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**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF:
CONSCIENTIOUS OBJECTION TO MILITARY SERVICE**

**Report of the High Commissioner submitted pursuant to Commission
resolution 2000/34**

Introduction

1. In its resolution 2000/34, the Commission on Human Rights, recalling its previous resolutions on the subject of conscientious objection in which the Commission recognized the right of everyone to have conscientious objection to military service as a legitimate exercise of the right to freedom of thought, conscience and religion, requested the Office of the United Nations High Commissioner for Human Rights to prepare a compilation and analysis of best practices in relation to the recognition of this right, to seek such information from Governments, the specialized agencies and relevant intergovernmental and non-governmental organisations, and to submit a report containing this information to the Commission at its fifty-eighth session.
2. The Office of the High Commissioner for Human Rights (OHCHR) invited Governments, specialized agencies and relevant intergovernmental and non-governmental organizations, by a note verbale dated 9 July 2001, to submit any relevant information pertaining to the issue of conscientious objection. As of December 2001, the Office had received responses from the following Governments: Argentina, Columbia, Costa Rica, Cuba, Czech Republic, Finland, Germany, Guatemala, Mali, Singapore and Sudan. The following non-governmental organizations also responded: Amnesty International, Colombian Commission of Jurists, International Commission of Jurists and Friends World Committee for Consultation (Quakers), and War Resisters International.
3. The present document takes the form of a preliminary report, outlining the right to conscientious objection to military service as protected at present in international law. The report furthermore proposes a number of substantive questions which could be addressed by

a subsequent analytical report on best practices in relation to the implementation at the national level of the right to conscientious objection to military service.

I. Trends in National Laws Regulating Conscientious Objection

4. Although the OHCHR received only a relatively limited number of responses to its note verbale of 9 July 2001, it is possible to identify certain trends in the implementation of the right to conscientious objection at national level.

5. In many of the States which replied to the note verbale, an alternative to military service is provided for by law. The grounds on which such alternative service can be invoked vary slightly among the countries, ranging from objections on religious and ethical grounds to objections on the basis of conscience. For example, in Germany, the Constitution provides that “[n]obody may be forced against their conscience into military service involving armed combat”, and in the Czech Republic, objections can be claimed for reasons of conscience or religion. While in many countries the conscientious objection’s case is examined at some kind of hearing to determine the validity of the claim, there is no individual examination of applications in Finland. In Cuba, all young people old enough to perform military service are also offered the possibility of alternative service and to carry out activities in the interest of the country’s economic and social development. Guatemala is in the process of drafting a law which will provide for civic service as an alternative to military service. Costa Rica and Mali do not have conscription and consequently no provisions regarding conscientious objection to military service. The Sudan and Singapore consider that “resolution 2000/34 goes beyond what is prescribed in the international law and the applicable human rights instruments”.

6. Most of the replies from non-governmental organizations make reference to the fact that a right to conscientious objection is considered by international human rights monitoring bodies as deriving from the fundamental norm of freedom of religion and conscience. The replies furthermore contain valuable information about individual cases and national legislation in a variety of countries, as well as suggestions on how to produce a report on best practices with regard to conscientious objection to military service. Some non-governmental organizations make references to practices in particular countries which appear to fall short of international human rights norms protecting the right to conscientious objection.

II. Conscientious Objection in International Human Rights Instruments

A. United Nations

7. Article 18 of the International Covenant on Civil and Political Rights (ICCPR) guarantees manifestations of religion or belief, but makes no explicit reference to conscientious objection to military service as being encompassed by the right to freedom of conscience and religion. However, the monitoring body, the Human Rights Committee, has considered the issue in relation to States parties' reports and in one of its general comments, as well as in individual communications (with regard to individual communications, see below under Section IV). In its General Comment No. 22 on the right to freedom of thought, conscience and religion (article 18), the Human Rights Committee stated that:

“The Covenant does not explicitly refer to a right to conscientious objection, but the Committee believes that such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one’s religion or belief.” (para. 11)

8. The position of the Human Rights Committee with regard to conscientious objection has been further elaborated in a number of concluding observations adopted upon the examination of States parties' reports. The most commonly raised issues by Committee experts relating directly to conscientious objection concern the recognition of the right to conscientious objection, legally or otherwise, the grounds on which conscientious exemption from military can be granted and the procedure for obtaining such exemption. Questions are also commonly raised regarding the provision, length and conditions of alternative service and the rights those who object to alternative service are treated; whether alternative service provides the same rights and social benefits as military service; the length and conditions of alternative service; whether there can be repeated punishment for failure to perform military service.¹

9. A study of the Committee's interpretation of the articles 18 and 26 of the Covenant also shows that concern is regularly expressed about disproportionately lengthy alternative service and repeated punishment for the failure to perform military service, considered by the Committee incompatible with the obligations of States parties under the Covenant. Likewise, concern has been raised by the Committee with respect to States parties that recognize the right to conscientious objection in a discriminatory manner, i.e. by granting exemption only to certain religious groups and not others², and has specifically recommended States to recognize the right of conscientious objection without discrimination³, recalling that "[c]onscientious objection should be provided for in law in a manner that is consistent with articles 18 and 26 of the Covenant, bearing in mind that article 18 also protects freedom of conscience of non-believers. The State party should fix the periods of military service and alternative service on a non-discriminatory basis."⁴

¹ Concluding observations of the Human Rights Committee on: Venezuela, *Official Records of the General Assembly, Forty-eighth session, Supplement No. 40 (A/48/40)*, volume I, para. 291; Austria, Ecuador and Belarus, *Official Records of the General Assembly, Forty-seventh session, Supplement No. 40 (A/47/40)*, paras. 110, 247 and 536; Spain, *Official Records of the General Assembly, forty-sixth session, Supplement No. 40 (A/46/40)*, para. 172; Portugal and Saint Vincent and the Grenadines, *Official Records of the General Assembly, Forty-fifth session, Supplement No. 40 (A/45/40)*, volume I, paras. 156 and 251; Norway and Netherlands, *Official Records of the General Assembly, Forty-fourth session, Supplement No. 40 (A/44/40)*, paras. 83 and 219; Finland and Hungary, *Official Records of the General Assembly, Forty-first session, Supplement No. 40 (A/41/40)*, paras. 210 and 398; Iceland, Australia and Peru, *Official Records of the General Assembly, Thirty-eighth session, Supplement No. 40 (A/38/40)*, paras. 113, 150 and 269; Norway, *Official Records of the General Assembly, Thirty-sixth session, Supplement No. 40 (A/36/40)*, para. 358; and, Canada, *Official Records of the General Assembly, Thirty-fifth session, Supplement No. 40 (A/35/40)*, para. 169.

² Concluding observations of the Human Rights Committee: Cyprus, *Official Records of the General Assembly, Forty-ninth session, Supplement No. 40 (A/49/40)*, volume I, paras. 321 and 330, Concluding observations of the Human Rights Committee: Finland, *Official Records of the General Assembly, Forty-sixth session, Supplement No. 40 (A/46/40)*, para. 115, Summary records from the consideration of the second periodic report of Hungary (CCPR/C/37/Add.1), 687th meeting, 15 July 1986 (CCPR/C/SR.687), para. 19.

³ Concluding observations of the Human Rights Committee: Romania, *Official Records of the General Assembly, Fifty-fourth session, Supplement No. 40 (A/54/40)*, volume I, para. 376.

⁴ Concluding observations of the Human Rights Committee: Kyrgyzstan, *Official Records of the General Assembly, Fifty-fifth session, Supplement No. 40 (A/55/40)*, volume I, para. 411.

10. The issue of the right to conscientious objection has been examined by the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities for over four decades. Based on the work of its Special Rapporteur on the question of discrimination in the matter of religious rights and practices, the Sub-Commission already in 1960 affirmed the right to conscientious objection to military service in the context of freedom and non-discrimination in the matter of religious rights and practices.

11. Pursuant to Sub-Commission resolution 1982/30, a comprehensive report was submitted in 1984 by two of its members containing a series of conclusions and recommendations relating to the subject of conscientious objection⁵, recommending inter alia that i) the right of conscientious objection be accorded to those whose conscience forbids them to take part in armed services under all circumstances; ii) the same right be recognized for those who are compelled to sustain apartheid, participate in genocide, intervene illegally, or utilize arms of mass destruction or that cause unnecessary suffering, and; iii) that countries consider introducing various forms of alternative service for conscientious objectors that is compatible with the reasons for their objection.

12. The issue was first raised by the Commission on Human Rights, under the agenda item "The role of youth in the promotion and protection of human rights, including the question of conscientious objection to military service", in 1970. In 1987, the Commission resolution 1987/46 specifically urged universal recognition of the right of conscientious objection. In 1989, the right to conscientious objection was reaffirmed by Commission resolution 1989/59 appealing to States to, if necessary, amend existing legislation to permit the exercise of the right of conscientious objection. Thereafter the Commission has reaffirmed the right of conscientious objection in a series of subsequent resolutions.

13. When addressing the issue, the Commission has based its views on articles 3 (right to life, liberty and security of person) and 18 (freedom of thought, conscience and religion) of the Universal Declaration of Human Rights (Commission resolution 1991/65). In resolution 1993/84, the Commission reminded States that they were to refrain from subjecting conscientious objectors to imprisonment and emphasized that "alternative service should be of a non-combatant or civilian character, in the public interest and not of a punitive nature." In resolution 1995/83, the Commission drew attention to "the right of everyone to have conscientious objections to military service as a legitimate exercise of the right to freedom of thought, conscience and religion as laid down in article 18 of the Universal Declaration of Human Rights, as well as in article 18 of the International Covenant on Civil and Political Rights." In resolution 1998/77, the Commission reaffirmed the right of everyone to have conscientious objections to military service as a legitimate exercise of the right to freedom of thought, conscience and religion and affirmed that persons performing military service might develop conscientious objections during their service and made clear that conscientious objection is a "legitimate exercise of the right to freedom of thought, conscience and religion." States were once again called upon to establish independent and impartial decision-making bodies to determine claims of such status without discrimination.

14. The issue of conscientious objection has also been addressed by the Special Rapporteur of the Commission on Human Rights on the elimination of all forms of intolerance and of

⁵ See A. Eide and C.L.C Mubango-Chpoya, Conscientious Objection to Military Service, United Nations publications, Sales No. E.85.XIV.I)

discrimination based on religion or belief, who has expressed the view “that regional characteristics and tensions are not sufficient to justify ... a categorical rejection of conscientious objections” and he has recommended that legislation be adopted to guarantee the right to conscientious objections, particularly for religious beliefs” (A155/280/Add.1, para.139).

B. Regional

1. Africa

15. Article 8 of the African Charter on Human and Peoples’ Rights provides for the right to freedom of conscience, and that the profession and free practice of religion shall be guaranteed.

2. Americas

16. The American Convention of Human Rights protects the right to freedom of conscience and religion in article 12. The same article also provides that “[n]o one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.” The right is subject only to restrictions which are prescribed by law and which are necessary to protect public safety, health, or morals, or the rights or freedom of others.

17. In its Annual Report of 1997, the Inter-American Commission on Human Rights invited those member States whose legislation still did not exempt conscientious objectors from military service or alternative service, to review their legal regimes and make modifications consistent with the spirit of the international law of human rights.⁶ More recently, the Inter-American Commission, in its third report concerning the human rights situation in Paraguay, made an indirect reference to the question of conscientious objection to military service.⁷

3. Europe

18. Article 9 of the European Convention on Human Rights protects the right to freedom of thought, conscience and religion. This freedom may be subject only to such limitations that are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others. No explicit reference to the right of conscientious objection to military service is made in article 9, but, like in the International Covenant on Civil and Political Rights, the European Convention refers to the question in its article defining forced or compulsory labour (art. 4(3)).

19. The Council of Europe Parliamentary Assembly adopted its first resolution and recommendation on right of conscientious objection in 1967, resolution 337 and recommendation 478, followed by recommendation 816 in 1977. According to the resolution, the right “shall be regarded as deriving logically from the fundamental rights of the individual in democratic rule of law states which are guaranteed in article 9 of the European Convention on Human Rights” and the Assembly thus formulated its position that the right of persons liable to conscription to be released from their military service

⁶ Annual Report of the Inter-American Commission on Human Rights, 1997, chap. VII

⁷ OEA/Ser./L/VII.110 doc.52 of 9 March 2001, paras. 38-39

obligation for reasons of conscience or profound conviction arising from religious, ethical, moral, humanitarian, philosophical or similar motives.

20. In 1987, the Committee of Ministers of the Council of Europe affirmed the right of conscientious objectors to be released from military service and supported the provision of alternative service for conscientious objectors. It also stated that such service “shall not be of a punitive nature.” The duration of alternative service “shall, in comparison to that of military service, remain within reasonable limits.”⁸

21. Within the framework of the European Union, several resolutions on the right to conscientious objection as implied in the right to freedom of thought, conscience and religion has been adopted by the European Parliament since the adoption of its first resolution on the issue in 1983, which noted “that protection of freedom of conscience implies the right to refuse to carry out armed military service and to withdraw from such service on grounds of conscience” and stated that “no court or commission can penetrate the conscience of an individual and that a declaration setting out the individual’s motives must therefore suffice in the vast majority of cases to secure the status of conscientious objector.”⁹

22. On 7 December 2000, the Charter of Fundamental Rights of the European Union entered into force. Article 10(2) of the Charter recognizes the right of conscientious objection, “in accordance with the national laws governing the exercise of this right”, explicitly as a part of freedom of thought, conscience and religion, making it the first international human rights instrument to do so.

23. Within the Conference on Security and Cooperation in Europe, the final text of the Copenhagen meeting (29 June 1990) noted that the United Nations Commission on Human Rights had recognized the right of everyone to have conscientious objections to military service. The participating States agreed “to consider introducing, where this has not yet been done, various forms of alternative service, which are compatible with the reasons for conscientious objection, such forms of alternative service being in principle of a non-combatant or civilian nature, in the public interest and of a non-punitive nature.”

24. The Office of Democratic Institutions and Human Rights of the OSCE has made interventions with Governments on the issue of conscientious objection in the past and it is one of the areas covered by the Advisory Panel of Experts on Freedom of Religion or Belief.

III. Jurisprudence of Human Rights Bodies

A. Human Rights Committee

25. Several cases regarding conscientious objection to military service have been brought before the Human Rights Committee under the Optional Protocol to the Covenant. The Committee’s decisions circumscribe State action concerning conscientious objectors.

⁸ Committee of Ministers of the Council of Europe, Recommendation No. R(87)8 of 9 April 1987 regarding Conscientious Objection to Compulsory Military Service.

⁹ European Parliament resolution of 16 February 1983 on conscientious objection. See also European Parliament resolution of 13 October 1989 on conscientious objection and alternative civilian service.

26. In 1999, the Committee revisited the applicability of article 18 to conscientious objection. The complainant had been denied recognition as a conscientious objector, since his reasons for objection did not meet the conditions set forth in domestic law.¹⁰ Although no violation of article 18 was found in the specific case, the Committee, while observing that the right to freedom of conscience does not as such imply the right to refuse all obligations imposed by law, clearly recognized that *“the right to conscientious objection to military service can be derived from article 18 [General Comment 22, article 18, 48th session, 1993]. In its General Comment on article 18, the Committee considered that the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief.”*

B. Working Group on Arbitrary Detention

27. The question of conscientious objections to military service under the International Covenant on Civil and Political Rights has also arisen in the context of the Working Group on Arbitrary Detention. In a 1999 opinion adopted by the Working Group under its individual petitions' procedure, it considered the question of whether, after an initial conviction for refusal to perform military service, each subsequent refusal to obey a summons to perform military service constitutes a new offence capable of giving rise to a fresh conviction. The Working Group expressed the opinion that when, after the initial conviction, the person concerned exhibits a constant resolve for reasons of conscience not to obey the subsequent summons, it is one and the same action entailing the same consequences, and therefore the offence is the same and not a new one. In other words, when there is an identity of parties, and identity of the purpose, repeated incarceration for an offence of conscientious objection can be considered arbitrary.¹¹

28. In its report to the fifty-seventh session of the Commission on Human Rights (E/CN.4/2001/14), the Working Group addressed the question of detention of conscientious objectors. The Working Group made the following observations and recommendations on that issue:

“93. ...repeated incarceration in cases of conscientious objectors is directed towards changing their conviction and opinion, under threat of penalty. The Working Group considers that this is incompatible with article 18.2, of the International Covenant on Civil and Political Rights, under which no one shall be subject to coercion which would impair his freedom to have or adopt a belief of his choice.

94. Accordingly, the Working Group recommends that all States that have not yet done so adopt appropriate legislative or other measures to ensure that conscientious objector status is recognized and attributed, in accordance with an established procedure, and that, pending the adoption of such measures, when de facto objectors are prosecuted, such prosecutions should not give rise to more than one conviction, so as to prevent the judicial system from being used to force conscientious objectors to change their convictions.”

¹⁰ Westerman v. the Netherlands, Communication No. 682/1996, *Official Records of the General Assembly, Fifty-fifth session, Supplement No. 40 (A/55/40)*, volume II, annex IX, sect.D, para. 6.5.

¹¹ Opinion No. 36/1999 (Turkey), paras. 8 and 9 in E/CN.4/2001/14/Add.1

C. Inter-American Commission on Human Rights and Court of Human Rights

29. No decisions have as of yet been handed down by the Inter-American Commission or Court in an individual case on the question of conscientious objection to military service. However, some cases have been submitted to the Commission which have not yet been decided, for example case No. 11.596, *Luis Gabriel Caldas León v. Colombia*. In this case, the applicant was arrested by police after declaring himself unwilling to perform military service.

D. The former European Commission and the European Court of Human Rights

30. Within the European system, the former Commission and the European Court have considered challenges to compulsory military service and conditions of alternative service. However, the European supervising bodies have so far been unwilling to find that a right to conscientious objection exists under the European Convention on Human Rights. In particular, the European Commission on Human Rights declined to find a violation of article 9, dealing with freedom of religion and conscience, in regard to conscientious objection. Instead, the Commission addressed conscientious objection through article 4 (defining compulsory and forced labour). There have, however, also been cases in which the human rights of conscientious objectors have been found to have been violated in the context of article 5 (arbitrary detention)¹² and article 14 (non-discrimination).¹³

31. More recently, a case was brought against Bulgaria that presented the issue of a prison sentence imposed on a Jehovah's Witness for refusal to perform military service under a law that provided no exemptions.¹⁴ A friendly settlement was reached which stipulated, inter alia, that all criminal proceedings and judicial sentences of conscientious objectors since 1991 be dismissed, if they were willing to perform alternative civilian service. The friendly settlement also stipulated that the alternative civilian service in Bulgaria be performed under a purely civilian administration and that such service be of similar duration to that required for military service by the law on military service then in force.¹⁵

E. Committee of Independent Experts of the European Social Charter

32. In a collective complaint against Greece, it was alleged that the provisions which allow conscientious objectors to perform civilian service instead of military service were of a punitive nature, and that the modalities and conditions amounted to a violation of article 1,

¹² *De Jong, Baljet, and van den Brink v. The Netherlands*, Application No. 00008805/79, 00008806/79 and 00009242/81, judgement of the European Court of Human Rights of 22 May 1984 and *Tsirlis and Louloupas v. Greece*, case No. 54/1996/673/859-860, judgement of the European Court of Human Rights of 29 May 1997.

¹³ *Thlimmenos v. Greece*, Application No. 34369/97, judgement of the European Court of Human Rights of 6 April 2000 (Grand Chamber).

¹⁴ *I.S. v. Bulgaria*, Application No. 32438/96, admissibility decision of the European Court of Human Rights of 6 April 2000.

¹⁵ See: *Dian Dimitrov, Krassimir Savov and Atanas Vishanov v. Bulgaria*, Applications No. 37358/97, 37988/97 and 39565/98, admissibility decision of the European Court of Human Rights of 10 April 2000; *Stefanov v. Bulgaria*, Application No. 32438/96, judgement of the European Court of Human Rights (friendly settlement) of 3 May 2001.

paragraph 2, of the European Social Charter, which obliges States to protect the right of workers to earn a living in an occupation freely entered into.¹⁶ In the present case, the Committee of Independent Experts found that alternative civilian service may amount to a restriction on this right. A majority of the Committee members found that when the duration of civilian service in Greece was 18 months longer than that of the corresponding military service – during which time the persons concerned were denied the right to earn a living in an occupation freely entered into – it amounted to a disproportionate restriction of the provision laid down in article 1, paragraph 2, of the European Social Charter.

IV. Questions to be Addressed by a Report on Best Practices in Relation to Conscientious Objection to Military Service

33. As already mentioned, the Commission on Human Rights, in resolution 2000/34, requested Office of the High Commissioner to prepare a compilation and analysis of best practices in relation to the recognition of the right of everyone to have conscientious objections to military service as a legitimate exercise of the right to freedom of thought, conscience and religion, and the provision of alternative forms of service, based on the provisions of resolution 1998/77. Following from the above analysis of the right to conscientious objection in international law, and taking resolution 1998/77 as a point of departure, it is suggested that the following questions be addressed in a substantive report on best practices:

- a) Questions relating to legislative implementation of the right to conscientious objection to military service:
 - How is the right to conscientious objection best implemented at State level? Is it provided for at the level of Constitution, in the national law, or in any other way?
 - Is there free access to information about conscientious objection?
- b) Questions relating to the procedure for granting conscientious objector status:
 - When can the right be claimed: before entry into the military service or also during the performance of military service? While many countries limit the possibility of claiming conscientious objector status to the time before entry into service, some countries allow serving conscripts to claim conscientious objector status during their time of service.
 - On what grounds can conscientious objector status be claimed? Resolution 1998/77 is clear that “everyone” has this right and refers to the exercise of the right of conscientious objection on the basis of the freedom of thought, conscience and religion. However, some countries also include further claims as legitimate reasons for conscientious objection.
 - Is the claim to be a conscientious objector accepted without inquiry?
 - Is any inquiry independent (of the military) and impartial?

¹⁶ Complaint No. 8/2000.

- Is there any discrimination between individuals and groups who can be recognized as conscientious objectors?

c) Questions relating to content and conditions of alternative service to military service:

- Is there any alternative service compatible with the reasons for the conscientious objection?
- Can the alternative service be considered to be of a punitive nature?
- Is non-discrimination in law and practice guaranteed in the terms and conditions of service, or in the exercise by conscientious objectors of their economic, social, cultural, civil or political rights, during or after service? What are the conditions of alternative service and subsequently? What is the reason for any difference in length between military service and alternative service and for any differences in the conditions of service? What are the reasons for any restrictions on or differences in employment or other benefits for those who have not undertaken military service?

d) Questions relating to additional measures required to protect the right to conscientious objection:

- Does criminal legislation in the country provide for imprisonment of those who object to military service? Is there repetition of punishment for those refusing service?
- Are conscientious objectors fleeing persecution in other countries granted asylum?

V. Concluding Remarks

34. The outline and analysis in this report of the issue of conscientious objection to military service in international law has shown that the right to conscientious objection to military service is encompassed in existing human rights norms guaranteeing the right to freedom of conscience and religion. An analytical report which comprehensively addresses the questions identified in the previous section concerning best practices on conscientious objection would provide substantive information about how the right can be comprehensively implemented, which in turn could be of assistance to States and others in developing or improving provisions for conscientious objection to military service. However, in order to compile such a comprehensive report on best practices relating to conscientious objection, additional information from States, intergovernmental organizations, national human rights institutions and non-governmental organizations would be needed.
