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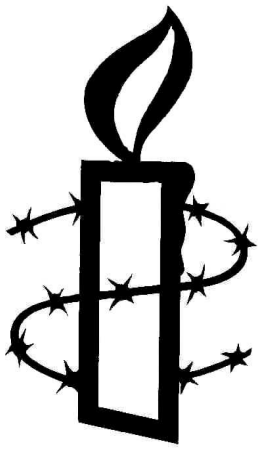
Bayatyan v Armenia

Third Party intervention to the Grand Chamber of the European Court of Human Rights

submitted jointly by

Amnesty International
Conscience and Peace Tax International
Friends World Committee for Consultation (Quakers)
International Commission of Jurists
War Resisters' International



IN THE GRAND CHAMBER OF THE EUROPEAN COURT OF HUMAN RIGHTS

Application No. 23459/03

VAHAN BAYATYAN

Applicant

-V-

ARMENIA

Respondent Government

WRITTEN COMMENTS SUBMITTED BY AMNESTY INTERNATIONAL, CONSCIENCE AND PEACE TAX INTERNATIONAL, FRIENDS WORLD COMMITTEE FOR CONSULTATION (QUAKERS), INTERNATIONAL COMMISSION OF JURISTS, AND WAR RESISTERS' INTERNATIONAL, PURSUANT TO ARTICLE 36 § 2 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND RULE 44 § 3 OF THE RULES OF THE COURT

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I. Introduction

1. These comments are submitted by Amnesty International, Conscience and Peace Tax International, Friends World Committee for Consultation (Quakers), International Commission of Jurists, and War Resisters' International ('the Interveners'), pursuant to Article 36 § 2 of the European Convention on Human Rights following the leave granted by the President of the Court in accordance with Rule 44 § 3 of the Rules of the Court by letter dated 24 June 2010. (See Annex 1 for a Description of the Intervening Organisations.)

2. The present submission draws substantially on the interpretation by the UN Human Rights Committee of the International Covenant on Civil and Political Rights ('ICCPR') and by other international and regional bodies of the right to freedom of thought, conscience and religion in relation to conscientious objection to military service.

II. Issues addressed in this submission

3. This submission addresses: the protection of conscientious objection to military service in international human rights standards; limitations on manifestation of religion or belief; and the reference to military service and conscientious objection in Article 4 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter, "the Convention").

II.i Overview

4. The right to freedom of thought, conscience and religion comprises two elements: the right to hold convictions or beliefs, and the right to manifest one's religion or belief in worship, teaching, practice and observance. The Interveners submit, consistent with the jurisprudence of other international human rights bodies and mechanisms, that conscientious objection to military service is a belief of sufficient seriousness and cogency to attract the protection of Article 9.[1] Compulsion to engage in military service contrary to such a belief is in itself a violation of the individual's freedom of conscience. In addition, compulsory military service, without provision for those who are conscientious objectors for religious or other reasons, amounts to an unjustified interference with the right to manifest a religion or belief. The UN Human Rights Committee has identified both elements in relation to conscientious objection to military service. In its most recent Views on an individual petition the Committee found that the authors' "conviction and sentence amounted to an infringement of their freedom of conscience and a restriction on their ability to manifest their religion or belief".[2]

5. Conscientious objection to military service has been recognised by the Human Rights Committee as deriving from the right to freedom of thought, conscience and religion under Article 18 of the International Covenant on Civil and Political Rights ('ICCPR'). Repeated resolutions of the former UN Commission on Human Rights recognised that conscientious objection to military service derives from principles and reasons of conscience, including profound convictions, arising from religious, moral, ethical, humanitarian or similar motives.[3] Special procedures mandated by the UN Human Rights Council have similarly addressed the question. The UN Special Rapporteur on freedom of religion or

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1 See, for example, *Kokkinakis v Greece* (Application No. 14307/88), judgment of 25 May 1993, § 31; *Valsamis v Greece* (Application No. 21787/93), judgment of 27 November 1996, § 25.

2 *Eu-min Jung, Tae-Yang Oh, Chang-Geun Yeom, Dong-hyuk Nah, Ho-Gun Yu, Chi-yun Lim, Choi Jin, Tae-hoon Lim, Sung-hwan Lim, Jae-sung Lim, and Dong-ju Goh v Republic of Korea* (Communications Nos. 1593 to 1603/2007), Views adopted 23 March 2010, UN Doc. CCPR/C/98/D/1593-1603/2007.

3 UN Commission on Human Rights Resolutions 1989/59, 1993/83, 1995/83, 1998/77, 2002/45, and 2004/35. The UN General Assembly abolished the Commission on 16 June 2006 (A/RES/60/251), replacing it with the Human Rights Council.

belief has made specific recommendations in regard to conscientious objection[4] and taken up individual cases.[5] In 2008 the UN Working Group on Arbitrary Detention ruled that imprisonment of conscientious objectors to military service was a form of arbitrary detention.[6] The Committee of Ministers of the Council of Europe,[7] the Parliamentary Assembly of the Council of Europe (PACE),[8] and the European Parliament[9] have all recognised conscientious objection to military service. It is also explicitly recognised in the European Union (EU) Charter of Fundamental Rights and in the Ibero-American Convention on Young People's Rights. Moreover, of the 17 member states of the Council of Europe which still have conscription, Turkey is the only one which has no provision for conscientious objection to military service.[10] Given these developments both internationally and in Council of Europe member states, and in light of the principle that the Convention is a 'living instrument', the Interveners submit that the Court should affirm that Article 9 protects the right of conscientious objectors not to engage in compulsory military service.

II.ii Conscientious objection to military service and the right to freedom of thought, conscience and religion

6. All member states of the Council of Europe and hence all High Contracting Parties to the Convention are also parties to the ICCPR. The provisions of Article 9 of the Convention and Article 18 of the ICCPR are almost identical.[11] It is, therefore, relevant to consider the interpretation of Article 18 of the ICCPR by the Human Rights Committee, the expert body which monitors States' implementation of their obligations under the ICCPR.

7. The Human Rights Committee has explicitly stated its view that conscientious objection to military service is protected as part of the right to freedom of thought, conscience and religion, 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. It has affirmed this in one of its General Comments (interpreting the ICCPR provisions), in numerous Concluding Observations (in relation to States parties' reports under the ICCPR), and in 'Views' (decisions on individual petitions under the First Optional Protocol to the ICCPR).[12]

8. Initially, in 1987, the Human Rights Committee followed the same approach as the European Commission of Human Rights in declaring inadmissible its first case concerning a conscientious objector

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4 For example, Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, Mission to Turkmenistan, UN Doc. A/HRC/10/8/Add.4, 12 January 2009, § 68; http://www2.ohchr.org/english/bodies/hrcouncil/10session/reports.htm.

5 For example, Summary of cases transmitted to Governments and replies received, UN Doc. E/CN.4/2006/5/Add.1, 27 March 2006, cases in Armenia at § 3-11; http://www2.ohchr.org/english/bodies/chr/sessions/62/listdocs.htm.

6 Opinion 8/2008 (Colombia) and Opinion 16/2008 (Turkey), in Opinions adopted by the Working Group on Arbitrary Detention, UN Doc. A/HRC/10/21/Add.1, 4 February 2009, pp. 110-114 and pp. 139-147; http://www2.ohchr.org/english/bodies/hrcouncil/10session/reports.htm.

7 Recommendations R(87)8 regarding conscientious objection to compulsory military service (9 April 1987) and CM/Rec (2010)4 on human rights of members of the armed forces (24 February 2010).

8 Resolution 337 (1967) and Recommendations 478 (1967), 816 (1977) and 1518 (2001).

9 Resolution of 7 February 1983 (Macciocchi resolution) on conscientious objection (OJ C 068, 14/03/1983 P. 0014); Resolution of 13 October 1989 (Schmidbauer resolution) on conscientious objection and alternative civilian service (OJ C 291, 20/11/1989 P. 0122); and Resolution of 19 January 1994 (Bandres, Molet and Bindi resolution) on conscientious objection in the member states of the Community (OJ C 044, 14/02/1994 P. 0103): see also European Bureau for Conscientious Objection, http://www.ebco-beoc.eu/page/1uside/document/doc2eu.htm.

10 See Annex 3 which sets out in tabular form the situation with regard to conscription and related provisions for conscientious objection in Council of Europe member states.

11 See Annex 4 for the respective provisions of the Convention and the ICCPR.

12 The Human Rights Committee adopts its General Comments and Concluding Observations unanimously.

to military service,[13] referring to the wording in Article 8 § 3 c (ii) of the ICCPR (the equivalent of Article 4 § 3 b of the Convention). However, through the State reporting process, and the consideration of other individual cases relating to conscientious objection and alternative service (but not the central question of whether conscientious objection itself was protected under the ICCPR), the Committee's position evolved.

9. In 1993, the Committee adopted General Comment No. 22[14] on the right to freedom of thought, conscience and religion (Article 18, ICCPR). In it the Committee noted that "a growing number of States have in their laws exempted from compulsory military service citizens who genuinely hold religious or other beliefs that forbid the performance of military service". The Committee added: "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."

10. On the basis of General Comment No. 22, and using the procedure which it started in 1991 of unanimously adopting Concluding Observations[15] when considering States' reports on their implementation of the ICCPR, the Committee has addressed the issue of conscientious objection on numerous occasions,[16] all but one explicitly or implicitly under Article 18.[17] The Concluding Observations have included specific recommendations to States to introduce legislation to provide for conscientious objection in States which fail to provide for recognition of such status, as well as to address discriminatory and unsatisfactory provisions where some recognition existed. For example, in the case of Chile: "The State party should expedite the adoption of legislation recognizing the right of conscientious objection to military service, ensuring that conscientious objectors are not subject to discrimination or punishment and recognizing that conscientious objection can occur at any time, even when a person's military service has already begun."[18]

11. In 1998, some years before the present application under the Convention was submitted, Armenia's most recent periodic report was considered by the Human Rights Committee. The Committee regretted "the lack of legal provision for alternatives to military service in case of conscientious objection … [and deplored] the conscription of conscientious objectors by force and their punishment by military courts, and the instances of reprisals against family members."[19]

12. It was not until 2004 that the Committee received an individual petition from conscientious objectors in a State with conscription which had no legislative provision for conscientious objection and who were, therefore, sentenced to prison for their religiously based objection. In that case, *Yeo-Bum Yoon and Myung-Jin Choi v Republic of Korea*,[20] the Committee had its first opportunity to address the precise question of the protection of conscientious objection to military service under the ICCPR in an individual

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13 *L.T.K. v Finland* (Communication No. 185/1984), Admissibility decision of 9 July 1985, UN Doc. CCPR/C/OP/2.

14 General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18): 30 July 1993, UN Doc. CCPR/C/21/Rev.1/Add.4, § 11. http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/9a30112c27d1167cc12563ed004d8f15?Opendocument.

15 Originally the Committee members expressed individual comments on States' reports; it was only in 1991 that the Committee as a whole started adopting Concluding Observations which are agreed unanimously.

16 The Interveners have found 44 references: see Annex 4.

17 Sometimes in conjunction with Article 26 (non-discrimination) and once under Article 24 (rights of the child) in the case of possible conscription of persons under 18 years of age.

18 Chile: 17 April 2007, UN Doc. CCPR/C/CHL/CO/5, § 13.

19 Armenia: 19 November 1998, UN Doc. CCPR/C.79/Add.100, § 18.

20 *Yeo-Bum Yoon and Myung-Jin Choi v Republic of Korea* (Communications Nos. 1321/2004 and 1322/2004), Views adopted 3 November 2006, UN Doc. CCPR/C/88/D/1321-1322/2004. See Annex 2 of this Submission.

case. The Committee reviewed its earlier case law and the relevance of the provision concerning forced labour (Article 8, ICCPR). It concluded that this article "neither recognizes nor excludes a right of conscientious objection" and that "the present claim is to be assessed solely in the light of Article 18 of the Covenant, the understanding of which evolves as that of any other guarantee of the Covenant over time in view of its text and purpose".[21] Ruling on this case in November 2006, the Committee concluded that conscientious objection to military service is protected under Article 18, and, after considering the permissible limitations on the manifestation of religion or belief, it found a violation of Article 18 § 1 of the ICCPR.

Regional standards, interpretation and practice

13. There are no judgments of other regional human rights courts about conscientious objection to military service and only one decision of the Inter-American Commission on Human Rights, in 2005.[22] That decision preceded the Human Rights Committee's decision in *Yoon and Choi v Republic of Korea.* It followed the earlier case law of the Human Rights Committee and the European Commission of Human Rights in interpreting the equivalent provisions of the American Convention on Human Rights.[23] However, later in the same year, in approving a friendly settlement, the Inter-American Commission recognised the evolving nature of the right to conscientious objection and made an explicit reference to General Comment No. 22 of the Human Rights Committee.[24] In that case, the Bolivian State, represented by the Ministry of Defence, agreed, despite the lack of legislation, to provide a conscientious objector who had refused to perform military service with a document of completed military service without levying on him the military tax normally imposed on those declared exempt, and also to issue a Ministerial Resolution stipulating that in the event of an armed conflict he would not be called up. The State also undertook "in accordance with international human rights law, to include the right to conscientious objection to military service in the preliminary draft of the amended regulations for military law currently under consideration by the Ministry of Defense and the armed forces", and "to encourage congressional approval of military legislation that would include the right to conscientious objection to military service". In approving the terms of the friendly settlement as being compatible with the American Convention, the Inter-American Commission reiterated that the purpose of the friendly settlement procedure was to reach a settlement on the basis of respect for the human rights recognised in the Convention, and that the State's acceptance of it was an expression of its good faith to comply with its obligations under the Convention.[25]

14. There are currently two regional standards relevant to Council of Europe member states, both agreed in the last decade, which explicitly recognise the right of conscientious objection to military service. The EU Charter of Fundamental Rights (2000), Article 10:

> 1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
> 2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

Situating this recognition of conscientious objection within Article 10 of the Charter confirms its association with the right to freedom of thought, conscience and religion. The *Explanations Relating to*

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21 *Yeo-Bum Yoon and Myung-Jin Choi v Republic of Korea*, § 8.2.

22 *Cristián Daniel Sahli Vera et al. v Chile*, Case 12.219, Decision of 10 March 2005, Report No. 43/05.

23 American Convention on Human Rights Articles 12 and 6 § 3 b are almost identical to Articles 9 and 4 §3 b of the European Convention.

24 *Alfredo Diaz Bustos v Bolivia*, Report No. 97/05, 27 October 2005.

25 As provided under the American Convention on Human Rights, the main function of the Inter-American Commission on Human Rights is to promote respect for and defence of human rights (Article 41). Its powers include taking action on petitions and other communications submitted to it alleging violations of rights protected by the American Convention (Articles 41(f) and 44). In dealing with such petitions its procedures include placing itself at the disposal of the parties with a view to reaching a friendly settlement of the matter on the basis of respect for the human rights recognised in the Convention (Article 48.1 (f)).

the Charter of Fundamental Rights state: "The right guaranteed in paragraph 2 corresponds to national constitutional traditions and to the development of national legislation on this issue".[26] Annex 3 of this Submission sets out the position of all the member states of the Council of Europe (to which all EU member states belong) on conscientious objection to military service. This information demonstrates the universal provision for conscientious objection to military service by EU States who have or have had conscription. Secondly, the Ibero-American Convention on Young People's Rights (2008), Article 12: "Young people have the right to form a conscientious objection against compulsory military service." Spain is a party to, and Portugal has signed, this Convention.[27]

Committee of Ministers of the Council of Europe

15. The Committee of Ministers, the Council of Europe's decison-making body, has adopted two recommendations relevant to conscientious objection. Recommendation No. R(87) of 9 April 1987 calls on all member states to recognise the right to conscientious objection to military service and to subscribe to the basic principle that "anyone liable to conscription to military service who, for compelling reasons of conscience, refuses to be involved in the use of arms, shall have the right to be released from the obligation to perform such service", and urges the governments of member states, insofar as they have not already done so, to bring their national law and practice into line with this basic principle.

16. Most recently, on 24 February 2010 the Committee of Ministers adopted Recommendation CM/Rec (2010)4 on human rights of members of the armed forces. It is particularly significant that in this Recommendation, in contrast to Recommendation No. R(87)8, the Committee of Ministers of the Council of Europe situate the provisions on the right to conscientious objection to military service squarely within the right to freedom of thought, conscience and religion. Section H on the right to freedom of thought, conscience and religion, urges States to implement the following recommendation: "For the purposes of compulsory military service, conscripts should have the right to be granted conscientious objector status and an alternative service of a civilian nature should be proposed to them." It then goes on to provide for the release of professional members of the armed forces on grounds of conscience, and addresses issues of non-discrimination, non-criminalisation, and the duty to inform members of the armed forces of their rights and the procedures they should follow in this respect.

Parliamentary Assembly of the Council of Europe (PACE):

17. In Recommendation 1518 of the Council of Europe Parliamentary Assembly, adopted in May 2001, the Assembly noted that "the exercise of the right to conscientious objection to military service has been an ongoing concern of the Council of Europe for over thirty years". The Assembly also stated plainly that "the right of conscientious objection is a fundamental aspect of the right to freedom of thought, conscience and religion enshrined in the Universal Declaration of Human Rights and the European Convention on Human Rights". The Parliamentary Assembly recommended that the Committee of Ministers incorporate the right of conscientious objection to military service into the European Convention on Human Rights by means of an additional protocol amending Articles 4 § 3 b and 9.[28] The Committee of Ministers decided not to act upon this recommendation, stating that its preferred course of action was to "make a sustained effort to implement the 1987 Recommendation".[29]

18. Finally, promulgation of legislation in accordance with international standards on conscientious objection to military service has been included in the accession criteria for new members of the Council

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[26] *Explanations Relating to the Charter of Fundamental Rights* (2007/C 303/02), OJ C 303/17, 14.12.2007.

[27] Bolivia, Costa Rica, Dominican Republic, Ecuador, Honduras, **Spain** and Uruguay are parties and Cuba, Guatemala, Mexico, Nicaragua, Panama, Paraguay, Peru, **Portugal** and Venezuela are signatories. It is also open to **Andorra**, Argentina, Brazil, Colombia, Chile and El Salvador.

[28] PACE Recommendation 1518 (2001), Exercise of the right to conscientious objection to military service in Council of Europe member states, § 6. As early as Recommendation 478 (1967) PACE asked the Committee of Ministers to draft a Convention or Recommendation on conscientious objection to military service.

[29] Committee of Ministers' reply to PACE Recommendation 1518 (2001) on the right to conscientious objection to military service in Council of Europe member states, adopted at the 785th meeting of the Ministers' Deputies (26-27 February 2002).

of Europe where compulsory military service has applied.[30] The Interveners draw attention in particular to PACE Opinion 221 (2000) on Armenia's application for membership of the Council of Europe. The Opinion recorded that Armenia had promised to adopt within three years a law on alternative service for conscientious objectors.[31]

II.iii Limitations to the freedom to manifest one's religion or belief

19. Under Article 9 § 2 of the Convention, "Freedom to manifest one's religion or beliefs shall be subject only to such limitations as 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." [32]

20. It is notable that, unlike the similar provisions in Articles 8, 10 and 11 of the Convention, national security is not included as one of the grounds for possible limitation under Article 9. The same is true of the almost identical wording of Article 18 § 3 of the ICCPR, as the Human Rights Committee specifically noted in its General Comment No. 22, § 8.

21. In the case of *Yoon and Choi v Republic of Korea* the Human Rights Committee examined the Government arguments to see whether its refusal to recognise conscientious objection and the penalties imposed on the individuals who had refused to carry out military service fulfilled the requirements to constitute permissible restrictions on the manifestation of religion or belief within the terms of Article 18 § 3 of the ICCPR. In considering these arguments, the Committee first set out the general interpretation: "Such restriction must be justified by the permissible limits described in paragraph 3 of article 18, that is, that any restriction must be prescribed by law and be necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others". In addition, they emphasized that "such restriction must not impair the very essence of the right in question". [33]

22. The Human Rights Committee then went on to consider both the specific arguments put forward by the Government, and the "relevant State practice, that an increasing number of those States parties to the Covenant which have retained compulsory military service have introduced alternatives to compulsory military service". The Committee concluded "that the State party has failed to show what special disadvantage would be involved for it if the rights of the authors under article 18 would be fully respected" and thus "that the State party has not demonstrated that in the present case the restriction in question is necessary, within the meaning of article 18, paragraph 3, of the Covenant".[34]

23. In March 2010, the Human Rights Committee unanimously reiterated its position in a similar case of objectors who were a Buddhist, a Catholic and a number with conscientious objections not based in a specific religion, finding "an infringement of their freedom of conscience and a restriction on their ability to manifest their religion or belief. The Committee finds that as the State party has not demonstrated that in the present cases the restrictions in question were necessary, within the meaning of article 18, paragraph 3, it has violated article 18, paragraph 1, of the Covenant." [35]

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30 PACE: Opinion No. 193 (1996) on Russia's request for membership of the Council of Europe; Opinion No. 221 (2000), Armenia's application for membership of the Council of Europe; Opinion No. 222 (2000), Azerbaijan's application for membership of the Council of Europe, Opinion No. 234 (2002) Bosnia and Herzegovina's application for membership of the Council of Europe; Opinion No. 239 (2002), The Federal Republic of Yugoslavia's application for membership of the Council of Europe.

31 Cited in the Chamber judgment *Bayatyan v Armenia*, § 43.

32 See further *Kokkinakis v Greece*, n.1 above; *Manoussakis and others v Greece* (Application No. 18748/91), judgment of 29 August 1996.

33 *Yeo-Bum Yoon and Myung-Jin Choi v Republic of Korea, n. 20 above*, § 8.3.

34 *Yeo-Bum Yoon and Myung-Jin Choi v Republic of Korea.*

35 *Eu-min Jung, Tae-Yang Oh, Chang-Geun Yeom, Dong-hyuk Nah, Ho-Gun Yu, Chi-yun Lim, Choi Jin, Tae-hoon Lim, Sung-hwan Lim, Jae-sung Lim, and Dong-ju Goh v Republic of Korea*, n. 2 above, § 7.4.

24. In relation to the interpretation of the Convention, it is notable that of the 17 member states of the Council of Europe which still have conscription, Turkey is the only one which has no provision whatever for conscientious objection to military service; Azerbaijan has a Constitutional provision but it has yet to be implemented in legislation. Armenia has had a provision since 2003 (subsequent to the events in the case under consideration). Conscription formerly applied in 23 further Council of Europe member states; at the time it was abolished or suspended each of the 23 provided for conscientious objection.

25. In the light of the near universal State practice within the Council of Europe region recognising conscientious objection to military service,[36] as well as the Human Rights Committee's insistence that "such restriction must not impair the very essence of the right in question", the Interveners contend that a State's failure to make any provision for conscientious objection to military service is an interference which cannot be justified in terms of Article 9 § 2 of the Convention.

II.iv Exceptions to the prohibition on forced labour

26. One of the issues which has arisen in relation to the protection of conscientious objection to military service under both the Convention and the ICCPR is the reference under their respective provisions relating to the prohibition on forced labour.[37]

27. The Human Rights Committee explicitly addressed the question of Article 8 in relation to conscientious objection to military service in the individual cases of *Yeo-Bum Yoon and Myung-Jin Choi*. The Committee concluded:

> The Committee … notes that article 8, paragraph 3, of the Covenant excludes from the scope of "forced or compulsory labour", which is proscribed, "any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors". It follows that article 8 of the Covenant itself neither recognizes nor excludes a right of conscientious objection. Thus, the present claim is to be assessed solely in the light of article 18 of the Covenant, the understanding of which evolves as that of any other guarantee of the Covenant over time in view of its text and purpose.[38]

28. The Interveners submit that an evolution in thinking comparable to that of the Human Rights Committee between 1985 and 2006 (see paras. 8-12 above) had occurred with respect to the understanding of conscientious objection to military service under the Convention, beginning with the decisions of the former European Commission on Human Rights. The Chamber judgment in *Bayatyan* is silent on this evolution as was pointed out by Judge Power in her dissenting opinion. In their referral request to the Grand Chamber, the applicants traced the shift away from the traditional interpretation of the relationship between Article 4 § 3 b and Article 9. The former Commission's inadmissibility decision in *Grandrath v Germany,* the leading decision of that body, held that the engagement of Article 4 § 3 b referring to conscientious objection precluded the recognition of an individual conscientious objector as a victim under Article 9 of the Convention.[39] In *Tsirlis and Kouloumpas v Greece*, Commissioner Liddy citing the concurring opinion of Mr Eusthadiades in *Grandrath,* challenged the position that the engagement of provisions of Article 4 of the Convention meant that Article 9 was inapplicable.[40] In *Thlimmenos v Greece* six Commissioners, in a joint dissenting opinion referring to the evolution of the Convention case law since *Grandrath,* doubted if that decision continued to be appropriate.[41] The six

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36 See Annex 3.

37 See Annex 4.

38 *Yeo-Bum Yoon and Myung-Jin Choi v Republic of Korea,* n. 20 above, § 8.2.

39 *Grandrath v Germany,* Application No. 2299/64 (1966).

40 *Tsirlis and Kouloumpas v Greece,* Application No. 19233/91, Report of Commission adopted 7 March 1996.

41 *Thlimmenos v Greece,* Application No. 34369/97, Report of Commission adopted 4 December 1998.

Commissioners decided this case on conscientious objection to military service by the direct application of Article 9 and considered that there had been a violation of that Article on the facts of the case.[42]

29. The purpose of Article 4 § 3 is clear. It is to exclude certain activities from the prohibition of forced labour under Article 4: "For the purpose of this article the term 'forced or compulsory labour' shall not include ...", and specifically to ensure that alternative service for conscientious objectors is not *per se* prohibited as forced labour.[43]

30. The Interveners submit that to interpret the wording in Article 4 § 3 b as determinative of Article 9 is inappropriate. In particular, in relation to Article 9, Article 4 § 3 b should not permit impairment of the right to freedom of thought, conscience and religion, or any interference with the right to manifest one's religion or belief.

III Conclusion

31. It is the Interveners' submission that the weight of international standards and guidance from both Council of Europe institutions and international bodies outside the Council of Europe system, as well as the jurisprudence of the UN Human Rights Committee, supports the protection of conscientious objection to military service as a belief under the right to freedom of thought, conscience and religion (Article 9 of the Convention). It makes clear that where military service is compulsory States are required to make provision for conscientious objectors in order to comply with Article 9. The now almost universal recognition of conscientious objection in Council of Europe member states further supports a progressive development of the Convention jurisprudence in this regard.[44]

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[42] Evans, C., *Freedom of Religion under the European Convention on Human Rights*, Oxford University Press, 2001, pp. 176-179.

[43] The UK, who at the time of the Convention's drafting had both conscription and alternative service, proposed excluding from the definition of forced labour: "any service of a military character or service in the case of conscientious objectors exacted in virtue of compulsory military service laws" (*Amendments to Articles 1, 2, 4, 5, 6, 8 and 9 of the Committee's Preliminary Draft Proposed by the Expert of the United Kingdom*, Comm. Of Experts, Doc. CM/WP 1 (50) 2; A 915 (Mar. 6, 1950)). By contrast, the earlier International Labour Organisation Forced Labour Convention, 1930 (C29), Article 2 includes only an exception for military service.

[44] *Tyrer v UK* (Application No. 5856/72, judgment of 25 April 1978; *Marckx v Belgium* (Application No. 6833/74) judgment of 13 June 1979; *Selmouni v France*, (Application No. 25803/94), judgment of 28 July 1999; *Stafford v UK* (Application No. 46295/99), judgment of 28 May 2002; *Sigurjonsson v Iceland* (Application No. 16130/90), judgment of 30 June 1993.

ANNEX 1:

Description of the Intervening Organisations

Amnesty International

Amnesty International aims to secure the observance of the Universal Declaration of Human Rights and other international standards throughout the world. It is a global movement of 2.8 million supporters, members and activists who campaign for internationally recognized human rights to be respected and protected. Amnesty International's mission is to undertake research and action focused on preventing and ending grave abuses of the rights to physical and mental integrity, freedom of conscience and expression and freedom from discrimination, within the context of its work to promote all human rights. It monitors law and practices in countries throughout the world in the light of international human rights and humanitarian law and standards and works independently and impartially to promote respect for human rights, based on research and on international standards agreed by the international community. It is independent of any government, political ideology, economic interest or religion, and does not take a position on the views of persons whose rights it seeks to protect; it is concerned solely with the impartial protection of internationally recognised human rights. Amnesty International has Special Consultative Status before the United Nations Economic and Social Council, Participatory Status with the Council of Europe, working relations with the Inter-Parliamentary Union and the African Union, and is registered as a civil society organization with the Organization of American States. Amnesty International Limited is a not-for-profit organization representing the worldwide movement. It is a company limited by guarantee registered in England and Wales (company number 01606776) with its registered office at 1 Easton St, London, WC1X 0DW, United Kingdom.

Conscience and Peace Tax International

Conscience and Peace Tax International is incorporated as an international non-profit association in Belgium. Since 1997 it has enjoyed Special Consultative Status to the Economic and Social Council of the United Nations. The primary object of the association is, by means that conform to Belgian and international law, to obtain recognition of the right to conscientious objection to paying for armaments and war preparation and war conduct through taxes. It also gives more general support to the struggle of conscientious objectors to military service and to human rights.

Friends World Committee for Consultation (Quakers)

Friends World Committee for Consultation (Quakers) is the body which links the Religious Society of Friends (Quakers) around the world. It was set up in 1937 and has its headquarters in London (United Kingdom). Since 1948 it has enjoyed Consultative Status at the Economic and Social Council of the United Nations as an international non-governmental organisation. Since 2002, this has been General Consultative Status. Since the founding of the United Nations in 1945, Quakers have shared that organisation's aims and supported its efforts to abolish war and promote peaceful resolution of conflicts, human rights, economic justice and good governance. Its work at the United Nations is primarily carried out through the Quaker United Nations

Offices in Geneva and New York, and annual representation at the United Nations Commission on Crime Prevention and Criminal Justice in Vienna.

The International Commission of Jurists

The International Commission of Jurists (ICJ) is a non-governmental organisation working to advance understanding and respect for the Rule of Law as well as the protection of human rights throughout the world. It was set up in 1952 and has its headquarters in Geneva (Switzerland). It is made up of 60 eminent jurists representing different justice systems throughout the world and has 80 national sections and affiliated justice organisations. The International Commission of Jurists has consultative status at the United Nations Economic and Social Council, the United Nations Organisation for Education, Science and Culture (UNESCO), the Council of Europe and the African Union. The organisation also cooperates with various bodies of the Organisation of American States and the Inter-Parliamentary Union. The International Commission Jurists regularly intervenes before national and international courts. It has submitted amicus curiae briefs to the European Court of Human Rights in a number of cases including in the case of *Mamatkulov v Turkey*, *Boumediene v Bosnia and Herzegovina* and *Al-Saadoon v UK*.

War Resisters' International

War Resisters' International is an international non-governmental organisation with more than 80 affilitated organisations in more than 40 countries. It enjoys Special Consultative Status to the Economic and Social Council of the United Nations. War Resisters' International has been working for the right to conscientious objection to military service since its foundation in 1921. The right to conscientious objection is also the focus of many of its affiliated organisations. Its work at the United Nations has focused on the Human Rights Committee. War Resisters' International has also presented cases of conscientious objectors to the UN Working Group on Arbitrary Detention. War Resisters' International has published global and regional studies on the right to conscientious objection in 1967, 1990, 1998, and 2008, is maintaining a global overview on recruitment and the right to conscientious objection, in close cooperation with its affiliated organisations and other partners.

ANNEX 2:

Extract from Views of the Human Rights Committee under Article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights: *Yeo-Bum Yoon and Myung-Jin Choi v Republic of Korea* (UN Doc. CCPR/C/88/D/1321-1322/2004, adopted 3 November 2006)

Consideration of the merits

8.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1 of the Optional Protocol.

8.2 The Committee notes the authors' claim that article 18 of the Covenant guaranteeing the right to freedom of conscience and the right to manifest one's religion or belief requires recognition of their religious belief, genuinely held, that submission to compulsory military service is morally and ethically impermissible for them as individuals. It also notes that article 8, paragraph 3, of the Covenant excludes from the scope of "forced or compulsory labour", which is proscribed, "any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors". It follows that article 8 of the Covenant itself neither recognizes nor excludes a right of conscientious objection. Thus, the present claim is to be assessed solely in the light of article 18 of the Covenant, the understanding of which evolves as that of any other guarantee of the Covenant over time in view of its text and purpose.

8.3 The Committee recalls its previous jurisprudence on the assessment of a claim of conscientious objection to military service as a protected form of manifestation of religious belief under Article 18, paragraph 1.[45] It observes that while the right to manifest one's religion or belief does not as such imply the right to refuse all obligations imposed by law, it provides certain protection, consistent with article 18, paragraph 3, against being forced to act against genuinely-held religious belief. The Committee also recalls its general view expressed in General Comment 22[46] that to compel a person to use lethal force, although such use would seriously conflict with the requirements of his conscience or religious beliefs, falls within the ambit of Article 18. The Committee notes, in the instant case, that the authors' refusal to be drafted for compulsory service was a direct expression of their religious beliefs, which it is uncontested were genuinely held. The authors' conviction and sentence, accordingly, amounts to a restriction on their ability to manifest their religion or belief. Such restriction must be justified by the permissible limits described in paragraph 3 of article 18, that is, that any restriction must

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[45] In Muhonen v Finland (Case No. 89/1981), for example, the Committee declined to decide whether article 18 guaranteed a right of conscientious objection. In L.T.K. v Finland (Case No. 185/1984), the Committee declined to address the issue fully on the merits, deciding as a preliminary matter of admissibility on the basis of the argument before it that the question fell outside the scope of article 18. Brinkhof v The Netherlands (Case No. 402/1990) addressed differentiation between total objectors and Jehovah's Witnesses, while Westerman v The Netherlands (Case No. 682/1986) involved a procedure for recognition of conscientious objection under domestic law itself, rather than the existence of underlying rights as such. Although the statement was not necessary for its final decision, in J.P. v Canada (Case No. 446/1991) the Committee noted, without further explanation, that article 18 "certainly protects the right to hold, express and disseminate opinions and convictions, including conscientious objection to military activities and expenditures".

[46] General Comment No. 22 (1993), para. 11.

be prescribed by law and be necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others. However, such restriction must not impair the very essence of the right in question.

8.4 The Committee notes that under the laws of the State party there is no procedure for recognition of conscientious objections against military service. The State party argues that this restriction is necessary for public safety, in order to maintain its national defensive capacities and to preserve social cohesion. The Committee takes note of the State party's argument on the particular context of its national security, as well as of its intention to act on the national action plan for conscientious objection devised by the National Human Rights Commission (paragraph 6.5 above). The Committee also notes, in relation to relevant State practice, that an increasing number of those States parties to the Covenant which have retained compulsory military service have introduced alternatives to compulsory military service, and that the State party failed to show what special disadvantage would be involved for it if the rights of the authors' under article 18 would be fully respected. As to the issue of social cohesion and equitability, the Committee considers that respect on the part of the State for conscientious beliefs and manifestations thereof is itself an important factor in ensuring cohesive and stable pluralism in society. It likewise observes that it is in principle possible, and in practice common, to conceive alternatives to compulsory military service that do not erode the basis of the principle of universal conscription but render equivalent social good and make equivalent demands on the individual, eliminating unfair disparities between those engaged in compulsory military service and those in alternative service. The Committee considers that the State party has not demonstrated that in the present case the restriction in question is necessary, within the meaning of article 18, paragraph 3, of the Covenant.

9. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, concludes that the facts as found by the Committee reveal, in respect of each author violations by the Republic of Korea of article 18, paragraph 1, of the Covenant.

10. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the authors with an effective remedy, including compensation. The State party is under an obligation to avoid similar violations of the Covenant in the future.

ANNEX 3:

Conscription and related provisions for conscientious objection in Council of Europe member states

State	COE member from:	Conscription imposed	Conscientious objection first recognised in:	
			constitution	legislation
Belgium	Founder	1870–1995		1964
Denmark	Founder	1848–1943; 1945–	1953	1917
France	Founder	1793–2001		1963
Ireland	Founder	never	n/a	
Italy	Founder	1861–2004		1972
Luxembourg	Founder	1944–1969		1963
Netherlands	Founder	1912–1996		1922
Norway	Founder	1866–		1922
United Kingdom	Founder	1916–1919; 1939–1963		1916
Greece	1949	1930–		1997
Sweden	1949	1892–2010		1920
Switzerland	1949	1848–		1995
Turkey	1949	1847–		
Germany	1950	(c1810)–1918; 1934–1945; 1959–	1949	1959
Iceland	1950	no armed forces	n/a	
Austria	1956	?1866–1918; 1955–	1974	1955
Cyprus	1961	1964–		1992
Malta	1965	never	n/a	
Portugal	1976	1910–2004	1976	1985
Spain	1977	1873–2001	1978	1985
Liechtenstein	1978	no armed forces	n/a	
San Marino	1988	never	n/a	
Finland	1989	1922–		1931
Hungary	1990	1938–2004		1989
Poland	1991	1919–1939; 1944–2009	1997	1988
Bulgaria	1992	1939–2007	1991	1998
Czech Republic	1993	1918–1939; 1945–2004	1992	(1990)

State	COE member from:	Conscription imposed	Conscientious objection first recognised in:	
			constitution	legislation
Estonia	1993	(1945)–	1991	2000
Lithuania	1993	(1945)–2009		(1990)
Romania	1993	1868–1945; 1947–2006		1996
Slovakia	1993	(1918)–2004	1992	(1990)
Slovenia	1993	(1919)–2003		(1989)
Andorra	1994	no armed forces	n/a	
Albania	1995	1944–2009	1998	2003
Latvia	1995	(1945)–2007		(1991)
Moldova	1995	(1918)–		1991
The former Yugoslav Republic of Macedonia	1995	(1919)–2007		(1989)
Ukraine	1995	(1922)–	1996	1992
Croatia	1996	(1919)–2007	1990	(1989)
Russian Federation	1996	1874–1917; 1918–	1993	2002
Georgia	1999	(1922)–		1997
Armenia	2001	(1922)–		2003
Azerbaijan	2001	(1922)–	1995	
Bosnia and Herzegovina	2002	(1919)–2005		1996
Serbia	2003	(1919)–	2003	(1989)
Monaco	2004	no armed forces	n/a	
Montenegro	2007	voluntary service only since independence		(1989)

Notes and sources

Dates in brackets are of legislative provisions which applied in the territory concerned but predate the present state.

Dates for the introduction of conscription before the First World War are given only for states which existed as such at the time. Often the transition to a system of conscription was a process with several stages which has not for the present purpose been studied in detail. The dates quoted should therefore be treated as indicative rather than exact.

The date for the end of conscription is the last on which conscripts could be found in the armed forces of the state concerned.

The following sources were used in compiling the table:

For the dates of accession to the Council of Europe, the website of the Council of Europe at http://www.coe.int/aboutcoe/index.asp?page=47pays1europe&l=en

For the other information:

Cinar, O. H. and Usterci, C., *Conscientious Objection: Resisting militarised society*, London: Zed Books, May 2009

Conscience and Peace Tax International (www.cpti.ws), *Military Recruitment and Conscientious Objection: A Thematic Global Study*, Geneva, 2006

European Bureau of Conscientious Objection (http://ebco-beoc.eu), Reports to the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament:

Conscientious Objection in Europe 2007 (Brussels, November 2008)
Conscientious Objection in Europe 2008 (Brussels, September 2009)
Conscientious Objection in Europe 2009 (Brussels, July 2010)

Horeman, B. and Stolwijk, M., *Refusing to Bear Arms* , London: War Resisters International, 1998

Mjøset, L. and van Holde, S. (eds), *The comparative study of conscription in the armed forces* (Comparative Social Research, Volume 20), Oxford: Elsevier Science, 2002

Moskos, C. C. and Chambers, J. W., *The New Conscientious Objection: From sacred to secular resistance*, New York/Oxford: Oxford University Press, 1993

Prasad, D. and Smythe, T., *Conscription – A World Survey: Compulsory military service and resistance to it*, London: War Resisters' International, 1968

Stolwijk, M., *The Right to Conscientious Objection in Europe: A review of the current situation*, Brussels: Quaker Council on European Affairs, 2005

The dates of constitutional provisions and/or legislation are those of the earliest identified from these sources as having contained an explicit reference to conscientious objections to military service or some equivalent concept. In many cases the initial recognition granted was very limited – for example, concerning only specific denominations or unarmed military service. No implication is intended that the provisions concerned were adequate or effectively implemented from the date cited.

ANNEX 4:

Articles on the right to freedom of thought, conscience and religion and on forced labour of the European Convention for the Protection of Human Rights and Fundamental Freedoms and of the International Covenant on Civil and Political Rights

European Convention for the Protection of Human Rights and Fundamental Freedoms

Article 9:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
Freedom to manifest one's religion or beliefs shall be subject only to such limitations as 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.

Article 4:

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purposes of the article the term “forced or compulsory labour” shall not include:
a) …;
b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;

International Covenant on Civil and Political Rights

Article 18:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

Article 8:

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.
3. (a) No one shall be required to perform forced or compulsory labour;
(b) …;
(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:
(i)…;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors.

ANNEX 5:

Concluding Observations of the UN Human Rights Committee relating to conscientious objection to military service

1. Concluding observations of the Human Rights Committee: **Russian Federation** (UN Doc. CCPR/C/RUS/CO/6 of 24 November 2009), para.23:

While welcoming the reduction by half, in 2008, of the prescribed length of civilian service for conscientious objectors from 42 months to 21 months, the Committee notes with concern that it is still 1.75 times longer than military service, and that the State party maintains the position that the discrimination suffered by conscientious objectors is due to such alternative service being a "preferential treatment" (para. 151, CCPR/C/RUS/6). The Committee notes with regret that the conditions of service for alternative service are punitive in nature, including the requirement to perform such services outside places of permanent residence, the receipt of low salaries, which are below the subsistence level for those who are assigned to work in social organisations, and the restrictions in freedom of movement for the persons concerned. The Committee is also concerned that the assessment of applications, carried out by a draft panel for such service, is under the control of the Ministry of Defence. (arts. 18, 19, 21, 22 and 25)

The State party should recognize fully the right to conscientious objection, and ensure that the length and the nature of this alternative to military service does not have a punitive character. The State party should also consider placing the assessment of applications for conscientious objector status entirely under the control of civilian authorities.

2. Concluding observations of the Human Rights Committee: **Azerbaijan** (UN Doc. CCPR/C/AZE/CO/3 of 13 August 2009), para. 14:

The Committee remains concerned that no legal provision regulates the status of conscientious objectors to military service (art. 18).

The Committee recommends that a law exempting conscientious objectors from compulsory military service and providing for alternative civil service of equivalent length be adopted at an early date in compliance with article 18 of the Covenant and the Committee's General Comment No. 22.

3. Concluding observations of the Human Rights Committee: **San Marino** (UN Doc. CCPR/C/SMR/CO/2 of 31 July 2008), para. 15:

While noting the exceptional circumstance of possible general military mobilization under article 4 of Law No. 15 of 26 January 1990, and welcoming the information provided by the State party on current efforts to adopt the Comprehensive Regulations of the Military Corps, the Committee remains concerned about article 3 of the Law, according to which San Marino citizens may be obliged to serve in the military from 16 to 60 years of age (article 24).

The State party should amend the law in order to provide that the entitlement to conscientious objection is expressly recognized and that the minimum age for service is raised.

4. Concluding observations of the Human Rights Committee: **Chile** (UN Doc. CCPR/C/CHL/CO/5 of 18 May 2007), para.13:
The Committee notes the State party's intention to adopt a law recognizing the right of conscientious objection to military service, but continues to be concerned that this right has still not been recognized (article 18 of the Covenant).

The State party should expedite the adoption of legislation recognizing the right of conscientious objection to military service, ensuring that conscientious objectors are not subject to discrimination

or punishment and recognizing that conscientious objection can occur at any time, even when a person's military service has already begun.

5. Concluding observations of the Human Rights Committee: **Ukraine** (UN Doc. CCPR/C/UKR/CO/6 of 28 November 2006), para.12:

While the State party has announced plans to convert its armed forces to an all-volunteer basis, the right to conscientious objection against mandatory military service should be fully respected. Conscientious objection has been accepted only for religious reasons, and only for certain religions.

The State party should extend the right of conscientious objection against mandatory military service to persons who hold non-religious beliefs grounded in conscience, as well as beliefs grounded in all religions.

6. Concluding observations of the Human Rights Committee: **Republic of Korea** (UN Doc. CCPR/C/KOR/CO/3 of 28 November 2006), para.17:

The Committee is concerned that: (a) under the Military Service Act of 2003 the penalty for refusal of active military service is imprisonment for a maximum of three years and that there is no legislative limit on the number of times they may be recalled and subjected to fresh penalties; (b) those who have not satisfied military service requirements are precluded from employment by government or public organisations and that (c) convicted conscientious objectors bear the stigma of a criminal record (art.18).

The State party should take all necessary measures to recognize the right of conscientious objectors to be exempted from military service. It is encouraged to bring legislation into line with Article 18 of the Covenant. In this regard, the Committee draws the attention of the State party to its General Comment 22 para.11 on the right to freedom of thought, conscience and religion.

7. Concluding observations of the Human Rights Committee: **Paraguay** (UN Doc. CCPR/C/PRY/CO/2 of 24 April 2006), para.18:

The Committee welcomes the recognition in Paraguay's Constitution of conscientious objection to military service and the provisional measures passed by the Chamber of Deputies to guarantee respect for conscientious objection given the lack of specific regulations governing this right. However, it regrets that access to information on conscientious objection appears to be unavailable in rural areas (article 18 of the Covenant).

The State party should pass specific regulations on conscientious objection so as to ensure that this right can be effectively exercised, and guarantee that information about its exercise is properly disseminated to the entire population.

8. Concluding observations of the Human Rights Committee: **Syrian Arab Republic** (UN Doc. CCPR/CO/84/SYR of 9 August 2005), para.11:

The Committee takes note of the information provided by the delegation whereby Syria does not recognize the right to conscientious objection to military service, but that it permits some of those who do not wish to perform such service to pay a certain sum in order not to do so (art. 18).

The State party should respect the right to conscientious objection to military service and establish, if it so wishes, an alternative civil service of a non-punitive nature.

9. Concluding observations of the Human Rights Committee: **Tajikistan** (UN Doc. CCPR/CO/84/TJK of 18 July 2005), para.20:

The Committee is concerned that the State party does not recognize the right to conscientious objection to compulsory military service (art. 18).

The State party should take all necessary measures to recognize the right of conscientious objectors to be exempted from military service.

10. Concluding observations of the Human Rights Committee: **Yemen** (UN Doc. CCPR/CO/84/YEM of 9 August 2005), para.19:

The Committee regrets that no response was provided by the delegation to the question whether Yemen law recognizes a right to conscientious objection to military service (art. 18).

The State party should ensure that persons liable for military service may claim the status of conscientious objector and perform alternative service that is not of a punitive character.

11. Concluding observations of the Human Rights Committee: **Greece** (UN Doc. CCPR/CO/83/GRC of 25 April 2005), para.15:

The Committee is concerned that the length of alternative service for conscientious objectors is much longer than military service, and that the assessment of applications for such service is solely under the control of the Ministry of Defence (art. 18).

The State party should ensure that the length of service alternative to military service does not have a punitive character, and should consider placing the assessment of applications for conscientious objector status under the control of civilian authorities.

12. Concluding observations of the Human Rights Committee: **Finland** (UN Doc. CCPR/CO/82/FIN of 2 December 2004), para.14:

The Committee regrets that the right to conscientious objection is acknowledged only in peacetime, and that the civilian alternative to military service is punitively long. It reiterates its concern at the fact that the preferential treatment accorded to Jehovah's Witnesses has not been extended to other groups of conscientious objectors.

The State party should fully acknowledge the right to conscientious objection and, accordingly, guarantee it both in wartime and in peacetime; it should also end the discrimination inherent in the duration of alternative civilian service and the categories that can benefit from it (arts. 18 and 26 of the Covenant).

13. Concluding observations of the Human Rights Committee: **Poland** (UN Doc. CCPR/CO/82/POL of 2 December 2004), para.15:

The Committee notes that the duration of alternative military service is 18 months, whereas for military service it is only 12 months (arts. 18 and 26).

The State party should ensure that the length of alternative service to military service does not have a punitive character.

14. Concluding observations of the Human Rights Committee: **Morocco** (UN Doc. CCPR/CO/82/MAR of 1 December 2004), para.22:

The Committee notes that, according to the information supplied by the State party, compulsory military service is a fallback applicable only when not enough professional soldiers can be recruited, while at the same time the State party does not recognize the right to conscientious objection.

The State party should fully recognize the right to conscientious objection in times of compulsory military service and should establish an alternative form of service, the terms of which should be non-discriminatory (Covenant, arts. 18 and 26).

15. Concluding observations of the Human Rights Committee: **Serbia and Montenegro** (UN Doc. CCPR/CO/81/SEMO of 12 August 2004), para.21:

The Committee takes note of the information provided by the delegation whereby conscientious objection is governed by a provisional decree, which is to be replaced by a law, which will recognize full

conscientious objection to military service and an alternative civil service that will have the same duration as military service (art. 18).

The State party should enact the said law as soon as possible. The law should recognize conscientious objection to military service without restrictions (art. 18) and alternative civil service of a non-punitive nature.

16. Concluding observations of the Human Rights Committee: **Colombia** (UN Doc. CCPR/CO/80/COL of 26 May 2004), para.17:

The Committee notes with concern that the legislation of the State party does not allow conscientious objection to military service.

The State party should guarantee that conscientious objectors are able to opt for alternative service whose duration would not have punitive effects (arts. 18 and 26).

17. Concluding observations of the Human Rights Committee: **Lithuania** (UN Doc. CCPR/CO/80/LTU of 4 May 2004), para.17:

The Committee reiterates the concern expressed in its concluding observations on the previous report about conditions of alternative service available to conscientious objectors to military service, in particular with respect to the eligibility criteria applied by the Special Commission and the duration of such service as compared with military service.

The Committee recommends that the State party clarify the grounds and eligibility for performing alternative service to persons objecting to military service on grounds of conscience or religious belief, to ensure that the right to freedom of conscience and religion is respected by permitting in practice alternative service outside the defence forces, and that the duration of service is not punitive in nature (arts. 18 and 26).

18. Concluding observations of the Human Rights Committee: **Latvia** (UN Doc. CCPR/CO/79/LVA of 6 November 2003), para.15:

The Committee notes with satisfaction that in 2002, a new law on alternative service entered into force, which provides for the right to conscientious objection. However, the Committee remains concerned that, pending a change in the conscription law, the duration of alternative service is up to twice that of military service and appears to be discriminatory (Article 18).

The State party should ensure that the alternative service is not of a discriminatory duration.

19. Concluding observations of the Human Rights Committee: **Russian Federation** (UN Doc. CCPR/CO/79/RUS of 6 November 2003), para.17:

While the Committee welcomes the introduction of the possibility for conscientious objectors to substitute civilian service for military service, it remains concerned that the Alternative Civilian Service Act, which will take effect on 1 January 2004, appears to be punitive in nature by prescribing civil service of a length 1.7 times that of normal military service. Furthermore, the law does not appear to guarantee that the tasks to be performed by conscientious objectors are compatible with their convictions.

The State party should reduce the length of civilian service to that of military service and ensure that its terms are compatible with articles 18 and 26 of the Covenant.

20. Concluding observations of the Human Rights Committee: **Israel** (UN Doc. CCPR/CO/78/ISR of 21 August 2003), para.24:

While noting the Supreme Court's judgement of 30 December 2002 in the case of eight IDF reservists (judgement HC 7622/02), the Committee remains concerned about the law and criteria applied and generally adverse determinations in practice by military judicial officers in individual cases of conscientious objection (art. 18).

The State party should review the law, criteria and practice governing the determination of conscientious objection, in order to ensure compliance with article 18 of the Covenant.

21. Concluding observations of the Human Rights Committee: **Estonia** (UN Doc. CCPR/CO/77/EST of 15 April 2003), para.15:

The Committee is concerned that the duration of alternative service for conscientious objectors may be up to twice as long as the duration of regular military service.

The State party is under an obligation to ensure that conscientious objectors can opt for alternative service, the duration of which is without punitive effect (articles 18 and 26 of the Covenant).

22. Concluding observations of the Human Rights Committee: **Republic of Moldova** (UN Doc. CCPR/CO/75/MDA of 26 July 2002), para.5:

The Committee further welcomes the abolition of forced labour in 1998, as well as the provision for alternative civilian service of equal duration in place of military service.

23. Concluding observations of the Human Rights Committee: **Vietnam** (UN Doc. CCPR/CO/75/VNM of 26 July 2002), para.17:

The Committee takes note of the fact that the law makes no provision for the status of conscientious objector to military service, which may legitimately be claimed under article 18 of the Covenant.

The State party should ensure that persons liable for military service may claim the status of conscientious objector and perform alternative service without discrimination.

24. Concluding observations of the Human Rights Committee: **Georgia** (UN Doc. CCPR/CO/74/GEO of 19 April 2002), para.18:

The Committee expresses its concern at the discrimination suffered by conscientious objectors owing to the fact that non-military alternative service lasts for 36 months compared with 18 months for military service; it regrets the lack of clear information on the rules currently governing conscientious objection to military service.

The State party should ensure that persons liable for military service who are conscientious objectors can opt for civilian service the duration of which is not discriminatory in relation to military service, in accordance with articles 18 and 26 of the Covenant.

25. Concluding observations of the Human Rights Committee: **Azerbaijan** (UN Doc. CCPR/CO/73/AZE of 12 November 2001), para.21:

The Committee takes note of the fact that the law makes no provision for the status of conscientious objector to military service, which may legitimately be claimed under article 18 of the Covenant.

The State party should ensure that persons liable for military service may claim the status of conscientious objector and perform alternative service without discrimination.

26. Concluding observations of the Human Rights Committee: **Ukraine** (UN Doc. CCPR/CO/73/UKR of 12 November 2001), para.20:

The Committee notes with concern the information given by the State party that conscientious objection to military service is accepted only in regard to objections for religious reasons and only with regard to certain religions, which appear in an official list. The Committee is concerned that this limitation is incompatible with articles 18 and 26 of the Covenant.

The State party should widen the grounds for conscientious objection in law so that they apply, without discrimination, to all religious beliefs and other convictions, and that any alternative service required for conscientious objectors be performed in a non-discriminatory manner.

27. Concluding observations of the Human Rights Committee: **Dominican Republic** (UN Doc. CCPR/CO/71/DOM of 26 April 2001), para.21:

The Committee takes note of the fact that the law makes no provision for the status of conscientious objector to military service, which may legitimately be claimed under article 18 of the Covenant.

The State party should ensure that persons liable for military service may claim the status of conscientious objector and perform alternative service without discrimination.

28. Concluding observations of the Human Rights Committee: **Venezuela** (UN Doc. CCPR/CO/71/VEN of 26 April 2001), para.26:

The Committee notes that there is no provision in Venezuelan law for conscientious objection to military service, which is legitimate pursuant to article 18 of the Covenant.

The State party should see to it that individuals required to perform military service can plead conscientious objection and perform alternative service without discrimination.

29. Concluding observations of the Human Rights Committee: **Kuwait** (UN Doc. CCPR/CO/69/KWT of 27 July 2000), para.43-44:

The Committee notes the existence of compulsory military service and that Kuwaiti law does not contain any provision on conscientious objection.

In order to implement article 18 of the Covenant, the State party should reflect in its legislation the situation of persons who believe that the use of armed force conflicts with their convictions, and establish for these cases an alternative civilian service.

30. Concluding observations of the Human Rights Committee: **Kyrgyzstan** (UN Doc. CCPR/CO/69/KGZ of 24 July 2000), para.18:

The Committee takes note that conscientious objection to military service is allowed only to members of a registered religious organization whose teachings prohibit the use of arms. The Committee regrets that the State party has not sought to justify why the provision on alternative service entails a period of service twice as long as that required of military conscripts, and why persons of higher education serve for a considerably lesser period in the military and in alternative service (arts. 18 and 26).

Conscientious 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.

31. Concluding observations of the Human Rights Committee: **Romania** (UN Doc. CCPR/C/79/Add.111 of 28 July 1999), para.17:

The Committee is concerned that the State party has not provided for the right to conscientious objection without discrimination (arts. 18 and 26).

The State party should amend its legislation to provide for conscientious objection, in a manner that is consistent with articles 18 and 26 of the Covenant.

32. Concluding observations of the Human Rights Committee: **Mexico** (UN Doc. CCPR/C/79/Add.109 of 27 July 1999), para.20:

The Committee notes that the law does not recognize the status of conscientious objectors to military service.

The State party should ensure that persons required to perform military service can invoke conscientious objection as grounds for exemption.

33. Concluding observations of the Human Rights Committee: **Armenia** (UN Doc. CCPR/C/79/Add.100 of 19 November 1998), para.18:

The Committee regrets the lack of legal provision for alternatives to military service in case of conscientious objection. The Committee deplores the conscription of conscientious objectors by force and their punishment by military courts, and the instances of reprisals against their family members.

34. Concluding observations of the Human Rights Committee: **Finland** (UN Doc. CCPR/C/79/Add.91 of 8 April 1998), para.21:

The Committee reiterates its concern, expressed during the consideration of Finland's third report, that Jehovah's Witnesses are granted by domestic law preferential treatment as compared with other groups of conscientious objectors and recommends that the State Party review the law to bring it into full conformity with article 26 of the Covenant.

35. Concluding observations of the Human Rights Committee: **Cyprus** (UN Doc. CCPR/C/79/Add.88 of 6 April 1998), para.17:

The Committee remains concerned about the discriminatory treatment accorded to conscientious objectors in Cyprus, who may be subject to punishment on one or more occasion for failure to perform military service. The Committee recommends that the proposed new law concerning conscientious objectors ensure their fair treatment under the law and eradicate lengthy imprisonment as a form of punishment.

36. Concluding observations of the Human Rights Committee: **Belarus** (UN Doc. CCPR/C/79/Add.86 of 19 November 1997), para.16:

The Committee notes the statement of the delegation of Belarus that legislation on conscientious objection to military service is envisaged. In this regard:

The Committee recommends that a law exempting conscientious objectors from compulsory military service and providing for alternative civil service of equivalent length be passed at an early date in compliance with article 18 of the Covenant and the Committee's General Comment No. 22 (48).

37. Concluding observations of the Human Rights Committee: **Lithuania** (UN Doc. CCPR/C/79/Add.87 of 19 November 1997), para.19:

The Committee expresses its concern over the conditions for alternative service available to persons who have a conscientious objection to military service, in particular the grounds for establishing the right to perform alternative service and its length. Therefore:

The Committee recommends the State party clarify the grounds and eligibility for performing, without discrimination, alternative service on grounds of conscience or religious belief to ensure that the right to freedom of conscience and religion is respected.

38. Concluding observations of the Human Rights Committee: **Slovakia** (UN Doc. CCPR/C/79/Add.79 of 4 August 1997), para.12:

The Committee notes with concern that insufficient steps have been taken to date to implement various provisions of the Constitution dealing with fundamental rights and of the Covenant. In particular, the Committee regrets the absence or inadequacy of laws regulating matters relating to article 14 of the Covenant, with respect to the appointment of members of the judiciary; article 4 of the Covenant; article 18, with respect to the right to conscientious objection to military service without a punitive extension of the period of service; and article 25 of the Covenant.

39. Concluding observations of the Human Rights Committee: **France** (UN Doc. CCPR/C/79/Add.80 of 4 August 1997), para.19:

The Committee is concerned that in order to exercise the right to conscientious objection to military service, which is a part of freedom of conscience under article 18 of the Covenant, the application must be made in advance of the conscript's entry into military service and that the right cannot be exercised thereafter. Moreover, the Committee notes that the length of alternative service is twice as long as military service and that this may raise issues of compatibility with article 18 of the Covenant.

40. Concluding observations of the Human Rights Committee: **Switzerland** (UN Doc. CCPR/C/79/Add.70 of 8 November 1996), para.10:

The Committee welcomes the entry into force of the Civilian Service Act, which has introduced a civil procedure for determining cases of conscientious objection.

41. Concluding observations of the Human Rights Committee: **Spain** (UN Doc. CCPR/C/79/Add.61 of 3 April 1996), paras.15 and 20:

Finally, the Committee is greatly concerned to hear that individuals cannot claim the status of conscientious objectors once they have entered the armed forces, since that does not seem to be consistent with the requirements of article 18 of the Covenant as pointed out in general comment No. 22 (48).

The Committee urges the State party to amend its legislation on conscientious objection so that any individual who wishes to claim the status of conscientious objector may do so at any time, either before or after entering the armed forces.

42. Concluding observations of the Human Rights Committee: **Russian Federation** (UN Doc. CCPR/C/79/Add.54 of 26 July 1995), paras.21 and 39:

The Committee is concerned that conscientious objection to military service, although recognized under article 59 of the Constitution, is not a practical option under Russian law and takes note in this regard of the draft law on alternative service before the Federal Assembly. It expresses its concern at the possibility that such alternative service may be made punitive, either in nature or in length of service. The Committee is also seriously concerned at the allegations of widespread cruelty and ill-treatment of young conscript-soldiers.

The Committee urges that stringent measures be adopted to ensure an immediate end to mistreatment and abuse of army recruits by their officers and fellow soldiers. It further recommends that every effort be made to ensure that reasonable alternatives to military service be made available that are not punitive in nature or in length of service. It urges that all charges brought against conscientious objectors to military service be dropped.

43. Concluding observations of the Human Rights Committee: **Libyan Arab Jamahiriya** (UN Doc. CCPR/C/79/Add.45 of 23 November 1994), paras.13 and 19:

Another area of concern is that of freedom of religion. The severe punishments for heresy (which are said not to have been used) and the restrictions on the right to change religion appear to be inconsistent with article 18 of the Covenant. The lack of provision for conscientious objection to military service is another concern.

The Committee urges the State party to continue with its programmes to secure full legal and de facto equality for women in all aspects of society. It should also ensure that its obligations to respect freedom of religion in accordance with article 18 of the Covenant are met. In this connection, the Committee draws attention to its general comment on article 18 of the Covenant.

44. Concluding observations of the Human Rights Committee: **Cyprus** (UN Doc. CCPR/C/79/Add.39 of 21 September 1994), paras.10 and 19:

The Committee is concerned about the unfair treatment accorded to conscientious objectors in Cyprus, who are subject to an excessive period of alternative service lasting 42 months, which is not compatible

with the provisions of article 18 and 26 of the Covenant, and that persons may also be subject to punishment on one or more occasion for failure to perform military service.

The Committee recommends that the laws concerning conscientious objectors be amended in order to ensure their fair treatment under the law and to reduce the excessively lengthy period of alternative national service and the possibility of repeated punishment.
