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**THE IMPLICATIONS FOR COUNCIL OF
EUROPE MEMBER STATES OF THE
RATIFICATION OF THE
ROME STATUTE OF THE
INTERNATIONAL CRIMINAL COURT**

**LES IMPLICATIONS POUR LES ETATS
MEMBRES DU CONSEIL DE L'EUROPE
DE LA RATIFICATION DU STATUT DE
ROME DE LA COUR PENALE
INTERNATIONALE**

**BILAN DE L'ETAT D'AVANCEMENT DE LA
RATIFICATION ET LA MISE EN OEUVRE
PAR
LA REPUBLIQUE D'AZERBAÏDJAN**

La République d'Azerbaïdjan n'a pas encore ratifié le Statut de Rome de la Cour pénale internationale. Néanmoins, le législateur, lorsque les lois concernées ont été adoptées il y a quelques années, a examiné quelques-unes des principales dispositions du Statut dans la perspective d'une future ratification. Ainsi, le code pénal de la République d'Azerbaïdjan, adopté le 30 décembre 1999 et entré en vigueur le 1^{er} septembre 2000, prévoit dans les chapitre 16 et 17 (i) la responsabilité pénale pour les crimes contre l'humanité et les crimes de guerre, reflétant par là les définitions des crimes respectifs relevant de la compétence de la Cour pénale internationale.

Gardant présent à l'esprit que le Statut de Rome établit une distinction entre la procédure d'extradition entre Etats et la procédure de remise qui s'applique entre un Etat Partie et la Cour, la Loi azerbaïdjanaise du 15 mai 2001 sur l'extradition des criminels (entrée en vigueur le 19 juin 2001) stipule dans son article 1.3.(ii) que ses dispositions ne s'étendront pas à la remise de personnes à des organismes judiciaires internationaux.

Quant à la ratification éventuelle du Statut de Rome, on s'attend à ce que le processus se heurte à certaines normes constitutionnelles, en particulier l'interdiction d'extrader les nationaux azéris (article 53(II) de la Constitution), l'immunité des personnes jouissant d'une qualité officielle (article 90, 128 de la Constitution) la possibilité d'octroyer la grâce etc. De surcroît, il n'est pas exclu que d'autres difficultés surgissent, en particulier tout ce qui touche à la règle du code de procédure pénale relatives au procès avec jury.

ANNEXES (en anglais uniquement)

i
unofficial translation

Extract of the CRIMINAL CODE OF THE REPUBLIC OF AZERBAIJAN

Section VII

CRIMES AGAINST PEACE AND SECURITY OF MANKIND

Part 16

Crimes against peace and crimes against humanity

Article 100. Planning, preparation, initiation or waging of a war of aggression

100.1. Planning, preparation or initiation of a war of aggression – shall be punished by deprivation of freedom for a term of 8 to 10 years.

100.2. Waging of a war of aggression – shall be punished by deprivation of freedom for a term of 10 to 15 years or by life imprisonment.

Article 101. Public incitement to initiating a war of aggression

101.1. Public incitement to initiating a war of aggression – shall be punished by restriction of freedom for a term of up to 3 years or by deprivation of freedom for the same term.

101.2. The same acts committed with the use of mass media or by a public official – shall be punished by deprivation of freedom for a term of 2 to 5 years, with disqualification to engage in specified activities for a term of up to 3 years or without thereof.

Article 102. Attacks directed against internationally protected persons or institutions

Attacks directed against an internationally protected representative of a foreign state, or on a staff member of an international organisation, or on premises or means of transport of these persons, if such acts are committed with intent to provoke a war or aggravate international relations – shall be punished by deprivation of freedom for a term of 5 to 10 years.

Article 103. Genocide

Killing members of a national, ethnical, racial or religious group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; forcibly transferring children of the group to another group, if such acts are committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such – shall be punished by deprivation of freedom for a term of 10 to 15 years or by life imprisonment.

Note: Any acts defined in Articles 103-113 of this Chapter and committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack, whether in time of peace or war, shall be regarded as crimes against humanity.

Article 104. Incitement to genocide

Direct and public incitement to commit any of the acts defined in Article 103 of this Code – shall be punished by deprivation of freedom for a term of 5 to 10 years.

Article 105. Extermination

Extermination of a population, in whole or in part, without elements of genocide – shall be punished by deprivation of freedom for a term of 10 to 15 years or by life imprisonment.

Article 106. Enslavement

106.1. Enslavement, i. e. the exercise of any or all the powers attaching to the right of ownership over a person – shall be punished by deprivation of freedom for a term of 5 to 10 years.

106.2. The same acts committed against a minor or with intent to convey a person to a foreign country – shall be punished by deprivation of freedom for a term of 7 to 12 years.

106.3. Slave trade, i.e. detention of a person with intent to reduce him or her to slavery or use him or her as a slave, sell or exchange; disposal of a person; any acts related to trade or trafficking in slaves; sexual slavery or any acts encroached upon sexual freedom based on enslavement – shall be punished by deprivation of freedom for a term of 5 to 10 years.

Article 107. Deportation or forcible transfer of population

Forced displacement of a population by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law and laws of the Republic of Azerbaijan – shall be punished by deprivation of freedom for a term of 10 to 15 years.

Article 108. Sexual violation

Rape, enforced prostitution, enforced sterilisation, or any other acts related to sexual violence – shall be punished by deprivation of freedom for a term of 10 to 15 years or by life imprisonment.

Article 109. Persecution

Persecution against any group or collectivity on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are prohibited under international law, i.e. severe deprivation of fundamental rights by reason of the identity of the group or collectivity, if these acts are connected to other crimes against mankind – shall be punished by deprivation of freedom for a term of 5 to 10 years.

Article 110. Enforced disappearance of persons

Arrest, detention or abduction of persons with the authorisation, support or acquiescence of a State or a political organisation, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time – shall be punished by deprivation of freedom for a term of 5 to 10 years.

Article 111. Racial discrimination (apartheid)

111.0. Any of the following acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons:

111.0.1. denial to a member or members of a racial group or groups of the right to life and liberty of person, i.e. murder of members of a racial group or groups; infliction upon them of serious bodily or mental harm; subjecting them to torture or to cruel, inhuman or degrading treatment or punishment; or arbitrary arrest and illegal imprisonment of such persons;

111.0.2. deliberate imposition on a racial group or groups of living conditions calculated to cause its or their physical destruction in whole or in part;

111.0.3. any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognised trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association;

111.0.4. any measures, including legislative measures, designed to divide the population along racial lines by the creation of separate reserves and ghettos for the members of a racial group or groups, the prohibition of mixed marriages among members of various racial groups, the expropriation of landed property belonging to a racial group or groups or to members thereof;

111.0.5. exploitation of the labour of the members of a racial group or groups;

111.0.6. persecution of organisations and persons, by depriving them of fundamental rights and freedoms, because they oppose apartheid – shall be punished by deprivation of freedom for a term of 10 to 15 years or by life imprisonment.

Article 112. Deprivation of liberty in violation of rules of international law

Imprisonment or other deprivation of liberty of persons in violation of rules international law – shall be punished by deprivation of freedom for a term of 5 to 8 years.

Article 113. Torture

Infliction of severe pain or suffering, whether physical or mental, upon persons detained or otherwise deprived of their liberty – shall be punished by deprivation of freedom for a term of 7 to 12 years.

PART 17

War Crimes

Article 114. Mercenarism

114.1. Recruitment, training, financing and other material provision of mercenaries, as well as use of such persons in an armed conflict or hostilities – shall be punished by deprivation of freedom for a term 4 to 8 years.

114.2. The same acts committed by a public official by using his or her official position, or with relation to a minor – shall be punished by deprivation of freedom for a term of 8 to 15 years.

114.3. Participation of a mercenary in an armed conflict or hostilities – shall be punished by deprivation of freedom for a term of 3 to 8 years.

Note:

1. Any of the acts defined in this Part and committed in connection with planning, preparation, initiating or waging of hostilities, whether during international or internal armed conflict, shall be regarded as war crimes.

2. "Mercenary" means a person who is not a national of a State party to the armed conflict or hostilities, is not a permanent resident of territory of that State, has not been sent on official duty, and acts for private gain.

Article 115. Violations of laws and customs of war

115.1. Compelling prisoners of war, and other persons protected by international humanitarian law to serve in the armed forces of the capturing Power, as well as compelling nationals citizens of the hostile Power to take part in the operations of war directed against their own country – shall be punished by deprivation of freedom for a term of 2 to 5 years.

115.2. Subjecting persons mentioned in Article 115.1. of this Chapter to torture, cruel or inhuman treatment or medical, biological or other experiments, removing the internal organs for the purpose of transplantation, or utilising the presence of such persons to render its own military forces or objects immune from armed operations, or holding such persons as hostages, or compelling the civilian population to forced labour or deporting them for other purposes from the area in which they are lawfully present – shall be punished by deprivation of freedom for a term of 5 to 10 years.

115.3. The acts defined in Articles 115.1 and 115.2. of this Code which cause death or serious injury to the health of such persons – shall be punished by deprivation of freedom for a term of 10 to 15 years.

115.4. Wilful killing of persons mentioned in Article 115.1. of this Code – shall be punished by deprivation of freedom for a term of 12 to 15 years or by life imprisonment.

Article 116. Violations of rules of international humanitarian law in time of armed conflict

116.0. Violations of international humanitarian law in time of armed conflict, i.e.:

116.0.1. use of methods and means of warfare which may cause significant destruction;

116.0.2. causing widespread, long-term and severe damage to the natural environment;

116.0.3. directing attacks against personnel involved in a peacekeeping mission or humanitarian assistance, as well as against personnel, buildings, installations and means of transport using the distinctive emblems of the Red Cross or Red Crescent;

116.0.4. using starvation of civilians as a method of warfare;

116.0.5. recruiting minors into armed forces;

116. 0.6. causing extensive destruction to justified by military necessity;

116.0.7. directing attacks against undefended areas, dwellings or demilitarised zones;

116.0.8. directing attacks without any military necessity against historic, religious, educational, scientific, charitable or medical objects, and places where the sick and wounded are collected, provided that they are not military objectives, are easily seen and distinguishable, and specially protected;

116. 0.9. breach of temporary armistice agreements or agreements on termination of military operations with a view to remove the dead and wounded from the battlefield, exchange or transportation thereof;

116.0.10. directing attacks against the civilian population as such or against individual civilians not taking part in hostilities;

116.0.11. causing violence against civilian population, robbing, destroying or seizing their property on the pretext of military necessity in hostility areas;

116.0.12. directing attacks against installations which may cause excessive loss of life among the civilian population or inflict severe damage to civilian objects;

116.0.13. directing attacks against a person who has evidently for the accused stopped his direct participation in military operations, or has no arms, or has surrendered having laid down his arms, or is not able to offer resistance because of having been wounded or for other reason;

116.0.14. transfer of parts of its own civilian population into the occupied territories;

116.0.15. unjustifiable delay in the repatriation of prisoners of war or civilians;

116.0.16. employing in armed conflict weapons, means and methods of warfare prohibited by the international treaties to which the Republic of Azerbaijan is a Party;

116.0.17. committing rape, sexual slavery, enforced prostitution, enforced sterilisation and other acts related to sexual violence;

116.0.18. imprisonment or other deprivation of liberty, in violation of rules international law, of persons mentioned in Article 115.1 of this Code, and deprivation of such persons of the procedural rights –
shall be punished by deprivation of freedom for a term of 7 to 15 years or by life imprisonment.

Article 117. Failure to act or giving a criminal order in time of armed conflict

117.1. Intentional non-use in time of armed conflict by a commander or a public official of all the opportunities within his power to prevent the commission by his subordinates of any crime defined in Articles 115 and 116 of this Code –
shall be punished by deprivation of freedom for a term of 5 to 10 years.

117.2. Declaring or ordering to the subordinates that there shall be no survivors in the hostility areas, or giving the subordinates an order to commit any of the crimes defined in Articles 115 and 116 of this Code –
shall be punished by deprivation of freedom for a term of 10 to 15 years or by life imprisonment.

Article 118. Pillage

Plunder of the property of persons killed or wounded in the battlefield (pillage) –
shall be punished by deprivation of freedom for a term of 3 to 10 years.

Article 119. Misuse of protective signs

119.1. Carrying in the battlefield area the distinctive signs of the Red Cross or the Red Crescent by persons that are not entitled to use them, as well as misusing in time of war the flags and signs of the Red Cross and Red Crescent or of the colours of medical transport units –

shall be punished by deprivation of freedom for a term to 2 years.

119.2. Making improper use of a flag of truce, of the flag, insignia or uniform of the United Nations, as well as of the distinctive emblems protected by the Geneva Conventions of 1949, resulting in death or serious injury to the health of a person, shall be punished by deprivation of freedom for a term 5 to 10 years.

ii Unofficial translation

**Extract of the
LAW OF THE REPUBLIC OF AZERBAIJAN
ON EXTRADITION OF CRIMINALS**
(adopted on 15 May 2001; entered into force on 19 June 2001)

Article 1.3. The provisions of this Law shall not extend to surrender of a person to international judicial bodies.

**Extract of the
LAW OF THE REPUBLIC OF AZERBAIJAN
ON LEGAL ASSISTANCE IN CRIMINAL MATTERS**
(adopted in June 2001)

Article 2.4. The provisions of this Law shall not extend to issues of cooperation with international judicial bodies.