ARGENTINE REPUBLIC
Ministry of Foreign Relations and Worship

DRAFT of an ANTI-WAR TREATY

Translated and Published by the Argentine Embassy
WASHINGTON, D. C.
September, 1932
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Draft of an Anti-War Treaty
(Non-aggression and Conciliation)

In an endeavor to contribute to the consolidation of peace, and in order to express their adherence to the efforts that all civilized nations have made to further the spirit of universal harmony:

To the end of condemning wars of aggression and territorial acquisitions secured by means of armed conquest and of making them impossible, of sanctioning their invalidity through the positive provisions of this Treaty, and in order to replace them with pacific solutions based upon lofty concepts of justice and equity;

Being convinced that one of the most effective means of insuring the moral and material benefits the world derives from peace, is through the organization of a permanent system of conciliation of international disputes, to be applied upon a violation of the hereinafter mentioned principles;

Have decided to record, in conventional form, these aims of non-aggression and concord, through the conclusion of the present Treaty, to which end they have appointed as their Plenipotentiaries:

His Excellency the President of the Argentine Republic:

Who, after having communicated their respective full powers, which were found in good and due form, have agreed on the following provisions:

ARTICLE I

The High Contracting Parties solemnly declare that they condemn wars of aggression in their mutual relations, and that the settlement of disputes and controversies shall be effected only through the pacific means established by International Law.

ARTICLE II

They declare that territorial questions must not be settled by resort to violence and that they shall recognize no territorial arrangement not obtained through pacific means, nor the validity of an occupation or acquisition of territory brought about by armed force.

1 This draft-Treaty was originally denominated South American Anti-War Treaty to express the source of its inspiration.
ARTICLE III

In case any of the Parties to the dispute fails to comply with the obligations set forth in the foregoing articles, the Contracting States undertake to make every effort in their power for the maintenance of peace. To that end, and in their character of neutrals, they shall adopt a common and solidary attitude; they shall exercise the political, juridical or economic means authorized by International Law; they shall bring the influence of public opinion to bear; but in no case shall they resort to intervention either diplomatic or armed. The attitude they may have to take under other collective treaties of which said States are signatories, is excluded from the foregoing provisions.

ARTICLE IV

The High Contracting Parties, with respect to all controversies which have not been settled through diplomatic channels within a reasonable period, oblige themselves to submit to the conciliatory procedure created by this Treaty, the disputes specifically mentioned, and any others that may arise in their reciprocal relations, without any further limitations than those recited in the following Article.

ARTICLE V

The High Contracting Parties and the States which may hereafter accede to this Treaty, may not formulate at the moment of signing, ratifying or adhering thereto, limitations to the procedure of Conciliation other than those indicated below:

a) Controversies for the settlement of which pacifist treaties, conventions, covenants, or agreements, of any nature, have been concluded. These shall in no case be deemed superseded by this Treaty; to the contrary, they shall be considered as supplemented thereby insofar as they are directed to insure peace. Questions or issues settled by previous treaties are also included in the exception.

b) Disputes that the Parties prefer to settle by direct negotiation or through submission to an arbitral or judicial procedure by mutual consent.

c) Issues that International Law leaves to the exclusive domestic jurisdiction of each State, under its constitutional system. On this ground the Parties may object to their being submitted to the procedure of conciliation before the national or local jurisdiction has rendered a final decision. Cases of manifest denial of justice or delay in the judicial proceedings are excepted, and should they arise, the procedure of conciliation shall be started not later than within the year.

d) Questions affecting constitutional provisions of the Parties to the controversy. In case of doubt, each Party shall request its respective Tribunal or Supreme Court, whenever vested with authority therefor, to render a reasoned opinion on the matter.

At any time, and in the manner provided for in Article XV, any High Contracting Party may communicate the instrument stating that it has partially or totally dropped the limitations set thereby to the procedure of conciliation.

The Contracting Parties shall deem themselves bound to each other in connection with the limitations made by any of them, only to the extent of the exceptions recorded in this Treaty.

ARTICLE VI

Should there be no Permanent Commission of Conciliation, or any other international body charged with such a mission under previous Treaties in force, the High Contracting Parties undertake to submit their controversies to examination and inquiry by a Commission of Conciliation to be organized in the manner hereinafter set forth, except in case of an agreement to the contrary entered into by the Parties in each instance:

The Commission of Conciliation shall consist of five members. Each Party to the controversy shall appoint one member, who may be chosen from among its own nationals. The three remaining members shall be appointed by agreement of the Parties from among nationals of third nations. The latter must be of different nationalities, and shall not have their habitual residence in the territory of the Parties concerned, nor be in the service of either one of them. The Parties shall select the President of the Commission of Conciliation from among these three members.

Should the Parties be unable to agree, they may request a third nation or any other existing international body to make those designations. Should the nominees so designated be objected to by
the Parties, or by any of them, each Party shall submit a list containing as many names as vacancies are to be filled, and the names of those to sit on the Commission of Conciliation shall be determined by lot.

**ARTICLE VII**

Those Tribunals or Supreme Courts of Justice vested by the domestic law of each State with authority to interpret, as a Court of sole or final recourse and in matters within their respective jurisdiction, the Constitution, the treaties or the general principles of the Law of Nations, may be preferred for designation by the High Contracting Parties to discharge the duties entrusted to the Commission of Conciliation established in this Treaty. In this event, the Tribunal or Court may be constituted by the whole bench or may appoint some of its members to act independently or in Mixed Commissions organized with justices of other Courts or Tribunals, as may be agreed by the Parties to the controversy.

**ARTICLE VIII**

The Commission of Conciliation shall establish its own Rules of Procedure. These shall provide, in all cases, for hearing both sides.

The Parties to the controversy may furnish, and the Commission may request from them, all the antecedents and data necessary. The Parties may be represented by Agents, with the assistance of Counsel or experts, and may also submit every kind of evidence.

**ARTICLE IX**

The proceedings and discussions of the Commission of Conciliation shall not be made public unless there is a decision to that effect, assented to by the Parties. In the absence of any provision to the contrary, the Commission shall adopt its decisions by a majority vote; but it may not pass upon the substance of the issue unless all its members are in attendance.

**ARTICLE X**

It is the duty of the Commission to procure a conciliatory settlement of the disputes submitted to it. After impartial consideration of the questions involved in the dispute, it shall set forth in a report the outcome of its work and shall submit to the Parties proposals for a settlement on the basis of a just and equitable solution. The report of the Commission shall, in no case, be in the nature of a decision or arbitral award, either in regard to the exposition or interpretation of facts or in connection with juridical considerations or findings.

**ARTICLE XI**

The Commission of Conciliation shall submit its report within a year to be reckoned from the day of its first sitting, unless the Parties decide, by common accord, to shorten or extend that term.

Once started, the procedure of conciliation may only be interrupted by a direct settlement between the Parties, or by their later decision to submit, by common accord, the dispute to arbitration or to an international court.

**ARTICLE XII**

On communicating its report to the Parties, the Commission of Conciliation shall fix a period of time, which shall not exceed six months, within which the Parties shall pass upon the bases of settlement it has proposed. Once this period of time has expired the Commission shall set forth in a final act the decision of the Parties.

Should the period of time lapse without the Parties having accepted the settlement, nor adopted by common accord another friendly solution, the Parties to the controversy shall regain their freedom of action to proceed as they may see fit within the limitations set forth in Articles I and II of this Treaty.

**ARTICLE XIII**

From the outset of the procedure of conciliation until the expiration of the term set by the Commission for the Parties to make a decision, they shall abstain from any measure which may prejudice the carrying out of the settlement to be proposed by the Commission and, in general, from every act capable of aggravating or prolonging the controversy.

**ARTICLE XIV**

During the procedure of conciliation the members of the Commission shall receive honoraria in the amount to be agreed upon
by the Parties to the controversy. Each Party shall bear its own expenses and a moiety of the joint expenses or honoraria.

**ARTICLE XV**

This Treaty shall be ratified by the High Contracting Parties, as soon as possible, in conformity with their respective constitutional procedures.

The original Treaty and the instruments of ratification shall be deposited in the Ministry of Foreign Affairs of the Argentine Republic which shall give notice of the ratifications to the other Signatory States. The Treaty shall enter into effect for the High Contracting Parties in the order in which they deposit their ratifications.

**ARTICLE XVI**

Any State not a signatory of this Treaty may adhere to it by sending the appropriate instrument to the Ministry of Foreign Affairs of the Argentine Republic, to the end that it may notify the other Contracting States.

**ARTICLE XVII**

This Treaty is concluded for an indefinite period, but it may be denounced by means of one year's previous notice at the expiration of which it shall cease to be in force as regards the Party denouncing the same, but shall remain in force as regards the other signatories. Notice of the denunciation shall be addressed to the Ministry of Foreign Affairs of the Argentine Republic which will transmit it to the other High Contracting Parties.

In witness whereof, the above mentioned Plenipotentiaries have signed this Treaty.

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**Statement of Reasons**

**Purpose of the Treaty**

This draft Anti-War Treaty, initiated by the Argentine Foreign Office, has definite aims: to profit by a recent and fundamental experience of the American Republics and which has shown them to be united by common lofty pacifist purposes; to base upon the existence of this spiritual community their hopeful efforts to restore harmony between two sister nations, and whatever may be the immediate outcome of this endeavor, also to vest with permanency the generous movement of joint purpose which has lined up all the peoples of the Americas behind a great solidary action.

It aims at the consolidation of world peace inasmuch as it begins by creating a peaceful system to insure it in a continent, recording the obligation not to resort to a war of aggression or to settle territorial controversies by armed force. To that end it creates a permanent system of conciliation based on justice and equity which, while it aims to find a pacific settlement for any international conflict, does not preclude the hypothesis of a possible universalization which might result from the contribution it entails.

It does not represent an aspiration that might lessen or stop praiseworthy existing régimes. Because in no wise does it assume to repeal, or even to suspend the effects of any of the pacifist treaties or agreements in force, which it intends to strengthen and whose radius of action it aims to broaden. It rests, therefore, on a foundation which must remain immovable, as in all great structures already existing for the consolidation of peace, and pays a tribute of cooperation to the ensemble of covenants it wishes to maintain untouched. Thus it coordinates with the Hague Conventions of 1899 and 1907, which established the Commission of Inquiry; the Treaties of 1913-1914, which broadened the field of action of the Commission of Inquiry, by means of the "Bryan formula"; the pacifist agreement of 1915, known as the A.B.C. Treaty, that made a new application of the Commission of Inquiry; the Covenant of the League of Nations, of 1919, which established new organs of peace and international cooperation; the "Gondra Treaty," of 1922, which established the permanent Pan American Commissions of Conciliation; the Central American Convention,
of 1923, which created a special system of Commission of Inquiry; the Treaty of Mutual Guarantee, of 1925, signed at Locarno, which insures territorial integrity; the Briand-Kellogg Pact for the outlawry of war, crystallized in the Treaty of Paris, of 1928; the General Act of Geneva, of 1928, which recommended model bilateral or multilateral treaties of conciliation and arbitration; the General Convention of Inter-American Conciliation, of 1929, which established new standards for dealing with international controversies; and other agreements signed with the same purpose.

The existence of so many and weighty efforts for the pacification of the world, is no obstacle to the conclusion of an Anti-War Treaty open to universal accession. Pan Americanism must avail itself of recent experience. It undoubtedly represents a wide community in the moral union of the Continent; but we must acknowledge that it also implies, in a way, a bilateral expression of the inescapable difference between the Latin and the Anglo-Saxon worlds in matters of temperament, geographic and economic location, and stability of political institutions. In order to secure within a whole continent the great results just attained through an expression of solidarity which must be made final, it is more efficacious that the convergence of forces and the flow of common purposes from its various ends be coincident. The speedy manner in which unity of purpose was brought about in the agreement of August 3, 1932, is a lesson which points the way. The Briand-Kellogg Pact, a splendid expression of American ideology, must be strengthened by the spontaneous contribution of all the nations of South America, and such a noble conception in the continued efforts for peace made by the great nation to the North, must receive the cooperation of the great Republics to the South, also possessing their conceptions of law which originate in sources formed by their pacifist tradition, their unique respect for arbitration, and the practice of international principles in the delimitation of their boundaries. Argentina, Brazil, Chile, and Perú, signatories of the Declaration of August 6, 1932, in which they organize a harmonious joint action and undertake to remain united in regard to the incidents connected with the Paraguayan-Bolivian dispute, were already bound, from a distant past, by international doctrines and standards of their very own, common to all of them and with features of undoubted similarity. Through their simultaneous

support of the efforts of all the other nations of America united by a fortunate coincidence of purposes, they have emphasized the trend which is to hasten the consolidation of international justice in the whole continent.

The Argentine Government wishes thus to contribute to the uniform acceptance of the Kellogg-Briand Pact and, what is of greater importance, to its effective application through the conclusion among the South American Republics of a similar and coinciding agreement, intended to cooperate in the attainment of the same lofty aims. In the endeavors for world peace, which are without doubt an honor to our time, the Argentine Government notices that there arise from diverse geographic conditions and political entities, isolated structures which it should be attempted to consolidate, so that the majestic organization of peace may rest upon all of them. Its separate pillars are the Covenant of the League of Nations, the Locarno agreements and the Briand-Kellogg Pact incorporated in the Treaty of Paris of August 27, 1928, and which represents, when taken as a whole, the American line of vision. It is not difficult to discern the need of coordination for the attainment of which so many and renewed efforts have been made. The supplementary structure for the restoration of the balance needed to bring about harmony of aims was missing, and it should emerge, as has fortunately been the case under the circumstances already mentioned, from this part of the southern hemisphere. It is to be hoped that through intelligent understanding the efficient means resulting from such a coordination, with all its potential possibilities, may be made use of regardless of any pride of paternity. The aspiration expressed in this initiative of the Argentine government should surprise no one since it entails a reply to the call addressed by the Ninth Assembly of the League of Nations to all States of the world in 1928. At the time the General Act of Geneva was signed, a request was made for contributions such as the one now tendered, and which should be of greater value as it does not rest on a purely ideological conception but is recommended by a practical experience which it is desired to divest of its casual character. In fact, at the aforesaid Assembly and upon presentation of the various models of conciliation and arbitration treaties, an invitation was addressed to all countries, whether or not members of the League, to conclude new international compacts
in accordance with the models submitted, or in any other form
deemed appropriate; the possibility of creating other instruments
of peace which instead of altering would supplement and strengthen
those already in existence was thus acknowledged.

**Article I**

It has been said that the Kellogg-Briand Pact represents
the nations of America, as it does for those of the world at large,
the exclusion of force and a prohibition to resort to war, in a final
summing up of many efforts to bring about respect for interna-
tional standards. For the Republics of South America it translates
their best doctrines and the purpose back of their valuable
juridical conceptions. Therefore, whatever may bring new ad-
herents to that pacifist instrument and which may facilitate its
application, also entails obviating those obstacles which have so
far stood in the way to its universal use. The difficulty of recon-
ciling the Kellogg-Briand Pact with that part of the Covenant
of the League of Nations which concerns the measures of concilia-
tion needed in connection with the self-defense of the States and
national policy, is well known. It is also bound to the lack of
emphatic sanctions as well as to the advantage of coordinating
it with a system for the pacific settlement of disputes, organized
by the treaty itself and which may have immediate application.
It is sought to obviate those disadvantages by making its accep-
tance easier in all cases. There is no attempt to repeal or to
set-up a substitute for that grandiose conception; the idea is to
draw from it a supplementary form which aspires to take into
consideration the objections raised by facilitating the existence of
a multiplicity of systems bent upon bringing about harmony, and
the progressive application of which may allow, at a given moment,
the making of a supreme effort to stem the outbreak of war.
Those are the aims sought in Article I of the Argentine draft
Anti-War Treaty.

Article I condemns wars of aggression in the relations between
the Contracting States, who obligate themselves to settle any
conflict which may arise between them by pacific means. In this
respect it conforms with the Covenant of the League of Nations,
with the Treaty of Locarno, with the Kellogg-Briand Pact, and
with several resolutions of Pan American Conferences. The

 Argentine draft retains the right of self-defense of States, which
must be inalienable. It does not reproduce the conception of war
"as an instrument of national policy" with which it is qualified
in the Kellogg-Briand Pact. But these are not fundamental dis-
crepancies, since the constructions and reservations made by several
nations on signing the Pact, coincide with the statement in this
draft. The diplomatic correspondence during the negotiations
bears out this view. According to those antecedents France took
the initiative of negotiating an agreement against "wars of aggres-
sion," basing her action on a Resolution taken in 1927 by the
League of Nations and under which wars of aggression were de-
declared to be an international crime (Notes of the French Ambas-
sador to the Secretary of State of the United States of January
5 and 21, 1928).—Germany set forth her views in the following
terms: "The German Government proceeds on the belief that a
"pact after the pattern submitted by the Government of the United
"States would not put in question the sovereign right of any state
"to defend itself. It is self-evident that if one state violates the
"pact the other contracting parties regain their freedom of action
"with reference to that state." (Note to the American Ambassador
in Berlin, of April 27, 1928).—Great Britain replied that: "After
"studying the wording of Article I of the United States draft, His
"Majesty's Government do not think that its terms exclude action
"which a state may be forced to take in self-defense. Mr. Kellogg
"has made it clear in the speech to which I have referred above
"(delivered April 28 before the American Society of International
"Law) that he regards the right of self-defense as inalienable, and
"His Majesty's Government are disposed to think that on this
"question no addition to the text is necessary." . . . . . .
"The machinery of the covenant (of the League of Nations) and
"of the treaty of Locarno, however, go somewhat further than a
"renunciation of war as a policy, in that they provide certain san-
"cations for a breach of their obligations. A clash might thus con-
"ceivably arise between the existing treaties and the proposed pact
"unless it is understood that the obligations of the new engage-
"ment will cease to operate in respect of a party which breaks its
"pledges and adopts hostile measures against one of its contract-
"ants. For the Government of this country respect for the obliga-
"tions arising out of the Covenant of the League of Nations and
"out of the Locarno treaties is fundamental." . . . . And referring to the phrase "as an instrument of national policy," Great Britain adds: "there are certain regions of the world the welfare and integrity of which constitute a special and vital interest for your peace and safety. His Majesty's Government have been at pains to make it clear in the past that interference with these regions cannot be suffered. Their protection against attack is to the British Empire a measure of self-defense. It must be clearly understood that His Majesty's Government in Great Britain accept the new treaty upon the distinct understanding that it does not prejudice their freedom of action in this respect. The Government of the United States have comparable interests any disregard of which by a foreign power they have declared that they would regard as an unfriendly act. His Majesty's Government believe, therefore, that in defining their position they are expressing the intention and meaning of the United States Government."—Japan replied that: "The proposal of the United States is understood to contain nothing that would refuse to independent states the right of self-defense, and nothing which is incompatible with the obligations of agreements guaranteeing the public peace, such as are embodied in the Covenant of the League of Nations and the treaties of Locarno."

With these views in mind, on June 23, 1928, the Government of the United States communicated again with those of Australia, Belgium, Canada, Czechoslovakia, France, Germany, Great Britain, India, Irish Free State, Italy, Japan, New Zealand, Poland, and South Africa, inviting their attention to the speech of the Secretary of State, of April 28, 1928, wherein he had reached the following conclusions: "(1) Self-defense. There is nothing in the American draft of an antiwar treaty which restricts or impairs in any way the right of self-defense. That right is inherent in every sovereign state and is implicit in every treaty. Every nation is free at all times and regardless of treaty provisions to defend its territory from attack or invasion and it alone is competent to decide whether circumstances require recourse to war in self-defense. . . . "(2) The League Covenant." . . . "There is, in my opinion, no necessary inconsistency between the Covenant and the idea of an unqualified renunciation of war. The Covenant can, it is true, be construed as authorizing war in certain circumstances but it is an authorization and not a positive requirement." "(3) The Treaties of Locarno. If the parties to the treaties of Locarno are under any positive obligation to go to war, such obligation certainly would not attach until one of the parties has resorted to "war in violation of its solemn pledges thereunder."

The Kellogg-Briand Pact was accepted with the foregoing constructions and reservations. (See notes: of Germany, June 11, 1928; of France, July 14, 1928; of Italy, July 15, 1928; of Belgium, July 17, 1928; of Poland, July 17, 1928; of Great Britain, July 18, 1928, in "Notes exchanged between the United States and other Powers on the subject of a multilateral treaty for the renunciation of war," Washington, 1928.)

The Argentine draft establishes, in conventional form, the right of self-defense against foreign aggression, and in so doing it agrees both with the foregoing antecedents of the Treaty of Paris of 1928 and with the Resolution adopted by the Sixth International Conference of American States at its meeting in Havana, 1928, and which reads: "Considering: That the American nations should always be inspired in solid cooperation for justice and the general good; That nothing is so opposed to this cooperation as the use of violence; That there is no international controversy, however serious it may be, which can not be peacefully arranged if the parties desire in reality to arrive at a pacific settlement; That war of aggression constitutes an international crime against the human species; Resolves: 1. All aggression is considered illicit and as such is declared prohibited. 2. The American States will employ all pacific means to settle conflicts which may arise between them."—It also agrees with the idea of the Treaty of Mutual Guarantee, signed at Locarno, October 16, 1925, by Germany, Belgium, France, Great Britain, and Italy, Article 2, section 1, of which, after condemning war, excludes the case of legitimate self-defense.

The draft does not reproduce the conception of war "as an instrument of national policy," because it is felt that in our time no State can be suspected of making war a national aspiration. On the other hand, as Great Britain pointed out during the negotiations for the Kellogg-Briand Pact, the national policy of some colonizing States in remote regions of the world, is, by its very
nature, excluded from the stipulations of a compact of this type. In any event, war is a relationship of an international character.

ARTICLE II

Two principles which supplement each other are included in this article. The first declares that territorial disputes shall not be settled by violent means. It was stated July 30, 1932, by the Argentine Ambassador, at the outset of the historical meeting held by the neutrals in connection with the conflict between Paraguay and Bolivia, under the following instructions from his government:

"Please submit, as a proposal on behalf of the Argentine government, that the Commission declare that territorial disputes in America shall not be settled through force." The second principle, which flows from the first, provides that no territorial arrangement secured by other than peaceful means, nor the validity of any occupation or acquisition of territory by force of arms, shall be recognized. These doctrines, which exclude resort to arms, were originated at the very dawn of American emancipation. From the first years of their independent life, the Hispanic-American Republics proclaimed and upheld the principle of the "uti possidetis" as the one governing their territorial rights, and rejected other solutions which were not based on titles arising from that principle, except in the case of some honor-giving and equitable compromises, of which instances are not missing. The need for respecting territorial integrity was acknowledged by successive Congresses of American nations, beginning with the Congress of Panama called by Bolivar in 1826; at the Congresses of Lima, 1847-1848 and 1864-1865, convened at the behest of Peru after the earnest endeavors of Mexico to carry on the work of solidarity undertaken by Bolivar; and in the continental Treaty of 1856, concluded with lofty Americanistic aims at Chile's initiative. All these praiseworthy efforts were supplemented with resolutions in favor of arbitration as a means for the settlement of international disputes. And it was thus that the Latin American Republics, with but very few exceptions, put an end to their territorial controversies. Brazil went still further and wrote the principle of arbitration into her Constitution.

The Argentine Republic rendered a well deserved tribute to these demands of the juristic consciousness of America by repudiating the resort to war in every phase of her international life. Her thinkers and statesmen declared that war is a crime and repeatedly condemned the right of conquest. It is known that the Treaty of the Triple Alliance, of May 1st, 1865, recognized Argentine's right to a given boundary with Paraguay (Article 16); yet, when the moment came to conclude peace the Argentine government did not avail itself of the advantages secured through victory and negotiated with the conquered nation a Treaty of territorial delimitation under which a part of the disputed territory was submitted to arbitration while the remainder was settled through direct negotiations. This Argentine attitude has been summed up in the popular consciousness by the slogan "victory gives no rights." With the same pacific procedure the Argentine Republic settled all of her remaining boundary disputes, without ever thinking that she might impose her views through coercion. She concluded with Chile the "Pacts of May," in 1902, climaxed by arbitration and a Treaty for the reduction of naval armaments.

The First International Conference of American States, which met in Washington 1880-1890, adopted a declaration against the right of conquest, worded as follows: "First. That the principle "of conquest shall not, during the continuance of the treaty of "arbitration, be recognized as admissible under American public "law. Second. That all cessions of territory made during the "continuance of the treaty of arbitration shall be void if made "under threats of war or the presence of an armed force. Third. "Any nation, from which such cessions shall be exacted, may "demand that the validity of the cessions so made shall be sub-

mitted to arbitration. Fourth. Any renunciation of the right to "arbitration, made under the conditions named in the second sec-
tion, shall be null and void." Although this declaration did not have the compulsory force of a Treaty it reflected well enough the pacific aspirations of the American Republics represented at the Conference. As a matter of fact, both prior to and after this declaration had been made, a large number of territorial disputes were settled judicially instead of being left to the uncertainties of war.

Wars of conquest are incompatible with the Covenant of the League of Nations, Article 10 of which provides: "The Members "of the League undertake to respect and preserve as against "external aggression the territorial integrity and existing political "independence of all Members of the League. In case of any such
“aggression or in case of any threat or danger of such aggression “the Council shall advise upon the means by which this obligation “shall be fulfilled.” This wise provision, aimed to maintain the territorial “status quo,” agrees with the Argentine doctrine and with the resolution adopted at Washington in 1890.

Another antecedent which should be borne in mind is Project No. 30 prepared in 1925 by the American Institute of International Law, worded as follows: “The American Republics, animated by “the desire of preserving the peace and prosperity of the continent, “for which it is indispensable that their mutual relations be based “upon principles of justice and upon respect for law, solemnly “declare as a fundamental concept of American international law “that, without criticizing territorial acquisitions effected in the “past, and without reference to existing controversies,—In the “future territorial acquisitions obtained by means of war or under “the menace of war or in presence of an armed force, to the detri- “ment of any American Republic, shall not be lawful; and that “consequently territorial acquisitions effected in the future by these “means can not be invoked as conferring title; and that those “obtained in the future by such means shall be considered null in “fact and in law.”

The Argentine doctrine was adopted during the recent terri- torial dispute between Bolivia and Paraguay, when nineteen Ameri- can nations signed the declaration of August 3, 1932, which reads: “The nations of America further declare that in connection with “this controversy they shall recognize no territorial arrangement “which is not secured by pacific means, nor the validity of acquisi- “tions of territory resulting from occupation or conquest by armed “force.”

This Anti-War Treaty will doubtlessly mark a new step in the juridical evolution of the world, and caps the results obtained by the preceding doctrines which have been gradually dislodging force from the field of international relations. The Argentine phase of this evolution had been already set forth in the book “La conception Argentine de l’Arbitrage et de l’intervention à l’ouverture de la Conférence de Washington, 1928” (its author is the present incumbent of the Argentine Foreign Office). These conceptions are stated in the Monroe Doctrine against occupation and armed interventions; in the Calvo and Drago doctrines concerning diplomatic or armed interventions and the collection of public debts by force; in the ideas propounded by Ruy Barbosa as to the Constitutions setting restrictions upon sovereignty; in the doctrines of Carlos Tejedor and Bernardo de Irigoyen regarding protection of foreigners and of corporations; in the Pan American treaties on pecuniary claims. These succeeding triumphs of right over might will be supplemented by this Treaty, which is intended to eradicate wars of conquest from the last territorial disputes still awaiting settlement.

The new doctrine is connected with the statements made by the United States and the League of Nations in the recent Sino- Japanese dispute as to Manchuria. It is true that in this particular case reference had to be made to treaties already in force, respect for which it was necessary to demand inasmuch as they contained provisions concerning the territorial integrity of China. As a matter of fact the compact known as the “nine power treaty,” of January 6, 1922, signed at the Washington Conference for the Limitation of Armaments, was involved in the dispute, since it set forth the obligation to respect the sovereignty, the independence, and the territorial and administrative integrity of China, in order to maintain unabated the principle of the “open door” in the Far East. The government of the United States informed the disputants that “it would not recognize any situation, treaty, or agree- “ment entered into by those Governments in violation of the “provisions of the Treaty of Paris, of August 27, 1928, of which “both China and Japan were signatories, as well as the United “States.” In this connection, although with reference to the case of China, the Secretary of State of the United States, Mr. Henry L. Stimson, on February 24, 1932, addressed a letter to Senator William E. Borah, in which he foresaw the possibility of this atti- tude becoming general. He said: “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.” It is, therefore, a happy coincidence, which becomes further accentuated through actions of the League
of Nations when, meeting in an extraordinary session to mediate in the Sino-Japanese conflict, it adopted the report of its corresponding Committee on the resolution of March 11, 1932, which also entails, at least partially, a condemnation of wars of conquest although, as in the case of the warning by the United States, it is related to the nine-power Treaty, whose violation it was necessary to sanction at the outset as contrary to the general principle. The resolution reads: “Considering that the provisions of the Covenant are entirely applicable to the present dispute, more particularly as regards: (1) The principle of a scrupulous respect for treaties; (2) The undertaking entered into by Members of the League of Nations to respect and preserve as against external aggression the territorial integrity and existing political independence of all the Members of the League; (3) Their obligation to submit any dispute which may arise between them to procedures for peaceful settlement; Adopting the principles laid down by the acting President of the Council, M. Briand, in his declaration of December 10th, 1931; Recalling the fact that twelve Members of the Council again invoked those principles in their appeal to the Japanese Government on February 16th, 1932, when they declared ‘that no infringement of the territorial integrity and no change in the political independence of any Member of the League brought about in disregard of Article 10 of the Covenant ought to be recognized as valid and effectual by Members of the League of Nations’; Considering that the principles governing international relations and the peaceful settlement of disputes between Members of the League above referred to are in full harmony with the Pact of Paris, which is one of the cornerstones of the peace organization of the world and under Article 2 of which ‘the High Contracting Parties agree that the settlement or solution of all disputes or conflicts, of whatever nature and whatever origin they may be, which may arise among them shall never be sought except by pacific means;’” Therefore, the Assembly: “Proclaims the binding nature of the principles and provisions referred to above and declares 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.” ... Such are the points of similarity between the Argentine doctrine, the recent Pan American declaration, and the principles upheld by the United States and by the League of Nations in regard to prohibiting resort to force to settle territorial disputes.

**Article III**

This article is intended to establish sanctions in connection with the prohibitions set forth hereinbefore, and to surround the same with guarantees that will divest them of their appearance of purely abstract formulas. But such guarantees shall have no bearing upon the sovereignty of the Contracting States, pursuant to the principles of non-intervention, diplomatic or armed, that the Argentine Republic has constantly practiced and upheld in her relations with the other States, and at the international congresses in which she has been represented. Keeping faith with these traditions, the draft places greater reliance upon honor of signature than on any coercive sanction. It also attaches great importance to the influence of public opinion without ignoring, nevertheless, the possible need of resorting to any of the political, legal, or economic sanctions authorized by International Law in case of noncompliance with obligations entered into. Moreover, it does not interfere with any of the measures the Contracting States may be bound to take by virtue of treaties—such as the Covenant of the League of Nations or other multilateral agreements, to which they may be Parties.

**Article IV**

This article is based on the Geneva General Act of 1928 in connection with the limitation of the reservations that the Parties may eventually make at the moment of signing, ratifying, or adhering to the Anti-War Treaty. It is desirable that reservations be reduced to a minimum in order to preserve the efficiency of the compact.

It reproduces, with slight changes, Article I of the General Convention on Inter-American Conciliation, signed in Washington, January 5, 1929. The article referred to reads “The High Contracting Parties agree to submit to the procedure of conciliation established by this Convention all controversies of any kind which have arisen or may arise between them for any reason and which it may not have been possible to settle through diplomatic channels;” but following the example of certain recent mul-
bilateral treaties, it confines diplomatic exchanges to a reasonable period in order to avoid their excessive duration.

**Article V**

The exceptions and reservations formulated by some nations to the Geneva General Act and to the General Convention on Inter-American Conciliation have been considered in connection with their systematic arrangement.

Section a) of this article shows the determination not to weaken, derogate, or suspend any of the treaties, conventions, pacts or agreements in force. It really attempts to strengthen them, and to broaden their practical scope. It merely aims at removing whatever incompatibility might arise with those already concluded, in order to insure the cooperation of all the systems devised for the maintenance of world peace.

Section b) is self-explanatory: it will not be necessary to apply the procedure of conciliation whenever the Parties in controversy agree to settle their differences through direct negotiation, or to submit them to arbitration or to judicial adjudication.

Section c) allows the withdrawal from the procedure of conciliation of those matters which, under each constitutional regime, are within the exclusive jurisdiction of national or local courts, in which case the State may decline the international procedure pending the exhaustion of all remedies provided for in the domestic jurisdiction; with the sole exception of those cases of manifest denial of justice or of unjustified delay in the judicial procedure, which is implied in the general conception of the article. These are the unchallengeable standards which, because they flow from the principles of sovereignty and equality of States enjoy the support of all the American Republics, as expressed in treaties and at international congresses.

Section d) fixes the maximum scope treaties may have in the nations governed by rigid written Constitutions and where there are Tribunals or Supreme Courts of Justice with authority to control the constitutionality of governmental actions. In those countries, no treaty can validly affect constitutional provisions, and their governments have no right to enter into, to approve, or to ratify that kind of international covenants. This exception, known as the "Argentine formula" (see "La Crise de la Codification et la Doctrine Argentine du Droit International," 1931, by the author of this draft-treaty), is typical in every institutional regime based upon the super-legality of the Constitution, a system widely adopted in the American Continent and which begins to make headway in some of the European post-war democracies. It agrees with proposals made by several delegations to the Second Hague Conference during the discussions on arbitration. This formula has been set forth in the treaties of arbitration concluded by the Argentine Republic with the following countries: Uruguay, June 8, 1899; Paraguay, November 6, 1899; Bolivia, February 3, 1902; Chile, May 28, 1902; Brazil, September 7, 1905; Italy, September 18, 1905; Ecuador, July 12, 1911; Venezuela, July 22, 1911; Colombia, September 20, 1912; France, July 3, 1914; Spain, July 9, 1916. The same trend is followed in some treaties recently concluded by several nations of Europe and America, in which it is provided that the compromise for arbitration shall be concluded in accordance with constitutional enactments, and that any award or decision affecting said constitutional provisions will be considered as null and void. (Treaty of Arbitration between the United States of America and Albania, October 22, 1928, Article 1; Treaty of Arbitration between the United States and Sweden, October 27, 1928, Article 1, Section 2; Treaty of Conciliation and Arbitration between Denmark and Haiti, April 5, 1928, Article 6, Treaty of Conciliation, Judicial settlement, and Arbitration, between Spain and Norway, December 27, 1928, Article 20).

Although the " Argentine formula" has nothing that can be considered indefinite or arbitrary, Section b) adds a stipulation intended to prevent misunderstandings, providing that in case of doubt as to whether or not a question has any bearing on a constitutional precept, the Contracting Party claiming such an exception shall request a reasoned opinion of its own Tribunal or Supreme Court of Justice, in order to place upon its contention a seal of impartiality.

**Article VI**

The Commission of Conciliation established by this Anti-War Treaty shall not enter upon its functions unless there is no other Commission set up by previous treaties binding the Contracting Parties, or in default of international bodies such as the Council of the League of Nations, Permanent Commissions of a Pan Ameri-
can origin, or others discharging similar duties under treaties already in force. The same criterion shall govern the manner of constituting the Commission of Conciliation, the States in controversy being free, furthermore, to agree in each case on a special organization therefor. The model included in Article 4, Section 1, of the Geneva General Act has been followed. The feature of regionalism has been excluded in order to facilitate universal adherence to this Anti-War Treaty, without repealing thereby those treaties based upon continental solutions.

**ARTICLE VII**

This article provides for a novel procedure. It gives preference in the exercise of conciliatory functions to the Tribunals or Supreme Courts of Justice which under the domestic law of each State are competent to interpret, as Courts of sole or final recourse, the Constitution, the treaties, and the general principles of the Law of Nations.

Besides the guarantee represented by the intervention of Judges who have been honored by their respective nations with positions of the greatest trust, through appointment to the bench of the highest body in their domestic judicial organization, there are fundamental reasons in favor of this arrangement which up to the present time have not been considered, or perhaps understood, in the European World, except in some of the new Constitutions, wherein the concept of super-legalities has begun to be incorporated. An important meaning is attached to the introduction of this principle. The only reservation made by the Argentine Republic in her treaties of arbitration, concerning the provisions of her Constitution, has been prompted thereby in some of its fundamentals.

This provision entails lessening the basic European problem of restrictions upon sovereignty, which stirs contemporary philosophy with its subtle interpretations, to find that it should give way to the conception of gradual interdependence and expansion of international life. The American countries which follow the masterful type set by the Constitution of the United States, and even improve thereon, need not make such a sacrifice of something which substantially rests upon an understandable psychological attitude determined by the defensive instinct of weak nations against the encroachments of force, that impels them to unwaveringly and irrevocably maintain this fundamental principle. And this is due to the fact that in the American institutional system the sovereign can be brought before its own judiciary. It is already limited by the possibility of abating the acts of sovereignty through the declaration of unconstitutionality. The Constitution prevails on the Law of Nations and the treaties within this system.

Such was also the luminous thought of Ruy Barbosa who, on behalf of Brazil, crystallized the American conception at the Second Hague Conference. His verbatim remarks were as follows: "If political sovereignty were that indefinite arbitrator, one could hardly understand that admirable Constitution of the United States which has been the example and the model of almost all American constitutions. The most specific character of that organization does not reside in the federative distribution of sovereignty that balances the local republics within the great national republic. That has been witnessed in other examples of the federative system; but that which constitutes the most original and among its most illustrious founders the name of Hamilton himself, now invoked by those who place sovereignty above justice, is the fact that in this incomparable work of the men who organized the United States of America, justice has been placed as a sacred limit and as an impassable barrier to sovereignty. To that end they declared rights which sovereignty could not restrict, and they clothed the courts, especially the courts of last instance, the federal courts with the immense authority of supreme interpreters of the constitution, with the right of examining the acts of sovereignty, even though they were federal laws, and of refusing to enforce them, whenever such decrees, such laws, such formal acts of sovereignty should not respect the rights consecrated by the constitutional declaration. And this is a first, but already an immense, an immeasurable restriction of sovereignty which would not be conceded in any other epoch, and which even in our days, in many countries far advanced, one might hold to be incompatible with its very essence. Still, it already exists for an entire continent."
ARTICLE VIII

Following Article 11 of the Geneva General Act, this Anti-War Treaty provides that both Parties be heard in the procedure of conciliation. It also authorizes them to be represented before the Commission of Conciliation by Agents and defense Counsel. With regard to the standards of procedure it must be borne in mind that Article V, Section a) does not repeal the treaties previously in force between the Parties, and that they may agree to adopt the standards set forth therein.

ARTICLE IX

It coincides with articles 12 and 13 of the Geneva General Act, in regard to the manner in which decisions shall be voted upon, and adds a provision concerning publicity of the proceedings.

ARTICLE X

Agrees with article 15 of the Geneva General Act and with articles 6, 7, and 9 of the General Convention on Inter-American Conciliation. It is the natural duty of every Commission of Conciliation to procure the friendly agreement of the Parties to the dispute by submitting a just and equitable solution to them. This proposal should in no case be in the nature of an arbitral award or of a judicial decision. It must offer a respite in the dispute, and be observed by the Parties in the interest of peace.

ARTICLE XI

Agrees with the Inter-American Convention which fixes the period of one year for the Commission to render its report, and runs counter to the Geneva General Act that provides for six months, which may prove to be too brief in case of conflict in remote regions. This Anti-War Treaty allows the Parties to the dispute to shorten or lengthen this period by agreement, as provided also in some multilateral treaties of conciliation. The Parties concerned may also put an end to the duties entrusted to the Commission through their agreement to settle the controversy by direct negotiation or by submission thereof to an arbitral or judicial adjudication, in accordance with Article V, Section b) of this Treaty.

ARTICLE XII

The first part of this article agrees with articles 10 and 11 of the Inter-American Convention. The second finds its inspiration in similar provisions of the “Gonda Treaty.” The term of six months in which the Parties may pass upon the bases for a settlement submitted by the Commission, together with the period of one year in which the latter must issue its report, assure a respite long enough to quiet down the spirits and to prepare, without haste, a solution advantageous to both Parties.

Once the period set by the Commission has lapsed, without its proposal for a settlement being accepted, or any other friendly solution agreed upon, the Parties recover their freedom of action; but in no event is it lawful for them to resort to war in violation of articles I and II of this Treaty, except in case of legitimate self-defense against an aggression.

ARTICLE XIII

The prohibition to opening hostilities or making warlike preparations, contained in other similar treaties, is not reproduced herein, since wars of aggression being outlawed under Article I, a hostile attitude, prior to the exhaustion of the procedure of conciliation and of the other pacific means provided for under International Law, would be tantamount to a war of aggression. Because of these reasons Article XIII incorporates the provision in Article 33 of the Geneva General Act, which reads: “The parties undertake, from all measures likely to react prejudicially upon the execution of the judicial or arbitral decision or upon the arrangements proposed by the Conciliation Commission and, in general, to abstain from any sort of action whatsoever which may aggravate or extend the dispute.” Or, in short, not to take an attitude which may impair the settlement to be suggested by the Commission, and not to carry out actions which may aggravate or extend the dispute.

ARTICLE XIV

No further explanations are required by this article. Each Party to the dispute bears its own expenses and contributes a moiety of the general expenses of the Commission. No costs can be
decreed because the procedure of conciliation is not judicial in character.

**ARTICLE XV**

Everything pertaining to the exchange of ratifications and instruments of accession shall be entrusted to the Argentine Foreign Office, as the Chancellery which has initiated this Anti-War Treaty.

**ARTICLE XVI**

This Treaty aims at a wide application, universal if possible. Therefore it incorporates the clause for unrestricted accession open to any state wishing to adopt it.

**ARTICLE XVII**

The Treaty is concluded for an indefinite period; but it may be denounced at any time by means of one year's previous notice.

It is therefore evident:

1.—That this Anti-War Treaty aims to direct the union of the nations of the Americas in their lofty pacifist aspiration, following the route marked by the success of their common views as stated in the agreement of August 3, 1932, in order to consolidate peace in the Continent; concentrating their action around the initiative taken by the nations of the southernmost section of America in their joint declaration of August 6, 1932, in the bringing together with them of the nations forming the Committee of Neutrals now sitting in Washington, and in the joint action of the nineteen nations which reached the unanimous agreement to establish the foregoing doctrine without delay.

2.—That this Anti-War Treaty in no way repeals the clauses or provisions of preexisting treaties or pacts, American or European, which bind the contracting Parties; but, to the contrary, is intended to add a new instrument for peace, compatible with all the others, and destined to strengthen the effectiveness of their application.

3.—That in this connection it takes into consideration the Kellogg-Briand Pact, and aims at strengthening it through the introduction of improvements in the form, required by the reservations affixed by some of the signatories, and tries to bring it into harmony with the covenants of Locarno and of the League of Nations.

4.—That it also endeavors to strengthen it (the Kellogg-Briand Pact) with sanctions of which it is now devoid, and to broaden the bases of moral power and public opinion upon which it rests, with others of a political, juridical, or economic order, plus the solidary and joint action of a common neutrality, although excluding any diplomatic or armed intervention.

5.—That in order to make the purpose of maintaining peace and of submission to the international standards which furnish its inspiration more effective, it supplements the aforesaid Pact (Kellogg-Briand) with a system of conciliation adapted to all the other treaties in existence, and which is not incompatible with any of the clauses contained in the latter.

6.—That it incorporates the principle which bars force from the field of territorial disputes between states, as an expression of what is the practice among the nations of America, which have generally settled through pacific means their boundary questions, and that it sets forth doctrines which contemplate the possibility of settling, by those means, all conflicts which may arise. It aims, consequently, at contributing by its possible development to a universal undertaking.

7.—That the clauses concerning the part assigned to the Supreme Courts of Justice in the countries where the constitutional system of the United States has been adopted, represent in the form in which they are here submitted an evidently convenient innovation. In such cases as they may not be in harmony with the institutional system of some States, use may be made of the power of formulating a reservation and the same may be done in regard to any other clause of the Treaty which may not harmonize with their views, the rest of the Treaty to be left standing without loss of effectiveness and applicability.

Carlos Saavedra Lamas.