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Comments Attached to the Briand-Kellogg Pact

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Abstract

The Briand-Kellogg Pact was signed in Paris on 27 August 1928, which was an important step for international law, especially for the process of the prohibition of the use of force. The contracting states of the Pact renounced the use of war as a national political instrument and pledged to settle their disputes henceforth by peaceful means. The signing and entry into force of the Pact were preceded by considerable preparatory work, during which the contracting parties made different notes, which were then attached to the treaty. The classification of these comments is not uniform throughout scholarly literature. Some authors consider that the statements can be regarded as reservations, while other sources refer to them as interpretative declarations. For legal and historical reasons it is highly important to find the correct classification for the comments. Therefore, the aim of this study is to analyze which of the two categories the notes would qualify based on the intention of the contracting parties and the nature and the content of the comments.

Keywords: Briand-Kellogg Pact, international treaty, interpretative declaration, reservation, renunciation of war

Introduction

On 27 August 1928, an international treaty on the renunciation of war, also known as the Briand-Kellogg Pact or the Pact of Paris (hereinafter: Pact), was signed in Paris, in which the contracting parties renounced the use of war as a national political instrument and pledged to settle their disputes peacefully.[1] The signing and entry into force of the agreement were preceded by considerable preparatory work, during which the contracting parties expressed their views on the treaty in the form of various notes. These comments are extremely important from the aspect of the effect and application of the Pact. Despite their importance, the classification of the comments is not uniform throughout the literature. Some authors consider that the statements can be regarded as reservations,[2] while other

[1] Kellogg-Briand Pact, France-United States [1928]," in *Encyclopaedia Britannica*. https://www.britannica.com/event/Kellogg-Briand-Pact. (hereinafter: Encyclopaedia Britannica)

[2] These authors include among others: Ian Brownlie, *International Law and the Use of Force by States* (Oxford: Clarendon Press, 1963), 82. and Yoram Dinstein, *War, Aggression and Self-Defence* (Cambridge: Cambridge University Press, 2011) 85-86.

sources refer to them as interpretative declarations.[3] In addition, there are authors who do not want to classify the comments and rather use a neutral term for them, such as statements or explanations.[4]

The aim of this study is to explore which of the above positions can be considered correct. For this purpose, the study analyzes whether the statements in question can be classified as reservations or whether it is more appropriate to describe the comments as interpretative declarations. In order to answer this, the study first describes the circumstances in which the Pact was concluded, then presents the content of the agreement. Lastly, it analyzes the content and the nature of the comments of the parties. The opinion of the author about the correct classification of the comments will be presented at the end of the study, until then the expressions of notes and comments are used.

The conclusion and the content of the Pact

The process of conclusion

The treaty renouncing war was the result of a French initiative. After the First World War France wanted to strengthen its security system on all sides. Cooperation with European states was guaranteed by the League of Nations and the Treaty of Locarno, but these did not provide full protection. The dispute settlement mechanism of the League of Nations had major shortcomings and the Locarno Pact provided only limited cooperation.[5] These reasons and the fact that the United States was not a party to either of these conventions, led France to consolidate its relationship with the United States. For this purpose the French Foreign Minister Aristide Briand wrote an open letter to the United States on 6 April 1927 about renouncing the use of war in their relations by a bilateral agreement.[6]

The US Secretary of State Frank B. Kellogg answered for the proposal on 28 December 1927 and declared that all the principal powers of the world should renounce

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[3] Among these, the following sources can be mentioned as an example: Lassa Oppenheim, *International Law. A Treatise. Vol. II. Disputes, War and Neutrality (*London: Longmans Green and Co., 1944), 149. and André N. Mandelstam, *L'interprétation du Pacte Briand-Kellogg par les gouvernements et les parlements des États signataires* (Paris: Éditions A. Pedone, 1934).

[4] For example, William W. Bishop refers to the notes simply as statements. William W. Bishop, "Reservations to treaties," *Recueil des cours de l'Académie de droit international de La Haye*, no. 103 (1962): 307–309.

[5] The treaty was signed by Belgium, France, Great Britain, Germany and Italy on 16 October 1925 at the Locarno Conference.

[6] Cécile Balbareu, *Le Pacte de Paris. Pacte Briand-Kellogg sur la mise de la guerre hors la loi* (Paris: Librairie Universitaire, 1929), 25.

war as an instrument of national policy by mutual declaration.[7] The United States thus wanted to create a multilateral treaty open to many states. In response to the idea of the US, France proposed on 5 January 1928 that the governments of the two states should conclude a bilateral treaty, in which they renounce all wars of aggression and declare that they will resort only to peaceful means for the settlement of any disputes of whatever nature, which may arise between them. They shall then invite all the powers of the world to accede to this treaty. Kellogg's reply to the French Government on 11 January indicated his disagreement with the narrowing of the treaty to the exclusion of war of aggression and with the idea of presenting the other great powers with a finished agreement. The Secretary of State declared that the treaty should provide for a general renunciation of war and give the included states an opportunity to express their views on the agreement.[8]

The two states finally agreed to conclude a multilateral treaty, which would include a general renunciation of the means of war, not limiting the agreement only to wars of aggression. Accordingly, on 13 April 1928, a draft of the agreement was sent to four major powers – Germany, Italy, Japan and the United Kingdom – inviting them to participate in the treaty.[9] Soon afterwards, nine more states – Australia, Belgium, Canada, Czechoslovakia, India, New Zealand, Poland, South Africa and the Irish Free State – were invited to sign the Pact. On 27 August 1928, the Pact was signed by fifteen states and it entered into force on 24 July 1929, after the necessary ratifications had been made.[10]

The number of signatories to the treaty continued to grow, and by 1928-1934 almost 50 states had become parties to the treaty, in addition to the first 15 states.[11] Hungary was one of them, signing the treaty in Budapest on 14 February 1929 and depositing its instrument of ratification with the government of the United States on 23 July 1929.[12] The Pact thus gained widespread support, as 63 of the then existing 67 states ratified it, including all the great powers.[13]

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[7] A. Lysen, *Le Pacte Kellogg. Documents concernant le Traité Multilatéral Contre La Guerre* (Leyde: Société D'Éditions A. W. Sijthoff, 1928), 5, 19-20.

[8] Mandelstam, *L'interprétation du Pacte Briand-Kellogg par les gouvernements et les parlements des États signataires*, 4.

[9] Lysen, *Le Pacte Kellogg. Documents concernant le Traité Multilatéral Contre La Guerre*, 32-34.

[10] Randall Lesaffer, "Kellogg-Briand Pact (1928)," in *Max Planck Encyclopedie of Public International Law*, ed. Rüdiger Wolfrum (Oxford: Oxford University Press, 2011), 2.

[11] Status list: Treaty Providing for the Renunciation of War as an Instrument of National Policy, done at Paris August 27, 1928. https://www.state.gov/wp-content/uploads/2020/02/249-Kellogg-Briand-Treaty.pdf. (hereinafter: Status list)

[12] General Treaty for Renunciation of War as an Instrument of National Policy. Signed at Paris, August 27, 1928. UNTS vol. 94. p. 57. (hereinafter: Briand-Kellogg Pact)

[13] Status list.

The content of the Pact

The main text of the Pact is rather short, with only three articles on the substance. Before these articles, the preamble can be found, which states that the contracting parties renounce war as an instrument of national policy and henceforth use only peaceful means in their relations in order to maintain peaceful and friendly relations. In this introductory part the parties further expressed their hope that encouraged by their example, all other nations of the world will contribute to these humane endeavors.[14]

After setting out these objectives, the first and second articles of the Pact state the following:

> "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."[15]

The third article of the Pact is a final provision, since it contains the requirement to ratify the treaty and the necessary requirements of the entry into force. According to this, entry into force happens "as soon as all their several instruments of ratification […] have been deposited at Washington."[16] The treaty then declares its open character, namely that the agreement shall "remain open as long as may be necessary for adherence by all the other powers of the world."[17] For the acceding states, entry into force will also occur when they deposit their instruments of ratification in Washington.[18]

It is clear from the text of the Pact that the contracting parties did not attach any sanction to the breach of the treaty. In this respect, the preamble merely states that the breaching party must be deprived of the benefits of the treaty.[19] In a related context,

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[14] Briand-Kellogg Pact, Preamble.
[15] Briand-Kellogg Pact, Article I. and II.
[16] Briand-Kellogg Pact, Article III.
[17] Briand-Kellogg Pact, Article III.
[18] Briand-Kellogg Pact, Article III.
[19] Briand-Kellogg Pact, Preamble.

Kellogg explained during the negotiation of the Pact that the breach of a treaty by one party relieves the other contracting parties of their obligation under the treaty.[20]

Therefore, the compliance with the Pact, in the absence of an enforcement mechanism and a body to monitor compliance, was based on the hope that the tools of diplomacy and the weight of public opinion would provide a sufficient deterrent to treaty violations.[21] Thus, the observance of the treaty was left to the solemn promise and honor of nations. In his speech to the US Senate, Kellogg explained the exact reason of this: in his view, no state would sign the treaty if it were sanctioned for violating it, or if the question were to be decided by a separate body.[22]

The issue of sanctions was not the only one that the treaty did not address. During the preparatory negotiations, a number of questions arose regarding what wars were prohibited by the agreement, how far the question of self-defense, the provisions of the Locarno Treaty and the Covenant of the League of Nations were affected.[23] Since the agreement itself did not say anything about these matters, the states expressed their own thoughts in various comments, which they attached to the draft treaty.

Comments attached to the Pact

France was the first negotiating state to comment on the draft treaty. On 30 March 1928, it sent a letter expressing its views on a number of issues, including the breach of the treaty, the right of self-defense and the relationship of the agreement to the Locarno Treaty and the Covenant of the League of Nations. On the first question, France stated that if a contracting party did not keep its word and resorted to war, the other contracting parties would be released from the agreement. Regarding the right of self-defense, France was of the view that the agreement did not deprive the contracting parties of the right of self-

[20] Ferenc Faluhelyi, "A Kellogg-egyezmény nemzetközi jogi jelentősége [The international legal significance of the Briand-Kellogg Pact]," in Magyar Jogászegyleti Értekezések [Discussions of Hungarian Lawyers], ed. László Kollár (XXI/105-106, 1929), 54.

[21] In addition to this, the League of Nations was of course also present in the background, also trying to facilitate the implementation of the Pact.

[22] The Avalon Project: The Kellogg-Briand Pact. Hearings before the Committee on Foreign Relations, United States Senate, Seventieth Congress, Second Session on The General Pact for the Renunciation of War, December 7 and 11, 1928, Part 1. (hereinafter: Hearings)

[23] It was necessary to clarify the relationship between the conventions because, in fact, each of these documents made some provisions for recourse to the means of war. Brownlie, *International Law and the Use of Force by States*, 66.

defense.[24] Thus, war was not prohibited in such a case according to the state. Regarding the third question, France stated that the Pact did not affect the Covenant or the Locarno Treaty, nor did it diminish their provisions or affect the neutrality treaties concluded by France.[25]

On 23 June 1928, the United States also submitted a note on the issues raised, in which it stated that the agreement did not abrogate or limit the right of self-defense. According to the US position, the right of self-defense includes any right of the state to defend itself against an attack or invasion of the territory of the state. Furthermore, this self-defense is not limited to the territory of a particular state, but means that a state has the right to take action in any case it feels necessary to protect its interests or rights. The right of self-defense may be justified by the prevention of a specific attack on the territory of the state, or even of any event, which might jeopardize a right or interest of the state. In the view of the US, the determination of the necessary response in such a case is always a matter for the state to decide. The United States has also stated that neither party is under any obligation to take action against a violator of the treaty, that there is no conflict between the Covenant and the Locarno Treaty, and that the Pact does not conflict with the rights and obligations of the Covenant of the League of Nations.[26]

Germany, the first of the states to be included in the treaty, expressed its opinion on the Pact in a note made on 27 April 1928. In this comment, Germany stated that the treaty to be concluded was without prejudice to international obligations arising from previous international treaties, including the Covenant of the League of Nations and the Locarno Treaty, and to the inherent right of self-defense of states. Moreover, the German Government considers it self-evident that the right of any power to seek satisfaction by the means of war is revived against a party which is in breach of the treaty. Germany also expressed the hope that the treaty would make general disarmament possible and that the treaty will also provide a tool and an incentive for the development of peaceful means, which are indispensable for the settlement of disputes between states.[27]

On 19 May, the United Kingdom also expressed its opinion, stating that the British Empire has frontier territories in which it has a special interest and which it reserves the right to defend.[28] The note stated, quite precisely, that there are certain areas of the world,

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[24] Edwin M. Borchard, "The Multilateral Treaty for the Renunciation of War," *American Journal of International Law*, no. 1 (1929): 116-119.

[25] Henry Cabot Lodge, *The Kellogg-Briand Peace Pact: A Contemporary Criticism, 1928-29*. https://teachingamericanhistory.org/library/document/the-kellogg-briand-peace-pact-a-contemporary-criticism-1928-29/.

[26] Lesaffer, "Kellogg-Briand Pact (1928)," 5.

[27] Ferenc Faluhelyi, *A párisi Kellog-paktum és annak jelentősége [The Briand-Kellogg Pact and its importance]* (Kaposvár: Somogy-megyei Keresztény Irodalmi Nyomda, 1929), 13-14.

[28] Faluhelyi, *A párisi Kellog-paktum és annak jelentősége [The Briand-Kellogg Pact and its importance]*, 15.

whose integrity and well-being are of special and vital interest to the peace and security of the United Kingdom. Interference in the affairs of these territories cannot be permitted by the British Government, therefore, the defense of these territories from attack is regarded by the United Kingdom as self-defense.[29] In a speech in the House of Commons on 30 July, Chamberlain called this declaration the British Monroe Doctrine, and stated that it was far from being aggressive. Its object is merely to keep out of these territories the invasion of foreign states, just as the original Monroe Doctrine sought to keep out of South and Central America the invasion of European states.[30]

The other states, including Australia, Belgium, Canada, Czechoslovakia, India, Italy, Japan, New Zealand, Poland, South Africa and the Irish Free State also expressed their opinions regarding the Pact. All these states stated that the Pact does not affect the provisions of the Covenant and the Locarno Treaty, nor does it in any way limit or impair the right of self-defense. All the contracting parties agreed that each state shall enjoy complete freedom to defend itself against aggression and foreign invasion according to its needs and will.[31]

The above comments show that the participating states paid particular attention to the issue of self-defense. In this respect, it is important to note that the customary law of the time included preemptive strikes within the scope of self-defense.[32] Preemptive self-defense or self-defense without a specific attack, was adopted in international law since the Caroline affair in 1837.[33] Such a broad interpretation of self-defense had important consequences for the treaty: it left a significant gap in the Pact as it made it possible for the parties to invoke preemptive self-defense, even without an actual attack. It means that merely the threat of an attack was enough, provided that the requirements of immediacy, necessity and proportionality laid down in the Webster formula were met.[34]

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[29] Charles G. Fenwick, "War as an Instrument of National Policy," *American Journal of International Law*, no. 4 (1928): 826-828.

[30] Faluhelyi, "A Kellogg-egyezmény nemzetközi jogi jelentősége [The international legal significance of the Briand-Kellogg Pact]," 44.

[31] Stanimir A. Alexandrov, *Self-Defense Against the Use of Force in International Law* (The Hague: Kluwer Law International, 1996), 52-54.

[32] Brownlie, *International Law and the Use of Force by States*, 231-232.

[33] In 1837, an independence movement was launched in Canada against British rule. The United States steamship Caroline was used to transport supplies from the United States to the rebels, sailing on the Niagara River. To prevent further resupply and to break the rebels, a British commando burned and sank the Caroline on the night of 29 December 1837. In the case, the British argued that the sinking of the ship was justified by self-defence and self-preservation due to the threat of attack. After the incident, in 1841, Daniel Webster formulated the so-called Webster's Formula, which defined self-defence as an immediate, overwhelming necessity, which leaves no opportunity for recourse to other means, and no time for consideration. R. Y. Jennings, "The Caroline and McLeod Cases," *American Journal of International Law*, no. 1 (1938): 82-92. Anthony Clark Arend, "International Law and the Preemptive Use of Military Force," *The Washington Quarterly*, no. 2 (2003): 90-91.

[34] Christine Gray, *International Law and the Use of Force* (New York: Oxford University Press, 2008), 148-149.

Classification of comments

As explained in the introduction to this study, the comments made by the contracting parties are classified differently by researchers in the field of international law. The positions existing in the literature can be divided into two main groups: one of them classifies the comments as reservations, the other views them as interpretative declarations.[35] In the following, it will be explained which of these two categories seems to be more correct.

The concept of reservation can be used as a starting point for assessing opinions that consider comments as reservations. The definition was first codified in the Harvard University draft treaty, which states that a reservation is a written declaration by which a state, at the time of signature, ratification or accession to a treaty, specializes certain provisions as a condition of becoming a party to the treaty, thus limiting the scope of the treaty as applied to that state.[36]

On the basis of the above definition, the comments in question must be examined from three points of view in order to determine whether or not they can be classified reservations. Firstly, the manner and time of making the comments, secondly, the content of the statements and thirdly, the intention of the states, namely the purpose for which the statements were made. Regarding the first point, it should be noted that the states expressed their views in the form of a diplomatic note before the signature of the treaty, in reaction to the draft received. This does not correspond to any of the possibilities laid down in the concept of reservation. Furthermore, the draft treaty also states that a reservation made at the time of signature must be confirmed at the time of ratification,[37] which did happen in the case of the comments. Moreover, at the time of ratification by the United States, on 15 January 1929, the United States expressly stated that ratification was without reservations or conditions, and it communicated this to the other contracting parties as well.[38]

Therefore, based on the first point of view, it seems that the comments cannot be regarded as reservations. However, it is important to address the two additional criteria mentioned above, namely the content of the comments and the intention of the contracting parties. Regarding the content, it is important to note that all of the comments expressed,

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[35] The neutral expressions also can be mentioned as a third category, however, I am not paying attention to these statements.

[36] Draft Convention on the Law of Treaties, *American Journal of International Law*, 1935. Supplement: Research in International Law, 659. (hereinafter: Draft Convention)

[37] Draft Convention, 848-849.

[38] Philip Marshall Brown, "The Interpretation of the General Pact for the Renunciation of War," *American Journal of International Law,* no. 2 (1929): 374.

in different wording, that in a situation of self-defense the state concerned did not consider the use of war to be prohibited. Thus, the purpose of making these comments was clearly to limit the scope of the treaty and preserve the right to use force in case of self-defense. However, an important point arises in connection with this: in his speech to the Senate, Kellogg explained that irrespective of the notes of the states, the convention does not remove or limit the right of self-defense, since this right is an inherent right of all sovereigns and is implicit in all treaties.[39] According to the Secretary of State, every state enjoys the freedom to defend itself against any attack or invasion, even by war if necessary, regardless of time and regardless of the provisions of the treaty.[40] Based on this, any nation may defend its territory against attack or invasion at any time, regardless of the treaty, and the states have the exclusive right to decide whether, and under which circumstances the means of war are necessary for self-defense.[41]

In my view it means that the initiators did not intend to extend the scope of the treaty to self-defense. The states wanted to include the renunciation of war in the agreement in such a way that it would not affect the exercise of the right of self-defense. Consequently, the right of self-defense can also be seen as an implicit exception to the Pact.[42] However, if this is the case, one question arises: if the right of self-defense as an exception to the treaty is so significant, then why is it not explicitly mentioned in the text of the Pact? In my view, there are two possible answers for this. The first is that Kellogg did not find the concept of self-defense definable. In his Senate speech, the Secretary of State repeatedly stated that, in his opinion, the concepts of aggression, aggressor and self-defense could not be defined precisely. However, in addition to the conceptual difficulties, the lack of explicit mention of self-defense could also be explained by the fact that this right was considered to be an inherent right of all states. Therefore, this right should be included in all treaties without any specific mention.[43]

Whatever the real reason for the agreement's failure to mention self-defense as an exception to the prohibition of war, Kellogg's speech makes it clear that the right of self-defense can be exercised independently of the provisions of the Pact, therefore it is not covered by the treaty. This is also reinforced by Kellogg's statement before the Senate, that the treaty has the same effect without the notes of the parties: it preserves the right of self-defense without the states having to make a comment to that effect. This fact also

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[39] Hearings.
[40] Alexandrov, *Self-Defense Against the Use of Force in International Law*, 52-54.
[41] Charles G. Fenwick, *International Law* (New York and London: Appleton Century Crofts, 1949), 234.
[42] In addition to the right of self-defence, Ian Brownlie also mentions Article 16 of the Covenant of the League of Nations as an implicit exception to the Pact. Brownlie, *International Law and the Use of Force by States*, 89-90.
[43] Hearings.

strengthens that the notes cannot be regarded as reservations. A limitation of the scope of the treaty by reservation is conceivable only in respect of matters, which are otherwise covered by the treaty.[44]

In addition to this, there is a further circumstance, which makes it incorrect to classify the comments as reservations. Namely, the principle of absolute integrity, which was a dominant principle of the law of treaties in 1928.[45] This meant that the treaty had to apply to all contracting parties with the same content. Therefore, the reservation of one party had to be accepted by all the other parties,[46] otherwise the reserving party would not become a party to the treaty. If the comments had been classified as reservations, they would have required acceptance by all parties. If it had been the case, the United Kingdom clearly could not have become a party, as its comment was objected to by a number of states.[47] However, the state was not excluded from the circle of the contracting parties, which further strengthens the claim that the comments under consideration are not reservations.

Based on the above, the second question needs to be analyzed, namely whether the notes can be considered as interpretative declarations. According to this view, the purpose of the comments is merely to express how the states interpret the renunciation of war. This was the view expressed by Kellogg in the US Senate negotiations following the signing of the Pact.[48] During these negotiations, the Secretary of State was asked about his position on the effect of the comments. More precisely, he had to answer whether the comments were reservations and whether they represented any change to the treaty. Mr. Kellogg replied that there was nothing in the notes that would change or alter the treaty.[49] In his view, the notes remain within the framework of the interpretation of the treaty and merely reflect the parties' views on the matter. Kellogg therefore considered that no state had made a reservation,[50] on the contrary, the states had made unilateral declarations reflecting their own position. Thus, the comments had no force of reservations, since the text of the Pact was left intact and unchanged. At the same time, the Secretary of State

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[44] Hearings.

[45] In 1951, this concept was challenged by the advisory opinion of the International Court of Justice in the Genocide case, which favoured a flexible approach to absolute integrity, leaving it to the discretion of the contracting parties to decide how to look at reservations. This line of thought was gradually adopted by the United Nations from the 1960s onwards. Ian Brownlie, *Principles of Public International Law* (Oxford: Clarendon Press, 1998), 612-614.

[46] Draft Convention, 659-660.

[47] Protesting states include the Soviet Union, Persia, Egypt and Afghanistan. Faluhelyi, "A Kellogg-egyezmény nemzetközi jogi jelentősége [The international legal significance of the Briand-Kellogg Pact]," 30-32.

[48] Richard K. Gardiner, *Treaty Interpretation* (Oxford: Oxford University Press, 2011), 98.

[49] Hearings.

[50] Quincy Wright, "The Meaning of the Pact of Paris," *American Journal of International Law*, no. 1 (1933): 42-43.

also stated that the statements made in the notes were an essential and integral part of the Pact, since they constituted the official interpretation of the agreement and were therefore binding for the parties.[51]

I agree with the above and believe that the comments are indeed closer to interpretative declarations than to reservations. The expression of interpretative declaration did not exist in 1928, these declarations were explicitly mentioned and analyzed in the Guide to Practice of the International Law Commission adopted only in 2011 (hereinafter: Guide).[52] As the Guide was created much later, it cannot be applied for the notes, however, the concept of interpretative declarations contained therein may assist in understanding the nature of the comments attached to the Pact as well. According to the Guide, an interpretative declaration is "a unilateral statement, however phrased or named, made by a state or an international organization, whereby that state or that organization purports to specify or clarify the meaning or scope of a treaty or of certain of its provisions."[53]

Although the term interpretative declaration was not used in the literature at the time of the Pact, however, other similar terms had already appeared, such as interpretations by governments, unilateral interpretations, interpretative note and unilateral declaration.[54] Unilateral interpretations were therefore already known and used in the 1920s and 1930s, therefore I believe that the classification of the comments in this category is correct.

In this respect, there is one more question to consider: as interpretative declarations, are the comments binding for all contracting parties? According to the Appendix to the Harvard University Draft Convention, an interpretation to which all the parties agree is deemed to be an agreement as to the interpretation of the treaty and as such is applicable and binding to all contracting parties. This is particularly relevant where the wording of the treaty is not entirely clear.[55] In connection with this Philip Marshall Brown also explains that the most important point of alignment for the interpretation of agreements is the intention of the contracting parties, which may take the form of notes, comments, interpretations, even in the negotiations prior to ratification.[56]

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[51] Oona A. Hathaway – Scott J. Shapiro, "International Law and its Transformation through the Outlawry of War," *Internatonal Affairs*, no. 1 (2019): 45-46.

[52] The official title of the document is: Guide to Practice on Reservations to Treaties, Report of the ILC, 63 UN GAOR, Supp. No. 10. (A/66/10/Add.1) (hereinafter: Guide to Practice).

[53] Guide to Practice, 3.

[54] Mandelstam, *L'interprétation du Pacte Briand-Kellogg par les gouvernements et les parlements des États signataires*, 155. Robert H. Ferrell, *Peace in Their Time. The Origins of the Kellogg-Briand Pact* (Archon Books, 1968), 192-200.

[55] Draft Convention, 1225.

[56] Brown, "The Interpretation of the General Pact for the Renunciation of War," 378.

In my opinion, this is entirely true for the comments attached to the Briand-Kellogg Pact. In the light of the above, I am of the opinion that the comments made by the contracting parties during the preparation of the Pact can be considered as interpretative declarations and form a binding, additional part of the treaty for all parties.

Conclusion

Despite the widespread support of the Briand-Kellogg Pact the events of the 1930s, including the Japanese invasion of Manchuria in 1931, the Italian invasion of Abyssinia in 1935, the German invasion of Poland in 1939, the Russian invasion of Finland[57] and the horrors of the Second World War, made it clear that the Pact had failed to achieve its purpose regarding the prohibition of war.[58] According to certain views, the attached comments of the parties had a key role in the failure, as they deprived the Pact of its essence and rendered the agreement totally ineffective.[59]

In my opinion the statements describing the Pact as a complete failure are incorrect. While it is true that the Pact could not prevent the events of the 1930s and 40s, it can be seen as a significant milestone in other aspects. Firstly, the Pact successfully brought the United States into an agreement with European states that neither the Covenant of the League of Nations, nor the Locarno Treaty could achieve. On the other hand, the principles set out in the treaty provided the basis for the prosecution of war criminals after the Second World War. Building on the prohibition of war to define the concept of crimes against peace allowed the Nuremberg and Tokyo International Military Tribunals to prosecute the leaders of Second World War.[60] In Nuremberg and Tokyo it was established that although the crime against peace was only defined in the London Agreement of 1945, it was a category that had existed since the Briand-Kellogg Pact and that its violation constituted an international crime.[61]

Furthermore, the Pact was a landmark in the history of war and international law in general.[62] It was an extremely important step towards the prohibition of the use of force,

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[57] Thomas M. Franck, *Recourse to Force. State Action Against Threats and Armed Attacks* (Cambridge: Cambridge University Press, 2004), 11.

[58] Encyclopaedia Britannica.

[59] Lodge, *The Kellogg-Briand Peace Pact: A Contemporary Criticism, 1928-29*.

[60] Lea Felmájer, "A Nürnbergi Nemzetközi Katonai Törvényszék [The Nuremberg International Military Tribunal]," *Collega*, no. 1 (2000): 42.

[61] "International Military Tribunal (Nuremberg) Judgment and Sentences," *American Journal of International Law,* no. 41 (1947): 218.

[62] Cynthia D. Wallace, "Kellogg-Briand Pact (1928)," in *Encyclopedia of Public International Law 3. Use of Force. War and Neutrality Peace Treaties (A-M).* ed. Rudolf Bernhardt (Amsterdam: North-Holland Publishing Company,

which was finally enshrined in Article 2, Paragraph 4, of the Charter of the United Nations. This provision, however, did not repeal the Pact in my view. A similar view is expressed by Ian Brownlie, who argues that the Briand-Kellogg Pact is still in force today, supporting and reinforcing the Charter, and as a separate legal document, it sets limits on the use of force.[63]

All in all, the Pact has been a success,[64] even if not in the way its creators had originally envisaged. The comments attached to the Pact had a very important role in the prominence of the treaty, as without them, the Pact would probably not have been signed. As Kellogg has argued, it was essential to leave the interpretation of the prohibition of war to the individual sovereign states.[65] Thus, the comments of the participants, which in my view serve an interpretative function, helped to ensure broad participation in the Pact and contributed to the success of the agreement.

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1982), 238.

[63] Brownlie, *International Law and the Use of Force by States*, 75, 84.

[64] The importance of the Pact is illustrated by the fact that Kellogg was awarded the Nobel Peace Prize in 1929 for its creation. Nobel Peace Prize. https://www.nobelprize.org/prizes/lists/all-nobel-peace-prizes/.

[65] Hearings.

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