Conscience and Peace Tax International

Internacional de Conciencia e Impuestos para la Paz
NGO in Special Consultative Status with the Economic and Social Council of the UN

International non-profit organization (Belgium 15.075/96) **www.cpti.ws**
Bruineveld 11 • B-3010 Leuven • Belgium • Ph.: +32.16.254011 • e-✉: cpti@cpti.ws
Belgian account: 000-1709814-92 • IBAN: BE12 0001 7098 1492 • BIC: BPOTBEB1

Conscience & Peace Tax International
Representative to the UN in Geneva:
Derek Brett
Avenue Adrien-Jeandin 18
1226 Thônex.
Tel./fax: 022 860 24 63
Email: dubrett@talk21.com

Briefing for Human Rights Committee Task Force, October 2005:

Military Recruitment and Conscientious Objection in the United States of America

Since 1973, the United States of America has relied on voluntary recruitment to man its armed forces. The legislation to enforce obligatory military service, the Military Selective Service Act, however continues to apply in a "standby" mode allowed for in its provisions, and registration of those eligible for obligatory service is currently being enforced. This is responsible for the most serious systematic violations of the human rights of conscientious objectors in the USA at present, in particular the discrimination against them in areas of life not related to military enlistment. Conscientious objection is however also an issue affecting many who are already serving in the military, and this paper discusses the provision which is made for such cases. In recent months considerable public attention has been given to abuses, both individual and systematic, in the process of recruiting volunteers, but this issue, which does not impinge directly upon conscientious objection (although of course it may form part of the background to a request to be released from service on such grounds), is not treated here.

Background: The "Draft"

After brief periods of conscription during the American Civil War and the First World War, obligatory military service was reintroduced for a seven year period by the Selective Training and Service Act of 16th September 1940, when the United States of America was still at peace but anticipating being drawn in to the Second World War. In the event, the system, colloquially known as the "draft", lasted until 1972/3, as the Vietnam War was drawing to a close. Over the intervening years, to the considerable confusion of references in the literature, a sequence of extensions, amendments and replacements of Selective Service legislation had marked the slow evolution of the system:

"The Selective Service Act of 1948 was adopted as Public Law 759, ch. 625, 80th Cong., 2nd sess. (1948). It was recorded as 62 *U.S. Statutes*, 612 (1948). On June 19, 1951, the 1948 Draft Act was amended and retitled the Universal Military Training and Service Act 65 *U.S. Statutes*, 75 (1951). It was subsequently amended several

times and retitled in 1967, the Military Selective Service Act, Public Law 90 - 40, Sect.1(1) , 81 *U.S. Statutes,* 100 (June 30, 1967)." (Moskos & Chambers, 1993, p.242).

A further set of amendments produced the Military Selective Service Act, Public Law 92-129, enacted on 28th September 1971. Most significant addition was Section 10(h), which allowed the provisions of the Act to go into "standby" mode, ready for reactivation whenever required, rather than having to be repealed should inductions cease. Most sources still quote this as the law which is still applicable, but Eberly (1993) refers to a 1980 Act.

On 1st July 1973 the President's authority to induct personnel into the military expired. For two years registrations of those liable under the Selective Service Act continued, but in 1975 President Ford suspended these too - probably an essential step in the rebuilding of national unity, for by that time the "draft" had aroused so much opposition as to become infamous world-wide, to the extent that the word is often subsequently found, particularly in translation, as a synonym for compulsory military recruitment.

In fact, though, the word "draft" relates to the drawing of lots, and refers to a very specific system for selecting those who are to perform military service in a context where the entire manpower available has never been needed. This system requires first the registration of all those who are eligible - under the 1971 Act males between the ages of 18 and 26. The "draft" itself determines the order in which those registered will be called up to active service, the total number and hence the proportion of those eligible being set in accordance with the manpower needs of the military. In the lottery, each date of the year is assigned a "Random Sequence Number" (from 1 to 365, or 366 in a leap year). When the draft is implemented, the first to be called up are those whose twentieth birthday falls in the year in question and who were born on the date which has been allocated the number 1 in the lottery. All others born in the same year follow, in the random order of the numbers assigned to the date of their birthdays. When all eligible persons born in that year have been "drafted", those born in the previous year, *i.e.* those turning 21 in the course of the current year, are called up, similarly in randomised order of birthday dates. Those who turn 19 in the course of the year will be the last group to be drafted. For example, were a draft to be implemented in 2006 - and given the shortfall in voluntary recruitment there has, at the time of writing in October 2005, been discussion for several months of the imminent possibility of a draft, (Lapreziosa 2004; McNeil 2004B) - , those born in 1986 would be the "First Priority Selection Group", followed by those born in 1985 and other years back to 1980, then - obviously as a very last resort, as it would entail digging into the "capital" which would become available in future years - those born in 1987 and 1988. Once the "pecking order" has been established for a particular year, further groups can be called up at any time as manpower needs require.

In practice, one or two special cases would complicate the sequence. Those registered for the draft may in fact volunteer for "induction" at any time; volunteers will always be taken first. Those who have been granted postponements, exemptions or deferments which have now expired will also be called upon before new recruits in their age cohort. Certain categories of deferment bring "extended liability" to the age of 34; those becoming liable as a result will be called up in age order before the draft is extended to the 18/19 cohort.

The Re-introduced Draft Registration

In 1980 as a direct response to the Soviet invasion of Afghanistan, President Carter used a "Presidential Proclamation" to reintroduce draft registration. Special registration sessions were held for men aged between 18 and 20; henceforth, under the proclamation, all men born on or after 1st January 1963 have been obliged to register "during the sixty days beginning thirty days before the eighteenth anniversary of their birth" and thereafter to notify the Selective Service authorities within ten days of any change of address up to the 26th birthday.

This context - and particularly the five-year gap from 1975 to 1980 - is fundamental to the understanding of nature of draft registration. It is not a hangover from the past, retained simply as a matter of bureaucratic expediency. A fortunate small cohort born in the late 1950's escaped the need to register at all, and no problems have resulted from this. Not only is registration an essential precursor of national mobilisation; it was reinstated and has been retained as a deliberate message, perhaps sometimes to an overseas, sometimes to a domestic audience, that the nation is in a state of imminent readiness for such mobilisation. The Center on Conscience and War cite various quotations as evidence for this interpretation of the official view. In 1983, in his Autumn Semiannual Report, the Director of Selective Services called registration "a powerful weapon - a defense weapon - that has a rightful place in America's arsenal alongside bombers and missiles". In 1994 President Clinton referred to it as "a hedge against unseen threats" and a means of showing "U.S. resolve" to "potential enemies".

In this respect it can be regarded as a preliminary sabre-rattling, and this indeed is how many American conscientious objectors see it. It produces the image of twelve million fierce young males ready to be unleashed on those who threaten America. As such they are already an "instrument of war", to quote a phrase used by the Supreme Court in the case of Welsh (see below). One does not have to endorse this viewpoint to accept that for one who feels personally implicated such a perception may be legitimate and sincerely held. Nor is the argument relevant that by its deterrent effect such a policy may help to preserve peace, for no deterrent will deter unless there is a credible threat that in appropriate circumstances it will be used.

The significance is that no one liable to register may legally refrain from doing so on grounds of conscientious objection. Nor under the reintroduced registration system is there any way to be officially classified as claiming conscientious objector status at the time of registration, which had in fact previously been the obligatory time for lodging such a claim. The result is that those whose consciences will not permit them to register have no choice but to break the law.

Violations of the Military Selective Service Act are considered a felony; the maximum penalty is five years imprisonment *and* a fine of $250,000. This covers failure to register, or to notify change of address, provision of false information and refusing "induction". There is a limitation of five years for the bringing of a prosecution, *i.e.* until the age of 31. In fact, historically, prosecution has generally been treated as a last resort, and has not been pursued once the legal obligation itself has been met, even belatedly. There have been no convictions for failure to register since 1985.

This, however, does not mean that there are not sanctions. In practice, registration is enforced by the denial of benefits which are available to other citizens. 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. The federal government has also encouraged state and municipal legislatures to enact

similar legislation. As of August 2004, at least 20 of the fifty states (23 according to the Selective Service Agency) required those eligible to be registered for the draft as a precondition of receiving state finance for higher education and 17 states would not employ unregistered persons in any capacity. Nine states debarred unregistered men from admission to state colleges or universities. States have also been encouraged to make registration a precondition for the issue of a driving licence, or a state sanctioned photographic ID; and, again as of August 2004, 21 and the Virgin Islands Territory had done so, and in Illinois the necessary legislation was awaiting the Governor's approval. Eleven further states, plus the District of Colombia and the Territory of Guam had linked the procedure for application for a driving licence to draft registration for those who were not already registered, but most did not make this mandatory. In all, only 11 of the 50 states made no linkage between draft registration and higher education, state employment or the issue of driving licences; in thirteen there was linkage in all three areas. (For a full table see Center on Conscience and War (2004)). None of this is justified in terms of providing proof of identity - indeed as long as the female half of the population is not required to register such an excuse could never hold water. It is also a severe civic disadvantage:
"It's not just driving that is restricted for those who cannot in good conscience register for the draft. One cannot even buy a plane or train ticket in the US without a photo ID. Or cash a check in most places. Or even enter some buildings." (Center on Conscience and War, 2003)

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 - unless he can prove that this failure was not "knowing and wilful" - may find that some of these handicaps persist for life.

This last is a particular fear for non-citizens, for a distinctive feature of the system in the USA is that the requirement to register applies to all resident males of the relevant age "except those who are in valid non-immigrant status" (*i.e.* 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. Under law, those who are convicted of failure to register are deportable, may be debarred from obtaining citizenship for at least five years, or from obtaining a "green card" or permanent residence status, and may even be prohibited for life from re-entering the USA. This severest penalty would certainly apply to any non-citizen who was convicted of leaving the country in order to avoid military recruitment.

All aspects of the implementation of the Military Selective Service Act are in the hands of the Selective Service Agency, a civilian body. When the draft is not in operation it maintains a relatively small staff which handles the registration process. Appointment and training of volunteers for membership of local draft boards (officially known as "Claims Boards") also takes place in the absence of a draft. Although the introduction of a draft would require the approval by Congress of an amendment to the Military Selective Service Act to authorise the President to order inductions, the existence of these bodies, together with registration, means that the necessary structure is in place to enable immediate implementation. During the 1980s the Selective Service Agency was charged with preparing plans whereby the lottery would take place the day after congressional approval was obtained and induction orders be sent out by mail the following day, in order that the first conscripts could start service within two weeks. Although in 1994, on instructions from the

Department of Defence, a new set of procedures were drawn up which would lead to the first inductions six months after the reintroduction of the draft, the accelerated programme remains operational in case needed in a situation of national emergency.

In December 1987, an amendment was added to the Military Selective Service Act instructing the Selective Service Agency to draw up proposals for a "Health Care Personnel Delivery System" to enable the targeted conscription of medically-trained persons. These proposals are now in readiness, but would require implementing legislation before they could be put into effect. Under them, 62 categories of medical specialists, both male and female, would be registered and subject to drafting up to the age of 55. The standard of physical fitness required would be lower than in the general draft. There would be provisions for conscientious objection and alternative service, but the indications are that both would be more rigorously monitored than in the general draft. More recently, the Selective Service Agency has been studying the feasibility of a "special skills" draft aimed at those with computer and modern language expertise, but there are not believed to be any specific plans in this respect. (McNeil 2004A).

Conscientious Objection: Development of the Standards

In the USA, provision for conscientious objection followed closely behind the imposition of conscription. The first legislation to mention the concept was passed (in the North) on 24th February 1864, just under a year after the introduction of conscription. This Act "granted alternative service in hospitals for whoever would swear that he was conscientiously opposed to bearing arms and could produce evidence that 'his deportment had been uniformly consistent with such a declaration'"(Prasad & Smythe, 1968). Conscientious objection was included from the outset in the Conscription Law of 18th May 1917:

"nothing in this Act contained shall be construed to require or compel any person to serve in any of the forces herein provided for who is found to be a member of any well-recognised religious sect or organisation (...) whose existing creed or principles forbid its members to participate in war in any form and whose religious principles are against war or participation therein (...) but no person so exempted shall be exempted from service in any capacity which the President shall deem to be non-combatant."

The 1917 Law applied to all male citizens or "non-enemy aliens" applying for citizenship aged between 21 and 30, and was valid only "for the duration of the emergency"; it was repealed in 1919. As already mentioned, the Selective Training and Service Act of 1940 was for a fixed period of seven years. It broadened the age range of liability for induction, which was now from 18 to 45 "whether or not a state of war applies", and extended liability to all male residents, whether or not citizens or applying for citizenship. At the same time, the provisions for conscientious objection were made more generous. The wording was amended to the form which still appears in Section 6(j) of the 1971 Act:

"nothing contained (...) shall be construed to require any person to be subject to combatant training and service in the Armed Forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form." This definition predated the ICCPR, and as a result there has been a tendency of the Courts to refer to the recognition of conscientious objection as an act of "legislative grace", (which contrives at one and the same time to sound self-congratulatory and to imply an imminent danger of repeal); the legislation has never been looked on as existing in order to implement the freedoms in Article 18. Despite

this, decisions by the Supreme Court have helped establish a broad interpretation of this wording, not limited solely to traditional religions, parallel to that given to Article 18 of the ICCPR by General Comment 22 of the Human Rights Committee. Two decisions in particular stand out. In the case of US v Seeger (1965), the Court stated: "A sincere and meaningful belief which occupies in the mind of its possessor a place parallel to that filled by the God of those admittedly qualifying for the exemption comes within the statutory definition". This appeared to contradict the explanatory sentence which had been added in the 1948 Act:
"Religious training and be belief in this connection means an individual's belief in relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological or philosophical views or a merely personal moral code."

The Court can thus be seen as having led the way to the dropping of the reference to "belief in a Supreme Being" from the 1967 Act, leaving only the "does not include...", a formulation which admittedly leaves plenty of room for debate in any individual case. In Welsh v US (1970), the Court accepted as conscientious objectors those "whose consciences, spurred by deeply held moral and ethical beliefs will give them no rest or peace if they allowed themselves to become any part of an instrument of war", confirming that the beliefs concerned do not have to define themselves as a religion.

One other evolution which might be mentioned here is that the 1940 Act first made provision for conscientious objection to non-combatant as well as combatant service Initially, during the Second World War an alliance of religious organisations formed the Civilian Public Service to administer non-military service under the supervision of the Selective Service Agency. Once this scheme had ceased to function, the 1951 Act introduced the wording "civilian work contributing to the maintenance of the national health, safety, or interest," which survived through to the 1971 Act. From then until the suspension of the draft most objectors performed their alternative service in hospitals or mental institutions; alternative service lasted two years, the same length of the tour of duty imposed in the draft. (Chambers, 1993).

Induction and Conscientious Objection: the current regulations

In what is in many respects an example of good practice, there are detailed regulations governing how the system would be implemented in the event of the introduction of a draft. All sources are at pains to point out that the detailed regulations might be amended in the implementing legislation, and that as they have never been applied in practice in their current form there is no experience on which to predict their precise effect. But in so far as can be told, the latest indications are as follows:

Induction orders will notify draftees that they have been classified as "1-A - available for unrestricted military service" and give instructions to report on a specified day, at least ten days from the date issued, to a "Military Enlistment Processing Centre" for medical examination, the "induction ceremony" and transfer to "Boot Camp". All exemptions and deferments are technically handled by "reclassification". As well as conscientious objectors, and those rejected on "physical, mental or moral grounds" (presumably including convicted criminals serving sentences of imprisonment), they include those already committed to the military, whether on active duty, reservists or members of the Reserve Officer Training Corps (for no one is excluded from the initial requirement to register and be included in the draft lottery), ministers of religion and students preparing for the

ministry, certain government officials and holders of public elected offices, citizens of countries which have reciprocal exemption agreements with the USA, those who have within certain time limits lost members of the immediate family on active service, or who are the only surviving son in such a family, and men who can show that their induction would result in severe hardship to their dependents.

Only once the induction orders have been issued may notice of a claim for reclassification be lodged; a paragraph in the induction orders themselves will explain the procedure. This notice must be filed at the latest the day before the draftee is due to report, and must specify all claims which are to be brought; different grounds cannot be tried in sequence. It is not certain that the relevant form will accompany the induction orders, but these will refer draftees to a booklet "Information for Registrants" which, in the event of a draft should be available from all post offices, and which will include a form (SSS Form 9) on which to notify a claim for reclassification. In the absence of the form, notification by letter is acceptable.

Upon the lodging of any claim, the process of induction is suspended until the final determination of that claim. Those claiming conscientious objection will be issued with Claim Documentation Form 22, which must, within ten days of issue, be completed and returned, together with a statement of the beliefs which have led to the claim and, optionally, letters of support "from persons who have personal knowledge of your conscientious objection". At this stage the claimant must state whether claiming exemption from "training and service as a combatant member of the Armed Forces" (classification 1-A-0) or from "all training and service as a member of the Armed Forces" (classification 1-0). If accepted, the latter group proceed to classification 1-W while performing alternative service and 4-W when this is completed.

Where the grounds of the claim are not a simple matter of fact, the claim is adjudicated by the Local Claims Board (often referred to as the "draft board"). The area covered by each board is, with local variations, at about the level of a county; there are over 2,000 in the country as a whole. The Local Board must consist of at least three members who are volunteers drawn from local society. However the supporting staff of the board are military personnel (reservists, national guard, military recruiters) and it is anticipated that in an emergency the mechanics of the system will in the first instance be run by the military. Conscious attempts were made during the 1980's to make the Boards more representative of the population as a whole by seeking more volunteers who were women or members of ethnic minorities and fewer who were retired members of the military or reservists (serving members of the military may not sit on the Boards, nor may they be appointed immediately on retirement.), and to standardise the training given to Board members. Anecdotal evidence is that in the past some Board members had stated publicly that they would never accept a claim of conscientious objection.

Conscientious objectors are routinely expected to make a personal appearance before the board, accompanied if desired by an advisor, who may not take a direct part in the proceedings, and/or by up to three "witnesses" to the character and nature of the conscientious objection.

If the Board rejects the claim, the reasons must be stated in writing, and the rejection will be accompanied by a notification of the rights of appeal. An appeal may be made within fifteen days to the District Appeal Board. This covers the area of a Federal judicial district, meaning that there is usually more than one to a state. Before the District Appeal Board the applicant again may choose to appear in person and may be accompanied by an advisor, but no witnesses. If the District Appeal

Board rejects the application, but is not unanimous in this decision, a further appeal, and a request for a personal appearance, may be made, again within fifteen days, to the National Appeal Board, which is directly appointed by the President. At each stage, the reasons for a rejection have to be set out in writing. Throughout the procedure applicants have the right to examine their personal file held at the offices of the Local Board.

Conscientious objectors who succeed in being classified as "1-A-O" will be drafted into the military but assigned to non-combatant jobs. Those who are classified as "1-O" will be assigned by the Selective Service Agency to Alternative Service. In the absence of a draft this scheme is not in place, but a skeleton structure and regulations have been created. According to Center on Conscience and War (2002), alternative service may be performed in government or non-profit agencies, working in the fields of education, health care, agriculture, social or community service, or environmental protection. At least 35 hours per week must be worked over a period of two years. Payment is by the organisation providing the employment; they are "urged, but not required, to pay the going rate". Travel within the USA to take up the employment will be paid by the Selective Service Agency. A questionnaire to those undertaking service will used to match individuals to the jobs available; individuals will also be able to suggest their own placements which will usually be accepted if the nature of the employment fits the criteria and the employer is prepared to enter into a formal agreement with the Selective Service Agency. An appeal against an assignment, on the grounds that it violates the basis of the conscientious objection, can be made to the "Civilian Review Board", whose decision will be final. The employment will normally start within thirty days of the issue of the Order to Perform Alternative Service. The employer, assisted by any co-ordinating agency which has organised the placement, must report to the Selective Service Agency on satisfactory performance - the consequences of unsatisfactory performance are not specified.

Any system which involves a test by an outside agency of the sincerity of an applicant's views contains a basic dilemma for the applicant. If turned down does he accept the verdict, which is tantamount to agreeing that his claimed conscientious objection was not sincere and deeply-held? Or does he persist? Ultimately, those whose applications have been turned down would have the option of serving or of refusing induction - the advice is that they ought to attend for the "induction ceremony" to which they are summoned and not step forward when called to do so - this being a way of making it clear that the conscientious objection is being asserted. In such a circumstance, the objector would face probable prosecution - in a civilian court, not having taken the military oath - and imprisonment. Disturbingly, the indications are that such punishment would not cancel the registration with the Selective Service Agency, so that once released the objector would remain subject to possible further notice of induction, and repeated imprisonment.

Serving Members of the Military

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. This makes the USA almost if not completely unique not only in being prepared to accommodate conscientious objections which are developed by serving members of the armed forces, but also in the transparency of the procedures used.

States 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. (Chambers, 1993). 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 (Noone, 1993). A much smaller number were reallocated to non-combatant 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 (Eberly, 1993).

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 reservists would be in future. However they do not represent any extension to the very narrow "window" during which pre-entry applications may be lodged.

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 - because they also apply to female members of the armed forces) 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", *i.e.* 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 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.

During the current Iraq War, there has so far been no move to suspend consideration of conscientious objector claims, although even apparently well-founded claims have a far lower chance of success, particularly if they have not been lodged before mobilisation, in the case of reserves, or the first tour of active duty, in the case of full-time troops. Meanwhile fears that this might change at any time have led to a large increase in the number of potential conscientious objectors going absent without leave or refusing deployment, and against this background a reintroduction in the current legislative session of draft legislation mirroring the 1992 Dellums Bill is being strongly canvassed.

Sources:

American Friends Service Committee, Youth and Militarism Programme, http://afsc.org/youthmil/

Center on Conscience and War (2002), Conscientious Objectors and the Draft, Washington, DC. (The quotation from President Clinton in fact appears in a one sheet leaflet of the same year entitled "Should I Register for the Draft?: Advice to Conscientious Objectors Facing Selective Service Registration".)

Center on Conscience and War (2003), Evidence submitted to the OHCHR for its report on "best practices" in the field of conscientious objection to military service.

Center on Conscience and War (2004), State Penalties for Non-registrants (http://centeronconscience.org/literature/statepen_chart.pdf)

Chambers, J.W. (II) (1993) "Conscientious objectors and the American state from colonial times to the present", in Moskos, C.C. & Chambers, J. W.(II)(Eds), The New Conscientious Objection, from sacred to secular resistance. Oxford University Press, New York/Oxford, pp.23 - 46

Eberly, D. J. (1993) "Alternative Service in a future Draft", in Moskos, C.C. & Chambers, J. W.(II)(Eds), The New Conscientious Objection, from sacred to secular resistance. Oxford University Press, New York/Oxford, pp.57-65.

The GI Rights Hotline, http://girights.objector.org/

Horeman, B. & Stolwijk, M. (1998) Refusing to Bear Arms, War Resisters International, London

Lapreziosa, G. (2004) "Is the Draft coming back?", Philadelphia Yearly Meeting of the Religious Society of Friends, http://www.pym.org/, posted on 8th June, 2004

McNeil, J. E. (2004A), "No news: a special skills draft?", http://centeronconscience.org/, Urgent Action Alert posted on 15th March, 2004

McNeil, J.E. (2004B), "Do you feel a draft?", The Reporter, Volume 61, 3, Center for Conscience and War, Washington DC.

Noone, M. F. Jr. (1993), "Legal aspects of conscientious objection: a comparative analysis" in Moskos, C.C. & Chambers, J. W.(II)(Eds.), The New Conscientious Objection, from sacred to secular resistance. Oxford University Press, New York/Oxford, pp. 177-195.

Prasad, D. & Smythe, T. (1968), Conscription -a world survey: compulsory military service and resistance to it, War Resisters International, London

Seeley, R. A. (1982), Handbook for Conscientious Objectors, (13th Edition), Central Committee for Conscientious Objectors, Philadelphia & San Francisco

Seeley, R.A: (1998), Advice for Conscientious Objectors in the Armed Forces (5th Edition), Central Committee for Conscientious Objectors, Philadelphia & San Francisco