

**TREATIES AND OTHER INTERNATIONAL
AGREEMENTS:
THE ROLE OF THE
UNITED STATES SENATE**

**A Study Prepared for
the Committee on Foreign Relations
United States Senate
by the
Congressional Research Service
Library of Congress**

JANUARY 2001

**William S. Hein & Co., Inc.
Buffalo, New York
2004**

Library of Congress Cataloging-in-Publication Data

Treaties and other international agreements : the role of the United States Senate : a study / prepared for the Committee on Foreign Relations, United States Senate by the Congressional Research Service, Library of Congress.

p. cm. -- (Hein's electronic documents reprint series ; title 12)

Originally published: Washington : U.S. G.P.O., 2001. (S. prt. ; 106-71).

At head of title: 106th Congress, 2d session. Committee print.

"January 2001."

"Printed for the use of the Committee on Foreign Relations."

Includes bibliographical references.

ISBN 1-57588-808-4 (alk. paper)

1. United States. Congress--Powers and duties. 2. Treaty-making power--United States. 3. International obligations. 4. Treaties. I. United States. Congress. Senate. Committee on Foreign Relations. II. Library of Congress. Congressional Research Service. III. Series. IV. S. prt. ; 106-71.

KF4989.A25 2003

328.73'0746--dc22

2003057005

This book has been digitally archived to maintain the quality of the original work for future generations of legal researchers by William S. Hein & Co., Inc.

This volume printed on acid-free paper
by William S. Hein & Co., Inc.



Printed in the United States of America.

106TH CONGRESS }
2d Session

COMMITTEE PRINT

{ S. PRT.
106-71

**TREATIES AND OTHER INTERNATIONAL
AGREEMENTS: THE ROLE OF THE
UNITED STATES SENATE**

A S T U D Y

PREPARED FOR THE

COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE

BY THE

CONGRESSIONAL RESEARCH SERVICE
LIBRARY OF CONGRESS



JANUARY 2001

Printed for the use of the Committee on Foreign Relations

U.S. GOVERNMENT PRINTING OFFICE

66-922 CC

WASHINGTON : 2001

COMMITTEE ON FOREIGN RELATIONS

JESSE HELMS, North Carolina, *Chairman*

RICHARD G. LUGAR, Indiana

CHUCK HAGEL, Nebraska

GORDON SMITH, Oregon

ROD GRAMS, Minnesota

SAM BROWNBACK, Kansas

CRAIG THOMAS, Wyoming

JOHN ASHCROFT, Missouri

BILL FRIST, Tennessee

LINCOLN D. CHAFEE, Rhode Island

JOSEPH R. BIDEN, JR., Delaware

PAUL S. SARBANES, Maryland

CHRISTOPHER J. DODD, Connecticut

JOHN F. KERRY, Massachusetts

RUSSELL D. FEINGOLD, Wisconsin

PAUL WELLSTONE, Minnesota

BARBARA BOXER, California

ROBERT G. TORRICELLI, New Jersey

STEPHEN BIEGUN, *Staff Director*

EDWIN K. HALL, *Minority Staff Director*

RICHARD J. DOUGLAS, *Chief Counsel*

BRIAN MCKEON, *Minority Counsel*

LETTER OF SUBMITTAL

CONGRESSIONAL RESEARCH SERVICE,
THE LIBRARY OF CONGRESS,
Washington, DC, January 2, 2001.

Hon. JESSE HELMS,
*Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: In accordance with your request, we have revised and updated the study "Treaties and Other International Agreements: The Role of the United States Senate," last published in 1993. This new edition covers the subject matter through the 106th Congress.

This study summarizes the history of the treaty-making provisions of the Constitution and international and domestic law on treaties and other international agreements. It traces the process of making treaties from their negotiation to their entry into force, implementation, and termination. It examines differences between treaties and executive agreements as well as procedures for congressional oversight. The report was edited by Richard F. Grimmett, Specialist in National Defense. Individual chapters were prepared by policy specialists and attorneys of the Congressional Research Service identified at the beginning of each chapter.

The Congressional Research Service would like to thank Richard Douglas, Chief Counsel of the Committee, Edwin K. Hall, Minority Staff Director of the Committee, Brian P. McKeon, Minority Counsel of the Committee, and Robert Dove, Parliamentarian of the Senate, for their comments on Senate procedures for consideration of treaties. We would also like to thank Robert E. Dalton, Assistant Legal Adviser for Treaty Affairs, Department of State, and other staff members of the Treaty Office for their assistance with various factual questions regarding treaties and executive agreements.

Sincerely,

DANIEL P. MULHOLLAN,
Director.

CONTENTS

	Page
Letter of submittal	iii
Introductory note	xi
I. Overview of the treaty process	1
A. Background	2
The evolution of the Senate role	2
Treaties under international law	3
Treaties under U.S. law	4
Executive agreements under U.S. law	4
(1) Congressional-executive agreements	5
(2) Agreements pursuant to treaties	5
(3) Presidential or sole executive agreements	5
Steps in the U.S. process of making treaties and executive agree- ments	6
Negotiation and conclusion	6
Consideration by the Senate	7
Presidential action after Senate action	12
Implementation	12
Modification, extension, suspension, or termination	13
Congressional oversight	14
Trends in Senate action on treaties	14
B. Issues in treaties submitted for advice and consent	15
Request for consent without opportunity for advice	15
Multilateral treaties	16
Diminishing use of treaties for major political commitments	17
Unilateral executive branch action to reinterpret, modify, and termi- nate treaties	18
Difficulty in overseeing treaties	19
Minority power	19
The House role in treaties	19
Vienna Convention on the Law of Treaties	20
C. Issues in agreements not submitted to the Senate	21
Increasing use of executive agreements	22
Oversight of executive agreements—the Case-Zablocki Act	22
Learning of executive agreements	22
Determining authority for executive agreements	23
Non-binding international agreements	23
D. Deciding between treaties and executive agreements	24
Scope of the treaty power; proper subject matter for treaties	24
Scope of executive agreements; proper subject matter for executive agreements	25
Criteria for treaty form	26
II. Historical background and growth of international agreements	27
A. Historical background of constitutional provisions	27
The Constitutional Convention	28
Debate on adoption	29
B. Evolution into current practice	31
Washington's administrations	32
Presidencies from Adams to Polk	35
Indian treaties	36
Conflicts and cooperation	37
Executive agreements and multilateral agreements	38
Increasing proportion of executive and statutory agreements	40
Growth in multilateral agreements	42

	Page
III. International agreements and international law	43
A. The Vienna Convention on the Law of Treaties	43
International law status	43
Senate action on the convention	45
B. Treaty definition	49
C. Criteria for a binding international agreement	50
Intention of the parties to be bound under international law	50
Significance	51
Specificity	52
Form of the agreement	52
D. Limitations on binding international agreements and grounds for in- validation	53
Invalidation by fraud, corruption, coercion or error	53
Invalidation by conflict with a peremptory norm of general inter- national law (<i>jus cogens</i>)	54
Invalidation by violation of domestic law governing treaties	56
E. Non-binding agreements and functional equivalents	58
Unilateral commitments and declarations of intent	59
Joint communique and joint statements	60
Informal agreements	61
Status of non-binding agreements	62
IV. International agreements and U.S. law	65
A. Treaties	65
Scope of the treaty power	65
Treaties as law of the land	72
B. Executive agreements	76
Congressional-executive agreements	78
Agreements pursuant to treaties	86
Presidential or sole executive agreements	87
V. Negotiation and conclusion of international agreements	97
A. Negotiation	97
Logan Act	98
B. Initiative for an agreement; setting objectives	100
C. Advice and consent on appointments	103
Unconfirmed presidential agents	105
D. Consultations during the negotiations	106
Inclusion of Members of Congress on delegations	109
E. Conclusion or signing	111
F. Renegotiation of a treaty following Senate action	112
G. Interim between signing and entry into force; provisional application ..	113
VI. Senate consideration of treaties	117
A. Senate receipt and referral	118
Senate Rule XXX	118
Executive session—proceedings on treaties	119
Action on receipt of treaty from the president	119
B. Foreign Relations Committee consideration	122
C. Conditional approval	124
Types of conditions	124
Condition regarding treaty interpretation	128
Condition regarding supremacy of the Constitution	131
D. Resolution of ratification	136
E. Senate floor procedure	136
Executive session	136
Non-controversial treaties	137
Controversial treaties	138
Consideration of treaties under cloture	141
Final vote	142
Failure to receive two-thirds majority	143
F. Return or withdrawal	145
VII. Presidential options on treaties after Senate action	147
A. Ratification	147
Ratification of the treaty	147
Exchange or deposit of instruments of ratification (entry into force) ...	149
B. Resubmission of the treaty or submission of protocol	150
C. Inaction or refusal to ratify	152
Procedure when other nations attach new conditions	153
VIII. Dispute settlement, rules of interpretation, and obligation to implement	157
A. Dispute settlement	157

	Page
VIII. Dispute settlement, rules of interpretation, and obligation to imple- ment—Continued	
A. Dispute settlement—Continued	
Conciliation	158
Arbitration	159
Judicial settlement	161
B. Rules of interpretation	163
C. Obligation to implement	166
IX. Amendment or modification, extension, suspension, and termination of treaties and other international agreements	171
A. Introduction	171
B. Amendment and modification	176
Treaties	176
Executive agreements	183
C. Extension	184
Treaties	184
Executive agreements	187
D. Suspension	187
Treaties	187
Executive agreements	192
E. Termination or withdrawal	192
Treaties	192
Terms of treaty; unanimous consent	192
Breach	193
Impossibility of performance	194
<i>Rebus sic stantibus</i>	194
<i>Jus cogens</i>	195
Severance of diplomatic relations	195
Hostilities	196
State succession	196
F. U.S. law and practice in terminating international agreements	198
General	198
Treaties	201
Executive action pursuant to prior authorization or direction by the Congress	202
Executive action pursuant to prior authorization or direction by the Senate	204
Executive action without prior specific authorization or direction, but with subsequent approval by the Congress	205
Executive action without specific prior authorization or direction, but with subsequent approval by the Senate	205
Executive action without specific prior authorization or direction, and without subsequent approval by either the Congress or the Senate	206
Executive agreements	208
X. Congressional oversight of international agreements	209
A. The Case Act	209
Origins	210
Provisions for publication	210
The Bricker amendment and its legacy	212
National commitments concerns	213
Military base agreements (Spain, Portugal, Bahrain)	215
Separation of Powers Subcommittee approach	216
Intent and content of the Case Act	217
Implementation, 1972–1976	218
Amendments of the Case Act, 1977–1978	222
Committee procedures under the Case Act	224
Senate Foreign Relations Committee procedures	224
House International Relations Committee procedures	225
Impact and assessment of the Case Act	225
Number of agreements transmitted	226
Late transmittal of Case Act agreements	228
Insufficient transmittal of agreements to Congress	230
Pre-Case Act executive agreements	232
B. Consultations on form of agreement	233
C. Congressional review or approval of agreements	235
D. Required reports to Congress	238
E. Other tools of congressional oversight	239

	Page
X. Congressional oversight of international agreements—Continued	
E. Other tools of congressional oversight—Continued	
Implementation legislation	240
Recommendations in legislation	240
Consultation requirements	242
Oversight hearings	243
XI. Trends in major categories of treaties	245
A. Political and security agreements	246
National security and defense commitments	247
Treaty on the Final Settlement with Respect to Germany	250
Maritime Boundary Agreement with the Soviet Union	251
Arms control treaties	251
INF Treaty	254
Threshold Test Ban Treaty and Protocol	256
CFE Treaty	257
CFE Flank Agreement	257
START I Treaty	258
START II	260
Open Skies Treaty	261
Chemical Weapons Convention	261
Comprehensive Test Ban Treaty	262
B. Economic treaties	265
Friendship, commerce, and navigation treaties	265
Investment treaties	266
Consular conventions	269
Tax conventions	270
Treaty shopping	271
Exchange of information	272
Allocation of income of multinational business enterprises	272
Taxation of equipment rentals	272
Arbitration of competent authority issues	272
Insurance excise tax	273
C. Environmental treaties	273
No-reservations clauses	274
Fishery conventions	276
D. Legal cooperation	278
Extradition treaties	278
Mutual legal assistance treaties	282
E. Human rights conventions	285
Genocide Convention	287
Labor conventions	288
Convention Against Torture	290
Civil and Political Rights Covenant	291
Racial Discrimination Convention	292
Other human rights treaties	293

APPENDIXES

1. Treaties and other international agreements: an annotated bibliography	295
A. Introduction	295
B. International agreements and international law	295
1. Overview	295
a. General	295
b. Treaties and agreements involving international organiza- tions	298
2. Negotiation and conclusion of treaties and international agree- ments	299
a. Negotiation and the treatymaking process	299
(1) General	299
(2) Multilateral treaties	299
b. Amendments, interpretive declarations, and reservations	300
c. Acceptance, depositary, registration and publication	301
(1) Acceptance	301
(2) Depositary	301
(3) Registration and publication	302
3. Entry into force	302
4. Interpretation	303
5. Modification, suspension, and termination of treaties	307

1. Treaties and other international agreements—Continued	
B. International agreements and international law —Continued	
5. Modification, suspension, and termination of treaties —Continued	
a. Overview	307
b. Questions of treaty validity	310
6. Dispute settlement	312
7. Succession of states	313
C. International agreements and U.S. law	314
1. General	314
2. Congressional and Presidential roles in the making of treaties and international agreements	319
3. Communication of international agreements to Congress	330
4. U.S. termination of treaties	332
D. Guides	334
1. Guides to resources on treaties	334
2. Compilations of treaties, and indexes international in scope	335
3. U.S. treaties and the treatymaking process	338
a. Sources for treaty information throughout the treatymaking process	338
CIS/index	338
Congressional Index	338
Congressional Record	341
Executive Journal of the Senate	341
Senate executive reports	341
Senate Foreign Relations Committee calendar	341
Senate treaty documents	341
Department of State Dispatch	341
Department of State Bulletin	341
Foreign Policy Bulletin	342
Department of State Press Releases	342
Federal Register	342
Monthly Catalog	342
Shepard's United States Citations—Statutes Edition	342
Statutes at Large	342
Weekly Compilation of Presidential Documents	343
b. Official treaty series	343
TIAS	343
UST	343
c. Indexes and retrospective compilations	343
Current	343
1950+	344
1776–1949	344
1776–1949 (Bevans)	344
1776–1931 (Malloy)	344
1776–1863 (Miller)	344
d. Status of treaties	345
Treaties in force	345
Unperfected treaties	345
Additional information	345
4. Topical collections	346
a. Diplomatic and national security issues	346
b. Economic and commercial issues	347
c. International environmental issues and management of common areas	348
2. Case-Zablocki Act on Transmittal of International Agreements and Related Reporting Requirements	349
3. Coordination and reporting of international agreements, State Department regulations	351
4. Department of State Circular 175 Procedures on Treaties	357
710 Purpose and disclaimer	357
711 Purpose (state only)	357
712 Disclaimer (state only)	357
720 Negotiation and signature	357
721 Exercise of the international agreement power	358
722 Action required in negotiation and/or signature of treaties and agreements	359
723 Responsibility of office or officer conducting negotiations	361
724 Transmission of international agreements other than treaties to Congress: compliance with the Case-Zablocki Act	364

	Page
4. Department of State Circular 175 Procedures on Treaties—Continued	
725 Publication of treaties and other international agreements of the United States	364
730 Guidelines for concluding international agreements	364
731 Conformity of texts	366
732 Exchange or exhibition of full powers	366
733 Signature and sealing	366
734 Exchange of ratifications	367
740 Multilateral treaties and agreements	367
741 Official and working languages	368
742 Engrossing	369
743 Full powers	370
744 Signature and sealing	370
745 Disposition of final documents of conference	370
746 Procedure following signature	371
750 Responsibilities of the Assistant Legal Adviser for Treaty Affairs	371
5. The Vienna Convention on the Law of Treaties, Senate Ex. L, 92d Congress 1st Session, with list of signatures, ratifications and accessions deposited as of December 11, 2000	375
Letter of transmittal	377
Letter of submittal	378
Vienna Convention on the Law of Treaties	384
List of signatures, ratifications deposited and accessions deposited as of December 11, 2000	407
6. Glossary of treaty terminology	411
7. Simultaneous consideration of treaties and amending protocols	415
1. Treaty with Mexico Relating to Utilization of the Waters of Certain Rivers (Ex. A, 78-2, and Ex. H, 78-2)	415
2. Convention Between France and the United States as to Double Taxation and Fiscal Assistance and Supplementary Protocol (S. Ex. A, 80-1 and S. Ex. G, 80-2)	415
3. Tax Convention with Canada and Two Protocols (Ex. T, 96-2; Treaty Doc. 98-7; and Treaty Doc. 98-22)	416
4. Treaties with the U.S.S.R. on the Limitation of Underground Nuclear Weapon Tests and on Underground Nuclear Explosions for Peaceful Purposes and Protocols (Ex. N, 94-2; and Treaty Doc. 101-19)	416
8. Treaties approved by the Senate	417
2000	417
1999	420
1998	422
1997	425
1996	426
1995	429
1994	430
1993	430
9. Treaties rejected by the Senate	433
1999	433
10. Letter of response from Acting Director Thomas Graham, Jr. to Senator Pell accepting the narrow interpretation of the ABM Treaty	

TABLES

II-1. Treaties and executive agreements concluded by the United States, 1789-1989	39
II-2. Treaties and executive agreements concluded by the United States, 1930-1999	39
X-1. Transmittal of executive agreements to Congress, 1978-1999	226
X-2. Agencies submitting agreements late, 1979-1999	229
X-3. Statutory requirements for transmittal of agreements to Congress	236
X-4. Required reports related to international agreements	239
X-5. Legislation implementing treaties	241
XI-1. Human rights treaties pending on the Senate Foreign Relations Committee calendar	286
A1-1. Publications providing information on U.S. treaties throughout the treaty-making process	

CHARTS

1. Steps in the making of a treaty	8
2. Steps in the making of an executive agreement	10

INTRODUCTORY NOTE

This study revises a report bearing the same title published in 1993. It is intended to provide a reference volume for use by the U.S. Senate in its work of advising and consenting to treaties. It summarizes international and U.S. law on treaties and other international agreements. It traces the process of making treaties through the various stages from their initiation and negotiation to ratification, entry into force, implementation and oversight, modification or termination—describing the respective senatorial and Presidential roles at each stage. The study also provides background information on issues concerning the Senate role in treaties and other international agreements through specialized discussions in individual chapters. The appendix contains, among other things, a glossary of frequently used terms, important documents related to treaties: the Vienna Convention on the Law of Treaties (unratified by the United States); State Department Circular 175 describing treaty procedures in the executive branch; the State Department regulation, “Coordination and Reporting of International Agreements,” and material related to the Case-Zablocki Act on the reporting of international agreements to Congress. Also included are a list of treaties approved by the Senate from January 1993 through October 2000, examples of treaty documents, and an annotated bibliography.