

The 2020 Trump–Taliban “Peace Agreement”—Time to End the War on Terror

by

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“War, far as I can see.”¹

– CIA Director Mike Morell (2015)

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¹ Susan Page, *CIA Vet: War “Far as I can See,”* USA TODAY, May 10, 2015, at A1.

Introduction

By far and away the “War on Terror”² is the longest war in American history.³ In Afghanistan, the primary center of gravity for the conflict, it has gone on for almost two decades and has cost the United States somewhere north of one trillion dollars and thousands of casualties.⁴ But it may soon be over. Given that the Trump Administration entered into a conditional “peace deal” with the Taliban in February 2020,⁵ which purports to culminate with a complete drawdown of the then 13,000 American forces in Afghanistan by May of 2021, it is certainly worthwhile to examine the chronology of the War on Terror in order to both appreciate and then to gauge the efficacy of the Trump peace deal. Indeed, the ultimate question is whether the U.S. will now end the War on Terror.

On the campaign trail in 2016, President Donald Trump expressed great frustration concerning the ongoing American presence in Afghanistan, where the War on Terror emanated from, as well as the regional and global threat posed by ISIS⁶ in Iraq and Syria, where the War on

² On the morning of September 11, 2001, 19 members of the radical Islamic terror group al-Qa’ida hijacked four separate U.S. passenger aircraft while in flight (five terrorists each in three of the planes and four in the fourth). *See generally* Evan Thomas, *A New Date of Infamy*, NEWSWEEK, Sept. 13, 2001, at 22 (setting out a timeline of events that occurred on September 11, 2001). The terrorists purposefully crashed two of the planes into the Twin Towers of the World Trade Center in New York. *See Terrorists Destroy World Trade Center, Hit Pentagon in Raid With Hijacked Jets*, WALL ST. J., Sept. 12, 2001, at A1. A third plane slammed into the Pentagon in Washington, D.C., but the fourth plane went down in a field in Pennsylvania, most likely the result of the heroic efforts of some of the passengers. *Id.* According to a *New York Times* tally, along with billions of dollars in property loss, approximately 3,000 were killed, not including the nineteen terrorists. *See A Nation Challenged*, N.Y. TIMES, Apr. 24, 2002, at A13.

³ *See* Aaron O’Connell, *Is Afghanistan the U.S.’s Longest War? It Depends On How You Count*, UVA MILLER CENTER (Sept. 17, 2020), <https://millercenter.org/issues-policy/foreign-policy/presidency-endless-war/afghanistan-uss-longest-war-it-depends-how-you-count>.

⁴ *See* Kimberly Amadeo, *Afghanistan War Cost, Timeline, and Economic Impact*, THE BALANCE (Dec. 23, 2020), <https://www.thebalance.com/cost-of-afghanistan-war-timeline-economic-impact-4122493>; *Costs of War*, WATSON INST. INT’L & PUB. AFFS. (Sept. 2019), <https://watson.brown.edu/costsofwar/figures/2019/us-war-spending-afghanistan-2001>; *see also Casualty Status*, U.S. DEP’T OF DEF. (Jan. 18, 2021), <https://www.defense.gov/casualty.pdf> (noting that since the onset of the War on Terrorism, for both military and DOD civilians, there have been a total of 60,306 casualties, including 7,056 deaths, in both major arenas of combat).

⁵ Agreement for Bringing Peace to Afghanistan, U.S.–Taliban, Feb. 29, 2020 https://www.washingtonpost.com/con-text/u-s-taliban-peace-deal/7aab0f58-dd5c-430d-9557-1b6672d889c3/?itid=lk_inline_manual_3 (copy of U.S.–Taliban agreement) (contains the full text of the unclassified version of the peace deal).

⁶ *Ad-Dawlah al-Islāmiyah fil-‘Irāq al-Shām* is known in the English-speaking world as Islamic State of Iraq and al-Sham (ISIS), although the group prefers the Arabic word *al-Shām* which means Islamic State (IS). Faisal Irshaid,

Terror expanded.⁷ Like his predecessor Barack Obama, Donald Trump inherited the War on Terror which in turn began under the watch of President George W. Bush. Nevertheless, soon after his inauguration, President Trump certainly put his finger on the collective pulse of the nation with remarks given at Fort Myer, Virginia, on August 21, 2017:

[T]he American people are weary of war without victory. Nowhere is this more evident than with the war in Afghanistan, the longest war in American history – 17 years. I share the American people’s frustration. I also share their frustration over a foreign policy that has spent too much time, energy, money, and most importantly lives, trying to rebuild countries in our own image, instead of pursuing our security interests above all other considerations.⁸

Although previous visions of success in the War on Terror were coupled to a long-term commitment for the United States military to stay on the ground until a quasi-democratic government could take root in that country,⁹ President Trump early on signaled that his approach to the matter would be firmly rooted in a more achievable benchmark—America will declare “victory” and leave at the point in time when some minimum level of stability is determined to exist.¹⁰ In addition, the stability criterion would also translate into an acceptable degree of security against another 9/11-styled attack on the homeland emanating from Afghanistan.¹¹

The War on Terror Starts—the Bush Era

For the United States, the War on Terror began on September 11, 2001, following a

Isis, Isil, IS or Daesh? One Group, Many Names, BBC (Dec. 2, 2015), <https://www.bbc.com/news/world-middle-east-27994277>.

⁷ *Full Text: Donald Trump’s Speech on Fighting Terrorism*, POLITICO (Aug. 15, 2016), <https://www.politico.com/story/2016/08/donald-trump-terrorism-speech-227025>; Jacob Pramuk, *What Trump Said About Afghanistan Before He Became President*, CNBC (Aug. 21, 2017), <https://www.cnbc.com/2017/08/21/what-trump-said-about-afghanistan-before-he-became-president.html>.

⁸ President Donald J. Trump, Remarks on the Strategy in Afghanistan and South Asia (Aug. 21, 2017) [hereinafter President Donald J. Trump Remarks] (transcript available at <https://china.usembassy-china.org.cn/remarks-president-trump-strategy-afghanistan-south-asia/>).

⁹ See, e.g., David Oakley & Patrick Proctor, *Ten Years of GWOT, the Failure of Democratization and the Fallacy of “Ungoverned Spaces,”* 5 J. OF STRATEGIC SEC. 1, 1 (2012).

¹⁰ See Erik Goepner & Trevor Thrall, *Step Back: Lessons for U.S. Foreign Policy from the Failed War on Terror*, CATO INSTITUTE (June 26, 2017), <https://www.cato.org/publications/policy-analysis/step-back-lessons-us-foreign-policy-failed-war-terror>.

¹¹ See President Donald J. Trump Remarks, *supra* note 8; see also Agreement for Bringing Peace to Afghanistan, *supra* note 5.

coordinated attack by nineteen members of al-Qa'ida who hijacked four commercial passenger planes and intentionally slammed two of them into the Twin Towers in New York City and another into an outer ring of the Pentagon. A fourth hijacked plane, which was most certainly heading toward a predetermined target in Washington D.C., crashed in an open field in Pennsylvania, most likely through the heroic efforts of some of the passengers. Thus began what President Bush termed the War on Terror.

Quickly gathering a coalition of other nations and the full support of the Congress,¹² President Bush responded to the unprovoked terror attack by ordering the American military to strike both the al-Qa'ida strongholds in Afghanistan and the Taliban government that protected al-Qa'ida.¹³ While the military campaign to oust the Taliban and close down the al-Qa'ida training camps took only three months, October to December 2001, combat hostilities against Taliban insurgents and scattered al-Qa'ida remnants continued throughout both terms of the Bush presidency.¹⁴

Curiously, immediately following the ground victory in Afghanistan, many urged President Bush to resist the temptation to maintain a long-term American military presence in the country, believing either that it was simply an impossible task to bring “democracy” to the region by so-called nation building, or that it was simply not the job of the U.S. military to do so.¹⁵ Even though Osama bin Laden, the leader of al-Qa'ida, fled into hiding where he would remain for

¹² Authorization for Use of Military Force, Pub. L. No. 107-40, § 2(a), 115 Stat. 224, 224 (2001) (codified at 50 U.S.C. § 1541 (2006)). The U.S. Congress quickly identified the enemy in the War on Terror as all those “nations, organizations, or persons” responsible for the September 11 attacks. The AUMF provided full authority to President Bush to use armed force against those “he determines planned, authorized, committed, or aided the terrorist attacks” against the United States.

¹³ KENNETH KATZMAN & CLAYTON THOMAS, CONG. RSCH. SERV., RL305088, AFGHANISTAN: POST-TALIBAN GOVERNANCE, SECURITY, AND U.S. POLICY (2017).

¹⁴ See *Afghanistan War Cost, Timeline, and Economic Impact*, *supra* note 4.

¹⁵ See, e.g., Dominic Tierney, *The Backlash Against Nation-Building*, 5 PRISM 12 (2015). “Since 2009, there has been a profound backlash against nation-building as a core function of the U.S. military among officials, political elites, and wider public opinion.” *Id.* at 15.

almost ten years, Bush had achieved a significant battlefield victory and others argued that the United States should have departed.¹⁶ Not only would the War on Terror (apart from dealing with the issue of detainees) be over, but the deterrence message delivered by the quick defeat of the Taliban and al-Qa’ida would resonate with other nations that might harbor terrorists groups. Bush, however, elected to establish an American military presence in the country, which ensured that in an already fractured tribal-like society that fighting would extend on into the foreseeable future.¹⁷

Meanwhile, with 9/11 still fresh in the collective memory, President Bush and Congress became fixated with the unpleasant specter of weapons of mass destruction (WMD) being used in a new terror strike on the homeland.¹⁸ Accordingly, the Bush Administration expanded the meaning of the phrase War on Terror to include those rogue nations who posed a direct threat to the United States by possessing or seeking to possess WMD.¹⁹ For instance, in 2002, President Bush said: “[t]he United States of America will not permit the world’s most dangerous regimes to threaten us with the world’s most destructive weapons.”²⁰ Most certainly, the 2003 war with Saddam Hussein’s Iraq was waged with this maxim in mind.²¹ A U.S.-led military coalition to topple Saddam Hussein, which lasted from March 19, 2003, to May 1, 2003, opened up a second front in the War on Terror.²² It turned out American intelligence was misguided and there was no

¹⁶ *Id.*

¹⁷ See *Afghanistan War Cost, Timeline, and Economic Impact*, *supra* note 4.

¹⁸ Gary L. Gregg, *George W. Bush: Foreign Affairs*, UVA MILLER CENTER, <https://millercenter.org/president/gwbush/foreign-affairs> (discussing the Bush administration’s concerns about WMDs in the hands of rogue nation-states) (last visited Mar. 27, 2021).

¹⁹ See David E. Sanger, *Bush, Focusing on Terrorism, Says Secure U.S. is Top Priority*, N.Y. TIMES, Jan. 30, 2002, at A1.

²⁰ President George W. Bush, State of the Union Address (Jan. 29, 2002) (transcript available at <http://georgewbush-whitehouse.archives.gov/news/releases/2002/01/20020129-11.html>).

²¹ See Authorization for Use of Military Force Against Iraq Resolution of 2002, Pub. L. 107-243, 116 Stat. 1498, 1498-99 (2002) (codified at 50 U.S.C. § 1541). The Iraq AUMF cited many factors to justify the use of military force against Iraq, including that alleged WMD and programs to develop such weapons posed a “threat to the national security of the United States,” *id.* at 1498, and Iraq’s “capability and willingness to use weapons of mass destruction against other nations and its own people,” *id.* at 1499.

²² CONG. RSCH. SERV. RS21405 U.S. PERIODS OF WAR AND DATES OF RECENT CONFLICTS, (June 5, 2020). “On March 19, 2003, President Bush announced to the nation that the early stages of military operations against Iraq had begun . . .

significant WMD threat to be found.²³ Instead, the consequences of the conflict saw Iraqi society tear apart along cultural and religious fault lines between the Kurds, Shia, and Sunni. Not only was Iraq no longer a counterbalance to Iran, the number one State sponsor of terror in the world, but soon thereafter al-Qa'ida and other insurgent groups emerged and chaos erupted throughout Iraq.

President Bush maintained the status quo in Afghanistan but ordered a significant surge in combat troops in 2007 to stabilize Iraq. When Bush left office, Iraq was stable to an acceptable level, but Afghanistan was still unsettled.

The War on Terror Continues—the Obama Era

When President Barack Obama took office in January 2009, there were approximately 30,000 U.S. troops in Afghanistan and the War on Terror continued unabated.²⁴ Significant American military forces were still stationed all across Iraq, although combat operations were greatly reduced. Accordingly, Obama first turned his attention to Afghanistan, hoping that a dramatic increase to 140,000 coalition troops would not only calm things in Afghanistan but would force the Taliban to the negotiating table (the al-Qa'ida fighters had long since been eradicated from Afghanistan) where a peace deal could be struck.²⁵

[o]n May 1, 2003, in an address to the nation, President Bush declared that ‘major military combat actions in Iraq have ended,’ yet U.S. troops remained in Iraq.”

²³ Peter Taylor, *Iraq War: the Greatest Intelligence Failure in Living Memory*, THE TELEGRAPH (March 18, 2013), <https://www.telegraph.co.uk/news/worldnews/middleeast/iraq/9937516/Iraq-war-the-greatest-intelligence-failure-in-living-memory.html>.

²⁴ President Barack H. Obama, Address Outlining Steps to Prevent Terrorism After Christmas Attacks (Jan. 7, 2010) (transcript available at <http://www.cnn.com/2010/POLITICS/01/07/transcript.obama.terror.report/index.html>) (“We are at war. We are at war against al Qaeda, a far-reaching network of violence and hatred that attacked us on 9/11, that killed nearly 3,000 innocent people, and that is plotting to strike us again. And we will do whatever it takes to defeat them.”).

²⁵ *Operation Enduring Freedom Fast Facts*, CNN (Oct. 4, 2020), <https://www.cnn.com/2013/10/28/world/operation-enduring-freedom-fast-facts/>. The United States force rose to 100,000.

Unfortunately, the Obama surge did not have the hoped-for results. Afghanistan was not stabilized and the Taliban refused to engage in peace talks. When the drawdown concluded in 2012, over 1,000 Americans were dead or wounded and the Taliban was stronger after the surge than they had been before the surge.²⁶

Still, Obama accomplished what Bush had not—Barack Obama killed the almost mythical al-Qa’ida leader Osama Bin Laden. In a bold night raid on May 2, 2011, the terror leader was shot dead by American Special Forces at his heavily guarded hideout in Abbottabad, Pakistan.²⁷ Unfortunately, this brilliant tactical victory which had eluded American forces for ten years was not parlayed into an overall strategic victory of withdrawing American forces and ending the war. In other words, instead of announcing a “mission accomplished” speech to rubricate that the ultimate goal of destroying al-Qa’ida was now complete with the death of their leader, Obama instead elected to stay the course in order to strike a deal with the Taliban.²⁸ To be sure, if President Obama had ordered an immediate departure in 2011, America could have made a credible claim to victory regardless of whether or not the Taliban regained power. Indeed, it was the al-Qa’ida and not the Taliban that had attacked the United States on 9/11. When Obama left office, there were about 8,400 American soldiers in Afghanistan, but no deal was ever struck.²⁹

In dealing with Iraq, President Obama took an entirely different approach. In October 2011, Obama precipitously ordered a rapid and complete withdrawal of all U.S. forces (about 40,000)

²⁶ Eric Beech, *Taliban Stronger than Before U.S. Troop Surge: Lawmakers*, REUTERS (May 6, 2012), <https://www.reuters.com/article/us-usa-afghanistan-taliban/taliban-stronger-than-before-u-s-troop-surge-lawmakers-idUSBRE84509G20120506>.

²⁷ Julie Marks, *How Seal Team Six Took Out Osama bin Laden*, HISTORY (Aug. 2, 2019), <https://www.history.com/news/osama-bin-laden-death-seal-team-six>.

²⁸ See, e.g., *Operation Enduring Freedom Fast Facts*, supra note 25.

²⁹ Danielle Kurtzleben, *How the U.S. Troop Levels in Afghanistan Have Changed Under Obama*, NPR (July 6, 2016), <https://www.npr.org/2016/07/06/484979294/chart-how-the-u-s-troop-levels-in-afghanistan-have-changed-under-obama>.

from Iraq by the end of the year.³⁰ Tragically, the power vacuum left in Iraq was quickly filled by a terrorist group called the Islamic State of Iraq and al-Sham (ISIS) causing the War on Terror to expand exponentially.

At ISIS' peak of geographic power in 2016, the self-proclaimed caliphate controlled an amazing 27,000 square miles of territory in Syria and Iraq. By then, in his final year in office, Obama had come to the realization that if the War on Terror was to ever cease, the expansive radical Islamic caliphate in Iraq and Syria had to be destroyed.³¹

Ending the War on Terror—The Trump Era

Trump entered the Oval Office in January 2017 promising an end to the War on Terror even though the two-front war was still dragging on—the Taliban in Afghanistan and now ISIS in Iraq and parts of Syria. Only days after taking the oath of office, President Trump elected to focus on ISIS first, calling his senior military and national security advisors together to express his firm vision that the Pentagon must obliterate ISIS geographically. Under his decisive leadership, subsequent military victories against ISIS followed, including the retaking of the stronghold of Mosul in July 2017 and the destruction of the much-hardened ISIS capital of Raqqa in Syria in October 2017.³²

Interestingly enough, the so-called ground coalition that cut ISIS apart consisted primarily of a combined force of about 100,000 Iraqi troops and Shi'ite militia against perhaps 20,000

³⁰ Joshua Gillin, *Obama Refused to Sign Plan in Place to Leave 10,000 Troops in Iraq, Bush Says*, POLITIFACT (May 18, 2015), <http://www.politifact.com/truth-o-meter/statements/2015/may/18/jeb-bush/obama-refused-sign-plan-place-leave-10000-troops-i/>.

³¹ See generally, JEFFREY F. ADDICOTT, *RADICAL ISLAM WHY? CONFRONTING JIHAD AT HOME & ABROAD* (Laws. & Judges Publ'n Co. 2016).

³² See Jared Malsin, *Raqqa is in Ruins, and ISIS in Retreat*, TIME (Nov. 6, 2017), <http://time.com/raqqa-ruins-isis-retreat/> (discussing how ISIS's capital fell to coalition forces).

heavily entrenched ISIS fighters.³³ While the United States provided some 5,000 troops to the coalition (mostly spearheaded by America’s Special Forces), it was the crucial American air support that turned the tide and provided for the spectacular victories on the ground.³⁴ By early 2018, ISIS was no longer in control of any significant territory in either Syria or Iraq.³⁵ Untold thousands of ISIS fighters were killed in lawful combat operations and the remnants, perhaps 3,000, escaped into the desert where they now exist like al-Qa’ida—under the ground.³⁶

Of course, the issue of what to do next in the areas vacated by ISIS demanded attention. To be sure, although ISIS was now displaced, the organization was still capable of conducting limited terror attacks. In addition, large swaths of Iraq and Syria were in ruins. In sharp contrast to previous American administrations which were fixated on notions of nation building, President Trump refused to commit American troops to either peacekeeping or nation building.³⁷ Brett McGurk, the special envoy for the Global Coalition to Counter ISIS, stated that the U.S. would help stabilize areas liberated from ISIS but would not run hospitals or schools.³⁸ According to McGurk, “It’s not our responsibility.”³⁹ Instead, Trump ordered a small number of troops to remain in the region as a show of force and to conduct limited military operations when required. The

³³ See U.S. DEP’T OF DEF., OPERATION INHERENT RESOLVE: LEAD INSPECTOR GENERAL REPORT TO THE UNITED STATES CONGRESS APR. 1, 2019–JUN. 30, 2019 at 36, https://media.defense.gov/2019/Aug/09/2002169448/-1/-1/1/Q3FY2019_LEADIG_OIR_REPORT.PDF.

³⁴ See *The Air War Against the Islamic State*, RAND CORPORATION, https://www.rand.org/pubs/research_reports/RR4388-1.html (last visited Mar. 27, 2021) (discussing the pivotal role of U.S. airpower superiority in the defeat of ISIS).

³⁵ See *Timeline: The Rise, Spread, and Fall of The Islamic State*, WILSON CENTER (Oct. 28, 2019), <https://www.wilsoncenter.org/article/timeline-the-rise-spread-and-fall-the-islamic-state>.

³⁶ *Id.*

³⁷ Todd Beamon, *State Dept.: Trump Policies Brought ‘Dramatic’ Gains Against ISIS*, NEWSMAX (Aug. 5, 2017), <https://www.newsmax.com/Newsfront/isis-trump-state-department-islamic-state/2017/08/05/id/806041/> (discussing how nation building would not be pursued in the wake of the military successes over ISIS).

³⁸ *Id.*

³⁹ *Id.*

most notable American military effort in this regard was the brilliant raid that killed ISIS leader al-Baghdadi in 2019.⁴⁰

Satisfied that ISIS was going down in defeat, President Trump turned his attention to Afghanistan, and in late August 2017, he admitted that while his “original instinct was to pull out” of Afghanistan completely, he decided instead to order an unspecified increase in U.S. troop presence to signal to the Taliban that there were no timelines that would drive the United States out of the country.⁴¹ By February 2020, approximately 13,000 U.S. forces were hunkered down in Afghanistan conducting training and security missions. In the waning months of the Trump Administration, troop levels in both Afghanistan and Iraq had successfully been reduced to a mere 2,500 servicemembers, the lowest since 2001, the beginning of the War on Terror.⁴²

US-Taliban Peace Agreement

In contrast to Obama’s blunt strategy to use the stick of increased military might to force the Taliban to negotiate peace, the Trump strategy was a mixture of firm resolve, persuasion, and that ever-unpredictable element of good timing. Whatever the mixture of said ingredients, Trump was able to get the Taliban and the Afghan government to sign a “condition based” peace deal on February 28, 2020.⁴³ For the United States and its coalition partners, the peace plan was directly tied to a “phased withdrawal” of American forces to be completed, if all went well, within a mere

⁴⁰ *Abu Bakr al-Baghdadi: IS Leader ‘Dead after US Raid’ in Syria*, BBC NEWS (Oct. 28, 2019), <https://www.bbc.com/news/world-us-canada-50200339>.

⁴¹ Philip Elliott, *Trump Tries Presidential, Before Reverting to Old Habits*, TIME (Aug. 24, 2017), <http://time.com/4913683/trump-tries-presidential-reverts-old-habits/> (discussing President Trump’s announcement of troop increases in Afghanistan).

⁴² See Robert Burns & Lolita C. Baldor, *Pentagon Says US Has Dropped to 2,500 Troops in Afghanistan*, AP (Jan. 15, 2021), [https://apnews.com/article/joe-biden-donald-trump-afghanistan-taliban-united-states-16cc1dd5b2f74d463311d212ad0d215a; Idrees Ali, U.S. Troops in Afghanistan Now Down to 2,500, Lowest Since 2001: Pentagon, REUTERS \(Jan. 15, 2021\), https://www.reuters.com/article/us-usa-afghanistan-military/u-s-troops-in-afghanistan-now-down-to-2500-lowest-since-2001-pentagon-idUSKBN29K229; Courtney Kube & Saphora Smith, Pentagon to Cut Troop Levels to 2,500 in Afghanistan, Iraq, NBC NEWS \(Nov. 17, 2020\), https://www.nbcnews.com/news/military/pentagon-cut-troop-levels-2-500-afghanistan-iraq-n1247992](https://apnews.com/article/joe-biden-donald-trump-afghanistan-taliban-united-states-16cc1dd5b2f74d463311d212ad0d215a; Idrees Ali, U.S. Troops in Afghanistan Now Down to 2,500, Lowest Since 2001: Pentagon, REUTERS (Jan. 15, 2021), https://www.reuters.com/article/us-usa-afghanistan-military/u-s-troops-in-afghanistan-now-down-to-2500-lowest-since-2001-pentagon-idUSKBN29K229; Courtney Kube & Saphora Smith, Pentagon to Cut Troop Levels to 2,500 in Afghanistan, Iraq, NBC NEWS (Nov. 17, 2020), https://www.nbcnews.com/news/military/pentagon-cut-troop-levels-2-500-afghanistan-iraq-n1247992).

⁴³ See Mujib Mashal, *Taliban and U.S. Strike Deal to Withdraw American Troops from Afghanistan*, NEW YORK TIMES, Feb. 29, 2020, at A1.

14 months—May 2021. For their part, the Taliban would cease armed attacks, pledge to shun terror groups, and coexist with the current government in Afghanistan.

Critics may ultimately be correct in predictions that the Taliban will not keep its word to shun terror and terror groups or attempt to topple the current Afghan government, although as in the case of the Paris Peace Accords which ended American involvement in Vietnam,⁴⁴ this may not fully manifest itself until American troops have left Afghanistan far behind. What is fundamentally clear is that America has given much blood and treasure for the Afghan people—over 4,100 Americans killed in action.⁴⁵ Many Americans feel that enough time has been given to the Afghan people for them to chart their own destiny towards a better way of life and system of rule—twenty years is enough.

The peace deal contains classified and unclassified portions and the central themes of the agreement are: (1) the prevention of future threats against the United States and its allies from terror groups operating from Afghanistan soil; (2) the withdrawal of all American and coalition forces from Afghanistan; and (3) a commitment from the Taliban towards an intra-Afghan negotiation that would include a permanent ceasefire.⁴⁶ The preface of the peace agreement is as follows:

A comprehensive peace agreement is made of four parts:

1. Guarantees and enforcement mechanisms that will prevent the use of the soil of Afghanistan by any group or individual against the security of the United States and its allies.

⁴⁴ See, e.g., Agreement on Ending the War and Restoring Peace in Viet-Nam, U.S.-Viet., Jan. 27, 1973, T.I.A.S. No. 7542. Signed on January 27, 1973, the Paris Peace Accords was a peace treaty between the United States and North Vietnam to end the Vietnam War. The United States pulled out all combat troops from South Vietnam within the next two months. Although North Vietnam pledged to respect the sovereignty and independence of South Vietnam, they invaded and conquered it in 1975.

⁴⁵ CONG. RSCH. SERV., RL32492, AMERICAN WAR AND MILITARY OPERATIONS CASUALTIES: LISTS AND STATISTICS, (Jul. 29, 2020), <https://fas.org/sgp/crs/natsec/RL32492.pdf>.

⁴⁶ Agreement for Bringing Peace to Afghanistan, *supra* note 5.

2. Guarantees, enforcement mechanisms, and announcement of a timeline for the withdrawal of all foreign forces from Afghanistan.

3. After the announcement of guarantees for a complete withdrawal of foreign forces and timeline in the presence of international witnesses, and guarantees and the announcement in the presence of international witnesses that Afghan soil will not be used against the security of the United States and its allies, the Islamic Emirate of Afghanistan which is not recognized by the United States as a state and is known as the Taliban⁴⁷ will start intra-Afghan negotiations with Afghan sides on March 10, 2020, which corresponds to Rajab 15, 1441 on the Hijri Lunar calendar and Hoot 20, 1398 on the Hijri Solar calendar.

4. A permanent and comprehensive ceasefire will be an item on the agenda of the intra-Afghan dialogue and negotiations. The participants of intra-Afghan negotiations will discuss the date and modalities of a permanent and comprehensive ceasefire, including joint implementation mechanisms, which will be announced along with the completion and agreement over the future political roadmap of Afghanistan.

The four parts above are interrelated and each will be implemented in accordance with its own agreed timeline and agreed terms. Agreement on the first two parts paves the way for the last two parts.⁴⁸

From the perspective of the United States, the first part of the US-Taliban peace plan outlines a phased withdrawal of all U.S. military forces from Afghanistan. Another provision of the agreement is a mutual prisoner exchange with the Taliban. The United States will also work towards lifting American and international sanctions against the Taliban. Lastly, the United States resolves to respect the territorial integrity and independence of Afghanistan.⁴⁹ Part One of the unclassified peace deal states:

The United States is committed to withdraw from Afghanistan all military forces of the United States, its allies, and Coalition partners, including all non-diplomatic civilian personnel, private security contractors, trainers, advisors, and supporting services personnel within fourteen (14) months following announcement of this agreement, and will take the following measures in this regard:

A. The United States, its allies, and the Coalition will take the following measures in the first one hundred thirty-five (135) days: (1) They will reduce the number of U.S. forces in Afghanistan to eight thousand six hundred (8,600) and

⁴⁷ The language “the Islamic Emirate of Afghanistan which is not recognized by the United States as a state and is known as the Taliban” reflects the diplomatic stance of the United States and the United Nations that does not recognize the Taliban as the legitimate government of Afghanistan.

⁴⁸ Agreement for Bringing Peace to Afghanistan, *supra* note 5.

⁴⁹ *Id.*

proportionally bring reduction in the number of its allies and Coalition forces. (2) The United States, its allies, and the Coalition will withdraw all their forces from five (5) military bases.

B. With the commitment and action on the obligations of the Islamic Emirate of Afghanistan which is not recognized by the United States as a state and is known as the Taliban in Part Two of this agreement, the United States, its allies, and the Coalition will execute the following: (1) The United States, its allies, and the Coalition will complete withdrawal of all remaining forces from Afghanistan within the remaining nine and a half (9.5) months. (2) The United States, its allies, and the Coalition will withdraw all their forces from remaining bases.

C. The United States is committed to start immediately to work with all relevant sides on a plan to expeditiously release combat and political prisoners as a confidence building measure with the coordination and approval of all relevant sides. Up to five thousand (5,000) prisoners of the Islamic Emirate of Afghanistan which is not recognized by the United States as a state and is known as the Taliban and up to one thousand (1,000) prisoners of the other side will be released by March 10, 2020, the first day of intra-Afghan negotiations, which corresponds to Rajab 15, 1441 on the Hijri Lunar calendar and Hoot 20, 1398 on the Hijri Solar calendar. The relevant sides have the goal of releasing all the remaining prisoners over the course of the subsequent three months. The United States commits to completing this goal. The Islamic Emirate of Afghanistan which is not recognized by the United States as a state and is known as the Taliban commits that its released prisoners will be committed to the responsibilities mentioned in this agreement so that they will not pose a threat to the security of the United States and its allies.

D. With the start of intra-Afghan negotiations, the United States will initiate an administrative review of current U.S. sanctions and the rewards list against members of the Islamic Emirate of Afghanistan which is not recognized by the United States as a state and is known as the Taliban with the goal of removing these sanctions by August 27, 2020, which corresponds to Muharram 8, 1442 on the Hijri Lunar calendar and Saunbola 6, 1399 on the Hijri Solar calendar.

E. With the start of intra-Afghan negotiations, the United States will start diplomatic engagement with other members of the United Nations Security Council and Afghanistan to remove members of the Islamic Emirate of Afghanistan which is not recognized by the United States as a state and is known as the Taliban from the sanctions list with the aim of achieving this objective by May 29, 2020, which corresponds to Shawwal 6, 1441 on the Hijri Lunar calendar and Jawza 9, 1399 on the Hijri Solar calendar.

F. The United States and its allies will refrain from the threat or the use of force against the territorial integrity or political independence of Afghanistan or intervening in its domestic affairs.⁵⁰

⁵⁰ *Id.*

The second section of the US-Taliban peace agreement contains several commitments by the Taliban towards the continued security of the United States. The Taliban pledges to prevent the use of Afghanistan soil by al-Qa'ida and other terrorist groups for recruiting, training, and fundraising. In addition, the Taliban also promises to not cooperate in any way with enemies of the United States. The Taliban also guarantees to handle asylum seekers and the issuing of visas, passports, and other legal documents in a manner ensuring the safety of the United States.⁵¹ Part

Two of the unclassified peace deal states:

In conjunction with the announcement of this agreement, the Islamic Emirate of Afghanistan which is not recognized by the United States as a state and is known as the Taliban will take the following steps to prevent any group or individual, including al-Qa'ida, from using the soil of Afghanistan to threaten the security of the United States and its allies: (1) The Islamic Emirate of Afghanistan which is not recognized by the United States as a state and is known as the Taliban will not allow any of its members, other individuals or groups, including al-Qa'ida, to use the soil of Afghanistan to threaten the security of the United States and its allies. (2) The Islamic Emirate of Afghanistan which is not recognized by the United States as a state and is known as the Taliban will send a clear message that those who pose a threat to the security of the United States and its allies have no place in Afghanistan, and will instruct members of the Islamic Emirate of Afghanistan which is not recognized by the United States as a state and is known as the Taliban not to cooperate with groups or individuals threatening the security of the United States and its allies. (3) The Islamic Emirate of Afghanistan which is not recognized by the United States as a state and is known as the Taliban will prevent any group or individual in Afghanistan from threatening the security of the United States and its allies, and will prevent them from recruiting, training, and fundraising and will not host them in accordance with the commitments in this agreement. (4) The Islamic Emirate of Afghanistan which is not recognized by the United States as a state and is known as the Taliban is committed to deal with those seeking asylum or residence in Afghanistan according to international migration law and the commitments of this agreement, so that such persons do not pose a threat to the security of the United States and its allies. (5) The Islamic Emirate of Afghanistan which is not recognized by the United States as a state and is known as the Taliban will not provide visas, passports, travel permits, or other legal documents to those who pose a threat to the security of the United States and its allies to enter Afghanistan.⁵²

⁵¹ *Id.*

⁵² *Id.*

The third portion of the peace agreement declares that the United States will seek the endorsement of the deal by the United Nations Security Council. Furthermore, both the United States and the Taliban pledge to pursue positive relations in the future with each other and the new, expected post-settlement Afghanistan government.⁵³ Part Three of the unclassified peace deal states:

1. The United States will request the recognition and endorsement of the United Nations Security Council for this agreement.
2. The United States and the Islamic Emirate of Afghanistan which is not recognized by the United States as a state and is known as the Taliban seek positive relations with each other and expect that the relations between the United States and the new post-settlement Afghan Islamic government as determined by the intra-Afghan dialogue and negotiations will be positive.
3. The United States will seek economic cooperation for reconstruction with the new post-settlement Afghan Islamic government as determined by the intra-Afghan dialogue and negotiations, and will not intervene in its internal affairs.

Signed in Doha, Qatar on February 29, 2020, which corresponds to Rajab 5, 1441 on the Hijri Lunar calendar and Hoot 10, 1398 on the Hijri Solar calendar, in duplicate, in Pashto, Dari, and English languages, each text being equally authentic.⁵⁴

Conclusion—Victory

Throughout America’s almost 20-year asymmetrical War on Terror many have concluded that a central problem would be the difficulty of defining “victory.” To a degree, this is a valid observation, particularly given America’s penchant for nation-building and the spreading of democracy. In point of fact, by destroying the al-Qa’ida training camps in Afghanistan and expelling the Taliban from control of that country in 2001, the Bush Administration had scored a resounding battlefield victory and should have ended the war with a complete withdrawal of its forces. Nevertheless, President Bush elected to stay and rebuild (build) Afghanistan which meant that the conflict would continue indefinitely. Indeed, Bush vastly expanded the scope of the War

⁵³ *Id.*

⁵⁴ *Id.*

on Terror with his ill-informed 2003 military campaign against Saddam Hussein and the resulting rise of al-Qa'ida in Iraq.

Thus, President Obama inherited a two-front conflict which he also failed to achieve a victory in his eight years in office. Even with Obama's success in killing the elusive al-Qa'ida leader Osama bin Laden in 2011, he refused to parlay the brilliant tactical victory into a larger strategic victory that might have enabled a declaration of victory and withdrawal. Then, with the rise of ISIS in Iraq and Syria, the Obama Administration ran out of time and handed the seemingly never-ending conflict over to the new Commander-in-Chief, Donald Trump.

Within three years in office, President Trump racked up an impressive battlefield victory over ISIS, culminating with the death of their leader and driving the remnants underground and into hiding. Unlike his two predecessors, however, President Trump grabbed this significant victory and pragmatically shunned off nation building, leaving only a handful of troops on the ground to provide assistance to the Iraqi government.⁵⁵ To date, the region is more or less stable and the Trump policy has worked. For Trump, it is certain that stability equates to victory. In tandem with fighting ISIS, Trump also focused on Afghanistan where he slightly bumped up American troops to signal the seriousness of his intent to remain until a deal could be cut with the Taliban. While Trump had no intention of destroying the Taliban as he had done with ISIS, his desire to negotiate a settlement hinged on key guarantees from the Taliban. Amazingly, soon thereafter Trump was able to broker and sign a peace deal with the Taliban which would see the withdrawal of all U.S. forces by 2021 and the end of the Afghanistan conflict for the United States.

⁵⁵ Samya Kullab, *U.S. Pulls Out of a Third Base in Iraq*, MILITARY TIMES (Mar. 29, 2020), <https://www.militarytimes.com/news/your-military/2020/03/29/us-pulls-out-of-a-third-base-in-iraq/>. A total of 7,500 coalition troops, including 5,000 U.S. soldiers, remain in Iraq.

The twin achievements by the Trump Administration—ISIS and the Taliban—certainly means that there is now a light at the end of the tunnel for ending the War on Terror. To be sure, other challenges and set backs will certainly arise from both regions of concern, but the ultimate signpost for the end of the War on Terror may simply be an acceptable measure of stability. It remains to be seen if the Biden Administration has the political will to take advantage of the Trump-Taliban peace deal and depart from the war-torn country by May 2021 as agreed. To date, President Biden has elected to freeze the process and as of this writing the 2,500 American forces are still on the ground.”⁵⁶

Finally, to those who suggest that an American departure from Afghanistan or Syria will lead to greater instability and a higher likelihood of another 9/11-styled attack on the homeland, the answer is as it has always been. In other words, if attacked or threatened with imminent attack, the United States will respond with overwhelming military might in self-defense as fully recognized and authorized in Article 51 of the United Nations Charter.⁵⁷

⁵⁶ Connor Finnegan & James Gordon Meek, *Biden Admin Likely to Keep US Troops in Afghanistan Amid Escalating Violence, Stalled Talks*, ABC NEWS (Jan. 31, 2021, 11:01 PM), <https://abcnews.go.com/Politics/biden-admin-us-troops-afghanistan-amid-escalating-violence/story?id=75547504>.

⁵⁷ U.N. Charter art. 51. The analytical framework for the use of force is found in Article 51 of the United Nations Charter, which simply codifies the inherent right of self-defense. *See* Kullab, *supra* note 55 (highlighting the importance of the right of self-defense). The inherent right of self-defense refers to the right of a country to unilaterally engage in acts of self-defense; regardless of what any other nation or organization, including the United Nations, may or may not do. *Id.* (sanctioning members’ ability to self-defend). This is a well-known and ancient component of international law, which predates any international treaty:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security. *Id.*