

## USE OF FORCE, ARMS CONTROL, AND NONPROLIFERATION

*United States Withdraws Troops from Syria, Leaving Kurds Vulnerable*

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Political instability and violence escalated in northeastern Syria in October 2019, following President Trump's decision to withdraw most U.S. troops from the country. Trump's decision left U.S.-backed Kurdish forces vulnerable to attacks by Turkey, intensifying an already dire humanitarian situation. Soon thereafter, Kurdish leaders negotiated an agreement with the Russian-backed Syrian government to fill the vacuum left by the U.S. withdrawal. By late October, the president of Turkey agreed to a ceasefire in response to diplomatic and economic pressure from the United States and to the arrival of Russian and Syrian troops into northeastern Syria. Shortly thereafter, U.S. forces carried out a raid in northwestern Syria that resulted in the death of the leader of the Islamic State of Iraq and the Levant (ISIL)—a raid that relied in part on intelligence gathered earlier by Kurdish allies.

Since 2016, American Special Operation troops have been on the ground fighting alongside the Syrian Democratic Forces, a Kurdish-led militia, in an effort to defeat ISIL.<sup>1</sup> On December 19, 2018, Trump abruptly announced that the United States would withdraw entirely from Syria in light of the territorial defeat of ISIL, but he scaled back this decision after receiving bipartisan criticism from Congress and significant opposition from executive branch officials.<sup>2</sup> In the months following this announcement, Turkish President Recep Tayyip Erdoğan repeatedly threatened that Turkey would launch military operations into Kurdish-controlled northeastern Syria.<sup>3</sup>

In August of 2019, the United States and Turkey moved forward with the creation of a “safe zone” in northeastern Syria. The American embassy in Turkey explained that they had agreed on:

- (a) the rapid implementation of initial measures to address Turkey's security concerns;
- (b) to stand-up a joint operations center in Turkey as soon as possible in order to coordinate and manage the establishment of the safe zone together;
- (c) that the safe zone shall become a peace corridor, and every effort shall be made so that displaced Syrians can return to their country.<sup>4</sup>

<sup>1</sup> See Jean Galbraith, *Contemporary Practice of the United States*, 113 AJIL 394, 395 (2019) (also noting that the United States first entered the conflict in Syria in 2014). The Obama administration asserted domestic legal authority for using force in Syria based on the 2001 and 2002 Authorizations for Use of Military Force and claimed an international right to use force to respond in self-defense under Article 51 of the United Nations Charter to threats posed by ISIL. *Id.* at 394.

<sup>2</sup> *Id.* at 397–99.

<sup>3</sup> Sarah Dadouch, *Turkey to Launch Offensive in Kurdish-Controlled Area in Northern Syria: Erdoğan*, REUTERS (Aug. 4, 2019), at <https://www.reuters.com/article/us-syria-security-turkey/turkey-to-launch-offensive-in-kurdish-controlled-area-in-northern-syria-erdogan-idUSKCN1UU0GS>. The Turkish government views Kurdish forces within Syria as closely connected with Kurdish separatists within Turkey, whom it considers terrorists. See Rod Nordland, *U.S. Exit Seen as a Betrayal of the Kurds, and a Boon for ISIS*, N.Y. TIMES (Dec. 19, 2018), at <https://www.nytimes.com/2018/12/19/world/middleeast/syria-kurds-isis-us.html>.

<sup>4</sup> U.S. Mission Turkey, *Statement on Joint Military Talks Regarding Syria* (Aug. 7, 2019), at <https://tr.usembassy.gov/statement-on-joint-military-talks-regarding-syria> [<https://perma.cc/D654-AN5Z>].

In the following month, U.S. troops worked with the Syrian Democratic Forces to remove their trenches and other military barriers within the safe zone.<sup>5</sup>

Notwithstanding this development, Erdoğan informed Trump on October 6 of Turkey's intention to invade northeastern Syria.<sup>6</sup> The White House press secretary summarized the phone call as follows:

Turkey will soon be moving forward with its long-planned operation into Northern Syria. The United States Armed Forces will not support or be involved in the operation, and United States forces, having defeated the [ISIL] territorial "Caliphate," will no longer be in the immediate area . . . . Turkey will now be responsible for all [ISIL] fighters in the area captured over the past two years in the wake of the defeat of the territorial "Caliphate" by the United States.<sup>7</sup>

The next morning, Trump tweeted his wish to "get out of these ridiculous Endless Wars . . . and bring our soldiers home" and stated that other actors in the region would "have to figure the situation out."<sup>8</sup> Trump's tacit acceptance of Turkey's planned advance into northern Syria and his promise to "get out" of the area drew sharp criticism from former Trump administration officials, congressional leaders, and European allies.<sup>9</sup> Within a week, the U.S. House of Representatives passed a resolution expressing opposition to Trump's decision by a vote of 354 to 60.<sup>10</sup> Kurdish leaders, including Syrian Democratic Forces commander General Mazloum Kobane Abdi, responded to their abandonment by U.S. allies with dismay.<sup>11</sup>

On October 9, Turkey launched its offensive into northeastern Syria, conducting air strikes and sending ground troops across the border.<sup>12</sup> Turkey informed the UN Security Council by letter that it was invoking its right to self-defense under Article 51 of the UN Charter to "target terrorists and their hideouts, shelters, emplacements, weapons, vehicles

<sup>5</sup> Sarah El Deeb, *Turkey, US Conduct "Safe Zone" Joint Patrols in North Syria*, AP NEWS (Sept. 8, 2019), at <https://apnews.com/b6e7c9b282844b92bed9a2e5bc7703d9>.

<sup>6</sup> White House Press Release, Statement from the Press Secretary (Oct. 6, 2019), at <https://www.whitehouse.gov/briefings-statements/statement-press-secretary-85> [<https://perma.cc/4SS8-WTQC>].

<sup>7</sup> *Id.*

<sup>8</sup> Donald J. Trump (@realDonaldTrump), TWITTER (Oct. 7, 2019, 7:40 AM), at <https://twitter.com/realDonaldTrump/status/1181172457811697664> [<https://perma.cc/XH8R-FLC3>].

<sup>9</sup> See Peter Baker & Lara Jakes, *Trump Throws Middle East Policy Into Turmoil Over Syria*, N.Y. TIMES (Oct. 7, 2019), at <https://www.nytimes.com/2019/10/07/us/politics/turkey-syria-trump.html>; James McAuley & Rick Noack, *Withdrawal of U.S. Troops from Northern Syria Angers, Worries Europeans*, WASH. POST (Oct. 7, 2019), at [https://www.washingtonpost.com/world/europe/trumps-pullout-of-us-troops-from-northern-syria-angers-worries-europeans/2019/10/07/7a2c89f2-e8fe-11e9-85c0-85a098e47b37\\_story.html](https://www.washingtonpost.com/world/europe/trumps-pullout-of-us-troops-from-northern-syria-angers-worries-europeans/2019/10/07/7a2c89f2-e8fe-11e9-85c0-85a098e47b37_story.html); Eric Schmitt, Maggie Haberman & Edward Wong, *President Endorses Turkish Military Operation in Syria, Shifting U.S. Policy*, N.Y. TIMES (Oct. 7, 2019), at <https://www.nytimes.com/2019/10/07/us/politics/trump-turkey-syria.html>.

<sup>10</sup> H.R.J. Res. 77, 116th Cong. (2019).

<sup>11</sup> Liz Sly, Sarah Dadouch & Asser Khattab, *Syrian Kurds See American Betrayal and Warn Fight Against ISIS Is Now in Doubt*, WASH. POST (Oct. 7, 2019), at [https://www.washingtonpost.com/world/middle\\_east/syrian-kurds-see-american-betrayal-and-warn-alliance-against-isis-is-now-in-doubt/2019/10/07/96c425da-e902-11e9-a329-7378fbfa1b63\\_story.html](https://www.washingtonpost.com/world/middle_east/syrian-kurds-see-american-betrayal-and-warn-alliance-against-isis-is-now-in-doubt/2019/10/07/96c425da-e902-11e9-a329-7378fbfa1b63_story.html) (also quoting a statement from Syrian Kurdish leaders that "[t]o disregard our partnership would also send a clear signal to all would-be partner forces of the United States that a U.S. alliance may not be trustworthy").

<sup>12</sup> *Turkey-Syria Border: All the Latest Updates*, AL JAZEERA (Oct. 10, 2019), at <https://www.aljazeera.com/news/2019/10/turkey-syria-border-latest-updates-191008131745495.html>.

and equipment” and that, consistent with previous counter-terrorism operations, “Turkey’s response will be proportionate, measured and responsible.”<sup>13</sup>

In an unconventional diplomatic letter dated the same day, Trump wrote to Erdoğan as follows:

Let’s work out a good deal! You don’t want to be responsible for slaughtering thousands of people, and I don’t want to be responsible for destroying the Turkish economy—and I will . . . .

I have worked hard to solve some of your problems. Don’t let the world down. You can make a great deal. General Mazloum is willing to negotiate with you, and he is willing to make concessions that they would never have made in the past . . . .

History will look upon you favorably if you get this done the right and humane way. It will look upon you forever as the devil if good things don’t happen. Don’t be a tough guy. Don’t be a fool!<sup>14</sup>

In response to the Turkish offensive, Trump signed an executive order on October 14 that authorized significant sanctions against individuals and entities within the Turkish government involved in this offensive.<sup>15</sup> The order also authorized secondary sanctions on foreign banks doing business with such individuals or entities.<sup>16</sup> That same day, the Department of the Treasury designated two ministries and three senior Turkish government officials as subject to these sanctions.<sup>17</sup> The Treasury secretary stated that “[t]he United States is holding the Turkish Government accountable for escalating violence by Turkish forces, endangering innocent civilians, and destabilizing the region.”<sup>18</sup> Separately, on October 15, the Department of Justice indicted Halkbank, a Turkish state-owned bank, on fraud and money laundering charges relating to the evasion of U.S. sanctions on Iran.<sup>19</sup>

<sup>13</sup> Letter Dated 9 October 2019 from the Permanent Representative of Turkey to the United Nations Addressed to the President of the Security Council, UN Doc. S/2019/804, at <https://undocs.org/S/2019/804>. The European Parliament passed a resolution describing Turkey’s actions as “a grave violation of international law” that “is undermining the stability and security of the region as a whole, bringing further suffering to people already affected by war, causing the mass displacement of civilians, and could contribute to the re-emergence of [ISIL].” Resolution on the Turkish Military Operation in Northeast Syria and Its Consequences, Eur. Parl. Doc. 2886(RSP) (2019), at [http://www.europarl.europa.eu/doceo/document/RC-9-2019-0123\\_EN.html](http://www.europarl.europa.eu/doceo/document/RC-9-2019-0123_EN.html).

<sup>14</sup> *Read Trump’s Letter to President Erdoğan of Turkey*, N.Y. TIMES (Oct. 16, 2019), at <https://www.nytimes.com/interactive/2019/10/16/us/politics/trump-letter-turkey.html>. That same day, Trump stated that the United States was relocating “some of the most dangerous [detained ISIL] fighters” out of the area. Donald J. Trump, Remarks by President Trump at Signing of Executive Orders on Transparency in Federal Guidance and Enforcement, 2019 DAILY COMP. PRES. DOC. NO. 705, at 7 (Oct. 9).

<sup>15</sup> Exec. Order No. 13,894, 84 Fed. Reg. 55,851 (Oct. 14, 2019).

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

<sup>17</sup> U.S. Dep’t of Treasury Press Release, Treasury Designates Turkish Ministries and Senior Officials in Response to Military Action in Syria (Oct. 14, 2019), at <https://home.treasury.gov/news/press-releases/sm792> [<https://perma.cc/NU5X-QULW>].

<sup>18</sup> *Id.*

<sup>19</sup> U.S. Dep’t of Justice Press Release, Turkish Bank Charged in Manhattan Federal Court for Its Participation in a Multibillion-Dollar Iranian Sanctions Evasion Scheme (Oct. 15, 2019), at <https://www.justice.gov/opa/pr/turkish-bank-charged-manhattan-federal-court-its-participation-multibillion-dollar-iranian> [<https://perma.cc/34FZ-XDF7>].

Also in response to the Turkish offensive, Kurdish forces reached a deal with the Russian-backed Syrian government on October 13 that would allow government forces to return to northeastern Syria to combat Turkish military advances.<sup>20</sup> Filling the vacuum left by the U.S. withdrawal, Syrian government forces immediately moved in, along with Russian troops.<sup>21</sup>

On October 17, Vice President Pence led a delegation to Ankara, Turkey, in an attempt to negotiate a ceasefire with Erdoğan. After several hours of diplomatic discussions, Turkey agreed to a five-day ceasefire.<sup>22</sup> The United States and Turkey issued a joint statement following the meeting that outlined a thirteen-point agreement.<sup>23</sup> This agreement included the following:

1. The US and Turkey reaffirm their relationship as fellow members of NATO. The US understands Turkey's legitimate security concerns on Turkey's southern border.  
...
4. The two countries reiterate their pledge to uphold human life, human rights, and the protection of religious and ethnic communities.  
...
7. The Turkish side expressed its commitment to ensure safety and well-being of residents of all population centers in the safe zone controlled by the Turkish Forces (safe zone) and reiterated that maximum care will be exercised in order not to cause harm to civilians and civilian infrastructure.  
...
10. The safe zone will be primarily enforced by the Turkish Armed Forces and the two sides will increase their cooperation in all dimensions of its implementation.
11. The Turkish side will pause Operation Peace Spring in order to allow the withdrawal of [certain Syrian Kurdish forces] from the safe zone within 120 hours. Operation Peace Spring will be halted upon completion of this withdrawal.
12. Once Operation Peace Spring is paused, the US agrees not to pursue further imposition of sanctions under the Executive Order of October 14, 2019 . . . . Once Operation Peace Spring is halted as per paragraph 11 the current sanctions under the aforementioned Executive Order shall be lifted.<sup>24</sup>

Five days later, on October 22, Erdoğan and Russian President Vladimir Putin reached an agreement that their forces would share supervision over a strip of territory more than twenty

<sup>20</sup> Ben Hubbard, Charlie Savage, Eric Schmitt & Patrick Kingsley, *Abandoned by U.S. in Syria, Kurds Find New Ally in American foe*, N.Y. TIMES (Oct. 13, 2019), at <https://www.nytimes.com/2019/10/13/world/middleeast/syria-turkey-invasion-isis.html>.

<sup>21</sup> Ben Hubbard, Charlie Savage, Eric Schmitt & Patrick Kingsley, *In Syria, Russia Is Pleased to Fill an American Void*, N.Y. TIMES (Oct. 15, 2019), at <https://www.nytimes.com/2019/10/15/world/middleeast/kurds-syria-turkey.html>.

<sup>22</sup> Annie Karni, Lara Jakes & Patrick Kingsley, *Turkey Agrees to Pause Fighting, but Not to Withdraw Forces from Northern Syria*, N.Y. TIMES (Oct. 17, 2019), at <https://www.nytimes.com/2019/10/17/world/middleeast/trump-turkey-invasion-syria.html>.

<sup>23</sup> White House Press Release, *The United States and Turkey Agree to Ceasefire in Northeast Syria* (Oct. 17, 2019), at <https://www.whitehouse.gov/briefings-statements/united-states-turkey-agree-ceasefire-northeast-syria> [<https://perma.cc/Z3DK-7LX2>].

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

miles wide running hundreds of miles along Syria's northeastern border.<sup>25</sup> The next day, Trump announced a "permanent" ceasefire by Turkey:

Early this morning, the government of Turkey informed my administration that they would be stopping combat and their offensive in Syria, and making the ceasefire permanent. And it will indeed be permanent. However you would also define the word "permanent" in that part of the world as somewhat questionable, we all understand that. But I do believe it will be permanent.<sup>26</sup>

Trump accordingly instructed the secretary of the Treasury "to lift all sanctions imposed on October 14 in response to Turkey's original offensive moves against the Kurds in Syria's northeast border region."<sup>27</sup> Trump stated that this ceasefire "validates our course of action with Turkey that only a couple of weeks ago were scorned . . ."<sup>28</sup> He also made clear that "a small number of U.S. troops will remain in the area where they have the oil. And we're going to be protecting it, and we'll be deciding what we're going to do with it in the future."<sup>29</sup>

Several days later, Trump announced one further, significant development stemming from U.S. military operations in Syria. This was the death of ISIL leader Abu Bakr al-Baghdadi,<sup>30</sup> who died during a raid conducted by U.S. forces in northwestern Syria. Prior to this operation, Kurdish allies had tracked al-Baghdadi and provided information critical to the launch of the attack.<sup>31</sup> Although a spokesperson for the Kremlin declined to reveal whether the United States had informed Russia of the operation in advance,<sup>32</sup> Trump observed that "[w]e had to fly over certain Russia areas, Russia-held areas" and "Russia treated us great."<sup>33</sup>

On November 13, Erdoğan met with Trump at the White House.<sup>34</sup> At a joint press conference with Erdoğan, Trump stated:

<sup>25</sup> Kareem Fahim, Karen DeYoung & Missy Ryan, *Russia and Turkey Reach Deal to Push Kurdish Forces Out of Zone in Northern Syria*, WASH. POST (Oct. 22, 2019), at [https://www.washingtonpost.com/world/middle\\_east/turkeys-erdogan-meets-with-putin-in-russia-to-discuss-syrian-operation/2019/10/22/764abcea-f43f-11e9-b2d2-1f37c9d82dbb\\_story.html](https://www.washingtonpost.com/world/middle_east/turkeys-erdogan-meets-with-putin-in-russia-to-discuss-syrian-operation/2019/10/22/764abcea-f43f-11e9-b2d2-1f37c9d82dbb_story.html). For an informative graphic detailing the changes in control over northern Syria during this short period, see Allison McCann, Anjali Singhvi & Jeremy White, *How the New Syria Took Shape*, N.Y. TIMES (Oct. 30, 2019), at <https://www.nytimes.com/interactive/2019/10/30/world/middleeast/syria-turkey-maps.html>.

<sup>26</sup> White House Press Release, Remarks by President Trump on the Situation in Northern Syria (Oct. 23, 2019), at <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-situation-northern-syria/> [<https://perma.cc/M2KP-74VB>].

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> White House Press Release, Statement from the President on the Death of Abu Bakr al-Baghdadi (Oct. 27, 2019), at <https://www.whitehouse.gov/briefings-statements/statement-president-death-abu-bakr-al-baghdadi/> [<https://perma.cc/YD4E-CWFC>].

<sup>31</sup> Ben Hubbard & Eric Schmitt, *As Kurds Tracked ISIS Leader, U.S. Withdrawal Threw Raid into Turmoil*, N.Y. TIMES (Oct. 28, 2019), at <https://www.nytimes.com/2019/10/28/world/middleeast/isis-kurds-baghdadi.html>.

<sup>32</sup> Humeyra Pamuk & Andrew Osborn, *U.S. Wants to Bolster Fight Against Islamic State After Its Leader's Death*, REUTERS (Oct. 28, 2019), at <https://www.reuters.com/article/us-mideast-crisis-baghdadi/u-s-wants-to-bolster-fight-against-islamic-state-after-its-leaders-death-idUSKBN1X71DY>.

<sup>33</sup> White House Press Release, Remarks by President Trump on the Death of ISIS Leader Abu Bakr al-Baghdadi (Oct. 27, 2019), at <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-death-isis-leader-abu-bakr-al-baghdadi/> [<https://perma.cc/2DGA-U7YS>].

<sup>34</sup> White House Press Release, Remarks by President Trump and President Erdoğan of Turkey in Joint Press Conference (Nov. 13, 2019), at <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-president-erdogan-turkey-joint-press-conference/> [<https://perma.cc/FZ2C-LMG3>].

Today, the ceasefire continues to hold. And I want to thank the President for his partnership and cooperation as we work to build a more stable, and peaceful, and prosperous Middle East. We've assured each other that Turkey will continue to uphold what it's supposed to uphold. I'm a big fan of the President, I have to tell you that. And I know that the ceasefire, while complicated, is moving forward and moving forward at a very rapid clip. There's a lot of people that want to see that work after so many decades and so many centuries, you might say.<sup>35</sup>

In his remarks, Erdoğan noted his plans to repatriate one million Syrian refugees into the safe zone.<sup>36</sup> Erdoğan had met several weeks earlier with UN Secretary-General António Guterres to discuss this issue, and Guterres “stressed the basic principles relating to the voluntary, safe and dignified” return of refugees.<sup>37</sup> The United Nations High Commissioner for Refugees is in the process of reviewing Erdoğan's plan,<sup>38</sup> which would involve settling Arab Syrians from other regions within Syria into the largely Kurdish northeast.<sup>39</sup> In early November, a senior UN humanitarian advisor indicated that “localized heavy fighting continues” in northeastern Syria, where “recent displacements are compounding an already dire situation in which some 710,000 people were already displaced and approximately 1.8 million remain in need of humanitarian assistance.”<sup>40</sup>

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> UN Sec'y-Gen. Press Release, Readout of the Secretary-General's Meeting with H.E. Mr. Recep Tayyip Erdoğan, President of Turkey (Nov. 1, 2019), at <https://www.un.org/sg/en/content/sg/readout/2019-11-01/readout-of-the-secretary-general%E2%80%99s-meeting-he-mr-recep-tayyip-erdogan-president-of-turkey>.

<sup>38</sup> *Id.*

<sup>39</sup> See Dominic Evans, *Turkey's Plan to Settle Refugees in Northeast Syria Alarms Allies*, REUTERS (Oct. 8, 2019), at <https://www.reuters.com/article/us-syria-security-turkey-refugees-graphi/turkeys-plan-to-settle-refugees-in-northeast-syria-alarms-allies-idUSKBN1WN28J> (noting widespread skepticism regarding this plan); see also Lama Fakih, *Turkey's "Safe Zone" Would Be Anything But*, HUM. RTS. WATCH (Oct. 11, 2019), at <https://www.hrw.org/news/2019/10/11/turkeys-safe-zone-would-be-anything> (stating that “Turkey's plan to create a 32-kilometer ‘safe zone’ in Syria where it could relocate one million Syrian refugees is woefully misguided and dangerous—and bound to fail”).

<sup>40</sup> *Thursday's Daily Brief: DR Congo Warlord Sentenced, Iraq Protest Latest, UN Food Outlook Report, Syrian Humanitarian Update, Tech and the Food Chain*, UN NEWS (Nov. 7, 2019), at <https://news.un.org/en/story/2019/11/1050921>.