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## **Beyond Guantanamo**

Matthew Waxman (op-ed)  
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This month the United States and the government of Afghanistan reached an understanding that will allow for the gradual transfer of Afghan detainees now held by the Defense Department at Guantanamo Bay and in Afghanistan to the control of Afghan authorities. This is not only a significant step forward in the U.S.-Afghan security relationship but the latest example of how the United States and its coalition partners can share the burdens in mitigating the dangers terrorist fighters pose.

Terrorists must be captured and prevented from returning to the global battlefield. But it need not -- nor in many cases should it -- be the United States that detains them for the long term. All nations that have joined forces in the global war on terrorism share responsibility for keeping captured terrorists from returning to violence.

American armed forces will continue to capture and detain terrorist fighters like the approximately 510 enemy combatants currently at Guantanamo. The principle that a state is legally entitled to detain enemy fighters until the enemy -- in this case, al Qaeda and its affiliates, including the Taliban -- is defeated is not a new one; it is deeply rooted in international law. The Geneva Convention, for example, reflects the well-established notion that captured enemy fighters can be kept off the battlefield until the war is over.

But at the same time, the United States has no interest in holding anyone unnecessarily. Besides the moral cost, unnecessary detentions would undermine our message of freedom and democracy, which is essential to combating violent extremism. And beyond these humanitarian and political reasons, detaining anyone unnecessarily would divert valuable military resources in the war on terrorism.

To balance these demands, the United States has taken the extraordinary step during an ongoing war of instituting individual review processes to release detainees assessed as no longer constituting a significant threat, and to transfer other detainees to their home countries or other countries for possible detention, investigation or prosecution as appropriate.

These reviews began soon after enemy combatants were first brought to Guantanamo, and they continue at least once a year for each detainee there. To date the United States has released or transferred close to 250 Guantanamo detainees, to about a dozen countries, including Afghanistan, Pakistan, Saudi Arabia, Russia, Australia, the United Kingdom and France.

Such releases and transfers during an ongoing war entail a significant calculated risk. Detainees at Guantanamo include terrorist trainers, bombmakers, recruiters, facilitators and potential suicide bombers. In fact, about a dozen of those who had been thought to pose little continuing threat and were released have returned to the fight and engaged in hostile activities against U.S. forces or our coalition partners. But given the unique characteristics of the war against al Qaeda -- including its likely long duration and global scope -- it is the right course so long as coalition partners effectively share the burden for mitigating this risk.

The United States is looking for ways to accelerate transfer of detainees to their home countries or to other countries that will take responsibility for them. But before doing so, we must be assured of two things.

First, receiving countries must commit to credible and effective steps, consistent with their own laws, to prevent transferred combatants from re-engaging in hostile activity. This includes options such as home-country or third-country investigation, prosecution, detention, or other security measures that mitigate the continuing threat these individuals pose.

Second, receiving countries must pledge to treat transferred detainees humanely. Consistent with the Convention Against Torture and its other international legal obligations, the United States will not transfer any detainee to a country where he is likely to be tortured. In transferring detainees we cannot compromise our commitment to humane treatment or U.S. efforts to promote human rights.

The pace and extent of transfers will depend in part on our coalition partners' ability and willingness to share the burden of preventing more terrorist activities. Where necessary, the United States will assist our partners to develop the legal and physical capacity to contain terrorist threats.

For example, as part of the transfer arrangement with the government of Afghanistan, the United States has committed to renovate facilities for holding enemy fighters. It will also train and equip Afghan personnel so they can assume this mission safely and humanely.

The war against al Qaeda and its supporters is not being fought by the United States alone but by a broad coalition of states facing a common threat. Arrangements such as the one just negotiated with Afghanistan mark significant advances in what is truly a global war on terrorism.

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