

Learning to Love Drone Proliferation

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The United States has a new policy on drone proliferation: we're for it.

On February 17, the Obama Administration announced new, less strict conditions for selling killer drones to foreign governments.[1]

Up till now, sales of drones have been regulated by the 1987 Multilateral Technology Control Regime (MTCR). The MTCR was drafted with ballistic missiles in mind but now also encompasses drones.

As a control mechanism, the MTCR is seriously flawed. First, the MTCR is a voluntary control regime. Second, thirty-four states participate in the MTCR, but not China, India, Iran, Israel, or Pakistan. (On Friday, Pakistan revealed that it has developed an armed drone.)

The Predator and Reaper drones used for targeted kills fall under MTCR's Category I which is defined as systems whether armed or unarmed which can deliver a 500 kg payload to a range of 300 kilometers. Transfers of Category I systems are subject to a "strong presumption of denial."

The United States has only transferred armed drones to the United Kingdom (February 2007). The Obama Administration has previously turned down requests for armed drones from Turkey, Pakistan, Saudi Arabia, and the United Arab Emirates.[2] Under the new export policy, the MTCR's "strong presumption of denial" may become a thing of the past.

True, the new policy does not promise a drone to all comers—a policy which, albeit alarming, would at least have the virtue of even-handedness. Instead, the US State Department assures us that sales will be evaluated on a "case-by-case basis." The criteria that will be applied, like most of the new policy, are classified. We can expect the Administration will greenlight armed drone transfer to countries we like and reject transfers to countries we don't.

The Obama Administration has told us this much: prospective purchasers of UAS (unmanned aerial systems, *i.e.*, drones) must meet the end-use restrictions set out in [the State Department's February 17 "Fact Sheet"](#):

- * Purchasers must use UAS "in accordance with international law, including international humanitarian law and international human rights law, as applicable."

- * Purchasers must not use "military UAS to conduct unlawful surveillance or use unlawful force against their domestic populations."

* “Armed and other advanced UAS are to be used in operations involving the use of force only when there is a lawful basis for use of force under international law, such as national self-defense.”

The problems with these restrictions should be immediately apparent. Discussing armed drones in February 2014, Director of National Intelligence James Clapper said: “I would hope, as other countries acquire similar capabilities, that they follow the model that we have for the care and precision that we exercise.”[3]

Let’s hope that they don’t. The US model for using drones includes staggering numbers of civilian deaths, including drone strikes on weddings and funerals, and “double tap” strikes on rescuers who go to aide those injured in an initial strike. Military-age males in conflict areas are assumed, without more, to be terrorists and thus legitimate targets—all this taking place in countries with which the US is not at war.

Micah Zenko of the Council for Foreign Relations says this about the new restrictions: “Even analysts less skeptical than me would ask if the United States itself adheres to these principles.”[4] Sarah Knuckey, who teaches at Columbia Law School and who was one of the authors of the influential study, *Living under Drones*, comments of the new policy that “the US has advanced interpretations of international law that many have described as dangerous, novel, and expansive.”[5]

Expansive, indeed. Start with the US interpretation of self-defense. Micah Zenko and Professor Sarah Kreps rightly observe that: “The United States takes a more expansive view of self-defense than its allies, not just with respect to drones and targeting individuals, but also to invading countries.”[6] Law professors of a right-wing bent justified the 2003 US invasion of Iraq as preemptive self-defense. Going further back, the US justified its 1989 invasion of Panama as self-defense because the Canal Zone was considered US territory and US nationals were stationed there. Given sufficient ingenuity, any act of aggression can be rebaptized as self-defense.

Call the Repo Man

William D. Hartung, Director of the Arms and Security Project at the Center for International Policy points out that: “Middle Eastern allies from Bahrain to Egypt to Saudi Arabia have used U.S.-supplied weapons to put down democracy movements. Yet these are precisely the kinds of regimes that Washington may be tempted to supply drones to for use in the war on the Islamic State group.”[7]

Suppose—even after if it pinky swears not to—a state like Egypt unleashes a drone-fired Hellfire missile on the next crowd of demonstrators gathered in Tahrir Square? What could the US do about it? Send a repo man to Cairo?

Rear Admiral John Kirby, Pentagon Press Secretary, took a shot at these questions at a press conference on February 18. Kirby said that the Department of Defense “will have a role in what we—what we call end-use monitoring, so I mean, we will have a role as well as the State Department, in monitoring the use of these things.”

Kirby was then asked: “[G]iven that the United States use of drones to carry out extra-judicial killings abroad is a subject of great debate, about whether that conforms with international laws and human rights, how could the U.S. possibly ensure that these things be

held to those standards if other countries are using them once we let the technology go.”

Kirby replied that the United States has been selling various arms overseas for years. (This is supposed to make us feel better?) The US knows how to do end use monitoring (EUM), and “We’re very good at this....”

No, we’re not. Kirby’s questioner was correct: once the US transfers weapons there’s no telling how they’ll be used or who they’ll wind up with. Don’t they get CNN in the Pentagon? Hasn’t Admiral Kirby heard about the weapons the US gave the Iraqi army which are now in the hands of ISIS? Or the arms we supplied in the 1980s to *mujahideen* groups in Afghanistan who later became Al-Qaeda?

Even if the US permits drone sales only to the most cuddly, lovable, human-rights observant states, nothing prevents those states from passing their drones on to someone nasty. Sure, the US can refuse to sell more drones to that country in the future, but the damage will be already done.

If only the drones we sell had an OFF switch the US could throw. The idea of installing some sort of malware in drones that would allow remote disabling has been kicked around in industry circles, but to date it remains science fiction.

Even if the US did have an OFF switch would we use it? Like the US itself, US allies do not commit rights violations. So ignore anyone who tells you that the US has repeatedly given weapons to states while knowing full well that those states would use those weapons against their own people or in attacks on neighboring countries.

Potentially, Congress could put a brake on drone sales abroad. Under the U.S. Arms Export Control Act of 1976, Congress must be notified of most arms sales over \$14 million after which it is given 30 days to block the transaction. During the Cold War, any nation, however vile, which claimed to be fighting Communism could get all the US arms it wanted. Substitute “terrorists” for “Communists” and the same tactic works today.

Given the risks in selling drones overseas, why do it? Do we need to ask?

Back to the State Department Fact Sheet: the new UAS export policy “also ensures appropriate participation for U.S. industry in the emerging commercial UAS market, which will contribute to the health of the U.S. industrial base, and thus to U.S. national security which includes economic activity.” In other words, what’s good for General Atomics, maker of the Predator, is good for America. Micah Zenko writes: “With a projected \$80 billion in global spending over the next ten years, drones constitute a potential growth industry for the aerospace and defense sectors.”[8] Putting corporate profits before human lives—there’s the real US model.

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Notes

[1] Missy Ryan, “Obama Administration to Allow Sales of Armed Drones to Allies,” WASHINGTON POST, Feb. 17, 2015.

[2] Micah Zenko, “The Great Drone Contradiction,” foreignpolicy.com, February 19, 2015.

[3] Quoted in Micah Zenko and Sarah Kreps, *Limiting Armed Drone Proliferation*, Council on Foreign Relations Special Report No. 69, June 2014, at page 15.

[4] Micah Zenko, "The Great Drone Contradiction," foreignpolicy.com, February 19, 2015.

[5] Sarah Knuckey, "Washington's New Drone Sales Policy Could Export US-Style Drone War," justsecurity.org, February 20, 2015.

[6] Zenko and Kreps, *Limiting Armed Drone Proliferation*, at page 26.

[7] William D. Hartung, "A Lot Could Go Wrong Here," Center for International Policy, cipoline.org, Mar. 7, 2015.

[8] Micah Zenko, *Reforming U.S. Drone Strike Policies* (Jan. 2013), at p. 18

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