

# Walking the Talk:

2021 Blueprints for a Human Rights-Centered  
U.S. Foreign Policy



## Chapter 5: Ending Endless War



# Acknowledgments

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Human Rights First challenges the United States of America to live up to its ideals. We believe American leadership is essential in the struggle for human dignity and the rule of law, and so we focus our advocacy on the U.S. government and other key actors able to leverage U.S. influence. When the U.S. government falters in its commitment to promote and protect human rights, we step in to demand reform, accountability, and justice.

When confronting American domestic, foreign, and national security policies that undermine respect for universal rights, the staff of Human Rights First focus not on making a point, but on making a difference. For over 40 years we've built bipartisan coalitions and partnered with frontline activists, lawyers, military leaders, and technologists to tackle issues that demand American leadership.

Human Rights First is led by President and Chief Executive Officer Mike Breen and Chief Operating Officer Nicole Elkon.

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# Ending Endless War

# Introduction

For nearly 20 years, successive administrations have adopted a costly war-based approach to counterterrorism with no clear endgame in sight. This shortsighted strategy has led to egregious human rights violations; damaged the rule of law, international cooperation, and the reputation of the United States; set a dangerous precedent for other nations; fueled conflicts and massive human displacement; contributed to militarized and violent approaches to domestic policing; diverted limited resources from more effective approaches and other national priorities; and, most consequentially, destroyed hundreds of thousands of lives.

The American people have rightly grown skeptical of the war-centered approach of the last two decades,<sup>1</sup> and the presidential candidates for both parties have promised to end America's so-called "endless wars,"<sup>2</sup> beginning with drawing down forces in places like Afghanistan and Iraq.<sup>3</sup> Yet the problem of endless war goes well beyond the multigenerational conflicts in Afghanistan and Iraq. It also includes the United States'

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counterproductive approach to global counterterrorism, in which it has applied wartime rules for the use of lethal force, detention, and prosecutions far beyond the traditional boundaries for which those exceptional rules were designed.<sup>4</sup>

Continuing down the path of endless war is not only harmful and unpopular with the American people, it is also unnecessary. The United States maintains a robust array of diplomatic,

law enforcement, intelligence, development, and other resources to mitigate security concerns abroad and at home, including those stemming from the threat of terrorism. The United States need not, therefore, remain locked in the harmful, counterproductive, and costly state that has defined the post-9/11 era to date.

With a growing recognition of other pressing global challenges—from the devastation of climate change to great power competition—the next presidential administration and Congress have a renewed opportunity and responsibility to place counterterrorism policy on a sustainable course, while shifting resources and attention toward the most pressing challenges of the future. What follows are recommendations for setting the nation on this new course.<sup>5</sup>

## Recommendations

### ✓ End all operations under the 2001 and 2002 Use of Force Authorizations

The first step to ending endless wars is to cease all military operations under the 2001 and 2002 Authorizations for Use of Military Force (AUMF). Successive administrations have relied on these legal authorities in

1 For example, one recent survey found that 78 percent of Democrats, 64.5 percent of Republicans, and 68.8 percent of independents supported restraining military action overseas. "Rarely," noted the report, "does opinion research reveal issues that enjoy shared sentiments on a bi-partisan level." James Carden, *A New Poll Shows the Public is Overwhelmingly Opposed to Endless US Military Interventions*, Nation (Jan. 9, 2018) available at <https://www.thenation.com/article/archive/new-poll-shows-public-overwhelmingly-opposed-to-endless-us-military-interventions/>.

2 Joseph R. Biden, *Why America Must Lead Again: Rescuing U.S. Foreign Policy After Trump*, Foreign Affairs (Mar./Apr. 2020) available at <https://www.foreignaffairs.com/articles/usa/2020-01-23/why-america-must-lead-again>; Leo Shane III, *Trump's second-term plan includes stopping 'endless' wars, boosting military support*, Military Times (Aug. 24, 2020) available at <https://www.militarytimes.com/news/pentagon-congress/2020/08/24/trumps-second-term-plan-includes-stopping-endless-wars-boosting-military-support/>.

3 Lara Seligman, *General announces Iraq, Afghanistan troop drawdowns as Trump looks to fulfill campaign pledge*, Politico (Sep. 9, 2020) available at <https://www.politico.com/news/2020/09/09/iraq-troop-withdrawal-410723>.

4 Laurie R. Blank, *The Consequences of a "War" Paradigm for Counterterrorism: What Impact on Basic Rights and Values?*, 46(3) Ga. L. Rev. 719 (Mar. 2012) available at <https://www.georgialawreview.org/article/3513-the-consequences-of-a-war-paradigm-for-counterterrorism-what-impact-on-basic-rights-and-values>.

5 These recommendations, many of which were developed in partnership with experts from other human rights and civil society organizations, were previously published in substantially similar form at Just Security. See Rita Siemion, Scott Roehm, Hina Shamsi, Heather Brandon-Smith, Kate Kizer, Annie Shiel, Colleen Kelly, & Mandy Smithberger, *Toward a New Approach to National and Human Security: End Endless War*, Just Security (Sept. 11, 2020) available at <https://www.justsecurity.org/72371/toward-a-new-approach-to-national-and-human-security-ending-endless-war/>.

measure far beyond Congress's original purpose in enacting them. Continued reliance on the 2001 and 2002 AUMFs for military and other operations nearly two decades after their enactment has resulted in mission creep, relieved Congress of its responsibility to take hard votes regarding military engagements overseas, eroded public support for the operations themselves, and siphoned limited resources from other national priorities.

The 2001 AUMF authorized military force against those who “planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001 or harbored such organizations or persons.”<sup>6</sup> Nearly 20 years later, this AUMF has been used as the primary legal basis<sup>7</sup> for military operations against a number of different groups in at least 19 different countries around the world,<sup>8</sup> including against “associated forces” and “successor entities” of those responsible for the 9/11 attacks. Prior administrations have also claimed that the 2001 AUMF and the 2002 AUMF<sup>9</sup> (which authorized force against the Saddam Hussein regime in Iraq) provide authorization for using force against the Islamic State in Iraq and Syria (ISIS).<sup>10</sup> The current administration has even gone so far as to attempt to claim that Iran and groups affiliated with the Iranian regime are covered by the 2002 AUMF, including by citing the authorization as a legal basis for the targeted killing of Iranian general Qassem Soleimani in January 2020.<sup>11</sup>



The next president can and should retire these authorities without Congressional action. The president should immediately cease relying on the 2002 AUMF—which does not serve as the primary domestic legal basis for any current military operations—and set an end date for operations conducted under the 2001 AUMF. That end date should provide for only a brief wind-down period for operations currently underway pursuant to this authority. The administration should also publicly abandon prior executive branch legal interpretations that widened the scope of these authorities far beyond their original purpose.

To prevent future administrations from reviving these decades-old authorities, the next administration should furthermore urge Congress to rescind them, along with other outstanding war authorizations.

## ✓ Shift away from war-based detention, trial, and lethal force

Ending endless war will require shifting away from reliance on the tools of war and, in particular, away from reliance on a war-based legal framework for using force against, prosecuting, and detaining individuals suspected of terrorist activity. When legitimately and lawfully used in extraordinary circumstances, war-

6 Authorization for Use of Military Force, Pub. L. No. 107-40, 115 Stat. 224 (2001) available at <https://www.congress.gov/107/plaws/publ40/PLAW-107publ40.pdf>.

7 The executive branch has also relied on the 2002 Iraq AUMF to justify its counter-ISIL campaign. See, e.g., Stephen W. Preston, The Legal Framework for the United States' Use of Military Force Since 9/11, Speech at the Annual Meeting of the American Society of International Law (Apr. 10, 2015) available at <https://www.defense.gov/News/Speeches/Speech-View/Article/606662/>.

8 Matthew Weed, Congressional Research Service, *Memorandum: Presidential References to the 2001 Authorization for Use of Military Force in Publicly Available Executive Actions and Reports to Congress* (Feb. 16, 2018) available at <https://fas.org/sgp/crs/natsec/pres-aumf.pdf>.

9 Authorization for Use of Military Force Against Iraq Resolution of 2002, Pub. L. No. 107-243, 116 Stat. 1498 (2002) available at <https://www.congress.gov/107/plaws/publ243/PLAW-107publ243.pdf>.

10 President Barack Obama, *Report on the Legal and Policy Frameworks Guiding the United States' Use of Military Force and Related National Security Operations* (Dec. 2016) available at <https://fas.org/man/eprint/frameworks.pdf>; Stephen T. Dennis, *Here's Obama's Legal Justification for ISIS War*, Roll Call (Sep. 11, 2014) available at <https://www.rollcall.com/news/heres-the-administrations-legal-justification-for-isis-isil-war>. ISIS is also commonly referred to as ISIL (Islamic State in Iraq and the Levant), IS (Islamic State), or Daesh.

11 H. Foreign Affairs Comm., *Notice on the Legal and Policy Frameworks Guiding the United States' Use of Military Force and Related National Security Operations* (released Feb. 14, 2020) available at [https://foreignaffairs.house.gov/\\_cache/files/4/3/4362ca46-3a7d-43e8-a3ec-be0245705722/6E1A0F30F9204E380A7AD0C84EC572EC.doc148.pdf](https://foreignaffairs.house.gov/_cache/files/4/3/4362ca46-3a7d-43e8-a3ec-be0245705722/6E1A0F30F9204E380A7AD0C84EC572EC.doc148.pdf).

time use of force and military detention and tribunals are aimed at balancing military necessity, humanity, and fundamental rights. Even so, wartime authorities can confer extraordinary powers that in peacetime are egregious human rights violations.<sup>12</sup> The record of the last 20 years shows without doubt that use of lethal force as a first—rather than last—resort can normalize accompanying harm to civilians, military trials, detention without charge or trial, and even torture.<sup>13</sup> These practices violate fundamental human rights protections against extrajudicial killing, detention without charge or trial, and fair trial guarantees.<sup>14</sup>

To move away from endless war and toward a sustainable approach to security, lethal force should be used only as a last resort and in compliance with peacetime use of force standards.<sup>15</sup> Guantanamo should be closed, and the use of indefinite detention and military commissions should be discarded in favor of utilizing the far more effective civilian courts.<sup>16</sup>

### ✓ **Adopt an appropriately tailored and rights-respecting approach to security**

The United States has at its disposal a host of tools and resources available for addressing security concerns, including those posed by transnational armed groups. The next administration should prioritize the non-militarized tools in the government’s toolbox and utilize force only when it is lawful, and as a last resort. To do so, the administration should rely on law enforcement; lawful intelligence gathering; robust, accountable, and appropriately tailored foreign assistance; and diplomatic capabilities for addressing the drivers of conflict and violence.

In so doing, a future administration should reject the temptation to outsource the United States’ own endless wars to foreign partners. Rather than continuing to prioritize foreign military engagement and capacity building as the primary tool toward addressing security challenges, the administration should expand and increase its engagement with civil society and other non-governmental actors, as well as its engagement with the non-security agencies of partner governments, to effectively support efforts to alleviate the conditions that contribute to organized violence—including political repression and lack of economic development. And it should do so without perpetuating policies and programs that view local communities solely or primarily through a security lens, undermining their rights and security.

### ✓ **Use military force only as a last resort and with authorization from Congress**

Should extraordinary new security challenges arise, the next administration should consider its full array of tools before considering the use of military force. As an overarching principle, only if an administration exhausts all non-military means and determines that military force is lawful under international law (including meeting the requirements of necessity and proportionality) and strategically effective should it seek authorization from Congress in the form of a new, narrowly tailored AUMF.

The administration should also consider support for the use of force by partner security forces only as a last resort, when non-military means are insufficient, and when military force is lawful, necessary, proportionate, and strategically effective. If it deems such operations necessary, it should secure appropriate Congressional authorization. The administration should also be transparent about such operations, proactively and thoroughly vet partner forces for human rights compliance, and insist on enforceable assurances from partners that they will comply with both human rights and humanitarian law, wherever applicable.

<sup>12</sup> Scott Roehm, Rita Siemion, Hina Shamsi, *Toward a New Approach to National and Human Security: Introduction*, Just Security (Sep. 11, 2020) available at <https://www.justsecurity.org/72359/toward-a-new-approach-to-national-and-human-security-introduction/>.

<sup>13</sup> Rita Siemion et al., *Toward a New Approach to National and Human Security: End Unlawful, Secret, and Unaccountable Use of Lethal Force*, Just Security (Sep. 11, 2020) available at <https://www.justsecurity.org/72375/toward-a-new-approach-to-national-and-human-security-end-unlawful-secret-and-unaccountable-use-of-lethal-force/>.

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

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

<sup>16</sup> Hina Shamsi et al., *Toward a New Approach to National and Human Security: Close Guantanamo and End Indefinite Detention*, Just Security (Sep. 11, 2020) available at <https://www.justsecurity.org/72367/toward-a-new-approach-to-national-and-human-security-close-guantanamo-and-end-indefinite-detention/>.

## ✓ Insist on essential safeguards in any future AUMFs

If the next administration determines that the use of military force is necessary in the future, it must obtain prior authorization from Congress. In so doing, it should insist on the inclusion of essential safeguards in any new AUMF it seeks. Several safeguards have garnered bipartisan support<sup>17</sup> and reflect an effective approach to drafting an AUMF that permits the United States to address legitimate and exceptional security concerns while applying the hard lessons learned from overbroad and harmful interpretations of the 2001 and 2002 AUMFs. These include:

- **Clearly defining the enemy and mission objectives.** Specifying the nation or group(s) against which force is authorized and the objectives or purpose—i.e., the mission—for which force is authorized ensures that Congressional intent and the will of the American people cannot be overridden by subsequent, unintended interpretations and expansions of the use of force authority
- **Specifying the geographic scope of the authorization.** Explicitly limiting war authorities to declared theaters of actual armed conflict helps ensure compliance with U.S. obligations under the U.N. Charter and provides clarity regarding with whom the nation is at war and where.
- **Requiring robust transparency and reporting.** Regular and specific reporting requirements promote democratic accountability, ensure compliance with domestic and international law, and allow Congress to fulfill its oversight responsibilities by staying informed about the conflict, while providing a critical safeguard against endless war.
- **Obligating compliance with international law.** Any new AUMF should contain an explicit statement that its authorities may only be exercised in compliance with U.S. international legal obligations. The United States is already bound by international law regardless of whether an explicit statement is included in an AUMF, but its explicit inclusion will help restore domestic and global confidence in the United States as a nation that complies with the rule of law.
- **Including a supersession or sole source of authority provision.** Given prior administrations' assertions that the 2001 AUMF and 2002 Iraq AUMF authorize the use of force against ISIS—even though those authorizations were passed by Congress before ISIS existed—if Congress does not repeal both of these AUMFs, any new AUMF should make clear that it is the sole, superseding source of authority to use force against the nations or entity to which it applies. Without this clarifying language, the next administration could read the new authorization as expanding its war-making powers, rather than limiting them.<sup>18</sup>
- **Setting an expiration date.** Sunset clauses, which have been included in nearly one-third of prior AUMFs<sup>19</sup> and several post-9/11 national security statutes,<sup>20</sup> set a date for Congress and the executive branch to reexamine the AUMF in light of more recent conditions and, if necessary, reauthorize, refine, or narrow the legislation to suit those conditions.

17 See, e.g., Jack Goldsmith, Ryan Goodman, Steve Vladeck, *Opinion: Five principles that should govern any U.S. authorization of force*, Washington Post (Nov. 14, 2014) available at [https://www.washingtonpost.com/opinions/five-principles-that-should-govern-any-us-authorization-of-force/2014/11/14/6e278a2c-6c07-11e4-a31c-77759fc1e-acc\\_story.html](https://www.washingtonpost.com/opinions/five-principles-that-should-govern-any-us-authorization-of-force/2014/11/14/6e278a2c-6c07-11e4-a31c-77759fc1e-acc_story.html); Jennifer Daskal, Benjamin Wittes, *The Intellectual—But Not Political—AUMF Consensus*, Just Security (Mar. 2, 2015) available at <http://justsecurity.org/20546/intellectual-but-political-aumf-consensus/>; Harold Koh et al., *Principles to Guide Congressional Authorization of the Continued Use of Force Against ISIL*, Just Security (Nov. 10, 2014) available at <http://justsecurity.org/wp-content/uploads/2014/11/ISIL-AUMF-Statement-FINAL.pdf>. These elements have also gained the support of a coalition of human rights, civil liberties, and faith groups. See Letter from NGO Coalition to Senators Bob Corker and Ben Cardin on Authorizing the Use of Military Force (Jun. 19, 2017) available at <http://www.humanrightsfirst.org/sites/default/files/AUMF-letter-final-text-june-19-2017.pdf>.

18 Jennifer Daskal, *Why Sunset and Supersession Provisions Are Both Needed in an Anti-ISIL AUMF*, Just Security (Mar. 18, 2015) available at <https://www.justsecurity.org/21220/sunsets-supersession-alternatives-another-cpc/>.

19 See Bill French, John Bradshaw, National Security Network, *Ending the Endless War: An Incremental Approach to Repealing the 2001 AUMF*, p. 24–26 (Aug. 2014) available at [https://www.justsecurity.org/wp-content/uploads/2014/08/ENDING-THE-ENDLESS-WAR\\_FINAL.pdf](https://www.justsecurity.org/wp-content/uploads/2014/08/ENDING-THE-ENDLESS-WAR_FINAL.pdf).

20 Julian Hattem, *Obama signs NSA bill, renewing Patriot Act powers*, The Hill (Jun. 2, 2015) available at <https://thehill.com/policy/national-security/243850-obama-signs-nsa-bill-renewing-patriot-act-powers>; *Congress extends surveillance law*, Politico (Dec. 28, 2012) available at <https://www.politico.com/story/2012/12/congress-extends-foreign-surveillance-law-085563>.

## ✓ Support efforts in Congress to reform the War Powers Act

To secure lasting change for future generations, the administration should support structural reforms by Congress that protect against unilateral executive branch uses of force and restore the constitutional balance of war powers enshrined in the Constitution, including by reforming and modernizing the War Powers Act.

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At a minimum, such reforms should:

- **Recognize that the Constitution vests the decision to go to war solely in Congress**, with only a narrow exception for the President to use force temporarily to repel a sudden attack if that force is necessary and there is no time to obtain advance authorization from Congress;
- **Require the president to report any such defensive use of force without advance Congressional authorization**

**to Congress within 48 hours** of the actions taken with an explanation of the necessity to use force and a statement as to whether the hostilities are concluded or ongoing. Within seven days following the initial reporting deadline, the president should be required to submit a request for Congressional authorization if hostilities remain ongoing. If Congressional authorization is not provided within 20 days, there should be a mechanism for requiring the automatic termination of hostilities;

- **Define “hostilities,” “imminent hostilities,” and other ambiguities** in the existing law to ensure that the requirement for advance Congressional approval applies to all actions by U.S. forces that involve the use of deadly force;
- **Require the president to provide ongoing unclassified reports on current and possible engagement in hostilities whenever there is a material change**, or no less frequently than every 30 days to keep Congress fully and currently informed;
- **Recognize that introducing U.S. forces into hostilities** in any additional countries or against any additional nations, organized armed groups, or forces is only permitted when Congress has provided advanced authorization;
- **Provide expedited Congressional procedures for consideration of resolutions** to cease the use of U.S. Armed Forces in hostilities or situations where there is a serious risk of hostilities;
- **Provide judicial review** for non-compliance with resolutions to cease hostilities or automatic termination requirements, as well as for credibly alleged violations of international humanitarian law or human rights law; and
- **Prohibit funding for activities related to hostilities** that do not receive required authorization from Congress in advance.

The very notion of “endless war” serves as an indictment of 20 years of policy failures, and a reference to the devastating harms these failures have caused at home and abroad concerning peace, security, and the rule of law. American leaders need to move beyond promises to end the endless war paradigm by taking concrete and necessary actions, in line with clear public sentiment. A more secure and peaceful future for our collective security, one that better allows us to face other pressing challenges, depends on such action.

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