

Executive Order -- United States Policy on Pre- and Post-Strike Measures to Address Civilian Casualties in U.S. Operations Involving the Use of Force

EXECUTIVE ORDER

UNITED STATES POLICY ON PRE- AND POST-STRIKE MEASURES TO ADDRESS CIVILIAN CASUALTIES IN U.S. OPERATIONS INVOLVING THE USE OF FORCE

By the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby direct as follows:

Section 1. Purpose. United States policy on civilian casualties resulting from U.S. operations involving the use of force in armed conflict or in the exercise of the Nation's inherent right of self-defense is based on our national interests, our values, and our legal obligations. As a Nation, we are steadfastly committed to complying with our obligations under the law of armed conflict, including those that address the protection of civilians, such as the fundamental principles of necessity, humanity, distinction, and proportionality.

The protection of civilians is fundamentally consistent with the effective, efficient, and decisive use of force in pursuit of U.S. national interests. Minimizing civilian casualties can further mission objectives; help maintain the support of partner governments and vulnerable populations, especially in the conduct of counterterrorism and counterinsurgency operations; and enhance the legitimacy and sustainability of U.S. operations critical to our national security. As a matter of policy, the United States therefore routinely imposes certain heightened policy standards that are more protective than the requirements of the law of armed conflict that relate to the protection of civilians.

Civilian casualties are a tragic and at times unavoidable consequence of the use of force in situations of armed conflict or in the exercise of a state's inherent right of self-defense. The U.S. Government shall maintain and promote best practices that reduce the likelihood of civilian casualties, take appropriate steps when such casualties occur, and draw lessons from our operations to further enhance the protection of civilians.

Sec. 2. Policy. In furtherance of U.S. Government efforts to protect civilians in U.S. operations involving the use of force in armed conflict or in the exercise of the Nation's inherent right of self-defense, and with a view toward enhancing such efforts, relevant

departments and agencies (agencies) shall continue to take certain measures in present and future operations.

(a) In particular, relevant agencies shall, consistent with mission objectives and applicable law, including the law of armed conflict:

(i) train personnel, commensurate with their responsibilities, on compliance with legal obligations and policy guidance that address the protection of civilians and on implementation of best practices that reduce the likelihood of civilian casualties, including through exercises, pre-deployment training, and simulations of complex operational environments that include civilians;

(ii) develop, acquire, and field intelligence, surveillance, and reconnaissance systems that, by enabling more accurate battlespace awareness, contribute to the protection of civilians;

(iii) develop, acquire, and field weapon systems and other technological capabilities that further enable the discriminate use of force in different operational contexts;

(iv) take feasible precautions in conducting attacks to reduce the likelihood of civilian casualties, such as providing warnings to the civilian population (unless the circumstances do not permit), adjusting the timing of attacks, taking steps to ensure military objectives and civilians are clearly distinguished, and taking other measures appropriate to the circumstances; and

(v) conduct assessments that assist in the reduction of civilian casualties by identifying risks to civilians and evaluating efforts to reduce risks to civilians.

(b) In addition to the responsibilities above, relevant agencies shall also, as appropriate and consistent with mission objectives and applicable law, including the law of armed conflict:

(i) review or investigate incidents involving civilian casualties, including by considering relevant and credible information from all available sources, such as other agencies, partner governments, and nongovernmental organizations, and take measures to mitigate the likelihood of future incidents of civilian casualties;

(ii) acknowledge U.S. Government responsibility for civilian casualties and offer condolences, including ex gratia payments, to civilians who are injured or to the families of civilians who are killed;

(iii) engage with foreign partners to share and learn best practices for reducing the likelihood of and responding to civilian casualties, including through appropriate training and assistance; and

(iv) maintain channels for engagement with the International Committee of the Red Cross and other nongovernmental organizations that operate in conflict zones and

encourage such organizations to assist in efforts to distinguish between military objectives and civilians, including by appropriately marking protected facilities, vehicles, and personnel, and by providing updated information on the locations of such facilities and personnel.

Sec. 3. Report on Strikes Undertaken by the U.S. Government Against Terrorist Targets Outside Areas of Active Hostilities. (a) The Director of National Intelligence (DNI), or such other official as the President may designate, shall obtain from relevant agencies information about the number of strikes undertaken by the U.S. Government against terrorist targets outside areas of active hostilities from January 1, 2016, through December 31, 2016, as well as assessments of combatant and non-combatant deaths resulting from those strikes, and publicly release an unclassified summary of such information no later than May 1, 2017. By May 1 of each subsequent year, as consistent with the need to protect sources and methods, the DNI shall publicly release a report with the same information for the preceding calendar year.

(b) The annual report shall also include information obtained from relevant agencies regarding the general sources of information and methodology used to conduct these assessments and, as feasible and appropriate, shall address the general reasons for discrepancies between post-strike assessments from the U.S. Government and credible reporting from nongovernmental organizations regarding non-combatant deaths resulting from strikes undertaken by the U.S. Government against terrorist targets outside areas of active hostilities.

(c) In preparing a report under this section, the DNI shall review relevant and credible post-strike all-source reporting, including such information from nongovernmental sources, for the purpose of ensuring that this reporting is available to and considered by relevant agencies in their assessment of deaths.

(d) The Assistant to the President for National Security Affairs may, as appropriate, request that the head of any relevant agency conduct additional reviews related to the intelligence assessments of deaths from strikes against terrorist targets outside areas of active hostilities.

Sec. 4. Periodic Consultation. In furtherance of the policies and practices set forth in this order, the Assistant to the President for National Security Affairs, through the National Security Council staff, will convene agencies with relevant defense, counterterrorism, intelligence, legal, civilian protection, and technology expertise to consult on civilian casualty trends, consider potential improvements to U.S. Government civilian casualty mitigation efforts, and, as appropriate, report to the Deputies and Principals Committees, consistent with Presidential Policy Directive 1 or its successor. Specific incidents will not be considered in this context, and will continue to be examined within relevant chains of command.

Sec. 5. General Provisions. (a) The policies and practices set forth above are not intended to alter, and shall be implemented consistent with, the authority and responsibility of commanders and other U.S. personnel to execute their mission as

directed by the President or other appropriate authorities, which necessarily includes the inherent right of self-defense and the maintenance of good order and discipline among U.S. personnel. No part of this order modifies the chain of command of the U.S. Armed Forces or the authority of U.S. commanders.

(b) No part of this order modifies priorities in the collection of intelligence or the development, acquisition, or fielding of weapon systems and other technological capabilities.

(c) No part of this order shall prejudice or supplant established procedures pertaining to administrative or criminal investigative or judicial processes in the context of the military justice system or other applicable law and regulation.

(d) The policies set forth in this order are consistent with existing U.S. obligations under international law and are not intended to create new international legal obligations; nor shall anything in this order be construed to derogate from obligations under applicable law, including the law of armed conflict.

(e) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

BARACK OBAMA

THE WHITE HOUSE,
July 1, 2016.