

Civilian workers could face court martial

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Private military contractors in Iraq face the possibility of court martial following a move by the US Congress to strip them of immunity from military prosecution.

Congress recently passed legislation bringing defence contractors under the Uniform Code of Military Justice (UCMJ) in a move that could have significant ramifications for the estimated 100,000 private defence contractors in Iraq.

In recent years, the Pentagon has increasingly relied on contractors in an effort to cut costs and increase flexibility. But the role of private defence contractors in Iraq came under scrutiny in the wake of the Abu Ghraib prison scandal after it emerged that the Central Intelligence Agency used them for interrogations.

Peter Singer, an expert on military contracting at the Brookings Institution in Washington who first reported the move, said military officers, who had previously been hamstrung in dealing with possible abuses committed by contractors, welcomed the change.

He said Pentagon lawyers were scrambling to assess the impact of the legislation, not least in respect of soldiers who might witness abuses by military contractors.

But other experts questioned the wisdom of the law. Eugene Fidell, a military law specialist at Feldesman Tucker Leifer Fidell, said the change raised constitutional questions and said it was unnecessary because the Military Extraterritorial Jurisdiction Act of 2000 already allows the prosecution of contractors.

Mr Fidell also questioned whether the original interpretation of the applicability of the UCMJ to non-military personnel, which was decided in a Vietnam-era legal case, would even be interpreted in the same manner today.

The UCMJ previously could only be applied "in times of war [to] persons serving with or accompanying an armed force in the field". But there has not been a formal declaration of war by Congress for 65 years, which Mr Singer of the Brookings Institution says means contractors in Iraq or Afghanistan were not covered by the code. The new legislation now says the code also applies during a "contingency operation," which would include operations in Iraq and Afghanistan.

Christopher Beese, chief administration officer for ArmorGroup, a private security firm that has 1,600 employees operating in Iraq, said the law was unlikely to have any effect until the US, UK and Iraqi authorities "demonstrate there is resolve to take action where action is necessary" on potential cases of abuse.

Mr Beese said that even in situations where ArmorGroup had itself raised concerns about the actions of some of its own employees, it had found great difficulty getting the UK, US and Iraqi authorities to take appropriate action.

Stan Soloway, president of the Professional Services Council, which represents companies with US government contracts, agreed that the MEJA already gave the administration the powers it needed. He said his organisation intended to discuss the issue with Lindsey Graham, the South Carolina Republican senator who sponsored the legislation.

Jennifer Daskal of Human Rights Watch said the new law would allow "a good defence lawyer [to] tie up prosecutions with objections to the constitutionality of using the UCMJ to try civilians". She said the real problem was one of political will. "The Department of Justice already has the tools to prosecute private contractors – it just hasn't used them."

"This is a good thing," said Dov Zakheim, a former Bush administration senior Pentagon official. "It protects contractors by keeping them under an American legal umbrella, and also helps preserve the good reputation of those contractors who play by the rules, by enforcing discipline among those who have been

less responsible.”

But the scope of the change – for example, whether it applies to contractors working in war zones for agencies other than the Department of Defense or to foreigners – is unclear. Other questions relate to how wide ranging the application of the code – which bars, for example, homosexual conduct – would be to non-military personnel and whether it would apply to journalists embedded with the US military.

Tim Spicer, chief executive of Aegis, a UK company that since 2004 has operated a \$300m (£155m) Pentagon contract aimed at supporting reconstruction operations in Iraq, said his company was examining the implications of the legislation. “We need to look more closely at the implications but, in general, we welcome certainty in our legal position,” he said.

Lachlan Monro, chief operating officer of Blue Hackle, another UK based security contractor operating in Iraq, welcomed the move, saying it would “go some way to removing irresponsible security companies”.

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