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# US, Iranian Drones Crowd Iraqi Air Space

By PAUL McLEARY

WASHINGTON — Despite a years-long history of intermittently sniping at one another's drones in the skies over Iraq, Afghanistan and the Arabian Gulf, the United States and Iran have for the most part avoided each other in the air.

But with the US now flying about 50 missions a day over Iraq and a dedicated Iranian drone and signals intelligence presence having been established in Baghdad, the two rivals find themselves overtly sharing the same airspace, even while denying any coordination or contact.

Of course, Iraq is a big place, and the prospect of two aircraft bumping into one another is remote. But given the "shoot first, ask questions later" approach the two



TECH. SGT. ERIK GUDMUNDSON/US AIR FORCE

**Controlling the Skies:** An MQ-9 Reaper UAV taxis after landing at Joint Base Balad, Iraq. US, Iranian and Iraqi unmanned vehicles share airspace over Iraqi skies.

countries have taken toward one another's unmanned aerial assets, the possibility for another volley exists in the long-running, if rather sleepy, drone war.

We can date the first shot in this conflict to February 2009, when an American F-16 downed an Iranian drone almost on top of a small US

combat outpost in eastern Iraq.

In that mostly forgotten episode, the Iranian aircraft had been flying in Iraqi airspace for about 70 minutes trailed by two American aircraft before being shot out of the sky.

"This was not an accident on the See *DRONE WAR*, *Page 6*

# Europe Struggles To Unify Its Response to Russia

By PIERRE TRAN

PARIS — Europe will harden its line against Moscow after the downing of Malaysian Airlines Flight 17, but sniping between Britain and France shows that the road to political consensus will be long and hard, analysts said.

The 28 European Union foreign ministers agreed July 22 to stiffen sanctions unless Russian President Vladimir Putin moves toward settling the Ukraine crisis. Ministers have yet to detail the fresh sanctions, which include banning new arms sales and adding 15 people and 18 companies and organizations to the sanctions list.

Current arms contracts, including delivery of a Mistral-class helicopter carrier to Moscow, will be exempt.

The previous day, UK Prime Minister David Cameron said it would



THIERRY CHARLIER/AFP

**Seeking Consensus:** Foreign ministers Frans Timmermans of the Netherlands, left, Poland's Radoslaw Sikorski and Italy's Federica Mogherini confer prior to a meeting of foreign affairs ministers at the EU Council building in Brussels last week.

have been "unthinkable" for Britain to proceed with the €1.2 billion (US \$1.6 billion) ship deal inked in 2011, while French President François Hollande said the first ship would be handed over to Moscow, but whether the second will follow depends on Russia's "attitude."

That drew accusations of hypocrisy from the leader of the French Socialist Party and this riposte from Foreign Minister Laurent Fabius: "I say to my dear British friends, let's speak of finance. I'm led to believe there are quite a few oligarchs in London."

The cross-Channel sniping between Europe's leading military powers — parties to a 2010 pact to deepen defense cooperation — indicated how domestic politics and business interests made it difficult for Europe to show a united front, even during a crisis on its borders.

An option, drawn up by the European Commission, would forbid investors to buy new issues of shares and debt instruments from state-controlled Russian banks, the *Financial Times* reported July 25. The newspaper said the measure was unlikely to be adopted be-

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# Court: US Must Explain Why It Rejects Foreign Deals

By AARON MEHTA

WASHINGTON — Since its inception in 1975, the Committee on Foreign Investment in the United States (CFIUS) has decided whether foreign acquisitions or investments in US companies could raise national security concerns.

Powerful, if little-known outside the national security insiders, CFIUS has the ability to scuttle multimillion dollar deals that committee members feel pose a threat to US security. And it has been largely unchallenged — until July 15, when the Chinese-owned Ralls Corp. won a court case against the committee.

The case was notable as the first real challenge to CFIUS in court, but also for its potential long-term impact. Experts said the decision sets a fascinating precedent for how CFIUS has to disclose its decision-making process at a time when international acquisitions of US companies, particularly by Chinese firms, are trending upward.

"I think it's a big deal," said Christopher Brewster, an attorney with Washington-based Stroock & Stroock & Lavan, adding the decision injected a "bolt of due process" into the CFIUS system.

"During all this time there has been no significant legal challenge to the authority of the executive branch on this," he said. "So, effectively, it has operated without judicial oversight. If this decision is upheld, it says there are limits, there is a baseline you have to

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## CFIUS RULING

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meet, and if you don't do that the parties are entitled to take the issue to the court and get a hearing. That cannot help but have an impact on the review process."

While chaired by the Treasury Department, CFIUS, which operates under the Defense Production Act, is made up of representatives from 16 government agencies, including the Departments of Defense, State, Justice and Homeland Security.

The committee rarely has blocked a deal, but not because it is a pushover. Many companies, knowing a rejection is coming, simply withdraw. Ralls proved to be the exception, pushing against CFIUS in a way previously unheard of.

In February 2012, Ralls purchased the Butter Creek wind farm project, located in Oregon. A company news release notes this was the third wind farm purchased by the firm.

The company began work on the project until July of that year when CFIUS ordered a halt to construction. The government's reason? Ralls is affiliated with the Sany Group, a Chinese company, and the wind farm is located near a US Navy bombing range.

The proximity of a Chinese-owned program so close to a Navy base was enough of a concern for CFIUS to turn down the deal — and for them to require the company to take out any construction it had already begun, at its own cost.

In September 2012, Ralls filed suit against CFIUS in the US District Court for the District of Columbia. After President Obama signed off on CFIUS' objections, the suit was amended to include the president as a defendant. It also pulled out the proverbial big guns, hiring former solicitor general Paul Clement to argue the case.

On July 15 of this year, a three-judge panel unanimously declared that Ralls had the



PAUL J. RICHARDS/AFP/GETTY IMAGES

**Investment Shake-up:** A court decision in mid-July could lead to greater transparency from the Committee on Foreign Investment in the United States.

right to know why they were rejected.

"We conclude that the Presidential Order deprived Ralls of constitutionally protected property interests without due process of law," the court found.

"Ralls is heartened that the court today upheld Ralls' arguments in every respect and ordered the government to disclose the reasons why it deprived Ralls' property," Tim Xia, an attorney for the company, said in a statement after the decision. "We look forward to further vindicating Ralls' right to be treated fairly and equally under the law."

However, the finding does not overturn the CFIUS ruling, nor did it touch on the right of Obama to reject a deal on national security grounds. In fact, legal experts said they see almost no chance the Ralls decision will be overturned.

"There's no way it's going to happen," Chris Griner, also of Stroock, said.

Mario Mancuso, a former CFIUS member who is now chair of the international trade and investment practice at law firm Fried Frank, agreed. "I don't really think so. That train has left the station."

The government may appeal the decision. A Treasury spokeswoman directed a request

for comment to the Department of Justice; a DoJ spokesman declined to comment aside from saying the agency is reviewing the ruling.

Assuming the ruling is upheld, what does this actually mean for the CFIUS process?

The biggest change is that companies can now request nonclassified information from CFIUS on why they were turned down. It also gives the companies a chance to argue their case in hopes of having a CFIUS decision overturned.

"Parties before CFIUS will have an incentive to make queries of the CFIUS committee as to concerns about their particular transaction," Mancuso said. "CFIUS is already resource-constrained ... this will put tremendous procedural pressure on CFIUS' already constrained resources."

### The New Chinese Market

Chinese-owned companies like Sany are increasingly looking to acquire and invest in US assets, which means CFIUS oversight will loom large in the coming years.

CFIUS covered 318 cases from 2010-2012, according to its most recent report to Congress. The jump in Chinese cases is notable, rising from six in 2010 to 10 in 2011 to 23 in 2012 — the most of any country that year. The majority of those cases involved manufacturing, mining, utilities or construction.

Those 39 Chinese cases over the three-year period are second only to the United Kingdom's 68.

"That's an indicator of the overall trends of Chinese foreign direct investment, not just in the US but in our allies as well," said Brett Lambert, former deputy assistant secretary of defense for manufacturing and industrial base policy. "They have a lot of capital to deploy, and they are deploying it aggressively here in the United States; and from time to time the targets are companies the government feels are sensitive enough to warrant a CFIUS investigation."

It's not just China investing, Lambert said. Foreign firms are looking to move into the US market at higher rates than ever before.

"I believe we're seeing an uptick, and we're particularly seeing the increase in investments in advanced technology firms," Lambert said. "What you're seeing an increase in over the last few years is small and midsized firms being acquired in the US by multinational companies or foreign companies, or if not acquired at least taking investments."

The ruling likely will not change interest by investors, said Steven Grundman, a former Pentagon industrial policy chief now with the Atlantic Council.

"The unique circumstances of Ralls combined with the due process basis for the court's ruling strikes me as a combination that does not hold a great significance for the general conduct of foreign investment reviews of aerospace and defense mergers," he said.

"I think the factors that drive investment, that bring companies over here, that drove those decisions a year ago, will continue to be the factors to drive the decisions today," Brewster said.

At the same time, customers preparing for the CFIUS process may breathe a bit easier knowing they will get what Brewster called "a fair shake" and the ability to find out, at least in part, why their acquisition has been rejected.

"If anything, particularly with the Chinese, it gives them some comfort that they have more access and information," Griner said.

"The principals [of Ralls] will vindicate the interest of non-US buyers if they are victorious," Mancuso said. "It will break new ground. It will benefit the Chinese in particular because there are frankly many Chinese enterprises seeking to invest in the United States, but it won't be limited to them." □

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## DRONE WAR

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part of the Iranians," the Pentagon said in a March 2009 release. "The [drone] was in Iraqi airspace for nearly one hour and 10 minutes and well inside Iraqi territory before it was engaged."

According to a US Army after action report obtained and published by Wikileaks, the wingspan of the drone was 20 feet; it was 4.5 feet high and 14 feet long, with "Garmin GPS beacons on tail. Motor is aero flash systems, Chicago, IL."

On the other side of the ledger, in December 2011, Iran claimed to have shot down the secretive American RQ-170 Sentinel, which it said had strayed into Iranian airspace near the Afghan border. While American officials would only admit that operators had lost contact with the aircraft, the Iranians paraded a mockup of the aircraft for the global media, and claimed to have reverse-engineered parts of its mission package.

And in November 2012, two Iranian Su-25 fighters made repeated passes at a US Predator drone flying over the Arabian Gulf — with the drone's cameras picking up the trails of bullets that flew past it — but were unable to bring it down.

"We are aware of the reports that Iran is flying unmanned aerial vehicles in Iraq," Pentagon spokesperson CDR Elissa Smith said. "There are a variety of aircraft, manned and unmanned, flying with different flight parameters in the airspace over Iraq, and the Iraqi government is deconflicting the airspace."

Still, some analysts are skeptical that the Iraq mission will bring US-Iranian fireworks.

"I'd be surprised if an Iranian drone and a US drone had crossed paths" in Iraq, said Michael Knights, a specialist in the military capabilities of Iraq and Iran at the Washington Institute.

"Even in the pre-2011 period, Iranian drones were commonly working up to 50 kilometers west of the Iranian border," he continued. "They went much deeper some-

times, typically to Camp Ashraf, the Mojaheddin-e Khalq [MeK, Iranian opposition] camp. In fact, pre-2003 the Iranians ran a lot of UAVs to Ashraf and other MeK camps to do [battle damage assessments] on air strikes and artillery strikes."

In addition to American and Iranian drones, over the past year the US has also sold Iraq 48 Raven and 10 ScanEagle drones.

Even with American, Iranian and Iraqi platforms searching for Islamic State fighters, the Iraqi airspace "is not congested so much as it is confused," said Christopher Harmer of the Institute for the Study of War.

The ability of Iraqi air traffic controllers to keep an eye on their airspace is extremely limited, as their equipment and training is still in its formative stages and there is little commercial air traffic over Iraq.

Baghdad International Airport is still only handling about 20 take-offs and landings a day, for example, some of which are Iranian Ilyushin-76 cargo aircraft loaded with military gear headed to resup-

ply the Assad regime in Damascus, Syria.

But the beefed-up American presence should be filling in some of the gaps, at least from an American perspective. "At any given time you've got at least two Aegis-class destroyers in the Persian Gulf, equipped with long-range, high-resolution, multiple frequency radars that can provide some air cover" for US aircraft, Harmer said.

The USS George H.W. Bush in the gulf is also likely launching E2 Hawkeyes orbiting at 30,000 feet to give those pilots extra situational awareness.

But that surveillance cuts both ways.

It has been reported that the Iranians have set up an operations center at Rasheed Air Base in Baghdad from which they are flying a small number of surveillance drones along with a signals intelligence unit.

The Ababil drone is one of the most likely candidates to fly over Iraq. It has been used by Hezbollah over Israel and Lebanon, and in

2012 Syrian rebels captured one that they claimed to have shot down. The Israelis also shot down an armed Ababil in 2006 near Haifa.

Despite this, Harmer said the presence of US radar and intelligence might force the Iranians to shy away from showing their most sophisticated assets for fear of them falling into US or Islamic State hands.

"I'm skeptical about their technological capabilities," Harmer added. "The Iranians are trying to minimize the public knowledge of what they're doing," and they're not talking to anybody.

But again, both sides are likely playing the same game. "The Iranians have put themselves into the perfect intelligence-gathering situation" in Iraq, he said, with intelligence assets working on the ground with the blessing of the Baghdad government, and most likely trying to pick up everything they can on not only the Islamic State, but US operations and platforms as well. □

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