

CONSCIENTIOUS OBJECTION TO MILITARY SERVICE

*Report prepared in pursuance of resolutions 14 (XXXIV) and 1982/30
of the Sub-Commission on Prevention of Discrimination and Protection
of Minorities by Mr. Asbjørn Eide and Mr. Chama Mubanga-Chipoya,
members of the Sub-Commission*



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The opinions expressed in the present report are those of the authors.

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ABBREVIATIONS

ILO	International Labour Organisation
OAS	Organization of American States
OAU	Organization of African Unity
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCR	United Nations High Commissioner for Refugees

INTRODUCTION

A. Background

1. In its resolution 11 B (XXVII) of 19 March 1971, the Commission on Human Rights requested the Secretary-General to make available to it the information on conscientious objection to military service included in the country monographs prepared in connection with the *Study of Discrimination in the Matter of Religious Rights and Practices*,¹ and to seek from Member States up-to-date information on national legislation and other measures and practices relating to conscientious objection to military service and alternative service. A report on the subject was prepared by the Secretary-General in accordance with that resolution.²

2. In its resolution 1 A (XXXII) of 11 February 1976, the Commission on Human Rights noted the report on the question of conscientious objection to military service prepared by the Secretary-General. In its resolution 38 (XXXVI) of 12 March 1980, the Commission requested the Secretary-General once again to seek from Member States up-to-date information on national legislation and practices relating to conscientious objection to military service and alternative service. Pursuant to that resolution, the Secretary-General prepared a report on the role of youth in the promotion and protection of human rights, including the question of conscientious objection to military service.³

3. In its resolution 40 (XXXVII) of 12 March 1981, the Commission on Human Rights requested the Sub-Commission on Prevention of Discrimination and Protection of Minorities to study the question of conscientious objection to military service in general, and in particular the implementation of General Assembly resolution 33/165 of 20 December 1978, with a view to making recommendations to the Commission. The General Assembly had recognized, in that resolution, the right of all persons to refuse service in military or police forces used to enforce *apartheid*, and called upon Member States to grant asylum or safe transit to another State, in the spirit of the Declaration on Territorial Asylum,⁴ to persons compelled to leave their own countries solely because of their conscientious objection to assisting in the enforcement of *apartheid* through service in military or police forces.

4. On 10 September 1981, the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted resolution 14 (XXXIV) by which, after recalling General Assembly resolution 33/165 and expressing the belief that the various dimensions of the question of conscientious objection to military service and their interrelation with the promotion and protec-

tion of human rights required further examination, it requested Mr. Eide and Mr. Mubanga-Chipoya to undertake that examination, using the materials from Governments, specialized agencies, regional inter-governmental organizations and non-governmental organizations in consultative status available to the General Assembly, the Economic and Social Council, the Commission on Human Rights and the Sub-Commission, and to present to the Sub-Commission at its thirty-fifth session a concise report, together with their conclusions and recommendations.

5. At its thirty-fifth session, in 1982, the Sub-Commission examined a preliminary report on conscientious objection to military service submitted by Mr. Eide and Mr. Mubanga-Chipoya.⁵ By its resolution 1982/30 of 10 September 1982, the Sub-Commission requested the authors to prepare a final report based on the comments received on their preliminary report and to develop principles relating to the question of conscientious objection, with a view to:

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

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

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

B. Structure of the present report

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

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

¹ United Nations publication, Sales No. 60.XIV.2.

² E/CN.4/1118 and Corr.1 and Add.1-3.

³ E/CN.4/1419 and Add.1-5, and E/CN.4/1509.

⁴ General Assembly resolution 2312 (XXII) of 14 December 1967.

⁵ E/CN.4/Sub.2/1982/24.

8. In chapter III, conclusions are drawn from the material reviewed. The experience of the conscientious objector under national law and administration as described in chapter II is compared with the standards and demands of the international community, as described in chapter I. Finally, a set of recommendations are made on means of bringing national law and practice into greater conformity with international standards and demands.

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

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

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

12. As at the end of May 1982, as stated in paragraphs 10-12 of the preliminary report, replies had been received from a number of Governments, specialized agencies, regional intergovernmental organizations and non-governmental organizations. A reminder was sent on 1 December 1982 to all Governments, specialized agencies, regional intergovernmental organizations and non-governmental organizations which had not yet complied with the previous request addressed to them.

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

14. Comments had also been received from ILO, UNHCR and UNESCO, as well as from the Council of Europe, OAU and OAS.

15. The following non-governmental organizations had also sent valuable information: Amnesty International, Baptist World Alliance, Center of Concern, Commission to Study the Organization of Peace, Friends' World Committee for Consultation, International Association for the Defence of Religious Liberty, International Association for Religious Freedom, International Association of Educators for World Peace, International Bar Association, International Christian Youth Exchange, International Commission of Jurists, International Fellowship of Reconciliation, International Humanist and Ethical Union, International Peace Bureau, International Union of Lawyers, Pax Christi, Society for Comparative Legislation, War Resisters International, World Conference on Religion and Peace, World Future Studies Federation, Young Lawyers' International Association.⁶

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

17. Some Governments have argued that, since there is no conscription in their countries, the issue of conscientious objection does not arise. While it is true that the problem of conscientious objection is of particular importance in countries in which there is conscription, it does not follow that specific aspects of the problem do not arise in countries where there is not, as will be seen from the discussion. Some Governments of countries which do not have conscription have provided useful information on specific aspects of the issue of conscientious objection.

⁶ The World Association for the School as an Instrument of Peace also submitted a written statement on the subject to the Commission on Human Rights at its thirty-eighth session (E/CN.4/1982/NGO/34).

CONCEPT OF CONSCIENTIOUS OBJECTION AND RELEVANT INTERNATIONAL STANDARDS

A. Concept and dimensions of conscientious objection

18. This chapter contains an analytical presentation of the possible meanings of the concept of conscientious objection, based on the context in which the expression is used, be it by intergovernmental organizations, by scholars and publicists, or by non-governmental organizations. Account is also taken of the way in which the expression is used in national legislation, but here a rather wider concept is initially considered, and more specific meanings in particular applications will subsequently be explored.

19. There is a widespread notion that conscientious objection is a purely pacifist attitude: an unlimited opposition, based on principle, to the killing of human beings under any circumstances. But this is not the only sense given to the concept of conscientious objection, and for the purposes of the present study it is too narrow. Objection to participation in military service may also be partial, related to the purposes of or means used in armed action. One illustration of this is contained in resolution 40 (XXXVII) of the Commission on Human Rights, relating to conscientious objection to military service. In paragraph 2 of that resolution, the Commission:

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

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

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

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

therefore it is necessary to object in those other cases (partial objection to military service).

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

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

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

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

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

27. Partial objection to military service (or circumstantial objection) is built on the conviction that armed force may be justified under limited cir-

cumstances, derived from standards of international or national law or morality. Objection based on reference to standards of international law may concern the purpose for which armed force is used, or it may concern the means and methods used in armed combat.

28. Standards of international law, which will be further examined in section B below, seek to circumscribe the purposes for which armed force may be used in the world today. Armed force used for the purpose of expansion, aggression, genocide, and for gross and systematic violations of human rights, has been prohibited by international standards.

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

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

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

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

1. CONFLICT OF VALUES

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

to preclude the temptation to request alternative service for reasons of opportunism.

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

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

2. EVIDENCE OF CONVICTION

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

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

B. Relevant international standards

1. RIGHT TO FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

38. At the outset of this examination, reference must be made to the right to freedom of thought, con-

science and religion, which is recognized in the Universal Declaration of Human Rights (art. 18),⁷ the International Covenant on Civil and Political Rights (art. 18),⁸ the European Convention on Human Rights and Fundamental Freedoms (art. 9),⁹ the American Declaration on the Rights and Duties of Man (art. III),¹⁰ the American Convention on Human Rights (art. 12),¹¹ and the African Charter on Human and Peoples' Rights (art. 8).¹²

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

40. Article 29, paragraph 2, of the Universal Declaration of Human Rights reads:

In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Limitations on the right to act in conformity with one's conscience must be consonant with this provision.

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

⁷ General Assembly resolution 217 A (III) of 10 December 1948.

⁸ United Nations, *Treaty Series*, vol. 999, No. 14668, p. 172.

⁹ *Ibid.*, vol. 213, No. 2889, p. 222.

¹⁰ Pan American Union, International Conference on Human Rights (OEA/Ser.L/V/1.5), appendix I. The Declaration was approved by the Ninth International Conference of American States, Bogotá, 1948.

¹¹ Organization of American States, *Treaty Series* No. 36 (OEA/Ser.A/16) (Washington, D.C., 1971). The Convention was signed at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 1969.

¹² Adopted at the eighteenth session of the Assembly of Heads of State and Government of OAU, Nairobi, June 1981.

quences that should be drawn from it. Again, limitations to this right must be consonant with the provisions of article 29, paragraph 2, of the Universal Declaration of Human Rights.

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

43. Article 8, paragraph 3 (c), of the International Covenant on Civil and Political Rights stipulates that "forced or compulsory labour" shall not include "any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors". This provision, however, is of limited relevance. It makes it clear that neither military service nor alternative service is to be considered as forced labour. This implies that there is no general right to oppose obligatory military service on the ground that it interferes with personal freedom. But it does not settle, one way or the other, the question whether there is a basis for claiming exemption from military service on the grounds of conscientious objection.

2. RIGHT TO LIFE

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

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

3. JUS CONTRA BELLUM

46. Important developments have taken place in international law, particularly dynamic since the

founding of the United Nations. While in the past there have been periods in which international law did not restrain the right to use armed force, this right has now been severely circumscribed. Under Article 2, paragraph 4, and Article 51, of the Charter of the United Nations, there is only one case in which there is clearly a right to use armed force: in self-defence against an armed attack from outside. This law of the Charter has been reinforced and made more detailed by the Declaration on the Granting of Independence to Colonial Countries and Peoples,¹³ the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,¹⁴ the Definition of Aggression,¹⁵ and the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty.¹⁶

47. All these elements, the building blocks of modern international law, prohibit the use of armed force for certain purposes. The question of their relevance to the present study may be stated as follows: when a person is convinced that the armed forces of his own country are being used or may be used in the future for purposes that are in violation of international law, and when therefore a conscience built on respect for international law reinforces the general repulsion against taking the life of others arbitrarily, should not this objection be accepted? This would form a concrete application of the extent of the right to freedom of conscience and to the freedom of action built on conscience. It may be noted that the personal legal duty incumbent on the individual not to act contrary to international law was proclaimed in the Charter of the Nürnberg Tribunal.¹⁷

4. JUS IN BELLO

48. A number of international instruments prohibit the use of certain means and methods of warfare. These instruments are the Hague Conventions of 1899 and 1907, and the various Geneva Conventions, the most recent being the Geneva Conventions of 1949 and the additional Protocols to the Geneva Conventions adopted in 1977.¹⁸ These instruments prohibit certain kinds of behaviour (e.g. killing of prisoners, non-discrimination between civilian and military targets, respect for the population in occupied territories), and they also prohibit the use of certain means (use of asphyxiating poisonous or other gases, and possibly also use of nuclear weapons). All these efforts may be seen as the striving of the civilized international community to draw the line between protection of the life of the individual and legitimate scope of action when the use of armed force is unavoidable. Put in another way: there

¹³ General Assembly resolution 1514 (XV) of 14 December 1960.

¹⁴ General Assembly resolution 2625 (XXV) of 24 October 1970, annex.

¹⁵ General Assembly resolution 3314 (XXIX) of 14 December 1974, annex.

¹⁶ General Assembly resolution 2131 (XX) of 21 December 1965.

¹⁷ *The Charter and Judgment of the Nürnberg Tribunal* (United Nations publication, Sales No. 1949.V.7), appendix II.

¹⁸ See *Juridical Yearbook 1977* (United Nations publication, Sales No. E.79.V.1), p. 95.

are efforts to give substance to the provision that no one shall be deprived arbitrarily of his life. The international norms in this and other fields may then be seen as the legitimate dividing line between justified and unjustified (and therefore arbitrary) taking of the life of others.

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

5. GENOCIDE

50. The Convention on the Prevention and Punishment of the Crime of Genocide¹⁹ prohibits destructive acts that are directed against a national, ethnic, racial or religious group by any person, and makes genocide a crime under international law. In this case, the individual is not only entitled, for reasons of conscience, to refuse to participate in genocide; he is even obliged to abstain from such participation, since he is criminally liable under article IV of the Convention, whether he is a constitutionally responsible ruler, public official, or private individual.

51. The Nürnberg principles, contained in the Charter of the Nürnberg Tribunal, and reaffirmed in General Assembly resolution 95 (I) of 11 December 1946, make the individual personally responsible for certain actions contrary to international law, whether or not he has taken part in the decision-making process. These are the extreme cases, where there is not only a right to object to participation but also an obligation to do so in order to avoid criminal liability. (That this liability, in the absence of an international criminal tribunal, will not be given effect, is beside the point for the purposes of the present study.)

6. RIGHT TO SELF-DETERMINATION

52. In its resolution 2625 (XXV), containing the Declaration on Principles of International Law relating to Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, which include the principle of self-determination, the General Assembly states the following:

Every State has the duty to refrain from any forcible action which deprives peoples referred to in the elaboration of the principle of equal rights and self-determination of their right to self-determination and freedom and independence.

This is another instance in which the international community has drawn the line between legal and illegal use of armed force. An individual, whose conscience with regard to the taking of the life of others is informed by the normative efforts of the international community, might be considered to be entitled to refuse to participate in action contrary to the above-mentioned principle.

53. Objection to participation in armed repression of self-determination will no doubt be particularly strong in the case of individuals who belong to a people whose self-determination is denied. Resistance by the

¹⁹ General Assembly resolution 260 A (III) of 9 December 1948.

young people of Namibia and South Africa to military service in the South African-controlled armed forces provides an example of such a case.

54. Similarly, it is not only a right but a duty under international law to object to participation in the crime of *apartheid* (defined in the International Convention on the Suppression and Punishment of the Crime of *Apartheid*).²⁰

55. The Declaration on the Preparation of Societies for Life in Peace²¹ is also significant in various respects, which will be subsequently examined in this report.

7. VIOLATION OF HUMAN RIGHTS BY ARMED FORCE

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

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

C. Resolutions and decisions adopted by international organs

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

59. On 7 December 1965, the General Assembly adopted, by its resolution 2037 (XX), the Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples. Principle I of this Declaration reads as follows:

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

60. In 1968, the International Conference on Human Rights was held in Teheran. In its resolution XX, the Conference took into consideration the fact "that it is the hope of humanity that there should be in the future a world in which there does not exist any transgression of human rights and fundamental

freedoms and that to that end it is imperative to implant in the consciousness of youth lofty ideals of human dignity and of equal rights for all persons without any discrimination", and "that nowadays, within the process of social, economic and spiritual renewal in which humanity is engaged, the enthusiasm and the creative spirit of youth must be dedicated to eliminating any kind of violation of human rights".²²

61. On 19 December 1968, the General Assembly, in its resolution 2447 (XXIII), entitled "Education of youth in the respect for human rights and fundamental freedoms", endorsed the appeal made by the International Conference on Human Rights to States to ensure that all means of education should be employed so that youth might grow up and develop in a spirit of respect for human dignity and equal rights of man without discrimination as to race, colour, language, sex or faith; endorsed the recommendations made by the Conference in its resolution XX; and requested the Economic and Social Council to invite the Commission on Human Rights, in co-operation with UNESCO, to study the question of the education of youth all over the world with a view to the development of its personality and the strengthening of its respect for the rights of man and fundamental freedoms.

62. On 18 March 1969, the Commission on Human Rights adopted resolution 20 (XXV), dealing with the question of education of youth, in which it noted the recommendations of the Teheran Conference in its resolution XX and decided to consider at its future sessions the question of the education of youth all over the world for the development of its personality and the strengthening of its respect for the rights of man and fundamental freedoms.

63. On 22 March 1971, the Commission on Human Rights, in its resolution 11 B (XXVII), specifically referred to the question of conscientious objection to military service. It is significant that that reference was made in the context of education of youth for human rights.

64. In paragraph 1 of that resolution, the Commission requested the Secretary-General to make available to it information on conscientious objection which had been collected for the *Study of Discrimination in the Matter of Religious Rights and Practices*.

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

²⁰ General Assembly resolution 3068 (XXVIII) of 30 November 1973.

²¹ General Assembly resolution 33/73 of 15 December 1978.

²² See *Final Act of the International Conference on Human Rights, Teheran, 22 April to 13 May 1968* (United Nations publication, Sales No. E.68.XIV.2).

tional independence and social progress, and to struggle against colonial and foreign occupation.

66. These and other resolutions of the United Nations concerning the education of youth indicate the normative principles which it is sought to reinforce in the process of education. This is a point of considerable significance for the reinforcement of conscience which is promoted by the United Nations.

67. The General Assembly, in its resolution 33/165 of 20 December 1978, dealt with the status of persons refusing service in military or police forces used to enforce *apartheid*. In paragraph 1, the General Assembly recognized the right of all persons to refuse service in military or police forces used to enforce *apartheid*, and in paragraph 2 it went on to call upon Member States to grant asylum or safe transit to persons compelled to leave their country because of such conscientious objection.

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

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

70. The General Assembly, in its resolution 37/48 of 3 December 1982, entitled "International Youth Year: Participation, Development, Peace", underlined the need to disseminate among youth the ideals of peace, respect for human rights and fundamental freedoms, human solidarity and dedication to the objectives of progress and development. The General Assembly further expressed its conviction of the imperative need to harness the energies, enthusiasms and creative abilities of youth to the tasks of nation-building, the struggle for self-determination and national independence, in accordance with the Charter of the United Nations, and against foreign domination and occupation, for the economic, social and cultural advancement of peoples, the implementation of the new international economic order, the preservation of world peace and the promotion of international co-operation and understanding.

71. This is the latest demonstration of the orientation the United Nations is seeking to encourage with regard to the conscience of youth. It seems reasonable that this must affect the conscience of youth in the matter of restraints on the use of armed force, and thereby also the consciousness of young people that they may have to refuse to participate if armed force is used for purposes that violate the norms established by the United Nations, or when methods of armed action are resorted to which disregard the restraints established by norms adopted by the international community.

72. On 19 November 1974, the General Conference of UNESCO adopted the recommendation concerning

education for international understanding, co-operation and peace and education relating to human rights and fundamental freedoms. Paragraph 6 of the recommendation contains the following guiding principle:

Education should stress the inadmissibility of recourse to war for purposes of expansion, aggression and domination, or to the use of force and violence for purposes of repression, and should bring every person to understand and assume his or her responsibilities for the maintenance of peace. It should contribute to international understanding and strengthening of world peace and to the activities in the struggle against colonialism and neo-colonialism in all their forms and manifestations, and against all forms and varieties of racialism, fascism and *apartheid* as well as other ideologies which breed national and racial hatred and which are contrary to the purposes of this recommendation.²²

73. In 1980, UNESCO convened the World Congress on Disarmament Education. In section A, 6, of the final document of the Congress, the following principles and considerations are set out:

As an approach to international peace and security, disarmament education should take due account of the principles of international law based on the Charter of the United Nations, in particular, the refraining from the threat or use of force against the territorial integrity or political independence of States, the peaceful settlement of disputes, non-intervention in domestic affairs and self-determination of peoples. It should also draw upon the international law of human rights and international humanitarian law applicable in time of armed conflict and consider alternative approaches to security, including such non-military defence systems as non-violent civilian action. The study of United Nations efforts, of confidence-building measures, of peace-keeping, of non-violent conflict resolution and of other means of controlling international violence take on special importance in this regard. Due attention should be accorded in programmes of disarmament education to the right of conscientious objection and the right to refuse to kill. Disarmament education should provide an occasion to explore, without prejudging the issue, the implications for disarmament of the root causes of individual and collective violence and the objective and subjective causes of tensions, crises, disputes and conflicts which characterize the current national and international structures reflecting factors of inequality and injustice.²³

D. Recommendations by non-governmental organizations

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

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

We consider that the exercise of conscientious judgement is inherent in the dignity of human beings and that, accordingly, each person should be assured the right, on grounds of conscience or profound conviction, to refuse military service, or any other direct or indirect participation in wars or armed conflict. The right of conscientious objection also extends to those who are unwilling to serve in a particular war because they consider it unjust or because they refuse to participate in a war or conflict in which weapons of mass destruction are likely to be used. This Conference also considers that members of armed forces have the right, and even the duty, to refuse to obey military orders which may involve the commission of criminal offences, or of war crimes or of crimes against humanity.²⁴

²² UNESCO, *Records of the Eighteenth Session of the General Conference, Paris, 17 October to 23 November 1974*, vol. 1, *Resolutions* (Paris, 1974), pp. 148-149.

²³ UNESCO, *World Congress on Disarmament Education, Paris, 9-13 June 1980, Report and Final Document* (Paris, 1980), p. 9.

²⁴ World Conference on Religion and Peace, *Religion for Peace—Proceedings of the Kyoto Conference on Religion and Peace*, Kyoto, Japan, 16-21 October 1970, H. A. Jack, ed. (New Delhi, Gandhi Peace Foundation, 1973), p. 183.

Participants in the Second World Conference on Religion and Peace, held at Louvain, in 1974, stated:

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

Governments which have not yet recognized the right of conscientious objection should be persuaded to do so, and make available alternative forms of humanitarian service. They should grant suitable amnesties to those who have come into conflict with the law in asserting this right. Religious organizations should also seek to open creative avenues of work in reconciliation, peace-making, and development as alternative forms of service for those who reject all compulsory state service.²⁶

Participants in the Third World Conference on Religion and Peace, held at Princeton, in 1979, made the following statements:

(a) Princeton Declaration:

We uphold the right of citizens to conscientious objection to military service.²⁷

(b) Commission findings No. 19 on religion and human dignity, responsibility and rights:

We urge all Governments to consider peaceful alternatives to compulsory military service.²⁸

76. In 1970, the World Youth Assembly urged in its final report²⁹ that conscientious objection be treated as a human right.

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

Protection of conscience demands that the churches should give spiritual care and support not only to those serving in armed forces but also to those who, especially in the light of the nature of modern warfare, object to participation in particular wars they feel bound in conscience to oppose, or who find themselves unable to bear arms or to enter the military service of their nations for reasons of conscience. Such support should include pressure to have the law changed where this is required, and be extended to all in moral perplexity about scientific work on weapons of mass human destruction.³⁰

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

The rights of conscientious objectors

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

²⁶ World Conference on Religion and Peace, *World Religion/World Peace—Unabridged Proceedings on the Second World Conference on Religion and Peace*, Louvain, Belgium, 28 August-3 September 1974, H. A. Jack, ed. (New York, World Conference on Religion and Peace, 1979), pp. 46-47.

²⁷ World Conference on Religion and Peace, *Religion in the Struggle for World Community—Unabridged Proceedings of the Third World Conference on Religion and Peace*, Princeton, N.J., United States of America, 29 August-7 September 1979, H. A. Jack, ed. (New York, World Conference on Religion and Peace, 1980), p. v.

²⁸ *Ibid.*, p. 117.

²⁹ 56/WYA/P/10.

³⁰ World Council of Churches, *The Uppsala Report 1968—Official Report of the Fourth Assembly of the World Council of Churches*, Uppsala, Sweden, 4-20 July 1968, N. Goodall, ed. (Geneva, World Council of Churches, 1968), sect. 1V, para. 21.

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

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

32. It is urged that the churches should use their best endeavour to secure the recognition of the right of conscientious objection as hereinbefore defined under national and international law. Governments should extend the right of asylum to those refusing to serve in their country for reasons of conscience.³¹

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

80. The International Peace Bureau, in its recommendation of 8 August 1970, recommended that the United Nations Secretary-General undertake a study of the question of conscientious objection, and also presented a draft universal charter of conscientious objection to military service or training.

81. Participants in the World Congress of Peace Forces, held at Moscow from 25 to 31 October 1973, stated that the right to life was inalienable for every person and should be protected by law; that States should move towards the total abolition of capital punishment, and that the right to life also raised the problem of the right to refuse to kill.

82. Various national religious organizations and ethical associations, including the Unitarian Universalist Association of the United States of America, the General Assembly of the Unitarian and Free Churches in Great Britain and the American Ethical Union, have adopted resolutions demanding recognition and expansion of the right of conscientious objection. Some intergovernmental organizations, including War Resisters International, which has its headquarters in Belgium, have the promotion of the right to conscientious objection as one of their main aims. The promotion of the right to conscientious objection is also a major concern for the International Fellowship of Reconciliation, the Quakers, Service Civil International, and others.

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

(a) *Right to conscientious objection to wars or to a particular war and military service*

"This right applies to any person subject to compulsory military service who, for reasons of con-

³¹ Committee on Society, Development and Peace, *Peace—the Desperate Imperative*, report of the Consultation on Christian Concern for Peace, Baden, Austria, 3-9 April 1970 (Geneva, The Ecumenical Center, 1970), p. 57.

science or deep conviction based on religious, moral, humanitarian, philosophical or similar motives, such as on ecological grounds, refuses to carry out armed military service or other participation, direct or indirect, in wars or armed conflict.

(b) *Legal and administrative recognition of the right to conscientious objection to military training and service*

“Such recognition must be given effect by internationally recognized procedures, including the following:

- “(i) Prospective conscripts must be given full information about their rights and responsibilities and about the procedures to be followed when seeking recognition as conscientious objectors and alternative service.
- “(ii) A person should be allowed to be recognized as a conscientious objector at any age, whether in the armed forces, military reserve or as a prospective conscript, and in time of war or peace. Those who apply for recognition as conscientious objectors while already in the armed forces should be relieved of their normal military duties until the final decision in the proceedings on their cases is known.
- “(iii) No court or commission can penetrate the conscience of an individual, and a declaration setting out the individual’s motives must therefore suffice in the vast majority of cases to secure the status of conscientious objector.
- “(iv) Where there is a public hearing, it should be conducted by an independent and legally established civilian tribunal, and the conscientious objector should have the right to be represented or assisted during the hearing. If necessary, legal assistance should be free.
- “(v) The objector should be heard, and decisions made, without undue delay, and reasons for decisions always clearly stated.
- “(vi) The objector and the State should have the right of appeal to a higher judicial body.
- “(vii) A prison sentence is not an appropriate response to a plea of conscientious objection. Where a prison sentence is imposed,

the objector must not be sentenced to a term of imprisonment longer than the period of military service for which he is considered liable.

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

“(ix) The objector should have the right to form associations of objectors aimed at promoting the welfare of objectors, improving public recognition of their situation and deepening their convictions about peace and international co-operation.

(c) *Alternative service*

“If it is recognized that States will continue to practise conscription, then civilian service should not be managed by the military: civilian service is best managed by civilians.

“Conscientious objectors should have the choice of a variety of alternative civilian service, as for instance service with government, with non-governmental organizations, with the United Nations and specialized agencies, with international non-governmental organizations promoting the aims of the Universal Declaration of Human Rights. They might also serve as non-combatants within the military forces.

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

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

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

Chapter II

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

A. Grounds recognized as valid for conscientious objection

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

(a) Those in which there has never been conscription, and where the standing armed forces tend to be rather modest. But many of these States have promulgated legislation for national service in time of war and public emergency, at which time the issue of conscientious objection may arise. One illustration is the reply from the Government of Malawi:

In situations of public emergency, every citizen of Malawi, aged 18 to 60 years, may be called up for national service under the National Service Act (cap. 12:02). Refusal to serve in this capacity on purely conscientious grounds is an offence.³²

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

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

86. Annex II below provides a survey of present-day conscription. Conscription has been most common in Western and Eastern Europe, North America, Australia and New Zealand. In Latin America and the Caribbean, Africa and Asia, about one half of the countries have conscription.

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

88. Annex I below contains a country-by-country survey of existing provisions for acceptance or rejection of conscientious objection. The most common reason recognized as valid for exemption on grounds of conscientious objection is religious conviction. Some States

allow only for those who belong to "peace churches", whose doctrine is completely pacifist. Members of the Mennonite Church have been granted such exemption in some Latin American countries, including Bolivia and Mexico.

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

90. In Northern and Western Europe, conscientious objection is recognized not only on religious grounds but also on any ethical or humanist grounds whatsoever.

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

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

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

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

95. In States without conscription, where servicemen (enlisted personnel) develop conscientious ob-

³² See E/CN.4/1419.

jection to further service, the issue arises whether, on that ground, they should be released from further service. In several countries having an all-voluntary armed force, provision is made for release based on conscientious objection. The United Kingdom states, in its reply to the Secretary-General:

It is not considered practicable to specify the grounds on which conscientious objection may be claimed. It is for the applicant to satisfy those concerned that his conscientious objection to further service is genuine."

B. Procedures for obtaining conscientious objector status

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

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

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

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

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

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

¹¹ *Ibid.*

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

103. The procedural system established for obtaining conscientious objector status is likely to have a strong influence on the outcome of the request. The Parliamentary Assembly of the Council of Europe has explored this question and in 1977 made the following recommendations:

1. Persons liable for military service should be informed, when notified of their call-up or prospective call-up, of the rights they are entitled to exercise.

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

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

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

5. Applicants should also be granted a hearing and be entitled to be represented and to call relevant witnesses.¹⁴

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

C. Question of alternative service

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

106. For the authorities, the provision of alternative service fulfils two purposes: one is to impose a burden on the objector, even when granting him the status of conscientious objector, so as to deter those who out of pure expediency seek to be released from military service; the other is to obtain from the objector a service

¹⁴ Council of Europe, *Twenty-ninth Ordinary Session of the Parliamentary Assembly* (Second part, 5-13 October 1977), Strasbourg, recommendation 816 (1977), p. 2.

useful to the public interest even if it is not military service.

107. Objectors may accept alternative service depending on the grounds on which they have objected. There are three categories of alternative service (see paras. 108-111 below): (a) non-combat roles in the armed forces; (b) social service/development service; (c) peace-oriented service. In some cases, the objector may be willing to perform non-combat roles in the armed forces, if his objection is purely personal and does not include objection to the use of force by others. But when the objection is based on the conviction that the use of armed force is immoral, or that the particular use of armed force in which the country concerned is engaged is immoral, then non-combat roles will not be acceptable. Those who object to participation in the armed forces used to enforce *apartheid* will not be satisfied with the offer of non-combat roles in the same armed forces.

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

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

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

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

112. *The controlling authority.* In section B of this chapter, the procedures for obtaining conscientious objector status were examined. But who controls the ob-

jector whose status has been recognized during his alternative service?

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

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

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

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

116. In peacetime, the most likely consequence will be imprisonment. There appear to be two approaches to the imprisonment of unrecognized objectors. One approach is to use penalties in order to make them change their minds. Relatively short prison sentences are imposed, but after release the objector is again called up for military service. If he still refuses to serve, he receives a new sentence, which means that he may spend most of his adult life in prison because of his continued objection. This practice might be considered to be at some variance with article 14, paragraph 7, of the International Covenant on Civil and Political Rights, which

states that no one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

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

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

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

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

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

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

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

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

124. According to the information available today, in recent years thousands of people have fled countries, such as Portugal during the colonial war years, or the United States of America during the Vietnamese war, to avoid conscription into military service in wars to which they held conscientious objection.³⁵ As such situations occurred in the past, the present report will concentrate on southern Africa, since it is currently the area in which this phenomenon is most prevalent. People have fled South Africa as a result of their conscientious objection not only to military service on the usual grounds, but also to military and police enforcement of that country's unjust and racially prejudiced policy of *apartheid*.

³⁵ P. J. van Krieken, *Deserteurs Dienstweigeraars en Asielrecht* (Deserters, Conscientious Objectors and the Law on Asylum) (Van Gorcum-Assen, Amsterdam, 1976); see sect. VI of the English summary, p. 296.

125. The Committee on South African War Resistance has reported that exiled war resisters from South Africa have fled to a number of countries, including Lesotho, Swaziland, Botswana, Zimbabwe, Mozambique, the United States of America, Canada, Israel, Australia, New Zealand, the Federal Republic of Germany, Norway, the Netherlands and the United Kingdom.³⁶ Corroborative evidence is available from some of these countries.

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

127. Where conscientious objection is not accepted by the Government concerned, or, as in the case of refusal to serve in forces enforcing *apartheid*, such refusal or objection is punishable, the penalties usually including imprisonment.³⁷ In South Africa it is reported that the penalty of imprisonment for conscientious objection, other than on religious grounds, will be inflicted on the objector each time he refuses enlistment, and he may therefore spend most of his life in prison. Escape to other countries thus becomes an attractive proposition. Even an objector on religious grounds may be sent to prison for three years, if such convictions make him reject non-combatant service within the forces. In annex I, section B, list 7, below, further information is provided on this question.

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

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

The Defence Force supports government policy and is responsible for peace, law and order in this country. This policy is the same as that laid down by Dr. H. F. Verwoerd, namely multinationalism and self-determination of nations.³⁸

130. This statement is a clear illustration of the endorsement by the South African armed forces of the policy of *apartheid* and "bantustanization". The White Paper on Defence presented to the South African Parliament by the Minister of Defence in 1977 provides further evidence that the forces of that country are

³⁶ Committee on South African War Resistance (COSAWR), "The Church and the Military in South Africa", by A. Smail (London, 1981), p. 19.

³⁷ *Ibid.*, p. 7.

³⁸ *Ibid.*, p. 37.

constituted for the purpose of preserving "separate development" and *apartheid*.

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

132. However, both international standards, as reflected in existing international instruments, and the majority of the replies received from States on the matter, show that "it shall rest with the State granting asylum to evaluate the grounds for the grant of asylum", as stated in the Declaration on Territorial Asylum.³⁹ The decision is often determined by political considerations, and sometimes by the relationship between the country of asylum and the country from which the conscientious objector has fled. Some countries have based their decisions on whether they considered the war in question just.⁴⁰

133. According to available information, and as reflected in annex III below, many countries have stated that, although they have no legislation on asylum that provides specifically for conscientious objectors, such persons are in effect granted asylum in those countries provided that they satisfy the legal criteria for refugee status, namely, that they have a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or adherence to some political opinion. In these circumstances, it would appear that an international standard along the lines suggested in General Assembly resolution 33/165 is needed to set out categorically the types of objectors who should be given favourable consideration when they request asylum, in order to codify this general practice in international law.

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

³⁹ General Assembly resolution 2312 (XXII) of 14 December 1967, art. 1, para. 3, of the Declaration.

⁴⁰ Van Krieken, *op. cit.*, pp. 292 and 296, sections III.C.1 and VI.

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

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

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

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

Article 14 of Universal Declaration of Human Rights provides:

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution.
2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

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

Chapter III

CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

138. In this chapter, some conclusions are drawn based on the analysis in chapter II of the information received from Governments, intergovernmental and non-governmental organizations, a summary of which is given in the annexes to this report. Annex I contains a summary, country by country, of available information on conscription, conscientious objection to military service and alternative service. Annex II lists countries and territories, according to their position with regard to military service and alternative service.

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

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

141. These dilemmas become more serious with the passage of time. The existence and the work of the United Nations and the specialized agencies, such as UNESCO, have provided young people everywhere with a vision of a world based on solidarity, justice and human dignity: 1985 has been declared International Youth Year,¹ to be devoted to "participation, development and peace". In preparation for it, the General Assembly, in its resolution 37/48 of 3 December 1982, on International Youth Year, again considered it necessary to disseminate among youth the ideals of peace, respect for human rights and fundamental freedoms, human solidarity and dedication to the objectives of progress and development. UNESCO has for several years promoted education for human rights and international understanding, and is also now seeking to promote education on disarmament. These activities influence the thinking of young people and some respect should be shown for the dedication of youth to such ideals.

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

1. VOLUNTARISM OR COMPULSION IN PERFORMANCE OF MILITARY SERVICE

143. State practice varies widely regarding the extent to which military service is voluntary or enforced.

States can be divided into categories on this issue, as follows:

(a) A large number of States have no conscription, i.e. no compulsory military service. Available information indicates that 67 countries fall into this category (see annex II, list 1, below). The problem of conscientious objection is of less significance in such cases. Problems might emerge if objection developed in the mind of an enlisted person after joining the service. Provision should be made, in law or in the contract of enlistment, for withdrawal from service in such cases. Such provisions exist in some countries, but available material makes it difficult to ascertain their extent.

(b) A few countries have conscription in law, but do not enforce it. For practical purposes, the situation of the objector in such circumstances is similar to that under (a). Six countries fall into this category (see annex II, list 2, below). Legislation should be passed in the countries in this category to provide for recognition of conscientious objection in case conscription is enforced.

(c) The next category (see annex II, list 3, below) includes States which have conscription (compulsory service) and enforce it, but which mitigate that circumstance by formal and genuine recognition of conscientious objection, at least on some grounds. Fifteen countries fall into this category. Taken together, countries and territories belonging to categories (a), (b) and (c) grant freedom to the individual, to a greater or lesser extent, to decide whether or not to join the armed forces. Altogether, 88 countries appear to be included in this larger group.

(d) Then there are the countries which enforce compulsory service in the armed forces, and do not recognize the right of objectors to be exempted from military service, but which allow objectors, in certain circumstances, to be given non-combatant roles in the armed forces (see annex II, list 4, below). There are two subdivisions in this group: first, countries where the law provides for transfer to non-combatant roles (available material indicates that this is the situation in five countries); secondly, countries which in individual cases have allowed transfer to non-combatant roles on an *ad hoc* basis (information received indicates that this has happened in seven countries). It is difficult, however, to obtain reliable information on the extent to which this takes place, since it is an *ad hoc* decision by the relevant authorities to place a person in a non-combatant role and the reasons for it are not necessarily given.

(e) Finally, there is a group of 40 States with conscription which do not recognize conscientious objection in law and where there has been no indication that objectors have been allowed, by administrative decision, to perform unarmed services within the armed forces (see annex II, list 5, below). It is possible that in

¹ General Assembly resolution 34/151 of 17 December 1979.

some of these countries nobody has actually objected to military service. It should be noted that a few countries have been mentioned twice, for example Israel, which has obligatory military service for both men and women but which follows different practices with regard to the two sexes.

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

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

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

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

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

149. Where conscientious objection is recognized, differences exist regarding the way in which conscientious

objector status can be obtained. Three sets of factors must be considered in this regard:

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

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

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

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

2. ALTERNATIVE SERVICE

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

Convinced of the imperative to harness the energies, enthusiasms and creative abilities of youth to the tasks of nation-building, the struggle for self-determination and national independence, in accordance with the Charter of the United Nations, and against foreign domination and occupation, for the economic, social and cultural advancement of peoples, the implementation of the new international economic order, the preservation of world peace and the promotion of international co-operation and understanding.

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

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

B. Recommendations

153. The authors of this report request the Sub-Commission on Prevention on Discrimination and Protection of Minorities to consider making the following recommendations to the Commission on Human Rights:

"The Commission on Human Rights, recalling its resolution 40 (XXXVII) of 12 March 1981 and General Assembly resolution 33/165 of 20 December 1978, as well as General Assembly resolutions 34/151 of 17 December 1979, 35/126 of 11 December 1980,

36/28 of 13 November 1981 and 37/48 of 3 December 1982 on International Youth Year: Participation, Development, Peace, recommends that the Economic and Social Council should request the General Assembly to make the following recommendations, preferably in connection with the preparations for International Youth Year, 1985:

"1. Right to conscientious objection

"(a) 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.

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

"(c) States should recognize by law the right to be released from service in armed forces which the objector considers likely to be used to enforce *apartheid*.

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

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

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

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

"2. Procedural aspects

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

"(b) Applicants should be granted a hearing and be entitled to be represented by legal counsel and to call witnesses.

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

"3. Alternative service

"States should provide alternative service for the objector, which should be at least as long as the

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

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

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

"(a) Imposition of such penalties should be decided upon by an impartial civilian court applying the normal criteria of fair trial;

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

"5. Asylum

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

"6. Recruitment of children and minors

154. While the question of the use of children in war has not been dealt with as such in this report, it is nevertheless suggested that the Sub-Commission should consider how to follow up the concern expressed on this matter. In this connection, account should be taken of the provisions in Additional Protocol I of June 1977⁴² to the Geneva Convention of 1949, article 77, paragraph 2, in which the parties to a conflict pledge themselves to take all feasible measures in order that children under 15 do not take a direct part in hostilities and, in particular, to refrain from recruiting them into their armed forces. A similar prohibition is found in Protocol II,⁴³ article 4, paragraph 3 (c).

⁴² *Juridical Yearbook 1977* (United Nations publication, Sales No. E.79.V.1), p. 95.

⁴³ *Ibid.*, p. 135.

ANNEXES

Annex I

SUMMARY OF AVAILABLE INFORMATION ON CONSCRIPTION, CONSCIENTIOUS OBJECTION TO MILITARY SERVICE, AND ALTERNATIVE SERVICE

A. General observations

1. This annex constitutes a revised version of the summary contained in the annex to the preliminary report of the authors on conscientious objection to military service.^a New information collected since the issue of that report has been taken into account and, when necessary, previous data have been modified accordingly. However, as in the preliminary report, this annex should not be considered as containing exhaustive information on the world situation regarding conscription, conscientious objection to military service, and alternative service. It is rather intended to provide a concrete illustration of the report, based on data collected from available governmental, inter-governmental and non-governmental sources.

2. The information summarized in this annex concerns the following questions, for which data are available in various countries and territories:

- (a) Existence of conscription;
- (b) Liability to service;
- (c) Length of service;
- (d) Recognition of conscientious objection: recognition; grounds recognized as valid; timing of the claim;
- (e) Known cases of conscientious objection;
- (f) Alternative and development service;
- (g) Possible penalties for refusal to perform military service;
- (h) Dissemination of information on the possibility of obtaining conscientious objector status.

3. The following sources were used in the summary:

(a) REPLIES FROM GOVERNMENTS

"The role of youth in the promotion and protection of human rights, including the question of conscientious objection to military service", reports of the Secretary-General containing replies from Governments on the question (E/CN.4/1419 and Add.1-5 and E/CN.4/1509).

Replies from Governments to the note verbale sent on 4 December 1981 by the Secretary-General pursuant to resolution 14 (XXXIV) of 10 September 1981 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

Replies from Governments to the note verbale sent on 1 December 1982 by the Secretary-General pursuant to Sub-Commission resolution 1982/30 of 10 September 1982.

(b) OTHER UNITED NATIONS SOURCES

United Nations Centre against *Apartheid*, "Repression of conscientious objectors in South Africa", *Notes and Documents* No. 27/79, October 1979.

United Nations, Department of Public Information, *Objective Justice*, vol. XIV, No. 1, April 1982 (special issue on International Year for Sanctions against *Apartheid*).

"Military activities and arrangements by colonial Powers in territories under their administration which might be impeding the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples—Namibia", working paper prepared by the Secretariat (A/AC.109/704).

(c) REGIONAL INTERGOVERNMENTAL ORGANIZATION

Council of Europe (CE).^b

(d) NON-GOVERNMENTAL ORGANIZATIONS

Amnesty International (AI);

Commission to Study the Organization of Peace (CSOP);

Friends World Committee for Consultation (FWCC);

International Commission of Jurists (ICJ);

International Christian Youth Exchange (ICYE);

International Humanist and Ethical Union (IHEU);

International Youth and Student Movement for the United Nations (ISMUN);

Pax Christi (PC);

War Resisters International (WRI).

B. Summary of available data*

1. EXISTENCE OF CONSCRIPTION

Albania: Conscription exists (CE).

Afghanistan: Universal conscription is in effect (ISMUN).

Algeria: Participation in national service is required and comprises military training and public works projects carried out in the civilian sphere (ISMUN).

Angola: Conscription exists (AI).

Argentina: Universal conscription exists (ISMUN).

Australia: There is no conscription (National Service Termination Act 1973), but the main Act continues to specify the law that would apply if or when national service were reintroduced (IHEU). The Defence Force is maintained on a voluntary basis (National Service Termination Act 1973); the Defence Act 1903 makes provision for compulsory service in time of war only (Government reply).

Austria: Conscription exists; it was reintroduced in 1955 and is currently covered by the 1978 version of the National Defence Act (CE).

Bahamas: There is no conscription (Government reply).

Bahrain: There is no conscription (ISMUN).

Bangladesh: There is no conscription (ISMUN).

Barbados: There is no conscription (Government reply).

Belgium: Conscription exists (Government reply); it is regulated by the Military Law of 1937 (CE).

Belgium: Conscription exists (Government reply); it is regulated by the Military Law of 1937 (CE).

Benin: Universal conscription exists (ISMUN).

Bhutan: There is no conscription (ISMUN).

Bolivia: Military service is compulsory (PC).

* The acronyms appearing in section B relate to the sources of information listed in paragraph 3, subparagraphs (c) and (d), of section A.

^b Submission made to the Parliamentary Assembly of the Council of Europe by the Quaker Council for European Affairs.

^a E/CN.4/Sub.2/1982/24.

- Botswana:** There is no conscription. Recruitment is decided freely, but the principle that the burden of protecting the State must be borne by all citizens remains operational (Government reply).
- Brazil:** Conscription exists (art. 92 of the Federal Constitution of 1979). Women and clergy are exempted in time of peace (Government reply).
- Brunei:** There is no conscription (AI).
- Bulgaria:** Conscription exists (art. 91 of the 1947 Constitution) (FWCC).
- Burma:** The People's Military Service Act of 1959 provides for two categories of military service, part-time and full-time. However, except for the regular call-up of a small number of medical doctors, no recourse to the provisions of this law has been made to enforce military service. To date members of the Defence Force have been recruited on a voluntary basis (Government reply).
- Burundi:** There is no conscription (ISMUN).
- Byelorussian SSR:** Universal conscription exists (ISMUN).
- Cameroon:** Recruitment of armed forces is on a voluntary basis (Government reply).
- Canada:** There is no conscription (ISMUN).
- Cape Verde:** The performance of military service is compulsory under article 34 of the Constitution (Government reply).
- Central African Republic:** There is no compulsory military service except for civil servants (PC).
- Chad:** There is no conscription (ISMUN).
- Chile:** Universal conscription exists (ISMUN).
- China:** Universal conscription exists (ISMUN).
- Colombia:** Conscription exists (art. 165 of the Constitution) (Government reply).
- Congo:** Military service was abolished in 1969 (PC).
- Costa Rica:** There is no conscription. No army exists and military forces are established only pursuant to Pan American agreement or for purposes of national defence (arts. 12 and 147 of the Constitution); in that case military service will be compulsory (Government reply).
- Cuba:** Universal conscription exists (ISMUN).
- Cyprus:** Conscription exists (National Guard Law 1964) (Government reply).
- Czechoslovakia:** Conscription exists (1960 Constitution) (CE).
- Democratic People's Republic of Korea:** Universal conscription exists (ISMUN).
- Denmark:** Conscription exists (section 281 of the Danish Basic Law of 1953—Law on Military Service 1953) (CE).
- Dominican Republic:** There is no conscription (ISMUN).
- Ecuador:** Universal conscription exists (ISMUN).
- Egypt:** Universal conscription exists (ISMUN).
- El Salvador:** Military service is compulsory (art. 113 of the Political Constitution) (Government reply).
- Equatorial Guinea:** Universal conscription exists (ISMUN).
- Ethiopia:** There is no conscription (ISMUN).
- Fiji:** There is no conscription (ISMUN).
- Finland:** Conscription exists (Law on Military Service 1950) (CE).
- France:** Conscription exists (Law of 1928 on recruitment of armed forces and Order of 1959 on general organization of defence) (CE).
- Gabon:** Universal conscription exists (ISMUN).
- Gambia:** There is no compulsory military service (PC).
- German Democratic Republic:** Conscription exists (Law of 24 January 1962) (CE).
- Germany, Federal Republic of:** Conscription exists (1954 and 1956 amendments to the Constitution; law on military service, 1956, revised in 1972) (CE).
- Ghana:** There is no conscription. Volunteer armed forces exist; national defence requirements may be invoked (art. 27, para. 6, of the Constitution) (Government reply).
- Greece:** Conscription exists (AI); (art. 3 of the 1952 Constitution and Military Service Law of 1930) (CE). Military service is compulsory (Government reply). Conscription was confirmed by the Constitution, June 1975 (AI).
- Grenada:** There is no conscription (Government reply).
- Guatemala:** Universal conscription exists (ISMUN).
- Guinea:** Universal conscription exists (ISMUN).
- Guyana:** Military service is obligatory only in cases of national danger (ISMUN).
- Haiti:** Compulsory military service is provided for (art. 189 of the Constitution) but not enforced in practice (Government reply).
- Holy See:** There is no compulsory military service (PC).
- Honduras:** The Constitution of 1965 provides for universal conscription but is apparently not enforced because national defence needs are met by volunteers (ISMUN).
- Hong Kong:** Conscription was suspended in 1961 (PC).
- Hungary:** Compulsory military service exists (1949 Constitution) (CE).
- Iceland:** There is no compulsory service (CE) and no army (ISMUN). Military service may become obligatory during times of national danger (CE).
- India:** Military service as such is not obligatory, but may become obligatory during times of national danger (ISMUN).
- Indonesia:** There is no compulsory military service, except (under the 1945 Constitution) for students of both sexes, but this exception is no longer applied (PC). There is no conscription (AI).
- Iran, Islamic Republic of:** Conscription exists (Government reply).
- Iraq:** Conscription exists (ISMUN).
- Ireland:** There is no conscription (Government reply). Conscription can be introduced in case of national emergency. Professional armed forces exist (CE).
- Israel:** The obligation to serve in the defence forces is statutory by the law of the land (Government reply).
- Italy:** Conscription exists (CE).
- Ivory Coast:** Universal conscription exists in theory but is only selectively imposed (AI).
- Jamaica:** There is no compulsory military service (PC).
- Japan:** There is no conscription (ICYE).
- Jordan:** Universal conscription exists (ISMUN).
- Kenya:** There is no conscription (ISMUN).
- Kuwait:** Conscription exists (arts. 47 and 157 of the 1976 Constitution) (Government reply).
- Lao People's Democratic Republic:** Conscription exists (AI).
- Lebanon:** There is no conscription (Government reply).
- Lesotho:** There is no conscription (ISMUN).
- Liberia:** There is no conscription (ISMUN).
- Liechtenstein:** The army was abolished in 1868 (CE).
- Libyan Arab Jamahiriya:** Compulsory military service exists (Compulsory Military Service Law, 5 May 1978) (AI).
- Luxembourg:** There is no conscription (Government reply). There are career servicemen in the professional army (CE).
- Madagascar:** Conscription exists (Government reply).
- Malawi:** There is no conscription. In case of public emergency there is a compulsory call-up (Government reply).
- Malaysia:** There is no conscription (ISMUN).
- Maldives:** There is no conscription (ISMUN).
- Mali:** Universal conscription exists (ISMUN).
- Malta:** There is no conscription (CE).
- Mauritania:** There is no conscription (ISMUN).
- Mauritius:** There is no conscription (Government reply).
- Mexico:** Conscription exists (arts. 5 and 31 of the Political Constitution) (Government reply).
- Monaco:** There is no compulsory military service (PC).
- Mongolia:** Universal conscription exists (ISMUN).
- Morocco:** Conscription exists (art. 16 of the Constitution) (Government reply).
- Namibia:** Conscription exists in law (AI).
- Nauru:** There is no compulsory military service (PC).
- Nepal:** There is no conscription (ISMUN).
- Netherlands:** Conscription exists (law of 1912) (CE).
- New Zealand:** There is no conscription (repeal of the National Military Service Act in 1973) (Government reply).
- Niger:** Universal conscription exists (ISMUN).
- Nigeria:** There is no conscription at present (ISMUN).

Norway: Conscription exists (1914 Constitution—General Compulsory Service Act 1866 and 1953) (CE).

Oman: There is no conscription (Government reply).

Pakistan: There is no conscription (Government reply), but recently a military education training programme for college-aged youths was introduced (ISMUN).

Panama: There is no conscription (in peacetime) and no specific regulation governing the military profession (Government reply).

Papua New Guinea: There is no compulsory military service (Government reply).

Paraguay: Universal conscription exists (ISMUN).

Peru: Universal conscription exists (ISMUN).

Philippines: Universal conscription exists (ISMUN).

Poland: Compulsory service exists (Universal Military Service Law of 28 February 1950) (CE).

Portugal: Conscription exists (Recruitment Law 1956, art. 276 of the Constitution) (Government reply).

Qatar: There is no compulsory military service (Government reply).

Republic of Korea: Universal conscription exists (ISMUN).

Romania: Compulsory military service exists (art. 36 of the Constitution) (CE).

Rwanda: There is no compulsory service (art. 28 of the Constitution) (Government reply).

Samoa: There is no conscription (ISMUN).

San Marino: Military service is compulsory (PC).

Saudi Arabia: Military service in the armed forces is a national duty (Government reply).

Senegal: There is no conscription (Government reply).

Sierra Leone: There is no conscription (ISMUN).

Sikkim: There is no conscription (AI).

Singapore: Universal conscription exists (ISMUN).

Somalia: There is no conscription (ISMUN).

South Africa: Conscription exists (*Notes and Documents* No. 27/79).

Spain: Conscription exists (General Law on Military Service 1968) (CE).

Sri Lanka: There is no conscription. The Compulsory Public Service Act of 1971 provides that all university graduates must perform five years of public service (ICJ).

Sudan: There is no conscription (ISMUN).

Suriname: There was no conscription before independence (ICJ).

Swaziland: There is no conscription (Government reply).

Sweden: Conscription exists (Government reply).

Switzerland: Conscription exists (art. 18, para. 1, of the 1874 Constitution; art. 2 of the Law on the Military Organization of the Swiss Confederation, 1907) (AI) (CE).

Syrian Arab Republic: Military service is compulsory (Government reply).

Thailand: Universal conscription exists (ISMUN).

Togo: There is no conscription (Government reply).

Tonga: There is a very reduced military service (Government reply) and no peacetime conscription (WRI).

Trinidad and Tobago: There is no conscription (ISMUN).

Tunisia: Military service is compulsory (PC).

Turkey: Compulsory military service exists (art. 60 of the Constitution of 1961, Law No. 1111 of 21 June 1927) (CE).

Uganda: There is no conscription (ISMUN).

Ukrainian SSR: Compulsory military service exists (ISMUN).

USSR: Compulsory military service exists (1977 Constitution) (FWCC).

United Arab Emirates: There is no conscription (ISMUN).

United Kingdom: There has been no conscription since 1963, only volunteer servicemen (Government reply).

United Republic of Tanzania: There is no conscription (ISMUN).

United States of America: There has been no conscription since 1973, but the Military Selective Service Act is still part of the United States Code (Government reply).

Upper Volta: Universal conscription exists but is apparently not in force because national defence needs are met by volunteers (ISMUN).

Uruguay: Universal conscription exists (ISMUN).

Venezuela: Universal conscription is provided for in the 1961 Constitution but its application is apparently haphazard (ISMUN).

Yugoslavia: Conscription exists (art. 241 of the Constitution and the Compulsory Military Service Act) (Government reply).

Zaire: Compulsory conscription is mentioned in the 1964 Constitution but is apparently not in force (ISMUN).

Zambia: There is no conscription. Participation in the defence force is voluntary (Government reply).

Zimbabwe: There is no conscription (AI).

2. LIABILITY TO SERVICE

Albania: Men over 18 are liable to military service (CE).

Angola: All men from 18 to 50 and women with "special qualifications of interest to the armed forces" are liable to military service (Law No. 12/82), but those over 30 will serve only in the Reserve Force (AI).

Austria: Men between 18 and 51 are liable to military service (CE).

Belgium: Men between 18 and 45 are liable to military service (CE). The age of eligibility for registration is 16; the age for military service is 18 (WRI).

Benin: Men and women must perform one year's service (both military and educational) after completing their *baccalauréat* (AI).

Brazil: Persons between 19 and 45 are liable to service (Government reply). Informal exemption can be given by a local commander (FWCC) (ICJ). Exemption for physical or mental disability, or for overqualification for armed forces, can occur; exemption with loss of political rights can be given (Government reply).

Bulgaria: Men over 18 are liable to service; exemption can be given for special work (CE).

Chile: All men between 18 and 45. A law of 1978 provides for the introduction of compulsory service for women within 10 years (AI). Only clergy are exempted from military service (PC).

China: Minimum age 18 years. Every year probably 10 per cent of eligible youths are recruited (AI).

Costa Rica: In case of establishment of military forces, males between 18 and 60 are liable to service; exemption can be granted for poor health or physical defects and to persons in holy orders, save in the event of mobilization; temporary exemption exists for some professional categories (Government reply).

Cyprus: Men between 18 and 50 are liable to service (Government reply); police and clergy are exempted (CE).

Czechoslovakia: Men between 18 and 50 are liable to service; exemption can be granted for special work (CE).

Denmark: Men over 18 are liable to service; in practice not all men are called up (CE).

Ecuador: Article 28 of the Compulsory Military Service Act sets forth the three cases of exemption from military service:

- A son who is supporting his family, maintaining his parents and the younger children;
- A man married before pre-conscription registration, who is living with his wife, unless he expresses a wish to perform his military service;
- Those who have served in the armed forces as ordinary soldiers for a period of not less than one year and who have not been discharged for misbehaviour or for having committed a military offence.

Article 31 of the Act exempts from their military obligations citizens found to be morally or physically unfit. Such exemption is permanent; consequently these citizens have no military obligations in peacetime or in wartime.

The Regulation of the Compulsory Military Service Act develops the preceding idea and prescribes that the cases of exemption cover citizens declared to be physically and totally unfit and "those who are serving a sentence of imprisonment" and are publicly known as undesirable persons (Government reply).

Egypt: The Jewish population is exempted from military service (ISMUN).

El Salvador: Military service is compulsory for all Salvadorians from 18 to 30 (Government reply).

Finland: Men over 20 are liable to service (CE).

- France:** Men between 18 and 35 are liable to service; exemptions are granted for special family circumstances (CE) and health reasons (WRI).
- German Democratic Republic:** Men between 18 and 26 are liable to service (CE). Men between 26 and 50 may also be called up for the army reserve (AI).
- Germany, Federal Republic of:** Men between 18 and 28 are liable to service; exemption can be granted to clergy and those with special family circumstances; conscription does not apply to the inhabitants of West Berlin; exemption can be given for special service (CE).
- Greece:** Men between 18 and 40 (AI)/between 20 and 40 (CE) are liable to service. Exemptions are possible for those preparing for the priesthood or a monastic life. Temporary exemptions are possible for those studying and teaching abroad and reductions can be made where family circumstances so require (AI).
- Hungary:** Men over 18 are liable to service (CE).
- Ireland:** Volunteers over 18 are liable to service (CE).
- Iraq:** Postgraduates studying abroad are exempt until they complete their studies (resolution 649 of RCC 7.6.82) (AI).
- Israel:** Both men and women are liable to service (ISMUN). Statutory exemption applies to mothers of children, pregnant women and married women (Government reply). Conscription begins at 18. Muslims and Christians are exempt, and Jewish male scholars studying at Yeshiva schools are given automatic postponements until they pass the age of service (AI).
- Italy:** Men between 18 and 30 are liable to service; exemptions are granted for special service (CE).
- Ivory Coast:** Occasionally unemployed men, journalists and students are called up as a political measure (AI).
- Jordan:** Since 1976, men over 18 have been eligible for service (AI).
- Lao People's Democratic Republic:** All men between 15 and 45 are eligible (AI).
- Lebanon:** Youths of two religious denominations are exempted from military service (FWCC).
- Libyan Arab Jamahiriya:** All citizens from 18 to 35 are eligible. Those over 35 could be called upon in times of emergency or mobilization. Exemptions are granted on grounds of health, to only sons, and where the family is otherwise unable to earn a living. Students are supposed to be granted deferment while studying, although this is not always complied with. Conscription is often carried out by press-gang (AI).
- Luxembourg:** Volunteers between 17 and 25 are liable to service (CE).
- Malawi:** In case of public emergency, citizens between 18 and 60 are liable to service (National Service Act, Cap. 12:02) (Government reply).
- Mexico:** Mennonites are exempted (National Defence Decree 1942) (FWCC).
- Namibia:** Military service was extended to all black men aged from 16 to 25 by a proclamation of the South African State President in October 1980, although only a proportion of those eligible are actually conscripted (AI). Until this proclamation, military service had been mandatory only for whites, although use had been made of "volunteers" from other population groups in various sectors of the Defence Force (*Objective Justice*).
- Netherlands:** Men between 18 and 35 are liable to service; exemptions are granted for principal breadwinners, men performing indispensable functions, those with two or more brothers having performed military service, special situations or special services (CE).
- Norway:** Men between 18 and 44 are liable to service (CE).
- Panama:** Article 270 of the Constitution states that all males are required to bear arms to defend national independence and territorial integrity; article 16 of the Constitution states that naturalized Panamanians are not required to bear arms against their country of birth (Government reply).
- Paraguay:** Partial exemption exists for Mennonites; naturalized citizens may not be required to fight against their State of origin (ISMUN).
- Poland:** Men between 18 and 50 are liable to service; women between 18 and 40 may be called to perform auxiliary service (CE).
- Portugal:** Men between 21 and 45 are liable to service; call-up may occur at 18 in wartime; exemptions exist for special family circumstances (CE).
- Republic of Korea:** The age of conscription is now 19. Service in a reserve defence corps is compulsory for male and female students and for men until the age of 50 (AI).
- Romania:** Men over 18 are liable to service (CE).
- Singapore:** Men over 18 are liable to service. School-leavers and students preparing for university may be given some postponement. Further reservist training is obligatory after performance of active military service (AI).
- South Africa:** All young white males are liable to service; service is soon to be extended to "Coloured" and Indian populations (*Notes and Documents No. 27/79*). White men between 17 and 65 are liable to service (AI). In March 1982, South Africa announced revisions of its military service requirements that would make all white males up to 60 years of age liable to military training and service in Citizen Force units and would keep them on reserve status until the age of 65 (A/AC.109/704, para. 20).
- Spain:** Men between 20 and 38 are liable to service; exemption exists for clergy, members of religious sects and those with special family circumstances (CE).
- Sweden:** Males between 18 and 47 are liable to service (Government reply).
- Switzerland:** Men between 20 and 50 are liable to service (CE). Every Swiss is liable to military service (Government reply), from the age of 20 until the end of the year of his 48th birthday (AI).
- Syrian Arab Republic:** The age of liability is 18 (ICJ); exemption exists for Jews (FWCC) (ISMUN). Under the National Service Act, compulsory military service may be waived, postponed or replaced by alternative service in certain cases provided by law in order to make allowance for the special circumstances and needs of citizens, particularly those pertaining to religion, health and social situation, which might preclude compulsory military service (Government reply).
- Turkey:** Men over 20 are liable to service (CE).
- USSR:** Men between 18 and 27 are liable to service; women can be called up from the military register (CE).
- United Kingdom:** Volunteers from 16 to 35 serve in the army (CE).
- Yugoslavia:** Men over 18 are liable to service; exemption can be given for special family circumstances (CE). Those who evade military service by staying abroad must agree to perform it on return to Yugoslavia (AI).
- Zambia:** Men and women are liable to service (ISMUN).

3. LENGTH OF SERVICE

- Albania:** 24 to 36 months (CE).
- Angola:** 3 years; 4 years for higher ranks (AI).
- Austria:** 6 months (CE)/8 months (WRI).
- Belgium:** 10 months (WRI); reduced to 8 months if it is performed in the Belgian services in Germany (CE).
- Benin:** 18 months for men, 12 months for women (not applied in practice) (PC).
- Bulgaria:** 24 to 36 months, depending on the branch of the armed forces (CE).
- Chile:** Up to 2 years (AI).
- China:** Usually 3 to 5 years (AI).
- Cyprus:** 6 months (CE).
- Czechoslovakia:** 24 to 27 months, depending on the branch of the armed forces (CE).
- Denmark:** 9 months (Government reply).
- Finland:** 8 months (longer in some branches of the armed forces) (CE).
- France:** 12 months (CE).
- German Democratic Republic:** 18 months (CE); 18 months in the regular army followed by up to 2 years in the army reserve (AI).
- Germany, Federal Republic of:** 15 months; can be performed in separate periods (CE); 16 months is the average (Government reply).
- Greece:** Army, 22 months, possibly more; air force, 24 months; navy, 26 months, plus an additional reserve service (AI).
- Hungary:** 18 months (AI).
- Ireland:** The period is determined by the volunteers themselves (CE).
- Israel:** After completion of service, reserve duty is performed for 40 to 80 days a year (AI).

Italy: 12 months (CE).
Jordan: 2 years (AI).
Libyan Arab Jamahiriya: 3 years for the army; 4 years for the navy and air force. Some may be drafted for up to 10 years in practice (AI).
Luxembourg: 3 years (CE).
Netherlands: 14 months (CE).
Norway: 12 to 15 months, depending on the branch of the armed forces (CE).
Poland: 24 to 36 months (CE).
Portugal: 18 months (CE).
Republic of Korea: For the army and the marine corps, 30 months; for the air force and the navy, 3 years. College students who complete the full course of military drill at school have their military service reduced to 27 months. Various categories of persons (those studying abroad at government expense, those involved in certain technical industries, some scholars, musicians and sports men) receive only 3 weeks' basic training. Vocational high school teachers perform active service for only 18 months but must serve in certain schools for a further 30 months (AI).
Romania: 30 months (CE).
Singapore: 2 to 3 years (AI).
South Africa: At the beginning of 1982 military service included 2 years' initial training in the Citizen Force and a further 240 days spread over the next 8 years. After this men are still liable for service in the reserves until the age of 65 (AI).
Spain: 15 to 18 months, depending on the branch of the armed forces (CE).
Sweden: 9 to 13 months; after basic training, service can be performed in separate periods (CE).
Switzerland: The basic military training is 4 months (CE). The obligation to serve in the army extends from the beginning of the 20th year to the end of the 50th year (Military Organization Act 1907). Service includes basic military training and periodic military exercises (Government reply). After 118 days' basic training men are eligible for further training courses and reserve work until the age of 60 (AI).
Syrian Arab Republic: 30 months (ICJ).
Turkey: 20 months (CE).
USSR: 24 to 36 months (CE).
United Kingdom: The length of service is determined by the volunteers themselves (CE).
Yugoslavia: 18 to 24 months, depending on the branch of the armed forces (CE).

4. RECOGNITION OF CONSCIENTIOUS OBJECTION;
 GROUNDS RECOGNIZED AS VALID;
 TIMING OF CLAIM FOR OBJECTOR STATUS

Afghanistan: There is no legal recognition of conscientious objector status (PC).
Albania: There is no provision regarding conscientious objection (CE).
Algeria: There is no provision regarding conscientious objection (ISMUN).
Argentina: There is no provision regarding conscientious objection (ISMUN).
Australia: Conscientious objection would become relevant if compulsory military service were reintroduced (National Service Act 1951). Conscientious objection is seen as having two forms: beliefs which do not allow persons to engage in any form of defence service and beliefs which do not allow persons to engage in duties of a combatant nature. Conscientious beliefs are recognized as valid. Objection to service of a particular kind or in a particular case does not provide a basis for exemption (Government reply).
Austria: Conscientious objection is recognized in peacetime and wartime. Sincere religious beliefs, humanitarian, ideological and other serious grounds are recognized as valid. The claim for conscientious objector status has to be effected within 10 days of receipt of call-up papers and before receipt of call-up papers in subsequent recalls to service, but not during engagement in military service (CE); this claim is possible for serving soldiers after six months of service (WRI).

Belgium: Conscientious objection is recognized (Government reply); it can be claimed in peacetime and wartime (CE). Valid grounds are conscientious convictions and feeling of inability to use arms even in case of national danger; reasons challenging fundamental State institutions are not acceptable (CE). All grounds are accepted (religious, moral) but exclusively political reasons are not accepted (WRI). The claim has to be made before call-up (CE). Application for conscientious objector status is not possible for serving soldiers (WRI).
Benin: There is no provision for conscientious objection (ISMUN).
Bolivia: Conscientious objector status is only partially recognized. Only members of the Mennonite Church are exempted (PC).
Botswana: Conscientious objection does not arise as recruitment is decided freely (Government reply).
Brazil: Constitutional provisions exist for conscientious objection (FWCC).
Bulgaria: There is no recognition of conscientious objection (CE).
Burma: There is no legal recognition of conscientious objector status (Government reply).
Byelorussian SSR: There is no provision for conscientious objection (ISMUN).
Cameroon: There is no legal provision for conscientious objection as recruitment is on a voluntary basis (Government reply).
Cape Verde: There is no legislation providing for conscientious objection to military service, armed or otherwise (Government reply).
Chile: There is no provision for conscientious objection (ISMUN).
China: There is no provision for conscientious objection (ISMUN).
Colombia: There is no recognition of conscientious objection (Government reply).
Cuba: There is no provision for conscientious objection; the Constitution (art. 54) makes it a punishable offence to refuse to defend the country on grounds of religious belief (AI).
Cyprus: No provision exists for conscientious objection (Government reply).
Czechoslovakia: There is no recognition of conscientious objector status (FWCC).
Democratic People's Republic of Korea: There is no provision regarding conscientious objection (ISMUN).
Denmark: Conscientious objector status is recognized (Act No. 5427, Ministry of the Interior, 30 September 1980) (Government reply). Genuine conscientious grounds are valid (religious, philosophical and political reasons are acceptable) (CE). The claim must be made within four weeks following receipt of the call-up order (Government reply).
Ecuador: The text of the Compulsory Military Service Act makes no provision for conscientious objection. Legally, there is no process which classifies a conscientious objector other than as being remiss in peacetime or as a deserter in wartime (Government reply).
Egypt: There is no provision for conscientious objector status (ISMUN).
El Salvador: There is no provision for conscientious objector status (Government reply).
Equatorial Guinea: There is legislation on conscientious objection, but persons have the right to refuse to serve in military or police forces used to impose *apartheid* (Government reply).
Finland: Conscientious objection is recognized (Act and Statutory Decree on Unarmed and Civilian Service 1969). Conscientious grounds of a serious nature based on religious or ethical convictions are accepted in peacetime. Application has to be made before the conscript has been called up for military service. In case of application made after that time, the conscript is transferred to unarmed service pending the examination board's decision (Government reply).
France: Conscientious objection is recognized in peacetime and wartime (Law 63-1255 of 1963; Law 71-424 of 1971; Code du service

^c A bill modifying the French National Service Code was submitted to the Parliament in April 1983. According to the provisions of the bill, conscientious objectors may perform their national service in civilian services under State administration or for the local community, or in a social or humanitarian body. The length of service would be twice the length of military service. The request for civilian service must be made with the agreement of the Minister of Defence. If the request is not accepted, a recourse procedure can be initiated before an administrative tribunal.

- national—Decree of Bregançon 1972). Religious or philosophical grounds are accepted (Law 71-424). The claim must be made one month after publication of call-up; no possibility exists for conscripts already engaged in military service or reservists to make such a claim, but the legislation may well be changed (CE). Conscientious objectors are subject to the same régime as persons required to perform military service. Thus the general discipline of the armed forces is applicable to them, subject to the special arrangements laid down in Decree 72-805 of 17 August 1972 in regard to subordination, duties and obligations, punishment and the leave system. They are furthermore subject to the discipline of the authority or organization to which they are assigned (Government reply).
- Gabon:** There is no provision for conscientious objection (ISMUN).
- German Democratic Republic:** Conscientious objector status is recognized in an amendment to the Army Act ratified on 16 September 1964. Religious or similar motives are accepted. The claim for conscientious objector status is not possible for a serving soldier or reservist (CE).
- Germany, Federal Republic of:** Conscientious objection is recognized (art. 413 of the Basic Law) (Government reply). Conscientious grounds are valid with reference to the relevant part of the Constitution (nobody shall be forced to do armed war service against his conscience). There is no possibility of selective objection (CE). The claim may be made at any time (Government reply).
- Greece:** Recognition of conscientious objection to armed military service exists, but not to unarmed military service (AI). The designation of conscientious objector is given only to Jehovah's Witnesses, whose objection is based on religious beliefs. No special procedure exists for granting them formal status. Such persons may perform military service without bearing arms, but for a period double that of regular military service (Government reply). Only religious grounds are valid (AI). The claim must be made at time of call-up (AI).
- Guatemala:** There is no provision for conscientious objection. However, the possibility of paying a special tax may exempt some individuals liable to conscription (ISMUN).
- Guinea:** There is no provision for conscientious objection (ISMUN).
- Guyana:** Conscientious objector status is recognized in the Constitution of 1966 (ISMUN).
- Haiti:** There is no provision concerning conscientious objection to military service (Government reply).
- Honduras:** There is no provision for conscientious objection (ISMUN).
- Hungary:** No provision exists in Hungarian law for conscientious objector status (CE).
- Iran, Islamic Republic of:** There is no recognition of conscientious objector status (Government reply).
- Ireland:** There is no recognition of conscientious objector status (CE).
- Iraq:** There is no recognition of conscientious objector status (Government reply).
- Israel:** The concept of conscientious objection is not completely ignored but is of limited application. Statutory exemption is applicable only to women (Government reply). Men may also be exempt under the Law of Security Service 1959, article 28 (c) (AI). Statutory exemption exists for women of military age who have proved that reasons of conscience or religious conviction prevent them from serving in the defence service (Government reply). A few persons have been exempted by the Ministry of Defense on grounds of conscience (AI).
- Italy:** Conscientious objection is recognized (Act No. 772, 1972, amended in 1974) (Government reply). Opposition to use of arms in all circumstances for profound conscientious motives, profound religious, philosophical or moral convictions is considered valid (CE). The claim must be made within 60 days of call-up. On receipt of the application the candidate is suspended until his claim is examined. Normal delay for the Ministry of Defence decision is six months (applicants who have waited more than 26 months are exempt from all service) (CE).
- Ivory Coast:** There is no provision for conscientious objector status (ISMUN).
- Jordan:** There is no provision for conscientious objector status (ISMUN).
- Kuwait:** There is no recognition of conscientious objector status (Government reply).
- Libyan Arab Jamahiriya:** There is no recognition of conscientious objector status (AI).
- Luxembourg:** There is no recognition of conscientious objector status (Government reply).
- Madagascar:** There is no recognition of conscientious objector status (Government reply); some form of legal recognition has been reported (FWCC) since 1968 (ISMUN).
- Mali:** There is no provision for conscientious objector status (ISMUN).
- Malta:** Conscientious objector status would be envisaged in case of introduction of conscription (art. 36 (2) (c) of the Constitution) (CE).
- Mexico:** Partial recognition of conscientious objection exists (ISMUN).
- Mongolia:** There is no provision for conscientious objector status (ISMUN).
- Morocco:** There is no recognition of conscientious objector status (Government reply). However, some persons have reportedly been allowed to do service in underdeveloped parts of the country instead (ISMUN).
- Netherlands:** Conscientious objection is recognized (art. 196 of the Constitution, Conscientious Objection to Military Service Act 1962, amended in 1978). In article 2 of the amended Conscientious Objection Act, serious conscientious objection is defined as insurmountable conscientious objection to personal performance of military service in connection with the use of instruments of violence (Government reply). Selective objection may be possible (use of nuclear weapons). The claim must be made any time after receipt of call-up papers. Call to service is suspended on receipt of application (CE).
- Niger:** There is no provision for conscientious objector status (ISMUN).
- Norway:** Conscientious objector status is recognized (Act of 1965 relating to Exemption from Military Service for Reasons of Personal Conviction). Fundamental pacifist attitudes are considered as a point of departure; acceptance of self-defence or selective use of force does not preclude exemption. Criteria are under review at present (Government reply). The claim may be made at any time prior to induction or during military training (CE).
- Panama:** There is no recognition of conscientious objector status. Interest is shown in the review of the problem of conscientious objection by the United Nations, but procedures are needed to protect national integrity and defence. The view is expressed that conscientious objector status should not apply in the event of war (Government reply).
- Papua New Guinea:** Conscientious objector status exists (Government reply).
- Peru:** There is no provision for conscientious objection (ISMUN).
- Philippines:** There is no statute for conscientious objection but youths failing to register may be ignored (ISMUN).
- Poland:** There is no legal provision for conscientious objector status. Conscientious objectors could however be invited to take advantage of the law on civilian service as an alternative to military service (CE).
- Portugal:** Conscientious objector status exists (art. 41, No. 5, of the Constitution). Conscientious objector status is not yet regulated (draft law 164/1 submitted in 1978 but not discussed). A temporary decision of 1976 entitles conscientious objectors to postpone joining the army until the entry into force of new legislation (Government reply).
- Republic of Korea:** There is no provision for conscientious objection (ISMUN).
- Romania:** There is no provision for conscientious objector status (CE).
- Rwanda:** There is no recognition of conscientious objector status (Government reply).
- San Marino:** There is no legal recognition of conscientious objector status (PC).
- Saudi Arabia:** There is no provision for conscientious objection (Government reply).
- Singapore:** There is no provision for conscientious objector status (ISMUN).
- South Africa:** No provision exists for selective objectors. The Defence Force Act provides that those liable to conscription who demonstrate unconditional and universal objection to the use of

armed force on religious grounds may qualify for non-combatant service within the national armed forces (ISMUN).

Spain: Royal Order 1976 provides for conscientious objection. Until implementation of the law, there is a "deferred call-up" (military service bill on conscientious objection). Religious or ethical reasons could be recognized (Government reply).

Suriname: Article 122, paragraph 6, of the Constitution declares the legal conditions on which exemption for conscientious objection can be obtained. But no statutory provision has been enacted (Government reply).

Sweden: Conscientious objection is recognized (most recent legislation, 1978). Valid grounds are: serious conscientious objections to carrying arms (no political considerations are accepted), pacifism, religious belief. The claim may be made at any time, irrespective of whether the conscript has been called up or not (Government reply).

Switzerland: No provision exists concerning conscientious objector status (CE). Exemption is granted only when a conscript can prove that his performance of armed service will result in a severe conflict of conscience on religious or ethical grounds (AI). Religious opinions do not constitute grounds for securing exemption (art. 49 of the Federal Constitution). Persons for whom armed military service would cause a serious conflict of conscience for religious or ethical reasons may be allowed to perform unarmed military service. The decision concerning a claim is taken at the time of recruitment (Government reply).

Syrian Arab Republic: There is no recognition of conscientious objector status (Government reply).

Thailand: There is no provision for conscientious objection (ISMUN).

Tonga: There is no recognition of conscientious objector status (Government reply).

Tunisia: There is no legal recognition of conscientious objector status (PC).

Turkey: No provision exists for conscientious objector status (CE).

Ukrainian SSR: There is no provision concerning conscientious objection (ISMUN).

USSR: There is no provision concerning conscientious objection, although conscientious objector status was recognized by special decree in 1919. This regulation lapsed with the introduction of the Universal Military Service Law of 1939 (CE).

United Kingdom: Conscientious objector status exists for servicemen (administrative arrangements). It is not practicable to specify the grounds. The applicant has to convince those concerned that his conscientious objection is genuine (Government reply).

United States of America: Conscientious objection is recognized for servicemen (privilege granted by Act of Constitution). Valid grounds are firm and sincere objection to participation in war in any form or the bearing of arms, by reason of religious training and belief (CSOP).

Uruguay: Conscientious objector status is recognized. The conscientious objector is allowed to perform non-combatant service within the army (ISMUN).

Venezuela: There is no precise legal criterion on the matter in Venezuela. Venezuela recognizes no valid reason for conscientious objection (Government reply).

Yugoslavia: There is no provision for conscientious objection (Government reply).

Zaire: Conscientious objector status is recognized in principle, but only certain categories may be exempted (ISMUN).

Zambia: The Constitution recognizes conscientious objection to military service (Government reply).

5. KNOWN CASES OF CONSCIENTIOUS OBJECTION

Austria: 1980: 4,011 applications for conscientious objector status; 3,188 accepted (CE).

Argentina: Some Jehovah's Witnesses applied for exemption on conscientious grounds in 1981. Their application was rejected by all courts, including the Supreme Court (AI).

Belgium: 1979: 1,762 applications for conscientious objector status; 1,287 recognized claims; on average 90 per cent of claims were recognized (CE).

Botswana: There is no known case of conscientious objection (Government reply).

Brazil: Cases of conscientious objection exist (ICJ).

Bulgaria: A few cases of conscientious objection are known—Tolstoyans, Adventists, anarchists. Some objectors are ignored, some imprisoned, some choose exile. No figures are available (CE).

Cyprus: Some cases are known (mainly Jehovah's Witnesses), but no figures are available (CE).

Czechoslovakia: In the late 1950s at least two cases of conscientious objection occurred. The last known case occurred in 1977 (CE). A conscientious objector, one of the signatories to the Charter of the 77, was sentenced by military court in June 1981 (AI).

Denmark: Cases are known. 1976 statistics: 73,799 eligible conscripts; 2,255 applicants for conscientious objector status (CE).

El Salvador: There has been no known case of conscientious objection (Government reply).

Finland: Cases are known (in recent years about 3 per cent in unarmed or civilian service). About 110 per annum object even to alternative service (Government reply).

France: Since 1972, there have been approximately 2,500 conscientious objectors, 60 per cent of whom refused all forms of service. In 1980, 1,000 applications for conscientious objector status were made and 552 accepted (CE). The number of conscientious objectors in alternative service in 1979 was about 1,000, plus 1,000 total resisters. Several hundred conscientious objectors were in prison in 1979 (WRI). As a result of a presidential amnesty of 5 August 1981 and Ministry of Defence regulations of 23 October 1981, the prosecution of most conscientious objectors in France has been halted and most of those in prison have been released (AI).

German Democratic Republic: Conscientious objectors include Jehovah's Witnesses and others who intend to apply to emigrate. Among the known objectors are some who have refused to serve in the army reserve (AI).

Germany, Federal Republic of: Cases exist. For 1979, 45,515 applicants for conscientious objector status—4,500 applications from soldiers. For 1980, 54,000 applicants for conscientious objector status (Government reply).

Greece: Cases are known (Jehovah's Witnesses). As at the end of 1981, Amnesty International was working for the release of 51 imprisoned conscientious objectors; the number of conscientious objectors may be twice as high (AI).

Hungary: A few cases of Nazarenes and Jehovah's Witnesses are known, but no figures are available (CE). In addition, there are at least three conscientious objectors from fundamentalist Catholic groups (AI).

Ireland: There is no known case (CE).

Israel: Some Jews have refused service in the occupied territories or in Lebanon. Also, there are Jehovah's Witnesses who have refused army service, and some Druze (a sect not exempt from military service, unlike other Muslims) have refused conscription (AI).

Italy: Cases exist (favourable view in about 94 per cent of cases). So far only one person has opted for unarmed military service (Government reply). In 1976 there were 535,314 eligible conscripts and 2,628 applications were made (CE).

Japan: There is no known case of conscientious objection (ICYE).

Lao People's Democratic Republic: There is no information on conscientious objectors, but since 1979 there have been reports of many Laotian refugees crossing into Thailand to escape the threat of general conscription (AI).

Luxembourg: There has been no known case since 1967 (CE).

Netherlands: Cases are known (CE):

	1978	1979
Eligible conscripts	121 822	122 324
Applicants for conscientious objector status	2 432	3 091
Recognized applications	624	36
Cases upon which no decision had been reached as at 1 January 1980	1 321	2 873

Norway: In 1978, there were 2,000 applications for transfer to civilian service and 1,860 recognized claims (CE).

Poland: Some cases, including Jehovah's Witnesses and Tolstoyans, are reported, but no official statistics are available (CE).

Portugal: It is estimated that there are about 20 cases of conscientious objection (CE). From 1976 to 1979 a total of 704 used their right to conscientious objection (502 at the time of enlistment, 202 after incorporation) (Government reply).

Romania: Some religious groups such as Nazarenes have been known to refuse military service, but no figures are available (CE). Some Reformed Seventh Day Adventists have been imprisoned for refusal to perform military service on the sabbath (Saturday) (AI).

Singapore: Some Jehovah's Witnesses (a banned group) have been detained for refusing to serve in the army (AI).

South Africa: 1978: 3,123 failed to report for military service; 6 having reported, failed to render service or undergo training; 284 convicted for failing to report; 6 convicted for failing to serve or undergo training; 55 convicted who advanced conscientious objection as a ground for such failure (*Notes and Documents* No. 27/79).

Some Jehovah's Witnesses and members of "peace churches" have been prosecuted as conscientious objectors, but some other objectors, usually Baptists and Anglicans, have specifically refused to serve in the South Africa Defence Force because of its role in Namibia and its connection with the police (AI).

Spain: Several cases are reported but no official statistics exist (CE). It is estimated that 825 conscientious objectors were imprisoned between 1958 and 1976, sentenced to a total of 3,218 years, 1,904 of which were actually served (ISMUN).

Sweden: There are known cases of conscientious objection. There has been an increase in applications since 1977 (upon announcement of legislative changes). The application rate for non-military service was 50 per cent higher in 1979 than the annual average for 1972-1976. In 1979, 15 per cent of applications were refused (35 per cent for 1972-1976) (Government reply). In 1980, 3,836 applied for conscientious objector status, 3,531 cases were examined and 2,961 accepted (CE).

Switzerland: According to official sources, 354 objectors were convicted of refusing military service in 1980; there were 593 cases in 1981 (AI).

Syrian Arab Republic: There is no known case (Government reply).

Turkey: There is no information about cases of conscientious objection (CE).

USSR: Several cases are reported but no official statistics are available (CE). Conscientious objectors include Baptists, members of the Pentecostal Church and other Evangelical Christians, Jews and Germans; some members of the Pentecostal Church wishing to emigrate have also refused military service as possible acquaintance with military secrets would delay application for emigration for five years (AI).

United Kingdom: Some cases exist. One was reported in 1979 (a captain was discharged from the army as a conscientious objector by an appeals tribunal) (CE).

Yugoslavia: There are a few known cases of Nazarenes imprisoned for refusal to perform military service, but no official statistics are available (CE).

6. ALTERNATIVE AND DEVELOPMENT SERVICE

Algeria: There is no alternative service (ISMUN).

Argentina: Although there is no official recognition of conscientious objection, *ad hoc* administrative procedures apparently enable some conscientious objectors to perform alternative service (ISMUN).

Australia: No provision is made for alternate service persons totally exempted from defence service on grounds of conscientious belief; persons so exempted are under no further liability for any service. Persons exempted from combatant duties on grounds of conscientious belief would of course be employed in the Defence Force on non-combatant duties. It is possible that in circumstances which warranted the introduction of compulsory military service the Government would also assume powers to direct the non-military labour force. In that event, persons having the status of conscientious objectors would, in common with the rest of the civilian labour force, be subject to employment controls, but this is not a compulsory alternative to military service (Government reply).

Austria: Alternative service exists and consists of non-combatant service or civilian service, including social work, hospital work, rescue service, highway maintenance, etc. When the provincial government permits, it is possible to do educational work (CE). Control is effected by the Ministry of the Interior. There were about 3,900 conscientious objectors in alternative service in 1980 (WRI).

Belgium: Alternative service exists. It constitutes a derogation for the benefit of conscientious objectors but not a right for them (Law of 20 February 1980) (Government reply). Conscientious objectors are

subject to the same conditions as conscripts, but no allowance is made for clothing and housing (WRI). They serve in civil defence, health and social services, educational services, peace service and international service (FWCC and CE).

Benin: National service includes working for schools for 10 months as well as military training (two months) (AI).

Brazil: There is no alternative service; some army units work on civilian construction (ICJ).

Bulgaria: There is no official alternative service. The possibility exists for objectors to perform non-combatant duties within the army (CE).

Byelorussian SSR: There is no provision for alternative service (ISMUN).

China: There is no alternative service. Conscripts apparently perform part of their national service in agricultural tasks (ISMUN).

Cuba: The armed forces are reportedly involved in development projects (ISMUN).

Cyprus: There is no alternative service (CE). The army reportedly participates in development work (ISMUN).

Czechoslovakia: No official alternative service exists. There is a possibility for those objecting to the use of arms to be assigned to non-combatant duties within the army (CE).

Democratic People's Republic of Korea: There is no provision regarding alternative service (ISMUN).

Denmark: Alternative service is available: civilian work—11 months; possibility of transfer to the medical corps (Government reply); kindergartens, hospitals, forestry, libraries, museums, United Nations movement, etc. (WRI) and (CE); alternative service abroad: two years in developing countries (CE). Application for transfer to civilian work is submitted to the Directorate for Conscientious Objector Service; possibility of appeal of the Ministry of the Interior exists (CE).

Ecuador: Ecuadorian legislation does not prescribe an alternative service (Government reply).

Egypt: There is no alternative service (ISMUN).

El Salvador: For the time being there is no alternative manner of performing military service; however, a study has already been carried out with a view to establishing such an alternative, but it is in no way connected with conscientious objection to military service (Government reply).

Finland: Alternative service exists (unarmed service and civilian service). The Ministry of Labour approves institutions for civilian service (Government reply). Alternative service is accomplished in hospitals, social welfare institutions, prisons, etc. (CE). The length of service (unarmed and civilian) is longer than regular service (Government reply).

France: Alternative service is recognized (Decree of Bregainçon). The Ministry of Agriculture and the Cultural Secretariat or Office of Social Aid are responsible for organizing civilian service. The Ministry of Defence approves the organization and administration of civilian service (forestry work, cultural or social work). Possibility of non-combatant service within the army (CE). Service is twice as long as ordinary military service (WRI).

Young persons granted the status of conscientious objector come under the authority of the Ministry of Agriculture. As such they are employed either by the National Forestry Commission or by other public bodies attached to various ministries or by private bodies performing tasks of public interest (Government reply).

Gabon: There is no alternative service (ISMUN).

German Democratic Republic: Non-combatant service is available and lasts 18 months; it includes road building, repair of military exercise grounds and emergency services (CE and AI).

Germany, Federal Republic of: Alternative service exists. Objectors may choose to perform a development service in the Federal Republic or in developing countries (ISMUN). Civilian service must be for the benefit of the public at large (priority to the social sphere) (Government reply). Recognized conscientious objectors objecting to the performance of any kind of service can be released from obligations if they show willingness to serve voluntarily in a health or similar institution for two and a half years (CE). Length of normal alternative service corresponds to normal military service (Government reply).

Greece: Unarmed military service for twice the duration of armed military service is provided by Law 731/77 (AI). The Ministry of Defence is responsible for organizing non-combatant service (CE).

Guatemala: There is no alternative service (ISMUN).

Guyana: Both alternative and development services exist (ISMUN).

Honduras: No alternative service is available (ISMUN).

Hungary: Alternative service is not officially recognized. The possibility exists of being assigned to non-combatant duties within the army (CE). Some Nazarenes may have been allowed to do alternative service since 1977 (AI).

Iraq: There is no alternative service, but part of military training is devoted to educational and other non-military activities (ISMUN).

Israel: Women of military age exempted from defence service are liable to national service for 24 months. This service may be in agricultural work or training, labour service for the defence forces or other State institutions, service in an educational or social welfare institution or medical care (Government reply). In some cases permission has been granted for conscripts to serve only within the 1967 borders (AI).

Italy: Alternative service exists (welfare organizations, civil defence institutions, forestry, with Defence Minister's prior agreement), and is eight months longer than normal service. Unarmed military service exists (Government reply). Voluntary service in developing countries may be considered as performance of national service (CE).

Ivory Coast: There is no provision for alternative service. One element of national service involves work in rural development (ISMUN).

Lebanon: Alternative service exists (FWCC).

Luxembourg: There is no alternative service (CE).

Madagascar: There is no alternative service. However, since 1968 it has been possible to perform national service in work projects in underdeveloped areas (ISMUN). There is a development service, but it is not called a non-combatant service (FWCC).

Malawi: There is no development service (Government reply).

Malta: An alternative service for persons refusing military obligations would be envisaged in case of introduction of conscription (CE).

Mexico: Development service is possible for conscripts, but it is not called a non-combatant service (FWCC).

Morocco: Some persons have reportedly been allowed to serve in underdeveloped parts of the country instead of in the armed forces (ISMUN).

Netherlands: Alternative service exists, of two types: ordinary, which lasts at least 18 months; extraordinary, in case of war, emergency or for persons belonging to a group summoned to perform alternative service only in urgent cases. Status is similar to that of ordinary conscripts. Alternative service is performed in bodies designated by the Ministry of Social Affairs (Government reply).

Norway: Civilian service is available (16 months in non-combatant service, development service, civil defence, humanitarian work, health or social work) (CE).

Papua New Guinea: The Constitution provides for the performance of labour of a reasonable amount and kind as an alternative to compulsory military service in case of conscientious objection. A law to that effect must be reasonably justifiable and passed by a two-thirds majority in the National Parliament (Government reply).

Paraguay: There is no alternative service (ISMUN).

Peru: There is no provision for alternative service (ISMUN).

Philippines: There is no alternative service (ISMUN).

Poland: There is a 24 month civilian service (Law of June 1969) organized by the Ministry of Employment. Activities include work in hospitals, social and public institutions, emergency and conservation work, and non-combatant duties within the army (CE).

Portugal: Alternative service is not yet performed in practice. The Constitution states that conscientious objectors must complete unarmed service of the same duration as compulsory military service (CE).

Republic of Korea: There is no alternative service, but informal non-combatant service may be performed within the military service (ISMUN).

Romania: No information exists on this issue (CE).

South Africa: There is no alternative service, in spite of efforts by the Baptists of South Africa and the Quakers' Yearly Meeting for southern Africa (FWCC).

Spain: Alternative service exists (as provided in the bill on conscientious objection) (CE). The length of alternative service is 27 months. Possibilities for alternative service would include work

for the public welfare in environmental protection, rural improvements, protection of natural resources, social services, etc. (CE).

Sri Lanka: Development service exists (ICJ).

Sweden: Alternative service exists. Non-military service may be performed in fields approved by the Government (civil defence, repair and maintenance sectors on railways, power stations, telephone network, health, agriculture, social services, education, etc.). The length is 420 days (Government reply). Service may be performed in developing countries (CE).

Switzerland: No provision exists for alternative civilian service. There is only the possibility of performing military service in a non-combatant role (AI). There is no alternative civilian service. Such service would require the amendment of article 18 of the Federal Constitution and a draft amendment to that end was rejected in December 1977. A new initiative advocating the introduction of civilian service is pending (public vote in 1984), but the Federal Council recommends its rejection (Government reply).

Syrian Arab Republic: There is no alternative service (ISMUN).

Thailand: There is no provision for alternative service (ISMUN).

Turkey: There is no possibility of alternative service (CE).

Ukrainian SSR: There is no alternative service (ISMUN).

USSR: There is no official alternative service. Possible assignment to non-combatant duties or offer of volunteer work may occur (CE).

United Kingdom: There is no alternative service (Government reply).

United States of America: Alternative service is not currently applicable, but the Military Selective Service Act contains parts relating to conscientious objection and alternative service (Government reply). Alternative service is for 24 months, as in the armed forces (currently under revision) (CSOP).

Upper Volta: There is no alternative service (ISMUN).

Venezuela: There is no provision for alternative service (ISMUN).

Zaire: Some youths are involved in semi-obligatory development projects (ISMUN).

Zambia: Conscientious objectors may perform alternative labour in place of military service (Government reply).

7. POSSIBLE PENALTIES FOR REFUSAL TO PERFORM MILITARY SERVICE

Afghanistan: According to the law, conscientious objectors may face imprisonment (PC).

Albania: Penalties of up to five years' imprisonment may be imposed in peacetime. During a war or emergency, more than five years' imprisonment or the death sentence (AI).

Algeria: According to the law, conscientious objectors may face imprisonment (PC).

Argentina: There is a possibility of extended requirement; desertion may result in imprisonment (ISMUN).

Austria: For those not recognized as conscientious objectors or who do not attend for enrolment, three to six months' gaol is possible. They might face repeated imprisonment (CE).

Belgium: Conscripts refusing all forms of national service may receive a prison sentence of up to three years (CE).

Benin: According to the law, conscientious objectors may face prison (PC).

Brazil: The possible prison penalty is from four months to one year in peacetime and from two to five years in war (ICJ). Under article 210 of the Constitution, loss of civil rights, and under article 149, loss of political rights, may occur. Special taxation may also result from refusal to serve (Government reply).

Bulgaria: Imprisonment for up to seven years is possible (CE). In peacetime, imprisonment of up to three years is provided for by the Criminal Code (1968), article 361 (I). In wartime this may be extended to 20 years or death (AI).

Burma: According to the law, conscientious objectors may face imprisonment (PC).

Byelorussian SSR: According to the law, conscientious objectors may face imprisonment (PC).

Chile: Fines or imprisonment may result from refusal to comply (ISMUN).

China: Various laws for "incitement to desertion" may apply, carrying up to the death sentence (AI).

- Colombia:** Fines or imprisonment may arise from refusal to comply (ISMUN).
- Cuba:** According to the law, conscientious objectors may face imprisonment (PC).
- Cyprus:** Persons not responding to call-up are considered to be deserters (two years' imprisonment and/or fine). Youths reaching 16 years of age may be prevented from leaving Cyprus if it is thought they intend to avoid military service (CE).
- Czechoslovakia:** The penalty applied is imprisonment (2 to 10 years) (CE).
- Democratic People's Republic of Korea:** According to the law, conscientious objectors may face imprisonment (PC).
- Denmark:** Imprisonment for nine months may occur (Jehovah's Witnesses released after three to four months) (WRI). Conscripts refusing all forms of national service may be imprisoned for a maximum of 15 months (CE).
- Ecuador:** Loss of civil rights may arise from refusal to comply (ISMUN).
- Egypt:** Imprisonment or fines may arise from refusal to comply (ISMUN).
- El Salvador:** Conscientious objectors may be imprisoned and treated as deserters (ISMUN).
- Equatorial Guinea:** According to the law, conscientious objectors may face imprisonment (PC).
- Finland:** Conscripts refusing alternative service may face imprisonment (no more than one year). There is no possibility of conditional sentence (Government reply).
- France:** For those refusing all forms of military service and not claiming conscientious objector status, or whose claims are rejected, 2 to 24 months' prison sentence by military tribunal is possible. In practice, less than 10 per cent of defaulters are brought to trial. Deserters and recognized conscientious objectors refusing to register for civil service risk a prison sentence of from six months to three years and could lose their civil rights for five years upon the decision of a civilian tribunal (civil consequences: job restriction) (CE).
- Gabon:** According to the law, conscientious objectors may face prison (PC).
- German Democratic Republic:** Prison sentence of up to 21 months might be faced (CE). The law allows for sentences of up to 5 years, although usually they are no more than 24 months. Those who object for religious reasons may receive slightly shorter sentences for refusing reserve service. Sentences of from six to eight months have been imposed (AI).
- Germany, Federal Republic of:** Refusal to respond to call-up obligations may result in a prison sentence of up to five years (CE). Possible penalty for refusing registration is a fine of up to DM 1,000 (for refusing the tribunal's decision: three years; in practice, maximum 15 months) (WRI).
- Greece:** Although initial sentences of up to 12 years may be imposed, these are reduced to four and a half years on appeal. In practice they are reduced still further. Some prisoners have been released early under Law 1240/82 of 29 March 1982, but many of these have been called up again. On their refusal, some have been sentenced to from one to eight years' imprisonment (AI).
- Guatemala:** Imprisonment may result from failure to comply (ISMUN).
- Guinea:** According to the law, conscientious objectors may face imprisonment (PC).
- Guyana:** Imprisonment and fines may arise from failure to comply (ISMUN).
- Hungary:** Refusal may bring up to five years' imprisonment (in wartime, 10-15 years or the death penalty) (AI).
- Iraq:** Imprisonment or extended service requirements may arise from failure to comply (ISMUN).
- Israel:** Repeated short prison terms or loss of civil rights may result from failure to comply (ISMUN). Jews refusing only service in the occupied territories in Lebanon are usually given sentences of 35 days (sometimes repeatedly). Some Jehovah's Witnesses and Druse who refuse all military service are sentenced to more than a year's imprisonment. Although some objectors are eventually given documents of exemption, it is often still hard to find work, obtain a driving licence, enter a university or receive social service assistance, as reserve records are often requested (AI).
- Italy:** Refusal of all forms of national service may lead to a prison sentence of from two to four years. Loss of recognized conscientious objector status may occur for failing to report for alternative service or behaving inconsistently with such status (CE).
- Ivory Coast:** Loss of civil rights may arise from failure to comply (ISMUN).
- Jordan:** Imprisonment may arise from failure to comply (ISMUN).
- Libyan Arab Jamahiriya:** Military courts can impose prison sentences of at least one year with loss of civil rights of one to five years (AI).
- Madagascar:** Penalties ranging from imprisonment to capital punishment may arise (arts. 124 and 138 of the Penal Code) (Government reply). Loss of civil rights or imprisonment may occur (ISMUN).
- Malawi:** Refusal to serve when called up under the National Service Act is an offence (Government reply).
- Mali:** According to the law, conscientious objectors may face imprisonment (PC).
- Mexico:** Failure to comply may result in loss of civil rights or imprisonment (ISMUN).
- Mongolia:** According to the law, conscientious objectors may face imprisonment (PC).
- Morocco:** Imprisonment may result from failure to comply (ISMUN).
- Netherlands:** If they ignore a lawful summons to perform alternative service, conscientious objectors may face a prison sentence not exceeding two years. In case of non-deliberate offence, they face a prison term not exceeding nine months (Government reply).
- Niger:** According to the law, conscientious objectors may face imprisonment (PC).
- Norway:** Refusal of all forms of national service leads to three months' imprisonment (12 months for continued refusal). There is the possibility of assignment to civilian service in prison (CE).
- Paraguay:** Imprisonment may result from failure to comply (ISMUN).
- Peru:** According to the law, conscientious objectors may face imprisonment (PC).
- Philippines:** Failure to comply may result in fines or imprisonment (ISMUN).
- Poland:** Refusal to register for national service may lead to imprisonment or a fine. Persistent refusal could lead to a prison sentence of from three to five years. Non-completion of military training may involve discrimination or loss of civil rights (CE). An attempt to evade military service permanently has been punishable by up to eight years' imprisonment since 1979 (AI).
- Portugal:** Prison sentence may result from refusal to perform military service. One case is reported of repeated imprisonment for the conscript's refusal to bear arms, with an ultimate sentence of three and a half years for desertion (CE).
- Republic of Korea:** According to the law, conscientious objectors may face imprisonment (PC). Refusal would probably lead to trial by a court martial. Reservists who do not comply with mobilization orders are fined (AI).
- Romania:** Prison sentences of up to five years are possible (AI).
- San Marino:** According to the law, conscientious objectors may face imprisonment (PC).
- Singapore:** According to the law, conscientious objectors may face imprisonment (PC) (AI).
- South Africa:** Military detention may occur (*Notes and Documents* No. 27/79). Members of recognized "peace churches" who are recognized as conscientious objectors usually receive prison sentences of three years, and are kept apart from military prisoners. Objectors to the South Africa Defence Force, however, are court-martialled as military defaulters and, although they are usually sentenced to only one year's detention, they remain liable for future call-up. They are kept with ordinary military prisoners and if they object they are discharged, but detained for a further year in a civilian prison for refusing to obey orders (AI).
- Spain:** Refusal to perform military service leads to up to three years' imprisonment (Military Penal Code). Refusal to perform alternative service leads to prison sentence (CE). Between 1958 and 1976, 825 conscientious objectors were imprisoned (ISMUN).
- Sweden:** Civil courts deal with refusal to perform military or non-military service. First refusal leads to suspended sentence and fine. Second refusal results in reasonably severe prison sentence (four months' open prison, possible release after three months) (Government reply).

Switzerland: Refusal to perform military service is punishable by military tribunals. A distinction is drawn by the law between a conscientious objector and an insubordinate person (for whom the penalty ranges from three days' to three years' imprisonment). Conscientious objectors face a maximum penalty of six months' imprisonment in semi-liberty (Government reply). *Arrêts répressifs* allow certain prisoners to work outside prison boundaries during daytime (AI).

Syrian Arab Republic: According to the law, conscientious objectors may face imprisonment (PC).

Thailand: Failure to comply may result in imprisonment or fines (ISMUN).

Tunisia: According to the law, conscientious objectors may face imprisonment (PC).

Turkey: Refusal to register may lead to a fine. In time of war it could lead to deprivation of liberty or the death penalty (CE).

Ukrainian SSR: According to the law, conscientious objectors may face imprisonment (PC).

Upper Volta: According to the law, conscientious objectors may face imprisonment (PC).

USSR: The treatment is on an *ad hoc* basis. There have been some cases of prison sentences or loss of civil rights (CE). Peacetime penalties are from one to five years' imprisonment; during wartime the death penalty is possible (AI).

United States of America: Penalties exist (CSOP).

Venezuela: According to the law, conscientious objectors may face imprisonment (PC). Anyone acting in Venezuela as a "conscientious objector" places himself outside the law and becomes an offender (Government reply).

Yugoslavia: Sanctions for criminal acts are applied regardless of the reasons invoked (Government reply); one to ten years' imprisonment; repeated imprisonment for refusal to register after release for first refusal (CE).

8. DISSEMINATION OF INFORMATION ON THE POSSIBILITY OF OBTAINING CONSCIENTIOUS OBJECTOR STATUS

Austria: Conscripts must be informed of the right to be released from military service on conscientious grounds. Information on application procedure may be obtained from the police (CE).

Belgium: There is easy access to information (official publications—right to refuse military service defined in call-up papers) (CE). An official leaflet is published by the Ministry of the Interior (WRI).

Cyprus: This section is not applicable (CE).

Czechoslovakia: This section is not applicable (CE).

Denmark: Information is not automatically provided. Two official schools for recognized conscientious objectors exist (four weeks' course) (CE).

Finland: Information on the right to refuse military service as a conscientious objector is given by the draft board (CE).

France: The right to information is not legally recognized. Propaganda "likely to incite potential conscripts to benefit from the provisions of the law recognizing conscientious objection" is punishable by a fine or imprisonment (AI).

German Democratic Republic: There is no automatic release of information (CE).

Germany, Federal Republic of: Usually there is no information on the right to refuse military service for conscripts. Propaganda on conscientious objection is not authorized within barracks. An official training session for recognized conscientious objectors exists (CE).

Greece: Information is not automatically given (CE).

Hungary: This section is not applicable (CE).

Italy: Release of information is not automatic. Special training sessions for conscientious objectors are held at the beginning of the period of alternative service (CE).

Netherlands: There is easy access to information on the rights of conscientious objectors (defined in call-up papers). In case of an unsuccessful claim, conscripts receive details of legal rights and how to appeal (CE).

Norway: Information is available at call-up time. An official school exists for recognized conscientious objectors (two months' course) (CE).

Poland: No information is available.

Romania: This section is not applicable (CE).

Spain: Information is not automatically given. Propagation of information is not expressly forbidden, but there are cases of arrest and imprisonment (CE).

Sweden: A pamphlet is distributed before registration concerning opportunities for alternative service. Applicants are informed of legislation regarding conscientious objectors and alternative service (CE).

Turkey: It is illegal to incite to resistance to military service. Possible imprisonment and heavy fines may occur (CE).

USSR: This section is not applicable (CE).

United Kingdom: Information is not automatic (CE).

Annex II

LISTING OF COUNTRIES OR TERRITORIES ACCORDING TO THEIR POSITION WITH REGARD TO CONSCRIPTION AND ALTERNATIVE SERVICE

1. In this annex, countries or territories about which relevant information (as reflected in annex I above) is available have been listed according to their situation with regard to conscription and alternative service.

2. List 1 shows countries or territories in which there is no conscription. It should be noted that, according to the information collected, in some of these countries or territories it is possible for conscientious objectors to perform alternative service in place of military service (Zambia), or would be possible if compulsory military service were introduced or reintroduced (Australia, Malta, Papua New Guinea, United States of America).

3. List 2 shows countries in which compulsory military service exists in law but is not enforced in practice.

4. List 3 shows countries in which conscription is enforced and conscientious objection legally recognized, and in which objectors may perform civilian and/or unarmed military service.

5. List 4 shows countries in which conscientious objectors may perform unarmed (non-combatant) service within the military forces. This list is divided into two categories: (a) countries where the possibility of performing such unarmed service is legally and officially recognized; (b) those where such a possibility exists only on an *ad hoc* or unofficial basis.

6. Finally, list 5 shows countries in which conscription exists and no alternative service is available to conscientious objectors.

1. Countries or territories in which there is no conscription

Australia (in peacetime)	Liberia
Bahamas	Liechtenstein
Bahrain	Luxembourg
Bangladesh	Malawi (compulsory call-up in times of national emergency)
Barbados	Malaysia
Bhutan	Maldives
Botswana	Malta
Brunei	Mauritania
Burundi	Mauritius
Cameroon	Monaco
Canada	Nauru
Central African Republic (except for civil servants)	Nepal
Congo	New Zealand
Costa Rica	Nigeria
Dominican Republic	Oman
Gambia	Pakistan
Ghana	Panama (in peacetime)
Grenada	Papua New Guinea
Holy See	Qatar
Hong Kong	Rwanda
Iceland (may be introduced in times of national emergency)	Samoa
India (may be introduced in times of national emergency)	Senegal
Indonesia	Sierra Leone
Ireland (may be introduced in time of national emergency)	Sikkim
Jamaica	Somalia
Japan	Sri Lanka
Kenya	Sudan
Lebanon	Swaziland
Lesotho	Togo
	Tonga (in peacetime)
	Trinidad and Tobago
	Uganda

United Arab Emirates
United Kingdom
United Republic of Tanzania

United States of America
Zambia
Zimbabwe.

2. Countries in which conscription exists but is not enforced

Burma
Haiti
Honduras
Ivory Coast (only selectively imposed)

Upper Volta
Zaire

3. Countries in which provision is made for civilian and/or unarmed military service

Austria
Belgium
Denmark
Finland
France
Germany, Federal Republic of
Guyana
Israel (for women)

Lebanon
Netherlands
Norway
Poland
Spain
Sri Lanka
Sweden

4. Countries in which provision is made for non-combatant service in the armed forces

(a) On a legal basis

German Democratic Republic
Greece
Portugal

South Africa
Uruguay

(b) On an ad hoc basis

Argentina
Bulgaria
Czechoslovakia
Hungary

Republic of Korea
Switzerland
USSR

5. Countries in which there is conscription without alternative service

Afghanistan
Albania
Algeria
Benin
Brazil
Cape Verde
Chile
China
Colombia
Cuba
Cyprus
Democratic People's Republic of Korea
Ecuador
Egypt
El Salvador
Equatorial Guinea
Gabon
Guatemala
Guinea
Honduras

Iran
Iraq
Israel (for men)
Ivory Coast
Mali
Mongolia
Morocco
Niger
Paraguay
Peru
Philippines
Romania
San Marino
Saudi Arabia
Singapore
Thailand
Tunisia
Turkey
Venezuela
Zambia

Annex III

SUMMARY OF AVAILABLE INFORMATION ON THE QUESTION OF ASYLUM

1. As stated in the introduction to the present report, on 4 December 1981 the Secretary-General addressed a request for observations and comments on the subject of conscientious objection to military service to Governments, concerned specialized agencies, regional intergovernmental organizations and non-governmental organizations. A reminder was sent on 1 December 1982 to those that had not yet complied with the previous request.

2. Among the replies received as at 20 June 1983, some refer to the question of asylum for persons who leave their country because of their objection to military service. A summary of replies received on this matter from Governments, concerned specialized agencies and regional intergovernmental organizations is reproduced below.

A. COMMENTS FROM GOVERNMENTS

Australia

[2 June 1982]

Various moves to have an internationally agreed convention on and definition of asylum have not met with success. At present, Australia's view is that the power to grant asylum is a sovereign one vested in each State, which can be interpreted by each State as it wishes. In general terms, asylum is the protection that a State grants to an alien, either by allowing him to remain in its territory (territorial asylum), or by providing protection in a limited number of places under its jurisdiction, but outside its territory (extra-territorial asylum). Political asylum (which encompasses both territorial and extra-territorial asylum) is neither codified nor structured, either domestically or internationally. In effect, political asylum can be what any country wishes it to be at any time.

In these circumstances, Australia would not wish to institutionalize political asylum by laying down guidelines on granting political asylum to conscientious objectors. Each case would have to be dealt with on its merits and against the background of the political situation in the applicant's homeland at the time the application was made.

As a party to the 1951 Convention relating to the Status of Refugees,^a Australia is aware of the criteria under the Convention for determining refugee status on the grounds of conscientious objection to performing military service.

Ecuador

[11 March 1983]

The right of asylum is regulated by domestic law and the international conventions in force for Ecuador.

The determination of the offence, for the purposes of granting asylum, rests with the granting State, as provided in article IV of the Convention on Diplomatic Asylum adopted at the Tenth Inter-American Conference, held at Caracas, Venezuela, in 1954.^b Political motivations may be accepted as a valid reason for application for diplomatic asylum by deserters (art. III of that Convention).

El Salvador

[25 March 1983]

The question of asylum for persons who have left their country on grounds of objection to military service has not been recognized.

No provision is made in El Salvador for cases in which persons object to performing military service on grounds of conscience; exemptions from military service have been made only for family or health reasons.

^a United Nations, *Treaty Series*, vol. 189, No. 2545, p. 150.

^b See Pan American Union, *Law and Treaty Series* (Washington, D.C., 1954).

Thus it is not appropriate for El Salvador to grant the right of asylum to persons who have objected, for whatever reason, to military service and who, after failing to gain recognition of their objection, have left their country.

This position stems from the principle that implementation of the right of asylum rests with the granting State, whose power to grant asylum is based on a legal and political institution for the protection and respect of fundamental human rights, inasmuch as it protects persons persecuted on political grounds or for political offences, or for ordinary offences connected with political offences.

El Salvador has always followed the guidelines traditionally recognized in Latin American law and has attached the greatest importance to the right of asylum. Thus it is a party to the Convention on Diplomatic Asylum and the Convention on Territorial Asylum adopted at the Tenth Inter-American Conference, held in Caracas, Venezuela, in 1954.^c

Consequently, asylum is not appropriate in the case of persons who refuse to discharge their obligation to perform military service, as they have not committed a political offence but rather an ordinary offence.

Greece

[21 July 1982]

With regard to the right of asylum of conscientious objectors, Greece considers that article 1, A, of the Convention relating to the Status of Refugees of 28 July 1951^d makes no specific provision for granting the status of "refugee" or according the right of asylum to persons refusing recruitment for military service on the grounds of their religious beliefs.

Morocco

[22 April 1982]

The concept of conscientious objection is incompatible with the principles upon which Morocco is founded as a nation and a State.

The Kingdom of Morocco nevertheless accepts the right of asylum for persons who have committed an offence in their country involving violation of military obligations.

New Zealand

[16 February 1982]

The New Zealand Government usually considers requests for asylum in the context of the 1951 Convention relating to the Status of Refugees^e and the 1967 Protocol relating to the Status of Refugees.^f A note on the procedures for the determination of refugee status in New Zealand has been published by the United Nations High Commissioner for Refugees.^g

The New Zealand Government would not usually regard draft evasion in itself as sufficient grounds for the granting of refugee status. The fact that an applicant for refugee status had evaded military service in his home country would have to be assessed together with such factors as the asylum seeker's moral, political or religious beliefs, the nature of the society enforcing military service, the penalties imposed on those refusing, the nature of the military action and the international background.

^c *Ibid.*

^d See footnote *a* above.

^e See footnote *a* above.

^f United Nations, *Treaty Series*, vol. 606, No. 8791, p. 267.

^g A/AC.96/Inf.152/Rev.3, paras. 99-103.

Saudi Arabia

[17 September 1982]

Asylum for alien minorities is dealt with under the overall policy which Saudi Arabia deems fit and in accordance with the conventions to which Saudi Arabia is a party.

Swaziland

[18 April 1983]

Asylum for persons who have fled their country because of their objection to military service has not been recognized. The Government's view is that asylum or safe transit to another State may be granted, in the spirit of the Declaration on Territorial Asylum,^h 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.

Syrian Arab Republic

[18 March 1983]

Persons who seek asylum in the Syrian Arab Republic after having fled from their own countries because of their objection to military service are treated in accordance with the agreements concluded between the Syrian Arab Republic and the Governments of those countries.

Venezuela

[23 March 1983]

With regard to friendly countries with which it has signed agreements of this kind, Venezuela has always followed the custom of respecting the sovereignty of the country granting asylum in matters pertaining to the appraisal of the events that lead to a request for asylum. Should an event of this nature occur, it would be advisable to continue this procedure.

Zambia

[16 July 1982]

There is no law in Zambia providing specifically for cases of asylum for persons who have fled their country because of their objection to military service. The only piece of legislation that can broadly relate to this issue is the Refugees (Control) Act, cap. 112 of the Laws of Zambia.

Section 3 (1) of cap. 112 provides: "the Minister may declare, by Statutory Order, any class of persons who are, or prior to their entry into Zambia were, ordinarily resident outside Zambia, to be refugees for the purposes of this Act".

By Statutory Instrument 240 of 1971, the Refugees (Control) (Declaration of Refugees) Order, "persons who are, or prior to their entry into Zambia were, ordinarily resident outside Zambia and who have sought asylum in Zambia owing to well-founded fear of being persecuted for reasons of race, religion, membership of a particular social group or political opinion are declared to be refugees for the purposes of the Act".

^h General Assembly resolution 2312 (XXII) of 14 December 1967.

B. COMMENTS FROM SPECIALIZED AGENCIES

United Nations High Commissioner for Refugees

[15 February 1982]

Objection to military service for reasons of conscience is not a subject on which this Office, having regard to its terms of reference, possesses comprehensive information. Conscientious objectors may however be considered as refugees and be granted asylum if they fulfil the normal criteria of refugee status, i.e. if they have a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion. In applying these criteria to conscientious objectors, it should be borne in mind that fear of prosecution or punishment for objection to military service, desertion or draft evasion, is not a reason for granting refugee status unless there are also elements indicating a well-founded fear of persecution under the refugee definition. Whether such elements exist must of course be determined according to the circumstances of the particular case.

With regard to persons who refuse service in military or police forces which are used to enforce *apartheid*, reference should also be made to General Assembly resolution 33/165 of 20 December 1978 which, *inter alia*, calls upon member States to grant asylum and to consider favourably the granting to such persons of all the rights and benefits accorded to refugees under existing legal instruments.

C. COMMENTS FROM REGIONAL INTERGOVERNMENTAL ORGANIZATIONS

Organization of African Unity

[11 March 1982]

It is proposed to discuss the question of conscientious objection to military service as it affects refugees emanating from the dependent territories of southern Africa vis-à-vis those emanating from independent Africa.

The modest experience of OAU in refugee service in Africa reveals that a substantial number of refugees fleeing both South Africa and Namibia do so on the basis of conscientious objection to the military service obtaining in these two territories. More specifically, those who flee these territories do so mainly because: (a) they do not want to be used by the obnoxious régime of South Africa to massacre their own kith and kin, and (b) they are conscientiously opposed to the abhorrent *apartheid* régime of South Africa, in all its forms.

Related to this notion of conscientious objection to military service in the dependent territories of southern Africa is the tendency of some members of the liberation movements to abandon their respective movements, usually to seek asylum in other countries altogether. They do this when they no longer agree with the methods used by the rest of the members of the movement in their enduring struggle to bring the racist South African Government to its knees. The proviso is that those who forsake their movements do so not because they are no longer interested in advancing the collective aims and objectives of the movement. Rather it is a question of the approach or method for achieving these noble objectives that causes them to split with their movements.

The OAU office does not have substantive information indicating that conscientious objection to military service constitutes a serious issue with independent Africa.