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The False Reality of Foreign Neutrality

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Abstract. As the Russian juggernaut ravages through Ukrainian cities and civilians and eastern European democracy proves to be dire in the alarming crisis, American intervention without provoking an all-out nuclear war seems like a must. However, given that the United States is currently at peace with the aggressor, Russia, as per the Neutrality Act and corresponding penal statutes in Title 18, individual citizens cannot engage in acts of aggression. There is one caveat that must be urgently addressed: the geographic boundaries of conscription, organization, and intervention. Under current laws, military intervention can be undertaken by U.S. citizens beyond U.S. borders, leading to potential issues such as the shattering of neutrality and escalation of the war. Through examination of the statutes' texts and applications in foreign affairs and historical cases, this piece concludes that the distinction between conscription domestically and abroad must be prohibited to ensure that neutrality is genuinely preserved in our modern day.

I. Background

The Neutrality Act of 1794 and corresponding US Penal Code, known together as Title 18, outline the sorts of intervention individual actors from the United States can take in a foreign conflict. These two statutes date back to the founding of the nation and were particularly relevant in regards to European militias during the 1790s. Given Putin's bellicose crackdown on Ukraine, however, the relevance of these laws has resurfaced in the context of modern volunteers. While the Neutrality Act of 1794 has been reenacted and amended multiple times to clarify the

associated penalties and breadth of its jurisdiction, it effectively lives on in 18 U.S.C. § 960.

Three statutes in the Penal Code are of particular importance regarding relevant action modern peacekeeping conscripts can take: 18 U.S.C. § 958, 18 U.S.C. § 959, and 18 U.S.C. § 960. The first involves accepting commission on U.S. soil against a foreign polity who is at peace with the U.S.—in this case, Russia. The second involves enlisting in the service of a foreign entity on U.S. soil, which is irrelevant to whether the respective foreign force is at war. The third involves furnishing and organizing money for foreign militaries on U.S. soil in conjunction with participating in an expedition from the United States, which is an adaptation of the statute's first rendition under President Washington's Neutrality Act. While Congress certainly can and should give a firm position on U.S. military intervention in foreign operations, the distinction between foreign and domestic recruitment, organization, and fundraising of the Neutrality Act should be repealed given the fallacy it provides abroad. Determined militants may take steps on foreign territory to effectively make it null and void.

II. Legal Bases

The three statues in the Penal Code have gone through multiple trials and errors throughout events involving foreign militias—from the founding of the statute during the Revolutionary War to the recent applications in Operation Gideon in Venezuela and the Gambian coup d'état attempt. Title 18 is undoubtedly key to the integrity of American foreign policy, and by no means does this argument seek to diminish its past or present importance. After all, armed citizens with a desire to overthrow foreign powers for the sake of alleged domestic peacekeeping would throw the international system into anarchy; as such, penalties must exist to keep ambitious militants in check. That said, the exception regarding American military actors outside U.S. turf could allow belligerents to evade prosecution and retribution as per 18 U.S.C. §§ 958-60. These laws cite people susceptible to prosecution as "any citizen of the United States who, within the jurisdiction thereof," or "whoever, within the United States,"—meaning, technically signing up outside U.S. soil would be legal. Regardless of the neutrality laws, would signing up to participate in a foreign conflict (that the U.S. has stated neutrality on) outside U.S. soil make a difference? Yes. On principle, would signing up violate this neutrality? Yes—it has, and it will regarding the Russo-Ukrainian War.

The Penal Codes have been put under scrutiny regarding certain hostilities and instances of foreign intervention. Notably, *Gayon v. McCarthy* (1920) set forth a

clarification that the furnishing of funds on U.S. turf would be sufficient to prove a violation of the Neutrality Laws. Additionally, under United States v. Murphy (1898), "military enterprises" composed and premeditated on U.S. land are grounds for violations once more. While these laws address the issues of their respective times, our increasingly-digitized world makes cyber-conscription and other means of advocacy for belligerent forces significantly easier for civilians—with boundless websites and outlets for recruitment abroad. For example, the laws present issues with digital conscription with acceptance under Sec. 958 and enlistment in Sec. 959. Additionally, though Sec. 959 has addressed the arrangement of payment, one must consider pro-bono work or payment received through non-governmental organizations representative of civilians.

Due to the specific language set forth in these laws, breaking neutrality in a way that conflicts with U.S. foreign policy is a criminal act. Essentially, one can avoid this criminalization by launching a private war, sparking a coup, or fostering a bellicose political movement if such conscription and organization occurs outside the United States. In essence, however, they are non-neutral representatives of the United States. If a warmongering veteran joins a brigade in Ukraine on Ukrainian turf, brandishing an American patch and rifle, Russian corps will not know of American neutrality laws or assume that America is merely neutral in this crisis. While one can certainly believe that Putin's heinous, excessive, and certainly unwarranted campaign should be denounced and chastised, one simultaneously needs to consider the Pandora's box the Neutrality Act leaves open for alleged freedom fighters.

III. Conclusions

Given the review of the vague terms set forth in various aspects of American penal law, and precedents set in case laws related to such statutes, this paper calls for the repeal of the Neutrality Act's domestic and foreign conscription nuance. Thus, the Justice Department must eliminate the distinction, thereby banning foreign intervention, or be firm in support of civilian aid. Obviously, the former could potentially escalate, drawing all of NATO into the conflict, meaning the evident choice would be the latter.

The involvement of U.S. troops would dangerously escalate the crisis, and the burden set forth in the Neutrality Act does not help with independent U.S. conscripts dodging the restrictions and engaging militarily with Putin's forces. As proven in past military operations, whether it be the conflicts in Afghanistan, Iraq, Syria, or even Ukraine itself in 2014, these volunteers often prove to be untrained

extremists zealous for bloodshed and martyrdom. While de-escalation of the crisis and retribution of the autocratic Russia are a necessity, the Neutrality Act should not be the venue for passionate Americans to do so and should urgently be repaired to avoid military escalation. This statute constitutes a false reality of foreign neutrality, ready to implode with unforeseen military consequences.