treaties were concluded. Between 1939 and 1993, executive agreements comprised more than 90% of the international agreements concluded.[418]

One must, of course, interpret the raw figures carefully. Only a very small minority of all the executive agreements entered into were based solely on the powers of the President as Commander in Chief and organ of foreign relations; the remainder were authorized in advance by Congress by statute or by treaty provisions ratified by the Senate.[419] Thus, consideration of the constitutional significance of executive agreements must begin with a differentiation among the kinds of agreements which are classed under this single heading.[420]

Executive Agreements by Authorization of Congress

Congress early authorized officers of the executive branch to enter into negotiations and to conclude agreements with foreign governments, authorizing the borrowing of money from foreign countries[421] and appropriating money to pay off the government of Algiers to prevent pirate attacks on United States shipping.[422] Perhaps the first formal authorization in advance of an executive agreement was enactment of a statute that permitted the Postmaster General to "make arrangements with the Postmasters in any foreign country for the reciprocal receipt and delivery of letters and packets, through

---

[418] CRS Study, xxxiv-xxxv, supra, 13–16. Not all such agreements, of course, are published, either because of national-security/secrecy considerations or because the subject matter is trivial. In a 1953 hearing exchange, Secretary of State Dulles estimated that about 10,000 executive agreements had been entered into in connection with the NATO treaty. "Every time we open a new privy, we have to have an executive agreement." *Hearing on S.J. Res. 1 and S.J. Res. 43: Before a Subcommittee of the Senate Judiciary Committee*, 83d Congress, 1st Sess. (1953), 877.

[419] One authority concluded that of the executive agreements entered into between 1938 and 1957, only 5.9 percent were based exclusively on the President's constitutional authority. McLaughlin, *The Scope of the Treaty Power in the United States—II*, 43 MINN. L. REV. 651, 721 (1959). Another, somewhat overlapping study found that in the period 1946–1972, 88.3% of executive agreements were based at least in part on statutory authority; 6.2% were based on treaties, and 5.5% were based solely on executive authority. *International Agreements: An Analysis of Executive Regulations and Practices*, Senate Committee on Foreign Relations, 95th Cong., 1st Sess. (Comm. Print) (1977), 22 (prepared by CRS).

[420] "[T]he distinction between so-called 'executive agreements' and 'treaties' is purely a constitutional one and has no international significance." Harvard Research in International Law, *Draft Convention on the Law of Treaties*, 29 AMER. J. INT. L. 697 (Supp.) (1935). *See* E. Byrd, supra at 148–151. Many scholars have aggressively promoted the use of executive agreements, in contrast to treaties, as a means of enhancing the role of the United States, especially the role of the President, in the international system. *See* McDougal & Lans, *Treaties and Congressional-Executive or Presidential Agreements: Interchangeable Instruments of National Policy (Pts. I & II)*, 54 YALE L. J. 181, 534 (1945).

[421] 1 Stat. 138 (1790). *See* E. Byrd, supra at 53 n.146.

[422] W. MCCLURE, INTERNATIONAL EXECUTIVE AGREEMENTS 41 (1941).