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Classifying International Agreements Under U.S. Law:The Beijing Platform as a Case Study

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I. INTRODUCTION

The 1995 United Nations Fourth World Conference on Women held in Beijing, China culminated in the creation of the Beijing Platform for Action, a document containing 361 paragraphs on the physical, political, sexual, and economic rights of women.[1] Under the auspices of the Beijing Platform for Action, the Clinton Administration announced that "[t]he United States committed to action in seven major areas" of broad domestic policy.[2] Because the Beijing Platform's recommendations are not considered binding and since the Platform has never been ratified by the U.S. Senate, it is not an Article II treaty.[3] These facts raise questions about what kind of legal force this declaration and others like it may exert on the U.S. government and where they fall in the hierarchy of federal law. This situation rekindles the debate on the limits of presidential power in foreign affairs that has waxed and waned throughout the twentieth century. Although this debate is not likely to be resolved in the foreseeable future, the reality is that new international agreements continue to appear on the scene of American law[4]—yet their

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1. *See Beijing Declaration and Platform for Action, Report of the Fourth World Conference on Women*, U.N. Doc. A/C.177/20 (1995) [hereinafter *Beijing Platform*] (available at <gopher://gopher.un.org:70/00/conf/fwcw/off/a–20.en>).

2. *See The President's Interagency Council on Women: Follow Up on U.S. Commitments Made At the U.N. Fourth World Conference on Women* (last modified Jan. 24, 1996) <http://secretary.state.gov/www/iacw/archives/jan96.html>.

3. The U.S. Constitution provides that "[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 . . . ." U.S. CONST. art. II, § 2, cl. 2; *see* BARRY E. CARTER & PHILLIP R. TRIMBLE, INTERNATIONAL LAW 109 (1995).

4. Some examples of other international agreements that have been produced through United Nations sponsorship include the following: *The Final Agreement of the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks*, U.N. Doc. A/C.164/37 (1995) (full text available on the World Wide Web at <gopher://gopher.un.org:70/11/ LOS/ CONF164>); *The Habitat Agenda*, U.N. Doc. A/C.165 (1996) (full text available on the World Wide Web at <http://www.undp.org/un/habitat/agenda/contents.html>); *see also Implementation of Agenda 21: Review of Progress Made Since the United Nations Conference on Environment and Development* (visited Dec. 27, 1997) <http://www.un.org/

potency is often questionable and their terms vague. The status and interpretation of such agreements are important questions facing courts and policymakers.

This Comment will discuss how courts and policymakers should evaluate and classify international agreements, with special consideration given to international agreements sponsored by the United Nations. As a case study, this Comment will subject the Beijing Platform to an analytical process that measures it against each of five classifications recognized by prevailing constitutional doctrines. The goal of this process will be to see whether the Beijing Platform fits within one or more of the five classifications or whether it fits within none of them. It is hoped that this analytical process can be used as a yardstick by which other international agreements can be clearly evaluated under U.S. law. Part II of this Comment defines and explains five distinct categories under constitutional law whereby international agreements may be analytically classified. Part III examines the threshold question of what power the President possesses to negotiate international agreements. Part IV examines the Beijing Platform under the five classifications in an effort to determine what legal classification the Beijing Platform most closely resembles. This exercise is intended to show how other international agreements can be similarly analyzed under this process, thus clarifying the legal status of each agreement. Part V questions the impact of the Case Act[5] on international agreements in general and on the Beijing Platform in particular. Part VI concludes by highlighting the need to more seriously consider the legal status of new types of international agreements like the Beijing Platform.

II. FIVE CATEGORIES OF INTERNATIONAL AGREEMENTS RECOGNIZED UNDER CONSTITUTIONAL LAW

Under the Constitution, the President of the United States is charged with representing the government of the United States in international affairs.[6] One of the President's chief responsibil-

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dpcsd/earthsummit/usa-cp.htm>.

5. 1 U.S.C. § 112b (1997).

6. The power of the President to represent the United States in foreign affairs is implied from the language of Article II, which states: "[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; and he shall nominate, and by and with the

ities is negotiating and entering into international agreements with foreign states. With respect to international agreements, early U.S. presidents were faced with a rather simple choice: whether or not to enter into any given treaty with a foreign state. However, as international law increased in sheer volume and complexity, international agreements evolved beyond the "treaty" category.[7] New types of international agreements were conceived to perform functions dictated by the rapidly changing face of international relations.[8] With the birth of the United Nations, a new system of international relations developed that began to produce innovations in the system of international law.[9] Despite these changes in the international system, the American legal system usually classifies international agreements in only five different ways: (a) self-executing international agreements, (b) non-self-executing international agreements, (c) Article II treaties, (d) congressional-executive agreements, and (e) sole executive agreements.[10]

Advice and Consent of the Senate, shall appoint Ambassadors, [and] other public Ministers and Consuls . . . ." U.S. CONST. art. II, § 2, cl. 2. The Constitution also gives the President the authority to "receive Ambassadors and other public Ministers." *Id.* § 3. No other specific references to a general authority over foreign affairs is found in the Constitution. *See also* CARTER & TRIMBLE, *supra* note 3, at 212-13.

7. *Cf.* Stefan A. Riesenfeld & Frederick M. Abbott, *The Scope of U.S. Senate Control Over the Conclusion and Operation of Treaties*, 67 CHI.-KENT L. REV. 571, 641-42 (1991) (suggesting that the increased global interdependence of the twentieth century may require adaptions to the conventional international treaty system); *see generally* LOCH K. JOHNSON, THE MAKING OF INTERNATIONAL AGREEMENTS (1986).

8. *See* Martin A. Rogoff & Barbara E. Gauditz, *The Provisional Application of International Agreements*, 39 ME. L. REV. 29, 30-32 (1987).

9. *See* John H. Barton & Barry E. Carter, *International Law and Institutions for a New Age*, 81 GEO. L.J. 535, 535-37 (1993). Examples of the innovations in international law and institutions include the Security Council, the International Court of Justice, the International Monetary Fund, the International Bank for Reconstruction and Development (or World Bank), and the International Trade Organization (predecessor of the GATT).

10. These are the categories most often used within the United States legal system. *See generally* CARTER & TRIMBLE, *supra* note 3; RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES, §§ 111, 301-303 (1987). However, some minor variations are usually encountered from scholar to scholar. I have chosen to analyze the Beijing Platform according to these five legal classifications, which I believe is the best way to assess the legal force of a given international agreement.

A. Self-executing and Non-self-executing International Agreements

The broadest category that the Beijing Platform and other U.N. conference declarations can be analyzed under is the "international agreements" category. According to the *Restatement (Third) of the Foreign Relations Law of the United States (Restatement)*, "'international agreement' means an agreement between two or more states or international organizations that is intended to be legally binding and is governed by international law."[11] The "international agreement" category can be further broken down into two subcategories: self-executing international agreements and non-self-executing international agreements. Courts have long distinguished between international agreements that have full force under U.S. law at the time they are completed and agreements that do not gain force under U.S. law without implementing legislation.[12]

The *Restatement* further explains that an international agreement is non-self-executing: "(a) if the agreement manifests an intention that it shall not become effective as domestic law without the enactment of implementing legislation, (b) if the Senate in giving consent to a treaty, or Congress by resolution, requires implementing legislation, or (c) if implementing legislation is constitutionally required."[13] This rule was applied most recently in *United States v. Postal*,[14] where the Fifth Circuit found that the 1958 Convention on the High Seas was not self-executing.[15] The majority opinion emphasized that the language of the Convention did not show an intent to be self-executing, and in fact many of the states that signed the Convention

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11. RESTATEMENT (THIRD), *supra* note 10, § 301(1). The comments explain that an international agreement may take any form or be referred to as a "treaty, convention, agreement, protocol, covenant, charter, statute, act, *declaration*, concordat, exchange of notes, agreed minute, memorandum of agreement, memorandum of understanding, and modus vivendi." *Id.* cmt. a (emphasis added).

12. *See, e.g.*, Stephens v. American Int'l Ins. Co., 66 F.3d 41, 45 (2d Cir. 1995); Floyd v. Eastern Airlines, Inc., 872 F.2d 1462, 1469 (11th Cir. 1989); Hopson v. Kreps, 622 F.2d 1375, 1380 (9th Cir. 1980).

13. RESTATEMENT (THIRD), *supra* note 10, § 111(4).

14. 589 F.2d 862 (5th Cir. 1979). The foundation for the opinion in *Postal* was built in *Whitney v. Robertson*, 124 U.S. 190 (1888), and *Cook v. United States*, 288 U.S. 102 (1933).

15. *See* 589 F.2d at 876-78.

did not recognize the possibility that a treaty may be self-executing under their laws.[16]

The *Restatement* comments to part (c) explain that implementing legislation is constitutionally required if "the agreement would achieve what lies within the exclusive law-making power of Congress under the Constitution."[17] This constitutional restraint on the types of agreements that may be self-executing was first noted by Chief Justice Marshall in *Foster v. Neilson*,[18] where he said:

> Our constitution declares a treaty to be the law of the land. It is, consequently, to be regarded in courts of justice as equivalent to an act of the legislature, whenever it operates of itself without the aid of any legislative provision. But when the terms of the stipulation import a contract when either of the parties engages to perform a particular act, the treaty addresses itself to the political, not the judicial department; and the legislature must execute the contract, before it can become a rule for the Court.[19]

Cases since *Foster* have followed Marshall's statement of the law in this area. For example, in *Robertson v. General Electric Co.*,[20] a patent treaty was determined to be non-self-executing because it dealt with patents, a matter that is expressly and exclusively delegated to Congress under the Constitution.[21]

B. Article II Treaties

The third category we will define is those international agreements that are capable of being properly called "treaties." Generally speaking, under the Constitution only those international agreements that receive the advice and consent of two-thirds of the Senate and are signed by the President may be

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16. *See id.* at 878.

17. RESTATEMENT (THIRD), *supra* note 10, § 111 cmt. i.

18. 27 U.S. (2 Pet.) 253 (1828).

19. *Id.* at 314. Although Marshall decided that the treaty was not self-executing, in a later case the Court decided that the same treaty was self-executing, after the Court reviewed the treaty's Spanish version. *See* United States v. Percheman, 32 U.S. (7 Pet.) 51, 89 (1833).

20. 32 F.2d 495, 500 (4th Cir.), *cert. denied*, 280 U.S. 571 (1929).

21. *See* U.S. CONST. art. I, § 8 ("The Congress Shall have Power . . . [t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries . . . .").

considered "treaties."[22] Because the Constitution fails to define the meaning of the word "treaty," it is helpful to briefly examine the definition of a "treaty" under U.S. law. Although the United States never formally joined the Vienna Convention on Treaties, the State Department has stated that the Vienna Convention represents customary international law, and it has been applied by U.S. courts.[23] Under the Vienna Convention, a treaty is defined as "an international agreement concluded between States in written form and governed by international law."[24] Some older cases confused the issue of what a treaty is by stating that all international agreements enjoy the supremacy of Article II treaties.[25] However, as Carter and Trimble explain, "the Vienna Convention uses the term 'treaty' in a broader sense than does the U.S. Constitution. In U.S. practice a 'treaty' is only one of four types of international agreement"[26] (namely, Article II treaties, congressional-executive agreements, executive agreements pursuant to treaty, and sole executive agreements).[27]

In a more recent case, *Weinberger v. Rossi*,[28] American citizens living and working in the Philippines brought suit against the Secretary of Defense and the Secretary of the Navy challenging the termination of their employment at the Subic Bay military base.[29] A newly enacted law prohibited discrimination against United States citizens working civilian jobs on U.S. military bases overseas, unless discrimination was permitted by "treaty."[30] The plaintiffs claimed that the new law prohibited the Navy from replacing them with Filipino natives. The Department of Defense claimed that the Base Labor Agreement be-

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22. *See* U.S. CONST. art. II, § 2, cl. 2 ("[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 . . . ."); *see also* CARTER & TRIMBLE, *supra* note 3, at 109.

23. *See* CARTER & TRIMBLE, *supra* note 3, at 110; Riesenfeld & Abbott, *supra* note 7, at 571; *see also* Maria Frankowska, *The Vienna Convention on the Law of Treaties Before United States Courts*, 28 VA. J. INT'L L. 281 (1988).

24. *Vienna Convention on the Law of Treaties*, art. II, § 1 U.N. Doc. A/C.39/27 (1969), *reprinted in* BARRY E. CARTER & PHILLIP R. TRIMBLE, INTERNATIONAL LAW: SELECTED DOCUMENTS 55 (1995).

25. *See* United States v. Pink, 315 U.S. 203, 223, 230 (1942); United States v. Belmont, 301 U.S. 324, 331 (1937); B. Altman & Co. v. United States, 224 U.S. 583, 600-601 (1912).

26. CARTER & TRIMBLE, *supra* note 3, at 165.

27. *See id.* at 165-66.

28. 456 U.S. 25 (1982).

29. *See id.* at 28.

30. *See id.* at 28-29.

tween the U.S. government and the government of the Philippines was a "treaty," and was therefore exempt from the new law.[31] The Supreme Court considered whether use of the word "treaty" in the statute was intended to refer only to international agreements entered into by the President with the advice and consent of the Senate or whether it refers in the broader sense to any international agreement entered into between the United States and other nations.[32]

The Circuit Court of Appeals found that the Base Labor Agreement was a congressional-executive agreement concluded by the President pursuant to congressional authorization and was hence not a "treaty" under Article II. However, the Supreme Court held that the Base Labor Agreement should be interpreted in this instance as having the same force as an Article II treaty.[33] Citing the fact that Congress had not been consistent in distinguishing between Article II "treaties" and other types of international agreements, the Court decided that Congress' use of the word "treaty" in the Act must have encompassed executive agreements as well; if not, some thirteen executive agreements that provided for preferential hiring would be invalidated.[34]

The Supreme Court in *Weinberger* explicitly recognized that "[u]nder the United States Constitution, of course, the word 'treaty' has a far more restrictive meaning."[35] The critical factor influencing the court's holding was that there was no clear intent shown by Congress to restrict application of the word "treaty" in the statute at issue to its narrowest sense as understood under the Constitution.[36] Because it was unclear what Congress meant by "treaty" in the new law, the court was forced to apply a broad reading of the word "treaty" in order to effectuate what they understood to be congressional intent on the matter.[37] Therefore, although *Weinberger* could be misconceived as broadening the definition of "treaty," it is in fact consistent with traditional constitutional doctrines.

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31. *See id.*
32. *See id.* at 29.
33. *See id.* at 36.
34. *See id.* at 31-33.
35. *Id.* at 29.
36. *See id.* at 31.
37. *See id.*

Because of the strict constitutional definition of treaties adhered to in the U.S. legal system as explained above, the most telling indicia of whether an international agreement may be a treaty is whether it has been submitted to the Senate for its advice and consent. Yet many international agreements that on their face would appear to merit Senate consideration are never submitted to the Senate.[38] This fact demonstrates that making the decision to submit an international agreement to the Senate for advice and consent is a political calculation.[39] In other words, if the President wants Senate approval of an international agreement, and if he believes he can obtain such, then he will submit it as a "treaty." But if he believes that the agreement will not receive Senate approval, then he may try to characterize the agreement as an "executive agreement," which needs no Senate ratification.[40]

For example, although the General Agreement on Tariffs and Trade (GATT) is considered binding on the U.S. government, it has never been ratified as a treaty by the Senate, and Congress has not enacted implementing legislation.[41] The history surrounding U.S. adoption of the GATT is illustrative of the political calculation argument. When the GATT was first conceived, it was intended to be a temporary mechanism that would be replaced by the International Trade Organization (ITO).[42] When domestic support for the ITO waned, President Truman was forced to abandon his plans to submit the ITO Charter to the Senate for ratification.[43] In place of the ITO, Truman adopted the GATT by executive act and proclaimed it binding on the U.S. government in order to avoid another confrontation with the Senate.[44]

Since there is a political calculation involved and because the President has sole discretion whether to seek Senate ap-

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38. There is, of course, nothing in the Constitution that requires the President to submit all international agreements to the Senate.

39. *See* Robert J. Spitzer, *President, Congress, and Foreign Policy*, *in* THE CONSTITUTION AND THE CONDUCT OF AMERICAN FOREIGN POLICY 93-94 (David G. Adler & Larry N. George eds., 1996).

40. *See* LOUIS HENKIN, FOREIGN AFFAIRS AND THE CONSTITUTION 133 (1972).

41. *See* Ronald A. Brand, *The Status of the General Agreement on Tariffs and Trade in United States Domestic Law*, 26 STAN. J. INT'L L. 479, 480 (1990).

42. *See id.* at 482.

43. *See id.*

44. *See id.*

proval of a given international agreement as a treaty, whether the President submits an agreement to the Senate does not necessarily determine whether it can be classified as a treaty. In short, one should not base a classification exercise on a factor that has nothing to do with the actual character of the agreement and everything to do with the vagaries of politics.

C. Congressional-Executive Agreements

The fourth category for classification purposes is the congressional-executive agreement, which is one of two types of executive agreements.[45] The constitutionality of executive agreements in general is established in *United States v. Curtiss-Wright Corp.*[46] and *United States v. Belmont.*[47] In *Belmont* the Supreme Court ruled that the executive agreements challenged by the plaintiffs were valid exercises of presidential power under the Constitution and had the force of federal law capable of superseding state law on the subject.[48] The Court rejected the plaintiff's contention that Article II of the Constitution required Senate advice and consent before such agreements could become law.[49]

Regarding congressional-executive agreements, the *Restatement* comments explain that

> [t]he prevailing view is that the Congressional-Executive agreement can be used as an alternative to the treaty method in every instance. Which procedure should be used is a political judgment, made in the first instance by the President, subject to the possibility that the Senate might refuse to consider a joint resolution of Congress to approve an agreement, insisting that the President submit the agreement as a treaty.[50]

A congressional-executive agreement can be used in place of a treaty when such agreements relate to subject matter that is within both legislative and executive spheres of power.[51] Such agreements are only executed by the President in accordance

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45. *See supra* text accompanying note 10.

46. 299 U.S. 304 (1936).

47. 301 U.S. 324 (1937); *see generally* STEPHEN M. MILLETT, THE CONSTITUTIONALITY OF EXECUTIVE AGREEMENTS 214-56 (1990).

48. *See* 301 U.S. at 331-32.

49. *See id.* at 330.

50. RESTATEMENT (THIRD), *supra* note 10, § 303 cmt. e.

51. *See* HENKIN, *supra* note 40, at 174-75.

with express authorizations by Congress on that specific subject matter.[52] This authorization can be in the form of a resolution prior to the actual event that empowers the President to negotiate agreements on specific subjects, or it can be in the form of a joint resolution passed by simple majority of both houses of Congress after the agreement has been concluded.[53]

D. Sole Executive Agreements

The second type of executive agreement is the "sole executive agreement" or "presidential executive agreement." This type of executive agreement is more limited than the congressional-executive agreement because the sole executive agreement power is exercised by the President without express Congressional authorization. The *Restatement* comments explain that "[s]ole executive agreements are subject to the constitutional limitations applicable to treaties and other international agreements. To the extent that the President's constitutional authority overlaps powers of Congress . . . , he may make sole executive agreements on matters that Congress may regulate by legislation."[54] However, the President may not make such agreements in areas under the exclusive authority of Congress. For example, because Congress alone may authorize the expenditure of federal funds, an international agreement requiring the expenditure of federal funds signed by the President and executed as a sole executive agreement would be of questionable validity and subject to congressional refusal to provide the funds.[55]

In early U.S. history, sole executive agreements were not submitted to the Senate for ratification because sole executive agreements dealt with matters considered too trivial or technical to require advice and consent.[56] However, since the 1940s,

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52. For example, tariffs and general trade matters were originally dealt with by treaty (i.e. treaties of friendship, commerce, and navigation), but now agreements on these subjects are handled by the United States Trade Representative by congressional-executive agreement, as authorized by an express grant from the House of Representatives. *See* Trade Act of 1974, 19 U.S.C. § 2111 (1997). In making this grant, the House of Representatives was exercising its exclusive constitutional power over the raising of revenue. *See* U.S. CONST. art. I, § 7.

53. *See* HENKIN, *supra* note 40, at 173-75.

54. RESTATEMENT (THIRD), *supra* note 10, § 303 cmt. h.

55. *See* Riesenfeld & Abbott, *supra* note 7, at 582.

56. *See* J. WILLIAM FULBRIGHT, THE CRIPPLED GIANT 217 (1972) ("The constitutionally and historically sanctioned distinction between the treaty as the proper

sole executive agreements have been used for other types of agreements that formerly were considered by some to be inappropriate for the device.[57] The first major attempt by Congress to limit the ability of the President to make executive agreements without congressional participation came in the form of an amendment to the Constitution championed by Senator John W. Bricker.[58] After President Eisenhower applied tremendous pressure and lobbying against the Bricker amendment, the Senate defeated it by a single vote in 1954.[59] Continued presidential "abuse"[60] of executive agreements ultimately resulted in passage of the War Powers Resolution[61] in 1973 in an effort to restrict the ability of the President to make agreements committing American troops abroad without congressional participation.[62]

The Senate also attempted to pass the Treaty Powers Resolution of 1976,[63] which would have reserved to the Senate power to refuse to implement agreements that were not made in treaty form. With the exception of the War Powers and the Case-

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instrument for contracting important, substantive agreements and the executive agreement as an instrument for the conduct of routine and essentially nonpolitical business with foreign countries has now all but disappeared.").

57. *See id.*; *see also* JOHNSON, *supra* note 7, at 5-6; David G. Adler, *Court, Constitution, and Foreign Affairs*, *in* THE CONSTITUTION AND THE CONDUCT OF AMERICAN FOREIGN POLICY, *supra* note 39, at 27.

58. *See* JOHNSON, *supra* note 7, at 85.

59. *See id.* at 101-107.

60. The best example of the perceived abuse of presidential power to make sole executive agreements is President Eisenhower's commitment of American military and economic aid to South Vietnam, which was reaffirmed by President Kennedy and President Johnson. *See* MILLETT, *supra* note 47, at 253-54. These commitments became the impetus for the War Powers Resolution, 50 U.S.C. § 1541-48 (1994).

61. 50 U.S.C. § 1541-48.

62. *See* W. Michael Reisman, *War Powers: The Operational Code of Competence*, *in* FOREIGN AFFAIRS AND THE U.S. CONSTITUTION 68, 72-73 (Louis Henkin et al. eds., 1990); LOUIS HENKIN, CONSTITUTIONALISM, DEMOCRACY, AND FOREIGN AFFAIRS 30 (1990).

63. S. Res. 434, 94th Cong. (1976). The Resolution expressed a number of findings of its sponsors, including the following:

> (b) . . . .
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> . . . .
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> (2) the requirement for Senate advice and consent to treaties has in recent years been circumvented by the use of "executive agreements,"; and
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> . . . .
>
> (c) The Senate declares that, under article 2, section 2, clause 2 of the Constitution, any international agreement, which involves a significant political, military, or economic commitment to a foreign country constitutes a treaty and should be submitted to the Senate for its advice and consent.

Id. at § 2(b)-(c).

Zablocki Act,[64] most efforts in Congress to limit the scope of presidential power in making sole executive agreements have not gained widespread acceptance.[65] In general, when the President has used his power to make sole executive agreements and Congress has not objected, the Supreme Court has upheld the agreement.[66]

III. PRESIDENTIAL POWER TO NEGOTIATE INTERNATIONAL AGREEMENTS

Because international relations increasingly touch on matters that were once considered purely domestic concerns, and due to the dramatic increase in quantity and quality of international agreements in the twentieth century, it is helpful to briefly review the nature of presidential power to negotiate international agreements. Often it is assumed that any international agreement produced through United Nations processes is unquestionably within the realm of executive control. However, there do exist limits on the types of agreements that may be signed by the President.

A. Presidential Authority to Subscribe to United Nations Conference Declarations

The *Restatement* summarizes four separate grounds recognized in constitutional law whereby the President may negotiate and conclude international agreements. These are:

> (1) the President, with the advice and consent of the Senate, may make any international agreement of the United States in the form of a treaty;
> (2) the President, with the authorization or approval of Congress, may make an international agreement dealing with any matter that falls within the powers of Congress and of the President under the Constitution;
> (3) the President may make an international agreement as authorized by treaty of the United States;

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64. 1 U.S.C. § 112b (1997); *see infra* Part V.

65. *See* HENKIN, *supra* note 40, at 176-84.

66. *See* RESTATEMENT (THIRD), *supra* note 10, § 303 reporters' note 7 (comparing Dames & Moore v. Regan, 453 U.S. 654, 668-69 (1981)).

> (4) the President, on his own authority, may make an international agreement dealing with any matter that falls within his independent powers under the Constitution.[67]

If we analyze the Beijing Platform as an international agreement under the four *Restatement* categories, one can argue that the President's authority to join in the declaration springs from either the second, third, or fourth grounds.[68] The argument for fitting the Beijing Platform into the second category is a historical one. That is, since the inception of the United Nations, Congress and the courts have never questioned the President's authority to oversee U.S. participation in U.N. functions—thereby impliedly approving such involvement.[69] Therefore, if participation in the Fourth World Conference on Women and the final declaration of that Conference are considered standard U.N. functions, then the President has been "authorized" or been given "approval" by Congress to do so.

The President's decision to participate in the Beijing Platform may be defensible under the third category as well. Because the United Nations Charter received the advice and consent of the Senate and presidential approval, it became a binding treaty under U.S. law. If the U.N. Charter operates as a treaty under federal law, it can be argued that State Department involvement in U.N. conferences and their corresponding declarations are therefore authorized "by treaty" of the United States.

The fourth category may also support the President's actions if the Beijing Platform is a matter within the President's "independent powers." For decades now, U.S. Presidents have asserted broad and independent power over "foreign relations."[70] Although the sphere of foreign relations is broad and undefined, its scope has often been questioned, particularly when the President's actions collide with the beliefs of members of Congress.[71]

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67. RESTATEMENT (THIRD), *supra* note 10, § 303.

68. U.S. participation in the Beijing Platform cannot be supported by reliance on the first category because U.N. conference declarations are not treaties under U.S. law until they receive the advice and consent of the Senate. *See infra* Part IV.B.

69. That the President may gain implied Congressional authority to conduct foreign affairs through certain international mechanisms was supported by Justice Rehnquist's opinion in *Dames & Moore v. Regan*, 453 U.S. 654, 686 (1981) (quoting United States v. Midwest Oil Co., 236 U.S. 459, 474 (1915)).

70. *See* HENKIN, *supra* note 40, at 37.

71. For example, see the discussion of the War Powers Resolution, Treaty Powers

However, the President's independent powers are strong enough that even in areas where Congress has concurrent authority to act in foreign relations,[72] Congress has rarely succeeded in restricting the scope of the President's foreign relations power.

Although the fourth category may not fully support the Beijing Platform, under the second or third tests the President seemingly possesses sufficient authority to enter into international agreements sponsored by the United Nations.

B. International Agreements and Subject Matter Constraints

Even if it is established that the President has power to represent the United States at U.N. conferences under the analysis above, some argue that this does not grant the President authority to bind the United States government in areas that are traditionally the province of Congress and unrelated to international relations.[73] This is an argument that the President's power in foreign affairs is constrained to matters that truly involve foreign affairs. However, the *Restatement* concludes that this argument is outdated,[74] and that "the Constitution does not require that an international agreement deal only with 'matters of international concern.' . . . International law knows no limitations on the purpose or subject matter of international agreements, other than that they may not conflict with a peremptory norm of international law."[75]

Resolution, and the Bricker Amendment, *supra* Part II.D.

72. For example, Congress shares in the President's power to conduct foreign affairs relating to international trade under Article I of the Constitution. *See* U.S. CONST. art. I, § 8, cl. 3 (giving Congress power "[t]o regulate Commerce with foreign Nations").

73. *See, e.g.*, CARTER & TRIMBLE, *supra* note 3, at 166 ("In the past some conservatives in the United States believed that subjects like racial discrimination and labor standards were within a sphere of domestic jurisdiction that was not appropriate for international negotiation. Some commentators accordingly stated that a treaty must deal with matters of 'international concern.'").

74. The *Restatement* reporters' notes argue that this outdated theory derives from a statement made by Charles Evans Hughes that referred to treaties as "'relating to foreign affairs' and not applying to matters 'which did not pertain to our external relations.'" RESTATEMENT (THIRD), *supra* note 10, § 302 reporters' note 2 (quoting *Discussion on Limitations of the Treaty-Making Power of the United States in Matters Coming within the Jurisdiction of the States*, 23 PROC. AM. SOC'Y INT'L L. 183, 194-96 (1929) (statement by Charles Evans Hughes)).

75. RESTATEMENT (THIRD), *supra* note 10, § 302 cmt. c.

Although there is no express language in the Constitution that limits the subject matter of international agreements,[76] there is an implied constitutional argument derived from balance of power principles. The President—whether he is negotiating agreements on purely foreign matters or matters that directly involve domestic issues—does not have *sole* power under the Constitution to make policy on matters squarely within the guardianship of Congress.[77] For example, since the Constitution gives Congress the power to tax and spend subject to presidential veto, there is a clear implication that the President may not exercise his powers over foreign affairs to make international agreements that would lay taxes or spend federal funds without congressional approval.[78] Therefore, although the Constitution does not expressly limit the subject matter of international agreements, when a proposed international agreement intrudes upon matters of domestic policy that have been delegated to Congress, presidential use of the international agreement as a policy-making tool is inappropriate. Without such limits, the balance of power between executive and legislative branches could be destroyed by the "creative" use of presidential foreign policy power.[79]

That balance of power principles be applied with more vigor in the area of foreign affairs is an underlying concern of this Comment. Allowing the Executive Branch unrestricted power in "foreign affairs" under the auspices of U.N. participation at conferences like the one in Beijing may be circumventing the proper role of the Legislative Branch when it comes to domestic policy

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76. *See* HENKIN, *supra* note 62, at 19 (noting that the Constitution does not use the term "foreign affairs" or an equivalent, and there is no mention of "international agreements" in non-treaty form).

77. As Justice Black stated in *Reid v. Covert*,

> no agreement with a foreign nation can confer power on the Congress, or on any other branch of Government, which is free from the restraints of the Constitution.
>
> It would be manifestly contrary to the objectives of those who created the Constitution . . . to construe Article VI as permitting the United States to exercise power under an international agreement without observing constitutional prohibitions.

354 U.S. 1, 16-17 (1957).

78. *See* HENKIN, *supra* note 62, at 24 ("The framers gave Congress 'all legislative powers' of the federal government; the President was to exercise 'the executive Power.' That division of authority and function was to apply generally, without apparent distinction or exception for what we have come to call foreign affairs.").

79. See GORDON SILVERSTEIN, IMBALANCE OF POWERS 221 (1997).

making.[80] Furthermore, the Executive Branch must acknowledge the concurrent power of Congress itself to regulate foreign affairs. That Congress has such a power has been recognized by the Supreme Court in *Perez v. Brownell*.[81]

IV. CLASSIFYING THE BEIJING PLATFORM FOR ACTION

Having discussed the five recognized categories for international agreements and the President's power to sign U.N. conference declarations, the Beijing Platform will be analyzed under each of the five categories.

As mentioned in the Introduction, the purpose of this analysis is two-fold. First, the analysis of the Beijing Platform shows that it is not binding on the United States despite statements by the Clinton Administration to the contrary.[82] Second, it is hoped that this analysis will provide a proper framework to assess the legal force of future international agreements.

The Beijing Platform for Action is roughly 132 pages long and contains 361 separate paragraphs (with additional subparagraphs) addressing such diverse topics as education, health, violence, the economy, the media, the environment, children, and armed conflict.[83] The document also sets forth the manner in which states should fund implementation efforts so as to realize the objectives of the Beijing Platform as soon as possible.[84] As will be shown, this type of international agreement can not easily be placed in one of the categories of international agreements that the U.S. legal and political system has come to recognize.

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80. *See* JOHNSON, *supra* note 7, at 158-60. Johnson suggests that what is needed here is more of a partnership between the two branches. The Executive Branch should seek to involve Congress in important foreign relations matters, and Congress should exercise restraint in challenging Executive actions. *See id.* at 160; Adler, *supra* note 57, at 19.

81. 356 U.S. 44, 57 (1958) ("Although there is in the Constitution no specific grant to Congress of power to enact legislation for the effective regulation of foreign affairs, there can be no doubt of the existence of this power in the law-making organ of the Nation."), *overruled in part by* Afroyim v. Rusk, 387 U.S. 253 (1967).

82. *See infra* note 91 and accompanying text.

83. *See Beijing Platform*, *supra* note 1.

84. For example, paragraph 349 of the Beijing Platform recommends that "[t]o facilitate the implementation of the Platform for Action, Governments should reduce, as appropriate, excessive military expenditures and investments for arms production and acquisition, consistent with national security requirements." *Id.* at ch. 1, ¶ 349.

A. Analysis Under the Self-Executing and Non-Self-Executing International Agreements Category

As discussed in Part II.A above, the *Restatement* and the Supreme Court in *United States v. Postal*[85] make clear that an international agreement will not be considered self-executing unless there is express language showing an intent to be self-executing. Because the Beijing Platform's language is nonobligatory (does not speak of binding commitments), it fails this requirement. Even if the language could be interpreted as obligatory, the U.S. reservations to the Beijing Platform clarify the U.S. position. The United States was one of over twenty-five parties to the Beijing Platform that registered reservations.[86] The ratification instrument submitted by the State Department detailed reservations on twenty-two paragraphs of the Beijing Platform, and prefaced its reservations with the following statement:

> The United States understands that the phrase "hereby adopt and commit ourselves as Governments to implement the . . . Platform for Action" contained in the Beijing Declaration, and other similar references throughout the texts, are consistent with the fact that the Platform, Declaration and *commitments made by States . . . are not legally binding*, and that they consist of *recommendations* concerning how States can and should promote the objectives of the Conference. The commitment referred to in the Declaration, therefore, constitutes a general commitment to undertake meaningful implementation of the Platform's recommendations overall, rather than a specific commitment to implement each element of the Platform.[87]

The reservations make it clear that even the executive department recognizes that the Beijing Platform is not legally binding on the United States and is therefore non-self-executing.

One might inquire why such a reservation is even necessary if the Platform's language is truly nonobligatory. This reservation may be explained by the fact that under international law, a state's expressed intent that an agreement be binding or nonbinding is controlling.[88] Therefore, the reservation was prob-

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85. 589 F.2d 862 (5th Cir.), *cert. denied*, 444 U.S. 832 (1979).
86. *See Beijing Platform*, *supra* note 1.
87. *Id.* at ch. v, ¶ 30 (emphasis added).
88. *See* MICHAEL J. GLENNON, CONSTITUTIONAL DIPLOMACY 166-68 (1990).

ably included as a precautionary measure to discourage any characterization of the Beijing Platform as binding international law. The *Restatement* comments refer to nonbinding international agreements of this kind as "'gentlemen's agreements' made at various times in United States history and in the history of the United Nations organization."[89] One of these nonbinding international agreements, the Final Act of the Conference on Security and Cooperation in Europe[90] (Final Act of the Helsinki Conference), shares many similarities with the Beijing Platform. Though nonbinding on its signatories, the Final Act of the Helsinki Conference "served an extraordinarily useful purpose as a nonbinding statement of principle concerning future conduct."[91]

Because the Beijing Platform is basically a human rights convention that focuses on the rights of women, it would likely face considerable odds if submitted for Senate approval. Since the inception of the United Nations, human rights conventions have not been well-received by Congress, where the non-self-executing nature of human rights treaties has been cited by the Senate whenever the President has tried to encourage U.S. adherence to such treaties.[92] Based on this history, it would be expected that if the Beijing Platform came before the Senate, the Senate would probably point out the non-self-executing nature of the Platform and either refuse to give advice and consent or approve it only on condition that it would remain unenforceable without specific enabling legislation.[93]

In summary, the Beijing Platform can be classified as a non-self-executing international agreement. United Nations conference declarations like the Beijing Platform are probably best understood as international consensus-building exercises de-

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89. RESTATEMENT (THIRD), *supra* note 10, § 301 cmt. e.

90. *See* Conference on Security and Cooperation in Europe: Final Act, Aug. 1, 1975, 73 DEP'T ST. BULL. 323, Sept. 1975.

91. GLENNON, *supra* note 88, at 169. Another example of a popular nonbinding international declaration is the 1989 Vienna Accord on Freedom of Association, Religion, Travel, and Emigration. *See id.*

92. *See* Lori Fisler Damrosch, *The Role of the United States Senate Concerning "Self-Executing" and "Non-Self-Executing" Treaties*, 67 CHI.-KENT L. REV. 515, 519 (1991).

93. For example, when the Torture Convention was submitted to the Senate by Presidents Reagan and Bush, the Senate adopted a resolution of advice and consent to ratification on October 27, 1990 which declared that Articles 1 through 16 of the Convention were not self-executing. *See id.* at 519-20.

signed to encourage domestic reforms.[94] Like the Final Act of the Helsinki Conference discussed above, the Beijing Platform can serve the useful purpose of encouraging domestic reforms on women's issues worldwide.

B. Analysis Under the Treaty Category

The Beijing Platform clearly fails the standard definition of a treaty because it has not received the advice and consent of two-thirds of the Senate. It cannot be considered an "unratified" treaty because it was never submitted to the Senate for a vote. And as *Weinberger* makes clear, the term "treaty" is still considered to denote only those international agreements that are ratified by the Senate and signed by the President—except when there is clear evidence of Congressional intent to use the term "treaty" in its broadest sense.[95] Because of the formal two-thirds ratification requirement, the treaty classification is perhaps the most easily analyzed category.

C. Analysis Under the Congressional-Executive Agreements Category

The Beijing Platform would likely not qualify as a congressional-executive agreement because there is no recognized act of Congress authorizing the President to bind the U.S.

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94. *See* GLENNON, *supra* note 88, at 168-69 ("Nonbinding international statements do serve a purpose. The flexibility to employ such diplomatic tools is an important ingredient in the process of forming stronger and clearer reciprocal international expectations."). Because the Beijing Platform is not self-executing, the Clinton Administration's announcement that the United States made "commitments" under the Beijing Platform is confusing and only partially correct. As J. William Fulbright explained,

> The term "commitment" has come to be used to refer to engagements with foreign countries ranging from those contracted by treaties to those resulting from executive agreements, *simple declarations* and mere suppositions deriving from repeated, casual assertions. . . .
>
> . . . .
>
> Presidents and their various subordinates have gotten so in the habit over the years of saying that we are "committed" . . . that they and virtually everyone else have come to accept these presumed obligations as articles of faith.

FULBRIGHT, *supra* note 56, at 217 (emphasis added). Modern presidents' plenary use of the word "commitment" in relation to various international dealings and U.N. projects has become so broad that it can mean almost anything—but rarely indicates a binding agreement under international law.

95. *See* Weinberger v. Rossi, 456 U.S. 25 (1982); *supra* Part II.B.

government to the Beijing Platform specifically or broad human rights-type agreements generally.[96] As discussed in Part II.C above, an international agreement may be recognized as a congressional-executive agreement if it is later approved by joint resolution of Congress. An effort was made by a small number of Senators and members of Congress to pass a nonbinding concurrent resolution[97] to support the commitments made by the United States under the Beijing Platform. As introduced, the Resolution would have stated that the Congress:

> (2) supports the inter-agency council on women, established by the Clinton Administration, which is working to implement United States Government commitments made at the United Nations Fourth World Conference on Women, in partnership with the nongovernmental organization community, and to develop a long-term plan to promote the empowerment of women and advancement of their status; [and]
>
> . . . .
>
> (6) urges governmental actions that uphold and enact the tenets of the platform for action and the commitments of the United States made at the conference.[98]

The resolution was never brought to a full vote in the House or Senate, and thereby "died" at the end of the 1995 session.[99] The fact that a resolution was introduced indicates at least some Congressional support for the commitments, thus giving the President evidence of Congressional approval. Had the resolution passed, the Beijing Platform could then be considered a valid congressional-executive agreement,[100] giving it much enhanced status under U.S. law.

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96. Neither the White House nor Congress has mentioned any such authorization surrounding the U.S. signing of the Beijing Platform in the press or in White House publications on the Beijing Conference and subsequent programs. Additionally, I was unable to find such authorization in my research. Therefore I am assuming none exists.

97. A "concurrent resolution" may be passed by both houses but will not be presented to the President, and it thus has no legal effect. A "joint resolution" is a resolution passed by both houses of Congress and submitted to the President for signature. If signed, it has the same effect as a statute. *See* CARTER & TRIMBLE, *supra* note 3, at 208 n.1.

98. H.R. Con. Res. 119, 104th Cong. (1995).

99. A search of federal bill-tracking, legislative history, Congressional Committee, and Congressional Record electronic databases failed to indicate that a full vote was ever taken on this resolution.

100. *See supra* Part II.C.

D. Analysis Under the Sole Executive Agreements Category

Because there is no congressional authorization to support the Beijing Platform as shown above, the Beijing Platform more closely fits the sole executive agreement category. However there remain plausible arguments that can be made to support the contention that the Beijing Platform addresses matters that are exclusively the domain of Congress.[101] The Beijing Platform contains wide ranging policy recommendations in areas such as public health (including reproductive rights), national defense spending, credit mechanisms and institutions, and violence against women.[102] These are areas in which the President does not have independent power to decide domestic policy.[103]

Therefore, although in form the Beijing Platform may seem to be a properly executed sole executive agreement, U.S. "commitments" under the Beijing Platform are not binding under international law or under U.S. law. Seen in this light, the Beijing Platform should have no legal force under U.S. law without actual implementing legislation.

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101. *See supra* Part II.D.

102. *See Beijing Declaration and Platform for Action (Summary)* (visited Dec. 27, 1997) <http://www.usia.gov/topical/global/women/plat.htm>. For example, the Platform recommends that governments

> [d]evelop gender-based methodologies and conduct research to address the feminization of poverty[;]
>
> . . . .
>
> Provide women with access to savings and credit mechanisms and institutions;
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> . . . .
>
> Improve women's access to vocational training, science and technology, and continuing education;
>
> . . . .
>
> Undertake gender-sensitive initiatives that address sexually transmitted diseases, HIV/AIDS and sexual and reproductive health issues;
>
> . . . .
>
> Work actively to ratify and implement all international agreements related to violence against women, including the UN Convention on the Elimination of all Forms of Discrimination against Women.

Id.

103. *See supra* Part III.B. Despite this problem, according to Bella Abzug, Co-Chair of the Women's Environment and Development Organization, the United States has already committed to, and announced a six year $1.6 billion anti-violence program as part of its "commitments" under the Platform for Action. *See United Nations Fourth World Conference on Women, Plenary Speech by Bella Abzug* (visited Dec. 27, 1997) <gopher://gopher.un.org/00/conf/fwcw/conf/ngo/13174219.txt>.

By examining the Beijing Platform using the categorical analysis developed above, it is possible to cut through the mists of confusion surrounding this agreement and identify its bare legal significance. It is hoped that this exercise can be repeated for any international agreements signed by the United States in the future. However, as noted above, some international agreements produced through U.N. processes are being given additional credence despite their lack of binding force at law.

V. THE CASE ACT AND INTERNATIONAL AGREEMENTS

As a side note to the analysis performed above, one piece of legislation deserves particular discussion due to its impact on the creation of international agreements. In 1972, Congress enacted the Case-Zablocki Act (Case Act)[104] in an effort to increase congressional control and oversight of sole executive agreements.[105] The Case Act requires all types of international agreements that are not treaties to be submitted to Congress through the Department of State no later than 60 days after entry into force.[106] State Department procedures require that copies of the agreements be transmitted to the President of the Senate and the Speaker of the House of Representatives as soon as practicable,[107] and that the agreements be printed in the United States Treaties and Other International Agreements publication unless the agreements concern specified "technical"

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104. 1 U.S.C. § 112b (1997).

105. *See* CARTER & TRIMBLE, *supra* note 3, at 110; *see generally* JOHNSON, *supra* note 7, at 121-40.

106. *See* Riesenfeld & Abbott, *supra* note 7, at 580. The Case Act states that:

> The Secretary of Stata shall transmit to the Congress the text of any international agreement (including the text of any oral international agreement, which agreement shall be reduced to writing), other than a treaty, to which the United States is a party as soon as practicable after such agreement has entered into force with respect to the United States but in no event later than sixty days thereafter. . . . Any department or agency of the United States Government which enters into any international agreement on behalf of the United States shall transmit to the Department of State the text of such agreement not later than twenty days after such agreement has been signed.

1 U.S.C. § 112b.

107. *See* 22 C.F.R. § 181.7(a) (1997) ("International agreements other than treaties shall be transmitted . . . to the President of the Senate and the Speaker of the House of Representatives as soon as practicable after the entry into force of such agreements, but in no event later than 60 days thereafter.").

agreements deemed not worth printing.[108] The Secretary of State is charged with determining whether an international agreement concluded by the President falls under the transmittal requirements of the Case Act.[109] Despite the fact that the Case Act is still in full force, since its enactment the Executive Branch has struggled to fulfill its requirements and has rarely complied with the time restrictions imposed.[110] Even more alarming, however, is the fact that hundreds of agreements are never reported at all.[111]

Congress experimented with enforcement of the Case Act requirements by passing Public Law 100-204, which used congressional "power of the purse" to require the following:

> (a) RESTRICTION ON USE OF FUNDS.–If any international agreement, whose text is required to be transmitted to the Congress pursuant to [the Case Act] is not so transmitted within the 60-day period specified . . . , then no funds authorized to be appropriated by this or any other Act shall be available after the end of that 60-day period to implement that agreement until the text of that agreement has been so transmitted.
> (b) EFFECTIVE DATE.–Subsection (a) shall take effect 60 days after the date of enactment of this Act [Dec. 22, 1987] and shall apply during fiscal years 1988 and 1989.[112]

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108. *See* 1 U.S.C. § 112a (a). A regulation under the Act lists the following types of agreements that will not be published:

> (1) Bilateral agreements for the rescheduling of intergovernmental debt payments;
> (2) Bilateral textile agreements concerning the importation of products containing specified textile fibers done under the Agricultural Act of 1956, as amended;
> (3) Bilateral agreements between postal administrations governing technical arrangements;
> (4) Bilateral agreements that apply to specified military exercises;
> (5) Bilateral military personnel exchange agreements;
> (6) Bilateral judicial assistance agreements that apply only to specified civil or criminal investigations or prosecutions;
> (7) Bilateral mapping agreements;
> (8) Tariff and other schedules under the General Agreement on Tariffs and Trade and under the Agreement of the World Trade Organization;
> (9) Agreements that have been given a national security classification pursuant to Executive Order No. 12958 or its successors . . . .

22 C.F.R. § 181.8(a) (1997).

109. 1 U.S.C. §112b (d).

110. *See* JOHNSON, *supra* note 7, at 122-24.

111. *See id.* at 125-26 (noting that many of these unreported agreements are related to intelligence matters).

112. Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, Pub. L. No.

This statute lapsed by its terms after 1989 and proved to be an inefficient means for Congress to gain greater control over Executive Branch powers to make sole executive agreements.

Because the Case Act is still in force, the Beijing Platform must be transmitted to Congress because it has not been handled as a treaty by the President. An exhaustive search by the author was performed of the United States Treaties, Treaties in Force, and the Congressional Record for evidence that the Beijing Platform has been published in compliance with the Case Act, and no copy of the Beijing Platform was found.

In conclusion, it appears doubtful at present that the Case Act will have any impact upon a President who chooses not to comply with its terms. However, if dissatisfaction in Congress grows, the possibility remains that new measures—like Public Law 100-204—may be enacted to attempt to force compliance with the Case Act or new congressional restrictions.

VI. CONCLUSION: U.N. CONFERENCE DECLARATIONS—A NEW CATEGORY OF INTERNATIONAL AGREEMENTS?

The current state of the Beijing Platform and other similar international agreements is truly enigmatic. The United States has signed the Platform, but has proclaimed that it is not binding. Its terms are not self-executing, but implementation of our "commitments" is underway. The document has not been submitted to the Senate as a treaty, nor has it been submitted to Congress as an executive agreement as required by law. Without a clear understanding of the legal status of the Beijing Platform and other U.N. declarations, confusion and tension between Congress and the President in the sphere of foreign affairs powers will worsen. Ultimately, these tensions may erode established constitutional principles that we depend on to provide checks and balances on the powers of our government. Is there a solution to this quandry?

By following the method of analysis applied in Part IV of this Comment, the Beijing Platform was compared against the five categories of international agreements developed in Part II. The analysis performed in Part IV.A showed that the Beijing Platform is not a self-executing international agreement because its terms have no power to bind its signatories under international

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100-204, tit. I, § 139, 101 Stat. 1331, 1347 (1987).

law. Therefore, the Beijing Platform must be a non-self-executing international agreement. The analysis performed in Part IV.B explained that the Beijing Platform is not a treaty because it was never submitted for Senate consideration and hence never received the advice and consent of two-thirds of the Senate. Part IV.C determined that the Beijing Platform cannot be considered a congressional-executive agreement because Congress never authorized the President to commit the U.S. government under the Beijing Platform. Finally, Part IV.D concluded that although in form the Beijing Platform seems to qualify as a sole-executive agreement, it is questionable whether the President's authority to execute sole executive agreements extends into those areas of domestic policy that the Beijing Platform addresses. As a side note, if the Beijing Platform is in fact a sole-executive agreement, it must be disclosed to Congress as required by the Case Act. Congress would then have an opportunity to debate whether the Beijing Platform should be implemented by the President, or whether further implementing legislation is needed.

The purpose of this analysis has been to set forth a framework for understanding the various types of international agreements. Because there are a variety of international agreements that are being ushered onto the international stage of international law, the suggested framework provides a useful method of determining the legal effect of the various agreements. This Comment has examined the Beijing Platform according to this framework in order to illustrate the application of this framework and analyze the Beijing Platform's legal significance. In any event, whether one chooses to follow the blueprint this Comment has provided or to follow some other, there must be more serious consideration given to international agreements and their place in U.S. law.

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