



# 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)

**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

[www.cpti.ws](http://www.cpti.ws)

Contact in Geneva : Derek BRETT, Av.Adrien-Jeandin 18, 1226 Thonex.  
Tel. 022 860 2463 Email: [dubrett@talk21.com](mailto:dubrett@talk21.com)

## UPR SUBMISSION - UNITED STATES OF AMERICA - NOVEMBER 2010

1. This submission was prepared in April 2010 on the basis of the latest information available to CPTI.
2. Information for this submission was obtained from personal contacts and published and website information from American Friends Service Committee, the Center on Conscience and War, the Central Committee for Conscientious Objectors, the Coalition to Stop the Use of Child Soldiers, GI Rights Hotline, the National War Tax Resisters Co-ordinating Committee, and War Resisters International and its USA affiliate the War Resisters League. None of these organisations are however in any way responsible for the presentation or interpretation of this information.

### Executive summary:

**3. 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.**

### Registration for military service

4. 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.

5. 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, making possible contingency plans that, if necessary, within a fortnight of Congress authorising the President to order inductions the first conscripts could be on their way to “boot” or training camp.

6. Although 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, 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. Jacobson, 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.”

7. 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, enforcement 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 27<sup>th</sup> 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.

8. The requirement to register 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.

### Juvenile recruitment

9. CPTI notes with concern that 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) , and its initial report under OPCAC was considered by the Committee on the Rights of the Child (CRC) in June 2008.

10. 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.

11. 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. The CRC recommended a withdrawal of the “understandings” and raising the minimum enlistment age to 18.

12. 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.

13. 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.

14. A concern of CPTI about all countries where 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.

15. 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.

16. In this respect, CPTI is particularly concerned at 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

17. The USA is among the more enlightened States in that, in the form of Department of Defense Directive No. 1300.6, first introduced in 1962, it has a procedure allowing for the “honourable discharge” of a serving member of the armed forces who becomes a conscientious objector.

18. In the relatively peaceful years between 1985 and 1991, inclusive, 845 applications (over 75% of those lodged) resulted in a discharge. In the five years from 2002 to 2006, according to the US Government Accountability Office, only 425 applications were lodged, but the acceptance rate had also gone down – to 54%.

19. In practice the conditions are restrictive, the existence of the provisions is not well known, conscientious objectors can face obstruction or hostility when they attempt to use them, and unrecognised conscientious objectors are treated harshly.

20. One restriction is that the objections cited must have developed only after enlistment. This is of particular concern with regard to those who were persuaded to enlist while still juveniles. If it is shown that the objections resulted from the crystallisation of ideas and influences from before the time of recruitment, their applications may be turned down.

21. 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.

22. 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.

23. 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.

#### Treatment of conscientious objectors to military taxes

24. Conscience and Peace Tax International campaigns for recognition of the right of conscientious objection to the payment of taxes for military purposes. There is a long tradition of such objection in the USA and 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.

25. Of course there is as yet no legislative recognition of conscientious objectors to military taxes; our member organisation, the National Campaign for a Peace Tax Fund promotes a draft Bill before Congress which would enable taxpayers to stipulate that their own contributions should not be used for military expenditure. Meanwhile, we are concerned about the increasingly draconian treatment of those who are driven by their own consciences into individual resistance of the current tax laws.

26. 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 the unusual decision was taken to refer for federal prosecution Frank Donnelly, a veteran peace activist from the state of Maine, who pleaded guilty to understating his income in the years 2003 and 2004, in order to avoid funding military activities. He is currently awaiting sentencing and faces a term of imprisonment of up to sixteen months.

27. 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.

28. In 2007 a number of persons who had in various ways indicated either on or in an enclosure to their tax form that they had a conscientious objection to paying taxes for war and that any payment exacted would be made under protest were warned that future "frivolous" communications of this nature could attract a fine of up to \$5,000. There have been no reports of this threat having actually been carried out, but CPTI considers the fact that it was even made to constitute an unacceptable restriction on the freedom of expression coupled with the freedom of thought, conscience and religion.