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## Bad Idea: Putting Congress in the Chain of Command for Nuclear Weapons

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Tensions between the United States and North Korea have become increasingly heated during the first year of the Trump administration. While heightened tensions with North Korea is not a new phenomenon in U.S. foreign policy, the rhetoric of the Trump administration, coupled with advancements in North Korea's nuclear program, have brought the issue to the forefront of public discussion. On November 14<sup>th</sup>, the Chairman of the Senate Foreign Relations Committee (SFRC), Senator Bob Corker (R-TN), conducted a hearing to review presidential authority over the use of nuclear weapons. In addition to the hearing, Congressman Ted Lieu (D-CA) and Senator Ed Markey (D-MA) cosponsored a [bill](#) during the 2016 presidential campaign and continuing into the first year of the Trump Presidency that would restrict the president from launching preemptive nuclear strikes without the authorization of Congress. Retaliatory strikes in response to a nuclear strike against the United States or its allies would still be permitted.

This prescription is highly problematic for several reasons. While proponents of congressional authorization hope that it will reduce tensions, in reality, it will only serve to increase the risks of accidental or inadvertent escalation, or at worst, incentivize an adversary to engage in deliberate escalation before Congress accedes to nuclear employment. Although proponents of such a policy shift correctly point out that the current risk of [surprise attack is low](#), this proposed policy change contains major flaws.

One of the principal methods behind nuclear deterrence is the effective use of signaling. The fundamental purpose behind nuclear deterrence is to communicate to all potential adversaries that unacceptable actions will result in a devastating response that would not be in their interest to pursue.<sup>1</sup> In a case of heightened tensions between two states armed with nuclear weapons, each action is watched by the other, attempting

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<sup>1</sup> It must be noted however, that nuclear weapons can only deter unacceptable actions, and cannot deter actions that are simply uncomfortable, i.e. gray zone provocations

to understand the adversary's ambitions, capabilities, and policies. During the Cold War, NATO forces faced an overwhelming disadvantage in conventional forces vis-à-vis the Warsaw Pact. Fearing a potential large-scale invasion into West Germany, the doctrines of both massive retaliation and flexible response allowed for nuclear retaliatory strikes in response to a conventional invasion. These policies signaled to the USSR that a conventional invasion of the West would lead to a devastating conflict for both sides. Likewise, in a December 2002 [interview](#) with a Russian policymaker, a single statement about so-called Russian "nuclear scalpels" (on the subject of Chechnya) continues to fuel [Western analysis](#) about Russian nuclear capabilities and policies in 2016. This illustrates that the statements of policymakers will influence how others view U.S. policy for potentially years to come.

In the case between North Korea and the United States, the proposed Markey/Lieu bill would potentially lead to an already paranoid North Korean leadership to decide to prematurely engage in aggressive activities that would shatter the already fragile peace. During an upswing in tensions, the action of the president going to Congress to request authorization to use nuclear weapons alone could be deeply alarming to state actors who already have convinced themselves that the United States is aiming to destroy their regime. In such a case, this proposed bill would lead to exactly the opposite, unintended consequences that the bill's authors are hoping to avoid. In his concluding remarks at the SFRC [hearing](#), Dr. Peter Feaver touched on this worry and stated that legislative fixes could lead to adverse second and third order effects.

In the case of deliberate escalation, this bill would encourage a potential adversary to act before congressional authorization is approved. In the case of Russia's nuclear escalate to deescalate strategy and its propensity to exploit situations to gain a fait accompli, the long lead time of Congressional action gives Russia a larger window of opportunity to engage in deliberate provocations without the United States being able to respond with all options. During the SFRC hearing, Senator Marco Rubio (R-FL) highlighted the danger of this very scenario. Rubio [stated](#), "If anyone out there thinks they can somehow get away with something because the politics of the United States would somehow prevent the commander-in-chief from acting expeditiously, that could also encourage miscalculation." Another factor to consider is will U.S. allies. Through NATO, the United States extends an umbrella of protection to five non-nuclear armed states, and through bilateral treaties with Japan and South Korea, the United States provides extended nuclear deterrence guarantees. If allies begin to doubt the U.S. commitment or ability to respond in a timely manner, it may undermine alliance

unity and push these countries to pursue their own domestic nuclear programs. In the cases of Japan and South Korea, the option of becoming a nuclear power is readily feasible due to their large existing stockpiles of nuclear materials.

This bill would also directly contradict the cornerstone of centralized decision making. In an episode of the Arms Control Wonk Podcast, Aaron Stein [pointed out](#) that “in declaratory policy, you don’t want to be speaking with multiple heads when you involve nuclear weapons.” General Paul Selva has also recently stated that in crisis situation, [clarity of decision making](#) is of utmost importance. If the President and Congress speak with two different voices on nuclear decision-making, it will only serve to confuse both adversaries and allies alike, ultimately raising the risk of miscalculation.

Instead of remaking and reinventing the wheel (and potentially increasing the risks of accidental and inadvertent escalation), the best path forward is to assure all members of the military chain of command, especially those closest to the President, of their right and duty to only act on orders that are legal under the laws of armed conflict. The law of armed conflict [states](#) that any order that targets an adversary in a method that is not proportional, targets non-combatants, or is not a military necessity is illegal under the law. In this case, members of the military can feel reassured that they contain the right and the responsibility to refuse orders that are clearly illegal. Already, General John Hyten, commander of STRATCOM, has [stated](#) that he would refuse to carry out illegal orders.

Nuclear policy is too important an issue to legislate based on the hypothetical thought processes of individual actors. It becomes a greater issue when the proposed solutions introduce measures that will only result in exacerbating already high tensions. The debate over the “Restricting First Use of Nuclear Weapons Act” will only add fuel to an already smoldering fire by having a public spectacle of over the presidential prerogative to utilize nuclear weapons. Policymakers should consider how an adversary watching the public congressional proceedings might react. During the hearing, former Acting Under Secretary for Policy at DoD Brian McKeon [warned](#) that passing legislation that addresses hypothetical scenarios usually produces bad law. Instead of passing a bad law, the solution can instead be found by reconfirming the existing power of the personnel in the chain of command to refuse orders that are plainly illegal, without having to exponentially add to the risks of miscalculation.

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