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Oral Statement to the 59th session of the UN Commission on Human Rights under Item 11(g)<sup>1</sup>

Delivered by Rachel Brett, Quaker UN Office, Geneva, on Wednesday 9 April 2003

### CONSCIENTIOUS OBJECTION TO MILITARY SERVICE

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

**One of the conceptual problems which arises in relation to conscientious objection to military service is the confusion between national defence, security, patriotism and the use of military force. Many people see these as one and the same thing. However, this is not necessarily the case. Many pacifists are deeply devoted to their country, and are willing to serve in other ways: this is where the question of a civilian service as an alternative to military service comes in: it mediates between the conscience of the individual and the demands of the State.**

**In 1989, the UN Commission on Human Rights recognised conscientious objection to military service as a legitimate exercise of the right to freedom of thought, conscience and religion.<sup>2</sup> Since 1993, it has also been accepted as being included within the International Covenant on Civil and Political Rights by the Human Rights Committee.<sup>3</sup>**

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<sup>1</sup> Because of time constraints, only the text in bold will be delivered orally

<sup>2</sup> UN Commission on Human Rights resolution 1989/59, reinforced and developed in succeeding resolutions 1993/84, 1995/83, 1998/77, 2000/34 and 2002/45.

<sup>3</sup> Human Rights Committee General Comment 22(48), followed and developed in subsequent questioning of States reporting under the Covenant and in the Committee's consideration of individual complaints under the First Optional Protocol to the Covenant. None of the regional human rights courts has yet ruled on the question. However, the Committee of Ministers of the Council of Europe Recommendation 8 (1987), recommended that the Council's Members States provide for the release from the obligation to perform military service those who refused "for compelling reasons of conscience", and the Charter of Fundamental Rights of the European Union (proclaimed in December 2000) in the provision on the right to freedom of thought, conscience and religion, states specially, Article 10(2): "The right to conscientious objection is recognised..." Similarly, the Inter-American Commission on Human Rights invited OAS States whose legislation did not exempt conscientious objectors from military service to review their legal regimes (98th session, Annual Report, 1997, Chapter VII - Recommendations of the Inter-American Commission on Human Rights).

The right to freedom of thought, conscience and religion is an unqualified and non-derogable right, even during times of national emergency threatening the life of the nation.<sup>4</sup> The right to manifest one's religion or belief too is non-derogable, although some restrictions on it are permitted. However, it is subject "only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others".<sup>5</sup> Unlike some other human rights provisions, no limitation is permitted on the grounds of national security.

The basis of conscientious objection to military service in the right to freedom of thought, conscience and religion gives it an extensive rather than a restrictive scope. The Human Rights Committee's General Comment 22 states that Article 18 covers theistic, non-theistic and atheistic beliefs, as well as the right to change one's religion or belief. The Committee has also made clear that providing for conscientious objectors only on *religious* grounds is not acceptable.<sup>6</sup> Conscientious objection has been specifically acknowledged as deriving from "principles and reasons of conscience, including profound convictions, arising from religious, moral, ethical, humanitarian or similar motives"<sup>7</sup>.

Conscientious objection to military service is not limited to pacifists, that is those who object to all use of armed force or participation in all wars. It also encompasses "those who believe that the use of force is justified in some circumstances but not in others, and that therefore it is necessary to object in those other cases (partial objection to military service)".<sup>8</sup> There is a long history of "selective" or "partial" objection, for example on the basis of the Just War concept. Although General Comment 22 refers to situations where "the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief"<sup>9</sup>, at no point does it specify that the objection has to be to the use of lethal force at all times.

#### *Practicalities*

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

1. it must be established by law and the law must be applicable in practice;
2. its availability, and the means of claiming it, must be known to those for whom it is relevant;
3. the recruitment practices must be such as to enable a claim of conscientious objection to be made;
4. the procedure for claiming it must meet the international standards, for example, who decides on the validity of claims and on what basis;

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<sup>4</sup> Article 18, Universal Declaration of Human Rights; Article 18 (1) International Covenant on Civil and Political Rights

<sup>5</sup> International Covenant on Civil and Political Rights, Article 18(3)

<sup>6</sup> See, for example, the Human Rights Committee's concluding observations on Ukraine (CCPR/CO/73/UKR of 12 November 2001, para. 20) and on Kyrgyzstan (CCPR/CO/69/KGZ of 24 July 2000, para. 18)

<sup>7</sup> UN Commission on Human Rights resolution 1998/77. At the same time, the Human Rights Committee's General Comment 22 makes clear that "Article 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. The terms belief and religion are to be broadly construed." (paragraph 2)

<sup>8</sup> UN Report, "Conscientious Objection to Military Service" by Eide and Mubanga-Chipoya (New York, 1983)

<sup>9</sup> Paragraph 11

5. the scope (grounds) of the recognition must not be restricted in ways not permitted by international law;
6. It must be available to serving soldiers and reservists as well as to new recruits. Although the question of conscientious objection to military service arises most frequently in the context of conscription (compulsory or obligatory military service), it can arise even when the original decision to join the armed forces was voluntary, or when the obligation to undertake compulsory military service was initially accepted.<sup>10</sup>
7. the nature, conditions and duration of alternative service must be compatible with the requirements of international law;<sup>11</sup> and
8. there must be no discrimination against conscientious objectors either during the time of alternative service or afterwards, in law or practice. Such discrimination would be a continued violation of their right to freedom of thought, conscience and religion.<sup>12</sup>

#### *Alternative Service*

**Since conscientious objection to military service is an expression of the right to freedom of thought, conscience and religion, any alternative service required instead of military service must be compatible with the grounds of the objection. Many States provide a number of alternatives, including unarmed military service for those whose objection is only to the personal use of arms and civilian service under civilian administration for those whose objection is to all use of military force.<sup>13</sup> Alternative service is not always required of conscientious objectors: they, or some categories of them, may be exempted from military service. Alternative service which is punitive in nature, whether because of the type of service or its duration in comparison with the length of military service, is not acceptable because it seeks to deter or punish the exercise of the right to freedom of thought, conscience or religion. If not of the same duration as military service, the alternative service must be "comparable in length"<sup>14</sup> to it. Any disparity in length is only permissible if it is based on "objective and reasonable criteria, such as the nature of the specific service concerned or the need for a special training in order to accomplish that service".<sup>15</sup>**

#### *Who decides?*

The difficulty of ruling on the validity of another person's conscientious objection to military service has been resolved in some States by allowing the individual a free choice between military and alternative service, in Finland for example. If an external

<sup>10</sup> UN Commission on Human Rights resolution 1998/77 explicitly acknowledges this, "Aware that persons performing military service may develop conscientious objections", and at no point limits the issue to objection to compulsory military service. The Universal Declaration on Human Rights, and General Comment 22 of the Human Rights Committee both explicitly recognise the right of the individual to change their religion or belief, which leads to the same effect.

<sup>11</sup> UN Commission on Human Rights resolution 1998/77, paragraph 4, "Reminds States with a system of compulsory military service ... of its recommendation that they provide for conscientious objectors various forms of alternative service which are compatible with the reasons for conscientious objection, of a noncombatant or civilian character, in the public interest and not of a punitive nature".

<sup>12</sup> Human Rights Committee General Comment 22

<sup>13</sup> See for example Recommendation (1987) 8 of the Committee of Ministers of the Council of Europe.

<sup>14</sup> Recommendation (1987) 8 of the Committee of Ministers of the Council of Europe

<sup>15</sup> Human Rights Committee in *Foin v France*, Communication No. 666/1995 (CCPR/C/67/D.666/1995), decided on 3 November 1999, similarly *Venier and Nicolas v France*, Communications Nos. 690/1996 and 691/1996, and *Maille v France*, Communication No. 689/1996, all decided 10 July 2000.

process is adopted, this cannot be an internal or military one, but an "independent and impartial" body "with the task of determining whether a conscientious objection is genuinely held in a specific case, taking account of the requirement not to discriminate between conscientious objectors on the basis of the nature of their particular beliefs."<sup>16</sup>

**The increasing recognition of conscientious objection to military service internationally, regionally and nationally is a significant contribution to the protection of the human rights of individuals who otherwise are forced either to undergo punishment (often repeated imprisonment) or to violate their most fundamental beliefs or principles. It should also be viewed as a positive contribution to society, nationally and internationally, rather than a negative refusal to participate. It is an affirmation of life and of the importance of seeking alternatives to war and the use of military force.**

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<sup>16</sup> UN Commission on Human Rights resolution 1998/77, para. 3