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QUESTION OF CONSCIENTIOUS OBJECTION TO MILITARY SERVICE

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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<sup>1</sup> (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. 1/

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.

1/ 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 pacifism.

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."

II. ANALYSIS OF RELEVANT INFORMATION RECEIVED FROM GOVERNMENTS,  
INTERGOVERNMENTAL AND NON-GOVERNMENTAL ORGANIZATIONS

A. Grounds recognized as valid reasons for conscientious objection

84. The issue of conscientious objection arises primarily when conscription exists in the country concerned. A number of States have informed the Secretary-General, in reply to the questionnaire sent out, that they do not have conscription and therefore the issue does not arise. But this is not entirely correct. Two different categories should be examined:

(a) When there has never been conscription, and where the standing armed forces tend to be rather modest. But many of these States have promulgated legislation for national service in time of war and public emergency, at which time the issue of conscientious objection may arise. One illustration is the reply from the Government of Malawi (E/CN.4/1419, p. 7): "In situations of public emergency, every citizen of Malawi, aged 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";

(b) When there has been conscription in the past, but the system has been changed so that the armed forces are based solely on voluntary enlistment. In some of these cases, the armed forces are nevertheless quite substantial in size. Legislation on conscientious objection may remain on the book even when conscription is suspended, and this legislation may be reactivated when conscription is reintroduced, or when there is a call-up for national service in time of war.

85. Also those who have enlisted voluntarily, sometimes develop objection on grounds of conscience at a later stage. In some States, provisions exist which allow for conscientious objection.

86. Annex II provides a survey of contemporary conscription. It used to be most common in Western and Eastern Europe, North America, Australia and New Zealand. In Latin America and the Caribbean, Africa and Asia about one half of the countries have conscription.

87. Some Western countries with a long tradition of conscription have suspended it during the last two decades. This applies to the United States, the United Kingdom, Australia and New Zealand.

88. Annex I contains a country by country survey of existing provisions for acceptance or rejection of conscientious objection. The most common ground recognized as valid, is that of exemption on a religious basis. Some States allow only for those who belong to "peace churches" whose doctrine is completely pacifist. Members of the Mennonites Church have been provided such exemption in some Latin American countries, including Bolivia and Mexico.

89. In many countries, any objector who claims that he is opposed to military service on religious grounds, will be recognized provided his conviction is found to be genuine.

90. In Northern and Western Europe, conscientious objectors are recognized not only if they base their objection on religious grounds, but also if they base it on any ethical or humanist ground whatsoever.

91. A genuine conviction is required, but the test may be more or less stringent. Account must be taken of age. Since those who are called up are normally in the 17 to 19 age group, one should not require too much sophistication in their reasoning in favour of objection.

92. In chapter I, section A, it has been pointed out that certain uses of armed force are illegal under international law. The Convention on the Suppression and Punishment of the Crime of Apartheid, as well as the Convention on the Prevention and Punishment of the Crime of Genocide, makes it a crime for the individual to participate in armed actions which are prohibited under those conventions. The notion of individual responsibility is also expressed in the Nuremberg principles. However, to our knowledge no national law provides for exemption for those who claim illegality of purpose. The present South African legislation or practice does not allow for exemption on the ground of conscientious objection to participation in the enforcement of apartheid.

93. Recently, there has been a growing acceptance in some Western countries of objection based on the illegality or unacceptability of the use of nuclear weapons. This is not an objection based on the purpose of the armed action, but on the means and the ethics of war.

94. In some cases, objection based on assumed loyalty to the enemy (or potential enemy) is accepted. Panama does not oblige naturalized citizens to participate in wars against armed forces belonging to their country of origin. There are also many cases in which aliens are exempted from military service. Such exemptions are of a rather special nature, since they do not necessarily reflect a conscientious objection to the use of force, but a conflict of loyalty for the individual concerned.

95. In States without conscription, where servicemen (enlisted personnel) develop conscientious objection to further service, the issue arises whether, on that ground, they should be released from further service. In several countries having an all-voluntary armed force, provision is made for release based on conscientious objection. The United Kingdom states, in its reply to the Secretary-General (E/CN.4/1419): "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".

B. Procedures for obtaining conscientious objector status

96. Reference is made here to those countries which give a legal recognition to conscientious objector status. In annex I (4) information on this matter is summarized. Application for such status usually has to be made at a specific time. In some countries, a person can be legally recognized as a conscientious objector at any time from the time of his call-up. In other countries, the application must be made at the time of the call-up or shortly thereafter. In France, for instance, that period until recently was 15 days, but has now been extended to 30 days.

97. A relevant issue in this connection is whether information can be made available to the potential conscripts so that they can be aware of the possibility of asking for conscientious objector status. Also in this regard, the practice varies widely. In some countries, there is full freedom of information about this possibility, whereas in other countries the authorities have prohibited the dissemination of information about the possibility of obtaining conscientious objector status.

98. In many countries, the conscript is normally placed on the provisional list until the application for conscientious objector status has been decided upon.

99. In some countries, the decision about such status is made administratively by those who are responsible for the induction of new conscripts. Increasingly, however, the decision must be made by a tribunal set up for that purpose. That tribunal must decide whether the applicant is sincere in his conviction and also whether the ground on which he bases his objection is valid under national law.

100. The authority responsible for deciding whether to grant conscientious objector status will also have to test the seriousness of the conviction. The way in which this can be done has not been explored in detail in the present report. It is an important issue which warrants further examination. Since moral convictions are a part of the intimate sphere of the personality, concrete proof of the conflict of conscience cannot be given. The task for the judges is to examine the binding character of the objector's conviction.

101. In some States, these tribunals consist only of military personnel, who often are disinclined to allow for conscientious objection. In other countries, tribunals are composed of military and civilian personnel, but there are also some countries in which only civilians participate in the tribunal.

102. In several, but not all, countries there is a right to appeal against the decision of the tribunal, either to a higher tribunal or to a regular court. But there are also some countries in which the decision by the first tribunal is final and cannot be appealed against.

103. The procedural system established for obtaining conscientious objector status is likely to have a strong influence on the outcome of the request. The Consultative Assembly of the Council of Europe has explored this question and made the following recommendations:

"(a) Persons liable for military service should be informed, when notified of their call-up or prospective call-up, of the rights they are entitled to exercise;

(b) Where the decision regarding the recognition of the right of conscientious objection is taken in the first instance by an administrative authority, the decision-taking body shall be entirely separate from the military authorities and its composition shall guarantee maximum independence and impartiality;

(c) Where the decision regarding the recognition of the right of conscientious objection is taken in the first instance by an administrative authority, its decision shall be subject to control by at least one other administrative body, composed likewise in the manner prescribed above, and subsequently to the control of at least one independent judicial body;

(d) The legislative authorities should investigate how the exercise of the right claimed can be made more effective by ensuring that objections and judicial appeals have the effect of suspending the armed service call-up order until the decision regarding the claim has been rendered;

(e) Applicants should be granted a hearing and should be entitled to be represented and to call relevant witnesses."

104. Where the status of conscientious objector is not provided for in the legislation of the country concerned, there are of course no formal procedures available. Administrative practice has evolved in several countries, transferring the objector to non-combat roles in the armed forces. In some cases a practice of failing to call up the conscientious objector for military service has developed, which means that in fact his objection is recognized. However, this is purely discretionary on the part of the authorities, and gives no right for the person concerned to obtain the status of conscientious objector.

#### C. The question of alternative service

105. Where objection has been recognized as valid, the objector is in many countries assigned to alternative service. In annex I (6) a survey is given of the situation with regard to alternative and development service. This is a compromise between the interest of the authorities and that of the conscientious objector. This compromise differs in nature from country to country; sometimes it is weighted in favour of the authorities and sometimes in favour of the objector.

106. For the authorities, the provision of alternative service fulfils two purposes: one is to impose a burden on the objector, even when granting him the status of conscientious objector, so as to deter those who out of pure expediency seek to be released from military service; the other is to obtain from the objector a service useful to the public interest even if it is not military service.

107. Objectors may accept alternative service depending on the grounds on which they have objected. There are three categories of alternative service (see further below): non-combat roles in armed forces; social service/development service; and, peace-oriented service. In some cases, the objector may be willing to perform non-combat roles in the armed forces, if his objection is purely personal and does not include any objection to the use of force by others. But when the objection is based on the conviction that the use of armed force is immoral, or that the particular use of armed force in which the country concerned is engaged is immoral, then non-combat roles will not be acceptable. Those who object to participation in armed forces used to enforce apartheid, will not be satisfied with the offer of non-combat roles in the same armed forces.

108. For the authorities, the easiest solution is to provide the objector with non-combat roles inside the armed forces. This kind of service is administratively provided for even in countries which do not recognize the validity of conscientious objection.

109. In many countries in Western Europe (and North America before the suspension of conscription) a much wider range of alternative services has been developed. One common opening is in the civil defence. Other widely used means are services in medical institutions and hospitals, forestry and agriculture. In several countries, the conscientious objector can enter social services or disaster relief organizations.

110. International development service is allowed for as an alternative service by some countries. It has been championed by an international non-governmental organization, the Service Civil International, since 1920. The purpose of this organization is to promote international understanding and peace, and considers international development service as more conducive to peace than participation in armed forces. Several countries presently allow for international development service as an alternative to military service.

111. In some countries, conscientious objectors can perform an alternative service directly related to the promotion of peace. This service can be accomplished within peace movements or associations, or take the form of assignment to peace research. It gives the conscientious objector an opportunity to deal with issues directly related to the ethical aspirations underlying the objection to participation in the armed forces. This must probably be considered as the solution most favourable to the conscientious objector. A few countries also offer training for peace during the alternative service. Some Governments make provisions for conscientious objection service in their own peace research, or they provide opportunities for peace action or peaceful social change with non-governmental organizations or other independent institutions.

112. The controlling authority. Under chapter II, section B, we examined the procedures for obtaining conscientious objector status. But who controls the objector whose status has been recognized, during his alternative service?

113. If the alternative service takes the form of non-combat roles within the armed forces, the persons concerned will be under military control and authority. If, however, the persons concerned are assigned to non-military duties, they are normally transferred to civilian authorities, in the Ministry of the Interior, the Ministry of Labour, the Ministry of Justice, or the Ministry of Social Affairs. In some cases, the Ministry of Defence is responsible for organizing alternative service, but other (civilian) authorities have the task of administering the service.

114. Length of service. Normally, but not always, alternative service is longer than regular military service. In some countries, this is no more than a small addition to equate the alternative service with the reservist service which is required from normal conscripts. In other countries, the period of alternative service is considerably longer, in order to impose an extra burden as a deterrent against potential conscientious objectors. There are cases where the alternative service is twice as long as regular military service. In a few countries, the length of alternative service varies according to its nature: those who are given non-combat roles in the armed forces are held no longer than those who perform military service, but for those given civilian service in the social or cultural field or development service in the Third World, the length of service is twice or almost three times as long as regular military service.

D. Status and experience of conscientious objectors in countries which do not permit conscientious objection or alternative service to military service, or which permit it only on limited grounds

115. An unrecognized conscientious objector who persists in objecting to military service may risk sanctions which sometimes can be very severe - imprisonment, even capital punishment, or at best a dishonourable discharge. In some cases, persistence in objecting to military service has been construed as mental disturbance, which may land the objector in a psychiatric institution. Annex I (7) contains a survey of the possible penalties objectors may face. Such penalties also exist in the legislation of countries which at present do not have conscription and they will be applicable if conscription is reintroduced. Penalties will also be applicable in countries where conscientious objection is recognized but where, in specific cases, the objection has not been granted.

116. In peacetime, the most likely consequence will be imprisonment. There appears to be two approaches to the imprisonment of unrecognized objectors. One approach is to use penalties in order to make them change their mind. Relatively short prison sentences are imposed, but after release the objector is again called up for military service. If he still refuses to serve, he receives a new sentence, which means that he may spend most of his adult life in prison because of his continued objection. This practice might be considered to be at some variance with article 14 (7) of the International Covenant on Civil and Political Rights, which states that no one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

117. The question is whether continued refusal to serve is considered as the same crime or a new crime.

118. In some countries, however, there is a practice of giving a pardon after two or more sentences, so that in fact no additional punishment is inflicted after that time, even if the person continues to object.

119. In some countries, much longer prison sentences are imposed, probably in order to deter other persons from objecting. Prison sentences of 10 or 15 years or even more have been imposed.

120. Objection in time of war or public emergency may lead to trial under martial law and can result in the death penalty.

121. In a great number of countries, the unrecognized objector who persists in his objection, may experience severe social disabilities. His civil rights may be taken away from him, temporarily or for ever, and he may be banned from many kinds of public employment. In addition, private employers frequently demand a certificate testifying that the military service has been performed, a practice which may prevent the objector from obtaining employment also in the civilian sector.

122. There are countries which refuse to provide a passport, or access to higher public education, to persons who cannot produce a certificate of military service.

E. The question of asylum for persons who have fled their country because of their objection to military service

123. Although there have been fewer replies from Governments and other concerned bodies on the question of asylum for conscientious objectors than on other aspects of the subject under study, information has nevertheless been received from a number of Governments across the world, as well as intergovernmental sources, and several non-governmental sources have also sent valuable information, thereby providing sufficient basis for analysis of the prevailing situation in the world today with regard to the matter of asylum for fleeing conscientious objectors. (See annex III).

124. According to the information available today, <sup>3/</sup> in recent years, thousands of people have fled countries, such as Portugal during the colonial war years, or the United States of America during the Vietnamese war, to avoid conscription into military service in wars to which they held conscientious objection. As such situations occurred in the past, the present report will concentrate on southern Africa, since it is currently the area in which this phenomenon is most prevalent. People have fled South Africa as a result of their conscientious objection not only to military service on the usual grounds, but also to military and police enforcement of that country's unjust and racially prejudiced policy of apartheid.

125. The Committee on South African War Resistance has reported <sup>4/</sup> that exiled war resisters from South Africa have fled to countries including Lesotho, Swaziland, Botswana, Zimbabwe, Mozambique, the United States, Canada, Israel, Australia, New Zealand, West Germany, Norway, the Netherlands and the United Kingdom. Corroborative evidence is available from some of these countries.

126. The Committee further reported that in 1980 the number of resisters in exile from South Africa was less than the 5,900 claimed by some, but that, in that one year alone, at least 500 resisters had gone into exile to escape service in the South African Defence Forces on the ground of conscientious objection.

127. Where conscientious objection is not accepted by the Government concerned, or, as in the case of refusal to serve in apartheid enforcing forces, such refusal or objection is punishable, the penalties usually include imprisonment. <sup>5/</sup> In South Africa it is reported that the penalty of imprisonment for conscientious objection, other than on religious grounds, will be inflicted on the objector each time he refuses enlistment, and he may therefore spend most of his life in prison. Escape to other countries thus becomes an attractive proposition. Even an objector on religious grounds may be sent to prison for three years, if such convictions make him reject non-combatant service within the forces. In annex II (7), further information is provided on this question.

<sup>3/</sup> Peter Johan van Krieken, Deserteurs Dienstweigeraars en Asielrecht, Van Gorcum-Assen/Amsterdam, 1976; English summary (Deserters, Conscientious Objectors and the Law on Asylum) p. 9.

<sup>4/</sup> Committee on South African War Resistance (COSAWR), The Church and the Military in South Africa, Andrew Small, September 1981, p. 19.

<sup>5/</sup> Ibid, p. 7.

128. While under international law and practice every nation may be said to have the right to organize its defence forces, the additional basis for objection to service in the South African forces is based on their role in enforcing apartheid. The Nuremberg and Tokyo trials have shown that an individual has personal responsibilities under international law which cannot be escaped by a plea of superior orders.

129. Thus objection may be based on opposition to the role of the forces in maintaining the status quo in South Africa, continuing the illegal occupation of Namibia and engaging in aggressive military activities against neighbouring States, and international law itself may be said to approve such objection. The role of those forces was clearly spelt out by General Magnus Malan, the former Chief of Staff of the South African forces, who, in 1979, stated that:

"The Defence Force supports government policy and is responsible for peace, law and order in this country. This policy is the same as that laid down by Dr. H.F. Verwoerd, namely multinationalism and self-determination of nations." <sup>6/</sup>

130. This statement is a clear illustration of the endorsement, by the South African armed forces, of the policy of apartheid and bantustanization. There is further evidence that the forces of that country are constituted for the purpose of preserving "separate development" and apartheid in the White Paper on Defence presented to Parliament by the Minister of Defence in 1977.

131. In consequence, when a South African citizen refuses to serve in the forces on the grounds of opposing apartheid, under paragraph 2 of General Assembly resolution 33/165 of 20 December 1978, Member States should grant him asylum or safe transit if he decides to flee his country.

132. However, both the international standards, as revealed by existing international instruments, and the majority of the replies received from States on the matter show that "it shall rest with the State granting asylum to evaluate the grounds for the grant of asylum", as stated in article 1 (3) of the Declaration on Territorial Asylum. The decision is often determined by political considerations and, sometimes, by the relationship between the country of asylum and the country from which the conscientious objector has fled. Some countries have based such evaluations on whether they considered the war in question just. <sup>7/</sup>

133. According to available information, and as reflected in annex III, many countries have stated that, although they have no legislation on asylum that provides specifically for conscientious objectors, such people are in effect granted asylum in those countries provided that they satisfy the legal criteria for refugee status, namely they must have a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group

<sup>6/</sup> Ibid, p. 37.

<sup>7/</sup> Peter Johan van Krieken, op. cit., pp. 5 and 9.

or adherence to some political opinion. In these circumstances, it would appear that an international instrument along the lines suggested in General Assembly resolution 33/165, is needed to set out categorically the types of objectors who should be given favourable consideration when they request asylum, in order to codify this general practice in international law.

134. Those countries which reject the system of apartheid as an unjust social system that violates basic human rights and should be eliminated may be expected to have no difficulties in receiving citizens of South Africa, who have heeded their protest and come to them as refugees of conscience.

135. In the context of the granting of asylum to conscientious objectors, some thought should also be given to the question of extradition, if only because extradition has the effect of hindering the acquisition of asylum. Extradition is the transfer of an individual from one national jurisdiction to another. It is an act of State based on either a treaty or an *ad hoc* agreement. It is important to note that expulsion, surrender or refusal to grant an entry permit to an objector may amount to *de facto* extradition. It should also be stated that in the current general practice of States, political offenders are not subject to extradition.

136. In some countries desertion from military service may imply loss of citizenship if coupled with the acquisition of another citizenship. Citizenship status may be critical to the question of extradition of the draft evader. Since extradition is based on the authority of an enforceable extradition treaty or arrangement between two or more countries, in the absence of such a treaty extradition of a conscientious objector may not even be attempted. In addition, extradition will only be possible if the objector has committed an extraditable offence, expressed as such in the treaty, i.e. if desertion or draft evasion are enumerated as extraditable offences in the treaty.

137. Moreover, as pointed out above, since the grant of asylum appears to remain within the sovereign power of a State, extradition proceedings may be defeated by the receiving State granting political asylum to the objector or draft evader. On this point it is appropriate to note the provisions of article 1 of the Declaration on Territorial Asylum, which reads:

"Asylum granted by a State, in the exercise of its sovereignty, to persons entitled to invoke article 14 of the Universal Declaration of Human Rights, including persons struggling against colonialism, shall be respected by all other States".

Article 14 of the Universal Declaration states that:

"1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.

"2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations."

It is clear that conscientious objection is well within the purview of both these articles.

### III. CONCLUSIONS AND RECOMMENDATIONS

#### A. Conclusions

138. In this section, some conclusions will be drawn, based on the analysis in chapter II of the information received from Governments, intergovernmental and non-governmental organizations, a summary of which is given in the annexes to this report. The first annex contains a summary, country by country, of available information on conscription, conscientious objection to military service and alternative service. The second annex lists countries and territories in tables, according to their situation with regard to military service and alternative.

139. It seems appropriate to recall some basic contradictions encountered: on the one hand the need felt by almost every State for some degree of military strength, and, on the other, the dual vocation of the United Nations to advance peace and international understanding as well as respect for the human being.

140. The contradictions reflect some fundamental dilemmas in the world today. One is between the assertion of national community and the search for a global community. Another is between the assertion of national authority and the respect for those who dissent on grounds of conscience.

141. These dilemmas become more serious with the passage of time. The existence and the work of the United Nations and the specialized agencies, such as UNESCO, have provided young people everywhere with the vision of a world based on solidarity, justice and human dignity: 1985 is International Youth Year, which is devoted to participation, development and peace. In preparation for it, the General Assembly in its resolution 37/48 of 3 December 1982, again considered it necessary 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. UNESCO has for several years promoted education for human rights and international understanding, and is also now seeking to promote disarmament education. These activities influence the thinking of young people and some respect should be shown for their dedication to such ideals.

142. If the existing material is considered in the light of those dilemmas and the moral imperatives promoted by the United Nations and its specialized agencies, the following picture emerges:

#### 1. Voluntarism or compulsion in performance of military service

143. State practice varies widely regarding the extent to which military service is voluntary or enforced. States can be located on a sliding scale on this issue as follows:

(a) A large number of States have no conscription, i.e. no compulsory military service. Available information indicates that 66 countries fall into this category (see annex II). The problem of conscientious objection is of less significance in such cases. Problems might emerge if objection develops in the mind of the enlisted person after joining the service. Provision should be made, in law or in the contract of enlistment, for withdrawal from service in such cases. Such provisions exist in some countries, but available material makes it difficult to ascertain the extent of it.



(b) A few countries have conscription in law, but do not enforce it. For practical purposes, the situation of the objector in such circumstances is similar to that under (a). Five countries fall into this category (see annex II). Legislation should be passed in the countries in this category, to provide for recognition of conscientious objection in case conscription is enforced.

(c) The next category includes States which have conscription (compulsory service) and enforce it, but which mitigate that circumstance by formal and genuine recognition of conscientious objection, at least on some grounds. Fifteen countries fall into this category. Taken together, countries and territories belonging to categories (a), (b) and (c) provide, to a greater or lesser extent, freedom for the individual to decide whether or not to join the armed forces. Altogether, 85 countries appear to be included in this larger group.

(d) Then there are the countries which enforce compulsory service in the armed forces, and do not recognize the right of objectors to be exempted from military service, but which do allow objectors, in certain circumstances, to be given non-combatant roles in the armed forces. There are two subdivisions in this group: first, those where the law provides for transfer to non-combatant roles (available material indicates that this is the situation in five countries); second, those countries which in individual cases, have allowed transfer to non-combatant roles on an ad hoc basis (information received indicates that this has happened in seven countries). It is difficult, however, to obtain reliable information on the extent to which this takes place, since it is an ad hoc decision by relevant authorities to place a person in a non-combatant role and the reasons for it are not necessarily given;

(e) Finally, there is a group of States with conscription which do not recognize conscientious objection in law and where there has been no indication that objectors have been allowed, by administrative decision, to perform unarmed services within the armed forces. The information received indicates that this is the situation in 39 countries. It is possible that in some of these countries nobody has actually objected to military service. It should be noted that a few countries have been mentioned twice, for example Israel, which has obligatory military service for both men and women but which follows a different practice with regard to the two sexes.

144. For the countries in category (c) above (those with conscription which recognize conscientious objection) the range of grounds on which objection is considered valid requires consideration. Reference is often made to "religious", "moral" or "political" objection. The concept of "political" objection is particularly unfortunate since it covers a wide range of different reasons for objecting - some of them laudable from a United Nations perspective, others less laudable.

145. The relevant distinction is between absolute and partial objection. Absolute objection is based on the conviction that it is wrong under all circumstances to take part in the killing of others. Partial objection is based on the acceptance of the use of armed force purely for defence, but refusal to serve in armed actions which are tantamount to aggression, occupation or repression of human rights, or where the means and methods of armed action are considered unacceptable. The absolute as well as the partial objection are normally based on moral convictions of a religious or humanistic inspiration.

146. In practice those States which recognize conscientious objection normally only do so for those who hold an absolute, pacifist, position. In recent years there have been cases where partial objection has been recognized, in particular when the objection is based on refusal to serve in armed forces when the use of weapons of mass destruction is envisaged as a possibility.

147. One important reason why partial objection is not normally recognized is that State authorities probably never agree with the objector that their actual or contemplated use of force is or will be in contravention of international law.

148. As pointed out in paragraph 92, the South African authorities do not agree that their use of armed forces is illegal, even though the universal opinion outside South Africa, substantiated by decisions of the General Assembly and the Security Council, is that the continued occupation of Namibia is in contravention of international law and that armed force to maintain the occupation is clearly illegal. The fact that Governments will not accept that their use of force is illegal or illegitimate should not, however, prevent recognition of an objection to serve by individuals who disagree with the authorities. There have been in the past and will in the future be cases where public opinion (internationally and nationally) is split regarding the legitimacy of the use of force or the means used. It should be possible to accept that young persons called up for conscription may hold a justifiable position on a given issue which differs from that of the authorities. Therefore national authorities might recognize that some individuals, to the best of their conscience, hold a strong conviction which should be respected even when it differs from the official position of the Government.

149. Where conscientious objection is recognized, differences exist regarding the way in which conscientious objector status can be obtained. Three sets of factors influence this:

(a) How impartial are the institutions, or tribunals, which decide whether or not such status shall be granted? Are legal standards comparable to those of fair trial being applied?

(b) At what time must the request for objector status be made? Is it admitted at the time of call-up only, or also later, whenever the conscientious conviction develops?

(c) Does the Government disseminate information about the right to conscientious objection and does it allow non-governmental organizations to do so?

The material collected indicates that some countries have developed impartial institutions or use the regular civilian courts, with the application of normal legal safeguards, to determine the issue. In other cases, military tribunals are used and may not be sufficiently impartial with regard to the issue of conscientious objection. In still other cases, the decision is left to the discretion of individuals within the military administration, with no possibility of appeal. It seems reasonable, if conscientious objection is recognized in some but not all cases, that an impartial tribunal should take the decision and that information about the right should be available to all.

## 2. Alternative service

150. Where conscientious objection is recognized, provision is normally made for alternative service, but there are also considerable differences in this connection. In some countries, the alternative service is such that it corresponds closely to the ideas expressed in the sixth perambular paragraph of General Assembly resolution 37/48, which states that the Assembly is

"convinced of the imperative 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".

151. In some cases, therefore, objectors are given alternative service related to social improvement, development or promotion of international peace.

152. In other cases the alternative service seems to be considered more as a punishment for refusing military service, in that it consists in hard work without a meaningful content.

### B. Recommendations

153. The Special Rapporteurs request the Sub-Commission to consider making the following recommendations to the Commission on Human Rights.

#### 1. The right to conscientious objection

154. The Commission on Human Rights, recalling its resolution 40 (XXXVII) and General Assembly resolution 33/165 of 1978 as well as General Assembly resolutions 34/151 of 1979, 35/126 of 1980, 36/28 of 1981 and 37/48 of 1982 on International Youth Year, recommends that the Economic and Social Council should request the General Assembly to make the following recommendations, preferably in connection with the preparations for International Youth Year, 1985: States should recognize by law the right of persons who - for reasons of conscience or profound conviction arising from religious, ethical, moral, humanitarian or similar motives - refuse to perform armed service to be released from the obligation to perform military service.

155. States should, as a minimum, extend the right of objection to persons whose conscience forbids them to take part in armed service under any circumstances (the pacifist position).

156. States should recognize by law the right to be released from service in armed forces which the objector considers likely to be used to enforce apartheid.

157. States should recognize by law the right to be released from service in armed forces which the objector considers likely to be used in action amounting to or approaching genocide.

158. States should recognize by law the right to be released from service in armed forces which the objector considers likely to be used for illegal occupation of foreign territory.

159. States should recognize the right of persons to be released from service in armed forces which the objector holds to be engaged in, or likely to be engaged in, gross violations of human rights.

160. States should recognize the right of persons to be released from the obligation to perform service in armed forces which the objector considers likely to resort to the use of weapons of mass destruction or weapons which have been specifically outlawed by international law or to use means and methods which cause unnecessary suffering.

#### 2. Procedural aspects

161. States should maintain or establish independent decision-making bodies to determine whether a conscientious objection is valid under national law in any specific case. There should always be a right of appeal to an independent, civilian judicial body.

162. Applicants should be granted a hearing and be entitled to be represented by legal counsel and to call witnesses.

163. States should disseminate information about the right of objection, and allow non-governmental organizations to do likewise.

#### 3. Alternative service

164. States should provide alternative service for the objector, which should be at least as long as the military service, but not excessively long so that it becomes in effect a punishment. States should, to the extent possible, seek to give the alternative service a meaningful content, including social work or work for peace, development and international understanding.

#### 4. Trial and penalties where the objection is not found valid

165. Even when States give effect to the above recommendations, there will be some cases where the objection is not found valid, and where penalties will be imposed on persons who persist in their objection.

166. Imposition of such penalties should be decided upon by an impartial civilian court applying the normal criteria of fair trial.

167. Penalties should not be excessively severe, and should take due account, as mitigating factors, of the conscience or conviction of the person concerned.

#### 5. Asylum

168. Taking into account the existence of rules of international law, under which an individual retains the right and the duty to refuse illegal orders under national law, and the provisions of General Assembly resolution 33/165, as well as the basic right to freedom of conscience, international standards should be established which will ensure a favourable attitude towards conscientious objectors requesting asylum in conformity with obligations under international law. Furthermore it appears to be the practice of many countries not to refuse asylum to conscientious objectors to military service. International legislation on this practice might clarify an area of human rights in which there are international and individual obligations.

## 6. Recommendations concerning the use of children and minors

169. While the question of the use of children in war has not been dealt with as such in this report, we nevertheless suggest that the Sub-Commission should consider how to follow up the concern expressed on this matter. In this connection, account should be taken of the provisions in Additional Protocol I to the Geneva Conventions of 1949, article 77, paragraph 2, in which the Parties to a conflict pledge themselves to take all feasible measures in order that children under 15 do not take a direct part in hostilities and, in particular, refrain from recruiting them into their armed forces. A similar prohibition is found in Protocol II, article 4, paragraph 3 (c).

## Annex I

### Summary of available information on conscription, conscientious objection to military service, and alternative service

#### I. General observations

1. This annex provides a revised version of the summary contained in the annex to the preliminary report (E/CN.4/Sub.2/1982/24). New information collected since the issue of the preliminary report has been taken into account in this summary, and, when necessary, previous data have been modified accordingly. However, as already mentioned in the preliminary report, this annex should not be considered as reflecting exhaustive information on the world situation regarding conscription, conscientious objection to military service, and alternative service. It is rather intended to provide a concrete illustration of the report, based on data collected from available governmental, intergovernmental and non-governmental sources.
2. The information summarized in this annex concerns the following questions, for which data are available in various countries and territories:
  1. Existence of conscription
  2. Liability to service
  3. Length of service
  4. Recognition of conscientious objection
    - (a) Recognition
    - (b) Grounds recognized as valid
    - (c) Timing of the claim
  5. Known cases of conscientious objection
  6. Alternative and development service
  7. Possible penalties for refusal to perform military service
  8. Dissemination of information on the possibility of obtaining conscientious objector status.
3. The following sources were used in the summary:
  - (a) Replies from Governments
    - Documents E/CN.4/1419 and Add. 1-4 and E/CN.4/1509: 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 containing statements from Governments on the question.

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