

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

the periods of notice provided for in such treaties,” and the required notice was given.³⁸⁵ When, however, by section 34 of the Jones Merchant Marine Act of 1920, the same President was authorized and directed within ninety days to give notice to the other parties to certain treaties, with which the Act was not in conflict but which might restrict Congress in the future from enacting discriminatory tonnage duties, President Wilson refused to comply, asserting that he “did not deem the direction contained in section 34 . . . an exercise of any constitutional power possessed by Congress.”³⁸⁶ The same attitude toward section 34 was continued by Presidents Harding and Coolidge.³⁸⁷

Very few precedents exist in which the President terminated a treaty after obtaining the approval of the Senate alone. The first occurred in 1854–1855, when President Pierce requested and received Senate approval to terminate a treaty with Denmark.³⁸⁸ When the validity of this action was questioned in the Senate, the Committee on Foreign Relations reported that the procedure was correct, that prior full-Congress actions were incorrect, and that the right to terminate resides in the treaty-making authorities, the President and the Senate.³⁸⁹

Examples of treaty terminations in which the President acted alone are much disputed with respect both to facts and to the un-

³⁸⁵ S. Crandall, *supra*, at 460. *See* Van der Weyde v. Ocean Transp. Co., 297 U.S. 114 (1936).

³⁸⁶ 41 Stat. 1007. *See* Reeves, *The Jones Act and the Denunciation of Treaties*, 15 AM. J. INT'L. L. 33 (1921). In 1879, Congress passed a resolution requiring the President to abrogate a treaty with China, but President Hayes vetoed it, partly on the ground that Congress as an entity had no role to play in ending treaties, only the President with the advice and consent of the Senate. 9 J. Richardson, *supra*, at 4466, 4470–4471. For the views of President Taft on the matter, *see* W. TAFT, *THE PRESIDENCY, ITS DUTIES, ITS POWERS, ITS OPPORTUNITIES AND ITS LIMITATIONS* 112–113 (1916).

³⁸⁷ Since this time, very few instances appear in which Congress has requested or directed termination by notice, but they have resulted in compliance. *E.g.*, 65 Stat. 72 (1951) (directing termination of most-favored-nation provisions with certain Communist countries in commercial treaties); 70 Stat. 773 (1956) (requesting renunciation of treaty rights of extraterritoriality in Morocco). The most recent example appears to be § 313 of the Anti-Apartheid Act of 1986, which required the Secretary of State to terminate immediately, in accordance with its terms, the tax treaty and protocol with South Africa that had been concluded on December 13, 1946. Pub. L. 99–440, 100 Stat. 3515 (1986), 22 U.S.C. § 5063.

³⁸⁸ 5 J. Richardson, *supra*, at 279, 334.

³⁸⁹ S. REP. NO. 97, 34th Congress, 1st Sess. (1856), 6–7. The other instance was President Wilson's request, which the Senate endorsed, for termination of the International Sanitary Convention of 1903. *See* 61 CONG. REC. 1793–1794 (1921). *See* CRS Study, *supra* at 161–62.