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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by Friends World Committee for Consultation, a non-governmental organization in general consultative status

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

[9 January 2012]

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

Conscientious objection to military service

Friends World Committee for Consultation (Quakers) welcomes the recent international and regional developments in recognition of conscientious objection to military service.¹ Although conscientious objection to military service is not explicitly recognised in the international human rights treaties, the Human Rights Committee is clear that it is protected under Article 18 of the International Covenant on Civil and Political Rights (ICCPR), and has stated so in its Views (decisions) on individual communications, its General Comments and Concluding Observations. The UN Commission on Human Rights adopted a series of resolutions recognising conscientious objection to military service, and the Working Group on Arbitrary Detention and the Special Rapporteur on Freedom of Religion and Belief of the UN Human Rights Council have also addressed the issue. Furthermore, during 2011 the European Court of Human Rights Grand Chamber ruled that conscientious objection to military service is protected under the European Convention of Human Rights.²

The right of conscientious objection to military service

The Human Rights Committee recognises the right of conscientious objection to military service as part of the right to freedom of thought, conscience and religion enshrined in Article 18 of the ICCPR. It has addressed the issue in many of its Concluding Observations on State reports, and in its Views on individual cases, most recently in *Min-Kyu Jeong et al v Republic of Korea*³ where the Committee held that conscientious objection to military service “inheres in the right to freedom of thought, conscience and religion. It 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.”⁴

In 2011, the Grand Chamber of the European Court of Human Rights, in *Bayatyan v Armenia*⁵, followed the same logic as the Human Rights Committee in ruling that opposition to military service, where it is motivated by a serious and insurmountable conflict between the obligation to serve in the army and a person's conscience, constitutes a conviction or belief of sufficient importance to attract the guarantees of Article 9 (right to freedom of thought, conscience and religion) of the European Convention on Human Rights, and that the provision on forced labour (Article 4 of the European Convention) is irrelevant. This judgment was followed by the Chamber in *Erçep v Turkey*⁶ which made clear that failure to provide for conscientious objectors to military service is a violation of Article 9.

¹ See Rachel Brett: *International Standards on Conscientious Objection to Military Service* (Quaker UN Office, Geneva, November 2011) available in English, French and Spanish from www.quano.org

² European Court of Human Rights Grand Chamber *Bayatyan v Armenia*, application no. 23459/03 (20 July 2011)

³ *Min-Kyu Jeong et al v Republic of Korea* (CCPR/C/101/D/1642-1741/2007 of 5 April 2011).

⁴ *Min-Kyu Jeong et al v Republic of Korea* (CCPR/C/101/D/1642-1741/2007 of 5 April 2011), para. 7.3.

⁵ European Court of Human Rights Grand Chamber, *Bayatyan v Armenia*, application no. 23459/03 (20 July 2011)

⁶ European Court of Human Rights Chamber II *Erçep v Turkey*, application no. 43965/04 (22 November 2011)

Who may be a conscientious objector?

Although conscientious objection may be based on a formal religious position, this is not required. The Human Rights Committee has made clear that no discrimination is permitted between the religion or belief on which the objection is based.⁷ Indeed, in General Comment 22 the Human Rights Committee simply referred to situations where “the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one’s religion or belief”.⁸ Furthermore, the same General Comment gives a broad scope to the terms ‘religion’ and ‘belief’, stating⁹ “Article 18 protects theistic, non-theistic and atheistic beliefs ... Article 18 is not limited in its applications to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions.” The Committee has specifically addressed this issue in Concluding Observations on State reports under the Covenant, calling, for example, on a reporting State to “extend the right of conscientious objection against mandatory military service to persons who hold non-religious beliefs grounded in conscience, as well as beliefs grounded in all religions”¹⁰ and in *Eu-min Jung et al v Republic of Korea*, the Committee specifically identified that “the authors’ subsequent conviction and sentence amounted to an infringement of their freedom of conscience”, in addition to being a violation of their freedom of religion or belief.¹¹

Equally, a person may become a conscientious objector after joining the armed forces, whether as a conscript or as a volunteer. Such a situation may arise in the context of a change of religion or belief in general, or in relation to the specific issue of military service. The general freedom to change one’s religion or belief is recognized in Article 18(1) of the Covenant,¹² and Article 18(2) prohibits “coercion which would impair” the individual’s freedom to have or adopt a religion. The Working Group on Arbitrary Detention considers that “repeated incarceration in cases of conscientious objectors is directed towards changing their conviction and opinion, under threat of penalty” and is thus incompatible with Article 18(2) of the Covenant.¹³ The Human Rights Committee has specifically applied the possibility of changes in religion or belief in this context, for example, when recommending the adoption of legislation on conscientious objection to military service to a reporting State, “recognizing that conscientious objection can occur at any time, even when a person’s military service has already begun”.¹⁴ Similarly, the Commission on Human Rights has stated “that persons performing military service may develop conscientious objections” and affirmed “the importance of the availability of information about the right

⁷ Human Rights Committee General Comment 22, para 11; also *Brinkhof v Netherlands* (Communication No. 402/1990 of 27 July, 1993). Similarly, UN Commission on Human Rights resolution 1998/77 (adopted without a vote): “Recognizing that conscientious objection to military service derives from principles and reasons of conscience, including profound convictions, arising from religious, moral, ethical, humanitarian or similar motives”.

⁸ Human Rights Committee General Comment 22, para. 11.

⁹ Human Rights Committee General Comment 22, para. 2.

¹⁰ Human Rights Committee, Concluding Observations on the Ukraine, November 2006 (CCPR/C/UKR/CO/6), para. 12.

¹¹ *Eu-min Jung et al v Republic of Korea* (CCPR/C/98/D/1593-1603/2007 of 14 April 2010), para. 7.4.

¹² The right to change one’s religion or belief was also specified in the Human Rights Committee General Comment 22, para. 5.

¹³ UN Working Group on Arbitrary Detention, Recommendation 2: detention of conscientious objectors, E/CN.4/2001/14, paras. 91-94.

¹⁴ Human Rights Committee, Concluding Observations on Chile, March 2007 (CCPR/C/CHL/CO/5), para. 13.

of conscientious objection to military service, and the means of acquiring conscientious objector status, to all persons affected by military service”.¹⁵

In 2010, the Committee of Ministers of the Council of Europe explicitly recognised that professional members of the armed forces as well as conscripts should be able to leave the armed forces for reasons of conscience in their Recommendation on human rights of members of the armed forces.¹⁶

Decision-making process

The Commission on Human Rights has welcomed “the fact that some States accept claims of conscientious objection as valid without inquiry” and called for “independent and impartial decision-making bodies” where this is not the case.¹⁷ The Human Rights Committee has expressed concern about “determinations ... by military judicial officers in individual cases of conscientious objection”¹⁸ and has encouraged “placing the assessment of applications for conscientious objector status under the control of civilian authorities”.¹⁹ The European Court of Human Rights found in *Erçep v Turkey* that as a civilian a conscientious objector being tried by an entirely military tribunal called into question the independence and impartiality of the proceedings and was a violation of Article 6 (right to fair trial) of the European Convention. Whatever the assessment process no discrimination is permitted “among conscientious objectors on the basis of the nature of their particular beliefs”.²⁰

Punishment of unrecognised conscientious objectors

Unrecognised conscientious objectors may not be punished more than once for their continued refusal to undertake, or continue in, military service on grounds of conscience. The Human Rights Committee’s General Comment 32²¹ on Article 14²² of the Covenant specifically addresses the repeated punishment of conscientious objectors:

Article 14, paragraph 7 of the Covenant, providing that no one shall be liable to be tried or punished again for an offence of which they have already been finally convicted or acquitted in accordance with the law and penal procedure of each country, embodies the principle of *ne bis in idem*. ... Repeated punishment of conscientious objectors for not having obeyed a renewed order to serve in the military may amount to punishment for the same crime if such subsequent refusal is based on the same constant resolve grounded in reasons of conscience.

The Working Group on Arbitrary Detention has found the repeated imprisonment of conscientious objectors because of their continued refusal to undertake military service to

¹⁵ UN Commission on Human Rights resolution 1998/77.

¹⁶ Recommendation CM/Rec(2010)4 of the Committee of Ministers to member states on human rights of members of the armed forces (24 February 2010), Section H, paras 40-46

¹⁷ UN Commission on Human Rights resolution 1998/77, OP2 and OP3.

¹⁸ Human Rights Committee, Concluding Observations on Israel, July 2003 (CCPR/CO/78/ISR), para. 24.

¹⁹ Human Rights Committee, Concluding Observations on Greece, March 2005 (CCPR/CO/83/GRC), para. 15.

²⁰ Human Rights Committee General Comment 22, para. 11.

²¹ General Comment No. 32, CCPR/C/GC/32, 23 August 2007, IX NE BIS IN IDEM, paras 54-55 (footnote omitted).

²² Article 14 covers the right to equality before courts and tribunals and to a fair trial.

be arbitrary detention.²³ However, following the Human Rights Committee's views in *Yoon and Choi v Republic of Korea*, the Working Group stated²⁴ that the initial imprisonment of a conscientious objector to military service also amounted to arbitrary detention resulting from the exercise of rights or freedoms guaranteed by Article 18 of the Universal Declaration of Human Rights and the ICCPR.²⁵

Alternative Service

Any alternative service required of conscientious objectors in lieu of compulsory military service must be compatible with the reasons for the objection, of a civilian character, in the public interest and not of a punitive nature.²⁶ In *Min-Kyu Jeong et al v Republic of Korea* the Human Rights Committee specified that it must be "a civilian alternative to military service, outside the military sphere and not under military command. The alternative service must not be of a punitive nature. It must be a real service to the community and compatible with respect for human rights." The term "punitive" covers not only the duration of alternative service but also the type of service and the conditions under which it is served.²⁷ Furthermore, any difference in length between alternative service and military service must be "based on reasonable and objective criteria, such as the nature of the specific service concerned, or the need for a special training in order to accomplish that service."²⁸

FWCC (Quakers) calls on

- the UN Human Rights Council to draw these positive developments on conscientious objection to military service to the attention of States; and
- States to fully implement the right of conscientious objection to military service in law and practice.

²³ Opinion No. 36/1999 (TURKEY); United Nations: Working Group on Arbitrary Detention (E/CN.4/2001/14/Add.1); Working Group on Arbitrary Detention Recommendation No. 2 (E/CN.4/2001/14); and Opinion No. 24/2003 (ISRAEL) E/CN.4/2005/6/Add. 1.

²⁴ Opinion No. 16/2008 (TURKEY) of 9 May 2008.

²⁵ Equally UN Commission on Human Rights resolution 1998/77 "Emphasizes that States should take the necessary measures to refrain from subjecting conscientious objectors to imprisonment and to repeated punishment" (OP5).

²⁶ UN Commission on Human Rights resolution 1998/77, OP4.

²⁷ UN Commission on Human Rights resolution 1998/77, OP4.

²⁸ *Foin v France* (Communication No. 666/1995), CCPR/C/D/666/1995, 9 November 1999, para. 10.3.