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Guest columnist

Outsourcing indecency

By P.W. Singer

Special to the Los Angeles Times

The reports of U.S. soldiers abusing Iraqi prisoners during interrogations are both horrifying and depressing. Fortunately, there is a clear and proper legal response. Those accused will be court-martialed and, if found guilty, they will be punished.

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But the story, sadly, does not end there. It now appears that this deeply disturbing episode — in which Iraqi prisoners were beaten, sexually assaulted and forced to perform simulated sexual acts, among other things — may have involved not only soldiers but also private contractors hired as interrogators.

That private contractors are interrogators in U.S. prison camps in Iraq should be stunning enough. This is incredibly sensitive work and takes our experiment with the boundaries of military outsourcing to levels never anticipated. But even more outrageous is the fact that gaps in the law may have given them a free pass so that it could be impossible to prosecute them for alleged criminal behavior.

Most people by now know that in an attempt to fill the gap between the demand for professional forces and the limited number deployed by the Pentagon, an array of traditional military and intelligence roles have been outsourced in Iraq, all without public discussion or debate. There are 15,000 to 20,000 private military contractors operating in Iraq, outsourcing critical military roles from logistics and local army training to guarding installations and convoys. This outsourcing of critical roles to private companies represents a sea change in the way we fight a war.

However, until the past few days, not many Americans were aware that private firms were also providing interrogators and translators in the prisons. According to recent reports, the Army's investigation on the abuses committed at Abu Ghraib prison near Baghdad in November and December named Virginia-based CACI International Inc. and San Diego-based Titan Corp. Titan, however, denies having contracts that involve working with prisoners.

The Army investigation discovered such depraved behavior as making prisoners perform simulated sex acts and form naked human pyramids and putting "glow sticks" in body orifices. The perpetrators even took more than 60 photographs, including one showing an Iraqi prisoner standing on a box with his head covered and wires attached to his hands and genitals. He was told that if he fell off the box he would be electrocuted. One civilian contractor was even accused of raping a male juvenile prisoner.

The Army has responded swiftly and correctly, at least with regard to its soldiers. Seventeen soldiers were relieved of duty and six face court-martial. As Army spokesman Brig. Gen. Mark Kimmit said:

"We're appalled ... they wear the same uniform as us, and they let their fellow soldiers down. ... These acts that you see in these pictures may reflect the actions of individuals, but, by God, it doesn't reflect my Army."

But although the military has established structures to investigate, prosecute and punish soldiers who commit crimes, the legal status of contractors in war zones is murky. Soldiers are accountable to the military code of justice wherever they are, but contractors are civilians — not formally part of the military and not part of the chain of command. They cannot be court-martialed.

Normally, an individual's crimes would then fall under the local nation's laws. But, of course, there are few established Iraqi legal institutions — that is why we are running prisons in Iraq in the first place — and, besides, coalition regulations explicitly state that contractors don't fall under their scope.

In turn, because the acts were committed abroad, and also reportedly involve some contractors who are not U.S. citizens, the application of U.S. domestic law in an extraterritorial setting is unclear and has never been tested. This appears to leave an incredible vacuum. Indeed, as Phillip Carter, a former Army officer now at UCLA Law School, says, "Legally speaking, (military contractors in Iraq) actually fall into the same gray area as the unlawful combatants detained at Guantánamo Bay."

So far, none of the contractors involved has been criminally prosecuted. As for the contractor accused of raping a prisoner in his mid-teens, Central Command spokeswoman Col. Jill Morgenthaler told the British newspaper the Guardian: "We had no jurisdiction over him. It was left up to the contractor on how to deal with him." It is clear that our policies on military contractors must be updated.

If found to be involved by investigators, the contractors should not escape prosecution. Yet that's exactly what happened in the Balkans when several DynCorp employees, working as military contractors, were implicated in the trafficking of women and other sex crimes. Felony crimes merit harsher punishment than simply the end of a good paycheck.

This may require breaking new legal ground, such as testing the extraterritorial standards for civilian prosecution, requiring detention of the suspects until the Iraqi legal system gathers strength or even transferring jurisdiction to the international court.

To not only pay contractors more than our soldiers but also give them a legal free pass is unconscionable.

More broadly, the United States must re-examine which military and intelligence roles are appropriate for outsourcing and which are not. For the roles that we do choose to outsource, we must close the gaps in the law. The overwhelming number of contractors are probably just as sickened and embarrassed by this behavior as the American military and the public.

That is why we have laws in the first place: to govern for the worst of human behavior, not hope for the best. The private military field should be no different.

P.W. Singer, a fellow at the Brookings Institution, is the author of "Corporate Warriors: Rise of the Privatized Military Industry" (Cornell University Press, 2004).

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