

IS THE DRONE “RULE BOOK” AN EFFORT TO FORCE KILL-NOT-CAPTURE?

After reading the response to Scott Shane’s article on the drone rule book, I wanted to add a few thoughts.

First, much of the treatment of the article treated the description of the rule book itself as news. It’s not. Greg Miller discussed the effort in an article last month.

White House counterterrorism adviser John O. Brennan is seeking to codify the administration’s approach to generating capture/kill lists, part of a broader effort to guide future administrations through the counterterrorism

The news in the Shane article is that the effort to codify the drone program accelerated—and now has lost urgency—because of the possibility that someone like Cofer Black rather than John Brennan would be running the drone program in a Romney Administration.

Facing the possibility that President Obama might not win a second term, his administration accelerated work in the weeks before the election to develop explicit rules for the targeted killing of terrorists by unmanned drones, so that a new president would inherit clear standards and procedures, according to two administration officials.

The matter may have lost some urgency after Nov. 6. But with more than 300 drone strikes and some 2,500 people killed by the Central Intelligence Agency and the military since Mr. Obama first took office, the administration is

still pushing to make the rules formal and resolve internal uncertainty and disagreement about exactly when lethal action is justified.

That's why I'm not sure we should assume that Obama ever intended the rules as limits on what Mitt's Administration might do.

There are at least two other possibilities.

While it's unclear whether this rule book effort is just part of or is the same thing as the disposition matrix also described in Miller's article, that article does make it fairly clear the codification effort strives to make the drone program more permanent, even to streamline it (and to centralize it under oversight-free White House personnel rather than the Joint Chiefs).

Targeted killing is now so routine that the Obama administration has spent much of the past year codifying and streamlining the processes that sustain it.

This year, the White House scrapped a system in which the Pentagon and the National Security Council had overlapping roles in scrutinizing the names being added to U.S. target lists.

Now the system functions like a funnel, starting with input from half a dozen agencies and narrowing through layers of review until proposed revisions are laid on Brennan's desk, and subsequently presented to the president.

[snip]

For an administration that is the first to embrace targeted killing on a wide scale, **officials seem confident that they have devised an approach that is so bureaucratically, legally and morally sound that future administrations will follow suit.** [my emphasis]

That is, the rush to implement the rule book may have been an effort to ensure the program's permanence, to force Mitt to keep it.

And while there's no doubt he would have (as Miller pointed out in his article), consider the alternative. Mitt's Administration likely would have included the architect of the torture program, Cofer Black, and a former CIA Director, Michael Hayden, who has repeatedly called for retaining the torture program.

The effort to institutionalize the drone program may have been a bid to sustain the kill-not-capture preference of the Obama Administration (though the "disposition matrix" appears to have been an effort to invent some alternatives for live capture that Obama hasn't much used). Though any effort to dictate choices to the dangerously creative Black, I suspect, would have been futile.

There's one other related possibility.

Hayden, in particular, has been vocal about what the choice to end torture has purportedly brought about: precisely that kill-not-capture choice. Even while defending torture, Hayden has been fairly aggressive in noting how much killing the Obama approach has entailed.

Might it be, then, that the effort to draft a set of "rules" for drone killing was really an effort to make the program look more rational and measured than it has been in practice, to put the best spin on it before another bureaucrats from another party got fully briefed on it?

As Shane notes, Obama's folks **still** haven't decided when and how they use drone killing.

Mr. Obama and his advisers are still debating whether remote-control killing should be a measure of last resort against imminent threats to the United States, or a more flexible tool, available to help allied governments attack their enemies or to prevent

■ militants from controlling territory.

So even four years in, the program is in fact an ad hoc mess, even if the Administration claims it is not.

And there are a number of killings or targetings that occurred under the Obama Administration—the incidents where “allies” gave us bad targeting data so we would kill their political rivals, the signature strikes that killed civilians, and even the targeting of Americans whom the intelligence community believed were not yet operational—that might be embarrassing if further details were leaked by the incoming Administration.

These awkward targetings are almost certainly precisely the reason the Administration refuses to make more information about its targeting program public: because they prove the program was never as orderly or legally sound as the Administration publicly claims. So the “rule book,” purporting to show the reasoned deliberations behind these screw-ups, might be one way to spin them as reasoned (and legal). I have suggested that some of the public statements about the drone program might have served as legal cover if ever anyone thought to prosecute Administration officials for killing civilians. Perhaps this “rule book” was designed to do the same?

Thus far, most of the treatment of the “rule book” has presumed it was meant to be prescriptive, and it might well have been. But it’s also possible the “rule book” was meant to be (falsely) descriptive, an effort to spin the program just as a group of potential critics got read into the program.

Update: Matthew Aid’s take on this seems to support my suspicions: this “rule book” is about the eventual review of this program.

■ A State Department official who recently left his post for a better paying job in the private sector admitted that there

is deep concern at State and Justice that sooner or later, a court in the U.S. or in The Hague will issue a ruling on the question of the legality of these missions, which many in Washington fear will go against the U.S. government position that these strikes are legal.