

Strategy planning of CO movement

James Reilly

Greetings, and thank you for inviting me to take part in this exciting conference on the issue of conscientious objection in Korea. I would like to thank all the conference organizers, particularly Giyoun Kim and Choi Jung Min, for all their hard work in making this event possible.

I will make a few introductory remarks in the form of a series of extended questions, and then open the floor up for a group discussion. I offer these comments humbly, as a newcomer to both the issue of conscientious objection and to the country of South Korea, in the hopes that they will give rise to useful discussion both this afternoon and throughout the conference. My questions are grouped into four categories: overall concepts, movement dynamics, strategy, and tactics.

Conceptual Issues

" Every subjects duty is the Kings; but every subjects soul is his own. "

-William Shakespeare, Henry V

Ever since governments existed, there has been a debate as to the proper dividing line between civic duty and individual liberty. The issue of conscientious objection goes to the heart of this issue.

1) Conscientious objectors can be divided a number of ways: on the basis of their opposition (secular or religious), on the extent of their opposition (opposed to all wars, to particular conflicts, or just particular weapons), and by their willingness to serve (refuse all service, do civilian service, or non-combatant service in military). Should Korea embrace all of these types of COs? If not, where should the line be drawn? Fundamentally: who is a CO, and who gets to decide?

2) Many of the fundamental notions of citizenship in Korea are tied up with the

tradition of military service. How can the CO movement coherently address questions of patriotism, of service to the nation, and assuring national security in a way that both builds the movement internally and expands public support and understanding?

3) Over the past decade, recognition of the right of conscientious objection has accompanied the strengthening of democracy in Eastern Europe and Latin America. How can the CO movement in Korea draw the connection between a more complete democracy in Korea and the right to conscientious objection? What potential does this have for gaining new allies? What recent successes or failures can we point to?

Movement Politics

1) Social movements always face a tradeoff between retaining internal unity and building a broad coalition of support. For the CO movement, the primary challenge appears to be bridging potential gaps between the peace movement and religious groups. One challenge is how to stand together with the Jehovahs Witnesses who make up the vast majority of CO prisoners in Korea; another is how to build links to the progressive Christian groups who were so critical in the democracy movement in Korea? How are these two issues related?

Strategy

1) The question of when and how to compromise in politics is never an easy one. What kinds of compromises are likely necessary in Korea in the near future on issues such as the length (and existence of) alternative service, the type of service, definitions of COs, the administering of a CO system, and proper cooperation between the government and NGOs? What kinds of problems do these compromises raise in regards to long-term goals and to retaining movement unity?

2) How can or should the CO movement relate to the issue of South Koreas policy toward the North? Is it beneficial or proper to combine the two issues, i.e. to link the CO movement up with the issue of national security policy?

Tactics

1) What groups represent important, yet largely untouched, potential allies for the CO movement? What about families of individuals who have suffered under military service?

2) What are the best ways to increase the number of COs? What role can counseling before, during, and after military service play in such outreach to potential COs?

3) Which parts of the government should the CO movement focus on—the courts, legislature, or the President? What are some effective lobbying tactics, and how can international organizations and international pressure help these efforts?

Meaning and History of Conscientious Objection to Military Service

Rachel Brett

Introduction

The issue of conscientious objection to military service has a long and honourable history. For more than 300 years, Quakers have refused to participate in war, believing it is wrong to kill or to train people to kill. It is on these grounds that Quakers claim the right to conscientious objection to military service, not only for themselves but for all who share their pacifist beliefs.

At the same time, Quakers have recognised the need to find alternative methods to resolve the inter-state problems that are bound to arise. This is why they are strong supporters of the United Nations, maintaining offices to the United Nations in both Geneva and New York, and holding General Consultative Status with the UN Economic and Social Council as an international non-governmental organisation.

Quakers support the resolution of conflicts by peaceful means, including through mediation, negotiation, arbitration and the International Court of Justice. They also recognise the importance of addressing the causes of wars: it is not enough to refuse to participate. We must also work to reduce the reasons why they arise in the first place.

Background

One of the conceptual problems which arises in relation to conscientious objection to military service is the confusion between national defence, security, patriotism and the use of military force. Many people see these as one and the same thing. However, this is not necessarily the case. South Africa appointed a Deputy Minister of Defence who is a known Quaker and pacifist because the government recognised that defence did not necessarily have to mean the use of military force. Many pacifists are deeply devoted to their country, and are willing to serve in other ways: this is where the question of a civilian service as an alternative to military service comes in: it mediates between the conscience of the individual and the

demands of the State.

Standards

Conscientious objection to military service has been recognised in some States for many decades. Its recognition in international law is a more recent development. It is not specifically included in any of the existing international or regional human rights treaties. In 1989, however, the United Nations recognised conscientious objection to military service as a legitimate exercise of the right to freedom of thought, conscience and religion.⁴³⁾ Since 1993, it has also been accepted as being included within the International Covenant on Civil and Political Rights by the Human Rights Committee, the supervisory body for that treaty.⁴⁴⁾

The right to freedom of thought, conscience and religion is an unqualified and non-derogable right, even during times of national emergency threatening the life of the nation.⁴⁵⁾ The right to manifest one's religion or belief too is non-derogable, although some restrictions on it are permitted. However, it is subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.⁴⁶⁾ Unlike some other human rights provisions, no limitation is permitted on the grounds of national security.

The basis of conscientious objection to military service in the right to freedom of thought, conscience and religion gives it an extensive rather than a restrictive

43 UN Commission on Human Rights resolution 1989/59, reinforced and developed in succeeding resolutions 1993/84, 1995/83, 1998/77, 2000/34 and 2002/45.

44 Human Rights Committee General Comment 22(48), followed and developed in subsequent questioning of States reporting under the Covenant and in the Committee's consideration of individual complaints under the First Optional Protocol to the Covenant. None of the regional human rights courts has yet ruled on the question. However, the Committee of Ministers of the Council of Europe Recommendation 8 (1987), recommended that the Council's Member States provide for the release from the obligation to perform military service those who refused "for compelling reasons of conscience", and the Charter of Fundamental Rights of the European Union (proclaimed in December 2000) in the provision on the right to freedom of thought, conscience and religion, states specially, Article 10(2): "The right to conscientious objection is recognised". Similarly, the Inter-American Commission on Human Rights invited OAS States whose legislation did not exempt conscientious objectors from military service to review their legal regimes (98th session, Annual Report, 1997, Chapter VII - Recommendations of the Inter-American Commission on Human Rights).

45 Article 18, Universal Declaration of Human Rights; Article 18 (1) International Covenant on Civil and Political Rights

46 International Covenant on Civil and Political Rights, Article 18(3)

scope. The Human Rights Committee's General Comment 22 states that Article 18 covers theistic, non-theistic and atheistic beliefs, as well as the right to change one's religion or belief. The Committee has also made clear that providing for conscientious objectors only on religious grounds is not acceptable.⁴⁷⁾ Conscientious objection has been specifically acknowledged as deriving from "principles and reasons of conscience, including profound convictions, arising from religious, moral, ethical, humanitarian or similar motives"⁴⁸⁾.

Conscientious objection to military service is not limited to pacifists, that is those who object to all use of armed force or participation in all wars. It also encompasses "those who believe 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)".⁴⁹⁾ There is a long history of "selective" or "partial" objection, for example on the basis of the Just War concept. Although General Comment 22 refers to situations where "the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief"⁵⁰⁾, at no point does it specify that the objection has to be to the use of lethal force at all times.

Practicalities

Even where conscientious objection to military service is recognised by the State, this recognition may be notional rather than real. In order to be valid, the following conditions must be met:

1. it must be established by law and the law must be applicable in practice;
2. its availability, and the means of claiming it, must be known to those for whom it is relevant;

47 See, for example, the Human Rights Committee's concluding observations on Ukraine (CCPR/CO/73/UKR of 12 November 2001, para. 20) and on Kyrgyzstan (CCPR/CO/69/KGZ of 24 July 2000, para. 18)

48 UN Commission on Human Rights resolution 1998/77. At the same time, the Human Rights Committee's General Comment 22 makes clear that "Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms belief and religion are to be broadly construed." (paragraph 2)

49 UN Report, "Conscientious Objection to Military Service" by Eide and Mubanga-Chipoya (New York, 1983)

50 Paragraph 11

3. the recruitment practices must be such as to enable a claim of conscientious objection to be made;
4. the procedure for claiming it must meet the international standards, for example, who decides on the validity of claims and on what basis;
5. the scope (grounds) of the recognition must not be restricted in ways not permitted by international law;
6. It must be available to serving soldiers and reservists as well as to new recruits. Although the question of conscientious objection to military service arises most frequently in the context of conscription (compulsory or obligatory military service), it can arise even when the original decision to join the armed forces was voluntary, or when the obligation to undertake compulsory military service was initially accepted.⁵¹⁾
7. the nature, conditions and duration of alternative service must be compatible with the requirements of international law;⁵²⁾ and
8. there must be no discrimination against conscientious objectors either during the time of alternative service or afterwards, in law or practice. Such discrimination would be a continued violation of their right to freedom of thought, conscience and religion.⁵³⁾

Alternative Service

Since conscientious objection to military service is an expression of the right to freedom of thought, conscience and religion, any alternative service required instead of military service must be compatible with the grounds of the objection. Many States provide a number of alternatives, including unarmed military service for those whose objection is only to the personal use of arms and civilian service under civilian administration for those whose objection is to all use of military force.⁵⁴⁾

51 UN Commission on Human Rights resolution 1998/77 explicitly acknowledges this, "Aware that persons performing military service may develop conscientious objections", and at no point limits the issue to objection to compulsory military service. The Universal Declaration on Human Rights, and General Comment 22 of the Human Rights Committee both explicitly recognise the right of the individual to change their religion or belief, which leads to the same effect.

52 UN Commission on Human Rights resolution 1998/77, paragraph 4, "Reminds States with a system of compulsory military service of its recommendation that they provide for conscientious objectors various forms of alternative service which are compatible with the reasons for conscientious objection, of a noncombatant or civilian character, in the public interest and not of a punitive nature".

53 Human Rights Committee General Comment 22

Alternative service is not always required of conscientious objectors: they, or some categories of them, may be exempted from military service. Alternative service which is punitive in nature, whether because of the type of service or its duration in comparison with the length of military service, is not acceptable because it seeks to deter or punish the exercise of the right to freedom of thought, conscience or religion. If not of the same duration as military service, the alternative service must be "comparable in length"⁵⁵⁾ to it. Any disparity in length is only permissible if it is based on "objective and reasonable criteria, such as the nature of the specific service concerned or the need for a special training in order to accomplish that service".⁵⁶⁾

Who decides?

The difficulty of ruling on the validity of another person's conscientious objection to military service has been resolved in some States by allowing the individual a free choice between military and alternative service, in Finland for example. If an external process is adopted, this cannot be an internal or military one, but an "independent and impartial" body "with the task of determining whether a conscientious objection is genuinely held in a specific case, taking account of the requirement not to discriminate between conscientious objectors on the basis of the nature of their particular beliefs."⁵⁷⁾

Conclusion

The increasing recognition of conscientious objection to military service internationally, regionally and nationally is a significant contribution to the protection of the human rights of individuals who otherwise are forced to either undergo punishment (often repeated imprisonment) or to violate their most fundamental beliefs or principles. It should also be viewed as a positive

54 See for example Recommendation (1987) 8 of the Committee of Ministers of the Council of Europe.

55 Recommendation (1987) 8 of the Committee of Ministers of the Council of Europe

56 Human Rights Committee in *Foin v France*, Communication No. 666/1995 (CCPR/C/67/D.666/1995), decided on 3 November 1999, similarly *Venier and Nicolas v France*, Communications Nos. 690/1996 and 691/1996, and *Maille v France*, Communication No. 689/1996, all decided 10 July 2000.

57 UN Commission on Human Rights resolution 1998/77, para. 3

contribution to society, nationally and internationally, rather than a negative refusal to participate. It is an affirmation of life and of the importance of seeking alternatives to war and the use of military force.

United Nations, Recognition of the Right to Conscientious Objection, and Practices of Alternative Services⁵⁸⁾

Lucie Viersma

The purpose of this report is to: (1) show the historical developments on the issue of conscientious objection within the main organs of the United Nations dealing with human rights matters; (2) lay out the legal basis for the recognition of conscientious objection by the United Nations; and (3) raise awareness on the relevant jurisprudence of the Human Rights Committee as well as on how the individual cases of conscientious objectors are treated by the special procedure mechanisms of the Commission on Human Rights, which could be of use to human rights practitioners.

Part I of the report details how the issue of conscientious objection has progressed through the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Commission on Human Rights and the General Assembly. Part II of the report demonstrates how the Human Rights Committee has been interpreting the issue, including through its general comment, jurisprudence and recommendations. Part III of the report demonstrates how the special procedure mechanisms of the Commission on Human Rights have addressed the state practices and acts that are contrary to the principle of conscientious objection.

While the Commission on Human Rights, in its resolution of 1989, recognized the right of everyone to have conscientious objections to military service as a legitimate exercise of the right to freedom of thought, conscience and religion as laid down in article 18 of the Universal Declaration of Human Rights as well as article 18 of the International Covenant on Civil and Political Rights, the issue of conscientious objection has been on the United Nations agenda for more than three decades.

The right to freedom of thought, conscience and religion is contained in article 18 of the Universal Declaration on Human Rights (hereinafter UDHR) and article 18 of the International Covenant on Civil and Political Rights (hereinafter ICCPR).

⁵⁸ This report does not represent the views of the Office of the High Commissioner for Human Rights.

Article 18 of the Universal Declaration on Human Rights establishes that:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

According to article 18 of the ICCPR,

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

The right to life, liberty and security of person, education, freedom of expression, and the right not to be discriminated against have been also deemed relevant for the issue of conscientious objection.

I. Historical developments within the United Nations

The UN Commission on Human Rights, which is the main subsidiary organ of the United Nations dealing with human rights matters, has addressed the subject of conscientious objection since 1971.

In its resolution 11 B (XXVII) of 22 March 1971, the Commission requested that the Secretary-General make available to it the information on conscientious

objection to military service, included in the country monographs which were prepared in connection with the Study on Discrimination in the Matter of Religious Rights and Practices; 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; and to submit a report on this matter to it as soon as possible. The resolution made a reference to the issue of conscientious objection to military service in the context of the education of youth and the strengthening of its respect for the rights of and fundamental freedoms.

In accordance with the resolution, in 1973, the Secretary-General prepared a report on the question of conscientious objection to military service.⁵⁹⁾

In its resolution 1 A (XXXII) of 11 February 1976, the Commission took note of the Secretary-General's report and decided to give adequate consideration to the problem of recognition of objection to military service at its next session.

In its resolution 33/165 of 20 December 1978, the General Assembly, which is the main deliberative organ of the United Nations composed of representatives of all Member States, recognised 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, 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. The resolution was the most specific endorsement of the right to refuse military participation in cases where the use of armed forces is considered illegal by the international community.⁶⁰⁾

Subsequently, in its resolution 38 (XXXVI) of 12 March 1980, the Commission requested the Secretary-General to seek once again 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, together with any comments they may wish to transmit on the matter.

59 E/CN.4/1118 and Corr.1 and Add.1-3.

60 Conscientious Objection to Military Service, Asbjorn Eide and Chama Mubanga-Chipoya, United Nations publication, Sales No. E.85.XIV.1, para. 68.

In 1981, the Secretary-General issued a report on the role of youth in the promotion and protection of human rights, including the question of conscientious objection to military service.⁶¹⁾

In its resolution 40 (XXXVII) of 12 March 1981, the Commission requested the Sub-Commission on Prevention of Discrimination and Protection of Minorities [hereinafter Sub-Commission] 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.

In its resolution 14 (XXXIV) of 10 September 1981, the Sub-Commission, which is the main subsidiary body of the Commission on Human Rights composed of experts acting in their personal capacity, requested the experts Mr. Asbjorn Eide and Mr. C.L.C. Mubanga-Chipoya to make an analysis of the various dimensions of conscientious objection to military service and its interrelationships with the promotion and protection of human rights and to present to the Sub-Commission a concise report together with their conclusions and recommendations.

In 1982, the Sub-Commission examined a preliminary report prepared by the experts. In its resolution 1982/30 of 10 September 1982, the Sub-Commission requested the experts 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.

In 1983, the experts Mr. Asbjorn Eide and Mr. C.L.C. Mubanga-Chipoya submitted to the Sub-Commission a comprehensive final report on the issue⁶²⁾, reflecting the relevant international norms and standards embodied in various human rights instruments and describing State practice concerning voluntary or compulsory performance of military service. The study, inter alia, requested that the General Assembly to recommend that States should recognize by law the right

61 E/CN.4/1419 and Add. 1-5. See also E/CN.4/1509.

62 Conscientious Objection to Military Service, Asbjorn Eide and Chama Mubanga-Chipoya, United Nations publication, Sales No. E.85.XIV.1.

of persons who, for reasons of conscience of profound conviction arising from religious, ethical, moral, humanitarian or similar motives, refuse to perform armed service, to be release from military service.⁶³⁾ With regard to alternative service, the General Assembly was requested to recommend that 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.⁶⁴⁾

In its resolution 1984/33 of 12 March 1984, the Commission decided to give the widest possible distribution to the report prepared by the experts Mr. Eide and Mubanga-Chipoya, with a view to receiving comments from Governments, relevant United Nations bodies and specialized agencies, other intergovernmental and non-governmental organizations. In 1985, the Secretary-General issued a report containing the comments of Governments, United Nations bodies and non-governmental organisations on the study.⁶⁵⁾

In its resolution 1987/46 of 10 March 1987, the Commission appealed to States to recognize that conscientious objection to military service should be considered a legitimate exercise of the right to freedom of thought, conscience and religion recognized by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, and recommended that States refrain from subjecting to imprisonment persons exercising this right.

Significantly, in its resolution 1989/59 of 8 March 1989, the Commission on Human Rights recognised the right of everyone to have conscientious objections to military service as a legitimate exercise of the right of freedom of thought, conscience and religion as laid down in article 18 of the Universal Declaration of Human Rights as well as article 18 of the International Covenant on Civil and Political Rights. The resolution also recommended to States with a system of compulsory military service, where such provision has not already been made, that

63 Ibid., para. 153 (1) (a).

64 Ibid., para. 153 (3).

65 E/CN.4/1985/25 and Add.1-4.

they introduce for conscientious objectors various forms of alternative service which are compatible with the reasons for conscientious objection, bearing in mind the experience of some States in this respect, and that they refrain from subjecting such persons to imprisonment. The resolution further emphasized that such forms of alternative service should be in principle of a non-combatant or civilian character, in the public interest and not of a punitive nature.

In its resolution 1991/65 of 6 March 1991, the Commission requested the Secretary-General to report to the Commission on the matter at its forty-ninth session during 1993 and decided to consider the question further at its forty-ninth session under the agenda item 'The role of youth in the promotion and protection of human rights, including the question of conscientious objection to military service'.

In 1993, the Commission considered the report of the Secretary-General on the issue.⁶⁶ In its resolutions 1993/84 of 10 March 1993 and 1995/83 of 8 March 1995, the Commission reaffirmed the right of everyone to conscientious objection to military service as stated in resolution 1989/59 and reminded States of its previous recommendation with regard to alternative service and its nature. The Commission resolutions from 1993 and 1995 also affirmed that persons performing military service should not be excluded from the right to have conscientious objections to military service.

The Commission's activities in identifying standards on conscientious objection peaked in 1998. In its resolution 1998/77 of 22 April 1998, the Commission, inter alia:

Recognized that conscientious objection to military service derives from principles and reasons of conscience, including profound convictions, arising from religious, moral, ethical, humanitarian or similar motives:

Was aware that persons performing military service may develop conscientious objections:

66 E/CN.4/1993/68 and Add. 1-3.

Recalled article 14 of the Universal Declaration of Human Rights, which recognizes the right of everyone to seek and enjoy in other countries asylum from persecution;

Drew attention to the right of everyone to have conscientious objections to military service as a legitimate exercise of the right to freedom of thought, conscience and religion, as laid down in article 18 of the Universal Declaration of Human Rights and article 18 of the International Covenant on Civil and Political Rights;

Welcomed the fact that some States accept claims of conscientious objection as valid without inquiry;

Called upon States that do not have such a system to establish independent and impartial decision-making bodies with the task of determining whether a conscientious objection is genuinely held in a specific case, taking account of the requirement not to discriminate between conscientious objectors on the basis of the nature of their particular beliefs;

Reminded States with a system of compulsory military service, where such provision has not already been made, of its recommendation that they provide for conscientious objectors various forms of alternative service which are compatible with the reasons for conscientious objection, of a non-combatant or civilian character, in the public interest and not of a punitive nature;

Reiterated that States, in their law and practice, must not discriminate against conscientious objectors in relation to their terms or conditions of service, or any economic, social, cultural, civil or political rights;

Emphasized that States should take the necessary measures to refrain from subjecting conscientious objectors to imprisonment and to repeated punishment for failure to perform military service, and recalls that no one shall be liable 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 (paragraph 5);

Reiterated that States, in their law and practice, must not discriminate against

conscientious objectors in relation to their terms or conditions of service, or any economic, social, cultural, civil or political rights;

Encouraged States, subject to the circumstances of the individual case meeting the other requirements of the definition of a refugee as set out in the 1951 Convention relating to the Status of Refugees, to consider granting asylum to those conscientious objectors compelled to leave their country of origin because they fear persecution owing to their refusal to perform military service when there is no provision, or no adequate provision, for conscientious objection to military service;

After 1998, the Commission moved towards encouraging implementation of the already established standards on conscientious objection. In its most recent resolutions 2000/34 of 20 April 2000 and 2002/45 of 23 April 2002, the Commission called upon States to review their current laws and practices in relation to conscientious objection to military service in the light of its resolution 1998/77. Both resolutions also requested the Office of the United Nations High Commissioner for Human Rights to prepare a compilation and analysis of best practices in relation to the recognition of the right of everyone to have conscientious objections to military service, as a legitimate exercise of the right to freedom of thought, conscience and religion, and the provision of alternative forms of service, and to seek such information from Governments, national human rights institutions, the specialized agencies and relevant intergovernmental and non-governmental organizations and to submit a bi-annual report containing this compilation and analysis. The next report on the conscientious objection to military service is to be submitted to the Commission at its sixtieth session in 2004.

II. Treaty-Monitoring Bodies

Treaty monitoring bodies, or committees, monitor the implementation of the core United Nations human rights treaties. Treaty bodies are composed of independent experts of recognized competence in the field of human rights who are elected by States parties. The states' compliance with the International Covenant on Civil and Political Rights is monitored by the Human Rights Committee. The Human Rights Committee (1) examines State party periodic reports and adopts concluding

observations summarizing its main concerns and making appropriate suggestions and recommendations to the State party; (2) elaborates general comments which consolidate the Committee's understanding of issues arising under the Covenant; and (3) examines individual complaints in a quasi-judicial manner and adopts views.

a. General Comment 22 of the Human Rights Committee

On 30 July 1993, the Human Rights Committee adopted General Comment 22 on the right to freedom of thought, conscience and religion. The General Comment 22, inter alia, affirmed that the right to conscientious objection to military service can be derived from article 18. In paragraph 11 of the General Comment 22, the Committee stated the following:

Many individuals have claimed the right to refuse to perform military service (conscientious objection) on the basis that such right derives from their freedoms under article 18. In response to such claims, a growing number of States have in their laws exempted from compulsory military service citizens who genuinely hold religious or other beliefs that forbid the performance of military service and replaced it with alternative national service. The Covenant does not explicitly refer to a right to conscientious objection, but the Committee believes that such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief. When this right is recognized by law or practice, there shall be no differentiation among conscientious objectors on the basis of the nature of their particular beliefs; likewise, there shall be no discrimination against conscientious objectors because they have failed to perform military service. The Committee invites States parties to report on the conditions under which persons can be exempted from military service on the basis of their rights under article 18 and on the nature and length of alternative national service.⁶⁷⁾

b. Views adopted by the Human Rights Committee

The Committee's position on conscientious objection has evolved over the years. In one of its earlier decisions from 1985, the Committee deemed inadmissible the

⁶⁷ CCPR General Comment 22, Right to freedom of thought, conscience and religion (Art. 18): 30/07/93, para. 11.

communication of L.T.K, a Finish citizen. L. T. K. claimed to be a victim of a breach by Finland of articles 18 and 19 of the ICCPR, stating that his status as conscientious objector to military service has not been recognized in Finland and that he has been criminally prosecuted because of his refusal to perform military service. The Committee stated:

The Covenant does not provide for the right to conscientious objection; neither article 18 nor article 19 of the Covenant, especially taking into account paragraph 3 (c) (ii) of article 8, can be construed as implying that right. The author does not claim that there were any procedural defects in the judicial proceedings against him, which themselves could have constituted a violation of any of the provisions of the Covenant, or that he was sentenced contrary to law.⁶⁸⁾

Following the adoption of General Comment 22, the Committee had before it several cases of conscientious objectors which it considered in relation to article 26.⁶⁹⁾ For example, in 1993, the Committee found that Mr. Henrikus A.G.M. Brinkhof was not a victim of a violation of article 26 and stated:

The Committee considers that the exemption of only one group of conscientious objectors and the inapplicability of exemption for all others cannot be considered reasonable. In this context, the Committee refers to its General Comment on article 18 and emphasizes that, when a right of conscientious objection to military service is recognized by a State party, no differentiation shall be made among conscientious objectors on the basis of the nature of their particular beliefs. However, in the instant case, the Committee considers that the author has not shown that his convictions as a pacifist are incompatible with the system of substitute service in the Netherlands or that the privileged treatment accorded to Jehovah's Witnesses adversely affected his rights as a conscientious objector against military service. The Committee therefore finds that Mr. Brinkhof is not a victim of a violation of article 26 of the Covenant.

The Committee, however, is of the opinion that the State party should give equal

68 Communication No. 185/1984, L.T.K. v. Finland, para. 5.2.

69 According to article 26 of the ICCPR, All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

treatment to all persons holding equally strong objections to military and substitute service, and it recommends that the State party review its relevant regulations and practice with a view to removing any discrimination in this respect.⁷⁰⁾

During 1999 and 2000, the Committee considered several communications against France and found a violation of article 26. In Frederic Foin v. France, the Committee stated the following:

The issue before the Committee is whether the specific conditions under which alternative service had to be performed by the author constitute a violation of the Covenant. The Committee observes that under article 8 of the Covenant, States parties may require service of a military character and, in case of conscientious objection, alternative national service, provided that such service is not discriminatory. The author has claimed that the requirement, under French law, of a length of 24 months for national alternative service, rather than 12 months for military service, is discriminatory and violates the principle of equality before the law and equal protection of the law set forth in article 26 of the Covenant. The Committee reiterates its position that article 26 does not prohibit all differences of treatment. Any differentiation, as the Committee has had the opportunity to state repeatedly, must however be based on reasonable and objective criteria. In this context, the Committee recognizes that the law and practice may establish differences between military and national alternative service and that such differences may, in a particular case, justify a longer period of service, provided that the differentiation is based on reasonable and objective criteria, such as the nature of the specific service concerned or the need for a special training in order to accomplish that service. In the present case, however, the reasons forwarded by the State party do not refer to such criteria or refer to criteria in general terms without specific reference to the author's case, and are rather based on the argument that doubling the length of service was the only way to test the sincerity of an individual's convictions. In the Committee's view, such argument does not satisfy the requirement that the difference in treatment involved in the present case was based on reasonable and objective criteria. In the circumstances, the Committee finds that a violation of article 26 occurred, since the author was discriminated against on the basis of his conviction of conscience.⁷¹⁾

70 Communication No. 402/1990, Henrikus A.G.M. Brinkhof v. The Netherlands, para. 9.3 and 9.4.

71 Communication No. 666/1995, Frederic Foin v. France, para. 10.3.

In *Richard Maille v. France*, the Committee noted:

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In *Marc Venier and Paul Nicolas v. France*, the Committee stated:

The issue before the Committee is whether the specific conditions under which alternative service had to be performed by the authors constitute a violation of the Covenant. The Committee observes that under article 8 of the Covenant, States

⁷² Communication No. 689/1996, *Richard Maille v. France*, para. 10.4.

parties may require service of a military character and, in case of conscientious objection, alternative national service, provided that such service is not discriminatory. The authors have claimed that the requirement, under French law, of a length of 24 months for national alternative service, rather than 12 months for military service, is discriminatory and violates the principle of equality before the law and equal protection of the law set forth in article 26 of the Covenant. The Committee reiterates its position that article 26 does not prohibit all differences of treatment. Any differentiation, as the Committee has had the opportunity to state repeatedly, must however be based on reasonable and objective criteria. In this context, the Committee recognizes that the law and practice may establish differences between military and national alternative service and that such differences may, in a particular case, justify a longer period of service, provided that the differentiation is based on reasonable and objective criteria, such as the nature of the specific service concerned or the need for a special training in order to accomplish that service. In the present case, however, the reasons forwarded by the State party do not refer to such criteria or refer to criteria in general terms without specific reference to the authors' cases, and are rather based on the argument that doubling the length of service was the only way to test the sincerity of an individual's convictions. In the Committee's view, such argument does not satisfy the requirement that the difference in treatment involved in the present cases was based on reasonable and objective criteria. In the circumstances, the Committee finds that a violation of article 26 occurred, since the authors were discriminated against on the basis of their conviction of conscience.⁷³⁾

In 1999, the Committee considered a communication *Westerman v. The Netherlands* in light of article 18 but found no violation. The Committee stated:

The question for the Committee is whether the imposition of sanctions to enforce the performance of military duty was, in the case of the author, an infringement of his right to freedom of conscience. The Committee observes that the authorities of the State party evaluated the facts and arguments advanced by the author in support of his claim for exemption as a conscientious objector in the light of its legal provisions in regard to conscientious objection and that these legal provisions are compatible with the provisions of article 18. See General Comment 22 (48),

⁷³ Communication No. 691/96, *Marc Venier and Paul Nicolas v. France*, para. 10.4.

paragraph 11 dealing with the right to conscientious objection. The Committee observes that the author failed to satisfy the authorities of the State party that he had an 'insurmountable objection of conscience to military service because of the use of violent means' (para. 5). There is nothing in the circumstances of the case which requires the Committee to substitute its own evaluation of this issue for that of the national authorities.⁷⁴⁾

Six members of the Committee dissented, stating that the author's reasons for conscientious objection to military serviceshow that his objection constituted a legitimate manifestation of his freedom of thought, conscience or religion under article 18 of the Covenantand that the State party has failed to provide justification for its decision to interfere with the author's right under article 18 of the Covenant in the form of denial of conscientious objector's status and imposing a term of imprisonment.⁷⁵⁾

There were additional cases⁷⁶⁾ of conscientious objectors that the Committee treated in light of Article 27.⁷⁷⁾

c. Concluding Observations and Comments of the Human Rights Committee

The Committee has further addressed the issue of conscientious objection in its concluding observations and comments, thus recommending action to various Member States.

For example, in recent Concluding Observations on Georgia, the Committee expressed

its concern at the discriminations suffered by conscientious objectors owing to the

74 Communication No. 682/1996, *Westerman v. The Netherlands*, para. 9.5.

75 *Ibid.*, Individual opinion (dissenting) by Committee members P. Bhagwati, L. Henkin, C. Medina Quiroga, F. Pocar and M. Scheinin.

76 Communication No. 511/1992, *Ilmari Lansman et al. v. Finland*; Communication No. 549/1993, *Francis Hopu and Tepoaitu Bessert v. France*.

77 According to article 27 of the ICCPR, In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

fact that non-military alternative service lasts for 36 months compared with 18 months for military service; and regretted the lack of clear information on the rules currently governing conscientious objection to military service. The State party should ensure that persons liable for military service who are conscientious objectors can opt for civilian service the duration of which is not discriminatory in relation to military service, in accordance with articles 18 and 26 of the Covenant.⁷⁸⁾

In Concluding Observations on Viet Nam, the Committee took note of:

the fact that the law makes no provision for the status of conscientious objector to military service, which may legitimately be claimed under article 18 of the Covenant. The State party should ensure that persons liable for military service may claim the status of conscientious objector and perform alternative service without discrimination.⁷⁹⁾

In Concluding Observations on Kyrgyzstan, the Committee noted that:

conscientious objection to military service is allowed only to members of a registered religious organization whose teachings prohibit the use of arms. The Committee regrets that the State party has not sought to justify why the provision on alternative service entails a period of service twice as long as that required of military conscripts, and why persons of higher education serve for a considerably lesser period in the military and in alternative service (arts. 18 and 26).

Conscientious objection should be provided for in law, in a manner that is consistent with articles 18 and 26 of the Covenant, bearing in mind that article 18 also protects freedom of conscience of non-believers. The State party should fix the periods of military service and alternative service on a non-discriminatory basis.⁸⁰⁾

In Concluding Observations on Ukraine, the Committee noted:

with concern the information given by the State party that conscientious objection to military service is accepted only in regard to objections for religious reasons and only with regard to certain religions, which appear in an official list. The Committee is concerned that this limitation is incompatible with articles 18 and 26

78 CCPR/CO/74/GEO (19 April 2002), para. 18.

79 CCPR/CO/75/VNM (26 July 2002), para. 17.

80 CCPR/CO/69/KGZ (24 July 2000), para. 18.

of the Covenant.

The State party should widen the grounds for conscientious objection in law so that they apply, without discrimination, to all religious beliefs and other convictions, and that any alternative service required for conscientious objectors be performed in a non-discriminatory manner.⁸¹⁾

In Concluding Observations on Venezuela, the Committee noted that:

“there is no provision in Venezuelan law for conscientious objection to military service, which is legitimate pursuant to article 18 of the Covenant.”

The State party should see to it that individuals required to perform military service can plead conscientious objection and perform alternative service without discrimination.”⁸²⁾

III. Special Procedures

of the UN Commission on Human Rights and the Economic and Social Council

The Commission on Human Rights and the Economic and Social Council have established several extra-conventional mechanisms or special procedures which also monitor the implementation of human rights standards. The Commission special procedure mechanisms have been entrusted to working groups of experts acting in their individual capacity or individuals designated as Special Rapporteurs, Special Representatives or independent experts.

The Commission mechanisms such as the Working Group on Arbitrary Detention, the Special Rapporteur on Religious Freedom and the Special Rapporteur on Freedom of Expression have recently addressed the issue of conscientious objection.

a. Working Group on Arbitrary Detention

The Working Group on Arbitrary Detention considered the case of Osman Murat Ike, a conscientious objector from Turkey and adopted Opinion No. 36/1999 (Turkey).⁸³⁾ According to the communication, having burned his call-up papers, he was questioned, arrested and detained by the military authorities on several

81 CCPR/CO/73/UKR (12 November 2001), para. 20.

82 CCPR/CO/71/VEN (26 April 2001), para. 26.

83 Opinions Adopted by the Working Group on Arbitrary Detention, E/CN.4/2001/14/Add.1, page 53.

occasions, beginning on 7 October 1996, for refusal to perform military service. He received seven sentences of imprisonment of a few months each. On 4 May 1998, he was sentenced to seven months' imprisonment, bringing the total duration of the sentences to 43 months. With the exception of the period from December 1996 to 28 January 1997, Mr. Ike has been in continuous detention since 7 October 1996. According to the source, Mr. Ike expects to be tried again for the same reason. The source maintains that Mr. Ike's detention is contrary to article 18 of the Universal Declaration of Human Rights. Military service is compulsory in Turkey and the authorities do not recognize civilian service as a legitimate alternative in the case of conscientious objectors.⁸⁴⁾

The Working Group, inter alia, stated in its opinion that:

there is, since, after the initial conviction, the person exhibits, for reasons of conscience, a constant resolve not to obey the subsequent summons, so that there is one and the same action entailing the same consequences and, therefore, the offence is the same and not a new one (see Decision of the Constitutional Court of the Czech Republic, 18 September 1999, No. 2, No. 130/95). Systematically to interpret such a refusal as being perhaps provisional (selective) would, in a country where the rule of law prevails, be tantamount to compelling someone to change his mind for fear of being deprived of his liberty if not for life, at least until the date at which citizens cease to be liable to military service.

It follows that the Working Group considers that Mr. Ike's detention from 7 October to December 1996 was not arbitrary. Regarding the other periods, and in view of the foregoing, the Working Group considers that Mr. Ike's detention is arbitrary, it having been ordered in violation of the fundamental principle *non bis in idem*, a principle generally recognized in countries where the rule of law prevails as being one of the most essential guarantees of the right to a fair trial.

In the light of the foregoing, the Working Group expresses the following opinion:

The deprivation of liberty of Mr. Osman Murat Ike from October to December

84 Ibid, Opinion No. 36/1999(Turkey), para. 5 and 6.

1996 was not arbitrary. His detention since 28 January 1997 is, however, arbitrary, being contrary to article 10 of the Universal Declaration of Human Rights, and it falls within category III of the principles applicable in the consideration of the cases submitted to the Working Group.⁸⁵⁾

In its 2001 report to the Commission on Human Rights, the Working Group adopted the following Recommendation with regard to the detention of conscientious objectors:

The Working Group notes that conscientious objection - which has its theoretical basis in the freedom of conscience and thus of opinion - gives rise, particularly in countries that have not yet recognized conscientious objector status, to repeated criminal prosecutions followed by sentences of deprivation of liberty which are renewed again and again.

The question before the Working Group was whether, after an initial conviction, each subsequent refusal to obey a summons to perform military service does or does not constitute a new offence capable of giving rise to a fresh conviction. If it does, deprivation of liberty, when applied to a conscientious objector, is not arbitrary, provided that the rules governing the right to a fair trial are respected. If it does not, detention must be considered arbitrary as being in breach of the principle of non bis in idem, a fundamental principle in a country where the rule of law prevails, as borne out by 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 punished. This principle is the corollary of the principle of res judicata.

Notwithstanding the above, repeated incarceration in cases of conscientious objectors is directed towards changing their conviction and opinion, under threat of penalty. The Working Group considers that this is incompatible with article 18, paragraph 2, of the International Covenant on Civil and Political Rights, under which no one shall be subject to coercion which would impair his freedom to have or

85 Ibid, Opinion No. 36/1999(Turkey), para. 9-11.

adopt a belief of his choice.

Accordingly, the Working Group recommends that all States that have not yet done so adopt appropriate legislative or other measures to ensure that conscientious objector status is recognized and attributed, in accordance with an established procedure, and that, pending the adoption of such measures, when de facto objectors are prosecuted, such prosecutions should not give rise to more than one conviction, so as to prevent the judicial system from being used to force conscientious objectors to change their convictions.⁸⁶⁾

b. Special Rapporteur on Religious Freedom

The Special Rapporteur on Religious Freedom has addressed the practices and acts contrary to the principle of conscientious objection in his communications to several Member States⁸⁷⁾ and during his country visits.⁸⁸⁾

In his 2001 report to the Commission on Human Rights, the Special Rapporteur concluded that:

First of all, the issue is one of discriminatory or intolerant policies, legislation or State practice, or even indifference on the part of State institutions which is prejudicial to minorities, be they of the 'major religions' or other religious and faith-based communities. Such minorities are mainly affected by: non-recognition of conscientious objection, no provision for alternative civilian service, and the punitive nature of this civilian service by reason of its duration, which particularly affects the Jehovah's Witnesses and other religious and faith-based communities in Belarus, the Republic of Korea, Eritrea, the former Yugoslav Republic of Macedonia and Ukraine; the absence or inadequacy of instruction in minority religions in

86 Report of the Working Group on Arbitrary Detention to the Commission on Human Rights, E/CN.4/2001/14, para. 91-94.

87 E.g., Interim report by the Special Rapporteur on freedom of religion or belief to the General Assembly at its fifty-sixth session, A/56/253, para. 63 and 68 and para. 4 and 5 of the Annex. See also Report of the Special Rapporteur on freedom of religion or belief to the Commission on Human Rights at its 59th session, E/CN.4/2003/66, para. 65-68 (containing a reply from Member State.)

88 See Interim report by the Special Rapporteur on freedom of religion or belief to the General Assembly at its fifty-fifth session (Situation in Turkey), A/55/280/Add.1.

educational establishments in Greece and Norway.⁸⁹⁾

c. Special Rapporteur on Freedom of Expression

The Special Rapporteur on Freedom of Expression addressed the issue of conscientious objection in his report on the visit to Sudan, stating that:

he regrets that the education of the Sudanese people has been relegated to a secondary position, even though he understands the requirements of war. He nevertheless considers that imposing military service as a condition for continuing one's studies is fundamentally a violation of the right to education. Appropriate forms of civil service or conscientious objection to military service should be sought in order to respect both freedom of opinion and the right of students to choose.⁹⁰⁾

d. Joint Communications by the Special Rapporteurs

The Special Rapporteur on Freedom of Expression and the Special Rapporteur on Torture sent joint communications addressing the situation of conscientious objectors. On 22 May 2001, they transmitted a joint urgent appeal to the Government of Turkmenistan stating that with regard to the detention of Dmitry Melnichenko, a member of the Evangelical Baptist Church in Ashgabat, consequent to his refusal to carry arms and swear an oath of military allegiance for reasons of conscience. Dmitry Melnichenko was called up for military service on 10 May 2001 and, after he declared himself a conscientious objector, was taken to a military unit in the town of Serdar in the KizylArvat district. On 15 May 2001, he was brought to the local offices of the National Security Committee where he was beaten on various parts of his body, including the head, with a truncheon. He was also insulted and humiliated before being subjected to electric shocks through wires attached to his head. On 16 May 2001, he was transferred back to the military unit in Serdar.⁹¹⁾

⁸⁹ E/CN.4/2001/63, para. 182.

⁹⁰ Report of the Special Rapporteur on Freedom of Expression to the Commission on Human Rights at its fifty-sixth session (Visit to the Sudan), E/CN.4/2000/63/Add.1, para. 125.

⁹¹ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression to the Commission on Human Rights at its fifty-eight session (Country situations), E/CN.4/2002/75/Add.2, para. 231.

On 20 August 2001, the Special Rapporteur on Freedom of Expression and the Special Rapporteur on Torture also sent a communication to the Government of Armenia regarding Vahagn Ghukasian, a journalist, who was beaten on 6 June 2000 by officers of the Ministry of Internal Affairs consequent to the publication of an article critical of some Armenian law enforcement bodies. Officials from the Ministry of Internal Affairs, after searching Vahagn Ghukasian's home, confiscated floppy discs containing the text of his brochure entitled Observer's version about the events of 27 October 1999, when a number of senior officials were shot dead in the Armenian Parliament. In the same communication, the Special Rapporteurs also expressed concern about the detention of Rafik Tononian, a young Jehovah's Witness from Gegharkunik region, consequent to his refusal to perform military service in connection with his religious beliefs. He was violently assaulted on 28 August 2000, when he voluntarily presented himself at the District Department of Internal Affairs in the city of Martuni. He was verbally abused and beaten by police officers, and, as a result, suffered severe pain in his knees. Rafik Tononian was subsequently transferred to Sovetashen pretrial prison in Yerevan and sentenced to two years' imprisonment on 1 November 2000 by a court of first instance in Martuni. To the Special Rapporteurs' knowledge, he is currently serving this term in a corrective labour colony in Kosh.⁹²⁾

On 28 June 2001, the Special Rapporteur on Freedom of Expression, jointly with the Special Rapporteur on the independence of judges and lawyers and the Special Representative on human rights defenders, sent an urgent appeal to the Government of Turkey concerning the trial of 16 individuals which recommenced on 29 June 2001, at the Ankara Military Court of the Office of the General Staff. Yavuz nen, President of the RDF; Vahdettin Karabay, Chairman of the Confederation of Progressive Trade Unions; Salim Zul, Chairman of Hak-is; Siyami Erdem, former Chairman of the Confederation of the Public Workers' Trade Union; Hsn ndl, President of the Human Right Association; Cengiz Bektas, co-Chairman of the Writers' Trade Union; Atilla Maras, co-Chairman of the Writers' Trade Union; Ylmaz Ensaroglu, President of Mazlum-Der; Zuhul Olcay; Lale Mansur; Sanar Yurdatapan; Ali Nesin; Erdal z; mer Madra; Etyen Mahupyan and Sadic Tasdogan, who had published a book entitled Freedom of Thought 2000, were accused of

⁹² Ibid, para. 239.

driving people away from wanting to conduct their military service in violation of article 155 of the Turkish Penal Code. On 23 May 2001, they requested the Ankara Military Court to refer their case to the Constitutional Court on the grounds that they would not receive a fair trial by an independent and impartial tribunal if their case were heard by a military court; their request was rejected. They were acquitted by the Istanbul State Security Court of charges under articles 169, 311 and 312 of the Penal Code and articles 6, 7 and 8 of the Anti-Terror Law but they faced proceedings in the Penal Court of First Instance for insulting religion in violation of article 175 of the Penal Code and before the Uskudar Criminal Court for insulting the quality of being a Turk, the Republic, Parliament, Government, Ministries, [the] jurisdiction or the forces of the Government related to the military, in violation of article 159 of the Penal Code. It is alleged that these proceedings have been brought against them in order to deter them from exercising their fundamental rights and freedoms.⁹³⁾

Conclusions:

The right of everyone to have conscientious objections to military service as a legitimate exercise of the right of freedom of thought, conscience and religion as laid down in article 18 of the Universal Declaration of Human Rights as well as article 18 of the International Covenant on Civil and Political Rights has been recognised by the United Nations Commission on Human Rights in its resolution 1989/59 of 8 March 1989.

The Commission activities in identifying standards of conscientious objection peaked in 1998. Following 1998, the Commission moved from identifying standards towards encouraging implementation of the already established standards on conscientious objection.

The Human Rights Committee, in its General Comment 22 from 1993, affirmed that the right to conscientious objection to military service can be derived from article 18 of the ICCPR. During 1999 and 2000, the Committee considered several communications of conscientious objectors against France in light of the right to non-discrimination and found a violation of article 26 of the ICCPR in those cases. The Committee has also addressed the issue of conscientious objection and alternative service in its various concluding observations, inter alia, recommending

⁹³ Ibid, para. 266.

that a state party ensures that any alternative service required for conscientious objectors be performed in a non-discriminatory manner.

Additionally, the Commission special procedure mechanisms such as the Working Group on Arbitrary Detention, the Special Rapporteur on Religious Freedom and the Special Rapporteur on Freedom of Expression have recently addressed the practices and acts contrary to the principle of conscientious objection. The Working Group on Arbitrary Detention, inter alia, recommended that pending the adoption of appropriate measures to ensure recognition of the status of conscientious objectors, the Governments ensure that the prosecution of conscientious objectors does not give rise to more than one conviction, so as to avoid the judicial system being used/abused to force a conscientious objector to change his conviction.

Currently, in the spirit of the most recent Commission resolution from 2002, the Office of the High Commissioner is preparing a compilation and analysis of best practices in relation to the recognition of the right of everyone to have conscientious objections to military service, as a legitimate exercise of the right to freedom of thought, conscience and religion, and the provision of alternative forms of service.

Conscientious Objection in Germany

Peter Tobiassen

Preface

Last year Seoul and other South Korean cities were hosts of the football world cup. Tens of thousands developed a liking for the German team and cheered its players. Nobody probably knew that there were conscientious objectors on the field, too, e.g. Thorsten Frings and especially Marco Bode⁹⁴).

When South Korean politicians meet with German ones, they often meet conscientious objectors. Juergen Trittin for example, minister for the environment of the Federal Republic of Germany, refused to do his military service after having joined the army and did his alternative service thereafter. Some prime ministers of the German states are conscientious objectors, some of their ministers did their alternative service abroad.

At least once a week several million Germans watch the popular host Reinhold Beckmann with his talk show on German television; he also presents several entertainment and sports shows. He, too, did his alternative service in a youth education centre and was responsible there for the film projectors and video equipment a decisive element for choosing his profession afterwards. At the same time other millions watch, on a different channel, even more famous Harald Schmidt's talk show, he also being a former person doing alternative service, who often refers to his experiences during that time.

Conscientious objection and alternative service are so absolutely normal in German society these days that nobody actually notices any more who did military and who did alternative service.

Germany is the nation with the second highest number of soldiers in international operations of the UN. It plays an important role in the NATO and the UN, its

⁹⁴ Marco Bode ended his distinguished career with the World Cup. About the start of his career it was reported: The talent scout invited him to a trial in early 1988. Marco Bode joined Werder Bremen's reserve team and got 500 Marks a month, 500 Marks for driving and a furnished room. A bit later he could add 700 Marks when he started his alternative service. "I was so happy about the first money I earned myself as I've probably never been again. He doesn't want to miss the experience either: "The work in an old people's home made me realise how much youth and health is really worth.

decisions on matters of security and military policy carry such a weight that the US government is very sensitive (sometimes even oversensitive) when Germany together with other European states develops its own ideas about fighting international terrorism and considers the war against Iraq to be wrong.

A lot of conscientious objectors in a country and nevertheless a military heavyweight. Is that a contradiction? Or does it even fit together? That is an exciting question, but one which I don't have to answer today. Just this: I get hope from this mixture. German as well a European thinking and doing opens up new political perspectives in dealing with international problems. Military options lose importance, while civilian options, international law and civilian international organisations like the UN or the OSCE gain importance.

Conscientious objection

Let us move back in time, back to 1945. Germany had just been freed from National Socialism and looked back on 12 years that couldn't have been worse. People had been murdered because of their race, their belief, their political ideas or simply their ethical belief. Germany had started the most terrible war in which millions of people were killed. Germany had tried genocide on a whole part of its population, the Jews in its own country and on the whole continent. Tens of thousands of German men were sentenced to death because they refused to support the criminal war of the Nazis or to fight in it as soldiers. Germany lay in ruins, the people were starving, mourned and were desperate. But it also meant starting all over, with the help of the Allies new civilian structures were created, there were free newspapers, a free radio and the freedom of assembly. Germany was demilitarised. Two German states seemed to develop, the Soviet-dominated block in the east, later to become the now defunct German Democratic Republic, and in the west the Federal Republic of Germany, this under the control of the occupying forces of Great Britain, France and the USA.

Four years later, in 1949, a new constitution was made for Western Germany. About a quarter of the 70 women and men who worked on this task had supported the idea of giving every person the right to conscientious objection in their respective states (later to form the Federal Republic). In some of the regional constitutions this right had already been established. In the parliamentary assembly these supporters were in the minority, though. They quickly got support through tens of thousands of petitions in which individual people and organisations voiced

their wish to make the right to conscientious objection part of the new constitution.

The discussion was very difficult and at the same time very simple. Germany was demilitarised. There was no compulsory military service, no army. Nobody was forced to do military service. That made the necessary discussion so difficult, as it had to stay on an abstract level. At the same time the war experiences were present and made it simple because everybody knew what conscription meant.

Eventually the German people had achieved its aim with several thousand petitions. Since 1949 the German constitution reads: No one may be compelled against his conscience to render war service involving the use of arms. This formed part of article four, under the heading Faith, Religion, Conscience, Creed⁹⁵). Conscientious objection in Germany is therefore linked to freedom of religion and conscience.

Seven years later the situation in Germany had changed very much. There was an army again and compulsory military service. This was sold to the Germans by their president Theodor Heuss as the legitimate child of democracy, although the supposedly democratic compulsory military service had been reintroduced to Germany by Hitler twenty years earlier, and the dictators Mussolini in Italy and Franco in Spain also had a system of conscriptions. Today it is undisputed that a compulsory military service in itself is neither democratic nor undemocratic, but simply a system with which an enormous number of soldiers can be recruited in a short time. That Germany was successful in operating this system within the bounds and according to democratic ideas after 1956 is undisputed.

With the introduction of compulsory military service in Germany the question arose how to deal with those who pointed to the constitution and said No one may be compelled against his conscience to render war service involving the use of arms. You would think that this should have been dealt with in the same way as other basic rights were dealt with. Freedom of religion (article 4, part 2⁹⁶) meant even then that everybody can go to the church they want to and as often as they want to. Or the freedom of speech (article 5, part 1⁹⁷): Everybody could write and say

⁹⁵ The German regulation corresponds to articles 19 and 20 of the Korean constitution.

⁹⁶ (2) The undisturbed practice of religion is guaranteed.

⁹⁷ (1) Everyone has the right to freely express and disseminate his opinion in speech, writing, and pictures and to freely inform himself from generally accessible sources. Freedom of the press and

what they wanted. No censorship was allowed. For the right to conscientious objection this would have meant: The person liable for military service writes to the military institutions that he wants to make use of his right to conscientious objection and that the military institutions accept this.

Since 1949 the mood has changed. The rearmament that the government pursued also found support in the population. The division of Germany, the situation of world politics, the fear of communism and the desire to be part of the stronger half of the world accelerated this support. Still there was a strong movement opposed to the new German army. This remilitarisation could maybe only succeed because critical elements were publicly defamed by military supporters and the government back then⁹⁸).

In this situation the conscientious objectors played a pivotal role. If the compulsory military service was to be introduced without bigger problems, their number had to be kept small and all those who thought of objecting to this had to be signalled that conscientious objection could not be successful.

So the state did not simply accept the statement, as it is done with all other basic rights -, but a so-called Anerkennungsverfahren (a special procedure in which the conscientious objector should be tested) was introduced.

Everybody who declared himself to be a conscientious objector soon found himself in front of the Committee of Conscientious Objection (a committee that tested his reasons and asked him questions). Usually one conscientious objector faced four men (women were rarely members of such a committee), a lawyer paid by the army and three other members who had often served in the German Wehrmacht and who still believed to have defended their fatherland. These four had the job of rejecting most of the petitioners instead of helping them to their guaranteed freedom of conscience. The hearings went accordingly. They often lasted several hours and ended with the decision: You are not entitled to object to doing your armed service.

Against this rejection you could appeal to the second instance, the Chamber of Conscientious Objection. You would meet four different faces with the same ideas as

freedom of reporting by means of broadcasts and films are guaranteed. There may be no censorship.

⁹⁸ Some even had to appear before court. If you want to know more about this can read it up in the very interesting (but unfortunately only published in German) book by the lawyer Heinrich Hannover: Heinrich Hannover, Die Republik vor Gericht 1954-1974 Erinnerungen eines unbequemen Rechtsanwalts, Aufbau-Verlag Berlin, 1998.

their colleagues in the first committee. After their rejection there was only the charge at the Administrative Court left.

Many conscientious objectors were forced to serve in the army against their convictions. A considerable number couldn't deal with this and developed mental problems or committed suicide. Many fled to Berlin or went abroad. In those years you could actually flee to today's capital because Berlin was then still demilitarised and its citizens were exempted from national service.

Although I only started working at the Zentralstelle KDV (Central Office for the Right and the Protection of Conscientious Objectors) in 1978, I still witnessed the effects of the rejection of those who had tried to object: Once a young man entered the office with packed suitcases. He was on his escape to Berlin. In another case a lawyer wrote to the military offices: The petition can be filed away. The applicant committed suicide last week because of his desperate situation. Fortunately, these situations are nonexistent today.

Germany has tried over the time to comply with the regulations given by European institutions. As early as 1977⁹⁹⁾ the Parliamentary Assembly of the Council of Europe decided to accept conscientious objection for whatever reason and to make sure all people liable for military service would be informed about the right to conscientious objections when being registered as conscripts and to be recognised before an independent jury in a fair trial. The alternative service, to be done in social institutions, shouldn't be longer than the military service and the people doing alternative service should be treated equal to those doing military service. Remarkably, this decision dates back to 1977, right in the Cold War. Apparently the majority of the members of the European Council didn't think Western Europe's safety was threatened by conscientious objectors. On the contrary, they asked single member states to introduce fair regulations for conscientious objectors.

In April 1987 still during the Cold War the Committee of Ministers to member states decides that all governments of the member states, if not done already, should bring their national law and practice in accordance with the following regulations and rules¹⁰⁰⁾. Stressed are the right to information about conscientious objection, fair and military independent instances and the possibility of objecting

99 Recommendation 816 (1977) on the right of conscientious objection to military service, adopted by the Assembly on 7 October 1977.

100 Recommendation R 87 (8) from April 9th, 1987, of the Committee of Ministers to member states regarding conscientious objection to compulsory service see attachment 1

conscientiously while doing military service. In addition, alternative service should have no punishing character and should not last longer than the military service.

Three years earlier 1984 Germany had tried to adjust to a part of these regulations¹⁰¹⁾ and had changed the testing procedure for conscientious objectors. The hearing before a committee and chamber only exists for those who object conscientiously while being soldiers¹⁰²⁾. Those objecting prior the order to come into the armed forces are tested in a written appeal and are usually accepted for conscientious objection. To be handed in are a certificate issued by the police, stating that the holder has no criminal record, an extensive curriculum vitae and an explanation of the reasons leading to the conscientious objection. This procedure is much more agreeable for the people liable for national service as the basic suspicion is gone; the percentage of recognition has gone up to 90 percent. Those who can argue their reasons in earnest and hands in the necessary forms are recognised.

This year 2003 the procedure of recognition is to be changed once more and to be made easier for the conscientious objectors. There will be a standardised written procedure which requires a curriculum vitae and an explanation. Soldiers, even those doing more than just military service, will be recognised as conscientious objectors if they explain why they changed their decision to become soldiers and to kill humans in a war, and why this willingness is not given any more. As women have had the right to become soldiers for two years now they, too, get the right to conscientious objection. So far this has always been a strict male problem.

We as conscientious objectors criticise this regulation, too, because the state reserves the right to recognise objectors only after testing them. But under pragmatic aspects we can live with this regulation.

As long as there is a procedure of recognition, i.e. the claim on a human right is only recognised or not after a formal procedure, the people and institutions testing have to come up with criteria according to which they want to act. These criteria have never been changed in Germany. Everyone reading up on the jurisdiction of the German Supreme Administrative Court and the Federal Constitutional Court in their substance, can be satisfied with his findings in this respect. Every earnest decision, be it motivated by religion, politics, ethics or by one's own experiences, is

101 At another place the same change of law disobeyed the regulation. Alternative service should last almost a third longer than military service (20 months as opposed to 15 months).

102 More precisely: As called-ups, as soldiers, as reserves or those who were rejected once and object a second time.

supposed to lead to recognition¹⁰³). It exclusively deals with an answer to the question whether one's own views allow the killing of people in a war or not. The real problem was and is the action of the examination committees. While about half of the petitions were rejected until 1984, since the change of legislation about 90% are recognised. While some had to undergo unbearable, hour-long examinations, others were through after just 15 minutes. It never had anything to do with what they had written in their explanations, it was all down to the views of the committee members.

Looking at the history of conscientious objection in Germany, you can see a slow, continual rise in the number of petitions¹⁰⁴). National service and in particular the security policy in the Federal Republic of Germany have never been threatened by this. The number of those the military institutions abstained from calling up was always higher than that of the conscientious objectors. In addition to that the army learned to realise that those who doubt military action make bad soldiers and tend to be unreliable. By now conscientious objectors pursuing their army while already in the army get the support of their superiors in order to speed up procedures and actually get them out of the army as quickly as possible.

Naturally military sociologists have been interested in the factors that determine a person's decision to object to military service. Political events like Germany taking part in the Gulf War in 1991 play a surprisingly minor role. The more important factors are in the personal environment. If there is a conscientious objector in the circle of friends or relatives the probability of objection rises. If the girlfriend signals that she can imagine having a boyfriend who didn't have to serve in the army to become a real man the probability also rises.

103 The Federal Constitutional Court explained in its decision from 20.12.1960 (BverfGE 12,45): Als eine Gewissensentscheidung ist jede ernste sittliche, d.h. an den Kategorien von Gut und Bse orientiert Entscheidung anzusehen, die der Einzelne in einer bestimmten Lage als fr sich bindend und unbedingt verpflichtend innerlich erfahrt, so dass er gegen sie nicht ohne ernste Gewissensnot handeln kann. (A conscientious decision is every serious decision that is based on the categories of Good and Evil which the individual feels bound to so he cannot act otherwise without putting himself into a serious conflict of belief.) The Supreme Administrative Court in its decision from 3.10.1958 (VII C 235/57) ruled: Handelt der Betroffene unter dem unabweisbaren Zwang seines Gewissens, dann kommt es auf die Art der Motive nicht an, die fr die Auslsung der Gewissensentscheidung mgebend waren. (If the affected person acts under his or her irrefusable force of conscience, the kind of the motives triggering this decision become irrelevant.)

104 See attachment 2

Alternative Service

In 1961, alternative service was introduced in Germany. The first 340 people doing alternative service in 1961 already did this in social institutions, hospitals, homes for handicapped people, old people's homes. These work fields haven't changed since.

Time and again government institutions and politicians voiced their opinion to make the alternative service more deterrent by accommodating them in barracks, giving them meaningless jobs, getting them far away from home and much more. Nothing was pushed through and all attempts to achieve this have failed.

That it came like that and that nowadays nobody tries to do it anymore has to do with the positive image the people doing alternative service have acquired. Their capacity for work is much in demand in social institutions. People have also realised that someone works best where they like to be and where they can see the sense of their work. Since our capitalist society loves effectiveness and productivity, artificial barriers were removed quickly.

In the German constitution it is said¹⁰⁵): Males who have attained the age of eighteen years can be required to serve in the Armed Forces, and A person who refuses, on grounds of conscience, to render war service involving the use of arms can be required to render a substitute service. The duration of such substitute service may not exceed the duration of military service. Since 1971, the Ersatzdienst (substitute service) has been called Zivildienst. (alternative service) The alternative service can only be an alternative to or substitute for the normal military service. If a person is unfit for military service, he is also exempted from doing alternative service. The same applies to all other exceptions. Fathers don't have to do military service and therefore also alternative service.

The first paragraph of the law regulating alternative service reads: In the alternative service recognised conscientious objectors fulfil duties that serve the

105 German constitution, article 12a section 1 and 2 in full: (1) Males who have attained the age of eighteen years can be required to serve in the Armed Forces, in the Federal Border Guard, or in a civil defence organization.

(2) A person who refuses, on grounds of conscience, to render war service involving the use of arms can be required to render a substitute service. The duration of such substitute service may not exceed the duration of military service. Details are regulated by a statute which may not interfere with the freedom to take a decision based on conscience and which must also provide for the possibility of a substitute service not connected with units of the Armed Forces or of the Federal Border Guard.

common good, usually on the social sector. The precedence of the social sector is mirrored in the figures, 95 % of the people doing alternative service work here. The remaining 5 % work in environmental care, the preservation of historical monuments and in the sports sector.

Of those working in social institutions 58 % are in care help or look after somebody, 12 % do manual work, 2 % assist gardeners in the grounds of social institutions, 1 % works in administration, 5 % help the janitors or in the kitchen, 1 % drive handicapped people, 5 % drive ambulances, 6 % help old people in their flats and houses and 5 % look after handicapped adults and children, enabling them to keep living at home.¹⁰⁶⁾

Alternative service is usually done in already existing institutions, either private or public. Private institutions may not, however, be primarily profit-making institutions, but have to be recognised as public utilities.

In order to be able to employ a person doing alternative service, these institutions have to be recognised as a Zivildienststelle, an institution officially allowed to employ people doing alternative service. The inspection is done by the governmental Bundesamt für Zivildienst, the responsible authority.

Once an institution is recognised as such a Zivildienststelle, the people doing alternative service can be enlisted to work anywhere in the institution. Their working hours correspond to those of the other employees, but they are paid like people doing military service.

People doing alternative service are simply called up like their military counterparts by the relevant governmental institution. The same punishing measures are valid, too. Those going AWOL (Absent without leave) can be sentenced to up to five years because of desertion. And those refusing to follow an order can be sent to prison for up to three years.¹⁰⁷⁾

Even if you are formally called up to do alternative service is the way to the alternative service fairly civilian. Those about to be called up get two months notice to look for a place for alternative service. This is necessary because social institutions are not willing to take up everybody, but only those who they considered suited for the requirements. Almost all people legible to do alternative service follow this request and all the public authorities have to do is to set up the

106 See attachment 3.

107 No one is currently in a German prison because he refused to empty a waste paper basket, though.

call-up papers according to the arrangement between the individual and the institution.

Most people required to do alternative service don't wait for the call-up letter, but go looking for an available place and afterwards ask to be called up. Today we have the somewhat absurd situation of a government unable to pay all those wishing to do alternative service. Most have volunteered to be put on a waiting list in order to get a call-up for alternative service as soon as possible. In the call-up letter you can read legally correct: If you don't follow this call-up, you can be sentenced to up to five years in prison.

Nowadays the army learns from the alternative service. At the conscription authorities the people called up can state where and when they want to do national service. Here, too, the authorities have come to the conclusion that the content soldier is the better soldier.

In addition to the alternative service there are also other service which lead to an exemption from the alternative service.

There is the so-called Other Service Abroad, which is of substantial interest for young Germans. Organisations with a German headquarter can send them to a partner organisation abroad and work there in social institutions, peace or civil rights initiatives, work with homeless people or disadvantaged children. Some Germans doing alternative service are here in Seoul. They work in social projects helping children with school problems or in Christian peace organisations. Around the world there are about a thousand places like that, but roughly 10,000 young men are interested.

Another possibility to do alternative service has a special historical background. Jehovah's Witnesses were persecuted and killed under Hitler. Many of them were interned in death camps. In the mid-sixties the world was looking at Germany because Jehovah's Witnesses were imprisoned in the new Germany once more. Foreign civil rights organisations wrote to the German government. Foreign governments asked questions in international talks. Far more than one thousand Jehovah's Witnesses were imprisoned because they refused to do military or alternative service because of their religious belief. One of the most important jurists in post-war Germany, Adolf Arndt, explained in 1968 at the German jurists congress: The punishment of Jehovah's Witnesses who believe it is their conscientious duty to refuse doing alternative surrogate service is a dark shadow on our administration of criminal justice. It is an indicator that these punishments are

marked by their emotions and the moralising explanations.¹⁰⁸⁾

Adolf Arndt was certainly thinking of decisions like that of the Braunschweig district court, which read as follows: A fundamental philosophy which doesn't approve of these purposes (the tasks of the surrogate service, P.T.) has to be described as hostile to the state, antisocial and unchristian. One gets the impression that these kinds of view are directed unnoticed by the members of this sect in order to cause trouble.¹⁰⁹⁾ This had obviously nothing to do with constitutional criminal justice. That critical people abroad were reminded of the language of National Socialist administration of justice is only too understandable. Their protests against the conditions in Germany were badly needed then.

Gustav Heinemann, then (1966-1969) the minister of justice and later (1969-1974) the German President, supported a new interpretation and regulation that allowed Jehovah's Witnesses to live unpunished in Germany. Whoever sees himself unable of doing alternative service as a surrogate service because of his conscience, is exempted from it if he, after being recognised as a conscientious objector, works as a normal employee in a hospital for a one year longer time than the alternative service would take. In 1969, this introduced a solution that brought a little more freedom of belief and conscience to Germany.

Those working in civil defence or disaster control of Germany, policemen or those working for at least two years in the voluntary service overseas are also exempted from military or alternative service.

By now more than one and a half million German men have done alternative service in social institutions. One and a half million men have had the courage to enter an area that was traditionally reserved for women. As far as I know there hasn't been an empirical study how this affects society. It is self-explanatory that his can't be without consequences.

With the help of alternative service some innovations could be started in social services in the Federal Republic of Germany. That it is not necessary to have alternative service bringing innovations on their way is illustrated by a view to Germany's neighbours where due to the absence of national service there is no alternative service. People doing alternative service form 5 % of the personnel in

108 Quoted from Harrer/Haberland, Zivildienstgesetz, Kommentar zu 15a (Seite 172), Leverkusen 1992

109 From a verdict of the district court Braunschweig from 8.10.1962, quoted in: Heinrich Hannover, Die Republik von Gericht 1954-1974 Erinnerungen eines unbequemen Rechtsanwalts, Aufbau-Verlag Berlin, 1998, Seite 144.

the social sector. A sudden cessation of the alternative service would be noticeable, but would certainly not endanger any social service. This means that whatever some may claim we don't have to stick to national service because of the alternative service. After 2005 national service in Germany will come under scrutiny according to government plans. I am sure that it will not survive that scrutiny. Alternative service as well as national service in Germany will only be a topic of history books then.

Postscript

I conscientiously objected in 1973 and did my alternative service in 1975/76. The arbitrariness of the examiners is something I experienced myself. First my human right of refusing to serve in the armed forces was not granted to me and later as arbitrarily suddenly given. We were then seen demoscopically only a small part of society, exactly 5.9 % of my year. Often I was advised to go to the other side, you traitor to your country. The other side, that was the GDR, the other Germany, the Communists. A few weeks ago I was surprised with a little celebration because of my 25 years working for our Centrals Office for Conscientious Objectors. At this ceremony were present the head of the military administration in Bremen, the German representative for alternative service and the German minister in charge of alternative service. Times have really changed.

From 1985 onwards I have occasionally followed the request to go to the other side, as a visitor. Of course there were conscientious objectors in the GDR like in every other state in the world. We met and made plans how to improve the situation of conscientious objectors in the GDR. After the unification of the two German states I had a chance to look at the files the Eastern German secret service had written about our meetings. Tenor: Go to the other side, you traitors to your country. The other side was in this case the FRG, the capitalists. Militaries and secret services are struggling with people who don't follow their logic.

Those conscientious objectors that we met in the GDR during the Cold War formed an important part of the peaceful revolution that led to Germany's unification in 1990. Later some of them became members of parliament, ministers or prime ministers of a Federal German state.

Attachment 1

Recommendation No. R (87) 8 of the Committee of Ministers to member states regarding conscientious objection to compulsory service

(Adopted by the Committee of Ministers on 9 April 1987 at the 406th meeting of the Ministers Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe, Considering that the aim of the Council of Europe is to achieve a greater unity between its members:

Recalling that respect for human rights and fundamental freedoms is the common heritage of member states of the Council of Europe, as is borne out, in particular, by the European Convention on Human Rights:

Considering that it is desirable to take common action for the further realisation of human rights and fundamental freedoms:

Noting that in the majority of member states of the Council of Europe military service is a basic obligation of citizens:

Considering the problems raised by conscientious objection to compulsory military service:

Wishing that conscientious objection to compulsory military service be recognised in all the member states of the Council of Europe and governed by common principles:

Noting that, in some member states where conscientious objection to compulsory military service is not yet recognised, specific measures have been taken with a view to improving the situation of the individuals concerned,

Recommends that the governments of member states, insofar as they have not already done so, bring their national law and practice into line with the following principles and rules:

A. Basic principle

1. Anyone liable to conscription for military service who, for compelling reasons of conscience, refuses to be involved in the use of arms, shall have the right to be released from the obligation to perform such service, on the conditions set out hereafter. Such persons may be liable to perform alternative service:

B. Procedure

2. States may lay down a suitable procedure for the examination of applications for conscientious objector status or accept a declaration giving reasons by the person concerned:

3. With a view to the effective application of the principles and rules of this recommendation, persons liable to conscription shall be informed in advance of their rights. For this purpose, the state shall provide them with all relevant information directly or allow private organisations concerned to furnish that information:

4. Applications for conscientious objector status shall be made in ways and within time-limits to be determined having due regard to the requirement that the procedure for the examination of an application should, as a rule, be completed before the individual concerned is actually enlisted in the forces:

5. The examination of applications shall include all the necessary guarantees for a fair procedure:

6. An applicant shall have the right to appeal against the decision at first instance:

7. The appeal authority shall be separate from the military administration and composed so as to ensure its independence:

8. The law may also provide for the possibility of applying for and obtaining conscientious objector status in cases where the requisite conditions for conscientious objection appear during military service or periods of military training after initial service:

C. Alternative Service

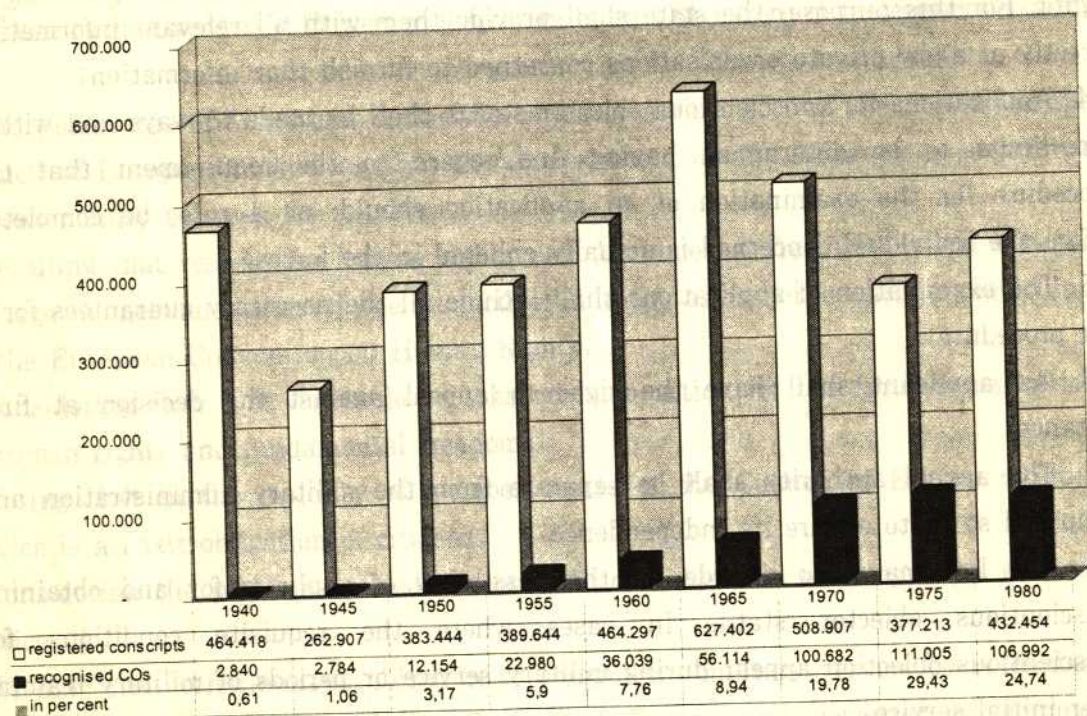
9. Alternative service, if any, shall be in principle civilian and in the public interest. Nevertheless, in addition to civilian service, the state may also provide for unarmed military service, assigning to it only those conscientious objectors whose objections are restricted to the personal use of arms:

10. Alternative service shall not be of a punitive nature. Its duration shall, in comparison to that of military service, remain within reasonable limits:

11. Conscientious objectors performing alternative service shall not have less social and financial rights than persons performing military service. Legislative provisions or regulations which relate to the taking into account of military service for employment, career or pension purposes shall apply to alternative service.

Attachment 2

Conscientious objection in Germany (Year of birth 1940 to 1980)



War Resisters' International's work in support of conscientious objectors

Conscientious objection

Conscientious objection has always been at the very centre of WRI's policy. WRI's declaration not to support any kind of war is a call to refuse to serve in any military or armed forces, a call to conscientious objection.

War Resisters' International supports all conscientious objectors, whether they are willing to perform a substitute service (in countries where this option exists) or not. War Resisters' International does not judge a person's motives to refuse to kill, and values a person's individual decision not to take part in war and preparation for war as an important step to end wars.

No to war

WRI will never endorse any kind of war, whether it is waged by a state, by a "liberation army", or under the auspices of the United Nations, even if it is called a "humanitarian military intervention". Wars, however noble the rhetoric, are invariably used to serve some power-political or economic interest. We know where war leads — to suffering and destruction, to rape and organised crime, to betrayal of values and to new structures of domination.

War Resisters' International's programme *The Right to Refuse to Kill* combines a wide range of activities to support conscientious objectors individually, as well as organised groups and movements for conscientious objection.

Supporting COs in prison: co-alerts

In many countries, prison is still the fate of conscientious objectors. Thousands of COs are still in prison — in South Korea, Israel, Finland, Spain, and many other countries. Despite many countries having introduced laws on conscientious objection, many COs still face imprisonment, because they either don't fit into the authorities' criteria, or they refuse to perform any alternative service. War Resisters' International supports conscientious objectors who are imprisoned because of their conscientious objection, or face repression by the state or state-like entities.

Co-alerts, sent out by email as soon as the WRI office receives information on the imprisonment or trial of a conscientious objector, are a powerful tool to mobilise support and protest. Co-alerts are available by email (send a message to majordomo@wri-irg.org with the text subscribe co-alert in the body of the message) or on the internet at wri-irg.org/cgi/news.cgi .

Supporting COs on the run: CO Asylum

Conscientious objectors often have to leave their country in order to flee from prosecution and imprisonment. However, conscientious objection is rarely accepted as a reason for asylum, and COs soon find themselves in danger of being deported back to their home country — into the very situation that made them leave. War Resisters' International demands the recognition of conscientious objection as a reason for asylum. War Resisters' International supports asylum seekers in their asylum claim through providing information on military service and the punishment for draft evasion and conscientious objection.

CONCODOC

WRI, as part of a coalition of CO support organisations, is hosting CONCODOC (CONscription and Conscientious Objection DOcumentation Centre), a worldwide documentation on the situation of conscription and conscientious objection. It is the only one of its kind in the world. You can register for online viewing of all 180 CONCODOC country reports at wri-irg.org/co/form.htm; some reports are also available in Spanish.

Supporting CO movements & international campaigns

All over the world new movements for conscientious objection are emerging. War Resisters' International sees support to new CO movements — solidarity actions, training of CO activists, and the exchange of experience — as one of its most important tasks. During the 1990s these activities focussed on support to the CO movement in Turkey (especially during the imprisonment of Osman Murat ?ke), and on the Balkans. These struggles are not over yet, but new CO movements are

emerging in South East Asia, Latin America, Israel, and in Africa. All these CO movements need international support. War Resisters' International coordinates two international days of action, which both focus on support to peace activists and conscientious objectors.

15 May - International Conscientious Objectors' Day

15 May was first celebrated as a day of action in 1982. The day focusses on the struggle for the right to conscientious objection, and WRI usually highlights one particular struggle each year, while at the same time remembering those who served this cause in the past.

1 December - Prisoners for Peace Day

Prisoners for Peace Day is a way to support those imprisoned for their stand against war and war preparations, by sending greeting cards to prisoners, and raising public awareness of prisoners for peace. Prisoners for Peace Day was introduced in the 1950s, but its roots go back to the 1920s, when WRI called for sending Christmas greetings to prisoners.

Introduction to the American Friends Service Committee and the East Asia Quaker International Affairs Program

The American Friends Service Committee, an independent Quaker organization, was founded in 1917 to provide conscientious objectors with an opportunity to aid civilian victims during World War I. Today it carries on programs of service, development, social justice, and peace education in 22 foreign countries and 43 places in the United States. Through the years, the work has attracted the support and partnership of people of many religions, races, and cultures.

A belief in the worth of all people undergirds AFSC program work in communities of great racial and cultural diversity in the United States communities that carry the burdens of poverty and powerlessness. AFSC supports the rights of immigrants, undocumented workers, small farmers, farm-workers, and refugees. It advocates on behalf of people who are hungry, poorly housed, homeless, or unemployed. It has programs on Indian reservations, in high schools, in rural areas such as Appalachia and northern New Mexico, in crowded cities, in prisons, and in factories along the Mexico-U.S. border.

In AFSC's overseas programs, staff members have fed and healed victims of war and repression without regard to their politics. In 1947, the AFSC and Friends Service of Britain together received the Nobel Peace Prize for their silent help from the nameless to the nameless. . . . on behalf of Quakers worldwide.

Today in Central and South American, the Caribbean, Indochina, Africa, and the Middle East, AFSC workers conduct social and technical assistance projects designed to enable people to develop their own power and resources.

Quaker International Affairs Representatives (QIARs), active in many troubled regions of the world, promote peace, justice, and reconciliation. They bring about

opportunities for understanding and communication among people who can effect change at grassroots, national, and international levels.

The goal of the East Asia Quaker International Affairs Program is to help support the creation of a community of neighbors in East Asia. Such a community would be characterized by reconciliation on the Korean peninsula, the resolution of disputes in the region through dialogue and regional security structures, and broadly beneficial and sustainable economic development.

Since 1994, the East Asia QIARs have worked toward this goal by promoting exchange among civil society organizations from around the region. They have sponsored conferences on arms trade and security issues; they have brought scholars and activists together in Beijing to discuss peace education; they have fostered cooperation between South Korean and Chinese environmental groups. In cooperation with South Korean NGOs they have organized a year and a half long train-the-trainers program on conflict resolution methods.

Heightened tension between China and the U.S. in the last several years has led the QIARs to increase their contact with Chinese organizations and institutions, and to address the US government plan to develop missile defense systems. The QIARs continue to seek ways to broaden and deepen the dialogue between the DPRK and the United States by bringing delegations back and forth. They travel widely throughout the region and share their analysis and experiences with U.S. audiences through speaking tours and in writing.

In its programs for peace and nonmilitary solutions to conflict, AFSC reflects the Quaker conviction that all life that of the oppressed and the oppressor is sacred. In more than twenty locations throughout the United States, AFSC staff members work to build informed public resistance to war and militarism and support for peaceful U.S. policies. They hold international exchanges with opinion makers from the United States and other countries to discern issues that cause conflicts.

The AFSC office in Washington, D.C., brings this broad range of experience to bear shaping perspectives of policy makers and press in the nations capital. The

Quaker United Nations Office in New York City represents Friends commitment to principle of the world as one community.

The AFSC is organized as a not-for profit corporation, with a governing body consisting of 180 Quakers from 23 yearly meetings (regional church bodies) of the North American Quakers. The AFSC maintains its international headquarters in Philadelphia and regional offices in eight states. The AFSC Board of Directors, drawn from the membership of its Corporation, governs the policies, programs, and administration of the AFSC. Numerous committees oversee AFSCs operations and consult with more than 400 women and men who make up the staff. Hundreds of volunteers assist in the work; thousands of contributors support it. The annual budget of the AFSC is about 33.8 million dollars.

Quakers place the authority of conscience, individual religious experience, and communal truth-seeking above the authority of creeds or traditions. The AFSC is rooted in the spiritual tradition of the Religious Society of Friends, directed by the Quaker board, and staffed by Quakers and others who believe in AFSCs mission. With these underpinnings, the AFSC gives contemporary meaning to the call of George Fox, the seventeenth century founder of Quakerism, who urged Friends to be patterns, be examples in all countries, places, islands, nations, wherever you come; that your life may preach among all. . . ; then you will come to walk cheerfully over the world, answering that of God in everyone. . . .

The AFSC holds in tenderness the dignity and promise of every individual. It emphasizes people rather than structures or ideologies. Because of its grounding in the Quaker belief that there is that of God in each person, it denies that violence can ever be right.

The New Profile Movement The Movement to Civil-ize Israel

New Profile is a young but visible organization, the outgrowth of the belief that there is a need to question the influence of deep rooted militarism on Israeli society. The movement, comprising feminist women, men and youth, is grassroots and voluntary. Our name, New Profile, reflects the long-range aim of our organization: to change the Profile of Israeli society from a militarized society of war and might, to an actively peacemaking community in which the rights of all people are respected and promoted equally, and the military occupation of others lands ends.

We are convinced that we need not live in a soldiers' state.

We believe that Israel is capable of a determined peace politics; It need not be a militarized society.

We are convinced that we ourselves, our children, our partners, need not go on being endlessly mobilized, need not go on living as warriors.

We understand that the state of war in Israel is maintained by decisions made by our politicians.

We will not go on enabling them by obediently, uncritically supplying soldiers to the military which implements them.

We will not go on being mobilized, raising children for mobilization, supporting mobilized partners, brothers, fathers, while those in charge of the country go on deploying the army easily, rather than building other solutions.

It is hard to express this type of opinion in Israel today. In a soldiers' state there are equal and less equal citizens: the social ladder is topped by those who fight. And those are unfailingly men. In addition, in Israel, they are Jewish men. As warriors, they are held to have privileged knowledge, giving them precedence in decision making.

Attitudes casting doubts on "security" related decisions, questioning the state's enormous military budgets, or its ongoing policies of military confrontation, are branded "naive," "hysterical," "ignorant." An attitude that dares question the fundamental principle of willing enlistment, is almost incomprehensible in a

soldiers' state. It is rejected as illegitimate.

Our position - the "ignorant" one - is free of the mindsets responsible for perpetuating war in Israel for decades. It is a position prioritizing life and the protection of life. It condones painful compromises in the interests of preserving life.

We oppose the use of military means to enforce Israeli sovereignty beyond the Green Line.

We oppose the use of the army, police, security forces in the ongoing oppression and discrimination of the Palestinian citizens of Israel, while demolishing their homes, denying them building and development rights, using violence to disperse their demonstrations.

Given the widespread opposition to the kind of roles assigned the Israeli army for many years, thousands of young women and men are currently avoiding conscription or avoiding combat duty. They feel unable to identify with the implications and meaning of military service in Israel today. Faced with no legal option for conscientious objection, a discharge on grounds of unfitness or poor health is virtually their only way out.

To date, Israeli law does not acknowledge men's basic human right to conscientious objection. We regard Israeli conscription law as discriminatory and non-democratic, and call for the recognition of the basic right of every person, men included, to act in accordance with their conscience. Young women too undergo difficult, degrading interrogations by the military Exemption Committee.

Acting on one's conscience is the fundamental right of every man and woman.

We call for the recognition of men and women's right to express their social commitment by means of alternative civic service, conducted through a broad array of community services including work with non-governmental, voluntary organizations.

For our part, we refuse to go on raising our children to see enlistment as a supreme and overriding value. We want a fundamentally changed education system, for a truly democratic civic education, teaching the practice of peace and conflict resolution, rather than training children to enlist and accept warfare.

what we do

New Profile has no elected board. All participation in activities is voluntary, including that of the Treasurer, the sole titled responsibility. Other positions and

all committee work are structured around non-hierarchical pairs or groups.

There are no membership fees. Members donate what they can when they can. A team works on fundraising, assisted by other members who create connections and gather information.

General meetings are held once a month on a regular basis. Their location rotates among the members, each meeting being held in the home of a different member. Members also rotate taking down minutes that are later typed out and circulated by e-mail. Such rotation is one practical means of sharing power and decentralizing authority.

To forward our aims, we engage in the following projects.

1. Rethinking Conscription: Working to provide a support system to those who resist induction into the army, whether based on political, religious or moral belief.
2. Advocacy for Demilitarization: disseminating information about the effects of militarism, to firmly place new perspectives on the public agenda and to influence prevalent views about the relation between Israeli society and the military. Putting an emphasis on non-violent, demilitarized education.
3. Study Groups and Adult Curriculum Development: Creating a network of Feminist Study Groups.
4. Partnership in the Womens Coalition for a Just Peace: Partaking in Affirmative Action in Protest to the Hostile Aggression of the Israeli Military Forces and the Israeli Police Force.

Contact Information:

New Profile, P O Box 3454 Ramat Hasharon 47100.

www.newsprofile.org

newsprofile@speedy.co.il

Donations can be sent to:

HaPoalim Bank, account no. 421121, Branch 769, Trumpeldor St., Ramat Hasharon, Israel - Thank you

Antimilitaristic Manufacture

Some personal info:

Born on October 23 1975.

Studied at the College of Informatics in Novi Sad and the Anthropology Department at the Faculty of Philosophy of the University of Belgrade.

So far I have worked as a co-editor and main editor of the only anti-militaristic newsletter in the region called "Prigovor!" (Objection!). "Prigovor!" was officially published by Women in Black from Belgrade. So far we published 10 issues.

As a Women in Black's CO group activist I have participated and coorganized in many activities concerning Conscientious Objection: collecting 30.000 signatures for Legislative Initiative for recognition of CO, made and maintained our web page at www.antimilitarizam.org, took part in all street actions, made leaflets, brochures and other materials.

Since November 2001 till December 2002 I was the coordinator of the Yugoslav Network of NGOs for Conscientious Objection. During this time I have organized and attended numerous street actions, round tables, press conferences and seminars (in FR Yugoslavia and abroad). In September 2002 I was called-up for the military service, but I have objected it refusing to take uniform and weapons. This was the first time that someone made his objection on strictly political bases, so WRI, Amnesty International, EBCO and some other organizations made a (successful) campaign for my release from the barracks that resulted in Supreme Military Medical Commission's decision that I don't fit for military service, so I was released. Since December 2002 I am working as a coordinator of the project called "Strategic Plan to Develop CO in South-East European Countries" organized by several peace groups from Barcelona, like European Bureau for Conscientious Objection (EBCO), RAI, Balkans Ayuda Obrera... For purpose of this project we have founded an EBCO branch here in Belgrade called "EBCO Balkan".

Some info on the organization:

The organization I represent is called 'Antimilitaristic Manufacture'. We were

working as an informal CO group for more than a 2 years within the national Network of NGOs for Conscientious Objection, until we have registered in June 2002 as an organization for promotion of anti-militarist and pacifist ideas.

'Manufacture' is mainly focused on publishing the materials (books, brochures, CDs of musicians who supported our ideas, printing posters, flyers, stickers, maintain the web page in Serbo-Croatian www.anitimilitarizam.org, etc.). So far we were just translating foreign resources, but our intention is to encourage domestic authors to publish their work on issue of anti-militarism and pacifism.

The group is a part and one of the founders of Regional Network for Conscientious Objection "Objection for Peace", founded together with "Zasto Ne?" from Bosnia, "AntiWar Campaign" from Croatia and "Peace Action" from Macedonia.

Peter Tobiassen & Central Office for the Rights and the Protection of Conscientious Objectors

The German Zentralstelle fuer Recht und Schutz der Kriegsdienstverweigerer aus Gewissensgruenden e.V. (Central Office for the Rights and the Protection of Conscientious Objectors) was founded in 1957, right after national service had been reintroduced in Germany. It is a common institution of 26 organisations going together in order to protect conscientious objectors. Its members are human rights organisations, youth organisations of several churches, trade unions and parties, the organisations of conscientious objectors and peace groups.

The Central Office works in two important fields. It is the organisation to turn to for all people seeking advice and help with the process of being recognised as conscientious objectors, and it is a lobby organisation with the parliament and the government. It supports the abolishment of discriminating regulations introduced by the parliament, the government and the authorities. The Central Office already laid down when it was founded that it would not do propaganda for conscientious objection. It takes action when someone who has already decided to be a conscientious objector turns to it.

The Central Office supports the abolishment of national service. The right to conscientious objection is protected best when people arent forced to serve with a gun in their hand.

The work of the Central Office is financed through membership fees (10%), donations (50%), selling of material (30%) and other takings (10%). In the office itself there work 3 people. The board of the organisation works on an honorary basis. Every year about 10,000 people are advised.

Zentralstelle fuer Recht und Schutz der Kriegsdienstverweigerer aus Gewissensgruenden e.V.

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**“양심에 따른 병역거부권과 대체복무제”
:국제인권기준을 통해 본 한국의 현황과 전망
2003 국제회의 참가자 기자회견**

일시 : 2003년 3월 13일 (목) 오전 11시

장소 : 느티나무

순서

- 인사말, 국제회의 개최 의의
- 참가자 소개
- 국제회의 논의사항 보고
- 영등포 교도소 방문 보고
- 질의 · 응답

주최 : 성공회대학교 인권평화센터, 양심에 따른 병역거부권 실현과
대체복무제도 개선을 위한 연대회의, 미국천우봉사회(American
Friends Service Committee, AFSC)

후원 : 개혁국민정당, 민주노동당, 사회당

“양심에 따른 병역거부권과 대체복무제” 2003 국제회의 논 / 의 / 사 / 항 / 보 / 고

<3월 11일, 첫째 날>

오전 세션은 양심에 따른 병역거부자들의 각 국 상황에 대한 증언으로 시작되었습니다.

이스라엘과 구유고슬라비아에서 온 '아미르 지볼', '이고르 세케'씨는 각각 오랜 분쟁으로 인해 고도로 군사주의화 된 나라에서 병역거부자들에 대한 박해 및 여성차별 의식 등을 설명하며 민주주의와 탈군사화의 진행속도가 결국 병역거부자들의 인권개선의 속도와 비례함을 역설하였습니다. 특히 한국의 병역거부 현실과는 다르지만 이스라엘의 경우 7~8회에 걸쳐 반복 수감되며 6개월 정도의 징역을 살게 되고 세르비아 몬테네그로의 경우 정부가 전 유럽적 인권기준 때문에 병역거부권을 받아들이기는 했지만 군대내 비전투 분야 복무 등으로 그 영역을 한정하여 병역거부자들의 인권을 완전히 보장하기에는 매우 미흡한 상황임을 증언하였습니다. 한국 상황의 증언자로 나선 유호근씨는 여전히 한국에는 1500여명의 병역거부자들이 수감되어 있고, 현재도 계속되는 병역거부로 실형을 선고받고 있는 현실을 지적하며 이제 한국사회에서도 병역거부자들을 양심수의 범주에 포함시켜 활동해 나가야 한다고 지적하였습니다. 또한 남북한의 군병력수는 180만 명으로서 세계 3위 수준이나, 안보와 평화는 군사력의 증강이 아닌 평화군축을 통해 이루어질 수 있을 것이며, 이것이 바로 양심에 따른 병역거부 운동이 지향해 가야할 목표 중에 하나일 것이라고 하였습니다.

오후 세션에서는 '양심에 따른 병역거부운동의 동향과 전략'에 관한 기초발제와 전체토론이 계속되었습니다.

기초발제자로 나선 안드레아스 스펙씨는 20년 전 자신이 병역거부 사유에 관한 심사를 받는 과정을 통해 단순한 군복무거부자였다가 대체복무까지를 거부하는 완전거부자가 되었던 과정을 설명하면서 양심에 따른 병역거부와 대체복무제도의 연관성에 대해 설명하였습니다. 그는 첫째, 대체복무 또한 군복무시스템의 연장이라는 점 둘째, 전사회에서 대체복무자들은 여전히 국가적 동원대상이라는 점 등을 지적하며 병역거부권의 본질과 이 운동의 궁극적 지향에 관해 역설하였습니다. 그는 병역거부권의 실현은 크게 두 가지 접근이 가능한데 하나는 인권적 접근이며, 다른 하나는 반군사주의적 접근이라고 하였습니다. 그는 병역거부권은 인간적 권리로서 당연히 보장받아야 하지만 그것의 달성이 이 운동의 궁극적 목적일 수는 없으며, 반군사주의적 행동으로서 전면화되어야 한다고 개인의 입장을 피력하였습니다. 뒤이어 제임스 라일리씨의 사회로 전략에 관한 전체토론이 진행되었습니다. 그는 한국적 상황에서 병역거부 운동의 발전을 위해서 살펴야 할 몇 가지 단서들을 제시하였습니다. 첫째, 대체복무제도의 개선 과정에서 정부와 어떻게 타협하고 조율할 것인가? 둘째, 국가안보정책(남북관계)과 병역거부 운동은 어떤 연관성을 맺으며 발전할 수 있는가? 셋째, 병역거부에 대한 인식확산을 위한 주요한 연대세력은 누구인가? 등을 토론거리로 제시하였습니다. 이후 이어진 전체토론에서는 한국 병역거부자의 대다수를 차지하는 여호와의 증인에 대한 사회적 편견의 극복과 시민운동과의 협력에 관한 방안에 대한 토론이 오고 갔으며, 병역거부 운동의 나아갈 바에 관한 의견들이 각 국의 실제사례를 중심으로 제시되었습니다. 그 이외에도 유엔의 역할과 활용방안, 여성 참여에 대한 의견, 징병제 폐지와 반군사주의 운동으로서 병역거부운동의 전략, 병역거부자의 양심수로의 규정 문제 등에 관한 매우 활발한 토론이 진행되었습니다.

<3월 12일, 둘째 날>

오전 세션은 병역거부권과 대체복무제도의 국제적 기준에 대한 논의로 시작되었습니다.

첫 번째 발제자로 나선 제네바 케이크유엔사무소 대표 레이첼 브렛씨는 한국에서 병역거부 문제가 빠르게 확산되고 있는 것은 매우 긍정적인 현상이라고 언급하며 병역거부권의 법적 승인과 관련하여 국제법의 원칙을 반드시 적용해야 함을 강조하였습니다. 또한 국제적, 종교적, 국가적으로 병역거부의 허용이 증가되고 있으며, 이것이 국제적 평화와 국가의 공공이익, 그리고 인권의 옹호에 기여한다는 사실과 연장선상에 있다고 설명하고 한국에서의 병역거부와 대체복무 문제는 이제 더욱 공개화된 공간에서 토론되어야 하고 대안을 찾아야 한다고 역설하였습니다. 이어 발제에 나선 유엔인권고등판무관실의 루씨에 비에르스마씨는 시민적·정치적 권리에 관한 국제규약 및 세계인권선언에 규정된 합법적 권리의 행사로서 병역거부권에 관해 정의내리며 여러 차례의 유엔인권위원회 결의를 거쳐 이 내용을 제차 확인한 바 있음을 설명하였습니다. 또한 병역거부권의 표준을 확립하려는 유엔의 노력은 1998년 질정에 달했고 이후 이미 확립된 표준의 이행을 독려하는 방향으로 유엔 차원의 활동이 전개되고 있음을 강조하였습니다. 또한 본인은 이번 한국 방문을 통해 유엔 차원에서 한국의 현실에 관해 많은 부분을 인식하게 된 것은 분명하다고 덧붙이고 이후 한국을 비롯한 국제사회에 병역거부권의 인정과 대체복무제도의 도입을 위해 애쓸 것을 약속하였습니다.

오후 세션은 대체복무제도의 국제적 성공사례로서 독일과 대만의 경험, 그리고 한국에의 교훈과 대체복무제 도입 가능성에 관해 토론하였습니다.

독일의 사례를 설명한 양심적 병역거부자의 인권과 보호를 위한 중앙사무소 페터 토비아스씨는 지난 2002년 월드컵에서 필드 한 구석을 누비던 축구선수들이 대체복무를 수행한 병역거부자 출신임을 설명하며 이미 독일에서는 대체복무제도가 일반화되어있는 제도이지만 정작 독일에서 병역거부권을 헌법에 명시시키는 냉전이 한창이던 1949년이었음을 강조하였습니다. 또한 지난 수십 년 간의 대체복무의 역사가 사회의 발전과 민주주의에 큰 기여를 했음을 설명하였습니다. 이어 대만의 대체복무 사례를 소개한 청타이리 대만 병무청 부청장은 같은 아시아 국가이면서 많은 부분 한국과 닮은 사회적 상황에 처해있는 대만에서 대체복무제도를 먼저 도입하게 되고 또 이러한 경험들을 함께 나눌 수 있어서 감사하다는 말로 발표를 시작하였습니다. 그는 대체복무제도 도입 초기에 국가안보의 문제 등 현재 한국에서 논의되었던 것과 비슷한 우려들이 많았지만 결국 대체복무제도는 큰 성과를 거두고 있다고 설명하였습니다. 또 이러한 사회적 우려로 인해 대만의 대체복무는 초창기 현역병 복무기간보다 길게 설정되었으나 현재는 현역병 복무기간 수준으로 조정되었다는 것, 그렇게 법을 개정하게 된 배경에는 대체복무제도를 악용하여 군대를 기피하거나 이로 인해 국방력에 큰 지장을 초래하지 않았다는 대체복무제 실시 결과에서 비롯된 것이라고 설명하였습니다. 이어진 세션에서는 종교적 양심에 의해 병역거부를 하신 홍영일씨의 특별증언과 개혁국민정당, 민주노동당, 사회당의 입장발표가 이어졌습니다. 계속된 종합토론에서는 이번 국제회의를 계기로 한국사회에서도 병역거부자들의 인권상황 개선을 위한 보다 획기적인 조치가 필요함이 제기되었고 새 정부에 거는 기대 등도 조심스럽게 피력되었습니다. 또한 병역거부운동이 전 세계 반군사주의운동과 연대하여 한국과 세계의 평화를 구축하기 위한 활동으로 전개되어야 한다고 공감하였습니다. <끝>

“양심에 따른 병역거부권과 대체복무제” 2003 국제회의
: 국제인권기준을 통해 본 한국의 현황과 전망
International Conference on "Conscientious Objection to Military Service"

일시: 2003년 3월 11~13일

장소: 성공회대학교 피츠버그홀 / 국회의원회관 1층 소회의실

주최: 성공회대학교 인권평화센터

양심에 따른 병역거부권 실현과 대체복무제도 개선을 위한 연대회의

미국친우봉사회(American Friends Service Committee, AFSC)

후원: 개혁국민정당, 민주노동당, 사회당

● **프로그램**

첫째날(3월 11일(화)/ 장소: 성공회대학교 피츠버그홀)

09:30-10:00 개회사, 환영사, 참가자소개

10:00-11:30 각국의 병역거부 현황 및 증언

: 이스라엘 (아미르 지볼 Amir Givol), 유고슬라비아 (이고르 세케 Igor Seke), 한국 (유호근)

11:30-12:30 질의응답

12:30-14:00 중식

14:00-14:20 다큐멘터리 상영

14:20-15:20 <기조발제> 양심에 따른 병역거부 운동의 최근 현황과 전망

- 안드레아스 스펙 Andreas Speck (반전인턴내셔널)

15:20-15:30 휴식

15:30-17:30 <토론> 양심에 따른 병역거부운동의 전략

- 기본발제 제임스 라일리 James Reilly (미국친우봉사회)

둘째날(3월 12일(수)/ 장소: 국회의원회관 1층 소회의실)

09:30-10:00 개회사, 환영사

10:00-12:00 <기조발제 1> 양심에 따른 병역거부권의 의미와 역사

- 레이첼 브렛 Rachel Brett (Quakers)

<기조발제 2> UN, 양심적 병역거부권, 그리고 대체복무제도

- 루씨에 비에르스마 Lucie Viersma (유엔인권고등판무관실)

12:00-13:30 중식

13:30-15:30 <대체복무제도의 사례>

독일 페터 토비아센 Peter Tobiassen (양심적 병역거부자의 인권과 보호를 위한 중앙사무소 Zentralstelle für Recht und Schutz der Kriegsdienstverweigerer aus Gewissensgründen)

대만 청타이리 Chung Tai Li (대만 병무청 부청장)

15:30-15:45 휴식

15:45-16:30 종교적 양심에 따른 병역거부자 특별증언: 홍영일

패널토론: 대체복무제도에 대한 입장 - 민노당, 사회당, 개혁당

16:30-17:30 전체토론

17:30 폐회사

세계날(3월 13일(목))

9:00-10:00 영등포교도소 방문(병역거부 수감자 면회)

11:00-12:00 기자간담회(장소: 느티나무)

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18:00-21:00 송별만찬/연대의 밤(문화마당)

● 참가자 소개

- ▶ 제임스 라일리 James Reilly (미국친우봉사회 American Friends Service Committee, AFSC / 미국)
- ▶ 레이첼 브렛 Rachel Brett (제네바 퀘이커 유엔사무소 Quaker UN Office, Geneva / 스위스)
- ▶ 이고르 세케 Igor Seke (반군사주의 제작소 Antimilitaristic Manufacture / 유고)
- ▶ 아미르 지볼 Amir Givol (새로운 윤곽 New Profile / 이스라엘)
- ▶ 안드레아스 스펙 Andreas Speck (반전인터내셔널 War Resisters' International, WRI / 영국)
- ▶ 루씨에 비에르스마 Lucie Viersma (유엔인권고등판무관실 / 스위스)
- ▶ 페터 토비아스 Peter Tobiassen (양심적 병역거부자의 인권과 보호를 위한 중앙사무소 Zentralstelle für Recht und Schutz der Kriegsdienstverweigerer aus Gewissensgründen / 독일)
- ▶ 청타이리 Chung Tai Li (병무청 부청장 / 대만)

● 참가단체 소개

▷ 미국친우봉사회(American Friends Service Committee, AFSC / www.afsc.org)

사회사업과 공공정보 프로그램을 통해 평화와 화해를 증진시킬 목적으로 1917년 미국과 캐나다의 프렌드파(퀘이커교도)가 창설한 단체이다.

제1차 세계대전 중 양심에 따른 병역거부자들을 도와 선택적 군복무 형태의 일환으로 구제사업과 구급차 부대에서 일하도록 했다. 제2차 세계대전 중에는 정신병원을 비롯한 인도적인 부문에서 일하는 것도 선택적 군복무 범위에 포함되도록 노력했다. 평화시에는 지역사회 발전, 미국 내 인종화합, 계절노동자 원조, 전쟁 피해지역 주민에 대한 구호, 피난민 지원사업과 같은 국내의 사업계획들을 추진했다. 미국친우봉사회의 자발적 국제 봉사 임무(VISA) 계획은 미국평화봉사단의 본보기가 되었다. 1947년 영국의 퀘이커 봉사협회와 함께 공동으로 노벨 평화상을 받았다. 미국친우봉사회는 개인이나 재단에서 재정지원을 받지만 어떤 경우에는 이 단체의 사업이 시행되는 나라의 정부로부터 원조를 받기도 한다. 본부는 필라델피아에 있다.

▷ 제네바 퀘이커 유엔사무소(Quaker UN Office, Geneva / www.geneva.quano.info)

퀘이커는 끊임없이 전쟁에 저항해 왔으며 약 300여 년 전 '종교친우회(Religious Society of Friends, 퀘이커)'를 창립한 이래 평화와 정의를 위해 활동해 왔다.

제네바 퀘이커 유엔사무소는 전 세계 퀘이커들을 대신하여 영국의 '퀘이커 평화와 사회의 증인(Quaker Peace and Social Witness)'과 '친우세계위원회(Friends World Committee for Consultation)'에 의해 운영되

고 있다. 1948년이래 제네바 사무국은 뉴욕 퀘이커 유엔사무소와 함께 유엔 경제사회이사회 범주II (Category II) 협의자격에 대한 퀘이커의 대표역할을 하고 있다. 이러한 뉴욕과 제네바 퀘이커 유엔사무소의 자격은 많은 유엔 회의에 업저버의 자격을 가지게 하며 자료를 수집하고 서면, 구두 진술을 가능하게 한다.

뉴욕과 제네바의 사무소는 유엔과 그들과의 연결고리 역할로 전 세계의 친구들(Friends)을 지원한다. 종종 이러한 활동은 특별한 주제에 관한 감시와 보고를 의미한다. 또한 드물기는 하지만 이러한 활동이 유엔에 정보를 제공하는 역할을 하기도 하며 혹은 특정 국가의 인권상황에 관해 이슈를 제기하기도 한다.

유엔사무소의 활동은 각기 다른 지역과 국가에서 온 정부 대표들을 비공식적으로 한 자리에 모아 민감한 인권상황에 대한 토론과 이해를 돕는 역할을 한다.

▷ 반군사주의 제작소(Antimilitaristic Manufacture)

반군사주의 제작소는 병역거부를 위한 비정부기구 네트워크를 지향하며 약 2년 전 활동을 시작한 병역거부 운동 그룹이다. 반군사주의 제작소는 반군사주의자와 평화주의자의 사상의 증진을 위해 2002년 6월 설립되었다.

제작소는 주요한 활동을 책, 브로셔, 병역거부를 지지하는 음악가들의 CD, 포스터, 전단지, 스티커, 세르비아-크로아티아어로 된 웹사이트 후원 등에 두고 있다.

▷ 새로운 윤곽(New Profile / www.newprofile.org)

새로운 윤곽은 역사가 오래되지 않았지만 괄목할만한 조직으로, 이스라엘 사회에 뿌리깊이 자리잡은 군사주의의 영향에 문제제기 할 필요가 있다는 믿음 하에 만들어졌다. 페미니스트 여성, 남성과 청소년으로 이루어진 이 활동은 대중적이며 자발적이다. 새로운 윤곽은 이 단체가 장기적으로 가져야할 목표를 반영한다. 이스라엘 사회를 전쟁과 힘에 의한 군사화 된 사회로부터, 모든 민중의 권리가 동등하게 고려되고 촉진되는, 그리고 다른 이들의 영토를 군사적으로 점령하는 행위가 종결되는 적극적인 평화 만들기 공동체로 바꾸는 것이다. 새로운 윤곽은 위원을 선출하지 않는다. 유일하게 직함이 있는 사무국장을 포함하여 모든 활동 참여자들이 자발적이다. 다른 지위들과 모든 위원회 업무는 비 위계적인 소규모 단위로 이루어져있다. 구성원의 보수는 없다. 구성원들은 할 수 있을 만큼, 할 수 있을 때 기부를 한다. 한 팀은 모금활동을 맡는다. 이 팀은 연락망을 만들고 정보를 모으는 사람들에 의해 지원을 받는다. 일반적인 회의는 정기적으로 한 달에 한번 열리며 장소는 구성원들간에 돌아가며 정해진다. 또한 구성원은 이후에 타이핑된 회의록을 돌리고 이메일로 회람한다. 이러한 회람은 권력을 분배하고 권위를 탈 집중화하는 실용적인 수단이다.

이러한 목표를 진척시키기 위해 새로운 윤곽은 다음과 같은 활동을 한다. ① 징병제 재고 ② 탈 군사화 고취 ③ 스터디 그룹과 성인 커리큘럼 개발 ④ 평화를 위한 여성연합(Women's Coalition for a Just Peace) 내 교류

▷ 반전인터내셔널(War Resisters' International, WRI / www.wri-irg.org)

“전쟁은 인간성(humanity)에 반하는 것이다. 따라서 나는 어떤 전쟁에도 반대하며, 전쟁의 원인을 제거하기 위해 투쟁할 것이다.” ‘반전인터내셔널’의 정신이 집약된 창립 선언문이다. 반전인터내셔널은 1차 세계대전 중 활동한 반전주의자들을 중심으로 1921년 영국에서 설립되었다. 뒤이어 1923년 미국 지부가 설립된 이래 전 세계 평화운동가들의 네트워크 조직으로 발전해왔다. 현재는 40여 개국 80여 개 지부가 활동중이다.

양심에 따른 병역거부운동은 반전인터내셔널 활동의 중심축이다. 창립자인 허버트 런햄 브라운부터 1차 세계대전 중 병역거부로 2년6개월을 감옥에서 보낸 병역거부자였다. 이 단체의 회원들은 주로 비종교적 이유의 병역거부자들로 구성돼 있다. 서구에서 양심에 따른 병역거부권이 인정되고, 대체복무가 도입된 데는 한 세기에 걸친 이들의 활동이 큰 몫을 담당했다.

양심적 병역거부권을 확보하기 위해 반전인터내셔널은 다양한 활동을 벌여왔다. 군사활동에 참여하기를 거부하는 것은 물론, 전쟁에 쓰이는 세금내기를 거부하는 운동, 제3세계의 병역거부자 지원 등이 대표적인 예이다. 베트남전 동안 미국에서 벌어진 징집카드 불태우기 운동도 이들의 활동과 밀접한 연관이 있다.

반전인터내셔널의 평화운동은 병역거부 운동을 넘어 다양한 영역에 걸쳐 있다. 나치 치하에서 탈출한 사람들에게 피난처를 제공한 활동은 대표적인 예다. 반전인터내셔널의 활동가들은 나치 치하의 네덜란드와 덴마크, 노르웨이에서도 비폭력 저항운동의 중요한 역할을 담당했다. 1944년 반전인터내셔널 네덜란드 지부 사무총장은 불법 유인물을 제작했다는 이유로 나치에 처형당하기도 했다. 이처럼 '비폭력 직접행동'은 이들에게 죽음을 각오하고 지켜야 할 원칙이다.

▷ 양심적 병역거부자의 인권과 보호를 위한 중앙사무소(Zentralstelle für Recht und Schutz der Kriegsdienstverweigerer aus Gewissensgründen, Central Office for the Rights and the Protection of Conscientious Objectors / www.zentralstelle-KDV.de)

병역거부자의 인권과 보호를 위한 중앙사무소는 독일에 국가복무(National Service)가 재 도입된 직후인 1957년 창립되었다. 중앙사무소는 26개 단체들이 병역거부자들을 보호할 목적으로 만든 연대단체이다. 중앙사무소에는 인권단체, 몇몇 교회의 청년단체, 노동단체 및 정당, 병역거부자 조직과 평화그룹이 소속되어 있다. 중앙사무소는 두 가지 중요한 임무를 가지고 있는데 조언을 구하는 모든 사람들에게 대한 지원을 통해 이들이 병역거부자로서 인지하는 과정을 돕는 것과 국회와 정부에 로비 하는 것이 그것이다. 중앙사무소의 활동은 국회와 정부, 그리고 책임자들로부터 도입된 차별조항들을 폐지하는 운동을 지원한다. 또한 중앙사무소는 국가복무를 폐지하는 운동을 지원한다.

중앙사무소는 회원단체들의 분담금(10%), 기부금(50%), 물품 판매(30%), 기타 다른 수입(10%)으로 운영되며 3명의 활동가가 일하고 있다. 이들 활동가들은 명예직이며 해마다 10,000명 가량의 사람들이 조언을 구한다.