

美國陸軍戰場手冊 (Field Manual) 彙編

FM 27-10 第六章 佔領

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CHAPTER 6 OCCUPATION

第六章 佔領

Section I. GENERAL

351. Military Occupation

Territory is considered occupied when it is actually placed under the authority of the hostile army.

The occupation extends only to the territory where such authority has been established and can be exercised. (HR, art. 42.)

352. Invasion Distinguished

a. Nature of Invasion. If resistance is offered, the state of invasion within any portion of a belligerent's territory corresponds with the period of resistance. If the invasion is unresisted, the state of invasion lasts only until the invader has taken firm control of the area with the intention of holding it. Invasion is not necessarily occupation, although occupation is normally preceded by invasion and may frequently coincide with it. An invader may attack with naval or air forces or its troops may push rapidly through a large portion of enemy territory without establishing that effective control which is essential to the status of occupation. Small raiding parties or flying columns, reconnaissance detachments or patrols moving through an area cannot be said to occupy it. Occupation, on the other hand, is invasion plus taking firm possession of enemy territory for the purpose of holding it.

b. Application of Law of Occupation. The rules set forth in this chapter apply of their own force only to belligerently occupied areas, but they should, as a matter of policy, be observed as far as possible in areas through which troops are passing and even on the battlefield.

353. Subjugation or Conquest Distinguished

Belligerent occupation in a foreign war, being based upon the possession of enemy territory, necessarily implies that the sovereignty of the occupied territory is not vested in the occupying power. Occupation is essentially provisional.

On the other hand, subjugation or conquest implies a transfer of sovereignty, which generally takes the form of annexation and is normally effected by a treaty of peace. When sovereignty passes, belligerent occupation, as such, of course ceases, although the territory may and usually does, for a period at least, continue to be governed through military agencies.

354. Friendly Territory Subject to Civil Affairs Administration Distinguished

第一節 通則

351. 軍事佔領

佔領地是實際上被敵軍組織所控制之一塊區域。

佔領範圍僅及於此當局建立與實際控制的區域。(海牙公約第 42 條)

352. 確實的入侵

a. 入侵的性質。 若遭遇抵抗，則在交戰區域任一地方的抵抗期間內，都視為入侵狀態。若未遭遇抵抗，入侵狀態僅持續到基於佔有意志之入侵者完全掌握此地區為止。雖然通常入侵的結果會導致佔領，但入侵並不必然等同於佔領。有時入侵者會以其海軍或空軍武力或軍隊，快速的進逼大部分的領土，而不建立對佔領來說重要要件的有效控制。透過小型入侵軍隊或游擊隊，偵察小隊或巡邏隊的行為，並不能稱為佔領。另一方面來說，佔領是入侵然後牢牢掌控敵軍領土並意圖維持此掌控的型態。

b. 佔領法的適用。 本章的原則僅適用於武裝交戰國的佔領區域，但亦得在政策許可下，擴張適用至軍隊通過之地區與戰場。

353. 確實的平定或征服

對外戰爭中的交戰國佔領，基於佔有敵方領土，意味被佔領地的主權不授予佔領國。佔領本質上屬於暫時性質。

另一方面，平定或征服也會導致主權的移轉，一般須以合併國土的形式且透過和平條約使之生效。當主權轉讓時，前述交戰國佔領當然停止，但佔領地通常繼續被軍事機構所治理一段時間。

354. 民政治理當局下的友好領土之辨別

Civil affairs administration is that form of administration established in friendly territory whereby a foreign government pursuant to an agreement, expressed or implied, with the government of the area concerned, may exercise certain authority normally the function of the local government.

Such administration is often established in areas which are freed from enemy occupation. It is normally required when the government of the area concerned is unable or unwilling to assume full responsibility for its administration. Territory subject to civil affairs administration is not considered to be occupied.

If circumstances have precluded the conclusion of a civil affairs agreement with the lawful government of allied territory recovered from enemy occupation or of other territory liberated from the enemy, military government may be established in the area as a provisional and interim measure (see [par. 12b](#) and [c](#)). A civil affairs agreement should, however, be concluded with the lawful government at the earliest possible opportunity.

355. Occupation as Question of Fact

Military occupation is a question of fact. It presupposes a hostile invasion, resisted or unresisted, as a result of which the invader has rendered the invaded government incapable of publicly exercising its authority, and that the invader has successfully substituted its own authority for that of the legitimate government in the territory invaded.

356. Effectiveness of Occupation

It follows from the definition that belligerent occupation must be both actual and effective, that is, the organized resistance must have been overcome and the force in possession must have taken measures to establish its authority. It is sufficient that the occupying force can, within a reasonable time, send detachments of troops to make its authority felt within the occupied district. It is immaterial whether the authority of the occupant is maintained by fixed garrisons or flying columns, whether by small or large forces, so long as the occupation is effective. The number of troops necessary to maintain effective occupation will depend on various considerations such as the disposition of the inhabitants, the number and density of the population, the nature of the terrain, and similar factors. The mere existence of a fort or defended area within the occupied district, provided the fort or defended area is under attack, does not render the occupation of the remainder of the district ineffective. Similarly, the mere existence of local resistance groups does not render the occupation ineffective.

357. Proclamation of Occupation

In a strict legal sense no proclamation of military occupation is necessary. However, on account of the special relations established between the inhabitants of the occupied territory and the occupant by virtue of the presence of the occupying forces, the fact of military occupation, with the extent of territory affected, should be made known. The practice of the United States is to make this fact known by proclamation.

358. Occupation Does Not Transfer Sovereignty

Being an incident of war, military occupation confers upon the invading force the means of exercising control for the period of occupation. It does not transfer the sovereignty to the occupant, but simply the authority or power to exercise some of the rights of sovereignty. The exercise of these rights results from the established power of the occupant and from the necessity of maintaining law and order, indispensable both to the inhabitants and to the occupying force.

民政治理當局是一種友好佔領狀態下，依據與外國政府的協議，無論明示或暗示，而在此地區建立的組織。此民政治理當局得執行通常為地方合法政府功能的職權。

此民政治理當局通常在解除敵軍佔領的狀態下建立。若此地區的原合法政府無力或無意承擔治理的責任時，在一般情形下需要建立民政治理當局。在民政治理體系下管轄的領土並不視為(交戰國)佔領。

若情況不允許與自敵軍解放領土的合法政府簽訂民政治理協議時，得在此地建立具有臨時與過渡性質的軍事政府來因應(參照本彙編第 12 段 b 和 c)。但，應在最短期間最可能的條件下，與當地合法政府簽訂民政治理協議。

355. 佔領的事實

軍事佔領是一種事實。其前提是敵意入侵，無論遭受抵抗與否，結果是使得被侵略的政府無法公開執行其職權，且入侵者成功的取代當地具有正當性的政府。

356. 佔領的有效性

根據定義交戰國佔領必須是實際且有效執行。換言之，有組織性的抵抗必須已經平定，而且佔領軍隊必須實施了管轄與行使管理。佔領軍可在合理的時間之內，在佔領區域內派遣部隊以建立威權。只要佔領是有效的，無論佔領管轄是由固定的衛戍部隊或游擊隊，也無論是由小型或大型軍隊來維持者都算數。維持有效佔領的軍隊數量，端賴以下的考慮，包括住民之分佈、人口的數量與密度、地勢的性質，以及其他類似元素。在佔領區內僅存的碉堡或防衛區，只要若此碉堡或防衛區遭受攻擊，並不會使得其餘部份的佔領無效。同樣的，僅僅地方反抗團契的存在，並不會使得佔領無效。

357. 宣告佔領

在嚴格的法律標準下，軍事佔領並不需要經過宣告。但是，由於佔領區住民與佔領軍存在著特別關係，軍事佔領某地區的事實，應公告周知。美國的實務是要將佔領的事實宣告出來的。

358. 佔領並不移轉主權

基於涉及戰爭事務，軍事佔領給予入侵軍隊在佔領期間執行控制領地的權力。但這並不移轉主權到佔領者手中，只是賦予此當局執行某些主權的權利。執行此類權利源自於原佔領

It is therefore unlawful for a belligerent occupant to annex occupied territory or to create a new State therein while hostilities are still in progress. (See GC, art. 47; [par. 365](#) herein.)

359. Oath of Allegiance Forbidden

It is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile Power. (HR, art. 45.)

360. Maintenance of Occupation

Occupation, to be effective, must be maintained. In case the occupant evacuates the district or is driven out by the enemy, the occupation ceases. It does not cease, however, if the occupant, after establishing its authority, moves forward against the enemy, leaving a smaller force to administer the affairs of the district. Nor does the existence of a rebellion or the activity of guerrilla or para-military units of itself cause the occupation to cease, provided the occupant could at any time it desired assume physical control of any part of the territory. If, however, the power of the occupant is effectively displaced for any length of time, its position towards the inhabitants is the same as before occupation.

361. Termination of Occupation

The law of belligerent occupation generally ceases to be applicable under the conditions set forth in [paragraphs 353](#) and [360](#). However, with respect to the provisions of GC alone, Article 6 of that Convention provides:

In the case of occupied territory, the application of the present Convention shall cease one year after the general close of military operations; however, the Occupying Power shall be bound, for the duration of the occupation, to the extent that such Power exercises the functions of government in such territory, by the provisions of the following Articles of the present Convention; [1 to 12](#), [27](#), [29 to 34](#), [47](#), [49](#), [51](#), [52](#), [53](#), [59](#), [61 to 77](#), [143](#).

Section II. ADMINISTRATION OF OCCUPIED TERRITORY

362. Necessity for Military Government

Military government is the form of administration by which an occupying power exercises governmental authority over occupied territory. The necessity for such government arises from the failure or inability of the legitimate government to exercise its functions on account of the military occupation, or the undesirability of allowing it to do so. (See [par. 12](#), which discusses military government, and [par. 354](#), dealing with civil affairs administration.)

363. Duty to Restore and Maintain Public Order

The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country. (HR, art. 43.)

364. Occupation Costs

者之建制權力，以及源自於維持法律與秩序、係對於當地住民和佔領國所不可或缺者。

是故交戰佔領國在戰鬥進行中兼併佔領地，或在那裡建立新國家是不合法的。(GC 第 47 條、本彙編第 365 段)

359. 禁止效忠宣誓

禁止強迫佔領地的住民去宣誓效忠敵對國 (HR 第 45 條)。

360. 佔領的持續

為有效起見，佔領必須持續。若佔領者從某一地區撤退，或被敵軍逐出，佔領就終止。但是，若佔領者已建立其威權，並繼續挺進對抗敵軍而僅留一部份軍隊治理此地區，佔領並不算終止。若佔領者可隨時對佔領區任一部份採取實際控制，即使僅有叛軍或游擊隊或準軍事部隊的存在，也不意味佔領的終止。但若佔領者的權力被長時期擱置或取代，其對於住民的地位與佔領前一樣。

361. 佔領的終止

實務上，通常依據本彙編第 353 段與第 360 段中的條件規定交戰佔領在法律上的終止。但有關日內瓦戰時保護平民公約的條款與法第 6 條：

在佔領地區有關本公約的適用方面，(交戰國) 佔領將在軍事行動結束之後的一年後終止。但是，在佔領期間佔領國應遵循本公約 1-12、27、29-34、[47](#)、49、51、52、53、59、61-77、143 執行其當地政府的權力。

第二節 佔領區域的治理

362. 軍事政府的必要性

軍事政府是佔領軍對於佔領地區執行政府職權的管理當局型態。對於此種政府的必要性，是由於軍事佔領導而致原來當地合法政府已潰散或不能執行自己的職權，或狀況不允許時佔領軍不欲其執行職權。(請參見本彙編第 12 段論軍事政府，以及第 354 段處理民政治理的條文)

363. 恢復與維持公共秩序的義務

當原來具有正當性政府的權力，事實上交給佔領者手中時，除非被情況所制止，後者必須盡全力恢復和保證該地區的公共秩序與安全，同時遵守該地區已生效的法律。(HR 第 43 條)

364. 佔領的花費

The economy of an occupied country can only be required to bear the expenses of the occupation, and these should not be greater than the economy of the country can reasonably be expected to bear.

365. Inviolability of Rights

Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory. (GC, art. 47.)

366. Local Governments Under Duress and Puppet Governments

The restrictions placed upon the authority of a belligerent government cannot be avoided by a system of using a puppet government, central or local, to carry out acts which would be unlawful if performed directly by the occupant. Acts induced or compelled by the occupant are nonetheless its acts.

367. Functions of Government

a. Paramount Authority of Occupant. The functions of the hostile government--whether of a general, provincial, or local character--continue only to the extent they are sanctioned by the occupant.

b. Functions of Local Government. The occupant may, while retaining its paramount authority, permit the government of the country to perform some or all of its normal functions. It may, for example, call upon the local authorities to administer designated rear areas, subject to the guidance and direction of the occupying power. Such action is consistent with the status of occupation, so long as there exists the firm possession and the purpose to maintain paramount authority.

368. Nature of Government

It is immaterial whether the government over an enemy's territory consists in a military or civil or mixed administration. Its character is the same and the source of its authority the same. It is a government imposed by force, and the legality of its acts is determined by the law of war.

369. Local Law and New Legislation

The penal laws of the occupied territory shall remain in force, with the exception that they may be repealed or suspended by the Occupying Power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention. Subject to the latter consideration and to the necessity for ensuring the effective administration of justice, the tribunals of the occupied territory shall continue to function in respect of all offences covered by the said laws.

The Occupying Power may, however, subject the population of the occupied territory to provisions which are essential to enable the Occupying Power to fulfil its obligation under the present Convention, to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property of the occupying forces or administration, and likewise of the establishments and lines of communication used by them. (GC, art. 64.)

被佔領地區的國計民生，只能用來支應佔領之花費，同時此項花費不得大於原地區合理預期的規模。

365. 不可侵犯的權利

本公約所賦予在佔領地內之被保護人之各項利益，均不得因佔領領土之結果引起該地制度或政府之變更，或因被佔領地當局與佔領國所訂立之協定，或因佔領國兼並佔領地之全部或一部，而在任何情況下或依任何模式加以剝奪。(GC 第 47 條)

366. 在傀儡政權下之地方政府

對交戰國佔領政府所規定或限制的行為，該行為若佔領者直接下令執行者亦屬於違法，不得透過設立中央級或地方級的傀儡政府模式規避之。換言之，佔領者所引導或強迫的行為，仍舊屬於佔領者的行為。

367. 政府的功能

a. 最高佔領當局。 無論是一般性的、省級的或地方性的政府，僅在佔領者的批准下繼續實施敵對政府的功能。

b. 地方政府的功能。 佔領者以其最高當局的立場，得指定當地國政府執行部份或所有的正常功能。舉例而言，可以在佔領權的指導與指揮下，指定地方當局管理後方區域。只要穩固的掌控以及意在維持最高當局的意志，則前述治理行為與佔領地位一致。

368. 政府的性質

佔領軍的政府無論是軍事性質、民政治理性質，或合併性質之政府型態都無關緊要。其性質是完全一致，且其權力來源也是相同。此為因武力所建立的政府，其合法性由戰時國際法所決定。

369. 地方法律與新的立法部門

佔領地之刑事法規應繼續有效，但遇該項法規構成對佔領國安全之威脅或對本公約實行之障礙時，佔領國得予以廢除或停止。在后者之考慮及保證有效的司法之需要之限制下，佔領地之法庭對於上述法規涉及之一切罪行，應繼續執行職務。

但佔領國得使佔領地居民服從該國為執行其在本公約下所負之義務，維持該地有秩序之統治，與保證佔領國、佔領軍、與行政機關之人員及財產，以及其所使用之設置與交通線之安全所必要之規定 (GC 第 64 條)。

370. Laws in Force

In restoring public order and safety, the occupant will continue in force the ordinary civil and penal (criminal) laws of the occupied territory except to the extent it may be authorized by Article 64, GC (par 369), and Article 43, HR (par. 363), to alter, suspend, or repeal such laws (see also HR art. 23 (h); par. 372 herein; and GC, art. 51; par. 418 herein). These laws will be administered by the local officials as far as practicable. Crimes not of a military nature and not affecting the occupant's security are normally left to the jurisdiction of the local courts.

371. Nature of Laws Suspended or Repealed

The occupant may alter, repeal, or suspend laws of the following types:

- a. Legislation constituting a threat to its security, such as laws relating to recruitment and the bearing of arms.
- b. Legislation dealing with political process, such as laws regarding the rights of suffrage and of assembly.
- c. Legislation the enforcement of which would be inconsistent with the duties of the occupant, such as laws establishing racial discrimination.

372. Prohibition as to Rights and Rights of Action

It is especially forbidden * * * to declare abolished, suspended, or inadmissible in a court of law the rights and actions of the nationals of the hostile party. (HR, art. 23, par. (h).)

373. Suspension of Ordinary Courts

The ordinary courts of justice should be suspended only if:

- a. Judges and magistrates abstain from fulfilling their functions (see GC, art. 54; par. 422 herein); or
- b. The courts are corrupt or unfairly constituted; or
- c. Local judicial administration has collapsed during the hostilities preceding the occupation and the occupant must set up its own courts to ensure that offenses against the local laws are properly tried.

In such cases, the occupant may establish courts of its own and make this measure known to the inhabitants.

374. Immunity of Occupation Personnel From Local Law

Military and civilian personnel of the occupying forces and occupation administration and persons accompanying them are not subject to the local law or to the jurisdiction of the local courts of the occupied territory unless expressly made subject thereto by a competent officer of the occupying forces or occupation administration. The occupant

370. 有效的法律

除非依據日內瓦戰時保護平民公約第 64 條 (本彙編第 369 段) 以及海牙公約第 43 條 (本彙編第 363 段) 能予以改變、擱置或撤銷，否則為恢復公共秩序與安全起見，佔領者應讓佔領區的普通民法與刑法繼續運用且有效。(請參照海牙公約第 23 條 (b) 及本彙編本彙編第 372 段、以及日內瓦戰時保護平民公約第 51 條、及本彙編第 418 段)。此等法律應儘可能由地方官員管理之。不屬於軍事性質的刑事犯罪，且不影響佔領者的安全，名義上應由地方法庭所管轄。

371. 法律的擱置與撤銷

佔領者得更改、撤銷或擱置下述型態之法律。

- a. 制訂威脅到佔領者安全的法律，諸如與徵兵有關以及允許攜帶武器等。
- b. 制訂有關政治過程的法律，諸如與投票權和集會權有關者。
- c. 繼續實施與佔領者義務不相符合的法律，諸如種族差別待遇者。

372. 權利禁止和訴訟權利

對於敵國國民的權利與行為給予：宣告廢除、擱置，或不承認其能接受法院審判與訴訟程序，此為特別禁止事項的。(海牙公約第 23 條 (b))

373. 擱置一般法庭

在以下條件下，得擱置普通法庭：

- a. 法官或地方文官拒絕履行其職務 (參照日內瓦戰時保護平民公約第 54 條、本彙編第 422 段) ；或
- b. 法庭貪污橫行或係屬非公義的組成，或
- c. 在先前的佔領戰鬥中若地方司法體系已崩潰，則佔領者必須自行建立法庭以確保違法者接受適當的審判。

在此類情況下，佔領者得建立自己的法庭，且必須對住民公告周知。

374. 佔領人員豁免地方法律

除佔領軍或佔領當局之有權者的明示以外，佔領軍和佔領當局的軍職與文職，以及其附屬人員不受當地法律或佔領區當地法庭所管轄。佔領軍應注意：適當的實體法仍適用此等人

should see to it that an appropriate system of substantive law applies to such persons and that tribunals are in existence to deal with civil litigation to which they are parties and with offenses committed by them.

375. Freedom of Movement

The occupant may withdraw from individuals the right to change their residence, restrict freedom of internal movement, forbid visits to certain districts, prohibit emigration and immigration (but see GC, art. 48; [par. 381](#) herein), and require that all individuals carry identification documents.

376. Commercial Restrictions

The occupant has the right to regulate commercial intercourse in the occupied territory. It may subject such intercourse to such prohibitions and restrictions as are essential to the purposes of the occupation. The commander of the occupying forces will usually find it advisable to forbid intercourse between the occupied territory and the territory still in the possession of the enemy.

377. Censorship

The belligerent occupant may establish censorship of the press, radio, theater, motion pictures, and television, of correspondence, and of all other means of communication. It may prohibit entirely the publication of newspapers or prescribe regulations for their publication and circulation. The occupant is not required to furnish facilities for postal service, but may take charge of them itself, especially if the officials of the occupied district fail to act or to obey its orders.

378. Means of Transportation

The belligerent occupant exercises authority over all means of transportation, both public and private, within the occupied district, and may seize them and regulate their operation.

- 資料來源 <http://www.globalsecurity.org/military/library/policy/army/fm/27-10/Ch6.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。
- 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。

士，而既存的法庭可處理前述人士為訴訟當事人的民事訴訟案件。

375. 遷徙自由

佔領者得撤銷個人住所遷徙自由的權利、限制區域內行動自由、限制造訪特定地區、禁止移出與移入活動 (但請參照日內瓦戰時保護平民公約第 48 條、本彙編第 381 段) · 以及要求所有居民攜帶身分證明文件。

376. 商業限制

佔領者得規範佔領區域內之商業交易。若商業交易影響佔領目的時，得予以禁止或限制之。佔領軍司令通常會禁止佔領區域與敵軍地區間之商業交易。

377. 審查制度

交戰國佔領者得審查新聞、廣播、劇場、電影，和電視，以及信件、和其他一切通訊模式。亦得全然禁止報紙的出版，或限制訂閱、傳閱或其他流通方式。佔領者無須建立郵遞服務，但亦得全盤自行控制，特別是在佔領區域有關當局無法或不願意執行或遵循佔領者命令時。

378. 運輸模式

交戰國佔領者得在佔領區域內，行使其職權至包括公共與私人的所有運輸工具，並且得攔獲與規製其運轉。

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