

GRADING PROGRESS ON U.S. DRONE POLICY

REPORT CARD

On The Recommendations of
The Stimson Task Force
on U.S. Drone Policy

Improve transparency in



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Grading Progress on U.S. Drone Policy:
Report Card on The Recommendations of
The Stimson Task Force on U.S. Drone Policy

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GRADING PROGRESS ON U.S. DRONE POLICY

REPORT CARD

On The Recommendations of
The Stimson Task Force on U.S. Drone Policy

PROJECT DIRECTOR

Rachel Stohl



INTRODUCTION

In June 2014, the Stimson Task Force on U.S. Drone Policy released its report and recommendations. The task force, chaired by former commander of U.S. Central Command General John P. Abizaid and Rosa Brooks, Georgetown University law professor and former Counselor to the Under Secretary of Defense for Policy, included eight other members that represented three administrations, a variety of key government agencies — including the Departments of State and Defense, the CIA, the FBI, and the military — and experts with experience in the private sector, legal community and academia.

The task force outlined eight concrete recommendations designed to ensure that U.S. drone policy is transparent, accountable, and consistent with long-term U.S. national security goals, foreign policy ideals, and commercial interests. In sum, the eight detailed recommendations suggest an overhaul of U.S. drone policy with a focus on improving oversight, accountability, and transparency; developing forward-looking international norms relating to the use of lethal force in nontraditional settings; devising sound export control and research and development policies for unmanned aerial vehicles (UAVs); and developing drone standards for domestic and international use.

Given the rapid spread of drone technology around the world, it is important that the Obama administration — and any administration that follows — develop a transparent and accountable U.S. drone policy that is both practical and comprehensive, and that sets a constructive international precedent for future drone use worldwide. The task force concluded that current U.S. policy suffers from a lack of transparency and accountability, and the *ad hoc* way in which the United States has implemented its nascent policy has negatively impacted U.S. and international perceptions of the technology. In short, the lack of a clear U.S. policy risks damaging consequences for the United States, at home and abroad, and undermines efforts to support the international rule of law.

Stimson sponsored the task force in an effort to respond to the president's call for constructive new approaches to thinking about drones that arose from his May 2013 speech at National Defense University (NDU). Over the past three years, it has been our intention to meaningfully contribute to the development of U.S. drone policy, regulations and standards. In that vein, Stimson has examined drone policy development over the 17 months that have followed the task force report, with a view to identifying ways in which the Obama administration can live up to the promises and values of increased transparency and greater oversight and accountability of the U.S. drone program as outlined by President Obama in his NDU speech and subsequent remarks at West Point in 2014, as well as in addresses to the nation in 2015.

METHODOLOGY

From July 2014 to December 2015, Stimson analyzed the progress of the Obama administration in implementing the recommendations of the Stimson Task Force on U.S. Drone Policy. We have assigned “grades” — based on how the Obama administration has done on implementing the eight recommendations made by the task force. In addition, this report describes, in detail, the steps taken by the administration to address the existing shortcomings in U.S. law, policy and practice and fulfill the task force’s recommendations. While this “Report Card” is not meant to capture every step taken by the Obama administration in the 17-month period, we have tried to be comprehensive in our scope, and fair in our analysis. The “Report Card” is based on publicly available information, and we recognize that the administration may have taken additional steps that are classified.

GRADING SCALE

A	Has implemented all elements of task force recommendation
B	Has taken nearly all steps to implement task force recommendation
C	Has taken significant steps to implement task force recommendation
D	Has taken few steps to implement task force recommendation
F	Has taken no steps to implement task force recommendation
U	Unknown if steps taken to implement task force recommendation

REPORT CARD

TASK FORCE RECOMMENDATIONS	GRADE	ACTIONS TAKEN
<p>1 Conduct a strategic review and cost-benefit analysis of the role of lethal UAVs in targeted counterterrorism strikes</p>	U	Based on publicly available information, it is not clear whether the administration has taken steps toward conducting such a strategic review and/or cost-benefit analysis of lethal drone strikes.
<p>2 Improve transparency in targeted UAV strikes:</p> <hr/> <p>A. Acknowledge use of lethal force in foreign countries, both to Congress and to the American public</p> <hr/> <p>B. Release information on:</p> <ul style="list-style-type: none"> i. Approximate number of strikes carried out by the military ii. Approximate number of strikes carried out by the CIA iii. General location of strikes iv. Number of those known to have been killed v. Organizational affiliation of those known to have been killed vi. Number of civilians known to have been killed vii. Identities of civilians known to have been killed <hr/> <p>C. Order preparation and public release of a detailed report explaining legal basis under domestic and international law of U.S. lethal drone program</p>	<p>D</p> <p>C</p> <p>F</p> <p>F</p>	<p>Though the Congressional intelligence committees are able to review lethal UAV strikes conducted by the CIA and Department of Defense after they occur, the Obama administration has, as a rule, been reluctant to publicly acknowledge the use of lethal force by UAVs in foreign countries.</p> <hr/> <p>The administration has made little to no information public on the approximate number, location, or death tolls of lethal drone strikes, or on which agency is responsible for which strikes.</p> <hr/> <p>Few official government documents have been released relating to the U.S. lethal drone program, primarily under court order.</p>

REPORT CARD

TASK FORCE RECOMMENDATIONS	GRADE	ACTIONS TAKEN
<p>3 Transfer general responsibility for lethal drone strikes from the CIA to the military</p>	D	<p>The administration has taken very few steps publicly to transfer the responsibility for lethal drone strikes from the CIA to the U.S. military, though the White House is discussing creating a dual command structure shared by the CIA and Defense Department.</p>
<p>4 Develop more robust oversight and accountability mechanisms for targeted strikes outside of traditional battlefields</p> <hr/> <p>A. Create a nonpartisan, independent commission to review lethal UAV policy</p>	<p>F</p> <hr/> <p>U</p>	<p>The administration continues to oppose releasing any public information on the U.S. lethal drone program, obstructing efforts to develop greater oversight and accountability mechanisms. The lack of action reinforces the culture of secrecy surrounding the use of armed drones.</p> <hr/> <p>It is not clear to what extent (if any) the administration has worked toward creating a nonpartisan, independent commission to review lethal UAV policy.</p>
<p>5 Foster the development of appropriate international norms for use of lethal force outside of traditional battlefields</p>	D	<p>The administration has done little to foster the development of appropriate international norms for use of lethal force outside of traditional battlefields, even as the use and potential use of lethal drones continues to grow. The minor exception was the “principles for proper use” that were issued as part of the revised U.S. drone export policy.</p>

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TASK FORCE RECOMMENDATIONS	GRADE	ACTIONS TAKEN
<p>6 Assess UAV-related technological developments and likely future trends, and develop an interagency research and development strategy geared toward advancing U.S. national security interests in a manner consistent with U.S. values</p>	U	Based on publicly available information, it is not clear whether the administration has conducted an interagency review to evaluate technological developments and evolution of UAVs with lethal capabilities, and thus unclear whether the administration is taking steps to develop a comprehensive interagency research, development, and use strategy for drones.
<p>7 Review and reform UAV-related export control rules and FAA rules</p>	C	Drone export policy is one area where the Obama administration has made progress. On February 17, 2015, the administration released a new export policy for UAVs.
<p>8 FAA should accelerate its efforts to meet the requirements of the 2012 FAA Reauthorization Bill</p>	C	Since the enactment of the 2012 FAA Modernization and Reform Act, the FAA has been slow to adopt rules regulating the use of civil drones in the U.S. airspace.

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BEFORE FLIGHT

OBAMA ADMINISTRATION IMPLEMENTATION OF TASK FORCE RECOMMENDATIONS

1 RECOMMENDATION

Conduct a strategic review and cost-benefit analysis of the role of lethal UAVs in targeted counterterrorism strikes

GRADE

U

Based on publicly available information, it is not clear whether the administration has taken steps toward conducting such a strategic review and/or cost-benefit analysis of lethal drone strikes.

After announcing the deaths of two civilians — American Warren Weinstein and Italian Giovanni Lo Porto — killed in a counterterrorism strike on the Afghanistan/Pakistan border region (the White House press secretary also announced that two additional Americans were killed via U.S. counterterrorism operations “in the same region”), the president said he had ordered “a full review of what happened.” The review “will identify the lessons that can be learned from this tragedy, and any changes that should be made.”¹ However, it is unclear where this review stands, and whether it will prompt any concrete changes to the U.S. drone program.

There is also no evidence as to whether the administration is currently undertaking a broader, interagency evaluation of the lethal drone program in order to draw larger conclusions on its efficacy. If an evaluation has been conducted, or is ongoing, its existence and results remain classified or outside public view. In the Weinstein/Lo Porto announcement, President Obama stated that the operation “was fully consistent with the guidelines under which we conduct counterterrorism efforts in the region.” Although the administration released an unclassified summary² of its policy standards and guidelines for use of force in counterterrorism operations in May 2013, the overall policy guidance remains classified. Thus, it is not clear to what extent the policy has been implemented, where the policy applies, and which agencies are involved in implementation. Without a clear metric used to evaluate the U.S. lethal drone program, it is impossible to make an assessment about the program’s efficacy or determine whether the program should be continued.

2 RECOMMENDATION

Improve transparency in targeted UAV strikes

GRADE

D

- A. Acknowledge use of lethal force in foreign countries, both to Congress and to the American public

GRADE

C

Though the Congressional intelligence committees are able to review lethal UAV strikes conducted by the CIA and Department of Defense after they occur, the Obama administration has, as a rule, been reluctant to publicly acknowledge the use of lethal force by unmanned aerial vehicles in foreign countries.³ One notable exception⁴ to this rule came after it was discovered that a strike in January 2015 had killed two civilian hostages, American Warren Weinstein and Italian Giovanni Lo Porto, who were being held in an al Qaeda compound near the Afghanistan/Pakistan border region (two other Americans were killed in U.S. counterterrorism operations “in the same region”). President Obama and the White House made public statements disclosing the operation and ordered a review to evaluate lessons learned and any changes that should be made.⁵ However, while the two statements were unusual in that they acknowledged civilian casualties from lethal U.S. drone strikes, the statements themselves actually provided few specific details. Absent from the remarks was the explicit acknowledgment that Weinstein and Lo Porto were in fact killed by drone strikes, the specific location of the strike (only the Afghanistan/Pakistan border region was mentioned), and whether DoD or the CIA (or perhaps another government agency) conducted the strike.

Though press releases as well as an Operation Inherent Resolve page on the Pentagon website account for “airstrikes” that occur in the Defense Department’s operations against the Islamic State (ISIL), DoD generally does not provide detailed information on drone strike operations, and the CIA releases no information on its own strikes, nor does either department regularly release information on operations in other countries.⁶

- B. Release information on: approximate number of strikes carried out by the military; approximate number of strikes carried out by the CIA; general location of strikes; number of those known to have been killed; organizational affiliation of those known to have been killed; number of civilians known to have been killed; identities of civilians known to have been killed

GRADE

F

The administration has made little information public on the approximate number, location, or death tolls of lethal drone strikes, or on which agency is responsible for which strikes.⁷ To date, the administration has held the position that revelations of such historical or summary strike data would implicate intelligence activities, sources and methods.⁸ It should be noted that the administration has, on occasion, released some information regarding lethal drone strikes against al Shabaab members in Somalia — identifying those targeted and killed, as well as the general location of the strike.⁹ While this signals some progress, the administration has refrained from disclosing aggregate data that would improve assessments of the program’s efficacy and overall utility.

As a result, various nongovernmental groups — including the Long War Journal, the Bureau of Investigative Journalism and the New America Foundation — attempt to independently track reports of drone strikes overseas and have collated data on strike location, targets and organizational affiliation, as well as civilian deaths and injuries.

Since June 26, 2014, lethal UAV strikes have been reported in Yemen, Pakistan, Libya, Afghanistan and Somalia, and against the Islamic State in Iraq and Syria. The use of such targeted strikes is expanding as demand for drones increases to support U.S. military and counterterrorism operations around the world. At least twelve countries are believed to host U.S. drones bases: Afghanistan, Djibouti, Ethiopia,¹⁰ Kuwait, Niger, the Philippines, Qatar, Saudi Arabia, Seychelles, Turkey, the United Arab Emirates and Yemen. In general, the strike targets seem to be those the U.S. believes are affiliated with dominant terror or insurgent groups in each country, including the Islamic State, al Qaeda and al Qaeda in the Arabian Peninsula, the Taliban, and al Shabaab.¹¹

Although the administration acknowledged the deaths of two civilians in counterterrorism operations along the Afghanistan-Pakistan border region (American Warren Weinstein and Italian Giovanni Lo Porto) as well as two other Americans (Ahmed Farouq and Adam Gadahn) that were killed in U.S. counterterrorism operations “in the same region,” these announcements remain the exception, rather than the rule. Moreover, the announcement fell short of acknowledging that the men were in fact killed by a drone strike and which government agency conducted the strike.

- C. Order preparation and public release of a detailed report explaining legal basis under domestic and international law of U.S. lethal drone program

GRADE

F

Since June 2014, only a few documents have been released relating to the U.S. lethal drone program, primarily under court order. In the summer of 2014, the administration released a redacted Department of Justice memo on the legality of the 2011 targeting and killing of American citizen Anwar al-Awlaki without due process of law, after

a successful appeal of a joint ACLU–New York Times Freedom of Information Act request.¹² Additionally, the Department of Defense released its Law of War Manual, which contains three short sections on the use of “remotely piloted aircraft” in war.¹³ According to the manual, the laws of war do not prohibit the use of “remotely piloted aircraft,” and “such weapons may offer certain tactical advantages over other weapons systems.”¹⁴ The only qualification to the legality of the use of UAVs by the U.S. military is that such weapons cannot be “inherently indiscriminate” or “calculated to cause superfluous injury.”

3 RECOMMENDATION

Transfer general responsibility for lethal drone strikes from the CIA to the military



To date, the Obama administration has taken very few public steps to transfer the responsibility for lethal drone strikes from the CIA to the U.S. military, though according to a classified plan shared with lawmakers in early June 2015, the White House is discussing the possibility of abandoning its two-year effort to move the lethal drone program squarely into the Pentagon and instead creating a dual command structure shared by the CIA and Defense Department.¹⁵

The lack of substantive administrative action toward transferring responsibility of the U.S. drone program from the CIA to DoD has prompted several legislative efforts. Two House bills, for example, seek to limit drone operations to the Department of Defense. H.R. 466 (Burgess, R-TX) was referred to House Armed Services on January 22, 2015, and would prohibit the CIA from using drones to “carry out a weapons strike or other lethal action.”¹⁶ H.R. 2569 (Yoho, R-FL), by comparison, would prohibit the use of armed drones by any department or agency of the federal government other than the Department of Defense and require that only military personnel “operate, or order the operation of” armed drones.¹⁷ The bill was introduced to the House and referred to the Committee on Armed Services, in addition to the Committee on Intelligence, in May 2015.

In addition, Senator John McCain has reportedly introduced a classified amendment to the 2016 National Defense Authorization Act that expresses support for transferring the CIA drone program to the Department of Defense.¹⁸ However, Senator Dianne Feinstein, formerly chair of the Senate Intelligence Committee, blocked a similar attempt in 2014.



4 RECOMMENDATION

Develop more robust oversight and accountability mechanisms for targeted strikes outside of traditional battlefields



The government continues to oppose releasing any public information on the U.S. lethal drone program, obstructing efforts to develop greater oversight and accountability mechanisms and reinforcing the administration’s culture of secrecy surrounding the use of armed drones. In the wake of the January 2015 strike that killed two civilian hostages, the White House indicated it would conduct an independent review of the operation.¹⁹ And, although the president committed to “identify[ing] the lessons that can be learned from this tragedy, and any changes that should be made,” it is unclear whether or not the review has been completed, and what impact it has had or will have, or whether the results will be made public.

Congress has focused its attention particularly on strengthening oversight of lethal strikes against American citizens. H.R. 137, the DRONES Act, introduced in January 2015, would require presidential review and approval for the lethal targeting of an American citizen or the citizens of a “strategic treaty ally” in a foreign country.²⁰ The bill has been referred to the House Armed Services Committee, the Committee on Intelligence and the House Judiciary Committee.

A. Create a nonpartisan, independent commission to review lethal UAV policy



It is not clear to what extent (if any) the administration has worked toward creating a nonpartisan, independent commission to review lethal UAV policy. If such a commission has been developed, information about its members, scope, mandate, etc., has not been made public.



5 RECOMMENDATION

Foster the development of appropriate international norms for use of lethal force outside of traditional battlefields



The administration has done little to foster the development of appropriate international norms for use of lethal force outside of traditional battlefields, even as lethal drone use and potential use is growing. At least nine countries are believed to have armed drones — China, France, Iran, Israel, Nigeria, Pakistan, South Africa, the United Kingdom and the United States — and at least four countries have used armed drones in combat.²¹ The increased use of U.S. drones to conduct lethal strikes outside of traditional battlefields has been used to underscore the need for appropriate international standards and norms for use, as other countries could use the U.S. rationale for conducting their own strikes. As drone technology continues to proliferate to more actors and is used in more theaters, the United States has been repeatedly urged to take the lead in working with partners and allies to promote the development of international norms.

In August 2015, the United Kingdom reportedly conducted a lethal drone strike against two British citizens who were fighting with the Islamic State in Syria.²² The U.K. government described the strike as an act of self-defense, but has since been criticized for not providing further details on the legal justification for the strike. In a statement to Parliament, Prime Minister David Cameron said,

I am clear that the action we took was entirely lawful. The Attorney General was consulted and was clear there would be a clear legal basis for action in international law. We were exercising the UK's inherent right to self-defence. There was clear evidence of the individuals in question planning and directing armed attacks against the UK. These were part of a series of actual and foiled attempts to attack the UK and our allies.²³

Additionally, in September 2015, Pakistan announced that it had conducted its own lethal drone strike against three suspected terrorists using armed drones.²⁴ It is unclear if and to what extent Pakistan and the United States will coordinate their counterterrorism operations in North Pakistan, particularly with regard to their separate drone programs.

The one occasion where international norms were publicly discussed and elaborated upon was in the February 2015 summary of the new U.S. export policy for unmanned aerial systems, in which the administration included a description of plans to work with other countries to develop international standards for the sale, transfer and use of drones. However, no details of this cooperation have yet been made public, and due to the nature of such undertakings (private meetings with allies, etc.), this work has been described to only occur on a bilateral and *ad hoc* basis.

6 RECOMMENDATION

Assess UAV-related technological developments and likely future trends, and develop an interagency research and development strategy geared toward advancing US national security interests in a manner consistent with US values

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Based on publicly available information, it is not clear whether the administration has conducted an interagency review to evaluate technological developments and evolution of UAVs with lethal capabilities. Without information as to the status of such a review, it is unclear whether the administration is taking steps to develop a comprehensive interagency research, development and use strategy for drones. However, for fiscal year 2016, the Obama administration requested more than \$950 million in funding for research, development, testing and evaluation (RDT&E) of unmanned systems, \$155 million of which is for systems with lethal capabilities.²⁵ This is a decrease from an estimated \$1.2 billion for RDT&E that was appropriated in fiscal year 2015, \$232 million of which was appropriated for systems with lethal capabilities.

Although the Defense Advanced Research Projects Agency (DARPA) is undertaking a number of projects to test expanded uses of unmanned systems, it is not clear to what extent the administration is more broadly evaluating the evolution of the technology and the potential impact of this evolution on future proliferation and use.

DARPA is also testing software improvements that would provide for extended mission capabilities of UAVs, particularly in denied or contested airspaces, increases in autonomous functions, and the potential for distributed air capabilities using smaller air-launched/air-recoverable unmanned systems.²⁶

7 RECOMMENDATION

Review and reform UAV-related export control rules and FAA rules

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Drone export policy is one area where the Obama administration has made progress. On February 17, 2015, the administration released a new export policy for UAVs. While the policy itself remains classified, the U.S. State Department released an unclassified fact sheet that outlines key tenets and provides some clarity on drone transfer decisions. The February release represented an initial step forward for President Obama's promised

expansion of transparency, and was developed in part because of continued calls for clarity on U.S. drone export policy as well as increasing demand for drones from close allies and partners around the world.

The new policy builds on existing legal frameworks that govern drone transfers — including the Arms Export Control Act, the Foreign Assistance Act, the International Traffic in Arms Regulations, the Conventional Arms Transfer Policy, the Export Administration Regulations for commercial drones, and the Missile Technology Control Regime (MTCR) — and adds several obligations for recipient countries in the form of four “principles for proper use.” These principles require recipients of U.S. drones:

- to use the systems in accordance with international law, including international humanitarian law and international human rights law;
- to use them in operations involving the use of force only when there is lawful basis for the use of force under international law;
- to not use them for unlawful surveillance or unlawful use of force against domestic populations; and
- to provide training on the use of drones so as to minimize the risk of damage or unintended injury.²⁷

The policy addresses all military drones, including armed systems, and requires more sophisticated systems to be transferred through the Foreign Military Sales program — that is, government-to-government agreements — so as to provide greater scrutiny and oversight over end-use. Drone transfer decisions will continue to be conducted on a case-by-case basis.

While the policy adds a welcome level of transparency to the drone export process, the process continues to remain quite opaque. There has been no progress on other areas of the task force’s recommendations on this topic, including to:

- More clearly distinguish between military and commercial drones;
- More clearly identify drone characteristics that pose particular security concerns beyond the traditional MTCR Category I 500kg/300km threshold and propose varying levels of export restrictions based on the technological advantages presented by those features, such as speed, radar cross-section, swarming capability, surveillance payload, low observable features, and armor and anti-aircraft countermeasures;
- More clearly identify factors that would allow future exports to overcome the MTCR “presumption of denial,” such as national security costs and benefits of the end-use, the drone characteristics or system modifications, and the overall benefit to the U.S. defense industrial base and to the nation’s technological edge from the transaction; and
- Examine whether and how the potential use of “UAV services” or other alternatives to the transfer of ownership and control of drones could be presented to foreign buyers.

8 RECOMMENDATION**GRADE****C****FAA should accelerate its efforts to meet the requirements of the 2012 FAA Reauthorization Bill**

Since the enactment of the 2012 FAA Modernization and Reform Act, the FAA has been slow to adopt rules regulating the use of civil drones in the U.S. airspace.²⁸

While the FAA has not yet published a final rule on small drones, on February 15, 2015, the agency introduced a notice of proposed rulemaking to provide “a framework of regulations that would allow routine use of certain small unmanned aircraft systems in today’s aviation system, while maintaining flexibility to accommodate future technological innovations.”²⁹ The public comment period for this rule closed on April 24, 2015.

The proposed rule has received mixed reviews. The Small UAV Coalition, for example, took issue with the proposal for drone use in line-of-sight vision, maximum operation height of 500ft, and daytime operation.³⁰ Other criticism has come from commercial companies and privacy advocates. In particular, the integration of drones into the national airspace has received criticism from privacy advocates who have noted that surveillance has not been addressed in the 2012 FAA Modernization and Reform Act and the FAA’s proposed rule for small drones.³¹

President Obama has attempted to address concerns regarding privacy and civil rights through his “Presidential Memorandum: Promoting Economic Competitiveness While Safeguarding Privacy, Civil Rights, and Civil Liberties in Domestic Use of Unmanned Aircraft Systems” — released on the same day as the FAA’s proposal — which sets limits on the extent to which federal agencies can use drones in the United States.³²

Following the introduction of the proposed rule for small drones, the FAA introduced a 200-foot “blanket policy” to accelerate the process of drone integration.³³ Initially, operators were required to obtain a Section 333 exemption in addition to a certificate of operation. The “blanket policy” instead allows for operators to fly commercial drones with merely a Section 333 exemption. This policy will remain in place until the FAA establishes a final rule on small drones.

Section 333 of the 2012 FAA Modernization and Reform Act requires that the Secretary of Transportation identify whether specific UAVs can be integrated within the national airspace before the completion of the integration plan. The first exemption for a commercial UAV was granted in June 2014 for BP and manufacturer AeroVironment to survey pipeline and infrastructure in Alaska. As of January 2016, the FAA has granted more than 2,900 exemptions — more than 1,500 of which are for private companies.³⁴

On June 17, 2015, during a House Committee on Oversight and Government Reform hearing, FAA Deputy Administrator Michael Whitaker confirmed that the FAA will not complete integration by the deadline of September 30, 2015.³⁵ The FAA instead anticipates that it will establish a final rule on small drones by June 2016.³⁶ The FAA has attributed the long delay to the 4,500 comments received on the proposed rule. As a response to the delay and widespread criticism, the FAA created a senior adviser position to prioritize drone integration within the agency and coordinate with the private sector.³⁷ In September 2015, the agency selected two new executives to assume new UAS positions — Marke “Hoot” Gibson as Senior Advisor on UAS Integration and Earl Lawrence as Director of UAS Integration Office within the FAA’s aviation safety organization.³⁸

Additionally, as part of its mandate under the 2012 FAA Modernization Act, the FAA was required to establish a program to integrate drones into the national airspace at six test ranges by August 2012. While the FAA missed this original deadline, the sites were announced in December 2013, and all six became operational by August 2014.

The FAA also established a registry for small drones in an effort to help address safety concerns. The registry was developed in response to increased reports of drone sightings near airports and other public areas. The registry officially became active on December 21, 2015. Under the new rule, registration is required for aircraft weighing more than .55 pounds and less than 55 pounds.³⁹ The FAA reported that more than 45,000 drone users registered their aircraft within the first two days of the registry being open.⁴⁰

The FAA also announced in May 2015 that it has partnered with a number of private sector actors to facilitate integration of drones into the national airspace system beyond the proposed small drones rule.⁴¹ Additionally, the FAA selected Mississippi State University to lead a team of research institutions and serve as the FAA’s National Center of Excellence for Unmanned Aircraft Systems.⁴² The team consists of 22 universities that will assist with additional research on safely integrating drones into the national airspace.⁴³ However, the relationship between the test sites and Center for Excellence has not been made clear, and their collaboration remains untested.

The slow pace of FAA regulations prompted Senators Cory Booker (D-NJ) and John Hoeven (R-ND) to introduce the Commercial UAS Modernization Act on May 12, 2015. This legislation is intended to create interim guidelines for commercial drones.⁴⁴ The bill would ultimately amend the 2012 FAA Modernization and Reform Act by allowing small drones to operate without a certificate of airworthiness (COA) and along similar guidelines underlined by the proposed rule. For instance, the drone may only be operated under visual line of sight and in daylight conditions. Since the introduction of this bill, however, there has been no action taken.

CONCLUSION

In the last year of the administration, there is a finite opportunity to establish a sustainable legacy on drones beyond the numbers of strikes and those killed or injured. But in the months since the task force released its recommendations, there has been virtually no progress and little has changed with regard to U.S. lethal drone policy. With a year remaining in this administration, this is the last chance to place the program on firmer footing and ensure that it is on a more transparent and accountable track for the next administration. The Obama administration could ensure that the U.S. drone program is viewed with greater confidence, sets a positive precedent and helps develop global norms and standards.

The challenge for the Obama administration will be to manage competing priorities, and to balance legal and ethical frameworks with national security and foreign policy concerns in a time of heightened insecurity and increased military actions around the globe. In short, a sustainable U.S. drone policy should be based on core U.S. values and protect U.S. national security, foreign policy and commercial interests.

Drones are not and cannot be a strategy in and of themselves. When used effectively, drones can only be at most a useful and pragmatic tactic or tool of a larger, more clearly articulated strategy — for counterterrorism purposes or to accomplish other military objectives. To that end, the Obama administration could consider six steps that can be taken without significant delay or cost to ensure a sensible and comprehensive U.S. drone policy.

1. Release the Presidential Policy Guidance on “U.S. Policy Standards and Procedures for the Use of Force in Counterterrorism Operations Outside the United States and Areas of Active Hostilities” to provide the basic framework for U.S. drone strikes.
2. Conduct a publicly available strategic review and cost-benefit analysis of lethal drone strikes, particularly in counterterrorism operations.
3. Provide the domestic and international legal framework for the U.S. drone program, including the release of the legal memos undertaken by the Office of Legal Counsel, the CIA, and DoD that contain the interpretations used by the United States with regard to international humanitarian law and international human rights law.
4. Provide historical data, even in aggregate and after strikes have occurred, regarding the specific details of U.S. lethal drone strikes, including the number of strikes in a particular location, the number of casualties, and who conducted the strikes.

5. Set out high-level thoughts on an international law framework for drone use, and a clear and distinct negotiating process to work toward that framework.
6. Propose a revised scope of International Traffic in Arms Regulations/United States Munitions List (USML) coverage for UAVs, in the context of the ongoing USML list reform exercise.

STIMSON TASK FORCE ON U.S. DRONE POLICY

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Rachel Stohl, February 2016

NOTES

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In June 2014, the Stimson Task Force on U.S. Drone Policy released its report and recommendations. The task force outlined eight concrete recommendations designed to ensure that U.S. drone policy is transparent, accountable, and consistent with long-term U.S. national security goals, foreign policy ideals, and commercial interests. From July 2014 to December 2015, Stimson analyzed and “graded” the progress of the Obama administration in implementing the recommendations of the Stimson Task Force on U.S. Drone Policy based on the Obama administration’s performance in implementing the task force’s eight recommendations. This report describes, in detail, the steps taken by the administration to address the existing shortcomings in U.S. law, policy and practice and fulfill the task force’s recommendations.

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