

March 10, 2017

The Honorable James Mattis  
Secretary of Defense  
Department of Defense  
1000 Defense Pentagon  
Washington, DC 20301-1000

Dear Secretary Mattis:

We, the undersigned, are former government officials and national security experts from across the political spectrum with substantial legal, policy, diplomatic, and operational expertise in combatting terrorism. In late January, President Trump issued a Presidential Memorandum directing you to submit a preliminary draft plan for defeating ISIS within 30 days.<sup>1</sup> Among other components, the plan shall include “recommended changes to any United States rules of engagement and other United States policy restrictions that exceed the requirements of international law regarding the use of force against ISIS.”<sup>2</sup> As the draft plan is finalized, we recommend that any changes to the rules of engagement or policies on the use of force in counterterrorism operations be guided by the following nonexclusive set of principles, many of which are required by current law, and all of which are designed to enable effective, nimble, and sustainable use of our military forces.

Sincerely,

Rand Beers  
Former Undersecretary for National Protection and Programs and Former Acting Secretary  
Department of Homeland Security

Daniel Benjamin  
Former Coordinator for Counterterrorism  
Department of State

Robert G. Berschinski  
Former Deputy Assistant Secretary of State for Democracy, Human Rights and Labor

Charles A. Blanchard  
Former General Counsel of the Army  
Former General Counsel of the Air Force

Antony Blinken  
Former Deputy Secretary of State

Rosa Brooks  
Former Counselor to Undersecretary of Defense for Policy  
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Former Deputy Director  
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Amy Pope  
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Michael H. Posner  
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Samantha Power  
Former United States Ambassador to the United Nations

Tommy Ross  
Former Deputy Assistant Secretary of Defense for Security Cooperation

Wendy Sherman  
Former Undersecretary of State for Political Affairs

Jeffrey Smith  
Former General Counsel  
Central Intelligence Agency

Suzanne Spaulding  
Former Undersecretary for National Protection and Programs  
Department of Homeland Security

Michael G. Vickers  
Former Undersecretary of Defense for Intelligence

William F. Wechsler  
Former Deputy Assistant Secretary of Defense for Special Operations and Combatting Terrorism

Christine E. Wormuth  
Former Undersecretary of Defense for Policy

Cc: The Honorable Rex W. Tillerson, Secretary of State  
The Honorable John F. Kelly, Secretary of the Department of Homeland Security  
Michael Dempsey, Acting Director of National Intelligence  
The Honorable General Joseph F. Dunford, Chairman of the Joint Chiefs of Staff  
Lieutenant General H. R. McMaster, USA, Assistant to the President for National Security Affairs  
Thomas Bossert, Assistant to the President for Homeland Security and Counterterrorism  
The Honorable Mike Pompeo, Director, Central Intelligence Agency  
The Honorable Jeff Sessions, Attorney General  
Senator John McCain, Chairman of the Senate Committee on Armed Services  
Representative Mac Thornberry, Chairman of the House Committee on Armed Services

## Principles to Guide U.S. Counterterrorism Use of Force Policies

In any counterterrorism or counterinsurgency campaign, public confidence and legitimacy are critical to strategic success. When such confidence breaks down, allies, partner forces, and local populations are less likely to provide cooperation, support, and vital intelligence; terrorist recruitment and propaganda efforts thrive; and attacks against U.S. troops become more likely. The United States has the most professional and experienced military in the world, and as such the American people and our allies rightly place a great deal of trust and confidence in U.S. military operations. As the United States continues to refine its policies on the use of force in counterterrorism operations, the following principles should guide policymakers. These principles, many of which are legally required, are designed to enable effective, nimble, and sustainable use of our military forces in the campaign to defeat ISIS, and other organized armed groups that pose a threat to the United States in Iraq, Syria, and other parts of the world.

### 1. **Continue to Prioritize Civilian Protection**

The United States has always put a strong premium on minimizing civilian harm in armed conflicts, both because it is the right thing to do and because doing so is strategically beneficial. However, even small numbers of unintentional civilian deaths or injuries—whether or not legally permitted—can cause significant strategic setbacks. For example, civilian deaths from U.S. operations can cause partners and allies to reduce operational collaboration, withdraw consent, and limit intelligence-sharing; increase violence from militant groups; and foster distrust among local populations that are crucial to accomplishing the mission. As a result, reducing civilian harm and appropriately responding to harm that does occur play an important role in helping the United States achieve its mission objectives. Since the 9/11 attacks, the United States has made important changes to the processes and procedures for reducing and responding to civilian harm—with clear, positive results. To that end, the United States should continue to:

- Take feasible precautions in conducting operations to reduce the likelihood of civilian casualties. In some situations—for example, outside of traditional war zones or when engaging in areas with high civilian density—rules of engagement that go beyond what is strictly required by the law of armed conflict may be strategically beneficial to accomplish the mission and secure the peace;
- Review or investigate incidents involving civilian casualties;
- Promptly acknowledge U.S. responsibility for civilian deaths;
- Provide remedies to civilians who are injured and family members of civilians who are killed;
- Work with foreign partners to share and develop best practices for reducing and responding to civilian harm;
- Maintain open channels of communication and engagement with the International Committee of the Red Cross and nongovernmental organizations in conflict zones to improve efforts to distinguish between military objectives and civilians.

## **2. Maintain Existing High Standards and Procedures for Uses of Force Outside Traditional War Zones**

The existence of terrorist organizations that orchestrate attacks from nations that lack the ability or willingness to address the threat posed by these armed groups has resulted in the use of armed force by the United States in self-defense in locations where it has minimal or no forces on the ground. The use of force outside traditional war zones, particularly using drone and other air strikes, raises complex legal, strategic, diplomatic, and humanitarian considerations that warrant continued use of heightened standards and procedures. To ensure that such operations are both strategically effective and lawful, the executive branch should, absent extraordinary circumstances:

- Ensure that there is an efficient and effective interagency legal and policy review process for approving such operations to ensure that the president has the full range of information, as well as the perspectives and advice of his relevant top national security and intelligence officials, needed to make a considered decision, and that all relevant government components are prepared for the various contingencies that may result;
- Use lethal force only when there is a near certainty—or a similarly high standard—that no civilian harm will occur; this standard has proven useful for maintaining support for kinetic operations among foreign governments and populations, and for minimizing the downsides and unintended consequences that occur when the United States accidentally kills or harms civilians.
- Require near certainty—or a similarly high standard—that the target has been accurately identified and is present;
- Use lethal force only in compliance with the requirements of domestic and international law and to address a threat that cannot be neutralized by other means, including capture by U.S. forces or local law enforcement, where feasible based on the risks and other factors associated with a potential capture operation. Capture operations offer the best opportunity for collecting vital intelligence needed for disrupting future terrorist plots.

## **3. Commit to Meaningful Transparency and Oversight**

While certain kinds of information must remain secret in the interest of national security, transparency to the public and oversight by Congress enhances the legitimacy of U.S. actions. Public disclosure regarding the legal and policy frameworks pursuant to which the U.S. operates—and the effects of those operations—enables the United States to broadcast successes; restore credibility when mistakes occur; and correct erroneous allegations of civilian casualties or unlawful operations that fuel enemy propaganda and recruitment, and can turn allies, partners, and local populations against the United States. Effective congressional oversight helps maintain confidence in U.S. operations when certain details must be withheld from the public. The United States has already made important improvements in transparency and oversight, and the following steps would bolster confidence in the legality and effectiveness of U.S. counterterrorism efforts:

- Streamline congressional oversight and ease transparency by ensuring that the Department of Defense has primary responsibility for lethal operations;
- Continue to publicly report the number of civilians and combatants killed in U.S. strikes;

- Consistent with national security, release to the public any updates or changes to the legal and policy frameworks that guide the United States' use of force and related national security operations;

4. **Evaluate the Strategic Costs, Benefits, and Consequences of Lethal Operations**

Evaluating the strategic impact, including both costs and benefits, of lethal force operations is critical to ensuring that lethal strikes are used in ways that advance, rather than undermine, U.S. national security and other important national interests. The new administration should conduct a comprehensive interagency strategic review of the use of force, particularly outside of traditional war zones. The review should be ongoing and should specifically assess the impact of lethal operations on:

- The nature and scope of the terrorist threat;
- The ability of terrorist organizations to recruit new members, launch attacks, and garner support;
- Global, regional and local attitudes towards the United States and its allies;
- The availability and effectiveness of other means of countering terrorism;
- Long-term success in reducing the threat of terrorism.