

THE PROPOSAL FOR A LEAGUE TO ENFORCE PEACE—AFFIRMATIVE

WILLIAM HOWARD TAFT

LADIES AND GENTLEMEN: It is a great pleasure to be one of this Conference. I know I am not fitted to preside over it, but I have already discovered, having attended a business meeting, that political experience in the study of machines has not been lost on the Managing Committee connected with this Conference and therefore, I expect to be guided as fully and completely as the exigency may require, and if I overstep the boundary, I hope I may be properly rebuked.

I want to speak to you of something that has come from this Institution and others like it, devised with the hope that it contains something constructive in its features, not new, perhaps, but formulated in such a way in its platform as to approve itself to a great many who have been aroused by the present war to the necessity of doing something and providing some means that shall be affirmative—to make less likely a recurrence of the dreadful cataclysm that we have witnessed and are witnessing in Europe. The League to Enforce Peace is an association organized through the activities of three or four gentlemen who were first dazed with the defeat of their hopes by the outbreak of the war and who, after they recovered themselves, thought it was wise to bring together as many interested in the subject as they could within the cosy limits of the Century Club at dinner. There is

something about a dinner that always helps to promote agreement. It creates a desire to be unanimous. Much to the surprise of the twenty gentlemen who were there, we did agree, and then, lest we might not hide our light under a bushel or lose for lack of appreciation of the importance of our own work, we shrunk from the public gaze by gathering at Independence Hall in Philadelphia, and there we agreed upon the platform with very few changes.

I only recite in general what the platform is, not because I think that most who are here do not know it, but merely for the purpose of refreshing their recollection and making it the basis of my remarks, which are directed toward some controverted features in the practical working of the plan. The plan contemplates an international agreement signed by as many powers as can be induced to sign it. The first provision is for a permanent Court of Justice international, with jurisdiction to consider and decide all controversies of a justiciable character arising between two or more members of the League, the power of the Court to be extended to passing upon questions finally and in a binding way upon whether the issue presented is a justiciable one and therefore, within the jurisdiction of the Court. The second provision is that all questions not of a justiciable character, leading to differences between two or more members of the League, are to be presented to a Commission, before which evidence is to be introduced, arguments are to be made and then the Commission is to recommend something in the nature of a compromise. The third provision is that if any one member of the League, violating its pledged faith, shall begin hostilities against any other member of the League before the questions creating the trouble have been submitted either for decision by the

Court or for recommendation by the Commission, then all the other members of the League agree to defend the member prematurely attacked against the one who begins the hostilities; and to use, first, economic means, and then military force for that purpose. The fourth plank provides that International Congresses shall be convened with representatives from all members of the League, who shall consider the subject of International Law, shall extend it in a Legislative way and submit the changes thus agreed upon to the nations constituting the League. If there is no objection within a year, then the rules changing or extending existing International Law shall be considered as rules for the decision of the permanent Court.

Now, one of the things that has been very gratifying to those who have been connected with the League, has been the eagerness with which, in very many quarters, the propositions have been accepted and approved. Of course there have been criticisms the character of which can be noted when I tell you that in England the objection to the title was that we have "Peace" in it at all. They wished us to strike that out and just call it a League of Nations, whereas from Oregon we got the proposition that we should strike out the word "Enforce." If we had struck out "Peace" and struck out "Enforce," it would be what Governor Allen used to call a "damn barren ideality." But we thought if we left out Peace we would be leaving Hamlet out of the play, so we concluded that in England they might call it a League of Nations if they retained its real features, and that that gentleman who declined to come in because we had force in it—we would have to consent to let him stay out. It would seem that many had been waiting for the formulation of some such proposals, and if I may judge from the comments on them, what attracts is its

216 affirmative and constructive quality in the proposition that physical force be added to the weight of moral force in order to prevent a general war, with the hope that the threat will be enough without actual resort to military or economic means.

Now I want to emphasize in this plan a number of its features, with a view of taking up some of the objections. First, I would like to emphasize the distinction between justiciable and non-justiciable. That has led to the division into a court and a commission, the court to consider justiciable questions, the commission to consider non-justiciable questions. Non-justiciable questions are those which cannot be settled according to the principles of law or equity. The justiciable ones are those that can be so settled. There are a great many non-justiciable questions that can arise between nations that may well lead to war, and in that respect is not so different in our domestic life. Take the case of Mrs. A., who has a lawn upon which she allows the children of Mrs. B. to play, Mrs. B. being a neighbor, and Mrs. C. is the neighbor on the other side and she does not let Mrs. C.'s children play on that lawn because she has had some previous experience with Mrs. C.'s children and she finds that they are young mustangs and dig up the lawn and tear the flowers and everything of that sort. Now she has a perfect right to say who shall come on that lawn and who shall not, but there well may be an issue between Mrs. C. and Mrs. A. growing out of that discrimination. It is non-justiciable; you cannot settle it in court, unless perhaps Mr. C. comes home and Mrs. C. tells Mr. C. about it and asks him to go over and see Mr. A. about it; then you may have a justiciable question. [Laughter.] But the issue then is not whether Mrs. A. was right in her judgment of Mrs. C.'s children and her dis-

crimination against them in favor of Mrs. B.'s; the justiciable issue usually settles down to the ultimate fact whether Mr. A. or Mr. C. hit first.

This is a domestic illustration, but we are having just such a situation with respect to Japan and China. We have a right to exclude the Japanese if we please; we have a right to exclude the Chinese. We are a bit inconsistent; we wish the Chinese trade but we do not care for the Chinese. We have a color scheme in our immigration and naturalization laws; it is limited to black and white and we are very fastidious about the browns and yellows. Such a question may very well lead to friction and lead to something worse. I only give that as an illustration of a non-justiciable question which in some way or other must be provided for. You can arbitrate a non-justiciable question if both parties are willing to it; you can leave any question of any sort to a Board of Arbitration or a single arbitrator if you are willing to do it and abide his decision, but you cannot submit such a question to a court, because a court has to proceed according to rules of law and there are many questions that you cannot dispose of according to rules of law. You can see that in the jurisdiction of the Supreme Court of the United States. It has under the Constitution the power to sit as in a National Tribunal and the duty to sit, because its judicial power extends to controversies between two or more States. Now the Supreme Court, through Mr. Justice Bradley and other of the Justices, has said a number of times that there are controversies between States that the court cannot consider because they are non-justiciable; they cannot be settled on principles of law or equity. In such a case, of course, if a State may not have a remedy through the court, it cannot have any remedy at all, because if it attempted to

enforce its remedy, to use force to establish what it believes its rights or interests to be, then Uncle Sam would step in to restrain that State by force. This is the difference between the Supreme Court as an instance of an international tribunal and a commission of arbitration between independent States.

Objection has been made to giving to the Permanent Court the power to decide whether the question before it is justiciable or not; in other words, the power to decide upon its own jurisdiction. This is not giving it any executive power. Every domestic court has it. The question whether an issue is one of law or equity is a question that such a court is entirely competent to decide. If such a question arises, the person against whom the complaint is filed or the nation against which the complaint is filed ought not, it seems to me, to be given the opportunity to say, "I decline to submit to this jurisdiction because in my judgment this question is non-justiciable and cannot be settled on the basis of law or equity." I think if we are establishing a permanent court, we ought to establish it so that a party may be brought in against his will. That is the case with us in a domestic court. The court issues its summons, brings in a party whether he thinks the court has jurisdiction or not. If the party chooses to raise the question, the court passes on it, and when the court has passed on it, that settles it.

Now I think therefore, with respect to that kind of a question, it ought not to be voluntary with the parties. Nations are much more willing to make agreements in the future to submit abstract questions than they are to submit a burning issue in respect to which, while they may feel that the law is against them, they have some sort of an equity in the back of their heads that could not be expounded

or would not be tolerated in court. We should take advantage of this willingness and bind them by agreement as to general jurisdiction to be interpreted and applied by the court itself. Objection is made to this on the ground that it surrenders too much of a Nation's sovereignty. I do not think so. It may encounter opposition when it is brought up in a world's conference, but I think we here ought to stand for it and press it as far as we can in order that the agreement which shall be made shall cover as much ground and be as effective as possible.

The reason why we have not one body to dispose of both legal and non-legal questions—we might have a commission of arbitration that could dispose of legal questions and also non-legal questions—but the reason why we make a division is important. We wish to settle legal questions by a court that proceeds on principles of law and equity, and decides without regard to the will of the parties. A commission of arbitration is a continuance of the diplomatic function of negotiation. The commission of arbitration usually has a representative of each party on it, and such representatives are not regarded. You may say they are, but really they are not regarded as judges; they are regarded as advocates of the parties who go into the conference room with the other members of the Board of Arbitration and there continue the arguments. The result in an arbitration is generally what a negotiation is for; namely, a compromise, and the Board of Arbitration seeks to please, as near as it can, both parties. Well, that does not lead to exact justice, so that a nation that has a real claim against another may feel loath to go into such an arbitration when the law and equity justify.

Another feature that I wish to emphasize is that while

the establishment of the permanent court would doubtless create an obligation on the part of those who entered into litigation to abide that judgment, the third clause for enforcing the agreement only goes to the extent of enforcing the agreement by using economic and military means to compel the submission, and the delay of any action until there has been a decision by the court or by the commission. In other words, A and B are brought into court; A is the complainant, B the defendant; the court decides against B and renders a judgment. Now, being parties to the League, B is bound by that judgment to A, but when D and E and F are called upon to comply with their limited obligation under the League, they may say B submitted the case, he waited until the judgment, he did not institute hostilities until after judgment was rendered, and we, under this agreement, are under no obligation to enforce the judgment by using our military forces to bring it about.

Now that has been the subject of criticism. It has been suggested that we ought to have the military forces of all those connected with the League, not only to prevent a hasty beginning of war before submission, but that we ought to have all bound to use their economic and military forces to enforce the judgment rendered. Well, that was made the subject of very considerable thought, but it was finally concluded that we ought not to be over-ambitious. It was thought that if we could stop hostilities until there had been a full hearing of a dispute, the introduction of evidence and the argument and delay incident to all that, that we might reasonably count on some settlement between the parties after they had had the time to think which was necessarily given by the discussion, the hearing and the delay. Some time we hope that it may come to the use of the Sheriff to enforce the judgment as well as

to keep peace until the judgment is rendered, but up to this time we have not been ambitious to that extent.

Now, so much for the judgment. What about the compromise? Ought we to enforce the compromise? Can we do more with respect to the compromise than merely to have the hearing, recommendation and delay? The Allies might enforce a judgment because that follows according to the rules of law and equity, but could we enforce a compromise? Would not that be going too far and compelling parties to abide the exercise of discretion in matters that are difficult to decide because there are no rules for decision? That is the question that troubled us. It is easy to hold them off until the compromise has been recommended; that makes a definite day, but when it comes to enforcing the compromise recommended in a matter that cannot be decided on legal principles, it seems to us that it is a little too ambitious to undertake it.

Now it is said that this leaves something too open and that war may creep in. I agree; it does, and anybody that says that he has got a machine that will work every time to keep away war, says something that I cannot credit. I believe he is sincere if he says it, but I think his conclusion impeaches his judgment some. I feel that we cannot make progress if we are going to attempt the impossible, because I think the whole plan will break down and the breaking down will be worse than if we attempted less and succeeded in it. Now the opportuneness of these proposals is growing more and more apparent to those who are charged with the duty of carrying on the work of the League to Enforce Peace. I do not know how near the end of the war we are, but we are certainly very much nearer the end than we were in 1914. That is a proposition that we can establish; and there are

II

indications that people are getting tired on the other side and there are suggestions that point to a possible collapse, certainly to a trend toward peace. Under these conditions the opportuneness of the proposal seems to press itself on the men most concerned with the struggle.

A gentleman came to see me the other day who had had conferences with Sir Edward Grey, with Monsieur Briand and with Mr. von Jagow, in which he discussed the proposals of the League to Enforce Peace. He reported to me that Messrs. Grey and Briand did not see how a satisfactory peace could be established unless it was on condition of some such international agreement as this of the League to Enforce Peace. Mr. von Jagow thought the plan was a good one but he doubted whether it could be adopted. Of course this is a working hypothesis. In detail it may be changed, but the general proposal that by the united force of all the powers of Europe the hot-heads in two nations shall be restrained from involving the whole of the world in another such disaster, is too good to give up. That idea ought to be cultivated, and European nations look to the United States to lead in the matter of its suggestion and of its being brought to the attention of a world conference and urged. I think the views of these European statesmen very significant, and it grows more significant the more you think about it. They are discussing the question of what the end of the war shall be; they are discussing how the object of all to prevent future war shall be attained. Is not this an opportunity and a great one? If that be true, then isn't it our duty to stir up our people on the subject, to iterate and reiterate the wisdom of the proposals?

I was not so much impressed when I was earlier in politics as I am now with the necessity of repetition and

repetition and repetition and again repetition in order to spread an idea among the people—all people. When you read the New York papers for a week and hear the same thing repeated in one form and another, you conclude everybody of the hundred millions knows all about it and agrees with it. Well, it isn't true. The circle of those who know that such an issue is being mooted is small and the task of bringing the question home to the whole American people is a vast work. Professor Dounsburry of Yale was in the habit of saying that one of the remarkable things he had discovered in his career of teaching was the wonderful capacity of the under-graduate mind to resist the acquisition of knowledge. And therefore if we have something that we think is good, if we have something that we think the American people ought to approve, something which they ought to give a mandate to their representatives in a world conference to stand for, then we ought to agitate and agitate and agitate, and that is the reason why we have an organization; that is the reason why some of us seize every occasion to talk about it in season and out of season; that is the reason why you have this infliction to-night.

Now I want to consider, as I said in the opening, some of the objections that have been made. The first objection is that membership in the League is impracticable for us because it would require a great standing army for us to perform our part of the obligation in the third clause. Well, I do not think that is a considered objection. We are now engaged in a campaign for reasonable preparedness, and the limits of what that preparedness should be are gradually being hammered out. Certainly if that which seems to be regarded as a reasonable military army force and naval force is to be maintained, then it will furnish all that we need to contribute to any joint force to

carry out our part of the obligation. It must be borne in mind that we shall only be one of a number of contributors if the plan can be carried out. Now there are many who say that they are not in favor of this plan but they are in favor of an international police force. Well, what is the difference? We do not claim any patent on this plan and we are quite willing to call it an international police force, but it must be constituted in a practical way, and when the joint forces are united and are doing the police duty of the world, it is true to say that they are not carrying on war, but enforcing justice.

In the second place, there is a constitutional objection. That does not strike me as very formidable. Perhaps it is because I know something about the Constitution. At least I am trying to teach it and if there is anything that makes you know something about a subject it is to try to teach it. It is said in the first place that the provision for a permanent court is unconstitutional in that it delegates the power to a tribunal to decide questions concerning the foreign relations of this country which must be decided by the President or by the President and the Senate or by the President and Congress. Well, if that be true, then we cannot have any arbitration of any sort and agree to abide by it. That same delegation is involved in every arbitration that we have had. We have agreed when we went into an arbitration that what tribunal decides is to bind us. To that extent we yield our discretion and liberty to control our own action by the judgment of another. Now, in Jay's Treaty we had a provision for an arbitration in 1794, and Professor Scott, who is always accurate, says that we have had forty such arbitrations since. If arbitration involves delegation of delegated constitutional power, then we have violated the Constitution so many times that it

must be a very sorry thing. Some distinction is sought to be made between agreeing to arbitrate an issue in the future when it shall arise and arbitrating an issue that has already arisen. What distinction is there? What can there be? In either case we agree to arbitrate a difference, the difference to occur in the future or the difference which has already occurred. The truth is, it is not a delegation of power to agree to create a court, and abide its judgment. The nation as a sovereign agrees to consent to the creation of a court and its judgment, just as a person may consent to an arbitration. The sovereign has as much power in that regard as a person.

Now the second constitutional objection on the basis of the Constitution is that in the third clause, where it is agreed that the nations of the League not engaged in the controversy shall unite their forces, economic and military, to enforce submission, we bind ourselves to make war, and that as Congress alone has the power to declare war, we take away from Congress this power and agree to change the structure of our government. Well, the slightest analysis will show the utter lack of foundation for any such objection. The treaty-making power of the government is in the President and Senate, two-thirds of the Senate. When a treaty is made, it binds the whole government, it binds the House of Representatives, it binds the Senate, it binds the President, it binds the people of the nation, in whose behalf and name it is made. When the obligations of that treaty are to be performed, then that part of the machinery of government that discharges such a function as is involved in the performance, is, under the Constitution, to act: This part of the machinery is bound in the sense that its honor ought to compel it to do the thing that the treaty-making power agreed for the government

236 should be done, but the government does not and can not do the thing until that part of the machinery acts. Congress is to declare war; therefore, when the treaty-making power has made a treaty involving the United States in the obligation to declare war, it is for Congress to declare war and exercise the constitutional function that it has to declare war. It may, if it chooses; it has the power, it has the constitutional power, to break the obligation of the government and not do that which the government is in honor bound to do. It is like fore-ordination and free will; it has the power, and may exercise it constitutionally, to say we will make no war, although that part of the government that had the power to agree that we should, did so agree.

Now how does that interfere with the normal operation of the machinery as provided by the Constitution? Well, if it does, we have been violating the Constitution right along. When we entered into that arrangement with Panama in respect to the zone and acquired dominion over that zone for the purpose of building the canal, what did we agree? We guaranteed the integrity of Panama. What does that mean? It means that we bound ourselves by that treaty that if any nation attempted to take away any territory from Panama or to subvert her government, we would fight. Now who would arrange the fighting? Wouldn't it be Congress? Doesn't that bind Congress to make war? She has the right to violate the obligation if she chooses. Does that make the treaty unconstitutional? We have guaranteed the integrity of Cuba, which means that no foreign nation can come in there and take any of her territory or subvert her government. Is that constitutional? It binds Congress to make war just as this does, and it does not do any more, and Congress may violate the plighted faith of the

nation if it chooses, but it does not change the constitutional obligation and power on the part of Congress to make war. That is all "constitutional"; it fills your mouth so full that you think that the objection must be formidable.

Then, of course, there is that objection to force. I am not going to argue, I am not going into that question of pacifism. I think I could argue with them in quietness and peace. I am certainly not disposed to call those who are pacifists names, because I want to convince them of their errors and my observation is that it never helps you to convince a man when your major premise is that in his then state of mind he is a fool. Ordinarily with that major premise, he is inclined to stick to his denial of the correctness of the conclusion. The Society of Friends has always advocated non-resistance. They have not always been consistent in it, as the Connecticut people who took Connecticut grants over into Pennsylvania and tried to live on the lands under those grants found out; they found that non-resistance did not work there. Nevertheless the Society of Friends has usually been consistent and I always differ with them with the utmost reluctance, because you can look back three hundred years and find many things advocated then which seemed far away from anything that was reasonable in the views of the ordinary common-sense individual in those days and see now how they have come to be regarded as axiomatic. I feel like opposing that particular denomination, therefore, with very considerable reluctance and great respect for their views; but nevertheless I do not think that we have reached the time when force, as an aid to moral impulse, can be dispensed with.

The modern anarchist, if I understand it—I do not mean the gentleman who begins his argument with you by blow-

238

ing you up—but I mean him who theoretically sustains the doctrine that if we could get rid of government entirely and all restraint and bring up children with the understanding that each was to act on his own responsibility, his or her own responsibility, and was to have no restraint of any kind, that, when they became adults, they would know just exactly what they ought to do first and then they would do it—I sometimes think we have begun this practice with our children—still I do not think that human nature is so constituted that the theory will work; we still need a police force at home to enforce laws, and it seems to me that a police force, if we can arrange it with respect to nations, may be made most useful and that its existence and the threat of using it may make the use of force by one nation in controversies between nations much less frequent.

Then there is the objection to the entangling alliances against the injunction of Washington, which we have heretofore observed; still I agree this is a serious objection, one to be carefully considered. Of course when Washington talked, he had in mind that very annoying treaty he had made with France during the Revolutionary War, which of course helped us in our Revolution, but subsequently involved us in some very uncomfortable obligations to France in her war with Great Britain. He had in mind an alliance with one nation against another, perhaps. This of course is different from that, in that it is hoped that it will embrace all the nations of the world, at least all the world. Nevertheless, I agree that it is a departure from the principle as he stated it, and we can only justify it on the ground that our situation is very different from what it was when Washington spoke. He was then five times as far from Europe as we are to-day, if you can judge by the

speed of transportation, and twenty-five times in matter of communication. He was twenty-five times as far from Asia, if you can consider that Asia was any considerable quantity at all in our foreign relations at that time, as it is now. Now we are a hundred million people and reach from ocean to ocean; we have Alaska, a dominion in itself, purchased by Seward in 1867, a place where a base of operations could easily be made for an attack on the Pacific Coast. We have the Hawaiian Islands and we have the Philippines; that is, we have them up to date.

I am not going to dwell on the Philippines; I cannot in this presence. I think it is in Our Mutual Friend—my memory is sometimes defective—but my recollection is that there was a gentleman named Silas Wegg, who was reading the "Decline and Fall of the Roman Empire" to the golden dust man and his wife, Mr. and Mrs. Boffin, and he occasionally made a mistake in his reading and called it "The Decline and Fall of the Russian Empire," and Mr. Boffin, with the intention of clearing up his ignorance, inquired what the distinction was between the Roman Empire and the Russian Empire, and Mr. Wegg was a bit stumped until some kind Providence helped him, and his eye hit on Mrs. Boffin and he said, "Mr. Boffin, I cannot explain that distinction in the presence of Mrs. Boffin." I cannot tell you what I think about the present Philippine policy in the presence of the ladies. . . . We are there now; it makes us an Asiatic power; they are under the eaves of Asia, and if we stay as long as we ought to stay to carry out the pledge we in effect made when we went in there, we shall continue to be an Asiatic power until a good many of us here are gone.

Then we have the friction with Japan and China. We wish to keep the open door and it is closing a bit. Then we

240

have got the Panama Canal, an investment of four hundred millions, to unite the eastern and the western seaboard, to double the force of our navy, it may be; that makes us almost a South American power. Then we own Porto Rico, fifteen hundred miles out at sea from Florida. Then we do not own, but we have a relation to Cuba that is even more likely to involve us in trouble than if we did own it. We have guaranteed her integrity and we have reserved to ourselves the right to go in and suppress insurrection and we have had to do it once. Then we have Mexico; that is an international nuisance that is likely to entail, I am sorry to say, greater burdens on us than we would like. And then we have our relations to Europe. When they went into the war, we settled back, shocked, of course, but with a kind of feeling that at any rate we were so separated from the war that we could not be involved, but I think we have gotten over that feeling now in view of our recent experiences in ultimatums which show our proximity to war and the warlike things in Europe.

Now the question which I want to put to you is whether, in view of the strained relations that we have had with Germany, for instance, in view of the questions that have arisen between us and England, in pursuing the indifferent course of a neutral, as I believe we have done, and yet coming so close to war as we have, we can say that we are any more likely to be kept out of war by remaining a neutral and avoiding such an alliance as this we here propose than if we went in and availed ourselves and made ourselves part of the great power of allies in such an agreement to stop war and to prevent its involving such a disaster to human progress.