

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

Sometimes the nature of a treaty will determine whether it requires legislative execution or “conveys an intention that it be ‘self-executing’ and is ratified on these terms.”<sup>343</sup> One authority states that whether a treaty is self-executing “depends upon whether the obligation is imposed on private individuals or on public authorities. . . .”

“Treaty provisions which define the rights and obligations of private individuals and lay down general principles for the guidance of military, naval or administrative officials in relation thereto are usually considered self-executing. Thus treaty provisions assuring aliens equal civil rights with citizens, defining the limits of national jurisdiction, and prescribing rules of prize, war and neutrality, have been so considered . . . .”

“On the other hand certain treaty obligations are addressed solely to public authorities, of which may be mentioned those requiring the payment of money, the cession of territory, the guarantee of territory or independence, the conclusion of subsequent treaties on described subjects, the participation in international organizations, the collection and supplying of information, and direction of postal, telegraphic or other services, the construction of buildings, bridges, lighthouses, etc.”<sup>344</sup> It may well be that these two characteristics merge with each other at many points and the language of the Court is not always helpful in distinguishing them.<sup>345</sup>

***Treaties and the Necessary and Proper Clause.***—What power, or powers, does Congress exercise when it enacts legislation for the purpose of carrying treaties of the United States into effect? When the subject matter of the treaty falls within the ambit of Congress’s enumerated powers, then it is these powers that it exercises in carrying the treaty into effect. But if the treaty deals with a subject that falls within the national jurisdiction because of its international character, then recourse is had to the Necessary and Proper

in treaties affecting the revenue laws of the United States a proviso that they should not be deemed effective until the necessary laws to carry them into operation should be enacted by Congress. 1 W. Willoughby, *supra*, at 558. Perhaps of the same nature was a qualification that cession of certain property in the Canal Zone should be dependent upon action by Congress inserted in Article V of the 1955 Treaty with Panama. TIAS 3297, 6 U.S.T. 2273, 2278. In regard to the latter, it may be noted that Article V of the Webster-Ashburton Treaty, 8 Stat. 572, 575 (1842), providing for the transfer to Canada of land in Maine and Massachusetts was conditioned upon assent by the two states and payment to them of compensation. S. Crandall, *supra*, at 222–224.

<sup>343</sup> *Medellin v. Texas*, 128 S. Ct. 1346, 1356 (2008), quoting *Ingartua-De La Rosa v. United States*, 417 F.3d 145, 150 (1st Cir. 2005) (en banc).

<sup>344</sup> Q. Wright, *supra*, at 207–208. See also L. HENKIN, *FOREIGN AFFAIRS AND THE CONSTITUTION* 156–162 (1972).

<sup>345</sup> Compare *Foster v. Neilson*, 27 U.S. (2 Pet.) 253, 314–15 (1829), with *Cook v. United States*, 288 U.S. 102, 118–19 (1933).