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OVERLOOKED AGGRESSION: PRESIDENT TRUMP'S 2019 COERCION OF UKRAINE AND THE BUDAPEST MEMORANDUM

In 2019, U.S. President Donald Trump was impeached for his ongoing conduct toward the Government of Ukraine. While much has been written about the domestic implications, few have raised questions about the potential violation of standing international agreements, especially those between the U.S. and Ukraine. Based upon a close textual analysis of available government documents and the agreement itself, we conclude that President Trump's 2019 actions toward the Government of Ukraine violated the 1994 Budapest Memorandum.

Key words: President Trump, Ukraine, Impeachment, Violation, Budapest Memorandum, CSCE Final Act, Helsinki Accords, military assistance, coercion, pressure, United States of America, USA, United States.

Introduction. In 2019, U.S. President Donald Trump was impeached for his ongoing conduct toward the Government of Ukraine. The House of Representatives wrote in the Articles of Impeachment that his «scheme» consisted of pressuring «the Government of Ukraine to publicly announce investigations that would benefit» his campaign in the 2020 U.S. Presidential Election (Articles of Impeachment, 2019, p. 2). While much has been written about the domestic implications, few have raised questions about the potential violation of standing international agreements, especially those between the U.S. and Ukraine.

The aim of this research is to evaluate whether President Trump's conduct toward the Government of Ukraine in 2019, for which he was impeached, violated the 1994 Budapest Memorandum.

Analysis of Existing Research. As of May 2020, it appears as though other researchers have yet to address the specific topic of this research. More broadly, Mariana Budjeryn has written extensively about the Budapest Memorandum. Her article entitled «The Breach: Ukraine's Territorial Integrity and the Budapest Memorandum» connects Ukrainian security concerns to the original purpose of the Budapest Memorandum, and demonstrates that Russia violated its terms with the 2014 occupation of Crimea. Another of Budjeryn's papers articulates the backstory of Ukrainian nuclear disarmament and the Budapest Memorandum in order to contextualize U.S. military assistance to Ukraine (Budjeryn, 2019, p. 1). Polina Sinovets collaborated numerous times with Mariana Budjeryn on this topic, and has also written about the strategic

culture of Ukraine, deterrence, and the implications of current international affairs on the infrastructure of nonproliferation.

This work has been conducted at the Odessa Center for Nonproliferation in Odessa, Ukraine, where the author of this research spent seven months as a Fulbright grantee.

The methodology of this research consisted of closely analyzing the text of official government documents and international agreements. The documents describing President Trump's conduct toward Ukraine and his subsequent impeachment include the Articles of Impeachment, the declassified 2019 Whistleblower Complaint, and the unclassified July 25, 2019 Memorandum of Telephone Conversation, as well as others.

We also closely analyzed the text of the Budapest Memorandum and its related counterpart, the Conference on Security and Cooperation in Europe (CSCE) Final Act, also known as the Helsinki Accords. Grammatically, one phrase in the final sentence of section 3 of the Budapest Memorandum is slightly convoluted in English; therefore, we cross-referenced it with the official Russian-language text for added clarity.

With this close textual analysis of the Budapest Memorandum and the CSCE Final Act, we developed three criteria which constitute a violation of section 3 of the Budapest Memorandum. We then applied these criteria to official accounts of President Trump's conduct to determine whether or not his actions constitute a violation of the Budapest Memorandum.

Scope: Limited to Declassified Information. At the time of this publication, less than one year has passed since the events in question became known to the public. As with any project relying on government documents that detail such recent events, this research is limited only to documents and information which have been declassified at this time and are, in some cases, redacted.

Background. In the 28 years since Ukraine gained its independence, it has interacted with 5 U.S. presidents, each of whom approached supporting its security and sovereignty differently.

George H. W. Bush was the final president to negotiate with representatives of the Soviet Union, and yet he is known for his speech «warning» the Ukrainian rada not to pursue independence (Kuzio, 2020). That being said, he wrote to Leonid Kravchuk in 1992, promising military assistance and security assurances to Ukraine following its nuclear disarmament (Budjeryn, n.d., p. 2). These promises became the basis for the Budapest Memorandum, signed by presidents Kravchuk and Bill Clinton in 1994. And under the Clinton administration, the aforementioned Congressional military assistance became a reality (Kuzio, 2020).

Ukraine found an ally in George W. Bush, whose foreign policy agenda emphasized supporting and promoting democracy abroad (Kuzio, 2020). Although Ukraine was unable to seize the opportunity at the time, primarily due to internal conflict, the Bush administration strongly supported its accession to the North Atlantic Treaty Organization (NATO) (Kuzio, 2020).

Barack Obama's foreign policy had unintentional yet devastating consequences for Ukraine (Kuzio, 2020). He was willing to look past Russia's inva-

sion of Georgia in an effort to reset U.S.-Russia relations, and by doing so, he opened a window of opportunity for Russia to illegally annex Crimea (Kuzio, 2020).

In its early years, the Trump administration proved an enigmatic yet benign partner to Ukraine (Kuzio, 2020). Congress has been markedly tough on Russia since the discovery of its interference in the 2016 election and has increased Ukrainian military assistance on a bipartisan basis (Kuzio, 2020). While Obama vetoed the sale of lethal weaponry, Trump reluctantly approved Congress' 2017 sale of Javelin missiles to Ukraine, once he had been persuaded that it would be good for U.S. business interests (Haltiwanger, 2020). However, in 2019, when these missiles were about to be shipped, there was a phone call from Washington D.C. to Kyiv.

Conduct by President Trump, Spring and Summer of 2019

The Phone Call, 25 July 2019. On the morning of July 25th, 2019, President Trump placed a call to the newly elected President Zelenskyy of Ukraine. President Trump congratulated President Zelenskyy once more on his victory, and the two exchanged pleasantries (Whistleblower Complaint, 2019, p. 2). However, President Trump then turned his attention to «his own personal interests» (Whistleblower Complaint, 2019, p. 2). «I would like you to do us a favor though,» President Trump said. «Because our country has been through a lot and Ukraine knows a whole lot about it» (July 25 Phone Call Memorandum, 2019, p. 3).

Irregular Conduct. This phone call did not occur in a vacuum. It was a moment of long-awaited contact between the two presidents in the midst of months of unorthodox conduct by the U.S. government, presenting itself to the incoming Zelenskyy administration as mixed signals from varying U.S. representatives (Whistleblower Complaint, 2019, p. 7). On the one hand, there were the personal and immediate associates of President Trump, including Mr. Rudy Giuliani, communicating on President Trump's behalf outside of official channels (Whistleblower Complaint, 2019, p. 4), verifying if President Zelenskyy was willing to «play ball» regarding the President's personal requests (Whistleblower Complaint, 2019, p. 7). And on the other hand, other U.S. officials were attempting to «contain the damage» and help Ukrainian leadership «navigate,» «understand, and respond to the differing messages» they were receiving from various individuals claiming to speak for the interests of the U.S. (Whistleblower Complaint, 2019, p. 7). Indeed, this pattern of chaotic and irregular conduct had been going on for months before the now-infamous July 25th phone call (Whistleblower Complaint, 2019, p. 6).

The goal of President Trump's conduct was to pursue an investigation — or at least the public announcement of an investigation — into «one of his main domestic political rivals» Joe Biden (Whistleblower Complaint, 2019, p. 1), in order to give himself an advantage in the 2020 presidential election (Articles of Impeachment, 2019, p. 2). And to this end, he «sought to pressure the Government of Ukraine» by «conditioning» \$391 million of vital U.S. military assistance, which had already been approved by Congress (DOD an-

nouncement, 2019), on their willingness to cooperate with his efforts (Articles of Impeachment, 2019, p. 3).

Russian Involvement. Additionally, President Trump asked that President Zelenskyy locate and return servers used by the Democratic National Committee (DNC) and by wealthy Ukrainian actors to stack the 2016 election against Trump (Whistleblower Report, 2019, p. 2). This alternative narrative, one in which Trump was the target of a DNC-Ukraine conspiracy rather than the benefactor of Russian election-meddling, was initially presented by the Kremlin (Kuzio, 2020).

Although there is no evidence to support this alternative theory of events, Andrii Derkach, Dmitry Firtash, and other powerful actors with ties to the Kremlin and Russian organized crime have made controversial accusations against Joe Biden and Robert Mueller, and alleged that they have corroborating documents (Grytsenko, 2019), (Shuster, 2019). As cited by the testimony of Dr. Fiona Hill, the Kremlin stood to benefit from this intervention into Ukrainian affairs as much as Trump did, and the proliferation of this narrative benefits Russia strategically (Barnes, 2019).

Upon closer inspection, none of these claims have proven accurate (Shuster, 2019), but they have been widely reported in American conservative media (Kuzio, 2020). President Trump himself has discussed these rumors on *Fox News* (Whistleblower Report, 2019, p. 2). On these grounds, Trump and his associates decided to pursue these DNC servers outside of official channels (Kuzio, 2020).

The Whistleblower Complaint. President Trump's ongoing conduct toward Ukraine was brought to light by the publication of a Whistleblower Complaint by an anonymous individual who was presumably working in the high ranks of the White House. The author's name has been withheld from the public and from the President for their own personal protection, but Congress and other government officials are aware of the individual's identity. The publication of a Whistleblower Complaint is entirely legal; an official may choose to do this if and when they have observed «a serious or flagrant problem, abuse, or violation of law or Executive order» consistent with the definition of an «urgent concern» in 50 U.S.C. § 3033 (k)(5)(g)» (Whistleblower Complaint, 2019, p. 1).

In accordance with the procedures of a Whistleblower Complaint, the anonymous author documented all of the information they possessed regarding President Trump's abuse of Presidential power and submitted it to Congress's (Permanent) Select Committee on Intelligence (Whistleblower Complaint, 2019, p. 1). This committee also made a redacted copy of the complaint available to the public.

Congressional Investigation. Now that they had been made aware of this conduct via the Whistleblower Report, Congress understood the gravity of President Trump's conduct and began their investigation.

In response to this investigation, rather than deny the actions he, his personal lawyer, Mr. Giuliani, and his other personal associates and political allies took to pressure Ukraine, he framed this conduct as «totally appropriate (perfect)» and something that is very routine in the course of a president's

work (Donald J. Trump [@realDonaldTrump], 2019). However, many high-ranking White House officials and experts such as Fiona Hill, Alexander Vindman, and others disagreed with this characterization.

Additionally, President Trump refused to cooperate with Congress' investigation, to testify, to present any evidence, or bring any witnesses on his own behalf. After an enormous amount of public pressure, however, he declassified the Memorandum of the telephone conversation of the July 25th phone call between he and President Zelenskyy¹.

Additionally, in response to this «public revelation, President Trump ultimately released the military and security assistance to the Government of Ukraine, but persisted in openly and corruptly urging and soliciting Ukraine to undertake investigations for his personal political benefit» (Articles of Impeachment, 2019, p. 4).

Not only that, but during the course of Congress' investigation, President Trump ordered his employees, the White House staff, and «executive branch agencies» not to cooperate with the investigation (Articles of Impeachment, 2019, p. 6). This was an unprecedented act, pitting two branches of government against each other, which are supposed to cooperate and serve the people of the U.S. (Articles of Impeachment, 2019, p. 6). For his defiance of the investigation, the House of Representatives added an additional charge to be debated in his trial: Obstruction of Congress (Articles of Impeachment, 2019, p. 6).

What is impeachment? Under ordinary circumstances, a sitting President cannot be indicted for any crime. But as the famous saying goes, no man is above the law. As such, impeachment is the only way that a sitting U.S. president can be charged with a crime in the United States of America. Specifically, the President can be charged with «high crimes and misdemeanors,» and the impeachment proceedings then take place in the House of Representatives. Only three U.S. presidents have ever been impeached: Andrew Johnson in 1868, Bill Clinton in 1998, and Donald Trump in 2019².

Impeachment Proceedings. In the U.S.' currently polarized political environment, President Trump's impeachment proceedings were framed as an intensely partisan issue. President Trump framed it on his Twitter and in public statements as a «hoax» by the «do-nothing, Radical Left Democrats» (Donald J. Trump [@realDonaldTrump], 2019, Donald J. Trump [@realDonaldTrump], 2020).

¹ The only existing record of this phone call — the one that has been released to the public — is not an exact transcript. It is a «memorandum» that «records the notes and recollections of Situation Room Duty Officers and NSC policy staff» (Memorandum of Telephone Conversation, July 25 2019, p. 1). As noted on the bottom of the Memorandum, it is «not a verbatim transcript» and «numerous factors can affect the accuracy of the record» (Memorandum of Telephone Conversation, July 25, 2019, p. 1).

² After a president is impeached in the House of Representatives, a trial occurs in the Senate to determine whether or not he will be removed from office for his crimes. No president has ever been convicted in the Senate and removed from office in the history of the United States of America. Additionally, lack of conviction in the Senate does not indicate innocence; that the President committed a crime is determined in the House of Representatives and the extent of his punishment for doing so is determined in the Senate. During his trial in 2019, President Trump was not convicted by the Senate and has since remained in his office.

Nonetheless, as the impeachment proceedings approached, the House of Representatives discussed thoroughly and agreed upon two charges, or «Articles of Impeachment,» to bring against President Trump: I. Abuse of Power, and II. Obstruction of Congress (Articles of Impeachment, 2019, p. 1).

After hours of extensive debate and discussion, President Donald Trump was impeached on December 18th, 2019, for the high crimes and misdemeanors of Abuse of Power and Obstruction of Congress. Impeachment serves as a confirmation of President Trump's wrongdoing in his conduct toward Ukraine and toward the U.S. In the eyes of the House of Representatives, President Trump pressured a foreign government, abused the power of the Presidency, and did so for «personal political gain» (Articles of Impeachment, 2019, p. 2).

Ukrainian Nuclear Disarmament and the Budapest Memorandum, 1994

Ukraine's Nuclear Inheritance. When Ukraine gained its long-sought independence from the Soviet Union in 1991, it inherited all of the Soviet nuclear weapons and technology on its territory (Budjeryn, n.d., p. 1). With the stroke of a pen, Ukraine possessed the third-largest supply of nuclear weapons in the world, more than China, France, and the U.K. combined (Budjeryn, 2019, p. 2).

Strategically, the U.S. did not want more than one major nuclear threat to emerge from the disintegrated Soviet Union, and a nuclear Ukraine directly endangered Russia's interests as well (Budjeryn, Sinovets, 2018, p. 1). Unbeknownst to these nations which were so threatened by it, Ukraine did not want its nuclear weapons either (Sinovets, Budjeryn, 2017, p. 3).

Over the next three years, the parties involved determined the terms under which Ukraine would accede to the Nuclear Nonproliferation Treaty (NPT). Multiple agreements were drafted, hotly debated, and revised. National interests changed, and so did the nations themselves. By 1994, only the final issues remained: no one wanted a nuclear Ukraine, but Ukraine feared for its security (Budjeryn, n.d., p. 1). As a non-nuclear state, it would be at the mercy of its aggressive neighbor; its very sovereignty hung in the balance (Budjeryn, n.d., p. 1). Deterrence was a concept contradictory to its strategic culture (Sinovets, Budjeryn, 2017, p. 1) but the threats facing a non-nuclear Ukraine are very real.

As a solution, the Budapest Memorandum was born.

*The Budapest Memorandum*¹ provided security assurances for Ukraine from the U.S., Russian Federation, and the United Kingdom in exchange for Ukraine's nuclear disarmament and its accession to the NPT as a non-nuclear weapons state (Budapest Memorandum, 1994, p. 3)².

¹ Although it is typically referred to as «the Budapest Memorandum,» its formal name is the Memorandum on Security Assurances in Connection with Ukraine's Accession to the Treaty on the Nonproliferation of Nuclear Weapons (Budjeryn, 2019, p. 2).

² France and China chose not to sign the Budapest Memorandum, as it was an agreement on which they had not directly worked (Tarasiuk, 2016, p. 42). But they both subsequently provided Ukraine with similar security assurances (Pifer, 2019).

The Budapest Memorandum was one of numerous agreements signed while negotiating the nuclear disarmament of Ukraine in the early 1990s. It specifically addressed security and protected Ukraine's national sovereignty, which was its «single gravest concern» in the negotiations for its nuclear disarmament (Budjeryn, n.d., p. 1).

Ukraine ultimately went forward, declaring itself a non-nuclear state and ratifying the NPT. However, the Ukrainian rada still stated its reservations, which directly echo the terms of the Budapest Memorandum:

«Article 4 of the law on accession to the NPT stressed that Ukraine will treat the use or threat of force against its territorial integrity and inviolability of its borders, as well as economic coercion by a nuclear state, as 'extraordinary circumstances that jeopardize its supreme interests,' a formulation taken verbatim from the Article X of the NPT regarding withdrawal from the treaty» (Budjeryn, n.d., p. 4).

In the decades following its passage, the Budapest Memorandum has proven woefully ineffective and is now «criticized from all sides» (OdCNP, Sinovets, 2016, p. 38). It is overly general and inexact in its terms, is legally non-binding — which allows cosignatories to break promises without consequence under international law — and it has left Ukraine without recourse to defend itself from the Russian military aggression that has ceaselessly ravaged the country for the past six years and cost more than 13,000 lives (Budjeryn, 2019, p. 2).

Since 2014, however, Ukraine has been receiving military assistance and diplomatic statements of support from the U.S. This military assistance has helped Ukraine tremendously over the past six years, modernizing its armaments and improving the training of its military personnel (Bender & Morgan, 2019). It has been allocated for the purpose of supporting Ukraine as it defends itself from ongoing Russian aggression (Trump-Ukraine Impeachment Inquiry Report, 2019). This military assistance and symbolic support of the U.S. is still vitally important to preventing Russia from advancing even further. To be deprived of this assistance now would render Ukraine that much more vulnerable to the illegal Russian aggression wreaking havoc on its territory.

As such, a threat to withdraw said military assistance is in itself a tremendous threat to Ukrainian sovereignty and security. In order to maintain the strategic partnership and military support that it so vitally needs from the U.S. to defend itself, in accordance with the support that the U.S. promised in writing in 1994 and has been providing in the form of military assistance since Russia began its assault on Ukraine in 2014, Ukraine has already agreed to reforms, worked on rooting out corruption in its government and military complex, and more. After decades of work to build a relationship with the west, in the eyes of one U.S. president, Ukraine might even be willing to «play ball.»

Did President Trump's conduct violate the Budapest Memorandum?

Budapest Memorandum, Section 3. Because the Budapest Memorandum was written to provide protective assurances of Ukraine's security and sov-

ereignty, most analyses focus on potential military violations. Indeed, much of the memorandum pertains to the use of force, especially involving nuclear weapons, against Ukraine's territorial integrity and sovereignty, which is reflective of Ukraine's primary concern at the time of its negotiation (Budjeryn, n.d., p. 1). However, the terms of the Budapest Memorandum are not limited to prohibiting the use of force against Ukraine by its cosignatories.

Because it focuses on non-military threats to Ukrainian sovereignty and security, Section 3 of the Budapest Memorandum is the most applicable to the conduct of President Trump and his associates in 2019.

The text of section 3 reads as follows:

«3. [RF, GB, US] reaffirm their commitment to Ukraine, in accordance with the principles of the *CSCE Final Act*, to refrain from economic coercion designed to subordinate to their own interest the exercise by Ukraine of the rights inherent in its sovereignty and thus to secure advantages of any kind» (Budapest Memorandum, 1994, p. 4) [Emphasis added].

An important extension of section 3 of the Budapest Memorandum is that, as directly cited in the passage above, it acts «in accordance with the principles of the *CSCE Final Act*.»

CSCE Final Act, Sections I and VI. The Conference on Security and Cooperation in Europe (CSCE) Final Act, otherwise known as the Helsinki Accords, was a comprehensive 1975 agreement intended to «enhance security and cooperation» across Europe (Helsinki Process, [csece.gov](http://www.csece.gov)).

The sections of the CSCE Final Act that are most applicable to the Budapest Memorandum are section «I. Sovereign equality, respect for the rights inherent in sovereignty» and section «VI. Non-intervention in internal affairs.»

A few relevant excerpts from these sections read as follows.

Excerpts from Section I of the CSCE Final Act:

«*[The participating States] will also respect each other's right freely to choose and develop its political, social, economic and cultural systems as well as its right to determine its laws and regulations.* Within the framework of international law, all the participating States have equal rights and duties. *They will respect each other's right to define and conduct as it wishes its relations with other States in accordance with international law and in the spirit of the present Declaration*» (CSCE Final Act, 1975, p. 4, Section I) [Emphasis added].

And below is an excerpt from the text of section VI of the CSCE Final Act:

«*The participating States will refrain from any intervention, direct or indirect, individual or collective, in the internal or external affairs falling within the domestic jurisdiction of another participating State, regardless of their mutual relations...They will likewise in all circumstances refrain from any other act of military, or of political, economic or other coercion designed to subordinate to their own interest the exercise by another participating State of the rights inherent in its sovereignty and thus to secure advantages of any kind*» (CSCE Final Act, 1975, p. 4, Section VI) [Emphasis added]:

The Criteria. Based upon the preceding sections from both the Budapest Memorandum and the CSCE Final Act, the criteria that constitute a violation of section 3 of the Budapest Memorandum are as follows:

1) An actor uses «an act of military, or of political, economic or other coercion» (CSCE Final Act, 1975, p. 4, Section VI).

2) To «subordinate» or influence the internal affairs, «political, social, economic [or] cultural systems,» or «laws and regulations» of Ukraine (CSCE Final Act, 1975, p. 4, Section VI, Budapest Memorandum, 1994, p. 4).

3) The actor has done so to «[serve] their own interests» or to «secure advantages of any kind» (Budapest Memorandum, 1994, p. 4).

In order to determine whether or not President Trump and his associates violated the Budapest Memorandum, we need only determine whether their conduct meets these criteria.

Criterion 1: President Trump's Use of Coercion. Firstly, we must evaluate whether or not President Trump and his associates used «an act of military, political, economic, or other coercion» against Ukraine in their conduct.

The use of coercion is repeatedly documented in both the Whistleblower Complaint and the Articles of Impeachment. The Whistleblower Complaint also uses the word «pressure» repeatedly to describe the behavior of President Trump and his associates toward Ukraine. The author of this complaint describes the conduct of the president and his associates as «pressuring a foreign country,» «he sought to pressure Ukrainian leadership,» etc.

The Whistleblower Complaint notes that «a meeting or a phone call between the President and President Zelenskyy would depend on» Zelenskyy's cooperation «on the issues that had been publicly aired by Mr. Lutsenko and Mr. Giuliani» (Whistleblower Complaint, 2019, p. 2).

As such, the very diplomatic future of the U.S. and Ukraine's strategic partnership seemingly hung in the balance over this issue. This partnership with the U.S. is very important to Ukraine, and has been built over the course of decades through no shortage of reforms, effort, and good faith.

More concretely, the Articles of Impeachment also cite that «President Trump sought to *pressure* the Government of Ukraine to take these steps by *conditioning* official U.S. Government acts of *significant value to Ukraine*» on President Zelenskyy's compliance (Articles of Impeachment, 2019, p. 2). [Emphasis added].

The U.S. Government acts that President Trump threatened to withhold were, of course, the release of \$391 million of vital U.S. military assistance that had already been approved by Congress and authorized for disbursement to Ukraine by U.S. government officials (DOD announcement, 2019).

As described in previous sections, the value of this military assistance to Ukraine is immense. In the years since Congress passed the bipartisan Ukraine Freedom Support Act, U.S. assistance has decreased casualties and prevented Russian forces from advancing further into Ukraine (Friedman, 2019, quoting M. Omelicheva). The Ukrainian armed forces themselves are far more modernized, «larger, better equipped and trained, and more capable of containing the advances of Moscow-backed separatists in the Donbas» (Omelicheva, 2019), which represents a tremendous improvement since the onset of the conflict in 2014 (Omelicheva, 2019). The symbolic support of the U.S. through diplomatic statements and through the sale of Javelin missiles are

both a significant morale booster to Ukrainian troops and a deterrent against ongoing Russian aggression (Peterson, 2019). Importantly, the U.S. is able to supply materials and advanced technical weaponry that are not manufactured in Ukraine, supplementing critical gaps in Ukraine's defense resources (Peterson, 2019). This is crucial, because Russia has far greater access to advanced weaponry such as drones and «radio-electronic jamming systems;» it is difficult for Ukraine to keep up in this regard without U.S. assistance (Peterson, 2019, quoting I. Ponomarenko).

In these ways, both the materials supplied and the symbolic support of the U.S. are vital to the defense of Ukraine against ongoing Russian aggression. Not only does withholding this assistance constitute pressure, but its consequentality renders it pressure of a significant magnitude.

Criterion 2: President Trump's Intervention into Ukrainian Internal Affairs. Secondly, we must determine whether President Trump sought to «subordinate» or influence the internal affairs, «political, social, economic [or] cultural systems,» or «laws and regulations» of Ukraine (CSCE Final Act, 1975, p. 4, Section VI, Budapest Memorandum, 1994, p. 4).

As cited in the July 25th phone call memorandum itself, President Trump aimed to have Ukraine's outgoing Prosecutor General, Mr. Yuriy Lutsenko, reappointed in President Zelenskyy's administration (July 25th Phone Call Memorandum, 2019, p. 3). This is in spite of the fact that Mr. Lutsenko has been publicly accused of corruption (Whistleblower Complaint, 2019, p. 5).

Far from having the best wishes of Ukraine in mind with this «scheme» (Articles of Impeachment, 2019, p. 2), the appointment of Mr. Yuriy Lutsenko would specifically benefit President Trump's efforts to publicly announce a Ukrainian investigation into his political rival, Joe Biden, even in the absence of evidence (Whistleblower Complaint, 2019, p. 5).

Simply put, President Zelenskyy's political appointments and removals rest squarely within the domestic jurisdiction of Ukraine. The opening and closing of investigations, especially those with reportedly insufficient evidence, also rest solely on Ukraine's judicial system (Whistleblower Complaint, 2019, p. 5).

As such, President Trump engaged in an intervention into Ukraine's internal affairs. He did not «[respect] [Ukraine's] right freely to choose and develop its political systems as well as its right to determine its laws and regulations.» In this manner, President Trump's conduct violates section VI of the CSCE Final Act, and as such, violates section 3 of the Budapest Memorandum.

Criterion 3: President Trump Acted in His Own Interest. Like the previous two criteria, that President Trump undertook this course of conduct to serve his own interests is clearly and repeatedly stated in both the Whistleblower Complaint and the Articles of Impeachment.

Straight to the point, the Articles of Impeachment state that «President Trump engaged in this scheme or course of conduct for corrupt purposes in pursuit of personal political benefit» (Articles of Impeachment, 2019, p. 3). Further, the phrase «(improper) personal political benefit» is used repeatedly throughout the Articles as a primary justification for his impeachment.

Given that President Trump undertook this course of conduct to «serve his own interests» and to «secure advantages» in the form of benefitting his 2020 reelection campaign (Articles of Impeachment, 2019, p. 2), he has concretely violated section 3 of the Budapest Memorandum.

Violating «the Spirit» of the Budapest Memorandum. In each of the official U.S. government reports documenting President Trump's conduct towards Ukraine, all of the criteria constituting a violation of the Budapest Memorandum are met. But in addition to this close textual analysis of the Budapest Memorandum and the CSCE Final Act, it is crucial to consider the broader intent of these declarations: that the signatories will act in «the spirit» of the agreements.

This language is present below, in the first section of the CSCE Final Act: «[The participating States] will respect each other's right to define and conduct as it wishes its relations with other States in accordance with international law and *in the spirit of the present Declaration*» (CSCE Final Act, 1975, p. 4, Section I) [Emphasis added].

The reasoning behind this concept is common sense. Naturally, not every circumstance, strategic decision, or development in the world can be foreseen and listed decades in advance. Instead, these declarations can be written in broad terms, meant to encompass the many iterations of behavior that states might consider. If a declaration were extremely specific, an aggressive state could justify its behavior by citing that it did not violate the precise terms, even if it acts entirely contrary to the intent of the agreement. To do this would be missing the point of the agreement entirely.

Indeed, the Budapest Memorandum and the CSCE Final Act cover those gaps posed by overspecificity by stating that the signatories agree to follow its principles «in the spirit» of the declaration at hand.

Unfortunately, the broadly-written, «good faith» approach of the Budapest Memorandum has failed to protect Ukraine and live up to its purpose. Over the last 26 years, it has been repeatedly violated and widely criticized (OdcNP, Sinovets, 2016, p. 38).

That being said: just because an agreement has been violated once, it does not mean that other parties may violate it without also incurring culpability. Just because Russia has flagrantly violated both the terms and «the spirit» of the Budapest Memorandum, it does not excuse the culpability of the U.S. for doing the same.

The «spirit» of the Budapest Memorandum was intended to protect the security and sovereignty of Ukraine following the subsequent surrender of its nuclear weapons both by and from the United Kingdom, the Russian Federation, and the U.S. In the sense that it is intended, contrary to «the spirit of the declaration,» through his pressuring of Ukrainian leaders to secure political advantages, President Trump and his associates violated the Budapest Memorandum.

Conclusions

Based upon the available government documents and a close textual analysis of relevant sections of the agreement, we conclude that President Trump's

2019 conduct toward the Government of Ukraine violated the 1994 Budapest Memorandum.

Through his conduct, President Trump and his associates used «an act of military, or of political, economic or other coercion» (CSCE Final Act, 1975, p. 4, Section VI), to «subordinate» or influence the internal affairs, «political, social, economic [or] cultural systems,» or «laws and regulations» of Ukraine (CSCE Final Act, 1975, p. 4, Section VI, Budapest Memorandum, 1994, p. 4) in order to «[serve] their own interests» or to «secure advantages of any kind» (Budapest Memorandum, 1994, p. 4).

This raises critical questions going forward: what are the implications of such a violation by a president of the United States? And how far will the Trump administration go?

Although it would directly contradict Ukraine's long-held strategic culture and security interests (Sinovets, Budjeryn, 2017, p. 1), had Ukraine deemed this violation «extraordinary circumstances that jeopardize its supreme interests» (Budjeryn, n.d., p. 4), the international ramifications, damage to the nonproliferation paradigm and disarmament efforts could have been immense. A more aggressive nation might be inclined to strike back at such a violation.

Additionally: even though this instance of President Trump's conduct was unique in that it directly violated an agreement, detrimental foreign policy and the degradation of the nonproliferation and arms control paradigm are nothing new for the Trump administration. From the JCPOA, to declining the INF treaty, to distancing and publicly degrading long-standing NATO allies (Fisher, 2016), to growing increasingly close with and complimenting authoritarian leaders such as Vladimir Putin — who also violated the Budapest Memorandum — reckless foreign policy is a consistent, destructive practice by the Trump administration. And as demonstrated by President Trump's decision to — wittingly or unwittingly — abuse the power of his office to violate an international agreement with a strategic partner for his own political gain, there is no telling what foreign policy damage his administration could do from here.

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ПРОІГНОРОВАНА АГРЕСІЯ: ПРИМУШЕННЯ УКРАЇНИ ПРЕЗИДЕНТОМ ТРАМПОМ В 2019 РОЦІ ТА БУДАПЕШТСЬКИЙ МЕМОРАНДУМ

Резюме

У 2019 році президент США Дональд Трамп був звинувачений у постійному втручанні у внутрішню політику України. Хоча багато написано про внутрішні наслідки, мало хто порушив питання про можливе порушення діючих міжнародних угод, особливо тих, що існують між США та Україною. Метою дослідження є визначення наявності політичного втручання президента США Трампа у реалізацію Урядом та Президентом України внутрішньої та зовнішньої політики у 2019 році, а також у зв'язку з цим — наявності порушення Будапештського меморандуму з боку США. Дослідження було проведено в Одеському центрі нерозповсюдження в Одесі (Україна), де автор цієї статті провела сім місяців в рамках програми Фулбрайта. Методологія дослідження полягала в тісному аналізі тексту офіційних урядових документів та міжнародних угод. Документи, що описують поведінку президента Трампа щодо України, та його подальший імпичмент, включають статті про імпичмент, розсекречену скаргу на службу виклику в 2019 році та некласифікований Меморандум про телефонну розмову від 25 липня 2019 року та інші. Автор проаналізувала тексти Будапештського меморандуму та Заключного акту Конференції з безпеки та співробітництва в Європі (НБСЕ), відомого як Гельсінські угоди. Граматично одна фраза в заклjučному реченні розділу 3 Будапештського меморандуму злегка перекирчлена англійською мовою; тому автор перекирдає її в офіційному російськомовному тексті для додаткової ясності. За допомогою цього ретельного аналізу тексту Будапештського меморандуму та Заключного акту НБСЕ автор визначає три критерії, які є порушенням розділу 3 Будапештського меморандуму: 1) актор використовує «військовий або політичний, економічний чи інший примус» (Заклучний акт НБСЕ, 1975, с. 4, розділ VI); 2) актор «підпорядковує чи впливає на внутрішні справи, політичну, соціальну, економічну [або] культурну систему» або «закони та правила» України (Заклучний акт НБСЕ, 1975, с. 4, розділ VI; Будапештський меморандум, 1994, с. 4); 3) актор зробив це для «[служіння] власним інтересам» або для «забезпечення будь-яких переваг» (Будапештський

меморандум, 1994, с. 4). Потім авторка застосовує ці критерії до офіційних звітів про поведінку президента Трампа, щоб визначити, чи є його дії порушенням Будапештського меморандуму. Спираючись на текстовий аналіз наявних урядових документів та самої угоди, авторка доводить, що дії Президента Трампа у 2019 році щодо Уряду України порушили Будапештські угоди.

Ключові слова: президент Трамп, Україна, імпичмент, порушення, Будапештський меморандум, Заключний акт НБСЕ, Гельсінські угоди, військова допомога, примус, тиск, Сполучені Штати Америки, США.

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ПРОИГНОРИРОВАННАЯ АГРЕССИЯ: ПРИНУЖДЕНИЕ УКРАИНЫ ПРЕЗИДЕНТОМ ТРАМПОМ В 2019 ГОДУ И БУДАПЕШТСКИЙ МЕМОРАНДУМ

Резюме

В 2019 г. президент США Д. Трамп был обвинен во вмешательстве во внутреннюю политику Украины. Хотя многое написано о последствиях этого, мало кто поднял вопрос о возможном нарушении международных соглашений, которые существуют между США и Украиной. Целью исследования является определение наличия политического вмешательства президента США Трампа в реализацию Правительством и Президентом Украины внутренней и внешней политики в 2019 году, а также в связи с этим — наличия факта нарушения Будапештского меморандума со стороны США. Исследование было проведено в Одесском центре нераспространения в Одессе (Украина), где автор этой статьи провела семь месяцев в рамках программы Фулбрайта. Методология исследования заключалась в анализе текста официальных правительственных документов и международных соглашений. Документы, описывающие действия президента Трампа в отношении Украины и инициирование процедуры импичмента, включают статьи об импичменте, рассекреченную жалобу на службу вызова в 2019 году и Меморандум о телефонном разговоре от 25 июля 2019. Автор проанализировала тексты Будапештского меморандума и Заключительного акта Конференции по безопасности и сотрудничеству в Европе (СБСЕ), известного как Хельсинкские соглашения. Автор установила, что одна фраза в заключительном предложении раздела 3 Будапештского меморандума несколько искажена в английском языке; поэтому рассмотрела её официальный русскоязычный перевод для дополнительной ясности. С помощью анализа текста Будапештского меморандума и Заключительного акта СБСЕ автор определила три критерия, которые являются нарушением раздела 3 Будапештского меморандума: 1) актор использует «военное или политическое, экономическое или иное принуждение» (Заключительный акт СБСЕ, 1975, с. 4, раздел VI); 2) актор «подчиняет, влияет на внутренние дела, политическую, социальную, экономическую [или] культурную систему» или «законы и правила» Украины (Заключительный акт СБСЕ, 1975, с. 4, раздел VI; Будапештский меморандум, 1994, с. 4); 3) актор сделал это для «[служения] собственным интересам» или для «обеспечения каких-либо преимуществ» (Будапештский меморандум, 1994, с. 4). Затем автор применила эти критерии при анализе официальных отчетов о поведении президента Трампа,

чтобы определить, являются ли его действия нарушением Будапештского меморандума. Опираясь на текстовый анализ имеющихся правительственных документов и самого договора, автор доказывает, что действия президента Трампа в 2019 году по отношению к Правительству Украины нарушили Будапештские соглашения.

Ключевые слова: президент Трамп, Украина, импичмент, нарушения, Будапештский меморандум, Заключительный акт СБСЕ, Хельсинкские соглашения, военная помощь, принуждение, давление, Соединенные Штаты Америки, США.