

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

ments may be made locating the power in the President alone, in the President and Senate, or in the Congress. Presidents generally have asserted the foreign relations power reposed in them under Article II and the inherent powers argument made in *Curtiss-Wright*. Because the Constitution requires the consent of the Senate for making a treaty, one can logically argue that its consent is also required for terminating it. Finally, because treaties are, like statutes, the supreme law of the land, it may well be argued that, again like statutes, they may be undone only through law-making by the entire Congress; additionally, since Congress may be required to implement treaties and may displace them through legislation, this argument is reenforced.

Definitive resolution of this argument appears only remotely possible. Historical practice provides support for all three arguments and the judicial branch seems unlikely to essay any answer.

Although abrogation of the French treaty, mentioned above, is apparently the only example of termination by Congress through a public law, many instances may be cited of congressional actions mandating terminations by notice of the President or changing the legal environment so that the President is required to terminate. The initial precedent in the instance of termination by notice pursuant to congressional action appears to have occurred in 1846,³⁸¹ when by joint resolution Congress authorized the President at his discretion to notify the British government of the abrogation of the Convention of August 6, 1827, relative to the joint occupation of the Oregon Territory. As the President himself had requested the resolution, the episode is often cited to support the theory that international conventions to which the United States is a party, even those terminable on notice, are terminable only through action of Congress.³⁸² Subsequently, Congress has often passed resolutions denouncing treaties or treaty provisions, which by their own terms were terminable on notice, and Presidents have usually, though not invariably, carried out such resolutions.³⁸³ By the La Follette-Furusetth Seaman's Act,³⁸⁴ President Wilson was directed, "within ninety days after the passage of the act, to give notice to foreign governments that so much of any treaties as might be in conflict with the provisions of the act would terminate on the expiration of

³⁸¹ Compare the different views of the 1846 action in *Treaty Termination: Hearings Before the Senate Committee on Foreign Relations*, 96th Congress, 1st Sess. (1979), 160–162 (memorandum of Hon. Herbert Hansell, Legal Advisor, Department of State), and in *Taiwan: Hearings Before the Senate Committee on Foreign Relations*, 96th Congress, 1st Sess. (1979), 300 (memorandum of Senator Goldwater).

³⁸² S. Crandall, *supra*, at 458–459.

³⁸³ *Id.* at 459–62; Q. Wright, *supra*, at 258.

³⁸⁴ 38 Stat. 1164 (1915).