically beating or performing other actions...», which allows supposing that torment may encompass torture as well as other cruel, inhuman or degrading treatment.

<sup>38</sup> Arts. 50, 51, 130, 147 of, respectively, Geneva Conventions I, II, III, IV; Art. 85 of Additional Protocol I

<sup>39</sup> Art. 3(a) common to all Geneva Conventions; besides art. 152, indictment may be made under art. 235 («Infliction of torture or other cruel, inhuman or degrading treatment or punishment»), provided that the disposition of this article would correspond the elements of the crime actually committed. The perpetrator could also be indicted under ar. 104 («Inflicting intentionally grave bodily harm») and art. 105 («Inflicting intentionally intermediately grave bodily harm»).

<sup>40</sup> Also, qualification under arts. 103, 104 is possible.

1.2. In non-international armed conflicts: encroachment on life and individual, in particular, killing of any kind, causing mutilation, cruel treatment and torture;

- encroachment on human dignity, in particular insulting and humiliating treatment;

*2. Physical extermination of civilian populations or prisoners of war.*

In international armed conflicts: wilful killing, killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion<sup>41</sup>. In non-international armed conflicts: encroachment on life and individual, in particular killing of any kind;

*3l. Hijacking the civilian population for enforced works or other purposes*

In international and non-international armed conflicts: unlawful deportation of transfer<sup>42</sup> or unlawful deprivation of liberty<sup>43</sup>; transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;

*4. Use of means of warfare prohibited by international law<sup>44</sup>.*

In international and non-international armed conflicts: employing poison or poisoned weapons; employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices; employing bullets which expand or flatten easily in the human body... employing weapons, projectiles and material ... which ... cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict...

*5. Meaningless destruction of towns and settlements*

In international and non-international armed conflicts: Attacking or bombing, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;

*6. Plunder of property.* In international armed conflicts: Pillaging a town or place, even when taken by assault;

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<sup>41</sup> In accordance with IHL norms, a combatant who has laid down the arms becomes a prisoner of war. Consequently, this part of art. 152 applies.

<sup>42</sup> Art. 49(1) of GC IV, art. 85(4)(a) of AP I;

<sup>43</sup> It seems that, when qualifying this crime, the Uzbek law enforcement would rather apply art. 138 («Forcible unlawful deprivation of liberty») than the said part of the disposition of art. 152.

<sup>44</sup> Thus, this norm is a referral, inasmuch as it criminalises the means of warfare which are prohibited by international law. It is suggested that this disposition might be interpreted quite broadly, encompassing the means which are prohibited by treaties to which the Republic of Uzbekistan is a party, as well as means which are prohibited under customary international law.

At the same time, a significant range of questions linked with the criminalisation of employing prohibited *methods* of warfare, has remained outside the field of vision of Uzbek legislation. The Penal Code does not contain any provisions which would provide the punishment for their commitment. In addition, the Penal Code does not cover any provisions which would concern inhuman treatment with prisoners of war, misuse and treacherous use of protective and distinctive emblems, including distinctive emblems of international organisations, coercion of children to take part in hostilities, etc. Thus, the following provisions of art. 8 of the Rome Statute are not implemented in the criminal legislation of Uzbekistan:

- Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
- Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
- Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
- Intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
- Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
- Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;
- Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;
- Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
- Killing or wounding treacherously individuals belonging to the hostile nation or army;
- Declaring that no quarter will be given;

- Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
- Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
- Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
- Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
- Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
- Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;
- Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities;
- The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

Besides the above mentioned, the ICC Rome Statute considers as war crimes the following provisions which are included in the Penal Code although without being regarded as war crimes and being covered by art. 152:

1. *taking of hostages* – art. 245 "Taking of hostages"<sup>45</sup>;
2. Sexual offences:
  - *committing rape* – art. 118 of the Penal Code;
  - sexual slavery – art. 135 "Recruitment of people for exploitation", art. 138 "Enforced unlawful deprivation of liberty";
  - enforced prostitution, forced pregnancy, enforced sterilization – the Penal Code does not contain similar provisions;

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<sup>45</sup> Art. 245(1): «The taking or detaining a person as a hostage with the purpose of forcing the State, an international organisation, a natural or juridical person to perform an action or refrain from performing one as a condition for releasing the hostage...»

- any other form of sexual violence любые другие виды сексуального насилия – art. 119, “Enforced satisfaction of sexual needs in unnatural form”<sup>46</sup>, art. 120 “Buggery”<sup>47</sup>, art. 121 “Compulsion of a woman to sexual relations”<sup>48</sup>.

The criminal legislation of Uzbekistan seems to be revised and supplemented to be brought to the conformity with State’s international obligations. That can be fulfilled as a consequence of the corresponding legislative initiative.

### III.2. Foreseen legal consequences

The crimes qualified on para 1 of art. 152 of the Penal Code of the Republic of Uzbekistan are related to the category of the crimes of particular gravity and are punished with the deprivation of liberty for the period from ten to twelve years.

## IV. Propaganda for war and aggression

### IV.1. Corpus delicti and source of law

The Penal Code of Uzbekistan sets the criminal liability for propaganda for war (art 150)<sup>49</sup> and for the crime of aggression (art 151).<sup>50</sup>

*Propaganda for war.* In accordance with the Commentary to the Uzbek Penal Code, the actus reus of the crime is the spreading – i.e. in the statement, expressions of any kind – of views, ideas or summons with the aim to provoke aggression of one country against another; the crime is considered as completed at the moment of spreading summons on propaganda of war. The spreading of views and ideas on unceasing armament, use of nuclear, hydrogen and bacteriological weapon, expression of opinions on inferiority of any nations or on their superiority, economical or ideological preparation to the future conflict. Means rea of the crime is characterized by the presence of direct intention. The crime can be committed by citizens of Uzbekistan, apatrides and foreigners<sup>51</sup>.

*Aggression.* Since the definition of the term “aggression” does not still exist in international criminal law, the provisions of art. 151 of the Uzbek Penal

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<sup>46</sup> Art. 119(1): «The perverted forcible satisfaction of sexual need, with the use of violence, threats or a helpless condition of the victim...»

<sup>47</sup> Art. 120(1): «The satisfaction of sexual need between men without the use of violence...»

<sup>48</sup> Art. 121(1): «Compulsion of a woman to sexual intercourse or a perverted satisfaction of sexual need by a person on whom the woman found herself depending as a subordinate, materially or otherwise...»

<sup>49</sup> Art. 150: «Propaganda for war, i.e. dissemination in any form of views, ideas or calls with the purpose of causing an aggression of one country against another...»

<sup>50</sup> Art. 151: «Planning or preparation of a war of aggression, as well as participation in a conspiracy for the commission of these acts...»

<sup>51</sup> See commentary on art. 150.

Code will be interpreted in the light of the Resolutions 3314 on determination of aggression of 1974<sup>52</sup>.

The crime can be committed by high-ranked state officials of the Republic of Uzbekistan who, according to the Commentary can be involved in planning and preparation of the aggression war; at the same time individuals who are also admitted by the Commentary as potential perpetrators will account for their immediate participation in the crime<sup>53</sup>.

*Actus reus* of the crime is characterized by the direct intention. Motives and purposes of planning, unleashing and prosecution of war are mostly politically orientated, but can involve private factors (self-interest, vainglory, hatred, revenge, etc).<sup>54</sup>

The crime is aimed at the external security and peace. For the purposes of *means rea* the very fact of planning or preparation to the aggression as well as the participation in the plot are the completed crimes.

#### **IV. 2. Foreseen legal consequences**

The crimes under art. 150 of the Penal Code relate to the category of grave crimes; the sanction for the commitment of the crime is the deprivation of liberty for the period from 5 to 10 years<sup>55</sup>. The crime of aggression is considered as a crime of particularly gravity; the Penal Code sets the deprivation of liberty for the period from 10 to 15 years as the punishment for the commitment of this crime<sup>56</sup>.

#### **V. Other *corpus delicti* of international crimes in national legislation**

##### **V.1. «Mercenarism» (art. 154)**

###### **V.1.1 *Corpus delicti* and source of law**

The definition of the crime of Mercenarism as it is given in the Penal Code of Uzbekistan, in principle, corresponds to the definition of art. 47 of the Additional Protocol I of 1977<sup>57</sup>. According to art. 154, Mercenarism is “the

<sup>52</sup> UN GA Res. 3314 (XXIX), GAOR 29th Sess., Supp. No. 31 (1974)

<sup>53</sup> However, this position seems to be incorrect, since, in accordance with the theory of international criminal law, subjects of the crime of aggression may only be the supreme State officials who occupy the highest posts in the State apparatus, whilst the immediate perpetrator (including members of the State's armed forces) may be held liable for compliance with an unlawful order, but not for unleashing a war of aggression.

<sup>54</sup> Л. Н. Смирнов, Е. Б. Зайцев, *Суд в Токио* (Москва, 1978), стр. 71 – 72

<sup>55</sup> Art. 150(2)

<sup>56</sup> Art. 151(2)

<sup>57</sup> Art. 47(2) of AP I (1977): «A mercenary is any person who: (a) is specially recruited locally or abroad in order to fight in an armed conflict; (b) does, in fact, take a direct part in the hostilities; (c) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party; (d) is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict; (e) is not a member of the armed

participation in an armed conflict, in the territory or on the part of a foreign state, of a person who is not a citizen or does not belong to the military forces of the state party to the conflict, or is authorised by no state for the fulfilling any official duties in the armed forces, and participating in the conflict for the purposes of gaining financial reward or other private benefits...»

Thus, art. 154 sets the criteria combination of which is necessary for bringing a person in a verdict of guilty in the crime of Mercenarism:

- *participation in the conflict in the territory or on the part of a third state.*
- *absence of citizenship / permanent residency in the territory of state or absence of the status of a member of military personnel*
- *participation in the conflict in individual capacity*
- *participation in the conflict for the purposes of enrichment / for other purposes*

The second paragraph of art. 154 criminalizes acts in respect to mercenaries, namely their recruitment, training, financing and use in an armed conflict. In the given context, the matter concerns the representatives of armed forces or special services that recruit, train, finance or use mercenaries.

*The perpetrator of the crime can be any person who has reached 16 years.*

*Actus reus* of the second part of the crime is the participation of a mercenary in an armed conflict or in hostilities or the creation of conditions for the mercenaries' participation in hostilities. *Means rea* is notable for the direct intention. As regards the persons responsible for recruiting, training, financing mercenaries, their objects and purposes does not influence the qualification of the committed acts.

## **V.1.2. Foreseen legal consequences**

The crimes of para. 1 of art. 154 is punished with the deprivation of liberty for the period from five to ten years. In its turn, para. 2 of art. 154 provides as the punishment the deprivation of the liberty from seven to twelve years.

## **V.2. "Incitement of national, racial, ethnical or religious hatred" (art. 156)**

### **V.2.1 Corpus delicti and sources of law**

The Commentary to the Penal Code of Uzbekistan regards as the direct object of the crime under art. 156 the social relations which provide national, racial, religious equality of citizens. *Actus reus* of the crime is characterized by the following:

1. Production, stocking with the purpose of dissemination or dissemination of materials containing national, racial, ethnic or religious hatred [...] <sup>58</sup>

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forces of a Party to the conflict; and (f) has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces».

<sup>58</sup> Art. 156, part I

2. Undertaking of intentional acts which humiliate national honour and dignity and insult the feelings of citizens with regard to their religious or atheistic beliefs; act which have been committed with the purpose of the excitement of hatred, impatience or discord to the groups of population on national, racial, ethnic or religious grounds [...] <sup>59</sup>
3. Direct or indirect restriction of rights or establishment of direct or indirect advantages depending on national, racial, ethnical or religious belonging [...] <sup>60</sup>

It is noteworthy that the act of “production, stocking with the purpose of spreading or spreading of the materials...” (para. I art. 156), committed by a person for the first time is not a crime but a delinquency which entails the administrative responsibility <sup>61</sup> in the form of fine or correctional labour. However in case of the repetition, the act is criminalised in accordance with the provisions of the Penal Code.

The crime can be committed in respect of both an individual and a group of persons. The crime is considered as committed since the moment of the accomplishment of discriminative acts and does not demand the coming of harmful consequences. The consequences can matter only for the qualification of the offences.

*Means rea* distinguish by the direct intention with the purpose to reach the criminal result, i.e. excitement of national, racial, ethnical or religious hatred or discord, insulting the national honour and dignity or religious feelings of citizens or propaganda of own superiority or inferiority of other nations based on their religion, class, national, tribal or racial belonging.

The perpetrator is aware of the character of his acts and deliberately wishes to achieve this effect. The object of the crime is the excitement of hatred or discord on the ground of the mentioned discriminative characteristics. The motives can be various: from the political immature to enmity to persons of other nationality, religion, etc.

The perpetrator of the crime is any person achieved 16 years.

Paragraph 3 of the art. 156 contains the aggravating grounds for para. 1 and 2 namely the acts committed: a) by the means that is dangerous to the others' lives; b) with the causation of grave body harm; c) with enforced resettlement of citizens from the places of their permanent residence; d) by high-ranked public official; e) by the group of person on the previous concert.

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<sup>59</sup> Art. 156, part II

<sup>60</sup> Art. 156, part II

<sup>61</sup> Art. 184-3 of the Code of Administrative Responsibility, in force since 1 April 1995

## **V.2.2. Foreseen legal consequences**

On paragraph 1 of art. 156, the crime is punished with the fine at the rate up to six hundred amounts of the minimal salary or correctional labours up to three years or with the deprivation of liberty up to three years.

On paragraph 2, the crime is punished with the deprivation of liberty up to five years.

On paragraph 3 of art. 156, the crime is punished with the deprivation of liberty for the period from five to ten years

## **C. General prerequisite of punishment or exemption from punishment**

### **1. Guilt**

In accordance with art. 20 of the Penal Code, person can be convicted if he has committed a crime intentionally or on carelessness.

A crime is recognised committed deliberately if a person was aware the social danger of his act and wished its commitment. A crime committed with the direct intention is the commitment of the act if a perpetrator was aware of the social danger of his act, foresaw its consequences and wished its coming (para 2 art 21). It is worth to remind that all crimes against peace and security of mankind which are criminalised in the criminal legislation of Uzbekistan, presuppose the direct intention only.

According to para 3 of art. 21, the crime is found to have been committed with the indirect intention if a person was aware of the social danger of his act, foresaw its consequences and did not wish its coming but deliberately admitted their arrival or was indifferent to their arrival.

Art. 22 of the Penal Code of Uzbekistan provides the responsibility for the commitment of crimes on carelessness. In accordance with this article, the crime committed on carelessness is the crime committed on self-sufficiency or on negligence.

The crime committed on self-sufficiency is the crime when a person fore-saw the possibility of the coming of social danger consequences of his acts but thoughtlessly, without sufficient grounds, reckoned on the prevention of these consequences (para. 2 art. 22).

The crime is considered as committed on negligence if a perpetrator did not foresee the coming of social dangerous consequences of his acts although on duly attention and foresight must and could have foreseen these consequences (para 3 art 22).

### **2. Punishability of the attempt at the commitment of a crime and possibility of timely refusal from attempt**

The Penal Code of Uzbekistan, in art. 25 («Preparation to crime and attempt at crime») contains the conditions of calling to criminal liability for

intentional crimes the commission of which has not been brought to the end due to the circumstances not depending the perpetrator's will. The given conditions are relevant for the purposes of this report as all offences considered in it, relate to the category of intentional crimes.

According to para. 1 art. 25, the preparation to a crime is the act of a perpetrator creating conditions for the commitment or concealment the intentional crime which has been interrupted before being started due to circumstances not depending on the perpetrator's will. The attempt at a crime is the start of the commitment of the intentional crime which has not been committed due to circumstances not depending on the perpetrator's will.

The article provides that the responsibility for the preparation and attempt is the same and on the same article of the particular part of the Uzbek Penal Code that is provided for the committed crime.

In its turn, art. 26 state that the voluntary refusal from the crime excludes the criminal liability.

### **3. Types of accomplices and their accountability**

Art. 28 determine the types of accomplices of a crime:

1. Executors – persons who committed a crime, in total or in part [...] (para. 2 art. 28).
2. Organizers – persons who manage the preparation or the commitment of a crime (para.3 art. 28).
3. Instigators – persons who incline to the commitment of a crime (para. 4 art. 28).
4. Accomplices – persons who contribute to the commitment of crimes by various methods (ч.5 ст. 28).

Regarding the forms of accomplice, the Penal Code criminalizes their following types:

1. Simple complicity – the participation in the commitment of a crime of two or more persons without the previous agreement (para. 2 art. 29).
2. Complex complicity – the participation in the commitment of a crime of two or more persons with the previous agreement (para. 3 art. 29).
3. Organised group – the preliminary uniting of two or more persons in a group for the joint criminal activity (para. 4 art. 29).
4. Criminal association – the preliminary uniting of two or more organised group for the joint criminal activity (para. 5 art. 29).

In accordance with art. 30, all participants of a crime bring the criminal liability in conformity with their contribution to the commitment of the criminal offence:

1. Organizers, instigators and accomplices bring the criminal liability under the same article of the Penal Code that relates to the executors (para. 1 art. 30).
2. Organizers as well as members of the groups organised on the preliminary agreement, organised groups and criminal associations bring the criminal liability for all the crimes in the preparation or commitment of which they took part (para. 2 art. 30).
3. Persons who organised the criminal group or criminal association or who manage them, bring the criminal liability for all the crimes committed by the criminal units if they were covered by the organizers' intention (para 3 art. 30).
4. If a crime was not covered by the other members of the group' intention, the criminal liability lies upon the person who has committed the crime (para. 4 art. 30).

#### **4. Significance of act committed on superior orders**

The conduct of a subordinate acting on superior orders is also regulated by article 40 of the Penal Code:

1. The infliction of harm while fulfilling a rightful order or another instruction or at the discharge of one's official duties shall not be a crime.
2. A person who commits a crime in pursuance of a manifestly criminal order or another instruction shall be held liable on general grounds.

#### **5. Significance of acts committed in pursuance of necessary defence**

Article 37 of the Penal Code of the Republic of Uzbekistan excludes liability for the commission of criminal acts which have been committed in pursuance of necessary defence, e.g. while defending the personality or rights of the defending person or of another person, the interests of society or State from illegal attempts through inflicting harm upon an assailant, unless no excess of limits of necessary defence was allowed for (ч. 1).

In its turn, art. 38 excludes liability for the commission of an act, which has inflicted harm on rights and interests which are protected by law but was committed in a state of absolute necessity, i.e. for the liquidation of danger threatening the personality or rights of the given person or other persons, the interests of society or State, if the danger could not, in the circumstances, be liquidated by other means, and if the harm actually inflicted is less significant than one that has been prevented (para. 1).

#### **6. Significance of the existence of a state of emergency**

The general part of Uzbekistan's penal legislation contains a norm which specifically refers to the commission of a crime by using the circumstances of a state of emergency, natural or another social disaster, as well as of a mass disorder – para. 1 of part 1 of article 56 («Circumstances aggravating punishment»).

## 7. Penal liability of juridical persons

In accordance with article 17(1) of the Penal Code, only natural persons may be subject to penal liability. The Republic of Uzbekistan's legislation does not provide for penal liability of juridical persons.

## 8. Significance of international legal and constitutional immunities

Under the Constitution of the Republic of Uzbekistan, members of both chambers of the Parliament (Oliy Majlis),<sup>62</sup> judges<sup>63</sup> enjoy functional immunities for the duration of their term of office. The particulars of procedure with regard to persons who possess privileges and immunities from penal prosecution on general grounds are regulated by the Code of penal procedure of the Republic of Uzbekistan.

In accordance with the Constitution, «the personality of the President shall be inviolable and protected by law»<sup>64</sup>.

## 9. Provisions on statutory limitation with regard to international crimes

In accordance with article 64(7) of the Penal Code,<sup>65</sup> statutory limitations do not apply to persons who have committed crimes against the peace and

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<sup>62</sup> Article 88(3) of the Constitution: «Members of the Legislative Chamber and Members of the Senate of the Oliy Majlis of the Republic of Uzbekistan shall enjoy the right of inviolability. They shall not be held criminally responsible, detained, apprehended or subjected to administrative measures which are impossible judicially, without the consent of the Legislative Chamber or the Senate, respectively»;  
<sup>63</sup> Article 108(4) of the Constitution: «Judges of the Constitutional Court shall enjoy the right of inviolability»; article 112(2): «The inviolability of judges shall be guaranteed by law».

<sup>64</sup> Art. 91 of the Constitution

<sup>65</sup> Article 64 («Deliverance from liability for crimes due to statutory limitations»):

1. A person shall be delivered from liability, if the following terms have passed since the day of the commission of the crime:
  - a) three years – if a crime not posing a significant social danger has been committed;
  - b) five years – if a crime of a lesser gravity has been committed;
  - c) ten years – if a grave crime has been committed;
  - d) fifteen years – if a particularly grave crime has been committed, with the exception of cases referred to in part 7 of the present article.
2. The statutory limitations shall be calculated from the day of the commission of a crime until the entry into force of the sentence.
3. The progress of the statutory limitations shall be suspended, if the person who has committed a crime and is to be held liable escapes from the prosecution or the court. The progress of the statutory limitations shall continue from the moment of apprehension of the perpetrator or his giving himself up.
4. The progress of the statutory limitations shall be suspended, if the person who has committed a grave or a particularly grave crime will have committed a new intentional crime, before the statutory limitations will have elapsed. In such cases, the calculation of the statutory limitations shall recommence from the day of the commission of the new crime. In other cases, if the person will have committed a new crime before the statutory limitations will have elapsed, their duration shall be calculated separately with regard to each crime.

security of mankind. However, as the penal legislation does not contain the notion of crimes against humanity, one should here bear in mind the statutory limitations which apply to common crimes (part 1 of article 169).

#### **10. Significance of amnesties and pardons for the prosecution of international crimes**

Article 76 provides for a full or partial deliverance from punishment on the basis of an act of amnesty or pardon. The Penal Code of the Republic of Uzbekistan does not specifically regulate issues of amnesty or pardon with regard to persons who have been found guilty of crimes against peace and security of mankind.

#### **D. Conclusions and recommendations**

On the basis of the aforesaid, the following conclusions and recommendations may be put forward:

- 1) The elements of international crimes had been included in the first edition of the Penal Code, which was brought into force on 1 April 1995, i.e. before the adoption of the Rome Statute of the International Criminal Court on 17 July 1998, and the formulations (dispositions and sanctions) of the respective articles have not been revised subsequently;
- 2) On the whole, the elements of the crime of genocide are formulated in the spirit of the 1948 Convention; however, there are a number of discrepancies in the definition of its objective elements. It seems that courts, at hearing alleged genocide cases, would apply the national penal law and might take into account the according international legal experience;
- 3) The absence of the notion of crimes against humanity in the penal legislation would not prevent the prosecution of acts listed in article 7 of the Rome Statute from happening in a general course (with the exception of a number of specific crimes). However, the existence of statutory limitations for the commission of common crimes on the territory of the Republic of Uzbekistan or abroad may create legal and practical difficulties for law enforcement authorities;
- 4) Article 152 criminalizes only a minority of criminal acts violating the law of armed conflicts, which are listed in according international treaties and article 8 of the Rome Statute of the International Criminal Court. The law enforcement authorities may face difficulties at qualifying quite many of such crimes, due to their absence from the penal legislation;

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5. A person shall not be held liable, if twenty-five years have passed since the time of the commission of a crime.

6. The issue of the application of the statutory limitations to a person who has committed a crime, for which an article of this Code's Specific Part allows for the imposition of the death penalty, shall be decided upon by the court. Should the court deem the application of the statutory limitations impossible, the deprivation of liberty shall be imposed instead of the death penalty.

7. The statutory limitations set out in the present article shall not apply to person who have committed crimes against the peace and security of mankind.

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- 5) As of December 2007, Uzbekistan still did not ratify the Rome Statute. The official stance with regard to the issue in question is quite clear, although not explicit: the ratification of the Rome Statute does not seem to be a matter of the nearest future;
- 6) To conclude with, it seems that the Penal Code of the Republic of Uzbekistan could be brought in conformity with modern tendencies in material international criminal law, provided there will be brought about the necessary political will and an according legislative initiative, through amending it (1) as concerns the establishment of penal liability for crimes against humanity and (2) war crimes, which are not yet covered by the Penal Code, as well as, probably, (3) as concerns correcting the elements of the crimes of genocide and aggression.