

BEN EMMERSON: DUPE ON TWO CONTINENTS, OR POLITICALLY SAVVY DIPLOMAT?

If I'm not mistaken, the people accusing UN Special Rapporteur on Human Rights and Counterterrorism, Ben Emmerson, of condoning lies in his recent report on drone strikes in Pakistan had no such reaction when Emmerson endorsed John Brennan to head the CIA.

That's not surprising. Some of the same people consistently read articles presenting evidence that Brennan was not the moderating force on the drone program his boosters claimed and yet parroted the headlines of those articles that said he was.

Don't get me wrong. Like these Emmerson critics, I take Emmerson's report solely for what it is: a report on what the civilian, democratically-elected leadership of Pakistan wants to say about drone strikes in Pakistan, not a report on what is really going on in Pakistan, largely under the leadership of Pakistan's permanent shadow government. Indeed, I was one of the first to point out how Emmerson's inability to talk to Pakistan's military and ISI in his reporting trip highlighted the differences between what civilian and military in Pakistan were saying, rather than reflected any "reality" on the ground.

What the release does, then, is lay out in stark contrast the degree to which Pakistan's civilian and military authorities are sending different messages.

I just read Emmerson's motives to be different than, simply, sanctioning a lie.

Indeed, I think his comments to Spencer Ackerman

and Jack Goldsmith's interpretation on his endorsement of Brennan might offer some insight on how he's approaching his efforts to put some legal framework on the use of drones internationally, and why he presented Pakistan's claims with such seeming credulity.

Emmerson told Spencer that while he might not agree with policies Brennan endorses, having him lead CIA would at least make the program more accountable.

"By putting Brennan in direct control of the CIA's policy [of targeted killings], **the president has placed this mediating legal presence in direct control of the positions that the CIA will adopt and advance, so as to bring the CIA much more closely under direct presidential and democratic control,**" Emmerson says. "It's right to view this as a recognition of the repository of trust that Obama places in Brennan to put him in control of the organization that poses the greatest threat to international legal consensus and recognition of the lawfulness of the drone program."

"Warts and all" conversations with current and former Obama administration officials convince Emmerson that Brennan tried to steer the drone program from a "technology-driven process" to one that attempted to balance the interests of the law, counterterrorism, and the agencies involved in implementing it. "There are significant elements within the CIA who are unhappy about Brennan's appointment," Emmerson says. "These are the hawkish elements inside the CIA who would rather have as a director someone who reflected their agenda, rather than someone who is there to impose the president's agenda."

Emmerson says he can't know if Brennan will actually carry out fewer drone

strikes at the CIA. "What I'm saying is, Brennan has been the driving force for the imposition of a single consistent and coherent analysis, both legal and operational, as to the way the administration will pursue this program," he explains. "I'm not suggesting that I agree with that analysis. That's not a matter for me, it's a matter for states, and there's a very considerable disagreement about that. But what I am saying is that what he will impose is restraint over the wilder ambitions of the agency's hawks to treat this program in a manner that is ultimately unaccountable and secret."
[my emphasis]

Jack Goldsmith deems Emmerson's acceptance of the myth that the CIA has been operating in rogue fashion as gullible or naive—critically, some of the same adjectives being used to describe his reporting on Pakistan.

By confirming Emmerson's *ex ante* bias that the CIA is a cowboy institution operating lawlessly and beyond presidential control, the officials and former officials who talked to Emmerson are clearly trying to protect the President and the White House (and, no doubt, themselves) from Emmerson's investigation at the expense of the CIA. Emmerson's gullibility or naivete (if those are the right terms) on this matter makes clear what has been pretty clear from the beginning, namely, that the CIA, and not the USG, is his real target.

I would suggest, however, that whether Emmerson is being naive or savvy, the effect is the same. He aggressively supported Brennan taking the helm at CIA (in a way that Goldsmith notes may make his life more difficult at CIA).

A position where, it should be said, Brennan will reportedly be operating outside the Drone Rulebook he himself devised.

But, according to both the analysis of Emmerson and those who are calling him naive, given Brennan's close relationship with Obama, even those off-rulebook drone strikes will now operate with no plausible deniability. Whether CIA was genuinely operating as a cowboy before or not, going forward it will be almost impossible to argue it is doing so, because Brennan, a very close Obama aide, will be overseeing the program.

I think both Emmerson's endorsement of Brennan and his presentation of a view the civilian government of Pakistan would like to tell rather than the reality serve the same purpose: To highlight the way drone wars operate within big loopholes of democratic accountability and possibly, to move towards eliminating those loopholes.

Emmerson is a UN diplomat operating with almost no leverage, and I'm not at all confident he'll succeed.

But his effort seems to understand a point I've long made about drones and Rosa Brooks has recently been addressing as well. Beyond any question about efficacy and civilian casualties, conducting drone strikes as we have been undermines the principles of sovereignty (which, it should be said, is an important part of any authority the UN might have over such issues) in both targeted and targeting states.

Maybe I'm misreading Emmerson's actions as being far more astute than they really are—maybe he is the dupe his critics make him out to be. But he seems to be using his public statements to address the underlying problems with imposing some international legal framework on drones as much as he is the specifics.