



# General Assembly

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## Human Rights Council

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Human rights bodies and mechanisms

### **Written statement\* submitted by Conscience and Peace Tax International (CPTI), a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 May 2011]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

## **Human Rights Council Advisory Committee: The right of peoples to peace**

Conscience and Peace Tax International welcomes the Progress Report of the Human Rights Council Advisory Committee on the right of peoples to peace. (A/HRC/17/39), which we see as an important first step towards the adoption of an United Nations Declaration – a declaration which we would however prefer to concentrate in a more focussed way on the individual right to peace, and to bear the simpler and clearer title “The Human Right to Peace”.

The core of the right to peace is that the individual should face neither the threat of physical violence nor the obligation to take part in such violence. The crucial parts of the draft are therefore those which relate to the right to life and address war and militarisation. Of course all human rights are interrelated and indivisible and full enjoyment of one set cannot be achieved without full respect for others, be they economic, cultural, social, civil or political. Nevertheless, the right to peace would be stripped of meaning were a declaration to roam too widely over such interrelations to the neglect of the core elements.

CPTI exists to campaign at the international level for recognition of the right of conscientious objection to the use of the taxes one has paid to finance military expenditure. We therefore restrict our detailed comments to Section F, which focusses on the right to conscientious objection, the area of our specific expertise.

With regard to the references in paragraphs 39 and 40 of the Progress Report to the relevant jurisprudence of the Human Rights Committee under the International Covenant on Civil and Political Rights (ICCPR), we would draw to the attention of the Working Group, the Advisory Committee and the Human Rights Council that - since the Progress Report was drafted – this jurisprudence has taken a further major step forward.

During its 101st Session in March this year, the Committee adopted “Views”<sup>1</sup> on 100 individual communications made under the Optional Protocol by Jehovah's Witnesses in the Republic of Korea who had each been sentenced to eighteen months' imprisonment for refusing to perform military service, there being no provision in national legislation or practice for conscientious objectors to military service. In finding a violation of Article 18.1 of the ICCPR, the Committee held that conscientious objection to military service “inheres in the right to freedom of thought, conscience and religion.”<sup>2</sup> A minority opinion signed by three members argued that, while still finding a violation, the Committee should have used the reasoning it had first expounded in *Yeo-Bum Yoon and Myung-Jin Choi v Republic of Korea*, where it stated, “The authors’ conviction and sentence, (...) amounts to a restriction on their ability to manifest their religion or belief. Such restriction must be justified by the permissible limits described in paragraph 3 of article 18, that is, that any restriction must be prescribed by law and be necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others. However, such restriction must not impair the very essence of the right in question.”<sup>3</sup>, and concluded, “that the State party has not demonstrated that in the present case the restriction in question is necessary, within the meaning of article 18, paragraph 3, of the Covenant.”<sup>4</sup>

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<sup>1</sup> CCPR/C/101/D/1642-1741/2007 *Min-Kyu Jeong et al v Republic of Korea*, issued on 5th April 2011

<sup>2</sup> *Ibid*, para 7.3.

<sup>3</sup> CCPR/C/D/1321-1322/2004, issued 23rd January 2007, para 8.3.

<sup>4</sup> *Ibid*, para 8.4.

By contrast, the majority in dealing with the latest cases followed the reasoning expounded in the dissenting opinion in Yoon and Choi by former member Mr Solari-Yrigoyen, who felt that the majority in that case had not stated strongly enough that conscientious objection “entitles any individual to an exemption from compulsory military service if this cannot be reconciled with that individual's religion or beliefs. The right must not be impaired by coercion. (...) Repression of the refusal to be drafted for compulsory military service, exercised against persons whose conscience or religion prohibit the use of arms, is incompatible with article 18, paragraph 1 of the Covenant.”<sup>5</sup>

Crucially, by treating conscientious objection to military service as an inherent part of the freedom of thought, conscience and religion, rather than a manifestation of religion or belief, they follow Solari-Yrigoyen in finding that Article 18.3 (which sets out the conditions in which limitations on such manifestations may be permissible) is not engaged. No limitations on the right itself are permissible.

The implication of this latest decision is that all parties to the ICCPR are under an absolute obligation under Article 18.1 to respect the right of conscientious objection to military service, at the very least in its most basic form of personal unwillingness to bear arms – no circumstances can justify exceptions to this.

Therefore, lest any declaration be open to interpretations which might seek to step back from, or dilute, the progress which has already been made, we suggest that “Standard 1” be rephrased as follows:

“As an integral part of the freedom of thought, conscience, and religion, individuals have the right of conscientious objection and to be protected in the effective exercise of this right.”

With regard to paragraph 43, concerning regional standards, we would also draw attention to Recommendation CM/Rec(2010)4 of the Committee of Ministers of the Council of Europe to member states, regarding human rights in the armed forces, which explicitly acknowledges the right of serving members of the armed forces to seek release on the grounds of conscientious objection, and to the Friendly Settlement before the Inter-American Commission on Human Rights in the case of *Bustos v Bolivia* (Report No. 97/05), which called on the state to recognise the right of conscientious objection to military service in accordance with international standards, and not to levy any substitute payment from the petitioner, a conscientious objector.

In proposed standard 2, we would question reference to a “right” to disobey manifestly illegal orders. This is in fact a duty. The difficulty in practice is for the person faced with such orders to show at the appropriate time that they are illegal. We would suggest, that following the precedent set by the German administrative court in the case of Major Florian Pfaff (BVerwG 2 WD 12.04) that where there are reasonable grounds for believing that orders are illegal refusal to obey should be treated as a matter of conscience, rather than imposing an unrealistic burden of proof.

Moreover, if the declaration is to produce new standards rather than simply codifying what exists already, it should encourage the developing trend in state practice to move away altogether from obligatory military service, which cannot logically be reconciled with a human right to peace.

Finally, we would respectfully suggest that paragraph 44 and standard 3, although important, are concerned not with freedom of religion or belief per se but with

<sup>5</sup> Wording from the dissenting opinion by Mr Solari-Yrigoyen in Yoon & Choi (2007), which is repeated in paras 7.3 and 7.4 of Jeong et al (2011).

discrimination and victimisation on grounds of perceived religious identity, and do not belong in this section. They pertain rather to the set of issues addressed by Article 20 of the ICCPR, and might appear more appropriately under the heading “vulnerable groups” in Section V(D).

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