



United Church
of Canada



Canadian Friends
Service Committee



Mennonite
Central
Committee

September 21, 2010 (International Day of Peace)

Summary: Statement in support of Bill C-440 and the rights of conscientious objectors

Attached is a joint statement from Canadian churches and church organizations, including those in the peace church tradition, voicing firm support for Bill C-440, *An Act to amend the Immigration and Refugee Protection Act (war resisters)*.

In keeping with the motions approved by Parliament in June of 2008 and March of 2009, which called upon the government to cease deportation proceedings against war resisters, Bill C-440 gives Parliamentarians an opportunity to respect the will of Canadians, of Parliament, and our country's obligations under international law.

With regards to Bill C-440, the statement urges Parliamentarians to consider the following:

- C-440 will build upon the growing body of international legal measures that support the rights of conscientious objectors to war. Canada is party to, and obligated to uphold, such instruments as the UN Convention on Refugees and the International Covenant on Civil and Political Rights, which protect conscientious objectors on the basis of genuine political, moral, or religious grounds as well as from wars that are considered illegal under the UN Charter;
- Contrary to what has been articulated by some in the public debate, individuals can, and do, *develop* a conscientious objection to war due to significant legal and moral questions that arise during military service. While “selective objectors” are not currently protected by Canadian or U.S. military policies, Resolution 1998/77 of the UN Human Rights Commission put forth critical interpretive comments that speak to such cases, emphasizing that States should refrain from subjecting such conscientious objectors to imprisonment or punishment;
- Recent public debates regarding the legitimacy of conscientious objectors from the Iraq War—and instructions to Canadian immigration officers—have framed U.S. war resisters as “deserters” who have committed a criminal act for which they should be punished. If deported, these individuals not only risk imprisonment but a dishonourable discharge sentence. Such a sentence has life-long repercussions, as it can substantially limit their access to employment, veterans' and social benefits, education grants, and health care;
- While conscientious objection rights are in their infancy in terms of judicial interpretation, they are slowly but firmly being established as a legitimate and protected expression of rights of conscience. In its 2010 decision to overturn the ruling that denied Jeremy Hinzman permanent residence in Canada, Canada's Federal Court of Appeal acknowledged that conscientious objection is an emerging right in international human rights law.

This statement encourages all Parliamentarians to support the rights of conscience and religion, and particularly those who have developed such a conviction through the experience of war itself. The approval and implementation of Bill C-440 will be a significant step forward in affirming such values and provide protection for conscientious objectors from wars not sanctioned by the international community.



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Statement in support of Bill C-440 and the rights of conscientious objectors

As Canadian churches and church organizations, including those in the peace church tradition, we would like to register our support for Bill C-440, *An Act to amend the Immigration and Refugee Protection Act (war resisters)*.

Our support is rooted in our understandings of scripture and the teachings of our respective traditions regarding conscientious objection to war. Throughout Canada's history, the Government of Canada has demonstrated respect and compassion for these beliefs through the provision of exemptions from military service and, later, alternative service options, during times of conscription.

Many in the churches—and other faiths—broadly support rights of conscience as conscience is the still, small voice of God speaking within us. We assert, therefore, that all conscientious objectors to war, regardless of faith, should receive the same compassionate response with which we have been graced.

Bill C-440 will provide protection to conscientious objectors from wars that are illegal under the UN Charter. As well, it will build upon the growing body of international legal measures that support the rights of conscientious objectors to war. Given the public debates regarding the legitimacy of the conscientious objectors from the Iraq War—as they have been called deserters—we would like to draw attention to the important legal provisions that uphold the rights of conscientious objectors to war, including military personnel who through their experience develop a conscientious objection to war in general, or a war in particular.

Legal provisions and decisions favouring conscientious objection

Since 2004, approximately 50 conscientious objectors from the U.S. military have come to Canada seeking refuge for their decision not to participate in the Iraq War. While they technically “deserted” the Iraq War, this is not the sum of the identity by which they should be measured. Under particular circumstances, military personnel who desert have rights of asylum guaranteed in the UN High Commissioner for Refugees Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (hereafter, “the Handbook”)¹, which Canada and other parties to the UN Convention on Refugees use to adjudicate cases.

The Handbook states: “[a] person is clearly not a refugee if his only reason for desertion or draft-evasion is his dislike of military service or fear of combat” (paragraph 168), nor is it “enough for a person to be in disagreement with his government regarding the political justification for a particular military action” (paragraph 171). The Handbook further states two key points that are relevant to the U.S. war resisters:

- “[t]here are, however, also cases where the necessity to perform military service may be the sole ground for a claim to refugee status, i.e. when a person can show that the performance of military

¹<http://www.hrea.org/learn/tutorials/refugees/Handbook/hbpart1.htm#Handbook%20Chapter%20Five>

- service would have required his participation in military action contrary to his genuine political, religious or moral convictions, or to valid reasons of conscience” (paragraph 170), and;
- “Where, however, the type of military action, with which an individual does not wish to be associated, is condemned by the international community as contrary to basic rules of human conduct, punishment for desertion or draft-evasion could, in the light of all other requirements of the definition, in itself be regarded as persecution.” (paragraph 171).

Chapter 5 of the Handbook must be considered alongside rights guaranteed in other international instruments such as the International Covenant on Civil and Political Rights (ICCPR), which Canada is party to and obligated to implement. Article 18 addresses the right to freedom of thought, conscience and religion. In 1993, the (then) UN Human Rights Committee issued General Comment 22 on Article 18 and interpreted that the right of conscience “encompasses freedom of thought on all matters”, that “these freedoms are protected unconditionally” and without limitation (including national security), and while conscientious objection to military service is not specifically cited in Article 18, it can be “derived” from it and “[w]hen [conscientious objection to military service] is recognized by law or practice [as is the case in the U.S. and Canada], there shall be no differentiation among conscientious objectors on the basis of the nature of their particular beliefs; likewise, there shall be no discrimination against conscientious objectors because they have failed to perform military service.”

In November 2006, in a landmark decision by the Human Rights Committee concerning two conscientious objectors from the Republic of Korea² it was clearly determined that conscientious objection to military service is protected by Article 18 of the ICCPR. A further case adjudicated April 2010 confirmed this interpretation.³

Contrary to what has been articulated by some in this debate, people in military service can and do develop a conscientious objection to war. This fact is established to the point that both Canada’s and the U.S.’s military policies recognize it, though provisions are restricted to an opposition to all war. The “selective objector,” who opposes a particular war for reasons of conscience, does not have protection under this policy. However, recognition of selective objection in international law goes back to 1978 when the UN General Assembly adopted resolution 33/165 (without a vote), which focused on refusal to enforce apartheid by service in military or police forces.

Resolution 1998/77 of the UN Human Rights Commission⁴ (adopted without a vote) put forth critical interpretive comments that bear upon the cases of the U.S. conscientious objectors to the Iraq War, including comments that drew “attention to the right of everyone to have conscientious objections to military service as a legitimate exercise of the right to freedom of thought, conscience and religion, as laid down in article 18 of the Universal Declaration of Human Rights and article 18 of the International Covenant on Civil and Political Rights”; that it was aware “that persons performing military service may develop conscientious objections”; and emphasized “that States should take the necessary measures to refrain from subjecting conscientious objectors to imprisonment and to repeated punishment for failure to perform military service.”

While conscientious objection rights are in their infancy in terms of judicial interpretation, and therefore remain somewhat controversial, they are slowly but firmly being established as a legitimate and protected expression of rights of conscience. In July 2010, Canada’s Federal Court of Appeal decision on Hinzman

² The decision is available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/26a8e9722d0cdadac1257279004c1b4e?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/26a8e9722d0cdadac1257279004c1b4e?Opendocument)
A commentary on the decision by the Quaker UN Office-Geneva is available at:

<http://www.quano.org/geneva/pdf/humanrights/BP2007COKoreaDecision.pdf>

³ <http://www.hrlrc.org.au/court-tribunal/un-human-rights-committee/eu-min-jung-ors-v-republic-of-korea-un-doc-ccprc98d1593-16032007-30-april-2010/>

⁴ <http://www.unhchr.ch/Huridocda/Huridocda.nsf/0/5bc5759a53f36ab380256671004b643a?Opendocument>

itself acknowledged there is “some evidence that the right to conscientious objection [to military service] is ‘an emerging right in international human rights law.’”⁵

Further considerations:

All of the U.S. soldiers who fled to Canada volunteered for military service—they were not drafted. All developed a conscientious objection to the Iraq War because of significant legal and moral questions, and/or because their direct experience. Regardless of whether they applied for CO status, none would have had access to an independent system for determining their conscientious objection as decisions are made by their commanding officer. Almost all had no access to information about conscientious objector status or other forms of discharge. All of the U.S. war resisters are at risk of imprisonment if deported to the United States. While the US military has a policy wherein military personnel can apply for conscientious objector status, those who have sought it—even with strong evidence of their beliefs—have generally not had their rights respected and accommodated, rather, they have been imprisoned for their failure to perform military service⁶. Indeed, the two war resisters (Robin Long and Cliff Cornell) deported by Canada in 2008 and 2009 were both imprisoned for up to a year, and disturbingly, prosecution sought tough sentences for them based on the fact that they voiced their concerns about the Iraq War in the Canadian press. While imprisonment is its own hardship, the critical repercussion for US war resisters in the United States is the life-long dishonourable discharge sentence. A dishonourable discharge can substantially limit one’s access to employment, health-care, education and social benefits and opportunities.

One of the most disturbing debates to emerge since the arrival of the U.S. war resisters is the argument that they are merely deserters who have committed an illegal act for which they should be punished. This idea is reinforced by the Operational Bulletin 202 which was released by Citizenship and Immigration Canada on 22 July 2010⁷, which introduced new challenges to war resisters in Canada. Titled an “Instruction to immigration officers in Canada on processing cases involving military deserters” the bulletin indicates an intention to declare U.S. war resisters “criminally inadmissible” to Canada on the basis that American and Canadian laws concerning desertion are similar.

The release of the Operational Bulletin would seem to indicate that the government will not support Bill C-440 as it views the people who desert the military, as criminals. While the actions of desertion and the actions of the expression of conscience may appear to be similar, the Bulletin does not take into account the beliefs and motivations that lead to the decision to desert (which the Federal Court of Appeal stated had to be considered as a part of the adjudication of Jeremy Hinzman’s application to stay in Canada on humanitarian and compassionate grounds in its recent decision). Conscientious objectors are not mere deserters—they are individuals being prompted by their consciences to refuse to participate in war, or a war, on the basis of their beliefs and/or experience.

In the 1960s, Canada’s position on conscientious objection changed significantly as it allowed American conscientious objectors—deserter and draft dodger—to come to Canada regardless of religious belief and whether they opposed all wars or just the war in Viet Nam. The provisions found in Bill C-440 are a logical evolution in practice consistent with our history and our values as Canadians. A majority of Canadians concur with this view: an Angus Reid poll, released in July 2008, found that three in five Canadians (64%) favour giving U.S. soldiers the opportunity to remain in Canada as permanent residents.⁸

⁵ <http://decisions.fca-caf.gc.ca/en/2010/2010fca177/2010fca177.html>

⁶ High profile cases include that of Stephen Funk, Suzanne Swift, Ehren Watada, and Camilo Meijia. Further examples can be found at: <http://www.couragetoresist.org/x/> and http://www.wri-irg.org/programmes/co_alerts

⁷ <http://www.cic.gc.ca/english/resources/manuals/bulletins/2010/ob202.asp>

⁸ http://www.resisters.ca/media_room.html

This support has been reflected in the Canadian Parliament where, in June 2008 and again in March 2009, motions were passed in the House of Commons calling on the government to cease deportation proceedings against war resisters and to create a provision within Canada's immigration policy to enable conscientious objectors from illegal wars to seek status in Canada. Now, Bill C-440 gives Parliamentarians an opportunity to respect the will of Canadians, of Parliament, and our country's obligations under international law.

Bill C-440, *an Act to amend the Immigration and Refugee Protection Act (war resisters)*⁹, was introduced by MP Gerard Kennedy in September 2009. Debate on second reading for the bill will occur on September 27, 2010. If passed, Bill C-440, which is consistent with the motions approved by Parliament in 2008 and 2009, will allow "foreign nationals who, based on a moral, political or religious objection, left the armed forces of another country to avoid participating in an armed conflict not sanctioned by the United Nations or refused compulsory military service for that reason, and who are in Canada, to remain in this country through humanitarian and compassionate consideration."

Conclusion

We encourage all Parliamentarians to support the rights of conscience and religion of conscientious objectors to war, particularly those who have developed such conviction through the experience of war itself. We give thanks for each heart that opens and embraces the priceless knowledge that, as human beings, we are called to love, show compassion and to offer sanctuary to those who ask for our help. This is part of our identity as a country and our mission as churches. Canada is home to many who have fled wars and military service. We have also been known as a country of peacemakers. The approval and implementation of Bill C-440 is a positive step forward in re-asserting such values.

Signed:



Merrill Stewart
Clerk,
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Donald Peters, Executive Director
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Omega Bula
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⁹<http://www2.parl.gc.ca/Sites/LOP/LEGISINFO/index.asp?Language=E&query=6876&List=toc&Session=23>