THE CEASE-FIRE

by

Madame Paul BASTID

Member of the Académie des Sciences morales et politiques

Professor in the University of Law,

Economics and the Social sciences, PARIS II

INTRODUCTION

Faced with the proliferation of terms used to describe the suspension of armed hostilities, particularly since the middle of our century, observers may fell somewhat bewildered. Expressions such as : « cease-fire », « stand-still », « cessation of hostilities », « cessation of all acts of armed hostilities », « cessation of military operations », « truce », « armistice » and several others besides are resorted to indifferently without any attempt to define their meaning. Sometimes different terms are used to qualify the same situation while at other times the same term is used to cover different meanings (1). In actual fact the realities of practice abound with examples of inaccuracies in the vocabulary of States and even in the language of the United Nations. The most recent examples are to be found in the Paris Agreements of 27th January 1973 on Vietnam, the terms of which resort indifferently to the expressions « cease-fire » and « cessation of hostilities » (2). So also, the Agreement on Laos of 21st February 1973 makes use of the word « cease-fire » in its military clauses although the objective set forth in the Preamble is to (cause) « war to cease » and to « restore peace ».

In such a context attempts at defining a system appear as a challenge. Nevertheless, the national reports - the German, American, British, Austrian, Belgian, Italian and Norwegian - have not given way to discouragement. Very substantial work has been carried out, both to give an account of domestic texts and to shed light on the practice followed in relations with other States. This work has to a considerable extent made the task of the Rapporteur General eisier, despite the inevitable choices that have had to be made. These national reports, however, were drawn up before the agreements the purpose of which was to bring about the discontinuance of hostilities in Vietnam and Laos were entered into. To-day, it is difficult to inquire into the present subject-matter without taking account of these new facts and without attempting to assess their significance in relation to the selfsame subject-matter as a whole.

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(1) P. MOHN, « Problems of truce suspension », *International conciliation*, n° 478, February, 1952

(2) « Cessation of hostilities » (title of Chapter 2) and « Cease-fire » (art. 2)

In 1949 and in 1953, in Palestine and in Korea, it is through the signature of an armistice in each case that hostilities were brought to an end, but even at the time there was talk of « cease fire » and since then the term has been in current use to cover what in fact is reality of indisputable complexity and the content of which is undoubtedly not determined once and for all.

The foremost striking factor in a cease fire is the very new combination of military and political elements, both of which are set in the contemporary framework of international relations : armed conflicts pertaining to decolonisation and the East-West clash ; restrictions on the right to the use of force, the competence of the United Nations Organisation in case of dispute and resort to force. Undoubtedly the armistices concluded in Korea and Palestine were already being influenced by these elements and very different indeed from the armistices ushered in by the end of World War II, but the specific nature of the cease fire is underscored both by the conditions in which they are brought about as by reason of its content.

I. — THE TWOFOLD NATURE OF THE CEASE FIRE

The cease fire has gradually freed itself from long standing concepts of the interruption of hostilities. It has asserted its originality and shows a character peculiar to itself (A). But developments have not rested there : this new institution has become divided and the cease fire at present has a dual aspect (B).

A. — *THE GENESIS.*

When a « state of war » was subjected to various precise conditions, certain formalities were compulsorily required to precede the opening of hostilities and only certain acts could mark the end of armed struggles (1°) ; subsequently, after having become « the greatest scouge of mankind » (3), war was condemned as a means of solving international disputes : the *jus in bello* appeared to yield in the face of the *jus contra bellum* (4). The emergence of the cease fire (2°) corresponds to this change in the nature of war.

1° *The traditional concepts of the interruption of hostilities.*

The traditional methods by means of which hostilities were brought to an end were in accordance with former conceptions of the law of war. Some of them were of a purely military nature. For instance, capitulation and surrender end fighting in a defined framework (fortification, army)

(3) E. KANT, *Zum ewigen Frieden*, vol. VII, pp 229 to 232.

(4) cf. J. SIOTIS, *Le droit de la guerre* . , Thèse, Paris 1958, p 101.

and their purpose was to avoid total extermination where resistance did not appear as capable of achieving any useful military purpose A suspension of the fighting (suspension d'armes) on the other hand was a mere pause in the course of the battle, agreed upon with a precise object in mind, such as burial of the dead, or the evacuation of civilians. Truces, too, only implied a limited suspension of hostilities, generally for humanitarian or religious purposes (5).

In contradistinction to these purely military agreements, the armistice may be mentioned. Although Grotius (6) gives a definition thereof that corresponds to a suspension of fighting, this method of halting hostilities subsequently became the subject of major developments . it increasingly tended to assume the features of a milestone on the way to a peace treaty (7). As an agreement entered into between the supreme military leaders of the belligerent States, its essential effect was to suspend hostilities. But save in the exceptional case of the partial armistice, hostilities were suspended throughout all the theatres of operations. Nevertheless, a state of war continued to exist, with all the legal consequences deriving therefrom (8). The armistice may stipulate demobilisation and the reduction of the armed forces of the defeated side as well as the creation of large demilitarised areas. Its military scope was considerable, but, furthermore, as a prelude to a peace treaty, it was of major political importance.

In the first half to the XXth century, an armistice has frequently implied the idea of capitulation (9) : the winning side thereupon dictated its conditions to the losing side. Since the middle of the XXth century the content of the armistice has evolved. Acts termed « armistices » are encountered that foreshadow the modern cease fire. Concluded as the result of veritable negotiations characterised by the direct or indirect presence of an International Organisation, they come into force while the issue of the conflict they suspend is still in doubt They are signed by military authorities, who in actual fact represent the political authorities. They decree measures intended to restore peace and create organs for the implementation and supervision of the acts entered into, providing for international

(5) *Cf.* the Têt truce in Vietnam

(6) « De jure belli ac pacis » Vol III, ch 22 armistices are cessations or suspensions agreed upon for a short space of time between individual army units.

(7) FITZMAURICE, R.C A D I., 1948, II, p 271

(8) This purely suspensive function has been clearly recalled by the Court of Cassation, which has held that an armistice convention entered into by two belligerents merely constitutes a provisional suspension of hostilities and cannot in itself bring to an end a state of war (Cass, ch. tempor, 3rd November 1944, S. 1945 8 29 note by ROUSSEAU) ; see also Cass. soc 14 th January 1944 S. 1944 I. 112 · « whereas France and Germany continue to be legally at war despite the armistice convention; whereas this situation of law will only be brought to a close by the decree fixing the date at which hostilities are to terminate ».

(9) B. DE MONTLUC, *Le cessez-le-feu*, Thèse, Paris 1971, p. 8

elements with their peculiar competence, recognised by the opponents (10). Such is the case of the Palestinian armistices of 1949 and the Korea agreement of 27 th July 1953 (11).

The concept of cease fire then detached itself from that of an armistice and has embarked upon a career of its own. The term has currently been employed ; its use dates from the first major conflict the United Nations was called upon to deal with, viz., the Indonesian conflict. As an original concept, the cease fire has to-day supplanted other modes of the suspension of hostilities.

2° *The original nature of the cease fire.*

Although the emergence of the cease fire does in fact correspond with deep rooted developments in the law of war, it equally coincides with an upheaval in the methods of international relations. « States of war » and « States of peace » are clear cut legal concepts entailing precise legal effects. The transition from war to peace has become « informal » ; « war » has shed its ritual and, henceforward illegal *de jure,* yields to *de facto* conflicts, a definition of which is difficult legally to circumscribe (12). The cease fire is the response to this new context. Attempts may be made to cause it to apply so soon as hostilities have broken out, whether these latter have assumed the guise of a « classical » war between sovereign States or that of an armed conflict, whether or not it bears the appearance of an international conflict. A distinction is no longer drawn between international wars and internal strife, i.e., civil war ; it is sufficient to find that hostilities are in process. This mere factual finding as to resort to the « use of force » (13) justifies the intervention of the cease fire.

But the original nature of the cease fire is also borne out by its results. In contradistinction to the armistice, the capitulation and other classical devices that more often than not set the seal upon the lassitude or the defeat of one of the belligerents, the cease fire does not accord an advantage on the facts nor does it consacrate the victory of arms : its aim is to prevent an armed conflict from developing that constitutes a threat to international peace and security. It only strives for and facilitates either resort to a political settlement of the dispute or the peaceful implementation

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(10) On this point, vide the Belgian Report, p. 124

(11) In the Palestinian affair the Security Council Resolution of 15 th July 1948 ordered the governments to issue orders to cease fire, subsequently an important part was be played by the UN Mediator in connexion with the conclusion of armistices. In Korea both the Security Council (declaration of 25 th June 1950) and the General Assembly (Resolution of 1 st February 1951) intervened during the conflict. In the resolution of the 3 rd December 1952 the Assembly adopted positions which were to serve as a basis for the Pan Mun Jom armistice.

(12) « The concept of war and combatant in modern conflicts » cf. PAUCOT, LEAUTE and KOVAR, *Military Law and Law of War Review,* 1971, x-2, pp 109-151.

(13) Art 2, para. 4 of the United Nations Charter

of such a settlement . but at this point the new dual aspect of the cease fire already becomes apparent

B. — *THE CONTEMPORARY DUAL ASPECT OF THE CEASE FIRE.*

Evolution has not marked time; the concept of cease fire has not remained uniform. The duality which to-day is one of its features is explicable according to whether the cease fire is the consequence of exhaustive political conversations (2°) or, on the contrary, whether it constitutes a prelude to such conversations.

1° *As a condition precedent to political discussions.*

A cease fire is more often than not due to the intervention of a third party to the conflict. Such third party thereupon imposes a suspension of hostilities on the parties in order to stop bloodshed as quickly as possible. This sort of situation is encountered, *inter alia,* in cases of disputes of medium scope, the nature of which is not such as to jeopardise the major strategic and political balance of power The International Organisation is then in a position to act effectively. The cease fire thus appears to be the cardinal tool which enables the Security Council to intervene swiftly « without prejudice to the rights, claims or position of the parties concerned » (14). Intervention will be limited to achieving a suspension of armed strife. At such a stage, the Council is not seeking to formulate proposals for a material settlement. Such a role will be assumed subsequently, where the belligerents do not themselves succeed in resolving their dispute

This situation is met with frequently in contemporary practice and to give an exhaustive list of the cases where it has been encountered would be a tedious exercise, so that only two examples will be given here In the conflict between Pakistan and India over Kashmir (1965) a UN resolution of 20th September 1965 invited both governments to issue orders to bring about a cease fire. The resolution concerned also provided that all necessary steps should be taken for achieving a political settlement of the conflict as soon as the cease fire had become operative and troops withdrawn. In the Bizerta affair (1961) the cease fire offer made by Admiral Amman contained two provisions (15) · first, fire was to cease before or shortly after daybreak, and once this was achieved, but only then, discussions would be opened in the afternoon of the same day with a view to beginning to determine the ways and means of the return to a normal situation.

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(14) Art 40 of the United Nations Charter.

(15) Security Council, Official Documents, July, August and September I96I, supplement, S 4894 Other instances could be cited . in the Suez affair the General Assembly, meeting in emergency session first, pressed all the parties to the conflict to accept a cease fire immediately (General Assembly Resolution 1/10 November 1956, 997 ES-I).

In all such cases as the above the situation is twofold; the cease fire is a preliminary step; it is brought about prior to the political discussions on the merits that it will be possible to hold as a result. The unitary situation which is sometimes the resultant of a cease fire is, on the other hand, entirely different.

2° *The cease fire as the conclusion of political discussions.*

This second form of the cease fire is met with, *inter alia*, in conflicts affecting the major powers and likely to cause changes to occur in spheres of influence already shared out. The cease fire is in such cases merely the consequence of political discussions on the substance of the dispute. The parties -in the absence of the intervention of a third party or where such intervention has proved fruitless- enter into conversations and the cease fire is the result of direct agreement.

Accordingly, discussions take place during the conflict. Hostilities, gains made by the troops on the ground, victories are no more than arguments amongst others. Once the agreement is concluded the cease fire *stricto sensu* will only be a part of the broader agreement which includes such cease fire, which remains a condition precedent to the peaceful implementation of the political clauses in the agreement, but it will no longer be a condition precedent to talks on the substantive issues. The recent Paris agreements, as already the cease fire agreements in Algeria (the Evian Agreements) (16) provide a perfect illustration of this situation. It should however be noted that these agreements, the resultant of political discussions, provide for a whole programme of political action. The objectives on which agreement is achieved are indeed much more complex than the « restoration of peace » between two States. From that standpoint these agreements appear as tending to adaptation to change, an adaptation to be effected through the medium of successive operations.

II. — THE CONTENT OF THE CEASE FIRE

So long as no cease fire has been achieved, the war goes on and the parties seek to score advantages, or even decisive results, on the ground: obviously the primary objective of the cease fire is to halt armed hostilities, to paralyse the fighting. This being so, any cease fire must necessarily include provisions of a military nature (A). But, furthermore, its political scope has today considerably increased, even though it may sometimes vary (B).

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(16) Journal Officiel of the French Republic, 20th March 1962, N° 67, p. 3019.

A. — *THE REQUIREMENTS OF THE SUSPENSION OF HOSTILITIES*

These requirements are governed by two essential concerns : to ensure that the terms of the cease fire are complied with (2°)) from the moment such cease fire has been brought about (1°).

1° *Implementation of the cease fire.*

A cease fire in the field presupposes that a certain number of technical problems should first have been settled; the text of the agreement must above all deal with two elements : time and place.

Time : the time at which the cease fire is due to enter into force must be specified. If the cease fire is the result of an agreement between the parties, the latter will freely determine the date of its entry into force (17). Where a third party intervenes in the conflict, that third party may either invite the parties to take all necessary steps with a view to achieving a cease fire, the date at which it shall enter into force to be settled upon by the belligerents themselves, or, where the United Nations is involved, order the parties to cease fire ; the injunction in this latter case states the time limit at the expiry of which fighting must cease.

Place : after the cessation of hostilities, the contending parties remain separated by a status quo line which falls accurately to be determined in order to avoid subsequent controversy. Such demarcation line will usually run through the points of contact of the contending forces (18). It will more often than not be buttressed by a demilitarized zone extending over a certain area on either side of the line, which then assumes the appearance of a ribbon. Lastly, with the same purpose in mind, the text of the cease fire may indicate the sites where the belligerents will station their troops.

Its field of application thus determined, the cease fire results in the maintenance of the status quo : the line must not be crossed by military units or armed groups, and exchange of fire across the line as well as overflights are equally prohibited ; armies may no longer seek territorial

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(17) The cease fire in Vietnam was agreed upon with effect from 24 hours Greenwich Mean Time on 27th January 1973 (Art 2 par. 3 of the Paris Agreements). The agreements state that the total cessation of hostilities mentioned in art. 2 is of a durable character and has no limitation in time The Agreement on Laos fixes into force at 1200 hours (Vientiane time) on 22nd February 1973.

(18) The hours immediately prior to the cease fire abound in warlike offensives, since each side endeavours to gain the maximum advantage when the demarcation line is drawn. The line may also consist in a natural obstacle, such as a navigable waterway in such case it will be for the agreement to determine the conditions of the passage of enemy craft

gains, military positions must be maintained but no more (19). There are some instances of cease fire agreements with broader effects, that extend their prohibitions to the reinforcement of defences and restocking (20). But such prohibitions increase further still the difficulties of supervision.

The purely negative effect of a cease fire is to suspend hostilities, but it is not its sole effect. The result to which it gives concrete form also affords a positive aspect, in order to prevent an extension of the conflict, the situation must also be stabilised : a cease fire does not imply the restoration of the *status quo ante bellum*, what it does is to paralyse military operations and leave them as they are at the time of its entry into force. The writers talk of « solidification », « statio », « immobilisation » or « freezing » of the military situation. In keeping with the same spirit, a cease fire is accompanied by provisions concerning the fate of prisoners of war.

The agreement on Laos concluded between the two Laotian parties (the Vientian Government party and the patriotic forces party) includes provisions concerning the « forces of foreign States » engaged in Laos.

2° *Supervision of the cease fire.*

The setting up of a supervisory organ specially entrusted with watching over compliance with the cease fire is regarded as a necessity. Where, *inter alia*, the cease fire stems from a bilateral agreement, the parties sometimes organise a form of control by direct agreement between themselves ; the Evian agreements, for instance provided for the constitution of a « mixed cease fire commission » entrusted with the settlement of problems arising out of the application of the cessation of hostilities (21). But more generally, the supervisory body is featured by the presence of a third party ; such third party may be made up of persons designated by third States selected by the belligerents (22) or by the authority intervening in the

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(19) The question arises whether the opponents may use the cessation of hostilities to improve their tactical organisation and call in reinforcements in order to occupy strategic points along the demarcation line This problem, within the context of « classical » suspensions of hostilities has been much debated by writers It will merely be noted here that contemporary practice generally authorises the circulation of troops within their own lines

(20) cf the agreement of 27th July 1949 in the Kashmir conflict and that of 15th August 1962 concerning New Guinea So also, art 7, para. 2 of the Paris Agreements provides that both South Vietnamese parties shall be authorised to effect periodical replacements of armaments, ammunition and war material that has been destroyed, damaged, worn or exhausted since the cease fire on a basis of parity in numbers, characteristics and properties under the supervision of the mixed military commission of both South Vietnamese parties and the international control and supervision commission

(21) Art 6 of the cease fire agreements.

(22) In Vietnam, under the terms of art 18 of the Paris agreements the international control and supervision commission includes the representatives of Poland, Canada, Hungary, Indonesia.

conflict and from which the cease fire initiative originates : control in this case is frequently exercised by the United Nations (23).

The mission of the said supervisory body is to watch over the way in which the cease fire agreement is executed. Its members are required to « observe and submit reports » (24) The cease fire zone must in fact be the subject of continuous control. The members of the supervisory body occupy observation posts along, and on either side of, the status quo line ; they carry out inspections by means of patrols from one observation post to another (25). Furthermore they investigate reported cases of breaches of the cease fire or cases that they themselves have found. The more serious breaches must become the subject of a precise and impartial report.

The report is submitted to the Security Council where that organ has assumed initiative for the cease fire It may, on that basis, take any steps it deems fit. In other cases the report is addressed to the parties. The problem of the role of the other signatories to the Final Act of the Paris Conference on Vietnam has given rise to much controversy. Article 6 sets forth the conditions in which reports and viewpoints shall be conveyed to these signatories. But the International Conference may be convened afresh only in exceptional circumstances, at the request of States and not of the International Commission.

It remains to be seen what is understood by a « breach » of the cease fire. Any general resumption of hostilities by one of the opponents is no mere breach, but amounts to flagrant negation of the cease fire. However, less serious incidents, more restricted in scope, may occur, and the question may then be raised what test will enable a distinction to be drawn between mere incidents and characterised breaches. Side by side with information deriving from the gravity of a breach, the terms of the cease fire agreement itself will have to be referred to. For instance, troop movements, the erection of major fortifications, independently of any crossing of the standstill line, may amount to a breach of the cease fire if the agreement bars both parties from using the discontinuance of hostilities in order to reinforce their respective strategic positions. It will be for the appointed observers to determine the nature of each individual act so as to be able to decide if, whether a breach has or has not been committed, the supervisory organ should proceed to investigate any such act or otherwise. It should be noted that the Security Council, from one conflict to another,

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(23) E g, the UN truce supervision body (ONUST) in the Israel-Arab conflict; the United Nations Military Observer Group in India and Pakistan in Kashmir

(24) Report of the Secretary General, 1st October 1965 (S/6699 add. 6).

(25) cf Belgian report pp 186 et seq

has supplied a fairly lengthy list of acts amounting to a breach of a cease fire (26).

B. — *THE POLITICAL IMPLICATIONS*

Side by side with its necessary military content, the cease fire is accompanied by a political action programme which bears witness to the specific nature of the concept. Such political scope is very clearly perceptible through the intervention of the International Community (1°) and by reason of the prospects of political developments that the cease fire underlies (2°) although the scope is not invariably the same.

1° *The intervention of the International Community.*

It is known that a cease fire may be of conventional origin, where an agreement is concluded between the parties, either between the latter direct, or thanks to the good offices of an intermediary. The cease fire may be of non conventional origin where it rests on the decision or recommendation of an international organism.

Nevertheless, it should not be lost sight of the fact that the cease fire machinery grafts itself on to a system of world relationships that is still dominated by State Sovereignty ; the cease fire remains a political agreement binding upon the parties thereto only from the moment it has been accepted by the latter, notwithstanding the terms employed by the Security Council.

Acceptance in this way forthcoming binds the parties, who must of necessity issue to the forces under their command the order to stop the fighting (27) ; whatever the procedure, reciprocal undertakings exist.

In any event, the cease fire generally implies the intervention of third party factors. It brings into play a triangular relationship, either directly where a third party intervenes in the conflict - an international or regional-organisation or a Mediator State - or indirectly, where the parties refuse

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(26) Certain general indications may be drawn therefrom. Will be regarded as breaches of the cease fire all aggressive military actions, air action (Resolution of the 18th May 1951, 3/2157/Ref 1), reprisals (Resolution of the 24th November 1953, S/3139/Rev. 2) More particularly the fact of sinking a destroyer at sea, of bombing an industrial area (Resolution of the 25th October 1967, n° 240).

(27) It would therefore appear that a unilateral cease fire is not conceivable Nevertheless, certain cases may be encountered where a cease fire has come about as the result of the unilateral declaration of one of the parties. But the opponent was then presumed to have tacitly accepted the cease fire. Thus, in the Sino-Indian conflict of 1962, the cease fire was decided upon by China on the 20th November, and it was only on the 10th December that it was to be expressly accepted by the Indian Government

any form of interference in their national sovereignty, by the sheer weight of world opinion. Such international pressure is particularly typical of the cease fire, it is a characteristic of a procedure devised in a system of international relations in which the prohibition on a resort to force is asserting itself as well as the right of self-determination.

2° *Prospects of political evolution.*

By reason of its emergency character, the cease fire finds its place within the frame of political situations that remain to be settled, but it often endeavours to define the general lines of their development.

When it is imposed by the UN, the cessation of hostilities leaves the door open for the latter's competence in the search after a political settlement of the dispute. For although arms fall silent, this fact is not in itself enough to provide a solution to the substance of the dispute. But the cease fire, a first link in a chain running from war to peace, is also an appeal in favour of a peaceful solution whose political outlines still remain to be drawn.

The paradox is that this selfsame aspect is to be met with where the cease fire is the end process of political discussions. As opposed to the armistice, which creates consolidated situations, the cease fire only determines, as it were, evolutionary situations that are coming into being ; for instance, amongst other things, the right to self-determination can be recognised in respect of certain populations although the domain of certain sovereignties may still be in doubt. This prospect of duration is particularly noticeable both in the Vietnam (28) and in the Laos cease fire agreements.

The cease fire tending to achieve immediate effects as regards the use of weapons initiates a process of political change. Even where it is the sequel to exhaustive discussions it does not claim to solve all the problems involved, in timely fashion, it confines itself on certain points to emphasising the difficulties yet to be overcome and leaves the door open to subsequent developments. It therefore appears that a practice has developed which sometimes corresponds to new aims of political action : problems of « régimes », or particularly of « systems », sometimes arising in the process of decolonisation or arising when the Security Council seeks to achieve new adjustments in an area of tension.

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(28) Although the right to self-determination of the people of South Vietnam is recognised by the Paris agreements, the latter remain silent both as to the nature of the institutions to be the subject of elections (art. 12 b) and as to the ways and means of holding general elections So also, matters reserved for subsequent discussion will include problems of strength reductions and demobilisation (art 13), the stages of reunification (art 15), the handing over of civilian Vietnamese personnel captured and held in South Vietnam Art 8c provides that both South Vietnamese parties will use their best endeavours to settle this question