

Senate Resolution

Declaring That a President Alone Cannot Repeal a Treaty Or Other Law and Affirming the Validity of the INF Treaty

Whereas the Intermediate-range Nuclear Forces Treaty (INF) between the USA and the USSR—succeeded by the Russian Federation—was signed by Presidents Ronald Reagan and Mikhail Gorbachev on Dec. 8, 1987, and approved by the Senate 93 to 5 on May 27, 1988.

Whereas INF banned nuclear and conventional missiles, plus their launchers, with ranges between about 300 and 3,400 miles; provided mutual inspections; and eliminated nearly 2,700 missiles that could send 4,000 nuclear warheads to kill millions of people.

Whereas President Trump supposedly quit INF in August 2019. INF says either "Party" may withdraw on six months' notice if it decides "extraordinary events ... have jeopardized its supreme interests." But the *U.S.A.* is the Party—*not* the executive alone without Congress.

Whereas Gorbachev and George Shultz, Reagan's secretary of state, both INF negotiators, wrote jointly in December that abandonment would lead to a new arms race, risking a war threatening human existence. They said military and diplomatic meetings could fix issues.

Whereas Thomas Jefferson, when vice-president, wrote in *Manual of Senate Procedure*: "Treaties are legislative acts.... An act of the legislature alone can declare them infringed and rescinded." James Madison saw "the same authority ... in annulling as in making a treaty."

Whereas Justice Iredell, writing for the Supreme Court, 1796, found the power to end a treaty "grounded in the solemn declaration of Congress alone...." Justice Story, for the court in 1821, held a like view. So did Chief Justice (ex-President) Taft, *Yale Law Journal*, 1916. Likewise, Judges Woodruff, Ray, and Cardozo, 1871, 1914, 1920, respectively.

Whereas at 1979 Senate hearings on treaty termination, five law professors said a president could not end a treaty without congressional OK. One called it an impeachable offense to try to do so. Listing 52 treaties ended with legislative action, Senator Goldwater said letting the president alone decide to exit an important treaty gave him "virtually a dictator's power."

Whereas in *Goldwater v. Carter*, 1979, Judge Oliver Gasch of DC District Court found it "incompatible with our system of checks and balances" for presidents to end treaties. The Supreme Court dismissed that "political" case, leaving the door open for Congress to assert authority in treaty termination. DC District Court ruled similarly in *Kucinich v. Bush*, 2002.

Now, therefore, be it *Resolved by the Senate that*

It is the sense of the Senate that a president alone cannot repeal a treaty, or any other law; and that until two-thirds of the Senate or a majority of each house of Congress votes to undo it, the INF Treaty remains in effect.