THE BRIAND-KELLOGG PACT

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A comprehensive attempt to secure peace by declaring war unlawful was made by the anti-war pact concluded at Paris on the 27th of August 19281)— the so-called Kellogg Pact or, more correctly, Briand-Kellogg Pact.

In the summer of 1927 the French Foreign Minister Briand had proposed to the United States the conclusion of a treaty between the two states, whereby they should mutually renounce war as a means of national policy and bind themselves to settle their future disputes by peaceful means alone. The American Secretary of State Kellogg proposed instead the conclusion of a general treaty, whereby all the powers should renounce war as an instrument of national policy. After long negotiations a treaty was agreed to by 15 states, viz: the 7 signatories of the Locarno Treaty, the English Dominions and India, the United States and Japan, whereby they renounce war as an instrument of national policy in their mutual relations (Article 1) and bind themselves not to seek a solution of their disputes with one another by any other than peaceful means (Article 2). The treaty was later acceded to by a large number of other states2). It is unlimited in time and came into operation on the 24th of July 19293).

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1) Recueil des traités No. 2137, (Danish) Dazette ("Lovtidende") No. 198, 5th of October 1929.

2) Up to June 1928 62 states in all had subscribed to the Kellogg Pact viz: all the 56 members of the League with the exception of Argentine, Bolivia, Salvador and Uruguay and 10 states outside the League (Afghanistan, Costa Rica, Danzig, Ecuador, Egypt, Iceland, Iraq, Nedjed, Soviet Russia and the United States).

3) On the 9th of February 1929 a protocol was signed in Moscow, whereby Soviet Russia, Latvia, Estonia, Poland and Rumania declare that the Anti-War Pact is to come into operation between them immediately. But in spite of this haste it seemed that neither this Pact nor the Covenant of the League could prevent the outbreak of the armed conflict between Russia and China in 1929 or between Japan and China in 1931.
In contrast to the Covenant of the League of Nations, the Geneva Protocol and the Locarno Treaties, the Briand-Kellogg Pact does not place upon the parties any obligation to arbitrate or even any positive duty to attempt peaceful means to settle the disputes since it will not be a breach of the Kellogg Pact to allow disputes to remain unsettled. On the other hand military reprisals must be held to be excluded, not by Article 1, but by Article 2. Nor does the Pact authorise the application of sanctions against those who break the Pact. It limits itself to a pure prohibition of war or other warlike methods and even this prohibition is not so unconditional as one would imagine from the general wording of the treaty. France had originally demanded the inclusion in the text of the treaty of a number of reservations and exceptions from the prohibition against war, but finally dropped her demand as being presumably superfluous in view of the provisions in the preamble and the previous negotiations between the signatory powers. On the other hand England, in her Note to the United States of the 19th of May 1928 made an important reservation, which is often called the British Monroe Doctrine.

While the standpoint of the League Covenant of 1919 still is that war as a general rule is lawful and is only in certain special cases declared unlawful, the unratified Geneva Protocol of 1924 declared wars of aggression as such to be unlawful and the standpoint of the Locarno Treaty of 1925 is similar. On the other hand the Briand-Kellogg Pact, without seeking to define war of aggression, declares war in general between the signatory powers to be unlawful. But a closer understanding of the treaty has given rise to much doubt. So far, at all events, it is clear that the Pact’s prohibition against war is not absolute and that in interpreting it reference must be made not merely to the words...