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

**Analytical report of the Office of the High Commissioner for Human Rights
on best practices in relation to conscientious objection to military service***

* In accordance with General Assembly resolution 53/208 B, paragraph 8, this document is submitted late so as to include the most up-to-date information possible.

Summary

This report is submitted in accordance with Commission on Human Rights resolution 2004/35, which requested OHCHR to prepare an analytical report providing supplementary information on best practices in relation to conscientious objection to military service, drawing on all appropriate sources. The right to conscientious objection to military service is considered a legitimate exercise of the right to freedom of thought, conscience, religion and belief, as articulated implicitly in article 18 of the International Covenant on Civil and Political Rights (ICCPR) and article 18 of the Universal Declaration of Human Rights, and explicitly by the Human Rights Committee in its general comment No. 22 on article 18 of the ICCPR.

The previous report to the Commission (E/CN.4/2004/55) identified the development of the right through an analysis of resolutions, observations and findings of the Commission on Human Rights, the Human Rights Committee, and the Sub-Commission on the Promotion and Protection of Human Rights. It also provided an overview of the jurisprudence of various international human rights bodies, including the Working Group on Arbitrary Detention, and identified trends in national laws regulating conscientious objection.

The present report focuses on best practices, and its review and analysis is based on the minimum basic principles as established by the provisions of Commission resolution 1998/77 on the issue of conscientious objection to military service.

An analysis of information reviewed provides support for the view that an increasing number of States are continuing to develop or improve provisions for conscientious objection to military service, and alternative service, so as to comply with existing human rights norms.

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Introduction

1. In its resolution 2004/35, the Commission on Human Rights recalled its previous resolutions on the subject of conscientious objection, in which the Commission recognized 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 took note of the report submitted by OHCHR on conscientious objection (E/CN.4/2004/55). In the same resolution, OHCHR was requested to prepare an analytical report providing supplementary information on best practices in relation to conscientious objection to military service, drawing on all appropriate sources, and to submit a report to the Commission at its sixty-second session.
2. By note verbale dated 31 August 2005, OHCHR invited Governments to submit any supplementary information on best practices pertaining to the issue of conscientious objection not contained in the previous report. As of January 2006, the Office had received responses from the following States: Belarus, Chile, Croatia, Greece, Lebanon, Lithuania, Mexico, the Philippines, the Russian Federation, Singapore, Slovenia, Tunisia and the United States of America.
3. The same request was addressed to national human rights institutions, United Nations bodies, intergovernmental and non-governmental organizations.
4. The following national human rights institutions responded: the Human Rights and Equal Opportunity Commission of Australia, the Ombudsman of Austria, the Defensor del Pueblo of Bolivia, the Ombudsman of Costa Rica, the Canadian Human Rights Commission, the Equal Treatment Commission of the Netherlands, the Fiji Human Rights Commission, the National Commission of Human Rights of Greece, the National Human Rights Commission of India, the National Human Rights Commission of Mauritius, the National Human Rights Commission of Mexico, the Ombudsman Office of Poland, the National Human Rights Ombudsman of Kazakhstan, the Defensor del Pueblo of Spain and the Ombudsman of Venezuela.
5. The following United Nations bodies and intergovernmental organizations responded: the European Commission, the United Nations High Commissioner for Refugees and the United Nations Assistance Mission in Afghanistan.
6. The following NGOs responded: the Protestant Association for the Care of Conscientious Objectors (EAK), Friends World Committee for Consultation (Quakers), International Helsinki Federation for Human Rights and Conscience and Peace Tax International (CPTI).
7. The replies received from Governments, national human rights institutions, United Nations bodies and intergovernmental and non-governmental organizations are available for consultation in OHCHR.

I. GENERAL TRENDS

8. The replies received from States and other organizations, as well as information from other sources, broadly show that States are more frequently recognizing conscientious objection both in law and in practice. In addition, the trend to move away from conscription towards volunteer, professional armed forces in recent years is noteworthy. For example, Bosnia and Herzegovina abolished conscription on 1 January 2006, and Romania will end conscription on 1 January 2007.¹ It has been reported that the following States have ended or suspended compulsory military service as well in the recent past: Argentina (1994), Belgium (1995), the Czech Republic (2004), France (2001), Hungary (2004), Italy (2004), Jordan (1992), Kuwait (2001), the Netherlands (1996), Peru (1999), Portugal (2004), Slovakia (2004), Spain (2001) and Slovenia (2003).²

9. Replies to the note verbale also indicated that there is no conscription in Afghanistan, Fiji, India, Mauritius and the United States. Australia reported that its armed forces are voluntary, but that conscription can be introduced during wartime. Costa Rica reported that it has no armed forces.

10. In cases where conscription has not ended, the trend is towards a progressive reduction in the number of conscripts being recruited (Kazakhstan, 2000), as well as reductions in the length of alternative service (Greece, 2004). It has also been reported that States have recently adopted (Armenia, 2003; Russian Federation, 2002) or proposed bills regulating the procedures for alternative service (Belarus, 2005).

11. Information concerning individual cases in some States, however, indicates that serious problems remain. Some States either do not implement the right to conscientious objection in a manner consistent with human rights standards, or continue not to recognize the right of conscientious objection and deal with objectors of conscience through punishment and/or by attempting to change the beliefs of these individuals. Significant numbers of individuals claiming the right of conscientious objection continue to be imprisoned in a number of countries.³ It should be recalled that Commission resolution 1998/77 emphasizes that States should “refrain from subjecting conscientious objectors to imprisonment and to repeated punishment for failure to perform military service, and recalls that no one shall be liable or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country”.

II. THE RIGHT TO CONSCIENTIOUS OBJECTION IN HUMAN RIGHTS LAW

12. The right to conscientious objection in human rights law is set out comprehensively in the previous report to the Commission. Nevertheless, a summary of the key aspects of the right is included to provide a framework for the analysis of best practices. Article 18 of the International Covenant on Civil and Political Rights (ICCPR) guarantees the right to freedom of thought, conscience and religion or belief, but makes no explicit reference to conscientious objection to military service. However, the ICCPR monitoring body, the Human Rights Committee, has considered the issue in relation to States parties' reports in one of its general comments, as well as in individual communications. In its general comment No. 22 on the right to freedom of thought, conscience and religion (ICCPR, art. 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).

13. The Human Rights Committee has elaborated its position with regard to conscientious objection in its concluding observations adopted following examination of States parties’ reports. Common issues raised relating to conscientious objection concern the recognition of the right to conscientious objection,⁴ the basis on which conscientious exemption from military service can be granted and the process for obtaining such exemption. Questions are also commonly raised regarding the provision, length and conditions of alternative service and the rights of those who object to alternative service; whether alternative service provides the same rights and social benefits as military service; the length and conditions of alternative service; and whether there can be repeated punishment for failure to perform military service.⁵ Recent concerns continue to raise issues of lack of an independent decision-making process,⁶ disproportionate lengthy alternative service⁷ and States parties that recognize the right to conscientious objection in a discriminatory manner, e.g. by granting exemption only to religious groups and not others. The Human Rights Committee has recommended that States parties recognize the right of conscientious objection without discrimination,⁸ recalling that “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”.⁹

14. In 1987, the Commission adopted resolution 1987/46, in which it appealed to States to recognize that conscientious objection to military service should be considered a legitimate exercise of the right to freedom of thought, conscience and religion. In 1989, the right to conscientious objection was recognized by the Commission in resolution 1989/59, in which the Commission appealed to States to enact legislation aimed at exemption from military service on the basis of genuinely held conscientious objection.

15. In the context of the right to conscientious objection, 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. In resolution 1993/84, the Commission reminded States with a system of compulsory military service of its recommendation that they introduce various forms of alternative service for conscientious objectors and emphasized that “such forms of 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”.

16. In resolution 1998/77, the Commission noted that persons performing military service may develop conscientious objections. The resolution also enumerated a number of basic minimum principles that are applicable to implementation of the right of conscientious objection.

17. In its resolution 2004/35, the Commission encouraged States, as part of post-conflict peacebuilding, to consider granting, and effectively implementing, amnesties and restitutions of rights, in law and practice, for those who have refused to undertake military service on grounds of conscientious objection.

18. Although Commission resolutions on conscientious objection have been adopted without a vote since 1989, a small number of States have indicated their disagreement. Singapore, for example, in its response to the note verbale of 31 August 2005 reiterated its position that “resolution 2004/35 goes beyond what is prescribed in the international law and the applicable human rights instruments”.¹⁰

III. BEST PRACTICES RELATING TO CONSCIENTIOUS OBJECTION

19. The present report’s analysis is organized principally around best practices relating to the minimum basic principles as established by the provisions of Commission resolution 1998/77 on conscientious objection to military service.

A. Conscientious objection in relation to other exemptions from military service

20. If a State does not recognize conscientious objection, other exemptions from military service may be the only way for an individual to avoid punishment by the authorities or draft evasion as a means for expressing his or her conviction. Although the most common exemption is lack of physical fitness, various other exemptions that may be applicable include the following: family circumstances (e.g. only son, care of aged parents, sole family breadwinner), military service of other family members, descendants of victims of human rights violations, for studies or for those who have achieved a certain degree of educational attainment, religious officials, particular categories of employment, nationals residing abroad, those who are convicted of crimes involving moral turpitude and those who have acquired nationality by naturalization. Some States exempt indigenous peoples completely or partially. Hence, conscientious objection may not be addressed in the recruitment process because potential recruits are exempted from service for other reasons.¹¹ This practice is not uniform, however, as some States, for example, will consider a claim of conscientious objection prior to a health examination.¹²

B. Legal basis of conscientious objection in national law

21. In most countries that recognize conscientious objection, there are provisions either in the Constitution¹³ or in legislation¹⁴ or both¹⁵ that recognize a right to conscientious objection. However, recognition of conscientious objection can also take place through administrative decision.¹⁶ It is also to be noted that rights relating to conscientious objector status can both be broadened or restricted by judicial decision.¹⁷ In some countries, the right to conscientious objection is limited by law to peacetime. In Bulgaria, Cyprus, Finland and Greece, for example, the applicable legislation indicates that the right to perform substitute service may be suspended during a war.¹⁸

22. The existence of legal recognition of conscientious objection or alternative service, without implementing provisions, can lead to legal uncertainty and frustrate the exercise of these rights, making it difficult, although not necessarily impossible, to exercise in practice. According to one source, Brazil has not yet adopted implementing legislation despite constitutional provisions recognizing conscientious objection. Similarly, in Ecuador, even though conscientious objection and alternative civil service are provided for in the Constitution, no civil service has been established.¹⁹ In Georgia, the right to conscientious objection was recognized by law in 1997, but it has been reported that no implementing provisions have been adopted.²⁰ The Bolivarian Republic of Venezuela has reported that it has no legislation on conscientious objection, although under its Constitution alternative civil service should be available if an individual wishes to claim conscientious objector status.

C. Grounds for granting conscientious objector status

23. Commission resolution 1998/77 states that “conscientious objection to military service derives from principles and reasons of conscience, including profound convictions, arising from religious, ethical, humanitarian or similar motives”, and also calls upon States “not to discriminate amongst conscientious objectors on the basis of their particular beliefs”. In many European countries, both religious and non-religious grounds for conscientious objection are legally recognized. In the United States, although the 1948 law recognizing conscientious objection originally applied only to religious grounds, this was broadened through judicial decision to include non-religious grounds as well.

24. In Australia, the law defines a conscientious belief as something that “(a) involves a fundamental conviction of what is morally right and morally wrong, whether or not based on religious considerations; and (b) is so compelling in character for that person that he or she is duty bound to espouse it; and (c) is likely to be of a long-standing nature”.²¹ It should be noted that conscientious objection for religious reasons is not limited to traditional denominations that have pacifist beliefs. Nevertheless, in spite of existing international standards recognizing both religious and non-religious grounds for conscientious objection, a small number of countries either legally or in practice limit the right to conscientious objection to individuals belonging to religious denominations that forbid their members to bear arms.²²

D. Time limits for applying for conscientious objector status

25. According to Commission resolution 1998/77, “persons performing military service may develop conscientious objection”, and therefore in principle no time limits should be applicable for formulating a request for conscientious objector status. Similarly, Council of Europe recommendation 1518 (2001) invites member States to introduce legislation recognizing “the right to be registered as a conscientious objector at any time before, during or after conscription, or performance of military service”. Nevertheless, a recent study has found that in 18 of 29 European countries with active conscription programmes, applications for conscientious objector status could only be made prior to starting military service. Only in seven States could applications for conscientious objector status be made by serving conscripts and reservists.²³ The right of conscientious objection for professional soldiers is linked to the issue of when a person may assert his or her right to conscientious objection, as a strict time limit of making

application for conscientious objector status prior to induction into the armed forces would preclude conscientious objector status for virtually all persons serving as volunteers in professional armed forces.

E. Conscientious objection for professional soldiers

26. Many States appear to interpret this right as applying only to those soldiers subject to military conscription, and legislation in many countries addresses the issue of conscientious objection only in this context. Nevertheless, a small number of States apply the right of conscientious objection to professional soldiers, which may include the reserves. The application of the right to conscientious objection to persons who voluntarily serve in the armed forces is based on the view that an individual's deeply held convictions can evolve and that individuals voluntarily serving in armed forces may over time develop conscientious objection to bearing arms. As this is not simply a theoretical proposition, but a practical reality to be addressed by the armed forces in many countries, a number of States, including Germany, the Netherlands, the United Kingdom and the United States, have recognized that those persons who voluntarily serve in the armed forces may apply for conscientious objector status.²⁴ The outcome of this process is normally to allow these persons to be discharged from the armed forces without penalty or to be assigned to non-combatant duties. It should be noted that restrictions in national legislation of some countries, such as time limits for applying for conscientious objector status or disqualifying conditions for those who have a gun licence or who have borne arms in the past would exclude conscientious objection for professional soldiers. Such restrictions would either have to be withdrawn or re-characterized as refutable presumptions to enable the right of conscientious objection to be applied to professional soldiers.

27. Interestingly, the outcome may be similar in some countries that do not recognize conscientious objection for professional soldiers, but deal with the issue pragmatically and not as an issue of military discipline. For example, Slovenia does not recognize conscientious objection for professional soldiers, but if a contractual soldier asserts this right during the validity of his or her service, typically five to seven years, the contract of employment is terminated. In Australia, even though there is no recognition of conscientious objection for professional soldiers, if they develop a general opposition to military service or a particular conflict, they can apply for discharge or transfer to another unit.

F. Selective conscientious objection

28. An additional aspect of the scope of the right of conscientious objection concerns whether an individual's convictions are against bearing arms in all circumstances or whether a right to conscientious objection can be recognized on a selective basis, based on the nature or circumstances of a particular conflict. The United States, for example, does not recognize selective conscientious objection, and the Supreme Court upheld this during a case arising from the Viet Nam War. The Court concluded that administering a policy allowing conscientious objector status to hinge on objections to a particular war would suffer from an inherent problem of unfairness and potential for discrimination. It also rejected the argument that limiting conscientious objector status to war in general violated the free exercise of religion protected by the United States Constitution.²⁵

29. Selective conscientious objection nevertheless is subject to limited recognition in some countries. For example, in Australia, selective conscientious objection for conscripts is recognized, but not for volunteers who choose to serve in the armed forces. Selective conscientious objection in Australia developed during the 1960s with some successful claims made during the Viet Nam War. The issue received renewed attention during the Gulf War in 1990, and legislation was amended in 1992 to allow recognition of conscientious objection by conscripts to particular conflicts.²⁶

30. In Germany, the Federal Administrative Court in 2005 reversed a disciplinary action against a major in the German armed forces who had refused to work on a software programme that had potential application in the Iraq conflict. The major had refused the work for reasons of conscience as he found the war in Iraq unjust and illegal. The judges found that while the major had not applied for conscientious objector status, he still enjoyed freedom of conscience and had not violated military law.²⁷

31. It should be noted, however, that recognition of selective conscientious objection is still relatively rare. In the Netherlands, for example, where conscientious objection for professional soldiers is allowed, selective objection to particular campaigns is not admitted, and in such a case a professional soldier who has a conscientious objection to a particular conflict may only seek discharge from the armed forces.²⁸

G. Information about applying for conscientious objector status

32. Commission resolution 1998/77 affirms the importance of the availability of information about the right to conscientious objection to military service, and the means of acquiring conscientious objector status, to all persons affected by military service. However, comprehensive information regarding State practice is lacking. Some States provide information about the possibility of applying for conscientious objector status prior to induction into the military, although in some cases this information is not in a user-friendly form that facilitates a clear understanding of the right. In other cases, information on this subject is published only in official gazettes or journals; consequently potential recruits may not have knowledge of their rights when called up or prior to induction into the armed forces.²⁹

33. Potential recruits sometimes learn of the possibility of applying for conscientious objector status because of discussion in the media or because information has been posted on the Internet. While more information is needed to have a better understanding of the issue, time limits imposed on applying for conscientious objector status prior to induction coupled with a lack of information on the right to conscientious objection clearly have the potential to deny significant numbers of individuals of their right to apply for conscientious objector status. It should be noted that information regarding the procedures for applying for conscientious objection status are not limited to potential recruits that are conscripted into the armed forces, but are equally valid for volunteers. Professional soldiers may develop a conscientious objection to bearing arms over time or after specific incidents in military service, and information by States that recognize conscientious objection for those voluntarily serving in the armed forces should be easily and readily available.

H. Application for conscientious objector status

34. Some States have conditions that may disqualify individuals from obtaining conscientious objector status. For example, in Austria an applicant can be rejected if he or she has been convicted of a criminal offence, employed by the State police, holds a gun licence, or if the applicant's objections to the use of violence are considered to be conditional and politically motivated. In Croatia, an application may be rejected if the applicant has been convicted for a criminal offence, or if he possesses weapons. In Greece, persons who have completed any period of armed military service in Greek or foreign armed forces or security services; persons who have obtained a permit to carry a weapon or who have applied for such a permit, as well as persons who participate in individual or collective activities of shooting events, hunting and like activities that are directly related to the use of weapons; and persons who have been convicted of a crime relating to the use of weapons, ammunition or illegal violence or persons against whom criminal proceedings for the above are pending, cannot be considered under the legislative provisions for granting conscientious objector status. In Serbia and Montenegro, applications may be rejected if an applicant has a licence to carry weapons or has been sentenced for criminal acts with three years before submitting an application.³⁰

35. In some other cases, applications can be denied if some formal requirement is lacking in the documentation submitted, such as a statement of motivation. In Croatia, for example, applications may be rejected if the applicant does not clearly state that he refuses military service for moral or religious reasons. In Germany, applications must include a reference to article 4 of the Constitution. In countries that essentially restrict conscientious objector status to certain religious denominations, the application frequently must include the name of the religious organization or group.³¹

36. In many countries, the essential requirement is that the application for conscientious objector status must be "well grounded", a phrase that essentially goes to assessing the genuineness of the applicant's convictions. In such cases, applications for conscientious objector status are examined individually, and may include a personal interview. Nevertheless, a recent study found that 11 European countries choose not to conduct a personal interview of the applicant. In these countries, it has been reported that applications for conscientious objector status tend to be almost automatically accepted, unless there is a disqualifying condition, a formal requirement lacking in the application or the application was not submitted within applicable time limits.³² It has been reported that at least one Latin American country, Paraguay, has a system that requires only swearing a personal declaration to be recognized as a conscientious objector.³³

I. Decision-making bodies

37. Commission resolution 1998/77 calls upon States that do not accept claims of conscientious objection as valid without inquiry, to establish independent and impartial decision-making bodies with the task of determining whether a conscientious objection is genuinely held in a specific case. Council of Europe recommendation 1518/2001 also speaks to this subject stating: "The examination of applications shall include all the necessary guarantees for a fair procedure. An applicant shall have the right to appeal against the decision at first instance. The appeal authority shall be separate from the military administration and composed so as to ensure its independence."

38. A recent study of European countries found that in 10 countries the responsibility for the application procedure was located within civilian ministries, while in 16 countries the responsibility was with the Ministry of Defence. The study found that in all the countries in which concern had been raised about discriminatory treatment towards non-religious applicants, the Ministry of Defence was responsible for the application procedure.³⁴ A review of available information indicates that most States have established boards or committees as decision-making bodies for applications for conscientious objector status. It is difficult to generalize the composition of these boards as there is no uniform pattern, but broadly speaking they tend to be composed of representatives of different government ministries, which may or may not include representatives of the military. In other cases, however, the boards may be composed primarily or exclusively of representatives of the military, but often drawn from different functions within the military. In many countries for which information is available, a decision to deny conscientious objector status can be appealed.

39. Croatia is an example of a country that has a predominantly civilian board, but with military representation. Its decision-making body is the Civilian Service Commission, with members of the Commission including a representative of the Ministry of Defence, the Ministry of Justice Administration and Local Self-Government and the Ministry of Health and Social Welfare. Decisions can be appealed to an appeal panel.

40. Greece has an intermediate system, with a consultative body consisting of a legal adviser of the Legal Council of State, two professors of higher educational institutes, specializing in philosophy, social or political sciences and psychology, and two superior officers of the armed forces, one from the military corps and one from the health corps. The application contains a statement of the reasons for requesting conscientious objector status, supporting documentation showing that the individual does not fall into one of the categories of disqualification, and any other documentation that would support or clarify the request. The consultative committee elaborates its opinion on each application to the Minister of National Defence, who decides whether to grant conscientious objector status. If the Minister does not grant conscientious objector status, the applicant may appeal the decision in the court.

41. The United States, which does not have conscription, has a decision-making system that is within the military and covers serving personnel. The application is subject to an investigative process by a senior officer not in the applicant's chain of command. In the Navy and Air Force, there is an additional requirement that the investigative officer be from the military's legal corps. The investigation includes an interview of the applicant by a military chaplain as well as a psychiatrist or medical officer. The investigative officer conducts an informal hearing at which the applicant can submit evidence. During the entire process, the applicant, at his or her expense, may be represented by counsel, who has access to all materials in the investigative file and who may assist the applicant at the hearing, including in the examination of witnesses. The investigative officer prepares a report, which includes conclusions and recommendations regarding the underlying basis of the applicant's conscientious objection and sincerity of his or her beliefs. The applicant has access to the entire file and may present a rebuttal statement. The decision is made by the designated approving authority for the branch of the military in which the individual serves. If the headquarters of the military service of the applicant has not delegated approval authority to a lower command, or if the lower authority, when delegated, has recommended disapproval of the applicant's request, the military service headquarters makes the final decision.

J. Alternative service: non-combatant and civilian service

42. Commission resolution 1998/77 calls upon States to “provide for conscientious objectors various forms of alternative service which are compatible with the reasons for conscientious objection, of a non-combatant or civilian character, in the public interest and not of a punitive character”. Council of Europe Recommendation R (87)8 states: “Alternative service, if any, shall be in principle civilian and in the public interest.” The Council of Europe recommendation would appear to go further than Commission resolution 1998/77 in that it recommends alternative service be civilian, with the quixotic qualification of “in principle”. Commission resolution 1998/77 indicates that alternative service could be of “a non-combatant or civilian character”, which would leave open the possibility of non-combatant service in the armed forces, provided it is compatible with the nature of an individual’s conscientious objection, in addition to civilian service.

43. In a study of European countries, it was found that in 18 countries alternative service consisted of civilian service outside the armed forces, with such service being most performed in the health and social sector.³⁵ A German non-governmental organization, EAK, reported that in Germany, in addition to performing alternative service with the government-organized civilian service, there was also the possibility to substitute other service abroad, or to engage in a voluntary social year or a voluntary ecological year either at home or abroad for the government-sponsored civilian service. It was pointed out that these voluntary services lasted longer than the official civilian service (conscription and alternative civilian service in Germany is nine months), and were not as well compensated, but that these alternative services to the official civilian service were attractive to some people for personal and career reasons.

44. In some European countries, alternative service by conscientious objectors includes unarmed service within the armed forces as well as substitute service of a civilian character outside the military. For example, Greece and Lithuania reported that alternative service could either be as unarmed service within the military or substitute service of a civilian character. In Armenia, an alternative service law came into effect on 1 July 2004 that provides for two types of alternative service: an alternative unarmed military service and an alternative labour service. Slovenia indicated that, until conscription was abolished in 2003, conscripts could perform their alternative service either in unarmed military service or in a substitute civilian service. It has been claimed that in some countries alternative service in practice appears to be limited to unarmed service within the military.³⁶

45. The United States of America reported that applicants for conscientious objector status can either seek separation from the military or service in a non-combatant role. Successful applicants are granted either Class 1-O conscientious objector status, in which a member objects to participation of any kind in war of any form, or Class 1-A-O status, in which a member objects to participation as a combatant in war in any form. The policy of the United States, therefore, does not require alternative civilian service if an applicant is successful in a claim of conscientious objection that, by its nature, would not permit non-combatant service in the military.

46. Mexico indicated that in case of conscientious objection, there were many tasks of a non-combatant nature that individuals could be assigned to do. It was further reported that starting in 1997, performance of national military service was reoriented, thus enabling

conscripts to contribute to the country's development by participating in socially beneficial programmes in the areas of education, sports, preservation of cultural heritage, the prevention of addiction and social work. Tunisia reported that the obligation of military service has been transformed by law into an obligation of national service. Although the concept of conscientious objection to military service is not incorporated in the law on national service, in addition to serving in the military, the possibility exists for individuals to perform their national service in the public administration, enterprises or in the framework of technical cooperation.

K. Length and conditions of alternative service

47. Commission resolution 1998/77 indicates that alternative service should be "compatible with the reasons for conscientious objection", "in the public interest", and "not of a punitive character". The Human Rights Committee has adopted a number of decisions and concluding observations on the length of alternative service. The Committee's approach is set out in the communication *Foin v. France*. The Committee, in a divided vote, recognized that "the law and practice may establish differences between military and national alternative service and that such differences may, in a particular case, justify a longer period of service, provided that the differentiation is based on reasonable and objective criteria, such as the nature of the specific service concerned or the need for a special training in order to accomplish that service".³⁷ The Committee, nevertheless, found that the French law was based primarily "on the argument that doubling the length of service was the only way to test the sincerity of an individual's convictions", and determined that this did not constitute reasonable and objective criteria. It has been argued that the *Foin* case is inconsistent with an earlier decision of the Committee, *Järvinen v. Finland*, which found that alternative service twice as long as military service was neither punitive nor unreasonable, in the context of a procedure that granted conscientious objector status without evaluation of the applicant's motives.³⁸ Subsequent decisions by the Committee have followed the reasoning in *Foin*.³⁹ The Committee's concluding observations have also subsequently expressed concern that alternative service of 2 times and 1.7 times the length of military service may be "punitive".⁴⁰

48. The European Committee of Social Rights of the Council of Europe, in a divided vote, also accepted "that the less onerous nature of civilian service justifies a longer duration than that of military service", adding that the "Contracting Parties to the Charter indeed enjoy a certain margin of appreciation in this area." Nevertheless, the Committee found that alternative civilian service twice the duration of military service was "excessive" in character, and amounted to a "disproportionate restriction on 'the right of the worker to earn his living in an occupation freely entered upon', and is contrary to article 1, paragraph 2, of the [European Social] Charter".⁴¹

49. Practice regarding the length of alternative service indicates that the duration can vary significantly. One study found that most European countries had alternative service that lasted longer than military service. The most common period of alternative service was 1.5 times military service (eight countries), followed by a period of between 1.5 and less than 2 times military service (six countries). It was relatively rare for alternative service to be twice as long (two countries) or more than twice as long (two countries). Three countries had alternative service that was more than the duration of military service but less than 1.5 times the length. Four States had alternative service for the same length as military service. It is also noteworthy that within different types of alternative service there can be variations as well. In Germany, one of the countries in which military service and alternative civilian service is of equal length,

if individuals choose an option to the official alternative civilian service such as the voluntary social year or a voluntary ecological year, then substitute service is in fact longer than military service.⁴²

50. In countries that have provided the possibility of either unarmed military service or civilian service, there can also be differences in length of service between the two. For example, Greece reported that for those who perform unarmed military service in the place of full armed service, the length of service is 18 months, whereas for those performing alternative civilian service in the social sector in place of full armed service, the length of service is 23 months. It has also been reported that the length of unarmed military service in Armenia is shorter than the period of alternative labour service.

51. The justification frequently advanced for differences in duration of service between regular military service and alternative service is that the overall terms and conditions of alternative service are less onerous than is the case of military service. For example, it has been argued that while working hours are normally fixed in alternative service, the obligations of the military service and the command relationship are permanent. It has been argued that living conditions and lodging may be different as well. These reasons presumably explain the differences in length of service between different categories of alternative service as well.

52. Although it is often assumed that the financial conditions of alternative civilian service are the same as military service or non-combatant service, it is difficult to draw any firm conclusions in this area because of the limited information available. While a number of States do finance alternative civilian service with more or less equivalent financial conditions as military service, there is evidence that in some States, organizations offering placements to conscripts as civilian alternative service may pay part or all of the remuneration.⁴³

L. Military tax in place of military service

53. An issue related to conscientious objector status, or more broadly exemption from or a reduction of compulsory military service for any reason, is the payment of a special tax. Although this is not widespread, it has been reported to occur in a number of countries. Switzerland, for example, levies a tax on earned income for all male citizens who cannot perform their compulsory military service for whatever reason. Other types of taxes relating to exemption or reduction in the period of military service have been reported to occur or to have occurred in countries such as Albania, Ecuador, Georgia, Turkey and Uzbekistan.⁴⁴

54. In a recent case involving a Bolivian national, *Alfredo Díaz Bustos v. Bolivia*, the petitioner claimed conscientious objector status and exemption from the tax for non-performance of military service. The Constitutional Court of Bolivia did not recognize the petitioner's claims, reasoning conscientious objection could not be invoked or applied as a form of exemption from compulsory military service since it had not been so established in legislation. The Court held that the petitioner was liable for payment of the tax. The Ombudsman of Bolivia submitted the case to the Inter-American Commission on Human Rights (IACHR).⁴⁵

55. The IACHR declared the case admissible to study whether Bolivia had violated the rights embodied in articles 13.1 (freedom of thought), 22 (freedom of movement) and 23 (political rights) of the American Convention on Human Rights. Before a decision on the merits,

a friendly settlement was agreed to between Bolivia and the petitioner. Bolivia agreed to (a) deliver a certificate of exemption from military service to the petitioner; (b) issue the certificate of exemption free of charge, without making it conditional on payment of the military tax or any other form of consideration; (c) issue a ministerial decision establishing that in the event of armed conflict, the petitioner would not be sent to the front or called up as an auxiliary in view of his status as a conscientious objector; (d) incorporate the right of conscientious objection to military service in preliminary drafts for the reform of military legislation; (e) promote, with the Ministry of Justice, approval by Congress of military legislation incorporating the right of conscientious objection to military service. On 25 July 2005, IACHR gave effect to the friendly settlement of the case.⁴⁶

M. Asylum and other forms of international protection

56. Commission resolution 1998/77 encourages States, subject to the individual concerned meeting the requirements of the definition of a refugee as set out in the 1951 Convention relating to the Status of Refugees, to consider granting asylum to those conscientious objectors compelled to leave their country of origin because they fear persecution owing to their refusal to perform military service when there is no provision, or no adequate provision, for conscientious objection to military service. The contribution of UNHCR noted that as with any development in human rights standards and their understanding, the evolution of the right to conscientious objection can have an impact on the interpretation of the refugee definition given in article 1.A (2) of the 1951 Convention relating to the Status of Refugees.⁴⁷ This is so, in particular in relation to the term “persecution” contained in the refugee definition.

57. UNHCR noted that in exercise of its international protection mandate and as part of its monitoring function under article 35 of the 1951 Convention, it carefully follows State practice and jurisprudence on this issue. The organization reported that, according to present State practice, a State’s refusal to recognize any form of conscientious objector would not as such mean that a conscientious objector who has fled that country and claimed asylum should automatically be recognized as a refugee. This may, however, be the case if such a conscientious objector would face treatment amounting to persecution on account of his or her race, religion, nationality, membership of a particular social group or political opinion. This would be so, for instance, if the individual were to face inhuman, degrading or disproportionately severe punishment for the military offence on one or more of these grounds, or if it can be shown that he or she has a well-founded fear of persecution on these grounds above and beyond the punishment for desertion, including violations of the right to life or other serious human rights violations.⁴⁸

58. Indeed, UNHCR has observed that a significant number of States are ready to provide international protection to conscientious objectors, draft evaders and deserters. States have recognized that conscientious objection, which may, inter alia, be expressed through draft evasion and desertion, can arise from a political opinion or a religious belief, that conscientious objection can in itself be regarded as a form of political opinion and, more rarely, that objectors or a particular class of them can constitute a particular social group.

59. On the specific situation of selective conscientious objectors, UNHCR noted that State practice on the issue is evolving. UNHCR observed that it serves the integrity of the international legal regime as a whole if an individual, for whom fleeing and claiming asylum is

the only way of avoiding participation in an internationally condemned war involving conduct contrary to international law, or in wars which systematically breach international humanitarian law, is granted international protection. For example, a large number of nationals from certain armed conflicts, such as the “wars of the Yugoslav succession”, benefited from provisions allowing them at least temporary leave to remain in countries of asylum on the basis of a wide variety of forms of selective and complete conscientious objection.

60. In post-conflict situations, UNHCR stated that the process of consolidating peace and enabling voluntary repatriation can be assisted by amnesties that grant returnees immunity from prosecution for offences they may have committed in relation to military conscription, desertion or armed service, including in or from non-recognized armed forces, as long as these amnesties exclude returnees charged, inter alia, with a serious violation of international humanitarian law, or genocide, or a crime against humanity, or a crime constituting a serious violation of human rights, or a serious common crime involving death or serious bodily harm, committed prior to or during exile.⁴⁹ Such amnesties need to be effective in practice as well as in law and should also ensure there is no discrimination in law or practice, both because this would constitute discrimination, contrary to the Human Rights Committee’s requirement of non-discrimination against those who fail to undertake military service⁵⁰ and because an amnesty which discriminated in this manner would inhibit returns.

IV. CONCLUSIONS

61. **This report demonstrates that an increasing number of States are continuing to develop or improve provisions for the implementation of the right to conscientious objection, to comply with human rights standards. It also demonstrates the wide variety of approaches for dealing with the right to conscientious objection, and alternative service when States require this. Problems, however, remain in a number of States, which either do not recognize the right to conscientious objection or whose practices do not fully conform to international standards. States that have not yet done so should be encouraged to recognize the right of conscientious objection, and to give full effect to this right. In States where the right is recognized, but implementation is not fully consistent with international norms, States should be encouraged to end time limits for individuals to apply for conscientious objector status, to make information more easily available and understandable, to ensure that conscientious objection is not limited to specific religious denominations, but that it can be grounded in other religious beliefs as well as for non-religious secular convictions.**

62. **States that require substitute service for conscientious objectors should be encouraged to provide, in addition to non-combatant service, civilian service, and States should endeavour to ensure that no form of alternative service is punitive in character. States that have not yet done so should be encouraged to consider recognizing conscientious objection for professional soldiers. States, subject to the circumstances of the individual case meeting the other requirements of the definition of a refugee as set out in the 1951 Convention relating to the Status of Refugees, should be encouraged to consider granting asylum to conscientious objectors compelled to leave their country of origin because they fear persecution owing to their refusal to perform military service when there is no provision, or no adequate provision, for conscientious objection to military service.**

Notes

¹ *CO Update* No. 15: November 2005 (<http://wri-irg.org>).

² *The right to conscientious objection in Europe: A review of the current situation*, Quaker Council for European Affairs, Brussels, April 2005; Replies of Slovenia, Defensor del Pueblo of Spain and Conscience and Peace Tax International (CPTI).

³ See e.g. *CO Update* (issued monthly); Amnesty International Document Library (<http://www.amnesty.org>).

⁴ Concluding observations of the Human Rights Committee on: Viet Nam, *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 40 (A/57/40)*, vol. I, para. 82; Venezuela, *ibid.*, *Fifty-sixth Session, Supplement No. 40 (A/56/40)*, vol. I, para. 77.

⁵ For example, concluding observations of the Human Rights Committee on: Venezuela, *ibid.*, *Forty-eighth Session, Supplement No. 40 (A/48/40)*, vol. I, para. 291; Austria, Ecuador and Belarus, *ibid.*, *Forty-seventh Session, Supplement No. 40 (A/47/40)*, paras. 110, 247 and 536, respectively; Spain, *ibid.*, *Forty-sixth Session, Supplement No. 40 (A/46/40)*, para. 172; Portugal and Saint Vincent and the Grenadines, *ibid.*, *Forty-fifth Session, Supplement No. 40 (A/45/40)*, vol. I, paras. 156 and 251, respectively; Norway and the Netherlands, *ibid.*, *Forty-fourth Session, Supplement No. 40 (A/44/40)*, paras. 83 and 219, respectively; Finland and Hungary, *ibid.*, *Forty-first Session, Supplement No. 40 (A/41/40)*, paras. 210 and 398, respectively; Iceland, Australia and Peru, *ibid.*, *Thirty-eighth Session, Supplement No. 40 (A/38/40)*, paras. 113, 150 and 269, respectively; Norway, *ibid.*, *Thirty-sixth Session, Supplement No. 40 (A/36/40)*, para. 358; and Canada, *ibid.*, *Thirty-fifth Session, Supplement No. 40 (A/35/40)*, para. 169.

⁶ For example, concluding observations of the Human Rights Committee on: Israel, *ibid.*, *Fifty-eighth Session, Supplement No. 40 (A/58/40)*, vol. I, para. 85.

⁷ For example, concluding observations of the Human Rights Committee on: Latvia, CCPR/CO/79/LVA (6 November 2003), para. 15; Georgia, *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 40 (A/57/40)*, vol. I, para. 78.

⁸ For example, concluding observations of the Human Rights Committee on: Georgia, *ibid.*

⁹ *Ibid.*, para. 18.

¹⁰ Reply of Singapore. A similar assertion was made in a joint letter, dated 24 April 2002, by 16 member States, including Singapore (E/CN.4/2002/188, annex). Commission resolutions 2004/35, 2002/45, 2000/34, 1998/77, 1997/117, 1995/83, 1993/84, 1991/65 and 1989/59 on conscientious objection were adopted without a vote. Resolution 1987/46 was adopted by a vote of 26 in favour, 2 against and 14 abstentions.

¹¹ Replies of Greece (health status considered prior to request for conscientious objection); Chile (descendants of victims of human rights violations); Chile, Lebanon, Mexico and the Philippines (religious officials); National Human Rights Office of Kazakhstan (conscripting having holy orders or a position at a religious association have a deferment from military service for period

of their religious activities); Lebanon (only child and only person supporting the family); the Philippines (residents abroad are exempted from service in reserve units for the duration of their absence from the country; persons convicted of crimes involving moral turpitude and those who are physically and mentally unfit to serve are exempted). For all other exemptions mentioned see reply of CPTI.

¹² Reply of CPTI.

¹³ See e.g. replies of Belarus, Croatia, Lithuania, the Russian Federation and Slovenia.

¹⁴ See e.g. replies of Greece, United States and the Human Rights and Equal Opportunity Commission of Australia.

¹⁵ See e.g. replies of Belarus, Croatia, Lithuania, the Ombudsman Office of Poland, the Russian Federation and Slovenia. States which have constitutional provisions recognizing the right to conscientious objection, but do not have implementing legislation can run into difficulties in giving effect to this right.

¹⁶ For example, the armed forces of Israel in 1995 established a “Committee for Granting Exemptions from Defence Service for Reasons of Conscience”. Reply of CPTI.

¹⁷ The United States Supreme Court has broadened the right of conscientious objectors to include non-religious conscientious objectors. See *United States v. Seeger*, 380 U.S. 163, 166 (1965) (extending application of law on conscientious objection from religious beliefs to those who have secular beliefs that are “sincere and meaningful (and occupy) a place in the life of the possessor parallel to that filled by an orthodox belief in God”); *Welsh v. United States*, 398 U.S. 33, 344 (1970) (plurality opinion) (conscientious objector status applies to all those whose consciences, spurred by deeply held moral, ethical, or religious beliefs, “would give them no rest or peace if they allowed themselves to become a part of an instrument of war”). However, in the Republic of Korea, the Constitutional Court and the Supreme Court have ruled that there is no right to conscientious objection. See “Conscientious objector sentenced to 18 months in jail”, *Korea Herald*, 4 July 2005, see also *CO Update* No. 4: December 2004. In Azerbaijan, the Supreme Court on 4 February 2005 rejected the claim of a Jehovah’s Witness for conscientious objector status, based on article 76 (2) of the Azeri Constitution which states, “If beliefs of citizens come into conflict with service in the army then in some cases envisaged by legislation alternative service instead of regular army service is permitted.” The Court reasoned that as Azerbaijan has not yet passed any law implementing this right, the appeal had to be rejected. See *CO Update* No. 7: March 2005.

¹⁸ *The right to conscientious objection in Europe*, op. cit.

¹⁹ Reply of CPTI.

²⁰ *The right to conscientious objection in Europe*, op. cit.

²¹ Reply of the Human Rights and Equal Opportunity Commission of Australia citing the *Defence Act 1903 s. 4*.

²² *The right to conscientious objection in Europe*, op. cit.

²³ Ibid.

²⁴ Reply of the United States; *The right to conscientious objection in Europe*, op. cit.

²⁵ *Gillette v. United States*, 401 U.S. 47 (1971).

²⁶ *Defence Legislation Amendment Act 1992*.

²⁷ See *CO Update* No. 12: August 2005.

²⁸ *The right to conscientious objection in Europe*, op. cit.

²⁹ Reply of CPTI.

³⁰ *The right to conscientious objection in Europe*, op. cit., reply of Greece.

³¹ *The right to conscientious objection in Europe*, op. cit. For example, it was reported that in Ukraine applications should include a document signed by a religious minister of a denomination that is included in the Government's list of religious organizations.

³² Ibid.

³³ Reply of CPTI.

³⁴ *The right to conscientious objection in Europe*, op. cit.

³⁵ Ibid.

³⁶ Ibid.

³⁷ *Foin v. France*, communication No. 666/1995, CCPR/C/67/D/666/1995 (decided 9 November 1999).

³⁸ See M. Nowak, *U.N. Covenant on Civil and Political Rights, CCPR Commentary*, 2nd rev. ed., N.P. Engel, Kehl (2005), pp. 613-614; *Järvinen v. Finland*, communication No. 295/1988.

³⁹ See *Maille v. France*, communication No. 689/1996; *Vernier v. France*, communication No. 690; and *Nicolas v. France*, communication No. 691/1996.

⁴⁰ See e.g. concluding observations of the Human Rights Committee on Estonia (Committee is concerned that alternative service "may be up to twice as long as the duration of regular military service. ... The State party is under an obligation to ensure that ... the duration ... is without punitive effect") CCPR/CO/77/EST (2003); Russian Federation ("the Alternative Civilian Service Act ... appears to be punitive in nature by prescribing civil service 1.7 times that of normal military service") (CCPR/CO/79/RUS (2003).

⁴¹ *Quaker Council for European Affairs v. Greece*, complaint No. 8/2000, Decision on the Merits, European Committee of Social Rights (2001).

⁴² *The right to conscientious objection in Europe*, op. cit., table 4; reply of Evangelische Arbeitsgemeinschaft zur Betreuung der Kriegsdienstverweigerer (EAK).

⁴³ Reply of CPTI.

⁴⁴ Ibid.

⁴⁵ Report No. 52/04, case 12.475, *Alfredo Díaz Bustos v. Bolivia* (13 October 2004).

⁴⁶ Report No. 97/05, Solucion amistosa, Petición 14/04, *Alfredo Díaz Bustos v. Bolivia* (27 October 2005). But see report No. 43/05, case 12.129, *Christián Daniel Sahli Vera et al. v. Chile* (10 March 2005) (where the IACHR found that “failure of the Chilean State to recognize ‘conscientious objector’ status in its domestic law, and failure to recognize [the petitioners] as ‘conscientious objectors’ ... does not constitute an interference with their right to freedom of conscience”).

⁴⁷ As an example of how the evolution of international human rights law can have an impact on the interpretation of the refugee definition, it is worth mentioning the 2005 general comment of the Committee on the Rights of the Child obligation which affirms that the principle of non-refoulement applies to children facing a real risk of under-age recruitment. This affirms that States “shall refrain from returning a child in any manner whatsoever to the borders of a State where there is a real risk of under-age recruitment, including recruitment not only as a combatant but also to provide sexual services for the military or where there is a real risk of direct or indirect participation in hostilities, either as a combatant or through carrying out other military duties.” Committee on the Rights of the Child, general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin, 3 June 2005, para. 28.

⁴⁸ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status*, 1979, re-edited, 1992, paras. 167-174.

⁴⁹ UNHCR Executive Committee Conclusion No. 101, 2004, on legal safety issues in the context of voluntary repatriation of refugees, paragraph (g). On a similar basis, international humanitarian law advocates application of the widest possible amnesty at the end of civil wars, not for the purpose of exempting those who have committed such crimes but to cover the fact that they could otherwise be tried for “reason” for taking up arms against the State and/or for what would in international armed conflicts be “lawful acts of war”.

⁵⁰ Human Rights Committee, general comment No. 22 on article 18 (1993), para. 11.
