

# War in Ukraine: Humanitarian Aid, and the Neutrality Act

## SPECIAL REPORT | The Ukraine Crisis



With few left unmoved by the plight of Ukraine, outpourings of support for the country have come in a dizzying range of shapes and sizes. These outpourings have ranged from creative campaigns by individual citizens and companies to major assistance, both humanitarian and military, from governments around the world.

Amidst these actions, the U.S. and its NATO allies, have been careful to underline that this support does not mean they are actually joining the war and fighting. But the lines between civilian and military efforts, and individual and official acts, may be blurring. For example, one fundraising [effort](#) makes it possible for individuals to donate to the Ukrainian army via various banks around the globe, including Germany's Central Bank.

This type of private support warrants a closer look at the somewhat obscure Neutrality Act, a law inspired by the U.S. government's conviction that foreign policy should be kept firmly in the hands of the government, and not individuals.

### HUMANITARIAN AID AND REFUGEE ADMINISTRATION

Support provided to Ukraine by the U.S. includes a pledge for [\\$13.6 billion in emergency aid](#), covering both military and humanitarian assistance. According to the [State Department](#), the U.S. is the largest

single-country donor of humanitarian aid to Ukraine. This aid includes providing food, drinking water, shelter, and health care, and involves partners such as the government of Ukraine, European allies, the United Nations and other international organizations, as well as NGOs.

During President Biden's meeting with EU leaders in Brussels on March 24, the administration [pledged](#) more than \$1 billion in additional funding to help counter the global impacts of Russia's invasion. It will be used for humanitarian assistance in Ukraine, among other things.

The U.S.'s action on refugees has been more limited, in part due to geographical realities. It focuses largely on supporting Ukraine's neighboring countries, which are struggling to accommodate the more than 3.5 million people who have left the country. On March 24, the White House announced that the U.S. will accept up to 100,000 refugees fleeing Ukraine. The details have yet to be decided, and may involve the U.S. Refugee Admissions Program.

### INDIVIDUAL ACTS OF SOLIDARITY

Meanwhile, the war has triggered myriad efforts at both individual and corporate levels. Elon Musk's space company SpaceX made headlines by sending Starlink satellite internet kits to the country. These can be used to access the Internet via satellite. While

some worry that the satellite signals could be used to detect and target antennas, Ukraine's Minister of Digital Transformation explicitly asked Musk for help (via Twitter) and says that, so far, targeting antennas has not been an issue.

Airbnb sparked both applause and concern by allowing users to book apartments in the embattled country even though they had no intention of ever using them. The campaign was intended to provide funds directly to locals, and it raised more than \$15 million. But the company has since acknowledged that the effort spurred the creation of "ghost apartments" that do not exist, and sometimes involved hosts who do not actually live in Ukraine. It now encourages donations to [Airbnb.org](#), which aims to offer, at no cost, short-term housing for 100,000 refugees fleeing the country.

A campaign by Etsy also went viral. The online marketplace has enabled customers to buy digital files from Ukraine-based sellers as a group, sending them much needed funds. Skeptics have noted that only the digitally savvy stand to benefit, with potentially patchy results that may leave behind those most in need of support.

In contrast, a [campaign](#) recently initiated by Epic Games, maker of the popular videogame Fortnite, will donate the funds it raises to various humanitarian relief organizations, including several agencies



of the United Nations. By March 22, the effort had raised \$50 million.

Such efforts are undoubtedly well-intentioned, and the government does not appear to have taken any steps to rein in the many enthusiastic offers of support. Whether this will change as the forms of help themselves evolve remains to be seen.

## NEUTRALITY ACT

Concerns about individual acts of citizens undermining the unity and consistency of foreign policy are practically as old as the nation itself, as a look at the Neutrality Act shows.

Originally enacted in 1794, the Act has since been amended several times, notably before and during the Second World War. Yet much of the original text remains in force, and is codified in 18 U.S.C §956 *et seq.* These provisions are based on a common underlying principle: that the government, and not individual citizens, is the one to decide the country's foreign policy, including its involvement in wars. The Act pursues this aim by forbidding various acts aimed at countries with which the United States is "at peace."

Specifically, its provisions forbid, among other things: receiving a "commission" in return for serving a foreign nation in a war against another nation with which the U.S. is at peace ([Section 958](#)); enlisting in a foreign state's military service ([Section 959](#)); knowingly participating in, preparing for, or financing a "military or naval expedition" against such a nation from within the U.S. ([Section 960](#)); and the outfitting or furnishing of certain vessels, including a foreign country's military vessels ([Section 961](#)) and any vessel

intended for use in the service of a foreign nation ([Section 962](#)). Penalties include fines and imprisonment.

## FOCUS ON INDIVIDUAL ACTIONS

The Department of Justice has in the past underlined that the Act is not targeted at activities by government officials acting within the scope of their duties. While acknowledging that the Act does not explicitly state this, it has maintained that the circumstances surrounding its enactment and subsequent practice make this clear.

The question came up in a claim, pursued in federal court in the 1980s, that §960 of the Neutrality Act could apply to the CIA's involvement in Nicaragua. The U.S. Court of Appeals for the Ninth Circuit eventually [dismissed](#) the claim based on the plaintiff's lack of standing. But a related [opinion](#) issued by the Department of Justice's Office of Legal Counsel sheds some light on the government's views.

The 1984 opinion states that the law was motivated by a desire to protect the US from "foreign entanglements during the early years of its history" and to strengthen its ability to "to conduct a unified and consistent foreign policy, unimpeded by the acts of individual citizens." It further opines that this purpose has "remained constant through [the Act's] several amendments and codifications over the last two centuries." The Department of Justice reiterated its views in a [broader overview](#) of the Neutrality Act issued later in 1984.

## LIMITED APPLICATION

Few courts have recently confronted the rarely-invoked Act. Throughout the past few decades, it has mostly been used against U.S. citizens accused of supporting

attempted coups around the world.

It seems clear that the Act does not target plainly humanitarian activities. As a law professor who specializes in security and governance [puts](#) it, "[t]he Neutrality Act...does not ban humanitarian aid by the government, nor Americans sending money to help refugees, nor aid work by Americans on the ground in war-torn countries." He adds that, while its "default command to all of us here at home is neutrality," this does not mean "neutrality in terms of our personal sentiments or even U.S. Government aid to belligerents, but neutrality in terms of not joining the fighting."

## GREY AREAS

Not surprisingly, recent attention to the Neutrality Act focuses on American citizens who have traveled to Ukraine to join the country's fight against the Russian invasion as soldiers. U.S. officials have not indicated whether such acts would be penalized, and commentators [note](#) that, even in these circumstances, the law's implications are murky.

The exact meaning of the phrase "at peace" is another potential grey area. As noted, the law targets various activities aimed at nations with which the United States is "at peace." Yet what exactly does that mean? The U.S. government has in the past argued that this term applies as long as Congress has not formally declared war. But district courts have, to varying degrees, questioned this assumption. Meanwhile, in a 2014 case, the Ninth Circuit opined that some sort of "military operations" need to exist for two countries *not* to be at peace, with "distant and tense" diplomatic relations alone not qualifying as such.

With the U.S.'s military aid continuing to take on new forms, and with private support



efforts not always purely humanitarian in nature, these and other grey areas may require further clarification.

### ESG: BREAKING TABOOS?

Clearly, Russia's invasion of Ukraine is shaking up some of our most dearly held convictions. For example, some may find themselves reluctant to condemn individuals looking to literally join the fight. In a conflict that involves such a clear aggressor, then, can even defense companies – such as those supplying weapons to Ukraine or other countries – be viewed as doing social good?

Some commentators note that efforts to supply weapons could form part of

business's Environmental, Social and Governance (ESG) programs. This has been welcome news for defense companies, some of which have struggled to secure loans due to ESG concerns raised by the finance sector. In the EU, the defense industry is already promoting defense companies as "tools of democracy," underlining their contributions to strong national defenses.

Investment funds have suggested that nuance is key. Defense companies cover wide ground. Some produce arms, while others focus on other products used by the military. Moreover, not all abide by applicable international treaties, sufficiently target governmental corruption, or closely scrutinize where their products end up. These

factors could make important differences in investment decisions.

At the EU level, the sudden shift in perspective will likely affect ongoing efforts to develop social taxonomy criteria for ESG investing rules. A recently published [blueprint](#) does not propose blacklisting weapons, stating instead that the bloc's approach should be based on reference to certain international treaties.

While it is too early to predict the final outcome of these discussions, one thing seems clear: fund managers, defense companies, and policymakers will all undoubtedly be looking for signals from investors about their views on the issue. ■