

**Report on the Legal and Policy Frameworks Guiding the United States' Use of Military Force and Related National Security Operations**

This report is provided consistent with Section 1264 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). It constitutes the 2019 update to the legal, factual, and policy bases for the United States' use of military force and related national security operations as articulated in: the "Report on the Legal and Policy Frameworks Guiding the United States' Use of Military Force and Related National Security Operations" of December 5, 2016 ("original report"); and the "Report on the Legal and Policy Frameworks Guiding the United States' Use of Military Force and Related National Security Operations" of March 12, 2018 ("2018 report"). Consistent with Section 1264(b) of the NDAA for FY 2018, as amended, notices were also provided to Congress on May 28, 2019, January 31, 2020, and September 8, 2020. Consistent with Section 1264, as amended, this report contains a classified annex. If a particular item or topic area from the prior reports or notices is not covered in this update or its classified annex, it remains unchanged.

***Countries in Which the United States Is Using Military Force***

In 2019, the United States used military force in the following countries: Afghanistan, Iraq, Syria, Yemen, Somalia, and Libya.<sup>1</sup>

***The Domestic Law Bases for the Ongoing Use of United States Military Force***

- ***Statutory Authorization: The 2001 Authorization for Use of Military Force (2001 AUMF)***
  - **The Scope of the 2001 AUMF:** The Authorization for Use of Military Force (Pub. L. No. 107-40) does not authorize the President to use force against every group that commits terrorist acts. The mere fact that an entity has been labeled a terrorist group, or that it has committed terrorist acts, does not bring it within the scope of the 2001 AUMF. The 2001 AUMF is the legal basis for currently authorized operations against the following groups or individuals: al-Qa'ida; the Taliban; certain other terrorist or insurgent groups affiliated with al-Qa'ida and the Taliban in Afghanistan; al-Qa'ida in the Arabian Peninsula; al-Shabaab; al-Qa'ida in the Lands of the Islamic Maghreb (AQIM); al-Qa'ida in Syria; and the Islamic State of Iraq and Syria (ISIS). United States military force was used against all of these groups, other than AQIM, during 2019.<sup>2</sup>
  - **Determining That Force Can Be Used Pursuant to the 2001 AUMF:** As described in the original report, a determination that a group is covered by the 2001 AUMF is made at the

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<sup>1</sup> Shortly after the calendar-year reporting period ended, on January 2, 2020, the President directed a use of force under both the 2002 AUMF and under his constitutional authority to take military action in certain circumstances without specific prior authorization of Congress. That use of force was described in the notice provided consistent with Section 1264(b) of the NDAA for FY 2018, as amended, on January 31, 2020.

<sup>2</sup> The classified annex to the notice provided consistent with Section 1264(b) of the NDAA for FY 2018, as amended, on September 8, 2020, contains specific information about the application of the 2001 AUMF to particular groups.

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most senior levels of the United States Government, only after a careful evaluation of the intelligence concerning each group's organization, links with al-Qa'ida or the Taliban, and its participation with al-Qa'ida or the Taliban's ongoing hostilities against the United States or its Coalition partners. These determinations are necessarily fact-specific. The determination that the 2001 AUMF provides sufficient authority to use military force against the organizations listed above is consistent with the interpretation and application of the 2001 AUMF over multiple Presidential administrations and is informed by the traditional concept of co-belligerency in conflicts between States.

In addition, the United States Government draws on all available information, including sensitive intelligence, to determine whether an individual is formally or functionally a member of a group or organization covered by the 2001 AUMF. For example, analysis of an individual's possible membership in one of the organized groups listed above may include, among other things: the extent to which an individual performs functions for the benefit of the group that are analogous to those traditionally performed by members of a country's armed forces; whether that person is carrying out or giving orders to others within the group; or whether that person has undertaken certain acts that reliably connote meaningful integration into the group.

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

- *Iraq and Syria:* United States forces continue to carry out a systematic campaign of airstrikes and other vital operations against ISIS in Iraq and Syria, and against al-Qa'ida in Syria. In Iraq, United States forces and the Defeat-ISIS Coalition coordinate with elements of the Iraqi Security Forces, including the Kurdish Peshmerga forces, to provide training, communications support, intelligence support, and other assistance to address the continuing threat posed by ISIS. United States military activities against ISIS in Iraq continue to be conducted at the invitation and with the consent of the Government of Iraq. In Syria, United States forces work "by, with, and through" vetted local forces, including the Syrian Democratic Forces, and members of the Defeat-ISIS Coalition to achieve the enduring defeat of ISIS. The United States maintains a small, residual force presence in Syria, including at the At Tanf Garrison, to preclude the resurgence of ISIS, including preventing ISIS from retaking critical petroleum infrastructure in northeast Syria.

United States forces continue to use necessary and appropriate force to defend themselves and partner forces conducting these operations from attacks or threats of imminent attack by ISIS or other groups or individuals.<sup>3</sup> For example, on December 29, 2019, United States forces conducted defensive strikes in Iraq and Syria in response to a series of Kata'ib Hizballah (KH) attacks on Iraqi bases that host United States and Coalition forces

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<sup>3</sup> Statutes that authorize the use of necessary and appropriate force, including the 2001 AUMF and 2002 AUMF, encompass the use of force both to carry out the missions under the statutes and to defend U.S. or partner forces as they pursue those missions.

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participating in the campaign to defeat ISIS.<sup>4</sup> Such strikes are lawful measures to counter immediate threats to United States and partner forces while engaged in that campaign.

*Minimizing Civilian Casualties in United States Military Operations*

The United States Government is committed to minimizing civilian casualties and complying with its obligations under the law of armed conflict. The protection of civilians is fundamentally consistent with the effective, efficient, and decisive use of force in pursuit of United States national interests.

On March 6, 2019, the President issued Executive Order 13862, revoking section 3 of Executive Order 13732 of July 1, 2016 (United States Policy on Pre- and Post-Strike Measures to Address Civilian Casualties in U.S. Operations Involving the Use of Force), while retaining all other portions of that Executive Order. The President decided to issue the new Executive Order after evaluating the reporting requirement called for in section 3 of Executive Order 13732 and in light of subsequent reporting requirements enacted in the NDAA for FY 2018. The annual reports submitted to the Congress by the Department of Defense pursuant to section 1057 of the NDAA for FY 2018, as amended, are more comprehensive in certain ways than the report required by Executive Order 13732, which was limited in geographic scope and the type of United States Government operation. All other United States measures to minimize civilian casualties described in Executive Order 13732 continue to apply. The annual reports in 2018 and 2019 that the Department of Defense has submitted to the Congress pursuant to section 1057 of the NDAA for FY 2018, as amended, detail the measures to minimize civilian casualties described in Executive Order 13732, along with other steps taken to mitigate harm to civilians during United States military operations.

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<sup>4</sup> United States forces conducted similar defensive strikes in Iraq on March 12, 2020, in response to an indirect fire attack on Camp Taji, Iraq, that killed 2 U.S. service members and 1 British service member, and wounded numerous other members of Coalition forces.

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