

## USE OF FORCE, ARMS CONTROL, AND NON-PROLIFERATION

*U.S. Withdraws from Afghanistan as the Taliban Take Control*

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Nearly twenty years after the U.S. military began operations against the Taliban in Afghanistan, President Joseph R. Biden reported on August 31, 2021, that the last U.S. combat troops had departed the country. Biden announced on April 14, 2021, that the United States would withdraw combat troops from Afghanistan before the twenty-year anniversary of September 11, 2001, and NATO member states decided to depart the country simultaneously. The withdrawal followed an early 2020 deal between the Taliban and the Trump administration, which conditioned the pullout on Taliban agreement not to harbor terrorists that target the United States and its allies. Over the course of a week and a half in mid-August, the Taliban captured most of Afghanistan's provincial capitals, entering Kabul on August 15. The Afghan government collapsed, and President Ashraf Ghani fled the country. Through the end of August, the United States and other countries conducted a major airlift operation to evacuate their nationals and Afghans considered at risk of Taliban reprisals, though many were left behind amid risks of renewed civil war and humanitarian crisis.

In an Authorization for Use of Military Force (AUMF) passed on September 18, 2001, Congress authorized the president to “use all necessary and appropriate force” against those involved in or harboring those involved in the September 11 attacks,<sup>1</sup> and the United States began military operations against the Afghan Taliban on October 7, 2001.<sup>2</sup> U.S. forces in Afghanistan peaked in 2011 at more than 100,000 troops,<sup>3</sup> dropping to about 3,500 by March 2021.<sup>4</sup> Over the course of two decades, the conflict in Afghanistan resulted in the deaths of 2,461 U.S. service members and personnel, as well as 20,722 wounded,<sup>5</sup> and the deaths of nearly 4,000 U.S. contractors.<sup>6</sup> The toll on Afghan forces and civilians was far higher. Between 2001 and early 2021, 66,000 Afghan soldiers died,<sup>7</sup> and more than 46,300 civilians were killed.<sup>8</sup> The conflict cost the United States more than two trillion dollars.<sup>9</sup>

<sup>1</sup> Authorization for Use of Military Force, Pub. L. No. 107-40, 115 Stat. 224 (2001).

<sup>2</sup> Sean D. Murphy, *Contemporary Practice of the United States*, 96 AJIL 237, 246 (2002).

<sup>3</sup> *Key Dates in U.S. Involvement in Afghanistan Since 9/11*, REUTERS (July 2, 2021), at <https://www.reuters.com/world/asia-pacific/key-dates-us-involvement-afghanistan-since-911-2021-07-02>.

<sup>4</sup> Thomas Gibbons-Neff, et al., *U.S. Has 1,000 More Troops in Afghanistan Than It Disclosed*, N.Y. TIMES (Mar. 14, 2021), at <https://www.nytimes.com/2021/03/14/world/asia/us-troops-afghanistan.html>.

<sup>5</sup> White House Press Release, Remarks by President Biden on the End of the War in Afghanistan (Aug. 31, 2021), at <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/08/31/remarks-by-president-biden-on-the-end-of-the-war-in-afghanistan> [<https://perma.cc/9UDW-M3PD>].

<sup>6</sup> Craig Witlock, *The Afghanistan Papers*, WASH. POST (Dec. 9, 2019), at <https://www.washingtonpost.com/graphics/2019/investigations/afghanistan-papers/afghanistan-war-confidential-documents>.

<sup>7</sup> Thomas Gibbons-Neff, Najim Rahim & C.J. Chivers, *How Long Can the Afghan Security Forces Last on Their Own?*, N.Y. TIMES (Apr. 28, 2021), at <https://www.nytimes.com/2021/04/28/world/asia/afghanistan-security-forces.html>.

<sup>8</sup> Watson Inst. for Int'l & Pub. Affairs, *Costs of War* (Sept. 2021), at <https://watson.brown.edu/costsofwar/figures/2021/WarDeathToll>.

<sup>9</sup> White House Press Release, *supra* note 5.

In February 2020, the Trump administration reached an agreement with the Taliban that provided for a fourteen-month drawdown of U.S. forces in exchange for Taliban assurances that the group would prevent actors within its territory from attacking the United States and its allies.<sup>10</sup> Although Trump initially proposed withdrawal of troops by the 2020 election,<sup>11</sup> the administration eventually settled on a deadline of May 1, 2021.<sup>12</sup>

In mid-April 2021, President Biden announced that while the United States would “begin [its] final withdrawal” on May 1, “U.S. troops, as well as forces deployed by our NATO Allies and operational partners, will be out of Afghanistan before we mark the 20th anniversary” of the September 11 attacks.<sup>13</sup> Biden declared that “[I]t’s time to end the forever war.”<sup>14</sup> He explained that the United States “went to Afghanistan in 2001 to root out Al Qaeda, to prevent future terrorist attacks against the United States planned from Afghanistan,” and that the country “accomplished that objective” in the ensuing years.<sup>15</sup> Pointing to terrorist threats “metastasizing around the globe,” Biden declared:

We cannot continue the cycle of extending or expanding our military presence in Afghanistan, hoping to create ideal conditions for the withdrawal, and expecting a different result. I’m now the fourth United States President to preside over American troop presence in Afghanistan: two Republicans, two Democrats. I will not pass this responsibility on to a fifth.<sup>16</sup>

Biden explained that although the United States “will not stay involved in Afghanistan militarily,” it would continue its “diplomatic and humanitarian work,” as well as “providing assistance to the Afghan National Defense and Security Forces.”<sup>17</sup>

NATO member states agreed unanimously to pull troops out of Afghanistan, and NATO announced the alliance’s departure alongside the U.S. decision.<sup>18</sup> NATO Secretary-General Jens Stoltenberg stated, “[w]e went into Afghanistan together. We have adjusted our posture together. And we are united in leaving together.”<sup>19</sup> He added that “NATO Allies and partners

<sup>10</sup> Jean Galbraith, *Contemporary Practice of the United States*, 114 AJIL 494, 529 (2020).

<sup>11</sup> Thomas Gibbons-Neff & Julian E. Barnes, *Trump Wants Troops in Afghanistan Home by Election Day. The Pentagon Is Drawing Up Plans*, N.Y. TIMES (May 26, 2020), at <https://www.nytimes.com/2020/05/26/world/asia/afghanistan-troop-withdrawal-election-day.html>.

<sup>12</sup> Helene Cooper, Thomas Gibbons-Neff & Eric Schmitt, *Biden to Withdraw All Combat Troops from Afghanistan by Sept. 11*, N.Y. TIMES (Apr. 13, 2021), at <https://www.nytimes.com/2021/04/13/us/politics/biden-afghanistan-withdrawal.html>.

<sup>13</sup> White House Press Release, *Remarks by President Biden on the Way Forward in Afghanistan* (Apr. 14, 2021), at <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/04/14/remarks-by-president-biden-on-the-way-forward-in-afghanistan> [<https://perma.cc/H5DH-JZ4H>].

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> John Hudson, *NATO Backs Biden’s Plan to Withdraw from Afghanistan*, WASH. POST (Apr. 14, 2021), at [https://www.washingtonpost.com/national-security/bidens-top-diplomat-tries-to-sell-european-allies-on-end-of-war-in-afghanistan/2021/04/14/df8079f4-9d1a-11eb-8a83-3bc1fa69c2e8\\_story.html](https://www.washingtonpost.com/national-security/bidens-top-diplomat-tries-to-sell-european-allies-on-end-of-war-in-afghanistan/2021/04/14/df8079f4-9d1a-11eb-8a83-3bc1fa69c2e8_story.html).

<sup>19</sup> NATO Press Release, *Joint Press Point by NATO Secretary General Jens Stoltenberg, US Secretary of State Antony Blinken and US Secretary of Defense Lloyd J. Austin III* (Apr. 15, 2021), at [https://www.nato.int/cps/en/natohq/opinions\\_183061.htm](https://www.nato.int/cps/en/natohq/opinions_183061.htm) [<https://perma.cc/7XCJ-YGQT>].

will continue to stand with the Afghan people. But it is now for the Afghan people to build a sustainable peace.”<sup>20</sup>

Congressional reaction to the withdrawal fell largely along party lines. House Speaker Nancy Pelosi (D-CA) described the process as a “safe, strategic and orderly departure” and noted that she “support[s] this transition” while emphasizing, “[i]t is imperative that the hard-won gains secured by and for Afghan women and girls are not erased.”<sup>21</sup> Senate Armed Services Committee Chairman Jack Reed (D-RI) stated that, “[t]here are no good options in Afghanistan,” and that “Biden is making a tough call on what may be the least of many bad options.”<sup>22</sup> Senate Republican Leader Mitch McConnell (R-KY) criticized the withdrawal, saying that it “leaves our Afghan partners alone to confront threats that [Biden’s] own top advisors acknowledge are grave and growing worse.”<sup>23</sup> McConnell added that he hoped the administration would “delay the withdrawal, address these concerns, and reconsider its misguided retreat.”<sup>24</sup> Senate and House Armed Services Committee ranking members Jim Inhofe (R-OK) and Mike Rogers (R-AL) condemned the plan as a “political, calendar-based approach,” calling it “irresponsible to leave when conditions on the ground would lead to a civil war in Afghanistan and allow the country to become a safe haven for terrorists once again.”<sup>25</sup>

Afghan President Ashraf Ghani stated that Afghanistan “respects the U.S. decision and we will work with our U.S. partners to ensure a smooth transition.”<sup>26</sup> For its part, the Taliban objected to the extension of the withdrawal timeline, stating that a delay beyond May 1 was “not acceptable,”<sup>27</sup> and promising “problems” in the event the “agreement is breached.”<sup>28</sup> However, the group stopped short of abrogating the agreement or engaging in widespread attacks on departing forces.

China and Russia expressed concerns about the consequences of U.S. withdrawal. Russia called the U.S. extension a “clear violation” of the agreement to pull out by May 1, but also found “concerning” the potential that “the armed conflict in Afghanistan might escalate in the near future, which in turn might undermine efforts to start direct intra-Afghan

<sup>20</sup> *Id.*

<sup>21</sup> Rep. Nancy Pelosi Press Release, Pelosi Statement on Biden Administration’s Announcement of Timeline for Departure of U.S. Troops from Afghanistan (Apr. 14, 2021), at <https://www.speaker.gov/newsroom/41421> [<https://perma.cc/LWP6-AWBV>].

<sup>22</sup> Sen. Jack Reed Press Release, Reed Statement on Bringing U.S. Troops Home from Afghanistan (Apr. 13, 2021), at <https://www.reed.senate.gov/news/releases/reed-statement-on-bringing-us-troops-home-from-afghanistan> [<https://perma.cc/R3UH-ZFF5>].

<sup>23</sup> Sen. Mitch McConnell Press Release, Leader McConnell Meets with President Ashraf Ghani of Afghanistan (June 24, 2021), at <https://www.republicanleader.senate.gov/newsroom/press-releases/leader-mcconnell-meets-with-president-ashraf-ghani-of-afghanistan> [<https://perma.cc/7HDN-Q2Q8>].

<sup>24</sup> *Id.*

<sup>25</sup> House Armed Services Committee Press Release, Rogers, Inhofe Urge Biden to Change Course on Afghanistan (Apr. 15, 2021), at <https://republicans-armedservices.house.gov/news/press-releases/rogers-inhofe-urge-biden-change-course-afghanistan> [<https://perma.cc/MH7T-UJGL>].

<sup>26</sup> Ashraf Ghani (@ashrafghani), TWITTER (Apr. 14, 2021, 12:52 PM), at <https://twitter.com/ashrafghani/status/1382376326825455626> [<https://perma.cc/NB2H-ADSY>].

<sup>27</sup> Cooper, Gibbons-Neff & Schmitt, *supra* note 12.

<sup>28</sup> Zabihullah Mujahid (@Zabelhulah\_M33), TWITTER (Apr. 14, 2021, 8:01 AM), at [https://twitter.com/Zabelhulah\\_M33/status/1382302937997832198](https://twitter.com/Zabelhulah_M33/status/1382302937997832198) [<https://perma.cc/V3PA-RH7U>].

negotiations.”<sup>29</sup> Chinese officials stated that “[t]he United States, which created the Afghan issue in the first place, should act responsibly to ensure a smooth transition.”<sup>30</sup> Officials worried that the speed of the withdrawal would lead to instability, as well as increased space for terrorists.<sup>31</sup>

Despite U.S. promises of continued support, as well as resumed airstrikes against the Taliban,<sup>32</sup> the militants quickly routed the Afghan military in mid-August. In April, Afghan President Ghani stated on Twitter that “Afghanistan’s proud security and defense forces are fully capable of defending its people and country, which they have been doing all along.”<sup>33</sup> However, the Afghan government remained fractured,<sup>34</sup> and the military continued to rely on foreign contractors to maintain its equipment.<sup>35</sup> Between mid-April and late July 2021, the Taliban increased its territory to control 223 of the country’s 419 districts.<sup>36</sup> On August 6, 2021, the Taliban took control of a provincial capital in southwestern Afghanistan.<sup>37</sup> By August 13, Taliban fighters seized the cities of Herat, Kandahar, and Lashkar Gah with little resistance.<sup>38</sup> On August 15, the Taliban entered Kabul and Bagram airbase, and President Ghani fled the country.<sup>39</sup>

The speed of the collapse appeared to take U.S. officials by surprise. A late June intelligence report had estimated that the government could fall within six months to a year of the U.S. departure.<sup>40</sup> On August 18, the chairman of the Joint Chiefs of Staff asserted, “[t]here was

<sup>29</sup> *Russia Says U.S. Troop Pullout from Afghanistan Risks “Escalation,”* MOSCOW TIMES (Apr. 14, 2021), at <https://www.themoscowtimes.com/2021/04/14/russia-says-us-troop-pullout-from-afghanistan-risks-escalation-a73597>.

<sup>30</sup> Steven Lee Myers, *China Criticized the Afghan War. Now It Worries About the Withdrawal*, N.Y. TIMES (July 15, 2021), at <https://www.nytimes.com/2021/07/15/world/middleeast/china-pakistan-afghanistan.html>.

<sup>31</sup> Xi, *Putin Announce Extension of China-Russia Friendly Cooperation Treaty*, XINHUANET (June 29, 2021), at [http://www.xinhuanet.com/english/2021-06/29/c\\_1310032860.htm](http://www.xinhuanet.com/english/2021-06/29/c_1310032860.htm); Ai Heping & Mo Jingxi, *United States Pullout in Afghanistan Creates Doubt*, CHINA DAILY (Apr. 16, 2021), at [https://www.chinadaily.com.cn/202104/16/WS6078c515a31024ad0bab5e02\\_2.html](https://www.chinadaily.com.cn/202104/16/WS6078c515a31024ad0bab5e02_2.html).

<sup>32</sup> Alex Horton, Dan Lamothe & Susannah George, *U.S. Escalates Airstrikes on Taliban, Officials Say, as Afghan Military Loses Ground*, WASH. POST (July 23, 2021), at <https://www.washingtonpost.com/world/2021/07/23/us-afghanistan-airstrikes/>.

<sup>33</sup> Ashraf Ghani (@ashrafghani), TWITTER (Apr. 14, 2021, 12:52 PM), at <https://twitter.com/ashrafghani/status/1382376330109534211> [<https://perma.cc/8DL2-SS35>].

<sup>34</sup> Susannah George, *A Ramped-Up Push for Peace Is Splintering Afghanistan’s Already Fragile Government*, WASH. POST (Apr. 10, 2021), at <https://www.washingtonpost.com/world/2021/04/10/afghanistan-peace-talks-taliban/>.

<sup>35</sup> Thomas Gibbons-Neff, Helene Cooper & Eric Schmitt, *Departure of U.S. Contractors Poses Myriad Problems for Afghan Military*, N.Y. TIMES (June 19, 2021), at <https://www.nytimes.com/2021/06/19/world/asia/afghanistan-withdrawal-contractors.html>.

<sup>36</sup> Bill Roggio, *Mapping Taliban Control in Afghanistan*, FDD’s LONG WAR J., at <https://www.longwarjournal.org/mapping-taliban-control-in-afghanistan>.

<sup>37</sup> *Resurgent Taliban Take Provincial Capital, Kill Afghan Govt Spokesman*, REUTERS (Aug. 7, 2021), at <https://www.reuters.com/world/asia-pacific/taliban-close-two-provincial-afghan-capitals-us-forces-exit-country-2021-08-06/>.

<sup>38</sup> Thomas Gibbons-Neff & Christina Goldbaum, *Three More Major Cities Are Under Taliban Control, as the Government’s Forces Near Collapse*, N.Y. TIMES (Aug. 13, 2021), at <https://www.nytimes.com/2021/08/13/world/asia/afghanistan-taliban-advance-kandahar.html>.

<sup>39</sup> Christina Goldbaum, et al., *Kabul Falls to the Taliban as the Afghan Government Collapses and the President Flees*, N.Y. TIMES (Aug. 15, 2021), at <https://www.nytimes.com/2021/08/15/world/asia/afghanistan-taliban-jalalabad-falls.html>; Susannah George, et al., *Afghan Government Collapses as Taliban Sweeps in, U.S. Sends More Troops to Aid Chaotic Withdrawal*, WASH. POST (Aug. 15, 2021), at <https://www.washingtonpost.com/world/2021/08/15/afghanistan-taliban-kabul-embassy-jalalabad/>.

<sup>40</sup> Dan Lamothe & Shane Harris, *Afghan Government Could Fall Within Six Months of U.S. Military Withdrawal, New Intelligence Assessment Says*, WASH. POST (June 24, 2021), at <https://www.washingtonpost.com>.

nothing that I or any other of us saw that indicated a collapse of this army and this government in 11 days.”<sup>41</sup> However, despite the Afghan government’s collapse, President Biden stated:

I stand squarely behind my decision. After 20 years, I’ve learned the hard way that there was never a good time to withdraw U.S. forces. . . . Afghanistan political leaders gave up and fled the country. The Afghan military collapsed, sometimes without trying to fight. If anything, the developments of the past week reinforced that ending U.S. military involvement in Afghanistan now was the right decision.<sup>42</sup>

The fall of the Afghan government prompted a multilateral effort to evacuate foreign nationals, as well as Afghans at risk of Taliban reprisals. The evacuations followed concerns by U.S. and other officials that the Taliban would target people who worked with the Afghan government and allied forces. Media outlets reported in mid-July that Taliban fighters had executed twenty-two Afghan soldiers who attempted to surrender,<sup>43</sup> and in early August, the U.S. and UK embassies in Kabul expressed concern over the Taliban’s murder of civilians, asserting that the killings “could constitute war crimes.”<sup>44</sup> In late July, the United States began transporting to U.S. military bases the first of approximately 18,000 Afghans who applied for special immigrant visas to travel to the United States.<sup>45</sup> The United States also expanded refugee programs to cover Afghans who worked for U.S.-funded programs, as well as U.S. media and nongovernmental organizations.<sup>46</sup> The United Kingdom accelerated plans to resettle Afghans who worked for the British military and the UK government, as well.<sup>47</sup> The Biden administration received criticism for failing to evacuate more vulnerable Afghans prior to the Taliban’s advance,<sup>48</sup> but responses to resettlement of Afghan refugees in the United States and elsewhere have been mixed, with European countries hesitant to

[com/national-security/afghan-government-could-fall-within-six-months-of-us-military-withdrawal-new-intelligence-assessment-says/2021/06/24/42375b14-d52c-11eb-baed-4abcfa380a17\\_story.html](https://www.eiu.com/national-security/afghan-government-could-fall-within-six-months-of-us-military-withdrawal-new-intelligence-assessment-says/2021/06/24/42375b14-d52c-11eb-baed-4abcfa380a17_story.html).

<sup>41</sup> Ellen Mitchell, *Pentagon Leaders Defend Afghanistan Evacuation Effort After Intelligence Faltered*, THE HILL (Aug. 18, 2021), at <https://thehill.com/policy/defense/568467-pentagon-leaders-defend-afghanistan-evacuation-effort-after-intelligence>.

<sup>42</sup> White House Press Release, Remarks by President Biden on Afghanistan (Aug. 16, 2021), at <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/08/16/remarks-by-president-biden-on-afghanistan> [<https://perma.cc/HXS2-T9A7>].

<sup>43</sup> Anna Coren, Sandi Sidhu, Tim Lister & Abdul Basir Bina, *Taliban Fighters Execute 22 Afghan Commandos as They Try to Surrender*, CNN (July 14, 2021), at <https://www.cnn.com/2021/07/13/asia/afghanistan-taliban-commandos-killed-intl-hnk/index.html>.

<sup>44</sup> U.S. Embassy Kabul (@USEmbassyKabul), TWITTER (Aug. 2, 2021, 9:00 AM), at <https://twitter.com/USEmbassyKabul/status/1422180483417485315> [<https://perma.cc/AK82-NU59>]; US, UK Embassies in Afghanistan Accuse Taliban of Possible War Crimes, REUTERS (Aug. 2, 2021), at <https://www.reuters.com/world/asia-pacific/us-uk-embassies-afghanistan-accuse-taliban-possible-war-crimes-2021-08-02>.

<sup>45</sup> Eric Schmitt & Jennifer Steinhauer, *Afghan Visa Applicants Arrive in U.S. After Years of Waiting*, N.Y. TIMES (July 30, 2021), at <https://www.nytimes.com/2021/07/30/us/politics/afghan-interpreters-evacuated.html>.

<sup>46</sup> Morgan Chalfant, *Biden Administration Expands Afghan Refugee Program Amid Taliban Violence*, THE HILL (Aug. 2, 2021), at <https://thehill.com/homenews/administration/565883-biden-administration-expands-afghan-refugee-program-amid-taliban?rl=1>.

<sup>47</sup> Jonathan Beale, *Hundreds More Afghans and Their Families to Be Allowed to Settle in UK*, BBC (May 31, 2021), at <https://www.bbc.com/news/uk-57301065>.

<sup>48</sup> Michael D. Shear, et al., *Miscue After Miscue, U.S. Exit Plan Unravels*, N.Y. TIMES (Aug. 21, 2021), at <https://www.nytimes.com/2021/08/21/us/politics/biden-taliban-afghanistan-kabul.html>; Vivian Salama, *Internal State Department Cable Warned of Kabul Collapse*, WALL STREET J. (Aug. 19, 2021), at <https://www.wsj.com/articles/confidential-state-department-cable-in-july-warned-of-afghanistans-collapse-11629406993>.

accept large numbers of Afghans<sup>49</sup> and Russia objecting to their relocation within Central Asia.<sup>50</sup>

The United States maintained control of Kabul's Hamid Karzai International Airport to facilitate the departure of U.S. personnel and others in the wake of the Taliban takeover, temporarily deploying 6,000 troops to secure the airport.<sup>51</sup> In one of the largest airlifts in history, the United States evacuated more than 123,000 people, including 6,000 U.S. nationals, between August 14 and 30.<sup>52</sup> An August 26 suicide bombing by Islamic State-Khorasan (ISIS-K) in a crowd outside an airport gate resulted in the deaths of 170 Afghan civilians and thirteen U.S. servicemembers, marking the last U.S. casualties of the war in Afghanistan.<sup>53</sup> The final U.S. forces departed the airport on August 30.<sup>54</sup>

The United States was unable to evacuate a significant number of Afghans who assisted in the war.<sup>55</sup> However, approximately one hundred countries issued a joint statement emphasizing "the clear expectation of and commitment from the Taliban" that individuals inside the country would be allowed to travel abroad freely.<sup>56</sup> The Taliban confirmed that Afghans "may leave the country anytime they want to."<sup>57</sup> In a resolution on August 30, the UN Security Council noted that it "expects that the Taliban will adhere to these and all other commitments."<sup>58</sup>

On August 31, President Biden announced that "[l]ast night in Kabul, the United States ended 20 years of war in Afghanistan—the longest war in American history."<sup>59</sup> Defending his decision not to push back the deadline for withdrawal, Biden stated "I was not going to extend this forever war, and I was not extending a forever exit."<sup>60</sup> Noting that the "decision about

<sup>49</sup> Karl Ritter & Mehmet Guzel, *Europe Fears Afghan Refugee Crisis After Taliban Takeover*, ASSOC. PRESS (Aug. 22, 2021), at <https://apnews.com/article/europe-middle-east-business-migration-taliban-6415008d9a07b57400691cc88a59a1fe>.

<sup>50</sup> Maria Tsvetkova, *Putin: We Don't Want Afghan Militants in Russia*, REUTERS (Aug. 22, 2021), at <https://www.reuters.com/world/europe/russias-putin-we-dont-want-afghan-militants-russia-2021-08-22>.

<sup>51</sup> White House Press Release, Remarks by President Biden on Evacuations in Afghanistan (Aug. 20, 2021), at <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/08/20/remarks-by-president-biden-on-evacuations-in-afghanistan> [<https://perma.cc/D6NN-6SZQ>].

<sup>52</sup> U.S. Dep't of State Press Release, Secretary Antony J. Blinken's Remarks on Afghanistan (Aug. 30, 2021), at <https://www.state.gov/secretary-of-antony-j-blinken-remarks-on-afghanistan> [<https://perma.cc/TN2J-8W7H>].

<sup>53</sup> Michelle Ye Hee Lee, et al., *Military Carries Out Strike in Kabul as Slain Service Members Are Returned to U.S.*, WASH. POST (Aug. 29, 2021), at <https://www.washingtonpost.com/world/2021/08/29/afghanistan-kabul-taliban-live-updates>.

<sup>54</sup> U.S. Dep't of Defense Press Release, Statement by Secretary of Defense Lloyd Austin III on the End of the American War in Afghanistan (Aug. 30, 2021), at <https://www.defense.gov/Newsroom/Releases/Release/Article/2759181/statement-by-secretary-of-defense-lloyd-austin-iii-on-the-end-of-the-american-w> [<https://perma.cc/MP9U-BMLE>].

<sup>55</sup> *Majority of Afghan Allies May Have Missed Out on Airlift - U.S. Official*, REUTERS (Sep. 1, 2021), at <https://www.reuters.com/world/asia-pacific/majority-afghan-allies-may-have-missed-out-airlift-us-official-2021-09-01>.

<sup>56</sup> U.S. Dep't of State Press Release, Joint Statement on Afghanistan Evacuation Travel Assurances (Aug. 29, 2021), at <https://www.state.gov/joint-statement-on-afghanistan-evacuation-travel-assurances> [<https://perma.cc/6WQM-U694>].

<sup>57</sup> U.S. Special Representative Zalmay Khalilzad (@US4AfghanPeace), TWITTER (Aug. 28, 2021, 1:28 PM), at <https://twitter.com/US4AfghanPeace/status/1431670028051615746> [<https://perma.cc/H7DZ-LV8P>] (containing a partial translation of the Taliban's remarks related to freedom of travel after August 31, 2021).

<sup>58</sup> SC Res. 2593, para. 5 (Aug. 30, 2021).

<sup>59</sup> White House Press Release, *supra* note 5.

<sup>60</sup> *Id.*

Afghanistan is not just about Afghanistan,” Biden suggested more generally that he was bringing to an end “an era of major military operations to remake other countries,” and he emphasized the need to focus on the “vital national interests of our people.”<sup>61</sup> While noting that “human rights will be the center of our foreign policy,” he made clear that “the way to do that is not through endless military deployments, but through diplomacy, economic tools, and rallying the rest of the world for support.”<sup>62</sup> The Taliban celebrated the departure of U.S. troops, announcing that “[t]he last American soldiers departed from Kabul airport, and our country has achieved a full independence, thanks to God.”<sup>63</sup>

It remains unclear precisely how the international community will interact with the Taliban going forward.<sup>64</sup> U.S. Secretary of State Antony Blinken stated that “[a] new chapter of America’s engagement with Afghanistan has begun. . . . The military mission is over. A new diplomatic mission has begun.”<sup>65</sup> He continued, “[t]he Taliban seeks international legitimacy and support. Our message is: any legitimacy and any support will have to be earned.”<sup>66</sup> However, U.S. capacity to engage with and monitor the Taliban government remained limited after the United States closed its embassy in Kabul, moving its Afghanistan office to Qatar.<sup>67</sup> For its part, Russia announced plans to “normalize” relations with Afghanistan and called for the unfreezing of assets, as well as international assistance to bolster the country’s economy under Taliban rule.<sup>68</sup> China hoped the international community would engage with and “positively guide” the Taliban.<sup>69</sup>

Humanitarian conditions in Afghanistan continue to deteriorate, and the Taliban’s return poses additional risks. Relief actors estimated that 18.4 million people—nearly half the Afghan population—would require humanitarian assistance during 2021, nearly six times the number in need compared to 2018.<sup>70</sup> The United Nations expects acute food insecurity to represent the most pressing concern,<sup>71</sup> with drought, conflict, and disrupted trade flows

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> Adam Nossiter & Eric Schmitt, *U.S. War in Afghanistan Ends as Final Evacuation Flights Depart*, N.Y. TIMES (Aug. 30, 2021), at <https://www.nytimes.com/2021/08/30/world/asia/afghanistan-us-occupation-ends.html>.

<sup>64</sup> See, e.g., Tess Bridgeman & Ryan Goodman, *Expert Backgrounder: Recognition and the Taliban*, JUST SECURITY (Aug. 17, 2021), at <https://www.justsecurity.org/77794/expert-backgrounder-recognition-and-the-taliban>.

<sup>65</sup> U.S. Dep’t of State Press Release, *supra* note 52.

<sup>66</sup> *Id.*

<sup>67</sup> U.S. Embassy Kabul Press Release, Security Message: Suspension of Operations (Aug. 31, 2021), at <https://af.embassy.gov/security-message-suspension-of-operations> [<https://perma.cc/UKU3-R8PH>].

<sup>68</sup> Anton Troianovski, *Putin Takes Shot at West, But Says He’ll Work to “Normalize” Afghanistan*, N.Y. TIMES (Aug. 20, 2021), at <https://www.nytimes.com/2021/08/20/world/europe/putin-afghanistan-merkel.html>; Robyn Dixon, *The World Should Unfreeze Afghanistan’s Reserves and Pour in Aid to Rebuild the Country, Russia Says*, WASH. POST (Aug. 30, 2021), at <https://www.washingtonpost.com/world/2021/08/30/russia-afghanistan-taliban-aid>.

<sup>69</sup> Yew Lun Tian, et al., *Chinese Foreign Minister Tells Top U.S. Diplomat World Must “Positively Guide” Taliban*, REUTERS (Aug. 29, 2021), at <https://www.reuters.com/world/china-foreign-minister-us-sec-state-discuss-afghanistan-amid-tense-ties-2021-08-29>.

<sup>70</sup> UN Office for the Coordination of Humanitarian Affairs, *Afghanistan Humanitarian Response Plan 5* (Jan. 2021), at <https://reliefweb.int/report/afghanistan/afghanistan-humanitarian-response-plan-2018-2021-january-2021-revision> [<https://perma.cc/C54U-HY6Z>].

<sup>71</sup> *Id.* at 76.

expected to exacerbate the problem.<sup>72</sup> Between January and early August 2021, conflict also displaced more than 550,000 people throughout the country.<sup>73</sup> A UN official declared that “[t]he situation has all the hallmarks of a humanitarian catastrophe.”<sup>74</sup> Many anticipate that Taliban rule will reverse the gains made by Afghan women since 2001, given that the Taliban barred women and girls from schools and most jobs from 1996 to 2001.<sup>75</sup> There is also a risk of civil war.<sup>76</sup>

Although it is unclear whether or to what extent the Taliban will again provide refuge to Al Qaeda and similar organizations,<sup>77</sup> Biden has emphasized that counterterror operations in Afghanistan will continue.<sup>78</sup> U.S. officials expect the withdrawal of combat troops to complicate such efforts, but the commander of U.S. Central Command has said that “[i]t’s going to be extremely difficult to do it, but it will not be impossible” to conduct “over the horizon” counterterror operations in Afghanistan.<sup>79</sup> In a possible preview of such operations, on August 27, the United States used a drone launched from a base in the United Arab Emirates to strike an ISIS-K “planner” and “facilitator” in Jalalabad in response to the suicide bombing at the Kabul airport.<sup>80</sup> The risk of such operations was made vivid, however, by another strike on August 29. The U.S. military struck a car in Kabul in an effort to thwart what they believed to be another ISIS-linked suicide bomber, but weeks later admitted that the strike was a “tragic mistake,” killing a man who worked for a U.S. aid organization and nine members of his family, including seven children.<sup>81</sup>

<sup>72</sup> Famine Early Warning Systems Network, Afghanistan Key Message Update (July 31, 2021), at <https://fews.net/central-asia/afghanistan/key-message-update/july-2021> [<https://perma.cc/389G-EKS3>].

<sup>73</sup> UN Office for the Coordination of Humanitarian Affairs, Afghanistan Weekly Humanitarian Update (Aug. 19, 2021), at <https://reliefweb.int/report/afghanistan/afghanistan-weekly-humanitarian-update-9-15-august-2021>.

<sup>74</sup> Emma Farge & Michael Shields, *Afghanistan on Brink of “Humanitarian Catastrophe,” UN Agencies Say*, REUTERS (Aug. 13, 2021), at <https://www.reuters.com/world/asia-pacific/un-urges-afghanistans-neighbours-keep-borders-open-crisis-looms-2021-08-13>.

<sup>75</sup> Thomas Gibbons-Neff, Fatima Faizi & Najim Rahim, *Afghan Women Fear the Worst, Whether War or Peace Lies Ahead*, N.Y. TIMES (Apr. 18, 2021), at <https://www.nytimes.com/2021/04/18/world/asia/women-afghanistan-withdrawal-us.html>.

<sup>76</sup> *Taliban, Opposition Fight for Afghan Holdout Province, Top U.S. General Warns of Civil War*, REUTERS (Sept. 4, 2021), at <https://www.reuters.com/world/asia-pacific/taliban-opposition-vie-control-panjshir-pakistan-spy-chief-flies-kabul-2021-09-04>; Sami Sahak, Wali Arian & Jim Huylebroek, *Taliban Claim Control Over Panjshir Valley, But Resistance Vows to Fight On*, N.Y. TIMES (Sept. 6, 2021), at <https://www.nytimes.com/2021/09/06/world/asia/afghanistan-panjshir-taliban-resistance.html>.

<sup>77</sup> Steven Erlanger, *The Taliban Are Back. Now Will They Restrain or Support Al Qaeda?*, N.Y. TIMES (Aug. 17, 2021), at <https://www.nytimes.com/2021/08/17/world/asia/taliban-afghanistan-al-qaeda.html>.

<sup>78</sup> White House Press Release, *supra* note 5.

<sup>79</sup> Missy Ryan & Karoun Demirjian, *“Extremely Difficult, But Not Impossible”: General Provides Assessment of Afghan Counterterrorism Effort After U.S. Troops Depart*, WASH. POST (Apr. 20, 2021), at [https://www.washingtonpost.com/national-security/afghan-war-us-withdrawal/2021/04/20/d9b05468-a201-11eb-8a6d-f1b55f463112\\_story.html](https://www.washingtonpost.com/national-security/afghan-war-us-withdrawal/2021/04/20/d9b05468-a201-11eb-8a6d-f1b55f463112_story.html).

<sup>80</sup> Helene Cooper & Eric Schmitt, *A Reprisal Strike Killed Two ISIS Militants and Wounded Another*, N.Y. TIMES (Aug. 28, 2021), at <https://www.nytimes.com/2021/08/28/world/us-airstrike-isis-k.html>.

<sup>81</sup> See Eric Schmitt & Helene Cooper, *Pentagon Acknowledges Aug. 29 Drone Strike in Afghanistan Was a Tragic Mistake that Killed 10 Civilians*, N.Y. TIMES (Sept. 17, 2021), at <https://www.nytimes.com/2021/09/17/us/politics/pentagon-drone-strike-afghanistan.html>; Phil Stewart & Idrees Ali, *U.S. Says Kabul Drone Strike Killed 10 Civilians, Including Children, in “Tragic Mistake,”* REUTERS (Sept. 17, 2021), at <https://www.reuters.com/world/asia-pacific/us-military-says-10-civilians-killed-kabul-drone-strike-last-month-2021-09-17>.

The withdrawal of combat troops also poses forward-looking legal and policy questions for the United States. Congress is considering repealing and replacing the 2001 AUMF,<sup>82</sup> and lawyers for individuals captured in Afghanistan and held at Guantánamo Bay have argued that the end of direct U.S. involvement in the conflict means the United States lacks a legal basis to continue to hold the detainees.<sup>83</sup> The Justice Department has responded that the United States “remain[s] at war with Al Qaeda,” and that the “war on terrorism” is not over.<sup>84</sup>

<sup>82</sup> See, e.g., Repeal of the Authorization for Use of Military Force, H.R. 255, 117th Cong. (2021); see also Karoun Demirjian, *Effort to Repeal Middle East War Authorizations Advances in Senate with Bipartisan Backing*, WASH. POST (Aug. 4, 2021), at <https://www.washingtonpost.com/national-security/2021/08/04/iraq-war-military-authorizations>.

<sup>83</sup> Charlie Savage & Carol Rosenberg, *Biden’s Plan to End Afghanistan War Gives Some Detainees Hope for Release*, N.Y. TIMES (Apr. 21, 2021), at <https://www.nytimes.com/2021/04/21/us/politics/afghanistan-war-guantanamo-prison.html>.

<sup>84</sup> Carol Rosenberg, *U.S. Defends Detention of Afghan at Guantánamo Despite Pullout*, N.Y. TIMES (May 10, 2021), at <https://www.nytimes.com/2021/05/10/us/politics/asadullah-haroon-gul.html>.