To prevent an unconstitutional strike against North Korea.

IN THE SENATE OF THE UNITED STATES

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

A BILL

To prevent an unconstitutional strike against North Korea.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “No Unconstitutional Strike Against North Korea Act of 2017”.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The President is currently prohibited from initiating a war or launching a first strike without congressional approval under the United States Constitution and United States law.
(2) The Constitution, in Article I, Section 8, grants Congress the sole power to declare war.

(3) George Washington, in a letter to William Moultrie dated August 28, 1793, wrote, "The constitution vests the power of declaring war in Congress; therefore no offensive expedition of importance can be undertaken until after they shall have deliberated upon the subject and authorized such a measure."

(4) In Examination Number 1 of the Hamilton Papers, dated December 17, 1801, Alexander Hamilton wrote, "The Congress shall have the power to declare war'; the plain meaning of which is, that it is the peculiar and exclusive duty of Congress, when the nation is at peace, to change that state into a state of war."

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

(6) Section 2(c) of the War Powers Resolution (50 U.S.C. 1541(c)) states that "the constitutional
powers of the President as Commander-in-Chief to
introduce United States Armed Forces into hos-
tilities, or into situations where imminent involve-
ment in hostilities is clearly indicated by the cir-
cumstances, are exercised only pursuant to (1) a
declaration of war, (2) specific statutory authoriza-
tion, or (3) a national emergency created by attack
upon the United States, its territories or possess-
sions, or its armed forces”.

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

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

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

(10) On August 14, 2017, Chairman of the
Joint Chiefs of Staff, Marine Corps General Joseph
Dunford stated, “The United States military’s pri-
ority is to support our government’s efforts to
achieve the denuclearization of the Korean Peninsula through diplomatic and economic pressure.”

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

SEC. 3. PROHIBITION ON UNCONSTITUTIONAL MILITARY STRIKES AGAINST NORTH KOREA.

(a) IN GENERAL.—None of the funds appropriated or otherwise made available to the Department of Defense or to any other Federal department or agency may be used to launch a military strike against North Korea or introduce the Armed Forces into hostilities in North Korea before the date on which Congress declares war on North Korea or enacts an authorization described in subsection (b).

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

(c) EXCEPTIONS.—The prohibition under subsection (a) shall not apply with respect to the introduction of the Armed Forces into hostilities to repel a sudden attack on the United States, its territories or possessions, the United States Armed Forces, or United States allies or to the de-
ployement of United States Armed Forces to rescue or re-
move United States personnel.

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

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

It is the sense of Congress that—

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

(2) the President, in coordination with United
States allies, should explore and pursue every fea-
sible opportunity to engage in talks with the Govern-
ment of North Korea on concrete steps to reduce
tensions and improve communication, and to initiate negotiations designed to achieve a diplomatic agreement to halt and eventually reverse North Korea’s nuclear and missile pursuits and to move toward denuclearization and a permanent peace in the Korean peninsula.