

## REPORT ON THE LEGAL AND POLICY FRAMEWORKS FOR THE UNITED STATES’ USE OF MILITARY FORCE AND RELATED NATIONAL SECURITY OPERATIONS

This report is provided in accordance with Section 1264(a) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (Pub. L. No. 115-91), as amended by Section 1261 of the NDAA for FY 2020 (Pub. L. No. 116-92), codified at 50 U.S.C. §1549(a). It constitutes the calendar-year 2022 annual report on changes to the legal and policy frameworks from the preceding calendar year for the United States’ use of military force and related national security operations.<sup>1</sup> Consistent with Section 1264(c) of the NDAA for FY 2018, as amended (50 U.S.C. §1549(c)), this report contains a classified annex.

On November 15, 2022, President Biden submitted a notification in accordance with Section 1264(b) of the NDAA for FY 2018, as amended (50 U.S.C. §1549(b)), describing a change to the legal and policy frameworks for the United States’ use of military force and related national security operations, which described the President’s approval of a Presidential Policy Memorandum that establishes rigorous standards and procedures governing U.S. direct action against terrorist targets outside areas of active hostilities. The classified annex contains additional information.

The calendar-year report for 2021 reflected that the United States used military force in Afghanistan, Iraq, Syria and Somalia. As previously recognized, the United States used force in each of those countries in 2022 as well.

### *2001 Authorization for Use of Military Force*

Foreign Forces, Irregular Forces, Groups, or Individuals for Which a Determination Has Been Made That Force Could Legally Be Used Under the Authorization for Use of Military Force, Pub. L. No. 107-40, 115 Stat. 224 (2001): No change.

Criteria for Designating a Foreign Force, Irregular Force, Group, or Individual as Lawfully Targetable, as a High-Value Target, and as Formally or Functionally a Member of a Group Covered Under the 2001 AUMF: As noted in the November 15, 2022 notification described above, the President has approved a Presidential Policy Memorandum that, among other things, establishes a rigorous interagency process and policy standards for targeting individuals with lethal force. The standards set forth in the PPM are intended to ensure that operations are both lawful and consistent with American values and broader national security objectives. The classified annex contains additional information.

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<sup>1</sup> President Obama issued the “Report on the Legal and Policy Frameworks Guiding the United States’ Use of Military Force and Related National Security Operations” on December 5, 2016. Pursuant to Section 1264, as amended, former President Trump submitted reports on March 12, 2018, and October 16, 2020, and President Biden submitted reports on March 1, 2021, and March 1, 2022.

## ***Application of Key Domestic and International Legal Principles to Key Theaters***

### ***Afghanistan:***

As a matter of international law, host nation consent provided a basis for counterterrorism operations in Afghanistan prior to the withdrawal of U.S. forces. When U.S. forces withdrew from Afghanistan in August 2021, President Biden stated that the United States remains prepared to use force against al-Qa'ida, ISIS, and other terrorist threats in Afghanistan, if necessary. In light of changed circumstances associated with that withdrawal, the United States does not intend to rely on that previously provided consent.

Consistent with the international law framework described in the December 2016 *Report on the Legal and Policy Frameworks Guiding the United States' Use of Military Force and Related National Security Operations*, absent reliance on consent to use force in Afghanistan, the United States has the inherent right to use necessary and proportionate force in self-defense to the extent that Afghanistan is unwilling or unable to confront effectively the threat to the United States emanating from the territory of Afghanistan.

There has been no change to the domestic law basis for counterterrorism operations in Afghanistan.

### ***U.S. Policies Regarding Targeting and Incidental Civilian Casualties***

The December 2016 *Report on the Legal and Policy Frameworks Guiding the United States' Use of Military Force and Related National Security Operations* described that the United States is committed to complying with its obligations under the law of armed conflict, including those obligations that address the protection of civilians, and as a matter of policy, the United States frequently applies certain heightened policy standards and procedures that underscore its commitment to reducing civilian casualties and to enhancing transparency and strengthening accountability for its actions.

On January 27, 2022, the Secretary of Defense issued a memorandum directing the development of a Civilian Harm Mitigation and Response Action Plan (CHMR-AP) to outline the steps the Department of Defense (DOD) will take and the resources needed to improve how DOD mitigates and responds to civilian harm. On August 25, 2022, the Secretary of Defense approved the CHMR-AP,<sup>2</sup> and implementation is underway. Under the CHMR-AP, DOD will, among other things:

- Establish a civilian protection center of excellence to serve as the hub and facilitator for DOD-wide analysis, learning, and training related to civilian harm mitigation and response (CHMR);

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<sup>2</sup> Department of Defense, Release, Civilian Harm Mitigation and Response Action Plan Fact Sheet, August, 25, 2022, see <https://defense.gov/News/Releases/Release/Article/3140007/civilian-harm-mitigation-and-response-action-plan-fact-sheet/>. The CHMR-AP is available at <https://media.defense.gov/2022/Aug/25/200306470/-1/-1/1/CIVILIAN-HARM-MITIGATION-AND-RESPONSE-ACTION-PLAN.PDF>

- Provide commanders and operators with more information to better understand the civilian environment;
- Incorporate guidance for addressing civilian harm across the full spectrum of armed conflict into doctrine and operation plans so that DOD is prepared to mitigate and respond to civilian harm in any future fight;
- Develop standardized civilian harm operational reporting and data management processes, including the development of a centralized, enterprise-wide data management platform, which will improve how DOD collects, shares, and learns from data related to civilian harm;
- Improve DOD's ability to assess and respond to civilian harm resulting from DOD operations;
- Incorporate CHMR into exercises, training, and professional military education across the joint force;
- Incorporate CHMR into security cooperation and operations with allies and partners; and
- Establish a CHMR Steering Committee for the purpose of providing executive-level direction, guidance, and oversight of DOD CHMR, including by driving effective implementation of the CHMR-AP.