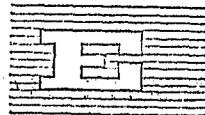


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THE ROLE OF YOUTH IN THE PROMOTION AND PROTECTION OF
HUMAN RIGHTS, INCLUDING THE QUESTION OF CONSCIENTIOUS
OBJECTION TO MILITARY SERVICE

Report by the Secretary-General

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INTRODUCTION

1. Upon the recommendation of the Commission on Human Rights, the Economic and Social Council adopted resolution 1984/27 of 24 May 1984 entitled "Conscientious objection to military service", in which it decided that the report prepared by Mr. Eide and Mr. Mubanga-Chipoya on conscientious objection to military service (E/CN.4/Sub.2/1983/30) should be transmitted for comments and observations to Governments, relevant United Nations bodies, specialized agencies and other intergovernmental and non-governmental organizations. The Council further requested the Secretary-General to report to the Commission on Human Rights at its forty-first session on those comments and observations and on other significant developments regarding the human rights of conscientious objectors.
2. Accordingly, by a note verbale of 20 August 1984, the Secretary-General transmitted the report to Governments, relevant United Nations bodies, specialized agencies and other intergovernmental and non-governmental organizations for their comments and observations.
3. As of 30 November 1984, substantial information has been received from the Governments of Australia, Cyprus, Sweden and the United Kingdom; from the United Nations High Commissioner for Refugees, and the following non-governmental organizations in consultative status with the Economic and Social Council: Amnesty International, Friends World Committee for Consultation, International Association of Democratic Lawyers, International Commission of Jurists, War Resisters International, World Alliance of Young Men's Christian Associations and World Federation of United Nations Associations. These communications will be found in chapters I, II and III of the present report.
4. Additional replies, if any, will be dealt with in addenda to the report.

I. REPLIES FROM GOVERNMENTS

AUSTRALIA

[27 November 1984]

[Original: ENGLISH]

The Australian Government wishes to provide the following comments concerning the report on conscientious objection to military service prepared by the Special Rapporteurs of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities.

The situation in Australia remains as set out in Australia's first report to the Human Rights Committee on its implementation of the International Covenant on Civil and Political Rights (CCPR/C/14/Add.1), submitted in November 1981. The relevant extract (paragraph 167) of the report is as follows:

"There is currently no compulsory military service in Australia. The provisions attaching to compulsory military service, when for any purpose related to national security these are called upon, are contained in the Commonwealth National Service Act 1951, which has application throughout Australia. Section 29A of that Act provides for a total exemption from military duties, or an exemption from military duties of a combatant nature, if a person's conscientious beliefs do not allow him to engage in such service."

Existing provisions therefore extend the right of objection only to persons whose conscience forbids them to take part in armed service under any circumstances.

In May 1983, a Private Member's Bill to amend the National Service Act was introduced in the Australian Senate. The purpose of this Bill was to extend the right of conscientious objection to objectors to particular wars. Although the Bill did not clearly specify the grounds on which such objections should be based - which were given as "moral, ethical or religious" - its broad effect was to address recommendations 156 to 160 of the Special Rapporteurs' report. On 31 May the Bill was referred to the Senate Standing Committee on Constitutional and Legal Affairs which in turn invited concerned organizations and individuals to comment on the issues raised. When the Committee concludes its work, it will prepare a report for consideration by the Senate and the Australian Government.

Against this background, the Australian Government welcomes the activities of the Special Rapporteurs and considers that their report has been timely and has shed useful light on the complex issue of the right of conscientious objection.

CYPRUS

[13 November 1984]

[Original: ENGLISH]

The report is a very valuable piece of work. It is a complete study of all three subjects, the concept of conscientious objection and relevant international standards relating to the question of conscientious objection, the analysis of the relevant information received from Governments, intergovernmental and non-governmental organizations and the conclusions. They are all presented with utmost clarity.

Recommendations contained in paragraphs 154 and 155. Cyprus is of the view that the right of objection to military service ought not to extend to military service the purpose of which is the defence of one's own country.

Recommendations in paragraphs 156 to 160. The phrases "the objector considers likely ...", "the objector considers likely to be used in ...", "the objector holds to be engaged in, or likely to be engaged in ..." introduce an exclusively subjective test. Thus the question will be whether an objector considers the service likely to be used for a purpose and not whether the service will, in fact, be used for a certain purpose. Although conscientious objection is a personal matter, nevertheless Cyprus is of the view that the "uses" and "purposes" of the service must be decided on objective criteria.

SWEDEN

[31 October 1984]

[Original: ENGLISH]

The Swedish Government would like to make the following comments and observations:

Paragraphs 156-160

Sweden has dealt with the subject matter in these paragraphs in a different way. The Swedish procedure provides that an individual will not be considered guilty of a criminal act, should he refuse to carry arms in situations referred to in these paragraphs. Consequently, it is not the purpose for which arms are to be used or the effects of such use that determine the possibility of being permitted to be a conscientious objector. Instead the relevant factor is whether the use of arms as a means of defence against another individual in general is incompatible with the personal convictions of the individual concerned. The legal technique which is being used in Sweden might be a useful alternative to the procedure recommended in the above-mentioned paragraphs.

With regard to the information contained in the annexes, certain details are obsolete. The following corrections should be made:

Annex I, page 15

The entry for Sweden should read:

"Basic training 7.5 to 15 months, rehearsal training in separate periods 75 to 215 days".

Annex I, page 29

The second sentence of the entry for Sweden should read:

"Service can be performed as basic training to some extent in developing countries."

Annex I, page 34

The entry for Sweden should read:

"Civil courts deal with refusal to perform military or non-military service. First refusal leads to suspended sentence and a fine. Second refusal may result in a reasonably severe prison sentence (four months' open prison, possible release after two months)."

UNITED KINGDOM

[30 October 1984]

[Original: ENGLISH]

Conscientious objection in the United Kingdom

1. There has been no compulsory National Service in the United Kingdom since 1963 and part I of the National Service Act was repealed in 1977. The arrangements for dealing now with conscientious cases in all volunteer United Kingdom Armed Forces are administrative rather than statutory.
2. Arrangements for dealing with instances of conscientious objection are as follows. When a serviceman appeals for release on grounds of conscience, the service department concerned first considers whether, in its opinion, the conscientious objection to further service is genuine or not. If it decides against releasing the serviceman, then he may, if he wishes, appeal to an independent non-statutory Advisory Committee. The appointments to this Committee are made by the Lord Chancellor and its function is to hear in public the appeals of applicants whose cases have already been considered and dismissed by their own service authorities. The Committee's advice as to whether the conscientious objection is genuine or not is passed in confidence to the Secretary of State for Defence with whom the decision on discharge or otherwise finally rests. On the question of conscience, the Committee's findings are accepted as decisive and, when the finding is that the conscientious objection is genuine, the discharge or resignation of the serviceman normally follows. As the United Kingdom does not have compulsory military service, there is no requirement for any form of "alternative service" for conscientious objectors.

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

4. The following observations are made on the report's recommendations:

(a) Paragraph 154. This deals with release from an obligation to military service. There is currently no such obligation in the United Kingdom.

(b) Paragraphs 155-160. Provision already exists for United Kingdom service personnel to register conscientious objection. The grounds on which objection can be based are not specified either by law or administratively. It is for the claimant to demonstrate that this objection, whatever the reason therefor, is valid. We would not wish to define or limit the grounds for objection and certainly would not be prepared to define by statute the grounds for conscientious objection as the report recommends in paragraphs 156-160.

(c) Paragraph 161. As explained in paragraph 2 above, initial consideration of an appeal for release on grounds of conscience is dealt with administratively by the services and, if the grounds for the appeal are accepted, the serviceman leaves the service. It is only if the appeal is rejected that the individual has a right of recourse to an independent non-statutory body. Given that the United Kingdom forces are entirely composed of volunteers, we believe the present system is both fair to the individual and properly recognizes the rights of command of the services.

(d) Paragraph 162. Appellants to the Advisory Committee are entitled to a public hearing, to legal counsel or other representation and to call witnesses.

(e) Paragraph 163. The right to appeal for release on grounds of conscience is well known in the armed forces although it is not generally publicized. Guidance is given to the service authorities at all levels on how to process such appeals.

(f) Paragraph 164. Since the United Kingdom has no compulsory military service, there is no requirement to provide for alternative service.

(g) Paragraphs 165-167. In the event of an appeal for release either not being granted by the services authorities or not recommended by the Advisory Committee, no action by way of trial or penalty is taken against the individual. In the event that he or she commits an offence as a means of pursuing attempts to leave the services it would be for the normal service or civilian courts to consider the case depending upon the circumstances.

(h) Paragraph 168. The age requirements for military service in the United Kingdom preclude the possibility of children under 15 undertaking active military service.

5. As the United Kingdom has no compulsory service the majority of the proposals made in the Eide/Mabanga-Chipoya report would have no relevance to the United Kingdom at present: we therefore do not see the need in the United Kingdom for any new statutory arrangements. However we have no objections to the recommendations in the report being presented as guidelines to States.

II. REPLIES FROM UNITED NATIONS BODIES

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

[30 October 1984]

[Original: ENGLISH]

The United Nations High Commissioner for Refugees would like to compliment the Special Rapporteurs, Mr. Eide and Mr. Mubanga-Chipoya, for their comprehensive and extremely useful report (E/CN.4/Sub.2/1983/30), on which the Economic and Social Council has invited him to comment.

As his preliminary comments are already included in annex III to this report and as he further elaborated thereon in an oral intervention at the 1983 session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the High Commissioner only has, at this stage, a few additional observations to make. (The text of this oral intervention is contained in E/CN.4/Sub.2/1983/SR.13).

Chapter II, section D, provides a helpful account of the treatment of conscientious objectors who have fled their country because of their refusal to serve in the military and police forces practicing apartheid. The High Commissioner would, however, like to point out that, in addition to this section and annex III on the practice of States, there is also a considerable body of jurisprudence by national courts, as well as writings of jurists, concerning conscientious objectors in other or similar situations who have been forced to leave their countries.

The Special Rapporteurs have well illustrated the point that some States recognize, either by express legislation or practice, the need to provide protection to conscientious objectors. However, they have also noted that many States are willing to grant asylum to conscientious objectors from other countries only if they fulfil the criteria for refugee status. In this regard, the High Commissioner would, of course, welcome any action which may be taken by States at the international level to formulate or codify provisions concerning the granting of asylum to conscientious objectors, along the lines of General Assembly resolution 33/165.

Furthermore, he has read with great interest the Special Rapporteurs' general recommendations contained in chapter III. Although detailed comments thereon would not be within his competence, he would naturally welcome any efforts by States, individually or jointly, to take measures which would be conducive to reducing the number of persons who feel obliged to seek asylum on the basis of conscientious objection.

III. REPLIES FROM NON-GOVERNMENTAL ORGANIZATIONS

AMNESTY INTERNATIONAL

[16 October 1984]

[Original: ENGLISH]

Amnesty International wishes to submit the following comments:

1. The report is the most comprehensive study on conscientious objection ever prepared under United Nations auspices. It is valuable not only for its analysis and recommendations but also for the wide ranging information it presents on the

status of conscientious objectors in a large number of countries. Amnesty International therefore welcomes the decision of the Economic and Social Council to have the report printed and widely distributed. The organization will be pleased to assist in the report's dissemination.

2. Amnesty International works for the release of individuals who are imprisoned because of their refusal on grounds of conscience to perform military service and who may be considered "prisoners of conscience". Amnesty International also works for changes in international standards and in national legislation which would prevent conscientious objectors to military service from being imprisoned.

3. Amnesty International hopes therefore that the Commission on Human Rights will act on the report's recommendations, in particular the recommendations contained in paragraph 154.

Amnesty International's policy in this regard is contained in Policy Guidelines on Conscientious Objection (revised and adopted by the 13th International Council, Vienna, 1980):

1. A conscientious objector is understood to be a person liable to conscription for military service who, for reasons of conscience or profound conviction arising from religious, ethical, moral, humanitarian, philosophical, political or similar motives, refuses to perform armed service or participate directly or indirectly in any other way in wars or armed conflicts.

2. Where a person is detained/imprisoned because he or she claims that he or she, on the grounds of conscience described in paragraph 1 above, objects to military service, Amnesty International will consider him or her a prisoner of conscience, if his or her imprisonment/detention is a consequence of one or more of the following reasons:

(a) The legal code of a country does not contain provisions for the recognition of conscientious objection and for a person to register his or her objection at a specific point in time;

(b) A person is refused the right to register his or her objection;

(c) The recognition of conscientious objection is so restricted that only some and not all of the above-mentioned grounds of conscience or profound conviction are acceptable;

(d) A person does not have the right to claim conscientious objection on the above-mentioned grounds of conscience or profound conviction developed after conscription into the armed forces;

(e) He or she is imprisoned as a consequence of his or her leaving the armed forces without authorization for reasons of conscience developed after conscription into the armed forces, if he or she has taken such reasonable steps to secure his or her release by lawful means as might grant him or her release from the military obligations on the grounds of conscience or if he or she did not use those means because he or she had been deprived of reasonable access to the knowledge of them;

(f) There is not a right to alternative service outside the "war machine";

(g) The length of the alternative service can be deemed a punishment for his or her conscientious objection.

3. A person should not be considered a prisoner of conscience if he or she is not willing to state the reason for his or her refusal to perform military service, unless it can be inferred from all the circumstances of the case that the refusal is based on conscientious objection.

4. A person should however not be considered a prisoner of conscience if he or she is offered and refuses comparable alternative service outside the "war machine".

FRIENDS WORLD COMMITTEE FOR CONSULTATION

[5 November 1984]

[Original: ENGLISH]

In response to Economic and Social Council resolution 1984/27 the Friends World Committee for Consultation would like to submit the following comments and observations on the report by Messrs. Asbjørn Eide and Chama Mubanga-Chipoya on the question of conscientious objection to military service (E/CN.4/1983/Sub.2/30). These comments relate to the conclusions reached by the Rapporteurs, and their recommendations.

1. The right to conscientious objection is outlined in paragraph 154 of the report, lines 6-10 in the English version. The primary principle of recognition of the right to conscientious objection is contained in the sentence: "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." This recognition should be the emphasis of consideration of this issue.
2. Paragraphs 155-160 should be embodied in a series of guidelines which follow from the above principle. States should be asked to refer to these guidelines, but implementation could be reviewed at regular intervals by the United Nations. Machinery for this purpose should be established in the United Nations framework.
3. The above should be the chief focus of the Commission on Human Rights in 1985, i.e., the recognition of a basic principle with guidelines to support it.
4. Paragraph 155 states that the minimum recognition which could be given is to extend the right of objection to pacifists, persons whose conscience forbids them to kill or be trained to kill under any circumstances. The Friends World Committee for Consultation agrees that this is the minimum.
5. The wording in many of the paragraphs refers to a subjective judgement, which could be replaced by universal criteria. For example "which the objector considers likely to be used in action amounting to or approaching genocide" (para. 157) could be replaced by "which the United Nations judges to be an act of genocide", similarly for each of the other paragraphs.

This would ensure a universal standard and enhance the role of the United Nations in applying the universal human rights instruments which it has elaborated. Paragraph 148 explains the difficulties which an objector can face when his or her judgement of a situation is not the same as that of the Government. If there were a universal standard available for comparison then the right to conscientious objection to certain acts of aggression defined in the guidelines would be better guaranteed.

6. Paragraph 161 concerns the procedural aspects of recognition and refers to a valid objection under national law. Again applying standards of uniformity, this should be changed to "national and international law".

7. Alternative service should be under civilian administration. Since freedom of conscience and freedom of expression are human rights, the exercise of these rights is not something for which punishment should be given. Therefore the duration of alternative service when carried out within a civil administration or organization should not exceed the period of normal military service. In every case objectors should enjoy the same economic and social advantages as conscripts. Governments should give careful consideration to the recommendation in paragraph 164 that alternative service should be given a meaningful content, including social work or work for peace, development and international understanding. This is obviously in line with the aims of the United Nations and in particular with International Youth Year, 1985.

8. In relation to the recommendations with regard to trial and penalties where the objection is not found valid, a sentence should be added between paragraphs 167 and 168 to the effect that objectors who have not been recognized, and have therefore been penalized, should not be called to military service again.

The Friends World Committee for Consultation believes that recognition of the right of conscientious objection by Member States would be an important contribution to the work of the United Nations for world peace. Such recognition can best be expressed by acceptance of the basic principle of conscientious objection (point 1 above) and of guidelines which follow from that principle (the remaining conclusions of the rapporteurs). Recognition of the right of conscientious objection is both timely and urgent during this, the International Year of Youth.

INTERNATIONAL ASSOCIATION OF DEMOCRATIC LAWYERS

[22 November 1984]

[Original: FRENCH]

1. As regards the report itself

As to the countries that have recognized and made arrangements for conscientious objection, the report does not, in our view, give sufficient thought to the difference in treatment between a conscientious objector and a serviceman.

Here we are referring to legislation which, like Belgium's, does not permit such differences between these people (other than those prescribed by the law itself, such as length of service, for example). Obviously, however, there is a difference in practice. We have in mind specifically the objector's actual living conditions and would do no more than refer by way of example to the package which he receives on entering service and contains neither trousers nor shoes, let alone a coat!

If conscientious objection is made too difficult from the practical standpoint, it will cease to be viable.

2. As regards the recommendations

(a) We consider that in order to provide every guarantee for the success of the project, verification of the application of procedures should be envisaged. The discrimination to which individuals are subject in this regard often takes very subtle forms.

It therefore seems to us that the possibility should be considered of direct appeal to a neutral body by the person concerned if application of the provisions of his country's legislation (in the broad sense) is refused in his case.

Similarly, why not consider publishing an annual report reviewing the question by country or group of countries, including cases of violation?

(b) Recommendation No. 4 (Trial and penalties where the objection is not found valid) should take account of cases in which excessively severe penalties would be imposed on the individual because of his objections.

In such instances, the object is in special need of protection and this aspect of the matter does not appear to have been sufficiently developed. We would refer, for instance, to General Assembly resolution 33/165 (cited in paragraphs 3 and 4 of the report), which calls upon Member States of the United Nations to grant asylum or safe transit to another State 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. We consider that, when the moral - and in this case physical - integrity of a person is threatened because of his conscientious objections, he should be afforded the same protection.

3. Subject to the foregoing we endorse the conclusions and recommendations of the report.

INTERNATIONAL COMMISSION OF JURISTS

[21 November 1984]

[Original: ENGLISH]

The International Commission of Jurists welcomes this report. It gives the subject of conscientious objection a much-needed detailed examination and provides a solid base for positive discussion and action at an international level.

ICJ strongly supports the proposed recommendations contained in the report which would establish a right to object to military service on grounds of conscience.

While commending the recommendations as a whole, ICJ would like to make two comments: firstly, on procedural aspects of dealing with conscientious objectors, and secondly, on the question of alternative service.

Regarding the first point, merely to recognize the right to be a conscientious objector is not enough. The exercise of such a right depends on decisions made during the examination of the values upon which a certain individual bases his life and his treatment of his fellows. Such decisions should not, we suggest, be made by military personnel whose consciences and values are so evidently opposed to those of the individuals they are seeking to judge. Therefore, it is vital that the delicate task of review rests in the hands of an independent civilian body.

Other important procedural aspects included in the authors' recommendations are the applicant's right to a hearing, to be represented by legal counsel and to call witnesses.

However, no mention is made of the applicant's status during the determination of his case. If, as in some countries, a conscientious objector is forced to start or continue his military service pending a decision by the reviewing body, not only are there obvious opportunities for discrimination against him in a probably hostile environment, but, in the event of a decision in his favour, his right of conscientious objection will have been violated during the period in which he actually served. ICJ hopes that this aspect of procedure will be borne in mind.

Secondly, the International Commission of Jurists welcomes the authors' recommendations regarding alternative service. Tapping the resources of youth in this way could provide a powerful new force for constructive action in many societies.

The International Commission of Jurists hopes that this report of Mr. Eide and Mr. Mubanga-Chipoya will provide the occasion for a decision to give legitimation to those young people who are trying to live up to the United Nations commitment to world peace.

WAR RESISTERS' INTERNATIONAL

[29 November 1984]

[Original: ENGLISH]

The report by Messrs. Eide and Mubanga-Chipoya is a very comprehensive and reliable analysis of the situation for conscientious objectors in Member States of the United Nations. War Resisters International welcomes in particular the recommendations made by the rapporteurs as a result of their investigations. WRI endorses the principle that the right to conscientious objection should be given to persons whose conscience forbids them to take part in armed service under any circumstances (the pacifist position). The recognition of this right is the minimum action which could be taken by the Member States of the United Nations.

Major efforts are made by governmental, regional and international bodies to influence young men's and women's strivings towards constructing a more peaceful world. The irony is that those young people who take such teachings to heart and thereby arrive at the conclusion that they are unwilling - either in principle or selectively - to bear arms, find themselves in an untenable position, a position which leaves them without support in many countries and at an international level.

For this reason consideration of the recommendations made in the report is particularly timely during International Youth Year. The recommendations contained in paragraphs 155-160 could be embodied in a series of guidelines which would follow from the basic principle outlined above and contained in paragraph 154, lines 6-10. This would allow for their gradual implementation, a process which could be reviewed by the United Nations at yearly intervals.

WORLD ALLIANCE OF YOUNG MEN'S CHRISTIAN ASSOCIATIONS

[14 November 1984]

[Original: ENGLISH]

The World Alliance of YMCAs has studied the report and particularly the recommendations dealing with (1) the right to conscientious objection; (2) procedural aspects; (3) alternative service; (4) trial and penalties; (5) asylum; and (6) use of children and minors.

YMCAs are in agreement with these sections and would advocate their adoption by the United Nations and all Member States.

In 1981, the 8th World Council of YMCAs approved the following resolution:

"That the World Alliance stimulate the National Movements most directly concerned to show solidarity with people who, for reasons of conscience, are unable to undertake military service and to utilize their energies to assist in the provision of alternative service opportunities where permitted, as is already done by the YMCA in some countries."

WORLD FEDERATION OF UNITED NATIONS ASSOCIATIONS

[2 November 1984]

[Original: ENGLISH]

This matter was discussed by WFUNA at its 27th Plenary Assembly (8-13 October 1979, Barcelona), which adopted a resolution on freedom of religion (including conscientious objection to military service).

On the basis of this resolution, WFUNA recognizes conscientious objection to military service as a human right and regrets that it has not been formally accepted as such. WFUNA believes that attention should be drawn to instances of persecution of religious groups and that more positive action by the United Nations is needed in the area of recognition of the right to conscientious objection to military service.