



FRIENDS WORLD COMMITTEE FOR CONSULTATION
Quaker United Nations Office, Geneva

References to **Conscientious Objection to Military Service**

in the documents submitted to and resolutions of the

UN Commission on Human Rights

during the 59th session: 17 March to 24 April 2003

Prepared by the **Quaker United Nations Office, Geneva.**

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Item 3

E/CN.4/2003/13

Report of the United Nations High Commissioner for Human Rights: Colombia

(c) Freedom of conscience and religion

113. Violations of the rights of religious representatives are a matter for concern. Many members of the Catholic Church have been killed, threatened or kidnapped by outlawed groups. Most such cases have been blamed on FARC-EP, including the kidnapping of the Bishop of Zipaquirá on 11 November. The murder of the parish priest of Restrepo (Valle) on 27 September 2002 was attributed to paramilitary groups, and that of the priest José Luis Arroyave, the social and spiritual leader of Comuna 13 in Medellín, on 20 September, to an unidentified illegal armed group. According to the Attorney-General's Office, FARC-EP arranged and perpetrated the murder of Monsignor Isaías Duarte Cancino in Cali on 16 March. The followers of other religious denominations, including the Pentecostal Church and the Adventist Church, have had to face violence in the exercise of their freedom of worship, freedom to preach and the pastoral activity of their ministers. Conscientious objection to military service is not admitted under Colombian domestic law.

Item 9

E/CN.4/2003/38

Report Submitted by the Special Representative to examine the situation of human rights in Bosnia and Herzegovina and the Federal Republic of Yugoslavia

G. Conscientious objection

23. Whilst both Entities formally recognize the right to conscientious objection, the Special Representative is concerned that insufficient implementation of the laws and lack of information on the right to conscientious objection and the procedures for obtaining conscientious objector status have prevented the realization of this right. The lack of information about the right and the procedures have either discouraged applications (only four persons have applied for conscientious objector status in the Republika Srpska since May 2002), or led to denials of applications for non-compliance with procedures. The Federal Commission on Community Service met in late November 2002 after a hiatus of eight months, and approved 15 applications for community service. However, the Commission still has a backlog of approximately 500 cases, and faces difficulties in terms of lack of financial and technical support. In the Republika Srpska, no independent civilian commission exists to handle applications; instead, applications are dealt with by the Ministry of Defence, in contravention of international standards.

4. Conscientious objection

66. The Special Representative notes that the issue of conscientious objection to military service was partially addressed by the Federal authorities in the Amnesty Act in 2001, whereby thousands of men who refused military service during the Kosovo and NATO conflicts were amnestied. The Law on the Yugoslav Army currently provides for unarmed service in the army or Ministry of Defence but does not provide conscientious objectors with any alternative civilian service. **He urges the authorities to amend the law to ensure it is compatible with the recommendations of the Commission on Human Rights on conscientious objection to military service.**

Item 11 (c)

E/CN.4/2003/67/Add.1

The right to freedom of opinion and expression, Addendum, Summary of cases transmitted to Governments and replies received

Armenia

35. In the case of Rafik Tonoian, the Government indicated that on 3 July 1998, the Procuracy of Martuni region initiated a criminal case against him on the basis of article 75 of the Criminal Code for his refusal to perform military service, and that on 3 September, Mr. Tonoian was charged and put in detention as a precautionary measure. The Government further indicated that that on 28 August 2000, Mr. Tonoian applied to the Procuracy of the Gegharqounik regions, mentioning that he did not want to perform his military service for his religious belief, and on 28 September, the criminal case was brought before the court, which sentenced Mr. Tonoian to two years' imprisonment on 1 November 2000. The Government concluded that Mr. Tonoian did not submit any declaration that he had been subject to beatings by police officers.

Item 11 (e)

E/CN.4/2003/66

Report of the Special Rapporteur on Freedom of Religion of Belief

Republic of Korea

65. Conscientious objectors have allegedly been routinely sentenced by military courts to three-year terms of imprisonment based on article 44 of the Military Penal Code and, more recently, by civil courts under provisions of the Military Service Act. As of December 2001, 1,640 conscientious objectors, most of them Jehovah's Witnesses and some of them members of the Seventh-Day Adventist Church, are said to be serving their sentences in national prisons. They are said not to be permitted any religious activity, allegedly because they objected to military service on grounds of religious belief.

66. By letter dated 20 June 2002, the Government replied, inter alia, that a compulsory

military service system was in accordance with its Constitution and relevant laws and that persons who fail to discharge the duty of military service shall be subject to criminal punishment. The Government considers the duty of national defence as constituting a valid limitation on the exercise of fundamental rights such as the right to freedom of conscience and manifestation of religious beliefs. National consensus on introducing an alternative system of military service has not yet been reached, but a debate on the issue of providing alternate military services has recently begun. In addition, the Constitutional Court is considering a petition submitted by a lower court on the constitutionality of subjecting conscientious objectors to imprisonment without providing for alternative forms of service. It is therefore expected that the outcome of the domestic debate and the Constitutional Court's decision will form a political and legal basis for future action by the Government on the issue.

67. According to the Government, as of December 2001, 1,534 conscientious objectors, most of them Jehovah's Witnesses, were serving their sentences in prisons and 106 were on trial. Certain religious activities are subject to limitations for the purpose of maintaining security and internal order in prisons and formal religious services on a regular basis may not be available in some facilities. However, there is no evidence to support the allegation that Jehovah's Witnesses serving prison terms are prohibited from any religious activity because they objected to military service on grounds of religious beliefs.

68. The Special Rapporteur thanks the Republic of Korea for its reply. He nevertheless recalls that according to its General Comment No. 22, the Human Rights Committee believes that the right to conscientious objection can be derived from article 18 of the International Covenant on Civil and Political Rights, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief.

Item 15

E/CN.4/2003/92

Report of the working group: Indigenous Issues

Executive summary

The eighth session of the working group on the draft declaration met from 2 to 13 December 2002 and discussed the clustering of: (a) articles 3, 31 and 36; (b) articles 25, 26, 27, 28, 29 and 30; (c) articles 7, 8 and 11. A compilation of amendments proposed by some States is included in the annex. The ninth session of the working group will take place from 15 to 26 September 2003 and will discuss the clustering of: (a) articles 3, 31, 19, 20, 21, 30, 36, 45 and preambular paragraph 15; (b) articles 22, 23 and 24; (c) articles 25, 26, 27 and 28; (d) articles 15, 16, 17 and 18; (e) articles 7, 8 and **11**.

ARTICLE 11

Norway

Indigenous peoples have the right to [special] protection and security in periods of armed conflict.

Norway

States shall observe *[applicable international human rights standards]*

and international humanitarian law,] [international standards, in particular the Fourth Geneva Convention of 1949,] for the protection of civilian populations in circumstances of emergency and armed conflict, and shall not:

Norway

(a) Recruit indigenous individuals **[into military service against their will, except in cases prescribed by law for all citizens, and to which there are no specific exemptions for indigenous individuals;]** [against their will into the armed forces and, in particular, for use against other indigenous peoples **[or against other members of the same indigenous people];]**

Saami Council

- (b) Recruit indigenous children into the armed forces under any circumstances;
- (c) Force indigenous individuals to abandon their lands, territories or means of subsistence, or relocate them in special centres for military purposes;
- (d) Force indigenous individuals to work for military purposes under any discriminatory conditions.

Alternative text to Article 11:

Switzerland

Indigenous peoples have the right to protection and security in **[times]** of armed conflict. States shall **[respect and ensure respect]** of the **[rules and principles of international humanitarian law, in particular concerning the protection of civilian persons in times of armed conflicts according]** to the Fourth Geneva Convention of 1949. They shall **[namely abstain from]** (or: shall not)

(a) [Compel(ing) indigenous persons to serve in the forces of a hostile Power;

(b) Compulsorily or voluntarily recruit(ing) indigenous persons under the age of 18 into their national armed forces;]

(c) Force (Forcing) indigenous individuals **[(persons)]** to abandon their lands, territories or means of subsistence, or relocate them in special centres for military purposes;

(d) Force (Forcing) indigenous individuals **[(persons)]** to work for military purposes under any discriminatory conditions.

Alternative text to Article 11:

Canada

[States shall not recruit indigenous individuals into the armed forces in a discriminatory manner.

Canada

Indigenous individuals are entitled to all protections provided by international humanitarian law, in particular those in the Fourth Geneva Convention of 1949.

States recognize that there may be circumstances in which special protection and security may be appropriate for indigenous peoples in times of armed conflict.

Alternative (2) text to Article 11:

Canada

[1. Indigenous individuals and peoples are entitled to all protections provided by international humanitarian law in times of armed conflict.

In particular, States shall observe international humanitarian law, including in particular the Fourth Geneva Convention of 1949 for the protection of civilians in armed conflict, and shall not:

(a) Recruit indigenous individuals against their will into the armed forces and, in particular, for use against other indigenous peoples, in a discriminatory manner or otherwise contrary to international law;

(b) Recruit indigenous children into the armed forces or deploy indigenous children in hostilities under any circumstances contrary to international law;

(c) Force indigenous individuals to abandon the lands they own, use or occupy, or means of subsistence, or relocate them in special centres for military purposes contrary to international law; or

(e) Force indigenous individuals to work for military purposes under any discriminatory conditions or otherwise contrary to international law.]

Document
for
discussion

Alternative text to Article 11:

[In times of conflict indigenous individuals are entitled to all protection afforded by international humanitarian laws, in particular the Fourth Geneva Convention. In any form of recruitment of indigenous individuals into the armed forces, States shall not act in a discriminatory manner. States shall not forceably recruit or conscript indigenous individuals solely for the purpose of engaging those individuals, by virtue of their indigenous identity, in hostilities specifically directed at other indigenous peoples. Indigenous children are entitled to all protection afforded by applicable international law regarding the recruitment of children into the armed forces.]

Part II: Draft Report of the Commission

E/CN.4/2003/L.11/Add.2

2003/11. Situation of human rights in Turkmenistan

The Commission on Human Rights,

3. *Expresses its grave concern:*

(d) At the heavy prison sentences given to objectors to compulsory military service on religious grounds, such as Jehovah's Witnesses, and the lack of alternative service compatible with the reasons for conscientious objection, of a non-combatant or civilian character, in the public interest and not of a punitive nature

5. *Calls upon* the Government of Turkmenistan:

(a) To ensure full respect for all human rights and fundamental freedoms, in particular the freedoms of expression, religion, association and assembly, the right to a fair trial by an independent and impartial tribunal established by law and the protection of the rights of persons belonging to ethnic and religious minorities, and to take the necessary measures to refrain from subjecting conscientious objectors to imprisonment

6. Urges the Government of Turkmenistan immediately and unconditionally to release all prisoners of conscience

51st Meeting

16 April 2003

*Adopted by a recorded vote of 23 votes to 16,
with 14 abstentions.*

Part III: Written NGO Statements

Written Statement submitted by Conscience and Peace Tax International (CPTI) E/CN.4/2003/NGO/24

Conscientious Objection to Military Taxation

Conscience and Peace Tax International (CPTI) is the international NGO representing a growing number of national movements which:

- a) uphold the right of conscientious objectors to refrain from contributing to military expenditures through taxation, and
- b) promote the creation of mechanisms whereby conscientious objectors might divert the appropriate portion of their tax contribution to nonmilitary, peace-building purposes.

We welcome the recognition by the Commission on Human Rights, in resolution 1989/59, that conscientious objection to military service is a legitimate exercise of the freedom of thought, conscience and religion, and the reaffirmation and development of this principle in resolutions 1993/84, 1995/83, 1998/77, 2000/34 and 2002/45.

We are pleased to note that an increasing number of states now apply legislation allowing "conscientious objectors to military service" to serve the national and international community in unarmed, non-military alternative service. This enables them to fulfill their civic duty, without obliging them to live and act in a manner which compromises their deep-seated religious or moral principles. Moreover, the alternative service not infrequently includes work for the defense and protection of the many human rights that this Commission addresses.

However, we would argue that the moral objection to participation in war is not assuaged if one is required to pay for others to do what oneself in conscience cannot do. We believe that the conscientious objection to military TAXATION is no less valid than the conscientious objection to military SERVICE, and is its logical concomitant.

To punish those who, on grounds of conscience, withhold taxes for the military is, we maintain, to penalize a legitimate expression of their freedom of thought, conscience and religion. Thus it is contrary to the International Covenant on Civil and Political Rights.

This should not be understood as a negative right. CPTI would bring you a vision held by many people all over the world. We see a future in which governments, which exist by the people and for the people, gather taxes from their people to create a culture of peace, free

from the scourge of war.

All over the world, individuals who, because of conscience, cannot serve in the military or pay for the military already work in diverse ways for peace, and give generously of their resources to create a culture of peace. Much more could be accomplished beyond these initiatives through partnerships between international organizations, states and nongovernmental efforts to create a culture of peace.

Our 9th International Conference was held last September, near Berlin. We heard reports from numerous countries about their efforts to introduce legislation toward this vision. The number of legislators that support this vision is growing. The number of religious leaders and institutions that support this vision is growing.

At the conference we heard testimony from conscientious objectors who have acted upon their religious beliefs and their conscience with regard to military taxes. Some deliberately choose poverty so as to live below the taxable level. Some publicly redirect their taxes to peaceful purposes. Some place their taxes aside in escrow - in trust for their government - until their government will agree to accommodate their religious or ethical convictions by allocating their taxes for non-military purposes. These acts of conscience have led to fines, seizure of homes and cars, and sometimes even imprisonment. Still their exercise of conscience persists because they know it is the right thing to do.

Many more states in today's world have compulsory taxation for military purposes than have compulsory military service. As things stand, persons whose fundamental religious, moral, or ethical beliefs are incompatible with such expenditures are generally faced with the choice between disobeying the dictates of their conscience or disobeying the law of the land.

We hope over the coming years to work with the Commission and the other organs of the United Nations, and with the member states, to develop models of alternative "peace tax" programs, and linked systems of tax accounting, thereby enabling conscientious objectors to military taxation to discharge their civic obligations by making no less full and valuable a contribution than, under best current practice, do conscientious objectors to military service.

Written Statement submitted by MINBYUN-Lawyers for a Democratic Society
E/CN.4/2003/NGO/25

Conscientious objection to military service

1. MINBYUN-Lawyers for a Democratic Society has been seriously concerned about the denial of the right of conscientious objection to military service in the Republic of Korea, and strongly urged the government of the Republic of Korea to immediately stop criminalizing conscientious objectors. As outlined in the written statement (E/CN.4/2002/NGO/126), which MINBYUN submitted to Fifty-eighth session of the UN Commission on Human Rights, it is estimated that every year about 600 young people eligible for the military draft are being sent to prison owing to their refusal to bear arms.

2. We welcome the continuous efforts of the UN Commission on Human Rights to lay emphasis on the recognition of the right of everyone to have conscientious objections to military service as a legitimate exercise of the right to freedom of thought, conscience and

religion. We also take note of the resolution of the UN Commission on Human Rights in 2002/45 to call upon States to review their current laws and practices in relation to conscientious objection to military service in the light of its resolution 1998/77.

3. With regard to the compilation and analysis of the best practices called for in the Commission resolution 2000/34 and 2002/45, we regrettably found that the Office of the UN High Commissioner for Human Rights (OHCHR) has received only a few responses from the countries until now. In order not to make a fundamental human right only available on the paper, all the governments should make strenuous efforts to find the best way to comprehensively implement it. This is the very purpose of the decision by the Commission to request the OHCHR to prepare its compilation and analysis of best practices in relation to the recognition of the right to conscientious objection to military service and the provision of alternative forms of service.

4. While it has consented to the above-mentioned resolutions as a member of the UN Commission on Human Rights, the government of the Republic of Korea has been harshly punishing conscientious objectors as criminals. It has not yet provided the OHCHR with the information on the real situation where the rights of conscientious objectors are seriously violated. As a signatory to the International Covenant on Civil and Political Rights (ICCPR), the government of the Republic of Korea has never mentioned the issue of conscientious objection on its periodical report to the Human Rights Committee.

5. In October 2002, in a regular meeting of the State Council, President Kim Dae-Jung described the objection to military service as the evasion of obligatory military service, and said that this act is not allowed on any account. This statement was made as a reaction against the development of student movement on conscientious objection, because some students who are not yet obliged to serve in the army declared that they would be conscientious objectors in the future. President Kim's remarks on the issue of conscientious objection were directly followed by the announcement of the Ministry of Defense that a person who has not performed military service would not be entitled to get an exit visa for going abroad. The Ministry of Justice even cancelled the plan of parole, which had been scheduled for some imprisoned conscientious objectors. Conscientious objectors have been arrested and detained even before trial. The National Human Rights Commission, which has a mandate to provide relief measures for the victims of human rights violations and to recommend the government to fully observe international human rights law, has been also taking a passive attitude on this issue.

6. In the meanwhile, since the summer of 2002, the number of conscientious objectors who have non-religious motives for the objection to military service has increased. Mr. Chi-Yun Lim, Mr. Ho-Geun Yoo and Mr. Dong-Hyuk Nah became conscientious objectors on account of their antiwar conviction and pacifism, not religious belief. Three of them had been arrested, but recently they were released on bail. The trials of Mr. Lim and Mr. Yoo were postponed to the decision of the Constitutional Court, which will determine the constitutionality of punishment against conscientious objectors under the Military Service Act, but in the case of Mr. Nah, he was sentenced to one year and six month imprisonment. Mr. Nah's case is now pending before the appellate court.

7. Under this situation, it is definitely clear that more and more young people will be victims of violations of human rights on conscientious objection. MINBYUN, therefore, strongly calls on the government of the Republic of Korea, which is also a member of the Commission on

Human Rights, to:

- (a) immediately stop criminalizing conscientious objectors by providing various forms alternative services;
- (b) submit the report to the Office of the UN High Commissioner for Human Rights, after elaborating upon the current laws and practices in relation to conscientious objections to military service in the light of its resolution 1998/77;
- (c) invite the Special Rapporteur on Freedom of Religion or Belief in order to investigate the violations of human rights on conscientious objection in the Republic of Korea.

8. MINBYUN also calls on the Commission on Human Rights to:

- (a) pay sincere attention to the human rights violations committed in the countries which have not yet recognized the right to conscientious objection to military service;
- (b) urge all the governments to fully and substantively cooperate with the Office of the UN High Commissioner for Human Rights in the preparation of the compilation and analysis of best practices on conscientious objection in accordance with the resolution 2002/45.

Written Statement submitted by Asian Legal Resource Centre (ALRC)

E/CN.4/2003/NGO/101

The need for effective national human rights institutions in Asia

6. Regrettably, the National Human Rights Commission in Korea has failed to take the initiative on many occasions, and has instead tended to follow the judgements of courts, rather than attempt to set important precedents. This is because it has mistakenly seen itself as a judicial rather than advocacy body. Instead of realizing its opportunity to act as a strong proponent of universal human rights principles, it has acted as if an adjudicator of individual human rights cases. This is unfortunate, as it means that the National Human Rights Commission has been prepared to take a back-seat role, in keeping with a 'neutral' adjudicators stance, rather than be proactive and visible, as befits an advocate. Some instances where the National Human Rights Commission has failed to fully realize its mandate follow.

Written Statement submitted by Pax Christi International

E/CN.4/2003/NGO/153

CONSCIENTIOUS OBJECTION TO MILITARY SERVICE

Pax Christi, the global Catholic peace movement, was born in the aftermath of the Second World War to foster reconciliation between enemies and the creation of a more peaceful and just world order. Fifty-eight years on, we continue to be a strong voice for peace and justice around the world, firmly supporting the founding purpose of the United Nations as articulated in the Charter: "to save succeeding generations from the scourge of war."

In every generation there have been people who conscientiously object to participation in war and military service. For them the term "scourge of war" has not been just a rhetorical description; it accurately portrays suffering endured by countless victims of war. In the past and regrettably still in some countries, those who have refused to participate in war have been regarded as cowards or unpatriotic citizens. They have endured imprisonment, exile and other

forms of punishment, even execution in response to their dedication to non-violence.

Myths about the glory and honour of war, often fostered by literature and film, are contradicted by the realities of war and violent social conflict in the modern world. Dictators conscript unwilling citizens into armed forces to force their wills upon their own people. Hundreds of thousands of children are compelled to serve as soldiers, depriving them of their childhood and often their very lives. Terrorists attack unarmed civilians in the mistaken belief that such atrocities will weaken their opponents and win converts to their cause, when the evidence is that such acts only increase the cycle of violence. Far from reducing the number of weapons of mass destruction, some nations seem more committed than ever to maintaining or increasing their reliance on chemical, biological and nuclear weapons; meanwhile, fear grows among peace-loving people throughout the world.

Today in the face of what seems to be a global increase in violence and resort to war, conscientious objectors are increasingly regarded as proverbial "canaries in the coalmine." Like the small birds that warn coalminers when poisonous gasses are threatening their lives, these brave people warn their fellow citizens of the toxic effect of violence in society and call for non-violent methods to resolve conflicts within and between nations. They reject the notion that violence "works" and refuse to contribute to the spiral of violence that is always the result of modern war. These people are justly regarded as heroes of peace.

Since 1987, the Commission on Human Rights has passed a series of resolutions establishing international standards recognizing the universal human right to be conscientiously opposed to military service and war, even when governments do not yet legally recognize that right. In our day, courageous individuals – in Israel, Colombia, South Korea, the United States and elsewhere -- continue to face hardships due to their refusal to participate in their country's military service or particular armed conflicts.

Pax Christi International is most grateful for the recognition of these rights as articulated in previous UN resolutions. Pax Christi national sections will continue to offer support and counsel to conscientious objectors around the world. We therefore call on the Commission to:

- Call on member states, as previously requested by the High Commissioner for Human Rights, to report on their "best practices" in relation to policies and experiences of conscientious objectors in their countries. The successful experiences of nations that have recognized these rights can serve as models for governments seeking to create similar mechanisms.
- Affirm the right to asylum for those who are forced to leave their country in order to flee prosecution and imprisonment due to their conscientious objection to war or military service.

Written Statement submitted by Amnesty International
E/CN.4/2003/NGO/180

Israeli Conscientious objectors imprisoned as prisoners of conscience

Since September 2000, some 180 Israeli conscripts and reservists have been imprisoned for up to six months for refusing to perform military service or to serve in the Occupied Territories, on the grounds that they believe they would be participating

in human rights violations. Amnesty International considers them to be prisoners of conscience.

Amnesty International calls on the Commission on Human Rights to:

- Urge the Israeli government to immediately and unconditionally release all detained conscripts and reservists who are prisoners of conscience and who are refusing to serve in the army on grounds of their conscientiously held beliefs;