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Mobilization and recruitment in Ukraine: challenges and solultions

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Abstract. This paper considers open-source information to consider the challenge of military recruitment in Ukraine. It then considers U.S. law and practice before and after the U.S. shifted from conscription to an all-volunteer force in 1973 for insights on methods to increase and sustain recruitment. Finally, it identifies potential methods to increase voluntary recruitment and decrease draft evasion, two sides of the same coin. Consideration is given to the impact that perceptions (and realities) about military justice and discipline have on recruitment and how to address and mitigate that impact; the relative role and impact of positive (e.g., benefits) versus negative (e.g., punishment) incentives in recruitment; the relative advantages and disadvantages of fixed enlistment terms, and whether there are alternatives to fixed terms, such as the use of combat exposure points to determine the length of service, or the implementation of mandatory unit rotations; the relative impact that recruitment age limitations play in meeting recruitment goals; the policy pros and cons of extending conscription by age and gender; and the potential role that benefits play in recruitment and how benefits might be adjusted to increase recruitment. If there was an easy or obvious recruiting solution, the Government of Ukraine would have adopted it. Marginal changes and adjustments over time can in their cumulative effect significantly change and improve the recruiting landscape. Given the long-

term nature of this war, the status of the war, and the continuous nature of the Russian threat, changes in military recruitment and culture are needed and will pay future security dividends.

Keywords: armed forces, rotation experience, human mobilisation resource, military reserve, recruitment.

Introduction

Introduction: The Challenge. Media reports indicate that the Ukrainian Armed Forces (UAF) face personnel shortages. In December 2023, former Commander in Chief of the Ukrainian Armed Forces General Zaluzhnyi is reported to have requested a call-up of an additional 500,000 persons. Media reports indicate that his successor, General Syrskyi, has called for a similar recruitment effort but with an overall reduced figure. President Zelensky stated in March 2024 that Ukrainian forces might need to shorten their lines because of manpower and munitions shortages, tactically ceding territory to Russia (Samya Kullab, 2024). The personnel challenge was addressed, in part, on April 2, 2024, when President Zelensky signed a law lowering the conscription age in Ukraine from 27 years to 25 years. The Ukrainian Parliament subsequently passed additional legislation in April 2024 providing incentives to recruitment, including a front line bonus and death benefit (Marc Santora, 2024).

However, for reasons considered below, a conscription age-change alone may not meet Ukraine's manpower needs or do so in a sustainable manner. Moreover, conscription and training will take time and the Government of Ukraine (GOU) will in all scenarios need to determine how best to implement the introduction of new personnel to maximize unit cohesion and combat effectiveness. Therefore, and critically, Ukraine should consider longer term conscription, recruitment, retention, and rotation options and solutions to meet the ongoing and persistent threat from Russia.

Roadmap. Section One of this article briefly addresses the manpower needs and challenges facing Ukraine in responding to Russian aggression (This paper is based on media reports, publicly available data, conversations, and anecdotal input. The goal of the paper is not to document data or trends but to provide relevant actors an external and comparative perspective on options to increase military recruitment and retention.). Section Two considers the U.S. experience with conscription and registration identifying decision points for GOU consideration, such as the method of conscription implementation. Considering Ukraine's recent conscription and recruitment changes, emphasis is placed on identifying "lessons" from the U.S. experience implementing conscription. Section Three considers recruitment incentives and disincentives that in U.S. experience are thought to impact voluntary recruitment and retention. Command climate, for example, as a recruiting incentive or disincentive is often overlooked, neglected, or viewed as too difficult to address in wartime; however, the U.S. experience suggests otherwise. Section Four addresses the U.S. experience with individual and unit rotation in Vietnam, post-Vietnam, and during the wars in Iraq and Afghanistan. One way to increase combat efficacy, with or without an increase in personnel, is with policies of unit rotation that allow units and individuals to rest and reset.

Methodological Framework

Assumptions and Caveats. This paper incorporates six underlying assumptions and caveats.

First, decisions about recruitment and mobilization in Ukraine are for Ukraine to make based on Ukraine's context and war experience.

Second, to meet its personnel needs, Ukraine will need to expand its conscription base. It has done so, lowering the draft age to 25 from 27. However, it may need to do so again, by lowering the draft age further, including women in the draft pool, or both.

Third, U.S. experience suggests that there are additional mechanisms that might increase voluntary recruitment and decrease conscription evasion.

Fourth, although a rebuttable presumption, while enlistment incentives may only provide marginal gains in recruitment in the short run, they may help create a steady and thus sustainable flow of recruitment in future years and thus a military capable of deterring, and if necessary, resisting ongoing Russian aggression. They are also likely to address specific recruitment needs, such as drone operators, Explosive Ordinance Disposal (EOD) experts, and medical personnel and may help to sustain a cadre of enlisted leadership.

Fifth, the paper does not presume to espouse a policy perspective or preference but rather seeks to identify options in neutral and academic manner. However, we are not neutral as to outcome. As scholars, we believe the outcome of Russia's war of aggression against Ukraine will help to define the 21st Century, including whether it is a law and rules-based century, or one defined by force and power alone. We also believe that if Russia is not stopped by Ukraine, NATO inevitably will need to stop Russia elsewhere and elsewhere will likely lead to the introduction of United State armed forces. In short, Ukraine is on the front line of freedom and law.

Finally, we approach this paper with humility and respect. Humility comes from knowing that the U.S. model and U.S. lessons are not necessarily the correct policy analogies for Ukraine. Therefore, we offer a U.S. perspective, not "the U.S. answer," so that Ukraine can draw from the U.S. experience, adopting what is apt and worked, and avoid repeating what was less successful. Respect comes from observing a nation and a military that has withstood a war of aggression while outnumbered and out equipped but not out-couraged.

Results and Discussions

The Need. Ukraine is facing a military manpower shortage. In any sustained war, the capacity to recruit and sustain an army matter. They matter more in a war of attrition. Since the full-scale invasion, U.S. estimates place Ukrainian casualties as of August 2023 at 70,000 killed and 120,000 wounded (Cooper, Gibbons-Neff, Schmitt and Barnes, 2023). The figures are certainly higher. Up to 50,000 Ukrainian combatants are estimated to have lost one or more limb due to combat wounds. Manpower matters for at least four reasons: (1) Russia has adopted attrition as a method of warfare and possesses numeric advantages; (2) offensive operations, e.g., to retake occupied territory are generally more manpower intensive than defensive operations; (3) a manpower reserve will improve combat effectiveness and recruitment by allowing for unit rotation, rest, and training cycles; and, (4) Ukraine will face an ongoing security threat from Russia after victory, as well as before.

I. Current Law, Practice, and Challenges. Under current law and practice Ukrainian men ages 25-60 are eligible for conscription into the Ukrainian Armed Forces (UAF) and are required to register with local military draft commissions. In theory, persons who volunteer or are conscripted are required to serve up to three years on active duty; however, pursuant to Martial Law declared February 24, 2022, and most recently extended a tenth time by vote of the Rada until May 14, 2024, the term of service has been extended until "the end of the special period." Therefore, persons who volunteer or are conscripted into the UAF do not in practice know how long they will be required to serve, neither do their families or employers. It is a common understanding (received wisdom) that military service will continue indefinitely until a military member is wounded or killed. There is no public data that verifies this understanding. However, from the standpoint of recruiting it does not matter. So long as this is received wisdom in Ukraine, it will have a corresponding impact on morale and recruiting.

Ukraine faces at least eight recruiting challenges.

A Diminishing Population Base. By some estimates, Ukraine's population has fallen from fifty-one million at the time of independence in 1991 to a projected population of from twenty-four to thirty-three million by 2040 (Baker, 2023). The projection varies depending on predictions about

the further demographic impact of Russia's war of aggression and the predicted rate of refugee return. Alarmingly, the younger generation, Gen Z, is the smallest generation in Ukrainian history. This reflects a number of factors reported on elsewhere, including a low birth rate following the economic depression following independence (Kramer, Holder, Letherby, 2024). The situation is compounded by the departure of an estimated 6 million women since the full-scale invasion. Although we have not identified specific legislative text or history indicating so, former Rada staff, scholars, and media indicate that the public policy reason for limiting conscription to older males is based on Ukraine's demography, to preserve the capacity of Gen Z to sustain or regenerate Ukraine's population; older conscripts are more likely to have had the opportunity to have children and start families. There are, of course, also "political" reasons to limit the age of conscription rooted in opposition to any expansion of conscription eligibility.

Exemptions. Under Ukrainian law, as amended by martial law decree, there are exemptions to conscription. These include an exemption for "critical war work." Critical war work includes, for example, railroad workers, truck drivers, and firefighters. However, the term is subject to interpretation and thus inconsistent application as well as abuse when applied by the local commissions that serve as "draft boards," in American parlance. Media reports indicate that the Rada is considering further delimiting the qualifications for the "critical war work" exemption. Full-time undergraduate students and professors holding PhDs are also exempt from conscription. This has resulted in some draft eligible men who already hold undergraduate degrees returning to university for additional undergraduate degrees, apparently finding lawful exemption from conscription while doing so.

Corruption. Any conscription process that includes exemptions, and especially interpretive exemptions adjudicated by local recruiters and commissions is subject to inconsistent application and corruption. In August 2023, media reports indicate President Zelensky fired all thirty-three Chiefs of the regional military recruiting offices on grounds of corruption (David Stern, 2023). We were told that in one oblast, fifty percent of the draft eligible men received a medical exemption for having one kidney. Whether apocryphal or verifiable, such stories become received wisdom impacting recruiting by undermining confidence in the integrity and equity of the conscription process and opening the door to a permissive - if others do it, why shouldn't I - attitude about avoiding and evading conscription.

Evasion. There is also outright evasion. At the outset of the full-scale invasion there was a mass flow of refugees into Central Europe. Most refugees were women and children, but conscription-aged men exited as well. Others were already overseas at university or working and stayed. Media reports indicate that there is an illegal market for exit papers that allow conscription-eligible men to exit the country. Media reports also indicate there is a market for guides to escort conscription eligible men across the Ukrainian border into Central Europe. These same reports indicate that approximately twenty-five men have drowned seeking to swim the Tysa River between Ukraine and Romania. Over sixteen thousand men have been captured seeking to exit Ukraine to evade conscription (Kramer, Holder, Letherby, 2024). We have been told that as many as 100,000-600,000 conscription-aged men have left the country.

Stigmatization. Some veterans and veterans groups refer to the stigma of veterans status in a manner akin to how Afghan veterans in Soviet era Ukraine and Vietnam veterans in the U.S. were perceived and treated by some. This seems extraordinary in a country that owes its survival to the UAF. The stigmatization of veterans status is an obvious deterrent to recruitment.

Impressment. Impressment also deters voluntary recruitment. Credible stories abound in Ukraine about conscription-aged males being grabbed off the street and placed directly in military training without opportunity to put their personal affairs in order and communicate with loved ones. Persons with lawful conscription exemptions are known to carry proof of exemption in public lest

recruiters seize them. Such conduct lowers trust in recruiters and the process of military recruitment and may encourage families to send conscription eligible men out of the country or in hiding.

Conflict and Ambiguity of Laws. From an outsider's perspective, Ukraine does not have clear law or regulations regarding recruitment and conscription. For example, there is an apparent conflict between Soviet era statutory law and the martial law declared following the full-scale invasion. Lack of clarity opens the door to the perception that the application of conscription rules and practices are inconsistent and unfair, including the perception that wealthy and connected persons are more likely to avoid service. This may change with the implementation of the April 2024 conscription and mobilization changes; however, it is wise to recall that in U.S. experience, clear law was implemented in inconsistent ways across draft districts leading to the impression that the law was applied unevenly and thus was unfair, an impression that often proved well founded.

Benefits – Scope and Reliability. Benefits available to wounded veterans or the survivors of servicemembers killed in the line of duty are perceived as (and likely are) inadequate to meet the actual and legitimate needs of surviving members and their families. This is illustrated by adoption of the moniker "invisible women" to describe the spouses of servicemembers killed in action. To state the obvious, it is a deterrent to recruiting, if recruits lack confidence that surviving loved ones will be cared for if they are wounded or killed in the line of duty.

II. Options and Solutions. There are no panaceas. If there was an easy or obvious solution, the Government of Ukraine (GOU) would have adopted it. The three primary mechanisms to meet military personnel requirements are conscription, voluntary recruitment, and retention. We address each in turn.

A. Conscription. As noted, in April 2024, the age of conscription in Ukraine was lowered from 27 to 25, making men ages 25-60 conscription eligible. The current draft band has resulted in an average UAF age of approximately 40. An age reduction to 25 creates a potential manpower pool of approximately 467,000. Of course, not every age-eligible man is medically qualified for military service; others may have legitimate conscription exemptions. In U.S. experience, approximately 23% of the age-eligible population meet the health and background criteria for military service without a waiver and without regard to whether these qualified persons are interested in military service (FY20 Qualified Military Available Key Findings, 2022). Weight is the leading disqualification factor; however, many disqualified persons present multiple factors, also including a criminal history, or educational deficits. Therefore, depending on accession standards established by the UAF, one can extrapolate that not all of the new band of conscription eligible men, ages 25 and 26, will be fit for military service.

No doubt, the health and background of Ukrainian men will vary in profile from their U.S. counterparts. Nonetheless, one can reasonably assess that a conscription pool of 450,000 will not produce an enlistment yield of 450,000. Applying U.S. accession standards, i.e., a qualified for service percentage of 23%, in a pool of 450,000, would likely yield 103,500 personnel. Therefore, consideration of additional changes to conscription criteria are possible, and should be framed on a contingency basis. Reference to other state practice, especially U.S./NATO practice may be helpful.

U.S. and NATO Conscription Practice. According to the Pew Research Center, fewer than a third of countries (60) have some form of an active conscription program. Twenty-three nations have conscription laws in place but do not currently engage in conscription, including the United States (Drew Desilver, 2019). Eight-five countries have no laws authorizing conscription and 23 nations have no regularly constituted military. Eight NATO countries have active conscription programs.

A. Denmark
   a. Military Conscription Stipulations: 4-12 months of military training
   b. Demographic: Men at the age of 18

B. Estonia

a. Military Conscription Stipulations: 8-11 months of military service (Some work in government services)
b. Demographic: Men ages 18-27

C. Greece
a. Military Conscription Stipulations: 9-12 months of service
b. Demographic: Men ages 19-45

D. Lithuania
a. Military Conscription Stipulations: 9 months of service obligation
b. Demographic: Men ages 19-26

E. Norway
a. Military Conscription Stipulations: 12-19 months of service obligation
b. Demographic: Both Men and Women ages 19-35

F. Sweden
a. Military Conscription Stipulations: 7-15 Months of Service, employs selective conscription.
b. Demographic: Both Men and Women ages 18-47

G. Turkey
a. Military Conscription Stipulations: 6-12 Months of Service
b. Demographic: Mandatory for Men at age 20 (Some exemptions Apply)

H. Finland
a. Military Conscription Stipulations: 5.5-12 months service with military or border guard
b. Demographic: Men must serve at age 18.

However, these programs are selective rather than universal in their application. For example, in Norway, conscription eligible persons are required to register but given the option of performing alternative public service or military service. In many cases, eligible persons do not perform any service. Thus, in practical effect, conscription results in limiting military service to true volunteers, or at least persons who have voluntarily chosen between methods of public service.

Under U.S. law and regulation, in the event of a draft, men aged 18 and six months and older "shall be liable for training and service in the Armed Forces of the United States." (See 50 U.S.C.A. §§ 3801-3820.). If the military's requirements were not met by the 19-year-old cohort, the law permits the induction of 20-year-old men, and so forth up the step ladder to age 26. The law does not specify the manner in which draftees will be called to service, i.e., whether by lottery or selection based on criteria. However, selection of persons for training and service "shall be made in an impartial manner, under such rules and regulations as the President may prescribe." The Selective Service System, as used in Vietnam, specified any lottery selection method shall use 366 days of sequence numbers to represent the birthday of all registrants 18 through 26 to create a random and impartial selection protocol (Vietnam Lotteries, 2024). The law limits inducted service to no more than 24 months ("Each person inducted into the Armed Forces…shall serve on active training and service for a period of twenty-four consecutive months, unless sooner released, transferred, or discharged…").

The United States Experience. The United States has relied on an All-Volunteer Force (AVF) since 1973. Prior to 1973, the United States employed conscription during the Civil War, the World Wars, and during the Cold War/Vietnam era, 1948-1973, as briefly described below (Kristy N. Kamarck, 2021).

The Civil War: The first U.S. draft was instituted pursuant to the 1863 Enrollment Act. Prior to that time, including during the Revolutionary War, War of 1812, and Mexican-American War, the U.S. relied on a volunteer federal force augmented by state militia as needed. Men ages 20 to 45 were eligible for the Civil War draft in both the U.S. Army and Confederate States Arms. There were

exemptions for family care dependency and employment in official positions. In addition, draftees could pay a substitute to take their place or a "commutation" fee of up to $300 ($7,388 in 2024 dollars) to avoid service, mechanisms that privileged wealthy persons. For example, one future U.S. president, Benjamin Harrison, paid for a substitute to take his place as a draftee. The Army also for the first time offered bounties (i.e. bonuses) to encourage enlistment. The draft was conducted by lottery in each congressional district based on quotas assigned to each district based on the number of eligible men and the number of men from the district already serving. Draftees were required to report in the order in which their names were drawn. In 1863, there were riots in New York City opposing the draft, resulting in $1.5 million in property damage. Of the 2,690,401 Union soldiers who served during the war, 255,373 were draftees. 86,724 draft eligible men paid a "commutation" to avoid service and 117,986 paid for substitutes. The Enrollment Act lapsed at the close of the war.

World War I (U.S. participation 1917-1819): At the outbreak of World War I, there were 100,000 personnel in the all-volunteer United States Armed Forces. In May 1917, President Wilson signed the Selective Service Act into law authorizing the conscription of males ages 21 to 31 and authorizing the mobilization of the state National Guards into federal service. In 1918, the Congress expanded the draft to include males up to the age of 45. A report to the Secretary of War on the operation of the Selective Service System suggests the change was driven by concern that the war would extend into 1919 and that younger ages would not provide sufficient Class I recruits to meet military needs, necessitating either the drafting of less qualified Class II and III recruits or raising the age of the draft (Second Report of the Provost Marshal General to the Secretary of War on the Operations of the Selective Service System to December 20, 1918, 1919).

In contrast to the Civil War draft, the World War I draft was selective, rather than based on a lottery. The government, through the Selective Service system, could select draft-eligible individuals based on skills, background, and health. Also in contrast to the Civil War, substitutions, commutations, and bounties for enlistments were not permitted or provided; however, "100,000 deferments were provided to otherwise qualified men … to serve in the shipbuilding industry." To process the registration and draft, the Selective Service Act established over 4,600 civilian draft boards (i.e. not connected to the military) to hear claims for exemptions. "Out of the 24.2 million that registered for the draft in World War I, 2.8 million were eventually inducted." (Kamarck, 2021)

World War II: The Selective Training and Service Act was passed in 1940, prior to America's entry into the War. Although passed in the shadow of war, this was the first peacetime conscription in the United States. The law required men ages 21 to 35 to register with one of 6,442 district draft boards. The boards assigned numbers to eligible district registrants for a conscription lottery. A draft lottery was used from 1940-1942. Subsequently, draft boards inducted persons in their districts based on quotas and criteria set by the government akin to a selective service rather than lottery system. (A lottery system returned in 1969 until the cessation of the draft in 1973). "Approximately 10 million of the 16 million servicemembers who served during World War II were draftees." The relevant law lapsed in 1947.

Cold War and Vietnam, 1948-1973: Following World War II, the U.S. military shrank from 12 million to 1.5 million personnel. However, the Selective Service Act of 1948 was passed in response to concerns about Soviet military power and recruiting shortfalls and a draft resumed. In response to the outbreak of the Korean War the draft was extended until 1955 and the registration age lowered to 18. The authorization to conduct a draft was extended in four-year increments. Between 1950-1964 volunteers comprised 2/3 of the military and the draft was used to augment personnel needs, largely in the Army. (Interestingly, "precedence policy at the time was to fill quotas with delinquents first (those that failed to register or had otherwise failed to meet requirements of the selective service law), followed by volunteers for induction, then 25-year-olds down to 19-year-olds"). During the period 1965-1973 the draft was especially controversial in the context of military intervention in Vietnam. At the height of the U.S. intervention there were 500,000 U.S. armed forces in Vietnam. During this

period there were ongoing protests against the war and the draft. In May 1970, for example, at Kent State University four students were killed and nine wounded when Ohio National Guard soldiers fired upon anti-war protesters. An estimated 100,000 draft eligible men left the country in order to avoid service and prosecution as did 1,000 deserters.

Throughout this time frame the draft was perceived as inequitable and inconsistent in its application, especially around the topics of student deferment and racial demographics. With the backdrop of the Vietnam War, inequities took on added meaning. In 1966, President Johnson established the National Advisory Commission on Selective Service to study the system and make recommendations. The Commission was led by Burke Marshall, a leader of the Civil Rights Division of the Department of Justice during the Kennedy Administration. Among other things, the Commission studied economic and racial disparities in the administration of the draft as well as educational deferments, the most controversial draft deferment. The law and corresponding regulations required that college students receiving a draft notice be permitted to finish the current academic year and that high school seniors be allowed to graduate from high school prior to induction. However, draft boards were given discretion to extend educational deferments. Many boards did so, resulting as a matter of practice in de facto exemptions. As a matter of process, a student coming off deferment when they graduated would be subject to the 19-year-old draft lottery pool. The Commission recommended that under no circumstances should deferments become exceptions and no new student deferments should be allowed without determining public need (In Pursuit of Equity: Who serves when not all serve?, 1967).

It is estimated that approximately half, or 15.4 million men, of the 27 million men eligible for the draft during the Vietnam Conflict received educational deferments (Tom Valentine, 2016). Contrary to popular perception in the United States, a majority of personnel who served during the Vietnam conflict did so as volunteers and not conscripts (1,857,304 conscripts out of 8,744,000 total participants, or 21%) (Kamarck, 2021). *However*, a 1977 RAND study concluded that as many as 77% of volunteers during the Vietnam War volunteered to otherwise avoid induction (Richard V. L. Cooper, 1977). The draft lapsed with the advent of the AVF in 1973; however, in response to the Soviet invasion of Afghanistan in 1980, President Carter activated by proclamation a requirement for males turning 18 to register for a potential draft. The registration requirement has remained in place since.

Implementation of the Draft: Themes, Issues, and Implications. The U.S. experience with conscription reveals several implementation themes and issues with potential relevance to Ukraine. To start, perceptions about conscription were shaped by perceptions about whether the draft was administered in a fair manner, including in the issuance of deferments and exemptions, and whether the draft was equitable in its application, i.e., whether the burdens of conscription fell disproportionately on minorities and/or the economically underprivileged men, which in the United States might also fall disproportionately along racial lines. Likewise, perceptions about the draft impacted public support for government policies, this was especially true during the Vietnam Conflict, which was increasingly unpopular after the 1968 Tet Offensive and more so because of the draft. For example, the antiwar movement was spearheaded on college campuses where many students faced the prospect of conscription without an ongoing deferment or exemption. College-aged students also were more likely to have the familial capacity and connections to both protest the draft and avoid or evade its reach.

Process impacts perceptions of Equity and Fairness: In U.S. practice, the process of registration and induction was administered at the local level, during Vietnam at 4,080 separate draft boards (as of 1966) established at the county and metropolitan level. The boards would determine the class of the registrant, e.g., 1-A for “Available for Military Service,” 4-F for “Not Available for Military Service,” as well as the availability of any “clearly established” deferment or exemption, e.g., Class I-S Student Deferment. Registrants could appeal draft board decisions to a state Appeals

Board and in certain extraordinary circumstances to the President. The boards were made up of local civilians, who in theory were aware of local economic needs and circumstances. However, the multitude of boards led to variance in the application of deferments, a situation magnified when national policies were vague or discretionary. As a result, even the good faith application of the Selective Service Act led to disparate outcomes, including for similarly situated persons depending on where they lived. This in turn contributed to the perception that the draft was administered in an unfair and inconsistent manner, before accounting for those draft eligible men who successfully "gamed" the system leading to additional perception that the draft was "rigged" in favor of the wealthy and privileged.

The perception that the draft was applied inconsistently and inequitably was based on reality during the Civil War and Vietnam. Affluent and educated persons were more likely to avail themselves of deferments and exemptions, especially educational and medical deferments, or assignment to a National Guard unit, which during Vietnam were not deployed overseas. This was certainly true during the Civil War when a draftee could pay a substitute to stand in his place; and it was indirectly true during Vietnam, whose deferments favored those who could afford college and thus access to an educational deferment or the type of advisors and medical experts who might guide an appellant through the deferment and exemption process.

Current U.S. law requires that in the event of a draft selective service selection shall be made in an impartial manner and without discrimination on account of race or color. The challenge is putting principle to practice, especially during wartime. The U.S. experience suggests that impartiality depends on clear standards, transparently and evenly applied across districts and demographics. This might occur by limiting the number of decision-making draft boards, a centralized appeals process, or both. In U.S. practice, educational deferments have been especially problematic, as education can serve as a proxy for privilege and wealth, and depending on how applied, shift the burden of war to the economically depressed, which is not impartial.

Lottery v. selection: The U.S. has used both a selective method of induction and a lottery system of induction. A selective system is more likely to meet the specific needs of the military by allowing draft authorities to draft against skill and fitness criteria determined by the military. A random lottery, on the other hand, is more equitable in its application and more likely to be perceived as equitable. It also removes inconsistencies between draft boards and regions where a single drawing is used to determine the order in which conscription eligible and qualified men are inducted into service. During World War II and Vietnam when a lottery was used, it was based on the drawing of birthdates. Current law requires selection in an "impartial manner."

Mix of draft and volunteer: During periods of conscription, the U.S. has relied on a blend of volunteers and conscripts. Conscription has generally been used to augment and close recruiting shortfalls, rather than as the primary mechanism of recruitment. That is, the U.S. Government did not set its conscription goals based on a policy judgment about the optimum blend of volunteers and draftees from a war fighting perspective or based on pre-set numbers and formulas. The military sought to fill its ranks with volunteers first. But of course, the draft spurred some, and according to the earlier cited RAND report a majority during Vietnam, of eligible men to volunteer and thus control the timing of induction and the branch of accession, and many times, also the military role (e.g., infantry, intelligence, supply).

Wartime literature indicates that in a mixed recruitment context, attention must be paid to training military leaders in the different leadership skills needed to lead volunteers, draftees, and blended units. The importance and complexity of such differential training increases dramatically when a draft reaches across ages. In American practice, officers have uniformly been leading 19-year-old and 20-year-old draftees, which means that officers and NCOs may anticipate a fairly uniform level of maturity (or immaturity) and level of physical fitness. Any context that includes draftees across ages, and an average age of 40 as in the UAF, will require additional leadership

training and skill sets to equip officers and NCOs to inspire and lead the young, the old, and the middle-aged, as well as the fit and the less fit. Perhaps most complicated, young officers may find themselves leading and responsible for men their father's ages and with more leadership and lifetime experience than the officers and NCOs appointed to lead them.

Volunteer incentives. In American experience, and during every period of conscription, recruitment incentives and the level of recruitment incentives has impacted the number of persons required for conscription. Restated, enlistment bonuses decrease conscription numbers. In today's AVF context, polling data indicates that patriotism, competitive pay, and career opportunity are the most cited reasons for enlistment, or more likely some combination of all three (Jim Garamone, 2023). However, during the draft, the opportunity to control the timing of induction and branch of induction were important factors influencing voluntary enlistment. Current U.S. law prohibits the paying of bounties to induce a person to enter the Armed Forces, the furnishing of substitutes, or the purchase of release, all of which were prominent during the Civil War.

Age. The United States has uniformly drafted up rather than down the ladder of age. That is, the United States has drafted 19-year-olds before it has drafted 20-year-olds, etc. The one exception appears to have been during the 1950-1964 period, where there is indication that the United States drafted down from age 25 to 19. Legislative history indicates that younger men were preferred for conscription for physical reasons and because it was thought the conscription of younger men would also be less disruptive to family life, and the economy.

Deferments and Exemptions. The United States has throughout its conscription history permitted deferments and exemptions for critical occupations and industries and family dependencies. The areas of greatest controversy have centered around three areas: (1) Equity - the perception and often reality that wealthier persons were more likely to find a path to deferment or exemption and that the draft fell disproportionately on the poor. (2) Educational deferments during the Vietnam era, as noted, were the most numerous and controversial deferments. (3) Standardization - It should not be lost that some of the concern about equity and educational deferments stemmed not from the existence of the deferment or exemption, but the uneven and seemingly arbitrary manner in which the deferments were awarded. This is illustrated by the findings of the National Commission on Selective Service, which documented how different draft boards applied different standards when addressing deferments, some based on grade point average or an assessment of the value of a student's area of study, and some based on semester hours. United States practice and history demonstrates the importance of clear standards uniformly and consistently applied. The draft in the United States has never been "popular;" it has been viewed even less favorably when perceived as unfair or inconsistent. The college and graduate deferment was repealed in 1971 (See §3806 for a description of current deferments and exemptions.).

The National Commission on Selective Service examined the question of whether draftees would be less likely to go to college after service in the absence of an educational deferment, an argument that was given to continue the educational deferments through college. Likewise, the Commission looked at whether the absence of deferments would curtail officer recruitment. The Commission concluded that neither concern was well-founded. Post-service soldiers were as likely to go on to college as they would have been if they had gone straight from high school. And students in officer training programs were exempt from conscription.

Deterrence, Prosecution, and Pardons. In U.S. practice, adherence to the registration and conscription requirements has been predicated on incentives and disincentives. Incentive comes in the form of the benefit of voluntarily enlisting or commissioning and thus controlling one's selection of service, branch, and timing of induction; however, we surmise that such incentive only "works" if conscription is both predictable and likely, if not certain. However, the principal deterrent to draft evasion is the loss of benefits, including the opportunity to work for the federal government and access to federal financial assistance for education. Draft evasion can and has at times, increased the

prospect of induction, as for example, during the period 1950-1960 when it was used as one factor in the priority of draft. Under current law, but not in practice with an AVF, "any registrant who has failed or refused to report for induction shall continue to remain liable for induction and when available shall be immediately inducted."

Prosecution is also possible. In U.S. law, failure to register or report for the draft is a felony punishable by a fine of up to $250,000 and/or 5 years imprisonment in addition to state penalties. However, in U.S. practice prosecution is not the primary means of compulsion or enforcement. During the Vietnam era, there were between 2,000 and 4,000 prosecutions for failure to register or failure to report for induction each year (James B. Jacobs & Dennis McNamara, 1984). In 1977, President Jimmy Carter signed a proclamation pardoning all persons who had violated the Selective Service Act during the period 1964-1973. The pardon was controversial. The public perceived the pardon as directed at those persons who had left the United States to avoid the Vietnam era draft and subsequently found themselves ineligible to reenter the United States. President Carter did not issue a statement at the time of the pardon, but the act was considered a part of President Carter's effort to bring closure to America's Vietnam War experience. In Ukrainian context, the fear of prosecution of conscription will likely deter conscription eligible men from returning to Ukraine, thus compounding concerns about demographic declines.

Female Conscription, Registration, and Volunteer Service. One way to increase personnel is to conscript age-eligible women as well as men. Registration is an intermediate step, providing a contingency path to conscription in the event of an immediate need for an influx of personnel. According to the Pew Research Center, fewer than a third of countries (60) have an ongoing military draft; most exclude women. Six countries conscript women as part of universal military service schemes: Eritrea, Israel, Mali, Morocco, North Korea, and Tunisia. Five countries, including two NATO countries, have selective service systems that include men and women, although as a matter of practice it does not appear that these five countries conscript women (or men) who do not otherwise volunteer to serve in the armed forces. (Those countries are Benin, Cabo Verde, Mozambique, Norway, and Sweden). Another 23 countries, including the United States, have conscription laws, but do not actively draft personnel, male or female. 85 countries with militaries that do not authorize conscription rely on volunteer service (Drew Desilver, 2019).

United States Practice: Approximately 3 million women have served in the military in some fashion since the Revolutionary War, including 34,000 during World War I and 200,000 during World War II. (The first and only woman to receive the Medal of Honor, Mary Walker, was from Syracuse Medical College and served as a surgeon during the Civil War.) However, it was not until President Truman signed the Women's Armed Services Integration Act of 1948 that women were granted permanent and regular status in the Armed Forces. This was the same year that President Truman desegregated the Armed Forces. Women were not eligible to serve in "direct ground combat roles" (infantry, armor, artillery, combat aviation) until 2013. It should be noted that almost 80% of today's military positions are classified as noncombat. In a wartime context, involving an invasion, we would anticipate that the percentage of "combat" positions would increase; however, the point remains valid that most military positions even in wartime do not entail direct combat roles. A 2015 Memorandum from the Secretary of Defense and Chairman of the Joint Chiefs of Staff to the Secretaries of the military departments, who hold legal responsibility over recruitment, provides: "Anyone who can meet operationally relevant and gender-neutral standards, regardless of gender, should have the opportunity to serve in any position." As of 2022, 231,147 women served in the U.S. Armed Forces, or 17.5% of the active-duty force.

Although female service in the Armed Forces was at one point controversial, it is generally accepted today, although sexism remains a concern as does sexual assault. Selective Service registration for all women is a more controversial subject. In 2020, a National Commission was created to consider among other topics whether the United States should continue to maintain a

Selective Service System and registration requirement and if so, whether women should be obliged to register at the age of 18 as required of men. The Commission noted that the subject evoked the most passionate views from Americans of all the topics covered by the Commission. The Commission concluded that "the time is right to extend Selective Service System registration to include men and women, between the ages of 18 and 26. This is a necessary and fair step making it possible to draw on the talent of a unified Nation in time of national emergency." (Kamarck, 2021) Proponents of female registration cited the need to maximize the potential pool of talent in the case of a national security emergency, the uncertainty over what talent would be needed in the future, the prevalence of "noncombat" jobs to be filled (80%), principles of civic duty, and principles of equality and fairness. (Male litigants have also made equal protections claims). Opponents cited the different roles of women in society, the need to backfill domestic jobs in the event of a draft, and generalized differences in physical capabilities and differentiated equipment. However, as of July 2024 the law has not been amended to reflect this recommendation.

B. Recruitment Incentives and Disincentives. Marginal changes and adjustments over time can in their cumulative effect significantly change and improve the recruiting landscape. Given the long-term nature of the war, the status of the war, and the continuous nature of the Russian threat, changes in military recruitment and culture over time may pay dividends forward. This section identifies recruiting incentives and disincentives in U.S. practice, which may offer appropriate analogy for Ukrainian recruitment.

Recruiting and Retention Methods

1. Bonuses:

- **Recruiting Bonuses:** Currently every service offers some version of an enlistment bonus depending on the career field. The bonuses are generally paid out as a percentage increase in the service member's salary over the length of enlistment. For example, the Army is currently offering an initial enlistment bonus of $15,000 for a "quick to ship" to initial training with other bonuses potentially compiling to over $50,000 (Earn Bonuses While Pursing Your Passion, 2024). Historically, these amounts shift with recruiting and retention numbers and are targeted to whatever career fields that have the highest turnover.
- **Retention Bonuses:** All services also offer reenlistment bonuses for usually 3 or more years paid out in the same structure as enlistment bonuses. However, due to record high reenlistment those bonuses are currently limited to low density fields (Regular Army: Active Duty Bonus Sheet, 2024).

2. Education Benefits (concurrent with service)

- The DOD offers an in-service education benefit called Tuition Assistance (TA), where a service member may enroll in an accredited institution and receive up to $4,500 per fiscal year (Jim Absher, 2023).
- Credentialing support is also available for service members. This is an incentive program up to $1000 per year to pay for an approved credential such as Project Manager Certification, Lean Six Sigma, or one of 5 personal training certifications (Army COOL Credentialing Opportunities On-Line, 2024).

3. Special Pays (skill and duty/assignment) (Military Compensation, 2014)

- Every branch currently offers incentives for specific skills or duty assignments and usually range between $150-$250 per month while maintaining that skill status. At a base level these include parachute/jump pay, demolition pay, flight pay, and hostile fire pay.
- Other special pay can be offered at various amounts and periods for language proficiency, medical certification, and volunteering for a specific "hardship" tour or placement.

4. Military Retirement and Veteran Specific Federal Benefits

- One of the most successful recruiting tools is the promise of education benefits after service. The U.S. has offered the GI Bill for over 75 years to provide for secondary education opportunities with over 800,000 veterans using the current Post 9/11 GI Bill since 2009 (75 Years of the GI Bill: How Transformative It's Been, 2019).

- Military Retirement benefits continue to play a key role in military retention. The current 20-year military retirement model is one of the most positively correlated reasons for continued service after initial enlistment (Beth Asch, 2019).

- The Veterans' Affairs (VA) System provides medical care to all retirees and various levels of discounted medical insurance for all qualifying veterans. This also includes VA based non-medical benefits like government backed VA loans and credit card interest rate caps.

Command Climate and Military Justice. Although hard to measure, command climate should not be overlooked as an influence on recruiting. A credible civilian or military justice system that holds military leaders accountable for the conduct of their personnel, but also the morale and welfare of their personnel is also important. In U.S. practice and experience, it is thought, but hard to demonstrate that perceptions about military life (i.e., the command climate) and to a lesser degree the credibility of the justice system that upholds good order and discipline, impact recruitment.

Mothers and fathers do not want their sons and daughters to serve in a military that treats, or is perceived as treating, their children unfairly and they do not want their children to serve in an environment that is abusive. This conclusion is intuitive, but also hard to demonstrate; generally, polling is not collected on why eligible persons do *not* volunteer for the Armed Forces. However, what the U.S. data does show is that concerns about sexual assault in the military and racial disparities impacts recruiting. The DOD Fall 2021 Propensity Update, Youth Poll conducted by the Joint Advertising Market Research & Studies (JAMRS) shows that 30% of all respondents listed "Possibility of sexual harassment/assault" as a main reason why they would *not* consider joining the U.S. military (Fall 2021 Propensity Update, 2022). An earlier 2013 survey stated that, while 59% of Americans say that if they or a friend had a daughter who was thinking of joining the military, the allegations of sexual misconduct would *not be a sufficient reason* to tell her to stay out of the military, *38% say these allegations are a sufficient reason to dissuade a young woman from joining* (Sexual Assault in the Military Widely Seen as Important Issue, But No Agreement on Solution, 2013). Additional polling show racism or racial disparities has a negative effect on recruiting and retention. A 2021 Blue Star Families Social Impact Research Racial Equity & Inclusion poll found that: (1) 42% of service members of color in a new survey turned down an assignment or permanent change of station order because of concerns about racism and discrimination, even when they knew doing so could negatively affect their career because of perceptions of racism in the local community; and (2) 33% of active-duty families and 34% of veterans in the survey reported that concerns about racial and ethnic discrimination were a factor in conversations with family members about whether to stay in the military.

We do not presume to extrapolate from the U.S. experience knowledge about the Ukrainian experience or context. They are distinct. However, command climate undoubtedly matters to recruiting and retention. It is also often overlooked or neglected until it reaches crisis proportions as has happened in the U.S. with sexual assault. The military may be especially prone to overlook issues of command climate and their impact on recruiting during times of conflict when the focus is on victory, rather than reform. However, in U.S. practice, it should be noted that some of the most significant reforms in the military justice system occurred as a result of war or amidst war, albeit not involving an invasion of the homeland. The bedrock of the U.S. military justice system, for example, the Uniform Code of Military Justice, was a product of the World War II experience of U.S. veterans. Many veterans didn't like what they had seen or experienced of military justice during the war. Some

veterans, like Gerald Ford, went on to serve in Congress and led the movement to reform the system top to bottom. Arguably the most significant additional reforms to the U.S. military justice system occurred with passage of the Military Justice Act of 1968, at the height of the U.S. involvement in Vietnam. Among other things, the Act created the position of military judge to preside over courts-martial, which reform was implemented in 1969 on a global scale and in a wartime context. Likewise, many of the reforms to the U.S. military justice system to address sexual assault have occurred during the U.S. wars in Iraq and Afghanistan. In other words, wartime context in U.S. practice did not and does not preclude legal reform, it necessitates it as a professional and recruiting necessity.

We surmise that polling in Ukraine about command climate warrants attention. Analysts of 'military power and inequality within military ranks' describe a correlation between how different classes of service members are treated and the impact on military performance, morale, and cohesion (Jason Lyall, 2022). When segments of military service members (of the same class) are treated differently or poorly, and subject to worse treatment or increased punishment, grievances become more prevalent (Jason Lyall, 2022). Such grievances are made online and through social media weaving its way back to the public—and even the enemy. When such sentiments reach the public, that is when public opinion starts to form and have an effect on perception of the military, military justice, and the public's willingness to join the military (Jason Lyall, 2022). This perception, once formed, can also have a compounding effect on conscripted soldiers beyond performance, but to the extent of causing friction with superiors; again leading to more military justice and discipline issues.

Moreover, it is not evident, the Ukrainian public has, or would have confidence, in the Ukrainian justice system to address concerns about command climate. In 2019, military justice responsibility was transferred from the Ukrainian military to the Office of the Prosecutor General. There is nothing inherently correct or incorrect about such a transfer, which comports with EU standards. However, whereas the Ukrainian military is an institution that polls at record high trust in Ukraine, polls demonstrate that the Office of the Prosecutor General operates at a level of record low trust. Likewise, while anecdote is not evidence or data, conversations and interviews indicate the Ukrainian system of military discipline and justice is perceived by many within and outside of the service as Soviet in style and arbitrary and capricious in practice.

Unit Rotation and The American Experience. During the large-scale combat operations of the 20th Century, the U.S. military generally deployed units at the Army or Fleet level for the duration of the conflict. Replacement service members were brought in individually to supplement unit strength lost as casualties (Griggs, Haider, Flatebo, 2020). In this Individual Replacement System (IRS), the replacements were largely comprised of draftees who were trained domestically at a volume and pace commensurate with the existing causality rate and force structure goals. The purpose of IRS was to maintain the combat strength and cohesion of consistently deployed units by continually pairing veteran troops with fresh replacements.

The most prolific U.S. use of the IRS was during World War II, between 1942 and 1944 (The Personnel Replacement System if the United States Army, 1954). During that time, the U.S. Army specifically maintained 102 replacement battalions spread between the U.S., Pacific, and European Theaters. Troops would assemble after basic training in specific depots in the U.S., move to forward deployed replacement depots for additional training and garrison duties before finally being pushed forward to front line units. This iteration of IRS adequately manned and reinforced a U.S. Army of approximately 8 million soldiers fighting across four major combat theaters (Research Starters: US Military by the Numbers, 2024).

Another similar version of IRS was also used in the Korean and Vietnam Wars. However, during the Vietnam War the IRS was altered to a 365-day replacement system for the individual service members opposed to the previous causality and points-based end of tour system. These troops would rotate into a deployed unit for individual, one-year tours of duty at a staggard rate to retain unit cohesion (Roger Kaplan, 1987). However, this system was widely criticized due to the expanded draft

parameters for lower quality recruits, the length of the conflict, and systemic reviews that this replacement system had an overall negative effect of unit readiness.

Since the end of the Vietnam War and the introduction of the All-Volunteer Force in 1973, the U.S. has also moved away from the IRS and onto the Unit Replacement System (URS). The Department of Defense (DOD) currently operates a strategic level military deployment cycle designed to prioritize unit level readiness for long term contingency operations like the Global War on Terror (GWOT) (Griggs, Haider, Flatebo, 2020). The DOD and its branch components develop the URS schedule, essentially the time and rhythm in which a unit is deployed to a specific Combatant Command theater, by balancing the national priorities from the Administration's National Security Strategy against the total number of troops available between the active duty and reserve/national guard forces (Feickert, Kapp, 2014).

This balance is quantified by measuring the operational tempo (OPTEMPO), the required number of units/troops needed to meet the current national security priorities, against the personnel tempo (PERSTEMPO) or the amount of time individual service members spend conducting their official duties deployed in theater (Kristy N. Kamarck, 2022). Additionally, Congress further requires the DOD to establish specific dwell time (time spent home in the US) standards under 10 U.S.C. § 991. These standards state that service members are to spend no more than 220 days out of 365 or 400 days out of 730 deployed without a DOD waiver and additional pay (10 U.S.C. § 991, 2024). As a result of all these considerations, the current DOD policy requires a 1:2 deployment ratio to dwell timeline for active-duty forces and a 1:4 ratio for mobilized reserve troops (Memorandum for senior Pentagon leadership defense agency and DOD field activity directors, 2021).

In practice, the URS was largely effective at deploying joint forces to combat theaters like Iraq and Afghanistan during the post-invasion contingency operations. Although the exact deployment length often differed by branch, they were generally between 6 and 12 months with an overlapping Relief in Place handover to the new replacement unit. As the conflicts in Iraq and Afghanistan began to draw down, the lengths of these deployments were likewise shortened further improving dwell time issues. For example, in the early GWOT the U.S. Army routinely deployed forces on 12- to 15-month deployments but moved to a 9-month cycle in FY2012 to reduce stress on the force (Army Deployment Period Policy, 2011).

Overall, URS has proven to be a practical solution to long-term, low intensity conflicts. However, despite its longstanding use the URS also has a number of challenges. Notably, the loss of institutional knowledge in theater when a unit is replaced (Griggs, Haider, Flatebo, 2020). The new unit does not have the same understanding of the threat environment or the logistical challenges and will undoubtedly lose time trying to establish their new battle rhythm. These new units do not have an existing relationship with any partner forces or the indigenous people potentially regressing any of the previous unit's progress (John Amble, 2021). In short, the 20 plus year GWOT was fought akin to 20 distinct 1-year-long conflicts by different units with limited continuity.

Conclusion

Conclusion: Fair and Just. Each nation experiences war in a different manner. This includes the lifecycle of the military member, including the process of recruitment and conscription, training and service, demobilization, and reassimilation. However, we believe based on the U.S. experience that there are, or should be, at least three common themes to military service in a democracy.

First, as stated in the U.S. Military Selective Service Act, "in a free society the obligations and privileges of serving in the armed forces … should be shared generally, in accordance with a system of selection which is fair and just, and which is consistent with the maintenance of an effective national economy."

Second, certainty matters. Citizens are more likely to volunteer for service if they can be certain about the duration of service, the duration and quality of training, the type of service they will be

required to perform, the certainty of fair treatment in service, and the certainty of unit rotation and rest. Military members also want the certainty of knowing that the wounded will be cared for, the bereaved will be provided for, and the dead will be remembered.

Finally, reform cannot wait for victory or for peace. Victory may depend on reform, in both sustaining recruitment and sustaining popular support and morale.

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