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SPEECH DELIVERED BY BRETT MYRDAL 29 SEPTEMBER 1983  
AT NUSAS UCT MASS MEETING: 'STUDENTS REJECT THE  
APARTHEID CONSTITUTION'

AS.61.112

Fellow students; I greet you today in solidarity with all other objectors; with the thousands who have left South Africa rather than serve in the South African Defence Force; in solidarity with Paul Dobson who, after 14 months in the SADF, chose to object and will now join the other conscientious objectors in Pretoria Central.

Last week I heard a report on capital radio covering the Transvaal National Party Congress. A resolution was passed calling for the rapid implementation of the extension of conscription to so-called coloureds and indians. Magnus Malan, minister of defence, spoke to the resolution.

He explained that the law to extend conscription would, but for shortage of time, have been introduced during the last sitting of parliament. He said it only remained for the new constitution to be accepted, before the extension of conscription would become fact.

So, as I talk today, introduced as a conscientious objector, I am very conscious of the fact that conscription is fast becoming a reality for a far broader group of South Africans. And it is precisely because of the supposed political rights which are being 'given' to the coloured and indian people, that they now face the threat of conscription in defence of the apartheid under which they live.

F.W.de Klerk, Transvaal Nationalist Party leader, has stated this clearly. I quote: "You can't ask a man to fight for his country if he can't vote. Among the terms of the new dispensation is the guarantee that coloureds and indians will get voting rights. It follows that their responsibilities will increase accordingly, which means they will hold obligations to defend these rights."

This is one harsh consequence of the new constitution that we, gathered here as members of NUSAS and the United Democratic Front, reject as we reject all aspects of the government's new deal.

In July, I failed to report to Potchefstroom Medical Services Corps. I was charged at Voortrekkerhoogte and face a Court Marshall there on November 8th. As a conscientious objector, I face a maximum sentence of two years imprisonment.

But I, like thousands of others, had been morally and physically prepared for war. Why then make this choice?

I attended a high school in Port Elizabeth. Part of its 'liberal' tradition was to train us as officer material for the SADF. The military, in the form of compulsory cadet training, was a part of my life from the age of 13.

Instead of cowboys and indians, at school camps we played 'nationalists vs terrorists'. We drilled with R1's; we were trained to shoot; 600 boys went on parade four times a year for the Eastern Province Command.

Our cadet camp (and I quote from our school year book) trained us in counter insurgency warfare and attacks on mock terrorist bases.

Then in our last year of school, we all received our first call up papers. The dilemma then was-varsity or national service? This was the year after Soweto '76 - We had always been told to prepare for the war against an external communist threat. But it was clear to many of us that conflict existed within South Africa. Many who were opposed to apartheid went in: 'to get it done with' - they are still trying to get it done.

They came back, some from the border. Many friends of mine couldn't recognise themselves or come to terms with what they had done.

So I chose to come to university. Here I was exposed to new ideas. Through meetings like these, and the work of organisations on campus, I broadened my understanding of conflict in South Africa and of the role I, myself, played in this.

The question for myself and for all of us was; 'What system are we called on to defend?' For me it became clear that it was a system based on the rule of a minority; where unemployment has reached 3 million; where the country is fragmented into homelands; where people from Crossroads and KTC are removed, to face repression of the order that we see in Ciskei at the moment. A country, which calls on its top generals to mastermind a militarily defensible constitution which it then holds out to the people of the country as democracy.

For me it became immoral to participate in the SADF and defend such an unjust system. Immoral to fight against our own people - the youth of

Soweto '76 now returning. I could not participate in a war of occupation in Namibia; in cross-border raids; in the suppression of uprisings; and I could not do the work of police in staffing road blocks and resettling people.

My dilemma meant that I had to choose sides. And I had to take the side of the people working for a just and free South Africa. For me, commitment to a non-racial struggle has meant that I must refuse to serve in the SADF.

All of you ,faced with this situation, will have to make an equally difficult decision. On the one hand, the state increases to 6 years the sentence for C.O.'s . But on the other, the constitution it has constructed offers no solution to the conflict. The very foundations of the constitution lie in the Group Areas Act, lie in the maintenance of the homelands.

When we oppose the constitution today, our opposition should not be limited to only those aspects of the status quo that are being modified by the constitution.

Our opposition should be directed at every way in which an embattled white minority attempts to preserve its power and privilege : detentions, forced removals, bantustan policy, and the increasing militarisation of our society.

When we demand alternatives, we cannot limit ourselves to alternatives to the constitution. Our demands must embrace a profoundly changed society, a society where people are no longer powerless and hungry, and shunted around like animals. A society where young men are no longer called on to fight their brothers in defence of a patently unjust system, a society where the people are in control of their lives - where the people shall govern.

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Objection to mil. service

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Sub-Commission on Prevention of  
Discrimination and Protection  
of Minorities

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Item 16 of the provisional agenda

QUESTION OF CONSCIENTIOUS OBJECTION TO MILITARY SERVICE

Report by Mr. Eide and Mr. Mubanga-Chipoya

GE.83-12375

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## INTRODUCTION

### A. Background

1. By its resolution 11 B (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 prepared in connection with the Study of Discrimination in the Matter of Religious Rights and Practices and to seek from Member States up-to-date information on national legislation and other measures and practices related to conscientious objection to military service, and alternative service. A report (E/CN.4/1118 and Corr.1 and Add.1-3) was prepared in accordance with this resolution.
2. At its thirty-second session in 1976, the Commission on Human Rights in its resolution 1 A (XXXII), noted the report on the question of conscientious objection to military service prepared by the Secretary-General. At its thirty-sixth session in 1980, the Commission on Human Rights, by its resolution 38 (XXXVI), requested the Secretary-General to seek once again from Member States up-to-date information on national legislation and practices relating to conscientious objection to military service and alternative service. A report was prepared pursuant to this resolution (E/CN.4/1419 and Add.1-5) and a follow-up to this report was issued in document E/CN.4/1509.
3. At its thirty-seventh session in 1981 the Commission, by its resolution 40 (XXXVII), requested the Sub-Commission on Prevention of Discrimination and Protection of Minorities to study the question of conscientious objection to military service in general, and in particular the implementation of General Assembly resolution 33/165 of 1978, with a view to making recommendations to the Commission. The General Assembly in resolution 33/165, recognized the right of all persons to refuse service in military or police forces which are used to enforce apartheid and called upon Member States of the United Nations to grant asylum or safe transit to another State, in the spirit of the Declaration on Territorial Asylum to persons compelled to leave their country of nationality solely because of a conscientious objection to assisting in the enforcement of apartheid through service in military or police forces.
4. At its thirty-fourth session in 1981, the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted resolution 14 (XXXIV) by which, after recalling General Assembly resolution 33/165 and expressing the belief that the various dimensions of the question of conscientious objection to military service and their interrelationships with the promotion and protection of human rights needs further examination, it requested the authors of the present report to make an analysis of the various dimensions of conscientious objection to military service and its interrelationships with the promotion and protection of human rights, using the materials from Governments, specialized agencies, regional intergovernmental organizations and non-governmental organizations in consultative status available to the General Assembly, the Economic and Social Council, the Commission on Human Rights and the Sub-Commission, and to present to the Sub-Commission at its thirty-fifth session a concise report together with their conclusions and recommendations.
5. At its thirty-fifth session in 1982, the Sub-Commission examined a preliminary report (E/CN.4/Sub.2/1982/24) submitted by the authors. In its resolution 1982/30, the Sub-Commission requested them to prepare a final report based on the comments received on their preliminary report and to develop principles related to the question of conscientious objection, with a view to

(a) Recognizing the right of all persons to refuse service in military or police forces which are used to enforce apartheid, to pursue wars of aggression, or to engage in any other illegal warfare;

(b) Recognizing the possibility of the right of all persons to refuse service in military or police forces on grounds of conscience or deeply held personal conviction, and their responsibility to offer instead of military service any other service in the social or economic field including work for the economic progress and development of their country; and

(c) Urging Member States to grant asylum or safe transit to another State to persons compelled to leave their country of nationality solely because of conscientious refusal to serve in the military forces.

#### B. Purpose

6. Chapter I of the report deals with the concept and dimensions of conscientious objection, the relevant international standards relating to the question and the approaches to the issue which can be discerned from the views expressed in resolutions and declarations of intergovernmental and non-governmental organizations.

7. Chapter II contains an analysis of the actual situation with respect to conscientious objection under relevant national laws and practices. There are a variety of different approaches taken by States, ranging from complete rejection of the concept of conscientious objection to a number of compromises between the interests of the State and the conscience of the objector. This report takes into account not only what happens to the objector in his own country, but also what his fate is likely to be if he escapes to another country in order to avoid military service. As required by the mandating resolution, the issue is dealt with in general terms, and the status of persons refusing service in military or police forces used to enforce apartheid is examined as well.

8. In chapter III, conclusions are drawn from the material reviewed. The experience of the conscientious objector under national law and administration as described in chapter II is compared to the standards and demands of the international community, as described in chapter I. Finally, a set of recommendations by which national law and practice can be brought more into conformity with international standards and demand, are expressed.

9. The annexes contain information on the situation, in various parts of the world, concerning the problem of conscientious objection. Annex I provides a summary of available information on conscription, conscientious objection to military service, and alternative service. Annex II contains tables listing countries and territories according to their situation with regard to conscription and alternative service. Annex III gives a summary of information received on the question of asylum for persons having fled their country because of their objection to military service.

10. Attention has also been drawn to a related, but different problem, which is the case of children and young adolescents in armed forces. Even when the individual child does not object to such service, it is doubtful that he can be sufficiently responsible to take such a decision, and in any case the use of children must be considered unacceptable. Since this is not a question of conscientious objection, it is not further dealt with in this report, and material has not been collected on the occurrence of the phenomenon. But in the recommendations it has been suggested that the Sub-Commission should consider action to be taken to follow up this problem.

11. Pursuant to the provisions of paragraph 1 of Sub-Commission resolution 14 (XXXIV) a note verbale was addressed by the Secretary-General on 4 December 1981 to Governments, concerned specialized agencies, regional intergovernmental organizations and non-governmental organizations asking for their observations and comments on the subject.

12. As of the end of May 1982, as stated in the preliminary report (E/CN.4/Sub.2/1982/24), replies had been received from a number of Governments, specialized agencies, regional intergovernmental organizations and non-governmental organizations. A reminder was sent on 1 December 1982 to all Governments, specialized agencies, regional intergovernmental organizations and non-governmental organizations which had not yet complied with the previous request addressed to them.

13. As of 20 June 1983, substantive replies had been received from the Governments of the following Member States: Australia, Botswana, Burma, Cape Verde, Colombia, Cyprus, Ecuador, El Salvador, France, Greece, Haiti, Holy See, Iraq, Israel, Jordan, Luxembourg, Morocco, New Zealand, Norway, Papua New Guinea, Qatar, Rwanda, Saudi Arabia, Swaziland, Switzerland, Syrian Arab Republic, United Republic of Cameroon, Venezuela and Zambia.

14. Comments had also been received from the International Labour Organisation, the United Nations High Commissioner for Refugees and the United Nations Educational, Scientific and Cultural Organization, as well as from the Council of Europe, the Organization of African Unity and the Organization of American States.

15. The following non-governmental organizations had also sent valuable information: Amnesty International, Baptist World Alliance, Center of Concern, Commission to Study the Organization of Peace, Friends' World Committee for Consultation, International Association for the Defence of Religious Liberty, International Association for Religious Freedom, International Association of Educators for World Peace, International Bar Association, International Christian Youth Exchange, International Commission of Jurists, International Fellowship of Reconciliation, International Humanist and Ethical Union, International Peace Bureau, International Union of Lawyers, Pax Christi, Society for Comparative Legislation, War Resisters International, World Conference on Religion and Peace, World Future Studies Federation, Young Lawyers' International Association. <sup>1/</sup>

16. In addition to the above-mentioned organizations, other sources of information were also consulted by the authors.

17. Some Governments have argued that since there is no conscription in their countries the issue of conscientious objection does not arise. While it is true that the problem of conscientious objection is of particular importance in countries which do have conscription, it does not follow that specific aspects of the problem do not arise in countries without conscription, as will be seen from the discussion. Some Governments of countries which do not have conscription have provided useful information on specific aspects of the issue of conscientious objection.

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<sup>1/</sup> The World Association for the School as an Instrument of Peace also submitted a written statement on the subject to the Commission on Human Rights at its thirty-eighth session (E/CN.4/1982/NGO/34).

I. THE CONCEPT OF CONSCIENTIOUS OBJECTION AND RELEVANT INTERNATIONAL STANDARDS RELATING TO THE QUESTION OF CONSCIENTIOUS OBJECTION

A. The concept and dimensions of conscientious objection

18. This chapter contains an analytical presentation of the possible meanings of the concept of conscientious objection. This is based on usages in relevant language, be it by intergovernmental organizations, by scholars and publicists, or by non-governmental organizations. Account is also taken of the way in which it is used in national legislation, but we are here initially utilizing a rather wider concept and shall subsequently explore more specific meanings in particular applications.

19. There is a widespread notion that conscientious objection is a purely pacifist attitude, an unlimited opposition, based on principle, to the killing of human beings under any circumstances. But this is not the only sense given to the concept of conscientious objection and for the purposes of the present study it is too narrow. Objection to participation in military service can also be partial, related to the purposes of, or means used, in armed action. One illustration of this is contained in Commission resolution 40 (XXXVII) by which the Commission:

"... requests the Sub-Commission on Prevention of Discrimination and Protection of Minorities to study the question of conscientious objection to military service in general, and in particular the implementation of General Assembly resolution 33/165 of 20 December 1978, with a view to making recommendations to the Commission on Human Rights."

General Assembly resolution 33/165 concerns the status of persons refusing service in military or police forces used to enforce apartheid. Since such persons are not necessarily pacifists, but are opposed to the use of military force to enforce apartheid, it follows that the concept of conscientious objection adopted in this study has to be more comprehensive than that of pure and simple pacificism.

20. In this analysis, the words "for reasons of conscience" will be retained, which means that cases in which a person objects to military service out of opportunism, or of a desire to avoid the hardship and risks of military action will be excluded from the study.

21. By conscience is meant genuine ethical convictions, which may be of religious or humanist inspiration, and supported by a variety of sources, such as the Charter of the United Nations, declarations and resolutions of the United Nations itself or declarations of religious or secular non-governmental organizations. Two major categories of convictions stand out, one that it is wrong under all circumstances to kill (the pacifist objection), and the other that the use of force is justified in some circumstances but not in others, and that therefore it is necessary to object in those other cases (partial objection to military service).

22. The conscience of the individual is a precious asset for every society. It is part of the socialization process to nurture and encourage the moral conscience of the individual, without which civilization would be meaningless. At the centre of this process is the effort to instil in the individual the conviction that it is immoral in most circumstances to take the life of other persons. Some exceptions to this moral principle are widely recognized, however, including the right to use force in self-defence when no other option seems possible. But it is also widely held that no one should deliberately place himself in a position in which he will find it necessary to defend himself.

23. As mentioned above, there are various influences at work in shaping the more precise content of conscience on this vital issue. The outcome of these influences varies for different individuals and within different societies. Some individuals are of the opinion that killing is immoral under all circumstances, others accept the use of force for some purposes but not for others, and many take the position that whatever their national authorities proclaim to be legal must necessarily also be moral. The last-mentioned obey the commands of their national authorities, including their military superiors, without questioning the legitimacy of those commands.

24. Thus, within a given society one is likely to find individuals whose conscience gives them different directions in this salient issue of the conditions under which to participate in the use of armed force.

25. Chapter I, sections B, C and D deal with some of the normative influences emanating from agents of the international community and aimed, directly or indirectly, at the conscience of the individual. Chapter I, section B, is concerned with the consequences these have for the understanding of the right to freedom of conscience. As pointed out, the conviction of the individual is influenced by education and socialization, which includes transmission of knowledge about existing or emerging international standards.

26. Essential to this analysis is the degree to which the individual should be entitled to take responsibility for his convictions. In almost all societies, it is only a minority which holds the opinion that it is immoral to participate in the use of armed force. But the fact that it is a minority opinion does not make it an any less profound and tenaciously-held conviction, which ought to be respected.

27. Partial objection to military service (or circumstantial objection) is built on the conviction that armed force can be justified under limited circumstances, derived from standards of international or national law or morality. Objection based on reference to standards of international law can refer to several categories: one dimension concerns the purpose for which armed force is used, another concerns the means and methods used in armed combat.

28. Standards of international law, as we shall further examine in chapter I, section B below, have sought to circumscribe the purposes for which armed force can be used in the world today. Armed force used for the purpose of expansion, aggression, genocide, for gross and systematic violations of human rights, has been prohibited by international standards.

29. International standards have also been developed which circumscribe the right to use certain means and methods in warfare. The conscience of individuals cannot avoid being influenced by these developments of international law, otherwise there would hardly be any point in the international community, including in particular the United Nations, developing such norms.

30. Limitations on the purposes, means and methods of the use of armed force is also frequently found in national law. In some countries, it has been provided for in the Constitution or other legislation that armed force can only be used for the defence of the national territory, and procedural provisions have been adopted according to which the decision to use armed force must be made, or consented to, by the popularly elected legislative body of the State.

31. National law also frequently penalizes the coercive use of force against individuals. It may occur that the armed force of a country is used in violation of constitutional or other national law, such as when the constitutional organs of the State have been suspended or overthrown by a military intervention.

32. The individual whose conscience has been shaped and influenced by constitutional and other laws of his country, may experience a deep problem of conscience when he is required to obey commands of authorities who deviate from the provisions and limitations contained in national law.

#### 1. The conflict of values

33. Objection to military service always implies some degree of conflict of values between the authorities and the person who objects. Pacifists normally represent a dissenting opinion held only by a relatively small number in society. This may explain why, in a number of countries, a compromise has been worked out, according to which those who genuinely hold pacifist convictions are allowed to be exempted from combat, and are given alternative services of various kinds. This alternative service reflects the degree of compromise made: it can range from the transfer of the person concerned to non-combat roles within the armed forces (a compromise weighted in favour of the authorities), to service which corresponds to the preferences of the conscientious objector. When alternative service of this kind is provided for, an attempt is made to ensure that the burden of the service is at least as onerous as military service would be, in order to preclude the temptation to request alternative service for reasons of opportunism.

34. When the objector is not a pacifist, but objects to participation in military service because of the alleged illegality of the purpose of or the means and methods used in, armed combat, the conflict of values becomes much more acute. No Government is likely to agree that the way in which they use their armed forces is illegal, under national or international law. Even in South Africa, the existing Government (which is based on a racial minority) does not accept that its military actions run counter to international law. While therefore an objector may consider himself entitled, by reference to international law, to oppose military service in the South African armed forces, this right is not accepted, under the national law of South Africa, as presently enforced.

35. The problem of conflict of values is not specific to the question of conscientious objection; it is a recurrent theme in many areas of social and political life. One of the main purposes of the concern with human rights is to ensure that divergent opinions can be accommodated, respected and acted out, in such a way that due attention is paid both to the common good and the concerns of the individuals. To achieve this, compromises have to be worked out in a democratic way; the question of conscientious objection and alternative service is one area in which many, but not all, societies have worked out such a compromise.

#### 2. Evidence of conviction

36. Those who object to military service must furnish some proof that their conviction is serious and well-founded. This is basically a procedural problem, to which we shall return in a subsequent part of the report, but some aspects of it should be mentioned here.

37. For the pacifists, the problem is to prove that they do hold the ethical, religious or moral conviction that it is wrong under all circumstances to participate in armed action. For those whose objection is circumstantial or partial, it is

necessary not only to prove that they have this conviction, but that they build it on some current considerations which are reasonably solid. They have to show some degree of probability that the purposes for which they are being inducted into the armed forces are likely to be illegitimate. They would have to demonstrate that these purposes or means and methods used would be illegitimate under international or national law. Since this in many cases will refer to future possibilities, convincing evidence may be difficult to provide. It is thus clear that the partial or circumstantial objector will face a much harder fight than an absolute pacifist to get his position acknowledged. Indeed, as earlier indicated, the former would be considered as breaking the established national law, in many countries, but especially so in South Africa.

#### B. Relevant international standards

38. We start this examination by reference to the right to freedom of thought, conscience and religion, which is recognized in the Universal Declaration of Human Rights of 1948 (article 18), the International Covenant on Civil and Political Rights of 1966 (article 18), the European Convention on Human Rights and Fundamental Freedoms of 1950 (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).

39. The freedom to have a conscience with regard to a certain issue is one thing, to act in accordance with that conscience is another. In article 18 of the Universal Declaration, it is stated that the right to freedom of thought, conscience and religion includes the freedom to manifest one's belief in teaching, practice, worship and observance. But no society can allow everyone to act in all directions according to their conscientious convictions. Society is entitled, under limitations contained in the human rights instruments, to prohibit and prevent people from acting out their conviction when such acts would harm others, and society is also entitled, again under limitations to be found in the human rights instruments, to impose acts on their citizens when such acts are required for the common good. But there must be some scope for freedom to act in accordance with one's concepts, otherwise it would be an empty right. It is undesirable to create too large a gap between convictions having a reasonable basis, and the actions which society demands the individual to perform. If this gap becomes too large, it leads to a deep personal crisis which can unnecessarily stifle human creativity in society.

40. Article 29, paragraph 2, of the Universal Declaration on Human Rights reads: "In the exercise of his rights and freedoms, everyone shall be subjected only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society". Limitations on the right to act in conformity with one's conscience must be consonant with this provision.

41. Reference should also be made to the right to freedom of opinion and expression, which is recognized in article 19 of the Universal Declaration, and in all other major international instruments on human rights. This right includes freedom to seek, receive and impart information and ideas through any media and regardless of frontiers. Those, therefore, whose conviction is that it is wrong to kill under any circumstances or in particular situations, also have a right to disseminate and receive information about this conviction and the consequences which should be drawn from it. Again, limitations to this right must be consonant with the provisions of article 29, paragraph 2 of the Universal Declaration.

42. Having made references to the rights of freedom of conscience, and having pointed out that the freedom to act in accordance with one's conscience can be limited, but that any limitations have to be kept within bounds, as defined in other parts of the human rights provisions, we now turn to the question whether there are standards of international law which can be seen to delimit or extend the right to act in accordance with a conscientious objection to military service.

43. Article 8 of the International Covenant on Civil and Political Rights stipulates that "forced or compulsory labour" does not include "any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors". This provision, however, is of limited relevance. It makes it clear that neither military service nor alternative service is to be considered forced labour. This implies that there is no general right to oppose obligatory military service on the ground that it interferes with personal freedom. But it does not settle, one way or the other, the question whether there is a basis for claiming exemption from military service on the basis of a conscientious objection.

#### 1. The right to life

44. Conscience can be reinforced by the right to life, which has been guaranteed by the Universal Declaration (article 3), the International Covenant on Civil and Political Rights of 1966 (article 6), the European Convention on Human Rights and Fundamental Freedoms (article 2), the American Declaration of 1948 (article 1), and the American Convention on Human Rights (article 4). It is also established in article 4 of the new African Charter on Human and Peoples' Rights. Although it cannot be advanced as a legal argument, it must nevertheless be mentioned that there is a religious injunction in the biblical Commandment "Thou shall not kill". This consideration is appropriate in this study because the Commandments have natural justice as their main basis.

45. These provisions do not secure an absolute protection for the life of the individual. The essence is that no one shall be arbitrarily deprived of his life. This means that there can be, in national and international law, a legitimate basis for taking the life of others when this is not arbitrary. Specific norms to this effect have been developed in all societies. To deprive a person of his life is everywhere considered as something which can only be justified under extreme circumstances and for reasons clearly defined in advance. This forms part of the conscience of every moral person, and it therefore reinforces the conviction that one shall not participate in the taking of life of others unless there exists an extreme situation that is clearly justified.

#### 2. Jus contra bellum

46. In international law, there have been important developments, particularly dynamic since the founding of the United Nations. While in the past there have been periods in which international law did not restrain the right to use armed force, this right has now been severely circumscribed. Under article 2, paragraph 4 and article 51, of the Charter of the United Nations, there is only one case in which there is clearly a right to use armed force: in self-defence against an armed attack from outside. This law of the Charter had been reinforced and made more detailed by the Declaration on the Granting of Independence to Colonial Countries and Peoples of 1960, the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States of 1970, the 1974 Declaration on the Prohibition of Aggression and the 1965 Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty.

47. All of these elements, building blocks of modern international law, prohibit the use of armed force for certain purposes. The question of relevance to our study is the following: when a person is convinced that the armed forces of her or his own country actually are being used or may be used in the future for purposes which are in violation of international law, and when therefore a conscience built on respect for international law reinforces the general repulsion against taking the life of others arbitrarily, should not this objection be accepted? It would then form a concrete application of the extent of the right to conscience and the freedom of action built on that conscience. We note that the personal legal duty incumbent on the individual not to act contrary to international law is proclaimed in the Charter of the Nuremberg Tribunal.

### 3. Jus in bello

48. A number of international instruments prohibit the use of certain means and methods in warfare. These instruments are the Hague Conventions of 1899 and 1907, and the various Geneva Conventions, the most recent being the Geneva Conventions of 1949 and the new Protocols to the Geneva Conventions adopted in 1977. These instruments prohibit certain kinds of behaviour (killing of prisoners, non-discrimination between civilian and military targets, respect for the population in occupied territories, etc.) and they also prohibit the use of certain means (the use of asphyxiating poisonous or other gases, possibly also the use of nuclear weapons). All these efforts can be seen as the striving of the civilized international community to draw the line between the protection of the life of the individual and the legitimate scope of action when the use of armed force is unavoidable. Put in another way: there are efforts to give substance to the provision that no one shall be deprived arbitrarily of his or her life. The international norms in this and other fields can then be seen as the legitimate dividing line between justified and unjustified (and therefore arbitrary) taking of the life of others.

49. Again, therefore, the question that arises is should an individual who, for reasons of conscience, refuses to participate in an action which in his or her view would go beyond the borderline of legitimate armed action have the right to act in accordance with his or her conscience?

### 4. Genocide

50. The 1948 Convention on the Prevention and Punishment of the Crime of Genocide prohibits destructive acts which are directed against a national, ethnic, racial or religious group by any person, and makes genocide a crime under international law. In this case, the individual is not only entitled, for reasons of conscience, to refuse to participate in genocide; he is even obliged to abstain from such participation, since he is criminally liable under article IV whether he is a constitutionally responsible ruler, public official, or private individual.

51. The Nuremberg Principles, contained in the Charter of the Nuremberg Tribunal, and reaffirmed in United Nations resolution 1 (95) of December 1946, make the individual personally responsible for certain actions contrary to international law, whether or not he has taken part in the decision-making process. These are the extreme cases, where there is not only a right to object to participation, but also an obligation to do so in order to avoid criminal liability. (That this liability in the absence of an international criminal tribunal, will not be given effect, is beside the point for the purposes of the present study.)

5. The right to self-determination

52. In its resolution 2625 (XXV), proclaiming the principles of international law relating to friendly relations and co-operation among States, which include the principles of self-determination, the General Assembly states - among other things - the following: "Every State has the duty to refrain from any forcible action which deprives peoples referred to in the elaboration of the principle of equal rights and self-determination of their right to self-determination and freedom and independence". This is another instance in which the international community has drawn the line between legal and illegal use of armed force. An individual, whose conscience with regard to the taking of the life of others, is informed by the normative efforts of the international community, might be considered entitled to refuse to participate in action contrary to the above principle.

53. Objection to participation in armed repression of self-determination will, no doubt, be particularly strong in the case of individuals who belong to the people whose self-determination is denied. Resistance by the young people of Namibia and South Africa to military service in the South African-controlled armed forces provides an example of such a case.

54. Similarly, it is not only a right but a duty under international law to object to participation in the crime of apartheid (defined in the International Convention on the Suppression and Punishment of the Crime of Apartheid).

55. The Declaration on the Preparation of Societies for Life in Peace (General Assembly resolution 33/73, of 15 December 1978), is also significant in various aspects, which will be further examined in this report.

6. Violations of human rights by armed force

56. National law in a democratic society establishes rules for the protection of the individual, and also against abuse of power by the authorities of the country concerned. When armed force is used in violations of those rules and when such force includes the threat of killing, or actual killing, the conscience of the individual is likely to be challenged. For a conscientious person, human rights provisions would be among the central norms that would guide him in determining the dividing line between the legitimate and illegitimate taking of the life of others. An individual prevented by conscience from going beyond that dividing line might legitimately claim respect for his conscience.

57. Similar observations can be made with regard to domestic laws, whether on the level of constitutional or subordinate laws, which regulate and delimit the scope of legitimate armed force. When military action is carried out in violation of those norms, a person prevented by conscience from participating in the action might claim respect for his conscience.

C. Resolutions and decisions adopted by international organs

58. Not only resolutions and decisions directly addressing the issue of conscientious objection, but also those concerned with the formation of responsibility by individuals towards peace and human rights will be examined in this section.

59. In 1965, the General Assembly of the United Nations adopted, by its resolution 2037 (XX), the Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples. Principle I of this Declaration reads as follows:

"Young people shall be brought up in the spirit of peace, justice, freedom, mutual respect and understanding in order to promote equal rights for all human beings and all nations, economic and social progress, disarmament and the maintenance of international peace and security."

60. In 1968 the International Conference on Human Rights was held in Teheran. In resolution XX the Conference took consideration of the fact that it is the hope of humanity that there should be in the future a world in which there does not exist any transgression of human rights and fundamental freedoms and that to that end it is imperative to implant in the consciousness of youth lofty ideals of human dignity and of equal rights for all persons without any discrimination, and that nowadays, within the process of social, economic and spiritual renewal in which humanity is engaged, the enthusiasm and the creative spirit of youth must be dedicated to eliminating any kind of violation of human rights.

61. Also in 1968, the General Assembly, in its resolution 2447 (XXIII), entitled "Education of youth in the respect for human rights and fundamental freedoms", endorsed the appeal made by the International Conference on Human Rights to States to ensure that all means of education should be employed so that youth may grow up and develop in a spirit of respect for human dignity and equal rights of man without discrimination as to race, colour, language, sex or faith, and endorsed the recommendations made by the International Conference on Human Rights in its resolution XX. The Assembly requested the Economic and Social Council to invite the Commission on Human Rights, in co-operation with UNESCO, to study the question of the education of youth all over the world with a view to the development of its personality and the strengthening of its respect for the rights of man and fundamental freedoms.

62. In 1969, the Commission on Human Rights, adopted resolution 20 (XXV), dealing with the question of education of youth, in which it endorsed the recommendations of the Teheran conference in its resolution XX and decided to consider at its future sessions the question of the education of youth all over the world for the development of its personality and the strengthening of its respect for the rights of man and fundamental freedoms.

63. In 1971, the Commission on Human Rights, in its resolution 11 B (XXVII), specifically referred to the question of conscientious objection to military service. It is significant that this reference was made in the context of education of youth for human rights.

64. By resolution 11 B (XXVII) the Commission requested the Secretary-General to make available to the Commission information on conscientious objection which had been collected for the Study of Discrimination in the Matter of Religious Rights and Practices. 2/

2/ United Nations publication, Sales No. 60.XIV.2.

65. In 1976, the Commission on Human Rights in its resolution 1 A (XXXII), took note of the report on the question of conscientious objection to military service prepared by the Secretary-General pursuant to its resolution 11 B (XXVII) (E/CN.4/1118 and Corr.1 and Add.1-3), and decided to give consideration to the problem at its thirty-third session. In resolution 1 B (XXXII), the Commission took note of the principles and motivating goals set out by the Advisory Group on Youth, which included the desire of young people to participate constructively in the establishment of social justice, to implement human rights on the national, regional and international levels, to overcome discrimination and exploitation wherever they exist, to attain the right to self-determination, national independence and social progress, and to struggle against colonial and foreign occupation.

66. These and other resolutions of the United Nations concerning the education of youth indicates the normative contents which are sought to be reinforced in the process of education. This is a point of considerable significance for the reinforcement of conscience which is promoted by the United Nations.

67. In 1978, the General Assembly, in its resolution 33/165, dealt with the status of persons refusing service in military or police forces used to enforce apartheid. In paragraph 1, the General Assembly recognized the right of all persons to refuse service in military or police forces which are used to enforce apartheid, and in paragraph 2 it went on to call upon Member States to grant asylum or safe transit to persons compelled to leave their country because of such objection.

68. This resolution, so far, is the most specific endorsement of the right to refuse military participation in cases where the purposes for which armed force is used are considered illegal by the international community.

69. Subsequent to the adoption by the General Assembly of resolution 33/165, the Commission on Human Rights adopted resolutions 38 (XXXVI) of 12 March 1980 and 40 (XXXVII) of 12 March 1981, and the Sub-Commission adopted resolutions 14 (XXXIV) of 10 September 1981 and 1982/30 of 10 September 1982. The relevant provisions of these resolutions are given in paragraphs 2, 3, 4 and 5 above.

70. In 1982, the General Assembly in its resolution 37/48, entitled "International Youth Year: Participation, Development, Peace", underlined the need to disseminate among youth the ideals of peace, respect for human rights and fundamental freedoms, human solidarity and dedication to the objectives of progress and development. The Assembly further expressed its conviction that there is an imperative need to harness the energies, enthusiasms and creative abilities of youth to the tasks of nation-building, the struggle for self-determination and national independence, in accordance with the Charter of the United Nations, and against foreign domination and occupation, for the economic, social and cultural advancement of peoples, the implementation of the new international economic order, the preservation of world peace and the promotion of international co-operation and understanding.

71. This is the latest demonstration of the orientation the United Nations is seeking to encourage with regard to the conscience of youth. It seems reasonable that this must affect the conscience of youth in the matter of restraints on the use of armed force, and thereby also their consciousness that they may have to

refuse to participate if armed force is used for purposes which violate the norms established by the United Nations, or when methods of armed action are resorted to which disregard the restraints established by norms adopted by the international community.

72. In 1974, the General Conference of UNESCO adopted the Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms. In this Recommendation, guiding principle 6 reads as follows:

"6. Education should stress the inadmissibility of recourse to war for purposes of expansion, aggression and domination, or to the use of force and violence for the purposes of repression, and should bring every person to understand and assume his or her responsibilities for the maintenance of peace. It should contribute to international understanding and strengthening of world peace and to the activities in the struggle against colonialism and neo-colonialism in all their forms and manifestations, and against all forms and varieties of racialism, fascism, and apartheid as well as other ideologies which breed national and racial hatred and which are contrary to the purposes of this recommendation."

73. In 1980, UNESCO convened the World Congress on Disarmament Education. In the Final Document, certain principles and considerations are set out (in Section A), of which No. 6 reads as follows:

"6. As an approach to international peace and security, disarmament education should take due account of the principles of international law based on the Charter of the United Nations, in particular, the refraining from the threat or use of force against the territorial integrity or political independence of States, the peaceful settlement of disputes, non-intervention in domestic affairs and self-determination of peoples. It should also draw upon the international law of human rights and international humanitarian law applicable in time of armed conflict and consider alternative approaches to security, including such non-military defence systems as non-violent civilian action. The study of United Nations efforts, of confidence-building measures, of peace-keeping, of non-violent conflict resolution and of other means of controlling international violence take on special importance in this regard. Due attention should be accorded in programmes of disarmament education to the right of conscientious objection and the right to refuse to kill. Disarmament education should provide an occasion to explore, without prejudging the issue, the implications for disarmament of the root causes of individual and collective violence and the objective and subjective causes of tensions, crises, disputes and conflicts which characterize the current national and international structures reflecting factors of inequality and injustice."

D. Recommendations by non-governmental organizations

74. A number of non-governmental organizations concerned with religious beliefs, ethical issues, and peace issues, have addressed themselves to the question of conscientious objection.

75. In 1970, participants in the First Assembly of the World Conference on Religion and Peace, held at Kyoto, Japan, declared:

"We consider that the exercise of conscientious judgement is inherent in the dignity of human beings and that, accordingly, each person should be assured the right, on grounds of conscience or profound conviction, to refuse military service, or any other direct or indirect participation in wars or armed conflict. The right of conscientious objection also extends to those who are unwilling to serve in a particular war because they consider it unjust or because they refuse to participate in a war or conflict in which weapons of mass destruction are likely to be used. This Conference also considers that members of armed forces have the right, and even the duty, to refuse to obey military orders which may involve the commission of criminal offences, or of war crimes or of crimes against humanity."

Participants in the Second Assembly of the World Conference on Religion and Peace, held at Louvain, Belgium, from 27 August to 3 September 1974 stated:

"We reaffirm the assertion of the Kyoto Conference of the right to conscientious objection to military service. We urge religious organizations to continue their work for the recognition of conscientious objection by the international community through the United Nations.

Governments which have not yet recognized the right of conscientious objection should be persuaded to do so, and make alternative forms of humanitarian service. They should grant suitable amnesties to those who have come into conflict with the law in asserting this right. Religious organizations should also seek to open creative avenues of work in reconciliation, peace-making, and development as alternative forms of service for those who reject all compulsory state service."

Participants in the Third Assembly of the World Conference on Religion and Peace, held at Princeton, New Jersey, United States, from 29 August to 7 September 1979 declared:

(a) Princeton Declaration: "We uphold the right of citizens to conscientious objection to military service."

(b) Commission Report on Religion and Human Dignity. "We urge governments to consider peaceful alternatives to compulsory military service."

76. In 1970, the World Youth Assembly urged in its final report (56/WYA/P/10) that conscientious objection be treated as a human right.

77. Participants in the 1968 meeting of the World Council of Churches held at Uppsala, stated:

"Protection of conscience demands that the churches should give spiritual care and support not only to those serving in armed forces but also those who, especially in the light of the nature of modern warfare, object to participation in particular wars they feel bound in conscience to oppose, or who find themselves unable to bear arms or to enter the military service of their nations for reasons of conscience. Such support should include pressure to have the law changed where this is required, and be extended to all in moral perplexity about scientific work on weapons of mass human destruction."

78. The Committee on Society, Development and Peace (SODEPAX) in 1970 (the Baden Consultation) stated:

"The Rights of conscientious objectors. The Consultation considers that the exercise of conscientious judgement is inherent in the dignity of human beings and that accordingly, each person should be assured the right, on grounds of conscience or profound conviction, to refuse military service, or any other direct or indirect participation in wars or armed conflicts.

The right of conscientious objection also extends to those who are unwilling to serve in a particular war because they consider it unjust or because they refuse to participate in a war or conflict in which weapons of mass destruction are likely to be used.

The Consultation also considers that members of armed forces have the right and even the duty to refuse to obey military orders which may involve the commission of criminal offences, or of war crimes or of crimes against humanity.

It is urged that the Churches should use their best endeavour to secure the recognition of the right of conscientious objection as herein before defined under national and international law. Governments should extend the right of asylum to those refusing to serve in their country for reasons of conscience."

79. Amnesty International, under its mandate, works for the release of "prisoners of conscience", a category of persons defined to include persons imprisoned, detained or otherwise physically restricted by reason of their political, religious or other conscientiously held beliefs, provided that they have not used or advocated violence. Individuals imprisoned because of their conscientious objection to military service generally fall within this definition.

80. The International Peace Bureau, in its recommendation of 8 August 1970, recommended that the United Nations Secretary-General undertake a study of the question of conscientious objection, and also presented a Draft of the Universal Charter of Conscientious Objection to Military Service or Training.

81. Participants in the World Congress of Peace Forces, held at Moscow from 25 to 31 October 1973, stated:

"The right to life is inalienable for every person and should be protected by law; and states should move towards the total abolition of capital punishment. The right to life also raises the problem of the right to refuse to kill."

82. Various national religious organizations and ethical associations, including the Unitarian Universalist Association of the United States, the General Assembly of the Unitarian and Free Churches in Great Britain and the American Ethical Union, have adopted resolutions demanding recognition and expansion of the right of conscientious objection. Some intergovernmental organizations, including War Resisters International, which has its headquarters in Belgium, have the promotion

of the right to conscientious objection as one of their main aims. The promotion of the right to conscientious objection is also a major concern for the International Fellowship of Reconciliation, the Quakers, Service Civil International, and others.

83. In response to the preliminary report submitted by the authors, a number of personalities from concerned non-governmental organizations convened a meeting and agreed to make the following set of recommendations on the issues which are reflected below:

"The right to conscientious objection to wars or a particular war and military service.

'Each person subjected to compulsory military service, who for reason of conscience or deep conviction based on religious, moral, humanitarian, philosophical or similar motives, such as on ecological grounds, refuses to carry out armed military service or other participation direct or indirect, in wars or armed conflict.'

"The legal and administrative recognition of the right of conscientious objection to military training and service must follow internationally recognized procedures including the following:

- Prospective conscripts must be given full information about their rights and responsibilities and about the procedures to be followed when seeking recognition as a conscientious objector and alternative service.
- A person should be allowed to be recognized as a conscientious objector at any age, whether in the armed forces, military reserve or as a prospective conscript, and in time of war or peace. Those who apply for recognition as conscientious objectors while already in the armed forces should be relieved of their normal military duties until the final proceedings on their cases are known.
- No court or commission can penetrate the conscience of an individual and a declaration setting out the individual's motives must therefore suffice in the vast majority of cases to secure the status of conscientious objector.
- Where there is a public hearing it should be by an independent and legally established civilian tribunal and the conscientious objector should have the right to be represented or assisted during the hearing. If necessary legal assistance should be free.
- The objector should be heard, and decisions made, without undue delay, and reasons for decisions always clearly stated.
- The objector and the state should have the right of appeal to a higher judicial body.

- A prison sentence is not an appropriate response to a plea of conscientious objection. Where prison sentences are imposed the objector must not be sentenced to a term of imprisonment longer than the period of military service for which he is considered liable.

- The objector must not, in respect of his conscientious objection, either during his period of liability for military service or afterwards, suffer any loss of rights - political, economic, social or civil - normally accorded to a citizen of his country.

- The objector should have the right to form associations of objectors, aimed to promote the welfare of objectors, to improve public recognition of their situation and to deepen their convictions about peace and international co-operation.

Alternative service

"If we recognize that States will continue to employ conscription, then civilian service should not be managed by the military: civilian service is best managed by civilians.

"Conscientious objectors should have the choice of a variety of alternative civilian service, as for instance:

"Service with government, with non-governmental organizations, with the United Nations and specialized agencies, with international NGOs promoting the aims of the Universal Declaration of Human Rights. They might also serve as non-combatants within the military forces.

"Civilian service should be organized in such a way as to respect the dignity of the person concerned and benefit the community. It should contribute to decreasing the causes of violence, achieving worthwhile living conditions and respect for human rights and development, reinforcing international solidarity and promoting international peace.

"Safeguards for human dignity should be built in to civilian service by assuming: that it offers work of social value which does not compete with paid labour; reflects a pedagogy of peace; respects ecological values; offers objectors a role in the self-government of service schemes.

"Civilian service should include peace instruction, and just as military personnel receive vocational training in socially useful skills, civilian service should teach skills specific to the service assignment and to a wider field of work."

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