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THE ROLE OF YOUTH IN THE PROMOTION AND PROTECTION OF
HUMAN RIGHTS, INCLUDING THE QUESTION OF CONSCIENTIOUS
OBJECTION TO MILITARY SERVICE

Report by the Secretary-General

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INTRODUCTION

1. In its resolution 1987/46 of 10 March 1987, entitled "Conscientious objection to military service", the Commission on Human Rights requested the Secretary-General to report to the Commission at its forty-fifth session on the question of conscientious objection to military service, taking into account comments provided by Governments and further information received by him.

2. Accordingly, in a note verbale of 22 May 1987, the Secretary-General invited all Member States, United Nations bodies, specialized agencies, intergovernmental organizations and non-governmental organizations to supply any relevant information and comments for the above-mentioned report, if possible by 31 December 1987. A copy of resolution 1987/46 was also transmitted with each note verbale.

3. In conformity with Commission resolution 1987/46, the present report by the Secretary-General on the role of youth in the promotion and protection of human rights, including the question of conscientious objection to military service is submitted to the Commission on Human Rights at its forty-fifth session.

I. VIEWS OF STATES WITH NATIONAL MILITARY SERVICE THAT PROVIDE
FOR ALTERNATIVES TO SERVICE IN THE ARMED FORCES

Bulgaria

[Original: English]
[19 February 1988]

In conformity with the Constitution of the People's Republic of Bulgaria, "The Defence of the Fatherland is the Highest Duty and a Matter of Honour for Every Bulgarian Citizen" (art. 61, para. 1). Bulgaria's conscription system functions as a general and compulsory military service valid for all citizens of the People's Republic of Bulgaria, regardless of race, religious belief, educational level, social origin and situation (art. 62 of the Constitution and art. 3 of the Compulsory Military Service Law).

In determining its approach to the issue of conscientious objection to military service, the Government of the People's Republic of Bulgaria proceeds from the understanding that the professing of given moral, ethical, religious or other beliefs banning the bearing of arms, represents a concrete manifestation of the right of each individual to freedom of thought, religious belief and conscience. In the search for possibilities to harmonize to the utmost degree the rights and duties of the individual and of the society as a whole, short of negative impact upon the country's national security, efforts are being exerted in the People's Republic of Bulgaria to find such forms of carrying out the military service which would not run counter to principles of conscience and religious beliefs, be it with respect to individuals or groups of people.

Although the right to conscientious objection to military service has not been translated into a concrete legal form, Bulgaria's national legislation provides for various alternatives in this regard. Most widespread is the non-combat duty within the framework of the Construction Forces. Basically, these forces perform construction and building duties, therefore they operate outside the national Armed Forces.

The State Council of the People's Republic of Bulgaria has issued, on its part, a number of decrees, whereby it has furnished, through the national legislation, the possibility for young men to validate their regular conscription by working in certain industrial sectors over a period of five years. More specifically, this form of non-combat duty covers young men who have worked in metallurgical plants - decree No. 4/1974; in shipbuilding yards - decree No. 7/1976; in ore mining, coal-mining and mine-building - decree No. 606/1977; in geological prospecting and oil and gas mining - decree No. 1241/1977. By virtue of these decrees, the conscripts working in the respective sectors of the national economy enjoy all the rights and carry the obligations in conformity with the Labour Code, i.e. they are not subject to the rights and duties of conscripts. This is a civil service outside the Armed Forces. In this way the concrete prerequisites have been laid down to blend the interests of society - by performing labour useful for the whole society - with the interests and moral, ethical, and religious beliefs of individuals.

To stimulate certain national economy sectors, particularly bearing the national development goals in mind, the legislation of the People's Republic of Bulgaria provides for yet another alternative to service in the Armed Forces. In conformity with the provisions of decree No. 3407/1984, young men can validate their military service when admitted as students in the professional disciplines: "Electronics and Automation" and "Biotechnologies", providing they assume the obligation to work within their speciality following graduation, for 10 years, at least.

It has been the consistent goal of the Government of the People's Republic of Bulgaria to arrive at effective solutions to the genuine issues confronting the individual in today's world, to promote respect for human dignity and the guarantees for the whole array of human rights and fundamental freedoms. In the search for ways to harmonize obligations vis-à-vis society and the conscience and religious beliefs of individuals, with regard to their rights and fundamental freedoms, it is imperative to guarantee, at the global level, the basic human right - the right to life. To overcome the contradictions in contemporary relations among States and to diminish international tensions, to put into effect real measures for general and complete disarmament and to set up a comprehensive System for International Peace and Security whose integral component is the socio-humanitarian sphere, too - these are the avenues along which the moral and ethical demands of conscience of the billions of people around the globe, for a world without wars and weapons, can be met. This is also the understanding of principle of the People's Republic of Bulgaria, upon which it promoted and will promote its relations with all countries, irrespective of their socio-political system.

Finland

[Original: English]
[4 November 1987]

Military service in Finland is based on the general obligation of national defence stipulated in the Constitution. Subparagraph 1 of paragraph 75 of the Constitution states that "every Finnish citizen is under an obligation to participate in the defence of the country or assist in this task, as prescribed by the law". The Military Service Act (453/50) was enacted by virtue of this provision of the Constitution. According to this Act every male citizen is liable for military service. Military service consists of armed service of prescribed duration in the Defence Forces.

Under certain conditions, military service may be carried out in forms alternative to armed service. According to the Unarmed Military Service and Civil Alternative Service Act (132/69) "a person liable for military service who objects to military service on profound conscientious grounds based on religious and ethical conviction shall, upon request, be exempted from military service in peacetime". A person exempted from military service must perform unarmed military service or non-military service.

A person liable for military service who has been exempted from military service must primarily perform unarmed military service within the Defence Forces. He is not obliged to handle arms or ammunition or other similar

equipment, practise their use or participate in their maintenance. In all other respects, unarmed military service is equivalent to armed military service with the exception that the period of service exceeds by 90 days the general period of armed military service (240 days).

If the conscientious grounds referred to in the Act prevent a person liable for military service also from performing unarmed military service in the Defence Forces, he can perform non-military service in public administration or in a university hospital. Non-military service must, according to law, be so arranged that the conviction of a person performing such service does not come into conflict with his responsibilities arising from this service. The period of service in non-military service exceeds by 240 days the general period of service, that is 480 days altogether. Practical arrangements for non-military service are taken care of by the Ministry of Labour.

A provisional amendment to the Unarmed Military Service and Civil Alternative Service Act entered into force on 1 January 1987. The Amendment (647/85) is in force on a trial basis until the end of 1992. This amendment abolished the inquiry procedure concerning the sincerity of the religious or ethical conviction of conscientious objectors. A simple statement that a person wishes to perform non-military service is sufficient. It is also up to him to choose between unarmed military service and non-military service. Transfer from armed military service into unarmed military service or non-military service is possible in all phases of the service period.

If a person called up for refresher training informs the military authorities that serious grounds of conscience prevent this participation, he is exempted from refresher training and ordered to perform alternative service.

If a person liable for military service refuses to perform armed or unarmed military service, the case will be dealt with according to the Military Code. If a person refuses to perform alternative service (total objector), the penal provisions of the Unarmed Military Service and Civil Alternative Service Act will be applied. According to these provisions, such a person will be sentenced to prison for a period which is equivalent to two thirds of his remaining service period plus five months, at the most. However, periods of service and sentence altogether may not exceed 16 months. Once a person has fully completed his sentence, he will not be called up for non-military service again.

An Act which exempts Jehovah's Witnesses from military service in certain cases entered into force on 1 January 1987. According to this Act (645/85), a Jehovah's Witness may be granted a deferment of military service until the end of the year during which he reaches 28 years of age and thereupon exempted from military service in peacetime. In practice, this means that Jehovah's Witnesses are not required to perform military service in any form in peacetime.

German Democratic Republic

[Original: English]

[20 January 1988]

1. The German Democratic Republic agrees to the basic position reflected in resolution 1987/46 of the Commission on Human Rights calling for efforts on the part of all States aimed at the definitive removal of the threat of war, the preservation of international peace, the realization of the right to self-determination and the development of international co-operation in accordance with the Charter of the United Nations. These objectives are also pursued by the German Democratic Republic through its foreign policy, which is designed to banish war from the life of mankind.

2. In view of the fact that under the Charter of the United Nations the maintenance of peace is the foremost duty of States, a duty which in the face of the continuing arms race keeps gaining in importance, having become a prerequisite for the survival of mankind, the practice of military service for the practical protection of peace is a sovereign right of any peace-loving State.

The German Democratic Republic believes that military service is also in full harmony with any religious ethical concept if such service has a peace-preserving function, i.e. if in the final analysis its purpose is to ensure that weapons will never be used.

3. Taking guidance from the bitter lessons of history, the German Democratic Republic has always viewed it as an obligation to make every effort to ensure that never again will a war start from German soil. It has thereby defined its national military effort as being exclusively defensive in nature.

4. This position of the German Democratic Republic, which reflects the nature and content of its military service, was reaffirmed before all States and before the citizens of the German Democratic Republic when in May 1987 the Warsaw Treaty States revealed their military doctrine and approached the member States of the North-Atlantic alliance with the proposal to enter into consultations for the purpose of comparing military doctrines.

The German Democratic Republic therefore has good reason to note that between the concern of its citizens for the preservation of peace and the military policy of their State there are no contradictions that could burden people's consciences or give rise to conflicts between conscience and civic duty in doing military service. Nor must one lose sight of the fact that it is a basic tenet of the International Covenant on Civil and Political Rights that the individual has duties to other individuals and to the community to which he belongs.

5. However, in accordance with the freedom of conscience and belief guaranteed in article 20 of its Constitution, the German Democratic Republic, as early as 1964, by decree of its National Defence Council, created the opportunity for service in construction units recognized in lieu of military service for those citizens who on account of their religious beliefs or on similar grounds refused to do military service involving the use of arms.

Accordingly, any refusal to do military service on the above-mentioned grounds is not subject to criminal prosecution.

Through these provisions the German Democratic Republic has been meeting the concern which for several years has been a subject of discussions at the Commission on Human Rights and other United Nations bodies.

Federal Republic of Germany

[Original: English]
[15 January 1988]

Pursuant to the Basic Law of the Federal Republic of Germany, no one may be compelled against his conscience to render war service involving the use of arms. This right enshrined in the Basic Law is a constitutionally guaranteed manifestation of the freedom to act according to the dictates of one's conscience and thus constitutes an autonomous basic right in the Federal Republic of Germany. The details are regulated by the Conscientious Objection Act, under which a person liable to military service may apply for recognition as a conscientious objector. The application must contain a reference to the right of conscientious objection embodied in the Basic Law and be accompanied by a detailed curriculum vitae, a detailed description of the reasons for the decision to refuse military service and a certificate of good conduct.

Applications submitted by persons called up for military service are decided on by the Federal Agency for Civilian Service in written proceedings. The relatively small number of applications presented by persons already rendering military service are decided on by independent committees and, if the applicant lodges an objection, by examination boards for conscientious objection. An applicant may institute legal proceedings before an administrative court in the event of his application being turned down by the Federal Agency for Civilian Service or the examination boards for conscientious objection. Decisions by administrative courts can, where leave to appeal is granted, be appealed against by recourse to the Federal Administrative Court. In the event of his appeal being rejected by the Federal Administrative Court, the applicant may finally make use of the special legal remedy of lodging a constitutional complaint with the Federal Constitutional Court.

General military service, to which men who have attained the age of 18 are liable, is also laid down in the Basic Law. To preserve the constitutional principle of equal treatment, conscientious objectors may be required to render substitute service. The details are regulated by the Civilian Service for Conscientious Objectors Act, pursuant to which persons who have been formally recognized as conscientious objectors are called up for civilian service in the form of activities benefiting the public at large, primarily in the social sphere. Formally recognized conscientious objectors who have rendered certain voluntary services abroad which further international understandings are subsequently not called up for civilian service.

Norway

[Original: English]
[18 February 1988]

1. According to section 1 of Act No. 3 of 20 August 1965 relating to exemption from military service for reasons of personal conviction, a conscript shall be exempted from military service if there is reason to assume that he is unable to perform military service of any kind without coming into conflict with deep personal convictions.

As long as the personal conviction complies with the requirements of the Act as to substance, depth and firmness, it is of no consequence whether it has a religious ethical or political basis.

2. According to section 10, a conscript who is exempted from military service under the Act shall perform compulsory civilian service. The prescribed term of service is 16 months. Up to 12 months of any military service that has already been performed shall be deducted.

According to section 10 of the Act, the service shall be of a civilian nature and have no relation to military installations or undertakings.

Over 70 per cent of those doing civilian service work in the health and social welfare sector. The remainder fulfil their civilian service obligation by working in the Civil Service Administration, at camps, in agriculture and forestry, for humanitarian organizations or museums/other cultural institutions, or in research-related work, etc.

3. According to section 2 of the Act and appurtenant regulations, applications for exemption from military service for reasons of personal conviction shall be considered by the Ministry of Justice. Approximately 80 per cent of the applicants are granted exemptions following administrative proceedings. If a conscript's application is refused, he is given three weeks to decide whether he is willing to accept the refusal and perform his military service. If he is not willing to do, the State shall institute proceedings against him in a civil court, which will make a final decision in the matter, cf. section 5 of the Act.

Portugal

[Original: French]
[7 December 1987]

1. Under Revision No. 1/88, the Portuguese Constitution states in article 4, paragraph 6, that "the right to conscientious objection is safeguarded under the terms of the law".

This attitude had already been adopted in the initial version of the 1976 Constitution, which, however, provided for conscientious objection solely to military service.

2. Since it is a fundamental right recognized in the Constitution, the authorities (and private entities) are required to ensure that it is applied directly, even in cases where it is not regulated by any law. In other words,

even in the absence of special regulations conscientious objectors are entitled, by direct reference to the provisions of the Constitution, to refuse to perform armed military service.

Article 276 of the Constitution goes on to establish that:

"4. Conscientious objectors shall perform civilian service, of a duration and hardship equivalent to armed military service.

5. Civilian service may be established to replace or supplement military service and may be required by law for all citizens not liable to military duties."

3. In view of these principles, persons liable to military service must above all be informed in proper time of their right to refuse to perform such service, in other words, before they are enlisted. Otherwise, the procedure to be followed and the application cannot be considered before the start of military service, unless the application involves postponement. In this case, however, a prompt solution has to be found so that an applicant for the status of conscientious objector is afforded a guarantee that he will not be harmed by any delay in the final decision and to ensure that the Armed Forces are in a position to plan their activities in the light of the number of existing objectors.

An application for such status must also be possible if the reasons therefor arise after enlistment and in cases in which other periods of military service are deemed compulsory.

4. Naturally, an alternative service is required to "replace or supplement military service" (art. 276, para. 5). In this way, conscientious objectors can be assigned to different duties and carry out activities which are useful to society and, at the same time, do not conflict with the reasons for their application.

Accordingly, conscientious objectors who do no more than refuse to bear arms can simply be assigned to activity to supplement armed military service.

With reference to the nature of such service, the constitutional principles relating to the activities of the Armed Forces have to be taken into account.

Article 275

"4. The Armed Forces shall be at the service of the Portuguese people.

5. The Armed Forces may, pursuant to the law, co-operate in work which has a bearing on fulfilling the essential needs and improving the quality of life of the population."

The alternative service must not be longer or involve more hardship than armed service. Status as a conscientious objector must not be viewed as a penalty or, at least, as something that warrants less favourable treatment. A harsh alternative service might well urge an objector to forget his profound personal convictions and place him under an obligation to perform traditional military service.

Again, cases of worse treatment on the grounds of political, ideological, religious or other convictions would be a breach of the Constitution, which states in article 13, paragraph 2:

"No one may be privileged, placed at an advantage or disadvantage, or deprived of a right to be exempted from a duty on account of his or her descent, sex, language, place of origin, religion, political or ideological beliefs, education, financial situation or social status."

5. The Assembly of the Portuguese Republic adopted the legal system governing conscientious objectors in Act No. 6/85, of 4 May.

Naturally, the Act adopts the basic principles of the Constitution and covers and regulates civilian service (art. 4 et seq.) in the light of the interests, capacity for selflessness and educational and occupational aptitudes of the objector (art. 7).

Sanctions are also established for cases of refusal to perform military service or desertion (art. 8).

6. Under the terms of chapter IV of the Act, the procedure for obtaining status as a conscientious objector is judicial and an application must be submitted to the court of the area in which the applicant has his residence.

The court's decision is open to appeal.

7. A special interim system is established for citizens who, at the time of publication of the Act, had already applied for objector status and citizens who, having commenced military service, wished to apply for such status (chapter V).

These are the basic features of the legal status of conscientious objectors.

The Portuguese Government will soon be adopting regulations concerning alternative civilian service, provided for in article 4 of Act No. 6/85. */

In any event, it is already definite that civilian service will be performed in the order of preference established in paragraph 2 of article 4.

Sweden

[Original: English]
[21 January 1988]

Swedish legislation in the field of "Conscientious objection to military service" has not been subject to any changes since comments were submitted by Sweden to the Centre for Human Rights on 31 October 1984 (E/CN.4/1985/25).

*/ Act No. 6/85 is available for consultation in the Secretariat (French only).

II. VIEWS OF STATES THAT DO NOT IN PRINCIPLE ALLOW CONSCIENTIOUS
OBJECTION TO MILITARY SERVICE BUT CONSIDER INDIVIDUAL CASES

Cuba

[Original: Spanish]

[10 November 1987]

The Constitution of the Republic of Cuba, the highest-ranking legal rules of our socialist State, was adopted by the free, direct and secret ballot of the people of Cuba. In keeping with the economic and social reality from which it stems, it enunciates and amply guarantees the principles of social equality and justice and it fully recognizes the exercise by all citizens of fundamental rights and freedoms on an equal footing; establishes that the socialist State of Cuba fulfils the will of the workers; preserves and defends the integrity and sovereignty of the motherland; and guarantees the freedom and full dignity of man, the enjoyment of his rights and the integral development of his personality.

To safeguard territorial integrity and national sovereignty, to preserve the creative work of the people and its historic achievements, to deter the imperialism of the United States, which has blockaded us, has organized acts of sabotage, piracy and military actions against Cuba, including the dispatch of mercenaries from bases in its territory, and to cope with and to overcome any case of aggression, the requisite material and human resources are assigned to the defence of Cuba; the nation as a whole is involved in such tasks, as a guarantee that this country will never be turned into a neo-colony, and as a mark of the unity of our people and its determination to live its Revolution or perish in striving to defend it.

In keeping with these aims and with the sovereign will of the people, the Constitution establishes in article 64 that "defence of the socialist motherland is every Cuban's greatest honour and highest duty".

Cuba's Armed Forces are forces for defence, not forces of aggression. The people of Cuba is ready to defend every inch of territory that is attacked and has shown this by mass voluntary enlistment in the Territorial Militia, which, in view of the threats and the military manoeuvres by the United States around Cuba, was created on 1 May 1980 to form, together with the regular units and the reserve, the great people's army of the Revolution.

In Cuba, general military service must be performed, as a school for military preparation and integral training, by all Cuban citizens from 16 to 50 years of age, but its distinct purpose is to defend the motherland against acts of aggression organized by enemies abroad.

Cuba's recruitment policy for military service covers Active Military Service for fit young men who are politically, morally and mentally suitable; they regard military service as a great honour, as a school in which the young and the participants in general receive not only military training for the defence of the motherland but also schooling and moral and educational instruction to train them as upstanding men. For this purpose, the Patriotic Military Education Society was established to help train the younger generation for enlistment and to educate children and young people in the fighting traditions of our people.

Defending the motherland is a tradition of the people of Cuba, which applauded General Antonio Maceo, the symbol of our people's spirit and indomitable will to fight, the hero of our Wars of Independence in 1868 and 1895, who said: "Anyone who tries to take over Cuba will find that its soil is bathed in blood, unless he has died in the fight", something which is summed up in our people's warcry "Motherland or Death".

The Constitution states in article 12 that the Republic of Cuba endorses the principles of proletarian internationalism and the fighting solidarity of peoples and it condemns imperialism, the mainspring and support of all manifestations of fascism, colonialism and racism, as the main force of aggression and war and the worst enemy of peoples; it condemns direct or indirect imperialist intervention in the internal or external affairs of any State, and hence armed aggression, economic blockades or any other form of interference or threat to the integrity of States and the politics, economies and cultures of nations; it characterizes wars of aggression and of conquest as international crimes; it recognizes the legitimacy of wars of national liberation and armed resistance to aggression and conquest; it considers that its internationalist right and duty is to help a State which has been attacked and help peoples waging the struggle for liberation; and it works for honourable, lasting peace based on respect for the independence and sovereignty of peoples and the right of peoples to self-determination.

In keeping with the duty of solidarity and internationalist help enunciated in our Constitution, Cuba's Armed Forces have, when requested, unhesitatingly and firmly supported countries threatened by aggressors which, in the service of imperialism, have endangered their integrity and independence, just as it is rendering support to the fraternal people of Angola in its struggle against racist invasion by the South African régime of apartheid.

We would point out that all Cuban internationalist combatants have gone to the People's Republic of Angola voluntarily. Every combatant was able to say that he wanted to stay in Cuba and not participate in performing this internationalist task, and all those in Angola have gone there of their own free will.

Commander-in-Chief Fidel Castro said in his speech on 26 July 1977 that "when volunteers were wanted for Angola, hundreds of thousands of Cubans wanted to take part in this display of solidarity with the people of Angola. Hundreds of thousands! For each one that did go, there were 30 reservists who had to stay here".

Cuba's Criminal Code was adopted on 30 December 1978 and, in response to the principles enunciated in the Constitution and in keeping with our people's political, social and cultural advancement and high degree of awareness, it incorporates as offences acts that are rejected by international legal thinking and condemned in international conventions to which our country is a party, such as those on mercenarism, genocide and apartheid, even though offences of this kind cannot occur in our society.

Under the heading of offences against the peace and international law, our Criminal Code also includes offences such as "incitement to war" and imposes penalties on anyone who "engages in incitement to a war of aggression" (art. 120 (a)); and "violation of the sovereignty of a foreign State", which

mentions "anyone who carries out an act aimed at undermining the independence of a foreign State, the integrity of its territory or the stability or prestige of its Government" (art. 115).

From the terms of the Constitution and the Criminal Code, it is apparent that the recognition in General Assembly resolution 33/165, cited in resolution 1987/46, of the right to refuse service in military or police forces used to impose apartheid is fully supported in Cuba, which has condemned the crime of apartheid, as well as wars of aggression and conquest, which are expressly prohibited by the Constitution. Objection to military service that pushes a young man into a war of aggression, a militaristic adventure for the benefit of the oligarchy and at the expense of the people, is just and legitimate. For this reason, Cuba hails the young Americans who refused to take part in the aggression in Viet Nam.

In view of the defensive character of our Armed Forces, Cuba considers that "conscientious objection" cannot be accepted in our case.

Nevertheless, we endeavour to accommodate this principle in cases where it is possible to do so.

Cuba, with a people that loves peace and justice and stands ready in military terms to safeguard its right to a just and humane life, supports the affirmations contained in resolution 1987/46, which recognizes the right to object to military service intended for acts of aggression in all forms and to impose apartheid or any other abhorrent discriminatory practice. Similarly, it shares the "conviction that consistent and sincere efforts on the part of all States aimed at the definite removal of the threat of war, the preservation of international peace, the realization of the right to self-determination and the development of international co-operation in accordance with the Charter of the United Nations will ultimately result in the creation of conditions under which military service will become unnecessary".

III. VIEWS OF STATES THAT HAVE NO STANDING ARMY OR WITH
MILITARY SERVICE ON A VOLUNTARY BASIS

Barbados

[Original: English]

[9 December 1987]

Barbados does not have a standing army and all recruits into the Defence Force or the Reserves do so willingly. The question of "Conscientious Objection to Military Service" therefore does not arise.

In addition, Chapter III of the Constitution of Barbados provides for the protection of fundamental rights and freedom of the individual, while Section 19 is specific on the protection of freedom of conscience which appears in particular to be compatible with resolution 1987/46. Hence, freedom of conscience which is guaranteed under the constitution would grant a citizen of Barbados the right of conscientious objection to military service in so far as it relates to Barbados.

Dominican Republic

[Original: Spanish]

[12 June 1987]

In the Dominican Republic there is no compulsory military service, and hence there are no cases of conscientious objection.

Guatemala

[Original: Spanish]

[13 October 1987]

Further to a study 1/ conducted by a commission organized in connection with note verbale No. G/SO 214 (24) of 22 May 1987 relating to Commission on Human Rights resolution 1987/46, the conclusion was reached that it is inappropriate to legalize conscientious objection as a cause for exemption from military service, not only because it is contrary to the Constitution of the Republic of Guatemala, the Constituent Law of the Guatemalan Army and other military laws and regulations, but also because recruitment by the Armed Forces is eminently professional and based on the spontaneous will and conviction of citizens in honouring their duties and civic rights to the motherland, and fundamentally because conscientious objection to military service on religious, ethical, moral or similar grounds is too abstract a concept and one that is not keeping with our point of view or the country's needs in preserving our integrity and territorial sovereignty.

Malta

[Original: English]

[25 May 1987]

Military service in Malta is on a voluntary basis, and therefore, the question of "conscientious objection" does not arise.

Uruguay

[Original: Spanish]
[12 January 1988]

The Ministry of Defence prepared a report containing the following major points: */

(1) The Republic's permanent military system is based exclusively on professionals (higher ranks) who have graduated from the Officer Training School and volunteers (lower ranks) who freely renew their contract each year.

(2) Rules regulating compulsory military instruction do exist, but they are applied exclusively to swearing the oath of loyalty to the flag and to exceptional and partial mobilizations.

(3) This means that, in Uruguay, conscientious objection is unlikely because there is no call-up.

*/ Reference material - legislative - is available for consultation in the Secretariat (Spanish only).

IV. VIEWS OF UNITED NATIONS BODIES AND SPECIALIZED AGENCIES

Office of the United Nations High Commissioner for Refugees

[Original: French]
[9 July 1988]

In connection with the specific issue of conscientious objection to military service, UNHCR's position can be summed up as follows:

Refusal to perform military service is usually penalized by measures under criminal law. In countries where absence without leave is viewed as a military offence and where there is no alternative service, an absentee may be recognized as a refugee if he can demonstrate that he would, for the offence committed, be penalized with disproportionate severity on the grounds of race, religion, nationality, social group or political views.

Again, since conscientious objection is a form of absence without leave, generally based on religious or political convictions, it is advisable to evaluate the sincerity of such convictions in order to determine whether an applicant for asylum is entitled to refugee status.

The question of conscientious objection must none the less be viewed in the light of recent changes in ideas which have led some States to introduce, in their legislation or administrative regulations, the possibility of exemption from military obligations for reasons of conscience that are recognized as valid, or incorporate measures to replace military service, in other words, normally civilian service.

An application for asylum may also be justified if the type of military action with which the person concerned refuses to associate himself for reasons of conscience is condemned by the international community as being contrary to the most elementary rules of conduct in the matter.

The same is true if the refusal to perform military service is motivated by reasons of conscience, inasmuch as acceptance would involve enlistment in military or police forces and would have the effect of reinforcing a system - apartheid - condemned by the international community. In this case, a conscientious objector is justified in asserting his rights to refugee status.

This latter type of situation is covered by resolution 33/165 of 20 December 1978, referred to in Commission on Human Rights resolution 1987/46, concerning conscientious objection to military service. Resolution 33/165 invites States Members of the United Nations to allow entry, in the spirit of the Declaration on Territorial Asylum, to conscientious objectors who refuse military service on grounds of their aversion to apartheid, a system that is condemned by the international community.

The other paragraphs encourage States to grant a particular status to conscientious objectors and provide for alternative forms of service. UNHCR can only welcome any provisions of this kind in internal law. In such cases,

conscientious objection to military service is no longer penalized and therefore a person who claims status as conscientious objector no longer has any reason to fear that he will be exposed to disproportionate penal or administrative sanctions and he can engage in alternative activities which do not conflict with his convictions.

United Nations Educational, Scientific and Cultural Organization

[Original: English]

[13 July 1987]

The subject of "Conscientious objection to military service" has not so far been debated within UNESCO's deliberating organs. It was however raised during the World Congress on Youth organized by UNESCO in Barcelona (Spain) in 1985, under the topic "Youth, mutual understanding and international co-operation", on the occasion of the International Youth Year. Several opinions were expressed as to the need for a broader recognition of the right to conscientious objection as a concrete commitment to peace.

V. VIEWS OF INTERGOVERNMENTAL ORGANIZATIONS

Council of Europe

[Original: English]

[23 July and 5 October 1987]

At the 406th meeting of the Ministers' Deputies, the Committee of Ministers adopted Recommendation No. R (87) 8 regarding conscientious objection to compulsory military service.

On this occasion, the Committee of Ministers authorized publication of the explanatory memorandum relating to the Recommendation prepared by the Steering Committee for Human Rights.

The texts of Recommendation No. R (87) 8 and of the explanatory report are given below.

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RECOMMENDATION No. R (87) 8

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES

REGARDING CONSCIENTIOUS OBJECTION TO
COMPULSORY MILITARY SERVICE 2/

(Adopted by the Committee of Ministers on 9 April 1987
at the 406th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Recalling that respect for human rights and fundamental freedoms is the common heritage of member States of the Council of Europe, as is borne out, in particular, by the European Convention on Human Rights;

Considering that it is desirable to take common action for the further realization of human rights and fundamental freedoms;

Noting that in the majority of member States of the Council of Europe military service is a basic obligation of citizens;

Considering the problems raised by conscientious objection to compulsory military service;

Wishing that conscientious objection to compulsory military service be recognized in all the member States of the Council of Europe and governed by common principles;

Noting that, in some member States where conscientious objection to compulsory military service is not yet recognized, specific measures have been taken with a view to improving the situation of the individuals concerned;

Recommends that the governments of member States, in so far as they have not already done so, bring their national law and practice into line with the following principles and rules:

A. Basic principle

1. Anyone liable to conscription for 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, on the conditions set out hereafter. Such persons may be liable to perform alternative service;

B. Procedure

2. States may lay down a suitable procedure for the examination of applications for conscientious objector status or accept a declaration giving reasons by the person concerned;

3. With a view to the effective application of the principles and rules of this recommendation, persons liable to conscription shall be informed in advance of their rights. For this purpose, the State shall provide them with all relevant information directly or allow private organizations concerned to furnish that information;

4. Applications for conscientious objector status shall be made in ways and within time-limits to be determined having due regard to the requirement that the procedure for the examination of an application should as a rule, be completed before the individual concerned is actually enlisted in the forces;

5. The examination of applications shall include all the necessary guarantees for a fair procedure;

6. An applicant shall have the right to appeal against the decision at first instance;

7. The appeal authority shall be separate from the military administration and composed so as to ensure its independence;

8. The law may also provide for the possibility of applying for and obtaining conscientious objector status in cases where the requisite conditions for conscientious objection appear during military service or periods of military training after initial service;

C. Alternative service

9. Alternative service, if any, shall be in principle civilian and in the public interest. Nevertheless, in additionn to civilian service, the State may also provide for unarmed military service, assigning to it only those conscientious objectors whose objections are restricted to the personal use of arms;

10. Alternative service shall not be of a punitive nature. Its duration shall, in comparison to that of military service, remain within reasonable limits;

11. Conscientious objectors performing alternative service shall not have less social and financial rights than persons performing military service. Legislative provisions or regulations which relate to the taking into account of military service for employment, career or pension purposes shall apply to alternative service.

EXPLANATORY REPORT

I. Introduction

1. Recommendation No. R (87) 8 is the result of work carried out within the Council of Europe since 1966. In that year, following an Amnesty International initiative, Mr. Richard and nine other parliamentarians tabled in the Assembly a motion for a recommendation on the right of conscientious objection (Doc. 2076). On the basis of a report by its Legal Affairs Committee, prepared by Mr. Bauer (Doc. 2170), the Assembly adopted, on 26 January 1967, Resolution 337 and Recommendation 478, both "on the right of conscientious objection".

2. In Resolution 337 the Assembly set out the principles, procedure and rules applicable to alternative service, which, in its opinion, should be followed in the matter.

3. In Recommendation 478 the Assembly recommended the Committee of Ministers:

"(a) to instruct the Committee of Experts on Human Rights to formulate proposals to give effect to the principles laid down by the Assembly in its Resolution 337 by means of a convention or a recommendation to Governments so that the right of conscientious objection may be firmly implanted in all member States of the Council of Europe;

(b) to invite member States to bring their national legislation as closely as possible into line with the principles adopted by the Consultative Assembly".

4. Subsequently, the problem was raised on several occasions:

- At the Parliamentary Conference on Human Rights (Vienna, 18-20 October 1971) Amnesty International invited the Conference "to reaffirm the principles outlined in Resolution 337 of the Assembly" and to "request the Committee of Ministers to re-instate this item in the next Intergovernmental Work Programme". The latter suggestion was reproduced in the conclusions of the conference and was included in the Appendix to Recommendation 683 (1972) containing proposals for a Council of Europe programme in the field of human rights.

- The question was submitted for an opinion by the Committee of Ministers to the Committee of Experts on Human Rights, which proposed, in July 1974, that the question of conscientious objection be included in the next medium-term Plan. The same proposal was subsequently made by the Assembly in its opinion on the draft Plan.

- The Assembly considered the question again and, on the basis of a report by its Legal Affairs Committee (Doc. 4027) prepared by Mr. Périquier, adopted, on 7 October 1977, Recommendation 816 on the right of conscientious objection to military service. In this text the Assembly recommended that the Committee of Ministers:

"(a) urge the Governments of member States, in so far as they have not already done so, to bring their legislation into line with the principles adopted by the Assembly [principles contained in Resolution 337 and appended to Recommendation 816];

(b) introduce the right of conscientious objection to military service into the European Convention on Human Rights".

- As in its reply to Recommendation 478, the Committee of Ministers notes, in its reply of March 1978, that "several member States have already settled the question of conscientious objection to military service within the framework on their own law in keeping with the majority of the principles included in the Appendix to Recommendation 816 or in Resolution 337, whilst other States, for various reasons, could not envisage amending their law on this matter".

5. It was in this context that the question of conscientious objection to military service was finally included in the Intergovernmental Programme of Activities for 1981.

6. The Steering Committee for Human Rights (CDDH) was assigned the task of studying these problems and duly considered them at its 10th to 19th meetings (November 1981 to May 1986).

7. The CDDH based its discussions on a report written by Mr. Zanghi, a member (and subsequently consultant) of the Committee, and took into account other documentary material produced either in the Council of Europe or in other international organizations. The CDDH also has before it the views of Amnesty International on the Draft Recommendation during its preparation.

8. At the end of its considerations the CDDH finalized the draft Recommendation and transmitted it to the Committee of Ministers. After having consulted the Assembly (see Opinion No. 132 of 30 January 1987), the Committee of Ministers adopted the text of Recommendation No. R (87) 8 on 9 April 1987 at the 906th meeting of the Ministers' Deputies.

II. Subject of the Recommendation

9. The CDDH found, after a detailed study of domestic laws and practices, that many Council of Europe member States had adopted provisions on the right of conscientious objection to compulsory military service, but that solutions adopted were extremely diverse.

10. Consequently, the CDDH considered that what was required was a harmonization of these domestic laws and practices on the basis of certain rules and principles. Given the present situation, it seemed that a Committee of Ministers' Recommendation to Council of Europe member States was the most appropriate means of achieving that end.

11. In that spirit, and on the basis of the Assembly proposals, the CDDH undertook this work. The Recommendation affirms the principle that "anyone liable to conscription for 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". It also specifies principles and rules to be followed with regard to the procedure for recognizing conscientious objector status, as well as to alternative service. This Recommendation applies only to compulsory military service, but this does not preclude the adoption of these principles and rules by States with a system of voluntary military service.

III. Comments on the provisions of the Recommendation

Preamble

12. The Preamble restates the reasons for the drawing up of the Recommendation as well as the purpose of this text: recognition of conscientious objection in all Council of Europe member States and harmonization of domestic law and practice on the basis of certain common principles.

13. The Recommendation forms part of the constant endeavours of Council of Europe member States to secure greater respect for, and promote the development of, human rights and fundamental freedoms, the cornerstone of which is the European Convention on Human Rights.

However, unlike the Assembly, the authors of the Recommendation did not wish to refer specifically to Article 9 of the Convention, since this involved a problem of interpretation. 3/

14. Account was taken of the position in States which have not yet recognized conscientious objection but have taken ad hoc measures to improve the situations of the persons concerned (for example by authorizing them to perform unarmed military service or by decriminalizing offences committed in this regard).

Paragraph 1

15. The principle which forms the very basis of the Recommendation has as its essential element the reasons which may be stated in support of an application for conscientious objector status. In this respect, the States' domestic law varies enormously: reasons of conscience, reasons of a religious, ethical, moral, humanitarian, philosophical nature, etc. In these circumstances, the experts rejected a solution consisting of giving a list of possible reasons, because (a) such a list could not be exhaustive and (b) it might well obscure the fundamental idea, namely that the very notion of freedom of conscience implies that all compelling reasons dictated by conscience against being involved in any use of arms are to be considered as a basis for granting conscientious objector status.

16. By choosing from the different reasons listed in the previous paragraph only the reason of conscience, the Recommendation aims to encourage States not to take too restrictive an attitude and not to use a precise definition of the reasons as a means of weakening the effectiveness of the right of conscientious objection.

However, only reasons involving a conflict of conscience can be taken into consideration and such reasons must, moreover, be "compelling" i.e. impossible to resist. It should be noted that the Recommendation does not cover cases of so-called "selective" or "partial" objections of conscience that is, those limited to the use of arms in certain cases only.

17. In the interests of the community, for reasons of equality of treatment, and also to ensure the applicant's good faith, most European States which have recognized the right of conscientious objection have considered it appropriate to set up an alternative service. The Recommendation takes into account this practice without obliging States to follow it (see also paras. 9 to 11 of the Recommendation).

Paragraph 2

18. Most Council of Europe member States have made provision in their current legislation for special procedures and appropriate bodies to deal with applications and decide on their admissibility. Paragraph 2 reflects this situation but at the same time encourages States to take into account that in some countries a declaration giving reasons by the person concerned is sufficient for obtaining conscientious objector status.

Paragraph 3

19. Effective exercise of the right of conscientious objection presupposes the provision of relevant information. To that end, paragraph 3 lays down the principle that all persons concerned must be informed sufficiently in advance for them to be able to exercise their rights at an appropriate stage.

20. The second sentence specifies how that information may be given: either directly by the State or by the non-governmental organizations concerned. In the latter case, the State may lay down conditions, in particular to avoid the furnishing of information that is contrary to public order.

Paragraph 4

21. Regardless of the system adopted by the State, the objector's application constitutes, in all cases, a necessary element for the granting of conscientious objector status. Paragraph 4 leaves it to domestic law to determine the procedural details and any time-limits. However, it recommends that, as a rule, the procedure for examination of the application should be completed before the person is actually enlisted in the forces.

Paragraph 5

22. In order to ensure, as far as possible, the effectiveness of the right of conscientious objection, the examination of applications must afford all the necessary guarantees for a fair procedure. In this regard, the importance of the impartiality of the different bodies involved, both at the first instance and appeal stages (see paras. 6 and 7 of the Recommendation) deserves particular mention.

Paragraph 6

23. This paragraph establishes the principle that the applicant shall have the right to appeal against the decision at first instance. The nature of the appellate authority is not specified, but, its composition must be such as to ensure its independence.

Paragraph 7

24. The question of who is to give a decision on the objector's application is naturally of cardinal importance. The authors of the Recommendation made a point of taking into account both the diversity of the systems adopted by the States in this regard and the need to provide for certain guarantees.

25. The Recommendation does not require that the first instance authority be separate from the military administration. On the other hand, such a separation must in all cases exist at the level of the appellate authority.

Paragraph 8

26. To prescribe an absolute time-limit in the rules to which applications are subject could be considered as contrary to the very purpose of the Recommendation. If refusal to perform military service is acknowledged as being based on a conflict of conscience, it follows that this conflict might occur at any moment in a person's life. Indeed there is nothing to prevent this type of conflict arising during military service.

For that reason, paragraph 8 gives the State the possibility of permitting the exercise of the right of conscientious objection even during military service, or during periods of military training following initial military service.

27. It is understood that if a State utilizes this possibility, all the guarantees mentioned in paragraphs 5 to 7 and 9 to 11 will be applicable in such cases also.

Paragraph 9

28. Recommendation provides that alternative service shall in principle be civilian in character. However, that does not prevent States that so wish from providing also for unarmed military service, to be reserved for persons whose objections are restricted to the personal use of arms.

29. The stipulation that alternative civilian service must be in the public interest is intended as an exhortation to States to see that conscientious objectors are employed on work of benefit to society, such as hospital service or work within the social services, as well as technical assistance to developing countries.

Paragraph 10

30. This paragraph stresses that alternative service shall not be of a punitive nature. It is on the basis of that principle that the question of the length of such service is examined. In most countries, alternative

service is longer than military service. This can be explained, inter alia, by the desire to take into account the time involved in periodic recalls following the initial spell of military service or - in so far as civilian service is concerned - by the nature of the service to which the conscientious objector is assigned.

The text does not state any specific duration; however, in the light of the earlier mentioned principle, it is stipulated that the service duration shall remain within reasonable limits.

Paragraph 11

31. As already stated, one of the reasons for instituting an alternative service is to guarantee equality of treatment between those performing military service and conscientious objectors. On the other hand, alternative service must not, in its turn engender discrimination, whether social or financial, between these two categories.

32. In the same spirit, the second sentence of this paragraph refers to States which provide for example, for jobs to be kept open during military service or for periods of military service to be counted for purposes of seniority in employment or in a career or for pension purposes. Wherever such provisions exist, they must be applied also to alternative service performed by conscientious objectors.

VI. VIEWS OF NON-GOVERNMENTAL ORGANIZATIONS

Amnesty International

[Original: English]
[29 February 1988]

Under its mandate, Amnesty International works for the release of prisoners of conscience, a category which includes persons "imprisoned, detained or otherwise physically restricted by reason of their political, religious or other conscientiously held beliefs or by reason of their ethnic origin, sex, colour, or language, provided that they have not used or advocated violence". Specifically, Amnesty International's policy guidelines concerning conscientious objection to military service read as follows:

"1. A conscientious objector is understood to be a person liable to conscription for military service, or to register for conscription for military service (even where there is no military service), who, for reasons of conscience or profound conviction arising from religious, ethical, moral, humanitarian, philosophical, political or similar motives refuses to perform armed service or any other direct or indirect participation in wars or armed conflicts.

"2. Where a person is detained/imprisoned because he or she claims that he or she on the grounds of conscience described in paragraph 1 above objects to military service, or to registering for conscription to military service, Amnesty International will consider him or her a prisoner of conscience, if his or her imprisonment/detention is a consequence of one or more of the following reasons:

"(a) the legal code of a country does not contain provisions for the recognition of conscientious objection and for a person to register his or her objection at a specific point in time;

"(b) a person is refused the right to register his or her objection;

"(c) the recognition of conscientious objection is so restricted that only some and not all of the above-mentioned grounds of conscience or profound conviction are acceptable;

"(d) a person does not have the right to claim conscientious objection on the above-mentioned grounds of conscience or profound conviction developed after conscription into the armed forces;

"(e) he or she is imprisoned as a consequence of his or her leaving the armed forces without authorization for reasons of conscience developed after conscription into the armed forces, if he or she has taken such reasonable steps to secure his or her release by lawful means as might grant him or her release from the military obligations on the grounds of conscience or if he or she did not use those means because he or she has been deprived of reasonable access to the knowledge of them;

"(f) there is not a right to alternative service which is of purely civilian character and under civilian control;

"(g) the length of the alternative service is deemed as a punishment for his or her conscientious objection.

"3. Where there is a provision for conscientious objection which satisfies the criteria in paragraph 2, a person should not be considered a prisoner of conscience, if he or she is not willing to state to the decision-making authorities the reason for his or her conscientious objection, where this is required by the law of the country, unless this reason can be inferred from all the circumstances of the case.

"4. A person should however not be considered a prisoner of conscience if he or she is offered and refuses comparable alternative service which is of a purely civilian character and under civilian control."

Amnesty International takes no position on whether or not States should provide for conscription. Nor does it agree or disagree with the motives of conscientious objectors. The organization works for the release of individual objectors who fall within the guidelines set forth above, and works for the development of law and procedure which make due provision for conscientious objectors.

A paper ^{*}/ submitted by Amnesty International contains details of that organization's concerns in 23 countries where conscientious objection and alternative service are governed by laws which may lead to the imprisonment of persons whom the organization would consider to be prisoners of conscience. It is by no means an exhaustive survey of the countries in which the law and practice relating to this area could give rise to cases of concern to the organization. Rather, it is confined to countries where information on the law and practice relating to conscientious objection is available to Amnesty International, where conscription currently exists and where the organization has had specific concerns relating to conscientious objection in recent years.

In some of the countries referred to herein there is no legal provision for conscientious objection, and persons objecting to military service on the basis of conscientiously-held beliefs are routinely imprisoned. In other countries, only limited grounds for refusal, such as religious motives, are deemed acceptable, and those who object on other grounds may be imprisoned. Amnesty International is also concerned that in some countries the alternative service available to those who object to military service cannot be considered to be "of purely civilian character and under civilian control", and objectors may be imprisoned for refusing such service on grounds of conscience. In other cases, alternative service may be as much as twice as long as military service. Amnesty International would regard a conscientious objector imprisoned for refusing to perform alternative service as a prisoner of conscience where the length of alternative service is such that it could be deemed "a punishment for his or her conscientious objection".

In some cases, conscientious objectors who have been imprisoned may be liable to be imprisoned again if, after having served their sentence, they persist in refusing to perform military service.

^{*}/ Available for consultation in the Secretariat (English only).

The right to refuse military service for reasons of conscience is inherent in the notion of freedom of thought, conscience and religion as laid down by Article 18 of the Universal Declaration of Human Rights. This freedom is also set forth in the International Covenant on Civil and Political Rights (article 18), the European Convention on Human Rights and Fundamental Freedoms (article 9), the American Declaration on the Rights and Duties of Man (article 3), the American Convention on Human Rights (article 12) and the African Charter on Human and Peoples' Rights (article 8). The first three of these conventions do not permit derogation from the right to freedom of conscience under any circumstances. The African Charter on Human and Peoples' Rights does not envisage suspension of any of its provisions.

Commission on Human Rights resolution 1987/46 views objection to military service on conscientious grounds as "a legitimate exercise of the right to freedom of thought, conscience and religion". It further recommends that States refrain from subjecting conscientious objectors to imprisonment. It also recommends provision for alternative service and impartial decision-making procedures for its application.

Recommendation No. R (87) 8 of the Committee of Ministers to Member States of the Council of Europe Regarding Conscientious Objection to Compulsory Military Service of 9 April 1987, while not making explicit reference to the right to freedom of thought, conscience and religion, similarly supports making provision for alternative service. It also recommends that such service "shall not be of a punitive nature. Its duration shall, in comparison to that of military service, remain within reasonable limits". The European Parliament in its resolution of 7 February 1983 went further, becoming the first international body to support the view that alternative service should not be longer than ordinary military service.

Annex 1 */ to this paper details a selection of recent cases known to Amnesty International which illustrate its concerns arising from imprisonment of conscientious objectors.

Annex 2 */ provides a summary of the (often limited) information available to Amnesty International concerning provisions for conscription, conscientious objector status and alternative service in countries not dealt with in the body of the paper.

Friends World Committee for Consultation (Quakers)

[Original: English]
[18 December 1987 and
8 February 1988]

Friends World Committee for Consultation (FWCC) warmly welcomes resolution 1987/46, entitled "Conscientious objection to war and military service", and regards it as very important in finding suitable words and phrases and in expressing the general intent of member States.

*/ Available for consultation in the Secretariat (English only).

Quakers have for more than 300 years consistently refused to participate in all wars believing that war is contrary to the teachings and spirit of Christ and therefore it is wrong to kill or to train people to kill. This is a position held by many Christians in the past and upheld today by several Christian churches, of whom Quakers are one. It is on these grounds that Quakers claim the right to conscientious objection to military service, not only for ourselves but for all who share our beliefs. FWCC believes that the right to conscientious objection to military service is implicit in article 18 of the Universal Declaration of Human Rights concerning freedom of thought, conscience and religion.

FWCC recognizes that the pacifist churches are a minority among Christians. However, the Christian Church has propounded the doctrine of the "Just War", which does not declare that all war is just, but, on the contrary, sets limits to the right to go to war and the choice of means for conducting it. Thus a Christian who does not take the pacifist position may, nevertheless, object to taking part in a particular war, either because the purpose of the war is unjust or because it is likely to be conducted by unjust methods. Further, there is a duty on every individual to refuse to take part in acts which are contrary to international law. In particular FWCC notes the following in this respect:

(a) Throughout history States have used armed force whenever it was deemed necessary, but this is no longer acceptable or legal. The United Nations is committed in its Charter to "... saving succeeding generations from the scourge of war". Today States are prohibited by the United Nations Charter from using armed force except in the event of an armed attack by another State. 4/ In such cases armed force may only be used for defence. 5/ Since the Second World War this area of international law has been reinforced and elaborated in a number of resolutions. 6/ Further, belligerents are no longer permitted a free choice of means and methods of conducting warfare. 7/

(b) The Convention on the Prevention and Punishment of the Crime of Genocide prohibits destructive acts which are directed against national, ethnic, racial or religious groups by any person, and makes genocide a crime under international law.

(c) A United Nations resolution of 1946 takes note of the Principles contained in the Charter of the International Military Tribunal, Nuremberg, and makes an individual responsible for actions which are contrary to international law. 8/

(d) The United Nations has said that States should refrain from any forcible action which might infringe on the right to self-determination. 9/ There is also a United Nations resolution making it a duty under international law to object to participating in armed forces which are used to maintain apartheid. 10/

Although FWCC does not share the just war tradition we do believe in the right of individuals to claim exemption from military service on these grounds.

The Commission on Human Rights plays an important role in interpreting the Universal Declaration of Human Rights as well as other human rights

instruments. The Commission also has the capacity, under Articles 55 and 56 of the Charter of the United Nations to interpret the human rights obligations of Member States of the United Nations.

FWCC recognizes the difficulties which Governments and individuals may face when an individual seeks to act in accordance with international law and suggests that universal guidelines should be established to assist in the application of internationally accepted norms. If there were universal guidelines then the duty to refuse to commit certain acts of aggression would be better guaranteed.

Conscientious objection to military service has been an issue for the United Nations and its predecessor the League of Nations for some 60 years. In past decades there have been major advances in the recognition of the right to conscientious objection by many Member States of the United Nations, and the list of countries having or initiating legislation on conscientious objection continues to grow.

In resolution 1987/46 the preambular paragraphs state that the support for the right to conscientious objection to military service is based on established international norms. The resolution refers to articles 3 and 18 of the Universal Declaration of Human Rights and is mindful of article 18 of the International Covenant on Civil and Political Rights and further notes the important role of youth in the promotion of international peace and co-operation as well as of human rights and fundamental freedoms.

Resolution 1987/46 indicates a growing acceptance of conscientious objection to military service among Member States and it should be taken into account by decision-making bodies when interpreting the relevant international norms.

FWCC notes that only two States (both currently engaged in armed conflicts) voted against the resolution and welcomes the fact that the majority of States do not have difficulties with the spirit and content of the resolution.

FWCC urges States to implement, if they have not already done so, the Commission's appeal "that conscientious objection to military service be recognized as a legitimate exercise of the right to freedom of thought, conscience and religion recognized by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights". FWCC further requests that States act in accordance with paragraph 3 and refrain from subjecting conscientious objectors to imprisonment.

The following information */ on conscientious objection to military service has been submitted by FWCC:

1. The Right to be a Conscientious Objector to War and Military Service: Existing Provisions and Problems Faced by Those Already in the Armed Service.
2. Kidnapping, round-ups and other forms of extra-legal conscription.
3. Asylum Abroad for Conscientious Objectors: Some Developments in the 1980s.

Human Rights Advocates

[Original: English]
[31 December 1987]

1. Paragraph 2 of Commission on Human Rights resolution 1987/46 "[i] invites States to take measures aimed at exemption from military service on the basis of a genuinely held conscientious objection to armed service". Human Rights Advocates (HRA) suggests that the Commission, at its forty-fifth session, ought to specify the scope of beliefs that legally should exempt objectors from military service. In particular, the Commission should make clear that exemption from service is required not only for objectors who refuse to participate in any and all uses of armed force, but also for those who refuse to participate in uses of armed force that, due either to their purposes or their means, contravene universally accepted principles of international law. (See Recommendations of the Sub-Commission Report, E/CN.4/Sub.2/1983/30, paras. 155-160).

2. The right to refuse to participate in illegal armed conflicts emerges from humanitarian law as well as from the Charter of the United Nations and the International Bill of Human Rights. The Fourth Hague Convention of 1907 (eighth preambular paragraph) makes clear that all persons during armed conflicts "remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience" (emphasis added). The purposes of the Charter and the interests of all Member States are promoted by recognition of the right of individuals to resist participation in actions which constitute gross violations of international law.

3. The International Military Tribunal emphasized that "[t]he essence of the [Nuremberg] Charter is that individuals have international duties that transcend the national obligations of obedience imposed by the individual State." Nuremberg Principles IV and VII proclaim that all persons who commit, or are parties to the commission of, international crimes are responsible for those crimes even if they acted pursuant to superior orders. Allied Control Council Law No. 10 amplifies that those liable for international crimes include any who "took a consenting part therein".

4. The right to resist complicity is broader than actual liability; that is, a person may not be coerced into committing breaches of international law even if that person probably would not be held criminally liable for those breaches. Article 30 of the Universal Declaration of Human Rights provides that "Nothing in this Declaration may be interpreted as implying for any State ... any right to engage in any activity ... aimed at the destruction of any of the rights and freedoms set forth herein." Surely that proscription prohibits States from forcing their youth to participate in conduct aimed at destroying the rights inevitably and massively violated during unlawful armed conflicts. Conscientious objection is one means by which conscripts should be permitted to resist potential complicity in international crimes.

*/ This information is available for consultation in the Secretariat (English only).

5. Which objectors, in addition to those who conscientiously oppose all use of force, should be entitled to exemption from military service? There are two considerations. First the conflict in which the objector refuses to participate must violate international law. At least and initially, exemption should be permitted when the General Assembly universally condemns, in language clearly portending legal consequence, a use of force as violating the Charter of the United Nations, Hague Conventions, Geneva Conventions, or Nuremberg Law. Second, the objector must demonstrate that his objection is genuinely held. To establish that, it should be sufficient to show that the objector has knowledge of international laws violated and believes that those laws should be followed.

6. Human Rights Advocates further wishes to bring to the Commission's attention United States law that directly incorporates Nuremberg rules on individual responsibility for international crimes. Section 498 of The Law of Land Warfare (United States Army Field Manual, 1956) provides:

"Any person, whether a member of the armed forces or a civilian, who commits an act which constitutes a crime under international law is responsible therefor and liable to punishment.

"Anyone exposed to criminal liability under international law for complicity in crimes has a due process right to take appropriate action to terminate such complicity. This right follows directly from the principle announced in Article 8 of the London Charter: 'The fact that the Defendant acted pursuant to an order of his Government or of a superior shall not free him from responsibility'." [59 Stat. 1547.]

7. In several recent cases, juries have acquitted persons who engaged in non-violent civil disobedience on the ground that, consonant with the Nuremberg Principles, they reasonably believed that their actions would contribute to efforts to prevent gross international law violations. For instance, in one Vermont case, the trial court ruled:

"International law operates as a restriction and limitation on the sovereignty of nations. It may also limit the obligations which individuals owe to their State, and create for them international obligations which are binding upon them to an extent that they must be carried out even if to do so violates a positive law or directive of the State."

Vermont v. McCann, Vermont District Court Unit 2, No. 2857-7-86CnCr, slip opn. pp. 15-16 (defendant charged with obstructing traffic at weapons plant acquitted after being permitted to raise Nuremberg-based defences), quoting United States v. Von Leeb, 11 Trials of War Criminals before the Nuremberg Military Tribunals 426, 489.

8. Just as persons should be permitted to take non-violent steps to try to prevent others from violating international law, even more surely should they be entitled to take steps to remove themselves from participation in those violations.

International Humanist and Ethical Union

[Original: English]
[21 January 1988]

The Commissioner for Human Rights of the International Humanist and Ethical Union (IHEU) asked his contact persons, in several countries, to supply information or comments concerning "Conscientious objection to military service". Most of the countries where the IHEU has its member organizations have no compulsory service so no information was received from them. However, some answers were received which are available for consultation in the Secretariat.

International Islamic Federation of Student Organizations

[Original: English]
[8 June 1987]

The philosophy of the International Islamic Federation of Student Organizations (IIFSO) is based on Islam which entails directing all its efforts toward the service of God and pursuing activities to advance the mission entrusted to man by Him. It states that naturally, it is inclined to view the question of conscientious objection to military service against this background.

The IIFSO will support all objections to military service if any conflict or campaign is aimed at objectives that are opposed to Islamic principles: enslavement of a people like the Soviet occupation in Afghanistan, the forced eviction of people from their homelands like Israel's creation and expansion, imposing overlordship on a territory in order to usurp a peoples' livelihood or to support oppression like in India where security forces are used in the genocide against non-Hindu minorities.

The IIFSO under the same consideration cannot support objection to military service if a campaign involves rightful defence of an Islamic State or an oppressed people or a campaign involving suppression of a movement that is opposing the will of God or aimed at stopping the people from following God's way.

IIFSO believes that the United Nations has a greater duty toward protecting minority communities who are forced to render military service in direct contradiction of their beliefs, e.g. the Soviet Union forced its Muslim citizens to fight in Afghanistan against their own brethren, etc.

Pax Christi International

[Original: English]
[6 January 1987]

Pax Christi International has been concerned with the issue of conscientious objection to military service for many years, as can be seen from the documents it has submitted. */

Its Working Group on Non-Violence, at a meeting on 11 December 1987, decided to make conscientious objection one of its main priorities for the next few years. To this end, it is collecting data about the conditions for alternative service in certain selected countries. It intends to prepare an intervention for the Commission on Human Rights, taking the position that those who are granted exemptions to military service on the grounds of conscientious objection should not be obliged to serve longer in civilian alternative service than they would have been obliged to serve in the military.

Pax Christi International is very pleased that the Commission on Human Rights adopted the resolution on conscientious objection to military service and is grateful to the Centre for Human Rights for continuing to monitor activities in this field.

*/ The documents in question are available for consultation in the Secretariat (English only).

Notes

1/ The study is available for consultation in the Secretariat (Spanish only).

2/ When this recommendation was adopted:

- in application of Article 10.2.c of the Rules of Procedure for the meetings of the Ministers' Deputies, the Representative of Greece reserved the right of his Government to comply with it or not, and the Representative of Cyprus reserved the right of his Government to comply or not with para. 9 of the text;

- in application of Article 10.2.d of the Rules of Procedure for the meetings of the Ministers' Deputies, the Representative of Italy recorded his abstention and in an explanatory statement said that his Government was of the opinion that the text as adopted fell short of the suggestions made by the Assembly, and therefore appeared to be deficient;

- in application of Article 10.2.d of the Rules of Procedure for the meetings of the Ministers' Deputies, the Representatives of Switzerland and Turkey recorded their abstentions and in explanatory statements said that their Governments would be unable to comply with the text.

3/ In several decisions the European Commission on Human Rights has stated that "the right of conscientious objection is not included among the rights and freedoms guaranteed by the Convention". See, in particular, the decisions on the admissibility of Applications Nos. 5591/72 (Collection of Decisions 43, p.161), 7565/76 (DR 9, p.117), 7705/76 (DR 9, p.196), 10410/83 (not yet published) and 10600/83 (not yet published). It should however be noted that in the decision 10410/83, the Commission "accepts that the applicant's complaint falls into the realm of at least Article 9 of the Convention, although the Convention does not guarantee, as such, a right to conscientious objection".

4/ Charter of the United Nations, Art. 2, para. 4.

5/ Ibid., Art. 51.

6/ For example, Declaration on the Granting of Independence to Colonial Countries and Peoples (1960) and the Definition of Aggression, resolution 3314 (XXIX) of 14 December 1974.

7/ The Peace Conferences of The Hague 1899 and 1907, the Geneva Conventions of 1949 and the Protocols to the Conventions adopted in 1977, and the Environmental Modification Convention (ENMOD) 1977.

8/ United Nations General Assembly resolution 95 (I) of December 1946.

9/ For example, General Assembly resolution 2625 (XXV).

10/ International Convention on the Suppression and Punishment of the Crime of Apartheid.