

# TREASURY DEPARTMENT

INTER OFFICE COMMUNICATION

DATE Sept. 29, 1944

TO : Mr. Richard Brenner  
FROM : Jean Lewis and Wayne P. Dyer

Our research in connection with the problems we discussed with you regarding the effect and validity of treaties and executive agreements leads us to the following conclusions:

1. The treaty power of the United States extends to all proper subjects of negotiation between the governments of the United States and the governments of other nations.

2. The treaty power is unlimited except by constitutional restraints against the action of the government or of its departments.

X 3. A treaty, like Congressional enactments, is the supreme law of the land and supersedes conflicting state law and previously enacted federal law.

4. A treaty is not abrogated or modified by subsequent Congressional enactments unless such purpose on the part of Congress has been clearly expressed.

5. Although treaties as such must be ratified or confirmed by two-thirds of the Senate, an executive agreement, modus vivendi, or compact need not be approved.

X 6. An executive agreement has the same force and effect as a treaty.

X 7. The provisions of a treaty are either executory, in which case appropriate legislative action is required to effectuate them; or are self-executing and no further legislative action is necessary.

X 8. Exact criteria have not been established by the courts to determine in a given case whether the provisions of a treaty are executory or self-executing.

X 9. The courts apparently have considered in determining if the provisions of a treaty were executory or were self-executing whether such provisions:

- (a) by their terms indicate that future action, either legislative or administrative, is necessary;
- (b) are recognized by the countries signatory thereto as requiring future legislative action;
- (c) require appropriations;
- (d) involve powers expressly delegated by the Constitution to the Congress;
- (e) contain provisions in the nature of future contractual obligations.

10. The property of a foreign sovereign is exempt from taxation.

We cannot and do not say categorically that the courts have expressly stated the rules and criteria above enumerated. Frequently the decisions do not specify which, if any, of these tests or considerations were applied. Because of the vague and inconclusive language adopted by the courts, it is difficult, if not impossible, to assert a conclusion which would not be subject to attack. Because of the complexity of the subject and the magnitude and importance of the question involved, we have thought it advisable to assemble and submit herewith a rather lengthy memorandum discussing the problems, the attitude of the courts and the expressions of eminent authority.

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