The Plan to Outlaw War

An Address
Delivered before the First Unitarian Society of Minneapolis, by the Minister, John H. Dietrich, on Sunday Morning, April 29, 1923.

Price Five Cents.

Published by
The Unitarian Laymen's League,
808 La Salle Ave.,
Minneapolis, Minn.
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The following address is published in response to a widespread demand for same, and because of the intense interest at the present time in the subject of international peace and the abolition of war as a legal method of settling differences between the nations of the world.

Additional copies of this pamphlet may be procured from the Publication Committee, 803 LaSalle Avenue, Minneapolis, Minn. Price five cents.
The Plan to Outlaw War

Just before the close of the last session of Congress Senator Borah introduced one of the most important resolutions that has ever been placed before the United States Senate. It is known as "Senate Resolution No. 441," a resolution to outlaw war.* Just at this time there was too much excitement about other matters to appreciate the extraordinary interest of his proposal. The resolution therefore was ordered to lie on the table without debate and its introduction was scarcely noticed by the press of the country. Such newspapers as did refer to it, with the exception of the New York World, treated it rather lightly; for it seemed almost simple-minded to suppose that anything could be accomplished by declaring that war is illegal. It seemed to most people, as was suggested by one newspaper, like passing a resolution against thunder storms in August. But Senator Borah is not in the habit of making ridiculous suggestions and Mr. John Dewey, who has come out in support of the plan in two recent articles in the New Republic, is perhaps the least likely of all living philosophers to be taken in by a patent nostrum. I am sure this resolution will be taken from the table during the next session of Congress. Senator Borah tells us that he proposes to fight the thing through, and I should not be surprised to find this program the one great issue of the coming year, and probably of the 1924 presidential campaign. The all-important thing is that the people be informed as to what this plan means, and how it can be put into effective operation; and that is why I speak this morning on "The Plan to Outlaw War."

In introducing his resolution, Senator Borah said: (what I have said to you a number of times in regard to the importance of getting rid of war before war gets rid of us) "The whole human family, scarred and tortured, prays for peace; and yet there is no peace. When shall we cease to live in this atmosphere of war? When shall we escape from the spell of war? When shall we loosen the grip of

*This resolution is printed in full at the end of this pamphlet.
the monster? This is the most stupendous problem in the world today. Beside this question all other questions are subsidiary and incidental. Without a solution, and a favorable solution of this riddle, human progress becomes a misfortune, the inventions of the human mind a curse, and civilization, so-called, an alluring trap into which men and women are ensnared to a death of unspeakable torture.

This resolution of Senator Borah is not a new and unheard of thing. Even I, myself, as early as 1910, in a sermon on international peace (when I was told there would never be another great war), suggested that war was a crime and should be treated by a world court, just as murder and every other crime is treated by the courts which we have set up to establish justice between individuals. The same suggestion was made by many people during the last decade; but the first attempt to formulate a definite plan for the outlawing of war came from the mind of Salmon O. Levinson, a well-known Jewish lawyer in Chicago, in conjunction with Philander C. Knox, the late United States Senator from Pennsylvania. Mr. Levinson's ideas were first made public in the columns of the New Republic of March 9, 1918, five years ago, under the title, "The Legal Status of War." Mr. Levinson says in that article that he writes from the standpoint of a lawyer, although not an international lawyer. And so he carried it to Senator Knox, who was Secretary of State under President Taft, trained in the traditions of diplomacy and probably the greatest authority on international law in this country. He gained Mr. Knox's support and in collaboration they formulated a definite plan known as "The Knox-Levinson Plan to Outlaw War." This plan was published in "Unity," a liberal weekly published in Chicago on December 29, 1921, with forewords by John Dewey and Raymond Robins. In his foreword John Dewey says: "The plan suggested by Mr. Levinson is simple and understandable. Like all really simple and intelligible propositions it goes to the root of the situation. Above all, it does more than any other plan yet proposed to provide natural and orderly agencies for enlightening the peoples regarding disputes among nations and for concentrating all the moral forces of the world against modern warfare. If such a plan as this will not work, then no political machinery will work and the world is doomed to war and doomed by war."

I speak of this plan because it is the original one and because Senator Borah's resolution is an embodiment of this plan. Let me now show you as simply and as clearly as I can what this plan is. The plan as formulated by Mr. Levinson and Senator Knox is somewhat elaborate, and
difficult for the layman to understand for the simple rea-
son that it was written by lawyers; but the embodiment of this plan in the resolution of Senator Borah is very sim-
ple, and when analyzed naturally separates itself into four
distinct steps. First, it begins with the proposal that all
of the nations of the earth shall be called together in con-
ference for the purpose of creating and codifying a code
of international law; secondly, it provides that the further
use of war as an institution for the settlement of disputes
between nations shall be formally abolished; thirdly, that
an international court shall be established for the interpa-
tation of this code of law and the settlement by legal
process of all international disputes; lastly, the court shall
be sustained and its decisions enforced not by force of
arms, but by the normal and powerful sanction of public
opinion. Let us now look at these separate steps and see
just what they imply, how practical they are, and what
prospect they have of being effective.

As I have said, the resolution implies that all of the
nations of the earth shall be called together into confer-
ence, not for the purpose of limiting armaments, not for
the purpose of regulating the game of war, but for the pur-
pose of creating and codifying a code of international law.
Here I would emphasize what the Knox-Lievinson plan calls
for but what the resolution does not clearly state, a con-
ference of all the nations of the earth. This does not mean
the allied nations who won the recent war and who alone
have composed the conferences thus far held. It does not
even mean what we so boastfully call the civilized nations.
When we talk thus we only deceive ourselves. There is
no nation which has any political organization which we
can afford to leave out of a world conference where we
are creating law for the guidance of the nations' activities.
The Washington conference, for instance, was a very small
and partial affair and that is one reason why it accomplish-
ed so little. We want representatives of the peoples of
all the world to come together and create this code of law
which shall regulate international relationships. This is
something entirely new in the history of mankind. At the
present time we have no international law save a few
agreements and precedents which may be violated with
impunity at any time. None of the conferences held in
the past provided for any creation and codification of inter-
national law; but left things just where they were before,
in a state of chaos. They attempted to control interna-
tional relationships without any basic law upon which to
act, and, of course, they failed. This plan proposes that
the world shall be given a body of statute law, a sort of
constitution, by which standards of relationship may be
established, by which national conduct may be guided, and
by which international order may be maintained. Now everything in the form of a code of laws is left to the discretion and wisdom of this conference except one thing, which constitutes the second point in the plan.

The resolution provides that this conference shall declare that war between nations be outlawed as an institution or means for the settlement of international controversies. In other words, war shall no longer be legally recognized, as it is at present, as the proper means for settling international disputes. On the contrary it is to be declared to be a crime punishable by the law of nations. This, of course, is the radical step in the program. War has always been and is today a recognized and established institution among us, just as marriage or religion or the state are established institutions. It has its laws and customs, its prohibitions and sanctions. It is, in fact, our way of doing things in one particular realm of our social life. Now I can understand how war came thus to be recognized and sanctioned in the days when it was considered glorious to fight and every gentleman was expected to be a soldier; but I cannot understand why we should continue thus to recognize and sanction it today when we know that it is hideous and evil, that it serves no good purpose whatever, and that in our saner moments we unhesitatingly denounced it as immoral. And yet we have never attempted to do anything to make it wrong for one nation to go to war with another nation. We have plenty of laws of war, but we have never made laws against war.

This was impressively illustrated at the outbreak of the last war. When Germany declared hostilities she did two things: She threw her arms against Russia in the East and against Belgium in the West. No one ever thought of blaming Germany for invading Russia. In doing this she was acting entirely within her rights, she was playing the game of war according to the rules laid down. She had made the formal declaration of war against Russia and this made it a perfectly legal and right action. The great wave of moral indignation which rolled up so suddenly against Germany was directed exclusively against her invasion of Belgium. This, we said, was wrong and illegal, not because it was an invasion by force of arms, but because it was an invasion in violation of a treaty and without a formal declaration of war. In other words, Germany's fault was not what she did, but the way she did it. If she had had no treaty with Belgium and had declared war according to the recognized rule, no protest could have been made. She had a right to play the game, but she had no right to break the rules of the game; for war has its rules like any other institution of the times. Now do you see what this means? It means that we not only have done
nothing to make war wrong, but that we have done very much to make war right; for the moment you try to regulate a thing you recognize its legal status; and we have always recognized the right of war so unquestionably that we have actually adopted a code of laws for its regulation. Every peace conference of modern times, including the one at Washington, has been a conference for the laying down of rules and regulations for the proper control of war between nations. They have stipulated that certain things should not be done and that certain weapons should not be used; but this, of course, means that certain other things may be done, and that certain other weapons may be used. In other words, war is right; for in the very process of declaring what is legal in war we declare that war itself is legal. We make war a recognized institution of society by legislating as to the conditions under which it shall be carried on. We sanction it as we sanction marriage; we bless it as we bless marriage; we protect it as we protect the marriage institution.

The only wars which we denounce as illegal and wrong, strange to say, are the only wars which really have a beneficent influence. I refer, of course, to those wars inside the nations, those wars of resistance against oppression which are known as revolutions. These wars are recognized as right if successful, but as wrong if unsuccessful. The man who takes up arms against his government in behalf of liberty and justice is an outlaw and a traitor, and if seized he is put to death for his crime. The British traitor George Washington became an American national hero because his rebellion was successful, but previous to his success, of course, he was a traitor and if he had been defeated he would have been put to death as such. But the ruler of a nation can take up arms against another nation and the whole world recognizes that he is entirely within his rights. All other nations immediately declare themselves, neutral, that is, they recognize the war as legal, and therefore not to be interfered with. Now the purpose of this resolution is no longer to regulate war, but to abolish it, and as in the case of burglary or murder, dueling or piracy, to pronounce it a crime. Piracy is an excellent example. In the days of Queen Elizabeth piracy was recognized as legal and offered a field of glory for gallant gentlemen like Sir Francis Drake, just as today war is recognized as legal and offers a field of glory for patriotic young men. But today piracy is a crime and the pirate is a criminal. In these times Sir Francis Drake would be hanged from the nearest gallows. That is precisely what this resolution proposes to do with war. Under it war shall be made a crime and the soldier shall be a criminal, for under it every nation shall bind itself to
“indict and punish its own war breeders or instigators.” How, then, are we going to settle international disputes? This brings me to the third point in the program.

A judicial substitute shall be created in the form of an “international court modeled on our federal supreme court in its jurisdiction over controversies between our sovereign states, such court to possess affirmative jurisdiction to hear and decide all purely international controversies as defined by the code of laws.” Here again is something entirely new. The Hague Conference established a court, but not a real court for the settlement of international disputes. It never went beyond the idea of voluntary arbitration, which is a very different thing from the judicial process. It left the nations free to come before the court or not as they saw fit. It was merely for the convenience of those who preferred arbitration to war and there was nothing binding in the decision of the court, if either nation was not satisfied with that decision. This Hague court recognized the distinction between what is known as justiciable and non-justiciable disputes and ruled out from consideration all questions which had any likelihood of causing war. The same thing is true of the world court established under the auspices of the League of Nations about which we hear so much today, and which President Harding proposes that we enter. Mr. Herbert Hoover in his address before the National Convention of the League of Women Voters, in Des Moines, Iowa, recently, in pleading for entrance into this court, said: “We do not need to submit any case to the court unless we feel like doing so: * * * No other nation can summon us into court. * * * The court itself cannot summon us in * * * nor * * * exert upon us any kind of compulsion, not even moral.”

This resolution, however, would establish a court with original power of jurisdiction. It provides that any nation may summon another nation before the bar, and the case be heard and settled whether the second nation appears or not. It declares that all questions of an international nature, even those delicate questions of national honor, are the business of the court. For the first time in history, so far as I know, we have a definite proposal that the decision of arms shall yield to the decision by established law. But how shall the findings of this court be enforced? This is provided for in the resolution in what I have called the fourth point in my analysis of the program.

To quote again from the resolution: “This court shall have the same power for the enforcement of its decrees as our federal supreme court, namely the respect of all enlightened nations for judgments resting upon open and
fair investigations and impartial decisions and the compelling power of enlightened public opinion.” This is where a great many people will balk at the plan and yet this is the thing to my mind which guarantees its success. Most people believe that these court decisions will have to be buttressed by force of some kind, but I have come to the conclusion that if force is recognized at all the whole plan will fail. You say that it is easy enough to set up a court, but how are we going to enforce its decisions. Here is the critical issue of the whole plan. Suppose Germany brings France into the court and gets a decision against France on the Ruhr issue, do you imagine that France would obey the decree of the court unless forced to do so. Well, the only basis I have for my judgment is the working of the court after which this one is to be modeled. I am told that this question was debated when our constitution was adopted and it was proposed to give the supreme court power to enforce its decisions in disputes between states. James Madison argued that to do so would create anarchy and revolution and thus disrupt the nation at the start. As a result of this plan we have the interesting fact, unknown to most people, that the supreme court of the United States possesses no power of any kind to enforce its decisions against the states. It has no police, it cannot call upon the army. And yet during all the years of its existence, so far as my knowledge goes, it has never had a decision disregarded or denied. Now that is difficult to realize, but the explanation is this: The very fact that force is entirely abandoned mobilizes behind the court the moral sentiment of men. It makes obedience not a matter of submission, but of honor. Men respond to the call of honor. And I believe what has worked for a century and a half in this great, vast country of ours, a continent in itself, with as great an area and with more states than the continent of Europe, will work in the world at large. I recognize that the situation would be more difficult, but I do not believe that it would be impossible for the simple reason that I refuse to surrender a faith which I have always held, and which I hope to continue to hold, my faith in the moral power of man. I have more faith in moral force than I have in physical force.

II.

Now, I think I know exactly what your reaction is to what I have said thus far. You are saying to yourselves that this scheme, like every other scheme, is futile so long as the causes that make for war remain. My first reaction was precisely the same. I have told you many times that we have failed thus far in dealing with war because we have been dealing with symptoms and not with causes. In my last address on this subject of war I analyzed the
The fundamental causes of war for you and suggested that so long as these remain we must expect intermittent warfare. I must refer to these causes again. They may be divided into two groups.

First we have the psychological causes of war, comprising those factors which lie in the inner experience of men,—in the form of instincts, emotions, and ideas,—which constitute the atmosphere in which men live. These psychological factors may be classified as fear, thirst for power, love of adventure, desire for glory, patriotism, and that whole range of passions that are combative, revengeful and aggressive. Such psychological factors are exceedingly important and until they have been overcome through education and training by a new set of ideas and there has been substituted for them a new group of emotions, it would seem that there is little chance of solving this perplexing problem of war. Secondly, there are what is still more important, because they stimulate these psychological causes, the sociological causes, the factors which operate in the outer experience of men, comprising the political, economic, and social conditions in which they live. These sociological factors may be classified as language, race, religion, social customs, dynasties, nations, and above all the economic system in which men work and by which they maintain their existence. In this particular period, as I have outlined for you before, the outward or sociological causes consist principally of our political system of nationalism and our economic system of imperialism. The tribal wars of centuries ago, when tribes were migrating in search of new lands, are gone forever. The religious wars of the sixteenth and seventeenth centuries, when men took their religion more seriously than they do now, are also gone. The wars of dynasty of the eighteenth century are practically gone, too, because the dynasties themselves no longer exist. The real cause of the recent war and the cause of the next war if we do not succeed in stopping it is the economic system in which we are living, which seeks to extend itself to the undeveloped portions of the globe; to seize there the natural resources such as oil, coal and rubber; and there maintain under the protection of its national flag exclusive concessions. It is this economic imperialism of Germany coming into conflict with the imperialism of Great Britain in Asia Minor and the Near East, or the imperialism of Japan meeting the imperialism of America in the Pacific and the Far East, which causes our modern wars; and to attempt to abolish war without getting rid of these fundamental causes of war at first glance seems exactly like trying to abolish typhoid fever while continuing to drink water polluted with typhoid germs. To deal with the symptoms of
war and not with these fundamental causes of war would seem utterly foolish.

That is the answer most of us would give to this plan to outlaw war. Now I believe that answer is absolutely sound, but I think also it is absolutely discouraging; for I confess that I cannot see the slightest chance of getting rid of these fundamental causes of war before war with its modern destructiveness gets rid of us. Look at the psychological causes of war, as I suggested them,—the ideas and notions which lure men into battle. Under proper conditions it is entirely possible by a systematic course of education to purge the minds of men from this corruption altogether. The whole content and attitude of the human mind I believe could be changed within the period of a generation by the exclusive control of our educational forces. Give me full charge of the education of the youth of this nation for the next twenty-five years and I will rear a race of men who would no more fight on the field of battle than they would offer human sacrifices on the altars of the gods. But with our schools and colleges, our newspapers and churches, and the public institutions generally, which mould opinion, controlled and used as they are today by those who benefit by war there is about as much chance of changing the human mind in this direction within the next generation as there is of changing apes into men by means of prayer.

And the same thing is true of the sociological causes of war. The reconstruction of our political and economic systems presents no theoretical difficulties. The program of a new order of society which at least would do away with our intense nationalism and our greedy imperialism has been definitely formulated, and could be written out in terms as precise as the United States constitution. But so long as the men who control our governmental affairs benefit by this nationalism and imperialism, what chance is there of persuading the nations of the earth, or rather the governments which control the foreign affairs of those nations, to adopt any program necessary to such a social reconstruction. At the close of the war you will remember from my discourses that I was very optimistic about this business of political and economic reconstruction. I was talking continuously about this new social order that was about to be established. But after four years of practical disillusionment I am forced to the conviction that things in all probability will go on in the future very much as they have gone on in the past. The people who are constantly fearing revolution and the reds may sit comfortably in their seats, for I see little prospect of any fundamental social changes in the lifetime of any of us who are gathered here. And yet these causes which are beyond our reach
are breeding another war just as surely as they bred the last one, and the next is likely to annihilate us—all of which means that if we can do nothing more immediate than eradicate the causes of war there is little use of our effort. We must build a dam to stay the flood of destruction while we are working to uproot the cause.

And that is why I look with favor upon this plan. For the situation is simply this: When we speak of the causes of war we do not really mean the causes of war, we mean the causes of disputes among men that are settled by war. The inward passions and outward rivalries of men lead to disputes, and war comes only when these disputes need to be settled. Lacking any other method of settlement the resort is made to physical force. Now the causes of disputes will be with us for an indefinite period, which means that the salvation of men depends upon some way of getting disputes settled without war. And this is the best proposal I have seen. Our situation is in fact that of the inhabitants of a flood-stricken area of country. The waters from the mountains continually accumulate. At regular intervals the water must run off, and down sweeps the flood with all its tide of destruction and death. The people say nothing can be done until the rain stops falling or the water stops accumulating, but some practical man who sees a little more clearly says: "You are wrong. I do not believe that the rains can be stopped from falling or that the water can be stopped from accumulating, but I do know that the floods can be avoided. What you need to do is to build channels to carry off the waters before the breaking point comes." That idea sums up the whole situation for us. There are forces present in the world which may break loose at any moment. We cannot hope to eradicate these forces in time to save civilization from destruction, but we can control their operation. We can guide them from the flooded areas of physical force to the safe channels of reason and goodwill. It is this and not the abolition of causes which constitutes our war problem today. We must devise some such plan as this program to outlaw war in order to hold our world together until the fundamental things can be done.

I believe that this plan will work for the simple reason that it is following the same course that we have followed in the eradication of other evils. Of course, every man knows that no evil is really eradicated until its causes are removed; but men have never waited for this fundamental work to be done before taking action. On the contrary, just as soon as the moral judgment of men has been aroused against an institution they have proceeded to outlaw it from society. They have formulated their moral judgment into a legal code and thereby declared to the
world that what is wrong shall also be illegal. This is precisely what happened in the case of slavery. Society did not wait to deal with the causes of this institution before taking up the fight against it. Once men became convinced that slavery was wrong they wiped it from the southern states with one single stroke of the pen by declaring it to be illegal, and there have been no slaves in America since. But the best illustration for our purpose is to be found in the history of dueling, as Mr. Levinson suggested, which, of course, is simply war between individuals instead of between groups of men. For many years men laid down rules to regulate dueling, just as they have laid down rules to regulate warfare, because it was a recognized institution, the recognized method of settling differences of honor between men. But when dueling came to be recognized as a nuisance which must be done away with for the sake of peace and order in the community, nobody took up the problem from the standpoint of the causes of dueling. How long do you suppose it would have taken us to remove this institution of private warfare if we had said there was nothing to do about it but try to remove the causes? These causes, like the causes of war, were deep-rooted in the weakness and foolishness of human nature and if we had waited to abolish these causes before doing anything about dueling this insane and destructive practice of settling differences between individuals would be with us still. However, men ignored the causes for the time-being and made up their minds that even while these causes were still operating they would do away with dueling by digging a new channel, so to speak, into which the combative instincts would flow and thus escape. Dueling, as you know, was practically done away with in a day, first by writing it into the law as a crime, and secondly, by providing a new and more sensible method of settling those disputes which took men to the dueling grounds. We still have fights today, but dueling as an institution has disappeared in favor of the institution of law and court procedure.

Now that is precisely what Senator Borah's resolution proposes to do with war. War like dueling is another institution which has outlived its usefulness for the simple reason that nothing has been provided to take its place. War has always been the recognized method of settling disputes between nations and therefore nations prepare for war. A few years ago certain disputes arose between nations in Europe and the only way to settle them was by war, because the world was organized for war and not for peace. These differences had to be settled with the instruments of war although they might much more easily have been settled by the instruments of peace, if the world had been organized for peace instead of for war. In other
words, it is not enough arbitrarily to abolish an institution. The very fact that this institution exists at all proves that it is performing, however atrociously, some function. This being the case we must not only outlaw what we would get rid of, but create some sort of alternative. We must create some sort of social mechanism which will perform the particular function involved so much better than the old mechanism that competition is impossible. It is this providing of an adequate substitute which in the last analysis determines the success or failure of an attempt to abolish something by law. And this is the second reason why I believe this plan to outlaw war will succeed, because an adequate substitute is here provided in the form of an international code of law with a real court to enforce it. Again dueling provides an excellent illustration. If men had simply prohibited the duel and let it go at that, it would have been an utter failure. As it was, however, they did not outlaw the duel until after they had established courts of law for the settlement of individual differences. For a considerable time the two institutions, the duel and the court, existed side by side. Men continued for some time to resort to the duel surreptitiously because they claimed that justice was slow and uncertain and that the manhood of the individual required immediate satisfaction on “the field of honor.” But the struggle was unequal and the courts proved their worth. When at last the duel was abolished as a crime, society merely registered a decision which had already been made by common sense as well as conscience. To establish something that is better is the one way to make sure the outlawry of an evil, and I am positive that the international court which this resolution proposes to establish is an infinitely better method of settling international disputes than the institution of wholesale and legalized murder.

Finally, what this resolution proposes is that the United States Government shall invite the nations of the world to declare that war is a crime. Such an invitation would be very hard to refuse because to refuse it would be to declare in favor of war as a permanent and righteous institution, which no nation in this enlightened age would scarcely dare to do. It would be very difficult to refuse because such an outlawry of war would no more preclude self defense in case of an invasion than the outlawry of murder precludes self defense in the case of assault. The issue could not be evaded then as it is now by insisting on the right of self defense. All that would be required would be a declaration on the part of each nation that it regards the making of war by other nations or by itself as a public crime in international law. If such a declaration could ever be got from the nations of the world, the
legal and moral advantages of the military party would be
destroyed forever. Today they are strictly orthodox under
the law of nations, while the peacemakers are the heres-
tics. Senator Borah’s plan would completely reverse this
position. Under it the law would be on the side of the
pacifists, and with it all the moral, patriotic and emotional
support that comes from being on the side that is uphold-
ing the law.

Thus it would mobilize the moral sentiments of the
race against war and in the interests of peace. Men act
at bottom on their emotions and not upon the dictates of
their reason. At present as always in the past men’s
emotions are linked up with the interests of war and not
with the interests of peace. The moment that war be-
comes a possibility the whole tidal flood of the human
spirit moves in the direction of hostilities and a man must
become either a criminal or a martyr to resist it. Under
this plan the tidal flow of the spirit would move in the
opposite direction. Our emotions would be mobilized for
peace and not for war. The association which now exists
between patriotism and militarism would be broken up.
Pacifism would be the patriotic attitude and militarism the
unpatriotic; the pacifist would be the patriot and the mili-
tarist would be the outcast. He who struggled to keep his
nation out of war would be the national hero, while the
man who advocated violence in the form of war would
simply be a criminal. Our courts would then be busy
throwing into federal prisons, not the men who insisted
upon peace, but the men who insisted upon war. Once
we can transform moral sentiment to the point of stamp-
ing men who advocate violence in international affairs
as criminals and outcasts, just as we stamp the men today
who advocate violence within the nation, wars will be
few and far between.

SENATE RESOLUTION 441

February 18, 1923, Mr. Borah submitted the following
resolution:

Whereas war is the greatest existing menace to society,
and has become so expensive and destructive that it not
only causes the stupendous burdens of taxation now af-
flicting our people, but threatens to engulf and destroy
civilization; and

Whereas civilization has been marked in its upward trend
out of barbarism into its present condition by the devel-
opment of law and courts to supplant methods of violence
and force; and

Whereas the genius of civilization has discovered but two
methods of compelling the settlement of human disputes,
namely, law and war, and therefore, in any plan for the
compulsory settlement of international controversies, we
must choose between war on the one hand and the process
of law on the other; and

Whereas war between nations has always been and still is
a lawful institution, so that any nation may, with or without cause, declare war against any other nation and be strictly within its legal rights; and

Whereas revolutionary war or wars of liberation are illegal and criminal, to wit: high treason whereas, under existing international law, war of aggression between nations are perfectly lawful; and

Whereas the overwhelming moral sentiment of civilized people everywhere is against the cruel and destructive institution of war; and

Whereas all alliances, leagues, or plans which rely upon force as the ultimate power for the enforcement of peace carry the seeds either of their own destruction or of military dominancy to the utter subversion of liberty and justice; and

Whereas we must recognize the fact that resolutions or treaties outlawing certain methods of killing will not be effective so long as war itself remains lawful; and that in international relations we must have, not rules and regulations of war but organic laws against war; and

Whereas in our Constitutional Convention of 1787 it was successfully contended by Madison and Hamilton that the use of force when applied to people collectively, that is, to states or nations was unsound in principle and would be tantamount to a declaration of war; and

Whereas we have in our Federal Supreme Court a practical and effective model for a real international court, as it has specific jurisdiction to hear and decide controversies between our sovereign States; and

Whereas our Supreme Court has exercised this jurisdiction, without resort to force, for one hundred and thirty-five years, during which time scores of controversies have been judicially and peaceably settled that might otherwise have led to war between the States, and thus furnishes a practical exemplar for the compulsory and pacific settlement of international controversies, and

Whereas an international arrangement of such judicial character would not shake the independence or impair the sovereignty of any nation: Now, therefore, be it

Resolved, That it is the view of the Senate of the United States that war between nations should be outlawed as an institution or means for the settlement of international controversies by making it a public crime under the law of nations and that every nation should be encouraged by solemn agreement or treaty to bind itself to indict and punish its own international war breeders or instigators and war profiteers under powers similar to those conferred upon our Congress under Article I, section 8, of our Federal Constitution which clothes the Congress with the power “to define and punish offenses against the law of nations”: And be it

Resolved further, That a code of international law of peace based upon equality and justice between nations, amplified and expanded and adapted and brought down to date should be created and adopted:

Second. That a judicial substitute for war should be created (or, if existing in part, adapted and adjusted) in the form or nature of an international court, modeled on our Federal Supreme Court in its jurisdiction over controversies between our sovereign States, such court to possess affirmative jurisdiction to hear and decide all purely international controversies, as defined by the code, or arising under treaties, and to have the same power for the enforcement of its decrees as our Federal Supreme Court, namely, the respect of all enlightened nations for judgments resting upon open and fair investigations and impartial decisions and the compelling power of enlightened public opinion.