

Learning about Legislation #32 — Ratifying and Ending Treaties

“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.”

— [The United States Constitution, Article II, Section 2](#)

The Constitution is clear about how treaties are to be created, but they say nothing about how a treaty might be ended. This is of considerable concern because of President Trump’s recent comments regarding NATO, and his apparent, stated unwillingness to fulfill Article 5, the reciprocal defense provision.

The issue of which branch has what power in terms of treaties has been an issue of some debate going back to the Framers of the Constitution. Thomas Jefferson [wrote](#), “Treaties being declared equally with the laws of the United States, to be the Supreme Law of the Land, it is understood that an act of the legislature alone can declare them infringed and rescinded.” But while he was clear about his feelings in this matter, this sentiment never made it into the Constitution, the Federalist Papers or any of our nation’s other foundational documents.

We do, however, have some idea of what the Framers intended, based on contemporaneous notes and diaries that recapped the events of the constitutional convention. Forrest Black wrote an [article](#) for the St. Louis Law Review in 1926 that provides a concise recap of the prevailing sentiments:

The debates on the treaty power in the Constitutional convention throw some light on our problem. The first point of importance to be emphasized is the fact that in the whole history of the Convention, at no time did any member suggest that the President alone should have this power. Even Hamilton, who was an ardent advocate of a highly centralized government, was unwilling to place this important power exclusively in the hands of the President. He believed that the Senate should participate because of "the vast importance of the trust, and the operation of the treaties as law." His Sketch of Government presented to the Convention, June 18, 1787, gave to the executive authority, with the "advice and approbation of the Senate, the power of making all treaties." Furthermore, the debates show that the majority of the members were not even favorable to the idea of giving the President any share in the treaty power until late in the convention.

The issue has become more questionable in recent decades, as the legislative branch began to abrogate its responsibilities. Former Senator Russ Feingold wrote a powerful piece for *NBC News* earlier this year titled [“Donald Trump can unilaterally withdraw from treaties because Congress abdicated responsibility.”](#) In that article, Mr. Feingold points out that in 2002 President George W. Bush unilaterally withdrew the United States from the Anti-Ballistic Missile Treaty, and that Congress failed to call a vote to protest this action or assert their Constitutional role as it related to treaties. He concludes, “...that failure to act to assert our constitutional prerogative now hands an erratic and often vengeful president the power to undo crucial international agreements.”

Because of this gray area in Constitutional law and asserted legislative responsibilities, we do face a potential crisis. Please see the first item in the next section, “Legislation of Interest,” to review how a bipartisan group of senators hope to curtail the president’s ability to withdraw from a critical treaty and how they hope to avert such a crisis.