



Testimony of Melissa Hooper

**House Foreign Affairs Committee
Subcommittee: Europe, Eurasia, Energy and the Environment**

**“Democracy and the NATO Alliance: Upholding our Shared Democratic
Values”**

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Chairman Keating, Ranking Member Kinzinger, Distinguished members of this Committee, thank you for holding this hearing and for the opportunity to provide this testimony.

This week, leaders and citizens across the United States and Europe are celebrating the 30th anniversary of the fall of the Berlin Wall, and with it, the blossoming of freedom in once captive nations. But even as we celebrate, the jubilation of 1989 has given way to worries about democracy in the same countries that were once models of liberal transformation.

Three decades removed, the promise of 1989 has in many ways receded. Advances in democracy and civil and political rights have begun to reverse globally. Increasingly, assertive authoritarian powers are crushing dissent at home while using the very openness of democratic societies to contest freedom abroad. At the same time, democratically elected leaders in a growing number of countries are using the power of their offices to erode human rights protections and the rule of law.

The result is a period of uncertainty, anxiety, and potential danger.

And yet, just as in 1989, the U.S. national interest in having and maintaining democratic allies remains strong. Democratic governance brings greater peace, pluralism, and prosperity. Greater observance of rights and development of free institutions produces greater stability, generates fewer refugees and extremist movements, and leads to fewer conflicts both internally and across-borders.

Importantly, the North Atlantic Treaty, which has underpinned transatlantic relationship for 70 years, was understood from its inception as a means not only to confront external military threats, but also to advance principles of democratic governance. Its framers specifically noted alliance members' commitment to principles of democracy, individual liberty, and rule of law in its preamble. These diplomats realized that shared values reinforce shared interests. However, when values diverge significantly, interests diverge as well. And when that happens, the reliability of allies can be called into question.

Attacks on Democratic Institutions Are a Significant Threat to the Democratic Alliance

Backsliding is problematic both because it harms the institutions that are the backbone of state resilience and good governance, and because as these institutions break down they create vulnerabilities to foreign malign influence.

Democratic values are even more important now than in the past because the threat today is not Soviet communism but kleptocratic rule and subversion of state interests to the interests of the ruling party and individuals in power. It is because the weaponry of today is directed precisely at democratic institutions, via illicit funds for political parties, corrupt mutation of free markets, disinformation, and attacks on free press and independent judges, that the shoring up of democratic institutions IS the readiness NATO must require of its members.

The countries presenting the greatest challenges to the unity and functioning of the alliance are Hungary, Poland, and Turkey. These governments have taken calculated steps over the past several years to destroy foundational democratic institutions. Since my co-panelist will address Turkey, I will focus largely on Poland and Hungary. Before I do, I will note a few broad themes characterizing the current context within the alliance, particularly those countries of the EU.

First, governments within the EU and NATO are mounting frontal attacks on their own constitutions and laws that form the basis of democratic governance.

In Hungary, we saw the first blow to democracy after the election of Viktor Orbán and the Fidesz party in 2010. Benefitting from a supermajority, Fidesz rewrote Hungary's Constitution – known as the Fundamental Law – to give the executive greater power over the judiciary. In addition to politicizing other institutions, the new constitution increased the number of seats on the Constitutional Court, allowing Fidesz to pack the court with loyalists, and legally curtailed the cases the court may hear.

In Poland in 2015, when Jarosław Kaczyński's Law and Justice party came to power, they lacked a similar supermajority, so have simply ignored constitutional court decisions with which they disagree, such as a decision striking down new rules limiting the court's jurisdiction.

Other states have followed suit. In 2017, a center-left Romanian government passed Government Ordinance 13, which decriminalized corruption and abuse of office. The ordinance was later reversed under popular pressure, though similar measures were eventually passed piecemeal. And in Bulgaria, after taped conversations came to light showing a system of blatant influence peddling in the judiciary in 2015, the head of the Supreme Cassation Court ordered an investigation, but the prosecutor simply refused to conduct it.

Second, governments repurpose state institutions for personal gain, which often facilitates and motivates assaults on constitutional frameworks.

Just last week, investigative journalists at the *New York Times* illustrated how Orbán and Czech Prime Minister Andrej Babiš have used EU farm subsidies to fund a "crony economy." They cut deals and offer contracts to those with links to political leaders, while binding these actors to the source of their wealth – the political party in power.

In Romania, the creation of an effective National Anticorruption Directorate, led by a fierce and effective advocate, Laura Codruta Kovesi, led the country's justice minister and former president to orchestrate her dismissal, and then fight tooth and nail to prevent her from becoming the Chief Prosecutor in the new EU Public Prosecutor's Office. In the Czech Republic, the Russia-connected president recently indicated that he would exercise executive prerogative to stop an investigation and upcoming prosecution of Babiš on charges that he and his family misused EU funds. In Bulgaria, from 2008 to 2018, foreign investment shrank from 28% of GDP to just 2%, due to rampant corruption in the judiciary, including instances of illegal judicial takeover of private companies.

Third, backsliding governments court outside influence in ways not conducive to U.S. interests.

This year far-right leaders in both Austria and Italy were kicked out of national governments after recordings surfaced of their secret meetings with Russia (or individuals posing as such). While these incidents, alongside the recent triumph of Slovak president and anticorruption lawyer Zuzana Caputova, demonstrate that citizen-fueled outrage can result in political change when corruption – especially Russian-linked corruption – is exposed, many other examples have generated no such change. Kremlin-connected political parties continue to gain ground throughout Europe, including in Germany and France, and Russian-supported illicit finance is coursing through European media and business communities, for example through energy deals obtained without open tenders in Hungary and Bulgaria. Disinformation is still rampant, and even espoused as a tool by governments in Hungary, Poland, Austria, Italy, and elsewhere.¹ Prime Minister Orbán's invitation to bring the Russian intelligence-linked International Investment Bank to Budapest is likely the single most concerning action related to the Kremlin's malign influence in NATO. The U.S. Congress should require the executive branch to develop a multi-agency strategy to counter Russian influence abroad and at home.

Within the EU, two governments are leading attacks on democratic norms and processes: Fidesz in Hungary and Law and Justice in Poland.

Hungary: Prime Minister Orbán Seeks to Lead Authoritarian Movement Within Europe

Prime Minister Orbán of Hungary has been described by Larry Diamond of Stanford University and the Hoover Institution as the most successful authoritarian populist leader in the world today. He has enacted the greatest demolition of institutions within the EU. Orbán has in many ways borrowed the strategies of Vladimir Putin, and has sought to lead a non-democratic movement within the EU.

Fidesz has assaulted virtually all of Hungary's democratic institutions, beginning with free and fair elections. In the last two national elections, Fidesz won 45-49% of the vote, but through restructuring of the electoral system was able to convert this plurality into a two-thirds supermajority in parliament.

In addition to cowering the constitutional court, the government sought to create a new parallel court system under the control of the executive. Recently it backed off this proposal, but the constitutional amendment creating the new system has not been repealed.

Free media has been decimated. As with government contracts and EU funds, most media outlets have been purchased by friends of Orbán and Fidesz such as Lorinc Meszaros and Arpad Habony -- often using state funds. After these friends of the party were permitted to buy up nearly all outlets in the country, they "voluntarily" consolidated and donated 476 outlets to the

¹ The Oxford Computational Propaganda Research Project, "The Global Disinformation Order," September 2019, <https://comprop.oii.ox.ac.uk/wp-content/uploads/sites/93/2019/09/CyberTroop-Report19.pdf>.

government – a move that Hungary’s anti-monopoly agency rubber-stamped. Today, the government controls roughly 90% of media country-wide. Outside of Budapest, the figure approaches 100%.

The most alarming actions of the Hungarian government invite Russian influence into this NATO member state, and serve Russian interests over NATO – and U.S. -- priorities. In 2014, Budapest awarded a \$14.5 billion project to renovate Hungary's nuclear power plant to Russia's state corporation Rosatom – without an open tender. The project uses Russian technology and financing. Last year the government invited the Russian-controlled International Investment Bank (IIB) to move to Budapest, fueling concerns it could act as an intelligence-gathering base for Moscow, and facilitate government money-laundering. As part of the deal, Budapest will grant the bank employees complete regulatory and prosecutorial immunity and give staff and their guests diplomatic status. These guests may include Russian nationals currently on sanction lists and others that present risks to national security.

In 2018, after capturing two Russian arms dealers with U.S. assistance, the government refused to extradite them to the U.S. and instead sent them to Russia where they were both released. Hungary has blocked Ukraine from negotiating cooperation with NATO. Orban has broken with the rest of the EU to support Turkey in its Syria offensive.

Orbán has also courted China’s Huawei, signing a new agreement with the company in July 2019, immediately on the heels of warnings from Secretary of State Pompeo of the risks associated with its technology. Huawei’s biggest production base outside of China is now in Budapest.

The U.S. response has been anemic at best, and at worst facilitates the problems. A State Department program that would have supported independent media with a modest \$700,000 in grants was cancelled in 2018 due to the Hungarian government’s discomfort with the project. Ambassador Cornstein has stated he has not witnessed any rights infringements in Hungary, and last fall appeared to agree with the Hungarian government’s decision to kick out U.S.-accredited Central European University from the country. There have been few statements of concern from the Trump administration regarding the authoritarian creep and security risks presented by Hungarian actions and policies. Recently, it is Congress that has begun to take bipartisan action, and we hope this will continue.

Poland: Forcibly Controlling an Independent Judiciary

Jaroslav Kaczynski, leader of the Law and Justice government, has demonstrated a model of a different sort. He has presented a step-by-step guide to destroying the oversight role of the judiciary from within a NATO democracy. His government has exerted executive control over nearly every judicial body, including the Constitutional Tribunal, the Supreme Court, the Ordinary or Lower Courts, the disciplinary body that now conducts oversight of judges, the prosecutor’s office, and the Extraordinary Appeal body capable of reopening and deciding

judicial cases that have already been closed back to 1997.² Some of these bodies have seen experienced judges now replaced with political appointees who are not even lawyers.

When the takeover of the judiciary was hemmed in by the Court of Justice of the European Union (CJEU), which struck a law that would have forced out one-third or more of the Supreme Court, the government retaliated. Its second-stage assault included bringing disciplinary charges against dozens of judges for minor acts such as being given a human rights award, or for language in their legal opinions that the government disagrees with. One judge was targeted because he allowed an investigation of a Law and Justice budget vote that occurred while opposition lawmakers were locked out of the voting room. The lack of a properly constituted judiciary calls into question whether foreign partners can obtain a fair trial according to international standards in Poland.

Law and Justice's Poland has been cited as an example of a divided and dangerously polarized society.³ The government has contributed to this polarization by using a political litmus test to determine who will serve on the judiciary, in government ministries, on judicial disciplinary bodies, in the prosecutor's office, and strikingly, in military leadership, and intelligence offices, including generals and managers of the NATO relationship.

The U.S. has expressed concern in a few instances, such as in response to passage of the Holocaust Law and consideration of a law forcing out Supreme Court judges. Ambassador Mosbacher has called out attacks on U.S.-owned media. However, there has been limited attention given to a years-long effort to eradicate judicial checks and balances. Congress must create space to bring judicial independence back to Poland.

It is Up to Congress to Respond

Congress has an important role to play in combating democratic backsliding in allied nations.

First, Congress must make its concerns known when a backsliding government acts counter to the joint values of NATO. A recent bipartisan Senate letter expressing concern regarding Hungary's "downward democratic trajectory and its implications for U.S. interests"⁴ and a bipartisan House statement of concern about the "curtailing of judicial independence, [p]oliticization of the judiciary, [and] attacks on free speech"⁵ in Poland were superb examples.

² See detailed description in: Melissa Hooper, "Poland", in [The Anatomy of Illiberal States: Assessing and Responding To Democratic Decline in Turkey and Central Europe](https://www.brookings.edu/research/the-anatomy-of-illiberal-states/), Brookings, February 2019

³ Thomas Carothers and Andrew O'Donahue, [Democracies Divided: The Global Challenge of Political Polarization](https://carnegieendowment.org/2019/09/24/democracies-divided-global-challenge-of-political-polarization-pub-79753), Brookings Institution Press, 2019, <https://carnegieendowment.org/2019/09/24/democracies-divided-global-challenge-of-political-polarization-pub-79753>

⁴ Letter to The Honorable Donald J. Trump from members of the Senate Foreign Relations Committee, May 10, 2019, <https://www.foreign.senate.gov/imo/media/doc/05-10-19%20Letter-Orban.pdf>.

⁵ Letter to His Excellency Mateusz Morawiecki from Chairman Eliot L. Engel and Ranking Member Michael T. McCaul of the House Foreign Affairs Committee, August 29, 2019,

The bipartisan resolution on Hungary currently circulating in the House is another positive step; it could be updated to highlight additional recent developments. Turkey, Hungary, and Poland all must have their actions addressed, both to prevent further corrosive action by these governments, and to caution other governments from joining them. There may be instances where it is appropriate for Congress to consider working with the administration to limit access to NATO infrastructure funding, intelligence-sharing, or joint military exercises.

One such possibility is something akin to the EU's Rule of Law Review Cycle, in which an independent body evaluates the rule of law health of every member. In the EU this review is likely to be tied to financial awards to states in the next budgetary cycle. Former U.S. Ambassadors to NATO Douglas Lute and Nicolas Burns recently proposed a variation for NATO.⁶

Second Congress needs to appropriate funds to shore up democratic institutions within the alliance. Funding can be used defensively on programs to combat disinformation, illicit finance, and malign influence, and affirmatively to provide core funding for the re-development of local institutions, including independent free media, a fully-functioning, independent judiciary and a robust civil society. It is these institutions that will help regenerate trust in democracy. Specifically, the movement to reopen RFE/RL in Hungary is a step in the right direction, and could be expanded to other countries, but Congress should make sure it is adequately funded to compete with the Hungarian government's media machine.

Third, Congress should consider legislating conditions on future military support to backsliding allies. For example, conditioning support to Hungary on the government agreeing to the anti-corruption oversight of the EU Public Prosecutor's office, or to Poland on the level of compliance with CJEU rulings on core rule of law matters.

Finally, Congress should urge the administration to penalize bad actors, using accountability mechanisms such as Global Magnitsky and other sanctions to target individuals that are major sources of corruption and rights violations.

These governments must hear from their allies that they have crossed the line and be warned that if they continue to undermine allied security, there will be consequences.

<https://foreignaffairs.house.gov/cache/files/8/8/88ac244d-32ec-47b5-ba7b-b462a13c26b1/75545AD99272CFD6DB71237BEF42240D.08-29-19-engel-mccaul-letter-to-polish-pm-regarding-poland-democracy-transformation-poland-address.pdf>.

⁶ Ambassador Douglas Lute and Ambassador Nicholas Burns, NATO at Seventy: An Alliance in Crisis, Harvard Kennedy School Belfer Center for Science and International Affairs, February 2019, <https://www.belfercenter.org/sites/default/files/files/publication/NATOatSeventy.pdf>.