

Civilian contractors in Iraq placed under US military law

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Under a new law written into the 2007 military spending bill last year, private contractors working in Iraq will now be subject to US military law. The provision, which was slipped through at the end of the last congressional session with virtually no debate, will for the first time place civilians working with the military under the jurisdiction of courts-martial and strip them of the constitutional right to a trial by a jury of their peers.

The measure was proposed by Senator Lindsey Graham (Republican, South Carolina) as a means of placing legal restraints on the nearly 100,000 private security contractors who have until now operated with impunity in Iraq and Afghanistan. While the new law has provoked predictable opposition from private security firms, civil liberties lawyers say the new law is written so broadly that its impact could reach much further than the mercenaries contracted by the Pentagon.

If the Defense Department chooses to pursue a case, civilian government employees, non-US citizens and even embedded journalists could now be brought before a military court. “One could imagine a situation in which a commander is unhappy with what a reporter is writing and could use the UCMJ (Uniform Code of Military Justice) to pressure the reporter,” Phillip E. Carter, a lawyer who specializes in government contract cases, told the *Washington Post*.

A law already in existence—the Military Extraterritorial Jurisdiction Act (MEJA) of 2000—allows the prosecution of private military contractors under US criminal law. But the Justice Department has not used its jurisdiction to charge, let alone prosecute and punish, the mercenaries implicated in war crimes, including the interrogators hired by the CIA who participated in the torture of detainees at Abu

Ghraib and others military contractors accused of firing on Iraqi civilians without provocation.

The MEJA has only been used in one case, which involved a soldier’s wife accused of stabbing him during a domestic dispute on a US military base in Turkey. “The Department of Justice already has the tools to prosecute private contractors—it just hasn’t used them,” Jennifer Daskal of Human Rights Watch told the *Financial Times*.

It is not clear how far the provisions of the military code could be extended to nonmilitary contractors in Iraq. For example, unlike US criminal law, the military code criminalizes disobeying an order, fraternizing with the enemy, and even homosexuality and adultery.

Christopher Anders, legislative counsel for the American Civil Liberties Union, told the *Post*, “Soldiers subject themselves to a different system of criminal justice. That’s a decision that’s made by everyone who enlists,” Anders said. “There may be some logic in applying military standards to civilian military contractors who are taking up arms. But it’s a whole different thing when others are swept up.”

A spokesperson for the Defense Department said Pentagon is still developing guidance on how the new provision will be used. “We’re going to have to go through and assess the situation as the facts and circumstances develop,” spokeswoman Cynthia Smith said.

The Supreme Court has historically struck down the conviction of civilians under military law, and no conviction of a civilian under the military code of justice has been upheld in more than half a century. This includes a 1957 case of a wife who killed her husband on a military base.

The change in the law—which involved the changing of five words in a 439-page military spending bill—went

unreported until Peter W. Singer, a senior fellow at the liberal think tank, the Brookings Institution, wrote a favorable article about the measure for the web site DefenseTech.org (see article here).

Previously, the military code applied to “persons serving with or accompanying an armed force in the field” only during a war, which US courts interpreted to mean a war declared by Congress. But there has not been a formal declaration of war by Congress for 65 years, Singer wrote, which meant contractors in Iraq or Afghanistan were not covered by the code. Under the new legislation, Congress amended the code to apply to persons accompanying an armed force during a “declared war or contingency operation,” which would include operations in Iraq and Afghanistan.

The new provision—signed into law by Bush last year behind the backs of the American people—is but the latest example of how core constitutional rights are being trampled on in the name of the “war on terror.”



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