

Trend Toward Equality? A Comparative Analysis of the Treatment of Noncitizen Veterans in the Administration of Post- Service Benefits

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INTRODUCTION

Throughout history, and particularly during times of conflict, nations have enlisted foreigners in their military forces to fight alongside their own citizens. These noncitizen veterans fought and shed blood along with citizen veterans, sacrificing for a nation that was not their own. Historically, these veterans have been given little recognition and unequal access to post-service benefits. This Article will highlight three countries and their varied historical treatment of some noncitizen veterans, including recent efforts to provide more equal access to benefits.

I. ISRAEL

A. History of Foreign Service

Prior to the 1948 War for Independence,² foreign volunteers served alongside Israeli nationals and permanent residents with the Israeli Defense Forces (IDF).³ While there is conscripted service for Israeli citizens and permanent residents,⁴ noncitizens and nonresidents are permitted to volunteer for service with the IDF.⁵

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² MEMORANDUM FROM RUTH LEVUSH, LAW LIBRARY OF CONGRESS TO AUTHORS REGARDING ISRAEL'S VETERANS BENEFITS FOR NON-CITIZENS (May 2009) (providing an English language translation and synopsis of Hebrew documents referenced herein) (on file with authors) [hereinafter LEVUSH].

³ *Id.* (citing to ISRAEL DEFENSE FORCE, VOLUNTEERS FROM ABROAD, <http://www.aka.idf.il/giyus/general/?catID=58464>).

⁴ See Defence Service Law, 5746-1986, 40 LSI 112 §§ 1, 45 (1985-86) (Isr.).

⁵ LEVUSH, *supra* note 2; see Yaakov Katz, *IDF to Draft Immigrant Mahal Graduates*, THE JERUSALEM POST, Dec. 20, 2007, available at <http://www.jpost.com/servlet/Satellite?page>

Approximately 3,500 foreign volunteers from dozens of countries served with the Israeli forces during the 1948 War for Independence.⁶ This included roughly 100 American pilots.⁷ The IDF has since implemented the Mahal volunteer program, through which foreign Jews may serve in IDF combat units.⁸ Generally, foreign volunteers under the Mahal program serve 18 months or, alternatively, 12 months followed by a period of religious education.⁹ Since 1988, approximately 1,000 foreign Jews have served more than a year through the Mahal program.¹⁰

B. Special Case – South Lebanese Army

Since 1978, the South Lebanese Army (SLA), originally a Christian militia, has had ties with Israel.¹¹ Beginning in the 1960s, Israel militarily intervened in Lebanon after attacks on northern Israel.¹² Following the first large-scale military operation in 1978, Israel pulled out its troops and provided support to the SLA.¹³ In 1982, the IDF succeeded in eliminating Palestinian forces in southern Lebanon.¹⁴ From 1985 to 2000, “the IDF, together with the SLA, controlled the security zone . . .” in Southern Lebanon,¹⁵ and the IDF helped train members of the SLA.¹⁶ After maintaining a

name=JPost%2FJPArticle%2FShowFull&cid=1196847385544. Military law requires all permanent residents to serve with the IDF regardless of foreign citizenship. See MINISTRY OF IMMIGRANT ABSORPTION, MILITARY SERVICE 11 (2nd ed. 2003), available at http://www.moia.gov.il/NR/rdonlyres/DBF4B5CB-861F-492B-A74B-D31528817568/0/idf_en.pdf [hereinafter MINISTRY OF IMMIGRANT ABSORPTION].

⁶ Katz, *supra* note 5.

⁷ BENNY MORRIS, 1948: A HISTORY OF THE FIRST ARAB-ISRAELI WAR 85 (2008).

⁸ MAHAL-IDF-VOLUNTEERS.ORG, MAHAL IDF VOLUNTEERS GUIDE & ASSISTANT, <http://www.mahal-idf-volunteers.org> (last visited Sept. 4, 2009); Katz, *supra* note 5.

⁹ LEVUSH, *supra* note 2 (referencing Defense Service (Volunteering for Defense Service) Regulations, 1974, KT 3168, 1156).

¹⁰ See Katz, *supra* note 5; see also LEVUSH, *supra* note 2.

¹¹ GLOBALSECURITY.ORG, SOUTH LEBANESE ARMY (SLA), <http://www.globalsecurity.org/military/world/para/sla.htm> (last visited Sept. 4, 2009) [hereinafter GLOBALSECURITY.ORG].

¹² Adir Waldman, *Clashing Behavior, Converging Interests: A Legal Convention Regulating a Military Conflict*, 27 YALE J. INT’L L. 249, 253-54 (2002).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 254.

¹⁶ GLOBALSECURITY.ORG, *supra* note 11.

presence for 22 years, the Israeli forces withdrew in May 2000 under guerilla fire.¹⁷ Following the conflict, many members of the SLA and their families sought asylum in Israel.¹⁸ By September 2000, 4,700 SLA refugees were living in Israel,¹⁹ and 2,500 remained in 2004.²⁰ The prevailing belief was that they were unable to return to Lebanon.²¹

C. Benefits for Noncitizen Veterans

When determining entitlement to veterans' benefits, Israel treats foreigners who volunteered for service, Israeli nationals, and residents who were mandated to serve, equally. The definitions of a soldier and discharged soldier make no distinction based upon citizenship or residency in bestowing benefits regarding pensions, rehabilitation, and employment of veterans.²² The Israeli government confers veterans' benefits to all soldiers who were in service on November 30, 1947, during the War for Independence, and all soldiers drafted into service since then.²³

The Absorption of Discharged Soldiers Law treats veterans equally no matter their citizenship or residence, as long as they served for at least twelve months.²⁴ Nevertheless, some benefits may only be bestowed upon veterans who remained in the State of Israel following service.²⁵ The Absorption of Discharged Soldiers

¹⁷ *Lebanese Army Takes Control of Christian Enclave of Jezzine*, HA'ARETZ, Sept. 20, 2000, available at 2000 WLNR 2903764.

¹⁸ *Id.*

¹⁹ *SLA Refugees Who Stay Won't Get Funds*, HA'ARETZ, Sept. 12, 2000, available at 2000 WLNR 2894494.

²⁰ *Knesset Approves: Toank Citizenship for Tzd"l*, YNET ONLINE NEWS, July 12, 2004, available at <http://www.ynet.co.il/articles/1,7340,L-3015146,00.html>.

²¹ *Id.*

²² Invalids (Pensions and Rehabilitation) Law, 5719-1959, 13 LSI 315 § 1 (1958-59) (Isr.); Fallen Soldier's Families (Pensions and Rehabilitation) Law, 5710-1950, 4 LSI 115 (1949-50) (Isr.); Discharged Soldiers (Reinstatement in Employment) Law, 5709-1949, 3 LSI 10 (1949) (Isr.).

²³ 4 LSI 115, § 1; 3 LSI 10.

²⁴ LEVUSH, *supra* note 2 (referencing Absorption of Discharged Soldiers Law, 1994, S.H. 1461). The law also indicates that fewer than twelve months of service will suffice if a veteran was discharged prior to that time due to health. *Id.*

²⁵ *See generally*, MINISTRY OF IMMIGRANT ABSORPTION, *supra* note 5.

Law provides benefits to assist former soldiers in adjusting to postmilitary life.²⁶ This includes financial benefits to be used for obtaining housing, completing education, starting a business, or getting married.²⁷ Eligibility for these benefits is based solely on the length and type of service.²⁸

Regardless of military service, Israeli citizenship is granted immediately to Jews and their family members who move to the country and seek it.²⁹ Citizenship and legal status of non-Jews is regulated separately.³⁰ Foreign citizens applying to volunteer with the IDF are only accepted if they are Jewish, their spouse is Jewish, or their parent or grandparent is Jewish.³¹ Thus, citizenship rights of all foreigners who are permitted to volunteer with the IDF are governed by Israeli immigration and citizenship law.³²

Former members of the South Lebanese Army are not considered veterans of the IDF. However, the Israeli government recognized the contributions made by the South Lebanese Army to the security of Israel and enacted law regulating the status of those people who served in the SLA and were Israeli residents as of a designated date.³³ Members of the SLA may request permanent residency or Israeli citizenship.³⁴ Furthermore, relatives of fallen SLA soldiers are entitled to the same benefits as family members of fallen soldiers of the IDF.³⁵ Disabled SLA veterans are entitled to the same disability, compensation, and pension payments as disabled IDF veterans.³⁶ SLA

²⁶ *Id.* at 39, 41-43.

²⁷ *Id.*

²⁸ *See id.* at 39.

²⁹ Law of Return, 5710-1950, 4 LSI 114 (1949-50) (Isr.).

³⁰ Nationality Law, 5712-1952, 6 LSI 50 (1951-52) (Isr.).

³¹ MAHAL-IDF-VOLUNTEERS.ORG, WHO CAN VOLUNTEER FOR THE IDF?, <http://www.mahal-idf-volunteers.org/about/join.htm> (last visited Sept. 4, 2009).

³² *Id.*; *see also* 6 LSI 50; 4 LSI 114.

³³ MEMORANDUM FROM JONATHAN BRANDOW, TO AUTHORS REGARDING THE SOUTH LEBANESE ARMY PERSONS AND THEIR FAMILIES LAW (June 2009) (providing English language translation and synopsis of this law) (on file with authors) [hereinafter BRANDOW].

³⁴ *Id.* § 3.

³⁵ *Id.* § 6; *see* 4 LSI 115.

³⁶ BRANDOW, *supra* note 33 at § 7; *see* 13 LSI 315.

veterans residing in Israel are also entitled to service awards,³⁷ and the Israeli government has taken steps to aid SLA veterans with finding employment and places to live.³⁸

II. FRANCE

A. History of Colonial Military Veterans in France

Beginning in the 1800s, France succeeded in colonizing several parts of Africa.³⁹ Early on, France created a military consisting of colonial soldiers.⁴⁰ By 1911, France ruled large areas of Africa, including land that now constitutes at least seventeen African countries.⁴¹ From the beginning of World War II, France needed the help of its colonial forces.⁴² Approximately 120,000 such soldiers served with the French forces during the War.⁴³

Following service, the French government awarded pensions to career and disabled veterans, but the pensions were considered privileges and not benefits and, thus, were administered unequally to French and African veterans.⁴⁴ Several groups complained of the unequal benefits and subsequently, in 1930, a law was passed which granted combat veterans a new type of pension.⁴⁵ The law was based on length of service and age and granted the new pension to combat veterans who attained the age of 50 and had served for at least 90 days, no matter the duration of their entire service.⁴⁶

³⁷ BRANDOW, *supra* note 33 at § 8.

³⁸ *Id.* § 14.

³⁹ *France's African Empire*, CURRENT EVENTS, A WEEKLY READER PUBLICATION, Dec. 9, 2005, available at 2005 WLNR 26369356 [hereinafter *France's African Empire*].

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Tony Chafer, *Forgotten Soldiers*, HISTORY TODAY, Nov. 1, 2008, at 35, available at 2008 WLNR 22088394.

⁴³ *Id.*; see generally GREGORY MANN, NATIVE SONS: WEST AFRICAN VETERANS AND FRANCE IN THE TWENTIETH CENTURY (2006).

⁴⁴ MANN, *supra* note 44, at 98.

⁴⁵ *Id.*

⁴⁶ *Id.*

Following a protest by African soldiers in December 1944, the French government made incremental movement toward equal benefits by providing African veterans employment training and preferential access to jobs.⁴⁷ Eventually, in the 1950s, the French government granted equal pensions for service-related disability to French and colonial military veterans.⁴⁸

B. Incremental Steps Toward Equalization

i. Law 59-1454

Beginning in 1958, France's African colonies began to declare their independence.⁴⁹ In 1960, the government permitted most former colonies to vote for freedom from French rule,⁵⁰ and the final nation gained its independence in 1962.⁵¹

In 1959, the French Parliament adopted legislation commonly known as "Law 59-1454"⁵² which, in pertinent part, redefined the pensions received by nationals of its former colonies.⁵³ The "[I]aw redefined the pensions for colonial military veterans as allowances" and froze the level of pension payments for colonial military veterans, based upon their countries' attainment of independence from France.⁵⁴ This process is known as "crystallization" of pensions of colonial military

⁴⁷ *Id.*

⁴⁸ *Id.* at 134.

⁴⁹ Lorand Bartels, *The Trade and Development Policy of the European Union*, 18 EUR. J. INT'L L. 715, 722 (2007).

⁵⁰ *France's African Empire*, *supra* note 40.

⁵¹ *Id.*; *accord* Bartels, *supra* note 50, at 722.

⁵² MEMORANDUM FROM NICOLE ATWILL, LAW LIBRARY OF CONGRESS TO AUTHORS REGARDING FRANCE'S VETERANS' BENEFITS FOR NON-CITIZENS (May 2009) (providing English language translation and synopsis of French documents referenced herein) (on file with authors) [hereinafter ATWILL] (referencing Law No. 59-1454 of Dec. 26, 1959, Journal Officiel de la Republique Francaise [J.O.] [Official Gazette of France], Dec. 29, 1959, p. 12363).

⁵³ *Id.*

⁵⁴ *Id.* "Article 71 of the Law states: (I.) Starting January 1, 1961, the pensions, annuities or life annuities imputed to the budget of the state or of a public establishment, whose holders are nationals of countries or territories that used to be part of the *Union Francaise* or the *Communaute* or places under French protectorate or trusteeship, are replaced during the normal period of entitlement by a yearly allowance calculated on the basis of tariffs in force for the said

veterans, and it applied to both military retirement and disability pensions.⁵⁵ While the colonial military veterans would continue to receive their pensions, the pensions would remain at a fixed rate, only to be adjusted by the government irregularly.⁵⁶ In addition to the freezing of pension rights, the crystallization process also barred colonial military veterans from any new rights.⁵⁷ Colonial military veterans argued for many years that the crystallization law was discriminatory, but no action was taken on this matter until approximately 1996, when a Senegalese veteran filed a legal action to have his pension adjusted to a level equal to the French veterans.⁵⁸

ii. *Challenge to Law 59-1454*

In 1996, Amadou Diop, a Senegalese national who served in the French army from February 1937 to April 1959, “filed an action before the Paris Administrative Tribunal against the Ministry of Defense to contest the Ministry’s refusal to adjust his military pension.”⁵⁹ On July 17, 1996, “the Paris Administrative Tribunal found in favor of the Ministry of Defense” and “Diop then appealed the Tribunal’s judgment [to] the Paris Administrative Court of Appeal, which found in his favor.”⁶⁰ The Ministry of Defense and

pensions, or annuities at the date of their reclassification; (II.) The conditions and deadlines under which the beneficiaries of the allowance established paragraph (1) will be allowed to opt for the substitution of this allowance by a one-time lump sum equal to the quintuple of the yearly allowance will be set forth by decrees; (III.) Exemptions to the above provisions may be granted for one year by decrees; this period will be susceptible to extension also by way of decrees.” *Id.*

⁵⁵ See MANN, *supra* note 44, at 185; accord ATWILL, *supra* note 39.

⁵⁶ MANN, *supra* note 44, at 185; see also GILLES CARREZ, REPORT ON BEHALF OF THE COMMISSION OF FINANCE, THE GENERAL ECONOMY AND THE PLAN ON THE DRAFT FINANCE LAW OF 2007 (No. 3341) (Oct. 12, 2006), available at <http://www.assemblee-nationale.fr>.

⁵⁷ ATWILL, *supra* note 39.

⁵⁸ *Id.* (referencing Conseil d’Etat [CE] [Highest Administrative Court], Nov. 30, 2001, N. 212179, 212211).

⁵⁹ *Id.* The procedural history of this case was provided by the Conseil d’Etat in its November 2001 ruling. See *id.* Mr. Diop argued that, although he began receiving a pension after service, his pension was replaced with an allowance, which could not be indexed to the cost of living once Senegal became independent. *Id.*

⁶⁰ *Id.* The Conseil d’Etat “found that Article 71 of Law 59-1454 violated article 14 of the European Convention for the Protection of Human Rights and article 1 of the First Additional Protocol to this Convention.” *Id.*

the Ministry of Economy appealed the decision of the Court of Appeals to the Conseil d'Etat, which affirmed the previous judgment.⁶¹ The Conseil d'Etat found that pensions were administered differently between French and noncitizen veterans based solely on nationality, and held that this was a violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms.⁶²

iii. *Decrystallization – A Step Toward Ending The Discrimination Between French Veterans and Colonial Military Veterans*

Following the Conseil d'Etat's 2001 ruling, the French government began a decrystallization initiative in 2002. The Amended Finance Law for 2002 provided several processes, which "resulted in the partial adjustment of pensions."⁶³ In this regard, the 2002 law considers "the residence of the veteran and the . . . benefits received by colonial military veterans cannot be higher than those received by a French citizen," as adjustments in benefits were based upon guidelines published by the United Nations.⁶⁴ The law "also provides for the right to request the review of disability pensions . . ." for aggravation of disabilities or the option "to renounce [the] pension and [receive] a lump sum . . ." that takes the veteran's age and family situation into account.⁶⁵

Despite France's 2002 move toward providing pensions to all former servicemen, it continues to increase pensions in an uneven manner.⁶⁶ As a result, colonial military veterans are still fighting for equal benefits.⁶⁷ Veterans and veterans' organizations are not alone in their fight for equal benefits. The High Authority for the Fight against Discrimination and for Equality (HALDE), "an independent agency

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.* (referencing Law No. 2002-1576 of Dec. 30, 2002, Journal Officiel de la Republique Francaise [J.O.] [Official Gazette of France], Dec. 29, 1959, p. 22088).

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Senegalese War Veterans Seek Justice*, PANAFRICAN NEWS AGENCY, Aug. 24, 2004.

⁶⁷ *Id.*; *France Blamed Over Treatment of African War Veterans*, PANAFRICAN NEWS AGENCY, Jan. 14, 2005.

that monitors discrimination in France,” has delineated advisory opinions which highlight continued discrimination in the administration of post-service benefits.⁶⁸ HALDE specifically notes that “a distinction based on nationality” remains because the 2002 law “imposes a residence criterion only on” colonial military veterans who are no longer citizens of France.⁶⁹

In response, the French Parliament adopted Law 2006-1666, which provided for alignment of the disability pensions and allowance received by colonial military veterans with those received by French citizens.⁷⁰ The law also provided, however, that adjustments in pensions and allowances are not automatic but that veterans must apply for them.⁷¹

In response to Law 2006-1666, HALDE resumed its call for equality, noting that the requirement to apply for an adjustment in benefits raises questions regarding access to a right, especially for those veterans residing abroad, as they may not be informed of the changes to the administration of their post-service benefits, including the need to apply for adjustments.⁷² HALDE also noted that Law 2006-1666 “does not include a de-crystallization of [] civil and military pensions [or] survivors benefits.”⁷³

In response to continued pressure for equalized benefits, members of the National Assembly drafted a law aimed at ending discrimination between French and colonial military veterans, which provides a complete decrystallization program.⁷⁴

⁶⁸ ATWILL, *supra* note 39 (referencing HALDE, DÉLIBÉRATION NO. 2006 [2006 DELIBERATION] (2006)).

⁶⁹ *Id.*

⁷⁰ *Id.* (referencing Law No. 2006-1666 of Dec. 21, 2006, Journal Officiel de la République Française [J.O.] [Official Gazette of France], Dec. 27, 2006, Art. 100). While this law was a step toward equalized benefits, the changes were not retroactive and thus, did not pay colonial military veterans for the discrimination endured since 1959. *See id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.* While the law does not decrystallize survivors’ benefits, the law imposes a condition that applicants for survivors’ disability pensions be domiciled in France. *Id.*

⁷⁴ *Id.* (referencing Proposition De Loi Relative à la Reconnaissance, Aux Conditions de Vie et à L’accueil des Anciens Combattants Originaires des États Antérieurement Lies à

III. UNITED STATES

A. History of Foreign Service & the Philippine Islands

The Treaty of Paris of 1898 ended the Spanish-American War and gave the United States (U.S.) sovereignty over several jurisdictions, including the Philippine Islands.⁷⁵ In 1935, the Philippine Islands ceased to exist as a colony and was recognized as a Republic, and the Philippine Army, which included the previously-established Philippine Constabulary, was formally created.⁷⁶ By Executive Military Order of July 26, 1941, President Roosevelt called the Philippine Army and Philippine Constabulary into service with the U.S. Armed Forces, which would operate as the U.S. Army in the Far East (USAFFE) under the control of General Douglas MacArthur.⁷⁷ The USAFFE assisted the U.S. Army in holding off the Japanese invasion of the Philippines during World War II until the Battle of Corregidor in April 1942.⁷⁸ After the end of World War II, the Philippines gained independence from the United States.⁷⁹

la France et Ayant Accédé à L'indépendance [On Ending Discrimination Between French Veterans and Colonial Military Veterans], Draft Law No. 1228 (proposed Oct. 29, 2008), available at <http://www.assemblee-nationale.fr/13/propositions/pion1228.asp>.

⁷⁵ Treaty of Peace between the United States of America and the Kingdom of Spain, U.S.-Spain, Proclamation, art. III, Dec. 10, 1898, 30 Stat. 1754.

⁷⁶ See CONST. (1935), Art. II (Phil.); An Act to Provide For the National Defense of the Philippines, Penalizing Certain Violations Thereof, Appropriating Funds Therefor, and For Other Purposes, Comm. Act. No. 1 (1935) (Phil.).

⁷⁷ Military Order: Organized Forces of the Government of the Commonwealth of the Philippines Called into Service of the Armed Forces of the United States, 6 Fed. Reg. 3825 (Aug. 1, 1941).

⁷⁸ See generally OFFICE OF THE CHIEF OF MILITARY HISTORY (OCMH) DEPARTMENT OF THE ARMY (DA), THE STATUS OF MEMBERS OF PHILIPPINE MILITARY FORCES DURING WORLD WAR II (June 1973), available at http://vaww.bva.va.gov/docs/Additional_Resources/96PhilippineMilitaryForces.pdf. Members of the Philippine Army received pay on a different scale than their U.S. Army counterparts during World War II, despite their valorous contribution, largely due to differing standards and costs of living in the Philippines as compared to the United States. See *id.* at 18-19, 32-41. There was a move to equalize the pay of the Philippine Army with that of the U.S. Army during World War II that was supported by General MacArthur; however, equalization of pay was never effectuated for various reasons, including the end of the war. *Id.*

⁷⁹ Treaty of General Relations Between the United States and the Republic of the Philippines, U.S.-Phil., art. I, July 4, 1946, 61 Stat. 1174.

TREATMENT OF NONCITIZEN VETERANS IN THE ADMINISTRATION
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In 1946, Congress passed the Rescission Act,⁸⁰ wherein certain service, including service in the USAFFE as a member of the Philippine Army, was deemed not to be active service.⁸¹ This law passed despite President Truman's objection to the law and declaration of "a moral obligation . . . to look after the welfare of the Philippine Army veterans."⁸² Since 1946, World War II Filipino veterans have had limited access to benefits administered by the Veterans Administration, and regular Philippine scouts, organized and a part of the Regular U.S. Army prior to World War II, are allowed "pension, compensation, dependency and indemnity compensation, and burial [benefits]."⁸³ On the other hand, Philippine Scouts enlisted in the Regular Army between October 1945 and June 1947 under Public Law 190, 79th Congress, and members of the Commonwealth Army of the Philippines, are allowed compensation for disabilities related to their military service, but not pension.⁸⁴ Likewise, service members who had recognized and unrecognized guerilla service are allowed compensation but not pension or burial benefits.⁸⁵

⁸⁰ Rescission Act of 1946, Pub. L. No. 70-301, 60 Stat. 14 (codified as amended at 38 U.S.C. § 107); see Melissa Murray, *When War is Work: The G.I. Bill, Citizenship and the Civic Generation*, 96 CAL. L. REV. 967, 984 (2008) (discussing Rescission Act of 1946).

⁸¹ Murray, *supra* note 81, at 984. The term "veteran" is defined by United States law as "a person who served in the active military, naval or air service, and was discharged or released therefrom under conditions other than dishonorable." 38 U.S.C. § 101(2) (2002); accord 38 C.F.R. § 3.1(d) (2008). As service in the USAFFE as a member of the Philippine Army is not considered "active duty," Filipino service members who were enlisted between October 6, 1945, and June 30, 1947 are not considered "veterans" as defined by the Veterans Administration (VA). See 38 C.F.R. § 3.40 (2008). Nevertheless, to ensure consistency throughout this article, all individuals who had military service with the Armed Forces of the United States will be referred to as "veterans" herein.

⁸² See Harry S. Truman, Signing Statement 38: Statement by the President Concerning Provisions in Bill Affecting Philippine Army Veterans (Feb. 20, 1946), available at <http://www.presidency.ucsb.edu/ws/index.php?pid=12583>.

⁸³ 38 C.F.R. § 3.40(a) (2008); 38 C.F.R. § 3.8(a) (2001).

⁸⁴ 38 C.F.R. § 3.40(b), (c) (2008); 38 C.F.R. § 3.8(b), (c) (2001).

⁸⁵ 38 C.F.R. § 3.40(d) (2008); 38 C.F.R. § 3.8(d) (2001).

B. Expansion of Benefits

Filipino veterans and their supporters have long argued for equal access to benefits, administered by VA, equal to veterans of the U.S. military. Beginning in 1993, legislation has consistently been introduced in Congress to amend the regulations that exclude service in the organized forces of the Philippine Army from active U.S. military service to include such service in the definition of active duty service;⁸⁶ however, every version of the bill died in committee until 2008.

In 2008, the Filipino Veterans Fairness Act of 2008 was introduced in the United States House of Representatives, and it called for the establishment of a Filipino Veterans Equity Compensation Fund, which would fund payments given to people who served in the organized forces of the Commonwealth Army of the Philippines or “new” Philippine Scouts in service of the Armed Forces of the United States.⁸⁷ The legislation was passed by the House of Representatives, but no further action was taken thereon.⁸⁸

Nevertheless, when the American Recovery and Reinvestment Act of 2009 was introduced in the House of Representatives and sent to the Senate, an Administrative Provision was added which created the Filipino Equity Compensation Fund and called for a one-time payment to World War II Filipino veterans, identical to the provisions of the Filipino Veterans Fairness Act of 2008.⁸⁹ According to the legislation, Filipino veterans who are United States citizens will be paid \$15,000, while noncitizen Filipino veterans will be paid \$9,000.⁹⁰

⁸⁶ See generally Filipino Veterans Equity Act of 2007, S. 57, H.R. 760, 110th Cong. (2007); Filipino Veterans Equity Act of 2006, H.R. 4574, 109th Cong. (2006); Filipino Veterans Equity Act of 2003, H.R. 491, 107th Cong. (2003); Filipino Veterans Equity Act of 2001, H.R. 491, 107th Cong. (2001); Filipino Veterans Equity Act of 1997, S. 623, 105th Cong. (1997); Filipino Veterans Equity Act of 1995, H.R. 1136, 104th Cong. (1995); Filipino Veterans Equity Act of 1995, S. 55, 104th Cong. (1995); Filipino Veterans Equity Act of 1993, S. 120, 103rd Cong. (1993).

⁸⁷ Filipino Veterans Equity Act of 2008, H.R. 6897, 110th Cong. (2008).

⁸⁸ See *id.*

⁸⁹ The American Recovery and Reinvestment Act of 2009, 123 Stat. 115 (2009).

⁹⁰ *Id.*

IV. ANALYSIS

A. Trend Toward Equality

The recent changes in law of the United States, France, and Israel suggest there is a trend toward treating noncitizen veterans equal to citizen veterans. Through recent legislation or court ruling, all three nations have made steps toward equalizing treatment of veterans who are noncitizens.⁹¹

In 2001, France's highest court determined that unequal benefits violated the European Convention for the Protection of Human Rights and forced the French government to begin making veterans' benefits equal for residents of nations previously under French sovereignty.⁹² Following its first two attempts to comply with the court decision,⁹³ the French government was instructed by the HALDE to eliminate any distinction based upon nationality with regard to its veterans' pension payments, along with dropping the requirement that foreign colonial veterans had to submit applications to receive these additional benefits.⁹⁴ Currently, the French legislature is considering an additional statute in an attempt to further eliminate any distinction between those veterans that are French nationals and those that are citizens of foreign countries.⁹⁵ The French government has shown resistance, but has been repeatedly forced to equalize benefits for its former colonial veterans.

In contrast to France, it appears out of necessity that the Israeli government has trended toward equalized veterans' benefits for noncitizens that serve with, or alongside, the IDF. As of April 27, 2009,

⁹¹ See *supra* Parts I-III.

⁹² See *supra* Part II; see also ATWILL, *supra* note 39 (referencing Decree No. 2003-1044 of Nov. 3, 2003, Journal Officiel de la Republique Francaise [J.O.] [Official Gazette of France], Nov. 4, 2003, p. 18755 (implementing article 68 of the Amended Finance Law for 2002) and Regulation of November 3, 2003, Journal Officiel de la Republique Francaise [J.O.] [Official Gazette of France], Nov. 4, 2003, p. 18758 (implementing Decree 2003-1044)).

⁹³ See *supra* Part II; see also ATWILL, *supra* note 39.

⁹⁴ See *supra* Part II; see also ATWILL, *supra* note 39.

⁹⁵ See ATWILL, *supra* note 39.

the population of Israel was approximately 7,411,000, approximately 20 percent of which is Arab.⁹⁶ In general, the Arab population is exempt from military service.⁹⁷ As such, Israel has a relatively small population from which to build its military forces. Necessarily, the Israeli government relies on Arab Druze (a sect of Islam) men and many other noncitizen residents of Israel in maintaining its mandatory forces.⁹⁸ The IDF also relies on foreign citizens and others not subject to conscripted service to volunteer for service.⁹⁹ Because of the number of noncitizen and nonresident veterans, the Israeli government has had to enact laws to treat these former soldiers equally.¹⁰⁰ While the Israeli government has maintained equal benefits for all draftees and volunteers for the IDF, it has also recently extended benefits to former members of the SLA, who are not veterans of the IDF but fought alongside the Israeli forces and helped protect northern Israel.¹⁰¹ Based on the need to protect its borders, the Israeli government has extended already near-equal veterans' benefits to members of foreign armed services who fought alongside the IDF.¹⁰²

In the United States, it appears that several years of political pressure and a recent need to stimulate the economy resulted in a recent trend to increase benefits for Philippine veterans.¹⁰³ Since World War II, Philippine Scouts have had access to fewer benefits than United States veterans.¹⁰⁴ Since 1993, Congress has attempted through legislation to alter benefits for Filipino veterans.¹⁰⁵ The reason

⁹⁶ Motti Bassok, *Israel at 61: Population Stands at 7.4 Million, 75.5% Jewish*, HA'ARETZ, Apr. 27, 2009, available at <http://www.haaretz.com/hasen/spages/1081532.html>.

⁹⁷ See KAIS M. FIRRO, *THE DRUZES IN THE JEWISH STATE* 127 (1999); BENJAMIN W. WOLKINSON, *ARAB EMPLOYMENT IN ISRAEL: THE QUEST FOR EQUAL EMPLOYMENT OPPORTUNITY* 15 (1999). The exception to this exemption is Arab Druze men, who are subject to mandatory military service with the IDF and have been drafted into the Israeli armed forces along with Israeli citizens since 1956. WOLKINSON, *supra*, at 15.

⁹⁸ FIRRO, *supra* note 98, at 127; *see supra* note 4 and accompanying text.

⁹⁹ *See supra* Part I. Military law requires all permanent residents to serve with the IDF, regardless of foreign citizenship. *See generally* MINISTRY OF IMMIGRANT ABSORPTION, *supra* note 5.

¹⁰⁰ *See supra* Part I.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *See supra* Part III.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

for this move toward equality is unclear. While nearly all previous attempts at equalizing benefits have failed, the one-time payment to Filipino veterans that was contained in the American Recovery and Reinvestment Act of 2009 will provide some benefit to those Filipino veterans previously receiving none.¹⁰⁶ These payments, as part of the larger stimulus package, served to inject money into the economy, with regard to Filipino veterans living in the United States. Notably, those Filipino veterans living in the United States are eligible for a payment nearly twice that of those living in the Philippines.¹⁰⁷ Nevertheless, this one-time payment, which is optional for Filipino veterans, will provide some financial benefit to many individuals who are otherwise not entitled to most benefits provided to United States veterans.¹⁰⁸ While they must forfeit their right to bring other future claims, this constitutes a monetary benefit for many Filipino veterans who otherwise receive no payments.¹⁰⁹ Furthermore, those Filipino veterans already receiving United States veterans' benefits have the option to refuse the payment.¹¹⁰ In that regard, this is certainly a step toward more equal treatment of Filipino veterans. Notably, the several previous attempts to provide Filipino veterans with additional benefits failed until the payment was seen as part of an unrelated attempt to stimulate the U.S. economy.

Whether by force, out of necessity, or for economic and political reasons, the governments of Israel, France, and the U.S. have taken recent steps to increase the benefits afforded to noncitizen veterans. However, some inequities still exist.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

B. Remaining Inequalities

Some countries have taken small, incremental steps toward granting noncitizen veterans access to benefits equal to their citizen counterparts, while other countries have taken big leaps. There remain, however, inequalities in the administration of benefits for noncitizen veterans.

While Israel does not distinguish between foreigners who volunteered for service, and Israeli nationals who are mandated to serve, in determining eligibility for veterans' benefits, resident and nonresident veterans are treated differently after separation from service. Resident veterans have access to assistance with rent, obtaining employment, and starting a business, while nonresident veterans do not. It is obvious that some of these benefits would be difficult to implement in foreign countries, but monetary benefits, such as assistance with rent, are likely easier to administer regardless of where the veteran resides.

While France began the decrystallization initiative in 2002, and subsequently aligned allowances and pensions received by colonial military veterans and French national veterans, the law currently in effect still requires claimants to apply for adjustment in their pensions. As noted, the requirement that one apply for adjustment may be discriminatory toward those veterans who do not reside in France as they may be unaware of their right to apply for adjustment or their rights. The law currently pending before the National Assembly was designed to remove the application requirement, but political pressure and other concerns may keep the legislation from becoming law.

With regard to Filipino veterans, the passage of the American Recovery and Reinvestment Act expanded the benefits given to World War II Filipino veterans by providing a one-time lump sum payment irrespective of the type of service performed during that conflict. However, because the amount of the payment is based upon the citizenship of the veteran, this distinction appears

to continue to discriminate against those World War II Filipino veterans who have not become U.S. citizens. While the purpose of the distinction is not clear, consideration may have been given to the differing costs and standards of living in the Philippines versus the United States, with an assumption that any World War II Filipino veteran who has become a citizen of the U.S. is likely residing in the U.S.¹¹¹

In addition to the apparent inequality based upon citizenship, the lump sum payment reflects a step away from giving Filipino veterans full access to VA benefits. Historically, the laws introduced in Congress regarding equality for Filipino veterans called for the recognition of their service as active duty service, which would allow access to compensation, pension, and medical treatment for these veterans, and compensation for their beneficiaries. On the other hand, the lump sum one-time payment does not afford medical treatment for World War II Filipino veterans, nor does it give their beneficiaries the right to apply for the one-time payment, except for when the veteran filed a claim for the payment and subsequently died.¹¹²

While inequalities remain, there are certain steps countries can take to ensure equal access to veterans' benefits without distinctions based on citizenship, residency, or nationality.

¹¹¹ Filipino veterans were given preference in the naturalization process pursuant to the Immigration Act of 1990. Pub. L. No. 101-649, 104 Stat. 4978 (1990) (codified as amended in sections of Title 8 of the United States Code); accord Darlene C. Goring, *In Service to America: Naturalization of Undocumented Alien Veterans*, 31 SETON HALL L. REV. 400, 402 n.5 (2000) (acknowledging that the Immigration and Nationality Act “change[d] the level and preference system for admission of immigrants to the U.S., and providing administrative naturalization, which provides for the naturalization of Filipino veterans who served during WWII”).

¹¹² A beneficiary's right to continue a veteran's claim for the one-time payment is similar to a beneficiary's right to apply for benefits on an accrued basis. Accrued benefits are a derivative claim that is viable only if the veteran had a claim pending at the time of death. *Jones v. West*, 136 F.3d 1296, 1300 (Fed. Cir. 1998); see 38 C.F.R. 3.159(b)(1) (2008). Despite the similarities, beneficiaries of veterans with active duty service are able to apply for dependency and indemnity compensation in addition to any claim brought for accrued benefits purposes, whereas beneficiaries of Filipino World War II veterans are only allowed to continue the claim for the one-time lump sum payment.

C. Roadblocks to Further Equalizing Benefits

Ideally, all nations would provide equal access to benefits for all of its military veterans. However, because these individuals are foreign citizens and are unable to vote in the countries that should provide such benefits, they lack any real political power to force the governments to enact change. Furthermore, the largest impediment to true equality is certainly funding. Limited resources mean that governments often deny access to benefits, where possible, in order to save money. Denying such benefits to foreign veterans succeeds in saving money without risking alienation of voting citizens.

Additionally, even if nations attempted to provide equal benefits, roadblocks would interfere with implementation. Different standards of living would require adjusting any financial payments to correspond with the cost of living in each foreign country. Also, implementation of nonmonetary benefits poses an even greater logistical problem. Providing equal healthcare benefits, in particular, would involve finding adequate treatment and medical facilities in every country that counts a veteran as a citizen or resident. Certainly, service with the same nation's military should result in equal access to benefits for all veterans. However, even if governments sought to provide such benefits, roadblocks remain that would almost certainly result in some unequal benefits.

D. Moving Forward

While there is no pending legislation before the Israel's legislature regarding the treatment of noncitizen veterans, there is a draft law pending before the French National Assembly. Accordingly, members of the Socialist and Communist groups of the National Assembly prepared a draft law aimed at ending the discrimination between French veterans and colonial military veterans, which, since November 2008, has been pending before the National Assembly. The intent of the draft law is to end the discrimination by proposing a

complete decrystallization process.¹¹³ The U.S. has taken a step further in its legislative process, as the American Recovery and Reinvestment Act of 2009 provided a one-time, lump-sum payment to eligible World War II Filipino veterans.¹¹⁴ These payments are to be made through the U.S. Department of Veterans Affairs from a \$198 million appropriation established for this purpose.¹¹⁵ Specifically, this Act provides that World War II Filipino veterans residing in the U.S. would receive a lump sum payment of \$15,000; non-U.S. citizens or those residing in the Philippines would receive \$9,000.¹¹⁶ Applying for this benefit will not affect other existing veterans' benefits.¹¹⁷ As of April 6, 2009, the Filipino Veterans Equity Compensation Fund in Public Law 111-5 Title X, Sec. 1002 has been implemented.¹¹⁸ As a result, "[t]he first 195 checks were issued . . . to qualified Filipino [World War] II veterans."¹¹⁹

CONCLUSION

Historically, countries have treated noncitizen veterans differently than citizen veterans in the administration of benefits given to those who have served in the armed forces. Over time, countries have taken incremental steps toward equality; however, inequalities remain, as ensuring a fair and equitable system is a constantly evolving process. By removing distinctions based on citizenship, residency, and nationality, countries will provide equal access to benefits and appropriately recognize the valorous service of all people who served in the defense of those countries.

¹¹³ See *supra* Part II (discussing French draft law).

¹¹⁴ See *supra* Part III; see also Stephen Dinan, *Bill Allots Millions to Filipino Vets Abroad*, THE WASHINGTON TIMES, Jan. 30, 2009, available at <http://www.washingtontimes.com/news/2009/jan/30/senate-bill-allots-millions-to-filipino-veterans>.

¹¹⁵ Dinan, *supra* note 115.

¹¹⁶ See *supra* Part III; see also Press Release, Dep't of Veterans Affairs, VA Issues First Equity Compensation Payments to Filipino Vets (April 15, 2009), available at <http://www1.va.gov/opa/feature/home/filipino-equity-comp.asp>. As noted by VA, "'Filipino Veterans Equity Compensation Fund' . . . restores the honorable 'active service' designation of former Filipino soldiers who were stripped of their U.S. veterans' status by an act of Congress in 1946." Press Release, Dep't of Veterans Affairs, *supra*.

¹¹⁷ See Press Release, Dep't of Veterans Affairs, *supra* note 117.

¹¹⁸ See *id.*

¹¹⁹ *Id.*

