

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

half the countries of the world protect themselves.<sup>465</sup> Congressional disquietude did not result in anything more substantial than passage of a “sense of the Senate” resolution expressing a desire that “national commitments” be made more solemnly in the future than in the past.<sup>466</sup>

### The Domestic Obligation of Executive Agreements

When the President enters into an executive agreement, what sort of obligation does it impose on the United States? That it may impose international obligations of potentially serious consequences is obvious and that such obligations may linger for long periods of time is equally obvious.<sup>467</sup> Not so obvious is the nature of the domestic obligations imposed by executive agreements. Do treaties and executive agreements have the same domestic effect?<sup>468</sup> Treaties preempt state law through operation of the Supremacy Clause. Although it may be that executive agreements entered into pursuant to congressional authorization or treaty obligation also derive preemptive force from the Supremacy Clause, that textual basis for preemption is arguably lacking for executive agreements resting solely on the President’s constitutional powers.

Initially, it was the view of most judges and scholars that executive agreements based solely on presidential power did not become the “law of the land” pursuant to the Supremacy Clause because such agreements are not “treaties” ratified by the Senate.<sup>469</sup> The Supreme Court, however, found another basis for holding state laws to be preempted by executive agreements, ultimately relying on the Constitution’s vesting of foreign relations power in the national government.

<sup>465</sup> For a congressional attempt to evaluate the extent of such commitments, see *United States Security Agreements and Commitments Abroad: Hearings Before a Subcommittee of the Senate Foreign Relations Committee*, 91st Congress, 1st Sess. (1969), 10 pts.; see also *U.S. Commitments to Foreign Powers: Hearings on S. Res. 151 Before the Senate Foreign Relations Committee*, 90th Congress, 1st Sess. (1967).

<sup>466</sup> The “National Commitments Resolution,” S. Res. 85, 91st Congress, 1st Sess., passed by the Senate June 25, 1969. See also S. REP. NO. 797, 90th Congress, 1st sess. (1967). See the discussion of these years in CRS study, *supra* at 169–202.

<sup>467</sup> In 1918, Secretary of State Lansing assured the Senate Foreign Relations Committee that the Lansing-Ishii Agreement had no binding force on the United States, that it was simply a declaration of American policy so long as the President and State Department might choose to continue it. 1 W. Willoughby, *supra* at 547. In fact, it took the Washington Conference of 1921, two formal treaties, and an exchange of notes to eradicate it, while the “Gentlemen’s Agreement” was finally ended after 17 years only by an act of Congress. W. McClure, *supra* at 97, 100.

<sup>468</sup> See E. Byrd, *supra* at 151–57.

<sup>469</sup> *E.g.*, *United States v. One Bag of Paradise Feathers*, 256 F. 301, 306 (2d Cir. 1919); 1 W. Willoughby, *supra* at 589. The State Department held the same view. G. HACKWORTH, 5 DIGEST OF INTERNATIONAL LAW 426 (1944).