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# Is the U.S.-North Korea Singapore Summit Agreement Constitutional?

At the culmination of an historic summit held in Singapore on June 12, President Donald Trump and North Korean dictator Kim Jong Un signed a document committing each leader's country to providing the other country with certain "security guarantees" in order to "contribute to the peace and prosperity of the Korean Peninsula and of the world."

While the meeting was the scene of several strange moments and appeared to be an unplanned performance of theater of the absurd, for Americans, the agreement reached by the two heads of state deserves detailed analysis as it purports to bind our country to make certain concessions to a communist regime based on the signature of the president alone.

Aimed at building "mutual confidence" and "overcoming decades of tensions and hostilities between the two countries and for the opening up of a new future," President Trump and Chairman Kim settled on four "joint statements":

• The United States and the DPRK commit to establish new U.S.–DPRK relations in accordance with the desire of the peoples of the two countries for peace and prosperity.

• The United States and the DPRK will join their efforts to build a lasting and stable peace regime on the Korean Peninsula.

• Reaffirming the April 27, 2018 Panmunjom Declaration, the DPRK commits to work toward complete denuclearization of the Korean Peninsula.

• The United States and the DPRK commit to recovering POW/MIA remains, including the immediate repatriation of those already identified.

Understanding that the leaders agreed "to implement the stipulations in this joint statement fully and expeditiously," it is urgent that Americans determine whether the president had the constitutionally granted authority to commit our country to these four points without any oversight from Congress.

If he does not have such power, then the agreement must be disregarded and President Trump must be instructed by the people and their representatives that he is not to sign any similar statements in the future.

I'll begin the constitutional analysis by citing Article II, Section 2 of the U.S. Constitution which sets out the entirety of executive authority. That key provision provides that:

> The President shall be commander in chief of the Army and Navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.
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> He 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 advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.
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> The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

That's it. That's the whole of the constitutionally permissible powers of the president.

A careful reading of that section reveals that there is no authority granted to the president to enter into binding "executive agreements" with other heads of state.

Constitutionally — and that's the only metric that matters in questions of federal authority — it is irrelevant whether the agreement is "historic," "epochal," "of great significance," or "establishing a lasting and robust peace." If the president doesn't have the authority to make such binding agreements — and he doesn't — then the agreement is null, void, and of no legal effect. Period.

Though he can neither enter into nor enforce such commitments, the president does have a constitutionally permissible role in establishing binding agreements with foreign countries; these agreements are called treaties.

As set out above, Article II grants the president "power, by and with the advice and consent of the Senate, to make treaties."

As to the nature of this mixture of executive and legislative powers, in *Federalist* No. 75, Alexander Hamilton explained that regarding the treaty-making authority "it will be found to partake more of the legislative than of the executive character…."

The reason the participation of both these branches are mandated in the Constitution is, as Hamilton wrote, "The qualities elsewhere detailed as indispensable in the management of foreign negotiations, point out the Executive as the most fit agent in those transactions; while the vast importance of the trust, and the operation of treaties as laws, plead strongly for the participation of the whole or a portion of the legislative body in the office of making them."

In other words, the president, as one person, is well suited to negotiating with executives of other nations, but he has no authority whatsoever to give his agreements the force of law unless the lawmaking body endows those agreements with its exclusive legislative power.

Whereas kings typically posses the power to make treaties without any additional authority, Hamilton posits that "it would be utterly unsafe and improper to intrust that power to an elective magistrate of four years' duration."

"The history of human conduct does not warrant that exalted opinion of human virtue which would

make it wise in a nation to commit interests of so delicate and momentous a kind, as those which concern its intercourse with the rest of the world, to the sole disposal of a magistrate created and circumstanced as would be a President of the United States," Hamilton adds.

Finally, as regards the constitutionality of the four points contained in the Singapore summit's agreement, Thomas Jefferson explained, "In giving to the President and Senate a power to make treaties, the Constitution meant only to authorize them to carry into effect, by way of treaty, any powers they might constitutionally exercise."

At another time, he reiterated this principle of constitutional construction, saying, "Surely the President and Senate cannot do by treaty what the whole government is interdicted from doing in any way."

In a letter to his colleague, collaborator, and friend James Madison, Jefferson agreed that "the objects on which the President and Senate may exclusively act by treaty are much reduced" by application of the principle that a treaty cannot contradict the Constitution and yet still enjoy the approval of that document.

Bottom line: It is unnecessary for constitutionalists to get into arguments over whether the commitments President Trump made to the murderous head of communist North Korea are in our best interest or not. All we need to do is explain, using the resources provided in this article, that any such agreement is prima facie unconstitutional, thus unenforceable.

*Photo: AP Images*