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Submission to the 107th Session of the Human Rights Committee for the attention of the Country Report Task Force on
the UNITED STATES OF AMERICA

(Military service, conscientious objection and related issues)

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Summary

This submission focusses on the situation regarding all aspects of conscientious objection to military service in the United States of America. The concerns it raises are:
The maintenance of compulsory registration for military service, with no provisions for the filing of a declaration of conscientious objection, coupled with inappropriate and unnecessary restrictions on the human rights of those who do not register
Military recruitment of persons aged under 18, sometimes involving abusive methods, together with inadequate safeguards against the deployment of persons aged under 18 in armed conflict.
Difficulties encountered by serving members of the armed forces who develop a conscientious objection to such service, and harsh treatment of those whose claim to be conscientious objectors is not accepted by the military authorities.
Interference with the freedoms of thought, conscience and religion and freedom of expression of persons with a conscientious objection to the use for military expenditures of the taxes they have paid.

Suggestion for the List of Issues

It would be unrealistic to suppose that all of the questions raised here could be alluded to in the List of Issues, given that none of them featured in the long list of concluding observations on the previous report. It is however suggested that an opening to discuss at least some of them could be provided by asking a question along the lines of:
How many applications from serving members of the armed forces for release on grounds of conscience have been received since the date of the last report, and what were the outcomes?
UNITED STATES OF AMERICA: Basic information

Population (November 2011, estimated) 311,051,000

Recruitment now voluntary but registration remains obligatory for all men aged 18

Minimum recruitment age: 17

Manpower reaching “militarily significant age” in 20103: 2,161,727
Armed forces active strength, November 20114: 1,569,417
as a percentage of the number of men reaching “military age”: 72.6%

Military expenditure US $m, 20115
711,421
Per capita $2,287
As % of GDP 4.8%

Comments

Being by far the world’s greatest economic power, it is not at all surprising that the USA should also be its major military power. The attention given to the mere size of its military might however obscures its proportional significance.

According to the latest data from SIPRI, all except one (Timor Leste) of the nations where military expenditure accounted for a higher proportion of GDP than in the USA were in the Middle East. The high level of expenditure is of course linked to possessing the world’s most advanced weaponry, but it also reflects the fact that the USA maintains a vast military personnel – few nations which impose conscription actually have at any one time as large a proportion of their population serving in the military as does the USA under voluntary recruitment.

Overall public expenditure in relation to GDP is lower in the USA than in most other nations; the consequence is that an unusually high proportion of public expenditure, and especially of

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1 Source: The Military Balance 2012 (International Institute of Strategic Studies, London), which bases its estimate on “demographic statistics taken from the US Census Bureau”.
2 Source: Child Soldiers International (formerly Coalition to Stop the Use of Child Soldiers), Louder than words: an agenda for action to end state use of child soldiers, London, September 2012.
3 Source: CIA World Factbook. https://www.cia.gov/library/publications/the-world-factbook/index.html. The male population reaching “militarily significant age” - defined by the source as 16 - is more meaningful than total population in assessing the comparative impact of military recruitment in different countries.
4 As quoted by the International Institute of Strategic Studies (London) in The Military Balance 2012.
5 Stockholm International Peace Research Institute (SIPRI), April 2012.
the federal budget, is devoted to military expenditure.
Registration for military service

The USA has not imposed obligatory military service since 1973. Until that year, a “Draft” by lottery based on dates of birth was in operation. The relevant legislation, the Military Selective Service Act, is still in force, so this system, and the accompanying arrangements for the adjudication of claims of conscientious objection and allocation of conscientious objectors to alternative service would apply in the event that conscription were reintroduced. Although recruitment shortfalls, particularly following the 2003 invasion of Iraq, led to some speculation that such a move was imminent, the 2008 economic crisis boosted recruitment, and the Washington Post reported in October 2009 that for the first time in 35 years the USA had met all its quantitative and qualitative targets for voluntary recruitment, despite the continuing overseas military engagements. This is a dramatic illustration of the so-called “poverty draft”, whereby recruitment which is nominally voluntary is actually forced by a lack of socio-economic choices, and bears disproportionately on the poor and members of ethnic minorities.

In 1980, in response to the Soviet invasion of Afghanistan, the compulsory registration for military service within 30 days of the eighteenth birthday, which had been suspended at the same time as the draft itself, was re-introduced, and remains in force. This is not essential in order to identify who might be liable for such service, for which the Department of Defense maintains a comprehensive recruiting database, aided partly by provisions in the 2002 “No Child Left Behind” Act (discussed below). Registration is in fact the first stage in mobilisation, enabling contingency planning which could result in the first conscripts being admitted to “boot” or training camp within a fortnight of Congress authorising the President to order inductions.

When the draft was in place claims of conscientious objection had to be filed at the time of registration in order to be eligible for consideration. By contrast, the reintroduced registration requirement has no provisions to allow the declaration of conscientious objections. A case is currently pending in the Federal Court, filed by the American Civil Liberties Union on behalf of Tobin D. Jacobrown, a Quaker from Washington State, who asserts "because of my religious beliefs, I should not be required to register for the draft unless it could be officially recognized that I claim to object to all war". The suit claims that under the 1993 Religious Freedom Restoration Act this belief should be accommodated if this is possible “without seriously compromising a compelling governmental interest.”

The maximum penalty for failure to register is five years imprisonment and a fine of $250,000. In fact, prosecution has generally been treated as a last resort; there have been no convictions since 1985. In practice, registration is enforced by curtailment of civil, economic and social rights. Those who have not registered are not eligible for federal loans or grants for higher education, for federally-funded job training, or for most federal employment. Many individual states have enacted similar legislation; some completely debar unregistered men from admission to state colleges or universities. In many cases registration is also a precondition for the issue of a driving licence, or a State-sanctioned photographic ID. Although the obligation persists up to the 27th birthday, registration must be completed at least a year before. Once a man has passed the age of 25 he can no longer register, and may find that some of these handicaps persist for life.

Those nations which retain obligatory military service usually require such service only of citizens. By contrast, the registration requirement in the USA applies to all resident males of the relevant age “except those who are in valid non-immigrant status” (ie. overseas students and others with temporary entry permits). Resident non-citizens who are discovered not to have registered - even if their presence in the country at the appropriate time was not covered by valid documentation - are in a particularly vulnerable situation at any future time when their residence status comes under scrutiny. They may be liable to deportation, may be debarred from obtaining citizenship, or a “green card” or permanent residence status, and can be prohibited for life from re-entering the USA.

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6 For a detailed history of these issues see the submission made in the name of CPTI for the examination of the Third Periodic Report in 2006.
Juvenile recruitment

The United States of America has not joined the near-universal ratification of the Convention on the Rights of the Child. Nevertheless it has ratified the Optional Protocol to that Convention on the involvement of children in armed conflict (OPCAC). Its initial report under OPCAC was considered by the Committee on the Rights of the Child (CRC) in June 2008, and it has now become the first of the Parties to the OPCAC to submit a second report, which is to be examined by the Committee on the Rights of the Child in January 2013.

Among the issues which it is clear from the List of Issues that the CRC will be examining are the recruitment and occasional deployment of persons of aged under 18, abuses in the military recruitment system, and pre-military training within the education system.

Enlistment is permitted by law at any time after the 17th birthday. Figures provided to the CRC show that during the four-year period 2004 – 2007 just over 94,000 persons were enlisted before their 18th birthday, 7.6% of all new recruits. The majority (over 70,000) joined the army. Most recruits were placed in a “delayed entry programme” until they had finished their secondary education. Only some 7,500 annually were still aged 17 when they entered the 4-6 month basic training programme, and 1,500 when they completed it and were assigned to operational units. By the period 2009 – 2011, the rate of juvenile recruitment had fallen slightly, the total over the three years was just over 45,000, or 5.3% of all recruits.7

Enlistment under the age of 18 is not a breach of OPCAC. At the time of ratification the USA lodged a series of “understandings” which placed very restrictive definitions on its obligations, including that on deployment in armed conflict. In practice, however, in 2003 each branch of the armed forces adopted an “implementation plan” which basically precluded the deployment of persons aged under 18 outside US territory. Nevertheless, an army investigation revealed that, during 2003 and 2004, 62 soldiers were deployed in either Iraq or Afghanistan before their eighteenth birthday. Although prompt action was taken to rectify the situation, this illustrates the dangers inherent in a system which can allow even a small minority to be posted to operational units before their eighteenth birthday, and a very few cases had been detected on enquiry even in 2007, and this had included the deployment of some seventeen-year-olds to what were classified as “hazardous duty pay” or “imminent danger pay” postings. The USA's Second Periodic Report indicated that in “fiscal year 2008” six personnel had been deployed while aged under 18; five to Kuwait and one on board ship. 8 Their answers to the List of Issues indicated that three had been deployed “in support of ongoing operations” in 2009 (but not to areas defined as hazardous) but none in 2010 or 2011.9

The USA has shown no inclination to accept the CRC’s 2008 recommendation that it withdraw of the “understandings” and raise the minimum enlistment age to 18.

Whatever the restrictions on the age of actual enlistment, the recruitment system as a whole targets pupils in secondary education. The “No Child Left Behind” Act makes personal details of all students in secondary education available to military recruiters; there are “opt-out” provisions, but these are not publicised in official sources. Recruiters have widespread access to schools; they are paid by results; there is some doubt as to whether the sanctions against over-enthusiasm counterbalance the rewards. Abuses inevitably occur.

Pre-military training is also widespread in the educational system. In the year 2006 over 480,000 pupils in secondary education aged fourteen years and upwards were enrolled in the “JROTC” programme on courses which “involved military drills with both real and dummy firearms”. Although participants were not obliged subsequently to enlist in the armed forces, approximately 40% of those who completed at least two years in the programme did so. The Committee on the Rights of the Child also noted with concern that children as young as 11 can enrol in Middle School Cadet Corps training.

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7 CRC/C/OPAC/USA/Q2/Add1 Annex 2.
8 CRC/C/OPAC/USA/2, Para 50.
9 CRC/C/OPAC/USA/Q2/Add1, Para 5
Wherever the military recruitment process is initiated before the age of eighteen that in their future lives persons may be irrevocably committed by ethical and moral choices made (and sometimes by the religious persuasion adopted) while they were still of an age to enjoy the protections of the Convention on the Rights of the Child. In the USA, the methods of recruitment, and the targeting of persons still in the secondary education system are such as to exploit them while of an impressionable age and of immature judgement. Parental consent, the one safeguard, is sought only at the very final stage of the process if the eighteenth birthday has still not been reached.

Many young people who would not otherwise contemplate a military career are tempted to accept military funding as a means of affording the very high cost of university education. As with the “poverty draft” most of those who enter in this way are not attracted by a military career as such; many intend to serve only in an unarmed role or to learn a trade. Often they do not understand the extent of the commitment they have entered into, or fully comprehend the implications.

Of particular concern in this respect, is the widespread use of “stop loss” orders, under which at complete executive discretion any contracted period of military service can be extended indefinitely, and any pending discharge cancelled. Overall, between 2001 and 2009, 185,000 personnel were affected by such orders.

Conscientious objectors within the armed forces

The USA is among the very few enlightened nations which formally recognise that serving members of the armed forces may develop conscientious objections, even if their initial decision to join had been voluntary.

In 1962, Department of Defense Directive No. 1300.6 for the first time made provision for the honourable discharge or transfer to non-combatant duties of a serving member of the armed forces “who has a firm fixed and sincere objection to participating in war in any form or the bearing of arms, by reason of religious training or belief”. Each branch of the armed forces has its own specific regulations drawn up under the overall authority of Directive No. 1300.6: Army AR600-43, (Personnel-General) Conscientious Objection; Navy MILPERSMAN (NAVPERS 15560C) §3620250, Naval Military Personnel Manual; Marines MCO 1306.16E, Conscientious Objection; Air Force: AFI 36-3204, Procedure for Applying as a Conscientious Objector; Coast Guard: COMDTINST 1900.8 Conscientious Objectors and the requirement to bear arms. These specific regulations to a large extent restate the principles listed in Directive 1300.6, applying them to local details.

Nations which do not currently impose obligatory military service often claim that this means that the issue of conscientious objection is irrelevant. The experience in the USA since 1962 disproves this. Admittedly from within armed forces more than a million strong, it is believed that in the years from 1965 to 1973, inclusive, there were between 17,000 and 18,000 applications, the annual number peaking at 4,381 in 1971. It is not stated what proportion were accepted in these Vietnam War years, but in the more peaceful conditions of the mid-1980’s there was still a steady flow of applications; between 1985 and 1991, inclusive, 841 applications resulted in a complete discharge. A much smaller number were reallocated to noncombatant status; 29 in 1985, declining to 7 in 1987, since when statistics have not been available. In this period, the success rate of applications was in the region of 80% in the army, 76% in the navy and 73% in the marines.10

In the five years from 2002 to 2006, according to the US Government Accountability Office, only 425 applications were lodged, but the acceptance rate was also lower – to 54%. More recent

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figures have not been traced.

Paragraph IV A (“Policy”) of Directive 1300.6 specifies that its provisions are not available to those whose beliefs at the time of entering military service “satisfied the requirements for classification as a Conscientious Objector pursuant to Section 6(j) (... of the Act ...), and he failed to request classification as a Conscientious Objector under the Selective Service System”, or whose request for classification as a Conscientious Objector “was denied on the merits by the Selective Service System and (... whose new request ) is based on essentially the same grounds, or supported by the same evidence”. However, if the beliefs “crystallized” only after induction the claim can be entertained. They thus were available to conscripts as well as to “professional” members of the military, and future reservists.

Subject to the above limitation, the Directive gives detailed advice regarding the criteria to be used in assessing a claim of conscientious objection, much of which emphasises the importance of treating each individual case on its merits, without prejudices regarding the nature, rather than the depth and sincerity of the beliefs, on which it is based, the degree to which they accord with the tenets of any church or other religious group to which the applicant is affiliated and their effect upon his or her political opinions, although these without the basis in belief would not be acceptable grounds.

The procedures to be followed are described in minute detail. They include interviews with a military chaplain and a psychologist, hearings at which the applicant may bring forward evidence and witnesses, and be represented by counsel, rules regarding the appointment of an “investigating officer” who must be at a certain distance from the immediate chain of command above the applicant, availability of reports made at all stages of the process, and opportunities given to the applicant to rebut them, and treatment of the applicant during the process. Section VI I states: “To the extent practicable under the circumstances, during the period applications are being processed and until a decision is made every effort will be made to assign applicants to duties which will conflict as little as possible with their asserted beliefs.” However “an applicant shall be required to comply with active duty or transfer orders in effect at the time of his application or subsequently issued.”

The non-profit organisations involved in the GI Rights Hotline, which is permitted - with varying co-operation from local military authorities - to offer confidential civilian counselling to military personnel, report a number of difficulties in practice encountered by those seeking such release. Above all, the process is a very slow one; many cases take over a year to reach a conclusion; rarely if ever is it completed within six months. During that time, the applicant remains subject to military orders and discipline, and if the local environment is hostile the assignment of duties which do not conflict with the applicant’s beliefs is of little protection, being advisory only. Any disciplinary difficulties can delay or compromise the application; penalties incurred must be discharged before an approved release can be authorised; charges of wear uniform or obey an order can lead to the loss of various of the financial benefits available to former members of the military - as does discharge at “entry level”, ie. within the first 180 days of service. (Entry Level Discharge does however involve a speedier process, subject to a commitment to perform alternative service if required.) Severe disciplinary charges, whatever the provocation, may be used to justify a discharge on less than honourable terms, which would take priority over the conscientious objection application, and would entail a lasting stigma, financial penalties, and probably subsequent employment problems.

The difficulties which may be encountered in practice were illustrated by seemingly straightforward case of Michael Izbicki, who in 2010 launched two applications for release from the navy on grounds of conscience, both of which were rejected although supported, indeed suggested, by the “experts” - the chaplains and psychologists, but who was finally granted a discharge early in 2011 when the American Civil Liberties Union lodged a petition for review with the federal courts.

The biggest problem with the procedures, however, is that, relying on no authority beyond the regulations, they can be altered or withdrawn at any time. Experience has shown that this is not an idle fear. At the outset of the “First” Gulf War in 1991, between 1500 and 2000 claims had been
lodged by serving members of the military and reservists, when a presidential “stop-loss” order was issued, which cancelled all pending discharges from the military on any grounds, and halted the consideration of any further applications. It was left at the discretion of the immediate chain of command whether applications for conscientious objector status were treated as having failed or were simply “frozen” and, in the latter case, the extent to which the conscience of the applicant was accommodated in the interim. In most case, it is reported, mutually satisfactory arrangements were arrived at, at least 42 Marines who persisted in declaring themselves conscientious objectors and resisting active deployment were jailed.

Chapter 1-7, Section a(5)(c) of the Army Regulations, which are unusual in adding substantively to Directive 1300.6, illustrates the military reasoning. Reasons for believing that an application may be insincere include:

“Applicants may have sought release from the Army through several means simultaneously, or in rapid succession (medical or hardship discharge etc.) They may have some major commitments during the time their beliefs were developing that are inconsistent with their claim. They may have applied (...) shortly after becoming aware of the prospect of undesirable or hazardous duty, or having been rejected for a special programme. The timing (...) alone, however, is never enough (...) to support a disapproval. These examples serve merely as indicators that further inquiry as to the person’s sincerity is warranted. Recommendations for disapproval should be supported by additional evidence beyond these indicators.”

Certainly the imminent prospect of dispatch to a war zone is likely to be unwelcome news to more than conscientious objectors, and it is an observable fact that the number of applications for release goes up in periods of war. However, false conclusions can be drawn, particularly if they are reflected back on to in individual cases. As the core of conscientious objection is a conviction of the immorality of war, it is in fact to be expected that whatever else happens there will be more “genuine” applications for conscientious objector status in time of war. And given the test which is imposed for discharge as a conscientious objector, namely that the objection must have crystallised after joining the military, it is also not surprising that many claims are lodged after the first encounter with the reality of war in active service.

In response to the 1991 “stop-loss” a Bill was introduced in the House of Representatives on 5th May 1992 in the name of Mr. Dellums, which would have amended Chapter 53 of title 10, United States Code - the measure under which the “stop-loss” decision was made - in order to enshrine the right to be considered for a discharge on grounds of conscientious objection as unable to be “suspended or superseded”. The Bill, which was not successful, would also have moved the burden of proof of the sincerity or insincerity of the claim from the applicant to the military authorities, would have made the assignment to non-combatant duties, and a bar on deployment, during the consideration a statutory requirement rather than a mere recommendation, and would have permitted the consideration of claims based on an objection to a particular war.

The definition of what is accepted as conscientious objection has been widened over the years, but it still refers to "a firm fixed and sincere objection to participating in war in any form”, thus a person who is prepared to defend his homeland but not to engage in what he or she considers wars of aggression abroad does not qualify. Many reservists who found themselves unexpectedly recalled to take part in the 2003 invasion and subsequent occupation of Iraq were confronted with a moral dilemma they had innocently assumed they would never encounter.

Those who felt obliged to avoid deployment by going temporarily absent without leave or by deserting also included many whose conscientious objections were not “selective.” Such action, severely prejudicial to any future discharge as a conscientious objector, could result from a number of circumstances. First, the existence of the possibility for release and the procedure to follow are not routinely made known to those affected. By contrast, the dissemination of this information is actively hampered by for example making it a disciplinary offence for a member of the armed forces to have more than one copy of the relevant regulations. Therefore some simply did not know about the provisions at the appropriate time. Others were dissuaded from applying, sometimes misled into believing that only members of certain religious denominations could apply, or were
trapped by the slow procedures involved, typically taking more than a year, during which the applicant is obliged to obey all orders, no matter how incompatible with the objection. In other cases the application was blocked by a “stop-loss” order.

Conscientious objectors whose applications for release are turned down, are faced with the choice between recanting from their objection, disobeying orders, or deserting. At least a dozen persons in this situation have in the last ten years been sentenced by courts martial to imprisonment for periods of up to 15 months, followed by demotion and dishonourable discharge. At the time of writing, United States Servicewoman Kimberly Riveira, who had travelled with her family to Canada between deployments to Iraq in 2007, but who was unsuccessful in obtaining asylum, is believed to be in detention awaiting court-martial at Fort Carson, Colorado. Amnesty International has declared her a prisoner of conscience.\textsuperscript{11} Many other conscientious objectors to the invasion and occupation of Iraq are still seeking leave to remain with their families in Canada, and one is in the course of appeals to the asylum court in Germany.

\textbf{Treatment of conscientious objectors to military taxes}

There is a long tradition in the USA of objection to the contribution to military expenditure through the payment of taxes, and, partly as a result of the high proportion of federal tax which goes on military expenditure, there are more citizens there who today actively express such objections in a variety of ways than anywhere else in the world. Not all are linked in a single movement, nor indeed in agreement about their approach, but there can be little doubt that they total more than 10,000 persons.

Cases of imprisonment for tax offences which were obviously the result of a conscientious objection to funding military activities have been relatively rare. The most recent, in 2005/6, concerned three members of a small religious group, the Restored Israel of Yahweh, which has a clear pacifist doctrine derived from that of the Jehovah's Witnesses. The three were sentenced to terms of imprisonment of up to 27 months with respect to the failure of a small business to declare and withhold employment taxes. However in 2009 Frank Donnelly, a veteran peace activist from the state of Maine, was imprisoned for understating his income in the years 2003 and 2004, in order to avoid funding military activities.

The only other case to have resulted in imprisonment in the last ten years was that of Tony Serra, a veteran civil rights lawyer from San Francisco, whose career had been the inspiration for the film “True Believer”. In 2005 he was sentenced to ten months' imprisonment for “wilful failure” to pay taxes for 1998 and 1999, the first person to have been prosecuted on this charge since 1949. It was widely felt that this represented the selective enforcement of tax laws to take revenge for dissent, and with the motive of discouraging dissent in the future.