

116TH CONGRESS
2D SESSION

S. 4304

To prohibit actions to terminate or withdraw the United States from certain international agreements without a joint resolution of approval, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 23, 2020

Mr. VAN HOLLEN (for Mr. MARKEY (for himself and Mr. VAN HOLLEN)) introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

A BILL

To prohibit actions to terminate or withdraw the United States from certain international agreements without a joint resolution of approval, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Preventing Actions
5 Undermining Security without Endorsement Act” or the
6 “PAUSE Act”.

7 **SEC. 2. FINDINGS.**

8 Congress makes the following findings:

1 (1) The COVID–19 global pandemic has high-
2 lighted the need for United States leadership to ad-
3 dress the full range of international security chal-
4 lenges, which the Government of the United States
5 can do by reaffirming its steadfast commitment to
6 those mutually beneficial treaties and agreements
7 forged with its European and Indo-Pacific allies,
8 along with other states parties.

9 (2) For more than 70 years, the United States
10 has shown a bipartisan commitment to the North
11 Atlantic Treaty Organization (NATO), specifically to
12 the principle of collective defense enshrined in Arti-
13 cle 5 of the North Atlantic Treaty, signed at Wash-
14 ington April 4, 1949.

15 (3) Section 1242 of the National Defense Au-
16 thorization Act for Fiscal Year 2020 (Public Law
17 116–92) prohibited the use of funds for the United
18 States withdrawal from the North Atlantic Treaty in
19 recognition that the NATO alliance remains a cor-
20 nerstone for peace and prosperity throughout the
21 world.

22 (4) On January 22, 2019, the House of Rep-
23 resentatives passed H.R. 676 (116th Congress) on a
24 357–22 vote, prohibiting the use of funds for the
25 United States withdrawal from the North Atlantic

1 Treaty, and on December 17, 2019, the Committee
2 on Foreign Relations of the Senate reported out
3 S.J. Res. 4 (116th Congress), which, if enacted into
4 law, would require approval of two-thirds of the Sen-
5 ate, or both Houses of Congress, before the Presi-
6 dent could withdraw the United States from the
7 treaty.

8 (5) The Treaty on Open Skies provides a crit-
9 ical confidence-building measure for Euro-Atlantic
10 security to the mutual benefit of the 34 States Par-
11 ties to the treaty, and the Open Skies Consultative
12 Commission (OSCC) is one of the few remaining
13 operational diplomatic forums from which the
14 United States can engage with the Russian Federa-
15 tion.

16 (6) Although the Government of the United
17 States is right to diplomatically press the Govern-
18 ment of the Russian Federation to return to full
19 compliance with its obligations under the Treaty on
20 Open Skies, withdrawal or termination of the treaty
21 would deprive United States allies and partners of
22 the benefits derived from observation missions over
23 Russian territory and Russian-occupied Eastern
24 Ukraine, missions that have vastly outnumbered

1 Russian overflights of United States territory since
2 entry into force of the treaty.

3 (7) On May 22, 2020, President Trump sub-
4 mitted notice of the decision to withdraw the United
5 States from the Treaty on Open Skies, and, in doing
6 so, failed to comply with section 1234(a) of the Na-
7 tional Defense Authorization Act for Fiscal Year
8 2020 (Public Law 116–92), requiring the President
9 to provide notification to Congress 120 days before
10 the provision of notice of intent to withdraw the
11 United States from that treaty.

12 (8) On July 7, 2020, Secretary of State Mike
13 Pompeo formally submitted a notice of the United
14 States decision to withdraw from the World Health
15 Organization, which, if such decision takes effect 1
16 year after that date and in accordance with other re-
17 quirements under law, will deprive the World Health
18 Organization of robust financial and technical con-
19 tributions from the United States needed to
20 strengthen the global response to the COVID–19
21 pandemic and address other health challenges.

22 (9) The Mutual Defense Treaty Between the
23 United States and the Republic of Korea, signed at
24 Washington October 1, 1953, the ratification of
25 which the Senate advised and consented to on Janu-

1 ary 26, 1954, was born from mutual sacrifice during
2 the Korean War, is based on shared values and in-
3 terests, and remains critical to the national security
4 of the United States nearly 7 decades after its sign-
5 ing.

6 (10) A February 2020 report from the Depart-
7 ment of State confirmed, in part, that verifiable lim-
8 its on “Russia’s strategic nuclear force” under the
9 New START Treaty “currently contribute to the na-
10 tional security of the United States”.

11 (11) A decision by the President to allow the
12 New START Treaty to expire on February 5, 2021,
13 without the United States having first successfully
14 concluded a verifiable and binding agreement in its
15 place, would lead to the United States losing visi-
16 bility into the location, movement, and disposition of
17 the strategic arsenal of the Russian Federation to
18 the detriment of the national security of the United
19 States and its allies.

20 (12) The Constitution of the United States pro-
21 vides Congress an important role in the treaty proc-
22 ess, requiring the advice and consent of two-thirds
23 of the Senate for approval of a resolution of ratifica-
24 tion.

1 **SEC. 3. DEFINITIONS.**

2 In this Act:

3 (1) APPROPRIATE COMMITTEES OF CON-
4 GRESS.—The term “appropriate committees of Con-
5 gress” means—

6 (A) the Committee on Armed Services, the
7 Committee on Foreign Relations, and the Com-
8 mittee on Health, Education, Labor, and Pen-
9 sions of the Senate; and

10 (B) the Committee on Armed Services, the
11 Committee on Foreign Affairs, and the Com-
12 mittee on Education and Labor of the House of
13 Representatives.

14 (2) CONSTITUTION OF THE WORLD HEALTH
15 ORGANIZATION.—The term “Constitution of the
16 World Health Organization” means the Constitution
17 of the World Health Organization, done at New
18 York July 22, 1946 (62 Stat. 2679; TIAS 1808).

19 (3) COVERED INTERNATIONAL AGREEMENT.—
20 The term “covered international agreement”
21 means—

22 (A) any international treaty to which the
23 Senate has given its advice and consent to rati-
24 fication; or

25 (B) the Constitution of the World Health
26 Organization.

1 (4) NEW START TREATY.—The term “New
2 START Treaty” means the Treaty between the
3 United States of America and the Russian Federa-
4 tion on Measures for the Further Reduction and
5 Limitation of Strategic Offensive Arms, signed at
6 Prague April 8, 2010 (TIAS 11–205).

7 (5) TREATY ON OPEN SKIES.—The term “Trea-
8 ty on Open Skies” means the Treaty on Open Skies,
9 signed at Helsinki March 24, 1992.

10 **SEC. 4. SENSE OF CONGRESS.**

11 It is the sense of Congress that—

12 (1) the President should refrain from taking
13 any action to withdraw or terminate any covered
14 international agreement without proper consultation
15 with, and affirmative approval from, Congress;

16 (2) the 1979 Supreme Court decision in Gold-
17 water v. Carter, 444 U.S. 996 (1979), is not control-
18 ling legal precedent with respect to the role of Con-
19 gress in the withdrawal or termination of the United
20 States from an international treaty, as the Court di-
21 rected the lower court to dismiss the complaint and
22 did not address the constitutionality of the decision
23 by President Carter to terminate the Mutual De-
24 fense Treaty between the United States of America
25 and the Republic of China, signed at Washington

1 December 2, 1954 (commonly referred to as the
2 “Sino-American Mutual Defense Treaty”);

3 (3) the United States should take every action
4 to reinforce its global reputation as a country that
5 fully complies with its obligations under the inter-
6 national treaties to which it is a party; and

7 (4) although Congress authorized the President
8 to accept membership for the United States to the
9 World Health Organization in 1948 through the
10 Joint Resolution entitled “Joint Resolution pro-
11 viding for membership and participation by the
12 United States in the World Health Organization and
13 authorizing an appropriation therefor”, approved
14 June 14, 1948 (22 U.S.C. 290 et seq.), that Resolu-
15 tion did not address whether affirmative approval by
16 both Houses of Congress may be required for a
17 United States withdrawal from the Constitution of
18 the World Health Organization to take effect.

19 **SEC. 5. JOINT RESOLUTION OF APPROVAL FOR TERMI-**
20 **NATION OR WITHDRAWAL FROM CERTAIN**
21 **INTERNATIONAL AGREEMENTS.**

22 No action to terminate or withdraw the United States
23 from any covered international agreement may occur un-
24 less—

1 (1) the Secretary of Defense and the Secretary
2 of State, or the Secretary of Health and Human
3 Services in the case of the Constitution of the World
4 Health Organization, meet the requirements under
5 section 6; and

6 (2) there is enacted into law a joint resolution
7 that approves such action.

8 **SEC. 6. SUBMISSION ON NOTICE OF INTENT TO TERMINATE**
9 **OR WITHDRAW THE UNITED STATES FROM**
10 **CERTAIN INTERNATIONAL AGREEMENTS.**

11 (a) IN GENERAL.—Not less than 120 days before the
12 provision of notice of intent to terminate or withdraw the
13 United States from a covered international agreement, the
14 Secretary of Defense and the Secretary of State, or the
15 Secretary of Health and Human Services in the case of
16 the Constitution of the World Health Organization, in con-
17 sultation with the Director of National Intelligence, shall
18 each submit to the appropriate committees of Congress—

19 (1) a detailed justification for the withdrawal
20 from or termination of the agreement;

21 (2) if the justification described in paragraph
22 (1) includes that a state party to the agreement is
23 in material breach of one or more obligations under
24 the agreement, a detailed explanation of the steps

1 taken by that state party to return to compliance
2 with such obligations;

3 (3) a certification that—

4 (A) all other state parties to the agreement
5 have been consulted with respect to the jus-
6 tification described in paragraph (1);

7 (B) withdrawal from or termination of the
8 agreement would be in the best national inter-
9 ests of the United States; and

10 (C) all steps taken for withdrawal from or
11 termination of the agreement are in compliance
12 with the agreement; and

13 (4) a comprehensive strategy to mitigate
14 against lost capacity of benefits, including plans for
15 a superseding agreement or potential new bilateral
16 or multilateral confidence-building measures.

17 (b) FORM.—The submission required by subsection
18 (a) shall be submitted in unclassified form, but may in-
19 clude a classified annex.

20 (c) APPLICABILITY TO NEW STRATEGIC ARMS RE-
21 Duction Treaty.—This section shall apply to a decision
22 by the President to not renew the New START Treaty
23 for up to an additional 5 years.

1 **SEC. 7. RULE OF CONSTRUCTION.**

2 Nothing in section 5 or 6 shall be construed as elimi-
3 nating any requirement set out in—

4 (1) the Joint Resolution entitled “Joint Resolu-
5 tion providing for membership and participation by
6 the United States in the World Health Organization
7 and authorizing an appropriation therefor”, ap-
8 proved June 14, 1948 (22 U.S.C. 290 et seq.), relat-
9 ing to United States withdrawal from the World
10 Health Organization; or

11 (2) section 1234(a) of the National Defense Au-
12 thorization Act for Fiscal Year 2020 (Public Law
13 116–92), relating to United States withdrawal from
14 the Treaty on Open Skies.

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