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Armistice

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A. General

1 An armistice is an agreement concluded between two or more States waging war against each other. The expression is not used in non-international armed conflicts. The purport of an armistice agreement has undergone a radical change in the last century. Until the World Wars, an armistice meant an agreement designed to bring about a mere → *suspension of hostilities* between belligerent parties who remained locked in a state of war with each other, and the expression was synonymous with truce. In contemporary international law, the locution employed in the general practice of States for a suspension of hostilities is → *ceasefire* (or truce). As for armistice, its meaning has been transformed from suspension of hostilities to termination of war, without, however, introducing peace in the full sense of that term (see paras 11–15 below).

2 Semantically, Arts 36–41 Hague Regulations Respecting the Laws and Customs of War on Land annexed to the 1899 Convention with Respect to the Laws and Customs of War by Land and to the 1907 Convention concerning the Laws and Customs of War on Land, ('Hague Regulations') reflect the pre-existing State practice in this domain. Art. 36 Hague Regulations defines an armistice as a suspension of military operations by mutual agreement between the belligerent parties, either for a fixed period or without an expiry date. Under Art. 37 Hague Regulations, an armistice may be general or local in character (see para. 27 below). Arts 40–41 Hague Regulations focus on identifying violations of an armistice that warrant resumption of hostilities, with or without advance notice.

3 Arts 36–41 Hague Regulations have to be read today as applicable to ceasefire, rather than to armistice. A modern armistice agreement divests the parties of the right to renew military operations at any time and under any circumstances whatsoever. By putting an end to war, an armistice today does not brook resumption of hostilities as an option.

4 The evolution in the status of armistice was noted in 1976 by the arbitrator Lalive in the arbitral case *Dalmia Cement Ltd v National Bank of Pakistan* of the International Chamber of Commerce. The arbitrator said here (at 628):

Armistice agreements, as a general rule, do not mean the end of the state of war, although recent practice, here too, seems to be changing the traditional rules. However that may be, it is clear that 'an armistice agreement may be capable of interpretation as showing that both parties intended not only a cessation of hostilities but also the termination of the state of war between them'. (Quotation from McNair and Watts 15)

In reality, the practice of States demonstrates that every single instrument concluded since World War II—when designated by the Contracting Parties as an 'armistice'—conveyed the intention of the parties not just to suspend hostilities but to terminate the state of war.

B. The Transformation of the Construct of Armistice

5 The transformation of the concept of armistice has its origins in the armistices which brought about the termination of World War I. A close look at the most famous armistice—the armistice with Germany of 11 November 1918—discloses far-reaching obligations undertaken by Germany that effectively barred the way for it to resume hostilities. The victorious Allied and Associated Powers solely reserved to themselves the prerogative of resorting to force, in case of breach of the armistice conditions by Germany. Initially concluded for a fixed period, the armistice was later extended indefinitely. Of course, peace with Germany came about only as a result of the → *Versailles Peace Treaty (1919)*.

6 The innovative trend of terminating war by armistice became even more pronounced in the armistices of World War II. Significantly, in the Armistice Agreement with Romania of 12 September 1944 ('Romanian Armistice') and Hungary of 20 January 1945 ('Hungarian Armistice'), these two countries declared that they had 'withdrawn from the war' against the Allied Powers (Art. 1 Romanian Armistice; Art. I (A) Hungarian Armistice). Romania announced that it 'has entered the war and will wage war on the side of the Allied Powers against Germany and Hungary' (Art. 1 Romanian Armistice), and Hungary agreed to declare war on Germany (Art. I (A) Hungarian Armistice). Likewise, Italy—which had already concluded an armistice with the Allies on 3 September 1943—declared war against Germany in October of that year. The preamble to the Treaty of Peace with Italy ([signed 10 February 1947, entered into force 15 September 1947] 49 UNTS 3; → *Peace Treaties [1947]*) directs attention to the fact that as a result of the declaration of war Italy 'thereby became a co-belligerent against Germany'. GG Fitzmaurice, adhering to the traditional notion of an armistice as a mere suspension of hostilities, was therefore forced to observe that 'Italy's co-belligerency created a highly anomalous situation juridically, and one which to some extent defies legal analysis and classification' (at 272). After all, if the war between the Allied Powers and Italy did not end until the Treaty of Peace with Italy of 1949, Italy—whose armed forces were fighting after October 1943 alongside Allied formations against Germany—was the co-belligerent of its enemies! Yet, once it is perceived that a modern armistice signifies the termination of war, there is no anomaly in the status of Italy during the late stages of World War II. Whereas Italy had been a co-belligerent of Germany against the Allies until September 1943, once its war against the Allies was terminated by virtue of the armistice, nothing prevented Italy from changing sides, declaring war against Germany, and becoming a co-belligerent of the Allies. The same is true of Romania and Hungary.

7 The evolution in the concept of armistice reached its zenith in the post-World War II period. The key instruments are four bilateral general armistice agreements, signed in 1949 between → *Israel*, on the one hand, Egypt, Lebanon, Jordan, and Syria, on the other ('Israeli Armistice Agreements'); followed by the 1953 Agreement concerning a Military Armistice in Korea ('Panmunjom Agreement'; 'Korean Armistice'). These armistice agreements terminated the Israeli War of Independence (see also → *Arab-Israeli Conflict*) and the → *Korean War (1950–53)* respectively, although they did not produce peace in the full meaning of the term. Interestingly, the Panmunjom Agreement combined 'concrete arrangements for ceasefire and armistice' jointly (Art. 2 Panmunjom Agreement). But the crux of the matter, proclaimed in the preamble, is that the Panmunjom Agreement has 'the objective of establishing an armistice which will insure a complete cessation of hostilities and of all acts of armed force in Korea until a final peace settlement is achieved'.

8 All four Israeli Armistice Agreements pronounce that, with a view to promoting a return to permanent peace in → *Palestine*, the parties affirm a number of principles, including a prohibition of recourse to military force and aggressive action. In keeping with these principles, the parties are forbidden to commit any warlike or hostile act against one another. The Israeli Armistice Agreements enunciate that the armistice demarcation lines are delineated 'without prejudice to the rights, claims and positions' of the parties in the ultimate peaceful settlement of the Palestine question (eg Art. V (2) General Armistice Agreement between Israel and Egypt ['Israeli-Egyptian Armistice']). The purpose of the armistice is described in their preambles in terms of a transition from truce to a permanent peace; in the case of Egypt, the armistice agreement expressly supersedes a previous general ceasefire agreement between Israel and Egypt (Art. XII (5) Israeli-Egyptian Armistice). Above all, the Israeli Armistice Agreements lay down that they will 'remain in

force until a peaceful settlement between the Parties is achieved' (eg Art. XII (2) Israeli-Egyptian Armistice).

9 In the words of S Rosenne:

True, the object of this accord was to establish transitional provisions for the restoration of peace—an objective itself mentioned in the Agreements themselves; but this is precisely the object of all general armistice agreements, as we have seen. In the sense that they are transitional they are intended to be replaced in due course by an agreed and definitive peace arrangement between the parties. It would, however, be a mistake to confuse this transiency with any temporariness. (At 82)

10 It is noteworthy that when the United Nations Security Council, in 1951, had to deal with an Israeli complaint concerning restrictions imposed by Egypt on the passage of ships through the → *Suez Canal*, the UN Security Council declared in Resolution 95 (1950) that the armistice between the two countries 'is of a permanent character' and that, in consequence, 'neither party can reasonably assert that it is actively a belligerent' (at para. 5). It clearly emerges from the text of Resolution 95 (1950), and from the thorough discussion preceding it, that the UN Security Council totally rejected the Egyptian contention that a state of war continued to exist with Israel after the armistice.

C. The Difference between Armistice and Peace

11 Irrefutably, an armistice agreement is never the equivalent of a treaty of peace (→ *Peace Treaties*). An armistice agreement—even in the modern sense—denotes only the end of war. A treaty of peace transcends the termination of war by providing also for normalization of relations between the former belligerent parties through the introduction or restoration of diplomatic, economic, and other relations.

12 Comparatively speaking, the negation of war is of far greater significance than the initiation (or restoration of), say, trade or cultural relations. Still, when such relations are non-existent, an essential ingredient is missing from the fabric of relations between the parties. An armistice agreement not followed by a treaty of peace is fragile by nature, and any delay in the advent of peace may be fraught with danger. The mere conclusion of an armistice agreement does not imply recognition of an enemy as a new State. Notwithstanding the armistice agreement, diplomatic relations need not be established or resumed (→ *Diplomatic Relations, Establishment and Severance*). The frontiers between the parties (the armistice demarcation lines), are liable to remain closed (→ *demarcation line*). In general, relations between the former belligerent parties may be strained and stressful. The upshot is that the armed phase of the conflict is over, but the conflict itself may continue unabated.

13 Since a modern armistice terminates war, it is concluded in a formal intergovernmental agreement, namely a treaty, following negotiations that may be lengthy and elaborate. In theory, an armistice can also be imposed on the belligerent parties by a binding decision of the UN Security Council adopted under the aegis of Chapter VII UN Charter. But in actuality this has never happened: the UN Security Council has always confined its cessation-of-hostilities resolutions to ceasefires.

14 Armistice demarcation lines are often drawn up explicitly 'without prejudice' to ultimate claims in a peace settlement (see para. 8 above), and at times they are even categorized as military lines. Nevertheless, as long as they cannot be altered by force, and remain binding indefinitely pending agreement to revise them by a treaty of peace or otherwise, there is in substance little or no difference between armistice demarcation lines and permanent

→ *boundaries*. After all, the hallmark of all international frontiers is that they are subject to modification by mutual consent. It is noteworthy that, in the → *Israeli Wall Advisory Opinion (Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory)*, the International Court of Justice took it for granted that the Israel-Jordanian armistice demarcation line, popularly called the Green Line—established in the General Armistice Agreement between Israel and Lebanon ('Israeli-Jordanian Armistice')—is the boundary between Israel and the West Bank (*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory [Advisory Opinion]* paras 72 and 78; see also → *Israel, Occupied Territories*).

15 By terminating war, a modern armistice cleans the slate of hostilities in the relations between the former belligerent parties. In this respect, an armistice is just like a treaty of peace. If hostilities erupt again between the parties to either an armistice or a peace treaty, the conflagration must be considered a new war, rather than a resumption of the previous one. This is in contradistinction to a breach or denunciation of a ceasefire, which starts another round of hostilities between the belligerent parties within the ambit of the same war. Naturally, a new war has to be analysed on its own merits in terms of the all-important assessment of → *aggression* (or → *armed attack*) and → *self-defence* pursuant to the *ius ad bellum*.

D. The Contents of a Modern Armistice

16 The components of an armistice agreement are as follows: Termination of hostilities: this is the distinctive feature of a modern armistice. Typically, the preamble of the Panmunjom Agreement states as its objective the establishment of an armistice ensuring 'a complete cessation of hostilities and of all acts of armed force in Korea until a final peace settlement is achieved'. The Israeli-Egyptian Armistice declared that

no element of the land, sea or air military or para-military forces of either Party, including non-regular forces, shall commit any warlike or hostile act against the military or para-military forces of the other Party, or against civilians in territory under the control of that Party; or shall advance beyond or pass over for any purpose whatsoever the Demarcation Line. (At Art. 2 (2))

17 Demarcation lines: armistice agreements generally require setting precise demarcation lines between the former belligerent parties, and these are usually marked on detailed maps attached to the text. The armistice lines may match previous international frontiers or ceasefire lines, but they may also incorporate agreed upon modifications and adjustments that may require significant evacuations and withdrawals. The seminal armistice with Germany of November 1918 promulgated evacuation of German troops from all the far-flung occupied countries. The Israeli-Egyptian Armistice, in Annex I, provided for withdrawal of Egyptian troops from the Faluja Pocket in which they had been encircled following the earlier general ceasefire agreement.

18 Entry into force: as a rule, an armistice agreement enters into force immediately upon signature and it is not subject to ratification. *En principe*, this is also true of a ceasefire. But it has to be perceived that a ceasefire must allow some time for instructions suspending hostilities to be transmitted to all units through the command channels. Thus, UN Security Council Resolution 211 (1965), which brought about a ceasefire in the 1965 war between India and Pakistan, was adopted on 20 September. The resolution demanded that the ceasefire should take effect on 22 September, at 7:00h GMT. In some instances, the unavoidable interval is even longer. Moreover, the execution of certain specific stipulations

of both armistice and ceasefire agreements may require a further time-lag before coming into effect (see, eg, para. 22 below re exchange of prisoners of war).

19 Duration: a modern armistice agreement, amounting to a termination of war, must be indefinite in its projected application. A termination of war and a limited period of application amount to a contradiction in terms. By contrast, a ceasefire as a suspension of hostilities is temporary by nature and, as such, it may be set for a fixed period of time. A prime example is UN Security Council Resolution 50, adopted on 29 May 1948, following the invasion of Israel upon its establishment by Arab armies. Resolution 50 (1948) called for ‘a cessation of all acts of armed force for a period of four weeks’ (at para. 1). After several delays, this ceasefire, known as the First Truce, came into force on 11 June 1948 and ended after four weeks. On 7 July 1948, the UN Security Council appealed to the parties ‘to accept in principle the prolongation of the truce’ (UNSC Res 53 (1948)), but hostilities resumed nevertheless.

20 Demilitarization: the parties to an armistice may agree on complete or partial → *demilitarization*, either all along the demarcation line, as in Korea, or in prescribed areas as in the Israeli armistice agreements with Egypt and Syria. By separating the military forces of the former belligerent parties, demilitarized zones are designed to minimize friction in the future. However, in the long run demilitarized zones by themselves may turn into irritants—due to frequent charges of breaches and counter-breaches—thereby increasing tensions between the parties instead of alleviating them.

21 Supervisory mechanism: the setting-up of a supervisory mechanism may prove vital to the success of an armistice, as well as a ceasefire, agreement. This is true not only with respect to the initial period, which is almost invariably attended by difficulties of on-the-ground implementation, but also in subsequent stages. The Israeli Armistice Agreements set up Mixed Armistice Commissions (‘MACs’) chaired by a United Nations official for supervision of the armistices, eg Art. X Israeli-Egyptian Armistice. The Korean Armistice established a different Military Armistice Commission composed of officers from both sides (Art. II Section B Panmunjom Agreement) plus a Neutral Nations Supervisory Commission (Art. II Section C Panmunjom Agreement). Generally speaking, the monitoring mechanism consists of elements of observation, inspection, and investigation.

22 Release of prisoners of war: often an armistice agreement deals explicitly with exchange of prisoners of war within a predetermined period. A good illustration is the Israeli-Egyptian Armistice Agreement, which ordained that the exchange of prisoners of war begin within ten days after signature and shall be completed not later than 21 days following (Art. IX (1) Israeli-Egyptian Armistice Agreement). In the case of Korea, a special agreement on prisoners of war—an exceptionally thorny problem in the negotiations—was concluded several weeks prior to the armistice, although its execution was to begin only ‘[w]ithin two months after the armistice agreement becomes effective’ (Agreement on Prisoners of War [signed 8 June 1953, entered into force 27 July 1953] [1953] 47 AJIL Supp 180).

23 What is the legal position when the armistice agreement is silent on this issue? Pursuant to Art. 118 (1) Geneva Convention of 1949 Relative to the Treatment of Prisoners of War (‘Geneva Convention III’), prisoners of war must be released ‘without delay after the cessation of active hostilities’. While the point in time of a genuine ‘cessation of active hostilities’ is not always readily apparent, there can be no doubt that it occurs once an armistice has been arrived at. Therefore, if the matter is not resolved overtly in the text of the armistice agreement, each belligerent party is duty bound—in conformity with Geneva

Convention III—to release unilaterally all prisoners of war in its hands, as soon as this is feasible after the entry into force of the armistice agreement.

24 Miscellaneous provisions: an armistice agreement may deal with diverse specific and local issues, as circumstances dictate. Thus, the Israeli-Jordanian Armistice Agreement deals with free access to → *Holy Places*, resumption of operation of a railroad to Jerusalem, etc (Art. VIII (2) Israeli-Jordanian Armistice Agreement).

E. The Difference between Armistice and Ceasefire

25 An armistice and a ceasefire agreement may be structured in a similar fashion. Clauses regarding supervision, demilitarization, exchange of prisoners of war, etc, may look very much alike. In fact, a ceasefire may go very far. This becomes obvious when one consults the most elaborate ceasefire arrangement ever worked out, namely, UN Security Council Resolution 687 (1991) concerning the → *Iraq-Kuwait War (1990-91)*. The breadth and range of this text, which covers compensation for claims and destruction of → *weapons of mass destruction*, are as awesome as they are unprecedented. How do we know that this is only a ceasefire? The answer is simple: Resolution 687 (1991) says so expressly (paras 1 and 33).

26 To date, all UN Security Council resolutions and almost all agreements relating to ‘cessation of hostilities’ have dealt explicitly with ceasefires (see para. 13 above). But what is the legal position when the text does not employ the term ceasefire *expressis verbis*? The problem is exacerbated by the fact that the frequently-used phrase ‘cessation of hostilities’ may be reconciled with both suspension and termination of war. When the language used is equivocal, it is necessary to look for the intention of the parties. The tell-tale indication revealing that the parties had only a ceasefire in mind is the temporary nature of the ‘cessation of hostilities’. A modern armistice—unlike a ceasefire—must, in the words of the Korean Armistice,

remain in effect until expressly superseded either by mutually acceptable amendments and additions or by provision in an appropriate agreement for a peaceful settlement at a political level between both sides (Art. 5 (62) Panmunjom Agreement).

27 Art. 37 Hague Regulations differentiates between a general and a local armistice in the sense of suspension of hostilities. The Israeli Armistice Agreements pointedly carry in their titles the adjective ‘general’. The Panmunjom Agreement already omits the adjective. The omission is consistent with the modern thrust of an armistice agreement as an end to war, for a termination of war cannot be localized. An authentic termination of war must be general in its scope, that is to say, the war must end on all fronts and embrace all locations.

F. Conclusion

28 It is widely admitted that there exists a ‘semantic confusion’ in the usage of the terms ceasefire, truce, and armistice (Bailey 467-69). Nevertheless, there is a marked reluctance in much of the legal literature to undertake any reappraisal of the role assigned to armistice in the vocabulary of war since the Hague Regulations. The general tendency is to follow in the footsteps of the Lalive-McNair/Watts approach (see para. 4 above). A leading example is the 2004 UK Ministry of Defence’s Manual of the Law of Armed Conflict. This manual, relying on Art. 36 Hague Regulations, first defines an armistice as a suspension of military operations (at 10.14). Later, the manual concedes that ‘[a]n armistice can put an end to armed conflict if that is the intention of the parties’ (at 10.16). The 2013 German Law of

Armed Conflict Manual records that armistices may be 'intended to result in a permanent end to hostilities' (at 224).

29 In reality, the intention of the parties to resort to an armistice as the legal tool to put an end to war in a manner that is not consonant with the vocabulary of the Hague Regulations has been evinced in every instance since the end of the World War I. Suspension of hostilities through an instrument entitled 'armistice' is actually in disuse. Surely, the present terminology has to be adjusted to fit the modern practice of States, which consistently attests the transformation that has occurred over the years in the legal status of a modern armistice.

30 This is not to suggest that Arts 36–41 Hague Regulations have lost their standing as an expression of customary international law. What has changed as a result of the evolution of international law since the World Wars is solely a matter of nomenclature. The substance of Arts 36–41 Hague Regulations remains unaffected where the suspension of hostilities is involved. But semantically, as the modern practice of States demonstrates, the Hague Regulations are applicable to those agreements that are today called ceasefires or truces. As far as modern armistices are concerned, they have now moved away from the span of Arts 36–41 Hague Regulations. They have become akin to what used to be called in the past peace preliminaries: bringing war to an end without introducing full and formal peace.

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