

Conflicts Among NHI Groups and U.S. Involvement: Recognition, War Powers, Neutrality, and Technology Transfer

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Premise. Some insider accounts describe multiple NHI groups with differing intentions, and conflicts among them, with the United States or other governments aligned with or opposed to particular groups. This analysis asks what U.S. and international law would govern such involvement.

Key points

- Recognition of an NHI group as a government, a belligerent, or neither is an executive decision that courts accept (*Zivotofsky*; *Guaranty Trust*), and it decides how the Logan Act, sovereign immunity, and treaty law apply.
 - Committing forces to hostilities triggers the War Powers Resolution; existing AUMFs do not cover NHI.
 - Arrangements with an NHI group are most likely reportable to Congress as “qualifying non-binding instruments” under the Case-Zablocki Act, unless made under DoD or intelligence authorities ([Form F5-1](#)).
 - The Neutrality Act’s “people” reaches organized groups conducting hostilities (*The Three Friends*); “at peace” is a jury question (*Chhun*).
 - Neutrality proclamations and the Trading with the Enemy Act speak of foreign states and nations and would need amendment; IEEPA is more flexible.
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1. Summary

- **Recognition.** Whether to treat an NHI group as a government, a belligerent, or neither is an executive decision. The President has exclusive power to recognize foreign sovereigns (*Zivotofsky v. Kerry*, 576 U.S. 1 (2015)). Recognition would determine whether the Logan Act, sovereign immunity (FSIA), treaty powers, and the international law of state relations apply.

- **War powers.** Committing U.S. forces to hostilities between NHI groups, or against one, triggers the War Powers Resolution’s reporting and 60-day clock (50 U.S.C. §§1543-1544), and Congress’s power to declare war and fund operations. Existing AUMFs (2001, 2002) do not cover NHI.
- **Agreements.** Alliances or cooperation agreements with an NHI group would be treaties (Senate consent) or executive agreements. The Case-Zablocki Act, as rewritten in 2022, requires the Secretary of State to report every “international agreement” and every “qualifying non-binding instrument” to congressional leadership and the foreign affairs committees each month, with its text and “a detailed description of the legal authority,” in unclassified form with a classified annex if needed (1 U.S.C. §112b(a)(1)-(2)); oral agreements must be reduced to writing (§112b(f)); and no international agreement may be concluded without prior consultation with the Secretary (§112b(g)). A non-binding instrument is “qualifying” if made with “foreign governments, international organizations, or foreign entities, including non-state actors,” and either significant to foreign policy or the subject of a written communication from the Chair or Ranking Member of either foreign affairs committee (§112b(k)(5)(A)). Whether an NHI group is a “foreign entity” is untested, and non-binding instruments made under DoD, Armed Forces, or intelligence community authorities are excluded (§112b(k)(5)(B)). The State Department’s implementing rule bears on the first question. A binding “international agreement” requires that each party be “a state, a state agency, or an intergovernmental organization” (22 C.F.R. §181.2(a)(1)), so a binding arrangement with an NHI group would not be reportable as an international agreement unless the executive treated the group as a state. A qualifying non-binding instrument may be made with “foreign entities, including non-state actors” (§181.4(a)(1), (b)(2)), which is the more likely route for an NHI arrangement to reach the committees. [Form F5-1](#) is a committee letter that designates NHI instruments as qualifying and asks the Secretary to state the executive branch’s position on both points.
- **Neutrality.** The Neutrality Act (18 U.S.C. §§958-962) prohibits private persons in the U.S. from organizing military expeditions against foreign states with which the U.S. is at peace and from arming vessels for belligerents. It applies to “foreign prince or state, or ... colony, district, or people” with which the U.S. is at peace (§960), and §962 forbids arming a vessel “in the service of any ... colony, district, or people, to cruise, or commit hostilities against” another with which the United States is at peace. Whether an NHI group is a “people” under these provisions is untested, but the Supreme Court read the word broadly in construing §962’s predecessor (Rev. Stat. §5283): “people” there “covers ... any insurgent or insurrectionary ‘body of people acting together, undertaking and conducting hostilities,’” whether or not the United States has recognized its belligerency. *The Three Friends*, 166 U.S. 1, 62-63 (1897). On that reading, an organized NHI group conducting hostilities against another could be a “people,” and a private U.S. person who equips a craft or organizes an enterprise to fight on one side would face §§960 and 962 if the United States is “at peace” with the other. *The Three Friends* looked to the political branches on whether a state of insurrectionary war existed (*id.* at 63-65), but modern courts treat “at peace” as an element for the jury: it means the absence of a declared war or active military operations between the United States and the target, and the term is not void for vagueness. *United States v. Yasith Chhun*, 513 F. Supp. 2d 1179, 1181-85 (C.D. Cal. 2007), *aff’d*, 744 F.3d 1110 (9th Cir. 2014).

Executive statements about the United States' relations with an NHI group would be strong evidence, and any U.S. military operations against the group would defeat the "at peace" element. The statute is still used. A court trying a 2004 prosecution stated its elements as "1) a military expedition organized in this country; 2) against the territory or dominion of any foreign prince or state, or of any colony, district, or people with whom the United States is at peace; and 3) defendant provided means for the expedition in this district, with knowledge of its character," and convicted defendants who organized travel from Virginia to join attacks on India. *United States v. Khan*, 309 F. Supp. 2d 789, 818-19 (E.D. Va. 2004). Later prosecutions have involved planned coups or armed operations against Laos, Cambodia, and Venezuela (*United States v. Jack*, 2010 WL 4718613 (E.D. Cal. Nov. 12, 2010); *Chhun*, above; *United States v. Lang*, 2025 WL 2085362 (M.D. Fla. July 24, 2025)). In each the target was a recognized state.

- **Technology exchange.** Technology received from one NHI group would be subject to export controls on further transfer; technology transferred to an NHI group would be an "export" if it leaves U.S. jurisdiction, raising ITAR/EAR licensing questions without any designated country. Investments involving NHI-derived technology could fall under CFIUS review if foreign persons are involved.
- **Law of armed conflict.** If hostilities occur, the LOAC applies to U.S. forces regardless of the adversary's nature. DoD policy is that "[m]embers of the DoD Components comply with the law of war during all armed conflicts, however characterized," and in other military operations act "consistent with the law of war's fundamental principles and rules," including Common Article 3 and the principles of military necessity, humanity, distinction, proportionality, and honor. DoD Directive 2311.01, *DoD Law of War Program* §1.2.a (July 2, 2020). Distinction, proportionality, precaution, and humane treatment of captured beings ([Issue F2](#)) would govern.

2. Recognition and its consequences

Whether an NHI group is a state, a belligerent, or neither is for the political branches, and courts accept the executive's determination. *Guaranty Trust Co. v. United States*, 304 U.S. 126, 137-38 (1938). International practice looks to the criteria in the Montevideo Convention on the Rights and Duties of States (1933), art. 1: a permanent population, a defined territory, a government, and capacity to enter into relations with other states. An NHI civilization might meet the last three without the second, which is one reason a status short of statehood, such as international legal personality for particular purposes ([Issue F1](#), §2.3B), is the likelier path. Recognition decides practical questions: whether the group could sue or be sued in U.S. courts, whether the Foreign Sovereign Immunities Act would apply, whether the Logan Act's "foreign government" element is met, and whether a binding agreement with it is an "international agreement" (§1).

3. War, belligerency, and neutrality procedure

- **Belligerency.** In *The Prize Cases*, 67 U.S. (2 Black) 635 (1863), the Court upheld the President's blockade of Confederate ports, treating the insurrection as war for purposes of the law of prize without recognizing the Confederacy as a state. A conflict with or among

NHI groups could be treated the same way: as war in fact for purposes of the laws of war and neutrality, without recognition.

- **Neutrality proclamations.** When the President, or Congress by concurrent resolution, finds “that there exists a state of war between foreign states” and that action is needed to protect U.S. security or citizens, the President issues a proclamation naming the states involved (22 U.S.C. §441(a)), which triggers the Neutrality Act of 1939’s restrictions. The statute speaks of “foreign states” and would need amendment to reach a conflict between NHI groups.
- **Trading with the Enemy Act.** Its definitions turn on nations with which the United States is at war (50 U.S.C. §4302), so it too would not reach an NHI group without amendment; IEEPA sanctions, which can target any “foreign country or a national thereof” and property in which they have an interest, are the more flexible tool.

4. Technology transfer in more detail

Exports of defense articles and services require State Department licenses under the Arms Export Control Act and ITAR, and the license application identifies the end user and end use. A transfer to an NHI group would have no ITAR country category; the government would treat it as an export to an unlisted end user and could deny it outright. Investments by foreign persons in U.S. businesses that hold NHI-derived technology would be reviewable by CFIUS as transactions involving “critical technologies” if the technology is controlled. Domestic holders of such technology should expect both regimes to apply to any foreign partner.

5. Practice and policy points

1. Congress should require reporting of any agreement, understanding, or arrangement with any NHI group under 1 U.S.C. §112b and of any hostilities under the War Powers Resolution.
2. The executive should articulate its position on recognition and on whether existing statutes (Logan Act, Neutrality Act, export controls) apply to NHI groups.
3. Private actors (including contractors) should avoid any dealings that could be construed as military assistance to one NHI group against another without government authorization.