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# How Congress Can Take Back Foreign Policy

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## A Playbook for Capitol Hill

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*Brian McKeon and Caroline Tess*

**O**n January 3, 2019, U.S. President Donald Trump will face a new reality: a chamber of Congress controlled by the opposition party. Confronting a hostile Democratic House of Representatives will be a rude awakening for a president who chafes at any limits on his authority. For the first two years of his presidency, Trump experienced little resistance from the Republican-controlled Congress as he sought to disrupt the established international order. Republicans largely stood by as Trump withdrew from vital international agreements, embraced autocrats while giving allies the cold shoulder, used Twitter to threaten friends and foes alike, and discarded democracy and human rights as core values of U.S. foreign policy.

His free rein is over. Now that Democrats have taken power in the House of Representatives, Congress has a chance to influence the administration's foreign policy. The Constitution gives Congress more authority over foreign affairs than most observers understand. It has the power of the purse, the power to declare war, and the power to regulate the armed forces, trade, and immigration. Congress can fund programs it supports and withhold money from those it doesn't. It can block initiatives that require legislation and use investigations to expose and curtail executive-branch wrongdoing. And it can reach out to allies and admonish adversaries.

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More recently, however, Congress' ability to govern has been eroded by a variety of factors, including increased partisanship, a 24-hour news cycle made more toxic by social media, and a permanent campaign requiring ever more fundraising and the need for regular travel to home districts. Congress must now rise to the occasion in order to pursue a single overriding imperative: to defend American national interests and values from a dangerous president. To do so, Democrats will have to stay disciplined and united—and use the powers the Constitution grants them in ways they have not done in years.

### **CONGRESS CAN CHECK AND BALANCE—WHEN IT WANTS TO**

That Republicans in Congress have done little to rein in Trump should not be surprising. Their silence as Trump has trashed long-standing party orthodoxy on trade, democracy, and NATO may seem jarring. But members of Congress typically give a president of their own party substantial running room on foreign policy, especially early in an administration. Deference to Trump was also a sound political strategy for Republicans keen to avoid the wrath of the president and the party faithful who support him.

Congress has taken some steps to check Trump. In 2017, it imposed new sanctions on Russia—measures that Trump signed under protest and has been reluctant to implement. In July 2018, the Senate unanimously approved a resolution that rejected the idea that Russian law enforcement should be allowed to interrogate Michael McFaul, a former U.S. ambassador to Russia, who was accused by the Kremlin of “illegal activities.” (The Kremlin provided no evidence for its accusation.) And in two successive budgets, Congress has rejected Trump’s efforts to slash funding for diplomacy and international development; a bipartisan statement from the Senate Appropriations Committee in 2017 decried an “apparent doctrine of retreat” that would serve to “weaken America’s standing in the world.” Yet beyond these limited steps, Congress has proved unable to act.

Now, however, Democrats have won control of the House of Representatives, with its attendant committees and powers. History suggests there is a lot a determined Congress can do to stand up to a wayward president. In the 1970s, in response to overreach by President Richard Nixon, large Democratic majorities moved to rein in the so-called imperial presidency, undertaking a flurry of investigative and legislative activity. Congress passed the War Powers Resolution,

which sought to limit the circumstances in which the president could use military force without the consent of Congress; the Congressional Budget Act, which strengthened the ability of Congress to manage the budget process and restricted the president's ability to flout congressional funding decisions; the Arms Export Control Act, which provides an extensive congressional review process for major weapons exports, and the Foreign Intelligence Surveillance Act, which created a new legal structure governing electronic surveillance in the United States for national security purposes. Congressional investigations led to reforms of the CIA and the FBI, too, particularly by restricting domestic spying, and created standing congressional intelligence committees to oversee the intelligence agencies.

In the 1990s, a Republican Congress sought to exert its own foreign policy priorities. It passed legislation requiring that various UN reforms be implemented before the United States would pay its back dues; reorganized the foreign affairs agencies, merging what had been separate agencies responsible for arms control and public diplomacy into the Department of State; blocked the Clinton administration's efforts to modify the Anti-Ballistic Missile Treaty; and rejected the Comprehensive Nuclear Test Ban Treaty.

### **THE POWER OF THE GAVEL**

Much of that action required majorities in both houses of Congress. Without control of the Senate, Democrats will have fewer options, but they can still make a significant impact. Their first step should be returning to standard practice for oversight, a core function of the congressional committees. That means hearings, and lots of them. From January to November 2018, the Senate Foreign Relations Committee held just 14 full committee hearings not related to nominations, allowing the administration to overhaul U.S. foreign policy without the need to explain itself in public. In 2004, by contrast, the chair of the Senate Foreign Relations Committee, Richard Lugar of Indiana—a Republican overseeing a Republican administration—held 14 hearings in the first three months of the year, often chairing two hearings in one day.

Congress has multiple committees that cover national security: Foreign Affairs and Foreign Relations, Armed Services, Intelligence, Homeland Security, and Appropriations, as well as the investigative committees. They should all hit the ground running in January. To



*Oversight: a Senate committee hearing in Washington, D.C., September 1974*

begin with, they should hold hearings on U.S. policy toward Iran, North Korea, Russia, Saudi Arabia, and Central America; the impact of tariffs on economic and foreign policy; and growing transnational threats, particularly climate change, cyberattacks, and terrorism.

The House Foreign Affairs Committee could set the tone early by holding two full committee hearings with senior State Department officials to discuss Iran and North Korea. Shockingly, in 2018, the committee did not hold a single hearing with administration officials dedicated to either topic. The House Oversight and Government Reform Committee will likely spend a good portion of its time investigating the Trump family businesses. It should prioritize taking a close look at the Chinese and Russians who have bought Trump properties in New York and elsewhere, as well as the lavish spending by foreign governments at the Trump International Hotel in Washington, D.C. A brief, preliminary report laying out the facts would establish a road map, allowing the media and members of Congress to connect the dots between Trump's private businesses and his official actions.

Congress can't match the president's bully pulpit. But hearings and investigations draw attention to neglected issues and can force administrations to rethink decisions. They can divert the executive branch from its priorities and focus the attention of the press, particularly when they stick to a limited set of issues and sustain the pressure. In 2004, for example, Henry Waxman of California, the senior Democratic member of the House Committee on Oversight

and Government Reform, carried out an investigation into weapons of mass destruction in Iraq, which revealed that the intelligence community had information that contradicted statements by the

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Bush administration about the threat posed by Iraq. In 2005, the Senate Foreign Relations Committee successfully derailed President George W. Bush's nomination of John Bolton as UN ambassador after an extensive investigation of Bolton's efforts as a senior State Department official to exaggerate intelligence findings to fit his policy

views and of his attempts to remove analysts who disagreed with him. And Republicans' relentless use of congressional hearings over the last two decades to discredit the science of climate change demonstrates the impact that sustained congressional pressure can have on the public discourse.

Democrats, now serving as committee chairs armed with subpoena power, will make extensive requests for information, interviews, and witnesses. Contrary to popular belief, the White House cannot fully control how agencies respond to Congress. Departments depend on Congress to fund them, approve their requests to repurpose existing funds, and confirm their senior staff. They strive to maintain working relationships with their oversight committees in both houses of Congress. Public fights over subpoenas are the exception, not the rule. Administration officials regularly agree to appear, provide documents, and cooperate with congressional investigators when faced with the possibility of onerous legislation and limits on their budgetary authority enacted through the appropriations process.

The congressional committees can also enlist other investigators, such as inspectors general (who are housed within departments and agencies and charged with rooting out fraud, waste, and abuse) and the Government Accountability Office (which audits the federal government and conducts program reviews), to dig into executive-branch activity. The GAO works for Congress, not the executive branch, and has the statutory authority to review the activities of most agencies. Inspectors general are independent of their agency's leadership; nearly all of them endeavor to protect that independence and respond to legitimate congressional requests.

The challenge will be to focus investigations on a limited number of worthwhile topics. Congress should keep it simple, shining a spotlight on the ethical swamp under Trump's leadership and on policies that are causing long-term practical and reputational damage to the United States. This should include highlighting how foreign governments are influencing the administration by spending money at Trump properties; how U.S. foreign policy toward China, Russia, and the Persian Gulf is affected by Trump family business interests in those countries; the consequences of U.S. support for Saudi Arabia and the United Arab Emirates' war in Yemen; and the shameful reduction in the numbers of refugees admitted to the United States. Moreover, Democrats will need to exercise discipline. It is important to be focused and patient, as effective congressional investigations unfold slowly, often lasting months, even years, as new facts are discovered and new avenues of inquiry pursued.

Complementing the work of the full committees, energized subcommittee chairs can use their gavels to focus attention on important issues. The chair of the House subcommittee on human rights, for example, can shine a light on dark places by hearing testimony from leading dissidents and human rights defenders from China, Cuba, the Philippines, Russia, and Turkey. Such hearings would underscore the United States' long-standing commitment to human rights for people everywhere. In 2014, for example, the House Foreign Affairs Committee held hearings with a Syrian defector known only as "Ceasar" who had smuggled thousands of photos out of Syria that documented the Syrian government's brutality. The hearings drew widespread attention in Congress and the media to his work.

Congress should also step in to save the U.S. Foreign Service, which is bleeding senior talent thanks to efforts by the White House and the State Department to force out many senior diplomats. Attrition at senior levels has been higher than usual, with a number of notable public resignations. It will take years to regain the experience that has been lost among the diplomatic corps, but the foreign affairs committees can help arrest the decline. Each should designate a subcommittee to focus solely on the health of the Foreign Service. These subcommittees should hold hearings, make recommendations to the Appropriations Committees, and draft legislation to make sure that the service gets adequate funding to support recruitment, diversity, and career advancement for diplomats. They should also investigate specific problems:

not just the wholesale retirement of senior diplomats and the sidelining of talented officers who served honorably in the Obama administration but also the ongoing attacks on U.S. diplomats in China and Cuba (attributed in some reports to sonic or microwave radiation) and the Trump administration's lack of response.

Not all oversight can or should be conducted in public. The House Permanent Select Committee on Intelligence, rather than continue Republican efforts to discredit the leadership of the FBI and Special Counsel Robert Mueller's investigation into Russian interference in the 2016 U.S. presidential election, should focus on standard oversight of the intelligence community, including covert operations, the collection of sensitive intelligence, and the impartial analytic process.

In addition, all members of Congress should receive candid, regular, and thorough classified briefings. Congress should pay special attention to North Korea. Given the unclear status of the nuclear negotiations, members should seek in-depth briefings before and after any discussions with the North Korean leadership. That's what Congress demanded—and received—throughout the negotiation of the Iran nuclear agreement.

Even though Republicans retained control of the Senate, Democrats can still exert influence there. Nominations offer serious leverage to individual senators, no matter which party holds the majority. An individual senator can place a hold on a nomination to influence policy or force the administration to hand over information or provide witnesses for hearings. Senators should avoid delay for delay's sake, but using nominees as leverage on other issues is often an effective way to get an administration's attention.

## **THE POWER TO LEGISLATE**

Congress must do more than conduct oversight; it must legislate. Every year, the appropriations process leads to must-pass bills that keep the government funded and give the legislative branch a chance to influence policy. Congress also passes annual defense and intelligence authorization bills, and in doing so frequently incorporates unrelated foreign policy legislation. In 2016, for example, Congress used the defense authorization bill to reorganize the government agency that conducts international broadcasting. And in October, it used a bill reauthorizing the Federal Aviation Administration to reauthorize and expand the mandate of the Overseas Private Investment Corporation

to fund infrastructure projects in developing countries, part of an effort to counter growing Chinese influence.

The Democrats' majority in the House gives them significant leverage to include their priorities in must-pass legislation. For starters, Congress should incorporate language explicitly barring U.S. forces from refueling Saudi planes and from offering intelligence support to the Saudi-led coalition in Yemen in the annual defense authorization bill. Congress can also exert its prerogatives on Cuba, lifting the travel restrictions imposed by the Trump administration and preserving Americans' ability to travel freely through legislative provisions in any of the annual must-pass bills, rather than in freestanding legislation that Trump would surely veto.

At the top of the legislative calendar, the incoming Speaker of the House must schedule an early vote on legislation to protect the Mueller investigation. Trump has hinted that he may shut the investigation down prematurely. Congress must not allow that to happen. Building on the Russian sanctions it passed in 2017, Congress should also promptly consider the Defending American Security From Kremlin Aggression Act of 2018, bipartisan legislation introduced in the Senate in August 2018 that provides additional sanctions on the Russian energy sector and new tools to protect the U.S. electoral system from foreign interference.

More broadly, Congress should take steps to safeguard the United States' role in the international order. At the top of the list should be defending multilateral institutions. Congress should enact legislation to block Trump from pulling the United States out of NATO and the World Trade Organization—something he has reportedly considered doing. Some in Congress question whether Trump can withdraw from treaties unilaterally, but there is no doubt that Congress could pass a statute preventing him from taking such impulsive steps. Such legislation would send a strong signal abroad that the United States' long-standing commitment to international institutions and alliances remains strong.

Congress should not limit itself to directly countering Trump's foreign policy; it should also act positively on its own. One area where Congress can make a real difference is cybersecurity. The United States' infrastructure is deeply vulnerable to cyberattacks, and the government has been far too slow to respond. So Congress should enact comprehensive legislation that better enables the sharing of cybersecurity information between the government and the private sector and that strengthens the ability of law enforcement to fight cybercrime.

Perhaps the most potent tool Congress has is the power of the purse. The Constitution dictates that no money can be drawn from the Treasury without appropriations made by law. Congress thus has substantial authority to influence policy, subject only to executive-branch foot-dragging in executing congressional directives or the rare presidential veto. Controlling the purse is one way in which Congress has pushed back successfully against the Trump administration during its first two years. During the next two, the Appropriations Committees will likely do the same in both chambers.

In particular, the appropriations subcommittees that cover foreign operations, which handle the State Department and foreign aid budgets, are islands of bipartisanship. They protect diplomatic resources and quietly advance worthwhile causes such as ending river blindness, promoting democracy, supporting girls' education, and combating human trafficking. They also zealously guard their funding priorities. Administrations often want to use funds for projects other than their original purpose. The subcommittees regularly reject, delay, or modify these proposals. Through an informal process—dictated by laws requiring the executive branch to notify Congress before trying to shift funds in this way—these subcommittees have effectively established a form of legislative veto over some administration actions. This past summer, the Trump administration attempted to rescind billions of dollars in foreign aid money, a move that would have slashed the State Department and USAID budgets months after Trump had signed the appropriations bill funding them into law. Faced with bipartisan congressional outrage, the White House backed down.

Similarly, Congress has substantial control over arms exports, which it should use to curtail U.S. support for the bloody war that Saudi Arabia and the United Arab Emirates are waging in Yemen. The State Department must notify the foreign affairs committees of every weapons sale over a certain dollar threshold and wait a certain period of time to allow for possible congressional votes on a resolution of disapproval. This process also includes an informal “prenotification” before a formal notice is submitted to the committees, which can lead to adjustments to the proposal. In rare cases, Congress can try to formally reject a sale, although it almost never succeeds, since the president usually vetoes such attempts.

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## ENDING CONGRESSIONAL IRRELEVANCE

Congress should do more than use the powers it already has; it should reclaim those that have been ceded to the executive. The constitutional historian Edward Corwin once wrote that the Constitution creates an “invitation to struggle” among the political branches. A Congress that delegates its powers or consistently acquiesces in the face of executive action not only ignores that invitation; it abdicates its responsibilities.

Trade offers a case in point. The Constitution grants Congress the power to “lay and collect” duties and regulate foreign commerce. The president has no express constitutional power over foreign trade; rather, the Constitution gives him a general authority to negotiate treaties. Until the 1930s, Congress imposed tariffs directly by statute. But in the last several decades, Congress has delegated substantial authority in this area to the president, allowing him to impose retaliatory tariffs and to negotiate trade agreements under what is known as “fast-track” authority. The agreements are then considered in Congress in an expedited process in which no amendments are allowed. This sort of delegation is not unusual; the growth of the federal government and the complexity of the modern economy have led Congress to yield significant power in many areas to the executive branch and administrative agencies.

Yet what Congress can give, Congress can take away. In 1980, for example, alarmed by President Jimmy Carter’s announcement that he would impose a fee on crude oil imports in an attempt to limit U.S. dependence on foreign oil, Congress created a mechanism by which it could override presidential actions on crude oil imports. Today, Trump has abused his trade authority. He has invoked bogus claims of national security to impose sweeping tariffs on allies and partners while giving little consideration to the harm his actions will inflict on the U.S. economy. Congress should limit or even revoke the president’s authority to enact retaliatory tariffs, increase the burden of proof he must meet, or create a mechanism for Congress to reject proposed tariffs.

Congress should also reclaim its control over military action. Article 1 of the Constitution gives Congress not merely the authority to declare war but also substantial power over the use of force and the regulation of the armed forces. The framers would not recognize the practice that has developed over the last few decades, with presidents directing extensive U.S. military actions while Congress often sits on the sidelines.

The most immediate task is to repeal and replace the 2001 Authorization for Use of Military Force, which Congress passed just after 9/11 to give the president the power to defend the country against those who planned the 9/11 attacks and anyone who aided them. The law remains in effect, and has been used far beyond its original intent. The executive branch has invoked it to justify counterterrorism operations in a long list of countries, as well as the continued detention of terrorist suspects at Guantánamo Bay. Congress should replace it with a statute that is more narrowly tailored, limiting it to such conflicts as that in Afghanistan and the campaign in Iraq and Syria against the Islamic State (also known as ISIS). A bipartisan effort in the Senate Foreign Relations Committee during the current Congress would be a good starting point.

The aspect of foreign policy over which the president has the greatest control is probably diplomacy, both because the executive carries out negotiations with other governments and because it has a large bureaucracy to help it. But here, too, Congress is not without power. Leading members of Congress should recognize that they can help reassure allies and repair damaged relationships. The new Speaker of the House should issue an early invitation to Canadian Prime Minister Justin Trudeau to address a joint meeting of Congress. Congress should award the Congressional Medal of Honor to NATO service members in recognition of the 17 years they have spent fighting alongside U.S. forces in Afghanistan. The Speaker should also personally lead a bipartisan delegation to visit NATO allies early in the year and designate senior members to lead delegations to reassure countries in other regions of the world.

The U.S. Constitution gives the president considerable power over foreign policy. In recent years, successive presidents have expanded that authority. Trump has used those powers to begin remaking the United States' global image and role. Yet the framers of the Constitution wisely vested Congress with powers of its own to influence and check the executive. Americans have voted. Now Congress must act. 

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