

美國陸軍戰場手冊 (Field Manual) 彙編

FM 27-10 第七章 交戰國非敵意關係

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CHAPTER 7 NONHOSTILE RELATIONS OF BELLIGERENTS

第七章 交戰國非敵意關係

Section I. GENERAL

449. Nonintercourse

All intercourse between the territories occupied by belligerent armies, whether by traffic, communication, travel, or in any other way, ceases. This is the general rule to be observed without special proclamation.

450. Exceptions to Rule

Exceptions to this rule, whether by safe-conduct, license to trade, exchange of mails, or travel from one territory into the other, are made on behalf of individuals only with the approval of the Government or the highest military authority.

451. Forms of Nonhostile Relations of Belligerents

The conduct of war and the restoration of peace require certain nonhostile relations between belligerents. These relations are conducted through parlementaires, military passports, safe-conducts, safeguards, cartels, capitulations, and armistices.

452. Communication Between Belligerent States and Armies

One belligerent may communicate with another directly by radio, through parlementaires, or in a conference, and indirectly through a Protecting Power, a third State other than a Protecting Power, or the International Committee of the Red Cross.

453. Good Faith Essential

It is absolutely essential in all nonhostile relations that the most scrupulous good faith shall be observed by both parties, and that no advantage not intended to be given by the adversary shall be taken.

Section II. MILITARY PASSPORTS, SAFE-CONDUCTS AND SAFEGUARDS

454. General

Persons within an area occupied by a belligerent may be protected from molestation or interference through military passports, safe-conducts, and safeguards. These devices are a matter of international law only when granted or posted by arrangement with the enemy.

第一節 通則

449. 不往來

所有在被交戰國佔領區域的交通、通訊、旅行、或其他往來皆予以停止。此為一般規則，無須特別宣告。

450. 例外規定

例外規定如下：僅在最高軍事當局批准下，個人得以安全通行證、貿易許可證、郵遞交換、或異地旅行從事前述行為。

451. 交戰團體之非敵意關係型態

為戰爭行為和恢復和平之需，交戰雙方中有特定之非敵意關係。此關係透過軍事使者、軍用護照、安全通行證、護航警衛、交換戰俘、投降協議以及休戰協議等為之。

452. 交戰雙方之聯繫

交戰國之一方得透過廣播、軍事使者、或會議，和間接透過保護國、非保護國之第三國、或國際紅十字會相互聯繫。

453. 誠實的信念

在非敵對關係中，雙方行使最高度的誠實，以及不意圖耍陰險來佔便宜是極端重要的。

第二節 軍用護照、安全通行證和護航警衛

454. 通則

由交戰國所佔領區域的人民得受到軍用護照、安全通行證和護航警衛之保護以免遭受騷擾。在擬定核發制度前與敵軍商量授予上述文件，乃視為國際法之手段。

455. Military Passport

A military passport is a document issued by order of a commander of belligerent forces, authorizing a person or persons named therein, *residing or sojourning within territory occupied by such forces*, to travel unmolested within such territory, with or without permission to pass, or to pass and return, by designated routes, through the lines, subject to such further conditions and limitations as the commander may prescribe.

456. Safe-Conduct

a. *General.* Documents like passports, issued by the same authority and for similar purposes, to *persons residing or sojourning outside of the occupied areas*, who desire to enter and remain within or pass through such areas, are called safe-conducts. Similar documents, issued by the same authority, to persons residing within or without the occupied areas, to permit them to carry specified goods to or from designated places within those areas, and to engage in trade otherwise forbidden by the general rule of nonintercourse, are also called safe-conducts. Safe-conducts for goods in which the grantee is given a continuing right for a prescribed period, or until further orders, to engage in the specified trade, are sometimes called licenses to trade.

b. *Safe-Conducts for Ambassadors and Diplomatic Agents.* Ambassadors and other diplomatic agents of neutral powers, accredited to the enemy, may receive safe-conducts through the territories occupied by the belligerents, unless there are military reasons to the contrary and unless they may reach the place of their destination conveniently by another route. There is, however, no legal requirement that such safe-conducts be issued. Safe-conducts of this nature are usually given by the supreme authority of the State and not by subordinate officers.

457. Safeguard

A safeguard is a detachment, guard, or detail posted by a commander for the protection of persons, places, or property of the enemy, or of a neutral. The term also includes a written order left by a commander with an enemy subject or posted upon enemy property for the protection of the individual or property concerned. It is usually directed to the succeeding commander and requests the grant of protection. The effect of a safeguard is to pledge the honor of the nation that the person or property shall be respected by the national armed forces. The violation of a safeguard is a grave violation of the law of war and, if committed by a person subject to the Uniform Code of Military Justice, is punishable under Article 102 thereof with death or such other punishment as a court-martial may direct.

Soldiers on duty as safeguards occupy a protected status. They may not be attacked, and it is customary to send them back, together with their equipment and arms, to their own army when the locality is occupied by the enemy and as soon as military exigencies permit.

455. 軍用護照

軍用護照是由交戰軍指揮官所簽發，授予個人或其於佔領區內之居留、旅行之人，在佔領區內不受干擾之旅行，無論是否有通行許可，或依指揮官所指定之特定路線、條件、和其餘限制其自由方式。

456. 安全通行證

a. *通則。* 類似於護照的文件，由相同的當局且為相似之目的所簽發，而讓佔領區以內的個人進入或通過此區域者，稱為安全通行證。由相同的當局所簽發之相似文件，讓佔領區以內個人攜帶物品並依據特定路線在此區域內移動，以及從事一般交戰國因需遵守「不往來的戰爭規則」而交易者，亦稱為安全通行證。對物品的通行證方面，除非有新的命令，受與者得在一定時間內，有權從事特定交易者，亦稱為交易許可證。

b. *大使或外交使節之安全通行證。* 除有軍事顧慮，以及有其他替代路線之外，為敵國所公認中立國的大使或其他外交使節，得由交戰國授予佔領區域之通行證。但是，簽發上述通行證並非法律義務，若基於軍事或其他理由，相關當局得不與簽發。此等通行證通常由一國之最高當局簽發，而非由其下屬人員所簽發。

457. 護航警衛

護航警衛是一種為了保護敵方或中立國個人、地方或財產而由指揮官所命令之特遣隊、警衛或圍駐軍。此名詞亦包括指揮官有關敵軍或有關保護敵方個人或相關財產之明文命令。此通常意味欲直接指揮直屬指揮官並要求給予保護。護航警衛之效力在以國家之榮譽以保證此人或其財產將獲得此國軍隊之保障。違反護航警衛視為嚴重違反戰爭法，以及若有人依據軍事統一法典 (UCMJ) 控訴時，應依據第 102 條懲處死刑或類似戒嚴法之刑責。

值護航警衛勤務之士兵擁有被保護地位。此等人不得加以攻擊，當其處所已被敵方佔領且軍事狀況許可時，依據慣例應儘速與其裝備和武器一同遣送回原處之陸軍部隊。

Section III. PARLEMENTAIRES

458. Negotiations Between Belligerents

In the past, the normal means of initiating negotiations between belligerents has been the display of a white flag. In current practice, radio messages to the enemy and messages dropped by aircraft are becoming increasingly important as a prelude to conversations between representatives of the belligerent forces.

The white flag, when used by troops, indicates a desire to communicate with the enemy. The hoisting of a white flag has no other signification in international law. It may indicate that the party hoisting it desires to open communication with a view to an armistice or a surrender. If hoisted in action by an individual soldier or a small party, it may signify merely the surrender of that soldier or party. It is essential, therefore, to determine with reasonable certainty that the flag is shown by actual authority of the enemy commander before basing important action upon that assumption.

The enemy is not required to cease firing when a white flag is raised. To indicate that the hoisting is authorized by its commander, the appearance of the flag should be accompanied or followed promptly by a complete cessation of fire from that side. The commander authorizing the hoisting of the flag should also promptly send a parlementaire or parlementaires.

459. Parlementaires

Parlementaires are agents employed by commanders of belligerent forces in the field, to go in person within the enemy lines, for the purpose of communicating or negotiating openly and directly with the enemy commander.

460. Inviolability of Parlementaire

A person is regarded as a parlementaire who has been authorized by one of the belligerents to enter into communication with the other, and who advances bearing a white flag. He has a right to inviolability, as well as the trumpeter, bugler or drummer, the flag-bearer and the interpreter who may accompany him. (HR, art. 32.)

461. Fire Not To Be Directed on the Parlementaire

Fire should not be intentionally directed on parlementaires or those accompanying them. If, however, the parlementaires or those near them present themselves during an engagement and are killed or wounded, it furnishes no ground for complaint. It is the duty of the parlementaire to select a propitious moment for displaying his flag, such as during the intervals of active operations, and to avoid dangerous zones by making a detour.

462. Credentials of Parlementaire

Parlementaires must be duly authorized in a written instrument signed by the commander of the forces.

463. Reception of Parlementaire

The commander to whom a parlementaire is sent is not in all cases obliged to receive him.

He may take all the necessary steps to prevent the parlementaire taking advantage of his mission to obtain information.

第三節 軍事使者

458. 交戰雙方之交涉

過去，交戰雙方之交涉以舉白旗為始。現代，以發送無線電至敵軍陣營，和以航空器投擲訊息的方式來開始敵對雙方交涉之方式，則越形重要。

軍隊使用白旗時，表示願與敵方溝通。當升起白旗時，在國際法上僅有此含意，即表示升起白旗的一方，意在溝通休戰或投降事宜。若舉白旗僅屬於個人或少數人的行為，則可能謹代表此人或此少數人之投降意願。故，重要的是在採取重要的步驟之前，應合理的確認白旗是依敵方當局指揮官所指示而升起。

當敵軍升起白旗時，無須停止交火。當確認白旗是依敵方當局指揮官所指示而升起，白旗的出現需伴著或隨著當事一方完全的停火行為。指揮官命令升起白旗後，需立即指派一位或多位的軍事使者。

459. 軍事使者

軍事使者為戰場交戰雙方指揮官所指派，而為直接與該戰場敵方指揮官溝通或交涉而跨越敵方的界線的代理人。

460. 軍事使者不可侵犯

個人若被交戰一方授權與對方聯繫，以及其高舉白旗，則視為軍事使者。軍事使者有權不受侵犯，其陪同之號手、號兵或鼓手、旗手以及翻譯人員亦同。(海牙公約第32條)

461. 不准射擊軍事使者

不准射擊軍事使者，或其陪同人員。但，若此軍事使者或陪同人員在戰鬥過程中現身，以致於受傷或死亡者，不得以此為申訴或異議之理由。軍事使者必須選擇適當時機高舉旗幟，諸如軍事行動之空檔，以及需繞道以免進入危險區域。

462. 軍事使者之證書

軍事使者需有由指揮官所簽發之書面證書。

463. 軍事使者之接待

敵方指揮官無須無條件接待軍事使者。

In case of abuse, he has the right to detain the parlementaire temporarily. (HR, art. 33.)

464. Conditions for Receipt of Parlementaire

A commander may declare the formalities and conditions upon which he will receive a parlementaire and fix the hour and place at which he must appear. The present rule is that a belligerent may not declare beforehand, even for a specified period-except in case of reprisal for abuses of the flag of truce-that he will not receive parlementaires. An unnecessary repetition of visits need not be allowed.

While within the lines of the enemy, the parlementaire must obey all instructions given him. He may be required to deliver his message to a subordinate of the commander.

465. Detention of Parlementaire

In addition to the right of detention for abuse of his position, a parlementaire may be detained in case he has seen anything or obtained knowledge which may be detrimental to the enemy, or if his departure would reveal information on the movement of troops. He should be detained only so long as circumstances imperatively demand, and information should be sent at once to his commander as to such detention, as well as of any other action taken against him or against his party.

466. Loss of Inviolability

The parlementaire loses his rights of inviolability if it is proved in a clear and incontestable manner that he has taken advantage of his privileged position to provoke or commit an act of treachery. (HR, art. 34.)

467. Abuse of Flag of Truce

It is an abuse of the flag of truce, forbidden as an improper ruse under Article 23 (f), HR ([par. 52](#)), for an enemy not to halt and cease firing while the parlementaire sent by him is advancing and being received by the other party; likewise, if the flag of truce is made use of for the purpose of inducing the enemy to believe that a parlementaire is going to be sent when no such intention exists. It is also an abuse of a flag of truce to carry out operations under the protection accorded by the enemy to it and those accompanying it. An individual or a party acts treacherously in displaying a white flag indicative of surrender as a ruse to permit attack upon the forces of the other belligerent. An abuse of a flag of truce may authorize a resort to reprisals.

468. Neutral Areas

If it is anticipated that negotiations between belligerents may be prolonged, a neutralized area may by agreement of the parties be set aside for the site of the negotiations. The belligerents may agree that no combat activity will take place within or over the area and that forces will be detailed to maintain the security of the area. The area designated as neutral on maps interchanged by representatives of the belligerents may be marked with searchlights, balloons, and other devices to insure that it will not be attacked.

Section IV. CARTELS

敵方指揮官得採取一切必要手段以避免軍事使者刺探軍情。

若有濫用軍事使者身份之情事，敵方指揮官得戰時拘禁此人(海牙公約第 33 條)。

464. 接受軍事使者之條件

指揮官得宣布接受軍事使者之條件，並指定其出現的時間與地點。現行的規則是，除了報復濫用休戰旗外，交戰一方得不事先宣布不接受軍事使者，即使在指定的期間亦同。軍事使者無意義的重複造訪得拒絕之。

在敵軍界線內，軍事使者必須遵守對方的指令。軍事使者得依據指示遞交訊息給指揮官的下屬。

465. 軍事使者之拘禁

除濫用其地位外，軍事使者得因眼見或耳聞敵方軍情而遭受敵方拘禁，或若其離開將暴露軍隊動態而遭致拘禁。此人僅得受拘禁至情況允許為止，且軍事使者與隨同人員被拘禁之訊息以及處置方式與狀況，應立即通知其指揮官。

466. 不受侵犯權利之喪失

軍事使者若因明顯且無可置疑的利用其地位煽動或鼓勵叛變，則喪失其不可侵犯之權利。(海牙公約第 34 條)

467. 濫用休戰旗

如第 23 條 (f) (海牙公約第 52 條) 般濫用休戰旗是被禁止的，即當敵軍派遣軍事使者已被接受並開始前進時，敵軍並未停火。同樣的，若休戰旗被用來作為欺騙對方的策略時亦然。由敵方派遣且在保護狀態下之軍事使者與伴隨人員展開軍事行動，也屬於濫用休戰旗。個人或團體使用白旗詐降，以意圖攻擊交戰國的另一方是奸詐的行為。總之，濫用休戰旗可訴諸報仇。

468. 中立區

若交戰雙方認為將延長交涉，雙方得於協議之中立區域進行。交戰團體得同意雙方不得在中立區域與上空交火，雙方應維持此區域之安全。交戰雙方之代表應互換此中立區域之地圖並以探照燈、氣球和其他措施劃定，以確認不被攻擊。

第四節 交換俘虜

469. Cartels

In its narrower sense, a cartel is an agreement entered into by belligerents for the exchange of prisoners of war. In its broader sense, it is any convention concluded between belligerents for the purpose of arranging or regulating certain kinds of nonhostile intercourse otherwise prohibited by reason of the existence of the war. Both parties to a cartel are in honor bound to observe its provisions with the most scrupulous care, but it is voidable by either party upon definite proof that it has been intentionally violated in an important particular by the other party. (See [par. 197.](#))

Section V. CAPITULATIONS

470. Capitulation Defined

A capitulation is an agreement entered into between commanders of belligerent forces for the surrender of a body of troops, a fortress, or other defended locality, or of a district of the theater of operations. A surrender may be effected without resort to a capitulation.

471. Military Honor in Capitulations

Capitulations agreed upon between the contracting parties must take into account the rules of military honour.

Once settled, they must be scrupulously observed by both parties. (HR, art. 35.)

472. Powers of Commanders

Subject to the limitations hereinafter indicated, the commander of a body of troops is presumed to be duly authorized to enter into capitulations. In the case of a commander of a military force of the United States, if continued battle has become impossible and he cannot communicate with his superiors, these facts will constitute proper authority to surrender. If a commander of military forces of the United States surrenders unnecessarily and shamefully or in violation of orders from higher authority, he is liable to trial and punishment (see UCMJ, Art. 99 (2)). The fact that any commander surrenders in violation of orders or the law of his own State does not impair the validity of the surrender. A commanding officer's powers do not extend beyond the forces and territory under his command. Unless so authorized by his government, he does not possess power to bind his government to a permanent cession of the place or places under his command, or to any surrender of sovereignty over territory, or to any cessation of hostilities in a district beyond his command, or to agree to terms of a political nature or such as will take effect after the termination of hostilities.

473. Surrenders Concluded by Political Authorities

The surrender of a place or force may also be arranged by the political authorities of the belligerents without the intervention of the military authorities. In this case the capitulation may contain other than military stipulations.

474. Form of Capitulations

There is no specified form for capitulation. They may be concluded either orally or in writing, but in order to avoid disputes, they should be reduced to writing. The agreement should contain in precise terms every condition to be observed on either side, excepting such conditions as are clearly imposed by the laws of war. Details of time and procedure should be prescribed in the most exact and unequivocal language. Even in case of an unconditional surrender,

469. 交換俘虜

狹義上說，交換俘虜是種交戰雙方交換戰俘的協議。在廣義上說，交戰雙方為安排或管制戰爭所不禁止的某種非敵對的往來，所簽訂之協議。交換俘虜之雙方需誠懇以待，但若一方有意違反而被另一方確實掌握證據，則無效(參照本彙編第 197 段)。

第五節 投降協定

470. 投降協定之定義

投降協議是交戰雙方指揮官為軍隊、要塞或其他防衛區，或戰區之投降為目的所簽署的協議。投降亦得不簽署投降協定而生效。

471. 投降協定之軍人榮譽

雙方所簽署之投降協定，需考慮軍人榮譽之規則。

一旦協定簽署完成，須由雙方謹慎監督其執行。(海牙公約第 35 條)

472. 指揮官權限

基於下述規定，軍事指揮官被認為有權利簽署投降書。在美國，若戰鬥無法持續，且無法與其上司聯繫，此事實將足以構成投降要件。若美國軍事指揮官在無必要，且不體面或違反上級命令下而投降者，其應接受審判與刑罰(參照 USMJ 第 99 條 (2))。指揮官違反命令或其本國法律而自行投降，並不影響投降效力。指揮官之權限不得超越其指揮區域。除非被其本國政府所授權，此指揮官不得永久割讓其管轄下之某地或多數地域，或移交領土主權給交戰對方，或指示非其管轄下之區域應停戰，或同意具有政治性質，或同意休戰後使之生效的條件。

473. 由政治當局所簽署之投降書

地區或軍隊之投降協議亦得由交戰雙方政治當局，在排除軍方當局的意見下安排之。此時，投降協議得包括軍事投降以外的條件。

474. 投降書形式

投降協議並無固定形式。投降協議得以口頭或書面為之，但為避免紛爭起見，應化為書面形式。投降協議除應包括於戰爭法之條件外，應詳載每一項雙方皆可確認

when the terms are dictated by the victor, they should nevertheless be embodied in a written capitulation as soon as practicable.

475. Subjects Usually Regulated

In the capitulation (the instrument of surrender), the following subjects are usually dealt with, insofar as they are relevant to the circumstance of the particular surrender:

- a. The force or territory which is surrendered and the exact time at which the surrender is to take effect.
- b. Disposition of the enemy forces. A stipulation is normally included concerning the movements and administration of the surrendered force after the surrender. The provisions of the capitulation may, for example, require that the troops assemble at designated points or that they remain in their present positions. It is normally understood that the surrendered forces are to become prisoners of war. In the event both belligerents are parties to GPW, little or nothing more on that subject need be included in the capitulation. However, special circumstances, such as inability of the victor to guard, evacuate, and maintain large numbers of prisoners of war or to occupy the area in which enemy military forces are present, may justify the victorious commander in allowing the defeated force to remain in its present positions, to withdraw, or to disperse after having been disarmed and having given their paroles, provided that the giving of paroles is not forbidden by the laws of their own country and that they are willing to give their paroles (see [par. 185](#)).
- c. If a place or area is surrendered, provisions relative to the withdrawal of the defenders and the entering into possession of the victorious troops. These matters should be fixed in advance with precision.
- d. Disposition of medical personnel and the wounded and sick.
- e. Disposition of prisoners of war, civilian internees, and other persons held in the custody of the surrendered troops.
- f. Disarmament. Normally provisions are included to govern the disposition of enemy arms, equipment, and other property in the hands of the force which has surrendered. Officers are sometimes allowed to retain their side arms in addition to the articles they are allowed to keep under Article 18, GPW ([par. 94](#)).
- g. Prohibition of destruction by the surrendered forces of their materiel or installations, or communications, transportation facilities, and other public utilities in the area concerned.
- h. The provision of facilities and of information on such matters as minefield and other defense measures.
- i. The civil administration of the area concerned, if a place or area is surrendered.
- j. Orders given by the victor. It is normally stipulated that the orders of the victorious commander will be scrupulously carried out by the surrendered forces and that those who fail to comply with such orders or with the terms of the surrender itself will be severely punished.

476. Damage or Destruction of Property Prohibited After Surrender

From the moment of surrender the party surrendering has no right to demolish, destroy, or injure facilities, installations, or materiel under his control, unless otherwise stipulated in the capitulation. Nothing, however, prevents a commander who intends to surrender from carrying out such destruction, provided he does so before signing the capitulation.

的精確條件。時間與程序，應以最精確和明白的語言文字記載。即使在無條件投降的情形，由勝方口述投降條件時，亦應於最快時間內製作成書面文字。

475. 一般守則

在投降協議(降書)，一般需記載下述與投降有關的事項：

- a. 投降軍隊與區域，以及精確的投降生效時刻。
- b. 對軍隊的處置。投降協議一般規定包括投降後戰敗軍隊的行動與管理。投降協議條款得要求如軍隊於指定地點集結，或留置原處等條件。在交戰雙方為對待戰俘公約之簽約國時，該公約所規定事項得無需要詳列於投降協議中。但在某些特殊情況下，諸如戰勝國無法守衛、撤離和負擔大量戰俘，或戰勝國無足夠人力佔領敵軍所在地，得使戰勝國指揮官允許戰敗國軍隊在解除武裝、以及不違反其國家法律而自願宣誓後停止軍事活動，就地留置、撤退或解散。(參照本彙編第 185 段)
- c. 對已投降地區之敗軍撤退相關，以及戰勝國進入佔領之條款。此事項必須事前精確規範。
- d. 對醫護人員和傷病者之處置。
- e. 對戰俘、被拘禁之平民，和其他被敗軍所拘留之人員。
- f. 解除武裝。一般而言，條款包括管理敵軍武器、裝備，和其他由投降軍方所掌控之財產。亦得在日內瓦戰俘待遇公約第 18 條(本彙編第 94 段)所允許的條件下，允許其軍官保有輕兵器。
- g. 禁止戰敗軍摧毀其物資、裝備，或通訊、運輸設施，以及其他當地之公共設施。
- h. 地雷區與其他防禦措施之設施與資訊之條款。
- i. 投降地區當地民政治理之管理當局。
- j. 戰勝國之命令。一般規定戰敗國軍隊需謹慎的執行戰勝國指揮官的命令，且無法遵守前述命令或者投降條件者將被嚴厲的懲罰。

476. 投降後對財產損害或破壞之禁止

除非休戰協定有其他規定，從投降時刻起，投降者無權利拆除、破壞，或毀損其管制下之設施、設備或物料。

但，投降軍指揮官得在簽署休戰協定前實施前述之破壞。

477. Violation of Terms of a Capitulation

Violation of the terms of a capitulation by individuals is punishable as a war crime. If the violation is directed by the commander who capitulated or by higher authority, the other belligerent may denounce the capitulation and resume hostilities. Like action may also be taken if the capitulation was obtained through a breach of faith.

478. Unconditional Surrender

An unconditional surrender is one in which a body of troops gives itself up to its enemy without condition. It need not be effected on the basis of an instrument signed by both parties. Subject to the restrictions of the law of war, the surrendered troops are governed by the directions of the State to which they surrender.

Section VI. ARMISTICES

479. Definition

An armistice (or truce, as it is sometimes called) is the cessation of active hostilities for a period agreed upon by the belligerents. It is not a partial or temporary peace; it is only the suspension of military operations to the extent agreed upon by the parties.

480. Effect of Armistice

An armistice suspends military operations by mutual agreement between the belligerent parties. If its duration is not defined, the belligerent parties may resume operations at any time, provided always that the enemy is warned within the time agreed upon, in accordance with the terms of the armistice. (HR, art. 36.)

481. Armistice No Excuse for Lack of Vigilance

The existence of an armistice does not warrant relaxation of vigilance in the service of security and protection, or in the preparedness of troops for action, or exposing positions to the enemy.

482. Kinds of Armistice

An armistice may be general or local. The first suspends the military operations of the belligerent States everywhere; the second only between certain fractions of the belligerent armies and within a fixed radius. (HR, art. 37.)

483. General Armistices

General armistices are usually of a combined political and military character. They usually precede the negotiations for peace, but may be concluded for other purposes. Due to its political importance, a general armistice is normally concluded by senior military officers or by diplomatic representatives or other high civilian officials. If an armistice contains political terms, it must be made under authorization from the governments concerned or subject to approval by them.

484. Local Armistices

477. 違反投降協定之規定

個人若違反投降協定之規定則應受戰犯的處罰。若此行為來自投降軍指揮官或更高當局之授意，則對方得放棄休戰協定而重啟戰事。若非以誠實態度執行休戰協定，亦同。

478. 無條件投降

無條件投降為軍隊無條件屈服於敵方之意。無條件投降無須備妥雙方所簽署的文件。根據戰爭法的規定，投降的軍隊由戰勝國所管理。

第六節 休戰協定

479. 定義

休戰協定(有時稱為停戰)是雙方同意中斷進行之交戰狀態。此協定並非部份或暫時的和平，而僅僅在雙方所同意的範圍內擱置軍事行動。

480. 休戰協定之效果

透過敵對雙方的協議，休戰協定擱置軍事行動。若休戰協定無期限之規定，則交戰雙方在協定中相互同意的期間內有提出警告，得隨時展開戰鬥行為。

481. 缺乏警戒心的休戰

休戰狀態並不代表可放鬆有關安全與保護的警戒心，或放鬆軍隊戰開行動的準備，或將己方暴露於敵方。

482. 休戰的種類

休戰得為全面性或地區性。前者停止敵對雙方國家全數之軍事行動，後者則僅交戰部隊固定區域間實現。

483. 全面性休戰

全面性休戰通常同時具有政治與軍事性質。常為協議和平之先聲，但也可能導致其他目的。由於具有政治重要性，全面性休戰應由資深軍事長官或外交代表或高級民政官員締結。若休戰協議包含政治條件時，必須由相關政府授權，或尤其批准。

484. 地區性休戰

A local armistice suspends operations between certain portions of the belligerent forces or within a designated district of the theater of operations. A local armistice may be concluded by the military forces only, or by the naval forces only, or between a less number than all of the belligerents at war. Commanders of the forces concerned are presumed to be competent to conclude local armistices, and ratification upon the part of their governments is not required unless specially stipulated in the armistice agreement.

It is always a condition of a local armistice that a considerable part of the forces and the region of war must be included and that the cause for which it is concluded is not merely some pressing local interest, as in the case of a suspension of arms (see [next paragraph](#)), but one of a more general character, such as a general exhaustion of the opposing belligerent in one part of the theater of war.

485. Suspension of Arms

A suspension of arms is a form of armistice concluded between commanders of military forces for some local military purpose, such as to bury the dead, to collect the wounded, to arrange for exchange of prisoners, or to enable a commander to communicate with his government or superior officer.

486. Form of Armistice

No special form for an armistice is prescribed. It should, if possible, be reduced to writing, in order to avoid misunderstandings and for the purpose of reference should differences of opinion arise. It should be drafted with the greatest precision and with absolute clearness.

487. What Stipulations an Armistice Should Contain

Stipulations covering the following matters should be incorporated in an armistice:

a. Precise Date, Day, and Hour of Commencement of the Armistice. The precise date, day, and hour for the suspension of hostilities should also be stipulated. The effective times may be different in different geographical areas. An armistice commences, in the absence of express mention to the contrary, at the moment it is signed.

b. Duration of the Armistice. The duration may be for a definite or indefinite period. In case it is indefinite, a belligerent may resume operations at any time after notice. The terms and manner of giving such notice should be specified. If a term is fixed and no agreement has been made for prolonging it, hostilities may be resumed without notice at the expiration of the term in the absence of positive agreement to the contrary.

c. Principal Lines and All Other Marks or Signs Necessary To Determine the Locations of the Belligerent Troops. For this purpose maps with the lines indicated thereon may be attached to and made part of the armistice. Provision may be included for a neutral zone between the two armies. It is usually agreed that these lines are not to be crossed or the neutral zone entered except by parlementaires or other parties by special agreement for specified purposes, such as to bury the dead and collect the wounded.

d. Relation of the Armies With the Local Inhabitants. If it is desired to make any change during the armistice in the relations between the opposing forces and the peaceable inhabitants, this must be accomplished by express provision.

地區性休戰暫停交戰雙方或戰區內某地之軍事行動。地區性休戰得僅由陸軍、海軍，或由一部分作戰軍隊為之。除非在休戰協議中有特別規定，相關軍事指揮官有權簽訂地區性休戰協議，而無須其政府之批准。

通常，所謂「地區性休戰」的條件必須包括當地大部分軍隊和區域。同時，諸如暫停休戰（參見本彙編下段）的狀況，簽訂地區性休戰的原因並非僅基於當地之急迫利益，而更普遍的原因之一是戰區交戰對方的某一部份軍隊已經被殲滅。

485. 暫時休戰

戰時休戰為交戰雙方軍事指揮官，為某些地區性軍事理由的休戰形式之一，諸如埋葬死者、接運傷兵、安排交換戰俘，或讓指揮官與其政府或上司溝通。

486. 休戰形式

休戰並無固定形式。若可能的話，應以書面為之，以免誤導同時做為認知不同時參照用。其應以最可能之精確與清晰的文字記載。

487. 休戰協定應規定事項

休戰協定應包括以下事項：

a. 休戰開始的精確日期、日子、和時間。 交戰雙方暫停戰鬥的精確日期、日子、和時間，應予以規定。各戰場的有效時間容或有所不同。除非無明示其他安排，休戰從簽訂的時刻立即生效。

b. 休戰期間。 休戰得為有限期與無限期。在無限期場合，交戰一方得在經過通知後隨時恢復戰鬥行為。所稱「通知」的條件與方式，亦應詳細列出。若休戰條件係屬有限期，亦無延長休戰之既定協議，也無其他無明確規定，得在時限屆滿後的未通知下隨時恢復戰鬥。

c. 足以決定交戰雙方位置的主要停戰線與其他標示。 為此原因，休戰協議應附有一份記載交戰雙方位置資料的地圖。休戰協議得包括雙方的中立區域。前述停戰線不得交叉，也不得間雜中立區域，除非有軍事使者或為特別目的而經由特別協議所規定，諸如埋葬死者、和收集傷患。

d. 交戰雙方軍隊與當地住民之關係。 在休戰期間若意圖變更與交戰雙方及當地和平住民的關係，應以明文

Otherwise these relations remain unchanged, each belligerent continuing to exercise the same rights as before, including the right to prevent or control all intercourse between the inhabitants within his lines and persons within the enemy lines.

e. Acts To Be Prohibited During the Armistice. In the absence of stipulations to the contrary, each belligerent is authorized to make movements of troops within his own lines, to receive reinforcements, to construct new fortifications, installations, and bases, to build and repair transportation and communications facilities, to seek information about the enemy, to bring up supplies and equipment, and, in general, to take advantage of the time and means at his disposal to prepare for resuming hostilities.

f. Disposition of Prisoners of War. If it is desired that prisoners of war and civilian internees should be released or exchanged, specific provisions in this regard should be made. (See GPW, art. 118; [par. 198](#) herein.)

g. Consultative Machinery. It is generally desirable to provide for the establishment of a commission, composed of representatives of the opposing forces, to supervise the implementation of the armistice agreement. Additional commissions, composed of representatives of the belligerents or of neutral powers or both, may be constituted to deal with such matters as the repatriation of prisoners of war.

488. Political and Military Stipulations in General Armistices

In addition to the provisions set forth in the preceding paragraph, general armistices normally contain a number of political and military stipulations concerning such matters as the evacuation of territory; disposition of aircraft and shipping; cooperation in the punishment of war crimes; restitution of captured or looted property; communications facilities and public utilities; civil administration; displaced persons; and the dissolution of organizations which may subvert public order.

489. Intercourse in Theater of Operations

a. Treaty Provision.

It rests with the contracting parties to settle, in the terms of the armistice, what communications may be held in the theatre of war with the inhabitants and between the inhabitants of one belligerent State and those of the other. (HR, art. 39.)

b. Rule in Absence of Stipulation. If nothing is stipulated, the intercourse remains suspended, as during actual hostilities.

490. Notification of Armistice

An armistice must be notified officially and in good time to the competent authorities and to the troops. Hostilities are suspended immediately after the notification, or on the date fixed. (HR, art. 38.)

491. When Binding

An armistice is binding upon the belligerents from the time of the agreed commencement, but the officers of the armies are responsible only from the time when they receive official information of its existence.

規定之。否則，此關係應予以維持不得改變，而敵對雙方維持先前權利，包括避免或管制當地住民與敵方住民間的來往權利。

e. 休戰中之禁止行為。 若休戰協議未規定，各交戰方得在己方區域內調動軍隊、增援、構築防禦工事、設施和基地、建造與修復交通和通訊設備、收集敵方情報、補給，以及通常獲取為再度恢復戰鬥所需的時間和手段。

f. 戰俘的處置。 若欲釋放或交換戰俘和平民拘禁者，應以個別條款明文規定之。(參見日內瓦戰俘待遇公約第 118 條、本彙編第 198 段)

g. 諮詢機制。 通常，應建立包括敵方代表在內的委員會，以監督休戰協議之執行。另應建立包括敵方代表、或中立國代表或兩者兼具之特別委員會，以處理諸如戰俘交還等問題。

488. 一般休戰中之政治與軍事條款

除前述條款外，為維持公共秩序，全盤休戰協議通常包括一系列與戰區撤退、飛機與船艦之處置、對戰犯的懲罰、擄獲物或劫掠財產之賠償、通訊設備與公共設施、民政治理、離散人員重新安置，和解散意圖破壞公共秩序之組織等有關的政治與軍事條款。

489. 戰區住民行動與來往

a. 條約款項。

有關確定戰區內住民，以及敵對雙方國家住民間通訊方式之條件與方式，雙方應簽訂協議並列入休戰協議中。(海牙公約第 39 條)

b. 未規定時之處理原則。 若無規定，雙方間居民之往來應如同實際戰鬥中般，予以擱置或停止。

490. 休戰之通知

休戰協議需正式及適時的通知軍事當局與其軍隊。敵對狀態在接獲此通知後應立即或在設定之日停止。(海牙公約第 38 條)

491. 必須遵守的時間

敵對雙方應在休戰協議開始時遵守，但軍官應在接獲正式休戰通知後始負起責任。

492. Denunciation of Armistice

Any serious violation of the armistice by one of the parties gives the other party the right of denouncing it, and even, in cases of urgency, of recommencing hostilities immediately. (HR, art. 40.)

493. Denunciation Must Not Involve Perfidy

An armistice, like other formal agreements between belligerents, engages the honor of both parties for the exact and complete fulfillment of every obligation thereby imposed. It would be an outrageous act of perfidy for either party, without warning, to resume hostilities during the period of an armistice, with or without a formal denunciation thereof, except in case of urgency and upon convincing proof of intentional and serious violation of its terms by the other party. Nevertheless, under the article last above quoted, upon definite proof of such a violation of the armistice, if the delay incident to formal denunciation and warning seems likely to give the violator a substantial advantage of any kind, the other party is free to resume hostilities without warning and with or without a formal denunciation.

494. Violations of Armistice by Individuals

a. Treaty Provision.

A violation of the terms of the armistice by private persons acting on their own initiative only entitles the injured party to demand the punishment of the offenders or, if necessary, compensation for the losses sustained. (HR, art. 41.)

b. *Private Individuals Defined.* A private individual, in the sense of the foregoing article, refers to any person, including a member of the armed forces, who acts on his own responsibility.

c. *Effect of Violation of Armistice by Individuals.* Violation of the terms of an armistice by individuals is punishable as a war crime. Such violations by individual soldiers or subordinate officers do not justify denunciation of the armistice unless they are proved to have been committed with the knowledge and actual or tacit consent of their own government or commander. Consent may be inferred in the event of a persistent failure to punish such offenders.

- 資料來源 <http://www.globalsecurity.org/military/library/policy/army/fm/27-10/Ch7.htm>

註：

略語

- H. III 海牙第三公約 · 1907.10.18 · 有關開戰部分。
HR. 海牙第四公約 · 1907.10.18 · 有關陸戰法律與習慣。
H. V. 海牙第五公約 · 1907.10.18 · 有關中立國與陸戰中人員之權利與義務。

492. 休戰協議之廢止

個人或少部分團體嚴重違反休戰協議時，對方有權廢止休戰協議，而在緊急狀況下，戰鬥得立即重新開始 (海牙公約第 40 條)。

493. 休戰協議之廢止不得背信

如同其他交戰雙方簽訂的協定，雙方應秉持誠信原則，確實遵守休戰協議之義務規定。若未經警告即在休戰期間內恢復戰鬥，係屬背信，也是極為可恥的行為。在緊急狀況或確認對方有嚴重違反協議之意圖時，無須正式通知廢止休戰協議。然而，基於前段海牙公約條款，確認有違反休戰協議之意圖，若認為延遲正式通知廢止的訊息或警告，似乎給予違反者優勢，對方得不經警告也無須經正式通知隨時恢復戰鬥。

494. 個人違反休戰協議

a. 條約的條款。

攸關個人自主違反休戰條款時，受害一方僅得要求對於此個人進行懲罰，或必要時要求賠償。(海牙公約第 41 條)

b. *個人的定義。* 依據前述海牙條款，所謂的「個人」包括對自己行為應負責之平民與武裝軍人在內。

c. *個人違反休戰協議之效力。* 個人違反休戰條款時將被處以戰犯的懲罰。此違反休戰之軍人或其下屬並不導致休戰無效，除非可證明其違犯行為獲得其政府或指揮官之實際或緘默之同意。持續不懲處違反之個人，可視為同意其行為。

H. IX. 海牙第九公約， 1907.10.18， 有關戰時海軍砲擊。
H. X. 海牙第十公約， 1907.10.18， 有關改自日內瓦海戰公約。
GPW 1929. 日內瓦戰俘公約， 1929.7.27， 有關改善戰俘待遇。
GWS 1929. 日內瓦戰場改善傷病兵狀況公約， 1929.7.27。
the Roerich Pact 保障藝術與科學機構與歷史博物館條約， 1985.4.15。
GWS. 日內瓦改善陸戰傷病兵狀況公約， 1949.8.12。
GWS Sea 日內瓦改善海戰傷病兵狀況公約， 1949.8.12。
GPW 日內瓦戰俘待遇公約， 1949.8.12。
GC 日內瓦戰時保護平民公約， 1949.8.12。

occupant 佔領者或佔領權 (國)
principal occupying power 主要佔領權 (國)
subordinate occupying power 次要佔領權 (國)
occupied territory 佔領地或佔領區域
belligerent occupant 交戰國佔領者
occupying forces 佔領軍
highest military authority 最高軍事當局
belligerent 交戰國之一方
belligerents 交戰國雙方
co-belligerent 戰爭中之同盟國
UCMJ 軍事統一法典

military commissions 軍事法庭
military government courts 軍事政府法院
military tribunals 軍事裁判所
provost courts 軍事簡易庭
(general) courts martial (一般) 軍人受軍法審判或軍法審判庭