

THE BROOKINGS INSTITUTION  
FALK AUDITORIUM

TRANSPARENCY AND GOVERNANCE IN U.S. FOREIGN POLICY  
A CONVERSATION WITH U.S. SENATOR BOB MENENDEZ (D-NJ)

Washington, D.C.

Thursday, February 13, 2020

**PARTICIPANTS:**

**Welcoming Remarks:**

SUZANNE MALONEY  
Interim Vice President and Director, Foreign Policy  
The Brookings Institution

**Featured Speaker:**

THE HONORABLE BOB MENENDEZ (D-NJ)  
Ranking Member, Foreign Relations Committee  
United States Senate

**Moderator:**

THOMAS WRIGHT  
Senior Fellow and Director, Center on the United States and Europe  
The Brookings Institution

\* \* \* \* \*

## P R O C E E D I N G S

MS. MALONEY: Good afternoon and thank you so much for your patience. I am Suzanne Maloney, interim vice president and director of the Foreign Policy program at the Brookings Institution. It is a true pleasure to welcome you this afternoon for our event with Senator Bob Menendez of New Jersey.

Today's event with Senator Menendez is an Alan and Jane Batkin International Leaders Forum, which brings world leaders and government officials to Brookings for major policy addresses. We couldn't be more grateful and thrilled for the presence of Senator Menendez here.

He was delayed, of course, by a very important vote on the War Powers Act. And we will be looking forward to the discussion that he's going to lead really following on the recent impeachment inquiry, which probed into the president's conduct and whether he abused executive power while interacting with foreign government officials. It brought to light the challenges that Congress faces when conducting oversight of the executive branch, especially the ability to oversee foreign policy.

It emphasized the need for greater transparency and accountability, both for the American public and among the branches of power themselves when engaging with foreign government officials. This is why we're so honored that Senator Menendez is here with us today, so that we can hear from the perspective of someone who's been hands-on and at the forefront of working on all these issues.

The son of Cuban immigrants, Senator Menendez has represented New Jersey in the Senate since 2006. He's chairman of the Senate Foreign Relations -- he was chairman of the Senate Foreign Relations Committee in the 113th Congress. In 2013, he led the effort to pass a resolution to allow the president to use military force in Syria, which would have ended chemical weapons use against civilians. He continues his work on the committee as ranking member today.

Bob, thank you so much for your service to our country and the important role that you play. It's wonderful to have you here with us on stage today.

Following Senator Menendez' keynote address, he'll be joined by Tom Wright, director of our Center on the U.S. and Europe, for a moderated discussion. Without any further ado, let me welcome Senator Menendez. (Applause)

SENATOR MENENDEZ: Thank you very much. Thank you.

Well, thank you, Suzanne, very much for that kind introduction. I hope that that slip actually becomes a reality again at some point in terms of chairing the committee, but I appreciate your warm welcome.

Let me apologize to everyone, but when we talk about checks and balances and the system of checks and balances in our government, which is a good focus of what I'm going to speak about today, none can be more important than the check and balance of the Congress to ultimately have the exclusive power to declare war. And the War Powers Resolution that we are debating, which is specific to Iran, is critical to that check and balance. And those were the votes that we were taking until just a little while ago and we have a final vote that I'll have to go back for, so we'll give as much time as we can before that vote is called.

It's an honor to be here at Brookings taking part in the Batkin International Leaders Forum, which has already hosted so many distinguished voices in global affairs. We come together this afternoon at a truly historic and, in my view, deeply troubling moment for our nation.

I stand before you just one week after the conclusion of an impeachment trial in the Senate that left many of us, myself included, wondering where exactly do we go from here? It was a trial that laid out in sobering detail how President Trump subverted our national security interests and solicited interference from a foreign power for his own personal political benefit; a trial that exposed just how deep of a divide there is between a party seeking to hold a president accountable and a party willing to look the other way no matter how egregious the conduct; a trial in which the Senate Majority not only excused the president's misconduct on Ukraine, but in doing so sent a dangerous message to future presidents that they, too, can misuse congressionally appropriated security assistance in order to extract political favors from a foreign power. They, too, can intimidate, threaten, and degrade distinguished diplomats, decorated military officers, and career public servants. They, too, can engage in the wholesale obstruction of a co-equal branch of government by blocking access to documents, withholding witnesses, and refusing to cooperate with Congress' constitutional responsibility to conduct oversight in general and the power to impeach.

Now, some say this moment is not that different from past events in our history. But I submit that the challenges we face are deeper than ever before and shake the very foundation of our

constitutional system of checks and balances. Our framers designed our three co-equal branches of government, sometimes to work with each other, sometimes in conflict with each other, but always to be a check on each other, and, in doing so, to protect the American people from tyranny.

They also sought to protect the republic from an overly powerful executive. Indeed, the framers gave Congress the power to impeach and remove because they feared there could come a day when a president would abuse their Article II powers, disregard a co-equal branch of government, and trample on our Constitution. That's why the day the Senate failed to remove this president, failed to even hold a legitimate trial, I called it a dark day for our constitutional order. But as it's often said, it is always darkest before the dawn.

So this moment calls for us to take stock and assess the health of our Republic and the blemishes in our constitutional order. If we do nothing, the continued erosion of our checks and balances may very well destroy the delicate balance of powers designed by our Founders, which has made our nation so exceptional. So the question I put before you today is this: How do we restore Congress as a co-equal branch of government? How do we guard our nation against any president who believes his powers have no bound? And what can we do to prevent the kind of abuses of power carried out during this president's pressure campaign on Ukraine from ever happening again?

A distinguished 30-year career diplomat smeared and attacked without justification. Career officials sidelined and shut out. Congressionally appropriated funds held up for political gain. Unofficial foreign policy channels proliferated. Congressional oversight utterly disregarded. That's the experience we just went through.

Indeed, even before the Ukraine scandal, this administration repeatedly disregarded the role of Congress. Before it defied the House impeachment subpoenas, it withheld documents and information from Congress necessary for everyday oversight. Before it ordered witnesses not to testify in the impeachment inquiry, it already prevented administration officials from testifying on routine policy. And before the president cast a legitimate congressional investigation as a hoax, he referred to congressional oversight as "presidential harassment" and "all-out war." In every congressional request for information, this administration sees, in its words, "all-out war."

I've seen it firsthand. As the ranking Democrat on the Senate Foreign Relations

Committee charged with overseeing the president's foreign policy, I have been stunned by the administration's utter contempt for other branches and the rule of law. Now, I've been doing foreign policy for 28 years between the House and the Senate. There's always a tension between the executive and legislative branch. But the absolute utter contempt that this administration has in providing witnesses and documents are beyond the pale.

They've refused to comply with statutes and provided Congress with no legal basis for doing so. They've entered into international agreements without informing Congress of key details. They withheld information on nominees that would disqualify anyone from serving in government. They've circumvented long-observed processes on arms sales to foreign nations, and the list goes on.

What we're left with is an administration not only stretching executive power to its maximum, but actively reducing the role of Congress in foreign policy to its bare minimum. Our democracy deserves better.

I cannot make decisions on war and peace, which is about life and death, unless I have the information to understand what is the challenge before us. I cannot decide what is the right policy as it relates to Iran and its nuclear ambitions or North Korea and its nuclear ambitions, I can't make decisions on how we deal with the Middle East, I can't make decisions of the Russian challenge to us even as we speak in these elections that are taking place, unless I have the information necessary. That means documents and witnesses, then making a judgment.

The Ukraine scandal must serve as a case study to inform how Congress can better serve as a check not only on this president, but any future president who believes they are above the law.

My friends those who say President Trump has learned his lesson and will have a course correction are deluding themselves. Let's not forget the president has already made it clear he's willing to seek foreign interference in our elections. He's shown no contrition for his actions. He maintains his conduct was "perfect" and has the right to defy Congress.

But even if this president has yet to learn his lesson, I hope Congress has. We've learned that we must bolster our oversight tools and curb the vulnerabilities exploited by this president, vulnerabilities that are now there for all of us to understand exist because they did not -- ultimately, those blemishes weren't known until we saw a president willing to so defy the traditional order.

We've learned we cannot rely on norms to perform our oversight role because all it takes is one president to shred them. Simply put, we've learned it's time for Congress to strengthen its hand. That's why today I'm calling for a package of new reforms to guard our republic against future abuses of power.

First, we can't expect mid-level career professionals to be the only ones to shoulder the burden of disclosing serious national security concerns. That's why we must make it law -- make it against the law for any -- any -- U.S. government official to solicit foreign action for personal or political benefit, and to require anyone who becomes aware of such an attempt to report it to Congress. And we must impose consequences for failing to do so.

Second, we need greater transparency. When Congress sends money to allies in the name of our national security, we cannot be kept in the dark. It was only through unofficial channels that Congress learned that funding for Ukraine was being withheld. Our tools for tracking funding failed. The threat of violating the Impoundment Control Act was simply not enough.

And if not for the whistleblower, we might have never learned about the president's corrupt efforts in the first place. That's why I'm calling for new legislation requiring agencies to inform Congress if foreign assistance is not obligated as directed by Congress within clear timeframes and, again, with clear consequences for failing to do so.

Third, we cannot conduct adequate oversight over an executive branch that only responds to our inquiries when they have to or when it is in their interest. So we must make it their interest all of the time. We must impose penalties for failing to comply with congressional requests. Agency heads should face financial penalties if they do not provide written justification to Congress for failing to respond to an oversight request in a timely manner. Reporting requirements need teeth.

We must also make judicial review a feasible option for resolving congressional executives' disputes. The courts shouldn't be used as a shield to wait out Congress until the next administration. That's why we need to create an expedited review process for congressional subpoenas and for agency heads who refuse to comply with them.

Currently, outside groups have a better chance of getting documents through FOIA requests than members of Congress with subpoena power. Pretty amazing. I can more likely get an

answer through a FOIA request than I can as a member of Congress with jurisdiction over the specific department and with subpoena power. That is absurd.

Let me be clear, these are tools not just for Democratic Congresses or Republican Congresses. They aren't intended to nor will they serve any one party. Rather, they're new guardrails we need to restore our systems of checks and balances and the role of Congress as a branch that is truly co-equal to the Executive.

Fourth, we need new guardrails to ensure that the U.S. foreign policy occurs via official channels, through official employees of the U.S. government who speak on our behalf, and who has sworn an oath to uphold and defend the Constitution. Yes, there are exceptions for individuals to work with the government without fully joining it, but it is time to rein in those exceptions. We must limit the opportunities for future Rudy Giuliani's to lurk in the shadows, wreaking havoc on our foreign policy. So while informal private representatives and special government employees may have their place, we need a thorough and full vetting of their private interests.

Secretary of State Mike Pompeo famously rolled his eyes to a fellow diplomat and said Rudy was someone that "had to be dealt with." That should not be the rule. It is astonishing that nearly a year after we first learned that Rudy Giuliani was up to something in Ukraine, we still don't know who he's representing or who is paying him.

And it's not just Ukraine. He has private clients in Venezuela, Romania, Turkey, and other countries, all while doing the president's political bidding. When private citizens engage in U.S. foreign policy, we must require they identify all their clients. Who is paying them and exactly how will they mitigate conflicts of interest?

Fifth, Congress must pass a Marie Yovanovitch Act to better protect diplomats and career public servants in the fact of an administration that fails to defend them and even openly attacks them. It is time the State Department tells us before it removes a career diplomat why it is doing so.

I know some would be thinking, yes, ambassadors and other high-ranking officials serve at the pleasure of the president. That's not a dispute. But never before have we seen a president authorize an off-the-books smear campaign against a distinguished ambassador. Never before have we heard the president's voice tell a group of associates to "take her out."

As I've said before, norms are nice as long as everybody respects them. This president does not. So when extraordinary public servants like Marie Yovanovitch are dismissed before their tenure is complete, Congress must know why.

This also should extend to the second in command at embassies, the deputy chiefs of mission. Too many of them have been unjustifiably landing on the chopping block. Choosing who serves on your team is one thing. Kicking someone out because they're not loyal to your personal political agenda is another thing. And because this president needs reminding, our diplomats are loyal to our Constitution and the rule of law first.

We must also do more to protect our diplomats from falling victim to foreign disinformation. While Ambassador Yovanovitch may have left the State Department -- which I believe is a great loss for our nation; I presided over two of her confirmation hearings -- our obligation to her does not end. I will not rest until we have an accounting of everything the State Department knew about foreign disinformation against her and why its leadership failed to protect her. At a minimum, we need stricter vetting of information from unofficial channels, particularly when it pertains to our diplomats.

The Ukraine scandal also reminded us that whistleblower protections must be adapted to the challenges they face. Sadly, many of the brave individuals who testified before Congress face legal costs, personal threats, and assaults on their reputation they never imagined. That's why we need to amend whistleblower protections to cover additional expenses. We must make sure that blowing the whistle to protect U.S. national security interests is unquestionably covered. And whistleblower protection training should be mandatory for all State Department employees.

I can't tell you how many interactions my staff has had with employees who aren't sure of what their rights are or what they can or cannot tell Congress. At a time when this administration is trying to instill fear into any potential whistleblower, we must send an unequivocal message that we will stand with them and protect them.

To that end, we must make agencies like the State Department certify to Congress that suspected whistleblowers have not been subjected to retaliation and tie those certifications to funding to make them more enforceable. And while there may be no legislative fix, we must call on the corrosive rhetoric used to disparage career public servants for what it is. You have to call it out.



Using words like “holdover” and “disloyal” to describe nonpartisan employees who devote themselves to serving our country has no place in our democratic system. From day one, this administration has systematically sidelined career officials. Again and again we’ve learned that they’ve been denied readouts, excluded from meetings, kept in the dark.

Not long after the president’s phone call with President Zelensky, for example, the State Department clamped down on who would access senior level communications. That’s unacceptable. These individuals form the backbone of our government institutions. It is their job to provide institutional knowledge and continuity between administrations without regarding for fleeting partisan gains. So Congress must do more to ensure that senior career experts are engaged and empowered, not silenced and sidelined.

And last, we need to repair our relationship with Ukraine and protect it from being used as a political football anymore. That means strengthening our commitment to a nation on the frontlines of Russian aggression in all of its forms. We stand with Ukraine against Russian aggression because it is in our national interest to do so. It is the defense of our democratic values and everything we have fought for since the end of World War II.

We stand with Ukraine because our cooperation provides youthful insight into Russia’s tactics both on the battlefield and in cyberspace. This is invaluable to our national security. As Ambassador Bill Taylor recently said, we support the Ukrainians because they are defending not themselves, because they’re also defending us.

In playing political games with our Ukraine security assistance, the president once again continued a disturbing pattern of doing Putin’s dirty work, spouting Kremlin talking points about Ukrainian interference in the 2016 presidential election, disregarding the advice and conclusions of our own U.S. intelligence community, and so on.

The president’s pressure campaign in Ukraine did far more than strengthen Russia’s hand in that conflict. It also sent a terrible signal to the rest of the world that our national security is beholden to political vendettas at home and our support is somehow for sale. This undercuts our ability to build alliances abroad and seek a brighter, more stable, and prosperous future for the American people at home.

So among the reforms I'll be introducing will be legislation to increase security assistance to Ukraine, increase support for training Ukrainian security forces, prioritize Ukraine in the Excess Defense Articles Program, and propose that it receive major non-NATO ally status. As I mentioned earlier, these are elements of something that I built that became Ukraine Freedom Support Act that I helped author.

We must improve Congress' ability to monitor funds at every point in the process. Never again can we allow this or any other White House to use congressionally appropriated funding for political errands.

If you couldn't tell already, I am a long-time, long and strong believer in congressional oversight. That is not new to me. In the previous administration, a Democratic administration, I'm a Democrat, when I felt that congressional oversight was needed, whether about Iran or other issues, I pursued it with the Obama administration. I was as vigorous then as I am now. The difference is we didn't have an administration that tested the scope, the breadth of executive power to the extent that it would undermine the very essence of the Constitution.

I also believe it is especially important in foreign policy where there's already greater opportunity for concealing information. Consider just a few examples from this president. Reports of tearing up interpreter notes of his meetings with a foreign adversary. Using an unsecure personal cellphone to engage with foreign leaders. Prolific irregular diplomat channels. And I could go on, but the point is clear. Before we find ourselves talking about the next Ukraine scandal, before we are bemoaning yet another set of inexcusable actions, I suggest we do something and we do it now.

This president has demonstrated that unless required, he will not comply. Unless his administration is required to tell the American people and the public, they will not. And unless there are guardrails in place to protect our Constitution, it will be trampled on. This is about far more than Donald Trump. This is about every president after Donald Trump. This is about protecting against future abuses of power that threaten the constitutional order set forth by our framers.

I'm always reminded whenever I review the Constitution again, the framers didn't make Article I the president of the United States. It didn't make Article I the judiciary and the Supreme Court. It made Article I the Congress of the United States, the representatives of the American people. That is the

importance that the Founders gave to this part of our separate co-equal branches of government.

If there's any comfort to be had in the aftermath of these events is that most Americans, and even my colleagues in the Senate who voted for acquittal, know that what President Trump did was wrong. They know that soliciting foreign interference in our election is wrong, that smearing ambassadors and career officials is wrong, that manipulating congressionally appropriated funding for political gain is wrong. And they know they cannot allow this to be the new norm.

This impeachment trial may have exposed the depth of our divisions and the Ukraine may have exposed the worst of this president. But through all the lies and the deception, through all the arguments and obstruction, we also got a glimpse of what is best of America. We saw the best of American people like Marie Yovanovitch, who devoted her career to promoting our democratic values and advancing the national interest. We saw the best of American military officers like Alexander Vindman, who risked everything to come forward and speak the truth to Congress, even at great personal cost. We saw the best of America in my colleague Mitt Romney, who voted his conscience and showed us what it means to put patriotism above partisanship. And we saw the best of America in others like them, the courageous and selfless, nonpartisan public servants, like Bill Taylor, Americans who cared enough about the fight against Russian aggression to stand up for Ukraine even when the President of the United States would not.

We must honor their service and strive to be a nation worthy of their sacrifices. We must present an effort to prevent these gross abuses of power from forever damaging the constitutional order passed down to us by the framers. We are not powerless. The solutions are right in front of us. And if we in the Congress choose to learn from what happened in Ukraine, I believe we can turn a time of great trial in our country to a time of great triumph.

As I said, following the impeachment trial in the Senate, I love this nation too much to stand by and let our great Republic be trampled on. And that is why I'm going to pursue these reforms now.

Thank you very much for having me over. (Applause)

MR. WRIGHT: Senator, thank you. We really appreciate you coming here and appreciate your leadership on these issues and your speech. I think, as everyone knows, we have very

limited time not because you want to get going, but because there's a pressing vote and amendments and negotiations on a critical issue, the War Powers Act, in the Senate. And I think we have about seven minutes, which is time for a couple of questions. We may get a signal from the front row that there's an immediate departure required.

But I'd like to start and just jump right into it on the bipartisan side. I mean, I think what you said resonated with many people. But the question I think a lot of people have is what are you hearing from your Republican colleagues in the Senate? I mean, these issues transcend partisanship, but, obviously, they've been quite supportive of the president.

So in private conversations and when you're sort of rolling this out, where do you sense they are and what prospect do you think there is for real progress on the issues that you outlined?

SENATOR MENENDEZ: I think we have a fair chance, and today is a perfect example. Today seven Republicans have joined with us in critical votes to stop the undermining of the underlying War Powers Resolution that Senator Kaine has presented on behalf of several of us. Those amendments, if they had passed, would have basically allowed wide holes in any executive power to pursue a military action without Congress' approval. And I'm not talking about military action to protect the American people, to prevent an imminent strike. I'm talking the classic essence of a war. So seven Republicans have joined us.

As I said in my comments on the floor, there is no higher calling for a member of Congress than a vote on war and peace, which is a vote of life and death. I will vote to send my sons and daughters to war if I think the cause of the nation is right. But if I don't believe the cause is right not only will I not vote to send my son and daughter, I won't vote to send anybody else's sons and daughters.

And so when I see seven Republicans join us against their colleagues who are offering these amendments, I say there's the beginning of taking back congressional responsibility and oversight. I think that some of the proposals I have made in conversations, I have said, look, this is not about this president. This president, from my perspective, showed us the blemishes. They went to the extreme of violating the norms that now show us if we have a president in the future, whatever his or her name may be, that ultimately does the same thing, will we not have learned from this moment?

And in pursuing these reforms we will protect ourselves from the difficult decisions of the

partisanship that we may be called upon to overcome in terms of a vote for a president or a vote against a president of our party. We will be protecting the institution, but, at the same time, creating less of a risk that you'll be put -- as I said to some of them, in the positions that you've been put now.

So I am optimistic that we will have some real opportunities in some of these reforms.

MR. WRIGHT: You're off to the Munich Security Conference later today. And if we assume that there won't be -- that not everything you outlined will get adopted in the next sort of 12 months, you know, that a president -- if there is legislation, President Trump might veto it. So we have at least until January 20th next year potentially beyond a continuation of what we've seen before. What will your message be both to American allies and partners, like Ukraine, who are wondering how to manage this situation in Washington that seems to be unique and adversaries, like Vladimir Putin, who may think there's really no cost to interfering and he can do exactly what he did the last time without repercussion? And what role is there for Congress and for the rest of sort of the American political system in filling that gap left by the president's inaction?

SENATOR MENENDEZ: Are you a lawyer? (Laughter)

MR. WRIGHT: No.

SENATOR MENENDEZ: That's a three-part question, so let me see if I can get it all, but it's an excellent question. Look, last year I went for the first time, in many years I have not gone to the Munich Security Conference. I felt it was a critical moment for the Congress of the United States acting in its separate co-equal branch of government and having a role in foreign policy to say there is a different view. And last year's delegation was the largest delegation ever to the Munich Security Conference of both Republicans and Democrats, House and Senate. And this year is also a very robust delegation.

I think that, first of all, in my conversations with many of these leaders I'm talking about how do we find a new pathway to avoiding conflict with Iran, but also ending its pathway to nuclear weapons? And Senator Graham and I have been working on a proposal for robust diplomacy and some unique aspects that have not, I think, been considered before that I hope we can get European counterparts to give us a good sense of how supportive they'll be.

It will not only be issue-specific, but it will show that we can come together, Republicans and Democrats, and that Congress is playing a role in trying to create different framework in a really

important international security issue.

We'll say that separate and apart from the Iran question that we believe strongly in the transatlantic alliance. This is what has created peace and security for the better part of 75 years after World War II. NATO is a strong component of that. We'll meet with the secretary-general of NATO. We'll meet with many NATO allies. We will say there is a steadfast support in the Congress of the United States for NATO and for the transatlantic alliances. Yes, we will not always agree, but, for the most part, our principles, our values are the same. And Congress will stand up for that role.

And lastly, by example, we will say this is what the president's budget did in foreign policy and this is what we have done, which has dramatically undone the dramatic cuts that would make it not a Department of State, but a department of a cadaver at the end of the day. And provided for robust money so that diplomacy can ultimately, hopefully, win the day.

So I think those are examples of the things we'll be communicating at Munich.

MR. WRIGHT: Great. I think we're, unfortunately, out of time because you do need to make it back for these votes. I apologize to the audience not to be able to go to you, but we really appreciate you spending time with us today. And we're glad you had the opportunity to stay for at least a couple of questions and wish you best on the rest of the day and in Germany, as well.

If I could ask the audience please to remain in your seats as the senator leaves, so we can get you out quickly and back to work.

SENATOR MENENDEZ: Well, thanks again to Brookings. And thank you all for your patience. But war and peace, life and death, those are the most important votes we take, so thank you.

(Applause)

\* \* \* \* \*

CERTIFICATE OF NOTARY PUBLIC

I, Carleton J. Anderson, III do hereby certify that the forgoing electronic file when originally transmitted was reduced to text at my direction; that said transcript is a true record of the proceedings therein referenced; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken; and, furthermore, that I am neither a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Carleton J. Anderson, III

(Signature and Seal on File)

Notary Public in and for the Commonwealth of Virginia

Commission No. 351998

Expires: November 30, 2020