

Law Concerning the Punishment of Grave Breaches of International Humanitarian Law (Law No.115, 2004)

国際人道法の重大な違反行為の処罰に関する法律（平成十六年法律第百十五号）

This English translation of the Law Concerning the Punishment of Grave Breaches of International Humanitarian Law (Law No.115, 2004) has been prepared by Yoko Takashima, IHL intern, ICRC Tokyo Office; currently Ph.D. candidate at Senshu University Graduate School of Law. This is an unofficial translation and only the original Japanese texts of laws and regulations have legal effect. This translation is to be used solely as reference material to aid in the understanding of Japanese laws and regulations.

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第一条（目的）

この法律は、国際的な武力紛争において適用される国際人道法に規定する重大な違反行為を処罰することにより、刑法（明治四十年法律第四十五号）等による処罰と相まって、これらの国際人道法の的確な実施の確保に資することを目的とする。

Article 1 (Purpose)

The purpose of this law is, by punishing the grave breaches which are set forth in international humanitarian law applicable in international armed conflict, combined with punishment by the Penal Code (Law No. 45, 1907), etc., to contribute to ensure an efficient implementation of international humanitarian law.

第二条（定義）

この法律において、次の各号に掲げる用語の意義は、それぞれ当該各号に定めるところによる。
一 捕虜 次のイ又はロに掲げる者であつて、捕虜の待遇に関する千九百四十九年八月十二日のジュネーヴ条約（以下「第三条約」という。）及び千九百四十九年八月十二日のジュネーヴ諸条約の国際的な武力紛争の犠牲者の保護に関する追加議定書（議定書Ⅰ）（以下「第一追加議定書」という。）において捕虜として取り扱われるものをいう。

イ 第三条約第四条に規定する者

ロ 第一追加議定書第四十四条１に規定する者（同条２から４までの規定により捕虜となる権利を失う者を除く。）

二 傷病捕虜 捕虜であつて、第三条約第一百条第一項(1)から(3)までに該当する者をいう。

三 文民 次のイ又はロに掲げる者であつて、戦時における文民の保護に関する千九百四十九年八月十二日のジュネーヴ条約（以下「第四条約」という。）及び第一追加議定書において被保護者として取り扱われるものをいう。

イ 第四条約第四条第一項に規定する者（同条第二項及び第四項の規定により被保護者と認められない者を除く。）

ロ 第一追加議定書第七十三条に規定する者

Article 2 (Definitions)

In this law, the meanings of the terms referred to in the following paragraphs shall be as prescribed respectively in those paragraphs:

(i) “Prisoners of War” means persons who are referred to in the following sub paragraphs (a) and (b), and to be treated as prisoners of war under the Geneva Convention relative to the

Treatment of Prisoners of War of 12 August 1949 (hereinafter, the Third Convention) and the Protocol Additional to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts (hereinafter, the Protocol (I)):

- (a) persons as defined by Article 4 of the Third Convention;
- (b) persons as defined by Article 44, paragraph 1 of the Protocol (I) (except for those forfeit their rights to be prisoners of war as provided in Article 44, paragraph 2, 3, and 4 of the Protocol (I).);
- (ii) “Sick and Wounded Prisoners of War” means persons who are prisoners of war and fall under the categories of Article 110 section 1, paragraph 1, 2 and 3 of the Third Convention;
- (iii) “Civilians” means persons who are listed in the following sub paragraphs (a) and (b), and to be treated as protected persons under the Geneva Convention relative to the Treatment of Civilian Persons in Time of War of 12 August 1949 (hereinafter, the Fourth Convention) and the Protocol (I):
 - (a) persons as defined by Article 4, section 1 of the Fourth Convention (except for those who are not be considered as protected persons as defined by Article 4, section 2 and 4 of the Fourth Convention.)
 - (b) persons as defined by Article 73 of the Protocol (I).

第三条（重要な文化財を破壊する罪）

次に掲げる事態又は武力紛争において、正当な理由がないのに、その戦闘行為として、歴史的記念物、芸術品又は礼拝所のうち、重要な文化財として政令で定めるものを破壊した者は、七年以下の懲役に処する。

一 第一追加議定書第一条3に規定する事態であつて、次のイ又はロに掲げるもの

イ 第一追加議定書の締約国間におけるもの

ロ 第一追加議定書第九十六条2の規定により第一追加議定書の規定を受諾し、かつ、適用する第一追加議定書の非締約国と第一追加議定書の締約国との間におけるもの

二 第一追加議定書第一条4に規定する武力紛争（第一追加議定書第九十六条3の規定により寄託者にあてた宣言が受領された後のものに限る。）

Article 3 (Crimes of destroying important cultural properties)

In situations and armed conflicts listed in the following, a person who, without justifiable reason, as acts of hostility, destroys the historic monuments, works of art or place of worship that are designated as important cultural properties in Cabinet Orders, shall be punished by imprisonment with work for not more than 7 years:

- (i) the situations referred to in Article 1, paragraph 3 of the Protocol (I), and listed in the following sub paragraphs (a) and (b):
 - (a) situations which may arise between the High Contracting Parties to the Protocol (I);

(b) situations which may arise between the State not party to the Protocol (I) and the High Contracting Party to the Protocol (I), which accept and apply the provisions of the Protocol (I) as stipulated under Article 96, paragraph 2 of the Protocol (I);

(ii) armed conflicts referred to in Article 1, paragraph 4 of the Protocol (I) (only after receipt of a declaration addressed to the depositary as stipulated under Article 96, paragraph 3 of the Protocol (I)).

第四条(捕虜の送還を遅延させる罪)

捕虜の送還に関する権限を有する者が、捕虜の抑留の原因となった武力紛争が終了した場合において、正当な理由がないのに、当該武力紛争の相手国（当該武力紛争の当事者間において合意された地を含む。次項において「送還地」という。）への捕虜の送還を遅延させたときは、五年以下の懲役に処する。

2 前項に規定する者が、正当な理由がないのに、送還に適する状態にある傷病捕虜の送還地への送還を遅延させたときも、同項と同様とする。

Article 4 (Crimes of delaying the repatriation of Prisoners of War)

When a person who has the authority to repatriate prisoners of war, in cases where an armed conflict that caused the internment of prisoners of war is ceased, without justifiable reason, delays the repatriation of prisoners of war to the other Party to the armed conflict (including the territory that are agreed between the Parties to the armed conflict. In the next paragraph, the repatriation territory.), the person shall be punished by imprisonment with work for not more than 5 years.

(2) When a person referred to in the preceding paragraph, without justifiable reason, delays the repatriation of sick and wounded prisoners of war who are fit to travel to the repatriation territory, the person shall be dealt with in the same way prescribed for in the preceding paragraph.

第五条(占領地域に移送する罪)

第三条第一号に掲げる事態において、占領に関する措置の一環としてその国が占領した地域（以下「占領地域」という。）に入植させる目的で、当該国の国籍を有する者又は当該国の領域内に住所若しくは居所を有する者を当該占領地域に移送した者は、五年以下の懲役に処する。

Article 5 (Crimes of transferring to occupied territory)

In the situations listed in Article 3, paragraph (i) of this law, for purpose of settlement in the territory the State occupies (hereinafter, the occupied territory) as part of measures concerning occupation, a person who transfers a person who has nationality of the State and has address or residence within the territory of the State to the occupied territory, shall be punished by imprisonment with work for not more than 5 years.

第六条(文民の出国等を妨げる罪)

出国の管理に関する権限を有する者が、正当な理由がないのに、文民の出国を妨げたときは、三年以下の懲役に処する。

2 占領地域からの出域（被占領国からの出国又は被占領国の国境を越えない占領地域外への移動をいう。以下同じ。）の管理に関する権限を有する者が、正当な理由がないのに、文民（被占領国の国籍を有する者を除く。）の占領地域からの出域を妨げたときも、前項と同様とする。

Article 6 (Crimes of obstructing the departure of civilians)

When a person, who has the authority to control the departure, without justifiable reason, obstructs the departure of civilians, the person shall be punished by imprisonment with work for not more than 3 years.

(2) When a person, who has the authority to control the departure from the occupied territory (this means a departure from the occupied State and a transfer to outside the occupied territory not crossing the border of the occupied State. The same for the following.), without justifiable reason, obstructs the departure of civilians (except for those have nationality of the occupied State) from the occupied territory, the person shall be dealt with in the same way prescribed for in the preceding paragraph.

第七条（国外犯）

第三条から前条までの罪は、刑法第四条の二の例に従う。

Article 7 (Crimes Committed outside Japan)

Those crimes listed in Article 3, 4, 5, 6 and 7 of this law shall be dealt with Article 4 *bis* of the Penal Code.

附則

Supplementary Provisions

第一条（施行期日）

この法律は、第一追加議定書が日本国について効力を生ずる日から施行する。ただし、附則第三条の規定は、公布の日から起算して二十日を経過した日から施行する。

Article 1 (Effective Date)

This law shall come into effect as from the date Protocol (I) becomes effective in Japan. However, the provisions of Article 3 of this Supplementary Provisions shall come into effect as from the date after twenty days from the day of promulgation.

第二条（経過措置）

第七条の規定は、この法律の施行の日以後に日本国について効力を生ずる条約により日本国外において犯したときであっても罰すべきものとされる罪に限り適用する。

Article 2 (Transitional Measures)

The provisions of Article 7 of this law shall be applied to a crime as long as the crime is to be punished even when the crime was committed outside the territory of Japan by a treaty that becomes effective in Japan after the effective date of this law.

第三条（刑法等の一部を改正する法律の一部改正）

刑法等の一部を改正する法律（昭和六十二年法律第五十二号）の一部を次のように改正する。

附則第二項中「条約」の下に「並びに戦地にある軍隊の傷者及び病者の状態の改善に関する千九百四十九年八月十二日のジュネーヴ条約、海上にある軍隊の傷者、病者及び難船者の状態の改善に関する千九百四十九年八月十二日のジュネーヴ条約、捕虜の待遇に関する千九百四十九年八月十二日のジュネーヴ条約及び戦時における文民の保護に関する千九百四十九年八月十二日のジュネーヴ条約」を加える。

Article 3 (Partial Amendments to the Law for Partial Amendments to the Penal Code)

A part of the Law for Partial Amendments to the Penal Code (Law No. 52, 1987) shall be amended as follows.

Under “Treaties” in section 2 of the Supplementary Provisions, “and the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949 and the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949” shall be added.