IMPLEMENTATION OF THE ROME STATUTE IN LATVIA*

I. INTRODUCTION

1. STATUS OF IMPLEMENTATION

Latvia is a party to the ICC. The Rome Statute was signed by Latvia on 22 April 1999[1] and ratified by the law 'On the Rome Statute of the International Criminal Court of 17 July 1998" (*ICC Implementation Act*), passed on 20 June 2002 and in force since 28 June 2002.[2] Apart from the ICC Implementation Act itself, Latvian domestic laws do not contain any explicit reference to the ICC. The role of the Rome Statute may however be inferred from Article 2 of the 2005 Criminal Procedure Code (*CPC*),[3] which lists international legal norms as one of the main sources for criminal procedure.

Constitutional provisions on immunities appear to have an implication on Latvia's international obligations under the Rome Statute,[4] yet so far there has not been any public discussion on the necessity to amend the Constitution.[5] The CPC has a chapter on the cooperation with international criminal courts, but addresses these issues in a fairly general manner, drawing no distinction between the ICC and other criminal courts and tribunals.[6]

The substantive definitions of international crimes are contained in the 1998 Criminal Code (*1998 CC*).[7] The existing definitions, while different from those in the Rome Statute, have not been amended, except for a new provision dealing with incitement to genocide.[8]

---

* By Ieva Kalnina, LL B (University of Latvia), LL M (Harvard), Ph D student (European University Institute) and Martins Paparinskis, LL B (University of Latvia), M Jur (Dist) (Oxon), M Phil student (Oxon). The authors would like to thank Justice of the Constitutional Court Gunars Kutris for his useful comments, Andris Millers for his assistance in the initial research and Kristine Kruma for her kind help in reviewing an earlier draft of this report. Special thanks are due to Matthias Goldmann for his patience and erudition.

[1] See <http://www.icc-cpi.int/asp/statesparties/country&id=71.html> (all websites visited on 15 January 2006 unless otherwise indicated).

[2] Par 1998.gada 17.jūlija Romas Starptautiskās krimināltiesas Statūtiem: LR likums. *Latvijas Vēstnesis,* 2002. gada 20.jūnijs, nr. 97 (On the Rome Stature of the International Criminal Court of 17 July 1998: a law of the Republic of Latvia. *Latvian Herald,* 20 June 2002, No. 97).

[3] A precise translation of the title of the 2005 Criminal Procedure Code ('*Kriminālprocesa likums'*) would be 'Criminal Procedure *Law*'. To avoid possible confusion with criminal procedure law in general, it is hereinafter referred to as the Criminal Procedure *Code.*

[4] For full details see infra Part I, 2.

[5] Latvijas Republikas Satversme: LR likums, *Latvijas Vēstnesis.* 1993.gada 1.jūlijs, nr.43 (Constitution of the Republic of Latvia: a law of the Republic of Latvia, *Latvian Herald.* 1 July 1993, no.43), <http://www.satv.tiesa.gov.lv/ENG/satversme.htm>.

[6] Kriminālprocesa likums: LR likums. *Latvijas Vēstnesis*, 2005. gada 11. maijs, nr.74 (Criminal Procedure Law: a law of the Republic of Latvia. *Latvian Herald,* 11 May 2005, No. 74), Chapter 76.

[7] Krimināllikums: LR likums. *Latvijas Vēstnesis,* 1998. gada 8.jūlijs, nr. 199/200 (Criminal Code: a law of the Republic of Latvia. *Latvian Herald,* 8 July 1998, No. 199/200), Chapter IX.

[8] 1998 CC, Article 71[1].

2. STATUS OF THE ROME STATUTE IN NATIONAL LAW

International agreements become part of Latvia's legal system through their ratification by Parliament (the *Saeima*). The status of the Rome Statute in Latvia's national legal order is identical to that of any other international agreement ratified by Parliament. There is a theoretical controversy as regards the proper rank of international law within the national legal order. Put briefly, three different positions are advanced. Some suggest that international law, purely by its virtue of being international, is superior to all national laws and regulations, except for the Constitution.[9] This view has found favour with the Constitutional Court[10]. Others argue that international agreements have a priority in application, while not being supreme over domestic law.[11] The third view suggests that international law rules may be either supreme or have a priority in application, depending on their content. In practice, from the point of view of international law it is not be important whether a certain norm is applied because it has a higher rank or because, even though formally being of the same rank, it has priority in application (the difference is important for the conflicting domestic norm that could be either inapplicable in casu or declared void by the Constitutional Court).[12] Whatever approach is chosen, the Rome Statute would be applied in the place of any inconsistent national rules (provided that these are of a non-constitutional nature). As an international agreement fully incorporated in the national legal order, the Rome Statute is fully binding on the national authorities. The only exception is the case of the broad constitutional provisions dealing with the immunities of MPs and the President, which — at least prima facie — are not fully compatible with the provisions of the Rome Statute on immunities.[13]

---

[9] The 1990 Declaration of Independence in the first recital of the preamble refers to the priority of principles of international law over state law, see Par Latvijas Republikas neatkarības atjaunošanu: Augstākās Padomes deklarācija. *Ziņotājs,* 1990. gada 17.maijs, nr.20 (On the Restoration of Independence of the Republic of Latvia: a declaration by the Supreme Council. *Reporter, 17 May* 1990, no.20), <http://www.oefre.unibe.ch/law/icl/lg01000_.html > (visited 23 February 2006). Article 16 of the Constitutional Court Law implies that international agreements prevail over national non-constitutional rules, Satversmes tiesas likums: LR likums. *Latvijas Vēstnesis,* 1996.gada 14.jūnijs, nr.103 (Constitutional Court Law: a law of the Republic of Latvia. *Latvian Herald,* 14 June 1996, No.103), <http://www.satv.tiesa.gov.lv/ENG/STlikums.htm> (visited 15 January 2006).

[10] Judgment of 7 July 2004 in case No. 2004-01-06, <www.satv.tiesa.gov.lv/Eng /Spriedumi/01-06(04).htm> (visited 15 January 2006).

[11] The Law on the International Agreements of the Republic of Latvia (Par Latvijas Republikas starptautiskajiem līgumiem: LR likums. *Latvijas Vēstnesis,* 1994.gada 26.janvāris, nr.11, (On the International Agreements of the Republic of Latvia: a law of the Republic of Latvia, *Latvian Herald,* 26 January 1994, No.11, Article 13)) and the Administrative Procedure Law (Administratīvā procesa likums: LR likums. *Latvijas Vēstnesis,* 2001.gada 14.novembris, nr.164 (Administrative Procedure Law: a law of the Republic of Latvia. *Latvian Herald,* 14 November 2001, No.164, Article 15(3))) say that international law has priority in application. The Constitutional Court's judgment of 7 July 2004 in case No. 2004-01-06 was accompanied by a dissent by Justice Jelagins, see <www.satv.tiesa.gov.lv/Eng/Spriedumi/01-06(04)jel.htm> (visited 15 January 2006).

[12] M. Paparinskis, 'Republic of Latvia Materials on International Law 2004', 5 *Baltic Yearbook of International Law* (2005) 251-253.

[13] See infra III 4(c)(i).

II. COMPLEMENTARITY

1. GENERAL PRINCIPLES OF JURISDICTION

The implementing legislation of the CPC and the 1998 CC does not address any jurisdictional issues. In the case of international crimes general jurisdictional principles would apply. Article 2 (1) of the 1998 CC provides for jurisdiction under the territoriality principle, Article 4(1) for jurisdiction pursuant to the active personality principle (extending also to foreigners and stateless persons having permanent residence in Latvia) and Article 4(3) for jurisdiction pursuant to the passive personality and protective principles.

It is not clear to what extent the 1998 CC provides for universal jurisdiction. Article 4(4) provides that '[a]liens or stateless persons who do not have a permanent residence permit for the Republic of Latvia and who have committed a criminal offence in the territory of another state, in the cases provided for in international agreements binding upon the Republic of Latvia, irrespective of the laws of the state in which the offence has been committed, shall be held liable in accordance with this Law if they have not been held criminally liable for such offence or committed to stand trial in the territory of another state.'.[14] Several issues can be derived from the wording of this provision. First, it provides for jurisdiction in cases where a person has no legal or factual nexus with Latvia. Second, such jurisdiction extends only to cases where a treaty provides so; it does not cover crimes under customary international law. Third, such jurisdiction exists only if another state has not held the persons criminally liable or committed then to stand trial. What is less clear is the meaning of the words 'in cases provided for in the international agreements binding for the Republic of Latvia'. On the one hand, Article 4(4) may make reference to those treaties that prohibit and also provide for jurisdiction to prosecute certain crimes. If this reading is adopted, the Rome Statute is excluded from the scope of the provision, since, unlike the 1949 Geneva Conventions, the 1984 Convention against Torture, the conventions against terrorism and, arguably, the Genocide Convention[15], it does not address jurisdiction of States Parties over core crimes. As regards the crimes under the Rome Stature, Latvian courts could only exercise jurisdiction in case where one of these other international treaties already provides for universal jurisdiction for the crimes. Another approach would be to say that the reference to international agreements also includes the Rome Statute, taking into account the references in its preamble to international crimes. Accordingly, States Parties to the Rome Statute could exercise universal jurisdiction at least as regards the crimes committed in the territories or by the nationals of the States Parties. This reading is not clearly excluded by the text of Article 4(4). However, Article 4(4) preceded the ratification of the Rome Statute, and the legislator would have probably amended the article if universal jurisdiction among States Parties were to be derived from it. To conclude,

---

[14] Article 4(4), 1998 CC (translation by the Translation and Terminology Centre, <http://www.ttc.lv/index.php?&id=10&tid=59&l=LV&seid=down&itid=13709> (visited 20 April 2006)).

[15] Recent case law shows that national courts extend universal jurisdiction to genocide, even if this was not the intention of the drafters of the Genocide Convention, W. A. Schabas, 'Genocide in International Law' (Cambridge University Press: 2000), 345 et seq., 'National Courts Finally Begin to Prosecute Genocide, the "Crime of Crimes"' 1 *Journal of International Criminal Justice* (2003), 39-63.

Article 4(4) does not seem to provide for a clear possibility to exercise universal jurisdiction over the Rome Statute crimes.

2. CORE CRIMES

2.a Genocide

Latvia acceded to the Convention on the Prevention and Punishment of the Crime of Genocide on 14 April 1992[16]. The Latvian legislation and case law in this area seem to be slightly inconsistent, seemingly lacking a clear distinction between genocide and crimes against humanity. The 1998 CC defines genocide as

> intentional acts for purposes of the destruction in whole or in part of any group of persons identifiable as such by nationality, ethnic origin, race, *social class* or a *defined collective belief or faith*, by killing members of the group, inflicting upon them physical injuries hazardous to life or health or causing them to become mentally ill, intentionally causing conditions of life for such people as result in their physical destruction in whole or in part, utilising measures the purpose of which is to prevent the birth of children in such group, or transferring children on a compulsory basis from one group of persons into another [17]

The 1998 CC has recently been amended to include a prohibition of public incitement to genocide.[18] The 1961 Criminal Code (*1961 CC*) is also relevant for the discussion of the existing case law of Latvian courts on genocide and crimes against humanity[19]. Even though it has been replaced by the 1998 CC as of 1 April 1999, the earlier provision has been applied to prosecutions of World War Two crimes. Article 68^1 of the 1961 CC (under the title 'Crimes against Humanity, Genocide') was rather similar to Article 71 of the 1998 CC. The 1961 CC also generally referred to crimes against humanity and commission of crimes in time of peace or of war, as well as added 'taking away or limiting the economic, political and/or social rights of the original population' to the list prohibited acts.[20]

Both the 1961 CC (as amended in 1993) and the 1998 CC not only cover genocide as defined in Article 6 of the RS, but go further. Whilst the formulation of Article 68^1 of the 1961 CC is remarkably unclear, it seems to extend the concept of genocide by adding groups and methods of commission which are excluded from the Genocide Convention. The 1998 CC, while omitting the additional methods of commission, retains 'social groups' among the protected ones. There is certainly nothing conceptually wrong if states provide broader definitions of international crimes in

---

[16] Par Latvijas Republikas pievienošanos starptautisko tiesību dokumentiem cilvēktiesību jautājumos: Augstākās padomes deklarācija. *Ziņotājs,* 1990. gada 24.maijs, nr.21 (On the Accession of the Republic of Latvia to International Instruments Relating to Human Rights: declaration of the Supreme Council. *Reporter,* 24 May 1990, no.21).

[17] 1998 CC, Article 71, emphasis added (translation by the Translation and Terminology Centre, <http://www.ttc.lv/index.php?&id=10&tid=59&l=LV&seid=down&itid=13709> (visited 20 April 2006)).

[18] 1998 CC, Article 71^1.

[19] Krimināl kodess: Augstākās Padomes likums. *Ziņotājs,* 1961. gada 1.janvāris (Criminal Code: a law of the Supreme Council. *Reporter,* 1 January 1961).

[20] 1961 CC, Article 68^1.

their national codes than the definitions found in international treaties and international customary law. Such provisions constitute state practice and may indicate the *opinio juris* necessary for the development of customary rules. The question which groups should be protected is perhaps one of the most controversial issues of the definition of genocide.[21] A number of states have definitions of genocide that cover social groups, and states have also argued for such an extension at the Rome Conference.[22] Consequently, a broader definition in national law is not *per se* a problem under the Rome Statute.

What may be problematic, however, is the application of the genocide provision by Latvian courts. A brief review seems to indicate (at least in the early case law) a slightly confused view of international criminal law and its interrelation with definitions of international crimes in domestic law[23] Latvian courts have dealt with a number of cases arising out of Soviet mass deportations of civilians in 1941 and 1949. The crimes were committed against representatives of social and political groups and consequently at least *prima facie* were not genocide (while rather undoubtedly constituting crimes against humanity).[24] In the first judgments the courts seemed to apply the broader genocide definition without any regard to the content of customary international law at the time of the crime.[25] In a 'second phase', the courts made sophisticated legal arguments with reference to international human rights law arguing that genocide also covers attacks against social groups.[26] Recently, the Supreme Court seems to have adopted a position (correct in the view of the present authors) that Article 68[1] of the 1961 CC actually refers to crimes against humanity. Since crimes against humanity can be committed against any civilian population (including social groups), the problematic concept of genocide against a social group has been dealt with.[27] The conclusion to be drawn from the jurisprudence of the recent years is increasingly positive, with courts becoming more receptive to international human rights and international criminal law arguments.

---

[21] W. A. Schabas, *Genocide in International Law* (Cambridge University Press: 2000) at 102-150; W. A. Schabas, ´Groups Protected by the Genocide Convention: Conflicting Interpretation from the International Criminal Tribunal for Rwanda´, 6 *ILSA Journal of International and Comparative Law* (2000) at 375 *et seq*.

[22] W. A. Schabas, *Genocide in International Law*, see *supra* note 21, at 146.

[23] For a discussion of Estonian case law see L. Malksoo, 'Soviet Genocide? Communist Mass Deportations in the Baltic States and International Law' 14 *Leiden Journal of International Law* (2001) 757-787.

[24] See I. Ziemele, 'Questions Concerning Genocide. A Note on the Supreme Court Judgment in Cases #PAK-269 of 4 November 1996 and #K-38 of 13 December 1995', 7-10 *Latvian Human Rights Quarterly* (1999); M. Paparinskis, 'Deportāciju prāvas: starptautisko tiesību skatpunkts' (Deportation Cases: An International Law Perspective), *Jurista Vārds* (Lawyer's Word), (2005) 3 May, No 16.

[25] Augstākās tiesas Krimināllietu tiesu palātas 1996.gada 4.novembra spriedums lietā Nr.PAK-269 (Judgement of the Criminal Matters Chamber of the Supreme Court of 4 November 1996 in Case No. PAK-269); Augstākās tiesas Krimināllietu tiesu palātas 2000.gada 12.janvāra spriedums lietā Nr.PAK-17 (Judgement of the Criminal Matters Chamber of the Supreme Court of 12 January 2000 in Case No. PAK-17).

[26] Zemgales apgabaltiesas Krimināllietu kolēģijas 2003.gada 25.septembra spriedums lietā Nr.K06-3/03-1 (Judgment of the Criminal Matters Collegium of the Zemgale Regional of 25 September 2003 in case No.K06-3/01-1).

[27] Augstākās tiesas Senāta Krimināllietu departamenta 2005.gada 19.aprīļa lēmums lietā Nr.SKK-01/162/05 (Decision of the Criminal Matters Department of the Supreme Court Senate of 19 April 2005 in Case No.SKK-01/162/05).

2.b Crimes against Humanity

The 1998 CC does not contain any provisions criminalising crimes against humanity. Rather curiously, crimes against humanity are mentioned only indirectly, in relation to the statute of limitation, possible defences and even in the title of chapter IX. The most reasonable explanation is simply a legislative error. The 1961 CC contained an article called 'Crimes against humanity, genocide'.[28] Article 71 of the 1998 CC merely refers to 'Genocide', omitting crimes against humanity (probably based on the implicit assumption that these terms are interchangeable). Consequently, *prima facie* crimes against humanity are not prohibited under the 1998 CC.

Amnesty International has argued that persecution as a crime against humanity is indirectly criminalised in Article 78 entitled 'Violation of national or racial equality and restriction of human rights'.[29] This Article criminalises the direct and indirect restriction of political, economic and social rights and has a superficial similarity to persecution as defined in Article 7(1)(h) of the RS. However, it does not seem that this provision can be considered as dealing with persecution. While the content of this Article substantively overlaps with the crime against of humanity of persecution, Article 78 of the CC prohibits a domestic, and not an international crime. Many domestic law crimes would substantively overlap with international crimes (e.g. a crime of murder in domestic law and murder as a crime against humanity, genocide or war crime), but without more that does not mean that there is a prohibition of an international crime. The provisions about the inapplicability of statutes of limitation and certain defences refer to genocide, crimes against peace and to the crimes against humanity, but not to this Article. In the 1998 CC international crimes can be identified contextually by these references, and they lack in the case of Article 78,

2.c War Crimes

Latvia is a state party to all of the Geneva Conventions and Additional Protocols.[30] The 1998 CC deals with war crimes in Article 74. Article 74 seems to be generally, although not fully, based on the 'grave breaches' provisions of the Geneva Conventions. Article 74 defines war crimes as a breach of laws and customs of war prohibited by binding international agreements. It goes on giving an exhaustive list of these crimes – killing, torture, plunder, transfer or assignment to forced labour of the civilians of occupied territories, of hostages and prisoners of war, unjustified destruction of cities and other objects. Reference to 'civilians of occupied territories' and 'prisoners of war' limits the provision to international armed conflicts. Since the Article does not expressly refer to the nature of armed conflict, attacks on hostages and unjustified destruction of cities could also apply to non-international armed conflicts.

---

[28] 1961 CC, Article 68[1].

[29] Amnesty International, *Universal Jurisdiction: the Duty of States to Enact and Implement Legislation*, September 2001, AI Index: IOR 53/009/2001, Chapter Six ('Crimes against humanity. State practice at the national level'), at 48, <http://web.amnesty.org/library/index/engior530112001?OpenDocument> (visited 23 February 2006).

[30] Par pievienošanos 1949.gada 12.augusta Ženēvas konvencijām un šo konvenciju 1977.gada 8.jūnija papildprotokoliem: LR Augstākās padomes lēmums. *Ziņotājs,* 1991. 5.decembris, nr.47 (On Joining the Geneva Convention of 12 August 1949 and the Additional Protocols to These Conventions of 8 June 1977. *Reporter,* 5 December 1991, No. 47).

Certain categories of grave breaches are absent or defined differently.[31] First, only torture is prohibited under Article 74, while inhumane treatment, including biological experiments, is missing. Since inhumane treatment is considered a less severe act than torture,[32] the absence of express statement may render it impossible to prosecute inhuman acts that do not reach the level of torture. However, one may argue that such acts may be prosecuted under Article 75, which, while not specifically defining the conduct as 'war crimes', prohibits unlawful violence against civilians in the area of attack.

Second, Article 74 does not criminalise the wilful causing of great suffering or serious injury to body or health. Third, the acts of compelling a prisoner of war or civilian to serve in the forces of a hostile power and of wilfully depriving a prisoner of war or a civilian of his right to a fair and regular trial are not criminalised. Fourts, in relation to 'transfers', the references to 'unlawful deportation' and 'unlawful confinement' have been omitted. In the above-mentioned respects, Article 74 is thus more restrictive than the grave breaches provisions of the Geneva Conventions. The rules of the Additional Protocols (other than on hostages and destruction of cities) seem to be absent from the definition of war crimes in Latvian law.

In some aspects, however, the scope of the crimes has been broadened by Article 74. Firstly, the prohibition of forced labour in Article 74 is not mentioned as a grave breach in the Geneva Conventions. Secondly, as regards the unjustified destruction of cities and other objects, Article 74 does not require that the destruction has to be 'extensive' and 'unlawfully and wantonly'. Even more importantly, the provision refers to 'objects' and not 'civilian objects'.

Article 75 of the 1998 CC is entitled 'Violence against the Population in the Area of Military Activity'. It prohibits unlawful violence against the civilian population and the unlawful and violent taking and destruction of their property. Since the applicability of the provision is conditioned by the existence of military activity, the provision also seems to apply in internal armed conflicts. It is not clear whether this provision is intended to cover Common Article 3 of the Geneva Conventions or Parts II and IV of the Second Additional Protocol; the formulations suggest against it. Article 75 is also not referred to by the provisions on statutes of limitations and defences for international crimes.

To summarize, the definition of war crimes in Latvian criminal is more accurate than that of genocide. The crime of genocide is defined broader than in international treaty and customary law, and, while not being wrong as a matter of principle, the early case law on genocide shows an overly enthusiastic application of the rule. 1998 CC does not expressly deal with crimes against humanity, although the extended definition of genocide effectively covers that, when addressing attack against social groups. The prohibition of war crimes is limited to an inadequate implementation of the grave breaches.

---

[31] Cf. Article 147 of the Convention (IV) Relative to the Protection of Civilian Persons in the Time of War, 75 UNTS (1950) 287; and Article 130 of the Convention (III) Relative to the Treatment of Prisoners of War, 75 UNTS (1950) 135.

[32] See *Prosecutor v. Furundzija*, Case No. IT-95-17/1, ICTY Trial Chamber II, Judgment (10 December 1998) notes 179, 180, 196; see also *Ireland v. United Kingdom*, ECHR Series A (1978) no. 25, para.167.

The article in the 1998 CC on war crimes seemingly gives an exhaustive definition. Article 1(1) of the 1998 CC limits criminal liability to the crimes 'under this law'. Consequently, the formulation of the crimes in question as stipulated in the 1998 CC would be decisive. However, the recent case law of the Constitutional Court has affirmed that customary international law is a valid source of law in the Latvian legal order.[33] The courts could consequently draw on customary law to interpret the imprecise national rules. Since international agreements ratified by Latvia become part of the Latvian legal order, the provisions of the 1998 CC should be interpreted in light of the crimes under the Rome Statute. Further reasons for optimism are the legislator's move to amend the section on international crimes (adding incitement to genocide) and the latest case law giving more serious consideration to the principle of legality in international criminal law[34].

3. GENERAL PRINCIPLES OF THE ROME STATUTE

3.a Command Responsibility

Command responsibility is not expressly addressed in the 1998 CC. The Supreme Court Senate in its *Kononov* judgment considered a defendant's argument that a doctrine of command responsibility had been applied in his case..[35] The accused, Mr. Kononov, had been a commander of a guerrilla unit during the Second World War and was accused of the murder of civilians by his subordinates while he was waiting in the forest. Mr. Kononov argued in his appeal that the previous judgment had ignored his subjective attitude and had adopted a theory of objective responsibility. The Supreme Court Senate rejected the argument on the facts and explained that Mr. Kononov had committed war crimes individually as a member of an organised group and that, according *inter alia* to Article 6(3) of the Nuremberg Statute, he was responsible. Consequently, there was no need to consider the command responsibility issue. The Supreme Court Senate did not explain what the situation would have been in the absence of Mr. Kononov's individual responsibility and hence the question of command responsibility was left open. One may argue that since command responsibility is a doctrine recognised in international criminal law, it may be applied to prosecution of international crimes in domestic courts. However, since Article 1(1) of 1998 CC limits criminal responsibility to crimes 'provided in this law' and 1998 CC does not provide for command responsibility in its General Part, it would be problematic for domestic courts to apply the doctrine of command responsibility.

3.b Participation

Article 89[1] (Criminal Organisations) of the 1998 CC defines a criminal organisation as an organisation that consists of at least five persons and has been created to commit inter alia very serious crimes against humanity, war crimes or genocide. Liability

[33] Judgment of the Constitutional Court of 13 May 2005 in Case No.2004-18-0106, paras 8.1., 8.2., see <www.satv.tiesa.gov.lv/ENG/Spriedumi/18-0106(04).htm> (visited 15 January 2006) .

[34] See *supra* note 31.

[35] Augstākās tiesas Senāta Krimināllietu departamenta 2004.gada 28.septembra lēmums lietā Nr.SKK-408/2004 (Judgment of the Criminal Matters Department of the Supreme Court Senate of 28 Septembre 2004 in case No.SKK-408/2004), <www.at.gov.lv/fails.php?id =179> (visited 15 January 2006).

would arise for organising such a group, joining such a group (or its sub-group),[36] leading such a group or participating in its crimes.[37] It seems that the national law criteria are higher than those of the Rome Statute. Certainly, if the specific provision is not applicable, the general principles of participation would apply, as laid down in Articles 19 and 20 of the 1998 CC, and those are broadly in line with the rules of the Rome Statute. The incitement to genocide has been prohibited expressly.[38]

3.c Defences

The defences listed in the Rome Statute have their equivalents in the 1998 CC under the headings of 'Capacity' and 'Defences'. Article 13 of the 1998 CC provides that a person cannot be criminally responsible in cases of mental incapacity. Articles 28-34 of the 1998 CC set out the defences available under national law – self-defence, arrest causing personal harm, necessity (duress), professional risk and superior orders. Article 34 explicitly provides -- in complete consistency with the Rome Statute -- that the defence of superior orders is inapplicable in cases of genocide, crimes against humanity and war crimes. (The fact that this provision does not refer to the discrimination of people or violence against civilians shows that the legislator did not see them as international crimes.)

The mental incapacity defence of the 1998 CC is comparable to the defence of mental disease or defect in Article 31 (1) a) RS. Article 31 (1) c) RS, which defines self-defence, is more restrictive than Article 29 of the 1998 CC. Whilst the Rome Statute allows self-defence or defence of another person as a ground for excluding criminal responsibility, or - in cases of war crimes only - defence of property, the 1998 CC additionally allows for the defence of state and society interests, as well as of legal rights of the accused or of other persons. However, although in principle providing a broader defence, the 1998 CC adds that the defence is inapplicable if the defended interests and the actual harm are disproportional. The interests provided for in 1998 CC but not in the Rome Statute would prima facie never be sufficient to amount to a defence for any of the crimes under the Rome Statute. Similarly, the concept of duress set out in the 1998 CC is broader than that of Article 31 (1) d) RS. Where the Rome Statute limits the possible circumstances of duress to the threat of death or bodily harm, the 1998 CC (as with self-defence) adds threats to state and society interests and to legal rights of the person or of other persons. However, since the 1998 CC provision also calls for proportionality between the threat and the harm, it can be interpreted in conformity with the Rome Statute.

3.d Mental Element

The mental element necessary for criminal responsibility under the Rome Statute is concisely defined in Article 30, which requires intent as to the criminal conduct and awareness (knowledge) as to the consequences. The definition of intent provided in the 1998 CC is consistent with the Rome Statute, but distinguishes between direct and indirect intent.[39] The 1998 CC also provides for a commission of a criminal

---

[36] Article 89[1] (1) of the 1998 CC.
[37] Article 89[1] (2) of the 1998 CC.
[38] Article 71[1] of the 1998 CC.
[39] According to Article 9 of the 1998 CC, a criminal offence is committed intentionally if the person who committed it foresaw and desired the consequences of the offence (direct intent)

offence through negligence and defines both criminal self-reliance and criminal neglect.[40]

Mistake of fact is not expressly defined in national criminal law. Nonetheless, certain provisions in the 1998 CC imply – in line with Article 32 (1) of the Rome Statute – that mistake of fact may exclude criminal responsibility only if it negates the mental element required by the crime.[41] It is thus arguable that decisions taken by national courts would be in line with the Rome Statute[42]. Mistake of law is not defined in national criminal law. The 1998 CC provision on superior orders is very similar to the one in the Rome Statute. Hence, the effects of a mistake of law in the case of superior orders are the same under the 1998 CC and the Rome Statute. The only difference is that under the Rome Statute a person may be relieved from criminal responsibility if three cumulative requirements are met: the person did not know the order was unlawful, the order was not manifestly unlawful and the person was under a legal obligation to obey such an order;[43] while the 1998 CC contains no explicit reference to the latter of these three requirements.[44] Under both the Rome Statute and the 1998 CC, orders to commit genocide and crimes against humanity are assumed to be manifestly unlawful.

3.e Retrospectivity

Article 1 of 1998 CC limits the crimes that can be prosecuted to those included in 1998 CC. The interdiction of incitement to genocide was inserted into the 1998 CC only in 2005. Thus from 28 June 2002 to 28 April 2005 incitement was not expressly prohibited.

3.f Statute of Limitation

Latvia is a party to the Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes Against Humanity.[45] Article 57 of the 1998 CC states that statutory limitations are inapplicable if a person has committed crimes against humanity, war crimes, crimes against peace or participated in genocide. It is unclear

---

or, even if such consequences were not desired, nevertheless knowingly allowed them to result (indirect intent).

[40] According to Article 10 of the 1998 CC, a criminal offence is committed through negligence if the person who committed it foresaw the possibility of the consequences of his or her act or failure to act, yet carelessly relied on these being prevented (criminal self-reliance), or did not foresee the possibility of such consequences, although according to the actual circumstances of the offence he or she should and could have foreseen such (criminal neglect).

[41] See, for example, Article 30 of the 1998 CC (apparent self-defence).

[42] On the different kinds of mistake of fact see U.Krastiņš, V.Liholaja, A.Niedre, *Krimināltiesības. Vispārējā un sevišķā daļa* (*Criminal Law. General and Special Part*) (Rīga: Tiesu namu aģentūra, 1999).

[43] Article 33 (1) of the Rome Statute.

[44] Article 34 (1) of the 1998 CC provides: 'Execution of a criminal command or a criminal order by the person who has executed it is justifiable only in those cases when the person did not know of the criminal nature of the command or the order and it was not manifest. (…)'

[45] Par Latvijas Republikas pievienošanos starptautisko tiesību dokumentiem cilvēktiesību jautājumos: Augstākās padomes deklarācija. *Ziņotājs,* 1990. 24.maijs, nr.21 (On the Accession of the Republic of Latvia to International Instruments Relating to Human Rights: declaration of the Supreme Council. *Reporter,* 24 May 1990, no. 21), <www.unhchr.ch/html/menu3/b/treaty6.htm> (visited 15 January 2006).

what importance should be paid to the words "*participated in* genocide" as opposed to "*committing*" other crimes. It is suggested that the statutory limitation would be inapplicable to all genocidal crimes, including incitement.

4. PRECONDITIONS FOR THE EXERCISE OF JURISDICTION

4.a Ne bis in idem (Article 20 (2) RS)

Article 25 of the CPC prohibits a retrial of the same person for the same crime in accordance with the principle of *ne bis in idem*. This also applies to situations where the person has been convicted or acquitted in another country with which Latvia has a bilateral treaty on the recognition of this principle.[46] *Ne bis in idem* is a general principle of criminal procedure and should be read in the context of more specific rules. According to Article 2(1) of the CPC, international law is one of the sources of criminal procedure. Consequently, Article 20 (2) RS would govern the situation with respect to the International Criminal Court.

4.b Irrelevance of Immunities and Amnesties

The Constitution includes rules on immunities for MPs and the President, examined in more detail *infra.*[47] The CPC refers to these immunities,[48] and also provides for diplomatic and consular immunities. Diplomatic immunities apply to foreign diplomats, equivalent persons and their family members.[49] Consular immunities apply to consular officials in accordance with the relevant international treaties.[50] The content of these immunities seems to be in line with the relevant Vienna Conventions.

No amnesties have been granted with respect to any international crimes falling under the jurisdiction of the ICC. The argument of amnesties may arise in the context of the surrender of individuals to the ICC. The CPC provides as one of the reasons for refusing surrender the existence of an amnesty.[51] The Constitution provides that amnesty can be granted by Parliament, and no limitations for this right are provided.[52]

5. OFFENCES AGAINST THE ADMINISTRATION OF JUSTICE (ARTICLE 70 (4) RS)

There has been no implementation legislation on the administration of justice. It seems that the pre-existing rules in the 1998 CC adequately cover the instances mentioned in Article 70 (1) RS.[53]

---

[46] CPC, Article 20 (6).
[47] See *infra* III.4.c(i).
[48] CPC, Article 120(1).
[49] CPC, Article 118(1).
[50] CPC, Article 119(1).
[51] CPC, Articles 697(2)(4), 842.
[52] Latvijas Republikas Satversme, see *supra* note 5, Article 45.
[53] 1998 CC, Articles 300 (false testimony), 289 (forgery of evidence), 301 (influencing the witness), 295 (influencing the court), 296 (attacking the officials), 320 (accepting bribes), 322 (soliciting bribes).

6. DISCRETION OF THE PROSECUTION

The CPC, apart from provisions on international cooperation, does not provide for any specific regulation of the initiation of criminal proceedings involving international crimes. The CPC's general provisions will thus be applicable. These provisions do not require consent from any specific public institution or authority, whether the investigator or the prosecutor.[54] The reason for initiating criminal proceedings is information about a commission of a possible crime[55]. The investigator can either initiate the proceedings or refuse to initiate the proceedings.[56] The prosecutor can initiate the proceedings (and subsequently send the case to the investigator) or refuse to initiate the proceedings.[57] The decision to refuse to initiate proceedings can be appealed to the higher prosecutor[58].

III. CO-OPERATION OF THE STATE PARTY WITH THE ICC

1. IMPLEMENTATION OF THE DUTY TO CO-OPERATE IN GENERAL, COMPETENT NATIONAL AUTHORITIES AND CHANNEL OF COMMUNICATION

1.a Implementation of the Duty to Co-operate in General

Cooperation issues with international courts are addressed in Chapter 76 of the CPC. The CPC provisions do not contain any explicit reference to the ICC. Therefore inferences must be drawn from the CPC's general provisions.

It should be emphasized that Article 2 of the CPC, entitled 'Sources of Criminal Procedure', stipulates that the law on criminal procedure is determined by the Constitution, international legal norms and the CPC. Thus the Rome Statute can be considered a valid legal source of Latvian criminal procedure by virtue of its being an international treaty.

1.b The Competence of National Authorities Regarding Requests by the ICC

According to Article 840(1) of the CPC, the competent institution for matters of co-operation with international courts is the Ministry of Justice of Latvia, whose competence extends to all aspects of co-operation, including arrest, surrender and competing requests. The ICC Implementation Act also assigns the Ministry of Justice the task to coordinate the fulfilment of Latvia's obligations under the Rome Statute.[59]

1.c Designation of a channel and a language of communication, Article 87 (1) (a) and (2) of the Statute in conjunction with Rules 176 and 178, RoPE

The institution generally responsible for cooperation as well as all communication with the ICC is the Ministry of Justice. The ICC Implementation Act also refers to

[54] CPC, Article 371 (1), (2).
[55] CPC, Article 369.
[56] CPC, Articles 371(1), 373.
[57] CPC, Articles 371(2), 373.
[58] CPC, Article 371(4).
[59] See *supra* note 2, Article 4.

Article 87(2) of the Rome Statute, according to which each co-operation request and accompanying documents must be either in Latvian or have a Latvian translation.[60]

2. GENERAL RECOGNITION OF THE ICC

The general wording of the CPC and the ICC Implementation Act clearly indicates that the legal personality of the ICC is recognised in Latvia. Articles 3 and 4 of the Rome Statute provide for the possibility of the ICC to sit elsewhere and exercise its functions and powers on the territory of its State Parties. The Rome Statute does not require an explicit approval by the State Party for this to happen. Latvia, by its ratification of the Rome Statute, has also agreed to host the ICC on its territory, if the Court so desires. No specific provision has been adopted in order to effectively enable the Court to sit on Latvian territory.

Latvia has also concluded the Agreement of Privileges and Immunities of the International Criminal Court[61], as well as assigned one of its most highly respected judges to sit on the ICC, thus leaving no doubt as to Latvia's recognition of the Court.

3. DUTY TO CO-OPERATE (ARTICLE 93 ET SEQ. RS)

3.a. Implementation of the Various Forms of Co-operation Under Article 93 et seq.

3.a.(i) Forms of co-operation specified in Article 93 (1) RS

Article 844 of the CPC, entitled "Assistance to an international court in procedural matters", provides that the competent authority (i.e. the Ministry of Justice), upon request by an international court, ensures the necessary assistance in the investigation and prosecution of crimes by carrying out the required procedural activities. Article 844(1) also mentions that a request for co-operation may relate to the protection of victims or witnesses as well as to any necessary confiscation measures, especially if carried out in the interest of victims. Apart from that, the CPC mentions no specific procedural activities with respect to international courts, thus general procedural provisions have to be applied. All procedural actions mentioned in Article 93 (1) of the Rome Statute are provided for in the CPC.[62] The technicalities of carrying out requests are regulated by Articles 813-815, 817-820, 824-825 of the CPC.

3.a(ii) Consultations with the Court, Article 97

The CPC is silent on the obligation to consult with the ICC in cases of difficulty with the execution of the request as provided for in Article 97 of the Rome Statute. However, since the Rome Statute is applicable by virtue of Article 2 CPC, it is again

---

[60] See *supra* note 2, Article 2.

[61] Par Līgumu par Starptautiskās Krimināltiesas privilēģijām un imunitātēm: LR likums. *Latvijas Vēstnesis,* 2004.gada 17.novembris, Nr. 101 (On the Agreements of Privileges and Immunities of the International Criminal Court: a law of the Republic of Latvia, *Latvian Herald,* 17 November 2004, No. 101).

[62] See, in general, CPC Chapter 9 on evidence, Chapter 10 on investigation measures and Chapter 11 on special investigation measures.

arguable that the Ministry of Justice would need to consult with the ICC in case certain obstacles would impede the execution of its request.

3.a(iii) Article 96 (2) (e) and (3)

Article 678 of the CPC lays down the formal and substantive requirements for a request for co-operation: (1) the title of the institution submitting the request; (2) the subject and substance of the request; (3) the description of the crime and its legal qualification; (4) information that would help to identify the suspect; (5) any other information necessary for the execution of the request.

3.a(iv) Article 99 (4)

Article 844 (4) of the CPC provides that agents of the international court may execute the necessary investigative measures either independently or in co-operation with other international organisations or the Ministry of Justice. If the specific investigative measures do not include the application of any compulsory methods, then the agent of the international court may, after consultation with the Ministry of Justice, carry them out independently.

3.b Denial of a Request for Assistance

Article 844 (3) of the CPC, in a direct reference to Article 93 (4) and (5) of the Rome Statute, stipulates that a request for assistance may be denied if it concerns the production of documents or disclosure of evidence which relate to national security, unless such assistance can be provided either subject to specified conditions or at a later date. The CPC does not distinguish between denying the request 'in whole or in part', as provided by Article 93 (4) ICC. Nor does the CPC provide for the possibility to execute the request 'in an alternative manner', which, however, arguably does not differ much from the execution of a request 'subject to specified conditions'.

4. ARREST AND SURRENDER (ARTICLES 59, 89 ET SEQ.)

4.a Implementation of the Duty to Arrest and Surrender Persons

4.a(i) Legal Obstacles of all kinds:

Article 842 CPC provides that a person may not be surrendered to an international court if any one of the grounds for refusal mentioned in Article 697(1) points 2, 3 and (2) points 3, 4, 5 are present, i.e.:

1) The person is suspected, accused or tried in Latvia for the same crime;

2) A decision has been made in Latvia not to begin or to finish criminal prosecution for the same crime;

3) A judgment of a Latvian court has come into force for the person for the same crime;

4) According to Latvian law, the person cannot be criminally prosecuted, sentenced or such person's sentence cannot be carried out because of a statutory limitation, an amnesty or any other legal ground;

5) The person has been pardoned for the crime in due form of law.

The grounds for refusal of a person's surrender to the ICC as contained in Latvian law go further than the provisions of the Rome Statute would allow. The national authorities do not have the power to question the proper issue of the warrant by the Trial Chamber, but the CPC however does set certain requirements as to the form and substance of a request for surrender (see 3.a(iii) above).

4.a(ii) Execution of a request for arrest and surrender

The CPC draws a distinction between extradition to states ('*izdošana*', the term also used in the Constitution)[63] and surrender to international courts ('*nodošana*', or transfer)[64]. Article 843(1) CPC stipulates that the request for arrest and surrender to an international court shall be reviewed, the person arrested and all the relevant issues as to the request decided in accordance with Articles 698–711 CPC; these articles contain provisions on the person's rights and her provisional arrest, and regulate certain aspects of the extradition process

The CPC provides for three types of arrest in the field of international co-operation: detention for the purpose of surrender (Article 699), provisional arrest (Articles 700-701) and surrender arrest (Article 702). If the ICC has requested a provisional arrest or surrender, an investigator or a prosecutor may detain a person for the purpose of surrender for up to 72 hours. Immediately, but at least within 24 hours, the Attorney-General's Office is informed. If neither the provisional arrest nor the surrender arrest is executed within 72 hours, the person must be released or another security measure[65] has to be applied (Article 699(5) CPC).

The ICC may also request a provisional arrest to be applied pending a request for surrender. Article 701(3) CPC provides that the provisional arrest may be applied for a maximum of 40 days unless the specific international agreement provides otherwise. In case of the ICC the 60-day limit stipulated in rule 188 RoPE would apply. The person is released if, alternatively, no request for surrender is made, no surrender arrest is executed, or obstacles precluding surrender have become known.

Article 702(1) CPC further stipulates that the surrender arrest is executed after the receipt of a request for surrender and other accompanying documents, like documents containing the description of the crime, the relevant provisions of the Rome Statute as well as information about the person to be surrendered. If no obstacles to the surrender exist (see supra 4.a (i), the materials are handed over to the investigating judge in whose territory of competence the person has been arrested or where the Office of Prosecutor General is located. The decision is made by the judge in accordance with a procedure similar to that of provisional arrests (Article 702(2) CPC), with the participation of the prosecutor and the person to be surrendered.

---

[63] CPC, Article 697. Article 697(2)(1) provides in absolute terms that the surrender of nationals is not possible. This has now to be read subject to Article 98 of the Constitution.

[64] CPC, Article 841.

[65] Article 243 of the CPC names all the available security measures, which include home arrest, bail, prohibition to leave the country and others. The approach taken in Article 699(5) CPC does not seem to contradict Article 92 (3) of the Rome Statute, stipulating that the person *may* be released if the requested State has not received the request for surrender within the specified time limits.

The judge makes the decision on provisional or surrender arrest after hearing the submissions of the prosecutor, the individual and the defence lawyer. While the CPC contains no provision exactly mirroring Article 59 (2) of the Rome Statute, the rights of the person to be surrendered are set out in great detail in Article 698 CPC, and include the right to know who is requesting her surrender and why, the right to use a language the person understands during the proceedings on surrender, the right to present explanations, make requests, request a defence lawyer for the purposes of legal aid and get acquainted with all the trial materials

The CPC does not provide for the right of the individual to ask for an interim release within the meaning of Article 59(3) of the Rome Statute.

4.a(iii) Multiple proceedings against the same person

As mentioned above,[66] Article 842 CPC, in conjunction with Article 697, provides for the rejection of the request for surrender by an international court if such a request risks undermining the principle of *ne bis in idem*, thus reflecting the safeguards enshrined in Articles 17 and 20 of the Rome Statute. The CPC does not specify the procedure by which the person concerned may invoke the provisions of Article 842 and 697 CPC; most likely it should be done during the proceedings on provisional and surrender arrest.

The CPC does not provide for a possibility to postpone the surrender of a person or to consult with the ICC in case of competing requests (Article 89 (2) and (4) of the Rome Statute). The issue of competing requests leaves certain implications a bit unclear. Article 843(2) CPC stipulates that a request for surrender from an international court prevails over requests from states unless the international court has not taken a decision determining the exclusiveness of its competence, i.e., if the ICC has not yet made a decision on its jurisdiction and admissibility under Articles 18 and 19 of the Rome Statute. In such a case the order of competing requests is determined on the basis of Article 709(4) criteria (the severity of the crime, its place and the sequence of the requests). It is, however, arguable that even a decision of the ICC on a *prima facie* basis could also be viewed as determining the Court's exclusive jurisdiction and hence no conflict should arise with respect to competing requests from other states, as the ICC requests would prevail.

4.a(iv) Transit of persons being surrendered through a state party

Article 681 CPC provides that the Ministry of Justice may allow the transit of persons through Latvia's territory. The request may be rejected should the person concerned be a citizen or non-citizen[67] of Latvia. The wording of the CPC seems to imply some discretion for the Ministry of Justice whether to allow the transit and may thus

[66] See *supra* III.4.a(i).

[67] 'Non-citizens' of Latvia are subject to the Law on the status of those citizens of the former USSR who do not have Latvian or any other state's citizenship, *Latvian Herald*, 21 April 1995, No. 63 (Par to bijušās PSRS pilsoņu statusu, kuriem nav Latvijas vai citas valsts pilsonības: LR likums. *Latvijas Vēstnesis*, 1995. gada 21.aprīlis, Nr.63.); on the legal implications of the non-citizen statutes see the Judgment of the Constitutional Court of 7 March 2005 in case No. 2004-15-0106, <www.satv.tiesa.gov.lv/ENG/Spriedumi/15-0106(04).htm> (visited 19 January 2006).

slightly contravene Article 89 (3) of the Rome Statute which does not envisage any discretion on the part of the state.

4.a(v) Duties to inform the Court:

The CPC contains no specific provisions as to the duties to inform or consult with the ICC, thus Article 97 of the Rome Statute has not been duly implemented. Nonetheless, since the CPC is applied in accordance with international legal norms, including the ones enshrined in the Rome Statute, Article 97 is binding on Latvia.

4.b "Article 98 (2)" agreements

Traditional treaties on bilateral co-operation in criminal matters concluded by Latvia do not address the surrender of a person to the ICC and therefore do not to fall within the meaning of Article 98 (2) agreements. Latvia has not only rejected the US efforts to sign a bilateral immunity agreement,[68] but is also among the governments which have publicly opposed the signing of such agreements.[69]

4.c Immunities, Surrender of Nationals and Life Imprisonment

4.c(i) Immunities

According to Articles 29, 30 and 54 of the Constitution,[70] criminal investigations against and an eventual arrest, surrender and prosecution of the President or a member of the Parliament is dependent upon the consent of Parliament. It should, however, be noted that, first, the above-mentioned constitutional provisions would only risk being in conflict with the Rome Statute if Latvia did not take advantage of the principle of complementarity and refused to efficiently investigate the matter. Second, even if such were the case, a mere existence of this constitutional provision does not impede the ICC Prosecutor from charging the individual in question. Once the Latvian state would be informed of the Prosecutor's intentions, the Parliament would be required to take a decision on matters relating to all requests by the ICC, including requests for the detention of such a person. While from a legal point of view a certain incompatibility between the Constitution and the Rome Statute does exist, as a practical point, it would not seem likely that Latvia, a state very favourable to the ICC , with a judge on the bench of the ICC, having ratified the Agreement on Immunities and Privileges of the Court (*APIC*) and having refused to conclude the bilateral agreement with the United States would violate its obligations under the Rome Statute.

---

[68] Coalition for the International Criminal Court, *Fact sheet on the Status of US Bilateral Immunity Agreements*, available at <www.iccnow.org/documents/USandICC/2006/CICC FS_BIAstatus_ 08Jan06.pdf > (visited 17 January 2006).

[69] Coalition for the International Criminal Court, *Fact sheet on the Countries opposed to signing an US Bilateral Immunity Agreement*, available at <www.iccnow.org/documents /USandICC/Countries OpposedBIA_AidLoss_16Dec05.pdf> (visited 17 January 2006).

[70] Article 29 of the Constitution (see *supra* note 5) provides: 'Members of the Saeima may not be arrested or searched, nor may their personal liberty be restricted in any way, without the sanction of the Saeima (…)'; Article 30 further stipulates that: 'The criminal prosecution may not be initiated against the member of the Saeima (…) without the sanction of the Saeima'. Article 54 contains provisions on the criminal responsibility of the President.

The current rules on immunities could only be changed through constitutional amendments. According to Article 76 of the Constitution, amendments may be made after three readings and by a majority vote of not less that two thirds of the MPs present. So far only a small number of ICC states parties have made constitutional amendments, claiming that their constitutions shall be interpreted in light of their international obligations and the object and purpose of the constitution, and thus rejecting the argument about the incompatibility of their constitution. The few countries that have made constitutional amendments have included a reference as to the ICC's precedence over potentially conflicting constitutional provisions, rather than specifically amended such provisions.[71]

4.c(ii) Surrender of nationals

Article 98 of the Constitution previously provided that the surrender of nationals was prohibited. It has been recently amended and now provides that it is possible to surrender nationals to foreign countries in accordance with international agreements ratified by Parliament provided that human rights are not violated.[72] However, it seems that the Constitutional provision is not relevant to the surrender of nationals to international courts. Nonetheless, there appears to be no problem with surrendering nationals to an international court provided that the court affirms that in the case of conviction the person would serve the penalty in Latvia.[73]

4.c(iii) Life Imprisonment

No problematic issues exist concerning life imprisonment. Article 38(3) of the Criminal Law refers to life imprisonment as one of the sanctions available under Latvian law. As far as the crimes under the Rome Statute are concerned, life imprisonment may be imposed for genocide and war crimes.

5. RIGHTS OF THE ACCUSED

The CPC provides for rights of the accused similar to those set out in Article 55 (1) and 55 (2) of the Rome Statute. Articles 70 through 73 CPC provide for the rights of the accused at the different stages of trial. In addition, Latvia is a Member State of the European Convention on Human Rights, which requires similar guarantees for the accused.

6. PRIVILEGES AND IMMUNITIES OF THE COURT AND ITS OFFICIALS, PROTECTION OF VICTIMS AND WITNESSES, AGREEMENT ON PRIVILEGES & IMMUNITIES OF THE COURT

Latvia has ratified the APIC, [74] which was transformed into Latvian law through a ratification act. When ratifying the APIC, Latvia chose to make a statement provided

---

[71] For a discussion of interpretative approaches taken by various countries and an analysis of constitutional amendments in certain others (like France, Belgium, Germany and Brazil), see H. Duffy, 'National Constitutional Compatibility and the International Criminal Court', 11 *Duke Journal of Comparative and International Law* (2001) 9-18.

[72] The Constitution, Article 98, available at <www.satv.tiesa.gov.lv/ENG/satversme.htm> (visited 15 January 2006).

[73] CPC, Article 841(2).

[74] Par Līgumu par Starptautiskās Krimināltiesas privilēģijām un imunitātēm: LR likums. *Latvijas Vēstnesis,* 2004.gada 17.novembris, Nr.101 (On the Agreement of Privileges and

for under Article 23 APIC with respect to the privileges accorded on Latvian territory depending on whether a person is a Latvian national or permanent resident there. The competent authority responsible for coordinating the execution of the obligations under the APIC is the Ministry of Justice.

7. ENFORCEMENT OF SENTENCES, FINES AND FORFEITURES IMPOSED BY THE ICC

So far Latvia has not indicated any willingness to accept ICC prisoners. Nor has Latvia accepted prisoners from the ICTY and ICTR.

Article 846 of the CPC provides for the possibility to enforce ICC sentences in Latvia, should the ICC rule accordingly. Article 846 (2) provides for the enforcement of such sentences in the same manner as national sentences. Similarly, Article 845 of the CPC provides that any fines and confiscatory measures requested by the ICC are also enforced in the same manner as equivalent national measures, while noting that *bona fide* rights acquired by third parties shall be respected.

Article 103 (3) (b) of the Rome Statute did not trigger the adoption of new legislation regarding detention conditions. It should be also be noted that while Latvia is a party to the ICCPR, the Human Rights Committee has repeatedly expressed its concerns about overcrowded prisons and the lack of any oversight mechanism for investigating human rights violations committed by police officers. While recognizing that progress has been made, the Human Rights Committee keeps encouraging Latvia to take all legislative and administrative measures to ensure compliance with the ICCPR and improve the conditions in detention facilities.[75]

In the case of *Farbtuhs v. Latvia* the ECHR found that the treatment of the applicant in a detention facility was inappropriate given the applicant's age and state of health and thus constituted a breach of Latvia's obligations under Article 3 of the Convention.[76]

IV. CONCLUSION

The definition of international crimes in Latvian law, could be further improved. The formulation of the provisions on genocide has led to some confusion in the national case law about the exact scope and content of the crime. The crimes against humanity are not expressly prohibited in the 1998 CC. The provision on war crimes does not fully cover the grave breaches of the Geneva Conventions and the First Additional Protocol, while purporting to be exhaustive. Nonetheless, the incomplete definitions may in some cases be supplemented by customary law; the legislator has also started to amend the international crimes section and, finally, the recent case law dealing with international crimes demonstrates that the courts have become more sophisticated in their legal reasoning.

Immunities of the International Criminal Court: a law of the Republic of Latvia, *Latvian Herald,* 17 November 2004, No. 101).

[75] Concluding observations of the Human Rights Committee: Latvia. 06/11/2003, CCPR/CO/79/LVA, <http://www.unhchr.ch/tbs/doc.nsf/0/c9778e6288fa75bdc1256e000050cb71?Opendocument> (visited 26 March 2006).

[76] See *Farbtuhs v. Latvia* (Application 4672/02), ECHR First Section, Judgement (2 December 2004), available at <http://www.echr.coe.int/echr> (visited 20 January 2006).

Similarly, while the constitutional rules on immunities seem not to be fully compatible, it is highly unlikely that this would result in an actual breach of Latvia's obligations under the Rome Statue.

Certain procedural aspects of the Rome Statute find no precise reflection in the CPC., which deals with 'international courts' in general. Thus, the rules of the CPC, drafted in very general terms, require careful interpretation. Nonetheless, considering that the CPC is to be applied in accordance with international legal norms, we conclude that the provisions of the Rome Statute are, where necessary, directly applicable.

Despite the drawbacks of the implementing legislation, so far nothing gives reason to doubt the high esteem in which Latvia holds the ICC. Adequate practice will hopefully compensate the lack of clear legal implementation.