Pentagon Begins Independent Inquiry Into Special Ops and War Crimes

The Defense Department inspector general will examine whether elite U.S. commando forces are doing enough to comply with the laws of armed conflict and hold violators accountable.

By Dave Philipps

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For decades the Defense Department has relied on covert and classified special operations troops to kick in doors and raid high-value targets around the world. The department's Inspector General's Office now may be taking its first broad look at whether those shadowy strike forces committed war crimes along the way.

The office sent a memo on Monday to the Joint Chiefs of Staff and to Special Operations Command, advising them it was beginning an inquiry into whether the forces overseen by the command, which include the Navy SEAL teams, the Army's Delta Force, Marine Raiders and other elite commandos, have programs in place to ensure they are following the law during combat, and whether they are reporting troops when those laws are broken.

The four-paragraph memo, which was first reported by Task & Purpose, could have seismic repercussions in the special operations community, current and former commandos and military legal experts say.

The Pentagon has come to rely heavily on special operations troops, who often conduct missions with little oversight, backed by a military and nation that often idolize the elite fighters. Accountability has at times been scant.

For example, in 20 years of fighting in Iraq and Afghanistan, despite repeated reports of Navy SEALs needlessly beating and killing civilians in war zones, only a handful of SEAL team members have ever been charged with such abuses and none have been convicted.

The announcement of the inquiry comes less than a week after President Biden took office, suggesting that his administration wants to take a very different approach to war crimes than his predecessor.

Among other things, former President Donald J. Trump intervened in military prosecutions and discipline of special operators, granted clemency to eight service members and military contractors who were accused or convicted of killing civilians, and told crowds at his rallies that acts of torture like waterboarding were fine, but "not nearly tough enough."

"It looks like Biden wants to show the world and our troops that he is breaking with Trump's obstructionist approach to war criminals and the rule of law," said Rachel VanLandingham, a professor at Southwestern Law School in Los Angeles and a retired Air Force lieutenant colonel who was a senior adviser to the top commanders of U.S. forces in Iraq and Afghanistan during the Bush and Obama administrations, covering issues related to compliance with the law of armed conflict.

Special Operations troops in general, and SEAL team members in particular, have repeatedly been accused of concealing murders and other crimes under the cloak of classified missions and a tribal culture built on loyalty and silence, Ms. VanLandingham said.

"I would hear things about the SEALs that were just outrageous, and I would try to pull a thread to try to find out more, and everyone would stop talking," she said. "It was almost impossible to really investigate, because they operated in dangerous hot zones. Plus, the SEALs were so deified by the military and society that no one really wanted to pursue it."

That may now be changing, she said.

After several highly publicized cases of killings and reports of widespread drug use in the ranks, the overall commander of the SEALs wrote to his subordinates in 2019, "We have a problem." That problem became more pressing in recent years after the International Criminal Court began an inquiry into possible war crimes by American troops in Afghanistan.

The Trump administration retaliated against the international court's actions last fall by imposing economic penalties and travel restrictions on the court's investigators.

By opening a Defense Department inquiry, the Biden administration may be trying to signal that the United States is willing to look into the allegations independently and hold criminals accountable, Ms. VanLandingham said.

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Accountability is also simply good international and domestic policy, she added: "The United States doesn't want to be seen as a lawbreaker. The rule of law is a reason people look up to us, and an important tool of soft power."

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Special Operations Command declined to comment on the new inquiry Thursday, referring questions to the inspector general's office.

In a statement, the inspector general said the evaluation begun this week was routine and part of the office's "planned oversight work, consistent with its normal protocols."

Still, legal experts said they had not seen anything similar during the longest period of armed conflict in United States history.

The Defense Department gave no indication of the size and scope of the new inquiry. But a recent independent investigation in Australia into that country's elite commando force, the Special Air Service, shows that such an effort could reach back decades and scrutinize hundreds of missions.

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Who are the Taliban? The Taliban arose in 1994 amid the turmoil that came after the withdrawal of Soviet forces from Afghanistan in 1989. They used brutal public punishments, including floggings, amputations and mass executions, to enforce their rules. Here's more on their origin story and their record as rulers.

The four-year investigation in Australia interviewed 510 potential witnesses and reviewed 20,000 documents. Its final report revealed dozens of illegal killings and a warrior culture in the ranks that drove S.A.S. commandos to glorify atrocities. Nineteen soldiers have since been referred for criminal investigation.

In the U.S. Navy, a high-ranking SEAL officer said, a small but similarly twisted subculture has formed since 2001. Asked what important differences there were between the Australian commandos and the American SEALs, the officer, who spoke on condition of anonymity because he was not authorized to speak publicly, replied, "The Australians have been investigated."

Three active-duty enlisted SEALs said in interviews that a small subculture of rogue operators had festered in the SEAL teams, protected by a fierce code of loyalty and their fellow SEALs' reluctance to speak out and risk tarnishing the reputation of their elite brotherhood.

The SEALs said their leaders had often stayed silent as well. One pointed to the example of Chris Kyle, a former SEAL sniper who died in 2013. In his widely read memoir, "American Sniper," Mr. Kyle wrote that while overseas, he was investigated several times for questionable kills in Iraq and was removed from duty at one point.

He wrote that he shot so many people that men serving under him joked that he must have glued a tiny silhouette of a gun into his sniper scope, so that every Iraqi he aimed at would appear to be armed and therefore be an acceptable target under the rules of engagement.

Despite those alarming accounts, the book was cleared for publication by the Defense Department and embraced by the SEAL leadership, the public and Hollywood.

"The military — civilians too — often, they see us as demigods, and that has created a problem," the SEAL who spoke about the book said.

After a number of questionable killings came to light, Special Operations leaders ordered a sweeping assessment in 2019 of the culture and ethics among the commandos. A report on the findings, released six months later, found "no systematic ethical problems" but said that repeated deployments to war zones had created a culture that favored "force employment and mission accomplishment over the routine activities that ensure leadership, accountability and discipline."

The Navy has said that discipline and accountability have always been high priorities for the SEAL teams. In recent years, the service has increased training in ethical decision-making and moral leadership for special operators.

The high-ranking SEAL officer said he had hoped that the 2019 assessment would include the kind of unflinching look at individual crimes that occurred in Australia, but because it was done in-house by the Special Operations Command, it was not truly independent.

The brief memo this week about the inspector general's inquiry was open-ended, he said. It could be the start of a major investigation, or produce a bland review of bureaucratic reporting processes. Still, he added, "The SEALs have been treated like heroes for too long — they need real accountability."