

115TH CONGRESS
1ST SESSION

S. 2016

To prevent an unconstitutional strike against North Korea.

IN THE SENATE OF THE UNITED STATES

OCTOBER 26, 2017

Mr. MARKEY introduced the following bill; which was read twice and referred
to the Committee on Foreign Relations

A BILL

To prevent an unconstitutional strike against North Korea.

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 “No Unconstitutional
5 Strike Against North Korea Act of 2017”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

8 (1) The President is currently prohibited from
9 initiating a war or launching a first strike without
10 congressional approval under the United States Con-
11 stitution and United States law.

1 (2) The Constitution, in article I, section 8,
2 grants Congress the sole power to declare war.

3 (3) George Washington, in a letter to William
4 Moultrie dated August 28, 1793, wrote, “The con-
5 stitution vests the power of declaring war in Con-
6 gress; therefore no offensive expedition of impor-
7 tance can be undertaken until after they shall have
8 deliberated upon the subject and authorized such a
9 measure.”.

10 (4) In Examination Number 1 of the Hamilton
11 Papers, dated December 17, 1801, Alexander Ham-
12 ilton wrote, “ ‘The Congress shall have the power to
13 declare war’; the plain meaning of which is, that it
14 is the peculiar and exclusive duty of Congress, when
15 the nation is at peace, to change that state into a
16 state of war.”.

17 (5) James Madison wrote, in Madison Papers,
18 Helvidius, Number 4, dated September 14, 1793,
19 “ ‘The power to declare war, including the power of
20 judging the causes of war, is fully and exclusively
21 vested in the legislature . . . the executive has no
22 right, in any case, to decide the question, whether
23 there is or is not cause for declaring war.”.

24 (6) Section 2(c) of the War Powers Resolution
25 (50 U.S.C. 1541(c)) states that “the constitutional

1 powers of the President as Commander-in-Chief to
2 introduce United States Armed Forces into hos-
3 tilities, or into situations where imminent involve-
4 ment in hostilities is clearly indicated by the cir-
5 cumstances, are exercised only pursuant to (1) a
6 declaration of war, (2) specific statutory authoriza-
7 tion, or (3) a national emergency created by attack
8 upon the United States, its territories or posses-
9 sions, or its armed forces”.

10 (7) The American people, United States allies
11 in Asia, and the entire world have been deeply trou-
12 bled by escalating tensions on the Korean peninsula.

13 (8) Recent polling demonstrates that more than
14 two-thirds of people in the United States believe that
15 the United States should attack North Korea only if
16 North Korea attacks first.

17 (9) The United States has approximately
18 28,500 members of the Armed Forces stationed in
19 Korea who would be placed in grave danger if an ac-
20 tive military conflict were to erupt.

21 (10) On August 14, 2017, Chairman of the
22 Joint Chiefs of Staff, Marine Corps General Joseph
23 Dunford stated, “The United States military’s pri-
24 ority is to support our government’s efforts to

1 achieve the denuclearization of the Korean Peninsula
 2 through diplomatic and economic pressure.”.

3 (11) On August 10, 2017, Defense Secretary
 4 James Mattis stated that armed conflict with North
 5 Korea “would be catastrophic”.

6 **SEC. 3. PROHIBITION ON UNCONSTITUTIONAL MILITARY**
 7 **STRIKES AGAINST NORTH KOREA.**

8 (a) IN GENERAL.—None of the funds appropriated
 9 or otherwise made available to the Department of Defense
 10 or to any other Federal department or agency may be used
 11 to launch a military strike against North Korea or intro-
 12 duce the Armed Forces into hostilities in North Korea be-
 13 fore the date on which Congress declares war on North
 14 Korea or enacts an authorization described in subsection
 15 (b).

16 (b) AUTHORIZATION OF MILITARY STRIKES.—An au-
 17 thorization described in this subsection is an authorization
 18 that meets the requirements of the War Powers Resolution
 19 (Public Law 93–148; 50 U.S.C. 1541 et seq.) and that
 20 is enacted after the date of the enactment of this Act.

21 (c) EXCEPTIONS.—The prohibition under subsection
 22 (a) shall not apply with respect to the introduction of the
 23 Armed Forces into hostilities to repel a sudden attack on
 24 the United States, its territories or possessions, the United
 25 States Armed Forces, or United States allies or to the de-

1 ployment of United States Armed Forces to rescue or re-
2 move United States personnel.

3 (d) RULE OF CONSTRUCTION.—Nothing in this sec-
4 tion may be construed to relieve the executive branch of
5 the restrictions on the use of force or the reporting re-
6 quirements stated in the War Powers Resolution (Public
7 Law 93–148; 50 U.S.C. 1541 et seq.).

8 **SEC. 4. SENSE OF CONGRESS IN SUPPORT OF A DIPLO-**
9 **MATIC RESOLUTION TO GROWING TENSIONS**
10 **WITH NORTH KOREA.**

11 It is the sense of Congress that—

12 (1) a conflict on the Korean peninsula would
13 have catastrophic consequences for the American
14 people, for members of the United States Armed
15 Forces stationed in the region, for United States in-
16 terests, for United States allies the Republic of
17 Korea and Japan, for the long-suffering people of
18 North Korea, and for global peace and security more
19 broadly, and that actions and statements that in-
20 crease tensions and could lead to miscalculation
21 should be avoided; and

22 (2) the President, in coordination with United
23 States allies, should explore and pursue every fea-
24 sible opportunity to engage in talks with the Govern-
25 ment of North Korea on concrete steps to reduce

1 tensions and improve communication, and to initiate
2 negotiations designed to achieve a diplomatic agree-
3 ment to halt and eventually reverse North Korea's
4 nuclear and missile pursuits and to move toward
5 denuclearization and a permanent peace in the Ko-
6 rean peninsula.

