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U.S. Military Scrutinizes Leaks for Risks to Afghans

By ERIC SCHMITT and CHARLIE SAVAGE

WASHINGTON — The Pentagon is reviewing tens of thousands of classified battlefield reports made public this week about the war in Afghanistan to determine whether Afghan informants were identified and could be at risk of reprisals, American officials said Wednesday.

A Pentagon spokesman, Col. David Lapan, said that a Pentagon assessment team had not yet drawn any conclusions, but that “in general, the naming of individuals could cause potential problems, both to their physical safety or willingness to continue support to coalition forces or the Afghan government.”

Speaking in Kabul on Thursday, the Afghan president, Hamid Karzai, called the disclosure of the names of Afghans who had cooperated with NATO and American forces “extremely irresponsible and shocking.”

“Whether those individuals acted legitimately or illegitimately in providing information to the NATO forces, their lives will be in danger now,” said Mr. Karzai, who spoke at a press conference just after he said he discussed the issue with his advisors. “Therefore we consider that extremely irresponsible and an act that one cannot overlook.”

A search by The New York Times through a sampling of the documents released by the organization WikiLeaks found reports that gave the names or other identifying features of dozens of Afghan informants, potential defectors and others who were cooperating with American and NATO troops.

The Times and two other publications given access to the documents — the British newspaper The Guardian and the German magazine Der Spiegel — posted online only selected examples from documents that had been redacted to eliminate names and other information that could be used to identify people at risk. The news organizations did this to avoid jeopardizing the lives of informants.

The founder of WikiLeaks, Julian Assange, has said that the organization withheld 15,000 of the approximately 92,000 documents in the archive that was released on Sunday to remove the names of informants in what he called a “harm minimization” process. But the 75,000 documents WikiLeaks put online provide information about possible informants, like their villages and in some cases their fathers’ names.

Asked on NBC's "Today" show on Wednesday if the killing of an Afghan as a result of the WikiLeaks disclosure would be considered "collateral damage" in his efforts to make details of the war public, Mr. Assange said, "If we had, in fact, made that mistake, then, of course, that would be something that we would take very seriously."

National security officials, meanwhile, are worried that the attention WikiLeaks has received in the past week has elevated its profile and could be used to entice disgruntled officials to send classified information to its Web site, which solicits "classified, censored or otherwise restricted material of political, diplomatic or ethical significance" and asserts that "submitting confidential material to WikiLeaks is safe, easy and protected by law."

One United States official, speaking on the condition of anonymity because of the continuing investigation, said government lawyers were exploring whether WikiLeaks and Mr. Assange could be charged with a crime. One question, some lawyers say, is whether they could be charged with inducing or serving as co-conspirators in violations of the Espionage Act, a 1917 law that prohibits the unauthorized disclosure of national security information.

Indeed, at a press club in London on Tuesday, Mr. Assange told reporters that before the most recent disclosure of documents, WikiLeaks had been warned by officials in the United States government that there had been "thoughts of whether I could be charged as a co-conspirator to espionage, which is serious."

"That doesn't seem to be the thinking within the United States anymore, however," he added. He did not elaborate.

But on Wednesday, Senator Lindsey Graham, Republican of South Carolina, said on Fox News that WikiLeaks itself should be prosecuted for its role, saying, "As far as I know, there's no immunity for a Web site to be able to pass on documents" that were illegally leaked.

At a Senate Judiciary Committee oversight hearing on Wednesday, Senator Jon Kyl, Republican of Arizona, pressed the director of the Federal Bureau of Investigation, Robert S. Mueller III, to say whether he expected that prosecutors would charge "both the individuals who provided the information and those who might have been involved in the dissemination of the information."

Mr. Mueller demurred, saying that "at this juncture, I can't say as to where that particular investigation will lead."

Attorney General Eric H. Holder, Jr. was similarly vague about prosecutorial plans, telling reporters in Egypt, where he is on a trip, that what the leak inquiry "will lead to, whether there will be criminal charges brought, will depend on how the investigation goes."

Still, several legal specialists in matters related to leaks of classified information say that prosecuting Mr. Assange or WikiLeaks on charges that they had violated the Espionage Act would face many hurdles, from the diplomatic difficulty in persuading a country to arrest and extradite Mr. Assange to an array of legal defenses he could mount if the United States managed to detain him. Mr. Assange is an Australian activist who has operated in various European cities.

Susan Buckley, a partner at the law firm Cahill Gordon & Reindel who specializes in communications law, said the [Espionage Act](#) had rarely been used and so there were few guides for how such a novel case would play out. For example, it is not clear whether the law applies to foreigners for actions overseas, although she noted that in a 1985 case, a judge ruled that the law did apply abroad.

It would also be highly unusual to use the law to go after the recipient and disseminator of a leak, rather than just the person who provided the information. Several scholars said they were aware of only one previous attempt to bring such a prosecution — the 2005 indictment of two former staff members of the [American Israel Public Affairs Committee](#) who were accused of passing on information about American policy toward Iran from a military analyst to Israel.

In 2009, prosecutors dropped the case after several court rulings that they said had sharply diminished the likelihood that they would win a conviction. But the Aipac case was controversial from the start, in part because it was seen as a step toward prosecuting journalists who write about classified matters, and a prosecution of Mr. Assange and WikiLeaks could also raise First Amendment issues.

A military spokesman noted that the Army had legal jurisdiction only over service members, and so any decision to prosecute WikiLeaks would be up to the Justice Department. A spokesman said the Justice Department would “not speculate on where the investigation may or may not lead or various other hypothetical scenarios.”

Mr. Assange has not said where he obtained the documents. But a military intelligence analyst, Pfc. [Bradley Manning](#), has been charged with leaking other classified documents and videos that have appeared on the WikiLeaks Web site.

The disclosure of documents containing the names of Afghan informants, which was reported Tuesday in The Times of London, could further complicate the Obama administration’s efforts to manage the course of the war in Afghanistan.

A search by The New York Times on Wednesday also turned up several examples.

In one 2007 report, for instance, a military officer discussed meeting with a person who was named in the report, who claimed to have worked with allied forces and wanted to continue doing so. The Times withheld details that could identify the man.

In another 2007 report, American troops met privately with an Afghan official, who was named in the report, who told the Americans about the recent movements of a local militant leader and his heavily armed force. The report also identified several other informants who were part of the official’s network.

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