



Conscience and Peace Tax International

Military Recruitment and Conscientious Objection:

A Thematic Global Survey

Conscience and Peace Tax International (CPTI) was founded in 1994 to work for recognition of the right of conscientious objection to military taxation and for the redirection of military spending to peaceful purposes. It is incorporated in Belgium with an international board and has Special Consultative Status with the Economic and Social Council of the United Nations.

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1. INTRODUCTION

The researching and production of this report was funded by a grant awarded to CPTI by the Joseph Rowntree Charitable Trust for “A systematic thematic compilation of information on military recruitment policy and practice world-wide, with a particular emphasis on provisions for conscientious objection.”

Much of the history of conscientious objection has, inevitably, been written by conscientious objectors. It is therefore no great surprise that the philosophy and growth of conscientious objection movements and the sufferings of individual conscientious objectors should have been exhaustively documented. This paper, therefore, concentrates instead on the legislative moves to accommodate conscientious objection, trying to place these in the context of the overall military recruitment systems and of the developing international standards in this field. It is hoped that the thematic approach, drawing out common features and issues across different national situations, will complement the country-by-country analysis in the 1998 “Refusing to bear arms” survey and the 2005 update of the European entries (see box). However this report should certainly not be seen as a substitute for the comprehensive detail of those analyses.

“Refusing to bear arms”

The most recent complete survey of the situation facing conscientious objectors world-wide was conducted by Bart Horeman and Marc Stolwijk and published in 1998 by War Resisters International under the title “Refusing to bear arms”. In 2005 an update by Marc Stolwijk of the European entries was published by the Quaker Council for European Affairs. The original survey and the updates are both available on the WRI website at <http://wri-irg.org/co/rtba>. In order not to further burden this report with repetitive footnotes, it should be stated at the outset that any information on the situation in a State in Europe which is not otherwise referenced may be found in the relevant country entry of the 2005 update.

The original proposal for the research reported here, as drawn up in the Summer of 2004, referred to two sources which had recently become available. The first was the file held in the Office of the UN High Commissioner for Human Rights of the replies to a questionnaire, sent out in 2003 to governments, international organisations, national human rights institutions and non-governmental organisations, in order to obtain information for the analysis of “best practices” which the Office was preparing for UN Commission on Human Rights (UN Document No. E/CN.4/2004/55). The second was the draft country entries being received by the Coalition to Stop the Use of Child Soldiers for their Child Soldiers Global Report 2004; some of these drafts, to which the researcher was given confidential access, contained more detailed information on provisions for conscientious objection than was required for the Global Report. The situation regarding conscientious objection is however moving so rapidly that it has been necessary to update and supplement the information contained in these sources. This paper also draws heavily for detailed examples of the issues discussed on the research done for a series of briefings which CPTI has prepared for the UN Human Rights Committee since the Summer of 2004 on the situation regarding conscientious objection in States reporting under the International Covenant on Civil and Political Rights.

2. MILITARY SERVICE AND RECRUITMENT

2.1 Types of Military Recruitment

Slightly fewer than half of the world's States currently enforce some form of obligatory military service. A similar number rely on voluntary recruitment. The remainder - generally micro-states - have effectively no armed forces.¹

In the nineteenth century, reliance on a volunteer army was seen as characteristically British, while France epitomised the more common model of universal conscription.² Historical British influence may be seen in the fact that, of Commonwealth countries, only Cyprus, Singapore and Zimbabwe now have legislation imposing obligatory military service although several others, along with the UK itself, brought in conscription during the two World Wars.

SOME DEFINITIONS:

Obligatory military service and **compulsory military service** seem to be used completely synonymously. However different nuances may be read into the focus on the one hand on the legal obligation and on the other on the compulsion. In general in this paper the adjective "compulsory" has been reserved for recruitment.

Recruitment is used in this paper as a general term for all means of finding military manpower. It can be voluntary *or* compulsory. Confusion is sometimes caused by the fact that the Spanish equivalent, *reclutamiento*, is apparently used exclusively for compulsory recruitment.

Compulsory recruitment may sometimes take the form of **forced recruitment**. Those **forcibly** recruited may be **legally** recruited, in the sense that the methods - whether or not legal in themselves - may be used as a means of enforcing the legal requirement to perform military service. Characteristically, however, forced recruitment takes place indiscriminately with no due process for establishing legal liability for military service.

Conscription can mean a system of obligatory military service or its enforcement in the individual case. It is generally used in this paper in the former sense.

Outside the Commonwealth, almost all States with any armed forces at all have, at least on paper, had some form of obligatory military service during the last sixty years. There are only eleven exceptions, five of them (Bahrain, Oman, Qatar, Saudi Arabia and the United Arab Emirates) in one group on the Persian Gulf. Under Article 9 of its 1947 Constitution, Japan may not have any armed forces - the "Self Defence Force" which does exist is manned on an entirely voluntary basis. Conscription has never been imposed in Ireland (even when it was part of the UK during the First World War it was not covered by the 1916 Military Service Act).

¹ See Barbey, C. (2001), *La non-militarisation et les pays sans armée: une réalité*, APRED, Flendruz, Switzerland. Precise definitions are however difficult, and some of the instances Barbey cites are rather idiosyncratic.

² See the articles by Forrest, Kestenbaum and the editors themselves in Mjoset & Van Holde(Eds), (2002) *The comparative study of conscription in the armed forces* (Comparative Social Research, Volume 20), Elsevier Science, Oxford

Table 1: Introduction / abolition of obligatory military service

State	Obligatory Military Service - introduced:	abolished/ suspended:	last intake	no conscripts serving from:
Argentina		1994		
Australia		1973		
Belgium		1992 (Dec 31)	1993	1995 (Mar 1)
Bosnia- Herzegovina:		2005 (Oct 5)	2005	2006 (Jan 1)
Croatia				2010 p
Czech Republic		2001	2004 (Apr)	2005 (Jan 1)
Djibouti			2001	
Ecuador			1998	
France		1997	2001	2002
Honduras		1994		
Hungary		2004 (Nov 3)		2005 (Aug)
Italy		2000 (Nov 14)	2004 (Feb)	2005 (Jan 1)
Jordan		1992 (Apr)		
Kuwait	1980	2001	2002	
Latvia		2004 (draft law)	2006 p	2007 p
Luxembourg		1967		1969 (Jul 1)
Macedonia, the FYR of				2008
Malaysia	2003			
Mozambique	1997			
Netherlands		1992	1996	1997
New Zealand		1973		
Nicaragua		1990		
Peru		1999 (Sep)		2003
Portugal		1999		2004 (Dec)
Romania		2005 (Sep)	2006	2007 (Jan 1)
Slovakia		2004 (Jun)		2007 (Jan 1)
Slovenia		2002	2003 (Apr)	2003 (Oct)
South Africa				1994
Spain		1999 (May 18)	2001	2002 (Jan 1)
Suriname		1998		
UK	1939		1957	1963
USA	1940		1973 (Jul 1)	
Zimbabwe	1989/2002			

Notes: p - currently proposed

Sources: Horeman, B. & Stolwijk, M., Refusing to Bear Arms, War Resisters International, 1998.
 Coalition to Stop the Use of Child Soldiers, Child Soldiers Global Report 2004 .
 Stolwijk, M., The Right to Conscientious Objection in Europe Quaker Council for European
 Affairs, Brussels, 2005.

Cameroon, Papua New Guinea, Rwanda and Timor Leste are other rare exceptions which have throughout their independent history had no legislation enabling conscription.

As Table 1 shows, however, the changes in recent years have been dramatic. Since 1960, the last peacetime conscripts have served in no fewer than thirty States, and according to current proposals these should be joined by three more (Latvia, Romania and Slovakia) from the beginning of 2007. Apart from those shown in the Table, a number of other States are at least debating the possibility of eventually suspending conscription and “professionalising” the armed forces. In Austria a date of 2010 is being discussed, while in Ukraine the target date is 2015. Early in 2003 the Minister of Defence of Tajikistan was reported as saying that this process would start there in five years time.³ According to a newspaper article in July 2003,⁴ the acting Ombudsman in Bolivia has observed that in recent years there had been a change in the attitude of the armed forces allowing discussions of possible abolition of obligatory military service. In fact the impetus for such changes often comes from the armed forces or the wider defence establishment. Thus in Moldova, it was the Ministry of Defence which in 2001 unsuccessfully promoted a Bill to abolish conscription altogether. In Bulgaria and Denmark, proposals including the abolition of conscription have also been aired but have been transformed in the first instance into less radical possibilities; for instance it is likely that compulsory military service in Denmark will be cut to a mere three months training, largely in “civil defence”.

The Swiss Minister of Defence, Samuel Schmid (subsequently President), provoked a lively debate by suggesting in a radio interview in August 2004 that the time might have come for Switzerland, too, to move to an all-volunteer, professional army. Although in many States the ideological basis of conscription lies in the concept of a “citizen’s militia” which can be mobilised at a time of national peril, Switzerland is in fact the only State now to adhere to the model in a relatively pure form, which makes the concept of “professionalisation of the armed forces” rather more controversial on ideological grounds than it is elsewhere.⁵

Sometimes however such expressed intentions do not come to fruition. The Thai government reportedly curtailed debate on reform of the conscription system when in 1997 it announced the abolition of compulsory military service and the gradual reduction of the armed forces to less than 200,000 by 2003. A greater reliance on reserve/paramilitary units was seen “as a way to enhance defence capabilities at a lower cost”.⁶ In practice, however, the number of conscripts and the overall strength of the armed forces have increased since 1997. Guatemala undertook to abolish conscription as part of the package of measures agreed to end the civil war in the mid-1990’s. However in the event the existing legislation remained in place, but to it was added an apparently unique free choice for conscripts to choose social service projects rather than training for military purposes, so that military service can be presented as voluntary.⁷

³ Radio Free Europe/Radio Liberty, 22 February 2003 “National armies of Uzbekistan, Tajikistan changing with the times”, available at www.eurasianet.org/departments/insight/articles/pp022203.shtml.

⁴ “Defensora del Pueblo propone que servicio militar sea voluntario,” (El Deber Online), Bolivia Hoy, 8 July 2003,

⁵ Schweizerischer Friedensrat (Swiss Peace Council) (2004), *Wehrpflicht zur Debatte*, Zurich.

⁶ Horeman, B. & Stolwijk, M. (1998), *Refusing to Bear Arms*, War Resisters International, London.

⁷ *Child Soldiers Global Report 2004* (Coalition to Stop the Use of Child Soldiers, London)

The example of Guatemala illustrates how in practice the simple dichotomy between systems of voluntary and compulsory recruitment breaks down into a rather more confused mosaic.

For a start, the period of obligatory service in a conscription system is often no longer than is necessary for basic training; in many cases its original purpose was to provide a pool of trained reserves who could be mobilised in the event of actual or impending hostilities. In order to retain an effective army, even States which rely on conscription for the bulk of their manpower need some core of longer-term military personnel. In particular the command structure, the officers, are rarely persons performing the minimum obligatory service, although they may have initially entered as such; the option of pursuing a military career may be available after completing all or part of the obligatory service,⁸ or the first year of training for a military career may be counted as the obligatory military service, as in Tunisia.⁹ Therefore even in countries which have some form of conscription or national service, this never supplies the entire military manpower, and often represents a relatively small proportion, as is illustrated in Table 2. In such cases, there is usually a gulf in status between conscripts and “regular” or “permanent” members of the armed forces; often there are differences in the regulations applying to the two groups.

In several States a constitutional reference to the duty of all citizens to participate if required in the defence of the country is not backed up by specific implementing legislation, and in practice recruitment to the armed forces may take place in a purely voluntary fashion. This does not necessarily mean that the requirement is redundant; but rather dormant or latent, available for use in an emergency. Such a constitutional provision may exist even where there are at present no armed forces (eg. Costa Rica), facilitating their introduction should the government deem it necessary.

Similarly while some States - Canada in 1946; the UK in 1957; New Zealand in 1973 - have repealed the legislation enforcing conscription, many others have simply suspended it. The USA is an obvious example. Section 10(h) of the Selective Service Act of 1971, amending legislation originally dating back to the 1940 Selective Training and Service Act, allowed the provisions to go into “standby” mode rather than having to be repealed whenever the periodic renewal of the President’s authority to induct personnel into the military should cease. Two years later, that authority was indeed allowed to expire. Nevertheless, throughout this report, reference will be made to the very detailed procedural provisions of the legislation in the USA, because although not currently implemented this remains on the statute book ready for reactivation whenever required.

⁸ For instance, under Article 34 of the Russian Federation’s Law on Military Duty and Military Service, conscripts may transfer to the regular army after six months. In Uzbekistan enrolment into the regular army is only possible after completion of obligatory military service.

⁹ Child Soldiers Global Report 2004

Table 2: Proportion of Conscripts in Armed Forces 2004

State	Total of Armed Forces Personnel	of which Conscripts: Number	%
Italy	194000	11000	5.7
Hungary	32300	2000	6.2
Czech Republic	45000	6000	13.3
Brazil	302909	45707	15.1
Russian Federation	1212700	210000	17.3
FYR Macedonia	10890	2000	18.4
Paraguay	10100	1900	18.8
Sudan	104800	20000	19.1
Portugal	44900	9100	20.3
Republic of Korea	687700	159000	23.1
El Salvador	15500	4200	27.1
Denmark	21180	5800	27.4
Chile	77700	22400	28.8
Austria	35000	10200	29.1
Lithuania	13510	3950	29.2
Romania	97200	29600	30.5
Mexico	192770	60000	31.1
Lebanon	72100	22600	31.3
Latvia	4880	1600	32.8
Germany	284500	94500	33.2
Croatia	20800	7000	33.7
Colombia	207000	74700	36.1
Venezuela	82300	31000	37.7
Mongolia	8600	3300	38.4
Iran	540000	220000	40.7
Belarus	72940	30000	41.1
China	2255000	990000	43.9
Sweden	27600	12300	44.6
Poland	141500	67500	47.7

State	Total of Armed Forces Personnel	of which Conscripts: Number	%
Estonia	4980	2410	48.4
Libya	76000	38000	50.0
Belgium	16400	8400	51.2
Bosnia-Herzegovina	8200	4200	51.2
Singapore	72500	39800	54.9
Norway	26600	15200	57.1
Greece	170800	98321	57.6
Georgia	17770	10400	58.5
Algeria	127500	75000	58.8
Moldova	6809	4089	60.1
Serbia-Montenegro	65300	39600	60.6
Bolivia	31500	20000	63.5
Israel	168000	107500	64.0
Tunisia	35000	23400	66.9
Armenia	44874	30075	67.0
Finland	27000	18500	68.5
Taiwan	290000	200000	69.0
Egypt	450000	322000	71.6
Turkey	514850	391000	75.9
Uzbekistan	52500	40000	76.2
Guinea	9700	7500	77.3
Guatemala	29200	23000	78.8
Turkmenistan	26000	21000	80.8
Switzerland	27400	23000	83.9
Viet Nam	484000	412000	85.1
Cyprus	10000	8700	87.0
Laos	29100	25600	88.0
Bulgaria	51000	49000	96.1

all figures as quoted in The Military Balance 2004/5

Moreover, although the constitutional provision may make the military service requirement universal, the numbers eligible are often far in excess of the needs or capacity of the armed forces themselves. In such cases it is normal for recruitment to involve some form of selection process - usually, at least in principle, "random", but sometimes deliberate; in Sweden, for instance, the legislation implies that it is those who are adjudged most suitable for military service who will be selected.¹⁰

Where there is a process of selection for obligatory military service, it is often the case that priority is given to those who - for any one of a number of reasons - "volunteer" to perform this military service before being called up to do so. During the period of obligatory military service the status of such "volunteers" remains that of conscripts, rather than of regular members of the armed forces.

This has enabled some countries to move towards completely "professional" armed forces without any change in legislation, and hence without abandoning the principle of obligatory military service. Chile, for instance, "has indicated... that it is undertaking a reform of the military service system, which in principle would be mostly voluntary, recurring to a lottery only if they are unable to cover the minimum number of persons needed with the voluntary system."¹¹ Likewise El Salvador¹² has stated that military service was effectively voluntary though a full conscription system, with registration, remains in place. Morocco, too, has had an over-supply of volunteers for its armed forces for many years and has not needed to enforce the conscription provisions which nonetheless remain on the statute book. On the other hand, a State's insistence that its military manpower needs are completely met by voluntary recruitment should not always be taken at face value. In a January 2004 letter to the UN Security Council, reiterating its evidence to the Committee on the Rights of the Child, Myanmar stated "The Myanmar Armed Forces is an all-volunteer force and those entering military service do so of their own free will," and furthermore that War Office Council Instruction 13/73 of January 1974 "stipulates that a person cannot enlist with the armed forces until the age of 18."¹³ Not only is no information provided to confirm the implied repeal of the National Service Law and People's Militia Act of 1959; these assertions are belied by the abundant evidence of forcible conscription of juveniles.¹⁴

Cutting across the distinction between compulsory and voluntary recruitment is also the distinction between the situation where the recruit is required or expected to come to the recruitment office and that in which a recruiter (accurately or not the term "recruiting sergeant" seems to be very widely used) goes out in search of potential recruits; whether those who have evaded obligatory military service, or in order to find volunteers. In both circumstances this can occur legally and with safeguards, but it is always liable to abuse. The pressure on recruiters to achieve targets in the former case can lead to random forced recruitment; in the latter to harassment and fraud by

¹⁰ "From each assignment group those persons should be enrolled who are best suited for the service in question." Art. 3.2, Act on Liability for Total Defence Service, 1809/1994.

¹¹ Inter-American Commission on Human Rights, Report N° 43/05, Case 12.219, Cristian Daniel Sahli Vera et al v Chile, March 10, 2005, Para 22.

¹² In its second periodic report to the Committee on the Rights of the Child: UN Document CRC/C/65/Add.25, 22 October 2003.

¹³ Child Soldiers Global Report 2004 (Coalition to Stop the Use of Child Soldiers, London)

¹⁴ See particularly Human Rights Watch, "My gun was as tall as me": Child Soldiers in Burma, New York, October 2002, pp 26 - 39.

recruiters. Exposure of a growing number of abuses by recruiters¹⁵ in the USA caused such embarrassment to the armed forces that it was publicly announced that all military recruiters would be recalled for one day on Friday 20th May 2005 for a compulsory retraining session aimed at eliminating improper practices.

Although recruitment of citizens into the central Government's armed forces is by far the most common form, mention should be made of some other types of military recruitment. It may occur at the sub-national scale; until the beginning of 2006 there were separate conscription schemes into the armed forces of the two constituent "entities" of Bosnia-Herzegovina. Bermuda, a crown colony of the UK, has its own conscription system.¹⁶

In many countries conscripts as well as volunteers are employed in various paramilitary forces and sometimes in large numbers (Paraguay, Colombia) in the police. Meanwhile, world wide, the number of members of various government-sponsored and armed, but usually locally recruited and controlled, militias with a wide variety of different titles (village guards, self-defence-groups, etc.) almost certainly runs into the millions rather than hundreds of thousands, but it is in the nature of such groups that coherent overall information is very hard to come by. Sometimes, however, recruitment into these groups may include a localised form of conscription; as has for example been reported with regard to the Local Defence Forces in Rwanda.¹⁷

External recruitment by governments is often overlooked. The French Foreign legion and the Gurkha units of the British Army have long and distinguished histories. More recently wealthier countries which rely on voluntary recruitment have made up shortfalls in the recruitment of their own citizens by turning to those of poorer States with which they have connections. The UK has accepted an increasing number of recruits from various Pacific states, notably Fiji¹⁸; recent reports indicate that as many as 8% of new recruits in the British Army are from overseas.¹⁹ Quite apart from territories such as Puerto Rico and Guam, which come under the domestic military recruitment legislation of the USA, the American army accepts volunteers from a number of the Pacific micro-states under its protection which do not have armies of their own, such as Micronesia and the Marshall Islands. In the United Arab Emirates 30% of the troops are thought to be foreign nationals. Saudi Arabia, too, has certainly in the past relied heavily on foreigners for its armed forces. After their basic military training it is possible for Swiss conscripts to enrol as professional soldiers in the elite "Swiss Guard" of the Vatican.

There are even instances where conscripts are employed as such in "foreign" armed forces. The largest number of conscripts in Tajikistan in fact serve in the Russian Border Guards, under Russian officers and command. Tajik conscripts make up the bulk of the 12,000 Russian border guards stationed in Tajikistan, whereas the national army has a strength of only 7,600.²⁰

¹⁵ Eg. an article in the New York Times, 3rd May 2005, by D: Cave, "Army Recruiters Say They Feel Pressure to Bend Rules"

¹⁶ Horeman, B. & Stolwijk, M. (1998), Refusing to Bear Arms, War Resisters International, London.

¹⁷ Child Soldiers Global Report 2004. (Coalition to Stop the Use of Child Soldiers, London)

¹⁸ Ibid, Fiji entry

¹⁹ "Tommy foreigner: Commonwealth soldiers", The Economist, 12th August 2004

²⁰ International Institute for Strategic Studies, The Military Balance 2004/2005 (Taylor & Francis).

A lot of military recruitment is also carried out by entities which are not internationally recognised as sovereign States. These range from Taiwan - a *de facto* State of over twenty million inhabitants, which not only has conscription but which has now legislated for the recognition of conscientious objection, to the myriad “armed opposition groups”,²¹ not forgetting the increasing number of private security firms and “military contractors” employed even by governments. Between the two extremes lie a number of secessionist statelets, among which Abkhazia, Nagorno-Karabakh, Taiwan, Transdniestria, and the “Turkish Republic of Northern Cyprus” currently impose a form of conscription, as until very recently did South Ossetia. It should, however, be noted that political entities which are not legal in themselves have no legal right to conscript and indeed those whom they do recruit may be legally subject to conscription in the State which is recognised as having title to the territory concerned. This applies even more strongly to the claimed “conscription” systems of armed opposition groups which do not administer territory. Not only are these groups not in a position of even theoretically being able to identify those allegedly liable; the persons concerned may actually be subject to enforceable conscription into the armed forces of the State. The escalatory effect of competitive recruitment in such circumstances is a topic too vast for the present survey.

²¹ For a comprehensive documentation, see Balancie, J-M. and La Grange, A. Mondes rebelles: Guérillas, milices, groupes terroristes, Editions Michalon, Paris (third edition 2001)

2.2 The Process

2.2.1 Registration and medical examination

The first requirement in enforcing obligatory military service is to identify those eligible. States vary in how comprehensive and accurate is their information on the identity, age, and whereabouts of their citizens, and in many instances the onus is placed on the citizen to register liability, typically a year before the age of eligibility for actual recruitment. Such a pre-registration is not however essential; some States proceed directly from their records held for other purposes. Thus Chile, in the 2005 Law on Military Service, was able to abolish registration altogether. Instead, in January each year the Civil Registry will pass to the military authorities details of all men who have completed their eighteenth year and this information will, if necessary (see p55), be used as the basis for selecting recruits.

At some stage between the establishment of the list of those eligible and the actual induction some form of examination of medical and physical fitness is usual. In Sweden the inspection “involves medical and psychological tests and other inquiries about personal conditions.”²²

Enlist, Enrol, Enlistment, Enrolment are all in common use to describe the military recruitment process, but they can sometimes be ambiguous. Etymologically they refer to putting on a list, roll or register (as does the Spanish equivalent). In systems where registration of those liable for military service is a discrete step in the process, they may be used to refer to this rather than to physically joining the armed forces.

If there is a selection procedure, this may or may not precede the medical examination. It is during this time, too, that decisions on exemptions (total or conditional) and deferments are normally made, and therefore when applications to exercise the right of conscientious objection to military service may be considered.

It is typical that registration, and medical examination if that takes place at the same time, leads to the issue of some kind of certificate of eligibility for military service which may need to be produced at various times for a variety of purposes.

The act of registration, and subsequently of incorporation into active service, has important implications for the status, rights and freedoms of those affected. It is frequently the case that those who have registered - or even those who are approaching military age - lose the freedom to leave the country. In Eritrea the fact that he was approaching military age was used as a reason to deny an exit visa to a child of six.²³ In Paraguay, under Article 23 of Law 569/75, citizens may not leave their area of residence between registration for military service and the medical examination, except for very good reason, with the permission of the judicial authorities, and subject to registration with those authorities in the temporary location.

²² Act on Liability for Total Defence Service, para 3.2

²³ Amnesty International (2004), *Eritrea: You have no right to ask*, London

2.2.2 Selection Procedure

The actual selection often takes place by means of a lottery. The classic example is the “draft” in the USA, which is used to determine the order in which those registered will be called up to active service, the total number and hence the proportion of those eligible being set in accordance with the manpower needs of the military. In the lottery, each day of the year is assigned a “Random Sequence Number” (from 1 to 365, or 366 in a leap year). When the draft is implemented, the first to be called up are those whose 20th birthday falls in the year in question and who were born on the date which has been allocated the number 1 in the lottery. All others born in the same year follow, in the random order of the numbers assigned to the date of their birthdays. When all eligible persons born in that year have been “drafted”, those born in the previous year, ie. those turning 21 in the course of the current year, are called up, similarly in randomised order of birthday dates. Those who turn 19 in the course of the year will be the last group to be drafted. For example, were a draft to be implemented in 2006, those born in 1986 would be the “First Priority Selection Group”, followed by those born in 1985 and other years back to 1980, then - obviously as a very last resort, as it would entail digging into the “capital” which would become available in future years - those born in 1987 and 1988. Once the “pecking order” has been established for a particular year, further groups can be called up at any time as manpower needs require.

In practice, one or two special cases would complicate the sequence. Those registered for the draft may in fact volunteer for “induction” at any time; volunteers will always be taken first. Those who have been granted postponements, exemptions or deferments which have now expired will also be called upon before new recruits in their age cohort. Certain categories of deferment bring “extended liability” to the age of 34; those becoming liable as a result will be called up in age order before the draft is extended to the 18/19 cohort.

“The Draft”

The draft in the USA is in fact the lottery which is used to determine which of the eligible recruits is selected. The noun “draft” is derived from the verb “draw” - in the sense of drawing lots. In turn, in American usage, it led to the coining of a new verb “to draft”, meaning to conscript by lottery, which became globalised as yet another synonym for any type of obligatory recruitment.

Rarely are the rules and arrangements spelt out in such detail. Nor, of course, is the linkage to dates of birth universal. The lottery may be altogether simpler. In Mexico, recruits are reportedly required to draw a ball; whether it is black or white determines their fate. In Denmark the practice of recruits drawing their own number was, the story is told, abandoned some years ago when a potential recruit disrupted the system by eating his ticket.²⁴

The responsibility may be delegated - to a community to present a certain number of recruits or to a recruiter to find them. Sometimes used by Governments (eg.

²⁴ Horeman, B. & Stolwijk, M. (1998), Refusing to Bear Arms, War Resisters International, London.

Bhutan),²⁵ the former method has often been used by armed opposition groups which wish to impose a form of conscription on their client populations. Brett & McCallin²⁶, quote Cambodia, Lebanon, Liberia, and Myanmar; there is no evidence that the situation in the last-named has subsequently changed.

Not all States have a registration system. Even those which do may lack effective means of checking who *ought* to have registered, so that the requirement may be largely ignored. As Rojas²⁷ explains with reference to Paraguay: “Even though the Armed Forces’ manpower needs are relatively small in comparison with the population of youths at the age of eligibility for obligatory military service, the full number of vacancies is never covered by those who register of their own free will especially for units operating in remote areas where conditions for the troops are harder. This - combined with the lack of any record held by the authorities of the addresses of all residents in the country whereby a mechanism of notification of recruitment might be put in place - is the reason why the Military and Police authorities have recourse to spot checks in the street of military documentation and the use of physical force to make up the annual shortfall in willing recruits.”

In such circumstances, two responses are possible. One is to focus on the group in the population which can be readily identified; those completing secondary education. Where conscription does exist in Africa this is often the only or principal means whereby it is enforced. The conscription of other sectors of society is often more random. In the five conscript testimonies from Eritrea reported by Connect eV²⁸, the ages at the time of recruitment are in exact inverse order to the level of education reached, from the girl who managed to complete school leaving examinations at the age of 15 to the young man who had left school after the fifth form and who had turned 20 before he was called up - this seemingly independent of the dates involved, which were scattered over the five year period from 1996 to 2000. In Eritrea final school examination results are withheld, meaning that University entrance examinations cannot be taken, until after military service. Under a 1997 decree, a similar practice was actively enforced in Sudan, at least until 2003²⁹. The focus on school leavers is however not unique to Africa; certainly prior to the legislative reform in 1998 which raised the minimum recruitment age, it was the main means of conscription in Colombia. Meanwhile it might be noted that in the Central African Republic there is a hint that no attempt is made to impose conscription on any except government employees.³⁰

²⁵ Horeman, B. & Stolwijk, M. (1998), Refusing to Bear Arms, War Resisters International, London.

²⁶ Brett, R. & McCallin, M. (1998), Children: the invisible soldiers (2nd edition), Rädda Barnen (Swedish Save the Children), Stockholm, p.48

²⁷ Rojas, F. (2001), “El Servicio Militar Obligatorio en Paraguay: entre la contestación social y la inercia de las instituciones del Estado autoritario”, paper delivered to the Panel on Military Service, Center for Hemispheric Defense Studies, REDES 2001 (Research and Education in Defense and Security Studies), Washington D.C. May 22-25, 2001. “ *A pesar de que la cantidad requerida por las Fuerzas Públicas es relativamente baja en comparación con la cantidad de jóvenes en edad de prestar SMO, nunca las plazas son cubiertas en su totalidad con los que se alistan voluntariamente, especialmente en unidades que por su lejanía, ofrecen condiciones más difíciles para la tropa. Este hecho -sumado a la inexistencia de un padrón donde el Estado pueda ubicar el domicilio de todas las personas residentes en el país para implementar un mecanismo de notificación del reclutamiento- motiva que las Fuerzas Militares y Policiales recurran al control en la vía pública de la documentación militar y al uso de la fuerza física para reclutar la cantidad que anualmente queda vacante por causa de los remisos.*”

²⁸ Connection eV Germany, War Resisters International & Eritrean Anti-Militarist Initiative Eritrea: Conscientious Objection and Desertion London (WRI) April 2005

²⁹ Child Soldiers Global Report 2004. (Coalition to Stop the Use of Child Soldiers, London)

³⁰ see Horeman, B. & Stolwijk, M. (1998), Refusing to Bear Arms, War Resisters International, London.

The other response, traditionally found in Paraguay and elsewhere in Latin America, but also Ethiopia certainly prior to 1992³¹, Eritrea and Angola³² to the present day, is to enforce recruitment by random checks of documentation in the street. In Paraguay, under Article 34 of Law 569/75, “The police authorities of the Republic and the Military Police attached to the Directorate of the Service of Recruitment and Mobilisation (*DISERMOV*) are authorised at any time to require any citizen aged between seventeen and fifty years to produce his certificate of enlistment or deferment, in order to enforce this law.” *DISERMOV* has traditionally interpreted this article as entitling it to effect the immediate recruitment of those apprehended for lack of the appropriate documentation. Rojas³³ reports that in most cases which had been the subject of complaints, the victim had thereafter been held incommunicado. Furthermore in so far as any legal process was gone through after detention, it was undertaken by military tribunals, with no review by civil courts, even though the charge against the defendants was technically that they had failed to take the military oath of allegiance, meaning that by definition they were still civilians.

Even when such methods of recruitment are to some extent sanctioned in law, they frequently degenerate into the random seizures of young people, which in English tend to be referred to as “press-ganging”, casting back to the practices of the 18th Century British navy, but which are notorious under different names in different cultures “arreo” in Latin America, “afesa” and “giffa” in the Amharic and Tigryna languages of the Horn of Africa, “rusgas” in Angola.

Bolivia acknowledged in its initial report to the Committee on the Rights of the Child that “[a]lthough the minimum age for performing military service is 18, when the annual intake into the armed forces cannot be made up on a voluntary basis, compulsory recruitment is indiscriminate, an occasion for forcibly recruiting poor adolescents, including some as young as 14, by means of organised sweeps.”³⁴ In Tajikistan allegations that recruiting officers sometimes resorted to random abductions were still being repeated in 2003. In Yemen, both sides in the civil war of 1994 were accused of widespread forced recruitment, and in the absence of information about formal recruitment procedures, reports based on confidential sources within the country hint that legal recruitment still relies on similarly random methods.

As time has gone on an increasing number of Eritreans have gone into hiding either before or after receiving their call-up papers. Many of the forced recruitment operations were targetted individually against such evaders and others in hiding who had deserted from the armed forces. Those conducting the operations were themselves at least sometimes unwilling conscripts acting under duress. One such

³¹ Brett, R. & McCallin, M. (1998), *Children: the invisible soldiers* (2nd edition), Rädda Barnen (Swedish Save the Children), Stockholm

³² Matondo, E., “Focus on Angola – Recruitment Practices and Grave Human Rights Violations”, Paper delivered to parallel meeting on conscientious objection during the 61st Session of the UN Commission on Human Rights, Geneva, 30th March 2005.

³³ Rojas, F. (2001), “El Servicio Militar Obligatorio en Paraguay: entre la contestación social y la inercia de las instituciones del Estado autoritario”, paper delivered to the Panel on Military Service, Center for Hemispheric Defense Studies, REDES 2001 (Research and Education in Defense and Security Studies), Washington D.C. May 22-25, 2001.

³⁴ Periodic Report of Bolivia to the Committee on the Rights of the Child, UN Document CRC/C/65/Add.1, 1 December 1997, para.154.

gives a graphic description of the process:³⁵ “In some cases we got addresses of persons who had disappeared from particular units. Sometimes we also surrounded entire quarters and (checked) every house. At first the quarter was surrounded. Then we went from house to house and got all out on the street, everybody. Everyone was checked. If someone was a student, he/she had a student card and was allowed to leave. If someone was an adult and a worker you looked for his worker card. If he or she had nothing to show, he/she would be brought to a military unit. Some stayed with their children. We had to take them out of their family and take them from their children. ... Some were ill. We took them too and brought them to their division. There they were put in prison. Some of the sick persons died.”

³⁵ Connection eV Germany, War Resisters International & Eritrean Anti-Militarist Initiative Eritrea: Conscientious Objection and Desertion London (WRI) April 2005

2.2.3 Call-up and Induction

Call-up

Where those liable for obligatory military service are not seized by force they must at some stage, with or without registration, and after any selection process has been followed, be summoned to report for military service. Many sources use the word “draft” for this process, but for the reasons explained on page 14, in this paper “call-up” is used instead.

Whatever it is called in local terminology and at whatever point it arrives, the call-up notice will instruct the conscript to report at a certain place at a certain time. It is normal that large numbers of recruits are called up at the same time. The Russian Federation, for instance, has two annual call-ups, in Spring and Autumn, as has Eritrea since 1994. The recruitment rounds there are still individually identified, so that a conscript could report, “In April 2000 I was called up for national service in the 13th round.”³⁶ In both these cases there are conscripts in the armed forces who have served for different lengths of time; in other countries, for example Brazil, only one round of conscripts generally serves at a time.

Sometimes (as in Turkey and the Russian Federation, and as is envisaged under the current legislation in the USA) medical examination does not take place until this point, so that some of those summoned will be deemed unfit. For all others, however, this will represent the precise moment of induction into military service. In English this would usually be called “enlistment”, but as has been explained on page 13, this can cause ambiguity when there is a pre-registration system. Similarly “draft”, however used, does not apply to a precise moment.

Induction literally means “to draw in”. There is no connection with “induce”; the verb is “to induct”. Although a term rather less familiar outside the USA, it refers less ambiguously than all the alternatives to the precise moment of joining the armed forces.

There is usually some form of induction ceremony which often places great importance on the taking of “the military oath” before the new recruits are issued with uniform and transported to barracks or training camp. No generalisation is complete, however. The taking of the oath may not occur until a later stage. In Hungary, conscripts did not take the military oath until three weeks after induction. In the USA, a preliminary stage involves lining the new recruits up and ordering them to take one step forward. Those who do not do so have refused induction.

Moreover, there is some confusion about whether induction takes place before or after training, and therefore at what point recruits become members of the armed forces. India, reporting to the Committee on the Rights of the Child in 2003³⁷, stated “Persons who are recruited at the age of 16 undergo basic military training for up to two and a half years from the date of enrolment and are then inducted into regular service.”

³⁶ Testimony by Musse Habtemichael in Connection eV Germany, War Resisters International & Eritrean Anti-Militarist Initiative Eritrea: Conscientious Objection and Desertion (WRI, London, 2005)

³⁷ UN Document CRC/C/93/Add.5, 16th July 2003.

Table 3: Changes in duration (months) of compulsory military service

State etc.	Year:	c1980	90	91	92	93	94	95	96	97	98	99	00	01	02	03	04	05
Albania	15	~	.	.	.	.	.	12	.	.	.	.	.	.	.	.	.	.
Argentina	12	~	.	.	.	.	.	0	-	-	-	-	-	-	-	-	-	-
Belgium	12	~	.	11	10	8	.	0	-	-	-	-	-	-	-	-	-	-
Bosnia-Herzegovina:																		
Federation	12	~	.	.	.	.	.	12	.	.	.	.	.	.	6	.	4	.
Rep. Srpska	12	~	.	.	18	.	.	9	.	.	.	.	.	6	.	.	4	.
Bulgaria	18	~	.	.	.	.	.	.	12	.	.	.	9	.	.	.	.	.
Croatia	12	~	10	.	.	.	.	.	.	.	.	.	.	6	.	.	.	.
Cyprus	26	~	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.	.
"Turkish Rep. of N. Cyprus"	24	~	.	.	.	.	.	.	.	.	.	.	15	.	.	.	.	.
Czech Republic	18	~	.	.	.	12	.	.	.	.	.	.	.	.	.	.	.	0
Finland	8	~	.	.	.	.	.	.	.	.	6	.	.	.	.	.	.	.
France	12	~	.	.	10	.	.	.	.	.	.	.	.	.	0	-	-	-
Georgia	24	~	.	.	.	.	.	18	.	.	.	.	.	.	.	.	.	.
Germany	15	~	.	12	.	.	.	10	.	.	.	.	.	.	.	.	9	.
Greece	20	~	.	19	.	.	.	.	.	.	.	.	.	16	.	12	.	.
Honduras	24	~	.	.	.	.	0	-	-	-	-	-	-	-	-	-	-	-
Hungary	18	~	12	.	.	.	.	.	.	9	.	.	.	.	6	.	.	0
Iran	28	~	24	.	.	.	.	.	.	.	21	.	.	.	.	.	.	.
Iraq	36	~	.	.	.	24	.	.	.	.	.	.	.	.	.	.	none	.
Italy	12	~	.	.	.	.	.	.	.	10	.	.	.	.	.	.	.	0
Jordan	24	~	.	.	0	-	-	-	-	-	-	-	-	-	-	-	-	-
Korea, Rep. of	26	~	.	.	.	.	.	.	.	.	.	.	.	.	.	24	.	.
Kuwait	24	~	.	.	.	.	.	.	.	.	.	.	.	.	0	-	-	-
Macedonia, the FYR of	12	~	.	9	.	.	.	.	.	.	.	.	.	.	.	6	.	.
Moldova	24	~	.	18	.	.	.	.	.	.	.	.	.	.	12	.	.	.
Mongolia	36	~	24	.	.	.	.	.	.	?	12	.	.	.	.	.	.	.
Mozambique	24	~	.	.	0	-	-	-	-	24	.	.	.	.	.	.	.	.
Netherlands	14	~	.	12	.	.	9	.	6	0	-	-	-	-	-	-	-	-
Nicaragua	24	~	S	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Norway	12	~	.	.	.	.	.	9	.	.	.	.	.	.	.	.	.	.
Peru	24	~	.	.	.	.	.	.	.	.	.	S	-	-	-	-	-	-
Poland	24	~	18	.	.	.	.	.	.	.	.	12	.	.	.	.	10	.
Portugal	16	~	15	.	12	.	4	.	.	.	.	.	.	.	.	.	.	0
Romania	16	~	12	.	.	.	.	.	.	.	.	.	.	.	.	8	.	.
Serbia - Montenegro	12	~	.	.	.	.	.	.	.	.	.	.	.	.	?	9	.	.
Slovakia	18	~	.	.	.	12	.	.	.	.	.	.	9	.	.	.	6	.
Slovenia	12	~	.	.	7	.	.	.	.	.	.	.	.	.	.	.	.	0
South Africa	12	~	.	.	.	.	S	-	-	-	-	-	-	-	-	-	-	-
Spain	15	~	12	9	.	.	.	7	.	.	.	.	.	.	0	-	-	-
Sudan	none	-	-	-	24	.	.	.	.	.	.	.	.	.	.	.	.	.
Taiwan	24	~	.	.	.	.	.	.	.	.	.	.	?	20	.	.	.	.
Turkey	20	~	18	15	.	.	18	.	.	.	.	.	.	.	.	15	.	.
Turkmenistan	24	~	.	.	.	18	.	.	.	.	.	.	.	.	24	.	.	.
Ukraine	24	~	.	.	.	24	.	.	.	.	.	.	.	.	.	.	.	12
Uzbekistan	24	~	.	.	.	18	.	.	.	.	.	.	.	.	12	.	.	.
Venezuela	24	~	.	.	.	.	.	.	.	.	?	18	.	.	.	.	.	.
Zimbabwe	none	-	-	-	-	-	-	-	-	-	-	-	-	-	4	.	.	.

2.3 Military service in practice

2.3.1 Duration and conditions

As can be seen from Table 3, the standard length of obligatory military service in 2004 varied from four months in Portugal (since abolished) to three years in Israel and Egypt. In fact, the gradual phasing out of compulsory military service in Western Europe was preceded during the 1990's by a steady shortening of the length of service required.³⁸ A similar progression has also been visible in many other parts of the world.

This is however only part of the story. As illustrated in Table 4, differential terms of service apply in many States. It is very common that graduates of higher education have a shorter length of service; sometimes this is extended also to those who have completed secondary education. Some conscripts are enrolled as officers; this is particularly the case where there are ongoing reserve obligations; in this case a longer full-time period of service is required. Sometimes there is reference to different lengths of service in different regions, although the details are often sketchy. It is frequently the case that those who join the air force or, particularly, the navy are required to serve for longer; it is rarely clear whether such a decision is the choice of the conscript.

In the Nordic countries the lengths of service form a singularly complicated pattern. Military service in Denmark is said to last between three days and fourteen months, depending on the particular branch of service entered. In Finland the duration is, depending on service and rank, 180, 260 or 362 days. In Sweden it appears that, basically according to ability, the conscript may be allocated to any particular service training programme up to the maximum of 615 days (approximately 20 months). Swedish armed forces sources indicate that most conscripts undergo between seven-and-a-half and seventeen-and-a-half months' training.³⁹

It should also be noted that the contracts entered in to by those who join the military voluntarily frequently commit them to an extended period of service and with less opportunity of giving notice to terminate early than is usually the case with contracts of employment. As will be seen in Section 4.3.4, this feature is of particular relevance to the situation of those who become conscientious objectors having voluntarily joined as regular members of the armed forces.

Sometimes of course, particularly at times of mobilisation, the lengths of service stipulated may be subject to extension. The legislative provisions governing the length of military service in Eritrea have not been changed, but as tensions on the border with Ethiopia grew during the 1990's, it became clear that the duration was notional only. "In practice," Amnesty International reports, "national service has been extended indefinitely by administrative decision since the war with Ethiopia, when conscription was accelerated, military training was shortened, and development

³⁸ Ajangiz, R. (2002), "The European farewell to conscription?" in Mjoset & Van Holde (Eds), The comparative study of conscription in the armed forces (Comparative Social Research, Volume 20), Elsevier Science, Oxford, pps. 307-333.

³⁹ Child Soldiers Global Report 2004 (Coalition to Stop the Use of Child Soldiers, London)

service was converted to active military service.”⁴⁰ Once in the Eritrean armed forces, therefore, it became very hard to get out - except by fleeing the country altogether, which many did. The five conscripts who had escaped to Germany and whose testimonies were collected by Connect eV⁴¹ were all well into the third year of service or beyond by the time they escaped. (A sixth testimony came from a conscientious objector who had fled to avoid initial recruitment.)

Extensions can also occur in less extreme circumstances. For example, in Tajikistan in response to the shortfall in meeting recruiting targets in Autumn 1996, those conscripts who were completing their term of service were retained for an extra six months.

It would be appropriate to mention briefly here certain aspects of the conditions encountered within military service. The restrictions on personal freedom may seem obvious; in general members of the military, particularly conscripts, are required to live in barracks and all are subject to a disciplinary regime which insists on unquestioning obedience to all legitimate orders. Civic rights may however be curtailed in further ways. The restrictions in Paraguay are particularly sweeping. Under various articles of the Electoral Code, soldiers lose all political rights; the right to exercise their vote, to stand for public office, to be a member of an electoral authority, or to have membership in any political party or movement. The Human Rights Committee has stated that the extension of this prohibition to students of military schools “seems to be an unreasonable restriction on article 25 of the Covenant on the right to participate in public life.”⁴² Under Article 134 of the Military Personnel Statutes (*Estatuto del Personal Militar*) conscripts lose the right to marry. Less surprisingly, while on active service they are prohibited from exercising any other remunerative employment⁴³, and lose the right to form trade unions or to withdraw their labour. Finally, under Article 10 of Law 569/75, “a soldier being a minor in age under civil law (the age of majority under civil law is not reached until the age of 20) acquires legal majority and is hence subject to military penal law... It is also understood that even if below the relevant military age soldiers are subject to military penal law and punishments appropriate to those aged 18 and above.”⁴⁴

In many armed forces, both conscripts and volunteers are liable to suffer extreme abusive treatment whether from their officers in the form of “punishments” or from fellow recruits in the form of practices notorious by their local names - “hazing” in the UK;⁴⁵ “*dedovschina*” in Russian. In both the UK and the Russian Federation there has been great concern about the level of alleged suicides and other unexplained

⁴⁰ Amnesty International (2004), *Eritrea: You have no right to ask*, London

⁴¹ Connection eV Germany, War Resisters International & Eritrean Anti-Militarist Initiative *Eritrea: Conscientious Objection and Desertion* London (WRI) April 2005

⁴² In paragraph 214 of its Final Observations on the Initial Report of Paraguay, UN Document CCPR/C/PRY/1995.

⁴³ Article 8 of Law 569/75

⁴⁴ SERPAJ (*Servicio Paz y Justicia*)-Paraguay (1995), *Los niños-soldados de Paraguay: Investigación sobre los soldados menores de edad* (Unpublished case study for the United Nations’ study on the impact of armed conflict on children (“the Machel Report”))

⁴⁵ The “Duty of Care” Report produced in 2005 by the United Kingdom’s Parliamentary Select Committee on Defence

**Table 4: Some Differential Lengths of Obligatory Military Service
(all figures in months)**

	Standard length	Graduates	Air force	Navy	Other
Azerbaijan	18	12			
Belarus	18	12			
Bulgaria	9	6			
Egypt	36	18			
Chile	12		12	24	14 a third of conscripts, unspecified
China	36		48	48	
Colombia	24	12			
Cyprus	26				13 those from large families
Denmark	9				10 Royal Lifeguard 12 Household Mounted Service 4 certain medical specialists
Egypt	36	18			
Iran	21				18 in certain regions
Israel	36				24 women
Kazakhstan	24	12		30	
Korea, Dem. People's Rep.		60 to 144	36 to 48	60 to 120	
Korea, Rep. of	26		30	30	28, 32 non-military duties
Kyrgystan	18	12			
Kuwait (- 2001)	24	12			
Latvia	12	9			
Lithuania	12	6			
Poland	12	3			
Singapore	24				30 officers
Sudan	24	12			18 with secondary schooling
Tajikistan	24	18			
Turkmenistan	24	18		30	
Sweden	7.5		8 to 12		
Turkey	15	6			12 reserve officers
Ukraine	18	12		24	
Vietnam	24		36	36	

deaths of recruits, but in the much smaller army of Paraguay 30 inadequately-explained deaths of conscripts were documented over a period of just six years. In Kazakhstan - where young men have been known to buy themselves in to the army to escape poverty - 128 investigations into *dedovschina* were opened in the first nine months of 2003, and almost 100 suicides amongst conscripts were registered in the same year, leading to the introduction of an official training programme to try to eliminate these practices.⁴⁶

There is, however, a suspicion that all of these features may be an inescapable side-effect of the brutalisation inherent in military training; a brutalisation, moreover, which becomes more rather than less thorough with the move towards “professionalisation” of the armed forces. It has been observed that one of the most important aspects of making a soldier effective in combat is to overcome the instinctive reluctance to take human life.⁴⁷

2.3.2 Documentation

A characteristic feature of a society which has obligatory military service is the importance throughout life of military documentation.

The system in Paraguay has been described in some detail. After registration for obligatory military service (usually referred to by the acronym *SMO*), citizens hold one of three distinct levels of military documentation: “The *boleta de enroliamento* is the document which the citizen receives in the act of registration for *SMO*, prior to medical inspection and incorporation into active service. The *boleta de aplazamiento* is the authorisation given at the time of registration which permits the deferment on justified reasons of incorporation into active service. The *SMO* booklet (*libreta*), commonly known as the *baja*, is the final certification granted to those who have complied with the *SMO* obligation or been definitively exempted.”⁴⁸ (With the recognition of conscientious objection, a further document, the *carne de objector*, was subsequently added to this list.)

The details may be local, but the general concept, even the idea of the “booklet”, cuts across cultures. An equivalent term is, for example, used in South-East Europe.⁴⁹

In Paraguay, as in many other Latin American countries, obligatory military service was historically enforced largely by random checks for this documentation. Those who were not able to produce it on demand were in danger of forced recruitment. In other countries, for instance Turkey, it seems that “draft dodgers” are not systematically pursued, but whenever in a routine contact with the police it emerges that a man’s military documentation is not in order he will be apprehended and be obliged to report to barracks and face prosecution.

⁴⁶ Child Soldiers Global Report 2004 (Coalition to Stop the Use of Child Soldiers, London)

⁴⁷ For an excellent review of these issues see

⁴⁸ SERPAJ (*Servicio Paz y Justicia*)-Paraguay (1995), Los niños-soldados de Paraguay: Investigación sobre los soldados menores de edad (Unpublished case study for the United Nations’ study on the impact of armed conflict on children (“the Machel Report”))

⁴⁹ Prigovor za Mir (Regional Network “Objection for Peace”) (2004) Comparative study on the existing models of civilian service in the region - future models of civilian service for the countries of the region

For in fact proof of military service is needed for all sorts of contact with the public authorities. Some examples⁵⁰ are:

Obtaining identity documents -	Armenia, Bolivia, Brazil, Eritrea
residence permits -	Armenia
passport -	Eritrea, Morocco, Turkey
exit visa -	Eritrea, Yemen
driving licences -	Eritrea, USA (registration for military service required in some states, even when no draft enforced)
University entrance -	Bolivia
and funding -	USA
or the award of a degree -	Yemen

Public housing (this sometimes leading to evictions) - Eritrea

Marriage registration - Armenia, Turkey

Business licences - Eritrea

Voting rights - Brazil, Bolivia

Employment (particularly in the public sector) - Morocco

Similarly, certain jobs are (or were) advertised in the Bosnian Federation as requiring “regular military service” to have been done.

Advantageous terms of employment - in Singapore “Individuals who have completed national (military or non-military) service enjoy higher starting salaries, tax incentives and other government-sponsored perks.”⁵¹

Although in principle the requirement may be that the military status should have been properly “regulated”, difficulties may in practice face those who have been excused performance of military service on perfectly legal grounds, especially of course when the discrimination in society at large already extends beyond what is sanctioned by law. In Israel, for example, “According to the Section 2 of the “Equal Opportunity for Employment Law-1988”, it is unlawful for an employer to ask an employment seeker or current employee whether or not he served in the military. In practice, anyone who has not served in the military has little chance to be employed in the public sector.”⁵² Obviously, too, anyone who has *refused* military service can be placed at a life-long disadvantage; the implications for conscientious objectors are discussed in Section 4.9, below.

⁵⁰ Sources for entries in this list are . General Counsel of Jehovah’s Witnesses, response to OHCHR questionnaire 2003; Child Soldiers Global Report 2004 (Coalition to Stop the Use of Child Soldiers, London); “CHAMBER JUDGMENT ÜLKE v. TURKEY” (application no. 39437/98) Press release issued by the Registrar, European Court of Human Rights, 24.1.06; Prigovor za Mir (Regional Network “Objection for Peace”) (2004) Comparative study on the existing models of civilian service in the region - future models of civilian service for the countries of the region

⁵¹ General Counsel of Jehovah’s Witnesses, response to OHCHR questionnaire 2003 (Singapore)

⁵² *ibid.* (Israel)

2.3.3 Reserve obligations

The performance of obligatory military service is frequently followed by a number of years in which the former conscript is listed in the armed forces reserves. The final column of Table 5 shows for different countries the age until which this requirement persists. What it involves in practice, however, varies enormously from one case to another.

At one extreme is Switzerland, where the initial period of basic military training is of between 18 and 21 weeks, but this is followed by an almost equal length of service in the form of six or seven refresher courses of a maximum of seventeen days each spread over the following ten years or so until each conscript has served a total of 260 days. During this time the reservist keeps and maintains his military equipment, including rifle and ammunition, at home.

Similarly in Sweden, reserve service includes “refresher training”, which outside conditions of mobilisation can amount to more than 34 days in no more than two periods in any one year, and no more than 240 days in total. The total of basic training and refresher training cannot exceed 700 days (approximately 23 months). Moreover, on completing basic training, conscripts are given a “wartime assignment”, which is valid for not more than ten years from the end of full-time service.⁵³ Short of wartime mobilisation, there is however a further level of “preparedness” which may for any one conscript involve being recalled to service for a maximum of 180 days in one or more periods.

In other instances, however, - Poland is just one example - the fact that names remain on the reserve list until the age of 50 (60 for officers) does not imply that in practice they may expect to be called upon to perform any duties, at least in times of peace.

Between the two extremes are many instances where there is provision for occasional call-up of reserves for refresher purposes on an *ad hoc* basis.

In many countries, the reserves are classified by various degrees of readiness, which may however only become of significance in a time of general mobilisation. In Paraguay, for example, until 32 years of age men form part of the permanent reserve (*Reserva Permanente*), from the age of 33 to 44 the National Guard (*Guardia Nacional*) and from 45 to 50 the Territorial Guard (*Guardia Territorial*). It is not, however, reported that reserves have in practice been called upon to perform any duties in at least the last twenty years.⁵⁴

⁵³ Act on Liability for Total Defence Service, paras 4.4 - 4.6 and 3.12 - 3.15

⁵⁴ SERPAJ (*Servicio Paz y Justicia*)-Paraguay (1995), Los niños-soldados de Paraguay: Investigación sobre los soldados menores de edad (Unpublished case study for the United Nations' study on the impact of armed conflict on children (“the Machel Report”).

2.4 PERSONS LIABLE TO RECRUITMENT

2.4.1 Gender

It may be noted that where there are military forces, males *always* participate; in almost all countries today females are also to be found in the military. So strong are presuppositions in this area, that it seems almost facetious to make the logical parallel that in no case are the military forces the exclusive preserve of females.⁵⁵ Such a rare exception were the semi-mythical Amazons documented by Herodotus that the name has stuck, and has been applied to female warriors right through the ages.⁵⁶

Iran, in its initial report to the UN Committee on the Rights of the Child,⁵⁷ stated that girls were exempt from military service altogether, the implication being that they were unable to join even if they wanted to. In Yemen, Egypt and Saudi Arabia no reference to female members of the armed forces has been traced. In the conflicts of recent years Iraq and Afghanistan stand out for the minimal evidence of (local) female involvement. But even in the Gulf region, a UNDP report⁵⁸ apparently indicates that the United Arab Emirates have been encouraging women to join the military. However precise roles which they may perform are usually restricted, especially in order to exclude front-line combat duties. In only three instances, Eritrea, Israel, and Tunisia (from the beginning of 2003) is there evidence that obligatory military service is in practice required of females, although legislation envisaging this exists, but does not seem to be enforced, in a handful of other countries: Benin, China, Libya and Sudan. In Poland NATO sources⁵⁹ reveal that although “compulsory basic military service” applies only to men, liability for compulsory military service applies also to women aged 18 to 40 “who have skills and/or qualifications useful in the armed forces”. Women in El Salvador have been theoretically liable for compulsory military service since 1994, although they are not required to serve in combat.

In Sweden, military service is a rare exception to sex discrimination laws. Article 16 of the 1975 Constitution states: ‘No Act of law or other statutory instrument may entail the discrimination of any citizen on grounds of sex unless the relevant provision forms part of efforts to bring about equality between men and women or relates to compulsory military service or any corresponding compulsory national service.’ Even so, in 2000, a government commission proposed making military service compulsory for women. The idea has been aired in the USA as well; the “Rangel Bill”⁶⁰ brought forward in 2003, proposed the reintroduction of the draft with women included.

Restrictions on women’s deployment are also being eroded. Australia, for instance, announced in August 2005 that it is to permit the deployment of women in front-line units, although

⁵⁵ “The universal gendering of war” pp 10 - 22 in Goldstein, J. S. , *War and Gender* Cambridge University Press, 2001.

⁵⁶ eg. Brett, R. & Specht, I. *Young soldiers: Why they choose to fight*, Lynne Rienner, (Boulder, Colorado) 2004, p. 86

⁵⁷ UN Document No. CRC/C/41/Add.5, 23 July 1998

⁵⁸ *Child Soldiers Global Report 2004* (Coalition to Stop the Use of Child Soldiers, London)

⁵⁹ www.nato.int/ims/2001/win/poland.htm

⁶⁰ HR163

h they would still be limited to support roles, not permitted in direct combat.⁶¹

In 1999, women were estimated to represent about 35% of the Eritrean forces.⁶² The demobilisation agreed upon in the UN-brokered peace accord of 12th December 2000 had been intended to include the majority of the women⁶³, but with the situation along the border remaining tense, it does not appear that any substantial steps towards demobilisation occurred until March 2004. It is interesting to note that one informant⁶⁴ reports that some girls had reported for national service of their own free will and before reaching the call-up age, having run away from home. This vision of military enlistment as a road to feminine emancipation has been noted elsewhere in armed opposition groups which employ considerable numbers of girl fighters⁶⁵ and, like the use of females in the front line itself, may represent a tradition directly inherited from the roots of Eritrean independence in the opposition forces in the thirty-year civil war in Ethiopia: "Unlike their counterparts in the (government) army, women in the (oppositon) force usually assumed combat duties. In fact some are said to be among the best fighters. Not an insignificant number of them were posted in commanding positions within the force."⁶⁶

The same girl's testimony alleges that, despite being under the official recruitment age, such volunteers were not released when traced by their parents, even when the girls themselves had changed their minds. She, as well as many others, reports that in practice the anticipated emancipation was an all-too-familiar illusion. Service for women at the front line was very often a punishment for withholding sexual favours. The only route to self betterment was to succeed in obtaining a favoured position as concubine and housekeeper to an influential officer. If any female officers exist in the Eritrean army, this girl had not come across them.

⁶¹ <http://news.bbc.co.uk/2/low/asia-pacific/4172538.stm> 0835, 22nd August 2005

⁶² Child Soldiers Global Report 2001 (Coalition to Stop the Use of Child Soldiers, London)

⁶³ US Department of State, 2004

⁶⁴ Bisrat Habte Micael in Connection eV Germany, War Resisters International & Eritrean Anti-Militarist Initiative, Eritrea: Conscientious Objection and Desertion WRI, London, 2005.

⁶⁵ See for example Brett, R. & Specht, I. Young soldiers: Why they choose to fight, Lynne Rienner, (Boulder, Colorado) 2004, pp. 88 - 91; Keairns, Y.E. The voices of girl child soldiers: Sri Lanka and The voices of girl child soldiers: Philippines, both published by Quaker United Nations Office, New York & Geneva, 2005.

⁶⁶ Ethiopian case study, quoted by Brett, R. & McCallin, M. (1998), Children: the invisible soldiers (2nd edition), Radda Barnen (Swedish Save the Children), Stockholm, 1998, p.83

2.4.2 Age⁶⁷

Table 5, which has already been referred to in the context of reserve obligations, gives an overview of various age provisions relating to military service, in roughly chronological order from left to right.

The first column refers to compulsory military training in schools. The second, by contrast, deals with training programmes, attached to educational establishments, which although themselves voluntary can count towards the fulfilment of the obligatory military service requirement.

The third column C introduces the question of enrolment in military training establishments as the final step in the education process. This is a very complicated area (see box) which, like the issue of military training in the normal school curriculum, deserves much more detailed study than it has yet received.

Military Schools and the Military in schools

The phrase “military schools” is problematic because it is clear that it is used in different countries to refer to an exceptionally wide variety of establishments. In some countries these are higher education institutions to which are admitted persons who have finished their normal schooling and have committed themselves to pursue a military career. In others they are a part of the normal education system but with a curriculum which focusses heavily on military training and an expectation that students will proceed to join the military, or they are schools which take students from relatively young ages and which just happen to be answerable to the military authorities. The question of whether students are members of the armed forces produces similar confusion; in some countries the authorities insist that students of establishments of the first kind do not become members of the armed forces until they have completed their training, in others all students - even at ages of 10 or younger - are formally considered to be members of the armed forces.

Quite outside the question of specific military schools is the role of schools in the general militarisation of society. A national programme, like that entitled “*soldados por un día*” (soldiers for a day) in Colombia can reinforce and make natural the central role of the military in society. Even where not compulsory, military training in schools can be used as a recruitment tool. The website of the Ministry of Education and Culture in the United Arab Emirates (quoted in the Child Soldiers Global Report) refers to “the ultimate aim of inculcating values of patriotism, self-denial and readiness to defend one's country in students and thus motivate them to take up military careers after completing their basic general education.” Voluntary uniformed military activity outside the formal school curriculum can also be used as a means of attracting particularly potential officers to military careers; the Officer Training Corps in the UK and the Junior Reserve Officer Training Corps in the USA are examples of this.

There follows the “normal” minimum recruitment age for volunteers, followed by the age of “full incorporation” into active units. In all but the most egregious cases, recruitment is followed by a period of training; by distinguishing these two sets of

⁶⁷ Except where otherwise indicated, all the information in this Section comes from the Child Soldiers Global Report 2004 (Coalition to Stop the Use of Child Soldiers, London)

figures and attempt is made to ensure that like is compared to like despite different styles of reporting. The next refers to the possibility already mentioned on page 10, where “volunteers” may perform their “obligatory military service” early. In some cases, there is a correspondingly younger age limit.

Then the following two columns list the normal ages for registration and call-up for obligatory military service.

Sometimes the legal requirement to register is closely related to actual age; in the USA, for instance, it is described as “during the sixty days beginning thirty days before the eighteenth anniversary of their birth”; in El Salvador registration is to take place within a month of the 17th birthday. The age for registration, and even more often that for call-up, is, however, frequently expressed with reference to the calendar year of birth, and other deadline dates may insert further confusion. To take a few of examples at random, in Estonia registration must take place by the 1st December, in Russia by the 31st March, of the year of the 17th birthday, while in Chile the relevant dates are 2nd January to 30th September of the year of the 18th birthday.

The way in which these provisions are reported may create apparent contradictions between different sources. Thus on the basis of the same facts, the age of military service in Brazil has been variously quoted as 17, 18 and 19. The precise situation is that, after pre-registration, actual call-up takes effect on the 1st January on the year of the nineteenth birthday. Therefore, in this case, as obligatory military service lasts for twelve months, all conscripts (deferrals apart) commence military service at the age of 18 and complete it at the age of 19. In the Table, when the legislation refers to calendar dates (typically the year within which a certain birthday falls) two ages are given; some recruits will personally be at the younger, some at the older age at the actual time of registration or induction.

Where voluntary recruitment is permitted at an age below 18, parental approval is usually required. This rule sometimes varies to reflect the legal age of majority; in Tunisia parental approval is required up to the age of 20; in Guinea-Bissau parental assent for recruitment is required only below the age of 16. Under the Optional Protocol to the Convention on the Rights on the Child on children in armed conflict, persons aged under 18 may not be deployed in hostilities. Canada, which recruits under-18s, has enacted legislation to put this into practice in conjunction with ratifying the Protocol.

In most cases, (Turkey is an exception) the law stipulates maximum as well as minimum military ages, and the most common forms of such stipulations are given in the final three columns. In practice, the maximum recruitment age may be lower. For instance in Sweden any person who has been allocated to military or civilian service but has not been called up for basic training before the end of the year of the 24th birthday will not be called up: “that person is obliged to fulfil basic training only if there are special reasons for doing so.”⁶⁸

⁶⁸ Act on Liability for Total Defence Service, para 4.2

TABLE 5: Military service ages

NB general explanatory notes appear at the end of the four pages

Country	Compulsory military training in schools from:									
	:	:	Optional school programme towards obligatory military service from:							
	:	:	Admission to military training establishments from:							
	:	:	:	:	Volunteers legally accepted for training from:					
	:	:	:	:	become fully incorporated in active units					
	:	:	:	:	:	Performance of military service optional from:				
	:	:	:	:	:	:	Registration for obligatory military service			
	:	:	:	:	:	:	:	Call-up for obligatory military service		
	:	:	:	:	:	:	:	:	Liability until:	
	:	:	:	:	:	:	:	:	:	Reserve duties until:
	:	:	:	:	:	:	:	:	:	:
Afghanistan					22					
Albania							19	32	55	
Algeria							19	30	50	
Angola					18		20	45		
Argentina	(a)	11	16	18			17/18	S		
Armenia						16	18	27	55	
Australia					17			18	S	
Austria					17	17	18			50
Azerbaijan					17		16	18	35	50
Bangladesh					16					
Bahrein					15	17				
Belarus					17	20	14	18	27	
Belgium							15/16	18/19		
Benin					21			21		
Bolivia		15						18/19		
Brazil							17	18/19		46
Brunei					<17.5					
Bulgaria					<18			18	30	55
Burkina Faso					20			18		
Burundi								16		
Cameroon					18					
Cambodia							18		30	
Canada					16					
Cape Verde					17			18	35	
Chad					<18			20		
Chile					17	16	b<18	17/18		
China	nk				<18			17/18	22	35
Colombia		14			16			18		
Croatia							17/18	18/19	27	55
Cuba	nk				15			17	28	
Cyprus								18		50
Turkish Rep. of N. Cyprus					17			19	30	

Notes: a) Argentina - admission to military high schools from which students graduate as reserve 2nd Lieutenants (*subtenientes de reserva*)
b) Chile - Students in the third or fourth year of secondary education

Country	Compulsory military training in schools from:									
	: Optional school programme towards obligatory military service from:									
	: : Admission to military training establishments from:									
	: : : Volunteers legally accepted for training from:									
	: : : : become fully incorporated in active units									
	: : : : : Performance of military service optional from:									
	: : : : : : Registration for obligatory military service									
	: : : : : : : Call-up for obligatory military service									
	: : : : : : : : Liability until:									
	: : : : : : : : : Reserve duties until:									
	: : : : : : : : : :									
Czech Rep.		15		18			19 S		28	
Denmark							18		30	
Djibouti			16	18						
Dominican Republic			16							
Ecuador	15									
Egypt			16				18			
El Salvador			17		16	17			30	
Eritrea						17	18	40/45	50	
Estonia						16/17	18/19			
Ethiopia							18		25	
Finland						17/18	19/20		30	50
France		16	17/18 to 40							
Georgia	14						18		27	
Germany			17				18		23	
Guatemala		11					18		30	
Guinea			18				18		25	
Guinea-Bissau			<16				18		25	
Hungary		<17	17		16/17		S		50	
India			16							
Iran		(c)	16				18			
Iraq (d)			18							
Ireland			16							
Israel			17			16	18		40/45	
Italy			17	18			18 S			
Jamaica			17.5							
Japan			15	18						
Jordan			17							
Kazakhstan	15	15		19						
Korea, Democratic People's Republic	14		16	18			18		24	
Korea, Republic of		16	17		17		18/19			
Kyrgyzstan	(e)	16					18		27	
Latvia						16	19		27	55

Notes:

c) Iran - 17 for enrolment into the police

d) Iraq - recruitment of post-invasion armed forces

e) Kyrgyzstan - the final two years of secondary education

Country	Compulsory military training in schools from:									
	: Optional school programme towards obligatory military service from:									
	: : Admission to military training establishments from:									
	: : : Volunteers legally accepted for training from:									
	: : : : become fully incorporated in active units									
	: : : : : Performance of military service optional from:									
	: : : : : : Registration for obligatory military service									
	: : : : : : : Call-up for obligatory military service									
	: : : : : : : : Liability until:									
	: : : : : : : : : Reserve duties until:									
	: : : : : : : : : :									
Laos				17?			18?		26	
Lebanon			17	18			18		30	
Lesotho			18							
Libya	16						18		35	
Lithuania			18			16	19		26	35
Luxembourg			17							
Macedonia, the FYR of						18	17	19	27	55
Malaysia		17	17							
Maldives			16							
Malta			17.5							
Mauretania			16			17	18			
Mexico	nk	15	16			17/18	18/19		40	
Moldova		17				16	18		27	
Mongolia						18	19		25	
Morocco				18			20			
Mozambique			18			18	20			
Namibia			18							
Nepal			15	18						
Netherlands			17			17	18		45	
New Zealand			17							
Nicaragua		17								
Norway				18			18/19		30	43/44
Oman		to 30	18							
Qatar			18							
Pakistan		16	18							
Papua New Guinea			16							
Paraguay				nk		17	18		50	
Peru			18			17				
Philippines		17 to 29				18			25	
Poland			17				18		28	50
Portugal		<18	18							
Romania		15					20		35	50
Russian Federation		16				16/17	18		27	50
Sao Tome			17				18			
Senegal			18				20			
Serbia- Montenegro			16?			16/17	17/18		35	60
Singapore			16.5			16	18			

Country	Compulsory military training in schools from:									
	:	Optional school programme towards obligatory military service from:								
	:	:	Admission to military training establishments from:							
	:	:	:	Volunteers legally accepted for training from:						
	:	:	:	:	become fully incorporated in active units					
	:	:	:	:	:	Performance of military service optional from:				
	:	:	:	:	:	:	Registration for obligatory military service			
	:	:	:	:	:	:	:	Call-up for obligatory military service		
	:	:	:	:	:	:	:	:	Liability until:	
	:	:	:	:	:	:	:	:	:	Reserve duties until:
	:	:	:	:	:	:	:	:	:	:
Slovakia		15	18			18 S	30	55		
Slovenia		16/17			18	19	27			
Spain		18				19 S				
Sudan						18	33			
Sweden					17/18		24	47		
Switzerland					18/19	19/20	26	34		
Syria					17/18	18/19		45		
Taiwan		15				18/19	40			
Tajikistan			18			18	27			
Thailand		14	18			20				
Trinidad & Tobago			16	16						
Tunisia		18		18		20				
Turkey		15	18?			19/20	40			
Turkmenistan		16				17	30			
Uganda			18							
Ukraine		17	17			18	25	40		
United Arab Emirates	15		(f)18							
UK		16	16							
USA			16		18	19/20	26			
Uzbekistan	14					18				
Venezuela	15				18		50			
Viet Nam	nk				16/17	18	27	45		
Yemen						18	30			
Zimbabwe	16		18			18				

Notes: f) - United Arab Emirates. Age for officers and women only; others not known.

General Explanations

S	obligatory military service referred to currently suspended
nk	precise age not known
16/17	format used when the legislation refers to a calendar year of the seventeenth birthday or in similar circumstances.
<18	specific rules (usually of parental permission) apply the age stated without their being an explicitly stated minimum age
?	evidence unclear or ambiguous

2.4.3 Citizenship and residence

Liability to perform military service is usually said to apply to all resident citizens - meaning, with the exceptions mentioned above, all male citizens. This means that the duty frequently accompanies the award of citizenship. In Sweden, for example, the obligation to report for an enrolment inspection at the Swedish National Service Administration applies from the day one becomes a Swedish citizen, although in normal circumstances this requirement is waived after the age of 24.⁶⁹

The USA is however an example of a country which requires all resident males of the relevant age “except those who are in valid non-immigrant status” (ie. overseas students and others with temporary entry permits) to register for military service, regardless of citizenship - or indeed of whether they are in the country legally. Some of the implications of this are discussed on page 96. The Netherlands, in Article 97 of the Constitution, also have the power to conscript non-national residents.

In Cyprus, all those of Cypriot descent on the male side are liable for national service, whether or not they themselves hold Cypriot citizenship.⁷⁰

In Libya, foreign workers from Arab states who have been granted a special status of “arab nationality” are liable for military service; in Thailand by contrast, those who had gained their citizenship by naturalisation were historically exempted.

States vary also in their treatment of citizens who are resident abroad. In many, a citizen who returns after the normal age of liability is excused the requirement, but in some - Syria and Turkey are examples - those who return at any age are liable to punishment as draft evaders, unless they have taken action to regularise their status. Greece treats all persons with a Greek parent as citizens, and thus liable to military service.

Sometimes citizens who return from living abroad benefit from shorter terms of service; this would appear to be the case in both halves of Cyprus, although the details are not clear.

⁶⁹ Act on Liability for Total Defence Service, para 2.2

⁷⁰ Child Soldiers Global Report 2004 (Coalition to Stop the Use of Child Soldiers, London)

2.4.4 Exemptions and Deferments

The procedures regarding conscientious objection are discussed in detail in Section 4, but it must be stressed that conscientious objection is just one of many grounds for exemption from military service which are recognised by different states. Some examples, culled at random, are given in Table 6.

To the list of minority exemptions might be added that of Jehovah's Witnesses, who are completely exempt from all military or equivalent service in a number of countries, certainly including Finland, Israel, the Netherlands, and Sweden. Although granted at the level of the group rather than of the individual, these exemptions are however clearly based on an appreciation that conscientious objection to military service is a manifestation of the faith practised by Jehovah's Witnesses, and is, therefore, a form of recognition of conscientious objection.

In some other countries (eg. Poland and Russia) Jehovah's Witnesses benefit from a willingness to classify, and thus exempt, active members as ministers of religion, similar to that negotiated on behalf of Roman Catholic clergy and students in concordats concluded by the Vatican with a number of States. Such exemptions are not based on implied conscientious objection - indeed in Poland, the Catholic church has traditionally supported the view that Catholics cannot be conscientious objectors.

Elsewhere, exemptions as ministers of religion are not made available to Jehovah's Witnesses. In the course of 2000 and 2001 a total of 33 ordained ministers of the Jehovah's Witnesses claimed such exemptions in Romania; the first 14 received suspended sentences for failure to perform alternative service; the remainder were acquitted on the basis that no such offence is stipulated in the penal code - an interpretation which was upheld by the Supreme Court in October 2001, and again in overturning the convictions of the original 14 in May 2003. The fourteen have subsequently filed applications with the European Court of Human Rights with specific reference to the failure to grant them the exemptions available to clergy of other denominations, which join the applications on the same grounds *Philemon Löffelmann v. Austria* and *Markus Gütl v. Austria*. (As a recognised "confessional community", Jehovah's Witnesses in Austria do not enjoy the same status as a fully recognised religion.)⁷¹

It would require enormous innocence to be surprised that in many places the wealthy are in practice often able to "buy" themselves, or usually their sons, out of obligatory military service. What is more remarkable is the evidence of how widespread it is for payment in lieu of military service to be incorporated in legislation.

Switzerland levies an annual tax of 2% of earned income, subject to a minimum of Fr.150 (approximately \$100), on all male citizens who for whatever reason have not performed obligatory military service until they reach the age of 50, the maximum age for reserve liability; a similar situation applies in Colombia, where under the Military Service Act (48/1993) the permanently disabled and indigenous peoples were exempted at all times, but Article 28 states: "Certain special exemptions are granted

⁷¹ General Counsel of Jehovah's Witnesses, response to OHCHR questionnaire 2003

during peacetime only and require the payment of a tax in lieu of military service” This list of exemptions includes that of those “persons who are partially or completely unfit for service”.

In Ecuador citizens not chosen in the ballot have to pay a “compensation fee” in order to receive the military certificate. A similar provision in Article 77 of the National Defence Service Act in Bolivia was part of the complaint brought before the Inter-American Commission on Human Rights on behalf of Alfredo Diaz Bustas; the friendly settlement, confirmed on 27th October 2005, included an agreement by the Ministry of Defence “to present the service document free of charge, without requiring for its delivery payment of the military tax stipulated in the National Defense Service Act, or the payment of any other amount for any reason or considerations of any other nature, whether monetary or not”.⁷²

In Iran, exemption is available, on payment of a fee, to those who have completed military training with the Basij paramilitary youth movement.⁷³

There is a longstanding Turkish provision whereby citizens living abroad can commute their military service to one month of training on payment of a sum which was originally set at DM 10,000. There were similarly reports in the early 1990’s that in certain circumstances Syrian citizens living abroad could qualify to be excused military service on payment of a fee which, depending on the details, varied between \$1000 and \$5000.⁷⁴ And more recently a 2% tax levied on the incomes of Eritrean citizens living abroad was specifically designated as a military tax.⁷⁵

The Mongolian Law on Civil Military Service Duties and Legal Status of the Military Servicemen, states: “The form of an alternate military service can be monetary contributions as a substitute for personal active service defined by law. Conditions for allowance of substitution payment are defined by the State Great Khural and the amount of payment is annually defined by the Government.”⁷⁶

In Article 15 of Law 7987/1995 Albania institutionalised the purchase of exemption from military service at a rate to be set from time to time by the Government. At the beginning of 2005 this rate was 300,000 lek (approximately \$3,000). Georgia instituted a similar system in 2002. In time of peace, exemption from military service may be purchased for 2000 lari (approximately \$900); postponement annually costs one tenth of that sum. Those thus exempted are classified as reservists and may be called up only in times of general mobilisation.

These moves were mirrored in several Central Asian republics. In 1999, in the context of plans to professionalise the armed forces, the Minister of Defence of Kazakhstan was referring to the possibility of conscripts being exempted all except a short period of weapons training on payment of a “certain charge”. Towards the end

⁷² Inter-American Commission on Human Rights, Report No. 97/05, 27th October 2005, paragraph 16b.

⁷³ Child Soldiers Global Report 2004 (Coalition to Stop the Use of Child Soldiers, London)

⁷⁴ Horeman, B. & Stolwijk, M. (1998), Refusing to Bear Arms, War Resisters International, London.

⁷⁵ Connection eV Germany, War Resisters International & Eritrean Anti-Militarist Initiative Eritrea: Conscientious Objection and Desertion London (WRI) April 2005

⁷⁶ Myagmarjav, G. and Nergui, B., “Formation of the legal environment of Mongolian civil-military relations” (Chapter 3 in Palamdorj, Sh. and Fluri, P., Democratic Oversight and Reform of Civil-Military Relations in Mongolia: A Self-Assessment, Geneva Centre for the Democratic Control of the Armed Forces, November 2003.

of 2002 the Kyrgyz parliament approved a draft law which would have enabled conscripts to buy out of the obligation, but this was apparently vetoed by the President. In Uzbekistan, a “Law on Service in the Armed Forces Reserve”, promulgated in April 2003, incorporates features of both the Georgian and Turkish precedents. Within a self-funding “mobilisation /conscription reserve”, for a payment of 25 times the minimum wage (approximately \$140), conscripts will be certified as having duly performed their military service after a period of probably one month’s training.⁷⁷

⁷⁷ Child Soldiers Global Reports 2001 and 2004 (Coalition to Stop the Use of Child Soldiers, London)

TABLE 6: Grounds for exemption or deferment

Medical: those who are adjudged to have a permanent medical or physical condition rendering them unfit for service are always excused military service. This may take the form of a height limit (eg in Thailand). Where women are subject to conscription exemption may also be granted on the grounds of pregnancy (Israel) or deferment while breast-feeding (Eritrea).

legislation in Moldova refers to “the List of illnesses, approved by the Ministry of Health”

Sweden permits a deferment of no more than a year at a time “if the applicant’s physical or psychological capacity is temporarily so reduced that it can be presumed that the training cannot be completed.” (5.8)

Family Circumstances:

only son

Brazil

Colombia “Persons who are the only child (male or female) of a marriage or permanent union, of a widowed, divorced or separated woman, or of a single mother.”

Sole family breadwinner

Colombia “Persons who have lost their father or mother and are working to support siblings who are not capable of supporting themselves”

“Persons looking after parents who are unable to work or are over the age of 60 and have no income, pension or means of subsistence

Croatia “If in the common household there is no other member capable to work, and it is indispensable to perform urgent works which cannot be done without causing damages to the household without his presence.”

Serbia-Montenegro Under Article 35 of the 2003 Military Service Act deferments are permitted to those who would experience difficulty in providing for their family if they have been living abroad and have no means of income while waiting for the start of military service. Furthermore, the more general dispensation under Article 308 of the Yugoslav Army Act may still be granted for those whose families would experience material hardship as a result of their leaving to perform military service.

USA men who can show that their induction would result in severe hardship to their dependents

Sole carer for incapacitated family members

Croatia and Serbia-Montenegro

Difficulties for the family as a result of death, illness or natural disasters

Serbia-Montenegro: Deferment of up to one year permitted, but only as long as the situation persists.

married persons living with their spouse

Colombia

Germany (including unmarried persons who are cohabiting)

Orphan

Brazil

Forthcoming wedding

Croatia: a deferment of up to three months is permitted.

Siblings currently performing military service

Croatia and Serbia-Montenegro Deferments permitted; the precise qualifying conditions unclear.
Eritrea if all other siblings are performing military service

Member of close family killed during military service

Colombia “the siblings or children of persons who have died or have been totally and permanently incapacitated in combat, in the line of duty or as a consequence thereof or whilst performing compulsory military service, unless that person is fit for service and volunteers to serve. the children of police personnel (*oficiales suboficiales agentes y civiles de la Fuerza Publica*) who have died or have been totally and permanently incapacitated in action or in the line of duty or for reasons related thereto, unless, where appropriate, that person is fit for service and volunteers to serve.”
Iran father or brother killed in Iran Iraq war
Moldova
USA
Uzbekistan

Occupational

Croatia and Serbia-Montenegro: those newly employed and undergoing training are allowed some latitude to defer in order to complete this. Serbia-Montenegro also allows deferments to
Eritrea “businessmen, industrial and farm workers, self-employed women, women working in the home, women raising children, and women in employment, except in bars, nightclubs and hotels”
Sweden “Anyone who has a function as a member of parliament, as substitute for a member of parliament or as a member of the cabinet has, without special decision, deferment for the duration of the assignment. The same applies for anyone who has a function in an international organisation and who, according to an agreement that Sweden has concluded with a foreign state, shall or ought not serve in the Total Defence organisation for the duration of the assignment.”
Tajikistan shepherds
and Uzbekistan
USA holders of public elected office

Distinction in sport or other areas of activity

Croatia “On a personal demand of the conscript or on the demand of the Croatian Olympic Committee” or equivalent sports federation “so that he might participate in the Olympic and Mediterranean Games, Universal, World and European championships, World and European Cups, international youth competitions (European Youth Olympic Festivals, World Youth Games, games Alps-Adriatic, official international competitions and national championships.”
Serbia-Montenegro “Exceptionally... the recruit first-class sportists or members of national representation, the recruit-first-class artist or the recruit-first-class scientist can be given the opportunity of postponing the serving of his military duty on the demand of the competent federal minister”

Deferment to complete higher education

Iran
Kazakhstan (only those who are already enrolled in further education)
Serbia-Montenegro (under the still-applied article 301 of the Yugoslav Army Law); the deferment may not continue beyond the end of November of the year of the 27th birthday.
; elsewhere those about to enter a course are also permitted to defer)

(in some other countries those entering higher education are allowed to bring forward the timing of their service)

Lack of education

Israel those who have completed less than eight years of formal education

Criminals

Colombia "persons who have been sentenced to a penalty that involves depriving them of their political rights pending their rehabilitation"
Israel
Moldova "persons who have served their punishment for having committed severe crimes"

Ministers of Religion and religious students

Austria
Colombia "Priests and members of religious orders... as well as their counterparts in other religions or churches who are involved full-time in religious activities."
Israel especially ultra-orthodox *yeshiva* religious students, but also Druze religious students
Moldova "clergymen of religious cults, monks, and students of the theological educational institution"
Poland
Romania "the invested or ordained personnel of the legally recognized religions." (Law 46/1996, Article 6c)
Russia
Ukraine "church ministers and incumbents of offices in a religious denomination registered according to established procedure" (Law on General Military Duty and Military Service, 2232/92, Articles 17 and 30).
USA - also students preparing for the ministry,

Minorities

Colombia "indigenous persons living in their own territories and who are preserving their cultural, social and economic integrity"
Israel Arab Israelis and "yeshiva" (and all non-Jewish women)
Paraguay indigenous peoples
Russian Federation - "small indigenous peoples"

Geographical

Brazil - recruitment only takes place in certain areas of the country - although registration is required everywhere. It is alleged that one evasion technique is to register in an area where recruitment does not take place.
Bosnia - Herzegovina - the Brcko District
Denmark self-governing dependent territories (Greenland, Faroes)
Finland the Aland Islands

2.4.5 Peacetime and Wartime

Many instances exist where the age limits or various exemption possibilities apply only in time of peace, or are modified in time of war.

In Greece, for example, in peacetime call-up may take place from the beginning of the year in which the conscript becomes 19, but in time of mobilisation Article 1 of Law 2510/1997 lowers this age by a year, and Article 14 permits the Minister of Defence to authorise the recruitment of volunteers a year before they would be subject to conscription. As it happens, Greece has been in a permanent state of mobilisation since 1976, although it is not clear whether advantage has in practice been taken of these provisions.

Article 2 of the Militia Act (1962) in Belgium, permits conscripts to be called up “in time of war or a threat to the territory”, from 1st January of the year in which they become 17. In both Estonia (Article 124 of the Constitution) and Kyrgyzstan (Article 20 of the 1998 ‘Law on mobilisation preparation and mobilisation in the Kyrgyz Republic,’) make citizens over 16 subject to military service in time of mobilisation. A similar provision in Mozambique was criticised by the Committee on the Rights of the Child.⁷⁸ Not only does the “Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict” contain an absolute prohibition on the conscription of under-18s; ILO Convention 182 on the Worst Forms of Child Labour which has been even more widely ratified (including by the States cited as examples above) bans the “forced or compulsory recruitment of children for use in armed conflict”. Such legal provisions to lower the conscription age in wartime, or when war is imminent, would thus lead most States into direct breaches of their treaty obligations, were they actually to be implemented.⁷⁹

Women may be conscriptable in war - though generally not for active service. This is for instance the case in Paraguay and Brazil. Brazil is also one of the States where the exemption of the clergy from military service does not apply in time of war: “Women and members of the clergy are exempt from military service in times of peace, although they are subject to other obligations set out in law.”⁸⁰ Many Vatican Concordats with States allow the exemption of priests from military service in time of peace, but permit their recruitment for unarmed service as chaplains or medical assistants in time of war or general mobilisation.

In Sweden, under the Act on Liability for Total Defence Service, “The supply of personnel for the Total Defence shall be secured by a liability for Total Defence for each Swedish citizen from the beginning of the year when he or she becomes 16 years old until the end of the year when he or she becomes 70 years old. The obligation is also valid for each person living in Sweden without Swedish citizenship.”⁸¹ This

⁷⁸ Concluding observations of the Committee on the Rights of the Child: Mozambique, UN Document CRC/C/15/Add.172, 3 April 2002, para. 23 (c).

⁷⁹ Romania, on the other hand, which according to the Child Soldiers Global Report 2004 has a provision to lower the conscription age from 20 to 18 in time of war, would be able to implement this without implications for its treaty obligations.

⁸⁰ Brazil’s Declaration to accompany its ratification of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

⁸¹ Act on Liability for Total Defence Service, 1809/1994, Para 1.2

liability involves “military, civilian, or general service. The military and civilian service includes basic training, refresher training, readiness service and wartime service. The general service implies that a person who is liable for Total Defence is obliged to serve during increased readiness...”⁸²

⁸² Ibid., Para 1.4

2.4.6 Who actually serves?

The net result of selection processes, exemptions and evasion is a very low rate of performance of obligatory military service. A comparison between the approximate annual male population in the relevant age cohort, and the number of conscripts indicated in The Military Balance 2004/5, produces the figures shown in Table 7. Even in Switzerland, which on paper has the most comprehensive recruitment system, recent reforms have been directed towards reducing the drop-out rate from military service, and the consequent costs. In 2003, the year during which the new system was introduced, the proportion of those called up who were rejected as unsuitable for recruitment soared to 30% from 19% two years earlier. Subsequent anecdotal evidence indicated that recruitment had become effectively voluntary, with those who were willing instead to pay the military tax (see page 35, above) experiencing no difficulty in being turned down.⁸³

So, after everything that has been reported in the previous pages, who is it that ends up performing military service?

The first thing which is evident is that it is rarely the best educated proportion of the population. In most States, those who proceed to higher or tertiary education can postpone military service until after they graduate. But then they typically have to serve for half as long as their countrymen who went into their military service younger - even if they are not able to avail themselves of a convenient scheme which enables them to perform their service for their country without ever warming their hands on the barrel of a rifle, or to count training performed as part of the school curriculum. Moreover, the more complicated the system of exemptions (and the rules for claiming them) the more this puts a premium on the education which will - at the one extreme - enable an unwilling recruit to ferret out an excuse for avoiding military service, and - at the other - enable a genuine conscientious objector to plead with sufficient eloquence as to convince a cynical tribunal of the genuineness of his convictions.

Nor - by definition - is it the most influential. If an Asian village is asked to provide its quota for the national recruitment drive, will the headman's son be chosen? If some form of lottery is held, but there is any chance of slanting the results - who will benefit? First and foremost the local dignitaries. If you are leading a "press-gang" and realise that your net has caught a senator's son, does it not suddenly become more porous?

Nor is it the wealthiest. The rich, after all, have more chance of sending their sons abroad to avoid military service. They have access to medical and psychological expertise which cannot be tapped by the poor, and which is also more predisposed to take account of the wishes of the client in certifying unfitness. And again, if it comes down to the "press gang", it will be the crowded alleys of the poor, not the leafy avenues of the rich, which are targeted. Even when there is a visible concentration of the wealthy young, it is likely to be avoided for fear that it will include the children of the influential - for of course the whole process is reinforced by the tendency of the three categories of wealth, influence and education to overlap. Finally, if all else fails,

⁸³ Stroebel, J., "Le nouveau recrutement fait chuter les demandes de service civil", *Le Civiliste* (Journal of the Swiss *Permanence Service Civil*), No. 24, June 2005

money may change hands, illicitly, in bribing a recruiter, or buying false documentation, or legally, through one of the means of buying-out already documented - the sums involved, needless to say, usually being far beyond the means of the poorer section of society.

The result therefore seems to be that it matters little whether the system is one of supposedly universal conscription or of voluntary service; it is the same disadvantaged sections of society who produce the overwhelming majority of the military rank and file.

TABLE 7: Those performing obligatory military service as a proportion of the relevant age group

State	Total male population in cohort born 1985 -1990 (,000s)	Approx. annual figure (,000s)	Length of obligatory military service (months)	Thus: Potential number of conscripts in 2004	Actual number of conscripts	Apparent % of potential number
Mexico	4757	951.4	30	2378500	60000	2.5
Brazil	9057	1811.4	12	1811400	45707	2.5
Sudan	1757	351.4	24	702800	20000	2.8
Paraguay	301	60.2	12	60200	1900	3.2
Italy	1571	314.2	10	261833	11000	4.2
Guinea	420	84	24	168000	7500	4.5
China	52008	10401.6	24	20803200	990000	4.8
Venezuela	1252	250.4	30	626000	31000	5.0
Indonesia	10717	2143.4	24	4286800	233000	5.4
Hungary	337	67.4	6	33700	2000	5.9
El Salvador	325	65	12	65000	4200	6.5
Guatemala	569	113.8	30	284500	23000	8.1
Russian Fed.	6204	1240.8	24	2481600	210000	8.5
Thailand	2762	552.4	24	1104800	96000	8.7
Czech Republic	335	67	12	67000	6000	9.0
Latvia	89	17.8	12	17800	1600	9.0
Colombia	2048	409.6	24	819200	74700	9.1
Moldova	199	39.8	12	39800	4089	10.3
Kyrgystan	256	51.2	18	76800	8500	11.1
Mongolia	137	27.4	12	27400	3300	12.0
Algeria	1872	374.4	18	561600	75000	13.4
Yemen	1041	208.2	24	416400	60000	14.4
Egypt	3706	741.2	36	2223600	322000	14.5
Uzbekistan	1331	266.2	12	266200	40000	15.0
Lithuania	131	26.2	12	26200	3950	15.1
Tajikistan	314	62.8	24	125600	19500	15.5
Iran	4462	892.4	18	1338600	220000	16.4
Chile	670	134	12	134000	22400	16.7
Kazakhstan	666	133.2	24	266400	46800	17.6
Romania	822	164.4	12	164400	29600	18.0

State	Total male population in cohort born 1985 -1990 (,000s)	Approx. annual figure (,000s)	Length of obligatory military service (months)	Thus: Potential number of conscripts in 2004	Actual number of conscripts	Apparent % of potential number
Korea (Rep. of)	1918	383.6	26	831133	159000	19.1
Poland	1706	341.2	12	341200	67500	19.8
Georgia	175	35	18	52500	10400	19.8
Turkmenistan	240	48	24	96000	21000	21.9
Tunisia	526	105.2	12	105200	23400	22.2
Ukraine	1826	365.2	18	547800	125000	22.8
Macedonia, the the F.Y.R. of	85	17	6	8500	2000	23.5
Denmark	147	29.4	10	24500	5800	23.7
Bolivia	415	83	12	83000	20000	24.1
Viet Nam	4151	830.2	24	1660400	412000	24.8
Germany	2514	502.8	9	377100	94500	25.1
Cuba	377	75.4	24	150800	38000	25.2
Ecuador	620	124	12	124000	37000	29.8
Laos	274	54.8	18	82200	25600	31.1
Austria	252	50.4	7	29400	10200	34.7
Estonia	52	10.4	8	6933	2410	34.8
Libya	355	71	18	106500	38000	35.7
Belarus	415	83	12	83000	30000	36.1
Sweden	270	54	7.5	33750	12300	36.4
Syria	1071	214.2	30	535500	200000	37.3
Portugal	358	71.6	4	23867	9100	38.1
Croatia	161	32.2	6	16100	7000	43.5
Turkey	3460	692	15	865000	391000	45.2
Azerbaijan	395	79	17	111917	56840	50.8
Switzerland	211	42.2	4	42200	23000	54.5
Armenia	137	27.4	24	54800	30075	54.9
Norway	138	27.6	12	27600	15200	55.1
Albania	132	26.4	12	26400	16000	60.6
Cyprus	33	6.6	25	13750	8700	63.3
Serbia - Montenegro	417	83.4	9	62550	39600	63.3
Israel	274	54.8	36	164400	107500	65.4
Taiwan	916	183.2	20	305333	200000	65.5
Lebanon	165	33	12	33000	22600	68.5
Singapore	137	27.4	24	54800	39800	72.6
Bosnia -Herzegovina	140	28	6	14000	12600	90.0
Greece	399	79.8	16	106400	98321	92.4
Finland	171	34.2	6	17100	18500	108.2
Bulgaria	278	55.6	9	41700	49000	117.5

Population figures drawn from the "World Population Prospects" database of the Population Division of the Department of Economic and Social Affairs of the United Nations Secretariat (<http://esa.un.org/unpp>). Numbers of conscripts and length of service as quoted in the Military Balance 2004/5 ; and may differ from information from other sources quoted elsewhere in this report.

In the case of Switzerland, the figure given is for the total number of conscripts who served during the year, not at any one time; therefore the "potential" figure is adjusted accordingly.

3. INTERNATIONAL STANDARDS ON CONSCIENTIOUS OBJECTION

The developing international legal and political standards on conscientious objection are largely derived from the guarantees of the freedom of thought, conscience and religion first enshrined in Article 18 of the Universal Declaration on Human Rights then reproduced, also in Article 18, in the International Covenant on Civil and Political Rights (ICCPR). There was however no specific reference to conscientious objection in Article 18, nor in the parallel Articles in regional human rights instruments: Article 8 of the African Charter on Human and Peoples' Rights; Article 12 of the American Convention on Human Rights; Article 9 of the European Convention on Human Rights. The words appeared in the ICCPR only in Article 8, where alternative service for conscientious objectors was lumped together with military service as an exception to the prohibition of forced labour.

In 1993, however, the Human Rights Committee which had been set up to oversee implementation of the International Covenant issued a "General Comment" on Article 18, which included the most authoritative fundamental statement yet of the right:

"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..." (General Comment 22, Paragraph 11).

By the time of General Comment 22, the issue of conscientious objection had found its way on to the political agenda of the United Nations, initially through General Assembly Resolution 33/165 (1978), which called upon states to grant asylum to persons whose claim was based on a conscientious objection to service in military or police forces used to impose apartheid. Following the receipt from the Sub-Commission on the Prevention of Discrimination and Protection of Minorities (as it then was), of the detailed "Eide/Mubanga-Chipoya report"⁸⁴, the UN Commission on Human Rights had then, in its Resolution 1987/46, called upon States to "recognize that conscientious objection to military service should be considered a legitimate exercise of the freedom of thought, conscience and religion."

Since 1993, at the UN level, the issue has advanced in parallel through the jurisprudence of the Human Rights Committee⁸⁵ and resolutions of the Commission

⁸⁴ Eide, A. & Mubanga-Chipoya, C.L.C., Conscientious objection to military service, (Report prepared in pursuance of resolutions 14 (XXXIV) and 1982/30 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities), 1985, United Nations Sales No. E.85.XIV.I

⁸⁵ see Hanski, R. & Scheinin, M. (2003), Leading Cases of the Human Rights Committee Institute for Human Rights, Abo Akademi University, Turku, Finland and Solari-Yrigoyen, H. (2004), "El Comité de Derechos Humanos y la objeción de conciencia al servicio militar", in Ando, N. (Ed.) Towards Implementing Universal Human Rights: Festschrift for the Twenty-Fifth Anniversary of the Human Rights Committee, (The Raoul

on Human Rights. The various recommendations of the 1987 Resolution and subsequent Resolutions in 1989, 1993, and 1995, were drawn together in Resolution 1998/77, which has been reaffirmed by subsequent Resolutions in alternate years (2000/3, 2002/45 and 2004/35). An important contribution to the legitimacy of their recommendations has been that all these Resolutions have been passed without a vote, and the number of co-sponsors has steadily increased reaching 38 in 2004. The reports of some of the “mechanisms” appointed by the Commission, notably the Working Group on Arbitrary Detention and the Special Rapporteur on the Freedom of Religion or Belief, have also helped to reinforce progress on the issue.

At the regional level there has been most progress in Europe, where the impetus towards consolidating and developing the standards for conscientious objection was Recommendation R(87)8 of the Council of Europe Committee of Ministers. The issue was subsequently taken up, in the Report of the Conference (as it then was) on Security and Co-operation in Europe “Human Dimension Implementation Meeting” in Copenhagen in 1990, in the Charter of Fundamental Rights of the European Union in 2000 and was finally reaffirmed in recommendation 1581/2001 of the Council of Europe Parliamentary Assembly.

Stipulations regarding legislation on conscientious objection have subsequently been included in the “accession criteria” for new members of the Council of Europe, and action in monitoring progress on these criteria has been a significant tool in moving the issue forward. Particularly worthy of mention in this respect is the conference which the Council of Europe sponsored in Sarajevo, September 2004, which brought together representatives of objectors organisations and governments in all the States of South-Eastern Europe except Slovenia.

The Human Rights Committee’s General Comment No. 22 and the Commission on Human Rights Resolution 1998/77 outline a number of principles regarding the recognition and implementation of the right to conscientious objection to military service. Together with other statements from these and other international bodies these are quoted as relevant in the analysis of practice which follows.

Wallenberg Institute Human Rights Library, 18), Martinus Nijhoff, Leiden, pp.155-172..., For a full background explanation of the different UN bodies, see Miles, E. A Conscientious Objectors Guide to the UN Human Rights System, published jointly by the Quaker United Nations Office and War Resisters’ International, 2000.

4. CONSCIENTIOUS OBJECTION IN PRACTICE

4.1 Constitutional and legislative recognition

Although there are a number of limited earlier precedents, the modern legislative recognition of conscientious objection can probably be traced back to the first Australian Defence Act of 1903 which granted total exemption from military service to "those who could demonstrate a conscientious objection to bearing arms".⁸⁶

By the end of the First World War, conscientious objection provisions had also appeared in Canada, New Zealand, the UK, and the USA; these lapsed with the end of conscription but were reinstated in an amended form with the approach of the Second World War - and in Denmark, where, as in Australia, provision for conscientious objection has remained on the statute book ever since. In Canada, the UK and New Zealand the provisions for conscientious objection lapsed with the repeal of the legislation establishing obligatory military service, in 1945, 1960 and 1973, respectively. In the USA, however, also in 1973, the legislation was simply suspended and provisions for the recognition of conscientious objection, still based on those brought in with the Selective Training and Service Act of 1940, remain valid.

Table 8 summarises the legislative history elsewhere. However the concept of conscientious objection is more widespread since some States which do not appear in Table 8, eg Chad,⁸⁷ have at times reported in some detail on the arrangements for conscientious objectors without providing details of the relevant legislation.

The German Federal Republic provides the first instance of the concept of conscientious objection being incorporated in a national Constitution; Article 4.3 of the 1949 "*Grundgesetz*" stating: "No one may be forced against his conscience into armed war service." (The post-war Japanese constitution had excluded the maintenance of armed forces, thereby seemingly rendering reference to individual conscientious objection superfluous.) Subsequently, many States have first acknowledged the right of conscientious objection in constitutions drawn up after radical political change; Portugal and Spain in the 1970's, Brazil, Paraguay and Ecuador in the 1980's and 1990's, and numerous Eastern European and former Soviet States in the years since 1989. Sometimes, however, constitutions refer to the possibility of alternative service without any specific mention of, or even allusion to, conscientious objection. Examples (both from 1992) are Article 52 of the Constitution of Uzbekistan and Article 139 of the Constitution of Lithuania. In both of these cases it is only in subordinate legislation that reference is made to the principle of conscientious objection.

In Belarus, even following a recommendation by the Constitutional Court in 2000, at least two attempts to introduce legislation to implement the reference to alternative service in Article 57 of the 1994 Constitution have been unsuccessful and nowhere in national legislation is there apparently any explicit reference to the concept of

⁸⁶ Horeman, B. & Stolwijk, M. (1998), *Refusing to Bear Arms*, War Resisters International, London.

⁸⁷ *ibid.*

TABLE 8: Legal Recognition of Conscientious Objection

Australia	1903 Defence Act	S	<i>would still apply if conscription reintroduced</i>
New Zealand	1912 Defence Amendment Act	S	no current provision
UK	1916 Military Service Act	S	no current provision
Canada	1917	S	no current provision
Denmark	1917 Alternative Service Act, 13th December		Civilian Service Act 588/67
USA	1917	S	Military Selective Service Act 92-129/71 (and amendments)
Sweden	1920		Total Defence Service Act 1809/94
Netherlands	1922 Constitutional amendment	S	Law on Conscientious Objection, 1962 (amended 22 May 2003)
Norway	1922 Amendment to Military Penal Code, para 35.5		Law on Exemption of Military Service for Reasons of Personal Conviction (7/99)
Finland	1931 Alternative Service Law, 4th June		Civilian Service Act 1723/1991 as amended by Acts 456/92, 1264/92, 1271/93, 1222/98, 439/00, 1248/00, 745/02.
Germany	1949 Constitution, Article 4.3		Law on Conscientious Objection 2003
France	1963 Law No. 1255/1963	S	?Law on Conscientious Objection 605/83
Italy	1972	S	Law on Conscientious Objection 230/1998
Austria	1974 Law on Civilian Service, Article 2		Law on Civilian Service
Portugal	1976 Constitution, Article 41	S	?Law on Conscientious Objection 7/1992
Spain	1978 Constitution	S	?Law on Conscientious Objection 48/1984
Belgium	1980 Law on Conscientious Objection	S	?Law on Conscientious Objection (amended 1992)
Brazil	1988 Constitution		Law on Alternative Service, 8231/91
Marshall Is.	1988 Constitution, Article 11	S	
Poland	1988		Law on Alternative Service 2003
Hungary	1989 Constitution	S	National Defence Act 90/93
Croatia	1990 Constitution, Article 47.2		Law on Civilian Service, 2003
Bulgaria	1991 Constitution, Article 59.2		Law on Alternative Service 2003 (16 May)
Czechoslovakia:	1991 Charter of Basic Rights and Freedoms, Article 15.3		
Czech Rep.		S	Law on Civilian Service 18/92, amended by Laws 135/93, 118/95, 151/99 and 223/99
Slovakia	(enshrined in Article 25 of the 1992 Constitution)		Civilian Service Act, 207/95
Estonia	1991 Constitution, Article 124		Defence Forces Service Act, 2000
Moldova	1991 Law on Alternative Service No. 633/91		same, but as amended by Law 534/99
Cap Verde	1992 Constitution, Article 271		
Cyprus	1992 National Guard Law 2/1992		
Angola	1993 Law on Military Service, Article 10		? no further implementing legislation
Lithuania	1996 Law on National Conscription		
Paraguay	1992 Constitution, Article 129		no implementing legislation
Serbia- Montenegro	1992 Constitution (of the then Yugoslavia)		Military Service Act, 26.8.03
Slovenia	1992 Constitution	S	

Uzbekistan	1992 Law on Universal Military Service, Article 52	Law on Military Duty and Military Service, 2002 (12 Dec)
Russian Federation	1993 Constitution, Article 59.3	Law on Alternative Civilian Service, 2003
Argentina	1995 Law on Voluntary Military Service, 24429/95(Art 20)	S <i>would apply if conscription reintroduced</i>
Azerbaijan	1995 Constitution	
Bosnia - Herzegovina:		
Federation	1996 Law on Defence	S ?Law on Defence, 2004
Rep. Srpska	1996 Law on Defence, Articles 215 - 219	S
Romania	1996 Law 46/1996 - Preparation of Population for Defence Article 4.	
Switzerland	1996 Law on Civilian Service	
Ukraine	1996 Constitution, Article 35.3	Law on Alternative Civilian Service, 1999
Greece	1997 Law on Conscientious Objection 2510/97	
Georgia	1997 Law on Alternative Service	
Mozambique	1997 Law on Obligatory Military Service	
Ecuador	1998 Constitution	
Albania	1998 Constitution, Article 166	Law on Military Service 9047/2003
Taiwan	2000 Alternative Service Law 15th. January	
Macedonia, the FYR of	2001 Law on Defence	
Latvia	2002 Law on Alternative Service	
Kyrgystan	2002 Law on Alternative (Non -Military) Service, June 2002	
Mongolia	2002 Law on Military Service Duties of Citizens and on the Legal Status of Military Personnel	
Armenia	2003 Law on Alternative Service	

S - obligatory military service currently suspended or abolished. Where the law regulating conscientious objection is quoted with a question mark, it has not been ascertained whether it remains valid should the relevant circumstances again arise.

conscientious objection. On paper, Belarus thus remains in a position not far different from that created by Article 72 of the Turkish Constitution: “National service is the right and duty of every Turk. The manner in which this service shall be performed, or considered as performed, either in the Armed Forces or in the public services, shall be regulated by law” - a provision which has not been used in Turkey to accommodate conscientious objection.

A comparison of the provisions in the Brazilian Constitution, promulgated in 1988, and that of Paraguay just four years later gives a revealing insight into how rapidly thinking about good practice was moving forward at that time. Article 143 of the Brazilian Constitution reads: "It is within the competence of the Armed Forces, according to law, to provide an alternative service for those who, in peacetime, after being enlisted, claim grounds of conscience, understood to be based on religious faith and philosophical or political beliefs, for exemption from purely military activity."

By contrast, as the Government of Paraguay states⁸⁸ Articles 24, 33, 37 and 129 of the 1992 Constitution cumulatively “establish progressive standards that guarantee the right to conscientious objection in a manner consistent with the interpretation given by the United Nations Human Rights Committee.” The specific reference in Paragraph 5 of Article 129 reads, "Those who declare their conscientious objection are to perform service beneficial to the civilian population in aid centres designated by law and operated under civilian jurisdiction. The laws implementing the right to conscientious objection shall neither be punitive nor impose burdens heavier than those imposed by military service."

Unfortunately, both Brazil and Paraguay are also examples where detailed legislation to implement the constitutional provisions is lacking. In the case of Brazil, according to the Jehovah’s Witnesses⁸⁹, “Since the current Federal Constitution was published... there has been no decision on processes of religious conscientious objectors. There are thousands of cases awaiting resolution in the Ministries of Defense and Justice... when the process reaches the Ministry of Justice... (*it*) comes to a halt. As a result, the petitioners’ situation remains unresolved”. In that of Paraguay, “In 2003 a bill regulating conscientious objection and establishing alternative civilian service was sent by the Chamber of Deputies to the Chamber of Senators for consideration and adoption. The Chamber of Senators rejected the bill on the ground that some articles were at variance with constitutional principles, and consideration of the possibility of introducing regulations governing the fundamental right of conscientious objection was definitively shelved.”⁹⁰ As a result, the situation of conscientious objectors continues to be governed by the temporary measures decided on in 1994 by the Human Rights Committee of the Chamber of Deputies, which agreed, “in view of the lack of regulatory legislation... to receive declarations from conscientious objectors and to approve their registration on a provisional basis, thereby exempting the objectors from military service until such time as the law established a public body to take responsibility for organizing alternative service.”

⁸⁸ In paragraphs 457 and 458 of its second State Report under the International Covenant on Civil and Political Rights, UN document CCPR/C/PRY/2004/2.

⁸⁹ General Counsel of Jehovah’s Witnesses, response to OHCHR questionnaire 2003

⁹⁰ UN Document CCPR/C/PRY/2004/2, para 46

A parallel situation occurs in Ecuador, where according to Article 188 of the 1998 Constitution "Military service is compulsory. However, citizens will be assigned to civil service in the community if a conscientious objection is invoked because of moral, religious or philosophical grounds in the manner determined by law", but no "civil service" has been set up.⁹¹

In other situations it has been argued that without any specific legislation the right to conscientious objection may be derived directly from provisions in national constitutions guaranteeing freedom of thought, conscience, religion or belief. Thus the *Defensor del Pueblo* in Venezuela⁹² quotes two articles of the 1999 Constitution - Article 134: "Under the law everyone has the duty to provide the civil or military services necessary for the defence, preservation and development of the country, or to respond to situations of public calamity. No one may be subjected to forced conscription (*reclutamiento forzoso*)," and Article 61: "Everyone has the right to freedom of conscience and to express it, except where its exercise affects his or her legal personality or constitutes a crime." Taken together, he argues, these have the effect of making military service in Venezuela voluntary, without the need for any further implementing legislation. He does not however cite any instance where an attempt had been made to realise this right. In a similar vein, his Colombian counterpart⁹³ quoted at length the dissenting opinion which he himself (at the time a Constitutional Court judge) and two others had entered in case 511/94, in which they argued that the unconditional guarantee of freedom of conscience in the Colombian constitution had to be seen as prevailing over the obligation to perform military service, recognised in the constitution as subject to a number of exceptions.

Attractive though these arguments are, no evidence has yet emerged of their convincing national courts. The issue does not seem to have been tested in Venezuela; in the Colombian case cited the majority took the view that the obligation to perform military service took precedence over the freedom of religion and belief. A similar decision was made in 2004 in the Constitutional Court of the Republic of Korea: "The legislative decision is justifiable in light of the gravity of the interest of national security. Then, the legal clause in the instant case cannot be considered a violation of the conscientious objector's freedom of conscience or freedom of religion."⁹⁴ The Supreme Court was even blunter: "Given the division of the country, the duty of national defense, being the most basic guarantee of the state's existence, takes precedence over the freedom of conscience."⁹⁵

Indeed, even explicit constitutional provisions may be inadequate to ensure the recognition of conscientious objectors, exemplified by the decision in the supreme court of Azerbaijan in February 2005 that the constitutional provision recognising conscientious objection could take effect only once enabling legislation was in place, and until that time a conscientious objector remained liable for the performance of obligatory military service.

⁹¹ *Child Soldiers Global Report 2004* (Coalition to Stop the Use of Child Soldiers, London)

⁹² Response by Defensor de Pueblo of Venezuela to the OHCHR questionnaire, 2003.

⁹³ Response by Defensor de Pueblo of Colombia to the OHCHR questionnaire, 2003.

⁹⁴ Decision No. 2002Heongal (August 26, 2004), cited by General Counsel of Jehovah's Witnesses, evidence submitted to the OHCHR, February 2005

⁹⁵ As quoted in an editorial in www.english.chosun.com, 26th December, 2005

4.2 Legal recognition does not define the existence of conscientious objection

Conscientious objection exists whether or not there is a procedure for recognising individuals as conscientious objectors. Indeed, an objector need not even have heard of the concept in order to fulfil the criteria. If in the State in question there is no legal provision for conscientious objection, or even if the objector is unaware of any provision which exists, there is no incentive to make formal application to the recruiting authority on those grounds. The lack of complaints does not mean that the rights of potential conscientious objectors are not being seriously violated, simply that they have no encouragement to believe that this is an enforceable right and are fearful of the consequences of asserting it. Those who have a conscientious objection to military service are therefore more likely to seek other ways of avoiding the liability and will usually accept without further qualification any situation where they are not called upon to perform military service, for whatever reason. In Turkmenistan, for example, despite their deep-seated objection to military service, Jehovah's Witnesses register and submit to medical examination. Those who are exempted on health grounds or because of family commitments do not announce their refusal to serve on grounds of conscience, as such an announcement usually leads to immediate prosecution.⁹⁶

In the absence of any legislative provision, evidence of a culture of evasion or avoidance of compulsory military service may therefore be an indicator of undeclared conscientious objection. This appears to have been the case in both Brazil and Paraguay before they emerged from military rule in the late 1980's - Brazil in 1985, Paraguay in 1989 - although among the many human rights abuses reported the restriction of the freedom of thought, conscience or religion with particular regard to conscientious objection had received no attention. Some Jehovah's Witnesses had reportedly been imprisoned in Brazil for refusing military service; in Paraguay there were no reports of recruits having claimed a right of conscientious objection. With the end of military rule, however, churches and non-governmental organisations, led by SERPAJ (*Servicio, Paz y Justicia*), quickly initiated successful campaigns in both countries to have references to conscientious objection included in the new Constitutions. The year after the promulgation of the 1992 Paraguay Constitution, the first group of five recruits declared themselves to be conscientious objectors; at the time of their hearing on 30th September 1993, a survey showed that 93% of the population remained unaware that this legal right existed. Within the next ten years over 100,000 conscientious objectors had registered and the rate of declarations was running at over 15,000 per annum, or something like a quarter of the number becoming eligible for military service - and this despite the fact that eleven of the sixteen local government authorities ("departments") still had no provisions for the registration of conscientious objectors.⁹⁷

Israel is perhaps the only instance where assessment of claims to conscientious objector status happens without any legal recognition of conscientious objection.

⁹⁶ General Counsel of Jehovah's Witnesses, evidence submitted to the OHCHR, February 2005

⁹⁷ Rojas, F. (2001), "El Servicio Militar Obligatorio en Paraguay: entre la contestación social y la inercia de las instituciones del Estado autoritario", paper delivered to the Panel on Military Service, Center for Hemispheric Defense Studies, REDES 2001 (Research and Education in Defense and Security Studies), Washington D.C. May 22-25, 2001.

Article 36 of the National Defence Service Law gives the armed forces sweeping authority to grant exemptions from military service for “reasons connected with the requirements of education, security settlement or the national economy, for family reasons or for other reasons”. Acting under this provision, in 1995 the armed forces established the “Committee for Granting Exemptions from Defence Service for Reasons of Conscience”, usually referred to simply as the “Conscience Committee”. The rules and procedures of this committee are not published, and there is no appeal from its decisions. Those whom it does exempt from military service are classified not as conscientious objectors but as “unsuitable”. The decision to refer an individual to the committee is entirely in the hands of the Israeli Defence Force; the most common category, selective objectors to service in the Occupied Territories⁹⁸, rarely come before it, nor do most applications by Druze conscripts for exemption on grounds of conscience. Over the years, the Committee has turned down the overwhelming majority of the cases it has considered.⁹⁹

In States where there is no process for the recognition of conscientious objection, only those conscientious objectors will come to light who feel led to challenge the system by refusing military service. Others will either avoid it or will feel that there is no option but to comply with a law which violates their consciences. The same can be true of those who have no knowledge of such provisions as do exist, or have severe and justifiable doubts about their fairness or adequacy in practice. This is an important consideration in circumstances where conscientious objectors flee their home country rather than face military recruitment - or desert or go “absent without leave” having been unwillingly recruited.

It should also be noted that in some States which do have legal provision for the recognition of conscientious objectors, not all objectors have the opportunity to declare themselves. Austria and Taiwan for example, will not accept an application for the recognition of conscientious objector status until a medical examination has taken place and the person concerned has been passed fit for military service. A conscientious objector who is exempted from military service on medical grounds is thus never formally recognised as such. This was also the situation in the USA and the Netherlands before conscription was suspended, in 1973 and 1997 respectively. By contrast, in the Russian Federation the application is first considered in principle, leading to a “Decision on Substitution”. Only after that does a medical examination take place before the draft commission notifies the alternative service agency of an “Assignment Decision”.¹⁰⁰

Switzerland in fact explicitly excludes the recognition as conscientious objectors of persons who would be exempt from military service on other grounds. In practice, this can also be the effect of the system in the USA, where all exemptions and deferments are handled, technically, by “reclassification”. The classifications are placed in a strict hierarchy, and those who qualify on, for example, medical grounds are placed in the appropriate classification without consideration of whether they might qualify for exemption on grounds lower down the list.

⁹⁸ For a full documentation of this movement, see Peretz, K. (Ed), Refusnik, Zed Books, London, 2004 (2nd Edition)

⁹⁹ War Resisters International, Conscientious objection in Israel: an unrecognised human right, February 2003.

¹⁰⁰ General Counsel of Jehovah’s Witnesses, evidence submitted to the OHCHR, February 2005

This is important because the issue is not just how easy it is to avoid military service. Strongly and sincerely committed conscientious objectors may legitimately demand to be recognised as such. Some feel that an important part of manifesting the belief which has led them to their objection is that they must publicly testify to it.

Hence for example the case brought against Chile to the Inter-American Commission on Human Rights¹⁰¹ on behalf of three young men who in 1998 when faced with the requirement to register for military service had submitted to the recruitment authorities individual requests stating their conscientious objection to participation in such service, but who had nevertheless been called up. A large part of the argument of the State rested on the fact that when they failed to report for induction they had suffered no punishment as a result and that indeed in the last twenty years no one had in fact been detained for failure to perform military service. (Para 26). The State had already, in Paragraph 22, cited the proposed reform of Chilean military service legislation, which would render such service essentially voluntary.

In August 2005 the law referred to was indeed passed; however it does not suspend the operation of the system of obligatory military service, but simply formalises what on the State's own admission was already rapidly becoming the *de facto* situation. Instead of registering all young men for the ballot to perform military service and then not pursuing those who failed to answer the summons to enlist, under the new system the State will in the first instance enrol those who are prepared to put themselves forward voluntarily to fulfil the "obligatory" requirement, resorting to a ballot only if the number of recruits thus obtained proves insufficient. Moreover, the system of requiring those liable for military service to register is to be replaced by one which relies on data provided by the Civil Registry. In other words the liability to perform military service if called upon remains unchanged, there is simply an intention on the part of the State that the occasion to put the question will in future be less frequent. Meanwhile, the number of those choosing to declare themselves to the recruitment authorities as conscientious objectors is growing; on 27th September 2005, in Santiago and two provincial cities about 40 conscientious objectors publicly handed in declarations at military recruitment offices.¹⁰²

Similarly, among the many ramifications of the recent - and not definitively resolved - case of Mehmet Tarhan, a conscientious objector in Turkey¹⁰³ was his resistance of moves by the military authorities to seek "proof" of his sexual orientation with a view to classifying him as "dysfunctional - unfit for service" instead of acknowledging his conscientious objection.

¹⁰¹ Case no. 12,219; decision given in Report 73/05 on 10th March 2005

¹⁰² CO Update No. 14, War Resisters International, (www.wri-irg.org), Oct 2005

¹⁰³ see CO Updates Nos. 9, 10/11, 14, 15 and 16, War Resisters International (www.wri-irg.org), May - December 2005 and the public statement by Amnesty International (ref: EUR 44/036/2005) issued on 9th December 2005.

4.3 Conscientious objection may develop at any time:

The fact that at one time a person does not have a conscientious objection to military service does not invalidate the subsequent emergence of such an objection. Quite apart from any dramatic change of beliefs, it must be understood that most forms of conscientious objection are not strict creeds, but beliefs no less fundamental because they develop and crystallise over time.

This also means that a conscientious objection may first be identified at different stages within an individual's relationship with the military. A person may be aware of an objection before ever being called upon to register or enrol. The objection may emerge only during the course of the recruitment process. It may not take shape until the objector has already embarked on obligatory military service, or has enlisted voluntarily. It may develop when the objector has completed military service, and is subject to reserve duties.

The best practice is clearly that conscientious objection should be recognised equally in all of these situations. A rare instance where this happens is Germany, where the same legislative provisions and to a large extent the same procedures apply before call-up, during compulsory military service, for "regular" serving members of the armed forces, and for reservists. Elsewhere, different issues can arise at different stages in the process, as discussed in the five sub-sections below.

4.3.1 At First Registration

As is clear from the provisions of the new Chilean Law on Military Service already quoted, advance registration of liability for military service is not essential. A selection procedure, or indeed a direct call-up, can be operated on the basis of information already held on citizens or residents - in the case of Chile the necessary information is to be supplied by the Civil Registry. In those cases where pre-registration does exist, however, the question arises of whether arrangements exist at this stage for conscientious objectors to apply for recognition as such, and thus exclusion from the "register".

In the USA and the Netherlands, as mentioned already, although call-up for obligatory military service has been suspended, the process for registration of those eligible still continues. In both States, however, the suspension of inductions was accompanied by a change in procedures which no longer require conscripts to undergo a medical examination at the time of registration, but also mean that no applications for exemption or "reclassification" are entertained at this stage; indeed the regulations in the USA have been changed so that only once the induction orders have been issued may notice of a claim for reclassification be lodged. The significance of this is that no one liable to register may legally refrain from doing so on grounds of conscientious objection. Nor is there any way to be officially classified as claiming conscientious objector status at the time of registration, which had in fact previously been the obligatory time for lodging such a claim. The result is that those whose consciences will not permit them to register have no choice but to break the law.

4.3.2 Before call up

It is a common requirement that applications for classification as a conscientious objector must be lodged at some stage before the commencement of military service. Table 9 gives an indication of some of the specific restrictions which apply. Sometimes the application must be made within a certain length of time after medical examination, this, as has been noted above, having the effect of excluding anyone who can be exempted on medical grounds from claiming conscientious objector status. Sometimes the rule is that it must be made a certain length of time before induction is due. Sometimes both apply, so that there may be a narrow “window” of time in which the application can be made. Sometimes there are other limitations; under the draft regulations in the USA, not currently being implemented, notice of any claims for “reclassification” (ie. exemptions or deferments) must specify all claims which are to be brought; different grounds cannot be tried in sequence.

One very important issue which affects all those who apply for recognition of conscientious objector status before induction into the military is whether the call-up notice is suspended, and whether they are treated as civilians while their application is processed.

Most countries which have a procedure for the recognition of conscientious objectors either undertake to reach a final decision on the claim before the date of call-up (hence the very early deadline for applications in for example the Russian Federation), or agree to the suspension of call-up during the process, including any appeals. In the USA, even a conscientious objector whose claim had been rejected, but who had reported to the induction ceremony itself only in order to restate his refusal would face prosecution in a civilian court, not having taken the military oath.

Greece is the glaring exception in this respect. There applicants whose cases have not been resolved by the date originally set for call-up are obliged to report to the military, become liable to military charges of insubordination for offences related to the nature of their conscientious objection (eg refusal to wear a uniform), and may be required to remain in barracks for whatever length of time intervenes before their cases are heard lest they face the considerably more serious charge of desertion.

It is perhaps not surprising that most States which do not have any legal recognition for conscientious objection but which deal with numerous cases tend to use the military justice system. This is for example the case in both Israel and Turkey. In Singapore, too, it is in the Armed Forces Detention Barracks that convicted conscientious objectors serve their sentences. The Republic of Korea for many years followed a similar policy, but in 2001 the practice changed, and subsequently conscientious objectors have been tried in civilian court and, if sentenced to imprisonment, have served their sentences in civilian prisons.¹⁰⁴

¹⁰⁴ MINBYUN (Lawyers for a Democratic Society), Korea Solidarity for Conscientious Objection, and War Resisters International, Briefing Paper on Conscientious Objection and Human Rights Issues in the Republic of Korea, prepared for the 60th Session of the UN Commission on Human Rights, 2004, p.12

TABLE 9: Time / status limits for application for recognition as a Conscientious Objector

Russian Federation	6 months before induction
Armenia	One month before induction (ie. by 1st March or 1st September)
Romania	within 15 days after passed fit for service
Slovakia	within 30 days after passed fit for service
Bulgaria	within 1 month after passed fit for service (Article 7.2)
Taiwan	between medical examination and call-up
Austria	within 6 months after passed fit or 2 days before call-up reservists within 3 years of first call-up
Macedonia, the FYR of	before call-up
Poland	before call-up
Bosnia - Herzegovina:	
Federation (S)	within 7 days of call-up
Rep. Srpska(S)	within 15 days of call-up
Georgia	within 10 days of call-up
Czech Republic (S)	within 30 days of call-up (for conscripts) reservists may apply during January of any year separate regulations for regular service personnel?
Ukraine	within 6 months of call-up
Greece	between call-up and the day before induction (one month)
USA (S)	after call-up; must be received one day before induction separate regulations for regular service personnel
Moldova	during the two months before induction
Cyprus	before induction
Estonia	before induction
Latvia	before induction separate regulations for regular service personnel?
Lithuania	before induction
Uzbekistan	before induction
Paraguay	no rules established - presumably very difficult in practice after induction
Hungary (S)	before taking military oath (about 3 weeks into service) reservists: before call-up for reserve duties
Serbia-	
Montenegro	before induction or within the first third of the period of service (ie. 3 months)
Switzerland	at any time after passed fit for service
Netherlands (S)	at any time after passed fit for service - including regular service personnel
Croatia	no restrictions for conscripts
Finland	no restrictions for conscripts
Sweden	no restrictions for conscripts approval automatic within 6 months of call-up or at any time before induction
Denmark	no restrictions for conscripts - situation for regular service personnel unclear
Norway	no restrictions for conscripts - situation for regular service personnel unclear
Slovenia (S)	no restrictions?
Germany	no restrictions

(S) = obligatory military service currently suspended or abolished

4.3.3 During obligatory military service

aware that persons performing military service may develop conscientious objections... Commission on Human Rights, Resolution 1998/77, preamble.

As has been indicated in Table 9, Germany is joined by a small number of other States in accepting applications for reclassification as conscientious objectors from persons currently serving obligatory military service.

Sometimes such applications are subject to closer examination than are those made before call-up. In Sweden, whereas “an application made before the applicant has been enlisted or within six months from the day he or she has obtained knowledge about a decision on enlistment must be approved without further investigation, unless there are special reasons for investigating the applicant’s attitude to the use of weapons against another person... If an application has been made later (*it*) must also contain a statement about the conditions the applicant quotes as a support to the statement that he or she has made regarding the use of weapons against another person”.¹⁰⁵ A similar provision applies in Denmark.

On the other hand, rules requiring the accelerated consideration of such in-service applications are in place in Germany and Norway, and were in Slovenia. In the case of Norway it is stipulated that all duties involving the bearing of arms are suspended upon application for recognition as a conscientious objector pending a decision on the application, which must be made within four weeks; in Sweden the entire service is postponed pending a decision.

4.3.4 Among those who have joined the military voluntarily.

The Assembly... recommends that the Committee of Ministers invite those member states that have not yet done so to introduce into their legislation... the right for permanent members of the armed forces to apply for the granting of conscientious objector status.

Council of Europe Parliamentary Assembly Recommendation 1518 (2001), Para 5 ii.

In very few States is it in practice possible for those who have joined the military voluntarily to be released from their obligations should they subsequently develop a conscientious objection, and in even fewer is there a right enshrined in legislation. The good example of Germany, where the legal provisions apply without time limit or other distinctions, has already been mentioned. In the Netherlands, too, the Law on Conscientious Objection applies to volunteers as well as conscripts, and therefore remains in force despite the suspension of obligatory military service.

Among States which are no longer calling up for obligatory military service, Slovenia’s Military Service Law of 1995 would also appear to distinguish between conscripts, whose military duties were suspended immediately on lodging a claim of conscientious objection, and what are translated as “national servicemen” who remain subject to military duties while their claim is being processed; certainly it was

¹⁰⁵ Act on Liability for Total Defence Service, 1809/1994 paras 3.17 and 3.18.

interpreted in this way by the Council of Europe in 2001.¹⁰⁶ According to Slovenia's 2003 submission to the OHCHR: "The commission must decide on an application within six months as of the date the application was submitted and within three months, if the application was submitted by a soldier performing military service... During the period of processing the application, all duties relating to military service of a conscript and national serviceman who already concluded his military service are suspended" (with exceptions in certain very specific circumstances.) "The processing of the application filed by a national serviceman during his military service has no effect on the discharging of duties relating to military service."

The 2001 Council of Europe report also quoted the Czech Republic and Latvia as recognising the "regular serviceman's right of conscientious objection to military service", although no details of the practical implementation of this recognition are known.¹⁰⁷ It is known that before the suspension of obligatory military service the Czech Republic, like Austria, had different time limits for applications from different categories of conscientious objector; conscripts had to apply within thirty days of call-up and could not do so once they had commenced service, while reservists benefitted from an annual "window" during the month of January in which they might lodge claims. By contrast, the Council of Europe report implied that there were no such provisions in Denmark or Norway, whereas other sources¹⁰⁸ report that they do exist.

In the USA a detailed procedure was set out in Department of Defense Directive No. 1300.6 of 1962 for the honourable discharge or transfer to non-combatant duties of a serving member of the armed forces "who has a firm fixed and sincere objection to participating in war in any form or the bearing of arms, by reason of religious training or belief". Each branch of the armed forces has its own specific regulations drawn up under the overall authority of and to a large extent restate the principles listed in Directive 1300.6.

States which do not currently impose obligatory military service often claim that this means that the issue of conscientious objection is irrelevant. The experience in the USA since 1962 disproves this. Admittedly from within armed forces more than a million strong, it is believed that in the years from 1965 to 1973 inclusive, there were between 17,000 and 18,000 applications, the annual number peaking at 4,381 in 1971.¹⁰⁹ It is not stated what proportion were accepted in these Vietnam War years, but in the more peaceful conditions of the mid-1980's there was still a steady flow of applications; between 1985 and 1991 inclusive, 841 applications resulted in a complete discharge.¹¹⁰ A much smaller number were reallocated to noncombatant status; 29 in 1985, declining to 7 in 1987, since when statistics have not been

¹⁰⁶ "Exercise of the right of conscientious objection to military service in Council of Europe member states" (Report of the Committee on Legal Affairs and Human Rights); Council of Europe Document 8809(Revised), 4th May /2001.

¹⁰⁷ Stolwijk, M., (2005) The Right to Conscientious Objection in Europe Quaker Council for European Affairs, Brussels

¹⁰⁸ Ibid. and Danish Institute for Human Rights, Response to questionnaire from OHCHR, 2003.

¹⁰⁹ Chambers, J.W. (II) (1993) "Conscientious objectors and the American state from colonial times to the present", in Moskos, C.C. & Chambers, J. W.(II)(Eds), The New Conscientious Objection, from sacred to secular resistance, Oxford University Press, New York/Oxford., pp.23 - 46.

¹¹⁰ Noone, M. F. Jr. (1993), "Legal aspects of conscientious objection: a comparative analysis" in Moskos & Chambers, as above, pp. 177-195.

available. In this period, the success rate of applications was in the region of 80% in the army, 76% in the navy and 73% in the marines.¹¹¹

Paragraph IV A (“Policy”) of Directive 1300.6 specifies that its provisions are not available to those whose beliefs at the time of entering military service “satisfied the requirements for classification as a Conscientious Objector pursuant to Section 6(j) (of the Act), and he failed to request classification as a Conscientious Objector under the Selective Service System”, or whose request for classification as a Conscientious Objector “was denied on the merits by the Selective Service System and (whose new request) is based on essentially the same grounds, or supported by the same evidence”. However, if the beliefs “crystallized” only after induction the claim can be entertained. They thus were available to conscripts as well as to “professional” members of the military, and reservists would be in future. However they do not represent any extension to the very narrow “window” during which pre-entry applications may be lodged.

Subject to the above limitation, the Directive gives detailed advice regarding the criteria to be used in assessing a claim of conscientious objection, much of which emphasises the importance of treating each individual case on its merits, without prejudices regarding the nature, rather than the depth and sincerity of the beliefs, on which it is based, the degree to which they accord with the tenets of any church or other religious group to which the applicant is affiliated and their effect upon his (or her - because they also apply to female members of the armed forces) political opinions, although these without the basis in belief would not be acceptable grounds.

The procedures to be followed are described in minute detail. They include interviews with a military chaplain and a psychologist, hearings at which the applicant may bring forward evidence and witnesses, and be represented by counsel, rules regarding the appointment of an “investigating officer” who must be at a certain distance from the immediate chain of command above the applicant, availability of reports made at all stages of the process, and opportunities given to the applicant to rebut them, and treatment of the applicant during the process. Section VI I states: “To the extent practicable under the circumstances, during the period applications are being processed and until a decision is made every effort will be made to assign applicants to duties which will conflict as little as possible with their asserted beliefs.” However “an applicant shall be required to comply with active duty or transfer orders in effect at the time of his application or subsequently issued.”

The biggest problem with the procedures, however, is that, relying on no authority beyond the regulations, they can be altered or withdrawn at any time. Experience has shown that this is not an idle fear. At the outset of the “First” Gulf War in 1991, between 1500 and 2000 claims had been lodged by serving members of the military and reservists, when a presidential “stop-loss” order was issued, which cancelled all pending discharges from the military on any grounds, and halted the consideration of any further applications. It was left at the discretion of the immediate chain of command whether applications for conscientious objector status were treated as having failed or were simply “frozen” and, in the latter case, the extent to which the conscience of the applicant was accommodated in the interim. In most cases, it is

¹¹¹ Eberly, D. J. (1993) “Alternative Service in a future Draft” ,in Moskos & Chambers, as above, pp.57-65.

reported, mutually satisfactory arrangements were arrived at, but at least 42 Marines who persisted in declaring themselves conscientious objectors and resisting active deployment were jailed.

Chapter 1-7, Section a(5)(c) of the Army Regulations, which are unusual in adding substantively to Directive 1300.6, illustrates the military reasoning. Reasons for believing that an application *may* be insincere include: “Applicants may have sought release from the Army through several means simultaneously, or in rapid succession (medical or hardship discharge etc.) They may have some major commitments during the time their beliefs were developing that are inconsistent with their claim. They may have applied... shortly after becoming aware of the prospect of undesirable or hazardous duty, or having been rejected for a special programme. The timing... alone, however, is never enough... to support a disapproval. These examples serve merely as indicators that further inquiry as to the person’s sincerity is warranted. Recommendations for disapproval should be supported by additional evidence beyond these indicators.”

The United Kingdom’s procedures for granting compassionate discharge for those who develop a conscientious objection are described in detail by Stolwijk.¹¹²

In other cases, the possibilities which are cited for professional members of the armed forces often do not relate to conscientious objection as such. Thus in Japan the constitutional position regarding the armed forces means that it is possible to cancel a contract of employment in the military at any time without penalty. Similarly Poland, in its Fifth Periodic Report under the International Covenant on Civil and Political Rights¹¹³ cited provisions whereby serving members of the armed forces who became conscientious objectors could obtain early release from their contracts. These provisions however were available to all, whatever their reason for wanting release, and moreover entailed refunding the costs of training at a rate which for many would be prohibitive. Ironically, those who are discharged for misconduct benefit in this respect from more favourable conditions. There is apparently a similar refunding provision in Germany; Stolwijk reports that a release on the basis of conscientious objection is treated as “a release on someone’s own initiative”.¹¹⁴ Despite the clear legislative recognition of the right of conscientious objectors to be released from military service there is thus more than a suspicion that conscientious objection is actually being accommodated rather than recognised; it is being treated as a matter of inclination rather than a moral compulsion equivalent in its own way to the grounds for being “invalided out”.

¹¹² Described in detail in Stolwijk, M., (2005) The Right to Conscientious Objection in Europe Quaker Council for European Affairs, Brussels

¹¹³ UN Document CCPR/C/POL/2004/5, para 331.

¹¹⁴ Stolwijk, M., (2005) The Right to Conscientious Objection in Europe Quaker Council for European Affairs, Brussels

4.3.5 Among Reservists

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

Council of Europe Committee of Ministers Recommendation R(87)8, para 8

The widespread lack of provision for conscientious objection for those who have already entered military service often also extends to reservists. Not only is this subject to the same criticism as any other time limits, it can lead to peculiar injustices of its own. The reserve obligations of former conscripts may continue although obligatory military service is no longer imposed. Indeed reservists may have undertaken military service before the right to conscientious objection was recognised. Conscientious objectors among them may therefore never have had the opportunity to apply for recognition. This is a particular concern in Greece and in Serbia-Montenegro (see pp 87 - 88).

Good examples of different ways in which the special situation of reservists has been allowed for are provided by Slovenia and Moldova. In the former, although obligatory military service was suspended with effect from 2003 the reserve obligations of former conscripts will extend until 2010. Reservists are however permitted to apply for recognition as conscientious objectors.¹¹⁵ Although not accepting applications during the course of military service Moldova, too, has a provision whereby former servicemen may apply for transfer to the Alternative Service Reserve.¹¹⁶

¹¹⁵ Response by Slovenia to the OHCHR questionnaire, 2003.

¹¹⁶ Article 29 of the Law on Alternative Service, (633/1991).

4.4 Information about conscientious objection provisions

The Commission on Human Rights... affirms the importance of the availability of information about the right to conscientious objection to military service, and the means of acquiring conscientious objector status, to all persons affected by military service
(Resolution 1998/77, OP 8)

Whatever the legislation or regulations covering the recognition of conscientious objector status, an individual conscientious objector will be able to take advantage of these only if he knows about the possibility.

Some States have interpreted this need more restrictively than others, quoting the publication of the relevant legislation in the official gazette; or its availability on the internet (Belarus) and/or in published sources (the Russian Federation) as instances of how they comply with this standard. In the Russian Federation, the Jehovah's Witnesses point out that in practice the amount of media coverage of the Alternative Service Law when it was being drafted and discussed was probably the major influence in getting it widely known.¹¹⁷

Other cases where there is no indication that any information is volunteered to potential conscripts include Brazil, Uzbekistan and Bulgaria. In the last named there has been considerable criticism of the lack of information provided by the authorities, to the extent that a survey made by the European Bureau of Conscientious Objection fourteen years after constitutional recognition of conscientious objection, and six years after an alternative service system was in place, revealed that only 31% of the age group concerned was aware of the possibility - and this (see Table 9) in the context of one of the tightest time limits for submitting applications.¹¹⁸

Others (Austria, the USA) make a point of sending information about the possibility of being registered as a conscientious objector with the initial call-up papers. Indeed, Hungary included information about the conscript's rights and obligations with the initial documents for military registration, and the form supplied included a question about the possibility of performing civilian service - without, the Jehovah's Witnesses point out, specifically referring to conscientious objection.¹¹⁹

Sometimes the information that is provided can be of questionable utility. In the case of Greece, the National Human Rights Commission reports that the information sent to potential recruits states merely, without any explanation, "Applications under Law 2510/1997 are available". Neither this, nor the stipulation in Article 22 (1) of that Law that all implementing details stipulated by decision of the Ministry of Defence will be published in the National Gazette, adequately provides to conscripts information about their right to conscientious objection to military service, and the means of acquiring conscientious objector status.

It is also essential that where it is possible for a serving member of the armed forces, whether a conscript or a volunteer, to be released on grounds of conscientious

¹¹⁷ General Counsel of Jehovah's Witnesses, evidence submitted to the OHCHR, February 2005

¹¹⁸ "Conscientious objection in Bulgaria - a survey" in CO Update No.12, War Resisters International, London, August 2005.

¹¹⁹ General Counsel of the Jehovah's Witnesses, Reply to OHCHR questionnaire, August 2003.

objection, that this information is readily available to them. Particularly when the provisions are in military regulations, this is often not the case. In both the UK and the USA access for the ordinary member of the military to the relevant regulations is not easy.

4.5 Procedure

The Commission on Human Rights... welcomes the fact that some States accept claims of conscientious objection as valid without inquiry.

calls 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.

(Resolution 1998/77, OPs 2 and 3)

Table 10 indicates the information which is available about the status and composition of the body which is responsible for deciding on the recognition of individual conscientious objectors in each State which has relevant provision; and Table 11 shows, likewise for each State, the procedures which have been laid down. The relevant time limits have already been listed in Table 9.

When the application for conscientious objector status is lodged before entry into military service, there should be no bar to the jurisdiction of an independent body under the control of a civilian judge under the ordinary law

“The issue of the administration of justice through military tribunals” (UN Document E/CN.4/Sub.2/2005/9) prepared for the Sub-Commission on the Promotion and Protection of Human Rights by Emmanuel Decaux, paragraph 19.

In many States, the deciding bodies are firmly within, appointed by, or otherwise controlled by the Ministry of Defence. Even when they are rather more at arms length from the military, the military influence can still be decisive. Thus in Greece, despite government claims¹²⁰ that the relevant committee consists “mainly of non-military personnel”, only three of the five members are in fact civilian, and the function of the committee is advisory only; the definitive decision being taken by the Minister of Defence. In Poland the district draft boards which had this responsibility used to have both military and civilian members, but their procedural rules meant that they could in fact function in the absence of their civilian members.¹²¹ However under the revised Law on Alternative Service which came into force in 2004, the membership of the deciding body became entirely civilian.

In the USA, appointment and training of volunteers for membership of some 2,000 local draft boards (officially known as “Claims Boards”) has continued in the years when the system has been suspended. The Local Board must consist of at least three members who are volunteers drawn from local society. However the supporting staff of the board are military personnel (reservists, national guard, military recruiters) and it is anticipated that in an emergency the mechanics of the system will in the first instance be run by the military. Conscious attempts were made during the 1980s to make the Boards more representative of the population as a whole by seeking more

¹²⁰ First Periodic Report under the International Covenant on Civil and Political Rights (UN Document CCPR/C/GRE/2004), Para. 683

¹²¹ Horeman, B. & Stolwijk, M. (1998), Refusing to Bear Arms, War Resisters International, London.

TABLE 10: Nature and composition of body which decides on recognition of Conscientious Objector status

State	Title (where known)	Responsible to / appointed by (Minister/ry of...)	Membership:
Albania	"a commission"	Defence	representatives of: Ministry of Defence other Ministries religious organisations organisations
Armenia	local Military Draft Commission (Law on Alternative Service, Articles 8 & 9)	Defence	
Austria		Interior	
Bosnia- Herzegovina: Federation Rep. Srpska	Commission for Civilian Service Ministry of Defence local office	Defence	
Brazil	Regional Commander of Military Service (see text)		
Bulgaria	Alternative Service Commission	Welfare & Labour	lawyer (chair) doctor representatives of Ministry of Defence, and of Religious Affairs
Croatia	Civilian Service Commission	Justice	
Cyprus	Ministry of Defence		
Denmark	Conscientious Objection Administration Board	Interior	
Estonia	Ministry of Defence		
Finland	Ministry of Defence		
Georgia	District Military Commission	Defence	
Germany	Federal Office of Civilian Service	Family, the Elderly Women & Youth	
Greece	Advisory Committee (Law 2510/97, Article 20)	Defence	Associate Judge of Council of State 2 university professors (political science, sociology or law) a recruitment officer an armed forces psychiatrist

State	Title (where known)	Responsible to / appointed by (Minister/ry of...)	Membership:
Hungary (S)	"the competent Administration Office" (Act 90/93, Article 116(1))	Employment	
Israel	exemption board (for female conscripts)	Defence	a rabbi, a psychiatrist, an army officer, a member of the public and a female soldier
	Conscience Committee (C'ttee for granting exemptions from defence service for reasons of conscience)	internal to Israeli Defence Forces	not published
Latvia	"a commission"		representatives of the Ministry of Defence and the National Commission on Human Rights
Lithuania	"a commission"	unclear	representatives of: public organisations religious communities educational institutes
Macedonia, the FYR of	Commission for Civilian Service	Defence	
Moldova	District Recruitment Commission - advised by District Officer of Alternative Service, who investigates applications	Defence	vice-chair is a representative of: alternative service
Norway	Ministry of Justice		
Paraguay	Human Rights Committee of the Chamber of Deputies 6 (of 17) Juntas Departamentales	none	
Poland	District Draft Board		five members
Portugal (S)	National Committee for Conscientious Objection	Prime Minister via	Minister for Youth
Romania	Commission for Conscription	Defence	

State	Title (where known)	Responsible to / appointed by (Minister/ry of...)	Membership:
Russian Fed.	Military Draft Commission	Defence	deputy head of local authority (chair) "physician responsible for conducting examinations for military service" representatives of "relevant government agency" and federal employment service.
Serbia- Montenegro		Defence	psychologist religious reps.
Slovakia	local conscription committee	Defence	
Slovenia (S)		Administration	social worker psychologist physician (1) internal affairs official defence official (cannot chair)
Sweden	National Service Administration	Defence	
Switzerland	commission	Economic Affairs Affairs	civilians appointed by the Ministry
Taiwan	Review Committee	Interior	2-4 representatives of: Ministry of Interior Ministry of Defence also religious reps.
Ukraine	Alternative Service Committee	Labour & Social Policy	among others, representatives of armed forces and of Government Committee for Religious Affairs
USA (S)	Local Claims Board	Selective Service Administration	volunteers (may not be serving or newly retired military personnel)
Uzbekistan	Military Commissariat		

volunteers who were women or members of ethnic minorities and fewer who were retired members of the military or reservists (serving members of the military may not sit on the Boards, nor may they be appointed immediately on retirement), and to standardise the training given to Board members.

Sometimes, for instance in Bulgaria and the Russian Federation, there are firm rules to ensure that at least the chair of the body concerned is not a Ministry of Defence appointment. In both of these, it is stipulated that decisions will be taken by a two-thirds majority vote of the membership; elsewhere information on the precise mechanics of the decision-making process is scanty.

At the other end of the spectrum, adjudicating committees in the Netherlands before the suspension of the call-up sometimes included representatives of objectors' organisations.

Application is often made directly to the determining body itself, but sometimes is forwarded to that body by, for example the local recruitment office. Sometimes an official form is provided for the purpose; in Austria this is downloadable from the web.¹²² In the event of the reintroduction of the "draft" in the USA a form for notifying all claims for "reclassification" ought to be available from all post offices. In both Austria and the USA, however, and always provided that the strict time limits have been met, the initial application may be registered without the form; it may even be notified orally in Austria, but in the USA it must be received in writing, whereupon "Claim Documentation Form 22" will be issued, and must in turn be completed and returned with supporting documentation within ten days of issue.

The words **application** and **applicant**, as used in this section, refer to application to be **recognised** as a conscientious objector for purposes of the applicable military recruitment legislation. If an application is unsuccessful it does **not** follow that the applicant is therefore not a conscientious objector.

Different jurisdictions vary in the amount of detail with which the nature of the application and the supporting documentation are specified. Sometimes (Germany, Sweden) all that is required is a statement of a formal nature making reference to the wording in the legal provision. In Austria, again, the procedure is simplified still further by the required form of words being pre-printed on the form. Specific details of information or evidence required usually give some indication of the considerations which will be taken into account in deciding whether to accept the application, whether or not the applicant is required to attend for a personal interview.

Personal interviews were abolished in Denmark in 1968; Germany has phased them out since 1984; Finland followed in 1987; Austria and Sweden¹²³ in 1991, and Norway in 1999. Although this has usually meant that most applications are accepted without enquiry, this is not necessarily the case. Despite the simplified application procedure Austria, in particular, retains a list of conditions which can exclude the recognition of conscientious objector status. Legislation on conscientious objection in

¹²² Response by the Austrian government to the OHCHR questionnaire, 2003.

¹²³ Sweden retained the possibility of interviewing applicants who had already enlisted (see p 59 above), and also a provision that no application may be rejected (an exceptional circumstance in itself) "if the applicant has not had the opportunity to offer verbal viva voce information about the matter." Act on Liability for Total Defence Service, 1809/1994, para 3.20.

Bosnia-Herzegovina, Croatia, (FYR)Macedonia and Serbia-Montenegro, was similar from the outset; interviews were not included as routine features of the system, but checks for disqualifying circumstances were incorporated.

“Acceptance without enquiry” is found in its purest form under the supposedly interim arrangements in Paraguay. The conscientious objector swears a declaration and is issued on the spot with the *carné de objector* which, as far as is known, has the same status as other forms of documentation of military status.¹²⁴ In Finland, acceptance of applications without enquiry is accompanied by a situation in which the length of alternative service is double the basic length of military service. Many conscientious objectors feel that this is used as a form of test of the sincerity of their convictions, and complain that the result is punitive treatment of objectors. The Human Rights Committee in 2004 agreed with this view.¹²⁵ In Brazil, although the legal provisions¹²⁶ would seem to indicate that no enquiry need be made into the grounds of the conscientious objection, the detailed implementing regulations state that the military authorities “can, at any time, initiate an investigation or request the presentation of documents that clarify the convictions of the petitioner.”¹²⁷

In Romania and Ukraine, interviews do not normally take place, but this is because the claims are decided solely on the basis of religious denomination. In Uzbekistan, however, where similar criteria apply, those claiming to be conscientious objectors must not only provide a certificate to prove that they belong to a religion accepted for this purpose; they must also provide convincing written and oral explanations of their personal objection.¹²⁸

The Committee notes 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 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.

Human Rights Committee, Concluding Observations on the Ukraine, November 2001, UN Document CCPR/CO/73/UKR, Para. 20.

¹²⁴ Rojas, F. (2001), “El Servicio Militar Obligatorio en Paraguay: entre la contestación social y la inercia de las instituciones del Estado autoritario”, paper delivered to the Panel on Military Service, Center for Hemispheric Defense Studies, REDES 2001 (Research and Education in Defense and Security Studies), Washington D.C. May 22-25, 2001.

¹²⁵ Concluding Observations on the Fifth Periodic Report of Finland (UN Document CCPR/CO/82/FIN), para 14.

¹²⁶ Law on Alternative Service, 8231/1991, Article 3.1.

¹²⁷ Decree No. 2681/1992, Article 7.

¹²⁸ General Counsel of Jehovah’s Witnesses, evidence submitted to the OHCHR, February 2005

TABLE 11: Procedure for recognition of Conscientious Objector status

State	Application form available?	Application made to:	Documentation required	Personal attendance
Austria	downloadable from web	Call-up Commission, Ministry of Interior, or Military District Command	none	not required
Albania	<i>no details known</i>			
Armenia				required
Azerbaijan		no procedures established		
Bosnia-Herzegovina: Federation (C)		to Commission for Civilian Service		rarely required
Rep. Srpska (C)		to Regional Commander of Military Service		not required
Bulgaria		to local military commander		may be required
Croatia		directly to the Civilian Service Commission	written justification	
Cyprus		directly to Ministry of Defence		
Denmark	from Ministry of Interior	directly to the Conscientious Objection Administration Board	written justification if after start of service	not required
Estonia		Ministry of Defence	in writing	may be required
Finland	from Ministry of Defence	directly to Ministry of Defence (if before start of service) in service: to regimental commander reserves: to commander of military province	none other than the form	not required
Georgia		directly to District Military Commission		may be required
Germany		directly	reference to Article 4b of the Constitution	not required

State	Application form available?	Application made to:	Documentation required	Personal attendance
Greece			Certificates from: the police, that the applicant has never applied for a firearms licence, and from the Forest Public Service that he has never held a hunting licence copy of criminal record	always required
Hungary (S)				not required
Israel				required
Latvia		local conscription centre		
Lithuania		to regional conscription centre	"motivation letter and curriculum vitae"	
Macedonia		to local conscription department		may be required
Moldova		to "the officer of alternative service in the district (city)." (Article 11)	"documents confirming the membership of the respective religious or pacifist organisation" (Article 14)	must be present at hearing (Article 16), but no indication that may speak
Norway	from Ministry of Justice			not required
Paraguay		to the Human Rights Commission of the Chamber of Deputies or to local administrations in some departments.		declaration must be sworn in person
Poland		directly		required
Romania		directly to Ministry of Defence	details of denominational membership	no indication
Russian Federation			at applicant's discretion, plus list of witnesses	required
Serbia-Montenegro		via local armed forces office		rarely required

State	Application form available?	Application made to:	Documentation required	Personal attendance
Slovenia (S)			"may be obtained by the Commission"	may be required
Sweden				not required
Switzerland		to Central Civilian Service Authority	curriculum vitae, written justification undertaking to perform civilian service	required
Taiwan			application form statement of beliefs certification of active membership of a "registered legal organisation"	
Ukraine			certification from a minister of religion from an exempted denomination	not usually required
USA	from post offices		statement of beliefs plus (optionally) letters of support "from persons who have personal knowledge of your conscientious objection"	Required - may be accompanied by an "adviser" and up to three character witnesses
Uzbekistan				required

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.
Human Rights Committee, General Comment 22 (July 1993), Paragraph 11.

Where there is a personal interview, this is usually so that the deciding body may investigate the genuineness of the applicant's conscientious objection - an inherently impossible task. It is therefore normal for the decision to rely heavily on proxy indicators from the applicant's personal history. In many countries, the process has gone further, and a specific list of conditions which must be met has been drawn up. Examples are given in Table 11.

Among such criteria, one with the longest history is the requirement of membership of a particular religious denomination - in fact Moskos and Chambers¹²⁹ argue that this should be seen as the first stage in the entire history of the recognition of conscientious objection. As applied in the recent past, the requirement has sometimes been exceptionally restrictive.

In Uzbekistan, under the original (1992) Law on Universal Military Service "members of registered religious organisations whose religious teaching forbids the bearing of arms or service in the armed forces" were exempted. In practice, however, there is no evidence that any religious group was defined as benefiting. Even Jehovah's Witnesses, whose opposition to bearing arms is very well known, were not admitted to alternative service, apparently because they took the position that the precise action to be taken was a matter for the conscience of the individual believer.¹³⁰ Under the revised "Law on Universal Military Service" of December 2002, Jehovah's Witnesses are reportedly listed along with "Evangelical Christians-Baptists and Seventh-day Adventists" as eligible to perform an alternative service.¹³¹

The Committee views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established.
Human Rights Committee, General Comment 22 (July 1993), Paragraph 2.

Elsewhere, particularly in Eastern Europe, the difficulty has arisen not at the stage of recognising churches as pacifist, but with the difficulty of becoming a recognised religion in the first place.

The converse, of course, has been discrimination against those whose personal conscientious objection may have been just as deeply founded but who belonged to the religious majority. In Poland, for example, concerns have also been voiced that applicants from different religious backgrounds may be treated in a discriminatory way; draft boards in the past have explicitly stated that Roman Catholics cannot be conscientious objectors. Although these allegations are now several years old, they

¹²⁹ Moskos, C.C. and Chambers, J.W., "The Secularisation of Conscience" in Moskos & Chambers (Eds), *The New Conscientious Objection, from sacred to secular resistance*, OUP, New York/Oxford, 1993 pp. 3 - 20.

¹³⁰ Corley, F., *Uzbekistan: Jehovah's Witnesses Criticise Conscientious Objector Trials*, (Keston News Service, 6th April 2001) (www.starlightsite.co.uk/keston/kns2001/010406UZ-01.htm)

¹³¹ "Uzbekistan introduces alternative military service" Radio Free Europe - Radio Liberty newslines, 2nd June 2003 (www.rferl.org/newsline/2003/06/2-TCA/tca-020603.asp)

are consistent with figures quoted in 2004¹³² which show that (in a country in which over 90% of the population consider themselves to be Roman Catholics) a proportion declining over the three years quoted from 2.5% to less than 1% of successful applications were based on religious grounds.

Jehovah's Witnesses, so often persecuted for their refusal to perform military service, have sometimes subsequently graduated into a group seen as benefiting from unfair discrimination. In the case of *Brinkhof v the Netherlands*,¹³³ the Human Rights Committee, while not finding that the complainant had directly suffered, observed that the differential treatment of Jehovah's Witnesses, who were exempted even from alternative service, was not reasonable. The Committee has also, in successive concluding observations on State Reports from Finland,¹³⁴ made similar comments about the total exemption granted there.

Above all, of course, an insistence on proof of adherence to a religious denomination discriminates against those whose conscientious objection is based upon personal convictions, not necessarily of a religious nature.

While not ruling out those whose objections are of a moral or ethical nature rather than directly derived from religious teachings, a number of States indicate that they will not accept applications where the objections are "political" in nature. Usually this is applied to those who make it clear that their objection is not to taking up arms in any circumstances but to particular actions or operations in which their military service might involve them. The issues posed by such "selective objectors" are discussed in Section 4.11.

either individually or in community with others

International Covenant on Civil and Political Rights, Article 18, Paragraph 1

Those who have served criminal sentences, or sentences of specific lengths and for specific categories of crimes may be debarred. It is particularly disturbing that in the case of Greece, this restriction applies even to a person *charged* with an offence, subverting the presumption of innocence.

Another very frequent disqualification is of persons who hold, or have ever held firearms licences. This is obviously seen as a test as to whether the life of the individual conforms to the conscientious principles expounded, but of course embodies the assumption that there are no circumstances in which a genuine conscientious objector might wish to possess or use a firearm. This restriction was not accepted by the Human Rights Committee in its consideration of the report of Serbia-Montenegro in July 2004.¹³⁵

¹³² Poland, Fifth State Report under the International Covenant on Civil and Political Rights (UN Document CCPR/C/POL/2004, para 312.

¹³³ Communication 402/1990; see Solari-Yrigoyen, H (2004), "El Comité de Derechos Humanos y la objeción de conciencia al servicio militar", in Ando, N. (Ed.) Towards Implementing Universal Human Rights: Festschrift for the Twenty-Fifth Anniversary of the Human Rights Committee, (The Raoul Wallenberg Institute Human Rights Library, 18), Martinus Nijhoff, Leiden, pp 166 - 167.

¹³⁴ UN Documents CCPR/C/79/Add.1 (1998), para 21 and CCPR/CO/82/FIN (2004), para 14.

¹³⁵ As reflected in paragraph 21 of its Concluding Observations (UN Document CCPR/CO/81/SEMO (2004)).

Table 12: On what grounds can applications be turned down?

Non-membership of recognised religious denomination, the teachings of which forbid service in the military:

Moldova
Romania
Taiwan
Ukraine
Uzbekistan

Past convictions:

Austria	"has been sentenced to imprisonment for a term of more than 6 months for a deliberate offence against the law involving the use or threat of force of arms against human beings or committed in connection with arms or explosives, unless the conviction is erased or subject to restriction of information..."
Greece	including anyone who has been <i>charged</i> with a criminal offence
Hungary (S)	"if the applicant formerly committed a violent crime against another person or against property or demonstrated such a violent attitude from which reasonably can be concluded that the fulfillment of military service cannot be contrary to his conviction." (Article 116.4c)
Moldova	"persons who have served their punishment for having committed severe crimes" (Article 5)
Norway	conviction for a crime of violence
Portugal (S)	

Firearms licence:

Austria
Bosnia-Herzegovina (both "entities") (S)
Croatia
Greece
Macedonia (the Former Yugoslav Republic of)
Portugal (S)
Serbia-Montenegro

Past military service (in any country):

Greece

Other past public service:

Austria "service in the uniformed constabulary of a regional authority"

Inadequate or untimely documentation:

Greece

Failure to attend hearing:

Armenia (Article 9)

False information in application

Armenia

(S) - obligatory military service suspended

Legislative references are to the law cited in the relevant country entry in Table 8.

In the case of Greece the prohibition is extended to those who have at any time served in any armed forces. This is in the context that all naturalised citizens must serve three months obligatory military service. Quite apart from the question of conscientious objection, this provision directly contradicts the general principle that military obligations should not apply in more than one State which (for dual nationals) has been enshrined since 1963 in the Council of Europe's successive European Conventions on Nationality (ETS 43 and ETS 166) (to neither of which, however is Greece itself a party). Two judgments of the military courts in Athens in April 2005 (while the Human Rights Committee happened to be considering its Concluding Observations on the State Report on Greece) seemed to relax this rule in the case of those who were now conscientious objectors, but within a month the rule had been reasserted in decisions by military courts in provincial cities, as had the reluctance, on the same grounds, to recognise conscientious objection on the part of former conscripts now faced with a call-up to reserve duty, even when the original military service had been performed before 1997, when the possibility of legal recognition of conscientious objection first became available.¹³⁶

Even were the presumed connection between criminal offences or association with firearms and the state of the person's conscience logical in all cases, the rejection of applications on these grounds effectively discounts the freedom to change ones religion or belief, as it treats past actions as an incontrovertible proof of the beliefs which the person now holds. The Jehovah's Witnesses cite one such case in Hungary in 2002, the final resolution of which was pre-empted by the abolition of conscription. A reformed criminal, now a Jehovah's Witness, was initially refused recognition as a conscientious objector, but this decision had been overturned on appeal to the courts.¹³⁷ The nature of the past criminal behaviour is not specified, but given the legislation (see the Table) the court would not have been able to make such a ruling if severe crimes of violence had been in question.

The Committee observes that the freedom to "have or to adopt" a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one's current religion or belief with another.

Human Rights Committee, General Comment 22 (July 1993), Paragraph 5

Finally there are cases where it is stipulated that applications will be rejected because of simple failure to observe the required formalities such as failure to attend a hearing, inadequate documentation, not meeting deadlines for application. Practice differs as to whether technical irregularities lead to definitive rejection or whether reapplication is possible. In Greece, the National Council on Human Rights and the Jehovah's Witnesses report that obtaining the necessary certification in time is often very difficult, or even impossible, due to bureaucratic delays which are no fault of the candidate¹³⁸, and that this has been the most frequent cause for applications to fail. However after the appeal by Antonios Apergis to the Council of State was upheld in Decision 284/2003, the Ministry of National Defence issued a circular stating that

¹³⁶ Amnesty International Press Release EUR 25/004/2005, 1st April 2005; War Resisters International, CO Alert "Greece; courts go mad: new sentences against conscientious objectors", 18th May, 2005.

¹³⁷ General Counsel of the Jehovah's Witnesses, Reply to OHCHR questionnaire, August 2003.

¹³⁸ In replies to the questionnaire from the OHCHR, 2003.

when an application is rejected due to a mere formality, there is a right to file another application for civilian service.¹³⁹

An applicant shall have the right to appeal against the decision at first instance
Council of Europe Committee of Ministers Recommendation R(87)8, para 6.

As can be seen from Table 12, States vary widely in the provisions they make for appeals against decisions to refuse recognition of conscientious objector status, and in whether such appeals are made to a body independent of the original determining body. Moreover, unless that body provides a statement of its findings the effectiveness of appeal procedures must be very reduced. Some States do have clear stipulations in the latter regard.

The Armenian Law (Article 11) provides that the applicant receives a protocol of the sitting with reasons for rejection within ten days. He can appeal within ten days to the national draft commission and thereafter within a month in court. In Bulgaria a formal motivation of the decision must be issued within 30 days; it is appealable in the first instance to the Ministry of Labour and Social Policy which may order a reconsideration if the correct procedures have not been followed.¹⁴⁰ Other accounts refer to the possibility of appeal to an administrative court.¹⁴¹

Under the Military Selective Service Act in the USA, if the Board rejects the claim, the reasons must be stated in writing, and the rejection will be accompanied by a notification of the rights of appeal. An appeal may be made within fifteen days to the District Appeal Board. (This covers the area of a Federal judicial district, meaning that there is usually more than one to a state.) Before the District Appeal Board the applicant again may choose to appear in person and may be accompanied by an advisor, but no witnesses. If the District Appeal Board rejects the application, but is not unanimous in this decision, a further appeal, and a request for a personal appearance, may be made, again within fifteen days, to the National Appeal Board, which is directly appointed by the President. At each stage, the reasons for a rejection have to be set out in writing. Throughout the procedure applicants have the right to examine their personal file held at the offices of the Local Board.

Of course an appeal process is only useful if the decision on the appeal is implemented. In Greece not only are appeals to the Council of State very costly in legal representation, but the decisions of the Council of State do not in themselves overturn convictions, but merely recommend that these should be reconsidered.

¹³⁹ General Counsel of Jehovah's Witnesses; evidence to the Human Rights Committee on Greece, February 2005.

¹⁴⁰ Dijkman, H. "Conscientious objection in Bulgaria", The Right to Refuse to Kill, Summer 2005, EBCO (European Bureau for Conscientious Objection), Brussels.

¹⁴¹ Stolwijk, M., (2005) The Right to Conscientious Objection in Europe Quaker Council for European Affairs, Brussels

TABLE 13: Appeal possibilities

State	Adverse decision notified (and time limit):	Appeal possible to: (and time limit)	Further appeals to: (and time limit)
Armenia	in a "protocol" giving reasons 10 days (Article 9)	Draft Commission for the Republic (10 days)	the courts (one month)
Austria		civil court	
Azerbaijan		no procedures established	
Bosnia-Herzegovina: Federation (S)			
Rep. Srpska (S)		Ministry of Defence	
Bulgaria	in a formal "motivation" 30 days	Ministry of Labour and Social Policy	administrative court
Croatia		an appeal panel comprising one representative each of: the Government, an ngo involved in alternative service, and conscientious objectors organisations	
Estonia		Defence Forces Service Commission	administrative court (Article 72)
Georgia	for confirmation by the State Commission for Civilian Service (20 days)		
Germany	(during service)	Administrative court usually 2 to 4 weeks	
Greece		Council of State	
Hungary (S)		Ministry of Employment (Article 116.1)	
Latvia		local conscription centre (10 days)	
Macedonia, the FYR of		60 days (Article 10)	
Moldova	no details stipulated in the Law	Republican Recruitment Commission (7 days)	to the courts - induction suspended until final settlement (Art.18)

State	Adverse decision notified (and time limit):	Appeal possible to: (and time limit)	Further appeals to: (and time limit)
Poland		by reapplication	to regional commission, then administrative court
Romania		no possibilities	
Russian Federation		Courts	
Serbia -Montenegro	15 days	Ministry of Defence (15 days)	
Slovenia (S)	6 months; 3 months during service	(15 days)	
Switzerland		Ministry of Economic Affairs	
Taiwan		Ministry of Interior	
USA (S)	in writing, accompanied by notification of rights of appeal	District Appeal Board 15 days	National Appeal Board

4.6 What happens when the claim is (finally) rejected?

The Commission on Human Rights... emphasizes that States should take the necessary measures to refrain from subjecting conscientious objectors to imprisonment or 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. (Resolution 1998/77, OP5)

Unless they are prepared to grant total and unconditional exemptions, all States ultimately face the problem of what action to take in the case of objectors who refuse the service asked of them. Those which do not recognise a right of conscientious objection of course reach this point as soon as conscientious grounds are cited. Those which do recognise such a right reach the point in an individual case either when any appeals procedure has been exhausted and the application has been turned down, or when confronted with an objector who is not prepared to accept the alternative service offered.

Once the appeals process has been exhausted, a rejected applicant faces a dilemma. If he accepts the verdict of the legal process, this might be interpreted as calling into question the sincerity of the objection in the first place. Otherwise he has no choice but to persist in his refusal. Meanwhile, the situation of refusal to perform alternative service may occur in the case of an absolute objector, one who on grounds of conscience refuses any dealings with the State, or who argues that even a civilian service option represents an indirect support of the militarised system,¹⁴² or in a situation where the objector is offered alternative service which he feels does not address his objection because, for instance, it is directly or indirectly too closely linked to the military and to war preparations, or again where the objector feels that the conditions of the alternative service are so unfavourable by comparison with military service as to represent an illegitimate punishment for the exercise of his conscience.¹⁴³

In all these situations, the issue for the objector is, or remains, one of freedom of thought, conscience or religion, but from the viewpoint of the State either the right of conscientious objection is not recognised in principle, or the claim has been found invalid in the case of the individual concerned. Therefore the perceived offence is never conscientious objection as such but the refusal of obligatory service, whether military or civilian. The specific charge may be failure to report, refusing or evading enlistment or desertion. Or the objector may be charged with various military disciplinary offences such as refusing to obey an order or to wear uniform, insubordination, or being absent without leave (see box).

¹⁴² See for example the German case reported by War Resisters International in CO Alert No.GER14755, 12th September 2005.

¹⁴³ See the Finnish cases in War Resisters International CO Alerts Nos. 14783 and 14785, 21st. March, 2006.

“AWOL”, Desertion and draft-evader

Persons who refuse or escape military service after induction usually do so by what is known colloquially as “going **AWOL**” - **absent without leave** (ie. permission). This military offence covers a variety of circumstances, for instance overstaying legitimate leave of absence, and may be punished either following the apprehension of the missing serviceman (or woman), or following a willing return to his (or her) unit. Where the intention is however “to remain permanently absent without leave” (wording taken from UK Armed Forces Bill 94/2005, Article 1.8, Para 2a), the much more serious offence of **desertion** is involved. Absence in order to avoid certain forms of active service (including, controversially, in the above-mentioned Bill, “military occupation of a foreign country or territory” 1.8, 3c) may also be considered desertion - classically “desertion in the face of the enemy”.

A **draft-evader** (colloquially, at least since the Vietnam War, known as a **draft-dodger**) is a person who has failed to respond to an individual or general call-up and has therefore never been inducted. Because of different historical circumstances, there is no common English alternative to the American term. Many potential recruits however **avoid** induction by means consistent with the applicable legislation. **Avoidance**, unlike **evasion** means that no offence is committed and there is therefore no fear of punishment.

As Table 14 shows, many States, including some whose legislation concerning recognition is relatively liberal, do in fact imprison those individuals whose conscientious objection they do not recognise. In the majority of them, a single sentence of imprisonment is also considered as discharging the obligatory service requirement, but in others the punishment does not affect liability for military service, and therefore the objector is or may be subject to repeated call-ups, and subsequent punishment.

... the Working Group recommends that all States that have not yet done so adopt appropriate legislative or other procedure 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. Opinion of the Working Group on Arbitrary Detention, No. 36/1999, Paragraph 94, reported in UN Document No. E/CN.4/2001/14.

With regard to the specific case of Osman Murat Ülke in Turkey, this practice has been criticised by both the UN Working Group on Arbitrary Detention (see box) and the European Court of Human Rights:

“The Court noted... that there was no specific provision in Turkish law governing penalties for those who refused to wear uniform on conscientious or religious grounds. It seemed that the relevant applicable rules were provisions of the military penal code... That legal framework was evidently not sufficient to provide an appropriate means of dealing with situations arising from the refusal to perform military service on account of one’s beliefs. Because of the unsuitable nature of the general legislation applied to his situation the applicant had run, and still ran, the risk of an interminable series of prosecutions and criminal convictions.

The numerous criminal prosecutions against the applicant, the cumulative effects of the criminal convictions which resulted from them and the constant alternation between prosecutions and terms of imprisonment, together with the possibility that he would be liable to prosecution for the rest of his life, had been disproportionate to the aim of ensuring that he did his military service. They were more calculated to repressing the applicant's intellectual personality, inspiring in him feelings of fear, anguish and vulnerability capable of humiliating and debasing him and breaking his resistance and will.

... In the aggregate, the acts concerned constituted degrading treatment within the meaning of Article 3.”¹⁴⁴

A further case from Turkey was filed with the European Court of Human Rights on December 23, 2004 by Yunus Erçep, a Jehovah's Witness from Istanbul. He had been prosecuted 17 times in six years for *bakaya* (evasion of enlistment), although on each occasion he had in fact presented himself and explained his conscientious objection. At the time of filing the application he was “out on bail facing court-imposed penalties of 10 months in prison and 1.6 billion Turkish Lira (ie. about \$1000) in fines.”¹⁴⁵

Referring back to their decision in the Ülke case, the UN Working Group on Arbitrary Detention¹⁴⁶ stated with regard to four linked cases in Israel:

“The explanation of the Government that after one conviction for not having obeyed an order to observe in the military repeated acts of disobedience are considered new offences did not convince the Working Group. Very much along the lines of its reasoning in its opinion No. 36/1999,... the Working Group is of the opinion that if after an initial conviction the convicted persons exhibit, for reasons of conscience, a constant resolve not to obey the subsequent summonses, additional penalties imposed for disobedience have the same content and purpose: to compel an individual to serve in the army. Therefore, the second and subsequent penalties are not compatible with the principle of *non bis in idem*, as contained in article 14, paragraph 7, of ICCPR, which states that “no one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted ... Moreover, repeated penalties for refusing to serve in the military would be tantamount to compelling someone to change his/her mind for fear of being deprived of liberty if not for life, then at least until the age at which citizens cease to be liable for military service.”

Some States have made legislative provision which while not removing the problem of repeated penalties has at least put a limitation on it. They include Turkmenistan and the Republic of Korea, which do not recognise conscientious objection in any circumstances, and Greece, which does.

Thus in Turkmenistan, persons who have been twice convicted for evading the call-up are thereafter exempted from military service.¹⁴⁷ Even so, “since the second ‘crime’

¹⁴⁴ “CHAMBER JUDGMENT ÜLKE v. TURKEY” (application no. 39437/98) Press release issued by the Registrar, European Court of Human Rights, 24.1.06

¹⁴⁵ General Counsel of Jehovah's Witnesses, evidence submitted to the OHCHR, February 2005

¹⁴⁶ In Para 30 of its Opinion No. 24/2003 (Israel), reported in UN Document E/CN.4/2005/6/Add.1.

¹⁴⁷ Law on Military Service, Article 16, Clause 3.

is considered a repetition, the conscientious objector may be sentenced to a stricter prison or camp regime intended for more serious or dangerous criminals.”¹⁴⁸

The Law on Conscientious Objection brought in in Greece in 1997 included a provision that “Persons who are convicted on charges of refusal to perform military service and who have served a prison sentence equal to or of longer duration than the alternative service term required of them had they been acknowledged to be conscientious objectors, are to be exempted from call-ups for enlistment in the Armed Forces following their release from prison.” (Law 1510/1997, Article 24.1). This provision does not however limit the sentence which may be imposed in the first instance, nor does it apply if the refusal to be inducted has not been acknowledged and the objector is therefore charged with a military offence, typically “insubordination” or “disobedience”. In such circumstances there would appear to be no limit to the number or length of sentences handed down, as evidenced by the case of Lazaros Petromedilis, who has served three terms of imprisonment since 1992 but in December 2004 was sentenced to a further 30 months, to be added to another, previously suspended, sentence of 20 months.

In the Republic of Korea, under Article 36, Paragraph 2 of the Enforcement Decree of the 2003 Military Service Act, those who have served sentences of at least 18 months are released from the obligation to perform active military service. Although almost all refusers of “active military service” have subsequently been sentenced to the minimum 18 months imprisonment which prevents them from being subjected to repeated call-up, the same is not true of refusers of reserve service. There is no legislative limit on the number of times they may be recalled and receive fresh penalties, or on the cumulative amount of such penalties. Reservists do not seem to feature on the lists of imprisoned conscientious objectors, implying that most are fined, but at least one case has been reported¹⁴⁹ where a reservist had served a total of eighteen months’ imprisonment in successive sentences, but as this had not been in one single period of imprisonment did not benefit from the limitation.

In fact, however, it is incitement to conscientious objection which is treated as a more serious crime in the Republic of Korea than is conscientious objection itself; under Article 114 of the Criminal Code (Formation of Criminal Organization) “Those who have formed or joined a criminal organization with the purpose of refusing the military service or a legal obligation to pay taxes shall be sentenced to imprisonment of up to 10 years or to the penalty fine of up to 1.5 million won.”¹⁵⁰

Instances of repeated call-ups and penalties have been reported in the past from Armenia; and penalties, generally in the form of fines or forced labour, which increase on a second conviction have been reported from Uzbekistan. They were also recorded in the USA during the Vietnam War,¹⁵¹ and there is no evidence that the wording of the Military Selective Service Act has subsequently changed to preclude this.

¹⁴⁸ General Counsel of the Jehovah’s Witnesses, Evidence submitted to the OHCHR, February 2005.

¹⁴⁹ General Counsel of the Jehovah’s Witnesses, Reply to OHCHR questionnaire, August 2003.

¹⁵⁰ Between \$1,000 and \$1,500.

¹⁵¹ Prasad, D. & Smythe, T. (1968), Conscription -a world survey: compulsory military service and resistance to it, War Resisters International, London, p146.

The punishments actually meted out sometimes greatly exceed the legal stipulations. In Eritrea, for example, just as the term of service in the army has been indefinitely extended, so has the imprisonment of conscientious objectors. Three Jehovah's Witnesses who declared themselves conscientious objectors at the first call-up for military service in September 1994 have now been held incommunicado in Sawa military base for over eleven years.¹⁵²

Brazil seems to be the one State where, on paper at least, there exists a formal process for refusing the "alternative service" available, which is effectively unarmed military service. "Those that, in whatever case, also refuse to render Alternative Service, should present a Declaration written by the individual, expressing such refusal."¹⁵³ A model declaration is attached to the regulations. The Jehovah's Witnesses report that this must also be accompanied by a Declaration from "the congregation that the petitioner attends, represented by the local legal association and with a recommendation of the elders,... signed by the President of the legal Association, declaring that the petitioner is an approved member of the determined congregation."¹⁵⁴ The application is made to the Ministry of Defence, at which point "it is the duty of the military agencies to verify the real situation of the petitioner... this can be done by means of an investigation". The Ministry of Defence then forwards the Declaration to the Ministry of Justice. "Subsequently," the Article continues, the petitioner "will receive the Certificate of Refusal to Render Alternative Service... having to, at that time, turn over his electoral titles, which will be remitted to the respective Regional Electoral Tribune along with a copy of the Official Diary that publishes the suspension of political rights for each one." Despite the reference to an investigation there does not seem to be any provision for the possibility that the Declaration would be rejected. In practice, however, as mentioned above (p 51), it would appear that this process may never have been carried through as described.

In some States the possibility of absolute objection has been addressed by completely exempting those groups who are known to have the strongest objections, especially Jehovah's Witnesses. Finland and Israel have both granted such exemptions. Elsewhere, for example in Norway and Germany, Jehovah's Witnesses refuse to register for alternative service, but most will perform it if sentenced by a court to "enforced completion" of the alternative service.

New legislation, particularly the initial recognition of conscientious objection, raises questions regarding the situation of conscientious objectors who had evaded or refused military service before their rights were recognised in law. Can their status be recognised retrospectively? Will penalties imposed under the previous legislation continue to be enforced? Will evaders still be pursued? In fact, will the requirement to perform military service remain applicable to those who had not previously done so? As already mentioned (see p. 67), some of these questions are also relevant to reservists.

When the Alternative Service Law in Taiwan was enacted in January 2000, those conscientious objectors who had already served three years imprisonment were released. Those who had been imprisoned for less time could be released if they

¹⁵² Amnesty International (2004), *Eritrea: You have no right to ask*, Section 3.

¹⁵³ Article 8 of the Alternative Service Regulations

¹⁵⁴ General Counsel of Jehovah's Witnesses, response to OHCHR questionnaire 2003

enlisted for alternative service.¹⁵⁵ By contrast, there has been no indication of a willingness in Greece to afford retrospective recognition to conscientious objectors who were first called up before 1997, partly because of the insistence on treating those who refuse induction as though they had already been inducted. This can be seen not only the ongoing Petromedilis case, but also the arrest and conviction in May 2005 of Georgios Koutsomanolakis, whose evasion of military service dated back to 1979.

The Commission on Human Rights... encourages States, as part of post-conflict peace-building, to consider granting, and effectively implementing, amnesties and restitution of rights, in law and practice, for those who have refused to undertake military service on the grounds of conscientious objection.” (Resolution 2004/35)

A special manifestation of this issue has affected the large number of nationals of Serbia-Montenegro who were outside the country at the time that the 1991 Yugoslav war started, or who left to avoid the war. Under the Dayton and Kumanovo agreements which ended the Yugoslav wars, a general amnesty was announced for all those who faced charges as males of military age who had left the country without the permission of the (then) Yugoslav National Army. However the requirement to perform military service, dating from a time before there was any provision for conscientious objection, was not annulled; and indeed the upper age to which the obligation applied had been raised in 1999 from 27 to 35 years. Thus “conscripts who were not inducted by the end of the calendar year when they reached the age of 27 are declared draft dodgers by recruitment bureaus and their obligation to serve is extended until the end of the calendar year in which they reach the age of 35. That, in itself, would not be so bad if it were not accompanied by criminal charges for failing to report for military duty and avoiding military service, under Article 214 of the Criminal Code. The competent prosecutor then requests from the investigative judge to investigate the case. And, since the conscript is not available, the judge issues a detention order, and puts him on a wanted list... military courts have instituted criminal proceedings against over 2,000 conscripts from the territory of Serbia now living abroad. In all these cases, the wanted posters and detention orders were issued... civilian judiciary have taken over from the military, but since the law has not been changed, civilian courts are obliged to follow the same procedure... Meanwhile, statements of certain high officials that there will be no arrests only add to the overall confusion, since no government official, be he a defense or prime minister, or even the president of the republic, does not have the authority to decide whether someone will be arrested or not.”¹⁵⁶

The result is that men in this category are in practice unable to return to Serbia-Montenegro even for a short visit as they are liable to be arrested at the border and either be required now to perform such service or sentenced to imprisonment for evasion of military service. To complicate the situation, many now have dual nationality, but precisely because they have not fulfilled the military obligation the Serbian authorities will not permit them to resolve the situation by renouncing Serbian nationality.

¹⁵⁵ General Counsel of Jehovah’s Witnesses, response to OHCHR questionnaire 2003

¹⁵⁶ Buturovic, J, “How to solve the problem of conscripts who avoided military service”, Centre for Civil-Military Relations, Belgrade, www.ccmr-bg.org/analyze/rec/word54.htm , 2005.

A suggestion by the Minister of Defence at the end of 2004 that application for exoneration might be made to Serbian Embassies overseas did not produce the expected solution of the problem; very few such exonérations have been granted, meanwhile a fee of EUR 50 is reportedly charged both at the time of application and in order to receive notification of the result. The latest proposals,¹⁵⁷ brought forward in a draft law by the Ministry of Defence in August 2005 are based closely on the longstanding Turkish provision whereby citizens living abroad could commute their military service to one month of training on payment of a sum which was originally set at DM 10,000. In Serbia sums ranging between EUR 1,000 and EUR 5,000 have been mentioned in different reports; the upper end of the range would be closer to the Turkish precedent. Another, unquoted, inspiration for this may have been the amnesty for draft evaders announced in Armenia in March 2004, permitting those who had left the country before 1995 to escape the threat of criminal prosecution by payment of US\$ 3,500. Given that there had at the time in question been no provision in either State for conscientious objection, both the proposed Serbian and the actual Armenian provisions represent a financial penalty for conscientious objection; by continuing to insist on a month of military training the Serbian proposals are completely inappropriate.

¹⁵⁷ Seke, I., "Serbia & Montenegro: Ministry of Defence presents draft law on military service / backlash for right to CO?", in CO Update No. 13, War Resisters International, London, September 2005.

TABLE 14: Penalties for refusal of military service

State	Relevant Law (and Article No.)	Charge; heard in Civilian (C) or Military (M) court?	Fine? (maximum)	Prison sentences (months):	Repeat call-up and penalties	Latest known numbers in prison
Albania	Military Criminal Code (1995), 16	M	Yes, or -	up to 24	Yes	14, for six months in 2000..
Armenia	Criminal Code 2003 art.327 prior to 2003: Article 75 Article 255a Article 257a	"Evasion of call-up" C Evasion Desertion Evasion of duty (after induction)	300 - 500 "minimum salaries"or - (alternatively up to 2 months "detention")	up to 24; 12 to 60(a) 12 to 36 36 to 84(p) 36 to 84	Yes	48 known c.o.s as of Feb. 2006 Many other evaders have been charged.
Austria	Military Penal Code			12		none since 1998..
Azerbaijan	Criminal Code 321 " (334)	Evasion Desertion		24(p) 36 to 84(p)		Total of 2611 (2002)
Nagorno- Karabakh	Armenian Criminal Code Applies including art 364.1	"refusal to perform one's military duties"			Yes	3 sentenced in 2005
Belarus	Criminal Code, (435, 437, 445-7)	Non-registration Evasion	Yes, or - Yes, or -	up to 3 months' administrative detention up to a further 24; up to 84(a)		no cases reported
Bulgaria	Criminal Code 361	failure to respond		10 to 18		none since 1998 - all.. convictions overturned 2002..
Cyprus		refusing reserve service		2 to 15 7 to 11	Yes	all cases apparently suspended since 1999

State	Relevant Law (and Article No.)	Charge; heard in Civilian (C) or Military (M) court?	Fine? (maximum)	Prison sentences (months):	Repeat call-up and penalties	Latest known numbers in prison
Turkish Rep. of N Cyprus	Military Penal Code art. 39			up to 36		no case reported since 1993
Denmark	Civilian Service Act, art. 6	(total refusal) C	Yes, and -	equal to length of service required	No	since 1996 in practice 240 hrs. community service
Eritrea	Decree No. 11, 6th November 1991		Yes, and -	24		12 declared co's, all Jehovah's Witnesses; three of them since 1994..
	Note: in all, over 1750 members of minority religions are currently detained in Eritrea, many of them in army camps. Some at least of these are probably in effect conscientious objectors					
Finland	Civilian Service Act (1723/91), art.26 Military Service Law (19/1998), art. 39	failure to report, ceasing to serve or written refusal refusing military service		half the length of unperformed civilian service.		2002: 67 sentenced under Act 1723/91; 9 under 19/98 25 in prison at 1/3/2006.
Georgia	Criminal Code, 81 Criminal Code, 82 Criminal Code, 256	refusing call up refusing mobilisation desertion		12 to 36; max 60 (a) 36 to 120 36 to 84 (p)		167 as of September 2002
Abkhazia	one reported case, in Dec 2002. Sentenced to 48 months but released after 4 months.					
Germany	"military arrest" for up to 21 days on 4 occasions, followed by prosecution under: Military Penal Code, art. 109 Other penalties under equivalent articles of the Military Penal Code or (in brackets) the Civilian Service Act, are: arts. 19, 20 (54) art. 15 (52) art. 16 (53)	refusing call up for military or civilian service Disobeying orders Absence without leave Desertion	Yes, or	up to 60 up to 36 (60a) up to 36 up to 60		In the most recent case (September 2005), a total objector was fined EUR 900 or 90 days in prison.

State	Relevant Law (and Article No.)	Charge; heard in Civilian (C) or Military (M) court?	Fine? (maximum)	Prison sentences (months):	Repeat call-up and penalties	Latest known numbers in prison
Greece		refusal of military service (unclear whether C or M) M: insubordination desertion		anything up to 48, perhaps even more not clear	No (see text) Yes	At least 7 sentences (including 5 suspended one of which was over- turned on on appeal) handed down since Dec. 2004.
Israel	National Defence Service Law, 35a	M: general breaches evasion of military service abetting evasion refusal of reserve service other charges: refusal to obey an order; absence without leave; desertion	Yes, or -	up to 24 up to 60 up to 24 maximum of 56 days on each occasion	Yes	At least 9 persons in the course of 2005, typically for 21 days but on up to nine successive occasions
Korea, Republic of	Military Service Law (1.88, 4.15)	C		up to 36		1174 as of 15th Sep.'05
Lithuania	not known	(absolute objectors)	Yes and -	(latest) 12		Feb. 2004 overturned on appeal
Macedonia, the FYR of	Law on Defence, art. 168 Criminal Code, 341	failure to respond evasion	30000dn, or - up to 2			amnesty announced Jul. 2003
Moldova	Penal Code, 7				60 no	
Norway			Yes, and	3 months	yes, but rarely enforced	10 in 2003
Poland		refusal		latest - 6		1 in 1998
Romania	Criminal Code, art. 354	evasion failure to report (M)	500000 - 3m lei	12 to 60		29 charged in 2000 none since

State	Relevant Law (and Article No.)	Charge; heard in Civilian (C) or Military (M) court?	Fine? (maximum)	Prison sentences (months):	Repeat call-up and penalties	Latest known numbers in prison
Russian Federation	Criminal Code, art 328.1 art 336	desertion collective desertion or desertion during armed conflict	Yes, or -	up to 24 up to 84 up to 120	No reports	
Singapore	Armed Forces Act	refusing reserve service		15 40 days	Yes - 24 months added on second occasion Yes - 12 12 months on third occasion	Total of 20 Jehovah's Witnesses as at end 2004..
Taiwan				36		
Turkey	Military Penal Code, art.12	evading enlistment ("bakaya") failure to respond ("Yoklama kaçađı")	usually, in first instance	36	Yes	2000 About 80 declared c.o.s who are subject to arrest and im- prisonment At least 5 detained during 2005
Turkmenistan	Criminal Code art 219.1		alternative to prison is: "corrective labour"	24		
USA	Military Selective Service Act	"offences under the Act"	\$250,000 and/or: -	60		
Yemen	failure to report desertion / evasion			24 36		
Notes:	(a) - with aggravating circumstances (p) - in peacetime					

4.7 Children

Even though under the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict “States Parties shall ensure that persons who have not attained the age of eighteen years are not compulsorily recruited into their armed forces”, not all States are parties to the Optional Protocol and in practice persons under the age of eighteen are subject to compulsory recruitment in many places.

Moreover, even where call-up does not take place until the age of 18, the registration procedures can make this an issue which often or even usually affects a younger age group. A combination of rules make this particularly so in the Russian Federation. All males must register for military service by the end of March in the year when they reach 17. Applications for recognition of conscientious objector status must be made six months before receiving call-up papers. Call-up occurs in two periods each year: between April and June and between October and December. Therefore, the “window” of age in which an application may be submitted starts at between sixteen years and three months and seventeen years and three months. Assuming that call-up papers are normally sent between the eighteenth birthday and the beginning of the first subsequent call-up session, the maximum age at which application for recognition of conscientious objector status could be made would lie between seventeen years and six months and eighteen years to the day. In other words all applications in normal circumstances have to be made before the individual reaches the age of eighteen.

Also the Optional Protocol does not completely prohibit the voluntary recruitment of children under the age of 18. In particular the persistent methods of recruiters searching for volunteers in the USA, including among school pupils, and the pressure brought to bear on young and impressionable minds have been in themselves the source of much adverse comment in recent months, quite apart from the evidence of abuses which have emerged.

For all these reasons the provisions and rules for conscientious objection are potentially relevant for children as well as for adults. But that being the case there are specific features which require particular emphasis in the case of those aged under 18.

Although it is usual to obtain parental consent before accepting the enlistment of those under 18, there can be no guarantee, particularly where there is a history of pressure being brought to bear to encourage recruitment, particularly an emphasis on the economic benefits, (eg Paraguay) that the consent of the conscript is indeed fully and freely-exercised, let alone based on mature judgment.

4.8 Women

Because so few states require obligatory military service of women, in most of the world the issue of conscientious objection only arises for them in the context of volunteers who subsequently develop a conscientious objection and apply for release; certainly some such cases in the USA have involved women - indeed as of November 2005, at least one ongoing case does.¹⁵⁸

In Israel, where there was no legal recognition of conscientious objection for men, Article 39c of the National Defence Service Law (1986) states: “A female person of military age who has proved, in such manner and to such authority as shall be prescribed by regulations, that reasons of conscience or reasons connected with her family’s religious way of life prevent her from serving in defence service, shall be exempt from the duty of that service.” There is thus an explicit possibility of granting exemption on reasons of conscience alone, although the wording and even more so the reported practical application of this provision is weighted heavily towards family obligations and a strict traditional religious observance, further elaborated in Article 40: “...(1) reasons of religious conviction prevent her from serving in the defence service and (2) she observes the dietary laws at home and away from home and (3) she does not ride on the Sabbath”. The context of these very specific provisions is of course that only Jewish women are subject to conscription in the first instance.¹⁵⁹

In recent years, women with various individual standpoints which might generally be classified as “anti-militarist” have become increasingly frustrated by the relative ease of obtaining exemption when they wished to take a stand on principle, and recently a number have put in explicit claims for exemption on pacifist or similar grounds. The first imprisonment of a female conscientious objector took place in November 2003; since then there have been several further cases. Meanwhile the Supreme Court in August 2004 backed a narrow interpretation of the relevant articles.

In Eritrea “there was considerable resistance to female recruitment from Muslim communities, especially among the Afar of Dankalia region on the Red Sea coast. Resistance on the grounds of religious belief, cultural traditions of family honour, or protecting women from sexual harassment and violence in the army, sometimes led to violent confrontations during conscription round-ups.”¹⁶⁰ Later reports indicate that attempts to conscript women in this region have been abandoned.¹⁶¹ Although this certainly represents an objection on grounds based in religion and belief, and is noteworthy as the major instance recorded of a resistance to military recruitment based principally on Islamic teaching, it stretches the definition of conscientious objection as such, revealing rather a remarkably close parallel to the wider grounds of religious tradition and way of life included in the Israeli legislation.

¹⁵⁸ War Resisters International, “USA: Women soldier refuses deployment to Iraq” in Conscientious Objection Update No. 16, December 2005

¹⁵⁹ War Resisters International, Conscientious objection in Israel: an unrecognised human right, February 2003.

¹⁶⁰ Amnesty International (2004), Eritrea: You have no right to ask, Section 5.

¹⁶¹ Amnesty International (2006), Eritrea: Religious persecution

4.9 Documentation for civil purposes

“there shall be no discrimination against conscientious objectors because they have failed to perform military service.”

Human Rights Committee, General Comment 22 (July 1993), Paragraph 11

The Commission on Human Rights... reiterates that States, in their law and practice, must not discriminate against conscientious objectors in relation to ... any economic, social, cultural, civil or political rights (Resolution 1998/77, OP 6)

Section 2.3.2 outlined the many purposes for which military documentation may be needed. Where documentation of equal standing is not available to those who have not performed military service, whether they have been exempted from, excused it on condition of performing alternative service, or have refused it, they remain at a potentially severe disadvantage.

The Jehovah's Witnesses report from Armenia, "As of October 13, 2004, there were over 17 Jehovah's Witnesses who, after their release from prison as conscientious objectors to military service, were refused identity documents (internal passports) because they were not given a document of registration by the military commissariat. The identity documents are necessary for such things as employment or marriage. An additional seven men, who have identity documents, were refused residency registration, a requirement in Armenia."¹⁶²

In Brazil, following alternative service "a Certificate of Alternative Obligatory Military Service Rendered will be issued, with the same legal implications as the Certificate of Reservists."¹⁶³ As indicated above (page 86) there is also (perhaps uniquely) a "Certificate of Refusal to Render Alternative Service". Under Article 4.1 "The refusal or the non-completion of Alternative Service, under whatever pretext due to personal responsibility of the draftee, will result in the corresponding Certificate not being issued for a period of years after the established expiration period." Thereafter, "the Certificate will be issued only after the proper authority rules for the suspension of political rights of the defaulter, who, at any time, can regularize his situation by fulfilling the due obligations"(Article 4.2). Thus the certification which is essential for legal identity is eventually available even to those who have refused all service, but the loss of "political rights" - including the right to vote or to stand for elective office - is permanent, being recoverable only by the withdrawal of the objection.

In Eritrea, it has not been individual conscientious objectors, but the whole community of Jehovah's Witnesses who, in punishment for "not fighting in the liberation struggle, refusing to vote in the independence referendum and refusing to do national service" found that following a presidential decree of October 1994, "the government expelled them from government employment and accommodation, denied them access to government services including schools and hospitals, and refused them the official identity cards, essential for daily life and administrative procedures, and passports". In 2004 this situation was defended by the head of the

¹⁶² General Counsel of Jehovah's Witnesses, evidence submitted to the OHCHR, February 2005

¹⁶³ Article 4 of Law No. 8.239

President's office: "...Their number is very small, they publicly said they don't recognize the temporary government and the government's response was, okay, if they do not recognize the temporary government, the government will also not recognize them..."¹⁶⁴

In the USA, prosecution for failure to register has generally been treated as a last resort. Instead, registration is enforced by the denial of benefits. Those who have not registered are not eligible for federal loans or grants for higher education, for federally-funded job training, or for most federal employment. The federal government has also encouraged state and municipal legislatures to enact similar legislation. As of August 2004, at least 20 of the fifty states required those eligible to be registered for the draft as a precondition of receiving state finance for higher education and 17 states would not employ unregistered persons in any capacity. Nine states debarred unregistered men from admission to state colleges or universities. States have also been encouraged to make registration a precondition for the issue of a driving licence, or a state sanctioned photographic ID, essential for many mundane purposes: "One cannot even buy a plane or train ticket in the US without a photo ID. Or cash a check in most places. Or even enter some buildings."¹⁶⁵ As of August 2004, 21 states and the Virgin Islands Territory had introduced such rules, and in Illinois the necessary legislation was awaiting the Governor's approval. Eleven further states, plus the District of Colombia and the Territory of Guam had linked the procedure for application for a driving licence to draft registration for those who were not already registered, but most did not make this mandatory. In all, only 11 of the 50 states made no linkage between draft registration and higher education, state employment or the issue of driving licences; in thirteen there was linkage in all three areas.¹⁶⁶ Once a man has passed the age of 25 he can no longer register, and - unless he can prove that this failure was not "knowing and wilful" - may find that the consequent handicaps persist for life. This last is a particular fear for non-citizens. Resident non-citizens who are discovered not to have registered - even if their presence in the country at the appropriate time was not covered by valid documentation - are in a particularly vulnerable situation at any future time when their residence status comes under scrutiny. Under law, those who are convicted of failure to register are deportable, may be debarred from obtaining citizenship for at least five years, or from obtaining a "green card" or permanent residence status, and may even be prohibited for life from re-entering the USA. This severest penalty would certainly apply to any non-citizen who was convicted of leaving the country in order to avoid military recruitment.

Conscientious objectors who have been convicted of offences connected with the refusal of military service may suffer disadvantages as a result not of the objection itself but of the criminal record. In a landmark judgment, the European Court of Human Rights found in the case of *Thlimmenos v Greece*,¹⁶⁷ that a Jehovah's Witness who had been imprisoned for refusing military service, before there was any provision for conscientious objection in Greek law, was the victim of discrimination when his criminal conviction debarred him from subsequently practising as an accountant. The

¹⁶⁴ Amnesty International (2004), *Eritrea: You have no right to ask*, London, Section 3.

¹⁶⁵ Center on Conscience and War, evidence submitted to the OHCHR, 2003.

¹⁶⁶ For a full table see Center on Conscience and War (2004), *State Penalties for Non-registrants* (http://centeronconscience.org/literature/statepen_chart.pdf)

¹⁶⁷ Application No. 34369/97; judgment of 6th April, 2000.

result was that in Law 2915/2001 Greece provided for the deletion of convictions resulting from conscientious objection from criminal records, and also abolished the practice of requiring proof of successful completion of military service in order to obtain employment in various professions. Some of the fourteen Jehovah's Witnesses in Romania whose convictions for failure to perform alternative service were overturned by the Supreme Court in 2003 (see p35) had in the meantime lost their (lay) jobs.¹⁶⁸

Finally, special mention must be made of a very common restriction placed on those who have been accepted as conscientious objectors. Those States which will not grant the status to persons who have held a firearms licence also tend to place restrictions on their ability to be issued one at any stage in the future; Armenia, Bosnia-Herzegovina and Portugal are examples. In Armenia, "1. Citizens who have performed alternative service may not ... be granted the right to own, bear and use weapons. 2. Citizens who have performed alternative service may not be appointed to State positions that involve operations connected with the possession, bearing and use of weapons."¹⁶⁹ Similarly, in Portugal a person who has been a conscientious objector cannot during his whole lifetime exercise any public or private function which entails using or carrying guns, trading or manufacturing war material. Austria has a more limited form of such an exclusion; no person who has performed alternative service as a conscientious objector may obtain a licensable weapon until more than 15 months after completion of that service.

¹⁶⁸ General Counsel of Jehovah's Witnesses, response to OHCHR questionnaire 2003

¹⁶⁹ Law on Alternative Service, 2003, Article 22.

4.10 The situation in time of war

the right to freedom of thought, conscience and religion (which includes the freedom to hold beliefs) is far reaching and profound ... The fundamental character of these freedoms is also reflected in the fact that this provision cannot be derogated from, even in time of public emergency

Human Rights Committee, General Comment 22 (July 1993), Paragraph 1

Freedom to manifest one's religion and 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.

International Covenant on Civil and Political Rights, Article 18, Paragraph 3

(this) is to be strictly interpreted: restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant, such as national security.

Human Rights Committee, General Comment 22 (July 1993), Paragraph 8

A remarkable number of legal provisions governing military service and conscientious objection prove on inspection not to apply in the event of war. The majority of the countries where obligatory military service has ceased to apply in recent years have in fact merely suspended the relevant legislation in time of peace. This is certainly the case, for example, in Belgium, the Czech Republic, France, Hungary, Italy and Spain. In the USA and the Netherlands, this is underlined by the continuing obligation on those eligible to register (see p.**nn**); this is also proposed from 2007 when the call-up for obligatory military service in Romania will cease.

As has been discussed already, the Act implementing the right to conscientious objection in the Netherlands remains valid in all circumstances. In the USA the relevant provisions are contained in the legislation the implementation of which has been suspended, so would automatically be covered by the lifting of the suspension. In Australia, where no conscientious objection provisions are applicable in time of peace, a wartime reintroduction of obligatory military service would be done under the original Defence Act of 1903 and the procedures set out in that Act would apply. Part IV includes provision for conscientious objector tribunals, whose decisions can be appealed to the administrative appeals tribunal for review and from there to the federal appeals court on questions of law only. Similarly, in Italy and the Czech Republic it has been made explicit that the provisions of the legislation concerning conscientious objection would again be applicable in time of war.

More information is needed on the current status of the legislation concerning conscientious objection in the other States which have suspended obligatory military service. If it too has not simply been suspended, but has been repealed outright, the implication is that, whereas obligatory military service could be reactivated at any time, provisions for conscientious objection would require new legislation.

Even more disturbing are indications that in some States the procedures governing the treatment of conscientious objection apply only in time of peace. This issue emerged in Finland's 2004 State Report under the ICCPR. Such relatively liberal features as the acceptance for non-military civilian service on the basis of a simple declaration of

conscientious objection are explicitly applicable only in time of peace, as is the complete exemption of Jehovah's Witnesses who reach the age of 29 in good standing. Significantly, exemption on medical grounds may be given for peace time only or for both peace and war, showing that the distinction is careful and deliberate. In its concluding observations the Human Rights Committee recommended: "The State party should fully acknowledge the right to conscientious objection and, accordingly, guarantee it both in wartime and in peacetime."¹⁷⁰

The Greek government has indicated that alternative service for conscientious objectors would be suspended in time of war and replaced by unarmed military service.¹⁷¹ In Poland, too, under the 1999 Law on the Obligation to Defend Poland, the alternative service system is suspended in time of war. This would affect not just conscientious objectors who are facing call-up, but many who have previously gone through the system and have been transferred to the reserve with or without performing alternative service. Those who have been exempted military service (eg ministers of religion and evangelising Jehovah's Witnesses who reach the age of 28) are also thereafter put on the reserve list, which in practice this involves no obligations in time of peace but theoretically makes them liable to some sort of military service in time of war.

In both Germany and Sweden the provisions even for civilian alternative service are seen in the context of what is translated as "holistic defence". In particular no time limit to civilian service exists in time of war, and conscripts may be allocated without right of appeal to tasks which some may consider dangerously militarist, including for example in Germany mine-clearance.¹⁷²

It is illogical that the rights of conscientious objectors should be restricted more thoroughly in time of war than in time of peace. As the core of conscientious objection is the unwillingness to set out willingly to take other lives it is likely that any objections will be stronger, not weaker in time of war.

It will be noted that in many cases the stipulated penalties for refusing military service or for other offences listed in Table 7 are longer in time of war. The same can also apply to penalties related to the performance of civilian service. In Sweden, for instance, a conscript "who intentionally deviates or fails to report for military, civilian or general service, refuses or neglects to obey a foreman's or other supervisor's order or in any other way disregards what is incumbent upon him or her during the service, will be sentenced, if the deed is liable to result in severe harm for the training or the service generally... to fines or imprisonment for up to one year," but if this happen "during increased readiness, the offender will be sentenced, if the crime... is considered as being severe, to imprisonment for at least six months and up to four years." (10.2)

¹⁷⁰ UN Document CCPR/CO/82/FIN (2004), para 14.

¹⁷¹ CCPR/C/GRC/2004/1, Para 687

¹⁷² War Resisters International, CO Alert No.GER14755, 12th September 2005

4.11 Selective objection

Just as conscientious objection may derive from a variety of religious, moral and ethical standpoints, so too its precise manifestation may take different forms. It may require the objector simply to refrain from going prepared to take human life, or sometimes from handling weapons, from any participation in military activities, or from any activity linked in any way to the military function of the State, which is seen by some as including service which is “alternative to” or “substitute for” that in the armed forces, by others as including helping to fund military expenditures. The conscience may demand that the individual question him- or herself critically as to whether the action taken effectively addressed the cause of the objection, or it may demand a public testimony of the reason for the action. The objection may be to all violence, or may make an exception in the case of self-defence, or may relate solely to any violence which is seen as morally unjust. Thus it may apply to all military activity or just to some; to all wars or just to “wars of aggression”. A person may have no hesitations about military action in defence of the national territory, or may subscribe to the theory of “the just war” and yet still have a genuine conscientious objection in other circumstances.

There is some evidence that at an early stage in the official recognition of conscientious objection this variety was understood. The 1939 Conscription Act in the UK reportedly “recognised all sincere COs, including selective objectors to particular wars.”¹⁷³ Even as the recognition of conscientious objectors has subsequently widened, however, the accepted definition has tended to narrow towards conscientious objection as a particular creed. As has emerged in the foregoing pages, States tend to be happier with those who are instructed by their religious denomination that they may not have any dealings with firearms. As soon as they are asked to consider moral objections to specific wars or categories of military action, such as refusal to accept deployment outside the national territory (which is the logic of the most numerous single group of selective objectors, the “refusniks” in Israel), they are quick to label such objections as “political” and therefore not allowable (see p.54). Israel itself, like the USA, is overt in complete rejection of any conscientious objection which is not based on a simple and absolute pacifist stance.

A remarkable exception to the general rule is Norway, which in 1990, in an amendment¹⁷⁴ to the Law on Exemption of Military Service for Reasons of Conscientious Objection, ruled that a conscript who could show that by performing military service he would be “compelled to compromise beliefs that are of fundamental importance to him and that are related to the use of weapons of mass destruction as they might be expected to be used in present day defence”¹⁷⁵ would qualify for exemption as a conscientious objector. Gleditsch and Agoy¹⁷⁶, without quoting the text, claim that this provision might exempt only those who are totally

¹⁷³ Chambers, J.W., “Conscientious Objectors and the Colonial State from American Times to the Present” in Moskos & Chambers, eds. The New Conscientious Objection, from sacred to secular resistance. Oxford University Press, New York/Oxford 1993, pp 23-46, at p.36

¹⁷⁴ Law 42/1990.

¹⁷⁵ As quoted in Horeman, B. & Stolwijk, M. (1998), Refusing to Bear Arms, War Resisters International, London.

¹⁷⁶ Gleditsch, N.P. and Agoy, N.I., “Norway: towards complete freedom of choice”, Chapter 9 in Moskos, C.C. & Chambers, J. W, Eds. The New Conscientious Objection, from sacred to secular resistance. Oxford University Press, New York/Oxford 1993, p.119.

opposed to the existence of nuclear weapons and not to their possible use by NATO. Unless severe distortion has occurred in the course of translation, and given the Norwegian context, the precise wording seems to imply the complete opposite.

In fact, however, a selective objection on the grounds of conscience can be clearly distinguished from a political opposition to a certain course of action. It can also be distinguished from refusal to participate in a particular military action on the grounds that it is illegal, or from refusal to obey illegal orders, or participate in war crimes, all of which are protected, and sometimes required, under international law without reference to considerations of conscience.

The moral nature of the objection is more likely to be recognised when a selective objector flees his country, in which situation his case for international protection is often compounded by the obvious fear of political persecution as well as the other, frequently overlapping issues.

4.12 Conscientious Objectors as refugees

The Commission on Human Rights... encourages 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. (Resolution 1998/77, OP7)

It is interesting to note that the 1951 Convention is based on a long tradition of refugee and extradition law which predates the Universal Declaration of Human Rights, and which gives at least as much attention to questions of political dissidence and the legality of armed action as motives for evading or refusing military service.

In fact neither the 1951 Convention nor the 1967 Protocol mention conscientious objection as such, which first appears in the 1979 UNHCR Handbook,¹⁷⁷ - an authoritative interpretation which however itself lacks the force of law. Even in the Handbook it is not treated as a topic in its own right, but within the section¹⁷⁸ on “Deserters and persons avoiding military service”.

This has led to some confusion; a lot of jurisprudence in refugee cases seems to have applied to conscientious objectors the criteria appropriate to all those avoiding military service, namely that this does not prevent them from qualifying for refugee status on other grounds, is not a ground for refusing refugee status, but that *prosecution* for evasion or desertion would not *in itself* constitute *persecution* supporting a refugee claim, that is unless it could “be shown that he would suffer disproportionately severe punishment for the military offence on account of his race, religion, nationality, membership of a particular social group or political opinion.” (Paragraph 169 of the Handbook)

In fact, however, according to Paragraph 170, “the necessity to perform military service may be the sole ground for a claim to refugee status ... when a person can show that the performance of military service would have required his participation in military action contrary to his genuine political, religious or moral convictions, or to valid reasons of conscience.”

Much attention in recent refugee cases has focussed on paragraph 171:

“Not every conviction, genuine though it may be, will constitute a sufficient reason for claiming refugee status after desertion or draft-evasion. It is not enough for a person to be in disagreement with his government regarding the political justification for a particular military action. Where, however, the type of military action, with which an individual does not wish to be associated, is condemned by the international community as contrary to basic rules of human conduct, punishment for desertion or draft-evasion could, in

¹⁷⁷ Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees HCR/IP/4/Eng/REV.1. Although the Handbook was reissued in 1992, the UNHCR’s amicus brief to the UK House of Lords in the case of *Sepet and Bulbul* points out (paragraph 3.44) that the 1979 text had not been revised.

¹⁷⁸ Chapter V, B. (paras 167 - 174)

the light of all other requirements of the definition, in itself be regarded as persecution.”

In the case of *Krotov* in the UK courts,¹⁷⁹ it was established with advice from UNHCR, that this criterion could be applied not only to the legality of the war itself, but also to abuses in its conduct. On that basis, Krotov, a deserter from the Russian army in Chechnya, was, on appeal, granted asylum. It also seems clear that in the circumstances covered by this paragraph the punishment for desertion or draft evasion does not necessarily need to be disproportionate or discriminatory in its application in order for it to be a valid consideration in a refugee claim.

Indeed, if it is not to be seen as in contradiction to the surrounding paragraphs, the limitation in Paragraph 171 must be read as applying essentially to political objections, not to “religious or moral convictions, or to valid reasons of conscience,” which are treated in Paragraphs 172 and 173, respectively.

Paragraph 172 states, “...If an applicant is able to show that his religious convictions are genuine, and that such convictions are not taken into account by the authorities of his country in requiring him to perform military service, he may be able to establish a claim to refugee status.”

Paragraph 173 notes that “An increasing number of States have introduced legislation or administrative regulations whereby persons who can invoke genuine reasons of conscience are exempted from military service, either entirely or subject to their performing alternative (i.e. civilian) service. The introduction of such legislation or administrative regulations has also been the subject of recommendations by international agencies,” and concludes, “In the light of these developments, it would be open to Contracting States, to grant refugee status to persons who object to performing military service for genuine reasons of conscience.” The rather weak wording is put into context by the fact that as an example is quoted only a 1977 Recommendation from the Council of Europe Parliamentary Assembly. This is a reminder that the Handbook was drafted long before the recent developments in standard-setting and State practice.

In fact, a much clearer and more contemporary statement of UNHCR’s interpretation of the law is to be found in Paragraph 26 of its 2004 Guidelines¹⁸⁰ on religion-based refugee claims:

“Where military service is compulsory, refugee status may be established if the refusal to serve is based on genuine political, religious, or moral convictions, or valid reasons of conscience. Such claims raise the distinction between prosecution and persecution. Prosecution and punishment pursuant to a law of general application is not generally considered to constitute persecution, ... In conscientious objector cases, a law purporting to be of general application may, depending on the circumstances, nonetheless be persecutory where, for instance, it impacts differently on particular groups, where it is applied or enforced in a discriminatory manner, where the punishment itself is excessive or disproportionately severe, *or where the*

¹⁷⁹ *Krotov v Secretary of State for the Home Department* [2004] EWCA Civ 69 (11 February 2004)

¹⁸⁰ GUIDELINES ON INTERNATIONAL PROTECTION: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees
HCR/GIP/04/06

military service cannot reasonably be expected to be performed by the individual because of his or her genuine beliefs or religious convictions. Where alternatives to military service, such as community service, are imposed there would not usually be a basis for a claim. Having said this, some forms of community service may be so excessively burdensome as to constitute a form of punishment, or the community service might require the carrying out of acts which clearly also defy the claimant's religious beliefs. In addition, the claimant may be able to establish a claim to refugee status where ... the individual has a well-founded fear of serious harassment, discrimination or violence by other individuals (for example, soldiers, local authorities, or neighbours) for his or her refusal to serve."

5. ALTERNATIVE SERVICE

The Commission on Human Rights... reminds 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. (Resolution 1998/77 OP4)

5.1 What is alternative service?

Certain points about the recommendation of the Commission on Human Rights must be stressed. It has no bearing on the basic right to conscientious objection; this right exists and can and should be recognised whether or not alternative service arrangements exist or would be appropriate. “Alternative” service cannot be asked of conscientious objectors who would not otherwise be subject to obligatory military service, whether because they are exempted on other grounds, because they had engaged voluntarily upon military service, or because they have already fulfilled their military service obligations. There is no “right to alternative service”; where alternative service exists it is a requirement imposed by the State, not a right. Moreover, it is no part of the Commission’s recommendation that alternative service should be available to anyone other than conscientious objectors, although it does not explicitly preclude this. Nor is it stipulated that such service should be obligatory.

Alternative service can exist only as an alternative to “obligatory military service”; States without obligatory military service cannot by definition have alternative service, and even in those which do it is not an *alternative* to anything other than the obligatory requirement. It should be noted that in the 1998 Refusing to Bear Arms report and the 2005 update of the European entries the synonym “**substitute service**” is used. This is a direct translation of the original German term “*Ersatzdienst*”. Even in Germany, however, this wording is no longer used in legislation.

The alternative service available may frequently include or comprise unarmed military service. In order to indicate explicitly an obligatory service completely outside the armed forces, this report uses the term **civilian service**. Some sources refer to “**civil service**” but this has a completely different, and therefore potentially confusing, meaning in the UK.

How to refer to those performing the service also causes problems. “**Civil servants**” presents the same problem as “civil service”. “**Servant**” and “**server**” are less ambiguous but are ungainly, carrying the wrong connotations. Some sources use the word “**soldier**”, which is even more unfortunate. However to use “conscientious objectors” in this context is also unsatisfactory; not all alternative service schemes are exclusive to conscientious objectors and some conscientious objections are to alternative service. For simplicity, the neutral word **conscript** is used here to cover all those performing obligatory service, whether military or civilian.

Conversely, the existence of an alternative “of a non-combatant or civilian character” to military service does not in itself constitute a recognition of conscientious objection, or even necessarily imply such a recognition. Obligatory national service which may be performed in non-military - or “civilian” - establishments is sometimes found without any linkage to conscientious objection.

In Guatemala the 2003 Civic Service Law ¹⁸¹ effectively made military service voluntary on condition that those who do not opt for it instead perform community service; there is however in the law no mention of conscientious objection.

The Republic of Korea and Singapore both have civilian as well as military national service, but expressly refuse to allow conscripts to opt for such service on the grounds of conscientious objection. In the case of Singapore, such civilian service may be performed in the Civil Defence Force or the Police Force. The Civil Defence Force is responsible for dealing with such emergencies as fires, floods, or earthquakes; some, but not all of the service in the Police Force is armed. Crucially, though, both are administered by the Ministry of Home Affairs rather than the Ministry of Defence. At the time when the Civil Defence Act was passed (in 1987) there were some hopes that this option might be used in practice as an alternative to criminal proceedings against conscientious objectors, and at an early stage some Jehovah's Witnesses were indeed transferred from military service to civil defence, but the authorities have remained adamant that "induction into civilian service for the purposes of national service occurs only at the discretion of the authorities and not by application of the individuals". At the beginning of 2005 20 Jehovah's Witnesses who had indicated their willingness to perform civilian service were imprisoned for refusing military service.¹⁸²

Sweden similarly includes "civilian service" as part of national service, not exclusively or even primarily for conscientious objectors, although objectors are under Articles 3.16 and 3.21 of the "Total Defence Service Act" exempted from armed service, including guard duty and the maintenance of public order.

Many African States, especially those formerly under French rule have national service schemes which include work in development, but it is not reported that this is linked to any system for recognising conscientious objectors. The 1998 Refusing to Bear Arms study mentions such arrangements in Benin, Burkina Faso, Cote d'Ivoire, Madagascar, Mali and Morocco (where "civilian service" is open only to graduates, and lasts two years, as against 18 months in the army). According to the Child Soldiers Global Report 2004, national service in Niger, too, may take the form of civilian service. The original conscription legislation in Eritrea, dating back to a 1991, (ie. pre-independence) ordinance of the Eritrean People's Liberation Front envisaged six months of military training being followed by twelve months working on development projects. In fact, during the three years after 1991 nothing was done to enforce the National Service obligation; indeed the major concentration was upon reducing the numbers in the armed forces by demobilising a large proportion of the 95,000 troops with which the EPLF had ended the war for independence. Those who did come forward to undertake National Service at this time were not put through military training but all spent the entire eighteen months in the "civilian" part of the programme. In view of this, even some Jehovah's Witnesses willingly participated; one of the three Jehovah's Witnesses who have been imprisoned since 1994 for refusing military service (see p 86) had already undertaken this non-military national service and held a certificate of its satisfactory completion. When tensions grew over

¹⁸¹ Law No. 20/2003 of 12th May 2003.

¹⁸² General Counsel of Jehovah's Witnesses, response to OHCHR questionnaire 2003 and further evidence submitted, 2005.

the border dispute with Ethiopia, the development service aspect was in practice abandoned.¹⁸³

In Turkmenistan there has been widespread redeployment of conscripts into all parts of the economy, where they have allegedly provided a cheap replacement for thousands of civilian employees; in theory, instead of being paid from the defence budget they receive one third of the normal pay from the employer to which they are allocated; in practice they often go unpaid.¹⁸⁴ Ironically, while according to such reports some former conscripts have complained that throughout their military service they never touched a weapon, imprisonments continue of those who refuse on grounds of conscience to undertake military service.¹⁸⁵

In Malaysia, the 2003 National Service Training Act instituted three months of compulsory national service at the age of 18, apparently administered by the Ministry of Defence, but it was claimed that this did not involve military training or service in the armed forces.¹⁸⁶

Furthermore, although in some states the stipulations closest to recognition of a right to conscientious objection occur in a “Law on Alternative Service”, the systems brought into existence by such laws have not necessarily been exclusively for conscientious objectors. For instance in Kyrgyzstan the provisions apply to “conscripts who oppose military service on religious grounds or whose their family status or health condition are not conducive to military service”.¹⁸⁷ Sometimes the relevant legislation in fact makes no reference to conscientious objection, sometimes it may not in practice even be available to conscientious objectors. Therefore when, for example, it is reported that in Azerbaijan, Kazakhstan and Tajikistan draft laws to establish “an alternative non-military service” had not yet been put before the legislatures, it should not be taken for granted that conscientious objection would be one of the qualifications for benefiting from these laws. The local precedent of Uzbekistan is not a good one. There, under the 1992 “Law on Universal Military Service”, those exempted from military service were required to perform alternative service, but as discussed above (p. 75) there is no evidence that any religious group was accepted as fitting the criteria which would enable its members to be recognised as conscientious objectors. Moreover, it would appear that under the 1992 Law on Alternative Service, this “alternative” service started with two months’ basic military training - including weapons training. The reforms of 2002/2003, while still inadequate, have brought some rationalisation: those performing Alternative Service will henceforth be required to train in “a military skill that does not involve the bearing of arms”.¹⁸⁸

¹⁸³ Connection eV Germany, War Resisters International & Eritrean Anti-Militarist Initiative Eritrea: Conscientious Objection and Desertion London (WRI) April 2005, and General Counsel of Jehovah’s Witnesses, response to OHCHR questionnaire, 2003.

¹⁸⁴ Institute of War and Peace Reporting (www.iwr.net), “Turkmen Troops Double Up as Nurses and Bakers”, Reporting Central Asia No.268, 25th February 2004 and “Turkmenistan: half-starved soldiers prop up economy”, Reporting Central Asia No. 428, 24th December 2005.

¹⁸⁵ General Counsel of Jehovah’s Witnesses, evidence submitted to the OHCHR, February 2005.

¹⁸⁶ Child Soldiers Global Report 2004 (Coalition to Stop the Use of Child Soldiers, London).

¹⁸⁷ *ibid*

¹⁸⁸ Radio Free Europe - Radio Liberty “Uzbekistan introduces alternative military service”, 2nd June, 2003 (www.rferl.org/newsline/2003/06/2-TCA/tca-020603.asp)

In Italy, by complete contrast to all the previous examples, the registration of conscientious objectors and their assignment to alternative civilian service is continuing, even though obligatory military service has been suspended.¹⁸⁹

It should be noted also that in some instances (Paraguay, Ecuador, Estonia, Belarus) a reference in the Constitution to alternative service has not been followed up by the anticipated detailed legislation. In Bulgaria from 1991 until the end of 1998, and in the Russian Federation from 1993 until the end of 2003 constitutional provisions that conscientious objectors might perform alternative service were not backed up by detailed implementing legislation. During the hiatus, objectors adopted differing strategies to claim their constitutional rights. In the Russian Federation a substantial number of schemes were developed by co-operation between non governmental organisations and local government to make it possible for young men to perform alternative service without waiting for the state scheme.¹⁹⁰ In the case of Bulgaria the issue was pursued through the European Court of Human Rights; the friendly settlement in the case of *Stefanov v Bulgaria*¹⁹¹ entailed the dismissal of all criminal proceedings under Article 361 of the Criminal Code (“failing to respond to call-up for military service”) which had been undertaken against conscientious objectors during the period between the 1991 Constitution and the coming into force of the Law on Alternative Service on the 1st January 1999, and the overturning of the resulting sentences.

...of a non-combatant or civilian character...

(Commission on Human Rights Resolution 1988/77, OP4)

The simplest form of alternative which may be offered to conscientious objectors is unarmed military service. Historically, such provision, for instance the opportunity of serving as medical personnel, has often been the first step in making more thoroughgoing arrangements to accommodate conscientious objection. However although not being required personally to carry weapons or undertake weapons training is acceptable to some, the majority of conscientious objectors do not feel able to accept any sort of military employment.

Some States make both unarmed military service and alternative civilian service available, with sometimes different conditions, eg. of duration, applying. For instance in the Russian Federation unarmed military service is one-and-a-half times the length of military service for which the conscript would be liable, whereas “civilian service” is one-and-three-quarter times as long.¹⁹² Unarmed military service may involve medical or clerical duties within the armed forces. In the Republika Srpska, before the abolition of conscription, one of the options for unarmed military service was work in military post offices. (By contrast, in the other Bosnian “entity” one of the forms of “civilian service” available was work in the Ministry of Defence.)

¹⁸⁹ See Italy’s Fifth Periodic Report under the International Covenant on Civil and Political Rights, UN Document CCPR/C/ITA/2004/5, paras 67 and 68.

¹⁹⁰ Evidence submitted in 2003 by the NGO Coalition for Democratic Alternative Civilian Service to the OHCHR for its report on “best practices” in the field of conscientious objection to military service.

¹⁹¹ Application No. 32438/96; Judgment of 3rd May 2001.

¹⁹² General Counsel of Jehovah’s Witnesses, evidence submitted to the OHCHR, 1st February 2005.

Often civilian service is not clearly distinguished from unarmed military service. Article 6.1 of the Bulgarian Law on Alternative Service of 16th May 2003 states: “Alternative service is executed in: the military forces, organisations and departments financed by the government, in municipality and state factories in positions, which do not require carrying or using weapons”. It is reported that in Mongolia, on grounds of “religious faith or moral/ethic belief, a citizen... may join an alternate form of military service in professional or specialised civil defence units and sub-units or paramilitary unit for Border troops assistance and other humanitarian organisations.”¹⁹³ The revealing phrase “alternative military service” also appears elsewhere; it was for instance used when the issue was first covered in the 1995 Constitution of Azerbaijan; the word “military” was deleted in a 2002 amendment, implying that there was a real contradiction to be cleared up, not simply a matter of translation. In the same vein, Article 21.3 of Law 2510/97 in Greece states that those performing alternative service “are considered as quasi-enlisted in the armed forces.”

In Brazil, the “alternative” service, defined in Article 3 of the relevant Law, No. 8.239/93 as “the exercise of administrative, aid, philanthropic or even productive activities”(3.2), is usually undertaken within the military and is in fact always in one essential respect unarmed military service: it is allocated by the authority of the Chief of the Armed Forces *after* enlistment. Even if it is ever performed “in subordinate agencies to the Civil Ministries, by means of conventions between these and the Military Ministries, as long as there exist reciprocal interests”(3.3), the conscript thus remains a soldier on secondment, not a civilian. The concomitant, that conscientious objectors who have performed such “alternative” service suffer no subsequent discrimination by comparison with those whose service was what the constitution terms “essentially military”, is therefore unsurprising, even though welcome.

¹⁹³ Myagmarjav, G. & Nergui, B. (2003), “Formation of the Legal Environment of Mongolian Civil-Military Relations” in Palamdorj, Sh. and Fluri, P., Democratic Oversight and Reform of Civil-Military Relations in Mongolia: A Self-Assessment Centre for the Democratic Control of Armed Forces (DCAF), Geneva, Chapter 3

TABLE 15: Administration and arrangements for alternative service

State	Authority responsible	Specific responsibilities (C - also determines recognition of COs)	
Albania	Ministry of Defence / Ministry of Labour and Social Affairs jointly		
Armenia	Ministry of Defence		
Austria	Ministry of Interior Provincial Governor	general responsibility approves employing organisations	
Bosnia-Herzegovina (S)			
Federation	Commission for Civilian Service (appointed by Ministry of Defence) supervisory Commission by Ministry of Justice	C	
Rep. Srpska	Ministry of Defence	C	direct supervision
Brazil	Chief of the Armed Forces in coordination with the Military Ministries (Law 8239/91, Art.3.1)	C	
Bulgaria	Ministry of Welfare and Labour	C through appointed Commission	
Croatia	Commission for Civilian Service (appointed by Ministry of Health and Social Care)	C	
Cyprus			
Denmark	Ministry of Interior	C through appointed Board	
Estonia			
Finland	Ministry of Labour		
Georgia	State Commission for Civilian Service	confirms decision of district military commission	
Germany	Federal Office of Civilian Service (appointed by Ministry of Youth, Family Affairs, Women & Health)		
Greece	Ministry of Defence	C through appointed Commission direct supervision	
Hungary (S)	Ministry of Employment		
Latvia	Ministry of Defence		
Lithuania			

<p>• Type of service and where performed. M - unarmed military P - in public sector N - in NGOs</p>	Conscript may choose placement?	Appeal and transfer possibilities
P in theory (see text)		
	May be permitted to substitute own arrangements	Transfer to military service possible
PN		Transfer possible on application of conscript or employer
MP		
M; C only by secondment from military		
MP (but see text)		No
PN	Stated preference will usually be respected but no obligation to do so	Transfer possible on application of conscript or employer
M; Civilian service apparently not yet implemented MPN		
<p>P? - "structural units in the area of government of the Ministry of Internal Affairs or the Ministry of Social Affairs which are engaged in rescue, social care or emergency work." However no legislation nor any actual case since 1996.</p>		
MN	Most conscripts find own placements within time limits, otherwise assigned to state training centre.	
P		
PN	May be permitted to substitute own arrangements	
MP		
PN		
M; Civilian service apparently not yet implemented		

State	Authority responsible	Specific responsibilities (C - also determines recognition of COs)
Macedonia, the FYR of	Ministry of Defence	direct supervision
Moldova	Directorate of Alternative Service (answerable to Republican Recruitment Commission)	Local officers receive and investigate applications on behalf of Recruitment Commissions; Directorate approves employers, makes placements, organises training, monitors fulfilment adjudicates on disputes
Norway Poland	Ministry of Justice Ministry of Labour	
Romania	Ministry of Defence	direct supervision
Russian Fed.	Federal Service for Labour and Employment	makes allocations; receives appeals - decisions are relayed to the conscript through local Military Commissariat
Serbia- Montenegro	Commission for Civilian Service (appointed by Ministry of Defence) Military Sector	Approves employers. seeking the views of the Ministry responsible "for the area of activity in which the organisation operates". Receives monthly reports about the conscript's work, including, eg details of any special leave awarded
Slovakia	Ministry of Defence	
Sweden	National Service Administration (reporting to Ministry of Defence)	
Switzerland	Ministry of Economic Affairs	
Taiwan Ukraine	Ministry of Labour and Social Policy	
USA (S)	Selective Service Agency (see text)	employer, assisted by any co-ordinating agency which has organised the placement, reports to the SSA on satisfactory performance
Uzbekistan	Ministry of Defence	

Type of service and where performed. M - unarmed military P - in public sector N - in NGOs	Conscript may choose placement?	Appeal and transfer possibilities
PN		Through the local "sector of defence" to the "Sector of defence & critical management"
not clear (see text)	No indication of any opportunity to choose.	Yes, in principle, to the alternative service authorities (Article 23)
PN PN		
PN - also "trade companies in appropriate fields"		Transfer to military service possible
P - only federal and regional, not municipal organisations.	no	to the Federal Service for Labour and Employment, whose decision can be appealed to the Courts
P N - only four NGOs approved for the purpose	Informal advance contacts with employing organisation encouraged, but these are not binding on the allocation	No formal system
PN		
P	"as far as possible" (Article 3,7)	
PN - including any private body serving the public interest		
P		yes
PN	May suggest own placement usually accepted if it fits the criteria and the employer and the employer is willing to sign a contract with the SSA.	to the Civilian Review Board, whose decision shall be final

5.2 Administration of alternative service

Information as to exactly how civilian alternative service schemes are operated in practice is relatively sparse. It would however appear to be a general model that, as well as the conscript, two parties are involved; the body responsible for the administration of the scheme and the employing organisation. Even when both are within the State sector the two remain distinct. Unarmed service in the military apart, no instance has been found where the body which assigns the conscript to alternative service is itself the subsequent employer.

The usual practice is that one and the same administering body finds, or assesses the suitability of, potential employers, allocates conscripts to placements, monitors the performance of these arrangements and handles any disputes which arise. Sometimes this is also the body which is responsible for adjudicating on claims of conscientious objector status. The allocation of responsibilities in those countries which have either a functioning alternative service system or the necessary legislative provisions to institute one is indicated in Table 14.

Although the employing organisations may be civilian, the administration of the alternative service system is often firmly within the control of the Ministry of Defence or other military bodies. Elsewhere the influence is indirect; the supervising body may be itself a civilian agency, but appointed by the Ministry of Defence. This is for instance true of the Selective Service Agency in the USA, which continues with a skeleton staff while obligatory military service is suspended.

The close involvement of the military in the administration of alternative service arrangements can help to blur the distinction between unarmed military service and civilian service, breeding suspicion that civilian placements are not truly civilian. Many placements in the Russian Federation have been complained of in this regard; the list issued by the Ministry of Labour of some 700 organisations offering a total of over 23,500 placements includes the Ministry of Defence, the Federal Service of Specialised Construction, the Russian Agency for Conventional Weapons and the Russian Organisation for Ammunition.

This has also been an issue in Armenia, where a number of Jehovah's Witnesses refused to accept alternative service because a lack of information about the details of the possible placements made it impossible to be certain that they would truly civilian. Early in 2005, 22 Jehovah's Witnesses did however come forward as the first Armenians to perform alternative service, and at first were satisfied that the psychiatric hospitals, sanatoriums and nursing homes to which they had been allocated were civilian establishments and that stipulations that military-style uniforms were to be worn and a military oath of allegiance taken were not at first insisted upon in practice.¹⁹⁴ By the end of the year, however, all twenty-two had left their placements, complaining that it had become increasingly clear that they were indeed in military establishments, and had been treated as members of the military.¹⁹⁵

¹⁹⁴ General Counsel of Jehovah's Witnesses, evidence submitted to the OHCHR, February 2005

¹⁹⁵ Corley, F. "Armenia: We are breaking our Council of Europe commitments, official admits", Forum 18 News Service, Oslo (www.forum18.org), 7th November 2005.

5.3 Where can alternative service be performed? - Employing organisations and allocation to placements

...in the public interest...

(Commission on Human Rights Resolution 1988/77, OP4)

Many alternative service placements are in the public sector, but a number of States allow private non-governmental, humanitarian or other non-profit organisations to participate. The not-for-profit stipulation is specific in the legislation in the USA,¹⁹⁶ but usually implicit elsewhere. In both Romania and Moldova, however, there is some ambiguity. The relevant legislation in Romania refers to “public institutions, independent administrations and trade companies”¹⁹⁷ while that in Moldova uses the words “enterprises, institutions and organisations”.¹⁹⁸ In Moldova also, under Article 26 of the same Law, the alternative service scheme is funded by a 25% levy on the earned incomes of those performing alternative service; a similar situation apparently applies in Uzbekistan.¹⁹⁹ In both cases this has been sometimes interpreted as indicating that at least some of those admitted to alternative service were permitted to remain in their usual job; in other words this was, very thinly disguised, yet another provision allowing the buying-out of the military service requirement. However the Moldovan Government has indicated only that alternative service placements are “created by the local administration”²⁰⁰ The most recent legislation in Uzbekistan, furthermore, was introduced as setting the pay for those performing alternative service at 80% of that for those performing military service.²⁰¹

The funding of alternative service is in fact often a contentious issue. It is easy to assume that the costs of an obligatory substitute for military service will be met from the military service budget. This argument is, perhaps understandably, not well received in ministries of defence - there is indeed a certain irony in the concept that the stipends of conscientious objectors performing alternative service should be a charge on the defence budget - and a number of States require those organisations offering placements to conscripts performing alternative service to provide all (Croatia, the USA) or part (Austria, Germany) of their remuneration. Even when the employing organisation is within the public sector, this can act as a disincentive to offer alternative service placements.

There seems moreover to be considerable variation in the degree to which the authority responsible for alternative service takes the initiative in searching for potential employers or whether it simply responds to their approaches. In the Bosnian Federation, for example, a public call for establishments to apply for recognition was made once a year.²⁰² This however did not result in enough suitable placements for all the conscripts who had been recognised as conscientious objectors. Similar

¹⁹⁶ Center on Conscience and War (2002), Conscientious Objectors and the Draft, Washington, DC.

¹⁹⁷ Article 2.2 of the Decree on Alternative Service (618/1997)

¹⁹⁸ Article 7 of the Law on Alternative Service, (633/1991).

¹⁹⁹ Corley, F., Uzbekistan: Jehovah's Witnesses Criticise Conscientious Objector Trials, (Keston News Service, 6th April 2001)

²⁰⁰ State response to OHCHR Questionnaire, 2003.

²⁰¹ “Uzbekistan introduces alternative military service” Radio Free Europe - Radio Liberty newswire, 2nd June 2003 (www.rferl.org/newswire/2003/06/2-TCA/tca-020603.asp)

²⁰² Prigovor za Mir (Regional Network “Objection for Peace”) (2004) Comparative study on the existing models of civilian service in the region - future models of civilian service for the countries of the region

shortfalls have been recorded elsewhere - in Croatia, Poland and Slovakia, for example. This sometimes means that recognised conscientious objectors reaching the maximum age for military service without having performed alternative service. In such instances they are usually treated as having escaped the requirement altogether.

Paradoxically, the same situation applies to about a third of conscientious objectors in Norway, where those performing alternative service are paid completely by the Ministry of Justice, with a small per capita fee from the employer being applied not to the funding of the scheme but towards the Government's contribution to UNICEF. Although there is thus no shortage of alternative service placements, the Government has placed an annual ceiling on its commitment.

Although in Norway this clearly has no influence on the number of conscientious objectors recognised, there is less cause for confidence when such a ceiling is set by the defence authorities, as for instance in Bulgaria.²⁰³ In such circumstances a suspicion is always created that what ought to be a decision solely on the merits of the individual case is in fact dictated by the armed forces manpower needs.

The specific rules regarding the type of organisation, whether publicly or privately financed, which can offer alternative service usually list the areas of activity covered; Table 16 gives a list of examples, almost certainly not exhaustive, from States which currently have alternative service schemes, or which did so until they recently ceased enforcing obligatory military service.

Particularly when the potential employer is a non-governmental organisation, its suitability will be vetted. The documentation for the 2004 Sarajevo conference gives an uniquely detailed insight into the sort of criteria which have been used in the western Balkans. Thus in Croatia eligibility as an "alternative service provider" is available to "Organisations which perform scientific, educational, cultural, sport, social, health, sanitary or humanitarian work in the Republic of Croatia, and in civil bodies and bodies of local and regional autonomous units (and) associations which have been working for at least three years on promotion and protection of human rights, health protection, improvement of the quality of living, disabled persons care, children's care, environment protection and sustainable development, social care, youth work, democratisation and development of civil society and culture." The criteria set out in the Bosnian Federation were similar: the organisation must have been working for at least three years within the Federation on promotion and protection of human rights, protection of health and environment, care of children and disabled persons, social protection, development of civil society and culture. Additionally, in order to qualify, they had to possess office space, have at least three full-time employees, and their accounts had to be in order.²⁰⁴ At the same time alternative service placements should not threaten existing jobs, or replace job opportunities for the unemployed, although it was not quite clear how, and how effectively, this stipulation was policed.

Once initial approval has been given it is rare for an establishment to be required to go through a reapplication process, unless of course some breach has led to its approval

²⁰³ Article 6.4 of the Law for Replacement of Military Service with Alternative Service

²⁰⁴ Prigovor za Mir (Regional Network "Objection for Peace") (2004) Comparative study on the existing models of civilian service in the region - future models of civilian service for the countries of the region

being withdrawn. Sometimes, however, as for example in Austria²⁰⁵, formal notice of recognition specifies the activities supported and number of places allocated, so that detailed changes would require renegotiation.

...compatible with the reasons for conscientious objection...
(Commission on Human Rights Resolution 1988/77, OP4)

In many cases, although an attempt may be made to match placement allocated to the skills of the conscript, he himself has no say in the decision. Elsewhere, as shown in Table 15, there is a greater or lesser degree of willingness to allow a choice, or even to consider the conscript's own suggestions of possible placements. In the USA, this is explicitly allowed for in one section of the questionnaire used to match individuals to the jobs available. Such suggestions will usually be accepted if the nature of the employment fits the relevant criteria and the employer is prepared to enter in to a formal agreement with the Selective Service Agency.²⁰⁶

Austria and Germany go further and allow conscripts to seek retrospective recognition of a longer period of community or voluntary service which they have performed completely independently as satisfying the alternative service requirement. Rather than twelve months of formal alternative service, for example, Austria allows two years community service in development co-operation abroad to be credited, or 14 months voluntary service, which must be completed by the age of 30.²⁰⁷

Even when there is not a direct involvement of the conscript in the allocation of substitute service, there is sometimes an appeal process, which may directly bear on the suitability of the allocation. Jehovah's Witnesses performing alternative service in Taiwan "have the legal right to refuse anything to do with the military and can ask for a transfer if the work is not suitable for a Christian."²⁰⁸ In the USA, an appeal against an assignment, on the grounds that it violates the basis of the conscientious objection, can be made to the "Civilian Review Board", whose decision will be final.

The system of appeals to transfer in the Russian Federation is, like the initial allocation, handled centrally through the Federal Service for Labour and Employment and is a slow process. Of 66 claims for "transfer to an acceptable form of service" lodged by Jehovah's Witnesses between January 2004 and January 2005, only five had been resolved by the end of 2004.²⁰⁹

There are a number of instances of provisions to allow transfer from alternative service to military service. In the Bosnian Federation a formal declaration withdrawing the status of conscientious objector had to be made, while in the other Bosnian "entity", Republika Srpska, it was assumed that this would involve transfer to unarmed military service, without withdrawing the status of conscientious objector. Irrespective of when the transfer is made there is sometimes a minimum length of service in the category transferred into; six months in Republika Srpska, four months

²⁰⁵ Response by Government of Austria to questionnaire from OHCHR, 2003

²⁰⁶ Center on Conscience and War, Conscientious Objectors and the Draft, Washington DC (General Board of Church and Society of the United Methodist Church), 2002 edition, p.39.

²⁰⁷ Response by the Austrian government to the OHCHR questionnaire, 2003.

²⁰⁸ General Counsel of Jehovah's Witnesses, response to OHCHR questionnaire 2003.

²⁰⁹ General Counsel of Jehovah's Witnesses, evidence submitted to the OHCHR, February 2005

in Austria.²¹⁰ The military service requirement in Serbia-Montenegro makes no allowance for time served in alternative service, although those who are permitted to transfer in the opposite direction do receive appropriately-reduced alternative service allocations.²¹¹

In Bosnia-Herzegovina and Serbia-Montenegro the postponement of alternative service is/was allowed on the same basis as the postponement of military service. The rules in Serbia-Montenegro, essentially based upon those which applied in the Yugoslav army are quoted extensively in Table 6. Appropriate proofs have to be supplied when applying to defer.

²¹⁰ Response by the Austrian government to the OHCHR questionnaire, 2003.

²¹¹ Prigovor za Mir (Regional Network "Objection for Peace") (2004) Comparative study on the existing models of civilian service in the region - future models of civilian service for the countries of the region

TABLE 16: Nature of alternative service placements

Health, (almost everywhere), including specifically:	
Hospitals:	Albania; Portugal
Sanatoriums	Armenia
Psychiatric hospitals	Armenia
“diagnosis of illnesses... drug, tobacco, alcoholism prevention, assistance to persons with disabilities, children and the elderly”	Portugal
Nursing homes:	Armenia; Taiwan
“Organisations for rehabilitation of disabled persons”	Republika Srpska
Social Work/ Social/community services:	Albania; Austria (including “youth welfare, commemoration services, peace services”); Poland; Russian Federation; Slovakia; USA
Federal ministries (Natural Resources, Labour, Defence)	Russian Federation,
Education:	Slovakia; USA
Humanitarian Organisations:	Albania; Mongolia
Culture	Slovakia
Environmental Protection:	Albania; Austria; Georgia; Poland; Slovakia; Switzerland; USA
“Ecology services”	Moldova
Agriculture:	Romania, USA
Forestry:	Romania
National parks:	Portugal
Weather Forecasting Service:	Russian Federation
Construction	Moldova, Russian Federation
Rescue services, including specifically:	
Fire Fighting	Albania; (and prevention), Moldova, Portugal
Rescue at sea:	Portugal
Disaster relief	Kyrgystan
Earthquake relief:	Taiwan; Portugal
Floods, epidemics and “other public calamities”:	Portugal
Road safety (Austria) / Car accidents: (Portugal)	
Work in judicial authorities, and with refugees & asylum seekers:	Austria
Prison Services	Russian Federation
Administration of the conscientious objection / alternative service system itself:	
Netherlands; Norway	

5.4 How does the duration of alternative service compare with that of military service?

Table 17 shows the evolution of ratios between the duration of military service and alternative service since about 1990. In five of the countries listed in the table the lengths are now equal; elsewhere (including Italy, where the Constitutional Court ruled in 1989 that a longer alternative service was unconstitutional)²¹² the lengths had been equalised before compulsory military service was suspended. At the other extreme, an equal number of countries, however, still require a period of alternative service exactly twice as long as that of obligatory military service, and in Finland the discrepancy, 13 months to 6, is even greater. Meanwhile, although less than twice the length of military service, the 42 months of alternative service required by Cyprus, represent 16 months longer than the equivalent military service in Cyprus and no less than 18 months longer in Armenia and the Russian Federation.

As was shown in Table 4, variable lengths of obligatory military service are common. Sometimes these are in recognition of different characteristics of recruits; educational status, for instance, or family responsibilities. Logically, such differences are often reflected by variations in the equivalent lengths of alternative service. Other variations however reflect service in different branches of the armed forces, or at different ranks, and Finland has quoted some of these in mitigation of the extreme disparity.²¹³ This would be appropriate only if it could be shown that conscientious objectors would not otherwise have the option of choosing the shortest duration of military service.

... 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... 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... was based on reasonable and objective criteria. In the circumstances, the Committee finds that... the author was discriminated against on the basis of his conviction of conscience."

Human Rights Committee View on *Foin v France* (Communication 666/1995)²¹⁴

Despite the growing body of jurisprudence, particularly from the Human Rights Committee, that any differential in length which cannot be justified on firm objective grounds must be considered punitive and thus unacceptable, the trend has not always been positive. In general this is not because alternative service has been lengthened, but simply because it has not always kept pace with the progressive shortening of

²¹² Horeman, B. & Stolwijk, M. (1998), Refusing to Bear Arms, War Resisters International, London.

²¹³ Summary Record of the 82nd Session of the Human Rights Committee, 19th October 2004 (UN Document CCPR.SR.2227, Para 24)

²¹⁴ ICCPR, A/55/40 vol II (3rd November 1999) 30 at para. 10.3.

TABLE 17: Relative Lengths of Military and Alternative Service

	Alternative Service Introduced	Date of changes in duration	Military Service (months)	Alternative Service (months)	Alternative as % of military
Albania	2003		12	12	100
Armenia	2004		24	42 36 (u)	175 150
Austria	<i>pre 1990</i>		8	8	100
		1991	8	10	125
		1994	8	11	138
		1996	8	12	150
Bosnia-Herzegovina: Federation		until 1991: see Yugoslav SFR			
		1992	12	24 (u)	200
	1996		12	?	?
		2002	6	?	?
		2004	4	6	150
		2006	suspended		
Republika Srpska		1992	18	24 (u)	133
	1996		9	12	133
		2001	6	10	167
		2004	4	10	250
		2006	suspended		
Brazil			12	12 (u)	100
Bulgaria	1998		9	13.5	150
<i>graduates</i>			6	9	150
Croatia		until 1991: see Yugoslav SFR			
		1992	10	15	150
		2001	6	8	133
Cyprus	1992		26	42	162
Czechoslovakia (until 1992)	1990		18	27	150
Czech Republic		from 1993: see Czech Republic, Slovakia			
		until 1992: see Czechoslovakia			
		1993	12	18	150
		2004	suspended		
Denmark	<i>pre 1990</i>		9	9	100
Estonia	1994		8	16 minimum	200
Finland	<i>pre 1990</i>		8	16	200
		1993	6	13	217

	Alternative Service Introduced	Date of changes in duration	Military Service (months)	Alternative Service (months)	Alternative as % of military
France	<i>pre 1990</i>		12	24	200
		1992	10	20	200
		2002	suspended		
Georgia	1998		18	36	200
Germany	<i>pre 1990</i>	1995	10	13	130
		2003	9	10	111
		2004	9	9	100
Greece	1997		18	36	200
			<i>12</i>	<i>28</i>	<i>233</i>
			<i>6</i>	<i>20</i>	<i>333</i>
	<i>1997 - 2002</i>		<i>3</i>	<i>15</i>	<i>500</i>
		2003	12	30	250
			12	23	192
	<i>reductions based on family circumstances</i>		9	17	189
	<i>2003-</i>		6	11	183
			3	5	167
Hungary	1989		18	28	156
		1990	12	22	183
		1997	9	18	200
		2002	6	11	183
		2005	suspended		
Italy	<i>pre 1990</i>		12	18	150
		1997	10	10	100
		2005	suspended		
Kyrgystan	2002		18	24	133
<i>graduates</i>			12	18	150
Latvia	2002		12	24	200
Lithuania	1996		12	18	150
Macedonia (FYR)		until 1991: see Yugoslav SFR			
	2001		9	14	156
		2003	6	10	167
Moldova	1991		18	24	133
		2002	12	24	200
Mongolia		2002	12	24	200
Norway	<i>pre 1990</i>		12	16	133
			9	13	144

	Alternative Service Introduced	Date of changes in duration	Military Service (months)	Alternative Service (months)	Alternative as % of military
Poland	1988		24	36	150
		1990	18	36	200
		1991	18	24	133
		1999	12	18	150
		2004	10	18	180
<i>graduates</i>			3	6	200
Portugal	<i>pre 1990</i>	1994	4	7	175
		2005	suspended		
Romania	1996		12	24	200
		2003	8	12	150
Russian Federation	2004		24	42	175
<i>graduates</i>			12	21	175
Serbia-Montenegro		until 1991: see Yugoslav SFR			
		1992	12	24 (u)	200
	2003		9	13	144
Slovakia		until 1992: see Czechoslovakia			
		1993	12	18	150
		1995	12	24	200
		2000	9	18	200
		2004	6	9	150
Slovenia		until 1991: see Yugoslav SFR			
		1992	7	7	100
		2005	suspended		
Spain	<i>1984</i>	1991	9	13	144
		2002	suspended		
Sweden	<i>pre 1990</i>		7.5	7.5	100
Switzerland	1996		8.5	13	153
Taiwan	2000		22	24	109
Ukraine	1999		18	27	150
Uzbekistan	1992		18	24	133
<i>graduates</i>			<i>12</i>	<i>18</i>	<i>150</i>
		2002	12	24	200
			9	18	200
Yugoslavian Socialist Federal Republic (until 1991)	1989		12	24 (u)	200
		from 1992: see separate entries			

Notes: Durations in **bold** are those believed to apply at the beginning of 2006.
in *italics* relate to shorter periods of service for specific groups.

military service which has been a feature of the period. Sometimes a reduction in the obligatory term of military service has not been accompanied by any immediate change in the alternative service legislation; sometimes the problem has been that the relevant legislation has stipulated in absolute terms the difference between the two.

Thus in Greece the 18 months difference stipulated in the Act (no.2510/1997) which established alternative service made that service exactly double the length of the normal obligatory military service. Shorter periods of military service (of 12 months, 6 months, or 3 months) at the time applied on the basis of family circumstances, children of one parent households, the older sons in large families and the fathers of families all benefiting roughly proportionally to the size of the family. The equivalent periods of alternative service were set at 28 months, 20 months and 15 months respectively. When in 2003 compulsory military service in the army was shortened to 12 months (a few months longer in the other services), this meant that under Act 2510/1997 the normal period of alternative service became 30 months, although this was now two-and-a-half times the length of military service. Law 3257/04 rationalised the system and marginally improved the differential by making the length of alternative service for each category of conscript exactly one month less than twice the military service.²¹⁵

The slight increase in the proportional discrepancy in Norway has a similar cause. Here the length of alternative service has been set as one month more than the “basic” - which in this case means the maximum rather than the normal - length of military service.

The relevant legislation elsewhere, for instance in the Czech Republic (Law 18/1992), and in France, stated that alternative service would last (in these instances) one-and-a-half times, or twice, as long as military service. Thus when the length of military service was changed that of alternative service was adjusted automatically, maintaining the same differential.

The differential itself is often justified in terms of the different nature of the two forms of service. Thus in 2003 the German government explained that those performing alternative service did not wear uniform, were not subject to an “immediate command relationship”, had fixed working hours, and were not required to live in barracks.²¹⁶ The Russian Federation reported that those performing alternative service had to work an 8 hour day, 5 day week, whereas the obligations of the military were permanent. Furthermore, they were permitted to follow courses of study in their free time, which conscripts in the military were not.²¹⁷ However in the case of Germany such arguments were cited to justify a differential of one month, since abandoned, but in the Russian Federation those performing alternative service are enrolled for three quarters as long again as those who perform military service, an extra eighteen months.

²¹⁵ General Counsel of the Jehovah's Witnesses, Evidence submitted to the UN Human Rights Committee regarding the State Report of Greece, 1st March 2005

²¹⁶ Response by German Government to questionnaire from OHCHR, 2003.

²¹⁷ Response by Government of the Russian Federation to questionnaire from OHCHR, 2003

Another argument often cited, eg. by Slovakia²¹⁸, refers to the reserve obligations of conscripts who performed military service. This is of course not valid everywhere; in not all countries are those performing alternative service exempt from all reserve duties; nor does being on the military reserve in time of peace always actually entail any duties. As an explanation for differences in duration this would be most convincing if it could be shown to reflect an exact equivalence to the amount of time a military conscript would actually spend in reserve mobilisation, an equation which was claimed by Hungary before the abolition of compulsory military service.²¹⁹

Furthermore, as will be shown in the Section on conditions of service, the implication that the restrictions on the personal freedom suffered by those performing military service have no parallels in the arrangements for alternative service is certainly not true everywhere, or in every case. An instance was quoted at the 2004 Sarajevo conference²²⁰ of a conscript in Macedonia who was employed in a residential care establishment where he had 24-hour seven-day-a-week responsibilities, but was still required to serve for the longer period justified by the less onerous duties attached to alternative service.

No instances have hitherto been recorded where the length of alternative service is actually less than that of military service. Recent proposals in Israel²²¹ would however create such an anomaly. It is clear that, although the proposed service would be required of recognised conscientious objectors, the proposals are mainly targetted at those religious and ethnic groups which are exempted from military service. Nevertheless, these developments deserve to be followed with interest.

²¹⁸ Summary Record of the 82nd Session of the Human Rights Committee, 18th July 2003 (UN Document CCPR.SR.2108, Para 29)

²¹⁹ General Counsel of Jehovah's Witnesses, response to OHCHR questionnaire 2003

²²⁰ Regional Conference "To Europe through conscientious objection and civilian service", Sarajevo 20-22 September 2004

²²¹ Ettinger, Y. & Alom, G. "Government approves civilian national service for all non-conscripts", Haaretz (www.haaretz.com), 18th December 2005.

5.5 Remuneration and other conditions of service

The Commission on Human Rights... reiterates that States, in their law and practice, must not discriminate against conscientious objectors in relation to their terms or conditions of service
(OP6 of Resolution 1998/77)

5.5.1 General

Some States set the remuneration for alternative service equal to that of military service, although this is most common where the distinction between the two is not very clearly established; Brazil, Sweden and (formerly) the Republika Srpska. By contrast, in the regulations in the USA the remuneration for alternative service is completely unlinked to that for military service; the organisation providing the employment is “urged, but not required, to pay the going rate”.²²²

The 20% differential in Uzbekistan between the pay of those performing military service, who also receive free food and clothing, and those performing alternative service, has already been mentioned (p.115). As announced in a statement by the Chairman of the State Religious Affairs Committee, on 31st May 2003, these differences were explicitly meant to be punitive and deterrent.²²³

Conscripts undertaking alternative service in Croatia receive no salary from the State, but, in parallel with those performing military service, qualify for an exhaustive list of social benefits - “health care, health insurance and rights in case of accidents, illness or deterioration of illness... social care, employment, pension and disability insurance and other rights that military servants have”. They also are provided as necessary with protective clothing, and, if employed more than 80 km from their home, free accommodation. Elsewhere, the scanty information available often hints that issues such as health insurance are overlooked for conscripts undertaking alternative service. Health care is for example not among the “social safeguards and facilities” listed in article 24 of Moldova’s Law on Alternative Service, (633/1991).

One feature which is sometimes assumed to distinguish the conditions associated with military service from alternative service is that those performing military service are required to live in barracks, while those performing alternative service can work, like civilians, from their usual home. Certainly in Bosnia-Herzegovina, Croatia and Serbia-Montenegro this was favoured as keeping down the costs of alternative service. However the distinction does not always hold in individual cases; some alternative service placements are by their nature residential, and in some countries, Greece and the Russian Federation in particular, alternative service is as a rule performed away from the conscript’s home area.

...and not of a punitive nature.
(Commission on Human Rights Resolution 1988/77, OP4)

²²² Center on Conscience and War, Conscientious Objectors and the Draft, Washington DC (General Board of Church and Society of the United Methodist Church), 2002 edition, p.39.

²²³ “Uzbekistan introduces alternative military service” Radio Free Europe - Radio Liberty newswire, 2nd June 2003 (www.rferl.org/newswire/2003/06/2-TCA/tca-020603.asp)

In Greece, Article 19 of Law 2510/1997 states that alternative service cannot be performed in Athens or Thessaloniki and gives the Minister of Defence authority to extend this list by decree. According to the National Commission for Human Rights²²⁴, four other large urban areas have thus been added to the list so that the areas in which it is not permissible to perform alternative service include more than half of the national population. This exclusion has not been adequately explained and is widely seen as punitive. In the words of the NCHR “it would not be unfair to emphasise that (*this*) wide exclusion rather tends to render the everyday life of an objector as difficult as possible (without access to many facilities), whereas big military units are still around several big cities of Greece.” Conscientious objectors performing alternative service are reportedly often posted to remote islands and not allowed to leave during the period of alternative service, meaning that (unlike the situation in other countries) the restrictions on their freedom of movement are certainly no less severe than those which apply to conscripts performing compulsory military service. Jehovah’s Witnesses, and presumably others belonging to religious minorities often find that they are assigned to parts of the country where they are remote from worshipping communities of their faith.²²⁵

In Armenia, Jehovah’s Witnesses found that they were prevented from leaving the workplace after working hours in order to participate in worship. Moreover, they “were forced to wear military style uniforms and name badges marked “Armed Forces of the Republic of Armenia”, were regularly visited by military police and given degrading work where they were treated as soldiers. Even the food was provided by the military.”²²⁶

The Taiwan Alternative Service Law, by contrast, expressly excludes wearing of uniform.²²⁷

As in Greece, alternative service placements in the Russian Federation are “as a rule” distant from the conscript’s home, and often in remote parts of the country. In its response to the OHCHR’s 2003 questionnaire, the Russian Federation carefully listed the benefits, guarantees and compensation in connexion with special nature of work; it counts towards their employment record, and as appropriate towards employment in their career speciality, compensation for time spent in the far north, hazardous employment benefits and compensation leave according to labour code, increased in proportion to the travel distance of the posting from the conscript’s home. Meanwhile at home they do not lose position on the waiting lists for accommodation, or improvements; for three months after the end of the alternative service the conscript has the right to reclaim from his former employer his job or an equivalent position, or to continue his studies. Health care is assured, there is free transport to and from the location of the placement, and for holidays. Free, hostel-style accommodation is to be provided by the employing organisation. Even those performing unarmed military service are not housed in military accommodation. However, they have no right to refuse a contract, to hold a managerial post, strike, undertake other employment, leave the locality without the employer’s consent, terminate or abandon their posting.

²²⁴ Response by the Greek National Commission for Human Rights to OHCHR questionnaire, 2003.

²²⁵ General Counsel of Jehovah’s Witnesses, response to OHCHR questionnaire 2003

²²⁶ War Resisters International, “Armenia: continued persecution of conscientious objectors”, CO Alert issued 19th May 2005.

²²⁷ General Counsel of Jehovah’s Witnesses, response to OHCHR questionnaire 2003

In Greece, too, persons performing alternative service are not allowed to strike or participate in any way in trade union activities. By contrast, Norway has, and when relevant the Netherlands had, trades unions representing the interests not just of those performing alternative service, but of military conscripts as well.

Leave allowances vary, and information is not readily available on how they compare with those granted to military conscripts. In Serbia-Montenegro, and Croatia, on top of the standard leave there is the possibility of “a rewarding leave of 30 days for special devotion to performance of jobs that are assigned to him”; there is also a right to special leave (7 days in Serbia-Montenegro, 5 in Croatia) in the event of marriage, child birth, the death of a member of the immediate family, or examinations. (In Serbia-Montenegro a vague category of “private business” is added to this list.)²²⁸ Austria allows 14 days holiday after the seventh month. In Greece the allowance is two days per completed month of work; in Taiwan the reference is only to all public holidays, and time off if the conscript needs medical assistance (which would not usually be considered leave).²²⁹

5.5.2 Disciplinary proceedings

A special case of the conditions of service are the disciplinary proceedings in respect of specific wrongdoing or inadequate performance. It is often claimed, particularly when States are trying to justify differential durations, that one of the respects in which military service is a harder option than alternative service is the requirement of unquestioning obedience to orders and the subjection to military disciplinary procedures. As with other generalisations, this needs careful scrutiny to see to what extent it holds up in any particular case. Sometimes, as has been described above with regard to Sweden, conscripts who are performing alternative service are subjected to a quasi-military disciplinary regime.

There are, however, certain respects in which conscripts performing alternative service may face sanctions which have no equivalent in military service. They may be stripped of their status, and allocated to military service. Or they may have their period of service lengthened on the grounds of inadequate performance. However badly a military conscript performs his duties, and whatever punishments he has to endure, there is no ultimate sanction because with rare exceptions he knows that he will walk free at the end of the statutory time.

In Serbia-Montenegro, unarmed or civilian service can be suspended for “activity which contradicts the reasons for which he has been sent into this service (fight, use of cold or fire arms, violent behaviour etc) also in the case of not fulfilling his work

²²⁸ Prigovor za Mir (Regional Network “Objection for Peace”) Comparative study on the existing models of civilian service in the region - future models of civilian service for the countries of the region Working Materials for Regional Conference “To Europe through conscientious objection and civilian service”, Sarajevo 20-22 September, 2004.

²²⁹ General Counsel of Jehovah’s Witnesses, response to OHCHR questionnaire 2003. The same source reports that conscripts performing alternative service work a forty-hour week and receive a monthly pay of about \$200; there is however no indication of who pays.

duties.”²³⁰ In Croatia, unauthorised absence of more than thirty days can be punished by the loss of “the right of civilian service”. Those who “self-willedly and unjustifiably” absent themselves for a continuous period of between ten and thirty days have the service “suspended”. In the Russian Federation, those who strike or leave the locality where they are posted can be stripped of conscientious objector status.²³¹ In Poland²³², the Minister of Labour “considers appeals against the decisions of the Voivodship Draft Boards concerning lifting substitute service and issues administrative decisions on the suspension of substitute service.”

Wherever it is stipulated, moreover, the ultimate responsibility for the decision about this form of disciplinary action is taken by the authority responsible for the initial allocations. Where that body is a military one (as in. Serbia-Montenegro) it is even more unsatisfactory that it should perform this role of adjudicating in disciplinary matters.

It is however in Greece that the punitive use of the withdrawal of the status has been most controversial. Paragraph 686 of Greece’s first Report under the International Covenant for Civil and Political Rights²³³ states that “One may no longer enjoy” the various rights attached to alternative service “(a) if one ceases to fulfill the prerequisites of article 18 for the acknowledgement of the right to alternative civilian social service; (b) if one is declared “insubordinate”; (c) if one commits a disciplinary offence or a crime which may result to interruption or termination of the employment contract; (d) if one exercises trade unionist activities or participates in a strike during the alternative civilian social service; (e) if one is punished for violating the provisions regarding the issuing of leaves of absence, as these provisions are in force for the employees of the respective public sector.”

It is reported that the Ombudsman has criticised these provisions on the grounds that they do indeed have the practical effect that a recognised conscientious objector can have that status revoked as a punishment for shortcomings in the fulfilment of alternative service, and can be required notwithstanding his conscientious objection to perform military service.²³⁴ The rather vague wording of stipulation (b) (insubordination) and the very nature of stipulation (d) (banning trade union activities) raise questions in themselves. It may also be noted that no details are given here of any due process for consideration of these various disciplinary decisions. The Jehovah’s Witnesses quote the case of Ioannis Pantoulas, who was in 2000 summarily dismissed from his placement in the post office on the island of Kos, and stripped of conscientious objector status, which meant that even as he was challenging his dismissal in the courts he was liable to report for military service and in danger of being charged with the military offence of “insubordination” for failure to present himself.²³⁵

²³⁰ Article 27b of the 2003 Military Service Act, quoted in Prigovor za Mir (Regional Network “Objection for Peace”) Comparative study on the existing models of civilian service in the region - future models of civilian service for the countries of the region, p.20 and p.22 Working Materials for Regional Conference “To Europe through conscientious objection and civilian service”, Sarajevo 20-22 September, 2004.

²³¹ Article 21.2 of the 2003 Law on Alternative Civilian Service.

²³² Fifth periodic report of Poland under the International Covenant for Civil and Political rights, UN Document reference CCPR/C/POL/2004/5, para. 329.

²³³ UN Document reference CCPR/C/GRE/2004/1.

²³⁴ Response by the Greek National Commission for Human Rights to the OHCHR questionnaire, 2003.

²³⁵ General Counsel of the Jehovah’s Witnesses, Evidence submitted to the UN Human Rights Committee regarding the State Report of Greece, 1st March 2005

The question of withdrawing the option of alternative service because of misdemeanours in the conduct of that service, and of transfer to the military service betrays a fundamental misconception about the nature of the exercise. Underlying such a possibility is the idea that permission for the performance of alternative service is a privilege which may be withdrawn if it is abused, rather than a requirement equivalent to that of military service, which has been placed upon those who have been recognised as having an objection of conscience to the latter. It is conceivable that there might be conduct during the performance of alternative service which could throw doubt upon the sincerity of the claimed conscientious objection. Even in such a situation, a summary verdict not based on due investigation would not be appropriate. But such an unusual circumstance apart, nothing in the performance of alternative service can have any bearing on the initial finding that there was a conscientious objection to military service and this having once been accepted, to transfer a conscript to such service is to commit a major violation of his freedom of religion and belief.

5.5.3 Reserve obligations

Although the continuing liability for reserve service of those who have been conscripted into the armed forces is often quoted as a reason for any longer duration alternative service, it should not be assumed that those who perform alternative service are exempt from reserve duties. Often those who have performed alternative service are subsequently allocated to the reserves, sometimes, as in Serbia-Montenegro, to the military reserves, but in an unarmed capacity; sometimes, as in Macedonia and the Bosnian Federation to civilian protection or civil defence.

In Moldova those who have performed alternative service are liable for reserve duties “in liquidating the consequences of exceptional situations”. In Austria those who have completed alternative service join a special “natural disaster reserve” until the age of 50. Unlike the military reserve, there is no restriction on the posting of such reservists overseas.²³⁶ Stolwijk however reports that these reserve duties have never been called upon in practice. Indeed there is often little detail about to what, if any, extent active performance of reservist duties will be called upon. Croatia is an exception: it is stipulated that at most two months a year may be spent in civilian reservist duties.

²³⁶ Response of Austria to OHCHR Questionnaire, 2003.

6. SUMMARY AND CONCLUSIONS

World-wide, systems of obligatory military service are in decline. Progressive shortenings of the length of service, often until it is barely long enough for the most basic of military training, have in many cases been followed by the complete suspension of call-up. Even where this has not yet happened, the military itself frequently sees conscripts as irrelevant to modern operational needs, and leads the discussion about the future “professionalisation” of the armed forces. As a result many of the issues, predicated on an environment of conscription, which have hitherto dominated discussions about conscientious objection to military service - notably the suitability of arrangements for providing alternatives to obligatory military service - are relevant in fewer and fewer societies. Conscientious objection itself, however, has neither gone away, nor become irrelevant. Instead the focus shifts to three aspects which have in the past been comparatively ignored.

- First, the freedom of conscience of all members of the armed forces. In particular their right to be recognised as conscientious objectors should they develop such convictions during the course of their military service, even in an exclusively volunteer force, which stems from the principle that the freedom of thought, conscience and religion includes the freedom to change one’s beliefs.
- Second, the importance of ensuring that the rights of conscientious objectors are safeguarded with at least as much force in time of war as in time of peace. As the core of conscientious objection is the refusal to set out willingly to take other lives it is likely that any objections will be stronger, not weaker, in time of war. It is also not unreasonable to suppose that the experience of actual combat might crystallise a conscientious objection in a serving member of the military; the fact that an application is made during a time of conflict is by no means an indication that it is spurious. It is therefore disturbing that there are so many instances where legislation affecting the right to conscientious objection is applicable only in time of peace. Similar concerns relate to other aspects of military recruitment arrangements such as age limits. It is important that such legislation is replaced, or at least supplemented by wartime provisions *at least* as favourable. Moreover, where there is no conscription, or the provisions have been suspended, firm legislative guarantees are needed that, if it is reinstated in the context of general mobilisation, the right of conscientious objection will be fully recognised and that the measures adopted for the treatment of those who claim such a right are completely in accordance with the best practices which have been identified. This of course includes ensuring the recognition of conscientious objections developed by reservists, who will usually be the first to be mobilised when peace gives way to war.
- Third, the conscientious implications of military service by indirect means, particularly financial, assume a greater significance. Given the finding that whether the applicable system is of conscription or volunteer recruitment there is a universal tendency for those recruited to be from among the poorer and less-well educated classes of society, it is particularly disturbing to note the frequency of formal provisions whereby exemption from military service, even on grounds of conscience, is either sold or is penalised by a tax. And with the phasing out of

physical conscription, the only military service which will be required of most citizens will be in the nature of a financial contribution to military expenditure through the tax system. Some describe this as tantamount to recruitment through taxes; and it is often only by refusing to make such a contribution that those with a profound conscientious objection to military activity may manifest this. The protection of the rights of such persons, and the search for legislative means to recognise and accommodate such “conscientious objection to military taxation”, although not the focus of this report, remain the central concerns of Conscience and Peace Tax International and of national campaigns in more than twenty countries.

Having said this, it is appropriate to summarise a number of findings of this study which are particularly relevant to situations where conscription still applies:

- If the right to conscientious objection is not recognised or is fiercely denied within a system it should not be assumed either that in the individual case that the avoidance of military service was not based on conscientious grounds just because no attempt was made to prove these; nor that lack of publicised cases be taken as an indication that there is no latent conscientious objection.
- The provision of information is crucial. Potential recruits should be clearly informed of their rights and the procedures to follow. Where there are mechanisms whereby serving members of the military can obtain release as conscientious objectors, information about these too should be readily available to those who might be affected. Similarly, information should be available to reservists whether originally conscripts or volunteers.
- Particular attention needs to be paid to the freedom to change one’s religion or belief. Not only can this be crucial in the case of serving members of the military; it also means that evidence of a person’s past behaviour should not in itself be used to invalidate a claim of conscientious objector status.
- Conversely, no one should be forced to change his or her views or beliefs. This means that even when an application for conscientious objector status has been turned down the applicant should not be forced unwillingly into the armed forces, and should not be subject to repeated calls.
- Special care has to be taken in the case of those while they are minors are presented with circumstances where they may or may not decide to apply for conscientious objector status. In particular, no decision which they make at this stage should be treated as binding them for the whole of life.

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