

THE TARGETED KILLING MEMOS SHARED WITH NYT, BUT NOT SENATE INTELLIGENCE COMMITTEE

According to the National Journal, one of the memos the Administration refuses to share with the intelligence committees authorizes the use of force in Algeria and, perhaps also in the same memo, with Mali.

Despite President Obama's pledge in his State of the Union address to make the drone program "even more transparent to the American people and to the world," his administration continues to resist efforts by Congress, even from fellow Democrats, to obtain the full range of classified legal memos justifying "targeted killing."

A key reason for that reticence, according to two sources who have read the memos or are aware of their contents, is that the documents contain secret protocols with foreign governments,

[snip]

Others may have been signed with the leaders of Algeria and Mali, the legal expert said. Given the widespread unpopularity of the drone program, the disclosure of these agreements could prove extremely embarrassing both for the United States and partner governments.

The Senate Intelligence Committee can't learn the details of what the government is up to, the Administration says, because even sharing

information (much less publicizing details) about our agreements with governments like Algeria would be embarrassing for all parties involved.

So who are the former and current government officials and senior administration officials leaking information to the NYT about new efforts – including the use of unarmed drones – to target the Algerian militant Mokhtar Belmokhtar in Algeria and Mali?

The NYT reports that earlier concerns about conducting operations not covered by the 2001 AUMF have recently been allayed.

The idea of taking stronger action in the region has been supported in recent months by Michael Sheehan, the senior counterterrorism official at the Pentagon, and Daniel Benjamin, who until December was the senior State Department counterterrorism official. In the past, State Department lawyers have questioned whether the military action approved by Congress against Al Qaeda after the Sept. 11, 2001, attacks authorized efforts to target extremists who were not clearly linked to the group. But according to some officials, those legal arguments have recently been overcome.

“Those legal arguments have recently been overcome.” By the adoption of new OLC advice the Administration won’t share with Congress?

The article suggests that part of this calculation comes from increased Algerian willingness to partner on counterterrorism, which in turn may be tied to our preparations to offer concrete plans to them.

Some proponents of the plan thought that gaining Algerian cooperation on counterterrorism might be problematic but figured the Algerians might come around if the United States was prepared

to present a detailed proposal to share information.

“They need to take responsibility for their guys running amok in the areas,” one senior administration official said of the Algerians.

Then, the NYT proceeds to describe the outlines of possible proposals – including having the Algerians conduct counterterrorism operations outside its border (presumably in Mali).

In a cable to the State Department last week, according to administration officials, Henry S. Ensher, the United States envoy in Algiers, urged that the pursuit of the Algerian militant Mokhtar Belmokhtar, the mastermind of the gas field attack, be made a priority. Toward that end, he recommended that the Obama administration tell the Algerians that if they allowed the United States to fly unarmed drones over the border area of Algeria as well as over Mali, the Americans would share the information with the Algerian government.

[snip]

American officials also sense a possible change of heart by Algerian officials to move away from their longstanding policy not to conduct military operations outside the nation’s borders. Algerian officials recently told the United States that they were prepared to conduct operations in border areas, one American official said.

There are hints that this change of heart came from the arrival of US personnel in Niger, where we’ll operate unarmed-but-heck-maybe-they’ll-be-armed drones out of a new base on Algeria’s southern border.

I guess the message was either the Algerians

conduct operations on their southern border with drone assistance or we'll operate potentially armed drones there ourselves? You know, "They need to take responsibility for their guys running amok in the areas."

Or, as the statement always goes, the Administration maintains we're allowed to operate drones "where the country involved consents or is unable or unwilling to take action against the threat." It sounds like we gave the Algerians that choice, and given the presence of drones on their border, they decided they might consent after all.

I'm sure the authorization to conduct targeted killing is all neatly mapped out somewhere, either publicly in the pages of the NYT, or in some OLC memo that the Administration refuses to share with Congress.

Update: As part of its still unsuccessful attempt to get the Senate Intelligence Committee to advance John Brennan's nomination, the Administration apparently shared details of some of the missing memos yesterday afternoon.

On Wednesday, administration officials met with intelligence committee members to discuss the contents of the disputed documents. Copies of the material were not turned over to the committee, however, said a source familiar with the matter.

So maybe they gave SSCI the information they had already leaked to the NYT?

Still, their claim that they can't share these memos because the details – some of which appear in the NYT – would be embarrassing really doesn't hold water at this point.