ARMS CONTROL: SALT II—EXECUTIVE AGREEMENT OR TREATY?

On August 26, 1978, Paul Warnke, director of the United States Arms Control and Disarmament Agency (ACDA) and chief negotiator of a Strategic Arms Limitation Talks (SALT) treaty with the Soviet Union, stated that the possibility of submitting a SALT II accord to both houses of Congress as an executive agreement instead of submitting it to the Senate as a treaty "remains open."1

The public announcement by Warnke followed instructions issued from President Carter to the United States delegation at the SALT talks in Geneva to inform the Soviet delegation that he desired the option of treating the finalized accord as an executive agreement rather than as a treaty. As a result of these instructions, the language at the top of the draft text was altered to read "Draft joint treaty/agreement."2

The immediate response from Senate leaders was typified by Senate Majority Leader Robert C. Byrd's warning that "the administration should not resort to an end-run around the Senate."3 The growing likelihood that any SALT II accord submitted as an executive agreement would be voted down in a Senate jealous of its constitutional prerogatives, apparently led President Carter to reconsider his strategy. On January 15, 1979, the President indicated that the finalized agreements would be sent to the Senate for approval as a treaty.4

The executive-congressional maneuvering over the form of SALT II and the corresponding mode of congressional review was no mere shadow-boxing. In conjunction with the furor surrounding the President's unilateral decision to abrogate the United States mutual defense treaty with the Republic of China (Taiwan), the SALT II classification debate served to dramatize congressional fears that any exclusive executive power to determine the form of international agreements might prove an effective means of subverting full congressional participation in the making of foreign policy. For while the SALT II dispute resulted in an apparent setback to the President, it remains an open question

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2 Id. at 4-A. col. 6.
whether there exist constitutional as well as political restraints upon executive discretion to classify agreements. This Recent Development will examine that question in the context of SALT II.

Although the United States Constitution explicitly governs the procedural requirements for the presidential exercise of the treaty-making power, the executive agreement is nowhere mentioned in that document. As evolved in twentieth-century practice, the term “executive agreement” actually includes three types of international agreements: (1) those issued by the President without submission to the Congress (the true executive agreement); (2) those issued by the President supplementing an existing treaty; and (3) those issued by the President after approval by joint resolution of Congress, requiring simple majorities in both Houses. It appears well-settled that this third type of executive agreement (the type which President Carter hoped to utilize for the SALT II accords) will be deemed a “treaty” within the meaning of a federal statute. Such congressional-executive agreements have been used extensively since the end of World War II in order to conclude a variety of political, economic, and

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5 U.S. Const. Art. II, § 2, cl. 2, provides:

He [the President] shall have power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur . . . .


7 The Supreme Court in B. Altman & Co. v. United States, 224 U.S. 583, 600 (1912), stated that a treaty signifies “a compact between two or more independent nations with a view of the public welfare.” The Court therein also gave judicial cognizance to the interchangeable constitutional practices of congressional-executive agreements and treaties. 224 U.S. at 601.

Although an international agreement concluded by joint resolution of Congress must be within the general legislative competence of Congress, the legislative authority of that body has, over the years, widened in scope so that it, in reality, encompasses any genuine concern of foreign affairs. See generally, Henkin, The Treaty Makers and the Law Makers: The Law of the Land and Foreign Relations, 107 U. Penn. L. Rev. 903 (1959).

The American Law Institute is in accord with this view at § 120 of its Restatement of Foreign Relations Law of the United States:

An international agreement made by the United States as an executive agreement authorized by an Act of Congress may . . . deal with any matter that falls within any of the powers of the Congress and the President under the Constitution, even if the matter also falls within the treaty power.

American Law Institute, Restatement (Second) of Foreign Relations Law of the United States 376 (1965).
military agreements with foreign countries. Attending the development of the congressional-executive agreement has been a debate on its constitutionality. Recently there have been attempts by congressional leaders to restrict the flexibility of the executive branch in deciding which subject matters should be negotiated as treaties and which subjects may be classified as "other international agreements" not requiring the treaty ratification process.

The constitutional authority for executive agreements varies according to the specific type considered. Most true executive agreements find their basis in Article II, section 2 of the United States Constitution. Those executive agreements supplementing an existing treaty are authorized by Article II, section 3 of the Constitution which provides that the President "shall take care that the laws be faithfully executed." Finally, executive agreements approved by a joint resolution of Congress have also been found to be "in accordance with constitutional requirements."

The distinctions made in United States constitutional law between the various types of international agreements do not, however, extend into the sphere of international law. The Vienna Convention on the Law of Treaties defines a "treaty" as "an inter-

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13 E. BYRD, JR., TREATIES AND EXECUTIVE AGREEMENTS IN THE UNITED STATES 162 (1960).
national agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular declaration.”\(^4\) Thus many of the executive agreements issued by the President of the United States are considered treaties by the international community.\(^5\)

Whether President Carter elects to submit the SALT II accord as an executive agreement or as a treaty, questions will remain concerning the scope of the President’s power to conclude international agreements without the consent of a two-thirds majority of the Senate. As regards the SALT negotiations, this question raises particular problems in light of past experiences in seeking approval of any SALT agreement.\(^6\)

Since November 1969, negotiations have progressed toward a comprehensive treaty outlining the qualitative and quantitative limitations on arms development. The first breakthrough came on May 26, 1972, when the United States and the Soviet Union concluded negotiations on a SALT I agreement aimed at the limitation and reduction of both offensive and defensive strategic arms. The Anti-Ballistic Missile (ABM) Treaty\(^7\) was approved for ratification by the Senate on August 3, 1972, while the Interim

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\(^{16}\) See, e.g., the Jackson Amendment to the Interim Agreement, requiring a stiff bargaining stance in future arms talks with regard to the principle of equality in the levels of strategic arms limitations. The Jackson Amendment had no effect on the terms of the Interim Agreement signed at Moscow, but it serves to emphasize the concern of Senators that the United States is being limited to levels of intercontinental strategic forces inferior to those of the Soviet Union. U.S.-USSR Strategic Arms Limitation, H.J. Res. 1227 (1972), P.L. 92-448 (1972).

\(^{17}\) Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missile Systems, May 26, 1972, 23 U.S.T. 3435, T.I.A.S. No. 7503. The ABM Treaty limited the two countries to two antiballistic sites; one for the defense of each nation’s capital and another for the defense of an ICBM (intercontinental ballistic missile) installation in each country. In 1974, a Protocol was signed between the United States and Soviet Union which restricted each nation to one site only. The Treaty is of unlimited duration but each party has the right to withdraw on six months notice if it decides that its supreme interests are jeopardized by “extraordinary events related to the subject matter of this Treaty.”
Agreement, after being amended, was passed by joint resolution of Congress on September 25, 1972. No further progress was achieved until two years later when bilateral discussions led to the creation of a joint statement of principles on SALT at Vladivostok on November 24, 1974, concluded by President Gerald R. Ford and Soviet General Secretary Leonid Brezhnev.

Since the summit conference at Vladivostok, negotiations have continued with the Carter Administration exerting pressure for a SALT II agreement. In March 1977, United States Secretary of State Cyrus Vance and Soviet Foreign Minister Andrei Gromyko were able to agree on a three-part framework for Salt II. Finally, on September 23, 1977, Secretary of State Vance released a

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18 Interim Agreement Between the United States of America and the Union of Soviet Socialist Republics on Certain Measures With Respect to the Limitation of Strategic Offensive Arms, May 26, 1972, 23 U.S.T. 3463, T.I.A.S. No. 7504. The Interim Agreement was approved by joint resolution of Congress and became effective October 3, 1972, as P.L. 92-448. The Interim Agreement placed ceilings on deployment of land-based intercontinental ballistic missiles (SLBMs) for a five year period unless such agreement was superceded by a more comprehensive agreement.

19 Jackson Amendment, supra note 16.

20 Joint American-Soviet Statement on the Limitation of Strategic Offensive Arms, November 24, 1974, DOCUMENTS ON DISARMAMENT, 1974 at 746-747. The Vladivostok Agreement was not approved by the United States Congress and questions as to its scope were apparent when Secretary of State Vance transmitted proposals for a SALT II accord in March of 1977. These suggestions were rejected by the Soviets as being inconsistent with their understanding of the Vladivostok accord. Under the terms of the agreed framework each side is allowed a maximum of 2,400 offensive strategic delivery vehicles (ICBMs, SLBMs, and bombers) of which 1,320 could be equipped with multiple, individually targeted re-entry vehicles (MIRVs). There is a ban on construction of new fixed ICBM launchers and on conversion of older fixed launchers from light to heavy ICBMs with limits on deployment of new types of strategic offensive arms. The duration of the Vladivostok Accord is through 1985 and it incorporates important elements of the Interim Agreement, such as those relating to verification.

21 In March 1977, the United States offered two alternative proposals for furthering the SALT process. One proposal would have added significant reductions and qualitative restraints to the ceilings which were agreed to at Vladivostok. The alternative proposal was based on the framework agreed to at Vladivostok with the controversial issues concerning the Soviet Backfire bomber and the United States' cruise missiles deferred until SALT III. Both of these proposals were rejected by the Soviet Union. U.S. Dep't of State News Release, January 19, 1978 at 14-15.

22 This framework accommodated both the Soviet desire to retain the Vladivostok framework for an agreement, and the U.S. desire for more comprehensive limitations. The agreement would consist of three parts: (1) a Treaty which would be in force through 1985 based on the Vladivostok accord; (2) a Protocol of about three years duration which would cover certain issues such as cruise missile constraints, mobile ICBM limits, and qualitative constraints on ICBMs, while deferring further negotiations on these issues to SALT III; (3) a Joint Statement of Principles which would be an agreed set of guidelines for future negotiations. U.S. Dep't State, Pub. No. 46, Special Report 7 (1978).
unilateral declaration indicating the intention of the United States to take no action inconsistent with the provisions of the 1972 Interim Agreement with the Soviet Union after its expiration on October 3, 1977, and during the second round of SALT talks, provided that the Soviet Union exercises similar restraint. The Soviet government issued a similar declaration three days later. Thus the history of SALT 1 negotiations reveals the use of both the executive agreement, issued by the President after approval by a joint resolution of Congress (evidenced by the Interim Agreement), and the true executive agreement (illustrated by the Vladivostok agreement).

While the congressional-executive agreement has been in use for over a century as an alternative to the treaty mode of concluding international agreements, this fact alone does not confirm its constitutionality. The congressional-executive agreement was first utilized in the nineteenth century during a period of expansion through territorial acquisition. On April 12, 1844, Secretary of State John C. Calhoun entered into a Treaty of Annexation with representatives of the Republic of Texas. In June 1844, the Senate failed to approve the treaty for ratification. Immediately thereafter President Tyler submitted the treaty with all the attending correspondence to the Congress for consideration. Secretary of State Calhoun declared:

It is admitted that what was sought to be effected by the Treaty submitted to the Senate, may be secured by a joint resolution of the two houses of Congress, incorporating all its provisions. This mode of effecting it will have the advantage of requiring only a majority of the two houses instead of the two-thirds of the Senate.

President Tyler was in full accord with Calhoun's views when he stated that "the power of Congress is... fully competent in some

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23 N.Y. Times, Sept. 23, 1977, § A at 1, col. 2. See Recent Development, 19 HARV. INT'L L.J. 372 (1978), and the discussion therein concerning the unilateral declaration policy statement and its possible violation of section 33 of the Arms Control and Disarmament Act of 1961, which requires that any agreement limiting the armaments of the United States must be approved either by treaty or act of Congress.


26 W. HOLT, TREATIES DEFEATED BY THE SENATE 75 (1964).

27 4 TREATIES AND OTHER INTERNATIONAL ACTS OF THE UNITED STATES 703 (H. Miller ed. 1934).
form of proceeding to accomplish everything that a formal ratification of the treaty could have accomplished . . . ." Thus, on March 1, 1845, the State of Texas was formally annexed by joint resolution of Congress, marking the origin of the use of the usual legislative process for the creation of formal international agreements.

Joint resolutions of Congress have been utilized not only in the area of territorial acquisitions but also to effect United States membership in international organizations and to conclude international commercial agreements. Such congressional-executive agreements will remain in force until they expire according to their own terms or are rescinded by negotiation, unless the act of Congress pursuant to which they were negotiated or by which they were ratified is repealed prior to that time. These limitations are neither greater nor less than those imposed in the case of a treaty, which also ceases to bind domestically when a contrary statute is enacted. Congressional-executive agreements, like treaties, are the supreme law of the land, second only to the Constitution of the United States.

In practice, therefore, Presidents have the option to submit an international agreement to Congress for approval by joint resolu-

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28 4 Messages and Papers of the Presidents 323 (J. Richardson ed. 1904).
29 On March 1, 1845, by a Senate vote of 27 in favor to 25 against, and a House vote of 132 in favor and 76 against the Congress of the United States passed the Joint Resolution formally annexing Texas. 5 Stat. 797 (1845).
30 On June 1, 1870, the Senate rejected a Treaty of Annexation with Hawaii. President McKinley thereafter submitted the treaty for ratification by a joint resolution following the precedent of Texas. On July 6, 1898, the Treaty was approved by the Congress. See 31 Cong. Rec. 5770-5973, 6140-6693 (1898).
31 Although the United States Senate rejected in 1920 the Treaty of Versailles which incorporated the Covenant of the League of Nations, on June 19, 1934, Congress, by a Joint Resolution, approved Article XXIII of the Treaty of Versailles, so far as membership and approval of the Constitution of the International Labor Organization was concerned. 48 Stat. 1182 (1934). On March 28, 1944, the United States became a member of the United Nations Relief and Rehabilitation Administration. Also by Joint Resolution, the United States undertook the functions of membership in the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific, and Cultural Organization, the International Refugee Organization, and the World Health Organization. J. Paige, supra note 6, at 56-57.
32 These international agreements have normally been approved by acts of Congress also requiring a majority vote in each House, the only difference being that these acts are considered congressional legislation, while agreements approved by joint resolution are considered international agreements. See J. Paige, The Law Nobody Knows 57 (1977).
33 McDougal and Lans, supra note 7, at 346.
34 U.S. Const. Art. 6, cl. 2; B. Altman & Co. v. United States, 224 U.S. 583 (1912).
tion or submit it to the Senate as a treaty. However, in this post-
Vietnam, post-Watergate era of congressional attempts to restrict
the executive branch's decisionmaking flexibility, political
realities may dictate the course of Presidential action. This
change in the political atmosphere has led the State Department
to begin revision of its Circular 175 procedures for classification,
negotiation, and ratification of international agreements. These
procedures are officially described as "internal guidelines or infor-
mation to be followed to facilitate the application of orderly pro-
cedures in the negotiation, signature, publication, and registra-
tion" of treaties and other international agreements.

Critics of the Circular 175 procedures maintain that since it is
an internal, executive memorandum not subject to judicial review,
"it leaves firmly in the hands of the State Department the crucial
function of deciding whether any particular international commit-
ment should be deemed to be within the category of matters ap-
propriately handled by treaty or by executive agreement." This
unilateral classification prerogative effectively gives, according to
these critics, the executive branch exclusive authority to inter-
pret the constitutional treaty power of Article II. Although the
Circular 175 revisions were intended to clarify the classification
procedures by specifying the subject matters best handled under
Article II guidelines of advice and consent, the current version
fails in this respect. The major drawback is that it "allows exten-
sive discretion with respect to consultation with Congress on an-
ticipated and proposed international agreements."

Congressional initiatives in the area of international agreement
classification have yet to greatly influence this process, resulting

37 R. Majak, supra note 15. The State Department's procedures for handling treaties and
other international agreements of the United States are concentrated in Chapter 700,
Volume 11, of the Foreign Affairs Manual. They are known generally as the Circular 175
procedures.
39 J. Am. Int'l L. Proc. 71st Ann. Meeting, "Treaties and Executive Agreements" (com-
ments by Thomas Franck) at 254.
40 Id. The current Procedures were revised last on August 16, 1974. 39 Fed. Reg. 29640
(1977). According to Monroe Leigh, Legal Adviser to the Department of State, in testifying
before the Subcomm. on Separation of Powers of the Senate Judiciary Committee on May
13, 1975, the purpose of further revising the Procedures was two-fold: "(1) to meet requests
by members of the Senate Foreign Relations Committee to clarify the guidelines to be con-
sidered in determining whether a particular international agreement should be concluded
as a treaty or as another form of international agreement; and (2) to strengthen provisions
on consultation with the Congress." 1975 Dig. of U.S. Prac. in Int'l L. 295.
largely in a discretionary policy of treaty negotiation, classification and ratification. However, some efforts have been made to diminish this discretion. The first successful attempt at imposing definitive guidelines in this area was the Case-Zablocki Act of 1972. This law requires any international agreement other than a treaty to be transmitted by the Secretary of State to the Congress as soon as is practicable after it goes into force, but not later than sixty days thereafter.

In 1975, there was an unsuccessful attempt to strengthen the Case-Zablocki Act by means of the proposed Morgan-Zablocki Bill, also referred to as the Executive Agreements Review Act of 1975. The Bill would have required the President to place before Congress for sixty days any proposed national commitment. During that period, the proposed agreement would be subject to a legislative veto by concurrent resolution of both Houses. This scheme would not only have increased the participation of the House in the treaty-making process, but would also have lessened the influence of the Senate in the determination of United States foreign policy.

More recently, in 1976, the Treaty Powers Resolution, also referred to as the Clark Resolution after its proponent, Senator Dick Clark of Iowa, was advanced to reaffirm the Senate’s prerogative in the treaty-making process. According to Senator Clark, this resolution expressed the sense of the Senate that international agreements involving significant political, military, or economic commitments to foreign countries properly constitute treaties which should be submitted to the Senate for its advice and consent. The resolution further expresses the sense of the Senate that, in determining whether an international agreement properly

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41 Id.
42 Id.
44 National commitments "were defined as including any agreement regarding the introduction, basing, or deployment of United States armed forces on foreign territory, or providing to a foreign country, government or people any military training or equipment including component parts and technology, any nuclear technology, or any financial or material resource." Id. at 3.
45 Id. at 2.
constitutes a treaty, the President should consult with the Senate Foreign Relations Committee.\footnote{Treaty Powers Resolution: Hearings on S. Res. 486 Before the Senate Committee on Foreign Relations, 94th Cong., 2d Sess. 1 (1976) (Opening statement of Senator Clark).}

The resolution went on to affirm that in the case of any agreement which has not been submitted as a treaty, the Senate may nonetheless make a finding that such agreement should have been so submitted.\footnote{Id.} Once the Senate designates an agreement as properly constituting a treaty, a point of order could be brought against consideration of any legislation which would provide funds to execute the agreement in question, unless that agreement was subsequently submitted to the Senate as a treaty.\footnote{Id.} This proposal would have amended the Standing Rules of the Senate to reflect a new procedure by which proposals for international agreements would be reviewed. However, this resolution was never reported out of committee.

In 1978, a similar Treaty Powers Resolution provision was introduced by the Senate Foreign Relations Committee as section 502 of S.3076, the Senate's version of the Foreign Relations Authorization Act for 1977.\footnote{See S. 3076, 95th Cong., 2d Sess. § 502 (1978) and S. Rep. No. 95-842, 95th Cong., 2d Sess. 50-55 (1978).} Although passed by the Senate, the provision was deleted in conference.\footnote{H. Rep. No. 95-1535, 95th Cong., 2d Sess. 64 (1978).} While it would appear that congressional reluctance to impose strict statutory requirements on the President's choice of international legal instruments illustrates a wide acceptance of discretionary executive decision making authority, it is also possible that congressional inability to legislate in this area reflects more the competing interests of the House and Senate in imposing such requirements.

The restrictions which have been imposed by Congress on the decision making flexibility of the executive branch with regard to international agreements affect the SALT negotiations in many ways. First, as an example of a restriction on executive authority, the Arms Control and Disarmament Act of 1961\footnote{22 U.S.C. § 33 (1970).} specifically prohibits any agreement which obligates the United States to limit its armaments without authorization by Congress either through legislation or through the Senate's consent to a treaty. The recent
unilateral declaration by the President of the United States to take no action inconsistent with the expired SALT I agreement may have violated this provision of the 1961 Act. Second, as an example of the problems which can arise from the exercise of unilateral executive authority, when the Committee on International Relations of the House of Representatives asked the Secretary of State "what authority the executive branch claimed to enter into the Vladivostok Agreement on SALT," they were informed that "it was interpreted by the State Department lawyers not to be an international agreement."  

The Soviet Union's rebuff of the Carter Administration's wide ranging proposals for a SALT II accord can be viewed as a response to the State Department's classification of the Vladivostok Agreement as not being an international agreement. The Soviets disagreed with this classification and were reluctant to bargain with the United States on proposals based upon the Vladivostok Agreement when the United States refused to acknowledge its validity. This is a clear example of the far reaching consequences which can result from a failure to receive congressional approval, either by way of joint resolution or treaty, of an arms limitation agreement. It further indicates the necessity of requiring the executive branch to consult with the Senate Foreign Relations Committee and House International Relations Committee before submitting any international agreement for approval by the Senate as a treaty or by the Congress in the form of a joint resolution. Ultimately, in order to have a strong, uniform and consistent foreign policy, congressional-executive relations must improve in the area of classification, consultation and ratification.

Undoubtedly, certain factors must dictate the form which any final agreement will take, and it is understood that any accord reached between the United States and the Soviet Union will contemplate permanent guidelines on the further limitation of strategic arms. This fact, coupled with the sensitive subject matter of SALT negotiations, should favor the use of the treaty ratification process for such an agreement. If ratified by treaty, the problems associated with the Vladivostok Agreement, specifically the questions concerning its validity as an interna-

\[\text{\^{a}1 Id.}\]

\[\text{\^{a}2 Congressional Review of International Agreements, supra note 11, at 7.}\]

\[\text{\^{a}3 See note 21 supra.}\]
tional agreement, would be avoided.

On the other hand, one advocate for approval of international agreements by joint resolution of Congress has argued persuasively for its adoption as a method giving "an equal role to the House of Representatives." This process also assures that both Houses will approve (or disapprove) the agreement in the first instance, avoiding the danger that the House of Representatives might refuse to give legislative implementation to a treaty already ratified by the Senate. Finally, while a treaty often has to go to the House and back to the Senate for implementation after ratification in the Senate, a congressional-executive agreement goes to both Houses initially for consent and implementation, thereby saving a step in the process. A leading observer of the arms control negotiations has warned, however, that "without advance Congressional authorization to use this form, any voting advantage of the joint resolution might well be dissipated" by criticism that the President is shirking his constitutional duty to obtain advice and consent of the Senate.

It must be concluded that the decision whether to submit a SALT II accord for approval as a treaty or as a congressional-executive agreement was essentially political in nature. In any event, it is imperative that congressional-executive relations improve so that international agreements entered into on behalf of the United States may have binding force in the international community. If President Carter had decided to submit the accord for approval by joint resolution of Congress, it is understood that liberal Democratic Senators normally in support of his foreign policy initiatives would have to vote to reject the agreement.

Thus, President Carter must exercise caution in seeking the ap-

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54 L. Henkin, FOREIGN AFFAIRS AND THE CONSTITUTION 175 (1972).
55 Id.
56 Id. at 175-76.
57 Bunn, Missile Limitation: By Treaty or Otherwise?, 70 COLUM. L. REV. 1, 13 (1970).
58 According to discussions with one informed Capitol Hill source, this group includes Senator Church of Idaho, Senator Hart of Colorado, and Senator McIntyre of New Hampshire. As a result of recent elections, Carter's problems will probably be increased by the rightward shift among the incoming legislators. Senator McIntyre, a member of the Armed Services Committee and a provisional supporter of SALT II, will be replaced by Gordon Humphrey, who opposes SALT and says he plans to be the "biggest skinflint" in Washington. Time, Nov. 20, 1978 at 18. Asked whether the November congressional elections had dimmed the chances of approval of a projected strategic arms accord, Secretary of State Vance said it was not yet clear. Atlanta J. & Const., November 26, 1978, at 22-A, col. 1. Cer-
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proval of the SALT II accord in any form. Although proposals to restrict the executive decision making flexibility have met with sure defeat in the past, the future may hold new variables which might influence passage of a Treaty Powers-type resolution. On such an important matter as limiting strategic arms, the form in which an agreement is submitted should not give rise to unnecessary impediments to its approval and ratification. Doubtless it is a futile venture to attempt to designate which subject matters should properly be negotiated as "other international agreements." The State Department's Circular 175 procedures outline nine considerations for selecting among constitutionally authorized procedures. The ninth consideration typifies the futility of trying to establish guidelines for such selection:

"In determining whether any international agreement should be brought into force as a treaty or as an international agreement other than a treaty, the utmost care is to be exercised to avoid any invasion or compromise of the constitutional powers of the Senate, the Congress as a whole, or the President."

However, it is these powers, delegated separately by the Constitution to the respective branches of government, which have escaped definition and firm boundaries for almost two hundred years and which underlie the current struggle to gain control of the classification process.

Constitutionally, the President has the option to submit the SALT II accord to the Congress for approval by joint resolution or to submit it in treaty form to the Senate. It should be noted that the approval of international agreements by joint resolution of Congress is a uniquely participatory method of domestic governmental operations and should remain available in the scheme of congressional-executive decision making in the area of foreign policy. But politically, the President probably has no option and will submit such an agreement to the Senate for its advice and consent rather than risk the possibility of future con-
gressional attempts to restrain his discretionary decision making authority.

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