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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 of the Secretary-General

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INTRODUCTION

1. In resolution 11B (XXVII) of 19 March 1971, the Commission on Human Rights requested the Secretary-General to make available to the Commission the information on conscientious objection to military service included in the country monographs which were prepared in connection with the Study of Discrimination in the Matter of Religious Rights and Practices, 1/ and to seek from Member States up-to-date information on national legislation and other measures and practices relating to conscientious objection to military service and alternative service. A report 2/ was prepared in accordance with the resolution.

2. At its thirty-sixth session, the Commission, in resolution 38 (XXXVI) requested the Secretary-General to seek once again from Member States up-to-date information on national legislation and other measures and practices relating to conscientious objection to military service and alternative service. The present report has been prepared in response to that resolution and contains extracts from the information received from Member States in reply to a note verbale of the Secretary-General. As of 5 November 1980, substantive replies from 16 Member States had been received.

3. The Government of the following States reported that no compulsory military service existed in their countries: Bahamas, Barbados, Ireland, Mauritius, Senegal, Sri Lanka, the United Kingdom and the United States. The replies of these Governments are not reproduced in the present document, except for those of the United Kingdom and the United States, which contain information on conscientious objection to service when raised after voluntary enrolment.

4. Any additional replies will be circulated as addenda to the present document.

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1/ United Nations publication, Sales No.60.XIV.2  
2/ E/CN.4/1118 and Corr.1 and Add.1-3.

REPLIES OF GOVERNMENTS

Costa Rica

[Original: Spanish]

[21 October 1980]

A detailed study of Costa Rica's legal order, starting with the basic instrument, the Constitution, shows that this question is governed by two principles of law.

Article 12 of the Constitution provides that:

"The Army is proscribed as a permanent institution. The maintenance and preservation of public order will be assured by the requisite police forces. Military forces may be established only pursuant to a Pan-American agreement or for the purposes of national defence; in either case, they shall always be subordinate to the civilian authorities. They may not deliberate, demonstrate, or make declarations, whether individually or collectively."

Further, article 147 of the same instrument reads:

"The Council of Government is composed of the President of the Republic and the Ministers; it is presided over by the former and performs the following functions:

1. It requests the Legislative Assembly to declare a state of national defence, and seeks its authority to order military recruitment, to organize the army and to negotiate peace ..."

The provisions referred to are the tip of the legal pyramid: from them derive, and upon them depend, another set of principles which are analysed below.

First and foremost, and on the basis of the premise that there is more substance to the basic content of constitutional principles than is apparent from the simple wording of constitutions, we shall see what arguments were adduced by the Constituent Assembly.

As regards the first principle of law, we would point out that it was not embodied in the draft that was being discussed but was incorporated into the text on a motion by three members of the Assembly, who supported the present wording from the outset.

It should be noted that the only point that came up for discussion was whether the proposed text as drafted "would exclude the formation of a citizens' army, such as the Swiss army, which voluntarily disciplines and perfects itself under the Minister of Security with a view to taking effective action in defence of the country"; to which one of the proposers replied in the negative, stating as his reasons that such a military organization would not be a permanent one and would, moreover, be in the interests of national defence.

It should, however, be pointed out that the answer to the question asked by the member of the Assembly is clearly given by the wording of the provision which, in addition to laying down such an exception, contains another, namely, the possibility of establishing an army under a Pan-American agreement. We thus see that the ban on the army in Costa Rica is not an absolute one.

On the assumption that the ban on possessing an army is conditional on the permanent existence of such a force, and with due regard for the exceptions referred to, it follows, conversely, that, if the army is a temporary one, its existence will be constitutional and its establishment, whether by virtue of a Pan-American agreement or for the purposes of national defence for a given period, subject to the rule of law.

For the reasons explained above, and having concluded that the army is proscribed but that one may be formed, it is necessary to consider how this may be done.

At this point, it is appropriate to analyse article 147, already referred to, which provides that the Council of Government is the body competent to organize and order military recruitment, subject to prior authorization by the Legislative Assembly.

One of the Legislative Assembly's functions, as laid down in article 121 (6) is:

"to authorize the Executive to declare a state of national defence and to make peace".

This necessarily requires us to clarify the sense of the conflicting principles of law: who is to declare a state of national defence? The same doubt arose at the sessions of the Constituent Assembly, and it was settled in the following way:

"(Deputy Ortíz) considered that there was some conflict between the two provisions, which should be harmonized.

An express provision to the effect that the Legislative Assembly could authorize the Executive to make use of the above powers, at the request of the Executive itself, would leave no room for confusion or misinterpretation in the future. The proposers of the motion indicated to Mr. Ortíz that his interpretation of the two provisions was the correct one." (page 164).

In short, therefore, the Executive is the body that declares the state of national defence, subject to prior authorization by the Legislative Assembly, given at the request of the Council of Government.

The Executive will also give the order for the army to be recruited and organized. It may be assumed that it will be formed automatically in accordance with military law which, though in force, cannot be applied until such time as the conditions for its implementation are met - a condition that will be fulfilled by the following legal instruments when article 12, referred to above, comes into operation.

I. Section 2 of Act No. 4 of 17 December 1897 concerning the Establishment of the Army, approved by DL - No. 14 of 24 May 1898, reads:

"All male Costa Ricans, by birth or . . . ., \*/ from the age of 18 years to the age of 60 years, shall be deemed to be members of the army whether or not they have enlisted.

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\*/ Translator's note: At least one word has been omitted here.

Foreigners who voluntarily enlist in its ranks may likewise form part of the army."

Article 51 reads:

"Persons who are called up to join the army and who fail, without just and proven cause, to report within the period stipulated by the Commanding Officer, shall be prosecuted to ensure that they comply with the order."

Article 52 reads:

"The following shall be exempt from compulsory military service:

1. Persons who, because of poor health or physical defects, certified by the army doctors concerned, are unfit to bear arms or to withstand the rigours of a campaign.

Diseases or physical injuries which, while they may render a person unfit for service in the infantry, cavalry or artillery, do not prevent him from serving in any other army unit shall be excluded.

2. Persons in holy orders, save in the event of the mobilization of troops."

Article 53 reads:

"The following shall be temporarily exempt from military service, during the performance of their duties:

1. The incumbents of the highest public offices.

2. Judges, governors, town councillors, public school teachers, members of boards of education, employees in the police sector, and all persons who are exempt under special laws."

II. In addition, the Army Regulations for the Republic, DL-6 of 14 January 1898, which relate specifically to training, will enter into force.

III. Lastly, the Code of Military Justice of the Republic of Costa Rica, No. 7 of 14 January 1898, approved by DL-23 on 23 June 1898, will take effect, the relevant portion of the Code providing in article 5:

"Depending on the status of the person concerned, the Court Martial shall have jurisdiction to try cases which are brought for all categories of offence, save those for which an exception is made in favour of another court:

6. Against persons who feign physical disability, or who maim or disable themselves, in order to gain exemption from military service, and also against doctors who knowingly issue false certificates for the said purpose".

In the light of all the above considerations, it may be concluded that the army is banned as a permanent institution but that one may be formed pursuant to a Pan-American agreement or during a state of national defence. In the latter event, the legislation, which by virtue of the existence of article 12 of the Constitution has not been implemented, will come into force; as is clear from a study of that legislation, military service is compulsory in Costa Rica for adult males between the ages of 18 and 60 years.

FINLAND

[Original: English]

[20 October 1980]

The Finnish legislation relating to the objection on conscientious grounds to military service and alternative service is included in the Act and the Statutory Decree concerning Unarmed and Civilian Service which are in force since April 1969 (Act 132 of 21 February 1969 and Statutory Decree 182 of 14 March 1969).

According to the Unarmed and Civilian Service Act, a conscript who objects to military service on conscientious grounds of a serious nature, based on a religious or ethic conviction, may be exempted from military service in peacetime. In wartime every man in service is obliged, in principle, to participate in defending the country even with arms.

An exemptee will first be ordered to serve unarmed in the Defence Forces. If his conscientious reasons compel him to refuse unarmed service as well, he will be ordered to serve in the civilian administration (state, municipalities or university central hospital). Both the unarmed service and the service in the civilian administration exceed the time required for the regular service (240 days), the former by 90 days and the latter by 120 days.

The religious and ethnic convictions of the conscripts are studied by an examination board. If the board finds that the conviction of a conscript justifies his application for unarmed service or service in the civilian administration, exemption from the regular service is granted. The examination board is appointed by the Government, and it consists of a chairman with a degree in law and of four members. Out of these four members at least one represents the Defence Forces and has to rank at least a major, one is a psychiatrist and one represents the Ministry of Justice. The examination board's decision can be appealed to the Ministry of Justice.

As a rule, the application for unarmed or civilian service must be entered before the conscript has been ordered to military service. The date for entering into service is then postponed until the examination board has reached its decision. However, should the application be made after the conscript has already begun his military service, he will be transferred to unarmed service pending the examination board's decision.

The practical arrangements concerning civilian service belong to the mandate of the Ministry of Labour. Among other things, this ministry approves the institutions for civilian service. At the moment there are about 180 institutions of this kind.

A conscript who even refuses alternative service will be sentenced to imprisonment for not more than one year. A conditional sentence is not possible.

In recent years, those in unarmed or civilian service have made up about 3 per cent out of those in the regular service. In 1979, 102 conscripts were ordered to unarmed service and 1,088 to civilian service. The decision of the examination board was negative in 25 cases, i.e. the conscript was ordered to armed service. The number of those even objecting to alternative service has been around 110 per year. They have been almost exclusively Jehovah's Witnesses.

In Finland, the position, the duties and the rights of the conscientious objectors have been discussed in numerous committees over the last few decades. Even at this moment, reforms concerning e.g. the position of the "total objectors" as well as the practical arrangements relating to civilian service are being considered.

MALAWI

[Original: English]

[3 October 1980]

Recruitment of soldiers in Malawi is voluntary on the part of the recruits. Once recruited, however, one may not object to being deployed on conscientious grounds as this is punishable under Section 39 of the Army Act (Cap. 12:01).

In situations of public emergency, every citizen of Malawi, ages 18 to 60 years, may be called up for national service under the National Service Act (Cap. 12:02). Refusal to serve in this capacity on purely conscientious grounds is an offence.

PANAMA

[Original: Spanish]

[6 October 1980]

I have to inform you that the Republic of Panama does not provide under its legal order for compulsory military service in peace time. For this reason, there are no legal provisions which deal with conscientious objection to military service. Under article 269 of the Constitution, the National Guard is the body responsible for ensuring national defence and public security. Under paragraph 6 of article 264, the professional military force is deemed to form part of the public service, and it is specified that it shall be organized in accordance with the needs of the Administration. No specific regulations governing the military profession have been laid down, its members being appointed to the National Guard by the Executive.

In our view, Sir, the resolution under consideration does not affect our domestic law. We believe that conscientious objection to military service is a matter that should be reviewed by the international community, with emphasis on its relationship with the question of human rights, but that the necessary procedures to protect national integrity and defence should be guaranteed. It is therefore important for our country that this exception should not apply in the event of war.

Our Constitution stipulates, in article 270, that all Panamanian males are required to bear arms to defend national independence and the territorial integrity of the State. In such cases, the terms of article 16 of the Constitution exempt naturalized Panamanians, who are not required to bear arms against the country of their birth.

SPAIN

[Original: Spanish]

[30 October 1980]

A. Conscientious objection to military service is currently governed by Royal Order 3011/1976. It provides for conscientious objection on religious grounds and, as an alternative, for social work in areas of interest to the community, for a period of three years.

Until the law foreseen in the above-mentioned provision is promulgated or the present law is substantially improved, persons alleging conscientious objection on religious or ethical grounds remain in a position of "deferred call-up".

B. The Ministry of Defence has prepared a draft Military Service Bill which provides that conscientious objection shall be a ground for exemption from military service.

C. The Office of the Prime Minister has prepared a draft bill governing conscientious objection, which is currently under consideration.

SURINAME

[Original: English]

[Undated]

The matter of conscientious objection to military service is mentioned in article 122, paragraph 6, of the Constitution of the Republic of Suriname. This article declares by law the conditions on which exemption from military service, for reasons of conscientious objection to such service, can be obtained. A statutory provision as such, stemming from the above-mentioned constitutional statement has, however, never been enacted.

SYRIAN ARAB REPUBLIC

[Original: English]

[13 October 1980]

The Syrian Arab Republic has not adopted any legislation or other measures relating to conscientious objectors. It should be stressed that as long as the sovereignty and territorial integrity of the Syrian Arab Republic remain violated by the Israeli military occupation and that the people of Palestine are deprived of their inalienable rights recognized by the relevant United Nations resolutions, the question of conscientious objection to military service is an unrealistic exercise as far as the Syrian Arab Republic is concerned.

The Government of the Syrian Arab Republic wishes to state that since its independence it has never had to deal with a case of conscientious objection to military service.



TONGA

[Original: English]

[20 October 1980]

As the Kingdom has a very small military service it therefore has no legislation on the subject.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

[Original: English]

[16 September 1980]

There has been no compulsory military service in the United Kingdom since July 1963. The questions raised by the Secretary-General are therefore not appropriate to the United Kingdom at the present time. Now that the United Kingdom Armed Forces consist entirely of volunteers the arrangements for dealing with servicemen who object to further service on the grounds of conscience are not statutory but administrative.

The arrangements are as follows. When a serviceman appeals for release on grounds of conscience, the Service Department concerned first considers whether, in its opinion, the conscientious objection to further service is genuine or not. If it decides against releasing the serviceman, then he may, if he wishes, appeal to an independent Advisory Committee.

Appointments to this Committee are made by the Lord Chancellor, and consist of a Chairman and reserve Chairman who are both professional lawyers, and four lay members. The Advisory Committee in session consists of either the Chairman or the reserve Chairman and two lay members. Its function is to hear in public the appeals of applicants whose cases have already been considered and dismissed by their own Service Authorities. The Committee's advice as to whether the conscientious objection is genuine or not is passed in confidence to the Secretary of State for Defence with whom the decision on discharge or otherwise finally rests. On the question of conscience the Committee's findings are accepted as decisive, and when the finding is that the conscientious objection is genuine the discharge or resignation of the serviceman normally follows.

In addition to hearing appeals from regular, volunteer servicemen, the Committee is also available to consider any appeals which might arise in the event of the reserves being called out.

As the United Kingdom does not have compulsory military service there is no requirement for any form of "alternative service" for conscientious objectors.

It is not considered practicable to specify the grounds on which conscientious objection may be claimed. It is for the applicant to satisfy those concerned that his conscientious objection to further service is genuine.

UNITED STATES OF AMERICA

[Original: English]

[20 October 1980]

The Government of the United States welcomes the opportunity to provide the Secretary-General with up-to-date information concerning conscientious objection to military service and alternative service, as circumstances affecting these matters have changed substantially since the submission of the contribution of the United States Government to the Report of the Secretary-General, E/CN.4/1118, published 15 December 1972.

On 1 July 1973, the authority of the Selective Service System to induct persons for military training and service expired. 50 App. U.S.C. § 467. From that date onward, no inductions have taken place. The system now operating in the United States is based on an all-volunteer force. Under this system, the questions of conscientious objection and alternative service for inductees do not arise.

The issue of conscientious objection by enlisted personnel and officers within the various branches of the military is dealt with under 32 Code of Federal Regulations, Part 75 (a full text is attached). <sup>1/</sup> The privilege of conscientiously objecting to continued military service or to occupation of a combatant position is established based on the wishes of the Executive rather than pursuant to an act of Congress. Under 32 CFR 75, procedures are established to screen, by way of review boards, both those requesting discharge, based on conscientious objection, and those requesting transfer to non-combatant status. Those whose requests are refused by the boards have recourse to take their case to the federal court system.

It should be noted that, while the Military Selective Service Act (50 App. U.S.C. § 451 et seq.) is currently without application based on induction having ceased, the Act is still part of the United States Code. Consequently, although not presently operable, that part of the Act relating to conscientious objectors and alternative service, as well as parts 1622 and 1660 of the Code of Federal Regulations, all reproduced in the Report of the Secretary-General, E/CN.4/1118, pp. 65-72, still represent United States law as it relates to conscientious objectors and alternative service.

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<sup>1/</sup> Available with the Secretariat.