

THE PEACE PACT OF PARIS OF
AUGUST 27, 1928

OKLAHOMA
AGRICULTURAL & MECHANICAL COLLEGE
LIBRARY

1

SEP 23 1939

THE PEACE PACT OF PARIS OF
AUGUST 27, 1928

By

SYDNEY L. HOWE

Bachelor of Science

Southwestern State Teachers College

Weatherford, Oklahoma

1927

Submitted to the Department of History
Oklahoma Agricultural and Mechanical College

In Partial Fulfillment of the Requirements

For the Degree of

MASTER OF ARTS

1939

LIBRARY
A. & M. COLLEGE
WEATHERFORD, OKLA.

APPROVED:

Edward F. Willis
In Charge of Thesis

T. H. Reynolds
Head of History Department

O. B. Whitcomb
Dean of Graduate School

118371

Preface

The author of this thesis has made a sincere effort to organize the important facts relative to the Peace Pact of Paris. Early modern peace movements have been briefly noted, as they might have a bearing on the historical background.

A special effort has been made to show the motives which prompted each nation that had a part in the negotiations. Their reservations are discussed in the light of the meaning which they give the Pact. While the attitude of certain nations is reflected in their correspondence, the writer avoids any display of personal prejudice.

As the instrument for renunciation of war went into effect and the conduct of some indicated a violation of the spirit of the treaty, the lack of specific sanctions became apparent. Although cooperation of effort to preserve peace has been strengthened through consultation, the present outlook is not bright.

To name all the sources from which help was received would be impossible, but grateful acknowledgment is made to Dr. E. F. Willis, of the History Department, for his sympathetic attitude and valuable criticisms; also to Miss Grace Campbell and Miss Margaret Walters of the Oklahoma A. and M. Library for aid in securing material.

Contents

I. Historical Background	Page 1
II. Development of the Pact	Page 16
III. The Meaning of the Pact	Page 42
IV. Ten Years under the Pact	Page 69

Chapter I
Historical Background

From the earliest beginnings of society war has been used without question and almost without interval. It has served as the basis upon which modern nations were formed.¹ Although civil war has been suppressed, the right to declare war was admittedly the right of any sovereign state. National armies and navies then, even in time of peace, continue to determine not only the character of nations themselves but also the status of nations in their relationship to one another.²

The proposal, then, to renounce war as an instrument of national policy, reaches into the heart of a complex problem, since it has played a beneficent role in history as well as a criminal one. Where would this or any other nation be if it had not at times used force to assert its determination to maintain those institutions which embody its political career?

If the principles of reform which eliminate violence from the calculation of statesmen is to be achieved, the complex nature of the problem must be recognized.³

¹ James T. Shotwell, War as an Instrument of National Policy and Its Renunciation in the Pact of Paris (New York: Harcourt, Brace and Company, 1929), p. 8.

² Ibid., p. 14.

³ Ibid., pp. 15-16.

Leaving out the medieval and early modern schemes for the preservation of peace, the movement may be considered to have begun immediately following the Napoleonic Wars. By 1815 three "peace societies" existed in the United States. Organizations for the promotion of peace on moral and religious grounds soon appeared in other countries. In 1837 William Ladd proposed a "Court of Nations" for the arbitration of all international disputes, but the President failed to act on the congressional resolution.

The movement became recognized as international in the "First General Peace Convention" held in London, England, in 1843. Other peace congresses were held in Paris in 1849, Frankfort in 1850, London in 1851, and Manchester and Edinburgh in 1853. This series of congresses came to an end during the mid-century wars in Europe and the United States.

A second phase of the movement began about 1867 when the "Ligue de la Paix" was founded in Paris. Other new peace societies began and old ones reorganized. The socialist and humanitarian groups gave strength to the new organizations and the movement became less ecclesiastical. More attention was given to disarmament and to the project of a "United States of Europe" sponsored by the "Geneva League for Peace and Liberty." New demands for the arbitration of disputes came as a result of the Franco-Prussian War. International congresses were resumed and the movement assumed a world wide scope. The "Interparliamentary Union" began in 1889, and annual peace congresses held meetings in many

lands. In 1899 the First Hague Conference was called.⁴

With the opening of the twentieth century definite moves were made to substitute pacific rather than military means of settling disputes. Notable among these were the so-called Root treaties in 1908 between the United States and leading European countries. By these treaties certain differences which might arise between the United States and the nation involved were to be settled by submitting the question to a Permanent Court of Arbitration. It was not mandatory that the decisions be accepted. The treaties were considered so successful, however, that they were renewed at the expiration of their five year period in 1913 and again in 1918.

The complete outlawry of war was first suggested by Salmon O. Levinson, a Chicago lawyer.⁵ The appeal to force between nations as well as individuals is intolerable and should be outlawed. War between nations should be abolished as an institution.⁶ The movement to outlaw war received support by statesmen in different nations. On November 11, 1921, President Harding said,

There must be, there shall be, the commanding voice of a conscious civilization against armed warfare.⁷

⁴ Frederick L. Schuman, International Politics (New York: McGraw-Hill Book Company, 1933), p. 658.

⁵ Salmon O. Levinson, "The Legal Status of War," New Republic, XIV (March 9, 1918), 171-173.

⁶ Salmon O. Levinson, "Outlawry of War," Senate Document 115, 67 Cong., 2 Sess., p. 3.

⁷ Ibid., p. 4.

Quoting from Lloyd George in Great Britain's Peace Aims, June, 1918,

Above all, making sure that war shall be henceforth declared a crime punishable by the law of nations.⁸

While in Detroit Marshall Foch on November 7, 1921, said,

War in itself and for itself is the greatest crime in the world and the glory of victory pursued for itself is a crime. This world is made for peace and for work in peace time. The first duty is to work for our people, not to fight.⁹

With the backing of these and other leading statesmen, Mr. Levinson formulated his twelve point plan to outlaw war.¹⁰

It is thus seen that the early advocates of outlawry of war proposed to reach their goal of a world without war simply by making it a public crime.¹¹

The outlawry of aggressive warfare affecting either territorial or political independence of all countries was one of Woodrow Wilson's cherished ideals. He voiced the matter in his Mobile speech in 1913 and later mentioned it in his address at the second Pan-American Scientific Congress at Washington in 1916-1917. During this conference he had caused to be prepared the draft of a treaty whose third

⁸ Ibid., p. 4.

⁹ Ibid., p. 6.

¹⁰ Ibid., p. 9.

¹¹ Frank M. Russell, Theories of International Relations (New York: D. Appleton-Century Company, 1936), p. 357.

article was regarded by him as so important that it was later inserted in the draft of the Covenant of the League of Nations without essential modifications.¹²

If no nation were to commit an aggression, that is, attack another nation, other than in self-defense, it is evident that there would be no wars of conquest. Then, too, the peaceful settlement of disputes and obligations on the part of League members was intended to establish the reign of law and peace, with force to be employed only in the service of both. It was doubtless Wilson's belief that the Covenant would usher in an era of peace if it were observed. Many believed that this treaty, with its provisions for peaceful settlement, providing for a Permanent Court of International Justice, would surely bring World Peace.¹³

One might think that the Covenant of the League of Nations, solemnly accepted by the majority of nations, would influence and control their conduct, making evident in their relations with one another a new and superior international life. But within a few years the Geneva Protocol renounced aggression, an act which would seem to have been outlawed with sufficient clarity in the Covenant, and expressed a renewed determination to banish aggression as well as war from the world. Great Britain's final rejection of

¹² Carnegie Endowment for International Peace, Year Book (Washington, 1934), p. 98.

¹³ Ibid., p. 98.

the Protocol, although intended to render effective the Covenant, remained but a proposal.¹⁴

The failure of the Protocol resulted in the making of the Treaty of Locarno, or the five power Pact in which the United Kingdom, Belgium, France, Germany, and Italy agreed not to resort to aggressive warfare but submit all of their disputes which diplomacy failed to adjust to judicial decision, to conciliation, or eventually to the Council of the League of Nations.¹⁵ This agreement was concluded on October 16, 1925.

Here are a series of treaties made by members of the League primarily intended to prevent aggressive war, yet the Covenant had already bound the members of the League "to respect and preserve as against internal aggression the territorial integrity and existing political independence of the members of the League."

On April 8, 1927, the tenth anniversary of the entrance of the United States into the World War, M. Briand, French Minister of Foreign Affairs, made a statement to the Associated Press Correspondent in Paris suggesting that the United States and France enter into a mutual agreement to denounce war as an instrument of national policy in their dealings with one another. A significant part of this message addressed to the American public appears as follows:

¹⁴ Ibid., p. 99.

¹⁵ Ibid., p. 99.

If there were need for those two great democracies to give high testimony to their desire for peace and to furnish to other peoples an example more solemn still, France would be willing to subscribe publicly with the United States to any mutual engagement tending 'to outlaw war,' to use an American expression, as between these two countries. The renunciation of war as an instrument of national policy is a conception already familiar to the signatories to the Covenant of the League of Nations and the Treaties of Locarno. Every engagement entered into in this spirit by the United States toward another nation such as France would contribute greatly in the eyes of the world to broaden and strengthen the foundations on which the international policy of peace is being erected. These two great friendly nations, equally devoted to the cause of peace, would furnish to the world the best illustration of the truth that the immediate end to be obtained is not so much disarmament as the practical application of peace itself.¹⁶

In the latter part of 1926 Nicholas Murray Butler with Aristide Briand discussed the book, On War, by Karl Clausewitz. During the conversation Butler suggested that the renunciation of war between the American and French Governments would be a fine step. "The foundations for the Pact of Paris renouncing war as an instrument of national policy had been laid in his mind."¹⁷

M. Briand's offer was probably further inspired by a conversation which he had on March 22, 1927, with James T. Shotwell, a professor of Columbia University and an ardent advocate of peace. Between then and April 6, the tenth anniversary of the entrance of the United States into the

¹⁶ James T. Shotwell, "The Pact of Paris," International Conciliation No. 243, (October, 1928), 27.

¹⁷ Nicholas Murray Butler, The Family of Nations (New York: Charles Scribner's Sons, 1938), p. 10.

World War he framed his message.¹⁸

Strange as it may seem, the offer of Briand to the American public which appeared without comment in the New York Times on April 6, 1927, attracted little or no attention in the United States generally, for some time. It seemed that America had missed the point. The diplomacy was too open and lacking in mystery to attract the attention of the press. Briand must have felt disappointed at the lack of results from his message. Since there had been no direct communication to Washington, the Department of State paid no attention to the message.¹⁹

The first American to cause the Briand offer to attract attention in the United States was Dr. Nicholas Murray Butler. On April 25, the New York Times published his letter together with a republication of the offer of M. Briand. Following is Dr. Butler's letter:

Is it possible that the American people failed to hear the extraordinarily important message addressed to them through the Associated Press on April 6 by M. Briand, Minister of Foreign Affairs in the Government of the French Republic? If not, what answer do they propose to make, and how long will they permit M. Briand to be kept waiting for that answer?

On April 6, 1927, the tenth anniversary of the formal entry of the United States into the World War, the Foreign Minister of France made a public proposal to the American people that is quite without parallel in our history. He formally and openly proposed a treaty between the United States and France

¹⁸ David H. Miller, The Peace Pact of Paris (New York: G. P. Putnam's Sons, 1928), p. 7.

¹⁹ Ibid., p. 8.

that would definitely renounce war as a remedy for real or fancied wrongs as between France and the United States. This is a proposal to 'outlaw' war that has every merit of practicality. For some reason which is hard to understand, the importance of this notable declaration appears not to have been understood, much less appreciated, in the United States.

This epoch-making offer was not made confidentially through ordinary diplomatic channels, but was contained in a public declaration and appeal to the people of the United States in a formal statement given to the Associated Press. 'France is willing,' says M. Briand in that statement, 'publicly to engage itself with the United States to put war as between the two countries outside the pale of the law.'

Any one who knows what is the practice of the French Government in respect to public ministerial declarations of any kind will realize that this is no irresponsible or merely rhetorical appeal. M. Briand deals here not with general theories of world peace or with plans that can be brought to pass in a distant future; he proposes a definite step to be taken at once and he is still waiting for evidence of understanding on the part of the American people. No French Minister ever speaks in terms like these unless he has previously gained the full support of the Cabinet of which he is a member. It is French governmental practice not to make pronouncement on an important question of public policy until that pronouncement has been accepted by the Government of the day. When a French Minister makes a declaration of policy such as this, it is the Government of France which is speaking.

Why should not the American people hasten to use every means at their command to assure the Government of France that they have heard, that they do understand, and that they will act in accordance with this progressive and constructive policy? The adhesion and cooperation of other powers would, of course, be secured later on, but the first thing is to act, and unless the American people are both physically and morally deaf, they will hear and act quickly.

One who reads M. Briand's statement will see how clearly he sees the limitations under which the present negotiations for disarmament are being carried on. Those limitations arise chiefly from questions of procedure or method, and yet they reflect the great fundamental differences which every negotiation must

face. Disarmament, as M. Briand truly says, can only follow from the existence of a will to peace among the nations of the civilized world. Let France and America, he cries, demonstrate that, as between themselves at least, that will exists and will be finally and formally recorded in public act

The fact that this statement is addressed to the American public instead of formally to the Government at Washington rather increases than lessens its importance. The method adopted by M. Briand is fitting and proper in these democratic days to ascertain whether the will to peace really exists among the people of the United States and the people of France with reference to their mutual relations. The appeal was primarily not to governmental action, but first of all to those moral forces to which M. Briand makes appeal do not really exist among us, or, if existing, they cannot secure such direction of our policies as shall realize these ideals, then in international relations we shall have reached a stage which no American who understands his country's traditions and who realizes his country's ideals can look upon without shame and sorrow.

M. Briand's mind is thoroughly practical. He does not ask the Government of the United States to accept the covenant of the League of Nations; he does not ask the Government of the United States to adhere to the protocol for the establishment of a Permanent Court of International Justice. All that he asks is that the people of the United States shall take their own way to enforce their policies with reference to France.

We have been celebrating, and finally and justly celebrating, the tenth anniversary of the entry of the United States into the World War. Where and how could we find a more fitting tribute to the memory of those whose lives were given up in that stupendous struggle than by making a solemn compact with that nation most severely stricken by that war for the definite and formal renunciation of war itself as an instrument of policy.

M. Briand, speaking the voice and expressing the soul of France, has called out to us across the ocean. What answer is he to hear? What evidence is he to have that these noble words have been heard and understood?²⁰

²⁰ Nicholas Murray Butler, New York Times, April 25, 1927.

As Briand had addressed his message to the American public it is not surprising that the response which he received in the succeeding months from the United States was still more significant and important in revealing the will of the people to a policy favoring the great experiment of renouncing war. "The United States could go as far as France in ways of peace."²¹

Previous to the Briand proposal Americans were in the habit of thinking of the France of the Third Republic as a militaristic nation. With the affair of April 6 came the first definite step toward a revision of the attitude toward France. But the change did not come about all at once. Briand was aware of the feeling that the people of the United States might not appreciate the genuineness of his offer. In conversation he stated frankly that he did not understand American public opinion, nor what to make of it. At this point Mr. Levinson, the originator of the phrase "outlawry of war," and a great proponent of renunciation of war, arrived in Paris. He was of great service in interpreting to Europe and America the program of war outlawry.²²

In order to bring the matter more directly to the attention of the people in the United States, Joseph P. Chamberlain and James T. Shotwell wrote up a draft of a treaty

²¹ Shotwell, War as an Instrument of National Policy, pp. 44-45.

²² Ibid., pp. 46-47.

which would embody the principles of the French proposal.²³ The fact that this treaty was copied and commented on in many newspapers showed a great interest in the proposal to renounce war. The more conservative papers ridiculed the proposal, but their articles were not copied by the small town newspapers of the Middle West which had furnished the greatest opposition to the entrance of the United States into the League of Nations. The proposal itself was in accord with an ideal over which there was practically no difference of opinion. The doubt was whether or not the ideal could be embodied in definite workable terms. The Draft-Treaty seemed to assure most people that the Briand proposal was something real for which there were definite precedents in the Root, Knox, Bryan, and Locarno treaties. Its importance, therefore, may be stated in the fact that it brought the proposal to renounce war into the sphere of practical discussion.²⁴

We must have in mind that up to this point no official correspondence between the French and United States governments had taken place. Public opinion was being mobilized in favor of an ideal. Encouraged by the trend of events, M. Briand made inquiry as to whether the Department of State did or did not desire a treaty along the line suggested, and if it did, whether it was not for the two governments con-

²³ Shotwell, War as an Instrument of National Policy, Appendix I, pp. 271-278.

²⁴ Shotwell, War as an Instrument of National Policy, pp. 54-55.

cerned to draw up the papers rather than others. On June 11 Washington said:

In response to an informal inquiry made on June second by M. Briand, Foreign Minister of France, through Mr. Herrick, the American Ambassador, the latter has been authorized to say to M. Briand that the United States will be pleased to engage in diplomatic conversations on the subject of a possible agreement along the lines indicated by M. Briand's statement to the press on April sixth last.²⁵

On June 20, 1927, the Department of State received from M. Briand through the American ambassador to France a letter discussing the friendly relations which had always existed between the two countries together with a draft of a pact of perpetual friendship between the United States and France.²⁶

There were just two articles to this treaty with the exception of the provisions for signature and ratification. They read as follows:

Article I. The High Contracting Powers Solemnly declare, in the name of the French people and the people of the United States of America that they condemn recourse to war as an instrument of their national policy toward each other.

Article II. The settlement or solution of all disputes or conflicts of whatsoever nature or of whatever origin they may be, which may arise between

²⁵ Miller, The Peace Pact of Paris, p. 9.

²⁶ M. Briand, "Draft of Pact of Perpetual Friendship between France and the United States," Treaty for the Renunciation of War, Publication No. 468 (Washington: United States Government Printing Office, 1933), p. 10. (This publication is a compilation of the text of the treaty, notes exchanged, instruments of ratification and other papers. It will be referred to hereafter as Publication No. 468.)

France and the United States of America, shall never be sought by either side except by pacific means.²⁷

After this proposal reached Washington it was apparently forgotten in official circles during the summer. The clamor was made that adherence to such an agreement was contrary to the constitution in that it interfered with the right of congress to declare war. This opposition was soon overcome when it was pointed out that we could hardly make any treaties at all if the constitution were interpreted in this way, for the powers of congress extend over most of the sphere of government covered by treaty provisions.²⁸

There were those who thought that Briand's motive in proposing the pact of perpetual friendship to the United States was to entice us into an alliance with France in case she became involved in war with another country. This theory is denied by Professor Shotwell who was closely associated with Briand at the time. The proposal to outlaw war was viewed by him, according to his own statement, as an extension to the United States of the principle which France had already accepted in the Covenant of the League of Nations and the Locarno Treaties. Other nations which were parties to these treaties were already familiar with the conception of renunciation of war and every engagement entered into by the United States and any other nations such as France would

²⁷ This and other translations used are those of the Department of State.

²⁸ Shotwell, War as an Instrument of National Policy, p. 77.

contribute greatly in the eyes of the world to broaden and strengthen the foundation of the policy upon which the policy of world peace was being erected.²⁹

²⁹ James T. Shotwell, On the Rim of the Abyss (New York: The MacMillan Company, 1936), p. 134.

Chapter II

Development of the Pact

During the summer and fall of 1927 while public opinion in the United States was being developed in favor of American entrance into an agreement to renounce war as an instrument of national policy, nothing was said on the subject in the diplomatic circles at Washington. There seemed to be an air of mystery even about the Briand letter of June 20.¹ By December, however, when congress convened, the question of the French offer was brought into governmental circles. In the United States Senate, on December 8, Arthur Capper, Senator from Kansas, introduced a resolution providing for renunciation of war as an instrument of national policy and the settlement of disputes by peaceful methods.² Just four days later Senator Borah from Idaho introduced a similar resolution.³

The rising tide of public opinion, together with these and other resolutions, is directly responsible for further negotiations. It was believed by some in Washington that the interval of more than six months before M. Briand's letter was answered was due to keen-sighted detection of designs on the part of France to make the United States her

¹ Shotwell, War as an Instrument of National Policy, p. 93.

² Senate Joint Resolution No. 14, 70 Cong., 1 Sess., p. 351.

³ Ibid., p. 477.

ally in European adventures. This objection does not seem real in view of the fact that the United States could have employed the same device used in the multilateral treaty, namely, "liberty of action," in case another signatory goes to war. M. Briand was too shrewd a statesman to propose impossibilities in diplomacy, and he knew as well as anyone that no country could bring America to her aid in an imperialistic adventure. His offer was made to the United States alone because existing conditions had been such as to make war with the two republics extremely unlikely.⁴

On December 28, 1927, Secretary of State Frank B. Kellogg acknowledged the receipt of M. Briand's offer of June 20 in which he set forth the position of the United States on the subject of a treaty renouncing war as an instrument of national policy. He pointed out that

in view of the traditional friendship between France and the United States - and in view of the common desire of the two nations never to resort to arms in the settlement of such controversies as may possibly arise between them - it has occurred to me that the two governments, instead of contenting themselves with a bilateral declaration of the nature suggested by M. Briand, might make a more signal contribution to world peace by joining in an effort to obtain the adherence of all of the principal Powers of the world to a declaration renouncing war as an instrument of national policy.⁵

Kellogg continues by stating that such a declaration adhered to by all the principal powers would furnish a much

⁴ Shotwell, "The Pact of Paris," International Conciliation No. 243, (October, 1928), 13.

⁵ "The Secretary of State (Kellogg) to the French Ambassador (Clandel)," Publication No. 468, p. 11.

more impressive example to the world than an arrangement between only two powers such as France and the United States.⁶

Probably the most important fact regarding the Kellogg proposal was that it was the first time in seven years that the United States had offered a constructive policy regarding world politics generally.⁷

The American answer seems most logical, for if the United States entered into such an agreement with France alone, it could hardly refuse to make similar treaties with England, Japan, or almost any other nation. So far as the United States was concerned, this treaty with France would involve other treaties, so why should not France also become involved?⁸ The American government believed that the conception should be extended to all nations of the world so that its declaration could become a part of international law and form a foundation for world peace.⁹

The political significance of the Kellogg note was of great importance; it had again placed the United States in a position of making a definite proposal pointing toward world peace; it tended to satisfy critics of the attitude of the United States toward the League of Nations; and it

⁶ Ibid., p. 12.

⁷ Miller, The Peace Pact of Paris, p. 15.

⁸ Ibid., p. 16.

⁹ "Official Text of the Kellogg Treaty," Congressional Digest, (December, 1928), 358.

seemed to satisfy advocates of the theory of "outlawry of war." Internationally, the Kellogg proposal was discussed in the light of its relationship toward all other existing international conventions.¹⁰

Despite the apparent cleverness of the Kellogg note the Washington authorities do not seem to have fully appreciated that a multilateral treaty was a great deal more complicated than a number of separate treaties. The violation by one member of such a treaty as that proposed would involve all signatories, whereas a number of bilateral treaties of which the United States was a party would be of no concern to any except the two signatories. Looking at the matter politically, a bilateral treaty between France and the United States would not bring into question, except in theory, the treaty obligations of France with the rest of Europe; but such a treaty in multilateral form among the six Great Powers involved a consideration of the whole series of world-wide obligations including the League and Locarno Treaties.¹¹

On January 5, 1928, the French Ambassador to the United States, Mr. Claudel, stated that the French Government was in harmony with Mr. Kellogg's proposal but suggested that the governments of France and the United States first sign such an agreement and then invite the other powers to adhere. He

¹⁰ Miller, The Peace Pact of Paris, p. 17.

¹¹ Ibid., p. 19.

also suggested that they use the term "all wars of aggression" instead of the term "war as an instrument of national policy."¹²

Mr. Kellogg's note of January 11 dealt with the newly suggested procedure and content in a straightforward fashion. He suggested that France join with the United States in communicating with the British, German, Japanese, and Italian governments the text of Briand's original proposal and the copies of the subsequent correspondence between France and the United States on the understanding that this preliminary discussion in no way committed any of the participating governments pending the conclusion of a final treaty. The French suggestion that all governments be invited to adhere to a ready-made treaty was open to the objection that some Powers might delay or refuse acceptance and so the treaty would not come into force at all and the efforts would be rendered of no avail. A practical solution would be to begin negotiations for a multilateral treaty by submitting the Briand proposal of June 20, 1927, as a basis for discussion and agreement.¹³

The French Government, in their note of January 21, seem to criticize the attitude of the United States in their unwillingness to embody the French declaration in more than

¹² "The French Ambassador to the American Secretary of State," Publication No. 468, p. 14.

¹³ "The American Secretary of State to the French Ambassador," Publication No. 468, pp. 15-17.

the preamble of the Franco-American arbitration treaty which was in the process of development at this time. The note also suggests that while they see no objections to beginning a multilateral treaty by France and the United States first signing, they are willing to listen to suggestions that might seem more practical to the United States. Briand also calls attention to complications which would be necessitated when other powers which are members of the League of Nations and Locarno Treaties are considered.¹⁴

The first answer from Washington to Briand's note of January 21 came from Senator Borah, Chairman of the Senate Foreign Relations Committee, in an article to the New York Times, dated Sunday, February 5. He answered point by point the French note and showed clearly that a treaty to renounce war as an instrument of national policy would strengthen not only the Covenant of the League of Nations and also the Locarno Treaties but any other legitimate treaty of Neutrality. If France could sign a treaty with the United States to that effect without violating the principles of the Covenant of the League, then any other member could do the same. Then if all members of the Covenant and Locarno Treaties renounced war along with the United States the machinery for maintaining peace would surely be strengthened.

Senator Borah's argument was irrefutable; he

¹⁴ "The French Ambassador to the American Secretary of State," Publication No. 468, pp. 19-21.

went behind the facade of the structure of the League of Nations to emphasize its purpose and its fundamental principle, which is the maintenance of peace.¹⁵

He furthermore pointed out that the Kellogg proposal was a solemn pledge to aid the workings of other peace machinery - arbitration treaties, conciliation treaties, the Hague Tribunal, the World Court, the peace machinery of the League, and the machinery of Locarno.¹⁶

There can be no doubt but that Senator Borah's argument influenced the subsequent negotiation with France, for in the Kellogg letter of February 27 he not only repeated the argument that appeared in the New York Times¹⁷ but also stated that if France could become a party to a bilateral treaty with the United States renouncing war as an instrument of national policy, then she could sign one with the other powers, as the difference between a bilateral treaty and a multilateral treaty renouncing war as an instrument of national policy was one of "degree and not of substance."¹⁸ As a further argument to show that the complete abolition of the institution of war was not incompatible with the theory of the League of Nations, he pointed out that the Sixth International Conference of American States had passed a

¹⁵ Shotwell, War as an Instrument of National Policy, p. 136.

¹⁶ Ibid., p. 137.

¹⁷ "The American Secretary of State to the French Ambassador," Publication No. 468, p. 22.

¹⁸ Ibid., p. 22.

resolution in which the twenty-one American States represented had condemned war as an instrument of national policy in their mutual relations. Seventeen of these twenty-one states are members of the League of Nations.¹⁹ Mr. Kellogg also maintained his former position regarding the use of the phrase "wars of aggression." He felt that the use of this term with any accompanying definition or explanation could not but weaken its value as a means of guaranteeing peace.²⁰ The suggestion contained in the note of January 11 is also repeated

that the Government of France join with the Government of the United States in transmitting to the British, Italian, German and Japanese Governments for their consideration and comment the text of M. Briand's original proposal, together with copies of the subsequent correspondence between France and the United States as a basis for preliminary discussions looking to the conclusion of an appropriate multilateral treaty proscribing recourse to war.²¹

It might be well to pause here for an analysis of the divergent views regarding the proposed multilateral treaty. The French did not insist on their suggested procedure, a treaty between the two countries to which other nations were invited to adhere, although this was without doubt closely connected with the question at issue. If this view were followed, the treaty could be adopted almost regardless of the number of signatories or the method of obtaining them.

¹⁹ Ibid., p. 23.

²⁰ Ibid., p. 23.

²¹ Ibid., p. 24.

On the other hand the American formula, if acceptable at all, would require a much more general acceptance before it should come into force.

France insisted on renunciation of war of "aggression," America was for renunciation of war as an instrument of national policy. Each agreed on the settlement of disputes by pacific means only. A question worthy of examination is whether in reality there is any difference in thought or meaning between the formulas of the two countries. Both seemed to agree that "war of aggression" is more limited in a sense than "war as an instrument of national policy." Admitting the difficulty of classifying a case that might come within the scope of either, and admitting the difficulty of finding words to define either, the question may be looked at from the point of view of language and theory.²²

Certainly self-defense was outside of the French proposal, for self-defense would be the opposite of aggression. It was outside of the meaning of the Kellogg proposal, for according to Mr. Kellogg's statement at the American Society of International Law on April 28, 1928, he stated that the anti-war treaty in no way impaired the right of a nation to defend its territory from attack or invasion.²³ It would seem too, that Mr. Kellogg had on March 1 assured the French

²² Miller, The Peace Pact of Paris, p. 38.

²³ Frank B. Kellogg, Speech delivered before the American Society of International Law, April 28, 1928, New York Times, April 29, 1928.

Ambassador that the renunciation of war as proclaimed in the treaty would not deprive the signatories of the legitimate right of self-defense.²⁴

In the French note of March 30, 1928, Briand made the following statement:

The French Government is willing to adopt as practical a point as possible and to facilitate as far as it can the efforts of the American Government in the direction of an immediate decision.²⁵

He does not believe, however, that a multilateral treaty could be included in the same form as a bilateral treaty. Four essential points were mentioned which it will be necessary to classify. (1) The right of self-defense was not to be prohibited by the proposed treaty. (2) If any nation violated the treaty, obligations toward that nation should end. (3) The treaty should be universally accepted by the nations before it should come into force. (4) The obligations of the new treaty should not in any way impair the obligations of previous treaties, particularly those of the Covenant, of Locarno, and of the Neutrality Treaties.²⁶

France agreed to a submission of the June 20 proposal together with subsequent correspondence of the United States and France to four previously mentioned powers for their

²⁴ Miller, The Peace Pact of Paris, p. 43.

²⁵ "The French Ambassador to the American Secretary of State," Publication No. 468, p. 28.

²⁶ Ibid., p. 31.

discussion and agreement.²⁷

This letter marks the closing of the first phase of the negotiations. Some thought that it was the end of the proposal itself. Liberals in both France and America registered strong opposition to the negative tone of the French note, while the reactionary press in Paris claimed that those who had originated the plan hoped that they had seen the last of the Kellogg proposal.²⁸

As a result of the French note of March 30 there was one important change in the subsequent negotiations. Instead of a joint proposal to the other four powers as the American Secretary of State had suggested, there now came a proposal from the United States made April 13 and a counter French proposal dated April 20.²⁹

It appears that there was conversation between March 30 and April 13, for the Kellogg note of the latter date, sent in the identical form to the Government of Great Britain, Germany, Italy, and Japan, states that the governments were in "complete agreement" as to the procedure. This note makes a clear statement regarding the views of the American and French Governments and encloses copies of the correspondence which had taken place between France and the United States from June 20, 1927, to March 30, 1928. A preliminary

²⁷ Ibid., p. 30.

²⁸ Shotwell, War as an Instrument of National Policy, p. 141.

²⁹ Miller, The Peace Pact of Paris, p. 50.

draft of a treaty representing in a general way the form of a treaty which the United States was prepared to sign with the Government of France, Great Britain, Germany, Italy, and Japan. The wording of articles one and two of this treaty was almost the same as that of the original Briand offer.³⁰

A copy of the American draft and of the note had been sent to Paris on April 11.³¹

The two primary articles of the American proposal are as follows:

Article I

The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war for the solution of international controversies and renounce it as an instrument of national policy in their relations with one another.

Article II

The High Contracting Parties agree that the settlement or solution of all disputes or conflicts of whatever nature or of whatever origin they may be, which may arise among them, shall never be sought except by pacific means.

A comparison of this with the wording of the Briand treaty of June 20, 1927, reveals few changes. In the first article the words "of the French people and the people of the United States of America" are changed to "of their respective peoples." This obviously is necessary to a multi-

³⁰ "Identical Notes from the Government of the United States to the Governments of Great Britain, Germany, Italy, and Japan, on April 13, 1928," Publication No. 468, pp. 32-34.

³¹ Miller, The Peace Pact of Paris, p. 52.

lateral instead of a bilateral treaty as was planned originally by M. Briand. In the original language was a solemn declaration "that they condemn recourse to war." The American draft reads "they condemn recourse to war for the settlement of international controversies." Just why this phrase is added is not mentioned in any of the later correspondence.

Article two followed very closely the wording of the French Draft Pact of Perpetual Friendship. At the beginning, however, the words, "The High Contracting Parties agree that," were inserted. Probably this does not make any real change in the meaning.

On April 20, the French Government sent a note to the Government of Great Britain, Germany, Italy, Japan, and the United States. In this letter hope was expressed that all nations would join in the humane program of renunciation of war as an instrument of national policy.³² With the note was included the French Draft for a multilateral treaty renouncing war as an instrument of national policy.³³

The French offer contained six articles where the American had contained only three. The chief differences between the two drafts were that the French defined war as an instrument of national policy; explained the legitimacy

³² "Draft of Proposed Treaty Submitted by the Government of France to the Governments of Great Britain, Germany, Italy, Japan and the United States on April 20, 1928," Publication No. 468, p. 37.

³³ Ibid., pp. 37-38.

of self-defense; brought out that if one signatory violated the provisions, the others were released from their obligations under the treaty; and included the provision that this treaty in no way affected the rights and obligations existing under previous international agreements.³⁴

The American and French views were now before the British, German, Italian, and Japanese Governments. The comments of these four powers together with the speech of Secretary of State Kellogg before the American Society of International Law at Washington on April 28, 1928, form the next step in the exchanges.

The first of the nations to reply was Germany under date of April 27, 1928. This was the day previous to the Kellogg speech before the American Society of International Law, so it could not have been influenced by those explanations. On the other hand, Germany was on the most cordial terms with the United States, and almost any proposal coming from the American Government was bound to have governmental and popular support. At the same time the relations between Germany on the one hand and those of Great Britain and France on the other were quite friendly, and Germany had every reason to wish them to become more so.³⁵

The German note first referred to the negotiations between the Governments of the United States and France and to

³⁴ Ibid., p. 37.

³⁵ Miller, The Peace Pact of Paris, p. 61.

the proposal made in the note of April 13; it stated that consideration had been given to the French Draft of April 20.³⁶

The German Government expressed cordial approval of "an international pact for the outlawry of war" and stated:

the two main ideas on which are based the initiative of the French Minister of Foreign Affairs and the resulting proposal of the United States correspond fully to the principles of German policy.³⁷

The note then went on to say:

respect for the obligations arising from the Covenant of the League of Nations and the Rhine Pact must, in the opinion of the German Government, remain inviolate.

It furthermore expressed opinion that nothing in the American Draft Treaty conflicted with these obligations, and continued:

an instrument of national policy should only serve to strengthen the Covenant of the League of Nations and of the Rhine Pact.³⁸

The attitude of the German Government was that since the right of a state to defend itself was self-evident, it was not necessary to mention this point in the treaty, neither was there any need to "provide expressly for the case of a violation." It also agreed that the "ultimate goal must be the universality of the new pact."³⁹

The Italian note of May 4, signed by Mussolini, was

³⁶ "The German Minister of Foreign Affairs to the American Ambassador, April 27, 1928," Publication No. 468, p. 40.

³⁷ Ibid., pp. 40-41.

³⁸ Ibid., p. 41.

³⁹ Ibid., p. 41.

next in order. It gave assurance that Italy favored the policy and was willing to aid in reaching an agreement. The suggestion was also made that representatives from the United States attend a "meeting of the legal experts of the powers whose direct interest in the proposed treaty had been enlisted."⁴⁰ Apparently this meeting never materialized due to the opinion of Secretary Kellogg and others that it was not necessary.⁴¹

Before going further into the replies of foreign countries, the American interpretations of the Pact on controversial points must be considered, as they had a bearing on the questions raised. America's official interpretation was made by Secretary Kellogg in his speech delivered before the American Society of International Law in Washington, April 26. Briefly summarized, the interpretations follow. (1) Self-defense was to be taken for granted and there was no need to define it, but each state should decide for itself what was aggression and what was defense. (2) The Covenant of the League of Nations imposed no affirmative primary obligations to go to war. It might authorize a war, but each member would decide for itself whether the authorization was legitimate and necessary. (3) Similarly, the Treaties of Locarno might call for police action but only against a nation which had resorted to war

⁴⁰ "The Italian Minister of Foreign Affairs to the American Ambassador," Publication No. 468, p. 481.

⁴¹ Miller, The Peace Pact of Paris, p. 65.

in violation to its solemn pledge thereunder. (4) Treaties of neutrality, to which France had referred, were presumably of the same defensive nature, and if all of the signatories were equally to join this anti-war treaty, it would simply add to the guarantee of peace. (5) This strengthening of the existing guarantees of peace was inherent in the multilateral treaty because it would go without saying that any violation of it would automatically release the other parties from their obligations to the treaty breaking state. (6) While hoping that the treaty would be accepted universally, it should become effective when approved by the six Great Powers, namely, Great Britain, France, Germany, Italy, Japan, and the United States.⁴²

Sir Austin Chamberlain's Note of May 19 is one of the most significant of the diplomatic exchanges preceding the making of the treaty. It described clearly and at length the American and French proposals and left no doubt as to the British position on all points.⁴³

First of all, he takes up the two draft treaties and attempts to harmonize them by stressing their common purposes and pointing out that the French are merely trying to state more precisely the conditions under which the treaty would be applied. There is no concealing the preference of

⁴² Frank B. Kellogg, French Draft of the Multilateral Treaty for the Renunciation of War, (Washington: Government Printing Office, 1928), pp. 1-3.

⁴³ Miller, The Peace Pact of Paris, p. 67.

SEP 25 1939

the British Foreign Office for a greater precision than is to be found in the American text, but it finds a way of harmonizing the two by putting Mr. Kellogg's explanation of the treaty on record in some appropriate manner so that it may have equal value with the terms of the treaty itself. Thus a broad interpretation of the American text would allow each nation to apply the treaty according to its own conditions.⁴⁴

There is one part of the British note which deserves to be quoted in full because of its special bearing on the interpretation of self-defense.

There are certain regions of the world the welfare and integrity of which constitute a special and vital interest for our peace and safety. His Majesty's Government have been at pains to make it clear in the past that interference with those regions cannot be suffered. Their protection against attack is to the British Empire a measure of self-defense. It must be clearly understood that His Majesty's Government in Great Britain accept the new treaty upon the distinct understanding that it does not prejudice their freedom of action in this respect. The Government of the United States have comparable interests any disregard of which by a foreign Power they have declared that they would regard as an unfriendly act. His Majesty's Government believe, therefore, that in defining their position they are expressing the intention and meaning of the United States Government.⁴⁵

These "unspecified regions" must certainly have been Egypt and the Persian Gulf. Here they considered that their position was similar to that of the United States in the

⁴⁴ "The British Secretary of State for Foreign Affairs to the American Ambassador, May 19, 1923," Publication No. 468, pp. 43-45.

⁴⁵ Ibid., p. 45.

Western Hemisphere. To this paragraph Kellogg never referred. The British had alluded to the Monroe Doctrine, although not by name, and any further discussion might have led to some observations in the correspondence about the Monroe Doctrine itself. Certainly such was not the wish of the American Department of State.⁴⁶

Finally the note agreed that it was not necessary to wait until all nations had signed before the treaty went into effect but suggested that "certain other States in Europe" might be included. It also called attention to the necessity of participation of the Governments of the Dominions and that of India.⁴⁷ These latter mentioned were notified by the English Government and almost immediately sent notes expressing their willingness to renounce war as an instrument of national policy.

Japan, the last of the Great Powers to answer the Kellogg letter of April 13 was quite brief in her reply. Her answer was one of complete agreement with the position taken by the United States. Tanaka spoke of the "high and beneficent aims of the proposal" and said that it was taken "to imply the entire abolition of the institution of war." He also expressed conviction that unanimous adherence of the six Great Powers referred to could be realized and that they would be happy to aid in furthering a move for estab-

⁴⁶ Miller, The Peace Pact of Paris, p. 69.

⁴⁷ Publication No. 468, p. 46.

lishing an "era of permanent and universal peace."⁴⁸

Before going into the final stages of the negotiation it might be well to consider opinions of the proposals outside of diplomatic circles. Statesmen in Europe were discovering that their efforts for security were made futile by the absence of the United States from the League of Nations. According to the New York World a no-war treaty with France alone would cause us to seem to be allied with her, and if we extended it to other countries we would find ourselves in a kind of European Monroe Doctrine with the United States agreeing never to intervene in a European conflict. Others considered the peace move as an attempt on the part of governments to become co-extensive with the world-wide economic system.⁴⁹

Europe felt that the proposed anti-war treaty would bring the United States into closer relationship with the League of Nations, while in America it was believed that adherence to a treaty renouncing war as an instrument of national policy would have a tremendous moral influence in promoting world peace.⁵⁰ At the same time it was conceded that since wars arise from causes that are accidental and

⁴⁸ "The Japanese Minister for Foreign Affairs to the American Ambassador, May 26, 1928," Publication No. 468, p. 51.

⁴⁹ "Hidden Jokes in the No-War Pact," Literary Digest, XCVI (January 7, 1928), 10.

⁵⁰ J. T. Gerould, "American Proposals for All-Around Treaties to Outlaw War," Current History, XXVIII (May, 1928), 282.

complex it was unreasonable to suppose that any treaty or even series of treaties would cause a cessation of armed conflict. So long as the duel was good form, it persisted; it gradually ceased when ruled out of good society.

Legalized piracy was at one time recognized but that had been relegated to the past. In the same way, why was it not reasonable to believe that war between nations could be placed in the same category with other worn-out relics of past ages?⁵¹

Europe had made efforts to outlaw war in the League of Nations, but the United States had declined to have a part. In the Genoa conference of 1922, Lloyd George induced the nations of Europe to foreswear war. The United States remained aloof. The Locarno Pact in 1925 attempted to bind the leading European nations to give up their right to make war. The principle applied in these agreements is to organize the nations against an "aggressor" in case a conflict broke out. The Kellogg proposal states simply that the nations commit themselves never to go to war, a plan almost too simple to be practical.⁵²

Kellogg's proposal, although not taken seriously in most parts of Europe, would be approved as soon as enough reservations could be made to leave conditions exactly as they were before the pact was signed. European nations

⁵¹ Ibid., p. 284.

⁵² George Glasgow, "American Proposals for Pact of Pacifism," Contemporary Review, CXXXIII (May, 1928), 645.

would not be bound to an American program; the United States would be tied to Europe. This would follow, because once we joined, we would have moral obligations when any other signatory violated the pact. The Kellogg Treaty could not modify nor abolish any of the machinery which had been prepared for protection against calamities which were always possible and at times seemed inevitable. Europe cannot think of peace without police force to maintain it. She is not acting in bad faith by taking the stand mentioned. Her experience has been different to ours, and she would no more change than an Eskimo would discard his furs because told by an inhabitant of the tropics that they were unsanitary. What people of Europe really think of the proposal never gets into official documents and seldom to the press. They cannot but utter words of praise because they cannot afford to offend the United States.⁵³

The Department of State now had before it, with the French counter proposal, the comment of ten other governments on the two drafts. Some of them advanced the discussion little, if at all. Italy, Australia, and New Zealand had been almost silent on the differences in the two proposals, and India had merely made reference to the British note of May 19. The other six governments, however, had stated their respective positions more or less at length,

⁵³ P. H. Simonds, "Kellogg Proposals," Review of Reviews, LXXVIII (July, 1928), 78-79.

and these, taken in connection with the French attitude put before Mr. Kellogg two problems for the following negotiations.

The first of these problems which pertained to the number of original signatories had practically been solved. Briand's original proposal had called for a bilateral agreement between France and the United States. This had been expanded by Mr. Kellogg to include the six Great Powers with provisions and hopes that all nations adhere. After some vacillation France had suggested that this multilateral treaty not come into effect until it had been accepted universally, or almost so. Her particular desire was to get all parties of the Locarno Treaties to sign this new treaty in the first instance. In his speech of April 28, Mr. Kellogg had expressed willingness to admit Belgium, Poland, and Czechoslovakia, the other Locarno Powers, and had brought in the five British Dominions and the Government of India. As no other country had joined France in insisting on the universality of the treaty, she seemed to be satisfied when the other Locarno Powers were included. Moreover, it should be said that although not explicitly indicated by the terms of the treaty itself, the procedure followed caused complete realization of the French desire.⁵⁴

The second question was whether, and if so, to what extent, the previous American proposal should be changed.

⁵⁴ Miller, The Peace Pact of Paris, p. 81.

This question was closely associated with the number of original signatories. Thus, if all of the Parties of the Locarno Treaties became members and there was complete agreement that their obligations remain intact, there was no need to make mention of it in the treaty. The situation regarding the relationship toward the League of Nations was similar, although probably not quite so clear.⁵⁵

On June 23, the United States Government submitted a revised treaty to fourteen governments, including the signatories to the Locarno Treaties, with a note explaining the construction placed by the United States upon the various points raised, and by quoting from the speech made by the Secretary of State, on April 23, before the American Society of International Law.⁵⁶

An interesting omission from the note was in regard to the so-called British "Monroe" or Regional Doctrine, announced in the British note of May 19. As to this, Mr. Kellogg probably had good reason for not alluding. While the silence here of the American note meant consent to the British declaration, still the silence was interesting.⁵⁷

In the Preamble of the New Draft Treaty Mr. Kellogg gave recognition to the principle that "any signatory Power

⁵⁵ Ibid., p. 82.

⁵⁶ "The Government of the United States to the Governments of Belgium, Czechoslovakia, France, Germany, Great Britain, Irish Free State, Italy, Japan, and Poland, June 23, 1928," Publication No. 468, pp. 57-58.

⁵⁷ Miller, The Peace Pact of Paris, p. 84.

which shall hereafter seek to promote its national interest by resort to war shall be denied the benefits furnished by this treaty."

The body of the new treaty is identical with that of April 13. The phrase previously quoted was the one in which Mr. Kellogg made his greatest concession regarding the effect of a violation of the treaty.⁵⁸

With this, Mr. Kellogg announced that the United States was ready to sign at once a "treaty in the form therein proposed," and expressed the hope that each of the fourteen Governments to whom the note was addressed would "be able promptly to indicate its readiness to accept, without qualifications or reservations, the form of treaty now suggested by the United States." Mr. Kellogg added his belief that if the fifteen Powers could agree on this form he was confident that the other nations of the world would soon adhere, and concluded his note with a request to be informed at an early date whether the Governments addressed would join in the Treaty "in the form transmitted."⁵⁹

The Department of State received answers from all the fourteen governments to whom the note of June 23 was addressed between July 11 and July 20. All of these notes expressed willingness on the part of their governments to become original signatories of the treaty "in the form transmitted"

⁵⁸ Ibid., p. 94.

⁵⁹ Publication No. 468, p. 61.

by the American Secretary of State.⁶⁰

By a happy inspiration the Department of State suggested that the treaty be signed at Paris. The choice of Paris as the place for signing the Pact was a tribute to the important part played by M. Briand, the French Foreign Minister, in the initiating and furthering of the negotiations which culminated in the actual affixing of the signatures of the designated plenipotentiaries.⁶¹ Due honor should also be given to Mr. Kellogg, since he had so faithfully pursued his aim of a world-wide multilateral treaty for the renunciation of war in simple text; and he had reached his goal.⁶²

⁶⁰ Shotwell, War as an Instrument of National Policy, p. 173.

⁶¹ Ibid., p. 174.

⁶² Miller, The Peace Pact of Paris, p. 112.

Chapter III

The Meaning of the Pact

Paris was decorated for the signing of the Pact which was to bear her name. Flags from all countries were displayed down its long avenue and on the government buildings. Within the Quai d' Orsay itself there was a touch of ceremony lacking when the delegates went to their places. The plenipotentiaries were guided to their places at the great horseshoe table by gaily uniformed ushers and a uniformed Swiss Guard led the procession from the reception room to the clock room, where the signing took place.¹

The ceremony of signature took place at three o'clock in the afternoon. It consisted of an address of welcome to the plenipotentiaries by the French Minister of Foreign Affairs, Aristide Briand, and the reading of the French and English texts of the treaty, followed by the signing by the fifteen original signatories.²

After the signing of the Briand-Kellogg Pact on August 27, 1928, by the fifteen original signatories, the United States immediately delivered invitations to adhere to all of the independent nations except Russia.³ The invitation to the Russian Government was delivered by the French

¹ Shotwell, War as an Instrument of National Policy, p. 180.

² Publication No. 468, p. 6.

³ Miller, The Peace Pact of Paris, p. 260.

Ambassador, as the United States did not recognize the Union of the Soviet Socialist Republics.⁴

Between August 27, 1928, and July 24, 1929, the date that the Pact became effective, many questions arose regarding its interpretation. Was it only an act of good faith, a moral gesture, or did it mean that war as an instrument of national policy was actually surrendered? If it were really to be put into actual practice, how was it to be worked out and applied, and what obligations did the United States assume? Another series of vital questions pertained to the reservations by the separate signatories. What effect did they have? Had they robbed the treaty of its purpose, or merely stated conditions under which it would have to be worked out?

Opinion as to the worth of the Pact varied greatly among scholars and statesmen. Its supporters declared that war was renounced forever and that no nation would dare affront the moral sentiments of the world by breaking its pledge. Some observers pointed out that with the universality of peace assured, national security was at last realized; armaments could be reduced and all energies directed to the building of a cooperative international order. Critics of the Pact were as hostile in denouncing it as its friends were warm in its praise. International lawyers argued that the numerous interpretations brought into the document in the

⁴ Ibid., p. 5.

course of its development reduced it to a mere temperance pledge with no binding force and a questionable moral value.⁵

In his speech on the occasion of the signing of the Pact M. Briand points out that since war has been stripped of its legality nations will gradually abandon the habit of associating the idea of national prestige with national force.⁶ He continues by observing that the leaders of nations signatory to the Pact would not run the risk of incurring the reprobation of their associates by provoking a war.⁷

The Kellogg Pact is a very important instrument. For the first time in history it established the principle of outlawry of all aggressive war in an international convention. The Covenant of the League of Nations and the Pacts of Locarno proscribe certain types of war among those who are members. In the League, for example, the states may go to war after an attempt at mediation has failed. Then, nations outside of these covenants are not affected. Certain arbitration and mediation treaties have increased the number of wars that are placed under interdict. But prior to the signing of the Briand-Kellogg Pact nations not participating

⁵ Russell M. Cooper, American Consultation in World Affairs (New York: The Macmillan Company, 1934), p. 10.

⁶ M. Briand, "Address Delivered at the Signing of the Pact of Paris, August 27, 1928," Publication No. 468, p. 314.

⁷ Ibid., p. 314.

in them were at liberty to wage war unless there were specific conventions on this point. For this reason the Pact has a double meaning from the judicial viewpoint. In the first place, it extends the number of wars interdicted for members of the League of Nations, and in the second place, states not belonging to the League will be bound by the interdiction of aggressive warfare when they sign the Kellogg Pact or adhere thereto.⁸

Aside from its judicial value, the Pact is of moral worth. In spite of its imperfections it remains true that the treaty solemnly pronounces a basic principle. Wars, which up to the time of the World War were recognized as legal, are outlawed. The nation which undertakes aggressive warfare is pronounced a criminal. In this way it is being recognized that public opinion is an important factor of peace. Thus public opinion, based on international morality and upon the interests of all humanity can in the final analysis assure world peace. The Pact will mean what the nations and people of the world want it to mean.⁹

The multilateral treaty practically takes the control of government out of diplomatic circles and places it under popular control. The treaty is simple, brief, and forceful. There are no elaborate rules of conduct and no standards of

⁸ Dr. Hans Wehberg, The Outlawry of War (Washington: Carnegie Endowment for International Peace, 1931), pp. 81-82.

⁹ S. L. Gulick, "Meaning of the Peace Pact," National Education Association Journal, XVII (November, 1928), 253.

international behavior. It is not a legal document but a popular slogan. It may be far from accomplishing its intended purpose of settling all international disputes in a peaceful way, but it leads in the right direction.¹⁰

In England there was much praise for the treaty and criticism for Sir Austin Chamberlain because of his being luke-warm toward British adherence.¹¹ People felt that never in the history of diplomacy was there so great a proposal; so contrived that in the simple acceptance of it the world had settled peace to gain and nothing to lose. If the nations of the world would recognize that peace is worth while, agree not to go to war, and believe in the value of their pledge, there will be no war.¹²

In a speech before the Wisconsin American Legion on August 15, 1928, President Calvin Coolidge declared definitely in favor of the Kellogg Pact as drafted. The part of the speech relating to the American foreign policy follows:

We should take every precaution to prevent ourselves or the rest of the world from being involved again in such a tragedy as began in 1914. While countries' national defense should never be neglected, preparation for maintenance of peace is likewise required by every human impulse that stirs the hearts of men.

It is in accordance with our determination to refrain from aggression and build up a sentiment

¹⁰ Senator Wagner, Congressional Record, 70 Cong., 2 Sess., p. 1359.

¹¹ George Glasgow, "Sir Austin and the Pact," Contemporary Review, CXXXIV (August, 1928), 237.

¹² Ibid., 240-241.

and practice among nations more favorable to peace, that we ratified a treaty for the limitation of naval armaments made in 1921, earnestly sought for a further extension of this principle in 1927 and secured the consent of fourteen important nations to the negotiation of a treaty condemning recourse to war, renouncing it as an instrument of their national policy, and pledging each other to seek no solution of their disagreements except by pacific means. It is hoped other nations will join this movement. Had an agreement of this kind been in existence in 1914, there is every reason to suppose that it would have saved the situation and delivered the world from all the misery which was inflicted by the great war.

By taking a leading position in securing this agreement, which is fraught with so much hope for the progress of humanity, we have demonstrated that when we have said we maintained our armaments, not for aggression, but purely for defense, we were making a candid statement which we were willing to verify by our actions.

I shall not now go into a discussion of the details or implications of this agreement other than to point out that of course it detracts nothing from the right and obligation of ourselves or the other high contracting parties to maintain an adequate national defense against any attack, but it does pledge ourselves not to attack others in consideration for their agreement not to attack us, and to seek a settlement of our controversies one with another through peaceful means.

While it would be too much to suppose that war has been entirely banished, yet a new and important barrier, reasonable and honorable, has been set up to prevent it. This agreement proposes a revolutionary policy among nations. It holds a greater hope for peaceful relations than was ever before given to the world. If those who are involved in it, having started it, will finish it, its provisions will prove one of the greatest blessings ever bestowed upon humanity. It is a fitting consummation of the first decade of peace.¹³

In his message to the Senate on December 4, 1928, he

¹³ President Calvin Coolidge, "Speech before the Wisconsin American Legion," New York Times, August 16, 1928.

called attention to the fact that even then fifty-nine of the sixty-four independent nations had endorsed the new treaty. He added:

I have every reason to believe that they are in sympathy with this effort to promote peace, and no reason to believe that any of them will refuse in due course to become a party to the treaty. - The fact that I approve of the treaty is well known. I hope that it may come into force with the least possible delay, and I should be pleased if the Senate would take such action during the present session as to enable the United States to ratify the treaty before the expiration of my term of office.¹⁴

With the president's endorsement of the treaty was a letter from the Secretary of State giving a brief review of the diplomatic negotiations leading to the approval of the agreement at Paris on August 27, together with arguments for its ratification.

In explaining the treaty he pointed out:

The treaty for the renunciation of war is brief and simple . . . It contains no reservations or exceptions, and there are no collateral understandings which detract from its effectiveness or qualify its high purpose. It records the determination of the participating powers to abolish war as an instrument of national policy in their relations with one another, and to seek only by pacific means the settlement of any disputes that may arise among them.¹⁵

German officials were outspoken in their prediction as to the value of the new Pact. At a Constitution Day celebration at Berlin more than five hundred German officers de-

¹⁴ Calvin Coolidge, Senate Executive Document, 70 Cong., 2 Sess., December 4, 1928, p. 1-2.

¹⁵ Frank B. Kellogg, Senate Executive Document A, 70 Cong., 2 Sess., December 1, 1928, p. 3.

clared that it "marked the dawn of a new era for Germany."¹⁶

The press in Paris did not offer any adverse criticism to the Pact. France was willing to enter into any proposal which offered world peace. The worst that was said was that if it does no good, precautions can be taken to see that it does no harm.¹⁷

At his palace in England on August 3, 1928, King George is quoted as follows:

My Government has been happy to accept the treaty for the renunciation of war proposed by the United States Government. The proposed treaty has similarly been accepted by my Government in the Dominions and my Government in India. It is my confident expectation that when completed it will constitute a new and important guarantee of the World's peace.¹⁸

An effect of the anti-war treaty is to increase materially the influence of the United States in European affairs. The American economic structure necessitates world peace. The world can have purchasing power only if there is peace. The importance of the Pact of Paris can hardly be overestimated in view of building up trade among nations.¹⁹

As has already been mentioned, men in high places did not all agree that the Briand-Kellogg Pact was a means of preventing war or even of making its recurrence less likely.

¹⁶ New York Times, August 12, 1928.

¹⁷ New York Times, August 20, 1928.

¹⁸ New York Times, August 4, 1928.

¹⁹ J. T. Gerould, "Effect of Anti-War Treaty on American Foreign Policy," Current History, XXIX (October, 1928), 120.

Most of the adverse criticism seems to arise from the meaning that is read into the treaty in the interpretations and reservations. The original proposition of Secretary Kellogg was an unconditional renunciation of war. The treaty as qualified by its reservations constitutes no renunciation or outlawry of war but in fact and in law a solemn sanction for all wars mentioned in the exceptions and qualifications.²⁰ These are the reservations, briefly summarized. (1) The Pact does not restrict self-defense. (2) Rights under the League of Nations and Locarno treaties are not affected. (3) Other neutrality treaties are to be respected. (4) Great Britain's spheres of special influence are recognized.

On Mr. Kellogg's own statement wars waged in self-defense are recognized as legal. At the same time all countries are free to determine when a war is defensive. Had the Pact been in existence in 1914 the World War would not have been averted because the leaders claimed to be acting in self-defense.²¹ If nations are allowed without restrictions to decide what is a defensive war, it is difficult to think of any war in the future that would not be placed in that category. Instead of outlawing war as the treaty pretends to do, it places a specific sanction on any

²⁰ Edwin Borchard, "Address Delivered at the Williamston Institute of Politics, August 22, 1928," Senate Document 176, (Washington: United States Government Printing Office, 1929), p. 3.

²¹ F. H. Simonds, "Should the Senate Ratify the Kellogg Treaty?" Forum, LXXXI (January, 1929), 27.

war that is likely to be promulgated. Theoretical renunciation of war as an instrument of national policy has little scope for application in view of concrete wars which the Pact sanctions. It is idle to presume that these official constructions placed into the treaty by the signatories is not as much an integral part of the document as if they had been written into the treaty.²²

It was frankly agreed by some French organs that since a signatory may decide for itself when circumstances demand a war for self-defense that nothing could be "lost" by signing the Pact. In other words, membership in the Briand-Kellogg Pact would make no difference from a practical point of view since there was no definition of an aggressive war.²³

Again, it will be noticed that the British claim to the right to use war as an instrument of national policy in certain undefined regions of the world is recognized. Under this reservation England could make war on Egypt, which is recognized as one of those undefined regions, and still not violate the letter of the Pact. While the signatories of the Pact commit themselves to a renunciation of war in general, all remain free to declare and wage war under conditions that are likely to occur.²⁴

²² Borchard, Senate Document 176, p. 3.

²³ George Glasgow, "Kellogg Pact," Contemporary Review, CXXXIV (September, 1928), 383.

²⁴ Simonds, "Should the Senate Ratify the Kellogg Pact?" Forum, LXXXI (January, 1929), 27.

Fear and distrust of the small nations for the larger ones began to show themselves before the treaty was ratified. None of the little nations seemed quite satisfied. While at the assembly of the League of Nations at Geneva public addresses on the pledge against fighting were quite laudatory, personal conversations with delegates from the lesser powers indicated that most of them were anxious about the effects of the Pact of Paris. It was generally believed by the smaller powers that in the case of a threatening quarrel between the larger powers of Europe, the United States would probably exert an influence but would leave disputes with the smaller countries in their own hands for settlement.²⁵

Masanoa Manihara, former Ambassador from Japan to the United States, points out that the various interpretations and reservations attached to the agreement and the places where war is not outlawed leave the treaty of little practical value.²⁶

What the people of Europe actually think of the Kellogg Pact never gets into official documents and seldom to the press. They feel that they must utter words of praise and agreement because they cannot afford to offend America. The single measure of their real sentiment is to be found by

²⁵ M. W. Davis, "Foreign Opinion," Outlook, CL (September 19, 1928), 820.

²⁶ "A Japanese Statesman Discusses the Kellogg Pact," Living Age, CCCCXXVII (December 15, 1929), 510.

a careful study of their reservations.²⁷ The Kellogg proposal does not appeal to the intellects of Europeans. To sign a treaty to renounce war would be like signing one to renounce poverty. To renounce poverty would not give prosperity. War cannot be abolished by a mere declaration renouncing it. It must be done by rooting down into the causes and removing them. With no enforcing act they do not think that the Pact can accomplish much.²⁸

By the overwhelming vote of eighty-five to one, nine absent, the Senate on January 15, 1929, consented for the United States to become a party to the multilateral treaty renouncing war as an instrument of national policy. At the time the Senate voted such a large majority in favor of the treaty, many did so under the pressure of public demand rather than through conviction that it was of practical value.²⁹ Statements from individual senators bear out this view. Senator Swanson, although favoring the treaty, felt that it was a friendly gesture but as an actual peace pact would be found ineffective and disappointing. Senator Fess did not believe the treaty was a guarantee against war. He thought the greatest result to be hoped from it was the augmentation of the spirit of peace against that of war.

²⁷ F. H. Simonds, "Kellogg Proposal," Review of Reviews, LXXVIII (July, 1928), 39.

²⁸ A. Bullard, "Europe and the Kellogg Treaty," Outlook, CL (September 12, 1928), 768.

²⁹ George W. Wickersham, "Pact of Paris: A Gesture or a Pledge," Foreign Affairs, VII (April, 1929), 356.

Senator Carter Glass, while voting for the peace pact, said that he was not willing for the people of Virginia to think that he was simple enough to suppose that it was worth a postage stamp in the direction of accomplishing international peace. Senator Bruce attacked the treaty because of its lack of sanctions. He believed that whatever its face value might be, it had been largely destroyed by the interpretative notes.³⁰

Still another act of the Senate as a whole which showed lack of confidence in what they had done was that immediately after the ratification of the treaty they began the consideration of an act authorizing the construction of fifteen new cruisers.³¹

While representatives of the fifteen original signatories in Paris on occasion of the signing of the Briand-Kellogg Pact spoke of the impressiveness of the occasion, the Italian press correspondent of Il Tevere ironically remarked, "Peace will reign perpetually." He was sarcastic in his comment about the possible effect of the treaty, saying that people had no faith in it. Although Italy was represented, her soul was absent because she saw no fascination in international justice. "The United States, England, and France were rich," he observed.³²

³⁰ Ibid., p. 363.

³¹ Ibid., p. 356.

³² New York Times, August 28, 1928.

In the Japanese Privy Council an interesting discussion arose over ratification of the treaty to renounce war as an instrument of national policy because of the way article one is worded. It states: "The High Contracting Parties solemnly declare in the names of their respective peoples that they condemn recourse to war . . ." Now in Japan the emperor reserves the prerogative of making war and conducting treaties without reference to the popular will. It was thought that the Japanese Government should make reservation declaring this Royal prerogative.³³ This resulted in the following interpretative note:

The Imperial Government declares that the phraseology 'in the names of their respective peoples' appearing in Article I of the treaty for the renunciation of war, signed August 27, 1928, viewed in the light of the provisions of the Imperial Constitution is understood to be inapplicable in so far as Japan is concerned.³⁴

What was the meaning of American participation in a world-wide treaty renouncing war? The people of Europe hoped that the treaty and negotiations leading up to it would mean that the United States was once more showing an interest in the peace problem. It was felt that peace in Europe could not be stabilized without the sympathy, encouragement and support of the United States. Many Europeans were enthusiastic about the treaty because they hoped it

³³ "Japan's Debate over the Kellogg Peace Pact," Living Age, CCCXXVI, (June, 1929), 248.

³⁴ New York Times, July 25, 1929.

meant the end of estrangement between Europe and America which followed the War.³⁵

The expression was made that the Pact would keep the nations of Europe at peace because none of them were strong enough to wage a war without the financial assistance of the United States, and this they would not likely get under the Pact. The Government of the United States has thus become the great arbitrator in European politics.³⁶

Europe sees in the Pact no millennium but a promise on the part of the United States that if trouble comes, its efforts to preserve the peace will not be multiplied by the action of a great nation that has refused to join the forces it has assembled. The obligation America has assumed is a light one. Legally, it amounts to little, if anything. Morally, it means that America will not be indifferent should peace be broken. By implication, at least, the United States will not make a common cause with the offender.³⁷

The treaty itself is silent on the question of using sanctions as a means of enforcement. The Committee on Foreign Relations in the United States Senate, however, gives the following interpretation:

³⁵ A. Bullard, "Europe and the Kellogg Treaty," Outlook, CL (September 2, 1928), 768.

³⁶ Nation, CXXVII (October 17, 1928), 408.

³⁷ J. T. Gerould, "Kellogg Pact and Reparations Settlement as Steps toward Peace," Current History, XXIX (February, 1929), 855.

The committee further understands that the treaty does not provide sanctions, express or implied. Should any signatory to the treaty or any nation adhering to the treaty, violate the terms of the same, there is no obligation, or commitment, express or implied, upon the part of any of the other signers of the treaty to engage in punitive or coercive measures as against the nation violating the treaty. The effect of the violation of the treaty is to relieve the other signers of the treaty from any obligation under it with the nation violating the same.

In other words, the treaty does not, either expressly or impliedly, contemplate the use of force or coercive measures for its enforcement as against any nation violating it. It is a voluntary pledge upon the part of each nation that it will not have recourse to war, except in self-defense, and that it will not seek settlement of its international controversies except through pacific means. And if a nation sees proper to disregard the treaty and violate the same, the effect of such action is to take it from under the benefits of the treaty and to relieve the other nations from any treaty relationship with the said power.³⁸

What then shall be the punishment of one who violates the treaty by provoking a war? In the preamble of the treaty one reads

. . . any signatory Power which shall hereafter seek to promote its national interests by resort to war should be denied the benefits furnished by this treaty;

There is no legal obligation in the Pact of Paris upon the United States or any other signatory to join in public action against any state which chooses to run amuck in the world, and no external body is called upon to point out the duty to the signatories in case violation occurs. The only reference to the problem is the phrase in the preamble just

³⁸ "Multilateral or Kellogg Treaty," Senate Document, Report No. 1, 70 Cong., 2 Sess., pp. 2-3.

quoted. The novelty of this method of approach is that instead of enumerating the duties of the law-abiding states, it denies the aggressor the right to calculate upon continued friendly relations. It does not say that those relations will be broken, but, in leaving the signatories free to take this step, points to it a moral duty.³⁹ Since an "aggressor" is not defined in the treaty, each state is its own judge as to whether a violation has occurred or not.

Friends of the Pact of Paris consider that one of its special merits is the fact that it contains no sanctions, for if it did, there would be logical grounds on the part of those not willing to subject the United States to the determinations of any foreign country or league of countries. The Kellogg Pact is of practical value. Why may not a friendly gesture have important results within the field of international relations?⁴⁰ Again, lack of sanctions is no argument against the Pact of Paris, for after all no treaty has any sanctions beyond the plighted word of the signatory nation.⁴¹

In answering the criticism that there is no means of enforcing the treaty, Secretary Kellogg says:

³⁹ Shotwell, Renunciation of War as an Instrument of National Policy, pp. 221-222.

⁴⁰ W. S. Myers, "Kellogg Pact and the Question of Sanctions," American Academy of Political and Social Science, LIV (July, 1929), 59.

⁴¹ Senator Wagner, Congressional Record, 70 Cong., 2 Sess., p. 341.

My personal opinion is that alliances have been futile in the past and will be in the future; that the carrying out of this treaty must rest on the solemn pledges and honor of nations; that if by this treaty all the nations solemnly pronounce against war as an institution for settling international disputes, the world will have taken a step forward, created a public opinion, marshaled the great moral forces of the world for its observance, and entered into a sacred obligation which will make it far more difficult to plunge the world into another great conflict.⁴²

If two or more nations which are parties to a dispute seek a pacific settlement some means can surely be found. It is impossible at the present time with the existing machinery of international relations for any two countries trying to do so to fail to reach a pacific settlement of a dispute between them. Besides direct diplomacy, there are various arbitration tribunals, the Permanent Court of International Justice, Commissions of Inquiry and of Conciliation, and the mediation and consultation of other powers. Although no definition of an aggressor has been mentioned, each signatory has a moral obligation to place responsibility in case war is provoked.

Suppose there are two parties to an international dispute; if both of them seek to settle it by pacific means, the dispute will be settled and there will be no war. If one of them refuses pacific means, then war results and the treaty is broken.

The criteria given by M. Herriot at the Fifth Assembly

⁴² Frank B. Kellogg, "Renunciation of War," Review of Reviews, LXXVIII (December, 1928), 600.

of the League of Nations might well be accepted. The aggressor, according to him, was the party who refused arbitration and resorted to war.⁴³

It may be asked whether, when war has ceased to be a legal means of settling international disputes, rules governing the conduct of any war may be regarded as binding. In other words, are the Hague and Geneva Conventions concerning the humanitarian procedure in case of war still in effect after the Kellogg Pact comes into force? If international law proscribes war, it is difficult to admit that it should establish at the same time principles for its conduct in case it should break out. It is hard to believe, however, that belligerent states would revert to the inderdicted arms, massacre of prisoners, etc., used in medieval times. Humane methods of warfare may still be said to claim a moral force. Moreover, the fear that opponents may resort to methods just as cruel will prompt each side to conduct its war as humanely as possible, if one may think of humanity at all in this connection.

But even after the Kellogg Pact is in effect the laws of war will still retain a judicial force, for war as a rule may be regarded as contrary to law on one side only. So far as one party is concerned, it will be permissible as a war of sanction or self-defense. This fact does not, in reality, modify the question under discussion. The laws of war apply

⁴³ Miller, The Peace Pact of Paris, p. 127.

either to both belligerents, or to neither one. If the party violating the Kellogg Pact is not required to commit its crime according to certain rules, the other party is likewise exempt from observing the law of war. But it seems more probable that these will become obsolete only if the Pact is successful in preventing war.⁴⁴

There is another important consequence which ratification of the Kellogg Pact may have for all nations adhering. In future, in case of a war of aggression by a state, the citizens of that state will have the right to refuse military service. In fact, this will be their duty, for international law takes precedence over the laws of individual states. If international law makes war a crime, the citizens of a state should abstain from participation in that crime. This interpretation may be deducted on the following ground. Article one of the Kellogg Pact declares "that the High Contracting parties renounce war in the name of their respective peoples." In a certain measure this places the treaty under the guarantee of the people themselves. Thus the people are under obligations to strive with all their power for the realization of the ends pursued by the treaty.⁴⁵

In the correspondence which took place during the process of negotiating the treaty, the fifteen original signatories made clear that the peace pact was in no way to

⁴⁴ Wehberg, The Outlawry of War, pp. 83-84.

⁴⁵ Ibid., p. 84.

impair or limit their obligations under the League of Nations, Locarno, and other existing neutrality treaties. Similarly in the report from the Committee on Foreign Relations in the United States Senate we read:

This treaty in no respect changes or qualifies our present position or relation to any pact or treaty existing between other nations or governments.⁴⁶

In explaining the obligations of those who are signatory to the Pact and also members of the League of Nations, it should be pointed out that the enforcement of peace under the Covenant may be in the nature of a defensive war. It might be defined as cooperative defense both in theory and in fact. The theory is derived from article eleven, paragraph one, of the Covenant of the League of Nations, which reads

. . . the League shall take any action which may be deemed wise and effectual to safeguard the peace of nations.

A more definite statement regarding the use of military sanctions is found in article sixteen, paragraph two.

It shall be the duty of the Council to recommend to the several Governments concerned what effective military, naval or air force the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League.

This is cooperation in the truest sense of the word, for there is no super-State which can command the members of the League. Action is taken only by the free will of each participating government. The defense of the community

⁴⁶ "Multilateral or Kellogg Treaty," Senate Document, Report No. 1, 70 Cong., 2 Sess., p. 3.

of nations is thus in the hands of free but responsible members.⁴⁷

If this interpretation is accepted, then renunciation of war as an instrument of national policy is not synonymous with outlawry of war. Outlawry should call for a whole new set of provisions which lie beyond the scope of this treaty. Renunciation, on the other hand, as set forth in this treaty, is a simple act by which each sovereign State declares for itself the conditions of its own exercise of power.⁴⁸

In the letter which Secretary Kellogg sent to the fourteen powers on June 22, 1928, he attempted to harmonize the Pact with the League by showing that the League did not require positive military sanctions. He said:

The Covenant imposes no affirmative primary obligation to go to war. The obligation, if any, is secondary and attaches only when deliberately accepted by a state. Article 10 of the Covenant has, for example, been interpreted by a resolution submitted to the Fourth Assembly but not formally adopted owing to one adverse vote to mean that 'it is for the constitutional authorities to decide, in reference to the obligation of preserving the independence and integrity of the territory of members, in what degree the member is bound to assure the execution of this obligation by the employment of its military forces.' There is, in my opinion, no necessary inconsistency between the covenant and the idea of an unqualified renunciation of war. The covenant can, it is true, be construed as authorizing war in

⁴⁷ Shotwell, "The Pact of Paris," International Conciliation No. 243, (October, 1928), 19.

⁴⁸ Ibid., p. 18.

certain circumstances but it is an authorization and not a positive requirement.⁴⁹

Members of the League Assembly, however, recognized some inconsistency between the Kellogg Pact and the Covenant for in their meeting in September, 1929, slight changes were suggested to bring the Covenant more closely in keeping with the spirit of the Kellogg Pact. Aside from slight changes in the wording of articles twelve, thirteen, and fifteen, the significant phrase, "They agree that they will in no case resort to war," was added to article twelve, paragraph one.⁵⁰ However, this did not receive the necessary ratifications to become effective.

In explaining the perfect harmony between the Locarno Treaties and the Pact, Mr. Kellogg gave the following satisfactory explanation:

If the parties to the treaties of Locarno are under any positive obligation to go to war, such obligation certainly would not attach until one of the parties has resorted to war in violation of its solemn pledges thereunder. It is therefore obvious that if all the parties to the Locarno treaties became parties to the multilateral anti-war treaty proposed by the United States, there would be a double assurance that the Locarno treaties would not be violated by recourse to arms. In such event it would follow that resort to war by any state in violation of the Locarno treaties would also be a breach of the multilateral anti-war treaty and the other parties to the anti-war treaty would thus as a matter of law be automatically released from their obligations thereunder and free to fulfill their Locarno commitments.⁵¹

⁴⁹ Publication No. 468, p. 57.

⁵⁰ Wehberg, The Outlawry of War, pp. 88-89.

⁵¹ Publication No. 468, p. 58.

Another striking feature of the Briand-Kellogg Treaty is that it is perpetual. It contains no limiting clause or provision for determination or denunciation. It lasts for all time except for the theory that all parties might agree to end it. This is highly improbable. Indeed, the preamble indicates that the treaty would not be terminated or abrogated by its violation, even as to a delinquent party; the aggressor is merely deprived of its benefits. The importance of such perpetuity is almost impossible to overestimate. Recent treaties without a limiting clause are almost unknown. Experience has shown that international agreements looking to the future should be subject to revision. One erroneous assertion about withdrawal from the League of Nations in 1919 and 1920 was that a state would have to remain a member unless the other powers consented to its withdrawal.

Here, however, is a treaty proposed by the United States where the question of withdrawal is not even arguable. States are bound forever and ever. The promise of each state made to all the others runs in perpetuity, unless there is unanimous consent to termination, limitation, or revision. It is a treaty drawn on the basis that conditions may change, but not the treaty, which is to fit them all, now and hereafter.⁵²

It is vital to observe that the Kellogg-Briand Treaty

⁵² Miller, The Peace Pact of Paris, p. 146 ff.

is a qualification of the United States Constitution, not an amendment, for that would not be technically correct, but it makes as real a change in the Constitution of the United States as an amendment. If this treaty is observed in good faith on the part of the United States, the war-making power of Congress under the Constitution is radically altered and limited. The Constitution gives Congress power to declare war; this implies when Congress chooses, for good reason, for poor reason, or for no reason at all. But with this treaty Congress may not declare war as an instrument of national policy; it may do so only in cases of self-defense and the like where the treaty has been violated by another power.

The change is great; the difference is profound; we may sense it if we consider some of our past history; with such a Treaty the war of 1812 with the British would not have taken place; with such a Treaty we could not start another such war as that with Mexico; with such a treaty the Spanish War is not imaginable.

Not only does the United States but all other powers by acceptance of this treaty limit their freedom of action under the hitherto accepted rules of international law; and like other powers having a written constitution, the United States limits its own freedom under the fundamental law; in a real sense (perhaps not in a legal sense), the Constitutional powers of Congress are curtailed.⁵³

At this point it might be well to review briefly the

⁵³ Ibid., p. 148.

history of the Briand-Kellogg Pact. On April 6, 1927, the tenth anniversary of the entrance of the United States into the Great War, Aristide Briand announced in the newspapers that France would be willing to sign an agreement with the United States to outlaw war between the two countries. In the official correspondence which followed, Mr. Kellogg suggested that other countries be invited to join this measure. The result of the negotiations was that on August 27, 1928, fifteen states signed at Paris a multilateral treaty renouncing war as an instrument of national policy. Many other nations soon subscribed, and the treaty was proclaimed July 24, 1929.

The Pact of Paris is a solemn agreement of the principal states of the world to "renounce war as an instrument of national policy" and to seek the solution of all disputes by pacific means.

The famous declaration was regarded by many as a great step toward the arbitration of war. Skeptics nevertheless pointed out that the declaration amounted to very little, since there were reservations which were understood, although not incorporated into the treaty. Each state reserved the right to make war in self-defense; against any state which violated the declaration; in cases provided for by the League of Nations and Locarno Treaties. The first reservation is the most important one. It is of course fairly easy for any state that desires to make war to claim

that it is a war of self-defense. The World War was regarded by the people in each country concerned as a war of self-defense. Nevertheless, the declaration to outlaw war, although it does not abolish war, creates a strong moral presumption against it.

Chapter IV

Ten Years under the Pact

The Briand-Kellogg Pact which had been signed August 27, 1928, had not yet been formally promulgated when it met its first severe test in the Far East. China and the Union of Soviet Republics had become embroiled in a bitter controversy over the control of the Chinese Eastern Railway in Northern Manchuria, and both parties displayed such bellicosity that war appeared imminent.

The controversy arose over an alleged violation of the Sino-Russian railway agreement of 1924. By this agreement control of the railroad was divided between the two governments with the further understanding that each government further agreed to refrain from any propoganda against the political or social system of the other. Feeling between the two governments became increasingly unfriendly, and in 1927 China forced the Russian ambassador to leave Peking because of alleged Soviet responsibility for Communist uprisings. Cordial relations had not been fully established when on May 27, 1929, Chinese officials raided the Soviet consulates in four Manchurian cities, claiming that communist propaganda was being distributed from these consulates contrary to international law and specific agreements.¹

On July 10, the Chinese president of the railroad took

¹ Russell M. Cooper, American Consultation in World Affairs, p. 87.

a more drastic step by dismissing the Russian manager, the five Russian directors, and Russian heads of departments, explaining that his action was necessary to stop Communist propaganda and to safeguard China's interest in the Chinese Eastern Railway. In view of the known eagerness of the Chinese to assume greater control over the railroad at the expense of Russia, the Soviet Government interpreted these arbitrary acts as a deliberate attempt of the Chinese to violate the agreements of 1924 and gain control. Naturally, a controversy ensued. In a vigorous protest on July 13 Russia delivered an ultimatum to China demanding restoration of Russian rights and a conference to settle all railway questions. China replied on July 17 without compliance and Russia immediately severed diplomatic relations and suspended railway communications.² Both countries massed troops on the Manchurian border, creating a situation so tense that there was real danger that the controversy might develop into a war.³

Both Russia and China were adherents of the Briand-Kellogg Pact renouncing war as an instrument of national policy and agreeing to settle all disputes by pacific means, and although the Pact had not been formally declared in effect, they were under moral obligations to abide by its provisions. Naturally the United States as an initiator of

² Ibid., pp. 87-88.

³ The New York Times, July 17, 1929.

the Pact was much concerned that the principles embodied in the treaty be respected in this instance. On July 18 Mr. Stimson's first step was a conference with Dr. Chao-Cho Wu, the Chinese Minister in Washington.⁴ He explained to Dr. Wu his desire for a peaceful settlement and called the latter's attention to China's obligation as a signatory of the Pact. Mr. Stimson then informed Mr. Paul Claudel, the French Ambassador, of his action regarding China and expressed hope that the French Government would follow a similar course with Soviet Russia. This hope was fulfilled the next morning when the French Foreign Minister, Briand, transmitted the appeal to the Russian Ambassador, Dvoglevski, and to the Chinese Minister Kao Lou, at Paris.⁵ The use of the French Government was necessary because of the lack of diplomatic relations between Washington and Moscow.

Secretary Stimson then conferred with the Ambassadors from Great Britain, Japan, Italy, and Germany and received assurance that their Governments were in accord with that of the United States.⁶

There can be little question concerning the effect of Secretary Stimson's intercession in the Russo-Chinese controversy. Even before the formal reply from the Nanking Government was received, Minister Wu indicated that it would

⁴ Ibid., July 22, 1929.

⁵ Ibid., July 20, 1929.

⁶ Cooper, American Consultation in World Affairs, pp. 89-91.

be favorable. He declared:

Anything we put our signatures to will be adhered to. Although the Kellogg Pact is not yet formally in effect, China has no intention of using force in the present controversy.⁷

Similarly, the Russian response was of a conciliatory nature. In an interview with American correspondents on July 19, Jan Ruzzutak, the Russian Commissar of Railroads and acting head of the Russian Government, announced:

Unless or until the Chinese or the White Guards attack us, no single Russian soldier will set foot on Chinese territory. . . .

We know the masses demand drastic action. We know our strength and the Chinese weaknesses, but our pacific pronouncements are not just words. Our signature to the Kellogg Pact was not just a diplomatic gesture. When we talk of peace, we mean peace, and when we condemn the imperialist policy of foreign powers defending their interests in China by force we were sincere.⁸

On July 22 Mr. Stimson announced that he had received favorable replies and that both China and Russia had formally declared their intention of refraining from hostility except in self-defense. The Chinese official response came from Dr. Wu, Minister to the United States; the Russian reply was received through Paul Claudel, the French Ambassador, upon advice from Foreign Minister Briand, who was notified of Moscow's attitude by the Russian Ambassador in Paris.⁹ Temporarily, war was averted. Probably neither party really

⁷ The New York Times, July 20, 1929.

⁸ Ibid.

⁹ Ibid., July 23, 1929.

desired a war but neither would accept the humiliation of backing down. Mr. Stimson's action gave both parties an opportunity to express their peaceful intentions and to seek a settlement of their controversy by pacific means.¹⁰

While the Pact of Paris could not be given full credit for preventing war between China and Russia, it served its purpose well. It focused the attention of the public opinion of the world against both nations, and it supplied a cooling blast which brought the temperatures of both below the fighting point.¹¹

The action of the United States Government in July, 1929, was designed merely to maintain peace; it did nothing to settle the causes of the controversy. While emphasizing pacific means, the Pact makes no suggestion and provides no machinery which might yield such a solution. In reaching a permanent settlement the parties were confronted with conflicting interests. Russia insisted upon a restoration of the status quo ante, while China supported the Mukden Government in refusing any such concession. Still more fundamental was the conflict between Russia's anxiety to protect its vested railway interests in Manchuria and China's ambitions for unqualified sovereignty over the rail-

¹⁰ Cooper, American Consultation in World Affairs, p. 92.

¹¹ J. T. Gerould, "Threat of War between the Soviet Union and China; Effect of the Kellogg Peace Pact on the Dispute," Current History, XXX (September, 1929), 1096.

way audits zone.¹²

Direct negotiations fared poorly, and by August 1 it was clear that an agreement was impossible, for the Russian Government would accept only a restoration of the status quo ante, which Mukden refused to grant. During August and September the Nanking and Moscow Governments exchanged notes through their representatives at Berlin, being forced to this cumbersome procedure in the absence of direct diplomatic relations; but again all efforts failed.¹³

The ensuing weeks were taken up with numerous border attacks from both sides, none of which had much military value except to aggravate the situation and make some kind of settlement imperative. Russia had superior military strength but hesitated to provoke war, possibly because she believed that continued border raids would ultimately prove just as successful and less costly in both man power and prestige. At length, on November 17, the Russians decided to bring matters to a head. They launched a vigorous attack upon Manchouli and Jalai Nor, capturing both places together with their Chinese garrisons. This military disaster spread consternation among the inhabitants of Manchuria, and on November 21 Marshal Chang Hsueh-liang sued for peace. The Soviet Government stated its terms the next

¹² Cooper, American Consultation in World Affairs, p. 92.

¹³ Harold S. Quigley, "Civil War Breaks Out Anew in China," Current History, XXXI (December, 1929), 616.

day, and on November 26 Marshal Chang accepted them. A preliminary agreement was worked out at Nikolsk-Ussuriisk from December 1 to 3. This settlement, based on the Russian ultimatum of July 13 and the telegram of July 25, brought an end to hostilities and restored normal conditions in upper Manchuria.¹⁴

Meanwhile, the news of Russia's offensive into Manchuria had aroused great anxiety in all of the major capitals for war had become more imminent than ever. In Washington, officials were especially concerned, not only because of the consequences of war, but also because of the threat against the Kellogg Pact, which was now in force. News dispatches from the region indicated that Russia was attempting by force of arms to compel acceptance of her demands. This was a direct violation of Article II of the Pact. In the midst of this crisis there came two dispatches from Manchuria further indicating Russia as the aggressor and urging neutral intercession under the Kellogg Pact.¹⁵

As in July, Secretary Stimson determined to bring neutral pressure to bear for peace. To that end he once again consulted with the Great Powers in an effort, not at intervention, but for a recrystallization and expression of united world opinion against war. On November 25, Ambassador Matsuji Debuchi of Japan called at the Department of State

¹⁴ Quigley, "Kellogg Pact Invoked in Soviet-Chinese Dispute," Current History, XXXI (January, 1930), 738.

¹⁵ Cooper, American Consultation in World Affairs, p. 95.

and reviewed the situation with Secretary Stimson and Nelson T. Johnson, Chief of the Division of Far Eastern Affairs.¹⁶

This was followed by conversations with other diplomats, both at Washington and in other major capitals of the world. At Paris, London, Tokyo, Berlin, and Rome the United States Ambassadors brought up the question and invited suggestions, but without making any definite proposals.¹⁷

On November 26 the Chinese Government sent identical notes to the individual signatories of the Kellogg Pact, urging that steps be taken to halt the Russians and punish them for their invasion of Chinese territory.¹⁸

When news was received of Marshal Chang's acceptance of the Soviet terms of November 26, the feeling in Europe and America became less tense. Unofficial advices from Washington indicated that the danger did not now appear as serious as the Chinese at first indicated and that collective action from the Great Powers was not necessary.¹⁹

On November 20 the Department of State made it clear that while it did not wish to disrupt negotiations, it feared the situation was still too grave to warrant inaction. At the same time Secretary Stimson and President

¹⁶ The New York Times, November 26, 1929.

¹⁷ Ibid., November 29, 1929.

¹⁸ Ibid., November 27, 1929.

¹⁹ Ibid., November 30, 1929.

Hoover carefully considered the situation and talked with several ambassadors. Mr. Stimson said that no intervention or mediation was considered but that influence to mobilize public opinion should be exerted.²⁰

Despite the efforts at agreement which were taking place at Nikolsk-Ussuriisk, the situation was believed sufficiently serious to warrant a public statement for peace which would not only arouse popular sentiment against further hostilities, but perhaps be a positive incentive for a successful outcome of the negotiations. Great Britain, France, Italy, and the United States sent statements to Russia and China calling attention to the formal and public assurances that neither would resort to war unless attacked and at the same time called attention to their obligations under the Pact of Paris.²¹ In order to make this "moral sanction" of the Pact as effective as possible, Mr. Stimson at the same time cabled all other nations who had ratified the Briand-Kellogg Pact asking that they also send similar messages to Russia and China. Thirty-seven of the nations associated themselves with the United States and sent similar notes to the two powers.²²

²⁰ Ibid., December 1, 1929.

²¹ Cooper, American Consultation in World Affairs, pp. 98-99.

²² Secretary of State Stimson, "The Far Eastern Problem," International Conciliation No. 286 (January, 1935), 28.

The Chinese Government, in their note of December, insisted that military actions had been taken purely for self-protection and declared that China was ready to work for peace. The Russian note of the same date, delivered to the French Ambassador at Moscow and relayed through Paris to Washington anticipated a peaceful settlement but expressed amazement that the United States and Great Britain should attempt to apply pressure when there were already moves for direct negotiation. It also denied that any state or group of states had the right to act in the function of a protector of the Pact.²³

On December 5, Secretary of State Stimson replied publicly to the Russian Government by a statement to the newspaper correspondents in Washington. He called attention to the fact that as far back as the Hague Convention of 1899 the nations of the world had agreed that strangers to a dispute could call attention to the states at variance and the exercise of that right would not be considered as an unfriendly act. Later that principle had been recognized among nations. The note also called attention to the fact that public opinion was playing a part since the nations concerned were in direct negotiation. He announced further that the Chinese Eastern Railway question was settled so far as America was concerned and that he did not propose to

²³ Harold S. Quigley, "Kellogg Pact Invoked in Soviet-Chinese Dispute," Current History, XXXI (January, 1930), 760.

answer the Russian note denouncing the United States for its action.²⁴

The Sino-Russian episode called attention to three important weaknesses in the Pact. (1) Consultation and appeal rested on no recognized authority. (2) There was no machinery for obtaining reliable information in the actual state of affairs in the area of hostilities. (3) There was no established and efficient method of consultation which would include all nations.²⁵

Whether the Sino-Russian controversy would have developed into a war had not the other powers consulted and made their appeal is impossible to say. Secretary Stimson's reminder in July seemed to ease the situation and the realization by Russia and China that the world was anxiously watching developments may have encouraged them to make a peaceful settlement in November. However, it must be admitted that forceful measures were used and that they were a decisive factor in inducing China to accept Russia's terms. The appeals of December 2 could not have decisively affected the Nikolsk-Ussuriisk agreement which was already practically reached, although the preliminary conversations and manifest concern of the powers may have had some influence. Whatever may have been the effect of the consultation of

²⁴ Ibid., p. 760.

²⁵ Cooper, American Consultation in World Affairs, pp. 106-107.

1929 regarding events in the Far East, the precedents created were of great importance in the development of international cooperation. The incident also showed that the United States regarded the Briand-Kellogg Pact obligations seriously and that it would not only be deeply concerned at their violation but would use them as a basis for international collaboration.²⁶

Manchuria again became the scene of hostilities on September 18, 1931, this time between Japan and China. Nearly all nations in the world were involved because of membership of one or all of the following instruments: the League of Nations, the Nine-Power Treaty, or the Briand-Kellogg Pact. The Council of the League of Nations was at the time in session in Geneva. Mr. Yoshizawa, the Japanese delegate, took the initiative in bringing the matter before the Council. He confirmed reports that there had been a collision between Japanese and Chinese troops near Mukden and the South Manchurian Railway, but said that his information contained few details. He would seek additional information from his Government, which he was sure would do anything possible to restore order. Dr. Sze, the Chinese delegate, was much disturbed over the incident, which his information indicated was not caused by any act of the Chinese. Acting on instructions from his Government, he requested that "in pursuance of authority given to it in

²⁶ Ibid., p. 108.

Article XI of the Covenant, the Council take immediate steps to prevent the further development of a situation endangering the peace of nations." He further stated that China was fully prepared to act in conformity with whatever recommendations it received from the Council and to abide by the decisions of the League of Nations.²⁷

Each country insisted that the other was primarily responsible for the incident. The Japanese delegate urged that occupation of the country under the circumstances was necessary but was temporary, and urged that the matter be settled by direct negotiations between the two countries. Dr. Sze insisted that direct negotiations were impossible so long as hostile troops occupied Chinese territory, and urged that the League appoint a commission of inquiry to give an impartial account of the real facts of the situation in Manchuria. No definite action was taken, but the Council did determine on three lines of action.

(1) It appealed to both countries to refrain from action that would aggravate the situation and make a peaceful settlement more difficult. (2) Each country should endeavor to find means of withdrawing the troops without danger to the lives and property of their nationals (a committee of five was appointed to aid in working out this arrangement). (3) The United States was to be informed as

²⁷ A. L. Lowell, "Manchuria, the League and the United States," Foreign Affairs, X (April, 1932), 354-355.

to what the Council had done in order that there be formal cooperation between the United States and the League in dealing with the dispute.²⁸

Meanwhile, the Department of State at Washington was acting independently. At the same time the Chinese Government appealed to the League it also urged the United States to take such steps under the Kellogg Pact as would "insure the preservation of peace in the Far East, and the upholding of the principle of Peaceful settlement of international disputes."²⁹ The next day, Secretary Stimson gave the Japanese Ambassador a note expressing deep concern over the situation, calling attention to the Nine-Power Treaty and the Kellogg Pact, and hoping there would be no further application of force.³⁰

The United States Government was also in close touch with the activities of the League through Mr. Hugh Wilson, United States Minister to Switzerland, who attended the meetings of the League Council.³¹

Military activities in Manchuria continued in spite of

²⁸ Ibid., p. 355.

²⁹ Senate Document 55, 72 Cong., p. 3 (hereafter referred to as 72 Cong., S. Doc. 55). This senate document is the compilation of the correspondence of the Department of State regarding the Manchurian question from September, 1931, to January 16, 1932.

³⁰ Ibid., pp. 4-5.

³¹ Cooper, American Consultation in World Affairs, p. 197.

the efforts of the League Council to bring about a cessation of hostilities. On December 10 the Council decided upon the appointment of a commission of inquiry, Japan and China concurring. On this commission a place was assigned to a citizen of the United States whose government had strongly endorsed the Council's decision to appoint the Commission.³²

Meanwhile, the military occupation of Manchuria by Japan continued until Chinchow, the last unoccupied city, fell. Immediately thereafter, on January 7, 1932, Secretary Stimson dispatched his now-famous note to the Governments of both China and Japan. In it he expressed faith in the work of the commission that the Council of the League had authorized. He further significantly added:

But in view of the present situation and of its own rights and obligations therein, the American Government deems it to be its duty to notify both the Government of the Chinese Republic and the Imperial Japanese Government that it cannot admit the legality of any situation de facto nor does it intend to recognize any treaty or agreement entered into between the two governments, or agents thereof, which may impair the treaty rights of the United States or its citizens in China, including those which relate to the sovereignty, the independence, or the territorial and administrative integrity of the Republic of China, or to the international policy relative to China, commonly known as the open-door policy; and that it does not intend to recognize any situation, treaty or agreement which may be brought about by means contrary to the covenants and obligations of the Pact of Paris of August 27, 1928, to which treaty both China and Japan as well as the United States are parties.³³

This non-recognition policy is usually referred to as the

³² Sen. Doc. 55, 72 Cong., pp. 46-47.

³³ Ibid., pp. 53-54.

Hoover-Stimson Doctrine.

Japan's reply of January 16 denied any intention of acquiring territory or of interfering with the open-door policy. As to the impairment of treaty obligations Japan made the following declaration:

It might be the subject of an academic doubt, whether in a given case the impropriety of means necessarily and always avoids the ends secured but as Japan has no intentions of adopting improper means, that question does not practically arise.

Japan insisted that she had been forced to take some temporary control because of the chaotic conditions of the local government.³⁴

A month went by without any important development of Stimson's doctrine of non-recognition. A military attack was made by Japan upon Shanghai January 29, after which China again invoked the Covenant of the League. On February 16 the Council addressed a note to Japan accusing her of not making full use of the peaceful settlement provided in the Covenant, and stating that no violation of Article X, whereby members "undertake to respect and preserve the territorial integrity and existing political independence of all Members of the League," ought to be recognized.³⁵

Even yet, the Council had not made a complete pledge of non-recognition, for it was unable to bind the other

³⁴ Ibid., pp. 55-56.

³⁵ Cooper, American Consultation in World Affairs, p. 259.

League members. The note was important chiefly because it indicated a sterner attitude toward Japan.³⁶

This stronger attitude was considerably encouraged by Secretary of State Stimson when he addressed a public letter to Senator Borah, Chairman of the Senate Committee on Foreign Relations, February 23, frankly and fearlessly setting forth the policy of the United States. In it he reminded Great Britain that she had also supported the open-door policy in the Nine-Power Treaty of 1922, he charged that that treaty as well as the Kellogg Pact had been violated.³⁷ Finally, he invited world-wide support of his non-recognition doctrine by saying:

If a similar decision should be reached and a similar position taken by the other governments of the world a caveat will be placed upon such action which, we believe, will effectively bar the legality hereafter of any title or right sought to be obtained by pressure or treaty violation, and which, as has been shown by history in the past, will eventually lead to the restoration to China of rights and titles of which she may have been deprived.³⁸

On March 11 the Assembly of the League voted unanimously, except for Japan's and China's failure to vote, to accept the Hoover-Stimson doctrine of non-recognition of the fruits of aggression.³⁹

³⁶ Ibid., p. 239.

³⁷ Henry L. Stimson, "Letter of Secretary of State Stimson to Senator Borah," International Conciliation, No. 286 (January, 1935), 18-21.

³⁸ Ibid., p. 22.

³⁹ Cooper, American Consultation on World Affairs, p. 251.

After March 11 there were no further hostilities of importance, and on May 5, in accordance with the Assembly's resolution, the representatives of China, Japan, Great Britain, France, Italy and the United States proceeded to sign an armistice agreement. On May 31 the last of the Japanese expeditionary forces sailed from Shanghai.⁴⁰

During the summer of 1932, while awaiting the report of the Lytton Commission, all parties worked to strengthen their military and diplomatic positions. During August America, Japan, and China in turn stated the policies which they expected to follow in the Far East.⁴¹

In his address to the Council of Foreign Relations Secretary Stimson declared that the old ideas of neutrality are obsolete; that an act of war in one part of the world is of vital interest to every country; that the Briand-Kellogg Pact is a vital treaty; that the United States would not recognize illegal gains; and that consultation between signatories was necessary when the Pact was threatened.⁴² President Hoover indicated perfect agreement with the Secretary of State in his speech three days

⁴⁰ Ibid., p. 253.

⁴¹ Ibid., pp. 254-255.

⁴² Henry L. Stimson, "Statement of the Secretary of State, August 8, 1932," International Conciliation No. 286 (January, 1933), 24-31.

later.⁴³

Japan defended her recent recognition of the independent state of Manchukuo; denied responsibility for recent military activities in Manchuria, and disclaimed any intention of annexing territory. She claimed that her military activities had been prompted by self-defense and held that her action was not in violation of the Kellogg-Briand Pact.

Japan further stated her Far Eastern policy thus:

It goes without saying that Japan, always conscious of the general interests of the Far East will spare no effort to afford all possible assistance to China. Indeed, it is my fervent hope that the day is not far distant when Japan, Manchukuo, and China, as three independent powers closely linked together by the bond of cultural and racial affinities, will come to cooperate hand in hand, for the maintenance and advancement of the peace and prosperity of the Far East as well as for "the peace of the world and the civilization of mankind."⁴⁴

Dr. Lo Wen-Ken denounced the action of Japan in China as contrary to the Anti-War Pact. He denied that there was any movement in Manchuria for independence from China except that sponsored by Japan. He further stated:

There will be no peace and prosperity in the three eastern provinces until all Japanese troops have been withdrawn from places where they have no right to appear and until the Chinese Government

⁴³ "Excerpt from President Hoover's Presidential Nomination Acceptance Speech, August 11, 1932," International Conciliation No. 286 (January, 1933), 33.

⁴⁴ "Address of Count Uchida, Minister for Foreign Affairs, at the Third Session of the Imperial Diet, August 25, 1932," International Conciliation No. 286 (January, 1933), 34-40.

regains control over the land now temporarily lost to us.⁴⁵

Dr. Lo Wen-Ken emphasizes the important points of Chinese policy in the following statements:

1. Neither the Chinese Government nor the Chinese people entertain the least anti-foreign feelings. However, in view of the present state of affairs produced by Japan's military aggression, it would be absolutely impossible for the Chinese people to express the most cordial friendly sentiments to the Japanese people. It entirely rests with Japan herself to improve and restore relations between the Chinese and Japanese people.

2. China will never surrender one inch of her territory nor any of her sovereign rights under stress of military force which she condemns and is determined to resist to the best of her ability.

3. China will never agree to any solution of the present situation which takes into account the puppet organization in the Three Eastern Provinces established, maintained, and controlled by the Japanese military forces.

4. China is confident that any reasonable proposal for the settlement of the present situation will be necessarily compatible with the letter and spirit of the Covenant of the League of Nations, the Anti-War Pact, and the Nine-Power Treaty, as well as with China's sovereign power, and will also effectively secure everlasting peace in the Far East.⁴⁶

The Lytton Commission gave its report to the Council of the League of Nations on October 2. The report consisted of ten chapters. The first eight traced the background of the conflict, the interests involved, and the military

⁴⁵ "Speech Delivered by Dr. Lo Wen-Ken, Minister of Foreign Affairs at Nanking, at the Weekly Memorial Service of Dr. Sun Yat-Sen on August 29, 1932," International Conciliation No. 286 (January, 1933), 41-43.

⁴⁶ Ibid., p. 44.

developments while the last two proposed principles and conditions of settlement. It denied in the first place that Japan was acting wholly on the defensive in her Manchurian policy, thus implying a violation of the anti-war treaties. Furthermore, it said that Manchukuo could not have been formed without the activities of Japanese officials, both civil and military. Therefore, the new state could not have been considered to have been called into existence by a genuine and spontaneous independence movement. The Commission did not declare in favor of a restoration of the status quo ante nor a maintenance of the present state of Manchukuo. In view of these findings the other League members did not accept Japan's invitation to recognize the independent state.⁴⁷

Japan did not accept the report favorably; subsequent negotiations failed to deter her from an aggressive policy in the Far East and on February 24, 1933, she announced her intention to withdraw from the League of Nations. Present activities in China indicate that she has not changed her policy.

Another case which involved consultation among the signatories of the Briand-Kellogg Pact was the Leticia affair. On September 1, 1932, Peru seized the town of Leticia, which belonged to Columbia. At first the matter

⁴⁷ Cooper, American Consultation in World Affairs, p. 257.

was considered merely as a rebellion, since only civilians participated.⁴⁸ Yet, in spite of commitments by both governments, Peru soon changed her attitude and rallied to the support of the Letician invaders. Columbia was asked to refrain from recapturing Leticia on the ground that forceful action would inevitably injure innocent Peruvian interests. Peru added that the trouble was due to "uncontrollable national aspirations."⁴⁹

On January 23, 1933, the Columbian Government sent notes to the United States and other signatories of the Briand-Kellogg Pact asking them to remind Peru that she was violating the Pact in using force to support improper and inexcusable acts of aggression in the territory of a friendly nation. She cited Columbia's note of January 11 requesting Peru to retire its military forces from Columbian territory and to permit the legitimate authorities to reestablish order without a clash.⁵⁰

When Secretary Stimson received the Columbian note he immediately got busy. On Tuesday evening, January 24, he invited to his home the ambassadors of Great Britain, France, Italy, Germany, and Japan. This method of calling the powers together for consultation was new in its application to the Pact. Heretofore they had been consulted separately.

⁴⁸ New York Times, September 4, 1932.

⁴⁹ Ibid., September 16, 1932.

⁵⁰ Ibid., January 24, 1933.

While Stimson was consulting with the Great Powers, Francis White, the Assistant Secretary of State in charge of Latin American Affairs, was consulting with the Latin American representatives. In neither meeting were threats suggested, reliance being placed wholly upon the weight of Public Opinion.⁵¹

The outgrowth of the deliberation was a note from Secretary Stimson to the Peruvian Government dispatched January 25. It reviewed the case of each party and as a warning remarked that a violation of the Pact would entail a denial of the benefits furnished by it. Finally he noted that:

The American nations further declare that they would not recognize the validity of territorial acquisitions which might be obtained through occupation or conquest by force of arms.⁵²

The Council of the League of Nations sponsored conditions similar to these mentioned in Secretary Stimson's note and after some negotiations a satisfactory settlement was reached in which Leticia was returned to Columbia.⁵³

The fact that America's note aroused greater resentment against the United States than against the League served to cast doubts upon the advisability of consultation

⁵¹ Cooper, American Consultation in World Affairs, pp. 303-304.

⁵² New York Times, January 26, 1933.

⁵³ Cooper, American Consultation in World Affairs, p. 337.

and intercession under the Kellogg Pact in preference to such action under the authority and established procedure of the League of Nations. After this the United States worked through the League.⁵⁴

The Ethiopian-Italian dispute deserves mention here, not because of any effect which the Briand-Kellogg Pact had, but because of its lack of effect. General Smuts has said:

It is impossible to conceive of a simpler or clearer case of violation of both the Covenant and the Paris Peace Pact. The League has unanimously found against Italy and found her the aggressor.⁵⁵

When the Emperor of Ethiopia on July 3, 1935, appealed to the American Government to examine means of securing observance of the Pact of Paris he received the answer, that as the League of Nations was giving its attention to the controversy it was hoped that a satisfactory decision would be reached. The American note concluded with the following encouraging sentence:

Furthermore, and of great importance in view of the provisions of the Pact of Paris, to which both Italy and Abyssinia are parties, in common with 61 other countries, my Government would be loath to believe that either of them would resort to other than pacific means as a method of dealing with the controversy or would permit any situation to arise which would be inconsistent with the commitments of the Pact.⁵⁶

⁵⁴ Ibid., p. 340.

⁵⁵ Nicholas Murray Butler, The Family of Nations (New York: Charles Scribner's Sons, 1938), p. 214.

⁵⁶ Department of State, Press Release, July 6, 1935, Publication No. 757, p. 29.

On September 13 the Secretary of State, Cordell Hull, denied that the United States had abandoned the Kellogg Pact in the Ethiopian case. He mentioned to the Italian Government that he hoped that means would soon be found for a mutually satisfactory solution of the problem.⁵⁷

On August 1 President Roosevelt issued the following statement:

At this moment, when the Council of the League of Nations is assembled to consider ways for composing by pacific means the differences that have arisen between Italy and Ethiopia, I wish to voice the hope of the people and the Government of the United States that an amicable solution will be found and that peace will be maintained.⁵⁸

On September 3 the United States Government, upon discovery of an agency granting commercial concessions which added to the difficulties took measures to remove that obstacle to peaceful settlement.⁵⁹ Again the American Government asked the countries to consider the declaration of the pledge they had given in the Pact of Paris.⁶⁰

What happened to Ethiopia is no secret. Her emperor is in exile, and she has been proclaimed and is now a part of the Italian Empire.

What is the importance of the Briand-Kellogg Pact?

⁵⁷ Ibid., September 14, 1935; Publication No. 784, p. 195.

⁵⁸ Ibid., p. 195.

⁵⁹ Ibid., p. 196.

⁶⁰ Ibid., p. 196.

What has been its significance? Was it merely a statement of ideals? The answers to these and numerous other similar questions will vary widely. All that can be done here is to attempt to picture its probable place in history. There can be little doubt that it has not met the expectations of its authors, yet it has probably had more influence than some critics will admit. It is significant that Frank B. Kellogg was awarded the Nobel Prize in 1929 for his activities in behalf of world peace.

start There are sixty-three nations which under the Kellogg Pact have renounced war as an instrument of their national policy and agreed to settle their disputes by pacific means. However, since the Pact has gone into effect nations have continued to increase their armament and armed conflicts still break out. *stop*

The Conference of the International Law Association which met in Budapest in September of 1934 recognized the Pact as a vital force. The following interpretations were given to the Pact:

1. A Signatory State cannot by denunciation or non-observance of the Pact, release itself from its obligations thereunder.

2. A signatory state which threatens to resort to armed force for the solution of an international dispute or conflict is guilty of a violation of the Pact.

3. A signatory State which aids a violating state thereby itself violates the Pact.

4. In the event of a violation of the Pact by a resort to armed force or war by one signatory State against another, any signatory State, not

being a party to the original dispute, may, without thereby committing a breach of the Pact or of any rule of international law, do all or any of the following things:

- (a) Refuse to admit the exercise by the State violating the Pact of belligerent rights, such as visit and search of blockade, etc.
- (b) Decline to observe towards the State violating the Pact the duties prescribed by international law, apart from the Pact, for a neutral in relation to a belligerent.
- (c) Supply the State attacked with financial or material assistance, including munitions of war.
- (d) Assist with armed forces the State attacked.

5. The signatory States are not entitled to recognize as acquired de jure any territorial or other advantages acquired de facto by means of a violation of the Pact.

6. A violating State is liable to pay compensation for all damage caused by a violation of the Pact to any signatory State or to its nationals.

7. The Pact does not affect such humanitarian obligations as are contained in general treaties such as the Hague Conventions of 1899 and 1907, the Geneva Conventions of 1864, 1906 and 1929, and the International Convention relating to treatment of Prisoners of War, 1929.⁶¹

In addition to the Articles of Interpretation, the following Resolutions were passed:

- 1. That a violation of the Pact, being a matter which concerns the interests of all the signatories, should entitle them to insist that their interests be safeguarded in the subsequent Treaty of Peace.

⁶¹ Lord Howard of Penrith, "International Law or International Chaos," International Conciliation No. 308 (March, 1935), 83-45. (Lord Howard of Penrith was the British Ambassador at Washington when the Briand-Kellogg Pact was signed.)

2. That the signatories of the Pact should forthwith refuse and prohibit aid to any state commencing or threatening to commence recourse to armed force and which refuses or fails, on the demand of any signatory State, to submit the matter in dispute to the Permanent Court of International Justice or to some other agreed Tribunal for final determination.

3. That the principle be reaffirmed that it is the duty of all States without delay to erect such domestic legislation as may be required to carry into effect any Treaty obligations entered into by them.⁶²

These Interpretations and Resolutions may go too far, but at least the Pact is important as a declaration to the world that the policy of war was one that nations would not pursue; that the United States was placed in a better position to cooperate with the other nations, and that the treaty was less important than the Treaty of Locarno because it lacked sanctions.⁶³

The fact that the Budapest Articles received little attention indicate that people are no longer interested in it. They do not consider it as a living thing, yet it is probably destined to play an important part in world politics in the interest of peace. Of course, it could remain, unfortunately, as only a pious idea having no practical effect. Another interpretation which might be placed on the Pact is that each signatory is responsible only for its

⁶² Ibid., p. 84.

⁶³ Lord Askwith, "The Meaning of the Pact of Paris," Debate in the British House of Lords, February 20, 1935, International Conciliation No. 310 (May, 1935), 164.

own conduct.⁶⁴

The Briand-Kellogg Pact serves with other treaties as the basis of American Foreign policy. On July 12, 1935, the Secretary of State issued the following statement:

The Pact of Paris is no less binding now than when it was entered into by the 63 nations that are parties to it. By form and designation it constitutes a treaty by and among those nations. It is a declaration by the governments of the world that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another. Furthermore, it is an agreement and a solemn obligation that the settlement or solution of all disputes or conflicts among nations, of whatever nature or of whatever origin, shall never be sought except by pacific means.

The United States and other nations are interested in the maintenance of the pact and the sanctity of the international commitments assumed thereby for the promotion and maintenance of peace among the nations of the world.⁶⁵

The Kellogg Pact came about as a result of aroused public consciousness against the horrors of the World War, but it seems that time soon causes people to forget. Nevertheless, despite the discouraging international outlook, there is a steadily increasing desire for peace. In the Western Hemisphere Roosevelt's policy has reaffirmed the Briand-Kellogg Pact. Although at times the situation seems discouraging, the world is still advancing "along the road

⁶⁴ Lord Howard of Penrith, Ibid., pp. 166-167.

⁶⁵ Department of State, Press Release, July 13, 1935, Publication No. 758, pp. 53-54.

laid down by the negotiators of the Pact of Paris."⁶⁶

On October 6, 1937, the United States Department of State called attention to the necessity for maintaining the principles of the Briand-Kellogg Pact and indicted Japan as a violator of both it and the Nine-Power treaty of 1922.⁶⁷ Japan denied violation of either of these treaties, contending that China's Anti-Japanese policy incited by Red influence was to blame.⁶⁸

In regard to the violation of a treaty by a nation, it is difficult in some cases to determine the aggressor.

The determination by this Government of whether or not an action by another nation is in fact a violation of an obligation assumed under a treaty or agreement to which both that nation and the United States are parties, and the expression of opinion on the part of this Government that such violation has taken place must necessarily be governed by the circumstances of the occasion.

The United States Government has been frank to call attention to any alleged violation.⁶⁹

Again the Secretary of State called attention to the fact that the outbreak of hostilities anywhere in the world is a disturbing factor and that the people of all nations

⁶⁶ Ibid., August 28, 1937, Publication No. 1060, pp. 184-185.

⁶⁷ "Statement of the Far Eastern Crisis Issued by the Department of State, October 6, 1937," International Conciliation No. 334 (November, 1937), 716-717.

⁶⁸ Statement of the Japanese Government, October 9, 1927, Ibid., p. 720.

⁶⁹ Department of State, Press Release, April 26, 1928, No. 197.

desire peace under all circumstances. The Pact of Paris therefore is considered binding on all parties.⁷⁰

It might be interesting to note that from a legal standpoint even though the Pact may have been violated, no war has been officially declared since its inauguration. Neither has any nation threatened to withdraw in favor of accepting war as a part of its national policy.

⁷⁰ Ibid., May 28, 1938, No. 255.

BIBLIOGRAPHY

Primary Sources

Government Documents

Borchard, Edwin. Address delivered before the Williams-
ton Institute of Politics, August 22, 1928, Senate Executive
Document 176.

Congressional Record, 70 Cong., 2 Sess.

Department of State Press Releases. July 6, 1935;
July 13, 1935; September 14, 1935; August 28, 1937; April
26, 1938; May 28, 1938.

Levinson, Salmon O. "Outlawry of War," Senate Docu-
ment 115, 67 Cong., 2 Sess.

Multilateral or Kellogg-Briand Treaty. Report No. 1,
70 Cong., 2 Sess.

Senate Joint Resolution No. 14, 70 Cong., 1 Sess.

Senate Document 55, 72 Cong., 2 Sess.

Senate Executive Document, 70 Cong., 2 Sess.

Treaty for the Renunciation of War. Text of the
Treaty, notes exchanged, instruments of ratification and
adherence. Publication No. 468. Government Printing
Office, Washington, D. C., 1933.

Magazines

Kellogg, Frank B. "Renunciation of War," Review of
Reviews, LXXVII (1928), 595-601.

"Security and Defense," International Conciliation,
No. 310 (1935), 157-281.

Stimson, Henry L. "Basis of American Foreign Policy
During the Past Four Years," Foreign Affairs, XI (1933),
386-396.

"The Far Eastern Problem," International Conciliation,
No. 286 (1933), 17-87.

"The World Situation," International Conciliation, No. 334 (1937), 711-797.

"Views of Four Statesmen," International Conciliation, No. 308 (1935), 65-102.

Secondary Works

Books

Butler, Nicholas Murray. The Family of Nations. New York: Charles Scribner's Sons, 1938.

Cooper, Russell M. American Consultation in World Affairs. New York: The Macmillan Company, 1934.

Miller, David H. The Peace Pact of Paris. New York: G. P. Putnam's Sons, 1928.

Russell, Frank M. Theories of International Relations. New York: D. Appleton-Century Company, 1936.

Schuman, Frederick L. International Politics. New York: McGraw-Hill Book Company, 1933.

Shotwell, James T. War as an Instrument of National Policy and Its Renunciation in the Pact of Paris. New York: Harcourt Brace and Company, 1929.

Shotwell, James T. On the Rim of the Abyss. New York: The Macmillan Company, 1936.

Simonds and Emeny. The Great Powers in World Politics. New York: The American Book Company, 1935.

Wehberg, Dr. Hans. The Outlawry of War. Washington: Carnegie Endowment for International Peace, 1931.

Magazines and Newspapers

"A Japanese Statesman Discusses the Kellogg Pact," Living Age, CCCXXXVII (1929), 510.

Bullard, A. "Europe and the Kellogg Treaty," Outlook, CL (1928), 767-768.

Davis, M. W. "Foreign Opinion," Outlook, CL (1928), 820.

Dewey, John. "Peace by Pact or Covenant," New Republic, LXX (1932), 145-147.

Gerould, J. T. "Effect of the Anti-War Treaty on American Foreign Policy," Current History, XXIX (1928), 120-124.

Gerould, J. T. "Fifteen Nations Agree to a Multilateral Treaty Outlawing War," Current History, XXVIII (1928), 1012-15.

Gerould, J. T. "Kellogg Pact and Reparations Settlements as Steps toward Peace," Current History, XXIX (1929), 35-38.

Gerould, J. T. "Threat of War between the Soviet Union and China: Effect of the Kellogg Peace Pact on the Dispute," Current History, XXX (1929), 1096-1100.

Glasgow, George. "American Proposals for Pact of Pacifism," Contemporary Reviews, CXXXIII (1928), 645-651.

Glasgow, George. "Kellogg Pact," Contemporary Review, CXXXIX (1928), 382-385.

Glasgow, George. "Russia and the West," Contemporary Review, CXXIV (1928), 659-660.

Glasgow, George. "Sir Austin and the Pact," Contemporary Review, CXXXIV (1928), 237-248.

"Hidden Jokes in the No-War Pact," Literary Digest, XCVI (1928), 10.

"Japan's Debate over the Kellogg Peace Pact," Living Age, CCCXXXVI (1929), 248-249.

Levinson, Salmon O. "The Legal Status of War," New Republic, XIV (1918), 171, 173.

Lowell, A. L. "Manchuria, The League and the United State," Foreign Affairs, X (1932), 351-368.

Moore, John Bassett. "Appeal to Reason; the Kellogg Pact," Foreign Affairs, XI (1933), 551-555.

Myers, W. S. "Kellogg Pact and the Question of Sanctions," American Academy of Political and Social Science, CLIV (1929), 59-62.

New York Times, April 6, 1927 ff.

"Official Text of the Kellogg Treaty," Congressional

Digest, VII (1928), 337-338.

Quigley, Harold S. "Kellogg Pact Invoked in Soviet-Chinese Dispute," Current History, XXXI (1930), 758-763.

Shotwell, James T. "The Peace Pact of Paris," International Conciliation, No. 243 (1928), 11-23.

Simonds, F. H. "Kellogg Proposal," Review of Reviews, LXXVIII, (1928), 38-39.

Simonds, F. H. "Should the Senate Ratify the Kellogg Treaty?" Forum, LXXXI (1929), 27-29.

"Stimson Doctrine," Living Age, CCCXLIII (1932), 183-185.

"United States as Guardian of Europe," Nation, CXXVII (1928), 408.

Wickersham, George W. "Pact of Paris, A Gesture or a Pledge," Foreign Affairs, VII (1929), 356-371.