

# A Preemptive Strike on North Korea Would Be Catastrophic and Illegal

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*As Special Counsel **Robert Mueller** impanels two grand juries to investigate **Donald Trump** and his associates, and former Trump campaign manager **Paul Manafort's** home is searched, Trump needs to distract attention from the investigation into his alleged wrongdoing.*

North Korea has provided just such a distraction — albeit a potentially catastrophic one.

On Tuesday, Trump stated,

“North Korea best not make any more threats to the United States. They will be met with fire and fury like the world has never seen.”

Friday morning, Trump warned North Korea that the US military is “locked and loaded.”

Trump has learned that bombing other countries enhances a president’s popularity. In April, with 59 Tomahawk cruise missiles, each armed with over 1,000 pounds of explosives, he went from scoundrel-in-chief to national hero virtually overnight. The corporate media, the neoconservatives and most of Congress hailed Trump as strong and presidential for lobbing the missiles into Syria, reportedly killing nine civilians, including four children.

Several hours after Trump’s recent “fire and fury” statement, Pyongyang warned it was “carefully examining” a strike that would create “an enveloping fire” around Guam, the site of an important US military base and home to more than 160,000 people.

North Korea has accused the United States of planning a “preventive war,” saying that plans to mount one would be met with an “all-out war, wiping out all the strongholds of enemies, including the US mainland.” A spokesman for the General Staff of the Korean People’s Army promised,

“the tragic end of the American empire will be hastened.”

In an attempt to tamp down fears of all-out war, **Secretary of State Rex Tillerson** said there is not “any imminent threat” from North Korea.

But **Defense Secretary James Mattis** cautioned that Pyongyang “should cease any consideration of actions that would lead to the end of its regime and the destruction of its people.” And **National Security Adviser H.R. McMaster** said that the White House is considering all options, including “preventative war.”

Trump’s bellicose rhetoric against North Korea began shortly after the Office of the Director of National Intelligence (DNI) claimed that Pyongyang has developed a miniature nuclear warhead for its missiles. A DNI report issued in July said,

“North Korea has produced nuclear weapons for ballistic-missile delivery, to include delivery by ICBM-class missiles,” according to the Washington Post.

The DNI’s claim is questionable, however, as none of the other US intelligence agencies has ratified it. In fact, the DNI issued an identical report on North Korean nuclear capabilities in 2013.

Trump has indicated his willingness to use nuclear weapons. In August 2016 MSNBC’s **Joe Scarborough** reported that Trump asked a senior foreign policy adviser about nuclear weapons three times during a briefing, then queried,

“If we had them why can’t we use them?”

### **An Attack on North Korea Would Be Dangerous**

The Intercept reports that

“even a conventional war between the US and [North Korea] could kill more than 1 million people; a nuclear exchange, therefore, might result in tens of millions of casualties.”

More than 60 House Democrats, led by **Rep. John Conyers** (D-Michigan), sent a letter to Tillerson expressing their “profound concern over the statements made by President Trump that dramatically increased tensions with North Korea and raised the specter of nuclear war.” The letter says,

“These statements are irresponsible and dangerous, and also senselessly provide a boon to domestic North Korean propaganda which has long sought to portray the United States as a threat to their people.”

The letter to Tillerson quoted a prior letter sent to Trump by 64 Congress members in May, which said:

Military action against North Korea was considered by the Obama, Bush and Clinton Administrations, but all ultimately determined there was no military option that would not run the unacceptable risk of a counter-reaction from Pyongyang [that] could immediately threaten the lives of as many as a third of the South Korean population, put nearly 30,000 U.S. service members and over 100,000 other U.S. citizens residing in South Korea in grave danger,

and also threaten other regional allies such as Japan.

“Simply put, there is no military solution to this problem,” the August letter continued.

“We respectfully but firmly urge you to do everything in your power to ensure that President Trump and other Administration officials understand the importance of speaking and acting with the utmost caution and restraint on this delicate issue. Congress and the American public will hold President Trump responsible if a careless or ill-advised miscalculation results in conflict that endangers our service members and regional allies.”

Nevertheless, **Sen. Lindsey Graham** (R-South Carolina) stated,

“If there’s going to be a war to stop [**Kim Jong-un**], it will be over there. If thousands die, they’re going to die over there. They’re not going to die here. And [Trump] has told me that to my face.”

Trump and Graham apparently feel that massive casualties are acceptable as long as they don’t occur on the US mainland.

### **A Preemptive Strike on North Korea Would Violate the UN Charter**

A preemptive strike on North Korea would be illegal. It would violate the United Nations Charter, which forbids the use of military force unless conducted in self-defense or when approved by the Security Council.

“Self-defense” is a narrow exception to the Charter’s prohibition of the use of force. Countries may engage in individual or collective self-defense only in the face of an armed attack. There must exist “a necessity of self-defense, instant, overwhelming, leaving no choice of means, and no moment for deliberation,” under the well-established *Caroline Case*. In the case of North Korea, there has been no armed attack, and there is no imminent threat of one.

The Charter specifies that non-forceful measures, including diplomacy, must be pursued in order to maintain or restore international peace and security.

On August 5, in response to North Korea’s recent test launches of two intercontinental ballistic missiles, the UN Security Council unanimously enacted a sanctions regime that would reduce North Korea’s annual export earnings by at least one-third, an estimated \$1 billion. It would affect 90 percent of North Korea’s economy. Resolution 2371 targets North Korea’s primary exports, which include iron, iron ore, coal, lead, lead ore and seafood. It is also aimed at banks and joint ventures between North Korea and foreign corporations. The resolution imposes the toughest sanctions on North Korea to date.

The resolution does not, however, authorize the United States or any other country to use military force against North Korea. It ends by stating that the Security Council “*decides* to remain seized of the matter.” That means that the Council, and only the Council, has the authority to approve military action.

Tillerson has called for direct talks with North Korea and offered assurances that the United

States is not its enemy and does not seek regime change.

But CIA **Director Mike Pompeo** strongly intimated that the US is considering regime change in North Korea.

For North Korea, the past is prologue. Determined to avoid the fate of **Saddam Hussein**, who didn't have nukes, as well as that of **Muammar Qaddafi**, who did but relinquished them, Pyongyang is developing a nuclear deterrent. Kim Jong-un has repeatedly maintained that North Korea's nuclear capabilities are critical to its self-defense.

Indeed, **Dan Coats**, director of national intelligence, told the Aspen Security Forum of Kim Jong-un:

"There is some rationale backing his actions, which are survival — survival for his regime, survival for his country. And he has watched, I think, what has happened around the world relative to nations that possess nuclear capabilities and the leverage they have, and seen that having the nuclear card in your pocket results in a lot of deterrence capability."

### **Sign a Peace Treaty, End the Korean War**

Moreover, North Korea cannot forget the 1950-1953 Korean War, which reduced North Korea's population of 10 million by approximately one-third. Sixty-four years ago, the United States and North Korea signed an armistice agreement, but the US never permitted the creation of a peace treaty.

On several occasions, North Korea has suggested a way to a lasting peace. **Christine Hong**, associate professor at the University of California, Santa Cruz, wrote in the *Progressive*,

"Unsurprisingly, few media outlets have reported on North Korea's overtures to the United States, even as these, if pursued, might result in meaningful de-escalation on both sides. To be clear: peaceful alternatives are at hand. Far from being an intractable foe, North Korea has repeatedly asked the United States to sign a peace treaty that would bring the unresolved Korean War to a long-overdue end."

A month ago, China and Russia proposed a "freeze-for-freeze" strategy, which would entail North Korea freezing its nuclear and missile testing, and in return, the US and South Korea would end their annual joint military exercises. This proposal, issued in a joint statement by the Chinese and Russian Foreign Ministries after meetings between Russian **President Vladimir Putin** and Chinese **President Xi Jinping**, is a diplomatic solution that should be pursued. **Vassily Nebenzia**, Russia's ambassador to the UN, said this plan would offer "a way out" of the present situation.

The Congress members' letter to Tillerson cited successful efforts at direct diplomacy between Washington and Pyongyang in 1994 and 2000, later scuttled by Under Secretary of State for Arms Control and International Security **John Bolton** under **George W. Bush**.

Bolton told Fox Business on Monday,

“I don’t think there are any further diplomatic options in terms of trying to persuade North Korea to change its behavior.”

And **Vice President Mike Pence** said “engaging North Korea directly” is a non-starter at the present time.

But **Susan Rice, Barack Obama’s** national security adviser and US ambassador to the UN, wrote in the New York Times,

“We have long lived with successive Kims’ belligerent and colorful rhetoric.... I came to expect it whenever we passed resolutions. What is unprecedented and especially dangerous this time,” however, “is the reaction of President Trump.” His threats, Rice wrote, “risk tipping the Korean Peninsula into war, if the North’s leader, Kim Jong-un, believes them and acts precipitously.”

South Korean **President Moon Jae-in** told Trump in a recent telephone call,

“South Korea can never accept a war erupting again on the Korean Peninsula,” rather “the North Korean nuclear issue must be resolved in a peaceful, diplomatic manner through a close coordination between South Korea and the United States.”

In May, Trump told Bloomberg News that he would meet with Kim Jong-un:

“If it would be appropriate for me to meet with him, I would absolutely, I would be honored to do it ... under the right circumstances. But I would do that.”

As we stand on the precipice of a disastrous war, these are the right circumstances for Trump to meet with Kim Jong-un. If Trump were to successfully negotiate a peace treaty with North Korea, he would receive plaudits for being a real diplomat. The unthinkable alternative is military action that would cause the deaths of untold numbers of Koreans, Japanese people and Americans.

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