

**Joining International Organizations:
The United States Process**

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This study examines how the United States affiliates with multipartite international organizations, not only by the treaty, but also the executive agreement process. It examines these processes as a legal/political feature of executive-legislative relations, involving nearly 150 international organizations with which the United States has been affiliated since 1945. With few exceptions, Congress has cooperated with the President in developing a variety of techniques for such affiliation, and such coaction is not a post-World War II phenomenon, but began in the 1860s.

The process of American affiliation with international organizations is generally thought to presume cooperation of the President and either the Senate through the treaty process or both houses of Congress by means of executive agreements.¹ Remembering the conflict between Woodrow Wilson and the Senate in 1919 over the joining of the League of Nations² and between President Franklin Roosevelt and the Senate in 1935 over becoming a party to the Statute of the Permanent Court of International Justice,³ and because of the American tradition of isolationism or noninvolvement and the difficult constitutionally mandated treaty process, it was widely believed that the United States was not an avid joiner of international organizations until World War II.⁴

This attitude raises several basic questions. To what extent does the American treaty process inhibit affiliation with international (particularly multipartite) organizations? Is the process of joining them impeded or thwarted by constitutionally prescribed separation of powers respecting international cooperation and involvement via the treaty process, and by the division of powers respecting the exercise of national and residual state authority?

Evolution and Application of the American Treaty and Agreement Processes

At the outset, originally under the Articles of Confederation and subsequently when the Constitution went into effect, the United States dealt diplomatically with other countries on a bilateral basis and generally reduced international commitments to formal treaties. Using France and Great Britain as examples, during the first 60 years (1778-1839) this country signed 26 treaties and 2 agreements with them. Nine of these actually antedated the Constitution and the birth of the American government in 1789.⁵ During this early period the formal bipartite treaty served as the normal American instrument of international agreement, and dozens were negotiated primarily with European and Latin American governments. Those antedating the Constitution were "ratified" by the Continental Congress.⁶

Turning to multipartite treaties and agreements, the first one signed by the United States (in 1826) dealt with the establishment of cemeteries in Algiers, and the second (1839) concerned the formalizing of international consular and shipping regulations. Both of these initial engagements were treated by the United States as executive agreements, so that the technique of undertaking multipartite commitments by means other than the treaty process dates back to the early nineteenth century.⁷ Nevertheless, as Table 1 indicates, the preponderant majority to 1900 were formal treaties⁸ and reliance on treaties continued through 1920. However, the situation then began to change, and of the 51 international organizations contained in the Department of State listing of United States affiliations through December 1945 (Department of State 1946), only 16 (31%) were based on treaties, whereas 32 (63%) were provided for in executive agreements.⁹ Indeed, the record is clear that by 1945 the United States had been joining a preponderant majority of international organizations by the executive agreement process.

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TABLE 1
INTERNATIONAL ORGANIZATIONS
AFFILIATION BY TREATIES AND AGREEMENTS

	Treaties	Agreements	Totals
Prior to 1900	6	2	8
1900-1909	6	2	8
1910-1919	1	1	2
1920-1929	4	8	12
1930-1939	2	7	9
1940-1949	8	30	38
1950-1959	10	8	18
1960-1969	5	14	19
1970-1979	7	11	18
1980--	4	5	9
Total	53	88	141
Percent	37.59	62.41	100

Source: Plischke, 1991. "Evolution of Participation in International Organizations: The United States Experience," Appendix. 5 Commonwealth: 60-66.

This trend continued after World War II. While some major new agencies were based on treaties, of the 141 multipartite international organizations with which the United States has been affiliated since 1945,¹⁰ 62% were formed by means of a variety of formal and informal executive agreements.¹¹ As Table 2 shows, of the international organic acts subscribed to the United States since World War II, the preponderant majority, irrespective of their titles, are treated by the United States as executive agreements, including most of the "charters" and "statutes."¹²

TABLE 2
TITLES OF INTERNATIONAL INSTRUMENTS
(CONSTITUTIVE ACTS OF INTERNATIONAL
ORGANIZATIONS SINCE WORLD WAR II)

Title	Treaty	Agreement	Total
Agreement	3	24	27
Arbitration Rules	0	1	1
Arrangement	0	1	1
Articles of Agreement	0	6	6
Charter	2	5	7
Conference Communique	0	1	1
Conference Resolution or Decision	0	16	16
Constitution	0	8	8
Convention	39	3	42
Declaration	0	1	1
Exchange of Dip- lomatic Notes	0	4	4
General Act	1	0	1
Protocol	0	2	2
Regulations	0	4	4
Statute(s)	3	9	12
Treaty	5	0	5
U N Resolution	0	2	2
U S Statute	0	1	1
Total	53	88	141

Source: Plischke, 1991. "Evolution of Participation in International Organizations: The United States Experience," Appendix. 5 Commonwealth: 60-66.

International titles do not clearly determine whether an instrument will be approved by the treaty or the executive agreement process. This is because, as Table 3 indicates, the American treatment of these constitutive acts, with some exceptions, is less attributable to how they are designated internationally than to the functions and responsibilities of individual international organizations, as well as the decision-making process of the agencies and the nature of the international commitments subscribed to by the United States.¹³

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TABLE 3
INTERNATIONAL ORGANIZATIONS
FUNCTIONAL INTERESTS AND ACTIVITIES

<u>Category</u>	<u>Treaty</u>	<u>Agreement</u>	<u>Total</u>
General	2	1	3
Agriculture, Animals, and Food	4	4	8
Aviation and Outer Space	1	1	2
Commerce, Tarriffs, Trade, and Customs	6	6	12
Communications	4	1	5
Education and Culture	2	5	7
Finance and Development	1	19	20
Fisheries and Marine Resources	7	1	8
Health and Disease	2	2	4
Legal, Judicial and Law Enforcement	1	6	7
Navigation, Shipping and Maritime	6	9	15
Peaceful Settlement, Adjudication, Arbitration	6	0	6
Political	1	2	3
Regional (General)	0	4	4
Science and Energy	4	7	11
Security and Defense	4	3	7
Social and Humanitarian	1	12	13
Transportation and Travel	1	2	3
War Crimes (World War II)	0	3	3
Total	53	88	141

Sources: Plischke, 1991. "Evolution of Participation in International Organizations: The United States Experience," Appendix. 5 Commonwealth: 60-66.

The United Nations and the Organization of American States (whose Charters provide for general political and security functions), all organizations possessing basic peaceful settlement responsibilities,¹⁴ and most of those empowered to implemenent substantial alliance and collective

security commitments¹⁵ or to deal with international communications,¹⁶ fisheries and marine resources,¹⁷ and patent and trademark protection¹⁸ are based on international engagements regarded by the United States as treaties. On the other hand, few of the multipartite agencies that handle educational and cultural, financial and developmental, legal and juridical (excluding pacific settlement of international disputes), and social and humanitarian affairs are subjected to the treaty process by the United States.

With regard to functional service, it is interesting to note that, using the 20 United Nations specialized agencies as a sample, despite their wholesale membership and broad scale responsibilities, only 7 of them were founded on what the United States has regarded as treaties.¹⁹ Aside from those based on early conventions,²⁰ the primary reasons for resorting to the treaty process is that these agencies enjoy significant rule-making authority and/or possess functions that impinge on the residual constitutional authority and rights of the American states.²¹ The 13 others, including several global financial institutions that wield important international authority, have been dealt with by the executive agreement process.²²

Among the criteria for differentiating between treaties and executive agreements as related to functional responsibility are the degree to which an international organization impinges on the exercise of United States sovereignty,²³ the nature of American influence or control over the agency's decision-making process,²⁴ the authority of the President to commit the United States under his constitutional powers as commander in chief²⁵ and, to some extent, historical precedent.²⁶

U.S. Treaty and Agreement-Making Practice: Executive-Legislative Relations

So far as the United States is concerned, irrespective of the titles used internationally, the principal constitutional distinction is between the terms "treaty" and "agreement." Article II, Section 2, of the Constitution stipulates that the President has power "to make treaties" by and with "the advice and consent of the Senate" provided that "two thirds of the Senators present concur" thereto. In addition, the President engages the United States in what internally are called "executive agreements," authority for which is not expressly stipulated in the Constitution. These are not subject to the formal approval restraints required for treaties but, like them, also become "the law of the land" (although they cannot change domestic law). Most of these are based on prior legislation or are approved subsequently by

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congressional action endorsed by majority vote of both houses of Congress, sometimes consisting simply of implementing legislation.

Throughout our history, executive-legislative differences--both legal and political, and sometimes partisan--have arisen in delineating the usage of treaties and executive agreements, authority to decide upon the applicability of agreements, the role played by the Senate in amending treaties and appending reservations or interpretations, and action of the President to establish policy and undertake international commitments as chief executive, commander in chief, or diplomat in chief without overt legislative support. Since World War II such differences have involved the President's prerogative to enter into agreements related to expanding American commitments and actions as a major world power, including participation in international organizations, circumventing the two-thirds Senate treaty approval requirement or, in some cases, obviating congressional approval on policy positions that do not require implementing legislation.

Over the years much has been published on the American treaty and agreement-making processes, including official interpretations and practices concerning them. Some of these focus on the President's authority to "make" treaties and agreements, definitions of and distinctions between them, congressional or Senate authorization and approval as well as formal ratification and adherence procedures, types of executive agreements, requirements to submit treaty and agreement texts to Congress, and State Department responsibility for publishing them.²⁷

In 1964 the Department of State issued a statement of "standards" for determining whether an international engagement "should be concluded as a treaty." It specifies that it must be regarded as a treaty when the subject matter "is traditionally handled as a treaty" or is "not solely within the constitutional authority of the President," when it "involves important commitments affecting the nation as a whole," and/or when it is "desired to give utmost formality to the commitment with a view to requiring similar formality on the part of the other governments concerned." This statement also lists standards for determining when an agreement other than a treaty may be employed. (Whiteman 1970, 14:209) The presumption follows that, at least in the first instance, it is the Department of State that determines whether the international engagement is to be regarded as a treaty or an executive agreement in American constitutional practice.

In 1978 the Senate also considered a general draft "Treaty Powers Resolution" which would empower it to designate any international

understanding as a treaty and, therefore, subject it to the treaty-approval process, and to require the President to seek the advice of the Senate Foreign Relations Committee in advance of negotiations to determine its status. Although this resolution failed to gain approval, a comprehensive understanding was reached concerning the Department of State's responsibility for informing the Foreign Relations Committee, "on a confidential basis," of significant pending treaty negotiations.²⁸

Types of Executive Agreements and Special Arrangements

From existing legislation and commentary, it is evident that, aside from treaties, the President may initiate various types of "executive agreements." They may be formal, involving instruments comparable to treaties in terms of negotiation, content, form, approval, and accession which, from the international perspective, are indistinguishable from treaties. The constitutive acts of many international organizations have been treated in this fashion.²⁹ Other authorizations, embodied in broader functional agreements, may simply stipulate the establishment of a multipartite organization whose operations are prescribed by that agency itself or, as noted earlier, international agencies may flow from resolutions agreed upon by international conferences or organizations or, as in the case of the United Nations War Crimes Commission, are provided for in an exchange of diplomatic notes.³⁰

Aside from formal constitutive treaties and presidential agreements based solely on executive authority, the bulk of executive agreements fall into four general categories. These embrace (1) agreements founded on existing treaties,³¹ (2) agreements consummated subject to subsequent formal approval by the ordinary legislative process,³² (3) agreements made pursuant to prior congressional resolutions or specific authorizing legislation,³³ and (4) agreements that merely require some other form of implementing legislation.³⁴

Illustrating an exceptional case of legislative-executive coaction in dealing with the executive agreement process, the General Agreement on Tariffs and Trade--a comprehensive global convention on international trade policy, practices, and regulations known as GATT, signed in 1947--is unique in several respects. It was negotiated as a basic multipartite trade "treaty" and has frequently been amended and supplemented by revised commitments and extensive protocols.³⁵

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Also admittedly unprecedented, evidencing liberal legislative initiative in the establishment of international institutions, in 1966 Congress required the President to "cooperate with the Inter-American Center Authority (an agency of the State of Florida)" to provide for "United States participation in the Inter-American Cultural and Trade Center," called INTERAMA. It was created to promote Western Hemisphere trade and intercultural relations. Participants, Congress added, may be not only foreign countries but also, most unusual, individual states in our federal union.³⁶

Perhaps the most extraordinary example, however, of congressional-executive cooperation for joining multinational international organizations dates back to the 1870s--during the formative years of American affiliation with such agencies. In 1874 the United States signed a multipartite postal convention, establishing the General Postal Union, whose title was changed to the Universal Postal Union in 1878.³⁷ To facilitate the negotiation of postal arrangements, in 1872 Congress passed an act empowering the Postmaster General, "by and with the advice and consent of the President" to conclude such conventions.³⁸ This method of advance congressional authorization for concluding and ratifying conventions by the American postal agency, subject to presidential approval, is one of the most unique in congressional-executive treaty-making relations.³⁹

An additional feature of executive-congressional cooperation involves presidential authority to confer "international privileges and immunities" upon international organizations and their officers and employees. Under international law these are differentiated from "diplomatic and consular privileges and immunities" accorded to regular diplomatic agents.⁴⁰

Conclusion

In response to the questions raised at the outset, concerning the application of the constitutionally ordained separation of powers and the treaty and executive agreement processes for affiliation with multipartite international organizations, it may generally be concluded that, with very few exceptions, the American system does not seriously inhibit such involvement. Over the years, a variety of cooperative executive-legislative arrangements have not only been devised but also liberalized to accommodate such association.

Although initially the treaty process, requiring Senate approval, emerged as the traditional method for affiliation with these organizations, and some that were joined in this fashion remain in existence, this method was supplemented and eventually paralleled and superseded by the executive agreement process, so that by the end of World War II, and since, nearly two-thirds have been founded on agreements rather than treaties. Moreover, Congress does not require that all executive agreements serving as constitutive acts of such agencies be approved by formal affiliation or authorizing legislative action. Some are regarded as "presidential agreements" consummated by the executive under his authority as chief executive, commander in chief, or diplomat in chief. Others are based on prior authorizing legislation, simple association approval, functional implementing enactments, or merely appropriations allotments. In a few special cases, Congress even mandates the establishment of an organization or, in dealing with postal affairs, it authorized an extra-constitutional procedure.

Admittedly, the most difficult and occasionally most formidable of these executive-legislative arrangements is the treaty process, especially when the President and the Senate majority represent different political parties or policy positions. This is especially important in joining particular types of international organizations, such as those that possess significant political functions or general adjudicatory and arbitral functions, establish collective defense commitments, exercise international regulatory or rule-making powers, or handle issues that infringe upon the residual powers and functions of the constituent American states and the people protected by the Tenth Amendment.

So far as United States legislative action is concerned, the most comprehensive congressional action to approve a previously negotiated constitutive act of an international organization empowers the President not only to accept membership for the United States, but also to appoint representatives to its deliberative sessions and provide for appropriations to pay the American share of the agency's expenses. In other cases, Congress enacts prior authorizing legislation that serves as the basis for negotiations to create and/or join an international organization, resulting in either a treaty that requires Senate approval or an executive agreement that may or may not need subsequent confirmatory legislative action, or that merely is implemented by the passage of appropriations legislation. Some "presidential agreements" (distinguished from "congressional- executive

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agreements") may be self-executing and may not require any legislative action unless funding is required.

The reasons for these variations in executive-legislative practice flow from the application of differing criteria. For example, "presidential agreements" are generally reserved for either policy-recommending, temporary or interim, and wartime and immediate post-hostilities international organizations. On the other hand, many purely administrative and servicing, financial, and development agencies, respecting which presidential and congressional interests and objectives coalesce, are founded on executive agreements. If the organization is empowered to produce subsidiary substantive treaties or agreements subject to subsequent congressional action, their status is likely to be determined on their own merits. At times tradition plays a major role, so that once the decision is made to employ either the treaty or the agreement process, this may be continued for subsequent arrangements for particular organizations, and their successors, unless reasons materialize that warrant shifting the procedure. Finally, overriding other considerations, in certain cases the ultimate determination depends upon whether the authority and functions of an international organization impinges upon the residual rights of our constituent states or American persons, both corporate and private. Several of these criteria may apply or compete in deciding upon the status of the constitutive act of a given organization and the procedure for affiliation.

More than two centuries of experience evidences that, in keeping with a basic rule of diplomacy, if there is a will to do something, a way will be found to accomplish this. Difficulties arise when the Executive and Congress, each jealous of its constitutional birthright, disagree on their interpretation of the nation's goals and welfare, on their respective authority and roles in dealing with them, or on the process required to achieve and sustain them.

While the joining of many international organizations by the executive agreement rather than the treaty process might be viewed as designed to circumvent the treaty clause of the Constitution--especially because of experience with the League of Nations Covenant and the Statute of the Permanent Court of International Justice following World War I--this fails to explain the evolution and mutation of American practice. Executive agreements were used virtually from the beginning of United States participation in the creation of both bilateral and multilateral agencies in the nineteenth century. Initially this may be attributed to experimentation--a search for a flexible and workable constitutional process. Other motivations

include a willingness on the part of Congress to treat legislative consideration of treaties and agreements in the form in which they are suggested or submitted by the President, and perhaps a disposition that, so long as no hazardous legal commitments are involved that directly or immediately affect unpropitiously the national interests, welfare, and security of the country or impinge adversely upon the rights of the constituent states or private individuals, the more cumbersome treaty procedure is unnecessary.

In short, neither the separation of powers, nor the treaty process, has thwarted or seriously impeded the initiation and joining of international organizations. The system conceived by the framers of the Constitution has been molded to meet the needs of the country and the times. Procedures have been devised and modified to accommodate the powers and the functions of the President and Congress to enable them to play compatible if not cooperative roles in fabricating and managing an encompassing array of multipartite agencies to cope with global and regional issues and facilitate significant aspects of the governing of international affairs.

Appendix

In international parlance, the terms "treaties" and "agreements," and also such expressions as international "accords," "arrangements," "compacts," "conventions," "engagements," and "understandings" constitute generic expressions and they are used interchangeably. Whereas in practice some are formally titled "treaties" or "agreements," others bear a variety of more restricted titles. A few that are specifically employed for the "constitutive acts" of international organizations--which are unique in that they are utilized solely for the establishment of these agencies, such as "articles of agreement," "charter," "covenant," and "statute"--are readily understood. Alternative generic expressions for international engagements are "accord," "compact," and "understanding."

In addition to the terms "treaty" and "agreement," the following are commonly employed for international engagements. An "act," "general act," or "final act," is normally a formal statement or summary of proceedings of an international conference, which alludes to or includes treaties, agreements, or other forms of commitment. A "compromis d'arbitrage" is a specialized understanding, often in the form of a treaty, to submit a particular dispute to international arbitration or adjudication, specifying the issue to be decided, the agency to decide it, and, sometimes,

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the principles to be applied in deciding it; these may supplement the treaties that establish continuing organizations for processes of peaceful settlement. The "concordat" is a treaty or agreement signed by a government with the Vatican, concerning the interests of Roman Catholic Church and ecclesiastical matters. The term "convention" denotes a major multilateral treaty, usually concluded at an international conference, which concerns a variety of usually non-political affairs, and establishes important international commitments. An international "declaration" is a joint statement of policy or of principles of international law as mutually understood. A "modus vivendi" is a provisional working arrangement pending the devisement of a more permanent understanding for settling a dispute or resolving a problem. The term "pact" is a popular title for certain important treaties, usually creating significant commitments concerned with collective security and peace-keeping, or with establishing an alliance. The title "proces-verbal" denotes either simply an authenticated record of the minutes of an international conference or of an exchange of treaty ratifications, or constitutes an agreed written addition to the text of a treaty or agreement by way of explanation, elucidation, or interpretation. When applied to a written instrument, the term "protocol" is interchangeable with "proces verbal." Most of these relate, directly or indirectly, to the titles of the constitutive acts of international organizations. See Table 2 for statistical details.

Aside from the distinction among titles employed internationally, however, the United States distinguishes legally between "treaties," which require Senate approval by special vote, and "executive agreements," which do not. In American practice all "treaties," regardless of the international titles they bear, are dealt with by a constitutionally prescribed method of validation. On the other hand, "executive agreements," also irrespective of their specific international titles, may be dealt with by various procedures. The most important domestic differentiation among them, in this respect, is between "presidential agreements" (which are consummated solely by the executive on the basis of presidential authority and therefore do not necessitate implementing legislation) and "congressional-executive agreements" (which do require some form of cooperative legislative action to put them into effect in the United States).

Note also, as indicated in Table 2, that international titles do not predetermine the way international acts will be handled by the United States. The organic acts of the post-World War II multipartite organizations fall into two primary groups--those connoting proactive designations and

those reflecting some form of international covenant. The first of these accounts for only 19%, including charters" (7), "constitutions" (8), and "statutes". (12). For example, the Food and Agriculture Organization, International Labor Organization, International Refugee Organization, and World Health Organization are founded on "constitutions;" the Inter-American Committee on the Alliance for Progress, Organization of American States, and United Nations are based on "charters;" and the Inter-American Statistical Institute, International Atomic Energy Agency, International Criminal Police Commission, International Court of Justice, and International Meteorological Organization are founded on "statutes."

The balance (114 or 81%) are founded on constitutive instruments that bear titles denoting some form of international accord. Of these, the largest number are called "conventions," and all but 3 of the 42 conventions were dealt with by the United States as treaties, as were those formally titled "treaty." A total of 33 others are termed "agreements" or, in the case of many financial agencies, as "articles of agreement," and all but 3 of these were treated by the United States as executive agreements. The three exceptions, dealt with by the treaty process, were the constitutive acts of the International Office of Epizootics, the International Office of Public Health (1908, superseded by the World Health Organization in 1948), and the international agency established to maintain navigation lights on the Red Sea.

Only 5 organizations are based on constitutive acts formally titled "treaties" (these include collective security and peaceful settlement arrangements, such as the North Atlantic and Southeast Asia Treaty Organizations and inter-American arbitration and conciliation agencies), and 1 was founded on a "general act" (this title applied solely to the Committee of Control of the International Zone of Tangier, which was terminated in 1956) and 2 on "protocols" (the Central American Tribunal and the Council of Foreign Ministers). On the other hand, 16 were created by international conference and United Nations and Organization of American States "resolutions" or "decisions," 4 by "exchanges of diplomatic notes," and a few others by international "declarations," "regulations," "rules" and, strangely, even by a United States Statute.

It is a well-established international custom that treaties and agreements are subject to the principle of "ad referendum," which provides that, to become binding, the final, signed instruments must be subsequently approved by the governments of signatories in accordance with their national constitutional processes. The usual international procedure for

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effectuating treaties and some agreements, that is generally applicable to all signatories including the United States, is called "ratification." This is an executive act signified by a document called an "instrument of ratification," which is signed by the chief executive. In the case of the United States all international engagements that are regarded as "treaties" require advance Senate approval before the President issues a ratification instrument. The ratification procedure applies to all governments that negotiate and sign the treaties and agreements. On the other hand, the terms "accession," "adherence," and "adhesion" (which are used interchangeably) characterize acquiescence by non-signatories that later agree to be bound by the treaty or agreement, which they evidence by executing "instruments of accession, adherence, or adhesion." These confirmatory actions and documents apply to affiliation with international organizations as well as to other treaties and agreements. In exceptional cases, however, such as the consummation of agreements by means of the "exchange of diplomatic notes" generally require no specific additional acquiescing action to implement them.

A few additional terms warrant brief explanation. A "self-executing agreement," including an exchange of diplomatic notes, whatever its international title, is automatically enforceable on the basis of its own stipulations when it is consummated and promulgated, and therefore normally requires no legislative approval for its implementation. On the other hand, "non-self-executing agreements" are not automatically enforceable and do require authorizing legislation and/or additional executive action.

The expression "privileges and immunities"--a well established aspect of international law and diplomacy--denotes the inviolability, exemption, freedom, and special entitlements applied not only to persons, but also to their facilities, property, and records. When accorded by international custom and special treaties to government leaders, diplomats, and consuls, but also to national representatives to international organizations, they are denominated "diplomatic and consular privileges and immunities." But when they are applied to the officials of international organizations (which differ somewhat in their detail) they are called "international privileges and immunities." For example, the United States signed a formal treaty with the United Nations in 1946, specifying the international privileges and immunities that apply to its officials and staff members within the jurisdiction of the United States.

Finally, the terms "international organizations" and "international agencies" are used synonymously. But a distinction is made between

"general" and "specialized" international organizations. The former possess broad powers that encompass, among others, political functions (represented by the United Nations and the Organization of American States), whereas most organizations are restricted to limited, often technical and administrative, concerns. In addition, the designation "specialized" is also legally ascribed to those international organizations that are officially affiliated (often by treaty) with general organizations. In the case of the United Nations, they are denominated "United Nations specialized agencies." However, those that are similarly associated with the Organization of American States are referred to as "inter-American specialized organizations." Hence, while there are dozens of specialized global and inter-American organizations, only 20 of the global have been affiliated with the United Nations as its "specialized agencies" and only 6 of those in the Western Hemisphere are associated with the Organization of American States as its "specialized organizations."

NOTES

1. To facilitate understanding the nomenclature pertaining to treaty and agreement making and international organizations, it is essential to differentiate between general international and United States usages, and distinguish various titles and types of treaties and agreements, methods of becoming a party to international commitments, and categories of international organizations, as well as certain other relevant matters in both international and United States practice. See Appendix for a full discussion of relevant nomenclature.
2. Despite President Wilson's leadership at the Paris Peace Conference after World War I and, unprecedented, personally signing the Versailles Treaty, which contained the Covenant of the League of Nations and the Statute of the Permanent Court of International Justice, in 1919 the Senate rejected the treaty four times.
3. Although President Roosevelt, supported by the general public, submitted a protocol of adhesion to the Senate, the Statute of the Court was rejected by a vote of 52 to 36, which was 7 votes short of the necessary majority.
4. See Plischke 1991, especially note 1.
5. The texts of these early treaties and agreements are provided in Bevans, vols. 7 and 12. The treaties were concerned with boundary and

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claims settlements (10); amity, commerce, navigation, and consular affairs (9); Revolutionary War and War of 1812 settlements (3); cession of the Louisiana Territory by France (2); the Franco-American Alliance (1--the only such pact engaged in by the United States prior to the 1930s); and naval disarmament on the Great Lakes (1). Five of these treaties provided for bilateral arbitration agencies, all but one with Great Britain. The 2 executive agreements, on the other hand, consummated by exchanges of diplomatic notes, dealt with the cessation of Revolutionary War hostilities with Britain signed in 1783 (see Bevens, 12: 6), and provided for amity with France signed in 1778 (for this protocol to a treaty, see Bevens, 7: 792).

6. Under the Articles of Confederation (1778), the Congress was authorized to "enter into treaties or alliances" providing the delegates of at least 9 of the 13 states assented (Article XVIII), but Congress lacked authority to secure compliance of the states to such treaties. For commentary, see Whiteman, 14: 15.
7. See Bevens, 1: 1-2 and 3-6. According to the Department of State, these are the first multipartite international understandings subscribed to by the United States. These were followed by a third, a formal Red Cross Convention, not signed until 1864 (Bevens, 1: 7-11).
8. A substantial number of these treaties (59%) dealt with the establishment and continuance of international organizations, and eight of these agencies remain in existence. These continuing organizations are: the Permanent Court of Arbitration (Hague Tribunal) and agencies concerned with the exchange of publications, the Cape Spartel Lighthouse, penal and penitentiary affairs, postal affairs, protection of industrial property, publication of customs tariffs, and weights and measures. Other treaties dealt largely with claims and territorial issues. In addition, prior to the twentieth century, the Pan American Union, established in 1890, was the only such agency founded on an international conference resolution rather than a treaty, and it was later incorporated into the Organization of American States.
9. Three failed to be established. Discounting the latter as well as one provisional agency and 4 commodity councils and committees, more than 40 of these organizations remained in existence in the post- World War II era, some with revised constitutive acts and/or title changes. This State Department list of 51 organizations

contains only 5 temporary wartime agencies (none of which was founded on a treaty).

10. For this list of 141 international organizations, see Plischke 1991, Appendix. It provides the title of each organization, the title of its constitutive act, and the year of United States affiliation, and it indicates whether each organic act was dealt with as a treaty or an executive agreement. Note also that several categories of temporary wartime and post-surrender agencies based on executive agreements were not included. However, newer agencies that wield general political authority (such as the United Nations and the Organization of American States), that provide for alliances and collective defense (such as the North Atlantic Treaty and the Rio and Manila Pacts) or adjudicatory, arbitral, and other pacific settlement functions (such as the Permanent Court of Arbitration and the International Court of Justice), and that possess significant law or rule-making responsibilities (represented by several of the United Nations specialized agencies) are usually founded on treaties.
11. In addition to such organizations as the World War II Council of Foreign Ministers, War Crimes Commission, International Military Tribunals, and Inter-Allied Reparation Agency, these embrace international energy, meteorological, migration, statistical, and other global organizations, as well as all universal and regional banks, funds, and related financial institutions (8 of which are global financial institutions affiliated with the United Nations, including the International Bank and the International Monetary Fund, and 8 are regional agencies) and some 15 inter-American agencies (such as the Inter-American Defense Board, Commission of Human Rights, and Statistical Institute, and the Pan American Union).

It is particularly noteworthy that two-thirds of the specialized agencies of the United Nations were founded on executive agreements. This group includes those dealing with educational, financial, food and agriculture, health, labor, refugees, and trade and development affairs.

12. While the Charters of the United Nations and the Organization of American States, like the Covenant of the League of Nations, were regarded by the United States as treaties, the Charters of such organizations as the Inter-American Committee on the Alliance for

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Progress, World War II International Military Tribunals, and the United Nations Industrial Development Organization were treated as executive agreements.

13. The 141 post-World War II organizations may be grouped in 19 categories. Table 3 provides a more comprehensive classification than that employed in two Department of State studies, which list 7 categories in addition to "general" and "commodity" agencies and World War II temporary "occupation and peacemaking" organizations; see Department of State 1946 and 1950b.
14. Such as the International Court of Justice, the Permanent Court of Arbitration, and the inter-American tribunals and commissions of inquiry and conciliation.
15. Such as ANZUS (Australia, New Zealand, United States alliance), NATO, SEATO, and the Rio Pact inter-American security arrangement, but not the Inter-American Defense Board which is largely a planning agency.
16. Such as the International Telecommunication Union, the Universal Postal Union, and the Postal Union of the Americas and Spain.
17. Such as those concerned with conserving fisheries, seals, tunas, whales, and Antarctic marine resources, as well as the International Maritime Organization and the International Council for the Exploration of the Sea. In 1982 however, the United States refrained from signing the Law of the Sea Treaty which provided for a deep sea mining regime.
18. Such as the Inter-American Trade Mark Bureau and the International Union for the Protection of Industrial Property (concerned with patents and trademarks).
19. These include the International Atomic Energy Agency, International Civil Aviation Organization, International Maritime Organization, International Telecommunication Union, Universal Postal Union, World Intellectual Property Organization, and World Meteorological Organization.
20. Such as the International Telecommunication and the Universal Postal Unions (1874 and 1906).
21. Another potential specialized agency of the United Nations, the International Trade Organization, was never established. Its Charter of 1948, regarded as a treaty by the United States, was never ratified by this country or any of the other 50 signatories.

22. Two of these United Nations specialized agencies whose constitutive acts were regarded by the United States as executive agreements--the International Refugee Organization and the United Nations Relief and Rehabilitation Administration--were temporary agencies and have been disestablished.
23. This would apply to the United Nations and the Organization of American States; fishery, navigation, and shipping regulatory agencies; and alliance and collective security arrangements.
24. Aside from possessing the veto power in the United Nations Security Council, this applies, for example, to the International Bank, International Monetary Fund, and regional banks and funds which employ the weighted voting system.
25. This applies to such agencies as the Emergency Advisory Committee for Political Defense (inter- American), the Inter-American Defense Board, the United Nations War Crimes Commission, and the World War II International Military Tribunals for Europe and the Far East to deal with war criminals.
26. This is represented by the organizations joined in the nineteenth century, such as the Universal Postal Union (1874), International Bureau of Weights and Measures (1878), International Union for the Protection of Industrial Property (1884), International Center for the Exchange of Publications (1889), and the International Union for the Publication of Customs Tariffs (1891), which are still in existence.
27. For basic studies on American treaty and agreement-making, see Allen 1952; Blix 1960; Blix and Emerson 1973; Butler 1902; Byrd 1960; Collier 1969; Crandall 1916; Dangerfield 1933; Davis 1920; Devlin 1908; Fleming 1930; Gilbert 1973; Hendry 1955; Holt 1933; Hudson 1931-1950; Johnson 1984; Jones 1946; McClure 1941; Plischke 1967, chapters 12-14; and Tucker 1915.

For recent commentary and documentation on these matters, see: constitutional aspects of treaty-making (Murphy, 1975, pp. 99-101); the President's authority to make treaties and agreements (Department of State, Annual Digest of United States Practice in International Law, 1979, 771-780; hereafter Digest); the traditional definitions of "treaties" and "agreements" (Whiteman, 14: 1 and 195- 196); Department of State procedure for distinguishing "treaties" and "agreements" (Department of State 1974); treaty ratification procedure (Digest 1974, 215-217);

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agreements made by the President solely under his constitutional power (Whiteman, 14: 240-255); executive agreements subject to subsequent approval or implementation (Whiteman, 14: 234-240); meaning of the term "executive agreement" under the Case Act of 1972 (Digest 1973, 185-186); requirement to transmit the texts of international agreements to Congress under the Case Act of 1972 (P. L. 92-403; 86 Stat. 619), and Department of State letter to all executive departments and agencies, September 6, 1973 (Digest 1973, 187-188); and the requirement, enacted in 1950, for the Secretary of State to publish the texts of treaties and agreements (64 Stat. 980; 1 USC 112a). For a comprehensive bibliography on treaty and agreement-making, see Plischke 1980, 385-397.

28. Digest, 1978, 787-799. A decade earlier, in 1969, the United Nations sponsored the drafting and signing of the Vienna Convention on the Law of Treaties, which the United States signed and President Richard Nixon submitted to the Senate for approval in 1971, but which has not been ratified. This convention, consisting of 83 articles and open for signature for six months (November 1969 to April 1970), went into effect in January 1980. It provides for such matters as conclusion and entry into force, provisional implementation, reservations, interpretation and observance, amendment and modification, suspension and termination, and depositories and registration of treaties. For text of the convention, see Vienna Convention on the Law of Treaties 1969, and for background, see United Nations, 1972, 730-743; for United States objections to the treaty, see Digest, 1974, 195-199, and for commentary, see Sinclair, 1973.
29. Such as the "constitutions" of the Food and Agriculture Organization, International Labor Organization, and World Health Organization; the "conventions" of the International Institute of Agriculture and International Maritime Satellite Organization (although most constitutive acts entitled "convention" are treated by the United States as treaties); the "articles of agreement" of the International Bank and Monetary Fund; and the "statutes" of the International Children's Institute and International Meteorological Organization.
30. While such matters may be reflected in the American executive-legislative process respecting treaties and agreements in general, internally additional distinctions are made among several specific types of executive agreements. One important category consists of

those consummated under and in accordance with the President's constitutional powers as chief executive, commander in chief, or diplomat in chief. These are called "presidential agreements" (to distinguish them from "congressional-executive agreements" which involve legislation), and they are essentially "self-executing." "Self-executing" treaties and agreements are automatically enforceable on promulgation on the basis of their own stipulations, without requiring implementing legislation. The principal criterion for this distinction is whether the subject matter and authority for its treatment lie wholly within the powers of the President or require congressional consent, approval, or other action. For commentary on "self-executing" and "non-self-executing" international engagements, see Whiteman, 14, 302-316, and Digest, 1980, 415-417.

The same basic categories apply to joining international organizations. The number participated in solely on presidential authority is small, except for those creating temporary wartime and post-hostilities agencies based on the President's powers as commander in chief. World War II illustrations embrace the Council of Foreign Ministers (provided for in the Potsdam Agreement), the Inter-American Defense Board (flowing from an inter-American conference resolution), and a series of military government/civil affairs agencies, such as the Allied Council for Japan, European Advisory Commission, Far Eastern Commission, United Nations War Crimes Commission, and multipartite control councils and commissions for individual liberated countries and defeated Axis powers. Except for the Inter-American Defense Board, these proved to be temporary agencies.

Another type of international organization based on presidential agreements consists of "preparatory" and "interim" agencies created to launch more permanent organizations. These temporary arrangements, often founded on a *modus vivendi*, were established, for example, for the United Nations, several of its specialized agencies, and a few other organizations. Such preparatory arrangements were provided for the Food and Agriculture Organization, International Atomic Energy Agency, International Civil Aviation Organization, International Refugee Organization, International Trade Organization (which failed to be established), United Nations Educational, Scientific and Cultural

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Organization, and World Health Organization, as well as the Central Commission for Navigation of the Rhine and the Inter-American Commission of Women.

31. Examples of international agencies that are based on existing treaties include many subsidiaries of the United Nations, the Organization of American States, and the North Atlantic Treaty Organization. Thus, the UN Trade and Development Board (1964), UN Industrial Development Organization (1966), UN Institute for Training and Research (1963), UN International Children's Emergency Fund (1946), and other United Nations subsidiary institutions were automatic in that they required no subsequent executive or congressional action, except support of their funding. Similarly, the Statutes of the Inter-American Commission of Human Rights was approved by an OAS Council resolution in 1960. Under the North Atlantic Treaty, NATO initiated a variety of functional subsidiaries, as well as many purely administrative arrangements founded on subsequent agreements or Council resolutions.
32. A significant number of international organizations have been joined by means of executive agreements negotiated subject to subsequent formal congressional approval action of both houses, usually in the form of joint resolutions. Several specialized agencies of the United Nations and a number of other organizations were affiliated with by this process. These United Nations specialized agencies included, initially, the International Labor Organization (49 Stat. 2712; 22 USC 271, 272), and subsequently, the Food and Agriculture Organization (59 Stat. 529; 22 USC 279 and 279a), International Bank and International Monetary Fund (59 Stat. 512; 22 USC 286-286k), United Nations Educational, Scientific and Cultural Organization (60 Stat. 712; 22 USC 287m), and World Health Organization (62 Stat. 441; 22 USC 290). Other organizations dealt with similarly are represented by the Caribbean Commission (62 Stat. 66; 22 USC 280h), Central Bureau of the International Map of the World on the Millionth Scale (44 Stat. 384 and 46 Stat. 825; 22 USC 269a), Inter-American Statistical Institute (59 Stat. 311; 22 USC 269d), and International Criminal Police Commission--INTERPOL (52 Stat. 640; 22 USC 263a).

Standard congressional language for such affiliation specifies that "The President is hereby authorized to accept membership for the United States in" or that "The

President is hereby authorized to accept on behalf of the Government of the United States the [constitutive act of the organization]." These and similar general prescriptions may be further implemented with specific appropriations or other legislation. In the case of INTERPOL, however, Congress legislated: "The Attorney General is authorized to accept and maintain, on behalf of the United States, membership in the International Criminal Police Organization . . ."

33. To illustrate, the Fulbright and Connally Resolutions of 1943, respectively, sanctioned the creation of "international machinery" and "a general international organization" for the maintenance of peace and security. These preceded the negotiation of the United Nations Charter, which in turn, was subsequently approved for ratification by the treaty process. Similarly, the Vandenberg Resolution of 1948, providing Senate authorization for United States association with "regional and other collective arrangements" to maintain national security, presaged the negotiation and ratification of the North Atlantic Treaty. For the texts of these congressional resolutions, see Department of State, 1950a, 9, 14, and 197.

Evidencing the established practice for negotiating international agreements authorized in advance by act of Congress, the roster of these agreements numbers in the hundreds. Such action has been particularly extensive in the fields of international trade and foreign aid and development (including economic assistance, lend-lease, military/mutual assistance, technical assistance, and the Peace Corps), but also in such areas as commercial aviation, copyright, patents, space cooperation, and trademarks. For illustration, see 19 USC 1351, by which "the President...is authorized...to enter into foreign trade agreements with foreign governments..."; also see 19 USC, Chap. 17 on trade agreements, including 19 USC 2501-4 on the Trade Agreements Act.

So far as multilateral international organizations are concerned, the United States affiliated with the International Maritime Satellite Organization --INMARSAT, International Telecommunications Satellite Organization--INTELSTAT, and International Union of Official Travel Organizations by this advance legislative process. Congressional authorization in

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advance for affiliation with these organizations is provided, respectively, in 92 Stat. 2392 (47 USC 751); 76 Stat. 419 (47 USC 701); and 62 Stat. 153 (22 USC Supplement II, Sec. 1515b, since repealed). Although the United States was not an official member of the Organization for European Economic Cooperation (OEEC) to administer the Marshall Plan for European recovery following World War II, it worked closely with this agency under the Economic Cooperation Act of 1948. The remarkable case of the Universal Postal Union is discussed later.

34. The final category of affiliation, involving subsequent congressional implementing rather than establishment or affiliation legislation, encompasses those cases in which Congress, without overtly legislating approval of their constitutive acts, merely provides American funding for participation in international organizations. Thus, in 1935, Congress passed a resolution specifying that "to enable the United States to become a member of the Pan American Institute of Geography and History, there is hereby authorized to be appropriated . . . for the payment of the quota of the United States." Also, the Federal Seed Act of 1939 was amended in 1944 to provide that funds appropriated for administering the act "may be expended for the share of the United States in the expense of the International Seed Testing Congress." These 1935 and 1939 enactments are provided for, respectively, in 49 Stat. 512 (22 USC 273) and 58 Stat. 741 (7 USC 1605).

For general policy and commitments respecting American contributions to international organizations, see 22 USC 261-77, and for a list of legislation providing annual funding of a selected series of international agencies, see 22 USC 269a, addendum. Other illustrations of agencies treated in a similar fashion include the Inter-American Statistical Institute, International Association of Navigation Congresses, International Technical Committee of Aerial Legal Experts, and Inter-parliamentary Union. For illustrations of congressional blanket provisions for United States contributions to dozens of international organizations, with annual amounts, see Department of State 1950-1967 (1956) 1431-1434 and other volumes in this series.

35. The original GATT trade treaty of 1947, signed by 8 governments, is provided in Bevens, 4: 639-688. Overall, the extensive GATT complex, including protocols of accession and declarations of

rectification, numbers more than 75 instruments. The General Protocol of June 30, 1979 (Department of State 1950c, 31: Parts 2-5), for example, consists of four volumes of more than 3,000 pages. These multiple agreements establish common policies and rules governing many aspects of commerce that are incorporated into American legislation. Moreover, the GATT agreement did not originally constitute a typical constitutive act of an international organization, although Article XXV established a political process and mechanism for the "contracting governments" to deal with representation, meetings, accession and withdrawal, activities, decision-making, and amendments, and it provided for a steering committee called the Consultative Group. In addition, GATT is regarded as a continuing international trade conferencing system and as a quasi-specialized agency of the United Nations. For the original congressional acts for implementing GATT, see 61 Stat. (5) and (6) and 62 Stat. 3663; and for current law, see 19 USC 2901-2906.

36. Congress also prescribed the purposes, membership, powers, and duties of the Inter-American Cultural and Trade Center; see P.L. 89-355; 80 Stat. 5; 22 USC 2081-2085.
37. For these early multipartite postal conventions, see Bevens, 1: 29 and 51. For later agreements, and protocols, see Bevens, vols. 1-4, and for listing of current postal conventions, see Department of State Annual.

Postal "arrangements" with individual foreign countries were authorized by statute as early as 1792. Sec. 26 of this enactment of 1792, creating the Post Office Department, specified that "the Postmaster General may make arrangements with the Postmaster in any foreign country for the receipt and delivery of letters and packets through Post Offices." *Annals of Congress*, 1849, 1333- 1341; also see 1 Stat. 239.

Early bilateral postal conventions were consummated with individual governments as treaties, subject to Senate approval. Initial formal bilateral treaties of this type were signed with New Grenada (1844), Great Britain (1848), Belgium (1859), and Mexico (1861). The first of these applied to the territories of Colombia, Ecuador, Panama, and Venezuela. The records indicate that these treaties were ratified by the President with Senate approval, except for that with Belgium, for which no Senate action is indicated. For

the texts of these treaties, see Bevens, 5: 459-467; 6: 865-867; 9: 821-825; and 12: 98-104.

38. Since then both bipartite and a series of multilateral conventions and protocols have been concluded. From 1874 to the end of World War II, twelve of these global conventions were signed and ratified by the United States. Currently the statute simply specifies that the Postal Service, "with the consent of the President, may negotiate and conclude postal treaties and conventions . . . between the United States and other countries." For the 1872 enactment, see 17 Stat. 304, and for the current statute, see P.L. 91-375, dated August 12, 1970; 84 Stat. 724; 39 USC 407.

In addition to the Universal Postal Union, the United States also joined the Pan American Postal Union in 1926, retitled the Postal Union of the Americas and Spain in 1931. For the 1926 agreement, see Bevens, 2: 309-317, and for the 1931 agreement, see Bevens, 3: 34-55.

It is significant to note that the Postmaster General/Postal Service--rather than the President or the Department of State--not only "negotiates" and "concludes" these postal conventions, but also "ratifies" them, subject to the "consent," not of the Senate or both houses of Congress, but of the President. 39. Based on the precedent established in the 1870s to facilitate the consummation of international postal engagements by means other than the customary treaty or common executive agreement process, Congress prescribed an extraordinary if not "extra-constitutional" scheme for creating and joining international postal agencies and dealing with the international transmission of mails, as well as the handling of money orders, parcel post, express mail, and similar matters.

40. As specified in the International Organizations Immunities Act of 1945, the President may extend this status to any "public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation," and which are specifically designated by the President through executive orders.

See 59 Stat. 669; 22 USC 288. This paragraph in the USC also lists some 70 organizations upon which these privileges and immunities apply or formerly applied, and more recent

executive orders are published in the annual issues of the Public Papers of the Presidents of the United States. The text of the International Organizations Immunities Act of 1945 is also provided in Department of State 1950a, 167-172.

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