linquent signatories of their solemn engagement. It may properly call attention to the existence of Article II of the multilateral treaty and the obligations under it. But there is no enforcement clause in this compact.

The signature of this treaty marks a great advance in the cause of international peace. It also clearly indicates what is still necessary to give it effectiveness. The renunciation of war requires the further organization of peace. The historic forces are still in action and new issues are to be expected. To have agreed on so wide a scale to "condemn recourse to war" and to have renounced it "as an instrument of national policy" is to have laid a solid foundation for inaugurating a new era in the life of mankind.

DAVID JAYNE HILL.

WAR AS AN INSTRUMENT OF NATIONAL POLICY

The signing of the Kellogg-Briand multilateral treaty on August 27 is destined to become an event of first importance in the development of international law as well as an occasion of high moral significance in the progress of the nations towards the peaceful settlement of international disputes. It may indeed be conceded that from its lack of machinery for the execution of its promises the treaty adds no new sanctions to what may be called the procedural branch of international law. Yet this defect does not reduce the agreement to a mere gesture, a simple declaration of good intentions, a resolution to avoid war if it can be conveniently done. Such an interpretation, while warranted by a narrow examination of the obligations assumed in the treaty, does not do justice to the contribution which the treaty makes towards a definition of the place which war is henceforth to have in the scheme of international relations. Moreover it is entirely inaccurate to speak of the treaty as creating moral rather than legal obligations. The obligations may be vague and may present numerous loopholes of escape, but such as they are, being embodied in a formal international contract, they are legal.

The contracting parties declare that they "condemn recourse to war for the solution of international controversies" and that they "renounce it as an instrument of national policy in their relations with one another." Assuming that the first part of the declaration is not intended to be more comprehensive than the second part, the inquiry may be directed as to the meaning of war "as an instrument of national policy" and as to the extent of the reservations which attend its renunciation.

Prior to the year 1920 war had an accepted place in the procedure for the settlement of international disputes. It was not to be entered upon lightly, it could only be waged for a "just cause"; but as the determination of the gravity of the circumstances and of the justice of the cause was left to the individual state, war held its own as the final resort of the unsatisfied claimant, the *ultima ratio* in the adjustment of a deadlocked controversy. This place of war in the procedure of international law was severely restricted by

the obligations accepted by the members of the League of Nations and by the signatories of the Optional Clause attached to the protocol establishing the Permanent Court of International Justice. But apart from the fact that in neither case were the obligations not to resort to war absolute, the United States, among others, is not a party to them, so that on the eve of the signing of the Kellogg-Briand treaty the so-called "right to make war" was obviously susceptible of further curtailment.

The preamble to the treaty throws some light upon the renunciation of war as an instrument of national policy. It recites that the contracting parties are convinced that all "changes in their relations with one another" should be sought only by pacific means and be the result of a peaceful and orderly process, and that any signatory Power which shall hereafter seek to "promote its national interests" by resort to war should be denied the benefits of the treaty. The scope of these two phrases will perhaps be clearer if the fundamental, but implied, reservation of the treaty be first examined.

War as an "instrument of national policy" does not include wars of self-defense. This is a specific understanding set forth in the identic note accompanying the submission on June 23rd by the Government of the United States of the draft treaty in its revised form. "That right" (of self-defense), says the note, "is inherent in every sovereign state and is implicit in every treaty." The note seems to convey that by self-defense is meant the defense of territory from attack or invasion, but it deliberately refrains from attempting "a juristic conception of self-defense," making it clear that the Department of State was well aware of the latitude of interpretation of which that term was susceptible.

Yet it is the very lack of a definition of self-defense that makes the renunciation of war as an instrument of national policy so vague as to be almost misleading. Resistance to direct attack is one thing; resistance to indirect menace of attack quite another. It has never been contemplated that if a state should mobilize its forces and proceed to attack its unoffending neighbor, the latter would be prevented from meeting war with war. The rule of self-defense in this limited form will doubtless continue to hold its own against all provisions of law, as it does in the national law of the individual state.

But things are not so simple as that in the present international relations of states. It is the remoter aspects of national defense which create the real difficulty. Due to the lack of an effective organization for preventing resort to force, international law developed during the eighteenth and nineteenth centuries a tradition of national defense which included practically the whole range of the causes of war. It was in "self-defense," for example, that France vetoed the accession of a Hohenzollern to the throne of Spain in 1870, and, not finding satisfaction in the explanations of the German Government, declared war to protect herself against the alleged danger threatening her. It was in defense against Serbian propaganda seeking the disruption of the Dual Monarchy that Austria-Hungary declared war in 1914, and this initial

act of self-defense found its fulfillment in a vicious circle in which seven states were found each defending itself against the aggression of some other and each the aggressor in the other's eye.

A conspicuous illustration of the more remote aspects which self-defense may assume is to be seen in the Monroe Doctrine, by which the United States has sought to protect itself against conditions, not in themselves menacing, which might subsequently weaken its strategic position of geographic isolation. Remembering the traditions of the United States, it is difficult to believe that the government is now renouncing war in defense of the Monroe Doctrine, assuming that a grave issue involving that policy should arise. Although the Kellogg-Briand treaty makes no mention of the policy, it is safe to infer that it is "implicit in every treaty" to be ratified by the United States.

Great Britain on her part has been more explicit. Her own Monroe Doctrine, as tenaciously held as ours, looks to the protection of her dependencies in distant parts of the world. On May 18th Sir Austen Chamberlain, in his reply to Mr. Kellogg, after pointing out that there were "certain regions of the world the welfare and integrity of which constitute a special and vital interest for our peace and safety," emphasized that the British Government had been at pains to make it clear in the past that interference with those regions could not be suffered, and asserted that "their protection against attack is to the British Empire a measure of self-defense." If we assume that the "certain regions" referred to are not part of the British Empire itself, the position taken by the Foreign Minister suggests an intention to prevent the creation of any conditions, such as control by Russia over Afghanistan, which might indirectly threaten the security of the Empire or weaken its defenses. Further, any interference with the channels of communication between the mother country and the dependencies would undoubtedly be resisted as if it were a direct attack upon the territory.

Alongside these defensive policies of the United States and Great Britain may be matched the policy of France in the Mediterranean, the policy of Italy in the Adriatic, and the policy of Japan in Manchuria. In each case the principle of national defense is given an interpretation extending far beyond the conception of resistance to actual armed invasion. There is ever present the necessity of anticipating conditions which, if allowed to come about, might ultimately embarrass the resistance of the state to direct attack. By a very simple manipulation of the circumstances leading to a crisis all wars can be made out to be defensive wars, and governments on both sides have not been backward in giving to their cause the moral support that has always attended self-defense. While we may agree with Mr. Kellogg that any definition of self-defense in positive terms might make it "easy for the unscrupulous to mould events to accord with an agreed definition," the failure to adopt a definition renders the obligation of the new treaty exceedingly elastic.

War as an "instrument of national policy" may therefore be defined as war in pursuance of national claims or in promotion of national interests whenever such claims and such interests do not bear a character involving the right of self-defense "inherent in every sovereign state." Assuming an honest intention on the part of the contracting states to live up to the obligation undertaken, there is still a wide field for the operation of the anti-war treaty. It has, for example, been the policy of the United States to afford special protection to the lives and property of its citizens in countries where the standard of law and order is regarded as below normal. The Kellogg-Briand treaty would preclude the United States from resorting to war, or using the threat of war, to enforce its views against Mexico in the settlement of a controversy such as the recent one concerning the legality of the Mexican land and petroleum laws of 1926. What would happen if the alternative procedure of arbitration offered by the treaty were rejected by Mexico or failed otherwise to adjust the controversy lies beyond the contemplation of the treaty.

It must be admitted that the disputes coming within the field of the treaty would in most cases not be likely to bring about a resort to force in the absence of the obligation of the treaty. Disputes over the extent of the marginal sea, riparian rights along boundary rivers, the privileges of merchant ships in foreign ports, communications and transit, even the status of aliens, have not in the recent past led to threats of war except in the rarer cases where there were present in the dispute the remoter elements of national defense. But if the Kellogg-Briand treaty does no more than raise the issue of the various grounds of war as a form of procedure for the settlement of international disputes it will have fulfilled a useful purpose. Like the arbitration treaties that have been growing in number since the opening of the twentieth century, it will have drawn in the loose ends of the present legal system nearer to the ultimate perfect circle.

C. G. FENWICK

THE TREATY REGULATING TARIFF RELATIONS BETWEEN THE UNITED STATES AND CHINA

The sensible and satisfactory settlement of the unfortunate Nanking incident effected by an exchange of notes on April 3, 1928, between United States Minister MacMurray and General Hwang Fu, Minister for Foreign Affairs of the Government of China, formed the subject of an editorial comment in the July issue of this JOURNAL.[1] A similar recipe of diplomatic skill, compounded with common sense and inspired by good faith, has now been applied to the impasse with respect to the recognition of Chinese customs autonomy.

It will be recalled that the Nanking settlement was effected by the ex-

[1] Vol. 22, p. 593.