

References to

CONSCIENTIOUS OBJECTION

in the documents submitted to, and resolutions of, the

UN Commission on Human Rights

60th Session, March – April 2004

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Section One: **Reports**

Section Two: **NGO Documents**

Section Three: **Resolutions**

REPORTS

DOCUMENT E/CN.4/2004/1/Add.1

TITLE **ANNOTATIONS TO THE PROVISIONAL AGENDA**

PAGE 29 - 30

QUOTE **Sub-item (g): Conscientious objection to military service**

148. In its resolution 2002/45, the Commission requested the Office of the United Nations High Commissioner for Human Rights to continue the preparation of its compilation and analysis of best practices in relation to 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, and the provision of alternative forms of service, and to seek such information from Governments, national human rights institutions, the specialized agencies and relevant intergovernmental and non-governmental organizations, and to submit a report containing this compilation and analysis to the Commission at its sixtieth session.

149. The Commission will have before it the report of the Office of the United Nations High Commissioner for Human Rights (E/CN.4/2004/55).

DOCUMENT E/CN.4/2004/7/Add.1

TITLE **Report of the Special Rapporteur, on extrajudicial, summary or arbitrary executions, Asma Jahangir, Addendum, Summary of cases transmitted to Governments and replies received.**

AGENDA ITEM 11(b)

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QUOTE **Libyan Arab Jamahiriya**

287. On 30 July 2003, the Special Rapporteur and the Special Rapporteur on torture sent an appeal to the Government of the Libyan Arab Jamahiriya in connection with the situation of seven Eritrean nationals, **Zacharias Michael Belay, Misghina Siyoum, Mesfin, Rezene, Yonas, Michael and Abel**, who were allegedly detained in Libya and were reported to be at imminent risk of being forcibly returned to Eritrea where they could face torture, secret and incommunicado detention, as well as possible extrajudicial execution. The men were reportedly military conscripts aged in their 20s who had deserted from the army because of the alleged indefinite extension of their military service. They reportedly escaped to the Sudan in 2002 and travelled to Libya, hoping to reach a country of asylum in Europe. On 11 August 2002, they were allegedly arrested by the Libyan authorities as they were attempting to cross the Mediterranean Sea. They were reportedly convicted of illegal entry and sentenced to three months imprisonment. According to the information received, the punishment for deserters in Eritrea could be death, although it was also alleged that deserters were often detained and tortured, then forced to resume their military service. It is also alleged that between 30 September and 3 October 2002, about other 220 returned Eritrean, believed to have been mainly conscript army deserters and evaders, were allegedly held in incommunicado detention in Eritrea. In light of reports of allegations of torture and incommunicado detention of other deserters in Eritrea, fears were expressed that the seven men named above may be

subjected to torture or other forms of ill-treatment if they were deported to Eritrea and that their lives could be in danger.

DOCUMENT E/CN.4/2004/13

TITLE **Report of the United Nations High Commissioner for Human Rights on the human rights situation in Colombia***

AGENDA ITEM 3

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QUOTE **II. STATE POLICIES AND FOLLOW-UP ON INTERNATIONAL RECOMMENDATIONS**

34. Several bills proposed to modify the Constitution; among them, three bills for legislative acts, one known as the “Anti-Terrorist Statute”, another that modifies the competence of the Procurator General’s Office in examining disciplinary offences by members of the Armed Forces, and a third aimed at making structural changes to the organization of the State. Bills have also been promoted to modify the Criminal Code and the Code of Criminal Procedure, the Penitentiary and Prison Code, the Organizational By-laws of the Attorney-General’s Office, the Statutory Law for Administration of Justice and some norms regarding compulsory military service. Also proposed were the National Statute to face terrorism and the bill on national security and defence. The legislative proposals have generally been characterized by harsher sentences and the creation of new types of crimes, as well as by the weakening of constitutional and legal guarantees. At the same time, and paradoxically, bills showing great leniency were submitted in order to judicially respond to conduct that constitutes war crimes and crimes against humanity, such as the statutory bill regarding the reintegration of members of illegal armed groups.

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QUOTE: **III. INTERNATIONAL HUMANITARIAN LAW: BREACHES BY ARMED ACTORS** Security Forces

64. Additionally, governors and authorities of the indigenous councils of Nariño reported that, in March 2003, military forces indiscriminately recruited young indigenous people, in violation of current regulations exempting ethnic minorities from compulsory military service. The office in Colombia also received complaints regarding the use of minors by members of the security forces, especially in intelligence operations.

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QUOTE: **Annex III LEGISLATIVE POLICY^a Introduction**

3. Various legislative projects aimed at modifying the Constitution were presented. Proposed laws were submitted, one known as the “Antiterrorist Statute” and another that attempted to remove jurisdiction from the Procurator General’s Office to specifically examine disciplinary violations committed by members of the Armed Forces.^c Another such proposed law aimed at decreeing structural reforms in the organization of the State. Projects were also presented for modification of the penal code, the code of criminal procedure, the penitentiary and prison code, the Organic Statute of the Attorney-General’s Office, the Statutory Law on the Administration of Justice as well as with respect to some regulations regarding compulsory military service. Additionally, other proposed legislation aimed at the inclusion of new regulations, such as the National

Statute For Countering Terrorism, a proposed law dealing with national defence and security and the proposed Statutory Law on the Re-Incorporation of Members of Armed Groups. Law 418 was also regulated by means of Decree 128 of 2003.

DOCUMENT E/CN.4/2004/33
TITLE **Situation of human rights in Myanmar Report submitted by the Special Rapporteur, Paulo Sérgio Pinheiro**
AGENDA ITEM 9
PAGE 16
QUOTE **H. Compulsory military training for civilians**

53. The Special Rapporteur is deeply concerned about what is reported to be widespread forced military training of civilians. It is unclear what its legal basis is and purposes are. This training appears to have become systematic since May 2003, affecting government employees and their families as well as the general population (i.e. those with no links to the government service). It is alleged that every township has to send a certain number of persons to this training, mainly men between 18 and 40 but sometimes also women. Civilians reportedly must attend this training for one month part-time or two weeks full-time, and to endure the economic hardship caused by absence from work. Moreover, in some cases, they are also required to cover the cost of training and weapons such as bamboo sticks. Upon completion of the training, their names are registered and they may be called back at any time. This training appears to be different from the concept of people's militias, which dates back to earlier decades, as it puts more emphasis on developing organizational ("mobilizational") rather than military skills.

DOCUMENT E/CN.4/2004/55
TITLE **CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF CONSCIENTIOUS OBJECTION TO MILITARY SERVICE Report of the Office of the High Commissioner for Human Rights***
AGENDA ITEM 11(g)
PAGE 1-14
QUOTE **Summary**

This report is submitted in accordance with Commission on Human Rights resolution 2002/45 in which the Commission requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to continue the preparation of its compilation and analysis of best practices in relation to the recognition of the right of everyone to have conscientious objections to military service. The right to conscientious objection to military service is considered a legitimate exercise of the right to freedom of thought, conscience and religion as articulated implicitly in article 18 of the International Covenant on Civil and Political Rights and article 18 of the Universal Declaration of Human Rights, and explicitly by the Human Rights Committee in its general comment No. 22 on article 18 of the International Covenant on Civil and Political Rights.

The present report identifies trends in national laws regulating conscientious objection and identifies the development of the right through an analysis of observations and findings of the Commission on Human Rights, the Human Rights Committee, and the Sub-Commission on the Promotion and Protection of Human Rights. This report also provides an overview of the jurisprudence of various international human rights bodies, including the Working Group on Arbitrary Detention. In its review of best practices, the present report's analysis is based on the minimum basic principles as established by the provisions of Commission resolution

1998/77 on the issue of conscientious objection to military service. The analysis considers: national approaches to the exercise of the right including the nature of the decision-making process; the grounds for claiming conscientious objection; the stage of conscription when the right is applicable; the length, various forms and terms of conditions of alternative service; criminal penalties applied to repeat offenders; whether asylum can be granted to conscientious objectors, and the availability of public information on the right. An analysis of the responses of Member States to requests for information on how the right is being effectively implemented provides support for the notion that an increasing number of Member States are continuing to develop or improve provisions for conscientious objection to military service, so as to comply with existing human rights norms.

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Introduction

1. In its resolution 2002/45, the Commission on Human Rights, recalling its previous resolutions on the subject of conscientious objection, in which the Commission recognized 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 and having considered the preliminary report of the High Commissioner (E/CN.4/2002/WP.2), requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to continue the preparation of its compilation and analysis of best practices in relation to the recognition of this right, and to seek such information from Governments, national human rights institutions, the specialized agencies and relevant intergovernmental and non-governmental organizations (NGOs), and to submit a report containing this compilation and analysis to the Commission at its sixtieth session.

2. By notes verbales dated 1 August 2002 and 16 May 2003, OHCHR invited Governments to submit any relevant information pertaining to the issue of conscientious objection. As of December 2003, the Office had received responses from the following Governments: Argentina, Austria, Belarus, Belize, Colombia, Costa Rica, Croatia, Czech Republic, France, Germany, Lebanon, Luxembourg, Nicaragua, Portugal, Republic of Moldova, Russian Federation, Rwanda, San Marino, Serbia and Montenegro, Slovenia, Singapore and Togo.

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3. By letter dated 16 May 2003, the same request was addressed to national human rights institutions, the specialized agencies and relevant intergovernmental and non-governmental organizations.
4. The following national human rights institutions responded: the Danish Institute for Human Rights, the Greek National Commission for Human Rights, Irish Human Rights Commission, Human Rights Commission of Mauritius, the National Human Rights Commission of Mexico, the New Zealand Human Rights Commission, the National Human Rights Commission of the Republic of Korea, the Ombudsman of Colombia, the Ombudsman of Spain and the Ombudsman of Venezuela.
5. The Council of Europe provided an overview of its minimum standards.
6. The following NGOs also responded: Amnesty International, NGO Coalition for Alternative Civil Service, Protestant Association for the Care of Conscientious Objectors (EAK), Friends World Committee for Consultation (Quakers), World Veterans Federation, and War Resisters' International.
7. The replies received from Governments, human rights institutions, intergovernmental organizations and NGOs are available for consultation in the Secretariat.

I. TRENDS IN NATIONAL LAWS REGULATING CONSCIENTIOUS OBJECTION

8. Although OHCHR received only a relatively limited number of responses to its note verbale of 16 May 2003 from States with conscription, it is nevertheless possible to identify certain trends in the implementation of the right to conscientious objection at national level.
9. The minimum basic principles concerning the right to conscientious objection to military service were referred to in Commission resolution 1998/77 on the issue of conscientious objection to military service. Some States oppose the provisions of this resolution and subsequent follow-up resolutions. For example, Singapore reiterates its previous posture by stating that "resolution 2002/45 goes beyond what is prescribed in the international law and the applicable human rights instruments".¹
10. In many of the States that replied, an alternative to military service is provided for by law, either generally through its national constitution, or via implementing legislation. The grounds on which such alternative service can be invoked are strikingly similar; generally these are reasons of conscience or religion. Most responding States require a formal decision-making process: either a written or oral application, with the possibility of appeal. In many of the States, provision for alternative civil service does not involve military-related activities. Though most States provide notice of the option of alternative service, the advent of the Internet has ensured broader dissemination of this right through informal channels.
11. The responses of the national human rights institutions provide detailed information on the applicable law relating to the right to conscientious objection, including relevant case law. Some responses also express concern with State practice that appears to violate international human rights norms protecting the right to conscientious objection.
12. Most of the replies from NGOs make reference to the fact that a right to conscientious objection is considered by international human rights monitoring bodies as deriving from the fundamental norm of freedom of religion and conscience. The replies contain valuable information about individual cases and ongoing practices in certain States that appear to violate international human rights norms protecting the right to conscientious objection.

II. CONSCIENTIOUS OBJECTION IN INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

A. United Nations

13. Article 18 of the International Covenant on Civil and Political Rights (ICCPR) guarantees the right to freedom of religion or belief, but makes no explicit reference to conscientious

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objection to military service as being encompassed by the right to freedom of conscience and religion. However, the ICCPR monitoring body, the Human Rights Committee, has considered the issue in relation to States parties' reports in one of its general comments, as well as in individual communications. In its general comment No. 22 on the right to freedom of thought, conscience and religion (ICCPR, art. 18), the Human Rights Committee stated that: "The Covenant does not explicitly refer to a right to conscientious objection, but the Committee believes that such a right can be derived from article 18, 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" (para. 11).

14. The Human Rights Committee has elaborated its posture with regard to conscientious objection in its concluding observations adopted following examination of States parties' reports. Common issues raised relating to conscientious objection concern the recognition of the right to conscientious objection,² the basis on which conscientious exemption from military service can be granted and the process for obtaining such exemption. Questions are also commonly raised regarding the provision, length and conditions of alternative service and the rights of those who object to alternative service; whether alternative service provides the same rights and social benefits as military service; the length and conditions of alternative service; and whether there can be repeated punishment for failure to perform military service.³ Recent concerns continue to raise issues of lack of an independent decision-making process,⁴ disproportionate lengthy alternative services and States parties that recognize the right to conscientious objection in a discriminatory manner, e.g. by granting exemption only to religious groups and not others. The Human Rights Committee has recommended that States parties recognize the right of conscientious objection without discrimination,⁶ recalling that "conscientious objectors can opt for civilian service the duration of which is not discriminatory in relation to military service, in accordance with articles 18 and 26 of the Covenant".⁷

15. Since 1960, the issue of the right to conscientious objection has been examined by the Sub-Commission on the Promotion and Protection of Human Rights, when it first affirmed the right to conscientious objection to military service in the context of freedom and non-discrimination in the matter of religious rights and practices. In 1981, the Sub-Commission appointed two Special Rapporteurs, who submitted their final report in 1984. The report was later published. The report recommended, inter alia, that States should recognize by law (a) the right of persons who, for reasons of profound religious, ethical, moral, humanitarian or similar conviction, refuse to perform armed service and, at a minimum, should extend the right of objection to persons whose conscience forbids them to take part in armed service under any circumstances; and (b) the right to be released from service in armed forces which the objector considers likely to be used to enforce apartheid, in action amounting to genocide and for illegal occupation of foreign territory; States should recognize the right of persons to be released from service in armed forces which the objector holds in gross violations of human rights; 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 use weapons of mass destruction or other weapons outlawed by international law or which cause unnecessary suffering.⁸

16. In 1970, the issue was dealt with by the Commission on Human Rights, under the agenda item entitled, "The role of youth in the promotion and protection of human rights, including the question of conscientious objection to military service". In 1987, the Commission adopted resolution 1987/46, in which it appealed to States to recognize that conscientious objection to military service should be considered a legitimate exercise of the right to freedom of thought, conscience and religion. In 1989 the right to conscientious objection was

recognized by the Commission in resolution 1989/59, in which the Commission appealed to States to enact legislation aimed at exemption from military service on the basis of genuinely held conscientious objection.

17. In the context of the right to conscientious objection, the Commission has based its views on articles 3 (right to life, liberty and security of person) and 18 (freedom of thought, conscience and religion) of the Universal Declaration of Human Rights. In resolution 1993/84, the Commission reminded States with a system of compulsory military service of its recommendation that they introduce various forms of alternative service for conscientious objectors and emphasized that “such forms of alternative service should be of a non-combatant civilian character, in the public interest and not of a punitive nature”. In resolution 1995/83 the Commission drew attention to “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, as laid down in article 18 of the Universal Declaration of Human Rights, as well as in article 18 of the International Covenant on Civil and Political Rights”.

18. In resolution 1998/77, the Commission recalling its previous resolutions in which it recognized 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, and aware that persons performing military service may develop conscientious objections, drew attention to 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”. It called upon States to establish independent and impartial decision-making bodies with the task of determining whether a conscientious objection is genuinely held, taking account of the requirement not to discriminate.

19. The issue of conscientious objection has also been addressed by the Special Rapporteur of the Commission on Human Rights on freedom of religion or belief, the Special Rapporteur on freedom of opinion and expression and through joint communications sent by the Special Rapporteurs to Governments. The Special Rapporteur on freedom of religion or belief has addressed the practices and acts contrary to the principle of conscientious objection in his communications to Governments⁹ and during his country visits.¹⁰ In his 2001 report to the Commission on Human Rights, the Special Rapporteur concluded that: “First of all, the issue is one of discriminatory or intolerant policies, legislation or State practice, or even indifference on the part of State institutions which is prejudicial to minorities, be they of the ‘major religions’ or other religious and faith-based communities. Such minorities are mainly affected by ... non-recognition of conscientious objection, no provision for alternative civilian service, and the punitive nature of this civilian service by reason of its duration, which particularly affects the Jehovah’s Witnesses and other religious and faith-based communities ...”(E/CN.4/2001/63, para. 182).

20. The Special Rapporteur on freedom of opinion and expression addressed the issue of conscientious objection in a country report on the Sudan, stating: “[he] considers that imposing military service as a condition for continuing one’s studies is fundamentally a violation of the right to education. Appropriate forms of civil service or conscientious objection to military service should be sought in order to respect both freedom of opinion and the right of students to choose” (E/CN.4/2000/63/Add.1, para. 125).

21. Joint communications addressing the situation of conscientious objectors have been sent by the Special Rapporteur on freedom of opinion and expression and the Special Rapporteur on torture, and by the Special Rapporteur on freedom of opinion and expression, the Special Rapporteur on the independence of judges and lawyers and the Special Representative of the Secretary-General on human rights defenders.

B. Regional

1. Africa

22. Article 8 of the African Charter on Human and Peoples' Rights provides for the right to freedom of conscience, and that the profession and free practice of religion shall be guaranteed.

2. The Americas

23. Article 12 of the American Convention on Human Rights protects the right to freedom of conscience and religion. Moreover, it also states that "[n]o one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs" (art. 12, para. 2). The right is subject only to restrictions which are prescribed by law and which are necessary to protect public safety, health, or morals, or the rights or freedom of others.

24. In its Annual Report for 1997, the Inter-American Commission on Human Rights invited those member States whose legislation still did not exempt conscientious objectors from military service or alternative service, to review their legal regimes and make modifications consistent with the spirit of the international law of human rights.¹¹

3. Europe

25. Article 9 of the European Convention on Human Rights protects the right to freedom of thought, conscience and religion. This freedom may be subject only to such limitations that are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others. Though no explicit reference to the right of conscientious objection to military service is made, it is implicit in article 4 (3), which defines forced or compulsory labour.

26 In 1967, the Parliamentary Assembly of the Council of Europe adopted its first resolutions 337 and 478 supporting the right of conscientious objection. This was followed in 1977 with recommendation 816 affirming the right of conscientious objection. In May 2001, the Parliamentary Assembly, in a similar recommendation, noted that "the exercise of the right of conscientious objection to military service has been an ongoing concern of the Council of Europe for over thirty years".¹²

27. The Committee of Ministers of the Council of Europe, in 1987 endorsed the right of conscientious objectors to be released from military service and supported the provision of alternative service and invited member States to bring their legislation and practice into line with the right to conscientious objection.¹³ The recommendation to member States sets down minimum basic principles for the implementation of this right. For example, relevant due process protections need to be provided to applicants, including the right to be informed in advance of their rights. It also stated that applications can be made during military service and during military training after the initial service. Moreover, "alternative service shall not be of a punitive nature. Its duration shall, in comparison to that of military service, remain within reasonable limits".¹⁴ In March 2002, the Committee of Ministers urged a "sustained effort" to implement the 1987 recommendation.¹⁵

28. A number of resolutions on the right to conscientious objection as implied in the right to freedom of thought, conscience and religion have been adopted by the European Parliament since the first resolution on the issue, adopted in 1983, in which the Parliament noted "that protection of freedom of conscience implies the right to refuse to carry out armed military service and to withdraw from such service on grounds of conscience"(para. 2) and pointed out that "no court or commission can penetrate the conscience of an individual and that a declaration setting out the individual's motives must therefore suffice in the vast majority of cases to secure the status of conscientious objector"(para. 3).¹⁶

29. On 7 December 2000, the Charter of Fundamental Rights of the European Union entered into force. Article 10 (2) of the Charter recognizes the right of conscientious objection as

being explicitly part of freedom of thought, conscience and religion.¹⁷ This was the first international human rights instrument to make explicit recognition of the right to conscientious objection.

30. At the Second Conference on the Human Dimension of the Conference on Security and Cooperation in Europe (the Copenhagen Meeting, 5 June-29 July 1990) the representatives of the participating CSCE States noted “that the United Nations Commission on Human Rights has recognized the right of everyone to have conscientious objection to military service”¹⁸ and agreed “to consider introducing, where this has not yet been done, various forms of alternative service, which are compatible with the reasons for conscientious objection, such forms of alternative service being in principle of a non-combatant or civilian nature, in the public interest and of a non-punitive nature”.¹⁹ The participating States also agreed to “make available to the public information on this issue”.²⁰

31. The Organization for Security and Cooperation in Europe (OSCE) Field Missions and the OSCE Office of Democratic Institutions and Human Rights have provided legislative policy advice to Governments and have made interventions on the issue of conscientious objection.²¹

III. JURISPRUDENCE OF HUMAN RIGHTS BODIES

A. Human Rights Committee

32. As referenced in paragraph 13 above, the Human Rights Committee continues to consider cases regarding conscientious objection to military service under the Optional Protocol to the Covenant.

B. Working Group on Arbitrary Detention

33. The question of conscientious objection to military service under the International Covenant on Civil and Political Rights has also arisen in the context of the Working Group on Arbitrary Detention. In 1999, the Working Group, under its individual petitions procedure, considered the question of whether, after an initial conviction for refusal to perform military service, each subsequent refusal constitutes a new offence, or forms part of the initial actus. The Working Group stated that when, after the initial conviction, the person concerned exhibits a constant resolve for reasons of conscience not to obey the subsequent summons, it is “one and the same action entailing the same consequences, and therefore the offence is the same and not a new one” and therefore not subject to additional punishment.²²

34. In its report to the fifty-seventh session of the Commission on Human Rights (E/CN.4/2001/14), the Working Group addressed the question of detention of conscientious objectors. The Working Group made the following observations and recommendations: “93. ... repeated incarceration in cases of conscientious objectors is directed towards changing their conviction and opinion, under threat of penalty. The Working Group considers that this is incompatible with article 18, paragraph 2, of the International Covenant on Civil and Political Rights, under which no one shall be subject to coercion which would impair his freedom to have or adopt a belief of his choice. “94. Accordingly, the Working Group recommends that all States that have not yet done so adopt appropriate legislative or other measures to ensure that conscientious objector status is recognized and attributed, in accordance with an established procedure, and that, pending the adoption of such measures, when de facto objectors are prosecuted, such prosecutions should not give rise to more than one conviction, so as to prevent the judicial system from being used to force conscientious objectors to change their convictions.”

C. Inter-American Commission on Human Rights and Inter-American Court of Human Rights

35. Though no decisions have been issued by the Inter-American Commission or the Court in an individual case on the question of conscientious objection to military service, in 2002 the

Commission held admissible a conscientious objector's claim alleging the State's violation of the right to freedom of conscience and religion and the right to privacy, and of its obligation to take the legislative or other measures necessary to give effect to those rights.²³

D. The former European Commission and the European Court of Human Rights

36. Both the former Commission and the European Court have considered challenges to compulsory military service and conditions of alternative service. Neither body has, thus far, been willing to find that a right to conscientious objection exists under the European Convention on Human Rights.

37. In 2001, a case was brought against Bulgaria that presented the issue of State failure to provide for alternative civilian service to military service.²⁴ A settlement was reached which stipulated, *inter alia*, that all criminal proceedings and judicial sentences of conscientious objectors since 1991 be dismissed if they were willing to perform alternative civilian service. The settlement also stipulated that the alternative civilian service in Bulgaria be performed under a purely civilian administration and that such service be of similar duration to that required for military service.

38. In line with the minimum basic principles for the implementation of the right to conscientious objection as referred to in Commission resolution 1998/77, OHCHR has prepared a compilation and analysis of best practices in relation to the recognition of this right:

(a) Acceptance of claim to be a conscientious objector accepted without further inquiry. Though most States undertake some form of inquiry into applications for conscientious objection to military service, Austria, Belarus and the Republic of Moldova conduct no further inquiry. Denmark, for example, requires a simple statement asserting that military service is against the applicant's conscience, though a more formal process is applicable for those seeking conscientious objection during their military service;

(b) The nature of the decision-making process should be independent, impartial and non-discriminatory. There exists a varied approach to the nature of the decision-making process. Applications are generally presented to panels consisting of a mixture of military and civilian personnel. Some States permit written applications while others require individual examination of the applicant. A number of States ensure that the decision-making process is independent of the military. In Croatia, Germany, Portugal and Slovenia, civil service-type commissions are the fact-finders. For example, in Portugal, the national Commission for Conscientious Objection is composed of a judge, a citizen and the director of the Office of Conscientious Objectors, an administrative body. According to Council of Europe recommendation No. R(87)8, referred to earlier, examination of applicants must take place prior to enlistment. Moreover, the Council of Europe has formulated minimum due process standards for applicants that include the following: applicants must be informed of their rights before conscription/enlistment; examination of applications must provide for a fair procedure, the right to appeal from a first instance decision; and that any appeal authority must be independent of the military;

(c) Conscientious objection to military service derives from principles and reasons of conscience, including profound convictions, arising from religious, moral, ethical, humanitarian or similar motives. While a limited number of States only accept the assertion of reasons of religion, most responding States requiring persons to make out a specific case for acceptance as a conscientious objector generally require the applicant to adduce reasons "of conscience or religion". Slovenia permits conscientious objection on the basis of "religious, philosophical or humanitarian reasons";

(d) The right should be available to persons prior to and during military service. Though a number of responding States only permit application during the conscription process,

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Germany, Slovenia and Croatia provide broader latitude by allowing claims to be made prior to conscription, during military service and while in military reserves. This is also one of the minimum standards suggested by the Council of Europe;

(e) Various forms of alternative service should be compatible with the reasons for the conscientious objection, of a non-combatant or civilian nature, in the public interest and not of a punitive nature. Though a limited number of States provide an option for unarmed military service, most responding States provide alternative civil service activities. In Austria, alternative service must not involve use of force. In both Austria and Croatia, such activities include working with entities engaged in educational, cultural, sports, health or social fields or humanitarian activities. In Croatia, posts are in accordance with the educational achievements of the applicant and will be performed near the place of residence. In Austria and Germany, humanitarian activities with international organizations are acceptable forms of alternative service;

(f) Measures should be taken to ensure conscientious objectors are not subject to repeated punishment for failure to perform military service. Though most responding States do provide for imprisonment for those refusing to join military service, other responding States do not only provide for imprisonment in circumstances in which the conscientious objector refuses to perform alternative civil service;

(g) There should be no discrimination against conscientious objectors in relation to their terms or conditions of service, or any economic, social, cultural, civil or political rights. The Council of Europe principles and recommendations call for non-excessive differences in the duration of alternative service to military service. Responding States predominately provide an alternative civil service that is marginally longer than military service. For example, in Austria, alternative service is 12 months, military service is 8 months. In Croatia, military service is 6 months, alternative service is 8 months. German alternative service is 1 month longer than military service, which is 9 months. In Slovenia, 7 months' service is applicable to both. From the limited amount of information provided, it can be surmised that the reasoning behind the extended length of alternative service is the less onerous tasks assigned in more comfortable living conditions and lower number of compulsory hours of service. Most States provide for the same terms and conditions during alternative service;

(h) Asylum should be granted to those conscientious objectors compelled to leave their country of origin because they fear persecution owing to their refusal to perform military service. Most responding States consider applications of refugee status from conscientious objectors forced to flee their country of origin under the general provisions of the 1951 Convention relating to the Status of Refugees, and its Protocol of 1967;

(i) Information should be made available to all persons affected by military service about the right to conscientious objection to military service, and the means of acquiring conscientious objection status. Responding States predominately provide information on conscientious objection during the conscription process in the official languages of the State. In Austria, the notification of fitness to perform military service contains reference to the right to file an application for alternative service. In Germany, information on alternatives to military service is provided during pre-induction examinations. Responding States also provide this information in its Official Gazette (national collection of laws) and in some instances, on the Internet. Information is also disseminated via private organizations. Though alternative service information is provided in the official languages of the State, the Russian Federation also provides information in the languages of its republics. In Slovenia conscripts living in areas where the predominate language is Hungarian or Italian, will be provided information in their local language.

IV. CONCLUDING REMARKS

39. The legal analysis in this report on the issue of conscientious objection to military service in international law has shown that the right to conscientious objection to military service is grounded in existing human rights norms guaranteeing the right to freedom of conscience and religion. An analysis of responding Member State practice on how the right is being effectively implemented provides support for the notion that an increasing number of Member States are continuing to develop or improve provisions for conscientious objection to military service, so as to comply with existing human rights norms.

Notes

¹ This assertion was also made in a joint letter, dated 24 April 2003, signed by 16 Member States (E/CN.4/2002/188, annex).

² Concluding observations of the Human Rights Committee on: Viet Nam, *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 40 (A/57/40)*, vol. I, para. 82; Venezuela, *ibid.*, *Fifty-sixth Session, Supplement No. 40 (A/56/40)*, vol. I, para. 77. ³ For example, concluding observations of the Human Rights Committee on: Venezuela, *ibid.*, *Forty-eighth Session, Supplement No. 40 (A/48/40)*, vol. I, para. 291; Austria, Ecuador and Belarus, *ibid.*, *Forty-seventh Session, Supplement No. 40 (A/47/40)*, paras. 110, 247 and 536, respectively; Spain, *ibid.*, *Forty-sixth Session, Supplement No. 40 (A/46/40)*, para. 172; Portugal and Saint Vincent and the Grenadines, *ibid.*, *Forty-fifth Session, Supplement No. 40 (A/45/40)*, vol. I, paras. 156 and 251, respectively; Norway and the Netherlands, *ibid.*, *Forty-fourth Session, Supplement No. 40 (A/44/40)*, paras. 83 and 219, respectively; Finland and Hungary, *ibid.*, *Forty-first Session, Supplement No. 40 (A/41/40)*, paras. 210 and 398, respectively; Iceland, Australia and Peru, *ibid.*, *Thirty-eighth Session, Supplement No. 40 (A/38/40)*, paras. 113, 150 and 269, respectively; Norway, *ibid.*, *Thirty-sixth Session, Supplement No. 40 (A/36/40)*, para. 358; and Canada, *ibid.*, *Thirty-fifth Session, Supplement No. 40 (A/35/40)*, para. 169.

⁴ For example, concluding observations of the Human Rights Committee on Israel, *ibid.*, *Fifty-eighth Session, Supplement No. 40 (A/58/40)*, vol. I, para. 85. ⁵ For example, concluding observations of the Human Rights Committee on: Latvia, CCPR/CO/79/LVA (6 November 2003), para. 15; Georgia, *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 40 (A/57/40)*, vol. I, para. 78. ⁶ For example, concluding observations of the Human Rights Committee: Georgia, *ibid.* ⁷ *Ibid.*, para. 18.

⁸ A. Eide and C.L.C. Mubanga-Chipoya, *Conscientious Objection to Military Service*, United Nations publication, Sales No. E.85.XIV.1, chap. III, sect. B, para. 153. ⁹ See A/56/253, paras. 63 and 68, and annex, paras. 4 and 5. See also E/CN.4/2003/66, paras. 65-68.

¹⁰ See A/55/280/Add.1. ¹¹ *Annual Report of the Inter-American Commission on Human Rights, 1997*,

OEA/Ser.L/V/II.98 doc.6 rev., chap. VII. ¹² Parliamentary Assembly of the Council of Europe, Recommendation 1518 (23 May 2001). ¹³ Committee of Ministers of the Council of Europe, Recommendation No. R(87)8 of 9 April 1987 regarding Conscientious Objection to Compulsory Military Service. ¹⁴ *Ibid.*, at para. 10.

¹⁵ Decision on the reply from the Committee of Ministers adopted at the 785th meeting of the Ministers' Deputies (26-27 February 2002), doc. 9379, 1 March 2002.

¹⁶ European Parliament resolution of 7 February 1983 on conscientious objection. See also European Parliament resolution of 13 October 1989 on conscientious objection and alternative civilian service.

¹⁷ Article 10 (2) Charter of Fundamental Rights of the European Union (http://www.europarl.eu.int/charter/default_en.htm).

¹⁸ Document of the Copenhagen Meeting, Conference on Security and Cooperation in Europe, Second Conference on the Human Dimension of the CSE, Copenhagen, 5 June-29 July 1990 at para. 18. (<http://www.osce.org/docs/english/1990-1999/hd/cope90e.htm>).

¹⁹ Ibid. ²⁰ Ibid. ²¹ OSCE Mission encourages BiH on new conscientious objection instruction, Press Release, 28 October 2003 (http://www.osce.org/news/show_news.php?id=3641); OSCE Mission Reports on Human Dimension Activities, 24 September 2001, OSCE Office of Democratic Institutions and Human Rights. See also, Expert Workshop on alternative service organized in Armenia, Press Release, 30 October 2003 (http://www.osce.org/news/generate_pf.php3?news_id=3651). This event was co-organized by the Armenian National Assembly. ²² Opinion No. 36/1999 (Turkey), (E/CN.4/2001/14/Add.1, paras. 8 and 9). ²³ Report N° 45/0224 [1], Admissibility, Petition 12.219, *Cristian Daniel Sali Vera et al. v. Chile*. 9 October 2002.

²⁴ *Dimitrov et al v. Bulgaria*, Application No. 37358/97, Admissibility Decision of the European -Court of Human Rights, 10 April 2001.

DOCUMENT E/CN.4/2004/63/Add.1

TITLE **Report by Mr. Abdelfattah Amor, Special Rapporteur on freedom of religion or belief Addendum Visit to Georgia**

AGENDA ITEM 11(e)

PAGE 8

QUOTE **IV. THE ORTHODOX CHURCH**

28. Orthodoxy is not a State religion in the formal sense. Nonetheless, the importance of the Georgian Orthodox Church at all levels of Georgian society and the constitutional agreement (see below) make it a State religion de facto. The results of a recent poll by a non-governmental organization show that the Orthodox Church is the institution in which Georgians place most trust - far more than in political institutions. More than just being a member of a church, many Georgians consider that being Orthodox is an essential feature of the Georgian national identity.

1. The constitutional agreement

29. On 14 October 2002, the Orthodox Church signed a constitutional agreement with the Georgian State. This agreement gives the Orthodox Church special status, defines the relationship between the Church and the State, delimits the authority of the Church and defines its rights and obligations. It exempts members of the clergy from military service, institutes army and prison chaplains and makes provision for Orthodox Christianity to be taught in public schools. Being of constitutional rank, the agreement sits above laws and international treaties in the hierarchy of Georgian rules, but the Special Rapporteur has not been given precise, consistent information on the exact relationship between the Constitution and the agreement: whether, in other words, the agreement ranks on a par with the Constitution or just below it.

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QUOTE **2. The Orthodox Church and religious minorities**

36. The Patriarchate also criticizes certain practices of religious minorities which it regards as illegal, in particular the “proselytizing” by Jehovah’s Witnesses which it considers unacceptable. Other practices observed by Jehovah’s Witnesses, such as refusing blood transfusions and declining to perform military service, are regarded by the Orthodox Church as intolerable.

PAGE 13

QUOTE **3. Jehovah's Witnesses, Pentecostals, Word of Life Church**

57. The Special Rapporteur has also been informed that Jehovah's Witnesses, who are normally conscientious objectors, are no longer having problems with military service and win exemption fairly easily if they perform alternative, civilian service.

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QUOTE **3. The legislature**

88. Some members of Parliament nevertheless told the Special Rapporteur that they were concerned about what they called a campaign by religious minorities, the Jehovah's Witnesses in particular, against the Orthodox Church. In other words, the Jehovah's Witnesses were themselves said to be violating the right to religious freedom. These same members of Parliament also asserted that the Jehovah's Witnesses, in refusing military service and blood transfusions, had no regard for the interests of the State.

DOCUMENT E/CN.4/2004/63/Add.2

TITLE **Report by Mr. Abdelfattah Amor, Special Rapporteur on freedom of religion or belief Addendum VISIT TO ROMANIA**

AGENDA ITEM 11(e)

PAGE 5

QUOTE **I. HISTORICAL AND POLITICAL CONTEXT**

13. In fulfilment of its treaty obligations, Romania submitted its fourth periodic report (CCPR/C/95/Add.7) to the Human Rights Committee at its sixty-sixth session in July 1999. Among the main concerns of the Committee were discrimination against the Roma, violence against women, interference by the executive in judicial matters, and the right to conscientious objection.

PAGE 8

QUOTE **B. Legislative level**

31. Under this system of recognition, religions enjoy a number of privileges to help them to function, including a financial contribution from the State related to the size of their membership, exemption from military service for their clergy, exemption from tax, and the right to set up schools and to teach religion in State schools.

DOCUMENT E/CN.4/2004/WG.21/5

TITLE **Compendium of international and regional standards against racism, racial discrimination, xenophobia and related intolerance**

AGENDA ITEM 7

PAGE 255

QUOTE **B. COUNCIL OF EUROPE (CE)**

The texts of these instruments have been downloaded from the relevant Council of Europe web-site.

Convention for the Protection of Human Rights and Fundamental Freedoms, as Amended by Protocol No 11 (1950)

Adopted in Rome on 4 November 1950.

Entered into force on 3 September 1953.

ARTICLE 4 – PROHIBITION OF SLAVERY AND FORCED LABOUR

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this article the term “forced or compulsory labour” shall not include:
 - (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
 - (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
 - (c) any service exacted in case of an emergency or calamity threatening the life or wellbeing of the community;
 - (d) any work or service which forms part of normal civic obligations.

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QUOTE **European Convention on Nationality (1997)**

Adopted on 6 November 1997.

Entered into force on 1 March 2000.

Military obligations in cases of multiple nationality

ARTICLE 21 – FULFILMENT OF MILITARY OBLIGATIONS

1. Persons possessing the nationality of two or more States Parties shall be required to fulfill their military obligations in relation to one of those States Parties only.
2. The modes of application of paragraph 1 may be determined by special agreements between any of the States Parties.
3. Except where a special agreement which has been, or may be, concluded provides otherwise, the following provisions are applicable to persons possessing the nationality of two or more States Parties:
 - (a) Any such person shall be subject to military obligations in relation to the State Party in whose territory they are habitually resident. Nevertheless, they shall be free to choose, up to the age of 19 years, to submit themselves to military obligations as volunteers in relation to any other State Party of which they are also nationals for a total and effective period at least equal to that of the active military service required by the former State Party;
 - (b) Persons who are habitually resident in the territory of a State Party of which they are not nationals or in that of a State which is not a State Party may choose to perform their military service in the territory of any State Party of which they are nationals;
 - (c) Persons who, in accordance with the rules laid down in paragraphs a and b, shall fulfill their military obligations in relation to one State Party, as prescribed by the law of that State Party, shall be deemed to have fulfilled their military obligations in relation to any other State Party or States Parties of which they are also nationals;
 - (d) Persons who, before the entry into force of this Convention between the States Parties of which they are nationals, have, in relation to one of those States Parties, fulfilled their military obligations in accordance with the law of that State Party, shall be deemed to have fulfilled the same obligations in relation to any other State Party or States Parties of which they are also nationals;
 - (e) Persons who, in conformity with paragraph a, have performed their active military service in relation to one of the States Parties of which they are nationals, and subsequently transfer their habitual residence to the territory of the other State Party of which they are nationals, shall be liable to military service in the reserve only in relation to the latter State Party;
 - (f) The application of this article shall not prejudice, in any respect, the nationality of the persons concerned;
 - (g) In the event of mobilisation by any State Party, the obligations arising under this article shall not be binding upon that State Party.

ARTICLE 22 – EXEMPTION FROM MILITARY OBLIGATIONS OR ALTERNATIVE CIVIL SERVICE

Except where a special agreement which has been, or may be, concluded provides otherwise, the following provisions are also applicable to persons possessing the nationality of two or more States Parties:

(a) Article 21, paragraph 3, sub-paragraph c, of this Convention shall apply to persons who have been exempted from their military obligations or have fulfilled civil service as an alternative;

(b) persons who are nationals of a State Party which does not require obligatory military service shall be considered as having satisfied their military obligations when they have their habitual residence in the territory of that State Party. Nevertheless, they should be deemed not to have satisfied their military obligations in relation to a State Party or States Parties of which they are equally nationals and where military service is required unless the said habitual residence has been maintained up to a certain age, which each State Party concerned shall notify at the time of signature or when depositing its instruments of ratification, acceptance or accession;

(c) also persons who are nationals of a State Party which does not require obligatory military service shall be considered as having satisfied their military obligations when they have enlisted voluntarily in the military forces of that Party for a total and effective period which is at least equal to that of the active military service of the State Party or States Parties of which they are also nationals without regard to where they have their habitual residence.

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QUOTE American Convention on Human Rights– Pact of San José, Costa Rica (1978)

Adopted on 22 November 1969.

Entered into force on 18 July 1978.

ARTICLE 6 – FREEDOM FROM SLAVERY

1. No one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women.

2. No one shall be required to perform forced or compulsory labor. This provision shall not be interpreted to mean that, in those countries in which the penalty established for certain crimes is deprivation of liberty at forced labor, the carrying out of such a sentence imposed by a competent court is prohibited. Forced labor shall not adversely affect the dignity or the physical or intellectual capacity of the prisoner.

3. For the purposes of this article, the following do not constitute forced or compulsory labor:

(a) work or service normally required of a person imprisoned in execution of a sentence or formal decision passed by the competent judicial authority. Such work or service shall be carried out under the supervision and control of public authorities, and any persons performing such work or service shall not be placed at the disposal of any private party, company, or juridical person;

(b) military service and, in countries in which conscientious objectors are recognized, national service that the law may provide for in lieu of military service;

(c) service exacted in time of danger or calamity that threatens the existence or the well-being of the community; or

(d) work or service that forms part of normal civic obligations.

NGO DOCUMENTS

DOCUMENT E/CN.4/2004/NGO/60

AUTHOR **Written statement* submitted by the Colombian Commission of Jurists (CCJ), a non-governmental organization in special consultative status**

AGENDA ITEM 3

QUOTE *[Situation in Colombia]*

10. Sectors in Conditions of Vulnerability

The situation of women, children, youths, the elderly, homosexuals, the peasant population, and socially isolated persons continues worsening. The armed groups continue recruiting and mistreating girls, boys and youths. The bill on mandatory military service would extend this obligation to women and Indigenous peoples.

Resolutions

RESOLUTION **2004/12. Situation of human rights in Turkmenistan**

DOCUMENT E/CN.4/2004/L.11/Add.2

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QUOTE 3. *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 stop imprisoning conscientious objectors;

50th meeting

15 April 2004

[Adopted by a recorded vote of 25 votes to 11,
with 17 abstentions. See chap. IX.]

RESOLUTION **2004/35. Conscientious objection to military service**

DOCUMENT E/CN.4/2004/L.11/Add.4

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QUOTE *The Commission on Human Rights,*

Bearing in mind that it is recognized in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights that everyone has the right to life, liberty and security of person, as well as the right to freedom of thought, conscience and religion and the right not to be discriminated against,

Recalling all its previous resolutions on the subject, in particular resolution 1998/77 of 22 April 1998, in which the Commission recognized the right of everyone to have conscientious objection to military service as a legitimate exercise of the right to freedom of thought, conscience and religion, as laid down in article 18 of the Universal Declaration of Human Rights and article 18 of the International Covenant on Civil and Political Rights and general comment No. 22 of the Human Rights Committee,

1. *Takes note* of the compilation and analysis of best practices in relation to the recognition of the right of everyone to have conscientious objection to military service as a legitimate exercise of the right to freedom of thought, conscience and religion, and the provision of alternative forms of service contained in the report of the Office of the United Nations High Commissioner for Human Rights (E/CN.4/2004/55);

2. *Expresses its appreciation* to those Governments and others who contributed material for the report;

3. *Calls upon* States that have not yet done so to review their current laws and practices in relation to conscientious objection to military service in the light of its resolution 1998/77 of 22 April 1998, taking account of the information contained in the report;

4. *Encourages* States, as part of post-conflict peace-building, to consider granting, and effectively implementing, amnesties and restitution of rights, in law and practice, for those who have refused to undertake military service on grounds of conscientious objection;

5. *Requests* the Office of the High Commissioner for Human Rights to prepare an analytical report which would provide supplementary information on best practices in

Resolutions

relation to conscientious objection to military service, drawing on all appropriate sources, and to submit this report to the Commission at its sixty-second session under the same agenda item.

55th meeting

19 April 2004

[Adopted without a vote. See chap. XI.]
