

11. Dokumente zur Anwendung des Kelloggpaktes, insbesondere im chinesisch-japanischen Streitfall¹⁾

1. Rede des Staatssekretärs der Vereinigten Staaten, Stimson, vor dem Council on Foreign Relations am 8. August 1932²⁾

Four years ago the United States joined with France in the initiation of the Pact of Paris — the so-called Briand-Kellogg Pact for the Renunciation of War. A year later, in 1929, the Pact became formally effective, and it has now been adhered to by sixty-two nations. Scarcely had its ratification been announced on July 24, 1929, when it became subjected to the first of a series of difficult challenges which are still going on. In the defense of the Pact in these tests the American Government has been a leader. I believe it would be appropriate, in the light of this three years' history, to take stock now of what the Pact is, the direction in which it is developing, and the part which we may hope that it eventually will play in the affairs of the world.

Events have been moving so rapidly since the World War, and we have been so close to them, that it is difficult to obtain an adequate perspective. I think, therefore, that it would be well to summarize briefly the background out of which this great treaty came and against which it must be judged.

Prior to the World War many men had had visions of a warless world and had made efforts to accomplish the abolition of war, but these efforts had never resulted in any very general or effective combinations of nations directed towards that end. During the centuries which had elapsed since the beginnings of international law, a large part of that law had been a development of principles based upon the existence of war. The existence and legality of war were to a large extent the central facts out of which these legal principles grew and on which they rested. Thus the development of the doctrine of neutrality was predicated upon the duty of a neutral to maintain impartiality between two belligerents. This further implies that each belligerent has equal rights and is owed equal duties by the neutral. It implies that the war between them is a legal situation out of which these rights and obligations grow. Therefore, it is contrary to this aspect of international law for the neutral to take sides between belligerents or to pass a moral judgment upon the rightfulness or wrongfulness of the cause of either — at least to the extent of translating such a judgment into action. So long as a neutral exercised this strict impartiality,

¹⁾ Vgl. Asche Graf von Mandelsloh, Die Auslegung des Kelloggpaktes durch den amerikanischen Staatssekretär Stimson, T. 1 dieses Bandes, S. 617 ff.; sowie die in dieser Zeitschrift Bd. 2, T. 2 S. 272 ff. abgedruckten Dokumente.

²⁾ Foreign Affairs, special supplement to vol. 11, no. 1; französ. Übersetzung Europe Nouvelle no. 760, 3. sept. 1932, S. 1059; Rev. de Droit Int. (La Pradelle) X (1932), p. 640.

international law afforded to him, his commerce, and his property, certain rights of protection. And during the generations which preceded the World War much of the growth of international humanitarianism was associated with attempts, not to abolish war but to narrow and confine its destructive effects by the development of these doctrines of neutrality. Their chief purpose was to produce oases of safety for life and property in a world which still recognized and legalized the destruction of human life and property as one of the regular methods for the settlement of international controversies and the maintenance of international policy.

The mechanical inventions of the century preceding the World War, and the revolutionary changes in industrial and social organization by which they were accompanied, have, however, produced inevitable effects upon the concept of war which I have described. Communities and nations became less self-contained and more interdependent; the populations of industrialized states became much larger and more dependent for their food supplies upon far distant sources; the civilized world thus became very much more vulnerable to war. On the other hand, with these mechanical advances modern armies became more easily transportable and therefore larger and were armed with far more destructive weapons. By these changes on either side the inconsistency of war with normal life became sharper and more acute; the destructiveness of war to civilization became more emphatic; the abnormality of war became more apparent. The laws of neutrality became increasingly ineffective to prevent even strangers to the original quarrel from being drawn into the general conflict.

Finally there came the World War, dragging into its maelstrom almost the entire civilized world; tangible proof was given of the impossibility of confining modern war within any narrow limits; and it became evident to the most casual observer that if this evolution were permitted to continue, war, perhaps the next war, would drag down and utterly destroy our civilization.

Before this war was over it began to be called "a war to end war", and at the Peace Conference at Versailles the victorious nations entered into a covenant which sought to reduce the possibility of war to its lowest terms. The League of Nations Covenant did not undertake entirely to prescribe wars between nations. It left unrestricted a zone in which such wars might occur without reprobation. Furthermore, it provided under certain circumstances for the use of force by the community of nations against a wrongdoer as a sanction. It created a community group of nations pledged to restrict war and equipped with machinery for that purpose. Some of this machinery, notable article II, which provides, on a threat of war, for the calling of a conference for purposes of conciliation, has on several occasions proved a valuable influence in the prevention of war. Another important and beneficent result of the League organization has been the regular conferences which are held between the representatives of the different

nations. These discussions have often proved to be effective agencies for the settlement of controversies and thus for war prevention. By them there also has been developed, particularly among the nations of Europe, a community spirit which can be evoked to prevent war. In all of these ways there has been produced the beginning of a group sentiment which is wholly at variance with some of the old doctrines in respect to war.

Nine years later, in 1928, came the still more sweeping step of the Pact of Paris, the Briand-Kellogg Treaty. In this treaty substantially all the nations of the world have united in a covenant in which they renounce war altogether as an instrument of national policy in their relations with one another and have agreed that the settlement of all disputes or conflicts of whatever nature among them should never be sought except by pacific means.

The change of attitude on the part of world public opinion toward former customs and doctrines, which is evidenced by these two treaties, is so revolutionary that it is not surprising that the progress has outstripped the landmarks and orientation of many observers. The treaties signalize a revolution in human thought, but they are not the result of impulse or thoughtless sentiment. At bottom they are the growth of necessity, the product of a consciousness that unless some such step were taken modern civilization might be doomed. Under its present organization the world simply could not go on recognizing war, with its constantly growing destructiveness, as one of the normal instrumentalities of human life. Human organization has become too complex, too fragile, to be subjected to the hazards of the new agencies of destruction turned loose under the sanction of international law. So the entire central point from which the problem was viewed was changed. War between nations was renounced by the signatories of the Briand-Kellogg Pact. This means that it has become illegal throughout practically the entire world. It is no longer to be the source and subject of rights. It is no longer to be the principle around which the duties, the conduct, and the rights of nations revolve. It is an illegal thing. Hereafter when two nations engage in armed conflict either one or both of them must be wrongdoers — violators of the general treaty. We no longer draw a circle about them and treat them with the punctilios of the duelist's code. Instead we denounce them as law-breakers.

By that very act we have made obsolete many legal precedents and have given the legal profession the task of re-examining many of its codes and treatises.

The language of the Briand-Kellogg Treaty and the contemporaneous statements of its founders make its purpose clear. Some of its critics have asserted that the Pact was really not a treaty at all; that it was not intended to confer rights and impose liabilities; that it was a mere group of unilateral statements made by the signatories, declaring a pious purpose on the part of each, of which purpose that signatory

was to be the sole judge and executor, and for a violation of which no other signatory could call him to account.

If such an interpretation were correct, it would reduce the Pact to a mere gesture. If its promises conferred no rights as between the members of the community of signatories, it would be a sham. It would be worse than a nullity, for its failure would carry down the faith of the world in other efforts for peace.

But such critics are wrong. There is nothing in the language of the Pact nor in its contemporaneous history to justify any such an interpretation. On its face it is a treaty containing definite promises. In its preamble it expressly refers to the "benefits furnished by this treaty", and states that any signatory power violating its promise shall be denied those benefits. The correspondence of the framers of the treaty shows that they intended it to be a treaty which would confer benefits, which might be lost by a violation thereof. During the period when the treaty was under negotiation, Mr. Kellogg declared in a public address, made before this very body on March 15, 1928: "If war is to be abolished it must be through the conclusion of a specific treaty solemnly binding the parties not to resort to war with one another. It cannot be abolished by a mere declaration in the preamble of a treaty." In drafting the treaty Mr. Kellogg rightly and tenaciously fought for a clear, terse prohibition free from any detailed definitions or reservations. In his own words, he sought "a treaty so simple and unconditional that the people of all nations could understand it, a declaration which could be a rallying point for world sentiment, a foundation on which to build a world peace." Any other course would have opened the door to technicalities and destructive limitations.

As it stands, the only limitation to the broad covenant against war is the right of self-defense. This right is so inherent und universal that it was not deemed necessary even to insert it expressly in the treaty. It is also so well understood that it does not weaken the treaty. It exists in the case of the individual under domestic law, as well as in the case of the nation and its citizens under the law of nations. Its limits have been clearly defined by countless precedents. A nation which sought to mask imperialistic policy under the guise of the defense of its nationals would soon be unmasked. It could not long hope to confuse or mislead public opinion on a subject so well understood or in a world in which facts can be so easily ascertained as they can be under the journalistic conditions of to-day.

Again, the Briand-Kellogg Pact provides for no sanctions of force. It does not require any signatory to intervene with measures of force in case the Pact is violated. Instead it rests upon the sanction of public opinion, which can be made one of the most potent sanctions in the world. Any other course, through the possibility of entangling the signatories in international politics, would have confused the broad and simple aim of the treaty and prevented the development of that public opinion upon which it most surely relies. Its efficacy depends

upon the will of the people of the world to make it effective. If they desire to make it effective, it will be irresistible. Those critics who scoff at it have not accurately appraised the evolution in world opinion since the World War.

From the day of its ratification on July 24, 1929, it has been the determined aim of the American Government to make this sanction of public opinion effective and to insure that the Pact of Paris should become a living force in the world. We have recognized the hopes which it represented. We have resolved that they should not be disappointed. We have recognized that its effectiveness depends upon the cultivation of the mutual fidelity and good faith of the group of nations which has become its signatories, and which comprise virtually all of the nations of the world. We have been determined that the new order represented by this great treaty shall not fail.

In October 1929 President Hoover joined with Mr. Ramsay MacDonald, the Prime Minister of Great Britain, in a joint statement at the Rapidan in which they declared: "Both our Governments resolve to accept the Peace Pact not only as a declaration of good intentions, but as a positive obligation to direct national policy in accordance with its pledge." That declaration marked an epoch.

In the summer of 1929 hostilities threatened between Russia and China in northern Manchuria. Both nations were signatories of the Pact. It was the most difficult portion of the world in which such a challenge to this treaty could have occurred. Yet we at once took steps to organize public opinion in favor of peace. We communicated with the Governments of Great Britain, Japan, France, Italy and Germany, and the attention of the Governments of Russia and China was formally called to their obligations under the Treaty. Later during the same autumn, when hostilities actually broke out and military forces of Russia had crossed the Manchurian boundary and attacked the forces of China, our Government communicated with all the signatories of the Pact, suggesting that they urge upon Russia and China a peaceful solution of the controversy between them. Thirty-seven of these nations associated themselves with our action or signified their approval of our attitude. Although the aspect of the controversy had been extremely threatening and the forces of Russia had penetrated nearly a hundred miles within the boundaries of China, the restoration of the status quo ante was accepted by both parties and the invading forces were promptly withdrawn.

Two years later, in September 1931, hostilities broke out between the armed forces of Japan and China in the same quarter of the world, Manchuria, and the situation was brought to the attention of the Council of the League of Nations, which happened to be then in session at Geneva. Our Government was invited to confer as to the bearing of the Pact of Paris upon the controversy. We promptly accepted the invitation, designating a representative to meet with the Council for that purpose; and the attention of the two disputants was called

to their obligations under the Pact by France, Great Britain, Germany, Italy, Spain, Norway and the United States — those nations, other than the United States, being members of the Council then in session.

The hostilities between Japanese and Chinese armed forces continued and protracted efforts towards conciliation were made by the Council of the League, which had taken jurisdiction of the matter. The American Government maintained its attitude of sympathetic coöperation with the efforts of the Council and acting independently through the diplomatic channels endeavoured to re-enforce the Council's efforts at conciliation. Finally, when in spite of these efforts Japan had occupied all of Manchuria, the American Government formally notified both that country and China, on January 7, 1932, that it would not recognize any situation, treaty, or agreement which might be brought about by means contrary to the covenant and obligations of the Pact of Paris. Subsequently, on March 11, this action of the American Government was endorsed by the Assembly of the League of Nations, at a meeting in which fifty nations were represented. On that occasion, under circumstances of the utmost formality and solemnity, a resolution was adopted, unanimously, Japan alone refraining from voting, in which the Assembly declared that, "it is incumbent upon the members of the League of Nations not to recognize any situation, treaty or agreement which may be brought about by means contrary to the Covenant of the League of Nations or to the Pact of Paris."

These successive steps cannot be adequately appraised unless they are measured in the light of the vital change of point of view which I have described in the opening of this address. They were the acts of nations which were bound together by a new viewpoint towards war, as well as by covenants which made that viewpoint a reality. Except for this new viewpoint and these new covenants, these transactions in far-off Manchuria, under the rules of international law theretofore obtaining, might not have been deemed the concern of the United States and these fifty other nations. Under the former concepts of international law when a conflict occurred, it was usually deemed the concern only of the parties to the conflict. The others could only exercise and express a strict neutrality alike towards the injured and the aggressor. If they took any action or even expressed an opinion, it was likely to be deemed a hostile act towards the nation against which it was directed. The direct individual interest which every nation has in preventing a war had not yet been fully realized, nor had that interest been given legal recognition. But now under the covenants of the Briand-Kellogg Pact such a conflict becomes of legal concern to everybody connected with the Treaty. All of the steps taken to enforce the treaty must be judged by this new situation. As was said by Mr. Briand, quoting the words of President Coolidge: "An act of war in any part of the world is an act that injures the interests of my country." The world has learned that great lesson and the execution of the Briand-Kellogg Treaty codified it.

Thus the power of the Briand-Kellogg Treaty cannot be adequately appraised unless it is assumed that behind it rests the combined weight of the opinion of the entire world united by a deliberate covenant which gives to each nation the right to express its moral judgment. When the American Government took the responsibility of sending its note of January 7 last, it was a pioneer. It was appealing to a new common sentiment and to the provisions of a Treaty as yet untested. Its own refusal to recognize the fruits of aggression might be of comparatively little moment to an aggressor. But when the entire group of civilized nations took their stand beside the position of the American Government, the situation was revealed in its true sense. Moral disapproval, when it becomes the disapproval of the whole world, takes on a significance hitherto unknown in international law. For never before has international opinion been so organized and mobilized.

Another consequence which follows this development of the Briand-Kellogg Treaty, which I have been describing, is that consultation between the signatories of the Pact when faced with the threat of its violation becomes inevitable. Any effective invocation of the power of world opinion involves discussion and consultation. As long as the signatories of the Pact of Paris support the policy which the American Government has endeavored to establish during the past three years of arousing a united and living spirit of public opinion as a sanction to the Pact, as long as this course is adopted and endorsed by the great nations of the world who are signatories of that Treaty, consultations will take place as an incident to the unification of that opinion. The course which was followed in the Sino-Japanese controversy last winter conclusively proves that fact. The moment a situation arose which threatened the effectiveness of this Treaty, which the peoples of the world have come to regard as so vital to the protection of their interests, practically all the nations consulted in an effort to make effective the great peaceful purposes of that Treaty.

That the Pact thus necessarily carries with it the implication of consultation has perhaps not yet been fully appreciated by its well-wishers who have been so anxious that it be implemented by a formal provision for consultation. But with the clarification which has been given to its significance by the developments of the last three years, and the vitality with which it has been imbued by the positive construction put upon it, the misgivings of these well-wishers should be put at rest. That the American people subscribe to this view is made clear by the fact that each of the platforms recently adopted by the two great party conventions at Chicago contains a plank endorsing the principle of consultation.

I believe that this view of the Briand-Kellogg Treaty which I have been discussing will become one of the great and permanent policies of our nation. It is founded upon conceptions of law and ideals of peace which are among our most cherished faiths. It is a policy which combines the readiness to cooperate for peace and justice in the world,

which Americans have always manifested, while at the same time it preserves the independence of judgment and the flexibility of action upon which we have always insisted. I believe that this policy must strike a chord of sympathy in the conscience of other nations. We all feel that the dreadful lessons taught by the World War must not be forgotten. The determination to abolish war which emerged from that calamity must not be relaxed. These aspirations of the world are expressed in this great Treaty. It is only by continued vigilance that it can be built into an effective living reality. The American people are serious in their support and evaluation of the Treaty. They will not fail to do their share in this endeavor.

2. Schreiben des Staatssekretärs der Vereinigten Staaten, Stimson, an den Vorsitzenden des Auswärtigen Ausschusses des Senats, Senator Borah, vom 24. Februar 1932, betr. die Politik der Offenen Tür in China und den Kelloggpackt ³⁾

My dear Senator Borah: You have asked my opinion whether, as has been sometimes recently suggested, present conditions in China have in any way indicated that the so-called Nine Power Treaty has become inapplicable or ineffective or rightly in need of modification, and if so, what I considered should be the policy of this Government.

This treaty, as you of course know, forms the legal basis upon which now rests the "open door" policy towards China. That policy, enunciated by John Hay in 1899, brought to an end the struggle among various powers for so-called spheres of interest in China which was threatening the dismemberment of that empire. To accomplish this Mr. Hay invoked two principles — (1) equality of commercial opportunity among all nations in dealing with China, and (2) as necessary to that equality the preservation of China's territorial and administrative integrity.

These principles were not new in the foreign policy of America. They had been the principles upon which it rested in its dealings with other nations for many years. In the case of China they were invoked to save a situation which not only threatened the future development and sovereignty of that great Asiatic people, but also threatened to create dangerous and constantly increasing rivalries between the other nations of the world. War had already taken place between Japan and China. At the close of that war three other nations intervened to prevent Japan from obtaining some of the results of that war claimed by her. Other nations sought and had obtained spheres of interest. Partly as a result of these actions a serious uprising had broken out in China which endangered the legations of all of the powers at Peking. While the attack on those legations was in progress, Mr. Hay made an announcement in respect to this policy as the principle upon which the powers should act in the settlement of the rebellion. He said:

³⁾ U. Stat. Daily, 25. Febr. 1932, Yearly Ind. p. 2903.

"The policy of the Government of the United States is to seek a solution which may bring about permanent safety and peace to China, preserve Chinese territorial and administrative entity, protect all rights guaranteed to friendly powers by treaty and international law, and safeguard for the world the principle of equal and impartial trade with all parts of the Chinese Empire."

He was successful in obtaining the assent of the other powers to the policy thus announced.

In taking these steps Mr. Hay acted with the cordial support of the British Government. In responding to Mr. Hay's announcement, above set forth, Lord Salisbury, the British Prime Minister, expressed himself "most emphatically as concurring in the policy of the United States."

For twenty years thereafter the Open Door policy rested upon the informal commitments thus made by the various powers. But in the Winter of 1921 to 1922, at a conference participated in by all of the principal powers which had interests in the Pacific, the policy was crystallized into the so-called Nine Power Treaty, which gave definition and precision to the principles upon which the policy rested. In the first article of that Treaty, the contracting powers, other than China, agreed

1. To respect the sovereignty, the independence and the territorial and administrative integrity of China.

2. To provide the fullest and most unembarrassed opportunity to China to develop and maintain for herself an effective and stable government.

3. To use their influence for the purpose of effectually establishing and maintaining the principle of equal opportunity for the commerce and industry of all nations throughout the territory of China.

4. To refrain from taking advantage of conditions in China in order to seek special rights or privileges which would abridge the rights of subjects or citizens of friendly States, and from countenancing action inimical to the security of such States.

This treaty thus represents a carefully developed and matured international policy intended, on the one hand, to assure to all of the contracting parties their rights and interests in and with regard to China, and on the other hand, to assure to the people of China the fullest opportunity to develop without molestation their sovereignty and independence according to the modern and enlightened standards believed to maintain among the peoples of this earth. At the time this treaty was signed, it was known that China was engaged in an attempt to develop the free institutions of a self-governing republic after her recent revolution from an autocratic form of government; that she would require many years of both economic and political effort to that end; and that her progress would necessarily be slow.

The treaty was thus a covenant of self-denial among the signatory powers in deliberate renunciation of any policy of aggression which

might tend to interfere with that development. It was believed — and the whole history of the development of the "Open Door" policy reveals that faith — that only by such a process, under the protection of such an agreement, could the fullest interests not only of China but of all nations which have intercourse with her best be served.

In its report to the President announcing this treaty, the American Delegation, headed by the then Secretary of State, Mr. Charles E. Hughes, said:

"It is believed that through this treaty the "Open Door" in China has at least been made a fact."

During the course of the discussions which resulted in the treaty, the chairman of the British delegation, Lord Balfour, had stated that "The British Empire delegation understood that there was no representative of any power around the table who thought that the old practice of spheres of interest was either advocated by any government or would be tolerable to this conference. So far as the British Government were concerned, they had, in the most formal manner, publicly announced that they regarded this practice as utterly inappropriate to the existing situation."

At the same time the representative of Japan, Baron Shidehara, announced the position of his government as follows:

"No one denies to China her sacred right to govern herself. No one stands in the way of China to work out her own great national destiny."

The treaty was originally executed by the United States, Belgium, the British Empire, China, France, Italy, Japan, The Netherlands and Portugal. Subsequently it was also executed by Norway, Bolivia, Sweden, Denmark and Mexico. Germany has signed it but her Parliament has not yet ratified it.

It must be remembered also that this treaty was one of several treaties and agreements entered into at the Washington Conference by the various powers concerned, all of which were interrelated and interdependent. No one of these treaties can be disregarded without disturbing the general understanding and equilibrium which were intended to be accomplished and effected by the group of agreements arrived at in their entirety. The Washington Conference was essentially a disarmament conference, aimed to promote the possibility of peace in the world not only through the cessation of competition in naval armament but also by the solution of various other disturbing problems which threatened the peace of the world, particularly in the Far East. These problems were all interrelated.

The willingness of the American Government to surrender its then commanding lead in battleship construction and to leave its positions at Guam and in the Philippines without further fortification, was predicated upon, among other things, the self-denying covenants contained in the Nine Power Treaty, which assured the nations of the world not only of equal opportunity for their Eastern trade, but also against the

military aggrandisement of any other power at the expense of China. One can not discuss the possibility of modifying or abrogating those provisions of the Nine Power Treaty without considering at the same time the other promises upon which they were really dependent.

Six years later the policy of self-denial against aggression by a stronger against a weaker power, upon which the Nine Power Treaty had been based, received a powerful reinforcement by the execution by substantially all the nations of the world of the Pact of Paris, the so-called Kellogg-Briand Pact. These two treaties represent independent but harmonious steps taken for the purpose of aligning the conscience and public opinion of the world in favor of a system of orderly development by the law of nations including the settlement of all controversies by methods of justice and peace instead of by arbitrary force. The program for the protection of China from outside aggression is an essential part of any such development. The signatories and adherents of the Nine Power Treaty rightly felt that the orderly and peaceful development of the 400 millions of people inhabiting China was necessary to the peaceful welfare of the entire world and that no program for the welfare of the world as a whole could afford to neglect the welfare and protection of China.

The recent events which have taken place in China, especially the hostilities which having been begun in Manchuria have latterly been extended to Shanghai, far from indicating the advisability of any modification of the treaties we have been discussing, have tended to bring home the vital importance of the faithful observance of the covenants therein to all of the nations interested in the Far East. It is not necessary in that connection to inquire into the causes of the controversy or attempt to apportion the blame between the two nations which are unhappily involved; for regardless of cause or responsibility, it is clear beyond peradventure that a situation has developed which cannot, under any circumstances, be reconciled with the obligations of the covenants of these two treaties, and that if the treaties had been faithfully observed such a situation could not have arisen. The signatories of the Nine Power Treaty and of the Kellogg-Briand Pact who are not parties to that conflict are not likely to see any reason for modifying the terms of those treaties. To them the real value of the faithful performance of the treaties has been brought sharply home by the perils and losses to which their nationals have been subjected in Shanghai.

That is the view of this Government. We see no reason for abandoning the enlightened principles which are embodied in these treaties. We believe that this situation would have been avoided had these covenants been faithfully observed, and no evidence has come to us to indicate that a due compliance with them would have interfered with the adequate protection of the legitimate rights in China of the signatories of those treaties and their nationals.

On Jan. 7 last, upon the instruction of the President, this Government formally noticed Japan and China that it would not recognize

any situation, treaty or agreement entered into by those governments in violation of the covenants of these treaties, which affected the rights of our Government or its citizens in China. 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.

In the past our Government, as one of the leading powers on the Pacific Ocean, has rested its policy upon an abiding faith in the future of the people of China and upon the ultimate success in dealing with them of the principles of fair play, patience, and mutual goodwill. We appreciate the immensity of the task which lies before her statesmen in the development of her country and its government. The delays in her progress, the instability of her attempts to secure a responsible government, were foreseen by Messrs. Hay and Hughes and their contemporaries and were the very obstacles which the policy of the 'Open Door' was designed to meet. We concur with those statesmen, representing all the nations in the Washington Conference who decided that China was entitled to the time necessary to accomplish her development. We are prepared to make that our policy for the future.

3. Note der Vereinigten Staaten an China und Japan vom 7. Januar 1932 4)

"With the recent military operations about Chinchow, the last remaining administrative authority of the government of the Chinese Republic in South Manchuria, as it existed prior to Sept. 18, 1931, has been destroyed. The American Government continues confident that the work of the neutral commission recently authorized by the Council of the League of Nations will facilitate an ultimate solution of the difficulties now existing between China and Japan.

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 Imperial Japanese government and the government of the Chinese Republic that it cannot admit the legality of any situation de facto nor does it intend to recognize any treaty or agreement entered into between those 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

4) United States Daily v. 8. Jan. 1932, Yearly ind. 2521.

to the covenant and obligations of the Pact of Paris of Aug. 27, 1928, to which treaty both China and Japan, as well as the United States, are parties."

4. Note Chinas an die Vereinigten Staaten vom 19. Januar 1932
(Auszug) ⁵⁾

"I have the honor to acknowledge the receipt of Your Excellency's note dated Jan. 8, 1932, stating that, (*folgt der Wortlaut der oben zu 3. abgedruckten Note*)

With reference to the notification of Your' Excellency's Government that in this matter it does not recognize as legal any situation *de facto*, I have the honor to state that the Chinese government has repeatedly lodged with the Japanese government gravest protest against the various invasions and lawless acts perpetrated by the Japanese troops since Sept. 18, 1931, and has made it known internationally that the Chinese government accords them no recognition whatsoever.

With regard to the treaties or agreements referred to in the note under reply, I have the honor to state that the Chinese government, basing its position on its sovereignty and independence and on the principle of territorial and administrative integrity, has absolutely no intention of concluding any treaties or agreements of the categories described.

It is the sincere hope of the Chinese government that Your Excellency's Government will continue to promote the effectiveness of the international covenants in order that their dignity may be conserved.

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5. Note Japans an die Vereinigten Staaten vom 16. Januar 1932
(Auszug) ⁶⁾

"I have the honor to acknowledge the receipt of Your Excellency's note dated Jan. 8, which has had the most careful attention of this Government.

The Government of Japan were well aware that the Government of the United States could always be relied on to do everything in their power to support Japan's efforts to secure the full and complete fulfillment in every detail of the Treaties of Washington and the Kellogg Treaty for the outlawry of war. They are glad to receive this additional assurance of the fact.

As regards the question which Your Excellency specifically mentions of the policy of the so-called 'open-door', the Japanese Government as has so often been stated, regard that policy as a cardinal feature of the politics of the Far East, and only regrets that its effectiveness

⁵⁾ U. Stat. Daily, 18. Jan. 1932, Yearly Ind. p. 2600.

⁶⁾ U. Stat. Daily, 18. Jan. 1932, Yearly Ind. p. 2600.

is so seriously diminished by the unsettled conditions which prevail throughout China. In so far as they can secure it, the policy of the open door will always be maintained in Manchuria, as in China proper.

They take note of the statement by the Government of the United States that the latter cannot admit the legality of matters which might impair the treaty rights of the United States or its citizens or which might be brought about by means contrary to the Treaty of Aug. 27, 1928. 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 intention of adopting improper means, that question does not practically arise.

It may be added that the treaties which relate to China must necessarily be applied with due regard to the state of affairs from time to time prevailing in that country, and that the present unsettled and distracted state of China is not what was in the contemplation of the high contracting parties at the time of the Treaty of Washington. It was certainly not satisfactory then: but it did not display that disunion and those antagonisms which it does today. This cannot affect the binding character of the stipulations of treaties: but it may in material respects modify their application, since they must necessarily be applied with reference to the state of facts as they exist.

.....”

6. Appel, en date du 16 février 1932, adressé au Gouvernement Japonais par le président du Conseil, au nom des Membres du Conseil autres que les représentants de la Chine et du Japon 7)

Le Président du Conseil, parlant au nom de ses collègues, dans un appel adressé aux deux parties le 29 janvier, disait: «Seuls, la collaboration et le respect mutuel peuvent garantir le maintien des relations internationales; aucun règlement de caractère permanent ne saurait être obtenu par l'emploi de la force, qu'elle soit militaire, qu'elle soit même économique; et plus la situation actuelle se prolongerait, plus la mésentente entre les deux peuples grandirait, rendant la solution du différend plus difficile et causant un grave préjudice, non seulement aux deux nations directement intéressées, mais au monde entier.»

Aujourd'hui, les membres du Conseil autres que les représentants de la Chine et du Japon, ont l'obligation d'adresser au Gouvernement japonais un pressant appel pour qu'il reconnaisse les responsabilités particulières et le devoir de modération et de sagesse qu'impose au Japon, dans le conflit actuel, son titre de Membre de la Société des Nations et occupant au Conseil un siège permanent.

La situation, qui s'est développée en Extrême-Orient au cours de ces derniers mois, fera l'objet d'une étude complète de la part de la Commission nommée avec le consentement des parties. Mais depuis

7) Soc. d. Nat., Journ. Off. XIII^e Année, No. 3 (Première Partie) März 1932, S. 383.

que cette Commission a été constituée, il s'est produit et il se produit encore à Chang-Hai et dans la région de Chang-Hai des événements qui ont augmenté l'émotion de l'opinion publique, qui mettent en péril la vie et les intérêts des ressortissants de nombreux pays et qui ont ajouté aux difficultés exceptionnelles que rencontre le monde dans la crise qu'il traverse; ils menacent de créer de nouveaux et sérieux obstacles à la Conférence du désarmement.

Les douze membres du Conseil n'oublient nullement les griefs invoqués par le Japon, et ils lui ont, au cours des mois écoulés, accordé toute la confiance à laquelle a droit un associé de la première heure, qui observa toujours scrupuleusement ses obligations et ses devoirs de Membre de la communauté internationale. Ils ne peuvent cependant s'empêcher de regretter que le Japon n'ait pas jugé possible de s'en remettre sans réserve aux méthodes de règlement pacifique stipulées dans le Pacte de la Société des Nations; ils lui rappellent, une fois de plus, l'engagement solennel du Pacte de Paris, aux termes duquel la solution des différends internationaux ne devra jamais être recherchée que par des moyens pacifiques. Les douze membres du Conseil doivent constater que, dès le premier moment, dans cette lutte qui se déroule sur son territoire, la Chine a porté son différend avec le Japon devant la Société des Nations et s'est engagée à accepter les propositions faites par celle-ci en vue d'un règlement pacifique.

Les douze membres du Conseil désirent rappeler qu'aux termes de l'article 10 du Pacte de la Société des Nations, tout Membre de la Société s'est engagé à respecter et à maintenir l'intégrité territoriale et l'indépendance politique présente de tous les Membres de la Société. Ils ont le droit, à titre amical, d'appeler l'attention sur cette disposition d'où il résulte notamment, à leur avis, qu'aucun empiètement sur l'intégrité territoriale et aucune atteinte à l'indépendance politique d'un Membre de la Société des Nations, commis au mépris de l'article 10, ne sauraient être reconnus comme valides et effectifs par les Membres de la Société.

Devant l'opinion publique du monde, le Japon a l'immense responsabilité de se montrer juste et modéré dans ses rapports avec la Chine. Il a déjà reconnu cette responsabilité dans les termes les plus solennels en signant, en 1922, le Traité des neuf Puissances, par lequel les parties contractantes ont convenu expressément de respecter la souveraineté et l'indépendance, ainsi que l'intégrité territoriale et administrative de la Chine. Faisant appel à son sentiment élevé de l'honneur, les douze membres du Conseil demandent au Japon de reconnaître les obligations que lui imposent la situation particulière, ainsi que la confiance que les nations du monde ont placé en lui, en sa qualité d'associé à l'organisation et au maintien de la paix.

7. Réponse, en date du 23 février 1932, du Gouvernement Japonais à l'appel du président du Conseil en date du 16 février 1932⁸⁾ (Auszug)

.....

Le Japon a participé sans réserve à la procédure de règlement stipulée dans le Pacte; on ne saurait assurément supposer que ces méthodes excluent des mesures provisoires de défense qui ne sont interdites par aucune résolution de la Société, ni que ces méthodes obligent le Japon à accepter une dérogation à ses propres dispositions expresses sous la forme d'une décision de la majorité.

C'est un axiome universellement reconnu qu'aucun traité de règlement pacifique ne met obstacle au droit de légitime défense. On semble regretter surtout que le Japon ne se soit pas mis sans réserve entre les mains de ses collègues; mais, malgré son grand respect pour eux, il avait juridiquement et moralement, le droit de s'y refuser: juridiquement, parce qu'il ne s'était pas engagé à agir autrement; moralement, parce que, tout en ayant la plus grande confiance dans leur jugement et leur bonne volonté, il croit être naturellement et nécessairement en bien meilleur état d'apprécier les faits qu'aucune Puissance éloignée ne saurait l'être.

4. L'appel invoque l'article 10 du Pacte de la Société des Nations. Les mesures strictement défensives prises par le Japon n'enfreignent pas les dispositions de cet article. En effet, aucune Puissance n'a allégué cette disposition du Pacte lorsque d'autres Etats envoyèrent, il y a cinq ans, d'importants renforts pour défendre Chang-Hai, ni lorsque les forces américaines et britanniques bombardèrent Nankin, ni en diverses autres occasions dont on se souviendra aisément. La disposition en question est excellente, mais elle n'interdit pas la défense de soi et n'autorise pas la Chine à se livrer à tous les débordements et à attaquer impunément les autres pays sans que ceux-ci aient le droit de se défendre.

5. Comme le Japon n'envisage pas plus qu'on ne l'envisageait dans les cas précités d'attenter à l'intégrité territoriale ou à l'indépendance d'un Membre de la Société des Nations, il est superflu de dire que le Gouvernement japonais ne voit pas très bien la portée de la remarque selon laquelle aucune atteinte de cette nature commise au mépris de l'article 10 du Pacte ne saurait être reconnue comme valide et effective. Le Gouvernement japonais saisit cette occasion de déclarer une fois de plus, résolument et solennellement, que le Japon ne nourrit aucune ambition territoriale ou politique quelconque en Chine.

.....

8. Beschluß der Völkerbundsversammlung vom 11. März 1932 (Auszug)⁹⁾

I.

L'Assemblée,

Considérant que les dispositions du Pacte sont entièrement applicables au présent différend et qu'il en est spécialement ainsi:

⁸⁾ Soc. d. Nat., Journ. Off. XIII^e Année, No. 3 (II^{ème} Partie) März 1932, S. 384.

⁹⁾ S. d. N., Journ. Off., Suppl. Spéc. No. 101, vol. I. S. 87.

1° Du principe du respect scrupuleux des Traités;

2° De l'engagement assumé par les Membres de la Société des Nations de respecter et de maintenir contre toute agression extérieure l'intégrité territoriale et l'indépendance politique présente de tous les Membres de la Société;

3° De leur obligation de soumettre tout différend s'élevant entre eux aux procédures de règlement pacifique;

Faisant siens les principes formulés par le Président en exercice du Conseil, M. Briand, dans sa déclaration du 10 décembre 1931;

Rappelant que douze Membres du Conseil invoquèrent ces principes à nouveau dans leur appel au Gouvernement japonais, le 16 février 1932, en déclarant «Qu'aucun empiétement sur l'intégrité territoriale et aucune atteinte à l'indépendance politique d'un Membre de la Société des Nations commis au mépris de l'article 10 ne sauraient être reconnus comme valides et effectifs par les Membres de la Société»;

Considérant que les principes régissant les relations internationales et le règlement pacifique des différends entre Membres de la Société rappelés ci-dessus sont en pleine harmonie avec le Pacte de Paris, qui forme l'un des piliers de l'organisation de la paix du monde, et dont l'article 2 stipule que les «Hautes Parties contractantes reconnaissent que le règlement ou la solution de tous les différends ou conflits, de quelque nature ou de quelque origine qu'ils puissent être, qui pourront surgir entre elles, ne devra jamais être recherché que par des moyens pacifiques»;

En attendant les mesures qu'elle pourra finalement prendre pour le règlement du différend dont elle est saisie;

Proclame le caractère obligatoire des principes et des dispositions susmentionnés et déclare que les Membres de la Société des Nations sont tenus de ne reconnaître aucune situation, aucun Traité et aucun accord qui pourraient être obtenus par des moyens contraires au Pacte de la Société des Nations ou au Pacte de Paris.

.....

12. Zur Intervention der Mächte der Panamerikanischen Union im Chaco-Streitfall

Telegramm der neunzehn neutralen Mächte an Bolivien und Paraguay vom 3. August 1932¹⁾

[Translation.]

The representatives of all the American Republics, meeting in Washington, the seat of the Neutral Commission, having been duly authorized by their respective Governments, have the honor to make the following declaration to the Governments of Bolivia and Paraguay:

¹⁾ Department of State Press Releases, August 6, 1932, p. 100—101.