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Updated April 8, 2021

U.S. Antipersonnel Landmine Use Policy

2020 Trump Administration Landmine Policy

On January 31, 2020, the Department of Defense (DOD) announced a new policy on the use of antipersonnel landmines (APLs). According to a January 31, 2020, DOD memorandum, President Trump "decided to cancel Presidential Policy Directive-37 (PPD-37)," which was issued by the Obama Administration in January 2016. The Administration adopted the new policy following an internal DOD review ordered by former Secretary of Defense James Mattis that was completed in 2018.

The January 2020 memorandum permits Combatant Commanders to authorize the use of nonpersistent APLs regardless of geographic location "when necessary for mission success in major contingencies or other exceptional circumstances." Nonpersistent landmines, according to the memorandum, "must possess self-destruction mechanisms and self-deactivation features." Persistent landmines, which the new policy forbids, lack these features. PPD-37 forbade the use of APLs "outside the Korean Peninsula," as well as assisting, encouraging, or inducing "anyone outside the Korean Peninsula to engage in activity prohibited by the Ottawa Convention." The Ottawa Convention, to which the United States is not a party, requires states parties to stop the production, use, and transfer of APLs, as well as to destroy all stockpiled APLs, except for the "minimum number absolutely necessary" for training purposes. The Obama Administration's policy stated the United States would "undertake to destroy APL stockpiles not required for the defense" of South Korea.

Background

With the end of the Cold War in 1991, during the mid- to late 1990s, the international community began to question the utility of APLs in light of the growing number of civilian and U.N. peacekeeper casualties resulting from abandoned unmarked or unregistered minefields. In 1996, President Clinton announced a policy that immediately discontinued U.S. use of persistent APLs except in the demilitarized zone (DMZ) separating North and South Korea and supported negotiation of a worldwide ban on APLs in the U.N. In November 1996, the United States introduced a resolution to the U.N. General Assembly to pursue an international agreement that would ban the use, stockpiling, production, and transfer of APLs. While many nations supported such a ban, others were concerned that verifying such a ban would be difficult and that APLs still played a useful role in military operations. The UN General Assembly, however, could not agree on a way forward.

In 1997 the government of Canada and a number of nongovernmental organizations sponsored *The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and on Their Destruction*, (also known as the Ottawa Convention), which entered into force for those signatory countries in 1999. The Clinton Administration declined to sign the Ottawa Convention because it would preclude U.S. use of APLs in the DMZ. In February 2004, the Bush Administration announced the United States would use persistent APLs only in the DMZ until 2010, after which the United States would not use such APLs anywhere. The Bush Administration also indicated that the United States would develop alternatives to persistent landmines. The Obama Administration conducted a review of U.S. policy regarding landmines. A National Security Council spokesperson stated in June 2014 that the United States would not "produce or otherwise acquire any anti-personnel landmines in the future," including for the purpose of replacing expiring stockpiles. In 2014, the Obama Administration announced the APL policy described in PPD-37 (discussed earlier). The Department of State noted in December 2014 that the United States was "pursuing solutions that would be compliant with the [Ottawa Convention] and that would ultimately allow us to accede to the convention while ensuring that we are still able to meet our alliance commitments" to South Korea.

Details

As noted, the new policy "will not have any expressed geographic limitations." DOD's January 31, 2020, memorandum adds

> [A]ppropriate geographic limitations will be formulated based on specific operational contexts and will be reflected in relevant rules of engagement, consistent with existing DOD policy and practice.

The policy described in the memorandum permits the use of nonpersistent APLs "in major contingencies or other exceptional circumstances." Responding to a question during a January 31, 2020, press briefing, the acting Assistant Secretary of Defense for Strategy, Plans and Capabilities did not provide any specific scenarios that might constitute "exceptional circumstances." With respect to the U.S. stockpile of persistent APLs, the "Military Departments will continue to demilitarize" any such landmines "remaining in existing inactive stockpiles," according to the January 31, 2020, memo which mandates that DOD

> may acquire, retain, and transfer a limited number of persistent landmines for the purposes of training personnel engaged in demining and countermining

> operations and improving countermine capabilities. The stocks of such persistent landmines will not exceed the minimum number absolutely necessary for such purposes.

DOD's January 31, 2020, briefing also noted that the United States may need to develop new APLs for use in accordance with the new policy and that

> all activated landmines … will be designed and constructed to self-destruct in 30 days or less after emplacement and will possess a back-up self-deactivation feature. Some landmines, will be designed and constructed to self-destruct in shorter periods of time, such as two hours or forty eight hours.

The memorandum also stipulated that "Military Departments should explore acquiring landmines and landmine alternatives that could further reduce the risk of unintended harm to noncombatants." The memorandum also states DOD "will continue to adhere to all applicable international legal obligations concerning landmines" and specifically cites the *Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 annexed to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects* (hereafter "Protocol"). The United States is a party to the Protocol, which entered into force in 1998. In addition to prohibiting the use of nondetectable APLs and imposing detailed restrictions on the use of persistent APLs, the Protocol requires that its parties take "[a]ll feasible precautions … to protect civilians from the effects" of APLs. The written 2020 DOD policy apparently conforms to these requirements.

Why the Change in Policy?

According to DOD's January 31, 2020, Landmine Policy statement, the change in policy was required because

> the strategic environment has changed since 2016 and the U.S. faces an era of strategic competition that requires our military to become more lethal, resilient, and ready for future contingencies.

Regarding the utility of landmines in modern warfare, it was further stated that

> such area denial systems are a force multiplier in key operational contexts: they can obstruct, channel, and delay/stop numerically superior adversaries and prevent them from outflanking friendly forces.

While DOD did not provide any specifics, incidents outside of the Korean peninsula, such as in Afghanistan in 2019 and in Manda Bay, Kenya, in 2020, might have compelled the Administration and DOD reexamine the need for nonpersistent APLs.

2021 Biden Administration Policy on Landmine Use

DOD Press Secretary John Kirby told reporters on April 6 that the department is analyzing then-Secretary of Defense Mark Esper's decision with regard to the January 2020 policy described above. Upon completion of that analysis, DOD will "be able to have a better idea of whether or not further review of our landmine policy is warranted," Kirby added. However, Ambassador Linda Thomas-Greenfield stated during an April 8 UN Security Council debate that "President Biden has been clear that he intends to roll back" the Trump administration's above-described policy, "and our administration has begun a policy review to do just that."

Potential Issues for Congress

Potential issues for Congress might include the following:

- When does DOD plan to complete its 2020 Landmine Policy review?
- Does DOD plan to brief Congress on the results of the 2020 Landmine Policy review?
- What are some of the "exceptional circumstances" DOD believes could require the use of APLs?
- Does DOD have sufficient quantities and types of nonpersistent APLs to meet potential Combatant Commander's requirements as envisioned under DOD's current policy?
- Aside from self-destruct and deactivation features on nonpersistent APLs, what measures will military commanders employ to help prevent civilian/friendly force casualties?
- Under the current policy, are APLs to be used in a strictly defensive role or as a barrier to advancing enemy forces or can they be used in an offensive role such as during ambushes and raids?
- Will the current policy on U.S. APL usage be acceptable to our regional allies, some of whom no longer use APLs?
- With the possibility of more widespread use of APLs resulting from the current U.S. policy, how could this affect civilian casualties?

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