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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,) Case No. CR 05-00519 (A) DDP
)
Plaintiff,) **ORDER DENYING DEFENDANT CHHUN'S**
) **MOTION FOR ORDER DISMISSING**
v.) **COUNTS TWO AND THREE OF THE FIRST**
) **SUPERSEDING INDICTMENT ON THE**
YASITH CHHUN) **GROUND THAT THE UNITED STATES WAS**
) **NOT "AT PEACE" WITH CAMBODIA**
Defendants.)
) [Motion filed on July 30, 2007]

This matter comes before the Court on Defendant Chhun's Motion to Dismiss Counts Two and Three of the First Superseding Indictment on the Ground That the United States was not "At Peace" With Cambodia. After reviewing the papers submitted by the parties, the Court denies the motion.

I. BACKGROUND

The indictment for the following charges arises from Defendant Chhun's alleged involvement in the failed coup attempt against the Cambodian government on November 24, 2000. Count Two of the First Superseding Indictment charges Defendant Chhun under 18 U.S.C. §

1 956(b) with conspiracy to damage or destroy property in a foreign
2 country with which the United States is "at peace." Count Three of
3 the First Superseding Indictment charges Defendant Chhun with a
4 violation of 18 U.S.C § 960 for conspiracy to take part in a
5 military expedition against a foreign state with which the United
6 States is "at peace." Defendant argues that Counts Two and Three
7 should be dismissed because the United States was not "at peace"
8 with Cambodia at the time of the alleged conduct as a matter of
9 law. The Government opposes dismissal arguing that the United
10 States being "at peace" with Cambodia is an element of the crime
11 that must be decided by a jury. Further, both parties offer
12 competing interpretations of the meaning of the "at peace"
13 requirement under 18 U.S.C. § 956(b) and 18 U.S.C. § 960.

14

15 **II. DISCUSSION**

16 **A. Legal Standard**

17 A motion to dismiss an indictment may properly be considered
18 in pretrial under Federal Rule of Criminal Procedure 12. Fed. R.
19 Crim. P. 12. A Rule 12 motion to dismiss allows three categories
20 of defenses, objections, and requests to be raised before trial:
21 (1) the failure of the indictment or information to show subject
22 matter jurisdiction or to state an offense; (2) the five mandatory
23 pretrial matters enumerated in Rule 12(b), including defenses based
24 on defects in the institution of the prosecution and defenses based
25 on defects in the indictment; and (3) all other matters that are
26 capable of determination without the trial of the general issue.
27 United States v. Smith, 866 F.2d 1092, 1095 (9th Cir. 1987).

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1 **A. Analysis**

2 **1. Is the "At Peace" Requirement a Question of Law or**
3 **Fact?**

4 The first question raised by the motion is whether the "at
5 peace" requirement is a question of law to be decided by the Court
6 or a question of fact to be decided by a jury. In addressing a
7 pretrial motion, a court generally may decide questions of law
8 rather than fact. United States v. Shortt Accountancy Corp., 785
9 F.2d 1448, 1452 (9th Cir. 1986). The essential elements of a crime
10 are issues of fact that must be submitted to a jury and proved
11 beyond a reasonable doubt. United States v. Gaudin, 515 U.S. 506,
12 511 (1995) ("The Constitution gives a criminal defendant the right
13 to demand that a jury find him guilty of all the elements of the
14 crime with which he is charged"); see also In re Winship,
15 397 U.S. 358, 364 (1970). When there is a mixed question of law
16 and fact, these questions have "typically been resolved by juries."
17 Gaudin, 515 U.S. at 512.

18 Both parties concede that whether the United States was "at
19 peace" with Cambodia is an element of the conspiracy offenses
20 provided for by 18 U.S.C. § 956(b) and 18 U.S.C. § 960 and must be
21 proven by the Government beyond a reasonable doubt. (See Def.'s
22 Mot. 2 and Gov.'s Mot. 4, 7.) Nevertheless, relying on United
23 States v. Terrell, 731 F. Supp. 473 (S.D. Fla. 1989), one of the
24 few recent cases to address the "at peace" requirement, Defendant
25 Chhun maintains that the Court may decide that the United States
26 was not "at peace" with Cambodia as a matter of law. (Def.'s Mot.
27 2-4.)

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1 In Terrell, the defendants were charged with conspiracy under
2 18 U.S.C. § 960 for their conduct in relation to the CIA's covert
3 military operations with the Contras against the Sandinista
4 government in Nicaragua. Terrell, 731 F. Supp. at 474. As this
5 was a 18 U.S.C. § 960 prosecution, the "at peace" element was at
6 issue. The court noted that it had previously determined that
7 whether the United States was "at peace" with Nicaragua was "a
8 question of law."¹ The court then proceeded to define the legal
9 standard for proof of the "at peace" requirement. Id. at 475-476.
10 After reviewing the evidence of covert operations by the Contras
11 against the Nicaraguan government funded primarily by the CIA, the
12 court held that the United States was not "at peace" during the
13 time relevant to the indictments, and dismissed all counts that
14 included the "at peace" requirement. Id. at 477.

15 The Court finds the Terrell opinion's determination that the
16 "at peace" requirement is a question of law to be in conflict with
17 the weight of authority establishing that essential elements of a
18 crime are questions of fact for a jury. See, e.g., Gaudin, 515
19 U.S. at 511-12. A jury must ultimately decide whether the
20 prosecution has carried its burden of proving beyond a reasonable
21 doubt all essential elements of the 18 U.S.C. § 956(b) and 18
22 U.S.C. § 960 conspiracy charges, including whether the United
23 States was "at peace" with Cambodia. Even where the "at peace"
24 requirement is construed as a mixed question of law and fact, it is

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27 ¹ As mentioned by Defendant Chhun, this previous
28 determination likely did not result in an opinion as it cannot be
found on Lexis or PACER. (Def.'s Mot. 3.)

1 the jury that will apply a legal standard to the facts. See id. at
2 512.

3 Although a question of fact for the jury, the Court must
4 articulate the legal standard to be applied in evaluating proof of
5 the "at peace" requirement. On this legal question, the Terrell
6 case remains relevant. The Court now turns to defining the legal
7 standard for the "at peace" requirement.

8 **2. The Meaning of "At Peace" Under 18 U.S.C. § 956(b)**
9 **and 18 U.S.C § 960**

10 In addressing the meaning of the words "in time of peace"
11 from Article 92 of the Articles of War, Justice Douglas has stated:
12 We deal with a term that must be construed in light of
13 the precise facts of each case and the impact of the
14 particular statute involved. Congress in drafting laws
15 may decide that the Nation may be "at war" for one
16 purpose, and "at peace" for another. It may use the same
17 words broadly in one context, narrowly in another. The
18 problem of judicial interpretation is to determine
19 whether "in the sense of this law" peace had arrived.
20 Only mischief can result if those terms are given one
21 meaning regardless of the statutory context.

22 Lee v. Madigan, 358 U.S. 228, 230-31 (1959) (internal citations
23 omitted).

24 The "at peace" requirement derives from the Neutrality Act of
25 1794. The Neutrality Act was passed with language similar to that
26 used by President George Washington in his annual address to the

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1 nation a year earlier.² According to the Supreme Court in Wilborg
2 v. United States, 163 U.S. 632, 647 (1896), “[t]he statute was
3 undoubtedly designed in general to secure neutrality in wars
4 between two other nations, or between contending parties recognized
5 as belligerents, but its operation is not necessarily dependent on
6 the existence of such state of belligerency.” Id. at 647 (internal
7 citations omitted). In United States v. Three Friends, 166 U.S. 1,
8 52 (1896), the Court further explained that “though the principal
9 object of the act was to ‘secure the performance of the duty of the
10 United States, under the law of nations, as a neutral nation in
11 respect of foreign powers,’ the act is nevertheless an act ‘to
12 punish certain offenses against the United States. . . .” Id. at
13 52, citing 13 Op. Atty. Gen. 177, 178 (1869). Further, the act was
14 aimed at “provid[ing] a comprehensive code in prevention of acts by
15 individuals within our jurisdiction inconsistent with our own
16 authority, as well as hostile to friendly powers.” Id. at 53.

17 The Terrell case notes that “[t]here is no law on the meaning
18 of the term “‘at peace’.” See Terrell, 731 F. Supp. at 475. This
19 may explain how Defendant Chhun and the Government arrive at
20 different interpretations of its meaning. Defendant Chhun urges
21 the Court to follow the Terrell case in adopting a modern
22 conception of “at peace”. The Government directs the Court to

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25 ² Neutrality Act, ch. 50, 1 Stat. 381 (1794). On December
26 3, 1793, President Washington stated: “Where individuals shall . .
27 . enter upon military expeditions or enterprises within the
28 jurisdiction of the United States . . . these offences cannot
receive too early and close an attention, and require prompt and
decisive remedies.” President George Washington’s Annual Address
(December 3, 1793), quoted in Wilborg v. United States, 163 U.S.
632, 647 (1896) (citation omitted).

1 adopt the original meaning of "at peace." The Court considers each
2 interpretation in turn.

3 In Terrell, the court addressed the "at peace" requirement in
4 light of "these modern times of covert activities and undeclared
5 warfare." Terrell, 731 F. Supp. at 476. Since it could find no
6 definition of "at peace," the court analyzed whether the United
7 States was "at peace" with Nicaragua by asking whether the United
8 States acted with "neutrality" toward the Contras and Sandinista
9 government. Id. at 476-77. The court utilized an early Supreme
10 Court definition of "neutrality" as "impartiality of conduct
11 towards both parties." Id. at 475, citing Three Friends, 166 U.S.
12 at 52. Because the court found the government to provide support
13 to the Contras in its military operations against Nicaragua, the
14 court held that the United States did not act with impartiality and
15 therefore was not "at peace" with Nicaragua. Terrell, 731 F. Supp.
16 at 477.

17 Based on Terrell, Defendant Chhun argues that "analysis
18 whether the United States is 'at peace' with a foreign country . .
19 . cannot be resolved simply on the basis of whether there has been
20 a formal declaration of war. . . ." (Def.'s Mot. 3.) While
21 stating that "the United States was not engaged in a covert war
22 against the sitting government of Cambodia," Defendant Chhun
23 contends that there is sufficient evidence of human rights abuses
24 by Cambodia, and United States' actions in opposition and
25 condemnation of Cambodia, to find the two nations were not "at
26 peace" during the time charged in the indictment. (Id. at 4-16.)

27 On the other hand, the Government argues that the original
28 meaning of "at peace" is a "state of affairs that exists between

1 two countries where neither has declared war on the other."
2 (Gov.'s Mot. 12.) The Government points to two cases, United
3 States v. Burr, 25 F. Cas. 201 (C.C.D. Va. 1807) (No. 14694A) and
4 United States v. Smith, 27 F. Cas. 1192 (C.C.D.N.Y. 1806) (No.
5 16,342), as authority. In Burr, a decision authored by Chief
6 Justice Marshall while sitting by designation on the circuit court,
7 Aaron Burr was charged with a military expedition against Spain
8 after Spain's invasion of United States' territory. The Burr
9 decision contrasted a state of peace with a state of war. The
10 court ultimately held that the two nations remained "at peace"
11 since the United States' government had not determined that Spain's
12 invasion was an act of war nor decided to take any action against
13 Spain. The court reasoned that only the government can make such
14 "an election" to act against a foreign nation. Burr, 27 F. Cas. at
15 201. In Smith, another case involving United States-Spain
16 relations, the court stressed that only Congress may decide when
17 the United States is no longer "at peace" with a foreign nation
18 because Article I, section 8 of the United States Constitution
19 gives it exclusive power to declare war. Smith, 25 F. Cas. at
20 1231-32.

21 On this basis, the Government argues that this Court should
22 interpret "at peace" as the absence of "state-declared warfare."
23 In addressing Terrell, the Government notes that the statute's
24 language has not been changed to reflect the "modern political
25 realities of war." (Gov. Opp'n 16.) Further, the Government
26 emphasizes that Congress's purpose in enacting the statute was to
27 "prevent private citizens from interfering in foreign policy
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1 matters that were and are the exclusive domain of the government."
2 (Gov. Opp'n 17.)

3 As the "at peace" requirement is contained in a statute, its
4 meaning is a matter of statutory interpretation. When interpreting
5 a statute, the Court must "look first to the plain language of the
6 statute, construing the provisions of the entire law, including its
7 object and policy, to ascertain the intent of Congress." United
8 States v. Mohrbacher, 182 F.3d 1041, 1048 (9th Cir. 1999) (internal
9 quotation and citation omitted). Where a statutory term is not
10 defined in the statute, a court should give the term its ordinary
11 meaning. Id. (internal quotation and citation omitted).

12 Although 18 U.S.C. § 956(b) and 18 U.S.C. § 960 do not define
13 the term "at peace," the statute's purpose suggests a narrow
14 reading of the meaning of "at peace." In addition to securing
15 neutrality in conflicts between other nations, the Neutrality Act
16 aimed to prevent the interference of private individuals in the
17 government's foreign policy decisions by criminalizing certain
18 conduct against foreign nations. Otherwise, the United States
19 could be "driven into war by the licentious behavior of some
20 individuals." See Jules Lobel, The Rise and Decline of the
21 Neutrality Act: Sovereignty and Congressional War Powers in United
22 States Foreign Policy, 24 Harv. Int'l L.J. 31 (1983) (quoting a
23 statement from Congressional debate on the Neutrality Act).

24 The initiation of a military intervention or provocative acts
25 by a private individual against a friendly nation could lead to war
26 against the United States. The Neutrality Act provided the
27 government with a means to avoid an international incident by

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1 allowing for prosecution of those individuals. However, the "at
2 peace" requirement did not recognize the need for such prosecutions
3 when one acts against nations with whom the United States was
4 already at war.

5 On the basis of the statute's purpose and the term's ordinary
6 meaning, the Court concludes that the term "at peace" refers to the
7 relationship between the United States and a foreign country when
8 there is no war, whether declared or undeclared. This means that
9 the United States is not "at peace" when involved in a declared war
10 or active military operations against a foreign nation. The
11 implication is that the prosecution must prove to a jury the
12 absence of a declared war or active military operations between the
13 United States and Cambodia in order to carry its burden on the "at
14 peace" requirement.

15 Defendant Chhun's position seems to ask the Court to find that
16 the United States is not "at peace" with a foreign nation that it
17 condemns or opposes even if it takes no military action against
18 that country. While relying on Terrell, Defendants' position
19 actually goes beyond the Terrell holding. The court in Terrell
20 found that the United States was not "at peace" with Nicaragua
21 where the government was supporting the covert military operation
22 of the Contras against the Nicaraguan government. Terrell, 731 F.
23 Supp. at 476. Defendant Chhun's argument is that the United
24 States' opposition to the Cambodian government's conduct is
25 sufficient to show the two nations were not "at peace." This
26 interpretation lacks a basis in the statute's purpose or the term's
27 ordinary meaning.

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1 The Government contends that the "at peace" requirement should
2 be limited to the absence of declared war. The Court also does not
3 find that definition to comport with the statute's purpose nor with
4 the ordinary meaning of the term "at peace." Any military
5 intervention against a foreign nation, whether declared or
6 undeclared, indicates a state of affairs where the United States is
7 not "at peace" with that nation. Further, Article I, section 8 of
8 the U.S. Constitution established that Congress alone could make a
9 declaration of war. U.S. Const. Art. I, § 8. This language
10 existed at the passage of the Neutrality Act. Yet in the Act, the
11 drafters did not refer to Congress's enumerated power to declare
12 war, but rather, included the "at peace" requirement. This
13 suggests that the drafters intended the "at peace" requirement to
14 incorporate the absence of war whether declared or undeclared.

15 Finally, the Court notes that Defendant Chhun sought to raise
16 a void-for-vagueness challenge to the "at peace" requirement and
17 have the challenge considered in conjunction with this motion. "A
18 statute may be void for vagueness if it fails to give adequate
19 notice to people of ordinary intelligence concerning the conduct it
20 proscribes." United States v. Gilbert, 813 F.2d 1523, 1530 (9th
21 Cir. 1987). Based on the forgoing discussion, the Court finds no
22 vagueness because people of ordinary intelligence understand "at
23 peace" to mean the absence of war. See United States v. Elliot,
24 266 F. Supp. 318, 322 (holding that the words "at peace" are not
25 unconstitutionally vague).

26 Both parties raise arguments in connection to this motion
27 regarding the admission of evidence at trial on the "at peace"
28 requirement. The Court considers any limitations to such evidence

1 as it pertains to the factual issue whether the United States was
2 "at peace" with Cambodia in ruling on the Government's Motion to
3 Preclude Admission of Evidence Regarding Political Situation in
4 Cambodia.

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6 **III. CONCLUSION**

7 For the forgoing reasons, the Court denies the motion.

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9 IT IS SO ORDERED.

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12 Dated: September 18, 2007



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DEAN D. PREGERSON
United States District Judge

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