

THE KELLOGG PEACE PACT

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MR. Kellogg's peace party promises to be the success of the international social season. The fourteen states invited to participate as original signatories to the "Peace Pact" agreed to send representatives to sign in Paris late in August. Other states expressed a desire to attend, including Russia, much to the embarrassment of Mr. Kellogg and other Foreign Ministers to whom the Bolshevik is *persona non grata*, even in the matter of peace agreements. What, then, has occasioned all the enthusiasm? Has Mr. Kellogg really stumbled upon the touchstone which will prevent war? Or is it all a hypocritical gesture to meet the desires of a war-weary world? To answer such questions the first step must be a careful analysis of the proposed treaty.

The Treaty is sufficiently short and untechnical to warrant quotation of its essential clauses.

Article I states:

"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 states:

"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."

To the treaty proper must be added Mr. Kellogg's covering letter which accompanied the draft of the treaty in answer to objections raised by France in the early stages of negotiation, objections based upon alleged obligations arising out of the Covenant of the League, the Locarno and other security agreements. Since this letter was expressly mentioned in most of the notes of acceptance, it may be said to constitute an agreed interpretation of the obligations of the treaty. The letter states: (1) The treaty neither "restricts or impairs the right of self-defence" which is held to be "an inalienable right" of every sovereign state. (2) There is no

necessary antagonism between the treaty and the Covenant of the League since, under an interpretation of the famous Article X presented to the Assembly of the League itself, the Covenant does not require a member of the League to go to war against a Covenant-breaking state, though it may authorize it to do so. (3) As regards Locarno, if it entails military sanctions against an offender, it is only after the offender has actually resorted to aggression in defiance of its obligations under the Locarno agreement. In which case, if the offender were a signatory to the Kellogg Pact, and all parties to Locarno were invited to become original members, then it would have broken its obligations under the Kellogg agreement as well, and any obligation not to go to war against it would be automatically abrogated. As regards non-signatories to the Kellogg agreement, the agreement would not prohibit war against them in any case. Both of these observations, indeed, are applicable to obligations under the Covenant of the League as well, and to those arising under various neutrality agreements at which France vaguely hinted. (4) Mr. Kellogg emphatically pointed out that violation of the treaty through "resort to war by one party thereto would automatically release the other parties from their obligations to the treaty-breaking state". Indeed, to make this more certain, a clause to this effect was embodied in the preamble of the final draft of the treaty.

It will readily be observed that the Kellogg Pact does not contemplate the complete suppression of war. . . Members agree to renounce war "as an instrument of national policy in their relations with one another" only. While the aim is to include ultimately all states, meantime the members undertake no obligations as respects non-members. It does not include civil wars, a class more numerous than wars between states. It would not prevent war against a state which had broken its obligations under this treaty or other anti-war agreements. It does not cover defensive wars, and what wars may not be justified on the grounds of self-defence? A door is, indeed, already open to abuse of the term "defensive war". In her note of acceptance Great Britain intimated that there are certain regions of the world in which she has vital interests, just as the United States feels that she has vital interests in the Americas. By tacit acceptance of the British reply it would seem that the United States has the same idea in mind, namely, that wars to protect special interests might be considered "defensive wars". Thus, if each signatory makes mental reservations to vague areas beyond the actual confines of its own territories, what may the term "defensive wars" not be stretched to cover?

Nor does the Treaty propose to "outlaw" war, even when resorted to in defiance of the treaty. It does not imply that a signatory resorting to war will thereby be an outlaw in international society. It merely deprives it of the benefits of protection under the treaty; it does not deprive it of the legal rights of a belligerent recognized by international law. It is true that the members might legally use methods of retorsion or reprisal against an offender as a penalty for the offence, but any such action would be entirely optional on the part of each individual state. Nor is there any hint as to concerted action against an offender.

Further, no means whatsoever are provided for the execution of the treaty. It does not even provide a definition as to what would constitute a breach of its obligations, as does Locarno, though Mr. Kellogg was probably wise in refusing to embody a definition of aggression in the treaty, since no "fool-proof" definition has yet been devised and probably none ever will be. Nor does it provide for any co-operative action on the part of signatories to determine who is the aggressor in the event of the outbreak of war, as does the Covenant of the League. Above all, though it embodies a guarantee for the peaceful settlement of all disputes between members, the treaty provides no means whatsoever for the settlement of any disputes. Clearly if it is to be at all effective, this gap must be filled in by other treaties setting up machinery for settling disputes, since it would be obviously fatal to await the existence of a dangerous dispute before providing for the means of settlement. At the utmost, therefore, the Kellogg Pact is but a first step in preventing even such wars as those against which it is directed.

Is the Pact, then, of any value at all? It may, of course, have a certain psychological effect, in that it may tend to relieve the suspicions which most peoples have as to the pacific intentions of powerful neighbors. On the other hand, the world is not so unsophisticated as to rely on the mere declaration of good intentions, even when embodied in a treaty. The Pact promises, however, much more than this. Resort to war by any signatory would obviously put upon it the burden of proof that its acts were not in violation of the treaty. The failure to convince other signatories of the legality of its course would leave them free to take action either individually or collectively against it. It could hardly hope, therefore, under such circumstances, to enjoy the rights and privileges of a belligerent to which the law would entitle it. To make the situation clearer, let us assume that a state does resort to war and fails to convince other parties to the agreement that its course is legally correct. Would they, then, permit it, if it were a

naval power, to interfere with their trade by means of blockade or contraband? Would they be likely to permit it to raise loans, to buy munitions of war, or even to buy food-stuffs within their territories, for the prosecution of the war? It is true that there is nothing in the Pact to say that they would not, but it is scarcely likely that any member would view so lightly the breach of a treaty as to permit the offender to exercise the full rights of a member in good standing.

A difficulty might, of course, arise if there were conflicting opinions on the part of other signatories as to which was the aggressor. And it must be remembered that it is often extremely difficult to determine at the moment of the outbreak which party is the offender. Frequently all the facts of the case do not appear before the opening of diplomatic archives, an event often delayed for decades. Further, the interpretation of such facts as do exist is often coloured by the interest and sympathies of individuals and states concerned. Conflicting opinions among third parties might, therefore, render ineffective whatever sanctions may lie behind the treaty. Yet at best the attitude of third parties is likely to be problematical, and a member resorting to war on its own motion is scarcely likely to be assured in advance either that it can convince other members of the legality of its course, or that it can throw dust in the eyes of a sufficient number to prevent any effective action against it. At the very least, the treaty is, therefore, likely to prevent sudden recourse to arms.

There can be no doubt that Europe interprets the Kellogg Pact as a partial return on the part of the United States to participation in responsibility to maintain the *status quo*. Europe considers it an indication of the attitude of the United States towards the use of sanctions under the Covenant of the League and the Locarno Agreement. Hitherto the question, What will be the position of the United States? has always been a deterring factor in working out any definite system of sanctions for keeping the peace. This question has given pause especially to Great Britain, since on Great Britain would fall the burden of the application of any naval sanctions. There has been always the possibility that the United States might insist on its rights as a neutral and might, therefore, object to the severance of trade relations, even as against an aggressor state, a position which would place the United States in opposition not only to the League but also to Great Britain and might, indeed, lead to war between the two powers. To Europe the Kellogg Pact seems to clear up in part this difficulty. What foundation is there for Europe's hopes? The Pact imposes

no legal obligation whatever on the United States, even to permit the use of sanctions by members of the League or the Locarno Agreement. Legally speaking, the United States is as free as ever to adopt whatever position seems expedient under the circumstances. On the other hand, having defined its attitude towards war, it would certainly be unseemly for it to adopt a position which might prevent the League or the Locarno members from keeping the peace, even if such action interfered with the immediate interests of the United States. How much more unseemly if the offender were a signatory to the Kellogg Pact! And it must be remembered that no state is insensible to the opinions and good-will of other states, particularly those to which it is bound by important commercial relations, as well as political treaties. The United States would thus be induced by reason of moral obligations and self-interest to permit the use of sanctions against a state which had broken obligations to keep the peace, especially if it were a signatory to the Kellogg Pact. This would, of course, not be the case if the opinion of the United States as to which party constituted the aggressor conflicted with the opinions of the League or of the signatories to Locarno. In such case, the application of sanctions might be impossible or might entail the danger of open rupture with the United States. On the other hand, the United States could scarcely ignore the opinions of the League or of the members of the Locarno Agreement as to the aggressor, if for no other reason than that both the League and the Locarno Agreement include all the great states of Europe except Russia. This difficulty is, however, perhaps illusory, since neither the United States nor any other member is likely to come to any definite conclusion on the matter, much less to take action, without carefully discussing the matter directly with one another. No state operates in a vacuum.

Paradoxical as it may seem, the readiness of other states to accept the Pact and the belief on the part of European nations that the agreement constitutes a definition of the attitude of the United States to the League and other security agreements, are imperilling the acceptance of the Pact by the American Senate. Some of the old guard of irreconcilable isolationists in the Senate, and such a press supporter of the Coolidge Administration as the *New York Herald-Tribune* are campaigning against the treaty on the very ground intimated above, namely, that it is tantamount to a definition of the relation of the United States to the League, and that it therefore limits her freedom of action. On Mr. Kellogg's side, however, are the influential group of publicists who have been advocating the outlawry of war, and above all, Senator Borah,

Chairman of the Senate Committee on Foreign Relations, and probably the most influential, though sometimes misguided, advocate of peace in American public life. Mr. Kellogg may, therefore, be able to muster sufficient support for its acceptance. If not, and if Mr. Kellogg's peace plans follow those of President Wilson, the position of the United States in international society will indeed be a ludicrous one.

In the meantime, no responsible statesman is preparing for the immediate advent of the millennium. Mr. Kellogg, it is announced, after signing the peace agreement in Paris, will return on a warship. Mr. Coolidge is insisting on the enlarged naval-building programme which Congress cut last session. Great Britain and France have reached an agreement to discuss naval limitations, an agreement which, because unpublished, is suspected by both Italy and the United States as a covert naval alliance. Russia feels that unless she is invited to sign the Pact the agreement may be in reality an alliance aimed against her, and she must, therefore, take steps accordingly. All of which seems to indicate that spears are not as yet being turned into pruning-hooks, nor swords into ploughshares.