

Law of Neutrality: Just When Is a State a Belligerent in a War?

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The laws of war are to some extent a farce. When states come to the point of war the niceties of codified law will likely influence them very little. Nevertheless, there are such laws and lawyers specializing in such niceties, and this very little might turn out to be a whole lot.

One of these laws is the law of neutrality. Just when is a state a belligerent in a war? What can neutral states do and yet remain neutral? This question has not been decided all at once but, through history, a number of attempts have been made culminating in the Hague convention of 1907. On October 18, 1907 a number of states whose representatives met in the Hague, signed the “[Hague Convention \(V\) respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land](#).”

[Article 2](#) states: Belligerents are forbidden to move troops or convoys of either munitions of war or supplies across the territory of a neutral Power.

[Article 4](#) states: Corps of combatants cannot be formed nor recruiting agencies opened on the territory of a neutral Power to assist the belligerents.

[Article 5](#) states: A neutral Power must not allow any of the acts referred to in Articles 2 to 4 to occur on its territory.

It is not called upon to punish acts in violation of its neutrality unless the said acts have been committed on its own territory. The United States, United Kingdom, Germany, France and many other states in Europe and elsewhere [signed](#) this Convention.

Since then the United States has claimed that the situation has changed, and neutral states

can engage in the above activities without losing their neutral status. It has declared the doctrine of “qualified neutrality.”

15.2.2 [Qualified Neutrality](#). The United States has taken the position that certain duties of neutral States may be inapplicable under the doctrine of qualified neutrality. The law of neutrality has traditionally required neutral States to observe a strict impartiality between parties to a conflict, regardless of which State was viewed as the aggressor in the armed conflict.³⁶ However, after treaties outlawed war as a matter of national policy, it was argued that neutral States could discriminate in favor of States that were victims of wars of aggression. ³⁷ Thus, before its entry into World War II, the United States adopted a position of “qualified neutrality” in which neutral States had the right to support belligerent States that had been the victim of flagrant and illegal wars of aggression.³⁸ This position was controversial.

This new doctrine was not established through any international convention, but simply declared by Attorney General Jackson in 1941 to much disagreement among lawyers. Since just who is the aggressor and who the victim is almost always a matter of debate in any war, the doctrine of qualified neutrality is simply a claim that the United States can violate the Hague convention as it chooses.

Now it is undeniable that, if this is war, the United States, United Kingdom, Germany, France, and several other states have violated the articles of the Hague Convention. Under it they are belligerents. As Russia has already pointed out to Germany, they have crossed “the Rubicon,” or in other words, have chosen to become belligerents in the war.

The others have done what Germany did. It is unlikely that the doctrine of “qualified neutrality” prevents Russia from attacking them, since it doesn’t recognize this doctrine. Far more likely, in my opinion, is Russia’s reluctance to start World War III in earnest. Until now Russia has been very careful to establish a legal basis for its Special Military Operation in Ukraine. Early on they hoped to end it quickly with a peace treaty that Zelensky seemed ready to sign. The United States prevented him from doing so. Such a treaty would have allowed the operation to end without all out war.

Since Russia is engaged in a Special Military Operation they are not at war with Ukraine and the Hague Convention, which applies to war, is not applicable.

Although the Special Military Operation is now in fact a war between NATO and Russia, the fig leaf of the SMO still allows everybody to treat it as if it isn’t. Legal niceties allow a war to not be a war officially and thus a defeat to not be a defeat. Russia cannot lose this war. It is an existential matter for them. If they must, they will throw everything, including atomic weapons, into it. Putin has ominously asked, “who wants a world without Russia?” NATO, as long as they are not officially at war, could lose without officially losing. To be sure, the effect on NATO would likely be catastrophic, in that it would break up. But the states that comprise it, with their rich cultures, would remain unscathed, and the world, especially Europe, would be better off without NATO. They would have avoided all out, perhaps atomic, war.

The notion that Russia has an eye on invading Europe is, in my opinion, ridiculous. Maintaining control of the Warsaw pact bankrupted the Soviet Union. Russia, like all imperial powers before them, has learned that imperialism is a mug’s game. Arms dealers and others

of the elite may profit, but empires are a drain that always destroys the imperial state. The United States has completely exhausted its own natural wealth maintaining its military presence around the world. NATO is a tool for imperial exploitation that the world would be far better off without, and its absence will not result in Russian military invasion of Europe. Russia is far too aware that such a waste of resources together with survival is no longer possible. Why invade when you can trade, China proves. A win for Russia is a win for Europe, though a loss for NATO.

NATO's participation in Ukraine has made it more and more difficult for Russia to keep up the fig leaf of the Special Military Operation. Biden has declared that the goal is to break up Russia. There is now a suggestion that the United States might provide weapons that can reach far into Russia itself. Ukrainian terrorists attack nuclear facilities within Russia. There are those within Russia who criticize Putin's restraint, a restraint dictated by the limits of the special operation. The recent Ukrainian counteroffensive was a blatant NATO operation using NATO intelligence, command and control, weapons, and NATO troops thinly disguised as mercenaries. The charade becomes ever more a farce. The war between NATO and Russia is obvious to anyone who wants to look, and remains limited only by the legal fig leaf the Special Military Operation became when it did not end quickly.

If these provocations force Putin to widen the scope of his operations, the legal fig leaf that covers NATO's participation and justifies legal non-belligerence thus shielding European NATO countries, as well as, should I say it, the United States itself, will fall away, and war will begin in earnest. That is what the United States risks to keep its dying empire on life support by engaging in what can only be called shenanigans.

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