A NEW AGENDA FOR US DRONE POLICY AND THE USE OF LETHAL FORCE

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A NEW AGENDA FOR US DRONE POLICY AND THE USE OF LETHAL FORCE

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I am pleased to present to you A New Agenda for U.S. Drone Policy and the Use of Lethal Force, by Stimson Vice President Rachel Stohl and her colleague Shannon Dick, who serves as a Research Analyst at Stimson. For more than seven years, these colleagues have analyzed the domestic and international implications of the U.S. drone program, with regard to both the use and transfer of lethal drone technology. Their research has closely examined the legal and strategic questions posed by U.S. drone use outside recognized war zones, the ways in which U.S. drone use has led to civilian harm, the unique challenges posed by global drone proliferation, the difficulties in regulating emergent technologies, and the damaging effects of secrecy on democracy, accountability, and the rule of law. Today, the use of armed drones remains controversial due in large part to continued secrecy and lack of accountability surrounding lethal airstrikes outside of traditional battlefields and expansive claims about the legal frameworks – as well as uncertainty about the policy – and strategy guiding such strike decisions.

Given these ongoing controversies, Stimson has come to see and understand the U.S. drone program as emblematic of the larger assumptions and actions that have guided the U.S. use of lethal force around the world over the last two decades. The U.S. drone program demonstrated and enabled a willingness to use lethal force, and that willingness has come to define U.S. engagements in the world for a generation. Yet the bureaucratic machinery that guides the U.S. drone program is not unique to lethal drone use – rather, it shapes and influences where and when the United States uses lethal force (through a variety of means) against perceived adversaries all around the world. The continued availability of this machinery offers more
opportunities to use lethal force in new contexts and with new risks—options that were once viewed as exceptional. In this way, the United States’ current approach to the use of lethal force against terrorism suspects—including but not limited to the use of armed drones—poses an ongoing risk to U.S. national security and foreign policy.

We are deeply grateful to the Open Society Foundations for their financial support of this project. Stimson is equally indebted to both Rachel and Shannon for the remarkable contributions that they have made to the debate over the use of lethal drones in this country and around the world.

Reflecting on the ways in which the U.S. drone program has defined and has been defined by the United States’ nearly 20-year-old approach to the use of lethal force, the Stimson Center aims to offer an updated inventory of the challenges and consequences wrought by such an approach. This report serves as the fourth installment of our analyses on the U.S. drone program and seeks to emphasize the need for a thorough review and reconfiguration of the United States’ approach to the use of lethal force in order to ensure U.S. policies and activities are responsible and accountable in the short, medium, and long term.

**Brian Finlay**
Stimson Center President and CEO
April 2021
INTRODUCTION

The September 11th attacks ushered in a new era of national security and foreign policy in the United States, in which the U.S. government prioritized counterterrorism and established as well as assumed broad policies and authorities for identifying and countering threats to the U.S. through the use of lethal force. The U.S. government’s responses to the tragedy cast a long shadow on the ways in which the United States has since conceptualized and operationalized counterterrorism and the use of lethal force.

Since 9/11, the United States has shifted its posture from responding to the attacks to preventing terrorism through global policies designed to disrupt or deter threats using any means necessary. This policy shift has done more than shape military and intelligence activities for the last 20 years, it has also contributed to policies that have shielded these activities from public scrutiny, and stifled critical debates. In the process, the U.S. security apparatus grew, and U.S. lethal engagements abroad evolved into highly remote, expansive, and opaque operations. One of the most prominent yet secretive legacies of the post-9/11 security apparatus and a core component of the United States’ ongoing “forever wars” is the U.S. program for conducting lethal airstrikes outside war zones against people suspected of terrorism. And among the most notorious symbols for this program are U.S. armed drones.

Since 2013, the Stimson Center has researched the ways in which drone strikes facilitated the evolution of U.S. lethal engagements abroad, and analyzed the risks and challenges posed by the U.S. government’s dependence on armed drones and lethal airstrikes as principal tools for counterterrorism. This report builds on that body of work and examines the consequences of the United States’ permissive use of lethal force around the world – often exhibited by airstrikes.

The U.S. program of lethal airstrikes outside of recognized war zones both defines and symbolizes the United States’ war-based approach to counterterrorism. Sustained by three administrations, the program is a key area of concern because it helped establish and normalize a tactic of targeting individuals on the basis of short-term considerations while overlooking broader strategic concerns and considerations. Once confined to a few countries and targets, the normalization of the program has enabled the secret, unaccountable use of force to spread to new geographies and a growing array of targets who have little to no formal association with the architects of 9/11. Indeed, the U.S. program of lethal airstrikes largely operates in the shadows, targets a shifting set of adversaries, evades proper oversight, perpetuates considerable harm,
minimizes accountability, and has no discernible endgame. The program has greatly hindered independent assessments of the impact, legitimacy, and strategic efficacy of such lethal operations for more than 10 years.

The upcoming 20th anniversary of the 9/11 attacks – paired with the recent transition to a new U.S. presidential administration and the historic and tumultuous events of 2020 – presents an opportune time to reevaluate the polices of the last 20 years. The Biden administration should reflect on the ways in which the post-9/11 U.S. security state has transformed U.S. engagement in the world and reassess the U.S. approach to lethal force to restore the principles and values that drive U.S. foreign policy.

There is an opportunity to accept a bolder vision for how we understand and interpret U.S. national security and to change course, to not only reconsider the United States’ approach, but account for the harm wrought by the prevailing narratives that have guided U.S. policies and actions for a generation. The last 20 years of military and counterterrorism engagement have demonstrated the perils of prevention-based policies, which have focused almost exclusively on anticipation and prevention and have left no room for policies focused on resiliency and rights-promoting responses.

This report reflects on the current status of the U.S. program of lethal airstrikes outside war zones – or what the U.S. government refers to as “areas of active hostilities” – and critically examines the narratives used to rationalize U.S. lethal activities abroad and perpetuate America’s “endless wars.” The report concludes with a series of recommendations for advancing appropriate and responsible U.S. policies guiding the use of force and better aligning U.S. actions with U.S. principles in 2021 and beyond.
This report was written by Shannon Dick and Rachel Stohl at the Stimson Center, with research support from Ryan Fletcher. To conduct this research, Stimson convened an expert working group to reflect on the legacy of U.S. counterterrorism operations since 9/11, focusing on the evolution and sustainment of the U.S. lethal drone program and use of force more broadly, and to offer insights on the ways in which the United States can and should revise its approach. Stimson, alone, is responsible for the content of the report. Stimson also conducted desk research and interviews with current and former U.S. government personnel in efforts to better understand recent shifts in U.S. drone policies and practices as well as to supplement our knowledge of the machinations behind ongoing policy discussions related to the use of lethal force principally outside areas of active hostilities. The report builds on Stimson’s previous work aimed at developing a responsible and accountable drone policy and situates the issue in the larger context and conversation regarding America’s “forever wars.”
TWENTY YEARS OF LETHAL FORCE AND TARGETED STRIKES

For nearly 20 years, the U.S. drone program has reinforced and propagated a framework for the broad use of lethal force that is largely secretive and unaccountable. Since 2002, when the U.S. conducted its first ever lethal strike outside of a war zone, the United States is estimated to have conducted more than 1,500 targeted strikes in at least four countries where the United States was or is not at war. Recent years have laid bare the absence of a coherent policy and strategy underpinning the U.S. program of targeted counterterrorism strikes, in which there continues to be a primacy placed on perceived tactical efficiencies of targeted strikes over strategic direction and risks. The result of this approach has been a policy that is less restrained, less transparent, and less accountable. Indeed, the United States’ overarching approach to lethal force outside recognized war zones operates under a veil of secrecy. It is not clear what the current legal rationales or policy approaches that continue to guide lethal action look like. Moreover, it is also unclear how many people have been injured or killed by U.S. operations or how the administration assesses the results of this framework, including whether it has been successful in achieving its operational and strategic objectives (or even what metrics are being used to define success).

The characteristic that best defines current U.S. policy guiding lethal airstrikes is opacity. After nearly 20 years, a significant absence of public discourse and debate about the impact and consequences of the U.S. approach remains. In that absence, and amid countless other national and international crises, lethal airstrikes – and the use of force more broadly – have become normalized, with the human consequences of these strikes often ignored. Moreover, the legal and policy frameworks that established the “global war on terror,” initiated the U.S. drone program, and set the parameters for the permissive use of lethal force have also become entrenched in national policy. This ossification has facilitated the use of force in more than a dozen countries.

While the U.S. government has undertaken some efforts to bring the drone program out of the shadows and facilitate greater accountability for lethal airstrikes more broadly, the United States’ current approach continues to reflect many of the same risks and concerns that have been discussed among former government officials and civil society experts for years. The Biden administration’s stated intent to end America’s “endless wars” has, however, added urgency to advance responsible and accountable U.S. policies guiding the use of force, particularly while drone technology continues to proliferate and many of the nascent measures to improve transparency and accountability in the U.S. drone program – and the use of lethal force in general – have been rolled back in recent years.
Worldwide, the use of armed drones is increasing. More countries are using these technologies to conduct targeted strikes and support a range of military and counterterrorism operations than ever. The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has called current trends in drone proliferation the “second drone age,” in which “a vast array of State and non-State actors are deploying ever-more advanced drone technologies,” creating an increasingly significant international security challenge.\(^{11}\)

In the last 10 years, a growing number of countries have acquired drones and developed drone programs of their own. In 2010, there were an estimated 60 countries with active military drone programs.\(^{12}\) By March 2020, an estimated 102 countries had active military drone programs. There are likely more than 30,000 drones of various sizes and capabilities currently in service by national militaries around the world.\(^{13}\) An additional six countries are believed to have inactive or pending drone programs and at least 40 countries are believed to possess armed drones or are in the process of acquiring them.\(^{14}\)

Drone proliferation has been facilitated by continued growth in domestic drone production and international exports. According to research by PAX, the Center for the Study of the Drone, and others, at least 21 states now produce military drones, and many more are working to develop domestic production capabilities.\(^{15}\) With the ability to produce drones domestically, these countries have not only expanded their own drone programs but have also exported an increasing number of drones to the global arms market. Indeed, according to the Stockholm International Peace Research Institute, more armed drones were sold between 2017 and 2020 than over the previous eleven years combined.\(^{16}\) By the end of 2020, 449 armed drones had been sold or leased by seven countries to 28 recipients.\(^{17}\) China represents the world’s leading drone exporter, followed by the United States.\(^{18}\) Turkey, Israel, Iran, South Africa, and the United Arab Emirates are also known to have exported armed drones.

As the U.S. drone program has matured, the United States has played a leading role not only in the development and use of armed drones, but also in their international proliferation. During the Obama administration, U.S. drone sales more than doubled as compared to the Bush administration, and sales further accelerated under the Trump administration. By the end of 2020, the Trump administration had authorized the sale of 41 armed or weapons-ready drones to five recipients, as well as the lease of two weaponizable drones to one recipient, representing more drone transfer authorizations in four years than occurred in eight years under President Obama.\(^{19}\) In total, according to the Stockholm International Peace Research Institute, between 2001 and 2020, the United States authorized the sale or lease of 95 drones to nine countries that were either armed at the time of sale or capable of being armed.\(^{20}\) The Trump administration also paved the way for more sales to more recipients in the near future, and U.S. drone sales may continue to grow in the coming years as new buyers express interest – including India, Morocco, and Taiwan.
Increasing drone exports have catalyzed their deployment in conflict theaters across the world. Now, the use of lethal drone strikes is accelerating at a worrying pace. Just three countries – the United States, Israel, and the United Kingdom – conducted drone strikes from 2001 to 2015. That number has more than tripled in the last five years. Since 2015, eight additional countries have carried out drone strikes – some to target and strike suspected militants within their own borders and others to conduct cross-border counterterrorism or other military operations – bringing the total number of countries using lethal drone technology to 11. Furthermore, non-state actors have repeatedly demonstrated the use of less sophisticated drones equipped with munitions to strike battlefield targets as well as government facilities.

For example, the war in Libya has demonstrated growing sophistication and use of armed drones from a variety of actors, including the United Arab Emirates and Turkey, with the UN Panel of Experts on Libya noting in its December 2019 report that armed drones represented “the main means to conduct air strikes and drop precision-guided munitions.” The recent conflict in the Nagorno-Karabakh region further illustrates the increasing normalization of drone warfare.

The number of countries that actively participate in the U.S. drone program – be it through infrastructure, intelligence sharing, or other means – has also grown. This close level of cooperation has made it easier for other countries to develop their own armed drone programs, which are in some respects modeled after the U.S. drone program. For example, the United Kingdom has been closely involved in the U.S. drone program since the early days of the Iraq war, and the United Kingdom’s drone program developed alongside the U.S. program. A review of U.S.-U.K. drone cooperation led Drone Wars UK to conclude that “while the UK is the junior partner, it is without doubt a joint enterprise and the UK is learning and adopting many of the fundamental policies and ways of operating drones from the US. The very DNA of US drone operations has been transplanted into UK air power doctrine and political decision.” In this way, the United States exports not only armed drone technology, but also a framework for use.
From 2017 through 2020, the Trump administration worked to dismantle the Obama administration's limited policy efforts to make the use of lethal force more transparent and responsible. In 2017, the Trump administration reportedly revised the policies, principles, and procedures governing the U.S. drone program and counterterrorism operations outside areas of active hostilities but refused to confirm or deny the existence of the changes when its secrecy was challenged, leaving the United States engaged in lethal operations under secret policy directions and indistinct legal frameworks. Media reports indicated that the Trump administration’s policy altered several principles that had previously guided U.S. drone strikes and use of force in counterterrorism operations, lowering the threshold for what constitutes a legitimate “use of force,” eliminating the requirement that the target pose a “continuing, imminent threat to U.S. persons,” and altering the “near certainty” requirement that the target be present. The changes also reduced the involvement of the White House and civilian departments and agencies in strike decisions by granting operators greater strike-decision authority and expanding the CIA’s role and responsibilities in lethal strike operations. The Trump administration established a patchwork of policies for different theaters, thereby further relaxing targeting standards and civilian protections in some regions. These changes suggest at least a tacit effort to absolve the Trump presidency of the responsibility that comes with using lethal force.

The Trump administration also revised several policies and practices that were intended to restrain the transfer and use of U.S. drones. In 2018, the administration revised U.S. drone export policy to permit the sale of lethal drones under the State Department’s Direct Commercial Sales program, thereby increasing global access to U.S. drone technology. Specifically, this change allowed the defense industry to negotiate contracts directly with prospective buyers. In this policy revision, the administration also removed the special scrutiny required for laser designators, making weaponizable drones more widely available. Furthermore, the administration determined that most drone exports would no longer be subject to mandatory enhanced end-use monitoring – which is traditionally required for advanced technologies – and instead stated that drones may be subject to such monitoring on a case-by-case basis.

In 2019, the Trump administration removed the requirement that the U.S. government report on casualties resulting from all strikes undertaken by the U.S. government outside traditional war zones, as established in Executive Order 13732. However, it’s worth noting that, by statute, reporting on military operations was still required. In June 2020, the Trump administration unilaterally reinterpreted the Missile Technology Control Regime (MTCR) in order to ease U.S. exports of lethal drones and increase opportunities for sales. Specifically, the United States adopted a policy of national discretion with regard to drones classified as Category I systems under the MTCR – the platforms that serve as hallmarks of U.S. counterterrorism
operations – and treat them as Category II systems. Category I systems are subject to the strongest export restraints under the MTCR. Thus, while the United States increased access to U.S. drone technology for prospective buyers, it simultaneously reduced oversight and monitoring of the transfer and use of U.S. lethal drones.

These changes resulted in an incoherent policy towards the transfer and use of armed drones and considerably less transparency and public discourse on the scale of and rationale for the use of lethal force in counterterrorism operations undertaken in the name of U.S. national security. The U.S. program for targeted airstrikes helped create and engender an environment of uncertainty surrounding decisions to use lethal force – arguably the most consequential type of decision a president can make – obstructing accountability and setting a dangerous and destabilizing precedent for drone use around the world.

The Biden administration seems to recognize the risks of the United States’ current approach to lethal strikes and the importance of establishing responsible standards going forward. Media reports indicate that upon entering office, the new administration quietly limited lethal airstrikes and other counterterrorism operations and released “interim guidance” for such operations while it reviews current rules guiding the use of force outside active war zones. The administration, however, did not announce the new limits nor did it publicly release the interim guidance, raising early questions about how it will demonstrate its commitment to transparency and accountability. The review offers a significant opportunity to refine and refocus the United States’ approach in light of a shifting landscape of pressing national and international security challenges and responses to terrorism threats.
The architecture of U.S. lethal counterterrorism strikes created during the Obama administration deteriorated under the Trump administration and is now at increasing risk of being normalized in U.S. policy and practice, as well as internationally. The targeted killing of Iranian Major General Qasem Soleimani via a drone strike in January 2020 accentuated this risk, and demonstrated the strategic dangers of a lethal program characterized by official secrecy and decreasing media coverage and public discourse. Moreover, although the Soleimani strike was not conducted as part of the counterterrorism program, nor was it carried out outside an area of active hostilities, it demonstrates the risk posed by the administration’s expansive interpretation of constitutional authorities regarding the use of force. Should the United States sustain its approach for conducting lethal targeting operations and perpetuating the risks involved, it will set a de facto standard for limited transparency and virtually no accountability when it comes to the use of lethal force around the world – even though such a standard runs counter to U.S. principles and interests as well as global norms. The consequences of the U.S program for conducting lethal airstrikes outside war zones remain underexplored at both the national and international levels, and there is a narrowing window of opportunity for developing a responsible U.S. policy particularly as technological advances continue and more countries acquire and use drones for their own purposes.
Today’s threat environment looks immensely different than it did in the aftermath of September 11, 2001. The legal and policy frameworks established in the wake of those attacks were created to allow the U.S. government, with congressional authorization, to respond to those responsible. Yet over the last 20 years, those frameworks – including the 2001 Authorization for Use of Military Force (AUMF) – have been used to rationalize the expansive use of lethal force beyond their original remit. The 2002 AUMF, which authorized the use of force against Iraq under the rule of Saddam Hussein, has also been used to justify U.S. lethal operations against the Islamic State as well as Iran. Many of the groups the United States has taken action against in the last 20 years did not exist when the AUMF was passed and the operational entanglements in many countries where the U.S. conducts lethal operations have evolved over the last several years, begging the question as to whether the U.S. approach makes sense. Three cases represent this evolution and expansion of the U.S. counterterrorism response: Libya, Yemen, and Somalia.

The Libyan civil war represents a complex clash of actors vying for various interests and ends. The conflict has seen violent confrontations between rival governments as well as the proliferation of non-state armed groups, including al-Qaida the Islamic State, and others. Several foreign powers, including Turkey, Russia, the United Arab Emirates, Egypt, and the United States, have also intervened militarily, creating concerns about a prolonged proxy conflict.

In Yemen, U.S. forces have conducted lethal counterterrorism operations since at least 2002, though press reports indicate there were no strikes between 2002-2009. Since 2015, operations have occurred against the backdrop of Yemen's devastating civil war that is estimated to have killed nearly a quarter million people.

In Somalia, Somali, African Union, and U.S. forces have worked for more than a decade to combat terrorist and insurgent groups that have exploited power vacuums left by the country’s long-running civil war, including al-Shabab and to a lesser extent al-Qaida and the Islamic State group.

The following features offer more detail on the specific challenges and concerns raised by the United States’ approach to the use of lethal force in these three theaters. As these country spotlights show, steps must be taken to refocus the U.S. program of lethal airstrikes outside war zones towards restraint and accountability.
LIBYA illustrates the significant challenges surrounding the proliferating use of armed drones, primarily as a result of states acting as proxies for local forces. Libya also highlights the enduring value of diplomacy in resolving such conflicts – and the potential risk that the use of armed drones by regional actors may undermine such critical efforts.

During recent stages of Libya’s protracted civil war, armed drones were supplied by states acting as proxy air forces for both the UN-recognized Government of National Accord (GNA), and the rebel Libyan National Army (LNA). For example, armed drones from the United Arab Emirates (UAE) were first identified as supporting the LNA in October 2016. Over time, and as the LNA’s own assets were depleted, UAE drones came to dominate General Haftar’s aerial strike capability. Similarly, Turkish armed drones became the backbone of the GNA’s own arsenal, particularly between 2018-2020.

During the siege of Tripoli by the LNA, significant levels of civilian harm were reported, much of it directly attributed to the use of armed drones. As Airwars noted at the breaking of the siege: “The impact on civilians of the LNA’s fourteen-month, failed Tripoli offensive can only be described as devastating. Airwars has found that 60% of all reported civilian harm from air and artillery strikes [in Libya] since 2012 occurred since April 4th 2019.”

Of particular concern were UAE strikes on the Tajoura migrant and refugee center, and on the al Hadiba military academy. Relatively lower incidences of civilian harm were reported from Turkish drone strikes, though they were still of concern. It should be noted, however, that Turkish armed drones were also instrumental in breaking the siege of Tripoli and in routing LNA forces – bringing an end to Libya’s worst crisis since 2011.

The United States’ role in Libya is presently majorly focused on supporting UN-backed diplomatic efforts to end the decade-long civil war, as well as on supporting attempts to bring those responsible for reported war crimes to justice. This approach has been relatively successful, in part because the United States may now be viewed as a more neutral power in Libya.
This was not always the case. A limited number of declared or locally alleged U.S. drone strikes against both al-Qaeda and the Islamic State group in Libya took place between September 2012 and early 2019. In addition, in late 2016, the United States supported local GNA forces as they sought to oust the so-called Islamic State from the coastal city of Sirte. Of approximately 500 airstrikes conducted, 60 percent were later revealed by the U.S. Air Force to have been conducted by Reaper drones. This continues to represent the highest known ratio of armed drone use in urban engagements in any known conflict. There is still no definitive understanding of any associated civilian harm during that campaign.

As the Biden administration engages on Libya, a coherent diplomacy-driven policy – rather than a shorter-term U.S. counterterrorism focus which necessarily refracts Libya through U.S. domestic needs; or a scenario in which states fuel the civil war through their provision of armed drones, other weapons, and mercenaries – has the greater likelihood of delivering sustained peace in Libya and wider regional stability.

YEMEN illustrates the gaps in intelligence that inform U.S. targeted airstrikes and other lethal operations, and the dangers that arise from mythologizing precision.

It has been 12 years since the U.S. drone program in Yemen began in earnest. In that time, the United States has carried out at least 374 strikes, killing potentially as many as 1,775 people. While precise figures are hard to come by, estimates suggest that in the last four years, as many as 154 civilians may have lost their lives in U.S. operations, demonstrating that precision airstrikes are, in fact, imprecise.

The Al Ameri and Al Taisy families know just how wrong the intelligence can be from firsthand experience. Between 2013 and 2018, both families were subjected to five separate drone strikes and one special operations raid. These attacks, which spanned both the Obama and Trump administrations, killed 34 members of the families, including nine children. The youngest was three months old.
The first strike, carried out in December 2013, hit Abdallah Mabkhut al-Ameri, his new wife and about 60 of their friends as they celebrated their marriage. Twelve members of the Al Ameri family died, all of them breadwinners. The 12 men left behind a combined 73 children. While the Yemeni government publicly acknowledged that the strike hit civilians and compensated the families, the Obama administration continued to publicly insist those killed were militants. Leaked reports suggest that internally, the CIA was using the strike and the accompanying civilian deaths to argue that it, not the Joint Special Operations Command, should retain control over the program.40

On January 29, 2017, only nine days after former-President Trump took office, he authorized another devastating raid on the families’ village, Al Ghayil, in Al Baydha province in central Yemen. According to investigations carried out by Reprieve and others, an aerial bombardment started at 2:30 a.m. near the village. Then, approximately 30 Navy SEALS raided the village, and by 6 a.m., 26 people were dead, including 11 children.

After the ground raid, the United States carried out four drone strikes against the Al Ameri family, killing seven more people, including three children and two active members of the Yemeni military. The Yemen National Commission, a government mechanism tasked with monitoring and investigating allegations of human rights violations, found all of the people killed were civilians. The deaths were recorded as extrajudicial killings.

In January 2021, the Al Ameri and Al Taisy families filed a petition before the Inter-American Commission for Human Rights. In an attempt to protect themselves, they asked the commission to mandate that the United States publicly disclose its targeting criteria. The families live in a perpetual state of fear. They also asked the commission to order the United States to carry out independent, thorough, and transparent post-strike investigations, as required by international law.

Lethal drone and airstrikes are often touted by U.S. officials as one of the most precise options in the United States’ arsenal. Yet the Al Ameri and Al Taisy experiences indicate just how imprecise the U.S. drone program often is, not because of the weaponry itself, but because the intelligence on which the strikes’ accuracy depends is often wrong. The experience of these two families also highlights another key failing of the program – the complete lack of accountability that has accompanied such imprecision.
SOMALIA underscores the absence of true accountability for civilian harm resulting from U.S. airstrikes, including in countries where the United States has an established presence and has been conducting lethal counterterrorism operations for more than a decade.

On February 2, 2020, the Kusow family was sitting down to dinner in the city of Jilib, in Somalia’s Middle Juba region, when an airstrike suddenly hit their home. The city had been under regular bombardment – retaliatory attacks by U.S. forces after an al-Shabab assault on a U.S. airbase in Manda Bay, Kenya, a few weeks before. AFRICOM’s commander, U.S. General Stephen Townsend, vowed to “relentlessly pursue those responsible” for the attack, which killed a U.S. soldier and two contractors, and destroyed five aircraft, including two rare and valuable spy planes.
In response to years of criticism, AFRICOM recently made some moves toward transparency. They have begun issuing quarterly reports on allegations of civilian casualties, providing brief updates on open investigations and admitted to 13 civilian casualties (five deaths and eight injuries) from only four attacks, including the one that targeted the Kusow family. These are their only four admissions of civilian casualties in Africa over a decade. They have also started a new online portal on their website, so Somalis who have internet access — a relatively small portion — can make their own civilian casualty allegations directly to AFRICOM.

Regrettably, however, they have not made similar moves toward accountability. None of the families of the victims in the four admitted cases have received reparations or compensation from the U.S. government. No physical office has opened in Mogadishu to allow civilians to walk in and make a civilian casualty claim. No U.S. soldiers or officials involved in the operations have been publicly disciplined. No known on-the-ground investigations have occurred. AFRICOM continues to wait for outside allegations to begin an inquiry.

The United States must create systems that allow for real accountability. The Pentagon announced that U.S. troops would withdraw from Somalia by January 2021, but this does not mean an end to U.S. military action in the country. AFRICOM will still have the capacity to deploy attack aircraft from nearby Djibouti. The United States cannot wash its hands of its legal obligations towards civilian victims of its air strikes in Somalia even as it continues to conduct remote warfare.
A BIDEN AGENDA

The following sections underscore the challenges and insufficiencies that persist within the United States’ approach to the use of lethal force across five key areas and offer insights into what is necessary for a new Biden agenda on the use of lethal force outside areas of active hostilities.

TRANSPARENCY

Secrecy hangs like a cloud over the U.S. program of lethal airstrikes outside war zones, complicating oversight and accountability for government actions, potentially undermining strategic advances, and creating a dangerous and destabilizing precedent for the use of force. It remains difficult to establish the facts about U.S. targeted airstrikes and assess the legality, strategic efficacy, and impact of U.S. operations. Objective assessments of the use of lethal force outside areas widely recognized as armed conflict are further complicated by a lack of publicly available strike information, and government backtracking on reporting such information.

After years of debate, it remains unclear what the U.S. government views as the legally binding rules and obligations that govern its use of lethal force outside areas of active hostilities. Consecutive administrations have relied on a combination of laws, expansive legal interpretations, and policy guidance to rationalize the use of lethal force, resulting in a complicated and confounding framework that adds ambiguity to the U.S. approach and obscures clear understandings of what the United States interprets as an obligation versus good practice. This challenge is compounded by the fact that the U.S. government has not disclosed the most recent policy standards guiding decisions to target specific groups or individuals. The Trump administration never publicly released its revised policy guidance from 2018. The Biden administration submitted its report on the legal and policy frameworks governing the use of force and established interim policy guidance for counterterrorism strikes, but it has largely not made that information public.

Furthermore, there is still a lack of clarity surrounding many of the novel legal concepts the U.S. government regularly uses to justify its use of force. It is not altogether clear how the U.S. government determines what groups are considered “associated forces” of al-Qaida or who should be considered a “combatant.” Nor is it
clear what constitutes an “imminent threat” or a “continuing imminent threat.” Such uncertainty surrounding these terms and legal concepts presents a critical challenge, as they are integral to understanding and evaluating the authority by which the United States claims to use force extraterritorially.45

Additionally, because there is limited access to information on lethal airstrikes, it is difficult to discern how often the United States is targeting terrorism suspects outside traditional battlefields, who has been targeted, where exactly such strikes occur, and how many civilians were injured or killed as a result. It is also nearly impossible to know which government agency – the Department of Defense or the CIA – is responsible for which strikes. The Obama administration created a requirement for annual reports on military and non-military counterterrorism strikes conducted outside war zones, and eventually released such reports in 2016 and early 2017, but the Trump overturned this requirement.

In recent years, Congress has stepped in to fill some of these transparency gaps. In the FY2018 National Defense Authorization Act (NDAA), Congress codified a requirement for the administration to report on the legal and policy frameworks governing the use of force and related national security operations.46 Congress amended this mandate in the FY2020 NDAA, requiring the administration to report annually, in the unclassified portion of the report, every change made to the relevant frameworks in the previous year as a means to prevent the administration from keeping such information secret and instead establish a norm of transparency based on the Obama administration’s disclosure in 2016. Congress also mandated that the Secretary of Defense submit annual reports on civilian casualties caused by U.S. military operations.47 Additionally, in response to the Trump administration’s rescission of the requirement to report on casualties resulting from U.S. military and non-military counterterrorism operations outside active war zones, Congress mandated in the FY2020 NDAA that the administration report such information to lawmakers.48

The Trump administration’s compliance with these requirements was mixed. From 2018 through 2020, the Department of Defense regularly submitted its annual report on civilian casualties in U.S. military operations.49 In 2020, the Trump administration was sued to compel its compliance in reporting on the legal and policy frameworks guiding the use of force.50 It is also not clear if the Trump administration submitted the report on counterterrorism strikes outside active war zones (which was due May 1, 2020) because the statute did not explicitly require the report to be public. It also appears the Trump administration relegated many key details captured in the frameworks report to classified annexes.
In response to congressional action, agencies have also started to incrementally implement certain transparency measures. In April 2020, U.S. Africa Command began releasing quarterly reports with civilian casualty assessments resulting from their lethal strike operations, providing some transparency on the ways in which they account for and respond to allegations of civilian harm. U.S. Africa Command also at times provides some insights on their justifications for certain strikes. Additionally, in October 2020, the Department of Defense posted a webpage to facilitate outside reporting on civilian casualties that are believed to have resulted from U.S. operations. These measures, though limited (as discussed on pages 21-22 in the Somalia case study), offer examples that other combatant commands and U.S. agencies could follow in releasing strike information and summaries of casualty assessments.

It is worth noting that since the rules governing U.S. counterterrorism operations – including lethal airstrikes – remain secret, it is impossible to determine if such strikes are consistent with U.S. policy. Indeed, beyond some limited efforts, the U.S. government has not adopted a comprehensive or sustained approach to improving transparency over the use of lethal force in counterterrorism operations writ large. The failure to do so has made it impossible to assess the strategic value and efficacy of these operations and has limited oversight as well as hindered accountability of government actions.
ACCOUNTABILITY AND THE PROTECTION OF CIVILIANS

The U.S. drone program and lethal airstrikes more broadly have contributed to significant and ongoing civilian harm. The drone program and the legal interpretations supporting it have hindered accountability and created difficulties and inefficiencies in U.S. government practices for identifying possible instances of civilian harm, as well as responding to and addressing mistakes.

Since 2002, it is estimated that the United States conducted nearly 1,570 drone strikes and other counterterrorism actions in just four countries – Libya, Pakistan, Somalia, and Yemen. Despite the large scale of these operations, the American public still doesn’t have a clear accounting of the impact of these strikes. This lack of clarity is due in part to inadequate reporting as well as to legal definitional issues and operational uncertainties surrounding U.S. government classifications of combatants and non-combatants. Non-government organizations have tried to fill these gaps by compiling estimates of strike data based on news sources and in-country investigations, and estimate that U.S. airstrikes in Libya, Pakistan, Somalia, and Yemen have killed between 447 and 624 civilians, and 4,611 to 7,186 suspected combatants.

However, there are wide discrepancies in these figures compared to U.S. government data. According to initial government estimates, the United States conducted approximately 680 strikes from 2009 – 2020 across Libya, Pakistan, Somalia, and Yemen (though complete figures remain unknown) that resulted in 69 to 121 civilian deaths. The U.S. military subsequently acknowledged that during this time period, it conducted at least 284 additional strikes that were previously unreported and that those attacks killed between five and 13 additional civilians, bringing the total number of confirmed strikes to 964, and the number of confirmed civilian casualties...
Discrepancies like these further underscore the challenges wrought by the U.S. government’s reticence to disclose strike-by-strike information and clearly articulate its legal interpretations consistent with international law and policy standards guiding the use of force outside traditional war zones.

Even though the U.S. government recently began taking steps to address instances of civilian casualties and acknowledge harm that resulted from its targeted strikes, much more needs to be done. For example, in April 2019, the U.S. military acknowledged for the first time that an airstrike in Somalia resulted in civilian casualties, after field investigations from Amnesty International revealed credible evidence of civilian harm. Since then, it has acknowledged three additional operations that resulted in civilian casualties in Somalia, demonstrating a positive change in its rhetoric and response to non-government reports of civilian harm in the country. These admissions, however, have done little to close the chasm between the between government and civil society assessments of civilian casualties.

The U.S. government has taken tentative steps to learn more about the impact of strikes as well as to acknowledge and respond to mistakes, but almost no progress has been made to institutionalize accountability. One gap in advancing accountability is the U.S. military’s self-imposed limitations on investigations of civilian casualties. The military largely relies on its own information and rarely, if ever, conducts witness interviews when investigating allegations of harm. The military also continues to view external sources of information, such as research and field work from non-government organizations, with considerable skepticism. This skepticism severely limits the government’s understanding of civilian harm in the areas where it carries out lethal operations. Additionally, the U.S. government has yet to take concrete steps to respond to incidents of civilian harm after acknowledging a mistake. After 20 years of waging air wars, outreach and consolation payments to affected families remains deficient. As a result, these limited U.S. measures may be seen as though there’s enough national interest to use force, fire the missile, and potentially cause harm, but not enough national interest to provide sufficient resources to properly account for and respond to mistakes.

A key area of focus for the Biden administration should be improving on the U.S. Department of Defense’s efforts to conduct thorough assessments of civilian casualties, incorporating more information gathered from non-governmental organizations. The government should also take more care in examining information provided by U.S. partners, especially when the information appears to contradict rigorous investigations conducted by non-government organizations. Overall, relevant U.S. government agencies should think creatively about how to develop and maintain an infrastructure to facilitate condolence responses for victims and their families across complex and challenging environments.
INTERNATIONAL STANDARDS AND NORMS

As drones continue to proliferate and more countries look to acquire and use lethal drone capabilities, questions of strategic efficacy, legality, transparency, and accountability will continue to magnify concerns about the precedent set by the U.S. drone program and the U.S. approach to using lethal force outside areas of active hostilities. Even though the United States is an outlier in its interpretation of applicable international legal standards to these areas (particularly concerning definitions of international humanitarian and human rights law), and despite its internationally controversial approach and policies, U.S. behavior has gone unchanged.

Civil society organizations and legal experts around the world, as well as the United Nations, its subsidiary bodies, and other groups have all called for greater international coordination on the development of international standards and norms for armed drones. These calls are fuelled in part by the recognition that, in many ways, the unique capabilities and consequences of drone transfers are not sufficiently covered by existing export control regimes. Thus, there is a need for forward-looking international norms relating to the use of lethal force by states outside traditional war settings to avoid civilian harm and impunity.

In 2016, the United States initiated an effort to pursue the development of international standards guiding the transfer and use of armed drones. The first output from this effort was a “joint declaration for the export and subsequent use of armed or strike-enabled unmanned aerial vehicles (UAVs),” which identified a set of principles intended to help inform countries’ decisions in transferring or using armed drones. Fifty-three UN member states signed the joint declaration and a smaller, core group of countries led by the United States and supported by Germany, Italy, Japan, the Netherlands, and the United Kingdom – with France, Israel, and Turkey serving as observer states – worked to develop the initiative into so-called international standards on the export and subsequent use of armed drones, as communicated by the U.S. State Department in October 2017. The results of this process have not yet been released, though the effort continues to incrementally move forward under U.S. direction.

Differing standards or rules guiding the transfer and use of lethal drones currently exist in varied forums and regulatory regimes, including the Global Counterterrorism Forum, the Missile Technology Control Regime, the Arms Trade Treaty, and the Wassenaar Arrangement, among others. These variations can lead to confusion for countries over which rules and standards to follow or to apply and can compound the risks already presented by the U.S. drone program, such as the risks to civilians and challenges to the rule of law, both domestically and internationally.
There is growing global interest in strengthening international standards and harmonizing a global approach to the transfer and use of armed drones, and the United States has an opportunity to assert its leadership in advancing a responsible and restrained approach.

Several opportunities within the UN system are currently being discussed, such as a UN Security Council resolution, or an action by the UN Human Rights Council. The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Agnes Callamard, submitted a report to the UN Human Rights Council in July 2020, which expressly considered targeted killings through the use of armed drones. The report reflected a growing need for the development of robust international standards governing the production, export, and use of drones and lethal drone strikes.

Specifically, the report recommended that States “[e]stablish a transparent multilateral process for the development of robust standards on the use of drones” or, alternatively, that “like-minded states (...) establish a group of experts to develop such standards (in the form of a time-bound forum), for States, academics and civil society to identify and strengthen legal norms and accountability mechanisms.”

In developing international standards on drone exports and use, the Biden administration must prioritize ensuring responsible transfers, as well as compliance with international legal obligations, and transparency of policy justifications for the use of force. The administration should also establish appropriate transparency and accountability mechanisms, including public reporting, in order to mitigate and address potential harm. These standards should add value to existing regimes, be specific, include enforcement strategies and requirements, and be developed through an inclusive process that takes into account the views and insights of affected countries, civil society, and other stakeholders.

**TECHNOLOGICAL DEVELOPMENT AND INNOVATION**

As drone technology continues to evolve at a rapid pace, several technological developments may complicate efforts to address concerns about the transfer and use of technologies that facilitate and potentially ease decisions to use lethal force. For example, evolutions in sensor technologies facilitate miniaturization and help augment image analysis, and advances in artificial intelligence (AI) accelerate data analysis. These and other technological developments could signal a broader challenge in which innovation overlooks consideration of appropriate use and regulation, as well as longer-term policy implications.
The United States continues to invest heavily in developing the technology behind its armed drones. In fact, much of the United States’ research into the military applications of autonomous technology centers around use of drone operations. For example, the United States seeks to develop technology that could allow large swarms of drones to be operated by a single user, or to operate autonomously. The Defense Advanced Research Projects Agency (DARPA) is playing an active role in developing this technology. The United Kingdom, Russia, and China are also developing similar technologies. While many of these new drone technologies are designed for use in conflicts with foreign militaries rather than terrorist groups, some of them could certainly have implications for counterterrorism strikes.

There is also a significant effort underway to leverage AI to make sense of the massive amount of data associated with the U.S. program of targeted airstrikes. The Department of Defense’s Algorithmic Warfare Cross-Functional Team (AWCFT), also referred to as Project Maven, is a key component of this initiative. The AWCFT was established in April 2017 with the objective of “turn[ing] the enormous volume of data available to DoD into actionable intelligence and insights at speed.” The AWCFT’s first task was to “augment or automate” the processing, exploitation, and dissemination of video data associated with the U.S. counter-ISIS campaign. This technology could be used to identify and track targets for targeted airstrikes. While the Department of Defense maintains that the use of AI in targeting “will help to reduce the human factors burden of FMV [full-motion video] analysis, increase actionable intelligence, and enhance military decision-making,” critics are concerned that it will reduce human involvement in and oversight of targeting decisions, which could increase the likelihood of civilian casualties. In August 2019, the head of the Air Force’s Air Combat Command told reporters he was not yet willing to rely on Maven data in combat operations, and that it needed more time to “learn.”

Issues related to transparency, accountability, and international precedent are equally relevant to discussions of technology development and innovation and should be considered by the Biden administration. Moreover, it is increasingly important that policy and strategy drive technological development rather than the other way around, and that humans remain in the decision-making loop.
COMMERCIAL DRONES IN THE UNITED STATES

The Federal Aviation Agency (FAA) has stated that drones represent the “fastest-growing segment of the transportation sector” in the United States, with more than 1.7 million drones registered in the United States as of December 2020. The FAA estimates that over the next four years, the number of drones registered to fly in the national airspace will nearly double, with 1.5 million recreational drones and more than 800,000 commercial drones registered to fly in U.S. airspace. The U.S. government’s decision to blacklist major drone manufacturer, the Chinese company DJI – one of the largest and most popular commercial drone companies in the world – is likely to also affect U.S. recreational and commercial drone markets and open the door for other manufacturers to fill the gaps.

In continuing its efforts to safely integrate drones into the national airspace, the FAA announced new rules for drone use on December 28, 2020. The rules require remote identification of drones and allow operators to fly drones at night and above people – which could facilitate commercial deliveries via drone. The FAA noted that these long-awaited rules are intended to better address safety, security, and privacy concerns related to the use of commercial and recreational drones in the national airspace by enabling identification from the ground. Indeed, there is a recognition of the growing threat posed by unregulated or illegally operated drones to national security, U.S. citizens, and critical infrastructure – including airports, nuclear facilities, and other locations – and the new rules represent an effort to address those risks. The rules took effect on March 16, 2021, 60 days after publication in the Federal Register.

In addition to commercial and recreational drone use, there is also growing concern over the use of surveillance drones at the state and local levels. The 2020 protests against police brutality in the United States revived public attention on the use of aerial surveillance and concerns about risks to civil liberties. Research by Faine Greenwood and the Center for the Study of the Drone reveals that police departments across the United States have embraced the use of drones for aerial surveillance, but there is no national framework to regulate their use or the use of the data they collect.
CONGRESSIONAL OVERSIGHT

As the United States’ approach to countering suspected terrorist threats over the last two decades has made clear, it remains easier to enter into a war than to identify and commit to a strategy for getting out of one. Unfortunately, executive branch interpretations of congressional constraints have proven to be elastic. The 2001 and 2002 Authorizations for Use of Military Force (AUMFs), as well as executive authorities under Article 2 of the U.S. Constitution, have been used to justify lethal action in countries never foreseen as relevant to the aftermath of the events of 9/11 or the U.S. invasion of Iraq. Although Congress passed legislation to fill gaps in transparency and prompt greater oversight for the United States’ use of force abroad, successive administrations often ignored such requirements with almost zero consequences. Thus, there is an urgent need to reinvigorate congressional engagement in and oversight of the use of lethal force, including through armed drone strikes, to rein in executive impulses now and in the future.

Increasing efforts by Congress to assert its oversight responsibilities and control over war powers to end “endless wars” could also contribute to creating structures that impose limits on the use of lethal force. Congress is considering repealing the expansive 2001 and 2002 AUMFs and is prepared to engage in serious debate with the executive branch about how to sunset these existing authorities, develop new and narrower frameworks, and identify the strategy, aims, and metrics for success when using lethal force abroad.77

The Biden administration has stated its intent to work with Congress in repealing these authorizations and developing “a more narrow and specific framework” to ultimately end America’s “forever wars.”78 This would represent a notable and positive step towards reining in the U.S. drone program and revising the U.S. government’s broad approach to the use of lethal force around the world. The decision to use lethal force is one of the most important and significant decisions a government can make, and if the Biden administration is committed to a principle of restraint and the use of force as a last resort, then Congress needs to engage in serious debate and oversight of such decisions.79 In short, Congress should identify ways to shift from the permissive environment it has contributed to that has allowed for lethal executive action, to one that is more constrained and requires congressional approval, including by sunsetting the 2001 and 2002 AUMFs.
As the conversation shifts within Congress and the broader foreign policy community towards ending “endless wars,” there is still a risk that the administration will retain these approaches to counterterrorism and the use of lethal force, rather than developing a longer-term, rights-based framework to address security concerns and challenges – such as rebuilding diplomatic relationships and enhancing cooperation with allies. Continued reliance on lethal airstrikes could mean a growth in, rather than constraints on, the current U.S. drone program and the use of lethal force either by the United States or its partners, and risk cementing current U.S. policies and practices in a way that obstructs responsibility and accountability. Congress can help counter such inclinations and their associated risks by setting limits on the use of lethal force, and revising the ways in which it assesses and approves proposed drone sales.
The Biden administration has an opportunity to reconstruct the U.S. approach to counterterrorism in a way that is more restrained, more sustainable, and better aligns with U.S. commitments to transparency, accountability, and the protection of human rights. While there may be a temptation to revert back to the principles, standards, and procedures that guided U.S. counterterrorism operations outside active war zones during the Obama administration, the Biden administration should resist taking a step backwards. The domestic and global environment is different than it was when the Obama administration’s policy guidance was released publicly, in 2013, and so the Biden administration should move beyond the framework it helped establish nearly a decade ago. The Biden administration should develop a clear, concise, and constrained strategy that is relevant to the world today and appropriately situates counterterrorism among other pressing security priorities. As 2020 made clear, it is crucial that the United States reorient its approach to national security.\textsuperscript{82}
FOR THE BIDEN ADMINISTRATION

The Biden administration has an opportunity to refocus the United States’ approach to the use of lethal force and ensure it is lawful, transparent, accountable, and sets a useful and rights-promoting international precedent. As the administration looks to the future, it can ensure that its policies protect civilians and are able to withstand technological innovation by undertaking the following:

LEGAL AND POLICY FRAMEWORKS

- Conduct a comprehensive strategic analysis and review of the U.S. program of lethal airstrikes, including a comparative analysis of alternative tools, and publish the findings of the study publicly.

- Review lethal force policy and ensure that lethal force is used only in countries where the United States is engaged in an armed conflict, under strict criteria, and within the limits of both international humanitarian law and international human rights law.

- Publicly disclose all existing and past policy positions and legal interpretations, along with underlying legal and policy analysis, including Office of Legal Counsel memoranda, on how the U.S. government has defined and interpreted legal and policy constraints on the use of force abroad, including where international humanitarian law and international human rights law apply.

- With rare exceptions, end the use of lethal force operations led by the CIA, including the use of drone strikes. As a general principle, the military should be responsible for the use of lethal force outside the United States. The CIA should focus on intelligence collection and analysis.

- Ensure there is a high-level political and civilian agency review of strike decisions and a revision of tactical guidelines, rules of engagement, and strike review processes.

- Do not rely on the 2001 AUMF for any new operations and end reliance on the 2002 AUMF entirely.

- Work with Congress to repeal both the 2001 and 2002 AUMFs.
Ensure that any new AUMF contains critical safeguards, such as 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 to ensure 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.

Conduct a comprehensive review of global drone posture and identify the elements of the underlying infrastructure that influence operational decisions.

**TRANSPARENCY**

Promptly release the principles, standards, and procedures (PSP) document that guided U.S. counterterrorism operations during the Trump administration. Publicly release the interim guidance for counterterrorism operations outside conventional battlefields while conducting the internal review of such operations. Upon completion of the review, promptly release the new policy to the public.

Comply with all congressional reporting requirements, including the congressionally mandated report on U.S. government operations and civilian casualties that occur “outside of areas of hostilities.”

Release detailed casualty assessments resulting from counterterrorism operations, disaggregating information on individual strikes, on the number and general location of targeted strikes, the number and organizational affiliations of individuals classified as combatants known to have been killed, the number and identities of any civilians known to have been killed, the criteria used to classify individuals as combatants and non-combatants, and the number of strikes carried out by the military versus, historically, the CIA.

**ACCOUNTABILITY AND CIVILIAN PROTECTION**

During the policy review, reissue an improved executive order on civilian casualties, including thorough assessments and amends for civilians harmed as a result of U.S. and U.S.-led coalition operations, making a clear statement of White House policy to prevent more casualties from occurring.

Prioritize civilian protection and harm mitigation in counterterrorism operations, reverting back to the “near certainty” principle that targets are present at the time of the strike.
Set up infrastructure and dedicate resources for addressing civilian casualties by refining the response to external reports of civilian casualties, including improving military thoroughness and transparency within its own investigations, and using credible information from non-government sources.

Standardize the policy surrounding ex gratia payments to civilians harmed as a result of U.S. operations.

### INTERNATIONAL STANDARDS AND NORMS

- Develop international standards on drone exports and use that to ensure responsible transfers and compliance with international legal obligations. Any international standards should include public reporting of policy justifications for the use of force, transfers, and casualty assessments.

- Ensure that these international standards add value to existing export control regimes, include enforcement strategies and requirements, and are developed through an inclusive process.

### TECHNOLOGICAL DEVELOPMENT AND INNOVATION

- Ensure technology developments include consideration of appropriate use and are consistent with protection of the right to life under international legal frameworks and standards.

### FOR CONGRESS

Congress has an important oversight and accountability role that can be strengthened with increased transparency. To that end, we recommend that Congress:

#### OVERSIGHT

- Increase and ensure meaningful oversight concerning lethal force operations and hold oversight hearings on current operations and engagement in armed conflicts, requiring definitions of the opponents, mission objectives, and metrics of success.

- Mandate that as a general rule, the U.S. military should be responsible for the use of lethal force outside the United States.
In any debate on the repeal/replace of the 2001 and 2002 AUMFs, ensure that new authorizations concerning the use of lethal force are specified by geographic scope and declared theaters of actual armed conflict, include an expiration date or sunset clause, require congressional approval of any new associated forces, and place limits on the amount and/or type of force that can be used.

Reinforce the requirement that U.S. operations are consistent and comply with accepted international interpretations of international law to help restore domestic and global confidence in the United States’ adherence to the rule of law, and to set an appropriate precedent for other nations.

**TRANSPARENCY**

- Strengthen transparency by requiring the public release of legal opinions and executive branch guidelines applicable to the use of force abroad.

- Publicly release reports on the use of force and partnered operations, submitted under the National Defense Authorization Act (NDAA), to strengthen transparency over U.S. policies and activities guiding the use of lethal force.

- Remove the exemption that relieves the Department of Defense from reporting sensitive military operations in Iraq, Syria, or Afghanistan to Congress from 10 USC 130f.

- Require the administration to get all relevant and required reports concerning use of force in and on time and, to the greatest extent possible, ensure that the reports are unclassified.

**CIVILIAN CASUALTIES**

- Require the Department of Defense and State Department to establish an effective process through which harmed civilians or surviving family members of those killed by the United States may seek an ex gratia payment.
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ENDNOTES

1 Assumed authorities noted here include, for example, the use of covert lethal action and Article II authorities under the U.S. Constitution to use force in self-defense.

2 In this context, the term war zone refers to traditional, territorially defined battlefields, often referred to as "areas of active hostilities." Under the Obama administration, Afghanistan, Iraq, and Syria, as well as parts of Libya at times, were considered war zones or "areas of active hostilities." Other countries where U.S. counterterrorism operations occurred – such as Pakistan, Somalia, and Yemen – were viewed as falling outside these areas. The Trump administration reportedly declared parts of Somalia and Yemen as "areas of active hostilities," though it remains unclear if those declarations remain in place. For the purposes of this paper, "war zones" refers to Afghanistan, Iraq, and Syria – though it is worth considering whether these theaters currently reflect active war zones as they did four years ago.


7 These figures are based on an average of figures compiled by Airwars and New America. See pages 26-27 for more discussion of U.S. drone strike data and see endnote 55 for a discussion of how we arrived at these numbers.


16 According to SIPRI, the first international armed drone sale occurred in 2006 when the United States sold MQ-9 Reaper drones to the United Kingdom. Countries had sold 183 armed drones by the end of 2016, less than the 266 sold between 2017 and 2020.

17 The 28 countries that have imported armed drones are Algeria, Australia, Azerbaijan, Egypt, France, Germany, India, Indonesia, Iraq, Jordan, Kazakhstan, Libya, Laos, Myanmar, Netherlands, Nigeria, Pakistan, Qatar, Saudi Arabia, Serbia, Spain, Sudan, Syria, Turkmenistan, the United Arab Emirates, Ukraine, the United Kingdom, and Uzbekistan. Two of these countries – Australia and India – have “selected” but “not yet ordered” armed drones, according to SIPRI’s arms transfer data. Additionally, two of these countries – Germany and India – leased armed drones from Israel.

18 The 16 countries that have imported armed drones from China are Algeria, Egypt, Indonesia, Iraq, Jordan, Kazakhstan, Laos, Myanmar, Nigeria, Pakistan, Saudi Arabia, Serbia, Sudan, Turkmenistan, the United Arab Emirates, and Uzbekistan.

19 The Obama administration authorized the export of 25 armed drones and 12 drones capable of being armed to four recipients (France, Italy, Spain, and the United Kingdom) over the course of its eight years in office. The Trump administration authorized the export of armed drones to three recipients (Australia, France, Netherlands) and it authorized the sale of drones capable of being armed to two others (Belgium and the United Arab Emirates). The Trump administration also authorized the lease of two weaponizable drones to India to support the Indian Navy with surveillance. Figures in this report on U.S. drone sale authorizations include the sale of 12 armed MQ-9 Reapers to Australia and 15 unarmed MQ-9 Reapers to the United Arab Emirates and counts them towards authorizations that occurred under President Trump. According to SIPRI’s arms transfer data, these systems were “selected” but “not yet ordered by end-2020.”

20 The number of drones sold by the United States has accelerated in recent years, as has the number of countries purchasing these systems for the first time. The United States authorized the sale of nearly twice as many armed and weapons-ready drones – and authorized their sale to more first-time buyers – between 2016 and 2020 than it did over the previous 15 years. Between 2001 and 2015, the United States authorized the sale of 32 armed or weaponizable drones to three countries (France, Italy, and the United Kingdom). Between 2016 and 2020, it authorized the sale of 61 such systems, including to five countries that had never purchased this technology (Australia, Belgium, Netherlands, Spain, and the United Arab Emirates). In 2020, the Trump administration also leased two MQ-1 Predator drones to India to support maritime surveillance.

21 These eight additional countries are: Azerbaijan, France, Iran, Iraq, Nigeria, Pakistan, Turkey, and the United Arab Emirates. See: Center for the Study of the Drone, “Drone Databook,” xiii.


27 Atherton, "Trump Inherited the Drone War but Ditched Accountability."
33 United Nations, General Assembly, Use of Armed Drones for Targeted Killings, 15-16.


51 U.S. Department of Defense, "Civilian Casualty Report."


55 These figures are based on data compiled by Airwars and New America, the two primary aggregators of data related to U.S. drone strikes and other uses of lethal force outside areas of active hostilities. Other organizations, notably the Bureau of Investigative Journalism, have compiled similar data. However, because the Bureau of Investigative Journalism no longer updates this data and has passed this work along to Airwars, their data were excluded from our analysis. To access or learn more about the Airwars data used in this report, see: Airwars, "Our monitoring of civilian harm, https://airwars.org/.

56 For New America’s data, see: New America, "America’s Counterterrorism Wars," last modified March 23, 2021, https://www.newamerica.org/international-security/reports/americas-counterterrorism-wars/. The figures represent an average of the minimum and maximum number of U.S. actions, civilian deaths, and suspected combatant deaths reported by New America and Airwars. In two instances, we relied exclusively on New America’s data to account for gaps in Airwars’ reporting. In a number of instances, one or both of these sources reported a single value instead of a range (e.g., 1 strike as opposed to 1-3). In those cases, we treated the single value as both the minimum and maximum value for purposes of averaging it with the minimum and maximum value provided by the second source. Government of the United States, Office of the Director of National Intelligence, “Summary of Information Regarding U.S. Counterterrorism Strikes Outside Areas of Active Hostilities,” (2016), https://content.govdelivery.com/attachments/USODNI/2016/07/01/file_attachments/579487/DNI%2brelease%2Bon%2BCT%2Bstrikes%2Boutside%2Bareas%2Bof%2Bactive%2Bhostilities_FINAL.PDF; Government of the United States, Office of the Director of National Intelligence, “Summary of 2016 Information Regarding United States Counterterrorism Strikes Outside Areas of Active Hostilities,” (2017), https://www.dni.gov/files/documents/Newsroom/Summary-of-2016-Information-Regarding-United-States-Counterterrorism-Strikes-Outside-Areas-of-Active-Hostilities.pdf; U.S. Department of Defense, "Civilian Casualty Report."
For more information on the number of strikes and civilian casualties that U.S. forces have acknowledged responsibility for, see Airwars’ data and reports, available at: Airwars, “Our monitoring of civilian harm,” https://airwars.org/.


The 53 states that agreed to the Joint Declaration and resolved to continue discussions on the development of international standards for the export and subsequent use of drones are: Albania, Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Chile, Colombia, Czech Republic, Denmark, Estonia, Finland, Georgia, Germany, Greece, Hungary, Iraq, Ireland, Italy, Japan, Jordan, Kosovo, Latvia, Lithuania, Luxembourg, Malawi, Malta, Mexico, Montenegro, the Netherlands, New Zealand, Nigeria, Norway, Paraguay, Philippines, Poland, Portugal, Romania, Serbia, Seychelles, Singapore, Slovakia, Slovenia, South Africa, South Korea, Spain, Sri Lanka, Sweden, Ukraine, the United Kingdom, Uruguay, and the United States.


United Nations, Use of Armed Drones For Targeted Killings.


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