

## **6. THE KELLOGG-BRIAND PACT AND THE RIGHT OF SELF-DEFENSE**

### **Treaty renouncing war recognizes self-defense warfare**

In 1928 the Tanaka Cabinet joined the other powers in signing an international pact, the General Treaty for Renunciation of War as a National Policy, the intent of which was to demonstrate to the world the desire of the signatories to abolish warfare.

This same treaty was used excessively in the condemnation of Japan at the IMTFE (Tokyo Trials), which was held after the Greater East Asian War. Japan was accused of having violated the international pact any number of times, beginning with the Manchurian Incident. Proposed by Frank B. Kellogg, US secretary of state, and Aristide Briand, the French foreign minister (and therefore commonly known as the Kellogg-Briand Pact, but also referred to as the Pact of Paris), the treaty was concluded in Paris on August 27, 1928. The original signatories included Japan, the UK, the US, France, Italy, and Germany. Before long, many other nations signed the pact, even Russia, which was not then a member of the League of Nations. The Kellogg-Briand Pact comprised the following three provisions:

#### 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.

(Article III describes ratification and procedural matters.)<sup>1</sup>

However, the idealistic treaty had a major flaw: thanks to assertions on the part of powers like the UK, US, and France, it made exceptions for defensive wars. Furthermore, as the US argued, it allowed the nation or nations involved in the dispute to decide whether the claim of self-defense was legitimate. If we were to accept the right of the relevant nations to interpret what constitutes a war of self-defense, the war-renunciation treaty would be totally invalid as law, since all wars are waged in the name of self-defense.

### **Reservation of the right of self-defense**

In his judgement submitted to the IMTFE, held after the Greater East Asian War had ended, Justice Radhabinod Pal refers to a statement made by Secretary Kellogg concerning self-defense, in which the US argued that the right of self-defense was not limited to a nation's own territory.

---

<sup>1</sup> <https://treaties.un.org/doc/Publication/UNTS/LON/Volume%2094/v94.pdf>.

On the question of self-defense, Mr. Kellogg declared that the right of self-defense was not limited to the defense of territory under the sovereignty of the state concerned, and that under the treaty, each state would have the prerogative of judging for itself, WHAT ACTION THE RIGHT OF SELF-DEFENSE COVERED and when it came into play, subject to the risk that this judgment might not be endorsed by the rest of the world. “The United States must judge ... and it is answerable to the public opinion of the world if it is not an honest defense; that is all.” This is Mr. Kellogg's [sic] own statement.<sup>2</sup>

What was Japan's reaction to the treaty? Foreign Minister Tanaka prepared a written response describing Japan's position and stating that he agreed with the American proposal. When he delivered it to US Ambassador Charles MacVeagh, he sought the diplomat's understanding by further elaborating on Japan's attitude toward China. About the right of self-defense, he said, “Japan's neighbor, China, is constantly engaged in civil warfare. Although war with China is, of course, not something we wish to engage in, we must always be cognizant of the necessity of taking appropriate defensive measures.” At that time, it was not only a matter of protecting vested interests and Japanese residents, but also of the need to maintain order, the ultimate goal being to establish Manchuria as a safe zone between Japan and Russia.<sup>3</sup>

The powers rejected warfare as a means of implementing national policy, but reserved the right to engage in defensive warfare. Furthermore, decisions and determinations relating to the exercise of the right of self-defense were the prerogative of each of the relevant nations.

What nation has ever gone to war *except* in the name of self-defense? Every nation that engages in war, even nations that are patently aggressors, justifies its action by maintaining that they are waging wars of self-defense. As long as nations are recognizing each other's right of self-defense, and the determination of whether the exercise of that right is legitimate, we cannot expect any declaration or treaty renouncing war to be meaningful. According to historian Thomas A. Bailey, some Americans “sneered that the treaty had no teeth, except the feeble pressure of world opinion; it was just “a New Year's resolution” or “a letter to Santa Claus.”<sup>4</sup> And then we have diplomat Ishii Kikujirō, in *Diplomatic Commentaries*, writing, “If too much emphasis be laid on ideals in considering the anti-war question, the matter will hardly escape becoming a religious issue.”<sup>5</sup>

Later, the Manchurian Incident case was brought before the League of Nations. Japan was accused of violating the Pact of Paris. But when the league deliberated on the incident, Japan

---

<sup>2</sup> Radhabinod Pal, “Dissentient Judgment of Justice Pal” in *International Military Tribunal for the Far East* (Tokyo: Kokusho Kankōkai, Inc., 1999), 45.

<sup>3</sup> Ōhata Tokushirō, “Fusen jōyaku to Nippon” (Pact of Paris and Japan), *Kokusai seiji* (International relations), vol. 28, no. 2 (1964).

<sup>4</sup> Bailey, *op. cit.*, 650.

<sup>5</sup> Ishii, *op. cit.*, 244.

refuted the charge, citing the right of self-defense. By recognizing the reservation of the right of self-defense, the Kellogg-Briand Pact significantly affected future generations.

### **USSR first to violate Pact of Paris**

It is ironic that the Kellogg-Briand Pact enjoyed little respect from its signatories, especially given the lofty idealism embodied in its language.

Thomas A. Bailey, an American specialist in diplomatic history, describes the reaction in Congress when the US signed the treaty:

The Senate had few illusions about the agreement for abolishing war. Senator Reed of Missouri branded it an “international kiss,” while Senator Glass of Virginia did not want people to think him “simple enough to suppose that it is worth a postage stamp . . . .” No formal reservations were attached to the treaty, but the Senate Foreign Relations committee did present an “interpretation” reserving the right of self-defense, the right to fight for the Monroe Doctrine, and the right to enforce the treaty against violators.

Such was the tidal wave of public opinion that the Senate approved the Kellogg-Briand Pact, in January, 1929, by a vote of 85 to 1. The next order of business was the bill for constructing fifteen new cruisers, which shortly thereafter were approved. The *New York Evening Post* jibed, “If, after just having signed a peace treaty with twenty-six nations, we need fifteen new cruisers, how many would we have needed if we hadn’t just signed a peace treaty with twenty-six nations?”<sup>6</sup>

The first violation of the pact soon occurred, the guilty party being the USSR. It was a contravention that should be committed to historical memory. In 1929 Zhang Xueliang searched the Soviet consulate in Harbin. There he discovered and confiscated evidence of a communist revolutionary plot, which motivated him to seize control of the Chinese Eastern Railway. The Soviets retaliated by crossing the border between the USSR and Manchuria with both air and land forces, and invading Manchuria in November. They repelled Zhang’s northeastern army and succeeded in restoring the railway to joint Soviet-Chinese administration, as it had been since the days of imperial Russia. The Sino-Soviet conflict drew the attention of the US, UK, France, and Italy concerning the USSR’s obligation to the Pact of Paris. But the Soviets objected to the interference of third-party nations, insisting that they had acted in self-defense.

When the Manchurian Incident arose, the Japanese advocated for negotiations to be held between Japan and China, arguing that action taken by the Guandong Army had been motivated by self-defense. However, the US castigated Japan over its “violation of the anti-war treaty.” Additionally, the Lytton Report, issued in 1932, rejected Japan’s assertion of self-defense. Nevertheless, when I recall that, two years prior to the Manchurian Incident, the USSR violated the Pact of Paris by invading Manchuria in the name of self-defense, I find that the argument that the Manchurian Incident was an act of Japanese aggression loses all credibility. Moreover, when I consider the fact that at the IMTFE, the very same Soviet Union condemned Japan’s policies

---

<sup>6</sup> Bailey, *op. cit.*, 650.

subsequent to the Manchurian Incident as acts of aggression, I am overcome by an absolutely unendurable feeling of helplessness.

In any case, I will refrain from defending the Kellogg-Briand Pact, as it is not worthy of such an effort. The aforementioned Alfred Griswold exquisitely assesses the treaty by writing that when the break between China and Russia came in 1929, “the Kellogg Pact was essentially as meaningless as an agreement not to raise umbrellas except in rainy weather.”<sup>7</sup>

---

<sup>7</sup> Griswold, *op. cit.*, 393.