What of International Executive Agreements?

I introduced you to some of the nuances from the quotes in John Stormer's work in the previous section. So let's continue, we have treaties, executive orders and now what the heck are these International Executive Agreements?

Presentation Slide # 71

Here is the Official chatter direct from the State Department:

"**What is the difference between a treaty and an executive agreement?**

International Executive Agreements

Executive Agreement, an agreement between the ***United State***s and ***a foreign government*** that is **less formal** than a treaty and is **not subject** to the **constitutional requirement for ratification by two-thirds of the U.S. Senate**.

The Constitution of the United States does not specifically give a president the power to conclude executive agreements. However, he may be authorized to do so by Congress, or he may do so on the basis of the power granted him to **conduct foreign relations**. Despite questions about the constitutionality of executive agreements, in **1937** the Supreme Court ruled that they had **the same force as treaties**. Because executive agreements are made on the authority of the incumbent president, they do not necessarily bind his successors.

Most executive agreements have been made pursuant to a treaty or to an act of Congress. **Sometimes, however**, presidents have concluded executive agreements ***to achieve purposes*** that ***would not*** command the support of two-thirds of the Senate. For example, after the outbreak of World War II but before American entry into the conflict, President Franklin D. Roosevelt negotiated an executive agreement that gave the United Kingdom 50 overage destroyers in exchange for 99-year leases on certain British naval bases in the Atlantic.

Source: **Encyclopedia Britannica**

The greater detail in the State Department manual: 11 FAM 721.2,

"there are two procedures under domestic law through which the United States becomes a party to an international agreement. First, international agreements (regardless of their title, designation, or form) whose entry into force with respect to the United States takes place only after two thirds of the U.S. Senate has given its advice and consent under Article II, section 2, Clause 2 of the Constitution are "treaties." Second, international agreements brought into force with respect to the United States on a constitutional basis other than with the advice and consent of the Senate are "international agreements other than treaties" and are often referred to as "executive agreements." There are different types of executive agreements."[140]

I have read the various sections of the FAM (Foreign Affairs Manual) as it relates to Executive Agreement as well as other research that I've done to conclude that the following summation from Wikipedia does an ample job of providing the gist of the piles of documentation and information out there.

[140] U.S. Department of State: Diplomacy in Action, Treaty vs. Executive Agreement, http://www.state.gov/s/l/treaty/faqs/70133.htm

From the Article on US Foreign Policy the section on Law:

> "In the United States, there are three types of treaty-related law:
>
> Executive agreements
>
> **Congressional-executive agreements** are made by the president and Congress. A majority of both houses makes it binding much like regular legislation after it is signed by the president. While the constitution does not expressly state that these agreements are allowed, and constitutional scholars such as Laurence Tribe think they're unconstitutional, the U.S. Supreme Court has upheld their validity.[*citation needed*]
>
> **Sole executive agreements** are made by the president alone.
>
> **Treaties** are formal written agreements specified by the Treaty Clause of the Constitution. The president makes a treaty with foreign powers, but then the proposed treaty must be ratified by a two-thirds vote in the Senate. For example, President Wilson proposed the Treaty of Versailles after World War I after consulting with allied powers, but this treaty was rejected by the U.S. Senate; as a result, the U.S. subsequently made separate agreements with different nations. While most international law has a broader interpretation of the term *treaty*, the U.S. sense of the term is more restricted. In *Missouri v. Holland*, the Supreme Court ruled that the power to make treaties under the U.S. Constitution is a power separate from the other enumerated powers of the federal government, and hence the federal government can use treaties to legislate in areas which would otherwise fall within the exclusive authority of the states.
>
> International law in most nations considers all three of the above agreements as *treaties*. In most nations, treaty laws supersede domestic law. So if there's a conflict between a treaty obligation and a domestic law, then the treaty usually prevails.
>
> In contrast to most other nations, the United States considers the three types of agreements as distinct. Further, the United States incorporates treaty law into the body of U.S. federal law. As a result, Congress can modify or repeal treaties afterwards. It can overrule an agreed-upon treaty obligation even if this is seen as a violation of the treaty under international law. Several U.S. court rulings confirmed this understanding, including the 1900 Supreme Court decision in *Paquete Habana*, a late 1950s decision in *Reid v. Covert*, and a lower court ruling in 1986 in *Garcia-Mir v. Meese*. Further, the Supreme Court has declared itself as having the power to rule a treaty as void by declaring it "unconstitutional", although as of 2011, it has never exercised this power.
>
> The State Department has taken the position that the Vienna Convention on the Law of Treaties represents established law. Generally when the U.S. signs a treaty, it is binding. However, because of the *Reid v. Covert* decision, the U.S. adds a reservation to the text of every treaty that says, in effect, that the U.S. intends to abide by the treaty, but if the treaty is found to be in violation of the Constitution, then the U.S. legally can't abide by the treaty since the U.S. signature would be *ultra vires* ("beyond powers").[141]

With this established, let us take a walk through what I have included in the presentation:

Executive Agreement, an agreement between the ***United State***s and ***a foreign government*** that is **less formal** than a treaty and is **not subject** to the constitutional requirement for ratification by two-thirds of the U.S. Senate.

---

[141] Section 3 – Law, Wikipedia contributors, "Foreign policy of the United States," *Wikipedia, The Free Encyclopedia,* http://en.wikipedia.org/w/index.php?title=Foreign_policy_of_the_United_States&oldid=575823560

> "The Constitution of the United States does not specifically give a president the power to conclude executive agreements. However, (as we established previously) he may be authorized to do so by Congress, or he may do so on the basis of the power granted him to **conduct foreign relations**.
>
> Despite questions about the constitutionality of executive agreements, in **1937** the Supreme Court ruled that they had **the same force as treaties**. Because executive agreements are made on the authority of the incumbent president, *they do not necessarily bind his successors*.
>
> ***Most executive agreements have been made pursuant to a treaty or to an act of Congress***. Sometimes, however, presidents have concluded executive agreements ***to achieve purposes*** that ***would not*** command the support of two-thirds of the Senate. For example, after the outbreak of World War II but before American entry into the conflict, President Franklin D. Roosevelt negotiated an executive agreement that gave the United Kingdom 50 overage destroyers in exchange for 99-year leases on certain British naval bases in the Atlantic." Source: **Encyclopedia Britannica**

In his 1944 Yale Law Journal article "Shall the Executive Agreement Replace the Treaty"[142], Edwin Borchard does amazing research and development of the Executive Agreement and I am sure that this paper has been used for justifying these agreements to this very date. Borchard shows how the Senate relinquishes its full authority by sub-committee approvals of State Department or to the present, the EPA, DOE and other departments to execute agreements and spend money on the approval or concurrence of the Senate sub-committee with any presented agreement. To me this is relinquishing the Senate Constitutional responsibility.

To my point Borchard writes:

> "If the Senate in some fashion consents explicitly or impliedly to an executive agreement where the propriety of a mere agreement is doubtful, possibly no objection can be raised except those objections predicated upon the general deficiencies of executive agreements. It is probably also true that if the Senate waives its treaty prerogatives long enough in the face of continuing Presidential determination to make compacts with foreign countries by executive agreements, the Senate may, by such default, lose its constitutional prerogatives altogether. But this would merely amount to Senate acquiescence in what many students consider an unconstitutional practice and would not therefore be an effective mode of general "ratification."[143]

Thankfully Borchard talks about the pitfalls of these agreements from being "an evasion" and "dangerous" Constitutional perspective as well as other dangers including "secret agreements, i.e. 1917 Lansing-Ishii Agreement", "1905 Katsura Agreement" and many others that he lists in the article. How many more secret Executive Agreements have been instituted since Yalta that we don't know? They are Secret! With this thought Borchard mentions that these agreements have a conscious use as a substitute is constitutional "evasion."

If you take the time to read Borchard you will see the full flow of the thought development all the way to the Supreme Court cases of "Curtiss-Wright, Belmont and Pink" which support the view that executive agreements have binding effects.

---

[142] Borchard, Edwin, "Shall the Executive Agreement Replace the Treaty" (1944). Faculty Scholarship Series. Paper 3499. http://digitalcommons.law.yale.edu/fss_papers/3499

[143] Ibid. lxx

Considering what Borchard and others have written, what is the simple application of International Executive Agreements? On the surface it seems to focus on what should happen between countries within the context of the agreement. But, the question is more directly pointed to the domestic obligations imposed by such agreements; are treaties and executive agreements interchangeable insofar as domestic effect is concerned? In Borchard's final analysis it would seem that they are. As I mentioned before, we have seen this very clearly with the implementation of the United Nations Agenda 21. The reality is that domestic policy is affected by these agreements and is usually executed through the Executive branch departments.

What is seen is that:

> "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 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, A Study Prepared for the Senate Committee on Foreign Relations by the Congressional Research Service, 95th Cong., 1st sess. (Comm. Print) (1977), 22."[144]

The point here is that Congress can control them if they have the Liberty of the People in mind as the Founders did verses the statist/globalist ideal of economy as the driver for any agreement or treaty.

> "See the continued expansion of the authority. Trade Expansion Act of 1962, 76 Stat. 872, Sec. 201, 19 U.S.C. Sec. 1821; Trade Act of 1974, 88 Stat. 1982 , as amended, 19 U.S.C. §§ 2111, 2115, 2131(b), 2435. Congress has, with respect to the authorization to the President to negotiate multilateral trade agreements under the auspices of GATT, constrained itself in considering implementing legislation, creating a "fast–track" procedure under which legislation is brought up under a tight timetable and without the possibility of amendment. 19 U.S.C. §§ 2191 –2194."[145]

[144] International Executive Agreements Without Senate Approval, CRS Annotated Constitution, http://www.law.cornell.edu/anncon/html/art2frag21_user.html

[145] Ibid.

Before we move on think about this topic in continuing from # 71:

Presentation Slide # 72

Sometimes these agreements are entered into with the concurrence of a **simple majority** of both houses of Congress ("**Congressional-Executive agreements**"); in these cases the concurrence may be given either before or after the Executive Branch negotiates the agreement.

Agenda 21 was agreed too, implemented & funded this way.

US State Dept. : "As explained in greater detail in 11 FAM 721.2, there are two procedures under domestic law through which the United States becomes a party to an international agreement. ***First***, international agreements (regardless of their title, designation, or form) whose entry into force with respect to the United States takes place only after two thirds of the U.S. Senate has given its advice and consent under Article II, section 2, Clause 2 of the Constitution are "treaties." **Second**, ***international agreements*** brought into force with respect to the United States on a constitutional basis **other than with the advice and consent of the Senate** are "international agreements other than treaties" and are often referred to as "executive agreements." There are different types of executive agreements."

Just remember, that the statist/globalist/progressive elements that have taken over the majority of the major law departments in university's have:

"Many scholars aggressively promoting 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 L. J.181,534 (1945)."[146]

Presentation Slide # 73

Lastly look at the State Department web site that shows that there are **489** Pages with Details Comprising Over **TEN Thousand** entanglements.

State Department Report: Treaties in Force - A List of Treaties and Other International Agreements of the United States in Force on January 1, 2016

https://www.state.gov/documents/organization/267489.pdf

Here is what George Washington had to say about other nations and entanglements. I am not going to give you the short quote but the complete paragraphs from his Farewell Address that discusses this topic. I believe he addresses every area that is now considered proper International Executive Agreements and Treaties.

Washington wrote:

[146] Ibid.

"Observe good faith and justice towards all nations; cultivate peace and harmony with all. Religion and morality enjoin this conduct; and can it be, that good policy does not equally enjoin it - It will be worthy of a free, enlightened, and at no distant period, a great nation, to give to mankind the magnanimous and too novel example of a people always guided by an exalted justice and benevolence. Who can doubt that, in the course of time and things, the fruits of such a plan would richly repay any temporary advantages which might be lost by a steady adherence to it ? Can it be that Providence has not connected the permanent felicity of a nation with its virtue ? The experiment, at least, is recommended by every sentiment which ennobles human nature. Alas! is it rendered impossible by its vices?

In the execution of such a plan, nothing is more essential than that permanent, inveterate antipathies against particular nations, and passionate attachments for others, should be excluded; and that, in place of them, just and amicable feelings towards all should be cultivated. The nation which indulges towards another a habitual hatred or a habitual fondness is in some degree a slave. It is a slave to its animosity or to its affection, either of which is sufficient to lead it astray from its duty and its interest. Antipathy in one nation against another disposes each more readily to offer insult and injury, to lay hold of slight causes of umbrage, and to be haughty and intractable, when accidental or trifling occasions of dispute occur. Hence, frequent collisions, obstinate, envenomed, and bloody contests. The nation, prompted by ill-will and resentment, sometimes impels to war the government, contrary to the best calculations of policy. The government sometimes participates in the national propensity, and adopts through passion what reason would reject; at other times it makes the animosity of the nation subservient to projects of hostility instigated by pride, ambition, and other sinister and pernicious motives. The peace often, sometimes perhaps the liberty, of nations, has been the victim.

So likewise, a passionate attachment of one nation for another produces a variety of evils. Sympathy for the favorite nation, facilitating the illusion of an imaginary common interest in cases where no real common interest exists, and infusing into one the enmities of the other, betrays the former into a participation in the quarrels and wars of the latter without adequate inducement or justification. It leads also to concessions to the favorite nation of privileges denied to others which is apt doubly to injure the nation making the concessions; by unnecessarily parting with what ought to have been retained, and by exciting jealousy, ill-will, and a disposition to retaliate, in the parties from whom equal privileges are withheld. And it gives to ambitious, corrupted, or deluded citizens (who devote themselves to the favorite nation), facility to betray or sacrifice the interests of their own country, without odium, sometimes even with popularity; gilding, with the appearances of a virtuous sense of obligation, a commendable deference for public opinion, or a laudable zeal for public good, the base or foolish compliances of ambition, corruption, or infatuation.

As avenues to foreign influence in innumerable ways, such attachments are particularly alarming to the truly enlightened and independent patriot. How many opportunities do they afford to tamper with domestic factions, to practice the arts of seduction, to mislead public opinion, to influence or awe the public councils. Such an attachment of a small or weak towards a great and powerful nation dooms the former to be the satellite of the latter.

Against the insidious wiles of foreign influence (I conjure you to believe me, fellow-citizens) the jealousy of a free people ought to be constantly awake, since history and experience prove that foreign influence is one of the most baneful foes of republican government. But that jealousy to be useful must be impartial; else it becomes the instrument of the very influence to be avoided, instead of a defense against it. Excessive partiality for one foreign nation and excessive dislike of another cause those whom they actuate to see danger only on one side, and serve to veil and even second the arts of influence on the other. Real patriots who may resist the intrigues of the favorite are liable to become suspected and odious, while its tools and dupes usurp the applause and confidence of the people, to surrender their interests.

The great rule of conduct for us in regard to foreign nations is in extending our commercial relations, to have with them as little political connection as possible. So far as we have already formed engagements, let them be fulfilled with perfect good faith. Here let us stop. Europe has a set of

primary interests which to us have none; or a very remote relation. Hence she must be engaged in frequent controversies, the causes of which are essentially foreign to our concerns. Hence, therefore, it must be unwise in us to implicate ourselves by artificial ties in the ordinary vicissitudes of her politics, or the ordinary combinations and collisions of her friendships or enmities.

Why forego the advantages of so peculiar a situation? Why quit our own to stand upon foreign ground? Why, by interweaving our destiny with that of any part of Europe, entangle our peace and prosperity in the toils of European ambition, rivalship, interest, humor or caprice?

It is our true policy to steer clear of permanent alliances with any portion of the foreign world; so far, I mean, as we are now at liberty to do it; for let me not be understood as capable of patronizing infidelity to existing engagements. I hold the maxim no less applicable to public than to private affairs, that honesty is always the best policy. I repeat it, therefore, let those engagements be observed in their genuine sense. But, in my opinion, it is unnecessary and would be unwise to extend them.

Taking care always to keep ourselves by suitable establishments on a respectable defensive posture, we may safely trust to temporary alliances for extraordinary emergencies.

Harmony, liberal intercourse with all nations, are recommended by policy, humanity, and interest. But even our commercial policy should hold an equal and impartial hand; neither seeking nor granting exclusive favors or preferences; consulting the natural course of things; diffusing and diversifying by gentle means the streams of commerce, but forcing nothing; establishing (with powers so disposed, in order to give trade a stable course, to define the rights of our merchants, and to enable the government to support them) conventional rules of intercourse, the best that present circumstances and mutual opinion will permit, but temporary, and liable to be from time to time abandoned or varied, as experience and circumstances shall dictate; constantly keeping in view that it is folly in one nation to look for disinterested favors from another; that it must pay with a portion of its independence for whatever it may accept under that character; that, by such acceptance, it may place itself in the condition of having given equivalents for nominal favors, and yet of being reproached with ingratitude for not giving more. There can be no greater error than to expect or calculate upon real favors from nation to nation. It is an illusion, which experience must cure, which a just pride ought to discard."

STUDY NOTES