

Sec. 2—Powers, Duties of the President Cl. 2—Treaties and Appointment of Officers

trial products—and “sell, transfer title to, exchange, lease, lend, or otherwise dispose of,” the same to the “government of any country whose defense the President deems vital to the defense of the United States,” and on any terms that he “deems satisfactory.” Under this authorization the United States entered into Mutual Aid Agreements under which the government furnished its allies in World War II with 40 billion dollars’ worth of munitions of war and other supplies.

International Organizations.—Overlapping of the treaty-making power through congressional-executive cooperation in international agreements is also demonstrated by the use of resolutions approving the United States joining of international organizations⁴³⁷ and participating in international conventions.⁴³⁸

Executive Agreements Authorized by Treaties

Arbitration Agreements.—In 1904 and 1905, Secretary of State John Hay negotiated a series of treaties providing for the general arbitration of international disputes. Article II of the treaty with Great Britain, for example, provided as follows: “In each individual case the High Contracting Parties, before appealing to the Permanent Court of Arbitration, shall conclude a special Agreement defining clearly the matter in dispute and the scope of the powers of the Arbitrators, and fixing the periods for the formation of the Arbitral Tribunal and the several stages of the procedure.”⁴³⁹ The Senate approved the British treaty by the constitutional majority having, however, first amended it by substituting the word “treaty” for “agreement.” President Theodore Roosevelt, characterizing the “ratification” as equivalent to rejection, sent the treaties to repose in the archives. “As a matter of historical practice,” Dr. McClure comments, “the *compromise* under which disputes have been arbitrated include both treaties and executive agreements in goodly numbers,”⁴⁴⁰ a statement supported by both Willoughby and Moore.⁴⁴¹

Agreements Under the United Nations Charter.—Article 43 of the United Nations Charter provides: “1. All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace

⁴³⁷ *E.g.*, 48 Stat. 1182 (1934), authorizing the President to accept membership for the United States in the International Labor Organization.

⁴³⁸ See E. Corwin, *supra* at 216.

⁴³⁹ W. McClure, *supra* at 13–14.

⁴⁴⁰ *Id.* at 14.

⁴⁴¹ 1 W. Willoughby, *supra* at 543.