

Michael Wiener and David Fernández Puyana (eds)



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A
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PEACE

Bringing together the Right to Peace and
Freedom of Conscientious Objection to Military Service

Michael Wiener and David Fernández Puyana (eds)

A Missing Piece for Peace

**Bringing Together the Right to Peace and
Freedom of Conscientious Objection to Military Service**

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University
for Peace



Authors of the book chapters:

Arnoldo André Tinoco

Annyssa Bellal

Heiner Bielefeldt

Derek Brett

Rachel Brett

Robin Brookes

Andrew Clapham

David Fernández Puyana

Antonio de Filippis

Nazila Ghanea

Gordan Grlić Radman

Christian Guillermet Fernández

Wolfgang S. Heinz

Murat Kanatlı

Georgios Karatzas

Angelos Nikolopoulos

Julián Andrés Ovalle Fierro

Lazaros Petromelidis

Laura Rodwell

Francisco Rojas Aravena

Maria Mercedes Rossi

Eduardo Sánchez Madrigal

Ibrahim Salama

Ahmed Shaheed

Michael Wiener

Gentian Zyberi

Co-editors of the book: Michael Wiener and David Fernández Puyana

Illustrations: Michael Wiener

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A Missing Piece for Peace
Bringing Together the Right to Peace and
Freedom of Conscientious Objection to Military Service

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Forewords

H.E. Dr. Arnaldo André Tinoco
Minister for Foreign Affairs and Worship of the Republic of Costa Rica

Costa Rica decided in 1949 to abolish the army as a permanent institution. Consequently, the respect of international law along with the deepening and strengthening of multilateralism are the best guarantee for the defense of democracy, peace, dialogue and cooperation.

On the basis of our commitment to the United Nations, Costa Rica is fully dedicated to the promotion of peace and the culture of peace. The promotion of human rights, including the right to peace, is also one of the main axes of the Costa Rican foreign policy. Chaired by Ambassador Christian Guillermet Fernández of Costa Rica, the United Nations General Assembly adopted the Declaration on the Right to Peace on 19 December 2016.

Led by Costa Rica alongside other States – Croatia and Poland –, the Human Rights Council recognized the right of everyone to have conscientious objection to military service as a legitimate exercise of the right to freedom of thought, conscience and religion, as laid down in article 18 of the Universal Declaration of Human Rights and article 18 of the International Covenant on Civil and Political Rights.

Recently, the United Nations General Assembly declared that everyone on the planet has a right to a healthy environment. Costa Rica also led this historical milestone. In this regard, it is also worth highlighting the speech I delivered during the 77th session of the United Nations General Assembly, on 21 September 2022, by which Costa Rica made a call to adopt a Declaration of Peace for the Ocean. I underscored that we cannot survive as a species without our ocean.

Finally, I would like to express our appreciation to the editors and contributors of the present book who have wholeheartedly joined their endeavour to strengthen the linkage between the three United Nations pillars through the universal recognition of the right to enjoy peace, human rights and development.

H.E. Dr. Gordan Grlić Radman
Minister of Foreign and European Affairs of the Republic of Croatia

Human history has been marked with wars since the beginning of times. With time, people, due to their religion or belief, slowly started objecting to compulsory military service, which included the active use of weaponry. For such conscientious objectors, facing the consequences of their beliefs, such as enduring convictions, imprisonment or even death, became a fate more acceptable than betraying their individual principles.

History teaches us that one of the first known and recorded conscientious objectors was a 21-year-old Maximilian, born in eastern Numidia, today's eastern part of modern Algeria. Maximilian evoked his Christian faith in the year 295 when refusing enlistment in the Roman army. Consequently, he was executed for this refusal, and was later canonized by the Roman Catholic Church as Saint Maximilian of Tebessa. In modern times, during the First and Second World War, thousands more refused military service in Europe and in the United States.

It might be difficult to comprehend fully the delicacy of the principle, and even more importantly, the tangible consequences of conscientious objection. For example, my country was brutally attacked in the early 1990s, and had there been no readiness by the people to perform their military service, one can only assume how our plight for freedom and independence would have evolved. Therefore, and in this specific case, the citizens of the Republic of Croatia and myself ended up forever grateful to our war veterans for defending our independence, territorial integrity and sovereignty.

While defending a country implies using weapons, something not every person is ready for or capable of, conscientious objectors can perform various duties of a civilian character. Just like in time of war as in time of peace, conscientious objectors should be given the full possibility of performing alternative services of a civilian nature, services that are neither discriminatory nor punitive, and are in line with their capabilities and beliefs. Here, I would like to underscore the fact that conscientious objection is protected by the Constitution of Croatia.

Although it is not a self-standing right in international human rights law, the right to conscientious objection to military service is inherent in the right to freedom of thought, conscience and religion, as set out in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and in many regional human rights instruments.

The UN Human Rights Committee, which monitors the implementation of the ICCPR, stated in 1993 that the right to conscientious objection to military service can be derived from article 18 of the ICCPR, inasmuch as the obligation to use said lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief.

Within the UN system, the issue of conscientious objection has been a topic of debate since the 1970s. My country started presenting resolutions on this issue from 2002, through the Commission on Human Rights, and more recently, from 2012 through the Human Rights Council. In 2013, Croatia, together with Costa Rica and Poland, led the adoption of a resolution by which the Council, for the first time since its inception, recognized the fact that the right to conscientious objection can be derived from the right to freedom of thought, conscience and religion or belief.

Though not legally binding, resolutions adopted by consensus guarantee their widest possible implementation. In that light, it is notable that this issue has enjoyed 30 years of adoptions via consensus. During the 51st session of the Human Rights Council in October 2022, together with its partners, Croatia ensured another consensus adoption of this resolution, with the highest number of cosponsors in its history. This was a sign of significant progress and a clear demonstration of growing support by UN Member States.

We understand the challenges of developing a system that, at the same time, provides for the security of a country, and ensures the right to conscientious objection to military service. This is precisely why my country remains ready to engage in dialogue and enable the sharing of best practices in law and practice. All stakeholders will have the opportunity for such an exchange during the upcoming workshop by the Office of the High Commissioner for Human Rights in fall of 2023.

Defending the freedom of religion or belief and its inherent right to conscientious objection to military service remains one of Croatia's priorities at the United Nations in Geneva. We are pleased to have a strong partner in the international community of likeminded States, while we remain strongly committed to the further promotion of this right. I hope this book will contribute to the wider understanding of the importance of the principle of conscientious objection to military service.

Prof. Dr. Francisco Rojas Aravena
Rector of the University for Peace

The Right to Peace captures the essence of the mission of the United Nations: to eliminate the scourge of war. That task has been the focus of the main multilateral body's efforts for more than 75 years. It is currently challenged by Russia's war in Ukraine and related nuclear threats. These now extend to other regions, especially the Korean Peninsula. More and better multilateralism is required, strengthening spaces for dialogue and concordance. Geopolitical threats are still present, as are civil wars and domestic polarization. It is essential to give more space to dialogue and to put a stop to violence. It is essential to *establish peace among human beings*.

We are on the threshold of the Anthropocene. The severe climate emergency affects life on the planet and the very existence of humanity. Our only Common Home is in grave danger. The Right to Peace must be understood as a basic and essential relationship with the planet. It is crucial to *establish peace with the planet*. There are specific areas that require immediate, urgent attention, such as the pollution of the seas. We need to *establish peace with the oceans*.

Political systems, particularly democratic ones, have lost support. Political parties are in crisis around the world. Economic crises, growing inequalities, increasing poverty, and hunger are stressing societies. The legitimacy of representation is eroding. Weak governments and fragile States fail to provide democratic governance, stability and security. Corruption further erodes governments and opens greater spaces for transnational organized crime. It is essential to re-establish democratic coexistence.

The Covid-19 pandemic caused immense setbacks in education. Years of schooling and literacy have been lost. Inequities in access to recent technologies have increased social gaps in education and knowledge. *Without Education, there is neither peace nor development*.

The University for Peace (UPEACE) is an institution of higher education dedicated to the study of peace. Created pursuant to UN General Assembly Resolution 35/55, UPEACE has been educating leaders for peace for the past four decades. It is a unique global academic institution with over 4,800 Alumni from more than 120 nations.

Through its Master's and Doctoral degree programmes, UPEACE educates future leaders for peace to explore and formulate strategies and practices in various contexts to address the causes of multiple problems affecting human and

global wellbeing, and thus contribute to the processes of peacekeeping and peacebuilding.

The *Declaration on the Right to Peace*, approved by the General Assembly in 2016, proclaims that “international and national institutions of education for peace shall be promoted in order to strengthen, among all human beings, the spirit of tolerance, dialogue, cooperation and solidarity. To this end, the University for Peace should contribute to the great universal task of educating for peace...”

With this book, UPEACE fulfils its mandate from the United Nations General Assembly on the implementation of the *Right to Peace*. Freedom of thought and action make it possible to fulfil citizens’ duties and demand the corresponding rights. Cooperation is based on freedom of association, assembly, and action within the framework of the rule of law.

Education is the best instrument for change. Education creates confidence, and from it, comes the hope of a promising future of peace. From there, it is possible to take conscious actions linked to sustainable peace. The link between the right to peace and the right of conscientious objection to military service is remarkably close. This connection is vital for the maintenance and enhancement of peace and security, and the strengthening of human rights, fundamental freedoms and peace-oriented values. The freedom to choose a path other than the use of force has legitimacy and must be regulated to fulfil citizens’ duties within the framework of constitutional States governed by the rule of law.

I express my gratitude to the co-editors of the book, Michael Wiener and David Fernández Puyana.

If we want peace, we must prepare peace.

Dr. Annyssa Bellal
Executive Coordinator of the Geneva Peacebuilding Platform

What is Peace? Despite the apparent simplicity of the word, the answer to this question is not as straightforward as it would seem. Is Peace simply the absence of war or does it require the realization of other necessary elements? At the Geneva Peacebuilding Platform, we believe that Peace is a multifaceted concept. It is about prevention of conflict and eruption of violence, about respect of the environment and human development, and it is about justice and accountability.

At the heart of Peace, stands also the respect for human rights and fundamental freedoms as so eloquently proclaimed in article 1 of the United Nations Charter of 1945, which establishes, as one of the core purposes of the Organization: “To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion”.

In fact, human rights permeate all facets of sustainable Peace: their respect is paramount to prevent wars, to regulate, along with international humanitarian law, State and non-State behaviour during conflict, and to ensure a sustainable and just transition in the aftermath of armed violence. In other words, human rights are the golden thread that runs across the very concept of Peace.

And there is no clearer expression of this idea than the refusal to bear arms and to participate in war as an exercise of one’s freedom of conscience, as demonstrated by the different authors of the chapters in the present book.

A Missing Piece for Peace: Bringing together the Right to Peace and Freedom of Conscientious Objection to Military Service, edited by Michael Wiener and David Fernández Puyana, gathers an outstanding collection of chapters written by renowned scholars and practitioners. It offers an essential reflection on the importance and centrality of human rights *for* Peace, and also reminds us of the existence of a human right *to* Peace. It is thus with great pride and pleasure, that the Geneva Peacebuilding Platform introduces the present book to the broad peacebuilding community.

Part I.

A Missing Piece for Peace



Chapter 1

Introduction

Michael Wiener and David Fernández Puyana

A missing piece for peace. On the cover page of this book, the monumental sculpture *Broken Chair*, which stands twelve meters high in front of the United Nations Office at Geneva, illustrates both the despair and dignity of victims of armed violence.¹ In addition, the chair's mutilated fourth leg could be regarded as a symbol for various lacunae in the eternal endeavour of attaining peace across the globe. One of these missing pieces is the unresolved relationship between the right to peace and freedom of conscientious objection to military service, whose legal foundations, respectively, have been contested by some governments over the past decades.

The title of this book is also inspired by the General Assembly's 2020 Declaration on the commemoration of the seventy-fifth anniversary of the United Nations, which stresses that “[y]outh is the missing piece for peace and development.”² The inherent links between peace, development and human rights were also highlighted by the General Assembly in its 2016 Declaration on the Right to Peace, proclaiming that “[e]veryone has the right to enjoy peace such that all human rights are promoted and protected and development is fully realized.”³

Conscientious objection to military service is an issue particularly experienced by young people,⁴ but also persons older than 24 years, including

¹ See Handicap International, “Discover BROKEN CHAIR”, available online at <https://www.handicap-international.ch/en/broken-chair> (all hyperlinks were checked on 7 November 2022).

² General Assembly resolution 75/1, adopted on 21 September 2020, *Declaration on the commemoration of the seventy-fifth anniversary of the United Nations*, A/RES/75/1, para. 17.

³ General Assembly resolution 71/189, adopted on 19 December 2016, *Declaration on the Right to Peace*, A/RES/71/189, annex, article 1.

⁴ See the joint statement of 20 February 1975 by the International Youth and Student Movement for the United Nations, together with Amnesty International, Friends World Committee for Consultation, International Catholic Child Bureau, International Commission of Jurists, International Federation of Human Rights, International Movement for Fraternal Union Between Races and Peoples, Pax Romana – International Movement of Catholic Students and Graduates, War Resisters International, Women's International League for Peace and Freedom, World Assembly of Youth, World Conference of Religion and Peace, World Student Christian Federation, World University Service and World Young Women's Christian Association, E/CN.4/NGO/185, para. 9.

conscripts and those serving voluntarily, might develop conscientious objections prior to, during or after their military service. The right of everyone to have conscientious objections to military service has been recognized at the international level since 1987 as a legitimate exercise of the right to freedom of thought, conscience and religion, as laid down in article 18 of the Universal Declaration of Human Rights as well as article 18 of the International Covenant on Civil and Political Rights.⁵ The title of this book thus refers to *freedom* of conscientious objection to military service,⁶ which alludes to the underlying freedom of conscience. Already in their 1983 report on conscientious objection to military service, the UN Sub-Commission members Asbjørn Eide and Chama Mubanga-Chipoya defined *conscience* as:

“genuine ethical convictions, which may be of religious or humanist inspiration, and supported by a variety of sources, such as the Charter of the United Nations, declarations and resolutions of the United Nations itself or declarations of religious or secular non-governmental organizations. Two major categories of convictions stand out: one that it is wrong under all circumstances to kill (the pacifist objection), and the other that the use of force is justified in some circumstances but not in others, and that therefore it is necessary to object to those other cases (partial objection to military service).”⁷

This book seeks to bring (back) together freedom of conscientious objection to military service with the right to peace.⁸ Several chapters analyse the *travaux préparatoires* and final text of the Declaration on the Right to Peace as adopted in 2016 by the General Assembly, with 131 votes in favour, 34

⁵ Commission on Human Rights resolutions 1987/46, 1989/59, 1991/65, 1993/84, 1995/83, 1998/77, 2000/34, 2002/45 and 2004/35; Human Rights Council resolutions 20/2, 24/17, 36/18 and 51/6.

⁶ The terminology “freedom of conscientious objection to military service” is used as a shorthand for the longer formulation “right to freedom of conscientious objection to military service”.

⁷ Asbjørn Eide and Chama Mubanga-Chipoya, *Conscientious objection to military service*, Report prepared in pursuance of resolutions 14 (XXXIV) and 1982/30 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities by Mr. Asbjørn Eide and Mr. Chama Mubanga-Chipoya, members of the Sub-Commission, E/CN.4/Sub.2/1983/30/Rev.1, para. 21.

⁸ The present book does not focus on “the other R2P”, i.e. the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity (A/RES/60/1, paras. 138-139). For detailed discussion of the interrelation between the Right to Peace and the Responsibility to Protect see the “2R2Ps for Sustainable Peace” Initiative, a collaborative project carried out by the Embassy of Costa Rica in Turkey, Hacettepe University and University for Peace, available online at <http://2r2ps.org>.

against and 19 abstentions.⁹ In 2012, the Human Rights Council Advisory Committee had suggested to include a draft article, stating that “[i]ndividuals have the right to conscientious objection and to be protected in the effective exercise of this right”.¹⁰ However, several States did not support using concepts that lacked consensus in international law and thus the Human Rights Council’s draft¹¹ and the General Assembly’s Declaration on the Right to Peace did not refer to conscientious objection to military service. Yet, this right – with its legal basis in freedom of thought, conscience and religion – could be crucial for reinvigorating the individual nature of the right to peace. This would also contribute to promoting the rights of persons belonging to national or ethnic, religious and linguistic minorities, which are alluded to in the Declaration on the Right to Peace.¹²

While the Declaration does not provide an exhaustive definition of the term *peace*, its preamble recognizes that “peace is not only the absence of conflict but also requires a positive, dynamic participatory process where dialogue is encouraged and conflicts are solved in a spirit of mutual understanding and cooperation, and socioeconomic development is ensured”.¹³ It also recalls “the need for strengthened international efforts to foster a global dialogue for the promotion of a culture of tolerance and peace at all levels, based on respect for human rights and diversity of religions and beliefs.”¹⁴ Academic and artistic efforts to support such a dialogue were highlighted during the Human Rights Council’s intersessional workshop on the right to peace in June 2018, where Jennifer Pochat from the foundation “Paz Sin Fronteras” (Peace Without Borders) suggested that artists could create songs on the right to peace and that related videos could be shared on social media in order to generate awareness of how to reduce risks to peace.¹⁵ A subsequent example

⁹ Declaration on the Right to Peace, A/RES/71/189, annex. For the detailed voting record see A/71/PV.65, p. 26.

¹⁰ A/HRC/20/31, annex, draft article 5(1).

¹¹ A/HRC/RES/32/28.

¹² Declaration on the Right to Peace, A/RES/71/189, annex, preambular para. 34: “Recalling further that the constant promotion and realization of the rights of persons belonging to national or ethnic, religious and linguistic minorities as an integral part of the development of a society as a whole and within a democratic framework based on the rule of law would contribute to the strengthening of friendship, cooperation and peace among peoples and States”.

¹³ *Ibid.*, preambular para. 17.

¹⁴ *Ibid.*, preambular para. 24.

¹⁵ A/HRC/39/31, para. 41.

of a succinct formulation for an artistic advocacy message is “Violins instead of Violence”, which was used for music videos in 2022.¹⁶

In view of recent UN resolutions and thematic reports on the right to peace and on the right to conscientious objection to military service,¹⁷ there seems to be growing momentum for addressing both human rights in a holistic manner. The concluding remarks of the 2018 intersessional workshop on the right to peace stressed that human rights education should include a focus on the right to conscientious objection to military service.¹⁸ In July 2019, the Human Rights Council invited “Governments, agencies and organizations of the United Nations system, and intergovernmental and non-governmental organizations to disseminate the Declaration on the Right to Peace and to promote universal respect and understanding thereof”.¹⁹ In December 2020, the General Assembly reaffirmed the Declaration on the Right to Peace and emphasized the purpose of the United Nations “to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion”.²⁰

Furthermore, the 2022 analytical report by the Office of the United Nations High Commissioner for Human Rights (OHCHR) on conscientious objection to military service refers to the idea of compiling “a study of the linkages between the right to conscientious objection to military service and the right to peace”.²¹ Following up on this suggestion, the present book brings together chapters written by experts who have been involved in elaborating the 2016 Declaration on the Right to Peace or in shaping freedom of conscientious objection to military service since the 1980s. The contributors include diplomats, civil society representatives, academics and UN independent experts from the Advisory Committee, Human Rights Committee, a Human Rights Council-mandated investigation as well as former and current Special Rapporteurs. This book also highlights short personal stories (entitled

¹⁶ See for example the music videos entitled “Violins, Not Violence”, available online at <https://www.youtube.com/watch?v=gIP8IB2grBo> (22 March 2022) and <https://www.youtube.com/watch?v=7mJWy2GPuBM> (21 March 2022).

¹⁷ A/HRC/35/4; A/HRC/RES/36/18; A/HRC/39/31; A/HRC/RES/41/4; A/RES/75/177; A/HRC/50/43; A/HRC/RES/51/6.

¹⁸ A/HRC/39/31, para. 70.

¹⁹ A/HRC/RES/41/4, operative para. 5.

²⁰ A/RES/75/177, operative para. 1 and preambular para. 4. The same formulation was also used again in October 2022 in draft resolution A/C.3/77/L.28, operative para. 1 and preambular para. 4.

²¹ A/HRC/50/43, para. 31.

“VOICE”) about positive experiences and practices by conscientious objectors and peace activists.

Its publication in open access through University for Peace (UPEACE) Press is emblematic in view of the explicit reference, in article 4 of the Declaration on the Right to Peace, to UPEACE and its General Assembly-based mandate to “contribute to the great universal task of educating for peace by engaging in teaching, research, post-graduate training and dissemination of knowledge.”²² The book launch discussions at UPEACE in San José and at *Maison de la Paix* in Geneva in December 2022 commemorate Human Rights Day (10 December) and the anniversaries of the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (18 December) and of the 2016 Declaration on the Right to Peace (19 December).

The book is divided into fifteen chapters. After the present introduction, Michael Wiener provides in [chapter 2](#) an overview of the (missing) links between the right to peace and conscientious objection to military service. He compares these human rights to two sides of one coin, which have been delinked under international law over the past seven decades due to political considerations and diverging approaches at the national, regional and multilateral levels. He traces in a chronological order the evolution of these two rights and their interplay – or lack thereof – during the drafting of related UN declarations and international case law.

In [chapter 3](#), Wolfgang S. Heinz notes that the discussion of a (human) right to peace has been – and continues to be – a contentious issue, particularly between countries in the Western group and a number of countries in the Global South. In view of his insights as former Rapporteur of the Human Rights Council Advisory Committee’s drafting group on the right to peace, he describes the elaboration of the Advisory Committee’s draft declaration from 2010 to 2012, and he compares it to the Declaration on the Right to Peace as ultimately adopted by the General Assembly in its resolution 71/189 of 19 December 2016.

In [chapter 4](#), Maria Mercedes Rossi outlines the contributions by civil society to elaborating the Declaration on the Right to Peace. She directly witnessed this process as permanent representative of “Associazione Comunità Papa Giovanni XXIII” at the United Nations Office in Geneva since 2009. While

²² Declaration on the Right to Peace, A/RES/71/189, annex, article 4, referring to A/RES/35/55, annex to the International Agreement for the Establishment of the University for Peace and Charter of the University for Peace, article 2.

civil society organizations were aiming for a stronger declaration that ideally would have been adopted without a vote, she notes that the 2016 Declaration was the result of a non-consensual process on which States and civil society organizations maintain divergent positions. In terms of “appropriate sustainable measures” for implementing the 2016 Declaration, she highlights the civil society proposal of creating “Infrastructures for Peace” in order to prevent and manage conflicts, facilitate peace agreements, reconcile tensions as well as face political, social and economic transformation.

Chapter 5 focuses on the *travaux préparatoires* of the 2016 Declaration on the Right to Peace, notably during the negotiations from 2013 to 2015 in the intergovernmental working group, which was chaired by Christian Guillermet Fernández and when David Fernández Puyana was assistant to the Chairperson-Rapporteur. These two co-authors note that during the reading process of the draft declaration prepared by the Advisory Committee at the first session of the intergovernmental working group, most member States rejected the inclusion of a provision on the right of conscientious objection to military service by considering it as controversial. Yet the reference in article 3 to “appropriate sustainable measures” to implement the 2016 Declaration on the Right to Peace could arguably be an entry point for elaborating the right of conscientious objection to military service.

Chapter 6 analyzes education as a key instrument for a sustainable peace. Francisco Rojas Aravena stresses that in a world full of uncertainties, with increasing conflicts, it is necessary to improve and protect human rights and protect the planet. He highlights the 1999 Declaration and Programme of Action on a Culture of Peace, which provides a comprehensive look at how to transform and resolve violent conflicts. In addition, the goals set forth in the 2030 Agenda for Sustainable Development make it possible to promote education that empowers and transforms the values of individuals, society and humanity. This also resonates with the motto of the University for Peace (which was established by the United Nations General Assembly in its resolution 35/55): “If you want Peace, work for Peace”.

Turning the focus on freedom of conscientious objection to military service, in **chapter 7** Gentian Zyberi and Eduardo Sánchez Madrigal analyze the practice of judicial and quasi-judicial human rights bodies at the global and regional levels. While the position of the UN Human Rights Committee prior to 1993 was that the International Covenant on Civil and Political Rights did not provide for a right to conscientious objection, in its subsequent jurisprudence it has held that repression of the refusal to be drafted for compulsory military service, exercised against persons whose conscience or

religion prohibited the use of arms, is incompatible with the absolutely protected right to hold a religion or belief. At the regional level, the European Court of Human Rights has recognized in its case law since 2011 the right to conscientious objection to military service as an external manifestation of an individual's religion or belief. However, related legal developments have been rather scarce in the Inter-American and African systems of human rights protection.

[Chapter 8](#) highlights the growing understanding that conscientious objectors to military service are entitled to all the protections offered by freedom of religion or belief and by the full human rights framework. In this chapter, Ahmed Shaheed and Laura Rodwell reflect on the notions of conscience and of freedom of conscience, also outlining various types of claims made under conscientious objection to military service. Furthermore, they recount the current positions on this right that have been adopted by the UN Human Rights Committee and the European Court of Human Rights. Lastly, they identify the key features of the right to freedom of religion or belief and explore their implications for conscientious objection to military service.

[Chapter 9](#) explores the human rights of – and protection gaps faced by – conscientious objectors who live in territories controlled by armed non-State actors and *de facto* authorities. Michael Wiener and Andrew Clapham analyze the practice by international human rights mechanisms in their engagement with *de facto* authorities in Afghanistan (Taliban), Cyprus (northern part), the Republic of Moldova (Transnistrian region), and Azerbaijan (Nagorno-Karabakh region), along with the related international law on State responsibility and the case law of the European Court of Human Rights. At the normative level, they propose guidelines, following a graduated approach with differentiated obligations based on the capacities of the relevant States, *de facto* authorities with exclusive control over territory, and armed non-State actors.

Rachel Brett, who was representative for human rights and refugees at the Quaker United Nations Office in Geneva for more than twenty years, outlines in [chapter 10](#) the contributions by civil society to shaping freedom of conscientious objection to military service. She highlights that civil society actors have been crucial in getting conscientious objection recognized at the United Nations and in developing the related understanding of international human rights bodies. In addition, non-governmental organizations have taken the United Nations standards into regional fora as well as into the individual countries, and have encouraged, supported and advised conscientious

objectors in their real-life struggles of conscience as well as with the military, tribunals and societal attitudes.

In [chapter 11](#), Derek Brett evaluates human rights advocacy and the implementation of freedom of conscientious objection in practice. After tracing the emergence, recognition and nature of conscientious objection to military service, he zooms out to conscientious objections claimed in various other directions, notably in the field of taxation. Furthermore, he explores other avenues for advancing freedom of conscientious objection, for example through advocacy concerning the right to life and provisions on specifically protected groups, such as women, children and youth. He also refers to perspectives from religious communities and faith-based organizations; while some maintain that their members cannot be conscientious objectors, others have strongly endorsed conscientious objection to military service, and even of tax objection, in their public statements and declarations.

With a view to linking the dots, Nazila Ghanea and Michael Wiener focus in [chapter 12](#) on the minority perspective under the right to peace and freedom of conscientious objection. They stress that persons belonging to religious or belief minorities may face specific challenges in enjoying both rights. However, a dedicated minority perspective has largely been absent from discussions on the right to peace and freedom of conscientious objection during the elaboration of related norms and standards. They argue that applying the “Faith for Rights” framework and its peer-to-peer learning methodology – notably through the #Faith4Rights toolkit – may lead to a more balanced and holistic understanding between minorities, human rights and peace in a way that is mutually beneficial and reinforcing.

In [chapter 13](#), Ibrahim Salama and Michael Wiener discuss how the “Faith for Rights” framework may bridge in practice the divides between and among religion(s), belief(s), human rights, international law, and freedom of conscience. After explaining the methodology of peer-to-peer learning as advanced through the #Faith4Rights toolkit, they share lessons from related events tailored to different audiences, including children, youth, students and scholars, parliamentarians, judges and prosecutors, civil servants, diplomats, UN independent experts, national human rights institutions, faith-based actors, human rights defenders and peer-learning facilitators. At the end of chapter 13, they include a hypothetical case to debate concerning selective conscientious objection against getting involved in a specific armed conflict, questions of refugee law, and human rights responsibilities of States and armed non-State actors.

In [chapter 14](#), Heiner Bielefeldt explores ways for amplifying the peace-building potential of human rights. He notes that human rights are part and parcel of a complex peace project, since they normatively qualify the *goal* of peace, and they also pave the *way* to that goal, thus assuming their peace-building role at two interconnected levels. The chapter sketches the contours of a human rights-based concept of peace, which accommodates a diversity of viewpoints, open political debates and non-violent conflicts, stressing that people should be free to take an active ownership in the ongoing task of building peace. Furthermore, he turns to the institutional dimension of human rights protection, notably through a “human rights ecosystem” which ultimately may help building sustainable trust through structures of accountability.

In [chapter 15](#), Michael Wiener and David Fernández Puyana provide concluding remarks and an outlook on how to reinvigorate a holistic debate on the right to peace and freedom of conscientious objection to military service. Possible entry points may reside in follow-up to the existing streams of thematic Human Rights Council resolutions as well as the United Nations’ global work around the annual celebrations of the International Day of Peace and the International Day of Conscience. The chapter also refers to the Secretary-General’s Call to Action for Human Rights (2020) and his report “Our Common Agenda” (2021), including the proposed New Agenda for Peace as a key component of the Summit of the Future (2024). A holistic debate could build on the key message by the former Chairperson of the UN Human Rights Committee, Sir Nigel Rodley, who stressed that “[t]he right to refuse to kill must be accepted completely.”²³

²³ Human Rights Committee, *Atasoy and Sarkut v. Turkey*, Views adopted on 29 March 2012, CCPR/C/104/D/1853-1854/2008, appendix II, Individual opinion of Committee member Sir Nigel Rodley, jointly with members Mr. Krister Thelin and Mr. Cornelis Flinterman (concurring).

Chapter 2

The missing link between the right to peace and conscientious objection to military service

Michael Wiener

1. Looking at two sides of one coin

The right to peace and freedom of conscientious objection to military service may be compared to two sides of one coin. On the one side, the former has been spelled out by the UN General Assembly as a collective right in the Declaration on the Right of Peoples to Peace (1984) and it was subsequently recognized – both in its individual and collective dimensions – in the Declaration on the Right to Peace (2016). On the other side, freedom of conscientious objection to military service has been derived from – or even considered inherent in – the individual’s freedom of thought, conscience, religion or belief, pursuant to article 18 of the Universal Declaration on Human Rights (1948, UDHR) as well as article 18 of the International Covenant on Civil and Political Rights (1966, ICCPR).

Freedom of conscientious objection to military service, notably for pacifist objectors, constitutes an integral part of the right to peace, which stresses the importance of settling conflicts through peaceful means. Viewing these two sides of the coin holistically – with their individual and collective dimensions respectively – may seem compelling, however, diverging approaches at the multilateral level and political considerations have led to delinking under international law the right to peace and freedom of conscientious objection to military service over the past seven decades. Interestingly, many States that recognize the latter at the domestic level and that promote conscientious objection to military service at the global level, were among the 34 countries which voted in the UN General Assembly against the 2016 Declaration on the Right to Peace.¹ Conversely, other States that voted in its favour, opposed keeping the initial references to conscientious objection to military service in the draft declaration that had been prepared by the Human Rights Council’s Advisory Committee in 2012. Therefore, the Declaration on the Right to Peace, as adopted by the UN General Assembly on 19 December 2016, is conspicuously silent on freedom of conscientious objection to military service and does not even refer to freedom of conscience. Yet it recognizes

¹ For the voting record see A/71/PV.65, p. 26.

that “peace is not only the absence of conflict but also requires a positive, dynamic participatory process where dialogue is encouraged and conflicts are solved in a spirit of mutual understanding and cooperation, and socioeconomic development is ensured”.²

During its *travaux préparatoires*, some delegations had also criticized the notion of “entitlement” in article 1 of the 2016 Declaration on the Right to Peace,³ thus an explicit link to the related freedom of conscientious objection to military service would have highlighted the exercise of individuals’ human rights vis-à-vis the State. Such a substantive reference could have made a difference during the negotiations, and it might still change the dynamics positively with a view to reconciling opposing views in the multilateral context. As highlighted by the former Chair-Rapporteur of the open-ended intergovernmental working group on the draft UN declaration on the right to peace (2013-2015), Christian Guillermet Fernández, the only elements upon which consensus had not been reached during the negotiation process were the title and article 1 of the Declaration, both of which referred to “the right to peace”.⁴ This was echoed by Jennifer Philpot-Nissen of the World Council of Churches when she moderated the Human Rights Council’s intersessional workshop on the right to peace in June 2018. The workshop’s concluding remarks highlighted that the international community should deploy maximum efforts and creativity to reach a consensus on the title and article 1 of the Declaration on the Right to Peace, while human rights education should include a focus on the right to conscientious objection to military service.⁵ Interestingly, the Assembly of the Inter-Parliamentary Union also underlined “that there is a link between peace and the promotion and protection of all human rights” (including article 18 of the UDHR and ICCPR) and it unanimously recognized in March 2018 “the will of the United Nations General Assembly to continue examining the issue of the promotion and protection of the right to peace”.⁶

² A/RES/71/189, annex, preambular para. 17.

³ Christian Guillermet Fernández and David Fernández Puyana, *The Right to Peace: Past, Present and Future*, University for Peace, San José: 2017, p. 161.

⁴ A/HRC/39/31, paras. 10 and 12.

⁵ A/HRC/39/31, paras. 68 and 70.

⁶ Assembly of the Inter-Parliamentary Union (IPU), *Sustaining peace as a vehicle for achieving sustainable development*, Resolution adopted unanimously by the 138th IPU Assembly (Geneva, 28 March 2018), preambular para. 13, <https://www.ipu.org/download/4784>.

2. Diverging national and regional approaches

The missing link between the right to peace and freedom of conscientious objection to military service can also be observed at the national and regional levels in the Americas, Africa, Asia and Europe.

(a) National dichotomies

For example, Cuba has been one of the main sponsors at the intergovernmental UN Human Rights Council of its resolutions on the promotion of the right to peace. At the same time, Cuba noted in 2017 that there were no international human rights instruments that established a right to conscientious objection to military service, which – it argued – should be understood “as a notion based on the interpretations and general comments of the UN Human Rights Committee, which was therefore not binding even on states parties to the International Covenant on Civil and Political Rights”.⁷

Furthermore, Eritrea was a co-sponsor of the draft Declaration on the Right to Peace in 2016, both in the UN Human Rights Council and General Assembly.⁸ However, with regard to conscientious objection to military service, Eritrea dissociated itself in 2022 from the consensus on Human Rights Council resolution 51/6, stating the following after this resolution had been adopted without a vote on 6 October 2022: “Not all States enjoyed the same level of security, and Eritrea, as a small country with a small population, could not afford to grant everyone the right to conscientious objection. Eritrea would continue to mobilize its society to meet national security threats, as any country would do in the same situation.”⁹

In addition, Bolivia’s 2009 Constitution provides in its article 10(1) that “Bolivia is a pacifist State that promotes the culture of peace and the right to peace”.¹⁰ However, the Constitutional Court clarified in 2015 that this provision did not negate the civic duty of all Bolivians to assume the defence of Bolivia, when the unity, sovereignty and territorial integrity of Bolivia is compromised, as was established in article 108(13) of the Constitution.¹¹

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<https://www.ohchr.org/sites/default/files/Documents/Issues/RuleOfLaw/ConscientiousObjection/Cuba.pdf>

⁸ See A/HRC/32/L.18; A/C.3/71/L.29.

⁹ A/HRC/51/SR.42, para. 111.

¹⁰ https://www.oas.org/dil/esp/constitucion_bolivia.pdf (“Bolivia es un Estado pacifista, que promueve la cultura de la paz y el derecho a la paz [...]”).

¹¹ Tribunal Constitucional Plurinacional, Declaración 0029/2015 Sucre, 29 de enero de 2015, https://bitacoraintercultural.org/wp-content/uploads/2019/05/DCP_-0029_2015.pdf, p. 27.

Thus the constitutional provisions explicitly guarantee the right to peace, while at the same time prohibiting conscientious objection to military service in the event of an act of aggression.¹²

Although Bolivia ratified in 2008 the Ibero-American Convention on Rights of Youth, which recognizes that “[y]outh have the right to make conscientious objection towards obligatory military service”, Bolivia at the same time entered a reservation to the Convention’s related article 12.¹³ This was criticized by Alfredo Díaz Bustos, a Jehovah’s Witness and conscientious objector, in his petition to the Inter-American Commission on Human Rights as revealing “non-compliance with the friendly settlement agreement by the Bolivian State” as approved by the Commission in its report no. 97/05.¹⁴ In 2018, however, the Inter-American Commission held that the Bolivian State had succeeded in fully implementing the agreement by incorporating the right to conscientious objection to military service in draft legislation to reform military law and fostering a legislative debate on the issue; yet the Commission also urged Bolivia’s legislative authorities to complete discussion of that legislation as soon as possible.¹⁵

(b) American region

It remains to be seen, if and how the separate legal challenge against Bolivia of an atheistic conscientious objector, José Ignacio Orías Calvo, for not having exempted him from complying with obligatory military service will be decided on the merits by the Inter-American Commission on Human Rights. On 9 June 2020, it held the petition of Mr. Orías Calvo admissible, foreshadowing that in its future decision on the merits of the case “the Commission shall take into account the current conception of the content and scope of the rights invoked by the alleged victim” and that “human rights treaties are living instruments, with interpretation that must go side by side

¹² Cecilia M. Bailliet, *The Construction of the Customary Law of Peace: Latin America and the Inter-American Court of Human Rights*, Edward Elgar Publishing: Cheltenham, 2021, p. 99.

¹³ Bolivia Law No. 3845 of 2 May 2008, <https://www.lexivox.org/norms/BO-L-3845.html#norm> (“De conformidad con el Artículo 213° de la Constitución Política del Estado, Bolivia mantiene reserva de los incisos 1 y 2 de Artículo 12° de esta Convención, la cual fue formulada al momento de su suscripción.”).

¹⁴ Inter-American Commission on Human Rights, 2011 Annual Report, <https://www.oas.org/en/iachr/docs/annual/2011/Chap3D.doc>, paras. 228 and 236.

¹⁵ Inter-American Commission on Human Rights, 2018 Annual Report, <https://www.oas.org/en/iachr/docs/annual/2018/docs/IA2018cap.2-en.pdf>, para. 200. For a critical assessment see <https://derechosnacion.org/wp-content/uploads/2019/04/Diaz-Bustos-Articulo-Final.pdf>

with the evolution of times and current lifestyles”.¹⁶ This formulation alludes to a possible shift in the regional jurisprudence at the Inter-American level concerning freedom of conscientious objection. Academic commentators have also suggested in 2022 that “the Inter-American Commission may consider that its own position should be amended consequently” to mirror the legal recognition of the right to conscientious objection to military service, as reflected in the jurisprudence of the UN Human Rights Committee and of the European Court of Human Rights.¹⁷

With regard to the right to peace, the Inter-American Court of Human Rights in its advisory opinion of 15 November 2017 mentioned this right with a view to avoid precluding other rights or guarantees that are inherent in the human personality.¹⁸ The Court referred to the obligation of all persons to conduct themselves fraternally, quoting the first preambular paragraph of the American Declaration of the Rights and Duties of Man, which provides that “[a]ll men are born free and equal, in dignity and in rights, and, being endowed by nature with reason and conscience, they should conduct themselves as brothers one to another”.¹⁹ In this context of the broad notion of “conscience”, the Court explicitly named the right to peace, which may be infringed by massive conflicts “because displacements caused by environmental deterioration frequently unleash violent conflicts between the displaced population and the population settled on the territory to which it is displaced”.²⁰ In 2019, several civil society organizations in their draft Universal Declaration on the Human Right to Peace welcomed this advisory opinion, “since it implicitly recognizes the right to peace as an inherent right

¹⁶ Inter-American Commission on Human Rights, Report No. 147/20, Petition 1384-16, Report on Admissibility, 9 June 2020, *José Ignacio Orias Calvo v. Bolivia*, <https://www.oas.org/en/iachr/decisions/2020/boad1384-16en.pdf>, para. 12.

¹⁷ Ludovic Hennebel and Hélène Tigroudja, *The American Convention on Human Rights: A Commentary*, Oxford University Press, Oxford: 2022, p. 429.

¹⁸ Inter-American Court of Human Rights, Advisory Opinion OC-23/17 of 15 November 2017, requested by the Republic of Colombia, *The environment and human rights*, https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf, para. 66, referring to article 29 of the American Convention on Human Rights (<https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>).

¹⁹ American Declaration of the Rights and Duties of Man, preambular para. 1, https://www.oas.org/dil/access_to_information_human_right_American_Declaration_of_the_Rights_and_Duties_of_Man.pdf.

²⁰ Inter-American Court of Human Rights, Advisory Opinion OC-23/17 of 15 November 2017, requested by the Republic of Colombia, *The environment and human rights*, https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf, para. 66.

of the human being, in accordance with Article 29.c) of the American Convention on Human Rights”.²¹

(c) African region

The African Charter on Human and Peoples’ Rights states that “[a]ll peoples shall have the right to national and international peace and security.”²² The collective and individual aspects of the right to peace are both acknowledged in resolutions at the regional level. With regard to the situation between Sudan and South Sudan, in 2012 the African Commission on Human and Peoples’ Rights urged “the two States Parties to put an end to the conflict and preserve the *right to peace* and security of *the peoples* of Sudan and South Sudan” and recommended both Governments “to take all necessary measures to ensure under all circumstances the *right to peace* and security of *persons living in their territories*, and the right to asylum of nationals of the other State involved in the conflict” (emphasis added).²³ On the other side, in Africa there exists so far no regional jurisprudence that explicitly recognizes freedom of conscientious objection to military service.

(d) Asian region

Six African²⁴ and ten Asian²⁵ States co-signed a joint statement at the UN Commission on Human Rights in 2002, in which they explicitly did “not recognise the universal applicability of conscientious objection to military service”, arguing that “allowing individuals to be excused from military service would compromise the concept of collective responsibility for national defence, undermine national values and breach the principle of equal application of the law.”²⁶ In subsequent years, Singapore continuously objected against recognizing freedom of conscientious objection to military service.²⁷ At the level of the Association of Southeast Asian Nations

²¹ <http://aedidh.org/wp-content/uploads/2019/07/Universal-Declaration-HRP-14.7.19.pdf>, preambular para. 5.

²² Article 23(1) of the African Charter on Human and Peoples’ Rights, adopted on 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5,

https://www.achpr.org/public/Document/file/English/banjul_charter.pdf.

²³ African Commission on Human and Peoples’ Rights, Resolution on the Situation Between Sudan and South Sudan - ACHPR/Res.219(LI)2012, adopted on 2 May 2012, <https://www.achpr.org/sessions/resolutions?id=238>, paras. 11 and 13.

²⁴ Botswana, Egypt, Eritrea, Rwanda, Sudan and Tanzania.

²⁵ Bangladesh, China, Iran, Iraq, Lebanon, Myanmar, Singapore, Syrian Arab Republic, Thailand and Vietnam.

²⁶ E/CN.4/2002/188, annex, paras. 3-4.

²⁷ A/HRC/50/43, para. 11; A/HRC/35/4, para. 9; A/HRC/23/G/6, annex; A/HRC/23/22, para. 15; E/CN.4/2006/51, para. 18; E/CN.4/2002/188, annex.

(ASEAN), its 2012 Human Rights Declaration is also silent on conscientious objection to military service, whereas it contains a sub-chapter entitled “Right to peace”. Highlighting both the individual and collective dimensions, it provides that “[e]very person and the peoples of ASEAN have the right to enjoy peace within an ASEAN framework of security and stability, neutrality and freedom, such that the rights set forth in this Declaration can be fully realised.”²⁸

(e) European region

The situation is opposite in Europe, from where almost all States in 2016 either voted against²⁹ or abstained³⁰ in the General Assembly during the adoption of the Declaration on the Right to Peace. At the same time, the right of conscientious objection to military service has been recognized by the Council of Europe’s Committee of Ministers (since 1987),³¹ in the case law of the European Court of Human Rights (since 2011)³² as well as in the Charter of Fundamental Rights of the European Union (declared in 2000 and entered into force in 2009).³³ Yet, as noted by Cecilia Bailliet, “[t]he European Union has experienced a type of schizophrenia”³⁴ concerning its position on conscientious objectors in the qualification for being a refugee, since its Council Directive 2004/83/EC includes only a narrow acceptance of conscientious objection as grounds for asylum when the applicant has suffered “prosecution or punishment for refusal to perform military service

²⁸ Article 38 of the ASEAN Human Rights Declaration, <https://asean.org/asean-human-rights-declaration/>.

²⁹ Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, Monaco, Montenegro, Netherlands, Romania, Slovakia, Slovenia, Spain, Sweden, the former Yugoslav Republic of Macedonia, United Kingdom of Great Britain and Northern Ireland.

³⁰ Albania, Andorra, Armenia, Cyprus, Georgia, Greece, Iceland, Italy, Liechtenstein, Norway, Poland, Portugal, Republic of Moldova, San Marino, Serbia, Switzerland, Turkey and Ukraine.

³¹ Council of Europe, Recommendation No. R (87) 8 of the Committee of Ministers to Member States Regarding Conscientious Objection to Compulsory Military Service, 9 April 1987.

³² European Court of Human Rights, *Bayatyan v. Armenia*, application no. 23459/03, judgment of 7 July 2011.

³³ Article 10(2) of the Charter of Fundamental Rights of the European Union: “The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.”

³⁴ Cecilia M. Bailliet, “Assessing Jus Ad Bellum and Jus in Bello within the Refugee Status Determination Process: Contemplations on Conscientious Objectors Seeking Asylum”, *The Georgetown Immigration Law Journal* 20 no. 3 (2006), pp. 337-384, at 367.

in a conflict, where performing military service would include crimes or acts falling under the exclusion clauses”.³⁵

These examples illustrate how contentious the freedom of conscientious objection to military service and the right to peace have been considered at the national and regional levels. With some notable exceptions,³⁶ there seem to be two groups of States, which at the multilateral level promote either the former or the latter right, while contesting the validity of the other right – and vice versa. Even among civil society organizations working on human rights issues in Geneva and New York, arguably only few of them focus equally on advocating for freedom of conscientious objection to military service and for the right to peace. Such compartmentalization and politicization may have led to delinking these two sides of one coin. The next section will analyze the evolution of these two rights and their interplay – or lack thereof – during the drafting of related UN declarations and case law at the international level.

3. Tracing the international evolution of the (human) right (of peoples) to peace and freedom of conscientious objection to military service

(a) Early phase of conceptualizing freedom of conscientious objection to military service

While the term “conscientious objection to military service” is not explicitly mentioned in the Universal Declaration of Human Rights (1948), the latter refers in its article 18 to freedom of conscience and article 1 provides that all human beings “are endowed with reason and conscience”. During the *travaux préparatoires* of the legally binding draft International Covenant on Human Rights (which was subsequently split into the International Covenant on Civil and Political Rights as well as the International Covenant on Economic, Social and Cultural Rights, both adopted in 1966), civil society organizations and States tried – ultimately in vain – to include a right of conscientious objection to military service. In December 1949, the non-governmental organization (NGO) *Service Civil International* suggested adding to draft article 16 on freedom of thought, conscience and religion that “[a]nyone whose religious beliefs or deep convictions forbid him to participate either

³⁵ Article 9(2)(e) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004L0083&from=en>.

³⁶ For example, Costa Rica has been among the main sponsors at the UN Human Rights Council both of resolutions on the right to peace and on conscientious objection to military service.

directly or indirectly in armed conflict shall, in countries where there is compulsory military service, be guaranteed the right to perform a civilian service in place of service with the armed forces.”³⁷ Similarly, the delegation of the Republic of the Philippines proposed in January 1950 the formulation that “[p]ersons who conscientiously object to war as being contrary to their religion shall be exempt from military service.”³⁸ However, it withdrew the suggested amendment following debate within the Commission on Human Rights in April 1950, during which the delegate from Chile had argued that war was not only opposed on religious grounds but “equally hated by all and there was no doubt that it also violated the collective conscience of all the citizens of a country”.³⁹ In addition, the representatives of the United States, United Kingdom and Australia argued that the question of military service was outside the scope of draft article 16 or seemed out of place there.⁴⁰ The Uruguayan delegation saw the suggested addition as a duplication of the reference to conscientious objectors in draft article 8,⁴¹ and the Indian delegation advised against considering the related questions in detail, indicating that it would vote against the Philippine amendment.⁴²

In 1956, the Sub-Commission on Prevention of Discrimination and Protection of Minorities appointed its member from India, Arcot Krishnaswami, as Special Rapporteur to draft a study on discrimination in the matter of religious rights and practices. In his 1959 study, Krishnaswami noted that “[n]ormally recognition of the claim of conscientious objectors to full or partial exemption from military service is left to the discretion of the State” and he suggested the rule that “[i]n a country where the principle of conscientious objection to military service is recognized, exemptions should be granted to genuine objectors in a manner ensuring that no adverse distinction based upon religion or belief may result.”⁴³ However, other members of the Sub-Commission argued against the inclusion of this rule, which was dropped from their draft declaration of January 1964.⁴⁴

³⁷ E/CN.4/NGO/1, p. 1.

³⁸ E/CN.4/353/Add.3, p. 7.

³⁹ E/CN.4/SR.161, para. 51.

⁴⁰ *Ibid.*, paras. 52-53 and 55.

⁴¹ *Ibid.*, para. 54. Against this argument see Heiner Bielefeldt, Nazila Ghanea and Michael Wiener, *Freedom of Religion or Belief: An International Law Commentary*, Oxford University Press, Oxford: 2016, p. 262.

⁴² E/CN.4/SR.161, para. 56.

⁴³ E/CN.4/Sub.2/200/Rev.1, pp. 43 and 65.

⁴⁴ E/CN.4/800, paras. 113, 114, and 160.

(b) Early discussions on the collective right of peoples to peace

The right to peace was initially framed as a collective right of *peoples*, notably in the context of decolonization and the right to self-determination. One of first mentioning of the term “right to peace” in UN records was on the question of Algeria, when the Syrian representative, Farid Zeineddine, in the General Assembly’s First Committee stated the following in New York on 30 November 1957: “Algeria is an Arab country. It is entitled to its independence just as is any other country in the world. The Algerian people are entitled to freely exercise their inherent sovereignty and their right to self-determination in the manner in which they see fit.”⁴⁵ Mr. Zeineddine continued by stressing that “Algeria has the right to peace and liberty, and so does France.”⁴⁶

Interestingly, some five years later, the Government of the United States of America also used the terminology “right to peace” in its public statement welcoming the encyclical *Pacem in Terris*, which Pope John XXIII had issued on 11 April 1963.⁴⁷ One week after its publication, the US delegation in Geneva at the Conference of the Eighteen-Nation Committee on Disarmament stated that “*Pacem in Terris* is an historic encyclical, worldwide in its import and strongly in keeping with the spirit of the ecumenical conference. No country could be more responsive than the United States to its profound appeal to, and reassertion of, the dignity of the individual and man’s right to peace, liberty and the pursuit of happiness.”⁴⁸

⁴⁵ A/C.1/PV.915, p. 42.

⁴⁶ A/C.1/PV.915, p. 67.

⁴⁷ Pope John XXIII, *Pacem in terris*, 11 April 1963, https://www.vatican.va/content/john-xxiii/en/encyclicals/documents/hf_j-xxiii_enc_11041963_pacem.html. See especially the following references to conscience and human rights: “14. Also among man’s rights is that of being able to worship God in accordance with the right dictates of his own conscience, and to profess his religion both in private and in public. [...] 49. Hence, representatives of the State have no power to bind men in conscience, unless their own authority is tied to God’s authority, and is a participation in it. [...] 51. Governmental authority, therefore, is a postulate of the moral order and derives from God. Consequently, laws and decrees passed in contravention of the moral order, and hence of the divine will, can have no binding force in conscience, since ‘it is right to obey God rather than men’. [...] 142. [...] The United Nations Organization has the special aim of maintaining and strengthening peace between nations, and of encouraging and assisting friendly relations between them, based on the principles of equality, mutual respect, and extensive cooperation in every field of human endeavor. 143. A clear proof of the farsightedness of this organization is provided by the Universal Declaration of Human Rights passed by the United Nations General Assembly on December 10, 1948. The preamble of this declaration affirms that the genuine recognition and complete observance of all the rights and freedoms outlined in the declaration is a goal to be sought by all peoples and all nations.”

⁴⁸ ENDC/PV.121, p. 19.

This formulation seemed to recognize the right to peace in both its individual and collective dimensions, even though the United States of America in 1984 abstained during the vote of the Declaration on the Right of Peoples to Peace, along with 33 other countries.⁴⁹

Subsequently, however, the US Government took a different position, as evidenced in its explanation of vote against the Human Rights Council’s draft resolution entitled “United Nations Declaration on the Right to Peace” in 2013:

“[...] the United States continues to question the value of working toward a declaration on the so-called ‘right’ to peace. This proposed right is neither recognized nor defined in any universal, binding instrument, and its parameters are entirely unclear. Nor is there any consensus, in theory or in state practice, as to what such a right would entail. Regardless of how it has been promoted, studied or framed, past efforts to move forward with the ‘right to peace’ have always ended in endorsements for new concepts on controversial thematic issues, often unrelated to human rights. The result has inevitably been to circumvent ongoing dialogue in the Council by using broad support for the cause of peace to advance other agendas. Human rights are universal and are held and exercised by individuals. We do not agree with attempts to develop a collective ‘right to peace’ or to position it as an ‘enabling right’ that would in any way modify or stifle the exercise of existing human rights.”⁵⁰

At the same time, alluding to freedom of thought, conscience and religion, the US delegation “stressed that respect for human rights is fundamental to ensuring peace in any society. We know that any peace is unstable where citizens are denied the right to speak freely or worship as they please, choose their own leaders or assemble without fear.”⁵¹

⁴⁹ A/39/PV.57, para. 206.

⁵⁰ Explanation of Vote on the resolution entitled “United Nations Declaration on the Right to Peace”, delivered by Stephen Townley, U.S. Delegation to the UN Human Rights Council – 23rd Session, Geneva, 13 June 2013, <https://geneva.usmission.gov/2013/06/13/eov-on-the-right-to-peace/>

⁵¹ Ibid. A similar quote had already been included in the 2011 response of the United States of America to OHCHR in response to the Questionnaire on the Right of Peoples to Peace related to the Advisory Committee’s Progress Report to be submitted to the 17th Session of the Human Rights Council (<https://extranet2.ohchr.org/Extranets/AdvisoryCommittee/portal/page/portal/AdvisoryCommittee>)

(c) *Recognizing selective conscientious objection in the apartheid context*

Freedom of conscientious objection to military service was already alluded to, or explicitly included, in previous UN documents and draft declarations on the right to peace. On 15 December 1978, the General Assembly in its resolution 33/73 reaffirmed “the right of individuals, States and all mankind to life in peace”, stressing that “[e]very nation and every human being, regardless of race, conscience, language or sex, has the inherent right to life in peace.”⁵² While conscientious objection to military service was not spelled out by the General Assembly in this 1978 Declaration on the Preparation of Societies for Life in Peace, its reference to the conscience of every human being opened the pathway for subsequent more explicit terminology.⁵³ Just five days later, General Assembly resolution 33/165 (adopted without a vote) recognized selective conscientious objection in the *apartheid* context by calling upon Member States to grant asylum or safe transit to another State “to persons compelled to leave their country of nationality solely because of

[tee/Rightofpeoplestopace/USA.docx](https://www.whitehouse.gov/the-press-office/2009/10/06/09-10-06-obamas-acceptance-speech/)): “President Obama noted, upon receiving the Nobel Peace Prize, that protection of human rights is essential to international peace, stating, ‘Only a just peace based on the inherent rights and dignity of every individual can truly be lasting,’ and, ‘I believe that peace is unstable where citizens are denied the right to speak freely or worship as they please, choose their own leaders or assemble without fear.’” (see <https://obamawhitehouse.archives.gov/the-press-office/remarks-president-acceptance-nobel-peace-prize>).

⁵² Declaration on the Preparation of Societies for Life in Peace (1978), A/RES/33/73, preambular para. 3 and operative para. I 1. Resolution 33/73 was adopted by the General Assembly on 15 December 1978 by 138 votes to none, with Israel and the United States of America abstaining (for details of the recorded vote see A/33/PV.85, para. 75). The representative of Israel explained that “[b]ecause of Israel’s preoccupation with violations of human rights against Jews, particularly in the USSR, Israel had therefore to abstain in the vote on the draft resolution even though we are in the fullest agreement with the central theme and its proclaimed aim” (A/33/PV.85, para. 105). Furthermore, the Albanian delegation explained that it had not taken part in the vote because the draft resolution did neither indicate the sources of war nor mention the principal dangers threatening peace, with Albania stating that “[t]he true causes of aggressive wars lie in the efforts of imperialism and reaction to oppress and exploit the peoples” (A/33/PV.85, paras. 100-101).

⁵³ See the 1983 report on *Conscientious objection to military service*, prepared in pursuance of resolutions 14 (XXXIV) and 1982/30 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities by Mr. Asbjørn Eide and Mr. Chama Mubanga-Chipoya, members of the Sub-Commission, E/CN.4/Sub.2/1983/30/Rev.1, paras. 54-55: “54. Similarly, it is not only a right but a duty under international law to object to participation in the crime of *apartheid* (defined in the International Convention on the Suppression and Punishment of the Crime of *Apartheid*). 55. The Declaration on the Preparation of Societies for Life in Peace is also significant in various respects, which will be subsequently examined in this report.”

a conscientious objection to assisting in the enforcement of *apartheid* through service in military or police forces”.⁵⁴

On the same date, several participants of the Oslo conference on “Peace and Human Rights = Human Rights and Peace” went even beyond the *apartheid* context and they urged “that the right to refuse to participate in war should be regarded as a human right, and that it formed one of the most essential links between the concern with human rights and the concern with peace”.⁵⁵ The annex of the Oslo final document also drew attention to the previous recommendations adopted in 1970 at the World Conference on Religion and Peace in Kyoto and the Consultation of Churches in Baden which had stated: “We consider that the exercise of conscientious judgment is inherent in the dignity of human beings and that, accordingly, each person should be assured the right, on grounds of conscience or profound conviction, to refuse military service or any other direct or indirect participation in wars or armed conflicts. The right of conscientious objection also extends to [t]hose who are unwilling to serve in a particular war because they consider it unjust or because they refuse to participate in a war or conflict in which weapons of mass destruction are likely to be used.”⁵⁶

(d) Disarmament education and the 1984 Declaration on the Right of Peoples to Peace

The individual nature of freedom of conscientious objection came also to the fore in the 1980s in the context of disarmament education. In 1980, UNESCO organized the World Congress on Disarmament Education, whose Final Document noted that “[d]ue attention should be accorded in programmes of disarmament education to the right of conscientious objection and the right to refuse to kill.”⁵⁷ These individual rights were also included in the recommendations formulated by the rapporteurs of the two commissions of the Congress as well as “the right to refuse to carry out scientific research work designed to produce weapons which are prohibited by international agreements”.⁵⁸

⁵⁴ General Assembly resolution on “Status of persons refusing service in military or police forces used to enforce *apartheid*”, 20 December 1978, A/RES/33/165, operative para. 2.

⁵⁵ Conference on Peace and Human Rights = Human Rights and Peace: Organized by the International Peace Research Institute, Oslo, and the International Institute of Human Rights, Strasbourg: Oslo, December 20-22, 1978: FINAL DOCUMENT, *Bulletin of Peace Proposals*, Vol. 10, No. 2 (1979), pp. 224-228, at p. 226.

⁵⁶ *Ibid.*

⁵⁷ UNESCO, SS-80/CONF.401/37 Rev., under II.A.6.

⁵⁸ UNESCO, SS-80/CONF.401/37 Rev., annex I, paras. 3 and 49.

The 1984 Declaration on the Right of Peoples to Peace, however, focussed only on the collective dimension, with the General Assembly solemnly proclaiming “that the peoples of our planet have a sacred right to peace”.⁵⁹ Thus the 1984 Declaration does not explicitly refer to individual rights such as freedom of conscientious objection to military service. The voting pattern of this resolution 39/11 of 12 November 1984, which had been proposed by the Mongolian People’s Republic, also showed an East-West divide in the Cold War context. On the one side, 34 States, mainly from the Western Europe and Others Group (WEOG), abstained and just before its adoption the States of the European Community flagged difficulties of reconciling the resolution with Charter provisions on the respect for human rights and fundamental freedoms (article 1(3) of the UN Charter), the prohibition of threatening or using of force against the territorial integrity or political independence of any State (article 2(4)), and the inherent right of individual or collective self-defence (article 51).⁶⁰ On the other side, the permanent representative of the USSR referred to the disarmament campaign by “[p]eoples of different convictions, ages and professions” who had “expressed growing alarm about their future and the future of all mankind”.⁶¹ Furthermore, the Bulgarian representative noted that the “conscience of mankind” was stirred by the urgency of preventing a nuclear catastrophe and he quoted the Chairman of the Council of State of the People’s Republic of Bulgaria: “Let us hope that future generations will be deeply grateful to us for conscientiously carrying out our obligations and not permitting our beautiful Mother Earth to become a dead radioactive planet.”⁶² As part of a third group of States, the Philippines abstained in the vote, explaining that “a declaration of such significance deserves to be formulated in a more exhaustive and balanced manner, always bearing in mind, as it were, the principles embodied in the Charter of the United Nations.”⁶³ Furthermore, Malaysia ultimately did not participate in the voting as it was “sceptical as to both the approach which lies behind the proposal and the actual draft

⁵⁹ A/RES/39/11, annex, operative paragraph 1.

⁶⁰ A/39/PV.57, para. 206. The (then) ten States members of the European Community explained their abstention as follows: “First, it is not clear how the text could be reconciled with the right to self-defence as contained in the Charter. Secondly, how would the draft relate to human rights and fundamental freedoms as set out in the Charter? Thirdly, who may invoke the right to peace? How would the right be vindicated? Fourthly, on what foundation in existing international law would the draft base the obligation of States to which it refers? And, fifthly, how would the draft declaration be reconciled with Article 2, paragraph 4, of the Charter, which also forbids the threat as well as the use of force?” (A/39/PV.57, para. 202).

⁶¹ A/39/PV.57, para. 35.

⁶² A/39/PV.57, paras. 68 and 71.

⁶³ A/39/PV.57, paras. 198.

declaration itself”, which in Malaysia’s view did not couple the right of peoples to peace “with their right to freedom, to self-determination, to justice and to a decent life.”⁶⁴ These statements illustrate the polarization, especially in the Cold War context as well as due to divergent visions of collective and individual rights.

(e) Gradual recognition of freedom of conscientious objection to military service

From 1987 onwards, the recognition of the individual right of conscientious objection to military service gained momentum at the international level. The UN Commission on Human Rights and the Human Rights Council passed a dozen resolutions⁶⁵ by consensus between 1989 and 2022, whereas only the very first Commission on Human Rights resolution 1987/46 was adopted by vote (with 26 votes in favour, two against and 14 abstentions).⁶⁶ While resolution 1987/46 did not explicitly refer to the 1984 Declaration on the Right of Peoples to Peace, the Commission on Human Rights alluded to the inherent link between peace and military service by “expressing its conviction that consistent and sincere efforts on the part of all States aimed at the definitive removal of the threat of war, the preservation of international peace, the realization of the right to self-determination and the development of international co-operation in accordance with the Charter of the United Nations would ultimately result in the creation of conditions under which military service would become unnecessary”.⁶⁷ Each of the subsequent consensus resolutions recognized the right of everyone to have conscientious objections to military service as a legitimate exercise of the right to freedom of thought, conscience and religion, as laid down in article 18 of the UDHR and article 18 of the ICCPR.

In 1992, the UN Special Rapporteur on religious intolerance (whose mandate title was renamed in 2000 as Special Rapporteur on freedom of religion or

⁶⁴ A/39/PV.57, paras. 192-193.

⁶⁵ Commission on Human Rights resolutions 1989/59, 1991/65, 1993/84, 1995/83, 1998/77, 2000/34, 2002/45 and 2004/35; Human Rights Council resolutions 20/2, 24/17, 36/18 and 51/6.

⁶⁶ Commission on Human Rights resolution 1987/46 was adopted by 26 votes in favour (Argentina, Australia, Austria, Bangladesh, Belgium, Brazil, Colombia, Costa Rica, France, Gambia, Federal Republic of Germany, Ireland, Italy, Japan, Liberia, Norway, Pakistan, Peru, Philippines, Rwanda, Senegal, Somalia, Sri Lanka, Togo, United Kingdom of Great Britain and Northern Ireland, United States of America), two against (Iraq, Mozambique) and 14 abstentions (Algeria, Bulgaria, Byelorussian Soviet Socialist Republic, China, Congo, Cyprus, Ethiopia, German Democratic Republic, India, Mexico, Nicaragua, Union of Soviet Socialist Republics, Venezuela, Yugoslavia), see E/1987/18, para. 471.

⁶⁷ Commission on Human Rights resolution 1987/46, preambular para. 8.

belief) established a set of criteria, stressing that “[c]onscientious objectors should be exempted from combat but could be required to perform comparable alternative service of various kinds, which should be compatible with their reasons for conscientious objection, should such service exist in their country.”⁶⁸ The Special Rapporteur also laid out safeguards for application procedures to alternative service, “which may be aimed at social improvement, development or promotion of international peace and understanding”, and he stressed that “[t]he decision-making body should be entirely separate from the military authorities”.⁶⁹

UN treaty bodies were initially reluctant to see a legal basis for conscientious objection since article 8 (3)(c)(ii) of the ICCPR provides that “[a]ny service of military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors” was not to be regarded as forced or compulsory labour.⁷⁰ In 1993, however, the UN Human Rights Committee changed its approach in general comment no. 22, noting that: “The Covenant does not explicitly refer to a right to conscientious objection, but the Committee believes that such a right can be derived from article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one’s religion or belief. When this right is recognized by law or practice, there shall be no differentiation among conscientious objectors on the basis of the nature of their particular beliefs; likewise, there shall be no discrimination against conscientious objectors because they have failed to perform military service.”⁷¹ The Human Rights Committee discussed possible limitations to the right to manifest the objectors’ religion or belief pursuant to article 18(3) of the ICCPR in its jurisprudence until 2010 (*forum externum* approach), however, the Committee subsequently held that conscientious objection to military service inheres in the absolutely protected right to hold a belief under article 18(1) of the ICCPR, whose internal freedom cannot be restricted by States.⁷² Three Committee members stressed in their concurring opinion that “[i]t is precisely in time of armed conflict, when the community interests in question are most likely to be under greatest threat, that the right to

⁶⁸ E/CN.4/1992/52, para. 185.

⁶⁹ *Ibid.*

⁷⁰ Human Rights Committee, *Järvinen v Finland*, Views of 25 July 1990, CCPR/C/39/D/295/1988, paras. 6.1 and 6.2.

⁷¹ CCPR/C/21/Rev.1/Add.4, para. 11. See also below [chapter 7](#) by Gentian Zyberi and Eduardo Sánchez Madrigal, “The practice of judicial and quasi-judicial human rights bodies on conscientious objection to military service”.

⁷² Heiner Bielefeldt, Nazila Ghanea and Michael Wiener, *Freedom of Religion or Belief: An International Law Commentary*, Oxford University Press, Oxford: 2016, pp. 266-269.

conscientious objection is most in need of protection, most likely to be invoked and most likely to fail to be respected in practice.”⁷³ Furthermore, the Committee on the Elimination of Discrimination against Women has urged Eritrea to legally recognize the right of conscientious objection to military service, and it regretted that national service continued to be of an indefinite period.⁷⁴ The UN Working Group on Arbitrary Detention and other special procedures of the Human Rights Council have also followed the Human Rights Committee’s *forum internum* approach.⁷⁵ At the regional level, however, the European Court of Human Rights continues viewing conscientious objection to military service as an external manifestation of one’s religion or belief (*forum externum* approach), which may be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.⁷⁶

The UNHCR Guidelines on International Protection No. 10 conclude from the international jurisprudence and State practice that “a conscientious objector’s rights under Article 18 ICCPR will be respected where he or she is (i) exempted from the obligation to undertake military service or (ii) appropriate alternative service is available”,⁷⁷ but UNHCR’s “Guidelines do not ultimately make the call whether the right to conscientious objection is

⁷³ Human Rights Committee, *Atasoy and Sarkut v. Turkey*, Views adopted on 29 March 2012, CCPR/C/104/D/1853-1854/2008, appendix II, Individual opinion of Committee member Sir Nigel Rodley, jointly with members Mr. Krister Thelin and Mr. Cornelis Flinterman (concurring).

⁷⁴ CEDAW/C/ERI/CO/5, paras. 8 and 9(a); CEDAW/C/ERI/CO/6, paras. 10 and 11(a). However, during the discussion with the Committee on 14 February 2020, “the Government was of the view that participation in national service was positive for women, as it provided them opportunities. By fulfilling their obligations, they were able to claim their rights.” (CEDAW/C/SR.1756, para. 10).

⁷⁵ A/HRC/42/39, para. 60 (b); A/HRC/WGAD/2019/84, para. 42; <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25740>.

⁷⁶ European Court of Human Rights, *Adyan and Others v. Armenia*, application no. 75601/11, judgment of 12 October 2017, para. 72; *Mushfig Mammadov and Others v. Azerbaijan*, application no. 14604/08, judgment of 17 October 2019, paras. 92-99; *Aghanyan and Others v. Armenia*, application nos. 58070/12 and 21 others, judgment of 5 December 2019, para. 13.

⁷⁷ UNHCR Guidelines on International Protection No. 10: Claims to Refugee Status related to Military Service within the context of Article 1A (2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees, HCR/GIP/13/10/Corr.1, para. 9.

located in Article 18(1) or 18(3)” of the ICCPR.⁷⁸ Yet these dogmatic nuances will most likely lead to the same result in practice and one contribution to the 2022 OHCHR report also noted that the *forum externum* position of the European Court of Human Rights has not resulted in it finding that any of the permissible limitations on manifestation of religion or belief have been applicable in the cases it has considered.⁷⁹

In terms of substantive and procedural rights of conscientious objectors, the analytical reports published by OHCHR⁸⁰ stress that all persons affected by military service should have access to information about the right to conscientious objection and the means of acquiring objector status.⁸¹ Those who support conscientious objectors or who support the right of conscientious objection to military service should fully enjoy their freedom of expression.⁸² States should ensure that the right to object applies both to pacifists and to selective objectors who believe that the use of force is justified in some circumstances but not in others.⁸³ Conscripts and volunteers should be able to object before the commencement of military service as well as at any stage during and after military service,⁸⁴ including during mobilization, in time of war or in the absence of a peace agreement.⁸⁵ The process of applying for status as a conscientious objector should be free and there should be no charge for any part of the whole procedure.⁸⁶ Alternative

⁷⁸ Volker Türk and Alice Edwards, “Introductory Note to the Guidelines on International Protection No. 10 on Claims to Refugee Status related to Military Service”, *International Journal of Refugee Law*, Vol. 27, No. 1 (2015), pp. 166-171, at p. 170, in response to Guy S Goodwin-Gill, “The Dynamic of International Refugee Law”, *International Journal of Refugee Law*, Vol. 25, No. 4 (2013), pp. 651-666, at pp. 658-661.

⁷⁹ A/HRC/50/43, para. 13, referring to the contribution from the Quaker United Nations Office (QUNO), available online at <https://www.ohchr.org/sites/default/files/2022-05/QUNO-HRC50.pdf>, p. 6, as well as Heiner Bielefeldt and Michael Wiener, *Religious Freedom Under Scrutiny* (University of Pennsylvania Press, Philadelphia: 2019), p. 163.

⁸⁰ See A/HRC/35/4, paras. 63-65; A/HRC/41/23, para. 60; A/HRC/50/43, paras. 29 and 57.

⁸¹ Commission on Human Rights resolution 1993/84, operative para. 8.

⁸² A/HRC/35/4, paras. 49-50 and 62-63.

⁸³ General Assembly resolution 33/165, operative para. 2; UNHCR Guidelines on International Protection No. 10, HCR/GIP/13/10/Corr.1, paras. 3 and 11; A/HRC/35/4, para. 15.

⁸⁴ Human Rights Council resolution 24/17, operative para. 5. See also the explanation of position by the United States of America before the adoption – without a vote – of Human Rights Council resolution 51/6 on 6 October 2022 (A/HRC/51/SR.40, para. 87): “In the United States, an expansive legal and regulatory process was available to individuals wishing to request conscientious objector status, including conscripts and volunteers for military service whose beliefs about conscientious objection crystallized while they were in military service. That process also provided for review by civilian courts of decisions regarding requests for conscientious objector status.”

⁸⁵ A/HRC/35/4, paras. 32-33 and 61; A/HRC/50/43, paras. 29 and 55.

⁸⁶ A/HRC/41/23, paras. 21 and 60 (b).

service arrangements should be accessible to all conscientious objectors without discrimination as to the nature of their religious or non-religious beliefs.⁸⁷ No inquiry process is required by international law and consideration should be given to accepting claims of conscientious objection to military service as valid without such a process.⁸⁸ Otherwise States should establish independent and impartial decision-making bodies under the full control of civilian authorities to determine whether a conscientious objection to military service is genuinely held in a specific case.⁸⁹ Application procedures should be based on reasonable and relevant criteria and should avoid imposing any conditions that would result in automatically disqualifying applicants.⁹⁰ The process for consideration of any claim of conscientious objection should be timely and all duties involving the bearing of arms should be suspended pending the decision.⁹¹ After any decision on conscientious objector status, there should always be a right to appeal to an independent and civilian judicial body.⁹² States should ensure that alternative service is compatible with the reasons for conscientious objection, of a non-combatant or civilian character, in the public interest and not of a punitive character.⁹³ Any longer duration in comparison to military service is permissible only if the additional time for alternative service is based on reasonable and objective criteria.⁹⁴ Equalizing the duration of alternative service with military service is considered a good practice.⁹⁵ States must ensure that no one is detained arbitrarily, particularly in indiscriminate round-ups with the aim of identifying young persons who have failed to resolve their military status.⁹⁶ States should release individuals who are imprisoned or detained solely on the basis of their conscientious objection to military service.⁹⁷ Conscientious objectors should not be repeatedly punished for not having obeyed a renewed order to serve in the military.⁹⁸ Personal information of conscientious objectors must not be disclosed publicly by the

⁸⁷ Human Rights Committee, general comment no. 22, CCPR/C/21/Rev.1/Add.4, para. 11.

⁸⁸ Human Rights Council resolution 24/17, operative para. 7.

⁸⁹ Commission on Human Rights resolution 1989/59, operative para. 5.

⁹⁰ A/HRC/41/23, para. 60 (h); A/HRC/50/43, para. 57 (j).

⁹¹ A/HRC/41/23, paras. 49-51 and 60 (i).

⁹² E/CN.4/1992/52, para. 185.

⁹³ Commission on Human Rights resolution 1989/59, operative para. 4.

⁹⁴ Human Rights Committee, *Foin v. France*, Views adopted on 3 November 1999, CCPR/C/67/D/666/1995, para. 10.3.

⁹⁵ A/56/253, annex, para. 28; A/HRC/35/4, para. 22.

⁹⁶ CCPR/C/COL/CO/7, paras. 34-35.

⁹⁷ A/HRC/35/4, paras. 42, 45 and 65.

⁹⁸ Human Rights Council resolution 24/17, operative para. 10; E/CN.4/2001/14/Add.1, pp. 54-55; E/CN.4/2005/6/Add.1, p. 22; A/HRC/10/8/Add.4, paras. 50 and 68; A/HRC/16/53/Add.1, para. 391.

State and their criminal records should be expunged.⁹⁹ States must neither discriminate against conscientious objectors in relation to their civil, cultural, economic, political and social rights,¹⁰⁰ nor stigmatize them as “traitors”.¹⁰¹ Refugee status should be granted to those who have a well-founded fear of persecution in their country of origin owing to their refusal to perform military service when there is no provision, or no adequate provision, for conscientious objection to military service.¹⁰²

(f) Right to peace in reports of the Special Rapporteur on religious intolerance

In his report to the Commission on Human Rights of December 1996, the UN Special Rapporteur on religious intolerance included references both to the right of conscientious objection and to the right to peace. Abdelfattah Amor stressed that the “right of conscientious objection is intrinsically bound up with religious freedom” and he reminded States of resolution 1989/59, adopted without a vote by the Commission on Human Rights.¹⁰³ In the same report, he emphasized that “hatred, intolerance and acts of violence, including those motivated by religious extremism, may give rise to situations that threaten or somehow compromise international peace and security”, infringing the individual and collective right to peace as internationally established, particularly by General Assembly resolution 39/11 in the 1984 Declaration on the Right of Peoples to Peace.¹⁰⁴

In his 1998 report to the Commission on Human Rights, Abdelfattah Amor even went one step further by referring to “the human right to peace”, which may be imperilled by religious extremism.¹⁰⁵ He noted that preserving the right to peace “should encourage greater efforts towards international solidarity in order to stifle religious extremism – from whatever quarter it

⁹⁹ CCPR/C/KOR/CO/4, para. 45.

¹⁰⁰ Commission on Human Rights resolution 1998/77, operative para. 6.

¹⁰¹ A/HRC/32/53, p. 26; A/HRC/35/4, para. 65.

¹⁰² Commission on Human Rights resolution 1998/77, operative para. 7. See also Human Rights Committee, *M.N. v. Denmark*, Views of 22 July 2021, CCPR/C/132/D/3188/2018 (concerning potential deportation from Denmark to the Islamic Republic of Iran, where the author had failed to appear for and conscientiously objected to military service).

¹⁰³ E/CN.4/1997/91, paras. 81-82.

¹⁰⁴ *Ibid.*, para. 90. The English translation incorrectly states that the 1984 Declaration on the Right of Peoples to Peace was adopted on 12 November 1994 and also distorts the Special Rapporteur’s original formulation (“porter atteinte au droit de l’homme et des peuples à la paix”) by translating it as “infringing human rights and the right to peace”.

¹⁰⁵ E/CN.4/1998/6, para. 114 (“Au sujet de l’extrémisme religieux, ce dernier est susceptible de conduire à des situations difficilement contrôlables pouvant compromettre le droit de l’homme à la paix.”)

may come – by working on both its causes and its effects, without selectivity or ambivalence.”¹⁰⁶ Subsequently he highlighted that States and the international community must condemn religious extremism “unequivocally and combat it relentlessly in order to preserve the human right to peace”¹⁰⁷ and reiterated his recommendations “that the international community should define and adopt a baseline of commonly accepted rules and principles of conduct and behaviour towards religious extremism and that a study on religious extremism should be conducted within the framework of the Subcommission on the Promotion and Protection of Human Rights.”¹⁰⁸

(g) UNESCO promoting a culture of peace and the human right to peace

The human right to peace has also been promoted by the United Nations Educational, Scientific and Cultural Organization (UNESCO). In the July-August 1997 issue of *UNESCO Courier*, Director-General Federico Mayor published an article on the human right to peace, which also alludes to freedom of thought and conscience:

“A peace consciousness – in the interest of living together, of science and its applications – does not appear overnight, nor can it be imposed by decree. First comes disillusionment with materialism and enslavement to the market, and then a return to freedom of thought and action, sincerity, austerity, the indomitable force of the mind, the key to peace and to war, as affirmed by the founders of UNESCO. [...] Only conscience, which is responsibility – and thus ethical and moral – can make good use of the artefacts of reason. Conscience must work in tandem with reason. To the ethics of responsibility we must add an ethics of conviction and will. The former springs from knowledge, and the latter from passion, compassion and wisdom.”¹⁰⁹

While the term “conscientious objection to military service” does not appear explicitly in Federico Mayor’s article, he suggested adding the human right to peace when celebrating the fiftieth anniversary of the Universal

¹⁰⁶ E/CN.4/1998/6, para. 114.

¹⁰⁷ A/55/280, para. 136. However, in the absence of a human rights-compliant definition of “religious extremism” at the national level, there is a risk of arbitrarily arresting and detaining conscientious objectors as “extremists”; see below [chapter 15](#) and recent documents of the UN Human Rights Committee (CCPR/C/SR.3934, para. 48; CCPR/C/RUS/CO/8, paras. 30-31; CCPR/C/135/D/2483/2014, paras. 2.5, 5.3 and 9.4-9.6).

¹⁰⁸ A/55/280, para. 136, reiterating the Special Rapporteur’s recommendation in E/CN.4/1998/6, para. 114.

¹⁰⁹ <https://unesdoc.unesco.org/ark:/48223/pf0000109300>, p. 75.

Declaration of Human Rights in 1998, i.e. “the right which underlies them all: the right to peace – the right to live in peace!”¹¹⁰

Furthermore, in his 1997 report to the General Assembly on educational activities under the project “Towards a culture of peace” with elements for a draft provisional declaration and programme of action on a culture of peace, the UNESCO Director-General stressed that attaining “a culture of peace will benefit every nation and its people without diminishing any other”, adding that this was “an important means to implement globally the human right to peace”.¹¹¹ His report also referred to the recommendations of the 1997 expert meetings held in Las Palmas and Oslo, which invited preparing and subsequently elaborated a first draft declaration that addressed “the right to peace, the duty to contribute to its maintenance and construction, and its relation to a culture of peace.”¹¹² In addition, the UNESCO report stressed the important “role of those whose activity has a direct and multiplier impact on the minds” and in order to increase the efficiency of related actions it encouraged partnerships, including with political leaders, parliamentarians, teaching staff, journalists, intellectuals, religious leaders, managers and non-governmental organizations.¹¹³

(h) Civil society initiatives on the human right to peace

It was the initiative of civil society organizations, promoted notably by the Spanish Society for International Human Rights Law, to include freedom of conscientious objection to military service explicitly in their draft declarations on the right to peace. The 2006 Luarca Declaration on the Human Right to Peace provided in article 5 the right to civil disobedience and conscientious objection for peace, including the “right to acquire the status of conscientious objector in respect of military obligations” and the “right to object to paying taxes allocated to military expenditure and to object to taking part, in a working or professional capacity, in operations which support armed conflicts or which are contrary to international human rights law or international humanitarian law”.¹¹⁴ Furthermore, the 2010 Santiago Declaration on the Human Right to Peace added in its article 5(7) that

¹¹⁰ Ibid.

¹¹¹ See A/52/292, p. 2 and para. 50.

¹¹² A/52/292, para. 18.

¹¹³ A/52/292, para. 61.

¹¹⁴ Luarca Declaration on the Human Right to Peace, reprinted in Carmen Rosa Rueda Castañón and Carlos Villán Durán (eds), *La Declaración de Luarca sobre el Derecho Humano a la Paz*, Ediciones Madú, Granda: 2008, 2nd edition (<http://aedidh.org/es/la-declaracion-de-luarca-sobre-el-derecho-humano-a-la-paz/>), p. 142.

“[i]ndividuals, individually or as members of a group, have the right to be protected in the effective exercise of their right to disobedience and conscientious objection” and in its article 9(1)(a) the right to refugee status if “the person suffers persecution for engaging in activities in favour of peace and other human rights, or for claiming the right to conscientious objection against war or military service”.¹¹⁵ Similarly, the 2013 Nordic Expert Consultation on the Right to Peace recommended in Oslo as a Component of Peace that “[c]onscientious objectors and peace or human rights activists subject to well-founded fear of persecution on account of their actions or beliefs have the right to seek and to enjoy refugee status.”¹¹⁶

(i) Revived interest by the Human Rights Council since 2008

At the intergovernmental level, the UN Human Rights Council started in 2008 adopting resolutions on the promotion of the right of peoples to peace. Its resolutions 8/9 and 11/4 requested the High Commissioner for Human Rights to convene an expert workshop “(a) To further clarify the content and scope of this right; (b) To propose measures that raise awareness of the importance of realizing this right; (c) To suggest concrete actions to mobilize States, intergovernmental and non-governmental organizations in the promotion of the right of peoples to peace”.¹¹⁷ While the summary report of the expert workshop in December 2009 did not explicitly refer to conscientious objection to military service, yet several invited speakers stressed the dual (individual and collective) character of the right to peace, with Alfred de Zayas noting the tendency to perceive it “primarily from the perspective of collective rights. Yet, peace was also a personal right, prior to and indispensable to other rights.”¹¹⁸

¹¹⁵ Santiago Declaration on the Human Right to Peace, reprinted in Carlos Villán Durán and Carmelo Faleh Pérez (eds), *The International Observatory of the Human Right to Peace*, Spanish Society for International Human Rights Law, Lueca: 2013, pp. 444-460, at pp. 452-454.

¹¹⁶ Cecilia M. Bailliet and Kjetil Mujezinovic Larsen, “Legal Developments: Nordic Expert Consultation on the Right to Peace: Summary and Recommendations”, *Nordic Journal of Human Rights*, vol. 31, no. 2 (2013), pp. 262-278 at p. 277. See also p. 276, footnote 5: “We suggest that the term ‘right to peace’ may be replaced with ‘components of peace’ in order to increase state acceptance of the declaration. This would be in keeping with the notion of peace as being a meta-right, where reference to related human rights are used to explain its scope (similar to other solidarity rights, such as the right to a clean environment and the right to development).”

¹¹⁷ A/HRC/RES/8/9, operative para. 10; A/HRC/RES/11/4, operative para. 11.

¹¹⁸ A/HRC/14/38, para. 15.

(j) Draft text prepared by the Advisory Committee from 2010 to 2012

In June 2010, the Human Rights Council requested its Advisory Committee, in consultation with Member States, civil society, academia and all relevant stakeholders, to prepare a draft declaration on the right of peoples to peace.¹¹⁹ The 2011 progress report of the Advisory Committee included a sub-chapter on the right to conscientious objection and freedom of religion and belief, including the proposed standards that “[i]ndividuals have the right to conscientious objection and to be protected in the effective exercise of this right” as well as the right of members of any military or other security institutions to disobey certain orders:

“States have the obligation to prevent members of any military or other security institution from taking part in wars of aggression or other armed operations, whether international or internal, which violate the principles and norms of international human rights law or international humanitarian law. Members of any military or other security institutions have the right to disobey orders that are manifestly contrary to the above-mentioned principles and norms. The duty to obey military superior orders does not exempt from the observance of these obligations, and disobedience of such orders shall in no case constitute a military offence.”¹²⁰

In addition, the 2011 progress report stressed that the right to resist and oppose oppression was essential to achieving and maintaining a just peace, proposing the following standard:

“All individuals have the right to oppose war crimes, genocide, aggression, apartheid and crimes against humanity, violations of other universally recognized human rights, any propaganda in

¹¹⁹ A/HRC/RES/14/3, operative para. 15. For further details on the Advisory Committee’s work on the right to peace see below [chapter 3](#) by Wolfgang S. Heinz.

¹²⁰ A/HRC/17/39, para. 44. With regard to the crime of aggression and the justification of self-defence or authorization by the Security Council see also the explanation in the 2011 progress report, A/HRC/17/39, para. 23: “At the 2010 Review Conference of the Rome Statute, held in Kampala, the State parties to the Rome Statute of the International Criminal Court agreed to add aggression to the Court’s short list of prosecutable crimes. The members adopted by consensus amendments to the Rome Statute, including a definition of the crime of aggression and a regime establishing how the Court would exercise its jurisdiction over this crime. An act of aggression is defined as the use of armed force by one State against another State without the justification of self-defence or authorization by the Security Council.”

favour of war or incitement to violence and violations of the human right to peace, as defined in the present declaration.”¹²¹

These formulations were explicitly inspired by article 5(4) and article 6(2) of the 2010 Santiago Declaration on the Human Right to Peace, which had been drafted by a civil society group.¹²² They were again repeated, with minor edits, by the Advisory Committee in its draft declaration on the right to peace, which it submitted to the Human Rights Council in April 2012.¹²³

(k) Discussions in the intergovernmental working group from 2013 to 2015

In July 2012, the Human Rights Council decided to establish an open-ended intergovernmental working group with the mandate of progressively negotiating a draft UN declaration on the right to peace, on the basis of the draft submitted by the Advisory Committee, and without prejudging relevant past, present and future views and proposals.¹²⁴ During the first session of the intergovernmental working group in February 2013, however, “many delegations asked for the deletion of any reference to the right to conscientious objection to military service due to the lack of international consensus on this issue, which, in their opinion, fell purely within the realm of the domestic legislation of each State.”¹²⁵

For example, Cuba stressed at the outset of the intergovernmental working group that “[i]dentifying elements acceptable to all is essential in this process. The use of controversial, ambiguous and undefined issues, which also do not enjoy international consensus and are still under study and discussion in other fora, would be counterproductive and would further complicate our mandate. Accordingly, we should exclude from the text controversial issues such as human security, the responsibility to protect, conscientious objection to

¹²¹ A/HRC/17/39, para. 37.

¹²² See Spanish Society for International Human Rights Law, *Joint reply of NGOs, CSO and cities to the questionnaire “on possible elements for a draft declaration on the right of peoples to peace”*, 2 May 2011

(<https://extranet2.ohchr.org/Extranets/AdvisoryCommittee/portal/page/portal/AdvisoryCommittee/Rightofpeoplestopeace/Final%20Reply%20questionnaire.doc>), which notes on p. 29 that “the right to conscience objection should be qualified as an individual right. Besides, the Santiago Declaration (Art. 5.2) stresses that the individuals, individually or as members of a group, have the right to civil disobedience and to conscientious objection against activities that entail a threat against peace”.

¹²³ A/HRC/20/31, annex, articles 5 and 7(2).

¹²⁴ A/HRC/RES/20/15, operative para. 1.

¹²⁵ A/HRC/WG.13/1/2, para. 54.

military service, peacekeeping operations, refugees, among others.”¹²⁶ Similarly worded statements against the inclusion of the right to conscientious objection were made by Sri Lanka, Syrian Arab Republic, Islamic Republic of Iran and the Russian Federation.¹²⁷ In addition, with reference to the right of a sovereign State to defend itself and preserve its sovereignty, Singapore argued that including conscientious objection to military service in the draft declaration “reflects an overly simplistic view of peace, and denies the right of a State to adopt the necessary and appropriate measures to ensure that its people can enjoy peace.”¹²⁸

However, several civil society organizations argued in favour of keeping the draft language on the right of conscientious objection to military service. The International Fellowship of Reconciliation, Quakers and War Resisters’ International stated that “[i]n our view it is not necessary to elaborate further on this issue in the context of the Declaration. The content of the right has been spelled out in the jurisprudence of the Human Rights Committee and the European Court of Human Rights, in General Comment 22 of the Human Rights Committee, and in resolutions of the former Commission on Human Rights, endorsed by the Human Rights Council. The right is also reflected in resolutions and recommendations from the Council of Europe and in the Ibero-American Charter of the Rights of the Youth.”¹²⁹ Furthermore, Associazione Comunità Papa Giovanni XXIII welcomed the reference in the draft to conscientious objection to military service and suggested establishing at the international level a civilian peace corps (“White Helmets”), which “could be a useful instrument to lessen violence, to protect minorities and to support local non-violent conflict resolution.”¹³⁰ In addition, the Spanish Society for International Human Rights Law suggested introducing language from article 5(5)-(7) of the 2010 Santiago Declaration on the Human Right to Peace.¹³¹

In October and November 2013, the Chairperson-Rapporteur of the intergovernmental working group held meetings with representatives of

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<https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/WGRightPeace/StatesGeneralComments.pdf>, p. 7.

¹²⁷ *Ibid.*, pp. 13, 35, 38 and 43.

¹²⁸ *Ibid.*, p. 19.

¹²⁹

https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/WGRightPeace/NGOsstatementsonarticles4_to8.pdf, p. 11.

¹³⁰ *Ibid.*, p. 13.

¹³¹ *Ibid.*, p. 12.

States and civil society to discuss the elements that must be part of the declaration on the right to peace. During informal consultations on 9 May 2014, he stated that a resolution adopted by consensus would necessarily carry more weight than one supported by a majority of States and that soft-law instruments could be vehicles for focusing consensus on rules and principles, and for mobilizing a general response on the part of States.¹³² Yet the United States of America indicated that their presence in the intergovernmental working group “should not be mistaken for agreement to negotiate a Declaration on the Right to Peace”¹³³ and the European Union also stated that its “participation should not, however, be construed in any way as recognition of a ‘right to peace’.”¹³⁴ There seemed to be little support from States for including specific references to conscientious objection to military service and in view of the discussions in the intergovernmental working group, it was excluded from the draft text as circulated by the Chairperson-Rapporteur ahead of the second session.¹³⁵

Subsequently, several non-governmental organizations invited the Human Rights Council to rather endorse the draft declaration as prepared by the Advisory Committee and to consider notably its draft article 5 on the right to conscientious objection to military service.¹³⁶ They also highlighted during the second session of the intergovernmental working group from 30 June to 4 July 2014 that conscientious objection to military service linked to the right to freedom of thought, conscience and religion were missing in the text under consideration.¹³⁷ Associazione Comunità Papa Giovanni XXIII proposed to add a new paragraph under draft article 2, which would provide that “States and other stakeholders should respect fully the right to freedom of thought, conscience and religion from which conscientious objection derives”.¹³⁸ However, the Chairperson-Rapporteur’s new concise and focused text was broadly supported “as a significant improvement over the previous draft text, prepared by the Advisory Committee” and delegations “welcomed the fact that a number of ambiguous issues included in the Advisory Committee’s draft text that did not currently enjoy international consensus were no longer

¹³² Christian Guillermet Fernández and David Fernández Puyana, *The Right to Peace: Past, Present and Future*, University for Peace, San José: 2017, p. 150.

¹³³

https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/WGRightPeace/NGOsstatementsonarticles4_to8.pdf, p. 10.

¹³⁴ *Ibid.*, p. 29.

¹³⁵ A/HRC/WG.13/2/2.

¹³⁶ A/HRC/26/NGO/80, pp. 3 and 7.

¹³⁷ A/HRC/27/63, para. 49.

¹³⁸ A/HRC/WG.13/2/CRP.1, p. 14.

to be found in the new text, and considered that it was not appropriate to include in that text controversial issues or concepts lacking in clarity that were still being discussed in other forums.”¹³⁹

During the third session of the intergovernmental working group from 20 to 24 April 2015, representatives of non-governmental organizations and of other stakeholders suggested again to include the right to conscientious objection to military service as well as the “principles of non-aggression”,¹⁴⁰ albeit without success. Thus the intergovernmental process went ahead in this vein, however, without being able to reach consensus among States at the levels of the working group, Human Rights Council and General Assembly.

(l) 2016 Declaration on the Right to Peace

The Declaration on the Right to Peace was ultimately adopted by the General Assembly on 19 December 2016, with 131 votes in favour, 34 against and 19 abstentions. The Declaration neither refers to conscientious objection nor to freedom of thought, conscience and religion. Yet, its preamble alludes to religions and beliefs by “recalling the need for strengthened international efforts to foster a global dialogue for the promotion of a culture of tolerance and peace at all levels, based on respect for human rights and diversity of religions and beliefs”.¹⁴¹ It also recalls that constantly promoting and realizing the rights of persons who belong to religious minorities “as an integral part of the development of a society as a whole and within a democratic framework based on the rule of law would contribute to the strengthening of friendship, cooperation and peace among peoples and States”.¹⁴² In addition, its article 1 provides that “[e]veryone has the right to enjoy peace such that all human rights are promoted and protected and development is fully realized”, which could become an entry point for fundamental freedoms such as those protected under article 18 of the ICCPR. Furthermore, article 2 of the Declaration on the Right to Peace notes that “States should respect, implement and promote equality and non-

¹³⁹ A/HRC/27/63, para. 23.

¹⁴⁰ A/HRC/29/45, para. 30. With regard to aggression, see para. 28: “Several delegations considered it essential to include the principles of non-aggression and the prohibition of the use of force in the draft declaration, while one delegation stressed the need to recognize the exceptions of the latter enshrined in the Charter.” as well as para. 39: “A suggestion to include a reference to the Rome Statute of the International Criminal Court, as amended, was also debated, with several delegations raising concerns over the fact that the amendments regarding the crime of aggression (2010) had not yet come into force. Alternatively, a reference to aggression or acts of aggression was proposed.”

¹⁴¹ A/RES/71/189, annex, preambular para. 24.

¹⁴² *Ibid.*, preambular para. 34.

discrimination, justice and the rule of law, and guarantee freedom from fear and want as a means to build peace within and between societies”.

The Declaration’s implementation and possible linkages with conscientious objection were discussed during the Human Rights Council’s intersessional workshop, organized by OHCHR on 14 June 2018. The representative of the Spanish Society for International Human Rights Law reiterated the proposal that had been put forward by 692 civil society organizations in September 2017 to revise the Declaration on the Right to Peace and to include specific references to the right to resist and oppose oppression, including through conscientious objection to military service.¹⁴³ The former Independent Expert on the promotion of a democratic and equitable international order, Alfred de Zayas, stressed the importance of education on human rights instruments, notably freedom of religion or belief, including the right of conscientious objection to military service.¹⁴⁴ During another expert meeting, organized by civil society organizations in Geneva on 26 June 2019, the former Secretary of the UN Working Group on Arbitrary Detention, Miguel de la Lama, flagged that an important component of the human right to peace was each individual’s right to conscientious objection to military service, which should be fully recognized.¹⁴⁵

Also in recent years, the Declaration on the Right to Peace occasionally gets invoked in multilateral discussions in Geneva and New York. For example during the 2021 Social Forum, the Ambassador of the University for Peace to the United Nations in Geneva, David Fernández Puyana, stated that the best way to overcome intolerance and hatred, as consequences of the COVID-19 pandemic, was through the Declaration’s implementation.¹⁴⁶ In July 2019, the Human Rights Council welcomed the holding of the 2018 intersessional workshop and invited “Governments, agencies and organizations of the United Nations system, and intergovernmental and non-governmental organizations to disseminate the Declaration on the Right to Peace and to promote universal respect and understanding thereof”.¹⁴⁷ In December 2020, the General Assembly in its resolution 75/177 reaffirmed the Declaration on

¹⁴³ A/HRC/39/31, para. 26.

¹⁴⁴ A/HRC/39/31, para. 66.

¹⁴⁵ <http://aedidh.org/wp-content/uploads/2019/07/Miguel-de-la-Lama-Statement-26.6.2019.pdf>

¹⁴⁶ A/HRC/49/79, para. 37.

¹⁴⁷ A/HRC/RES/41/4, operative paras. 4 and 5 (the resolution was adopted by 32 votes to 13, with two abstentions).

the Right to Peace and reiterated “that the peoples of our planet have a sacred right to peace”.¹⁴⁸

4. Debates and reports in 2022

In March 2022, the dichotomy of actions and voting patterns concerning the Declaration on the Right to Peace was highlighted during the general debate at the 49th session of the Human Rights Council. The representative of a civil society organization, Center for Global Nonkilling, poignantly stated on 22 March 2022 the following: “We peacefully claim and proclaim our right to peace. It is a dismay to see some countries vote the right to peace and now wage war, to see others who did not vote it now crying for peace. It shows all the more that the progress of peace remains essential, including in our Council.”¹⁴⁹

During the subsequent session of the Human Rights Council on 5 July 2022, the representative of the International Fellowship of Reconciliation expressed “solidarity with all war resisters and conscientious objectors to military service in Ukraine as well as in Russia and Belarus and call[ed] on the international community to provide them asylum [...]. Freedom of thought, conscience and religion is a non-derogable right and, as is freedom of expression, it continues to apply in situations of armed conflict. The right to conscientious objection to military service should be absolutely protected and cannot be restricted as highlighted by the quadrennial analytical thematic report by OHCHR presented at this session.”¹⁵⁰ In addition, the representative of Conscience and Peace Tax International welcomed the legal advances as reflected in the 2022 report on conscientious objection to military service,

¹⁴⁸ A/RES/75/177, operative paras. 1 and 2 (the resolution was adopted by 130 votes to 55, with one abstention, see A/75/PV.46, pp. 14-15). On 10 November 2022, the Third Committee of the General Assembly adopted the related draft resolution A/C.3/77/L.28 by 128 votes to 53, with one abstention (for the voting record see https://www.un.org/en/ga/third/77/docs/voting_sheets/L.28.pdf).

¹⁴⁹ <https://media.un.org/en/asset/k1r/k1rvhxxrun?kalturaStartTime=11022>; written submission available at https://hrcmeetings.ohchr.org/HRCSessions/HRCDocuments/56/NGO/43391_82_f8f1e56c_9964_499b_bbc5_c0ce8785073a.docx. The General Assembly adopted on 19 December 2016 the Declaration on the Right to Peace by 131 votes to 34, with 19 abstentions (see A/71/PV.65, p. 26); notably, the Russian Federation voted in favour, while Ukraine abstained, and fifteen States from the Western Europe and Others Group (WEOG) voted against General Assembly resolution 71/189.

¹⁵⁰ https://media.un.org/en/asset/k1i/k1imq5bbps?fbclid=IwAR1aCK2qJIA1UL4k9-JFZSIeb8Jcz6KVRyJy7_A9brvQMzrWZhGuaZicexU&kalturaStartTime=5500; written submission available at <https://www.ifor.org/news/2022/7/5/ifor-addresses-the-un-human-rights-council-on-the-right-to-conscientious-objection-and-the-war-in-ukraine>

including recent jurisprudence and reports by the Working Group on Arbitrary Detention, the Committee on the Elimination of Discrimination against Women, the Beirut Declaration on “Faith for Rights”, the European Youth Forum and the Human Rights Council’s discussion of youth rights.¹⁵¹

In August 2022, Associazione Comunità Papa Giovanni XXIII proposed establishing Ministries of Peace in every country all around the world as “an effective move towards the realization of the Declaration on the Right to Peace and to maintaining and strengthening international peace and security in their broadest meaning”.¹⁵²

Lastly, in August 2022, the Independent Expert on the promotion of a democratic and equitable international order, Livingstone Sewanyana, highlighted in his report to the Human Rights Council on “Rethinking global peace and security” that the realization of the right to conscientious objection to military service “continues to be impeded by several challenges identified by the OHCHR in its most recent report on the matter”, including the lack of recognition or implementation, repeated trial or punishment, unjust procedures during application consideration, and disproportionate length of alternative service.¹⁵³ He connected freedom of conscientious objection to military service with the right to peace by recommending that Member States, in their individual capacity and as members of intergovernmental institutions and bodies, undertake to “(b) Uphold the Declaration on the Right to Peace [...]; (f) Respect the right to conscientious objection to military service without delay”.¹⁵⁴ Independent Expert Sewanyana concluded that “respect for the right to peace and for international law in general must be absolute”, noting that the current time of great turmoil is “marked by a highly volatile international peace and security situation which endangers the realization of a democratic and equitable international order”.¹⁵⁵

The present chapter has provided a brief overview of the politicized delinking between the right to peace and freedom of conscientious objection to military service over the past seven decades as well as recent attempts at connecting both rights again. The following chapters delve deeper into the related

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https://hrcmeetings.ohchr.org/HRCSessions/HRCDocuments/59/NGO/46348_83_5eb7c063_490d_47b3_ade4_d03a7fe6e2ef.doc

¹⁵² A/HRC/51/NGO/209, p. 3. See also below [chapter 4](#) by Maria Mercedes Rossi on “Contributions by civil society to elaborating the right to peace”.

¹⁵³ A/HRC/51/32, para. 29.

¹⁵⁴ A/HRC/51/32, para. 70 (b) and (f).

¹⁵⁵ A/HRC/51/32, para. 66.

developments, human rights challenges for the individuals concerned and prospects for bridging the divides. Part II focuses on the right to peace, whereas Part III analyzes freedom of conscientious objection to military service and the final Part IV aims at linking the dots between these rights.

Part II.

Right to Peace



Chapter 3

The Human Rights Council Advisory Committee's Draft Declaration on the right to peace (2012) and UN General Assembly Resolution 71/189 of 2016¹

*Wolfgang S. Heinz*²

1. Introduction

Since the 1990s, there has been empirical evidence of an increasing number of contact points between the two major thematic issues of peace and human rights.

On the website of the Office of the High Commissioner for Human Rights (OHCHR), the reader finds a section on Conflict prevention, early warning and security, with four sub sections on OHCHR: Arms and human rights, OHCHR: Prevention and early warning, Working Group on mercenaries, and Intergovernmental Working Group on private military and security companies.³ Interestingly in the time of working on the draft declaration, like today with the resolution, there is no reference to the right to peace as a topic apart from the Human Rights Council work.

There have been ad hoc contacts between the UN Security Council and the High Commissioner for Human Rights or Human Rights Council (HRC) experts, occasionally not without opposition from some Security Council members.⁴

¹ This chapter is based on two earlier publications of the author, Wolfgang S. Heinz, "Ein Menschenrecht auf Frieden? Auf dem Weg zu einer neuen Erklärung der Vereinten Nationen zu einem Menschenrecht auf Frieden", in: Vereinte Nationen, No. 5, 2011, pp. 221-225; Wolfgang S. Heinz, "Das Recht auf Frieden (1984–2017) bei den Vereinten Nationen", in: Fraktion Die Linke im Bundestag (ed.), Recht auf Frieden. Konferenz der Linksfraction Dokumentation (Berlin, 2019), pp. 5–11,

https://www.kathrin-vogler.de/fileadmin/lcmskathrinvogler/user/upload/190904_Recht_auf_Frieden_ReaderA4.pdf.

² Senior Lecturer, Free University, Dept. of Political Science. Former chair of the Human Rights Council Advisory Committee and former Rapporteur of its drafting group on the right to peace. This contribution represents personal observations by the author.

³ <https://www.ohchr.org/en/topic/conflict-prevention-early-warning-and-security>.

⁴ See, for example, UN press release 2018: "Procedural Vote Blocks Holding of Security Council Meeting on Human Rights Situation in Syria, Briefing by High Commissioner", SC/13255, 19 March 2018, <https://press.un.org/en/2018/sc13255.doc.htm>.

There are numerous points of contact between the two areas which can be identified as points of departure for the analysis that follows.

Promotion and protection of human rights is based on a cooperation mandate as stated in article 1, para. 3 of the UN Charter. While non-intervention into the internal affairs according to article 2, para. 7 of the Charter is still sometimes alluded to by States under criticism, the final declaration of the World Conference on Human Rights in Vienna, attended by 171 UN member States, has clarified that human rights constitute a legitimate concern of the international community (Vienna Declaration and Programme of Action, 1993, para. 4).

From the beginning to the present, the majority of member States of the United Nations did not want to make sanctions instruments available for the protection of human rights. These were reserved for the Security Council within the framework of Chapter VII of the UN Charter. The Council increasingly became convinced to include human rights aspects in its decision-making on resolutions, including peacekeeping, sanctions and the use of “necessary means”. The increase of problematic human rights/conflict situations in a number of countries raised the question of whether and, if so, which sanctions could make sense in order to improve the situation on the ground also from a human rights point of view.

The Security Council increasingly refers in its resolutions to human rights, humanitarian law and refugee law and demands its protection as well as compliance from conflict parties.⁵ Repeatedly it addressed countries that were or are also the subject of the Human Rights Council's deliberations, such as Afghanistan, Côte d'Ivoire, Iraq, the Democratic Republic of the Congo, Libya, Sri Lanka, Sudan and Syria.

At the 2005 World Summit, the UN General Assembly agreed to the concept of the responsibility to protect (R2P)⁶ which has been later discussed at General Assembly sessions. Security Council Resolutions 1970 and 1973 on Libya led to new and controversial discussions on when and how to use this political concept.

⁵ Joanna Weschler, “Human Rights”, in: David Malone (ed.), *The UN Security Council. From the Cold War to the 21st Century*, Boulder/London 2004, pp. 62 et seq.

⁶ UN General Assembly (GA), 2005 World Summit Outcome, UN Doc. A/RES/60/1, paras. 138-139.

2. Peace, security and human rights at the United Nations

In the United Nations, international security and human rights are largely dealt by separate organs. According to the UN Charter, the Security Council and the General Assembly (“New York”) address questions of peace and security; in Geneva, the Human Rights Council and other bodies deal with human rights.

This contribution starts with a brief overview on the Advisory Committee of the Human Rights Council (HRCAC)’s draft declaration on a human right of peoples to peace, followed by sections on the work of the HRCAC⁷ on this topic, on consultations with States and civil society, the adoption of General Assembly resolution 71/189 of 2016 on the right to peace and ends with concluding observations.

3. A brief overview on the evolution of the draft declaration of the HRC Advisory Committee on a human right of peoples to peace (2010-12)

Chronology

The road to the 2016 General Assembly (GA) resolution 71/189 and follow-up

- 1984 Declaration on the Right of Peoples to Peace, General Assembly resolution 39/11 of 1984
- 2009 Human Rights Council (HRC) workshop in Geneva
- 2010 Advisory Committee requested by the HRC to undertake a study (HRC resolution 14/3)
- 2011 Advisory Committee: Progress report on the right of peoples to peace (UN Doc. A/HRC/17/39, 28 March 2011)
- 2012 Advisory Committee: Transmission of the draft declaration to the HRC (UN Doc. A/HRC/20/31, 16 April 2012)
HRC sets up Open-Ended Inter-Governmental Working Group (HRC resolution 20/31)

⁷ For activities of the HRCAC and the Open-Ended Working Group see: <https://www.ohchr.org/en/hr-bodies/hrc/right-peace/wg-draft-un-declaration-on-the-right-to-peace>. For a comprehensive overview on peace and international law see Cecilia M. Bailliet, *Research Handbook on International Law and Peace*, Cheltenham/Northampton 2020.

- 2013 Open-Ended Inter-Governmental Working Group: 1st session. It discussed and decided not to pursue the HRCAC's draft; the chair of the Working Group was instructed to consult and submit a new draft.
- 2014 Second session of the Open-Ended Inter-Governmental Working Group
- 2015 Third session of the Open-Ended Inter-Governmental Working Group
- 2016 Adoption of the Declaration on the right to peace in the Human Rights Council (HRC resolution 32/28) (Wording of the title: no more *right of peoples* to peace, but not a *human* right to peace)
- 2016 Adoption of UN General Assembly resolution 71/189
- 2017 HRC Resolution to hold a workshop on the right to peace (HRC resolution 35/4)
- 2018 Workshop Report: HRC resolution 39/31
- 2019 HRC resolution inviting States to promote the right to peace (HRC resolution 41/4)

(a) First steps

The idea of a right of peoples to peace attracted attention mainly in the 1980s, with a resolution adopted by the General Assembly in 1984.⁸ It was taken up again by the UN Human Rights Council after a long break of more than two decades.⁹

Resolutions are tabled in the Human Rights Council by sponsor countries. In the case of the right of peoples to peace, Cuba was the driving force. In 2008 and 2009, the Cuban delegation introduced draft resolutions on the right of peoples to peace to the HRC, which referred to General Assembly resolution 39/11 of 1984. A workshop was proposed in 2009, which was then organised by the Office of the United Nations High Commissioner for Human Rights in December 2009.¹⁰ In 2010, Cuba proposed another resolution on the issue.

⁸ UN General Assembly resolution 39/11 of 1984.

⁹ See a selection of relevant literature, UN resolutions etc. in UN HRCAC, Progress report of the Human Rights Council Advisory Committee on the right of peoples to peace, UN Doc. A/HRC/17/39, 1 April 2011, paras. 22–38.

¹⁰ OHCHR, Report of the Office of the High Commissioner on the Outcome of the Expert Workshop on the Right of Peoples to Peace, UN Doc. A/HRC/14/38, 17 March 2010.

In it, the Human Rights Council Advisory Committee (HRCAC) was tasked with drafting a declaration on the right of peoples to peace. The draft was to be discussed in the Council and then passed as a resolution by the Council and submitted to the General Assembly.¹¹

Before voting on this draft resolution, France stated that the European Union supported some principles in the text but disagreed with others. The United States opposed the draft because in its view it made no meaningful contribution to peace and the situation of vulnerable groups in conflict zones. They also opposed collective rights. Human rights were universal and only applicable to individuals – by inference, not “by people”. The draft resolution was finally adopted as HRC Resolution 14/3 on 17 June 2010 by 31 votes against 14 votes; one member State, India, abstained.

*(b) The Work of the Advisory Committee on the draft*¹²

As with other mandates of the HRCAC on which the committee had worked at the time, a drafting group was set up – initially with four and later with six members.¹³ It presented a progress report to the HRC in a revised form at its 17th session in June 2011.¹⁴

The report offered an overview on the legal sources that could be identified to justify the existence of the right to peace in international treaties, for example resolutions of the General Assembly and the former Commission on Human Rights. It presented a list of more than 40 possible human rights standards, each of which was explained referring to relevant legal sources.

It was clear from the beginning that this would not be an easy ride to a generally accepted outcome. Whenever a draft declaration proposed, one has to consider a number of issues – and of course there can and have been different views on the following points (depending not the least whether you favour, partially favour or reject the proposal). For example, one had to clarify:

¹¹ UN HRC resolution 14/3, 23 June 2010.

¹² For obvious reasons I cannot go into the general political–legal context of the work of the HRC, but see the excellent handbook by Eric Tistouet, *A Practical Anatomy of the Human Rights Council*, Cheltenham/Northampton 2020. I have offered a limited overview on certain issues in Wolfgang S. Heinz, “An International Relations Perspective on the Reform Needs of the Human Rights Council”, in: *German Yearbook of International Law*, vol. 62, 2021, pp. 43–79.

¹³ UN HRCAC, Progress report of the Human Rights Council Advisory Committee on the right of peoples to peace, UN Doc. A/HRC/17/39, 1 April 2011, para. 2.

¹⁴ A/HRC/17/39, 1 April 2011.

- A declaration should be focused, concise, coherent, as far as possible.
- A short, medium sized, longer resolution? The 1984 resolution was short, had four points. On the other hand, you cannot have a paperback book. You have to identify which topics you take up, what should be the boundaries of “peace” for the purposes of the declaration?
- Should you go for a definition of peace, you could get a decades-long discussion. We opted to rather work with UN Charter references and choosing dimensions of peace. Not a new thing not to have a definition, the UN declarations on minorities and indigenous peoples, for instance, have been passed without definitions.
- Which standards do you try to develop a bit further? Caution, of course: You might be criticized for abandoning international law in the eye of critics, but how do you develop further international law (*de lege lata*, *de lege ferenda*)?
- How do you deal with proposals from other relevant actors, States, academia, NGOs. Caution: Whatever you do, you might be criticized that you go too far, or you take a position too conservative, etc.
- If you take proposals from other actors, e.g. civil society proposals, you might also be criticized – “the experts just copy proposals, nothing original from the committee”.
- If you do not take them, you can be criticized not to listen to civil society.

The landscape of member States’ positions was relatively clear, but hope for positions that might change was present at the time. There were many countries from the Global South favouring a new resolution, the majority, but of which type and contents? In the end, it was a “states espouse a few principles” approach, not a human rights-oriented approach defining (human) rights and corresponding State obligations.

Mainly the Western countries group was opposed to the project, arguing, questioning whether there does exist a right to peace in international law or an emerging right to peace.

Little common ground, as should be clear by now, could develop in these circumstances. Despite quite a number of conferences and workshops, including in Geneva, it proved extraordinary difficult to change what appeared to be rather fixed positions, fixed in the home capitals it seemed.

In the presentation of its draft in 2012, the HRCAC stressed *inter alia*:

“6. The Advisory Committee proposes the term ‘right to peace’, which was found to be more appropriate, and includes both the individual and collective dimensions.

7. The Advisory Committee worked towards a comprehensive, yet concise draft declaration, given that, the topic of peace may address many different issues (problem of determining boundaries instead of following an ‘include all issues’ approach). The draft declaration focuses on standards relating to international peace and security as core standards (elements of negative peace, absence of violence), and includes standards in the areas of peace education, development, the environment, and victims and vulnerable groups as elements of a positive peace.”¹⁵

The draft declaration starts to define individuals and peoples as rights holders, States and, in certain cases, international organizations as actors responsible for the observance of human rights (duty bearers).¹⁶

In most articles, the individual is addressed as rights holders, occasionally also peoples or peoples and individuals (e.g. in Article 1 para. 1, Article 3 paras. 3 and 5, Article 4 para. 1). States and also international organizations are seen as duty bearers. Core standards from the UN Charter can be found under Article 1 and 2, referring *inter alia* to the use or threat of force, friendly settlement of conflicts, etc., followed by main elements of human security, disarmament, peace education and training, conscientious objection to military service, private military and security companies, resistance and opposition to oppression, peacekeeping, right to development, environment, rights of victims and vulnerable groups and rights of refugees and migrants. “Obligations and implementation” emphasize the obligations of States and international organizations (as duty bearers), but also stress that effective implementation of the human right to peace requires the participation of civil society (Article 13, para. 3). A mechanism is proposed “to monitor respect for and the implementation of the right to peace and to report to relevant United Nations bodies” (Article 13, para. 6).¹⁷

¹⁵ UN HRCAC, Report of the Human Rights Council Advisory Committee on the right of peoples to peace, UN Doc. A/HRC/20/31, 16 April 2012, p. 2.

¹⁶ *Ibid.*, Article 1, paras. 1 and 2.

¹⁷ *Ibid.*, Articles 3-12.

(c) Consultation with States and civil society

During the work process, the OHCHR sent in April 2011 the drafting group's questionnaire to member States, international organizations and non-governmental organizations (NGOs) asking for comments on the Advisory Committee's progress report mentioned above. As of September 2011, eight member States had responded, the Vatican, the European Union, three international actors and 24 NGOs.¹⁸

Many answers were positive and supported the suggested standards. Suggestions were made to change and to include further standards. Western member States responding remained opposed. Apart there were various seminars and individual bilateral meetings with diplomats, scholars and NGOs over the time.

At the 7th session of the committee in 2011, for example, there was general support for the HRCAC proposals. With the exception of the U.S. delegation, speakers approved of the broad lines. There were criticisms and proposals on a number of points.¹⁹

Among various civil society initiatives, the Spanish Society for International Human Rights Law (Spanish acronym: AEDIDH) was the most active one and organised many workshops and conferences in Geneva and in other places, as well as published books with contributions on the topic.²⁰ The NGO, supported by other NGOs, reported on numerous seminars in its publications and has also adopted declarations on the right to peace at four conferences that contain a large number of standards (Luarca Declaration in October 2006, Bilbao Declaration in February 2010, Barcelona in June 2010 and Santiago de Compostela in December 2010). An "Observatory" on the Right to Peace was established to continue the work. The AEDIDH was

¹⁸ The questionnaire can be found under: http://www2.ohchr.org/english/bodies/hrcouncil/advisorycommittee/right_to_peace.htm, responses on the extranet website of the OHCHR (Name: HRC extranet; Password: 1session), under <https://extranet2.ohchr.org/Extranets/AdvisoryCommittee/portal/page/portal/AdvisoryCommittee/Rightofpeoplestopace.html>.

¹⁹ UN press release 2011, "Human Rights Council Advisory Committee opens seventh session. Elects Bureau and Discusses Right of Peoples to Peace", 8 August 2011; <https://www.ohchr.org/en/press-releases/2011/08/human-rights-council-advisory-committee-opens-seventh-session>.

²⁰ <http://aedidh.org/es/>. See e.g. AEDIDH et al., Consultations of the Eastern and Western European States and Others Groups with experts on the codification of the right to peace at the UN Human Rights Council 2011; <https://www.alfreddezayas.com/aimages/aedidh16%20May%202011.pdf>.

present at meetings the Advisory Committee, commenting its work and bringing together different actors.²¹

4. General Assembly resolution 71/189 of 2016

The HRC set up the Open-Ended Inter-Governmental Working Group which met in 2013, 2014 and 2015.

In the first session, member States discussed the HRCAC draft, decided at the end not to continue with the draft²² and asked the chair, Costa Rican ambassador Guillermet Fernández, to come up with a proposal on the basis of consultations.²³

In a statement of more than 600 civil society organisations commented in 2015, after the third, final session of the Working Group:

“The 627 undersigned civil society organizations consider that article 1 is highly insufficient since it does not recognise the human right to peace nor develop its fundamental elements, as did the Declaration on the Right to Peace of the Advisory Committee (2012) and the Santiago Declaration on the Human Right to Peace, approved by the international civil society in 2010. [...] In conclusion, the 627 undersigned civil society organizations request the Council:

1. To extend the mandate of the Working Group on the Right to Peace.
2. To invite the Working Group to renew the negotiation of the future Declaration of the United Nations on the Human Right to Peace, taking into account its essential elements, as developed both by the Advisory Committee Declaration on the Right to Peace (2012) and

²¹ See below [chapter 4](#) by Maria Mercedes Rossi, “Contributions by civil society to elaborating the right to peace”.

²² A comprehensive account can be found in Christian Guillermet Fernández and David Fernández Puyana, “Envisioning the ‘Right to Life and enjoy Peace, Human Rights and Development’ within the Human Rights Council”, *Przegląd Strategiczny*, Nr. 8, S. 309-327; <https://pressto.amu.edu.pl/index.php/ps/article/view/5321/5431>; Christian Guillermet Fernández and David Fernández Puyana, “Analysis and Assessment of the Right to Peace in light of the latest developments at the Human Rights Council”, *Erudito*, Vol. 2, No. 1, pp. 94-116, <http://eruditio.worldacademy.org/volume-2/issue-1/article/analysis-and-assessment-right-peace-light-latest-developments-human-rights-council>.

²³ See below [chapter 5](#) by Christian Guillermet Fernández and David Fernández Puyana, “The travaux préparatoires of the 2016 Declaration on the Right to Peace”.

civil society in the Santiago Declaration on the Right to Peace (2010).”²⁴

In the end, a draft was presented to the HRC and adopted (HRC resolution 32/28 of 2016), which went to the General Assembly.

UN General Assembly resolution 71/189 received 131 votes in favour and 34 against, while 19 member States abstained (Albania, Andorra, Armenia, Cyprus, Georgia, Greece, Iceland, Italy, Liechtenstein, Norway, Palau, Poland, Portugal, Republic of Moldova, San Marino, Serbia, Switzerland, Turkey and Ukraine).²⁵ Nine member States did not participate.

Comparing support and opposition to the resolutions 1984 and 2016 data shows that support for the right to peace increased – from 92 to 131 votes in favour – but also rejection – from no votes against in 1984²⁶ to 34 votes against in 2016.

In the follow-up to the resolution, two steps can be noted. In 2017, HRC resolution 35/4 requested to hold an intersessional workshop on the right to peace which took place in 2018.²⁷

In 2019, HRC resolution 41/4 invited States to promote the right to peace. It stated, *inter alia*:

“1. Recalls that everyone has the right to enjoy peace such that all human rights are promoted and protected and development is fully realized;

2. Stresses that States should respect, implement and promote equality and non- discrimination, justice and the rule of law, and guarantee freedom from fear and want as a means to build peace within and between societies;

²⁴ Joint written statement submitted by the International Youth and Student Movement for the United Nations and others, 25 May 2015; UN Doc. A/HRC/29/NGO/90; <https://www.lrw.org/wp-content/uploads/2017/08/29-NGO-90.pdf>.

²⁵ Voting of 2016 GA resolution: 131 member States in favour, 34 against (among others, by Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Ireland, Luxembourg, Netherlands, United Kingdom, United States), and 19 abstentions (see full list in UN Doc. A/71/PV.65, p. 26).

²⁶ Voting of 1984 GA resolution: 92 member States in favour, none against, 34 abstentions (see full list in UN Doc. A/39/PV.57, para. 206).

²⁷ HRC Resolution 35/4, 11 July 2017; Report: UN Doc. A/HRC/39/31, 31 July 2018.

3. Recognizes that peace is not only the absence of conflict but also requires a positive, dynamic participatory process where dialogue is encouraged and conflicts are solved in a spirit of mutual understanding and cooperation, and socioeconomic development is ensured; [...]

5. Invites Governments, agencies and organizations of the United Nations system, and intergovernmental and non-governmental organizations to disseminate the Declaration on the Right to Peace and to promote universal respect and understanding thereof;

6. Requests the Office of the High Commissioner to pay appropriate attention to the right to peace in its work, including in its activities to commemorate the seventy-fifth anniversary of the United Nations;

7. Encourages all Member States, specialized agencies, civil society and relevant stakeholders to contribute to the promotion of the right to peace...²⁸

There is no doubt that the negotiations were extraordinarily difficult and controversial. In terms of substance, there is a gross mismatch between 37 preambular paragraphs (many of which are helpful though) and four operative paragraphs. Those paragraphs (Nos. 1-4), in the view of the author, cannot be described as particularly human rights-oriented.

A right (originally: of the peoples) to peace was changed into a right for everyone to enjoy peace, an unclear concept. There are no recognizable human rights-related obligations for States. Of course, one can argue that the topic right to peace was “saved” – compared to a situation where no declaration would have been passed. Still this does not change my judgment of its profound weakness – and this is independent of the HRCAC draft issue.

5. Concluding remarks

Discussion of a (human) right to peace has been and continues to be a contentious issue, particularly between countries in the Western group and a number of countries in the Global South. It is strongly influenced by reflexes from the East-West confrontation which, it seems, could not easily be

²⁸ HRC Resolution 41/4, 17 July 2019.

overcome, and have now returned vividly after February 2022. The Western group resisted a new declaration of a human right to peace arguing mainly that there was no right to peace and that the issue does not belong in the Human Rights Council but in the competence of other UN bodies (similar reactions had been heard on topics such as human rights and trade, development, toxic waste, mercenaries, drone war).

On the other side, a number of Global South countries voiced concern about standards proposed by HRCAC relating to human security, responsibility to protect, conscientious objection to military service as being controversial and therefore should not be taken up, to cite only a view. They were more interested in having a State-to-State resolution with very limited substance, not a human rights resolution which would define rights holders and put some light non-binding, obligations on States. Clear, specific State obligations would be the goal. A General Assembly resolution would have been an expression of political intent and not legally binding.

While such progress was not possible in the negotiations in the 2013-2015 period, it may be possible in a mid- to long-term perspective when some rigid and frozen positions will open up again and a more comprehensive, human rights-oriented approach will be possible.

Chapter 4

Contributions by civil society to elaborating the right to peace

Maria Mercedes Rossi

1. Introduction

Peace is one of the *raison d'être* of the UN system as it clearly emerges from the historical facts that led to the creation of the United Nations Organization and from the UN Charter. Since peace has always been at the centre of the UN mission, during the past decades some Member States and civil society organizations have striven for the recognition of the right to peace. Such a process has finally led to the adoption of the 2016 UN General Assembly Resolution 71/189, entitled “Declaration on the Right to Peace”.

Civil Society Organizations (CSOs) in particular have played a very important role for the promotion and recognition of the human right to peace. In fact, Human Rights Council resolution 14/3 on the promotion of the right of peoples to peace, adopted on 17 June 2010, explicitly welcomed “the important work being carried out by civil society organizations for the promotion of the right of peoples to peace and the codification of that right”.

The adoption of the Declaration on the Right to Peace and the process that led to it have seen, in fact, a great mobilisation and engagement of civil society. Civil Society Organisations were aiming, of course, at a stronger declaration on the right to peace and which ideally would have been adopted by consensus. The 2016 Declaration, instead, was, at the end, the result of a non-consensual process on which Member States and civil society organizations were and are still maintaining divergent positions. Anyhow, its adoption has represented a galvanising and historical momentum that the author of this chapter, as permanent representative of Associazione Comunità Papa Giovanni XXIII (APG23), one of the CSOs engaged in the process, had the honour to directly witness.

Civil society is meant as a wide and diverse range of non-State, non-governmental and non-profit actors and organizations of different nature, belonging neither to the public nor the private sector, voluntarily pursuing collective, autonomously defined and values-driven interests and purposes. Civil society continues “to play important roles in protecting people from violence, providing services, monitoring human rights abuses, and

advocating for an end to wars or authoritarian rule”¹. CSOs are vital for building and keeping peace at different levels and for carrying out activities aimed to promote a culture and education of peace. In this chapter, the term “civil society” refers to the above broad definition, while the term “CSOs” refers to organizations accredited to the UN through the Economic and Social Council (ECOSOC).

2. Historical overview

Many civil society organization, united under the leadership of the Spanish Society for International Human Rights Law (SSIHRL), started a long process of advocacy for the establishment of a human right to peace, including a World Campaign in favour of the human right to peace between 2007 and 2010.² This campaign had the following purposes: (1) To share the Declarations on the human right to peace with peoples of all regions of the world; (2) To introduce the human right to peace in the agenda of the UN Human Rights Council and its Advisory Committee; (3) To conclude the civil society codification of a universal declaration on the human right to peace; and (4) To initiate the codification of the human right to peace at the United Nations.

The Campaign produced and disseminated the Luarca Declaration on the Human Right to Peace in 2006, which was subsequently reviewed in different occasions and finally redrafted and approved in 2010 as the Santiago Declaration on the Human Right to Peace.³ These declarations are outstanding and ambitious documents developed by civil society which served both as advocacy tools to push for the introduction of a UN human right to peace and as contributions by the civil society to the process that led to the 2016 Declaration on the Right to Peace, as adopted by the UN General Assembly.

In 2011, SSIHRL and the IOHRP⁴ in association with 778 CSOs submitted written amendments⁵ to the first draft of the declaration on the right to peace prepared by the Advisory Committee of the Human Rights Council. Such

¹ Thania Paffenholz, “Civil society and peacebuilding”, *Development Dialogue* (2015), p. 118, http://www.daghammarskjold.se/wp-content/uploads/2016/01/DHF_DD63_p108-118.pdf.

² Carlos Villán Durán, “Civil Society Organizations Contribution to the Universal Declaration on the Human Rights to Peace”, *International Journal on World Peace* vol. XXVIII, no. 4 (2011), pp. 59-93, at p. 59.

³ *Ibid.*, p. 60.

⁴ International Observatory of the Human Right to Peace.

⁵ A/HRC/AC/7/NGO/3.

amendments were partially accepted by the Advisory Committee's drafting group in the text of the second draft declaration.

Several joint written statements co-signed by numerous CSOs⁶ and tackling different aspects and implications of the right to peace were submitted to the Human Rights Council and the Advisory Committee in the years prior to the adoption of the Declaration on the Human Right to Peace under the leadership of the SSIHRL. The coordination of all this work was carried out by David Fernández Puyana, who, at that time, was the Director of the World Campaign on the Human Right to Peace.

At national and local levels, the mobilization of civil society, academia and local authorities to support the process on the recognition of the human right to peace has been, indeed, remarkable. The Padua University Human Rights Centre and the UNESCO Chair in Human Rights, Democracy and Peace at the same university have promoted and carried out, with the collaboration of the National Coordination of Local Authorities for Peace and Human Rights, a large campaign in Italy, to support the efforts of the UN Human Rights Council. More than three hundred City Councils and five Regional Councils adopted a petitionary motion in this regard, which was launched on the occasion of International Human Rights Day 2014, in a celebration held in the Aula Magna "Galileo Galilei" of the University of Padua. Afterwards, a delegation of these city councils headed by the late Prof. Antonio Papisca, Director of the UNESCO Chair Human Rights, Democracy and Peace, and Prof. Marco Mascia, Director of the Centre on Human Rights of the University of Padua, came to Geneva to give their motion to the President of the Human Rights Council and to the Director of the United Nations Office at Geneva.

Paz sin Fronteras, created by Mr. Miguel Bosé and Mr. Juanes (Foundation Peace without Borders), played a fundamental role of mobilization and awareness-raising before the institutions of the United Nations. On 22 October 2016, it launched the campaign called #RightToPeaceNow, through which celebrities urged Member States of the Third Committee of the General Assembly to adopt a Declaration on the Right to Peace at the end of the 71st regular session. During this campaign, several personalities from the world

⁶ A/HRC/6/NGO/33; A/HRC/6/NGO/34; A/HRC/6/NGO/62; A/HRC/7/NGO/84; A/HRC/8/NGO/33; A/HRC/9/NGO/47; A/HRC/10/NGO/113; A/HRC/12/NGO/30; A/HRC/13/NGO/89; A/HRC/14/NGO/47; A/HRC/15/NGO/70; A/HRC/16/NGO/14; A/HRC/17/NGO/57; A/HRC/18/NGO/7; A/HRC/AC/7/NGO/3; A/HRC/AC/8/NGO/2.

of culture and art raised their voices to demand a Declaration on the Right to Peace through their social networks and online platforms.

Several civil society organizations directly brought their voices into the discussions within the Open-Ended Intergovernmental Working Group (OEIWG) on the right to peace and actively engaged in the drafting of the new declaration by proposing and advocating for a clear human rights-based and victim-centred approach to the right to peace.

At the first session of the OEIWG, held on 18-21 February 2013, all the participating CSOs⁷ stood together making joint statements for defending the draft declaration prepared by the Advisory Committee, that contained almost 80 per cent of the Santiago Declaration. The Advisory Committee's text identified, in cooperation with some civil society organizations, the main elements which should be part of the future Declaration, including issues such as migrants, refugees, conscientious objection to military service, disarmament, environment, rights of victims, development and human security. Yet, all the elements presented by the Advisory Committee in its draft declaration were already included in the Declaration and Programme of Action of Culture of Peace.⁸

CSOs strongly supported the article 5 of the draft declaration on the right to conscientious objection to military service. Nevertheless, the majority of Member States rejected this notion and did not fully agree with the Advisory Committee's draft declaration. The first session of the OEIWG concluded by giving to the Chair, the Ambassador of Costa Rica, Christian Guillermet

⁷ African Commission of Health and Human Rights Promoters, American Association of Jurists, Association "Comunità Papa Giovanni XXIII", Association of World Citizens, Bangwe et Dialogue, Association Points-Coeur, Centre Europe - Tiers Monde, CIVICUS – World Alliance for Citizen Participation, Congregation of Our Lady of Charity of the Good Shepherd, Franciscans International, Initiatives of Change International, Institute for Planetary Synthesis, Institute of Global Education, International Association of Democratic Lawyers, International Association of Peace Messenger Cities (on behalf of 1619 civil society organization and cities), International Fellowship of Reconciliation, International Volunteerism Organization for Women Education and Development, International Youth and Student Movement for the United Nations, Istituto Internazionale Maria Ausiliatrice delle Salesiane di Don Bosco, Japan Federation of Bar Associations, Japanese Workers' Committee for Human Rights, Make Mothers Matter International, Nonviolent Peaceforce, North-South XXI, Rencontre Africaine pour la defense des droits de l'homme, Soka Gakkai International United Network of Young Peacebuilders, United Nations Watch, United Religions Initiative, United States Federation for Middle East Peace, Vivat international, Women's World Summit Foundation, Worldwide Organization for Women and Zonta International.

⁸ A/RES/53/243, 6 October 1999.

Fernandez, the task of drafting a new text to be presented at the second session.

Associazione Comunità Papa Giovanni XXIII (APG23),⁹ which was already among the co-signatories of the above mentioned jointly written statements to the Human Rights Council, was also present in the first session of the Working Group and made a specific intervention on conscientious objection in favour of article 5 of the draft.¹⁰ The Association, in fact, has supported freedom of conscientious objection since the 1970s and nowadays it has been running, planning and promoting both the national civilian service in Italy and the International Civilian Service (White Helmets) project abroad. Moreover, it supports the institution of Civilian Peace Corps, an Italian experimental project aiming to create an effective non-violent corps capable and formed to intervene in areas of conflict.

During the second session of the Open-Ended intergovernmental Working Group on the right to peace, held from 30 June to 4 July 2014, the civil society organizations attending the session maintained an absolutely united front, and prepared joint statements related to the contents of the right to peace. Firmly, they kept calling for the right to peace to be reaffirmed as a fundamental human right and to be clearly reflected in article 1 of the draft declaration. They hoped that the draft of the Advisory Committee would not be entirely discarded.¹¹ At the end of the session, they also made another joint statement with an appeal for all delegations to take a leap forward with the declaration by endorsing the right to life in peace, in line with article 1 of the Declaration on the Preparation of Societies for Life in Peace.¹²

At the third session of the OEIWG, held from 20 to 24 April 2015, CSOs continued their united efforts to advocate for a meaningful declaration reflecting the right to peace in the article 1 and the title and to support the

⁹ APG23 is an International Association of Faithful of Pontifical Right with legal status accredited with Special Consultative Status to the Economic and Social Council (ECOSOC) since 2006. Founded by Fr Oreste Benzi, a Catholic priest who passed away in 2007, APG23 is present in 45 countries on the five continents. Its members, of different ages and walks of life, share life directly with the poor and disadvantaged and are committed to removing the root causes of poverty and exclusion and to being the voice of the voiceless through nonviolent actions and means. Through its Civil Peace Corps, the Operazione Colomba, it has a nonviolent presence in both fronts in war zones to guarantee the respect for human rights and assist populations displaced by war.

¹⁰

https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/WGRightPeace/NGOsstatementsonarticles4_to8.pdf.

¹¹ A/HRC/27/63, para. 74.

¹² A/HRC/27/63, para. 89.

consensual approach of the Chair¹³ even if it was clear that such a consensus was far away from being reached.

With the aim of strengthening the effects of the second draft text prepared by the Chair-Rapporteur, APG23 and the United Network of Young Peacebuilders took the initiative and circulated in the room a non-paper with potential amendments. This non-paper introduced in article 1 the notion of *the right to enjoy peace*, inspired by article 38 of the ASEAN Human Rights Declaration.¹⁴ This proposal of language was then made by Indonesia during the third session and obtained the support from Malaysia, India, Venezuela, Pakistan and Philippines, and some civil society organizations.¹⁵ It became the choice of language reflected in article 1 of the final text as adopted by the General Assembly in 2016. At the end of the third session of the OEIWG, however, no consensus was reached among States, and the Chair's second draft remained with many square brackets both in the preambular and operational paragraphs.

All Members States and other stakeholders, including CSOs, were waiting for a fourth Open Ended Intergovernmental Working Group to take place as per Human Rights Council resolution 30/12, but the Permanent Mission of Cuba, the sponsor of the resolution on the Right of Peoples to Peace, decided to annex the final text of the Declaration on the Right to Peace to Human Rights Council resolution 32/28, recommending its adoption at the General Assembly. This resolution was adopted at the 32nd regular session of the Human Rights Council with a recorded vote of 34 to 9, with 4 abstentions.¹⁶

¹³ A/HRC/29/45, paras 29 and 30.

¹⁴ ASEAN Human Rights Declaration, article 38 (19 November 2012).

¹⁵ On 22 September 2015, Associazione Comunità Papa Giovanni XXIII delivered a joint oral statement in item 5 on behalf of the Resource Center for Palestinian Residency and Refugee Rights (BADIL), Center for Global Nonkilling, Commission Africaine des Promoteurs de la Santé et des Droits de l'homme (CAPSDH), Institute for Planetary Synthesis, Institute of Global Education, International Association of Democratic Lawyers (IADL), International Network for the prevention of elder Abuse (INPEA), International Peace Bureau, International Society for Human Rights, Istituto Internazionale delle figlie di Maria Ausiliatrice (IIMA), Mothers Legacy Project, Organisation pour la Communication en Afrique et de Promotion de la Coopération Economique Internationale (OCAPROCE), International Pan Pacific Southeast Asia Women's Association International (PPSEAWA), Pax Romana, United Network of Young Peacebuilders, Volontariato Internazionale Donna Educazione Sviluppo (VIDES) and Women's World Summit Foundation.

¹⁶ **In favour 34 States** (Algeria, Bangladesh, Plurinational State of Bolivia, Botswana, Burundi, China, Congo, Cote d'Ivoire, Cuba, Ecuador, El Salvador, Ethiopia, Ghana, India,

At this point, some differences among CSOs emerged, especially regarding their strategic point of view. The SSIHRL and part of its network, not being satisfied with the text of the declaration,¹⁷ continued pushing for the Santiago Declaration's approval and they advocated for a stronger text, similar to the one of the Advisory Committee. Other NGOs, notwithstanding their support for the Santiago Declaration, supported the adoption of the draft declaration as it was at the Human Rights Council and then at the General Assembly, convinced that such a declaration, even if not completely satisfactory, was creating a momentum and a further step in the right direction.¹⁸

In fact, by declaring the “right” of everyone to enjoy peace, human rights and development, article 1 of the 2016 Declaration on the Right to Peace interlinks the three UN pillars in such a way that it entitles everyone to live in a context where peace, development and human rights are realized and “to enjoy and access the benefits” deriving from peace, development and human rights.¹⁹ The 2016 Declaration thus marks a shift from the inter-State perspective to a victim-centred and human rights-based approach.

On 2 September 2016, the International Association of Peace Messenger Cities adopted the Wielun Declaration in Poland by which they welcomed the adoption by the Human Rights Council of the Declaration on the Right to Peace, as contained in the annex to its resolution 32/28 and called upon the General Assembly to adopt this Declaration by consensus.²⁰

Associazione Comunità Papa Giovanni XXIII (APG23), the Centre for Global NonKilling, the International Association of Democratic Lawyers (IADL), the International Fellowship of Reconciliation (IFOR), the Japan Committee for the Right to Peace and UNOY Peacebuilders, wrote a letter to

Indonesia, Kenya, Kyrgyzstan, Maldives, Mexico, Mongolia, Morocco, Namibia, Nigeria, Panama, Paraguay, Philippines, Qatar, Russian Federation, Saudi Arabia, South Africa, Togo, United Arab Emirates, Venezuela (Bolivarian Republic of), Vietnam); **against 9 States** (Belgium, France, Germany, Latvia, Netherlands, Republic of Korea, Slovenia, The former Yugoslav Republic of Macedonia, United Kingdom of Great Britain and Northern Ireland); **abstain 4 States** (Albania, Georgia, Portugal, Switzerland).

¹⁷ HRC 35th regular session; Expert Meeting: The human Right to Peace. Oral Statement delivered by Carlos Villan Durán, President of SSIHRL, Geneva, Palais des Nations, 13 June 2017.

¹⁸ Joint oral statement delivered by Associazione Comunità Papa Giovanni XXIII, 10 March 2017,

https://hrcmeetings.ohchr.org/HRCSessions/HRCDocuments/13/NGO/12799_53_5f1d0ff6_9d4f4dd4_b196_7adfed0b76b9.doc.

¹⁹ Christian Guillermet Fernández and David Fernández Puyana, *The Right to Peace: Past, Present and Future* (University for Peace, San José: 2017), p. 291.

²⁰ *Ibid.*, p. 175.

Miguel Bosé and Juanes, co-founders of Paz Sin Fronteras, asking their support and mobilization in view of the adoption of the declaration on the right to peace at the 71st General Assembly.

In addition, the International Association of Democratic Lawyers (IADL), Associazione Comunità Papa Giovanni XXIII (APG23), the Japanese Committee for the Human Right to Peace and the United Network of Young Peacebuilders (UNOY), wrote an Open Letter²¹ addressed to the diplomatic community in New York on 10 October 2016 stressing that: “in today’s world, devastated by armed conflicts, hate and poverty, the recognition and declaration by an overwhelming majority of states that ‘Everyone has the right to enjoy peace’, would send to Humanity, and in particular to young and future generations, a very much needed message of peace and hope. [...] The adoption of the UN Declaration on the Right to Peace will represent a little step forward toward the fulfilment of the solemn promises we made in 1945”. This letter was supported by 60 CSOs²² with UN-ECOSOC Status and many well-known peace and human rights activists.²³

²¹ Ibid., p. 23.

²² The open letter was supported by: Foundation Culture of Peace, International Society for Human Rights (ISHR), Finn Church Aid (FCA), International Federation of Settlements and Neighbourhood Centers (IFS), Commission Africaine des Promoteurs de la Santé et des droits de l’homme (CAPSDH), Cultura de Solidaridad Afro-Indígena, International Organization for the Elimination of All Forms of Racial Discrimination (EAFORD), Universal Esperanto Association (UEA), Mother’s Legacy Project, International Federation of Women in Legal Careers (IFWLC), International Federation of Women Lawyers (IFWL), 3HO Foundation, Institute for Planetary Synthesis (IPS), Institute of Global Education, Lama Gangchen World Peace Foundation, Federation of Family Associations of Missing Persons from Armed Conflicts (*IFFAMPAC*), Pax Christi International, Foundation for GAIA (GAIA), Planetary Association for Clean Energy (PACE), Global Eco-village Network (GEN), Institute of International Social Development at the United Nations (IISD), International Association of Peace Messenger Cities (IAPMC), International Peace Bureau (IPB), World For World Organization (WFWO), United Religions Initiative (URI), Lucis Trust-World Good Will Bangwe and Dialogue, Dzeno, Istituto Internazionale Maria Ausiliatrice delle Salesiane di Don Bosco (IIMA), Foundation for the Refugee Education Trust (RET International), Graines de Paix, International Volunteerism Organisation for Women Education Development (V.I.D.E.S.), US Federation for Middle East Peace, ONG Hope International, World Association for Education as an Instrument of Peace, Commission Colombian of Jurist, General Arab Women Federation (GAWF), International Organization for Victim Assistance (IOVA), International Society for Traumatic Stress Studies (ISTSS), International Women’s Year Liaison Group, Association Points-Coeur, Nonviolent Peaceforce, Association Centre Europe- Tiers Monde Cetim.

²³ <https://unipd-centrodirittiumani.it/en/news/Making-history-in-the-United-Nations-the-General-Assembly-adopts-a-Declaration-on-the-Right-to-peace-promoted-by-civil-society-organizations/4225>.

Finally, the Declaration on the Right to Peace was adopted by the General Assembly on 19 December 2016 in New York. It was a decisive moment to consolidate all the efforts made to recognize the Human Right to Peace and was the result of the tireless work of many peace activists, human rights promoters as well as of the important role played by some sectors of civil society for years.

3. Follow-up to the 2016 Declaration on the Right to Peace

Pursuant to its resolution 35/4, on 14 June 2018, the Human Rights Council convened in Geneva, with the support of the United Nations High Commissioner for Human Rights, a half-day intersessional workshop to discuss the implementation of the Declaration on the Right to Peace. More than 60 representatives from Member States, specialized United Nations agencies, special procedures of the Human Rights Council and civil society participated in the discussions.

On that occasion, the representative of Associazione Comunità Papa Giovanni XXIII encouraged each State to establish a Ministry of Peace, which could operate in the following areas of interest: (a) Human rights, by providing a structure to fulfil the duty to respect, protect and promote human rights and by monitoring compliance with international standards; (b) Alternative dispute resolution and reconciliation, by promoting a comprehensive and human rights-based approach to dispute resolution in order to solve domestic and international disputes peacefully; (c) Peace culture and education, by promoting them as crucial tools to address the root causes of long-standing conflicts; (d) Promotion of peace policies, by working for the good management and coordination of all the efforts to promote peace and to implement the right to peace; and (e) Violence and conflict prevention, by monitoring and preventing violence and conflicts to pursue peaceful societies and realize the right to peace. The basis of such a proposal can be found in article 3 of the 2016 Declaration on the Right to Peace, which calls for “appropriate sustainable measures” for its implementation.²⁴

APG23 and other NGOs supporting the proposal of a Ministry of Peace are persuaded that not only we must create appropriate national structures, but also strengthen institutional and individual skills and expertise in order to spread and implement a culture of peace, to increase the dialogue with civil society on this issue and to improve the national debate. This idea was also expressed by the former UN Secretary-General, Kofi Annan, in the 2001

²⁴ A/RES/71/189.

report “Prevention of armed conflict”, in which he stressed the importance of “the creation of a *sustainable national infrastructure for peace* that allows societies and their governments to resolve conflicts internally and with their own skills, institutions and resources”²⁵.

This is what the Infrastructures for Peace (I4P) do. The I4P approach recognizes the need of long-term structural measures to prevent and manage conflicts, facilitate peace agreements, reconcile tensions, face political, social and economic transformation. Since I4P should be adapted to the characteristics and needs of the country, there is not a uniform model of I4P but rather there are many types of infrastructures for peace with different features. However, there are some common aspects and functions for an effective I4P, such as transparency, accessibility, participation, flexibility and adaptability.

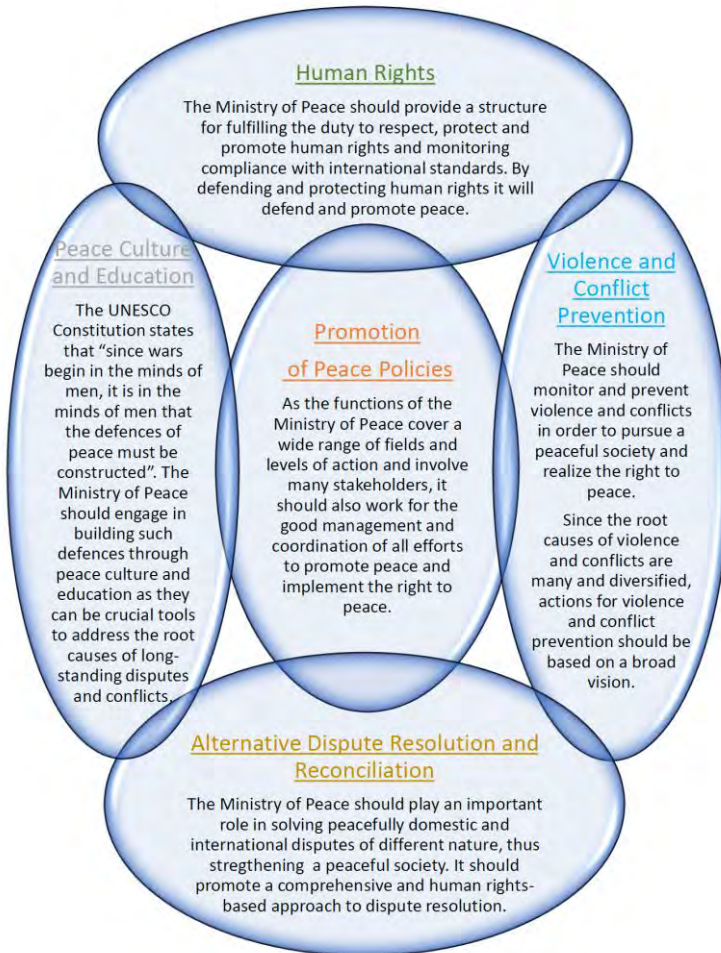
In some countries such as Costa Rica, Salomon Islands, Nepal and South Sudan, governments have established a Ministry of Peace; in other countries, different types of infrastructures have been set up by governments or civil society such as government bureaux, local peace councils, national peace councils, peace secretariats, etc.

A properly designed and well operational Ministry of Peace would be an “appropriate and sustainable” measure to contribute to the lasting and sustainable peace and to the implementation of the right to peace. The Ministry of Peace should promote human rights and justice in order to achieve peace. It should aim at eradicating the structural violence embedded in our society by identifying breeding grounds and root causes of conflicts and violence and addressing them. The Ministry of Peace will be an innovative response to the need of security and welfare. It will build up nonviolent alternatives to armed defence, promote a new form of security and prevent wars and conflicts through the realization of positive and sustainable peace.

The fields of action of the Ministry of Peace are described in the following diagram:

²⁵ United Nations, (2006) *Progress Report of the UN on the Secretary-General's Report 'Prevention of Armed Conflict' (2001)*, p. 16.

Diagram 1. Fields of Action – Ministry of peace



The founder of APG23, Father Oreste Benzi, claimed the establishment of a Ministry of Peace in 1994 in an open letter to the Italian government. He believed that “since men have always been organizing wars, it was high time to organize peace” and the Ministry of Peace should be tasked precisely with this mission. Taking Fr. Oreste Benzi’s thought as an inspiration, in 2017,

APG23 launched a national campaign²⁶ to promote the establishment of a Ministry of Peace in Italy; this national campaign has received a great support from many other Italian civil society organizations and academia.²⁷

The APG23 international office in Geneva continued the campaign for the creation of a Ministry of Peace by launching the proposal at the international level through organising two side events during the Human Rights Council and the publication of two booklets on the matter. The first side event, co-organized with the UN University for Peace in Costa Rica and entitled “Calling for Ministries of Peace all around the World”, was held during the 39th regular session of the Human Rights Council, on the occasion of the International Day of Peace on 21 September 2018.²⁸ At the event, the first research work publication, “Calling for Ministries of Peace All Around the World”, was presented.²⁹

The following year, APG23 and the permanent mission of the Republic of San Marino organized another side event, “Building peace and reconciliation through the creation of a Ministry of Peace”, to further discuss the necessary steps to promoting and building peace in our troubled world and to share good practices in implementing infrastructures for peace and, above all, a Ministry of Peace. The Association also produced an appendix of the previous booklet, entitled “Calling for Ministries of Peace all around the World – Conflict Prevention and Alternative Dispute Resolution through the experience of the APG23 Nonviolent Peace Corps (Operazione Colomba)”, aiming to deal with the concepts of violence/conflict prevention, alternative dispute resolution and reconciliation, stressing the importance of civilian intervention by non-governmental organizations for the adoption and implementation of appropriate measures in these fields. To this end, the booklet focused on the peculiar experience of Operazione Colomba,³⁰ presenting its strategies and activities as one example of how non-governmental organizations can play a major role. Indeed, Operazione Colomba represents an important and efficient model of civilian intervention in ethnic, religious, social and acute armed conflicts and has been promoting a wide range of projects, implemented in different areas of the world through the use of a common methodology, based on important pillars, such as direct sharing of life with

²⁶ <https://www.ministerodellapace.org/campagna/>

²⁷ <https://www.ministerodellapace.org>

²⁸ <https://www.apg23.org/en/post/-793.html>

²⁹ https://www.apg23.org/downloads/files/ONU/calling_for_ministries_of_peace.pdf

³⁰ <https://www.operazionecolomba.it/en/>

affected populations, popular participation, equal-proximity and nonviolence as an essential choice.

4. Concept of peace

The concept of peace enshrined in the 2016 Declaration on the Right to Peace can be deduced from its Preamble, where Member States recognized that “peace is not only the absence of conflict but also requires a positive, dynamic participatory process where dialogue is encouraged and conflicts are solved in a spirit of mutual understanding and cooperation, and socioeconomic development is ensured”.³¹

It is crystal clear that the Declaration refers to a positive peace with an integrated approach that includes human rights, political, economic, social, cultural, humanitarian, environmental and developmental perspectives. A comprehensive definition of peace should deal with the realization of sustainable social and economic development, respect for human rights and fundamental freedoms, promotion of justice, peace culture and education, non-discrimination, tolerance and dialogue, good governance and institution building, rule of law and accountability, among others, and all those elements that counter every kind of violence. As Pope John XXIII wrote, “peace is but an empty word, if it does not rest upon that order [...] that is founded on truth, built up on justice, nurtured and animated by charity, and brought into effect under the auspices of freedom” and that “common good is best safeguarded when personal rights and duties are guaranteed” (Pope John XXIII, 1963).

Many civil society organisations around the world, committed to the cause of peace and justice, are on the fore-front in contributing to the realization of this positive peace, from the peace-makers, peace-builders, peace-keepers to the human rights defenders who raise the voice of the voiceless and countless innocent victims of wars and violence in all its forms, and the numerous development actors with their humanitarian activities.

Civil society is very aware that “positive peace” requires a broad understanding of violence, encompassing “**direct violence**” (intentional physical or psychological violence carried out by an individual or a group toward another individual or group), “**structural violence**” (violence embedded in the society, originating from a social system characterized by injustice, intolerance, inequalities, poverty, exclusion, discrimination, unmet basic needs...) and “**cultural violence**” (cultural factors, such as hate speech, racism, xenophobia, religious extremism etc., used to justify and legitimize

³¹ A/RES/71/189, annex, preambular para. 17.

direct and structural violence which thus lead to the acceptance and normalization of such violence, making change and accountability extremely difficult). Therefore, in order to achieve a real, lasting and sustainable peace, civil society claims the adoption of a new human rights-based approach, implementing structures capable of dealing with ongoing or potential conflicts, as well as violence expressed through all its different forms (psychological, physical, structural or cultural).

Since peace and human rights are inextricably intertwined and mutually reinforcing, on the one hand the fulfilment of human rights is the best path towards conflict prevention and peace. On the other hand, defending and promoting the right of everyone to enjoy peace and make peace a reality, is necessary to ensure the respect and implementation of all the other fundamental human rights. As Secretary-General Kofi Annan stated, “respect for human rights is the best guarantee of peace and the establishment of a durable peace is a condition of the respect for human rights”.³²

Such a broad notion of peace has always been supported by UN institutions. For example, it was already included in the Charter of the United Nations that sets the foundation for linking peace and human rights, recognizing that in order to create the conditions necessary for “peaceful and friendly relations among nations”, Members States have to take action for promoting economic and social development; cultural and educational cooperation; human rights and fundamental freedoms. Peace is so dependent on these conditions that it cannot be fully achieved without their realization. This perspective is reiterated in the Universal Declaration of Human Rights, since peace is conceived as founded on the recognition and respect for the equal and inalienable rights of all and on the protection of human rights by the rule of law.

5. Concluding remarks

Although until now peace has been mainly linked to security, this broad understanding of peace intertwined with social justice, human rights and development leads to a new concept of “human security”, which goes well beyond the idea of military security. From this perspective, national and international security cannot be achieved without respecting human rights and all fundamental freedoms. The respect for human rights and the implementation of democratic institutions have to be encouraged at the

³² Message to the UNESCO International Consultation of Governmental Experts on the Human Right to Peace (Paris, 5-9 March 1998), 154 EX/40, Annex IV.

domestic level in order to guarantee both a peaceful society inside national borders and more peaceful international relations.

Moreover, the concept of positive peace is strictly interlinked with the notion of integral and sustainable socio-economic development. They could be considered two sides of the same coin, as both of them are people-centred, focusing on basic needs and promoting the values of equity and justice. Indeed, the 1986 “Declaration on the Right to Development” underscores that comprehensive development goes hand in hand with peace. It states plainly that “international peace and security are essential elements for the realization of the right to development” and that “States should promote the establishment, maintenance and strengthening of international peace and security and, to that end, should do their utmost to achieve general and complete disarmament under effective international control, as well as to ensure that the resources released by effective disarmament measures are used for comprehensive development, in particular that of the developing countries”.³³

The link between peace and development is reiterated in the 2030 Agenda, where States committed themselves to “foster peaceful, just and inclusive societies” and recognized that such a society is highly needed because “there can be no sustainable development without peace and no peace without sustainable development”. Although the importance of peace for sustainable development is then fully recognized by SDG 16, given the strong interrelatedness and affinity between peace and development, it can be said that the whole 2030 Agenda deals with peace: its integral realization is a necessary step to achieving peace because if its elements and goals are not properly addressed and fulfilled, they can become sources of conflict.

In this perspective, many CSOs that contributed to the adoption of the Declaration on the Right to Peace are also advocating, both in Geneva and New York, for the implementation of the right to development and closely monitor the implementation of the 2030 Agenda for Sustainable Development.

In order to promote peaceful, just and inclusive societies, as reaffirmed in the 2030 Agenda, the joint commitment of all States and institutions, civil society organizations and citizens is necessary. In fact, peace-building, meant in the broadest sense of the term, requires a multidimensional effort and encompasses different national, transnational and international stakeholders.

³³ A/RES/41/128, annex.

States are not the only actors on the stage, although they still play a major role in this field.

The action and participation of civil society and non-governmental organizations is crucial for achieving durable and stable peace. For this reason, the approach of infrastructures for peace, and of a Ministry of Peace above all, seeks to fully involve them, as well as the other stakeholders, adopting an integrated strategy based on human rights, political, economic, social, cultural, humanitarian, environmental and developmental perspectives.

Only by building peace, day after day, a peace strictly linked to development and the respect of human rights, we can generate a society that overcomes disruptive drivers, populisms and crisis, and that will be able to react to the violence that springs out from social and economic conflicts as well as from the tensions of marginalized peripheries.

We must stand all together to create a better world: conflicts and violations of human rights must not take place in the world as it happens now.

VOICE: Antonio de Filippis

“1980s. Western countries were replacing the concept of ‘defence of the homeland and borders’ with the concept of ‘security’: wherever in the world Italian interests were threatened, the Italian army could intervene. To gain prestige and a place in the world, following other Western countries, Italy sent its ships to the Persian Gulf to guarantee the supply of oil, at risk because of the war between Iran and Iraq. In those same years, it sent, for the first time since the end of the Second World War, its military to Lebanon.

Conscientious objectors to military service, young people who could perform civilian service instead of military service, had been active in Italy for several years. In 1972, a law was approved for this purpose. It was a legislative breakthrough, however, granted with many qualms: there was no reference to a right to (conscientious) objection, which instead was regarded as a concession by the Minister. Moreover, the management of such institution was in the hands of the Ministry of Defence, which was not impartial towards objectors, considered quasi-deserters, and whose period of service lasted eight months longer than military service without any specific legal reason. Even more remarkably, the Government did not contemplate any practical or systemic action for peace, for the construction of an alternative type of defence, and against the production and sale of weapons. In addition, the choice of operating as a civilian servant in war zones abroad was punished as a crime.

Furthermore, the Ministry of Defence discouraged young people from accessing civilian service, through varied and long waiting times, at the total discretion of the ministry, various delays, the placement of young people to entities and projects not previously agreed upon, in addition to the extra eight months of service required by law.

In this context, the objectors, organized in the League of Conscientious Objectors (LOC) and other entities, were fighting their way through several campaigns. The one that I was personally involved in was the campaign for self-reduction of civilian service, which aimed to challenge the longer duration of civilian service compared to military service. This form of struggle, like others carried out by the LOC, challenged one aspect of the law but expressed all the malaise and frustration towards the government’s policies on the international level and for the management of the civilian service, as mentioned above. The protest consisted of informing the Ministry that at the end of the twelfth month of civilian service, the objector would

consider his service terminated, eight months earlier than the law in force at the time prescribed, and for the same duration of the compulsory military service.

I did my civilian service in a family home of the Pope John XXIII Community (Associazione Comunità Papa Giovanni 23), which was led by a married couple. These structures represented a change in the field of social work, as they were an alternative to the reception of people in need in big institutions, which at the time was the norm: orphanages, shelters for persons with disabilities etc. In this way, the focus was on the concept of family as the natural place to take in those who, for various reasons and special needs, could not reside in their family of origin. I chose to spend a few words on this aspect because it was also one of the qualifying elements of the civilian service, which wished to support innovative social projects.

Going back to the self-reduction of civilian service, I made this choice along with thirty-five other young Italians. In my case, nobody was arrested thanks to a Constitutional Court ruling that was published in those very days. A complaint was filed against us, followed by a criminal provision and an administrative disciplinary measure. The investigating judge, during the preliminary evaluation, assessed that there were the requisites to submit the law to the scrutiny of the Italian Constitutional Court. Three years later, the Court ruled that the extra eight months would be forfeited because they were the expression of punitive intent and so civilian service was equated in duration with military service. It was August 1989 and the Italian government, thanks to this ruling, discharged the thousands of young men who had already done twelve months or more of civilian service.

Persevering in the struggle to obtain the chance of going on peace missions abroad during civilian service, the year 1992 marked a turning point. Prompted by the war in the former Yugoslavia, by the dramatic images of refugees fleeing the country, and by international inertia, a national campaign was launched by the Pope John XXIII Community, and later by other organisations, to go to war zones to bring aid and peace: sixty young men during their civilian service went to Croatia and Bosnia in contravention of the regulations in force, along with many other objectors who had already finished their service. As we had foreseen, no politician dared to punish these brave young men who, at the risk of their lives, without taking any more money, were providing first aid and assistance to victims, an action that was evidently good: no one was prosecuted or condemned, but we were called by the Italian Presidency of the Council of Ministers to Rome to write the first amnesty decree. From this campaign, which had its strength in its timeliness,

two branches were born that are still alive, strong and fruitful today: (1) At the movement level, Operation Dove, the non-violent initiative of the Pope John XXIII Community, still active today in Ukraine, Palestine, Colombia, Chile and on the Syrian border; and (2) At the institutional level, the White Helmets, the movement of young Italian people in civilian service abroad.”

Chapter 5

The travaux préparatoires of the 2016 Declaration on the Right to Peace

Christian Guillermet Fernández and David Fernández Puyana

1. Historical background

Elaborated in the *1978 Declaration on Preparation of Societies for Life in Peace* and the *1984 Declaration on the Right of Peoples to Peace*, the concept of the right of peoples to peace is inspired in the notion of peaceful coexistence; the rejection of war; the principles of mutual respect for interests, territorial integrity, and sovereignty; the requirement of non-interference in the domestic affairs of States and recognition of the right of each nation to independently settle its own affairs.

Some regional human rights systems have also recognized the right to peace, such as the African and Southeast Asian system. In this vein, the African Charter on Human and Peoples' Rights states that all peoples shall have the right to national and international peace and security.¹ Additionally, the Association of Southeast Asian Nations (ASEAN) *Declaration on Human Rights* recognized that every person and the peoples of ASEAN have the right to enjoy peace within an ASEAN framework of security and stability, neutrality and freedom.²

In particular, this chapter will focus on the “travaux préparatoires” of the *Declaration on the Right to Peace* until its adoption by the United Nations General Assembly in 2016. Special attention will be given to the three consecutive sessions of the Open-Ended Working Group on the Right to Peace established by the Human Rights Council (HRC) for negotiating the new peace instrument. Another section will be devoted to the relationship between the right to peace and freedom of conscientious objection to military service. It will conclude that the UNESCO initiative that in 1997 invited Member States to discuss a draft *Declaration on the Human Right to Peace* was finally realized.

¹ <https://www.achpr.org/legalinstruments/detail?id=49>, article 23(1).

² <https://asean.org/asean-human-rights-declaration/>, para. 38.

2. Elaboration of the right to peace

Since 2008 the HRC has been working on the “Promotion of the right of peoples to peace”, inspired by previous resolutions on this issue approved by the UN General Assembly and the former Commission on Human Rights, particularly the 1984 *Declaration on the Right of Peoples to Peace*³ and the 2000 *United Nations Millennium Declaration*.⁴

In 2010, the HRC also approved the resolution 14/3, requesting “the Advisory Committee, in consultation with Member States, civil society, academia and all relevant stakeholders, to prepare a draft declaration on the right of peoples to peace...”. Therefore, the HRC Advisory Committee (AC) adopted on 6 August 2010 the recommendation 5/2 on the promotion of the right of peoples to peace, establishing a drafting group chaired by Mona Zulficar (Egypt) to prepare a draft declaration on the right of peoples to peace. In light of this mandate, the drafting group initially prepared a progress report on the right to peace, which was submitted to the HRC in its 16th regular session (June 2011).

On 12 August 2011, the AC adopted recommendation 7/3 entitled “Drafting Group on the promotion of the right of peoples to peace”, by which it took note of the second progress report submitted by the drafting group (paragraph 1); it welcomed “the responses received to the questionnaire sent out in April 2011, and the discussions and statements made during its seventh session” (paragraph 2); and it welcomed “initiatives by civil society to organize discussions on progress reports of the Advisory Committee with Member States and academic experts” (paragraph 3).

In accordance with HRC resolution 17/16 of 17 June 2011 and AC recommendation 8/4 of 24 February 2012, the AC submitted to the HRC its (third) draft *Declaration on the Right to Peace*, which was really inspired by the different proposals of Declarations elaborated and advocated by some civil society organizations.

Pursuant to resolution 20/15 of 5 July 2012, the HRC decided to “establish an open-ended intergovernmental working group with the mandate of progressively negotiating a draft United Nations declaration on the right to peace, on the basis of the draft submitted by the Advisory Committee, and without prejudging relevant past, present and future views.”

³ General Assembly resolution 39/11 of 12 November 1984.

⁴ General Assembly resolution 55/2 of 8 September 2000.

(a) First Session

The first session of the open-ended intergovernmental working group (OEWG) took place from 18 to 21 February 2013. On the first day of the session, Christian Guillermet Fernández (Costa Rica) was elected by the Working Group as its Chairperson-Rapporteur, by acclamation. He was nominated by the delegation of Ecuador on behalf of the Group of Latin American and Caribbean Countries (GRULAC). This nomination was based on broad consultations with all regional groups and on agreement reached.

Throughout the general debate and reading of the draft declaration on the right to peace prepared by the AC, governmental delegations, representatives of international organizations and members of civil society raised the following doubts and points of concern (A/HRC/WG.13/1/2):

Firstly, some delegations stated that the international community should make every effort to increase the international standards of protection in the field of human rights for the benefit of our own citizens. The full enjoyment of human rights is impossible if we do not live in peace. Other delegations also agreed that the preservation of peace is the foundation, goal and main objective of our organization. They added that the promotion and protection of existing human rights can make a profound contribution to peace. It follows that the linkage between human rights and peace is pretty clear. Additionally, other delegations said that the right to peace is strongly inseparable from the most fundamental right, which is the right to life. They also stated that peace is a precondition or pre-requisite to protecting and promoting the enjoyment of all human rights. Other delegations re-phrased this latter concept by saying that “the United Nations, in its Charter, recognized that peace is both a prerequisite and a consequence of the full enjoyment of human rights by all.” Others added that peace should be seen as an enabling right which allows people to enjoy their civil, political, economic, social or cultural rights.

Secondly, for many delegations, the concept of the right to peace was not new, but recognized in soft law instruments including in UN General Assembly resolution 39/11 of 12 November 1984, whereby the international community had adopted the *Declaration on the Right of Peoples to Peace*, and most recently in the *Human Rights Declaration* adopted by the Association of Southeast Asian Nations (ASEAN) on 18 November 2012. On the other hand, several other delegations stated that a stand-alone “right to peace” did not exist under international law. In their view, peace was not a human right in and of itself: it was rather a goal that could be best realized

through the enforcement of existing identifiable and distinguishable human rights.

Thirdly, some delegations stressed that the current initiative of the right to peace could become a great opportunity to stop wars and armed conflicts in the world and consequently, to avoid all human rights violations, crimes against humanity and genocides, which usually occur in these dreadful situations. Furthermore, they indicated that this initiative is not only a clear reaction against war and conflict, but also a mean to eliminate all kind of violence against people. Others added that there is no possibility to exercise fundamental rights in a context of war. No socio-economic transformation may work under a conflict. As indicated also by the delegations, in order to ensure the promotion and exercise of the right to peace, the international community should exhaust all necessary efforts to eliminate the threat of war, in particular nuclear war, to settle disputes peacefully and to end all ongoing conflicts, which are seriously affecting the lives of millions of people. Some delegations stated that the Declaration should reflect the preventive role of peace with regard to human rights violations. Other delegations also stressed the complementarity and interdependence of the three main pillars of the United Nations (i.e. peace, development and human rights).

Fourthly, concerning the legal standards of the draft declaration elaborated by the AC, some delegations said that the thematic areas selected seem to have been arbitrarily picked. In addition, they indicated that many concepts of human rights included in the draft declaration were new and unclear, which meant that the current process could become an unproductive, futile and frivolous exercise. By introducing a broad concept of the right to peace, some delegations argued, the drafters included many disparate issues to peace. In addition, most of delegations added that the issues that the draft Declaration purports to address were already addressed in other, more appropriate forums, some under the HRC, and some not. They also added that the draft declaration included and subsumed a range of existing human rights and that it was inconsistent with relevant international norms, including the UN Charter. Furthermore, some of them said that the major misgiving was to use undefined, ambiguous and un-grounded concepts that lack any consensus in international law or to insert topics that do not have the slightest linkage to the purpose of the declaration. Several delegations called for the drafting of a brief, concise and balanced declaration that would be guided by international law as well as by the *Charter of the United Nations*, compliant with its Article 51. The declaration should avoid referring to controversial issues and unidentified and vague topics that did not presently enjoy international support and consensus.

Fifthly, as indicated by some delegation, “the draft declaration has attempted to re-invent the wheel by formulating new concepts and definitions, whereas it should be guided by international law, basing itself on the *Charter of the United Nations*.” In addition, others stressed that the essence of the next phrase in the HRC resolution 20/15 (which indicates “and without prejudging relevant past, present and future views and proposals”) was an open door to revise, to adjust or to change the text with new ideas and formulations.

(b) Second Session

The second session took place from 30 June to 4 July 2014 in Geneva. The preliminary ideas of the Chairperson-Rapporteur were included in a letter addressed to the members of the working group, which was circulated as an official document at the session (A/HRC/WG.13/2/2). In accordance with the above letter, the following points of concurrence among all delegations were highlighted by the Chairperson-Rapporteur:

1. The declaration should be short and concise and should provide an added value to the field of human rights on the basis of consensus and dialogue.
2. The declaration should be guided by international law, basing itself on the Charter of the United Nations and the promotion of human rights and fundamental freedoms.
3. The legal basis of the human rights legal system is the concept of human dignity.
4. Human rights and fundamental freedoms, in particular the right to life, are massively violated in the context of war and armed conflict. In addition, there is no possibility to exercise fundamental rights in a context of armed violence.
5. Cooperation, dialogue and the protection of all human rights are fundamental to the prevention of war and armed conflict.
6. The promotion, protection and prevention of violations of all human rights would make a profound contribution to peace.
7. Human rights, peace and development are interdependent and mutually reinforcing.
8. Many concepts of human rights included in the draft declaration elaborated by the Advisory Committee are new and unclear, which results in the risk that the current process will become an unproductive, futile and frivolous exercise. Many notions have already been addressed in other more appropriate forums, some under the HRC, and some not.

The approach by the Chairperson-Rapporteur as included in his text was welcomed by the OEWG, which is open to all States, civil society organizations and other stakeholders represented in the United Nations. This approach was accepted by the majority of participants and afterwards, adopted “ad referendum”. Delegations stated their appreciation for his efforts to prepare a new text carefully reflecting the various positions expressed in the first session of the working group and during the various inter-sessional consultations. Some cautiously appreciated the direction in which the drafting was heading on the basis of broad consultations. In particular, the approach is based on the following five ideas, which are a clear attempt to give an answer to the main points of concern raised at the first session:

Firstly, unlike the Security Council, the HRC is not the competent body to deal with those matters linked to the maintenance of international peace and security in the world. Pursuant to UN General Assembly resolution 60/251 of 2006, the HRC is trusted to work in some of the purposes and principles contained in the *Charter of the United Nations* (i.e. friendly relations among nations, self-determination of peoples, international cooperation and promotion of human rights and fundamental freedoms for all), but never on matters related to breach of peace, the use or threat of force or the crime of aggression.

The HRC is exclusively focused on those who truly suffer in a conflict: human beings and peoples. It is a forum for dialogue, not confrontation, which always works by and for the victims. Since the mandate of the HRC is to promote and protect human rights, peace should be elaborated in light of some fundamental human rights, which has already been recognized by the international community as a whole, such as the right to life.

Secondly, the added value of the new Declaration is to strengthen the linkage between peace, human rights and development. Therefore, the recognition of the right to life and the affirmation of the right to live in peace, human rights and development are intended to ensure that the authorities take measures to guarantee that life may be lived in a natural and dignified manner and that the individual has every possible means for this purpose.

Thirdly, the new Declaration should bear in mind two issues: the need to promote peaceful relations among countries and the condemnation of war. In order to protect and promote the right of peoples to peace, States should implement and comply with all the principles contained in article 2 of the *Charter of the United Nations*. Therefore, its essential content and in particular the strong condemnation of war, should be a cornerstone of the

future declaration in the line with the 1984 *Declaration on the Right of Peoples to Peace*.

Fourthly, with regard to the draft declaration prepared by the AC, it should be stressed that all the main elements proposed by the AC were already included in the *Declaration and Program of Action of Culture of Peace* and the *Vienna Declaration* and its *Programme of Action* (i.e. human security and poverty, disarmament, education, development, environment, vulnerable groups, refugees and migrants). It follows that in spite of including in the future Declaration concepts that are being currently dealt with by other competent bodies, the international community should progressively elaborate these notions in light of agreeable Declarations already adopted by the UN General Assembly, such as the *Declaration and Programme of Action of Culture of Peace* and the *Vienna Declaration* and its *Programme of Action*.

Broad support was expressed for the new concise and focused text as a significant improvement over the previous AC draft (A/HRC/20/31) and as a basis for further discussion during the present session. Delegations welcomed that a number of ambiguous issues included in the AC draft that did not yet enjoy international consensus were no longer found in the new text and noted that it was not appropriate to include in this text controversial issues or concepts lacking in clarity still being discussed in other forums.

(c) Third Session

On 25 September 2014, the HRC adopted resolution 27/17 as a continuation of the work done on this topic in recent years. The resolution requested to convene a third session of the OEWG on the right to peace with the purpose of finalizing the Declaration, which was held from 20 to 24 April 2015.

The resulting resolution provided a path for progressively introducing the new approach which had been proposed by the Chairperson-Rapporteur and was welcomed by all relevant stakeholders in the second session of the working group. A few points within this resolution are crucial for understanding this new approach.

1. “Recalling all previous resolutions on the promotion of the right of peoples to peace adopted by the General Assembly, the Commission on Human Rights and the HRC, in particular Council resolution 20/15 of 5 July 2012” (Preamble, paragraph 1). This paragraph shows how this new resolution no longer refers to the Advisory Committee’s draft declaration on the right to peace. The draft declaration had elaborated and built on several elements contained

in the *Declaration and Program of Action of Culture of Peace* and the *Vienna Declaration and its Programme of Action*. However, many of the human rights concepts that it discussed were new and unclear, and many of its key points had already been addressed in other more appropriate forums both under or outside of the HRC, and therefore made the draft declaration unnecessary.

2. “Recalling also General Assembly Resolution 39/11 of 12 November 1984, entitled ‘Declaration of the Right of Peoples to Peace,’ and the United Nations Millennium Declaration, as well as other relevant international documents” (Preamble, paragraph 2). This paragraph shows that the resolution opens up the possibility of taking into consideration, not only the 1984 Declaration on the Right of Peoples to Peace, but also other relevant instruments in the field of peace. The Chairperson-Rapporteur explained that his draft also reflected points of convergence among delegations, as identified in the *Declaration and Programme of Action on a Culture of Peace*,⁵ the *Vienna Declaration and Programme of Action*,⁶ and the *Declaration on the Preparation of Societies for Life in Peace*.⁷
3. “Welcoming the important work being carried out by civil society organizations, academia and other stakeholders for the promotion of the right to peace and their contribution to the development of this issue” (Preamble, paragraph 3). The resolution welcomes not only the work performed by civil society organizations, but also academia and other stakeholders (i.e. international organizations). Consultations also involved prestigious professors of international law from several universities and research centers, and during both the opening session of the working group and the presentation of his report, the Chairperson-Rapporteur acknowledged the extensive cooperation with and valuable advice provided by the academia in the course of the year leading up to the resolution’s enactment.
4. “Taking note of the report of the open-ended intergovernmental working group on its second session, held from 30 June to 4 July 2014, pursuant to HRC Resolution 20/15, in particular of the inputs from Governments, regional and political groups, civil society and relevant stakeholders, and the text presented by the Chairperson-Rapporteur of the working group, as requested by Council

⁵ General Assembly resolution 53/243.

⁶ A/CONF.157/23.

⁷ General Assembly resolution 33/73.

Resolution 23/16” (Preamble, paragraph 4). Here, the resolution clearly stresses that the new stage of the process will be based on inputs received from Governments, regional and political groups, civil society, other relevant stakeholders, and texts presented by the Chairperson-Rapporteur. A summary of the discussion is included in the report of the working group’s second session, and should be read in conjunction with the compilations of the proposals made by States and other stakeholders.⁸

5. “Decides that the working group shall hold its third session for five working days in 2015 with the objective of finalizing the declaration” (operative paragraph 1). Following the discussions held during the meetings of the working group, the Chairperson-Rapporteur recommended to the HRC that another session of the Open-Ended Intergovernmental Working Group be held before the Council’s twenty-eighth session, in order to finalize the text of the declaration (A/HRC/27/63, paragraph 94 (a)).
6. “Requests the Chairperson-Rapporteur of the working group to conduct informal consultations with Governments, regional groups and relevant stakeholders before the third session of the working group” (operative paragraph 3). Following the discussions held during the meetings of the working group, the Chairperson-Rapporteur recommended to the HRC that he be given permission to hold informal consultations with governments, regional groups and relevant stakeholders in the intersessional period (A/HRC/27/63, paragraph 94 (b)).
7. “Also requests the Chairperson-Rapporteur of the working group to prepare a revised text on the basis of the discussions held during the first and second sessions of the working group and on the basis of the intersessional informal consultations to be held, and to present it prior to the third session of the working group for consideration and further discussion thereat” (A/HRC/27/63, paragraph 94 (c)). This paragraph was proposed by the Chairperson-Rapporteur following the discussions held during the meetings of the working group. During its first session, the working group concluded that some delegations and other stakeholders recognized the existence of the right to peace, but that several other delegations held that a right to peace did not exist under international law. This latter group argued

⁸ A/HRC/WG.13/2/CRP.1.

that peace was therefore not a human right, but that peace was rather the consequence of the full implementation of all human rights. During its second session, the working group noted that the added value from a new text from a draft declaration stems not only from its recalling the linkage between the right to life and peace, but also from its elaboration on the connection between the right to life and human rights and development.

8. “Invites States, civil society and all relevant stakeholders to contribute actively and constructively to the work of the working group” (A/HRC/27/63, paragraph 89). At the conclusions of the working group’s second session, non-governmental organizations and other stakeholders presented a joint statement appealing all delegations to take a leap forward with the declaration by endorsing the right to life in peace, in line with Article 1 of the *Declaration on the Preparation of Societies for Life in Peace*. In addition, during the HRC debate on the Chairperson-Rapporteur’s report, civil society organizations stressed that a draft declaration on the right to peace should act as a milestone for using the existing international legal framework to protect all inherent human rights— particularly the right to life, and the right to live in peace (joint oral statement by Associazione Comunità Papa Giovanni XXIII and other individual oral statements delivered by Japan Federation of Bar Associations, International Movement against All Forms of Discrimination and Racism and International Association of Democratic Lawyers). At the conclusion of the third session, a number of delegations expressed their sincere gratitude for the leadership, flexibility and efforts demonstrated by the Chairperson-Rapporteur in working with all parties. Appreciation was also expressed for the contributions by non-governmental organizations and the support provided to the Chairperson-Rapporteur (Para. 79).

As conclusion of the Chairperson-Rapporteur, he acknowledged the respectful atmosphere and spirit of dialogue and cooperation that reigned during the third session of the working group while moving towards a consensual outcome (Para. 80). On the afternoon of 24 April 2015, the Chairperson-Rapporteur presented a new revised text, which would be based on the following agreeable points and ideas raised by some States and civil society organizations during the third session of the working group:

Firstly, the international community is absolutely ripe to advance in the progressive elaboration of the right of peoples to peace through the

development of those elements that compose it. Despite the different positions about the existence of this right, all member States, even those which do not recognize it, agreed to recall the 1984 *Declaration on the Right of Peoples to Peace* in the preambular paragraph 4 of the new text.

Secondly, the revised new text is the result of the work done by everyone during the week of the third session. It has taken into account comments and recommendations proposed by all stakeholders, including some civil society organizations. In the text there is no preambular paragraph or provision, which has not previously been discussed within the Group and has not been included in the compilation of the second session of the Working Group.

Thirdly, the preamble of the new revised text, which is composed of 37 paragraphs, includes all the specific measures aimed at preserving the right of peoples to peace identified by the HRC since 2008 (resolutions 11/4 of 2009, 14/3 of 2010 and 17/16 of 2011): (1) the principles of the *Charter of the United Nations*, such as the peaceful settlement of disputes, international cooperation and the self-determination of peoples; (2) the elimination of the threat of war; (3) the three pillars of the United Nations (i.e. peace, human rights and development); (4) the eradication of poverty and promotion of sustained economic growth, sustainable development and global prosperity for all; (5) the wide diffusion and promotion of education on peace; and (6) the strengthening of the *Declaration and Programme of Action on a Culture of Peace*.

Fourthly, the three UN pillars have been recognised by the HRC as a fundamental element aimed at promoting the right of peoples to peace. In particular, Council resolutions on the right of peoples to peace have constantly stressed in their operative sections that peace and security, development and human rights are the pillars of the United Nations system and the foundations for collective security and well-being. Therefore, it follows that the three UN pillars are strongly linked to the content of the right of peoples to peace.

Fifthly, the new revised text invites solemnly in the last preambular paragraph all stakeholders to guide themselves in their activities by recognizing the high importance of practicing tolerance, dialogue, cooperation and solidarity among all human beings, peoples and nations of the world as a means to promote peace. To that end, the present generations should ensure that both, they and future generations, learn to live together in peace with the highest aspiration of sparing future generations the scourge of war. The linkage between the right to life and peace is again reaffirmed in this paragraph.

Sixth, the first provision of the new revised text proclaims that “Everyone has the right to enjoy peace such that security is maintained, all human rights are promoted and protected and development is fully realized.” This proposal of language, inspired by Article 38 of the *ASEAN Human Rights Declaration*, was made by Indonesia during the third session and obtained the support from Malaysia, India, Venezuela, Pakistan and Philippines. Additionally, on 25 June 2015, Vietnam on behalf of ASEAN⁹ delivered a statement in which they recalled article 38 of the 2012 *ASEAN Human Rights Declaration*. This proposal also received the support from some civil society organizations. On 22 September 2015, an important NGO network called “...on Member States to take a step forward in the promotion of peace by adopting a declaration that proclaims the human right to peace, or at least the ‘right to enjoy peace’...”.¹⁰

Seventh, the second new provision proclaimed that “States should respect, implement and promote equality and non-discrimination, justice and the rule of law and guarantee the security of their people, fulfil their needs and ensure the protection and promotion of their universally recognized human rights and fundamental freedoms as a means to build peace.” This second article was jointly drafted by United States of America (USA), Australia, European Union, Malaysia, Indonesia, Morocco, Tunisia, Iran and Egypt.

Eighth, in accordance with Article 3 of the new text, the main actors on which rest the responsibility to make reality this highest and noble aspiration of humankind are human beings, States, United Nations, specialized agencies, international organizations and civil society. They are the main competent actors to promote peace and dialogue in the world.

⁹ Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, the Philippines, Singapore, Thailand and Vietnam.

¹⁰ On 22 September 2015, Associazione Comunità Papa Giovanni XXIII delivered a joint oral statement in item 5 on behalf of the Resource Center for Palestinian Residency and Refugee Rights (BADIL), Center for Global Nonkilling, Commission Africaine des Promoteurs de la Santé et des Droits de l’homme (CAPSDH), Institute for Planetary Synthesis, Institute of Global Education, International Association of Democratic Lawyers (IADL), International Network for the prevention of elder Abuse (INPEA), International Peace Bureau, International Society for Human Rights, Istituto Internazionale delle figlie di Maria Ausiliatrice (IIMA), Mothers Legacy Project, Organisation pour la Communication en Afrique et de Promotion de la Coopération Economique Internationale (OCAPROCE), International Pan Pacific Southeast Asia Women’s Association International (PPSEAWA), Pax Romana, United Network of Young Peacebuilders, Volontariato Internazionale Donna Educazione Sviluppo (VIDES) and Women’s World Summit Foundation.

3. Adoption of the Declaration on the Right to Peace

(a) Human Rights Council

In the presentation of the resolution at the Human Rights Council, Cuba emphasized that the adoption of this Declaration is framed in the context of the bilateral ceasefire and cessation of hostilities signed in Havana, between the Government of Colombia and the Revolutionary Armed forces of Colombia-People's Army (FARC-EP) on 23 June 2016.

In the explanation of vote before the vote, the United Kingdom of Great Britain and Northern Ireland recognized that although there were times when it seemed, both during the Working Group's sessions and subsequent informal discussions hosted by Costa Rica, that consensus might just be possible, this was not achieved because of two difficult key issues contained in the text. Additionally, the United States of America thanked the delegation of Costa Rica for its constructive, consensus-seeking approach while leading the HRC's working group for three years on this difficult issue. Despite the best efforts of many participants over the years, they have not been able to reach agreement on a shared outcome. Finally, the European Union stated that after the third session of the Working Group and subsequent informal consultations by the Chair, consensus seemed within reach. The EU was ready to display flexibility to build on that momentum and to accept a draft Declaration, despite several difficulties, provided their two main concerns in the draft were addressed – namely the title and Article 1. They regretted that a consensus outcome was not possible. Also they expressed their thanks to Ambassador Christian Guillermet Fernández from Costa Rica for his very open and transparent Chairmanship of the Working Group, and to his team for all the work done on this issue.

In the elaboration of the *Declaration on the Right to Peace*, the mobilization and strong voice of some civil society organizations were not properly heard in the September session held in 2015, when they openly called on Member States to take a step forward by adopting a declaration that could be meaningful for generations to come.¹¹ On 13 June 2016, Paz sin Fronteras (PSF)¹², created by Miguel Bosé and Juanes, began the campaign called #RightToPeaceNow by which well-known personalities urged Member States of the HRC to adopt a Declaration on the Right to Peace at the end of

¹¹ Ibid.

¹² See at <http://pazsinfronteras.org/en>

the 32nd regular session. During this campaign, several personalities¹³ of the world of culture and art raised their voices to demand a *Declaration on the Right to Peace* through their media and social networks.

Thanks to its social mobilization, the HRC finally decided to adopt a Declaration on the Right to Peace, on 1 July 2016, by a majority of its Member States.¹⁴ This Declaration is the clear result of three years of work with all stakeholders, including civil society, led by Ambassador Christian Guillermet Fernández of Costa Rica, the secretariat and his team, and jointly promoted with Cuba.

(b) General Assembly

On 19 December 2016, the plenary of the UN General Assembly in New York adopted the *Declaration on the Right to Peace* by a majority of its

¹³ Miguel Bose, Juanes, Alejandro Sanz, Pablo Alboran, Bulli, Sasha Sokol, Benny Ibarra de Llano, Ximena Sariñana, Fonseca, Patricia Cantu, Edgar Ramirez, Laura Pausini or the north American actress Jessica Chastain.

¹⁴ **In favour:** Africa: Algeria, Botswana, Burundi, Congo, Côte d'Ivoire, Ethiopia, Ghana, Kenya, Morocco, Namibia, Nigeria, South Africa, Togo; Latin American and Caribbean States: Bolivia, Cuba, Ecuador, El Salvador, Mexico, Panama, Paraguay, Venezuela; Asia Pacific States: Bangladesh, China, India, Indonesia, Kyrgyzstan, Maldives, Mongolia, Philippines, Qatar, Republic of Korea, Saudi Arabia, United Arab Emirates, Viet Nam; Eastern European States: Russian Federation.

Against: Belgium, Republic of Korea, France, Germany, Netherlands, United Kingdom and Northern Ireland, Slovenia, Latvia and Macedonia.

Abstentions: Albania, Georgia, Portugal and Switzerland.

Co-sponsors:

Council Members: Algeria, Bolivia, China, Cuba, Ecuador, El Salvador, Venezuela, Viet Nam, Indonesia, Qatar (on behalf of the States Members of the Group of Arab States) and South Africa.

Council Observers: Angola, Belarus, Cabo Verde, Costa Rica, Democratic People's Republic of Korea, Egypt, Eritrea Malaysia, Nicaragua, Pakistan, Syrian Arab Republic, Sudan, State of Palestine and Tunisia.

Member States,¹⁵ as previously adopted by its Third Committee on 18 November 2016¹⁶ and the HRC on 1 July 2016¹⁷ in Geneva.

In the adoption of the *Declaration on the Right to Peace* by the UNGA Third Committee, the mobilization and strong voice of some civil society organizations was properly heard in its 71st session, when they openly called on Member States to take a step forward by adopting a declaration that can be meaningful for generations to come.

The resolution A/C.3/71/L.29 of the UNGA Third Committee, in which the Declaration was annexed, includes in its operative part as a new element a general reference to the previous resolutions adopted by the General

¹⁵ See A/71/PV.65, p. 29. **In favour 131:** Afghanistan, Algeria, Angola, Antigua and Barbuda, Argentina, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belize, Benin, Bhutan, Bolivia (Plurinational State of), Botswana, Brazil, Brunei Darussalam, Burkina Faso, Burundi, Cabo Verde, Cambodia, Cameroon, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Côte d'Ivoire, Cuba, Democratic People's Republic of Korea, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Ethiopia, Fiji, Gabon, Ghana, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, India, Indonesia, Iran (Islamic Republic of), Iraq, Jamaica, Jordan, Kazakhstan, Kenya, Kiribati, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Lebanon, Lesotho, Liberia, Libya, Madagascar, Malawi, Malaysia, Maldives, Mali, Mauritania, Mauritius, Mexico, Mongolia, Morocco, Mozambique, Myanmar, Namibia, Nauru, Nepal, Nicaragua, Niger, Nigeria, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Qatar, Russian Federation, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sao Tome and Principe, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Singapore, Solomon Islands, Somalia, South Africa, South Sudan, Sri Lanka, Sudan, Suriname, Swaziland, Syrian Arab Republic, Tajikistan, Thailand, Togo, Trinidad and Tobago, Tunisia, Uganda, United Arab Emirates, United Republic of Tanzania, Uruguay, Uzbekistan, Vanuatu, Venezuela (Bolivarian Republic of), Viet Nam, Yemen, Zambia, Zimbabwe.

Against 34: Australia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Israel, Japan, Latvia, Lithuania, Luxembourg, Malta, Monaco, Montenegro, Netherlands, New Zealand, Republic of Korea, Romania, Slovakia, Slovenia, Spain, Sweden, the former Yugoslav Republic of Macedonia, United Kingdom of Great Britain and Northern Ireland, United States of America.

Abstentions 19: Albania, Andorra, Armenia, Cyprus, Georgia, Greece, Iceland, Italy, Liechtenstein, Norway, Palau, Poland, Portugal, Republic of Moldova, San Marino, Serbia, Switzerland, Turkey, Ukraine.

¹⁶ A/C.3/71/L.29, 18 November 2016. The resolution was presented by the following States: Algeria, Bolivia (Plurinational State of), Cuba, the Democratic People's Republic of Korea, Eritrea, Namibia, Nicaragua, the Syrian Arab Republic, Venezuela (Bolivarian Republic of) and Viet Nam. Subsequently, Belarus, Cameroon, the Central African Republic, China, the Lao People's Democratic Republic, Myanmar, South Africa, Togo and Zimbabwe joined in sponsoring the draft resolution. At the same meeting, Benin, Colombia, Costa Rica, Ecuador, Egypt, El Salvador, Ghana, Indonesia, Nigeria, Paraguay, Senegal, the Sudan and Uganda joined in sponsoring the draft resolution, as orally revised.

¹⁷A/HRC/RES/32/28, 1 July 2016.

Assembly on “the promotion of peace as a vital requirement for the full enjoyment of all human rights by all”. The last resolution on this topic (A/RES/69/176, 2015) not only reaffirms that the peoples of our planet have a sacred right to peace, but also welcomes the decision of the HRC, in its resolution 20/15, to establish an OEWG with the mandate of progressively negotiating a draft United Nations declaration on the right to peace.

Although most of the States supported the on-going process on the right to peace within the HRC in Geneva, some of them did not recognize the existence of the right to peace under international law. However, they were very open to the approach and procedure proposed by the Chairperson-Rapporteur Ambassador Christian Guillermet Fernández of Costa Rica and consequently, actively participated in the three consecutive sessions of the OEWG in Geneva.

Thanks to this approach, a majority of Member States supported the *Declaration on the Right to Peace* and an important number of Western States abstained for the first time ever on this topic at the Third Committee. In fact, this Declaration is the clear result of three years of work with all stakeholders, including civil society. This positive approach was elaborated in light of the following elements: firstly, international law and human rights law; secondly, the mandate of the HRC in the field of human rights and thirdly, the human rights elements elaborated by the resolutions on the right of peoples to peace adopted by the HRC in the past years.

An agreement among States and regional groups could not finally be achieved within the HRC and the Third Committee, exclusively because of the lack of agreement on the title and Article 1 of the text as presented by the Chairperson-Rapporteur on 21 September 2015. However, as indicated by a Group of States¹⁸ within the Third Committee, the Declaration has some value because it develops the *New Agenda 2030* and also reinforces the three UN pillars - peace and security, development and human rights. Furthermore, they pointed out that the Preamble of the Declaration additionally contains many elements that will benefit the clarity and greater balance in order to ensure and to represent the full range of views among memberships.

4. Conscientious objection to military service

The Advisory Committee Draft Declaration on the Right to Peace of 2012 recognized in its article 5(1) that “individuals have the right to conscientious objection and to be protected in the effective exercise of this right” and that

¹⁸ Australia, Liechtenstein, New Zealand, Norway, Switzerland and Iceland.

“states have the obligation to prevent members of any military or other security institution from taking part in wars of aggression or other armed operations, whether international or internal, which violate the Charter of the United Nations, the principles and norms of international human rights law or international humanitarian law...”¹⁹

During the reading process of the draft Declaration prepared by the Advisory Committee at the first session of the Open-Ended Working Group, most member States rejected the inclusion of a provision on the right of conscientious objection to military service by considering it as controversial. The only delegation which supported this reference was the Permanent Mission of Costa Rica. This position is fully consistent with the history of Costa Rica, which decided in 1949 to abolish the army as a permanent institution.

Although the 2016 Declaration on the Right to Peace did not include a reference to conscientious objection due to the rejection of some member States, it should be also noted that the right to conscientious objection to military service can be derived from the right to freedom of thought, conscience, religion or belief, which is alluded to in the Declaration’s preamble.²⁰

It is also important to recall that the Preamble of the Declaration on the Right to Peace refers to another important instrument for the conscientious objection to military service, which is the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. It proclaims that “...the constant promotion and realization of the rights of persons belonging to national or ethnic, religious and linguistic minorities as an integral part of the development of a society as a whole and within a democratic framework based on the rule of law would contribute to the strengthening of friendship, cooperation and peace among peoples and States”.²¹

Another relevant provision of the 2016 Declaration on the Right to Peace linked to the right to conscientious objection to military service could be its article 2, which proclaims the following: “States should respect, implement and promote equality and non-discrimination, justice and the rule of law, and

¹⁹ Report of the Human Rights Council Advisory Committee on the right of peoples to peace (UN Doc. A/HRC/20/31, annex), published on 16 April 2012.

²⁰ A/RES/71/189, annex, preambular para. 24.

²¹ *Ibid.*, preambular para. 34. See also below [chapter 12](#) by Nazila Ghanea and Michael Wiener, “The minority perspective under the right to peace and freedom of conscientious objection”.

guarantee freedom from fear and want as a means to build peace within and between societies”.

The freedom from fear and want refers to the proclamation made by US President Franklin D. Roosevelt in his 1941 message to Congress by which he proposed those four fundamental freedoms that people “everywhere in the world” ought to enjoy, namely: freedom of speech, freedom of worship, freedom from want and freedom from fear. In accordance with the second recital of the Universal Declaration on Human Rights “... freedom from fear and want has been proclaimed as the highest aspiration of the common people”.

Freedom from fear bears on collective security, such as terrorism prevention; nuclear, biological and chemical weapons; reduced risk and prevalence of war; use of force; peacekeeping and peacebuilding; disarmament and mercenarism.²² Consequently, the right to conscientious objection to military service is strongly linked to progressive evolvement of the freedom from fear, which is an important element of the 2016 Declaration on the Right to Peace.

Article 3 of the Declaration on the Right to Peace proclaims that “States, the United Nations and specialized agencies should take appropriate sustainable measures to implement the present Declaration...”. Positive action is a concept of great importance in the context of anti-discrimination laws, which have been adopted by several international human rights instruments and openly applied by courts. In this line, Member States should elaborate the right to conscientious objection to military service as a positive measure of the Declaration on the Right to Peace.

5. Conclusion

Now that the international community has elaborated the notion of the right to enjoy peace, human rights and development through a new declarative instrument adopted by the UN General Assembly, then it has arrived at the moment when everyone should gradually replace violence and wars with the peaceful settlement of conflicts and the respect of all human rights for all. The paper underlined the following ideas in the conclusion:

Firstly, since 2008 the HRC has been working on the “Promotion of the right of peoples to peace” inspired by previous resolutions on this issue approved by the UN General Assembly and the former Commission on Human Rights.

²² G. Kang, “The three freedoms of the United Nations in Northeast Asia”, *Korea Observer*, Vol. 36, 2005, No. 4, pp. 719-720.

The AC submitted to the HRC its (third) draft *Declaration on the Right to Peace*. Afterwards, the HRC decided to establish an open-ended intergovernmental working group with the mandate of progressively negotiating a draft United Nations declaration on the right to peace.

Secondly, the first session of the OEWG in 2013 made a general reading of the draft declaration on the right to peace prepared by the AC. Some delegations said that the thematic areas selected by the AC seem to have been arbitrarily picked. Others stressed that the essence of the next phrase in the resolution which indicates “and without prejudging relevant past, present and future views and proposals” is an open door to revise, to adjust or to change the text with new ideas and formulations.

Thirdly, the Chairperson-Rapporteur included in his text a new approach which was welcomed by the OEWG in the second session in 2014. This approach was accepted by the majority of participants and afterwards, adopted “ad referendum”. Delegations stated their appreciation for his efforts to prepare a new text carefully reflecting the various positions expressed in the first session of the working group and during the various inter-sessional consultations.

Fourthly, the third session of the OEWG on the right to peace, which had the purpose of finalizing the Declaration, was held from 20 to 24 April 2015. The Chairperson-Rapporteur introduced the new approach which was welcomed by all relevant stakeholders in the second session of the working group.

Fifthly, on 19 December 2016, the plenary of the UN General Assembly in New York adopted the *Declaration on the Right to Peace* by a majority of its Member States, as previously adopted by the Third Committee of UNGA on 18 November 2016 and the HRC on 1 July 2016 in Geneva.

Sixthly, the Declaration on the Right to Peace proclaims that States, the United Nations and specialized agencies should take appropriate sustainable measures to implement the Declaration. In this line, Member States should elaborate the right to conscientious objection to military service as a positive measure of the Declaration on the Right to Peace.

Since the process had been initiated by UNESCO in 1997, the elaboration of the right to enjoy peace, human rights and development will surely contribute to the strengthening of international cooperation and multilateralism and will also influence the current objectives of the United Nations as a fundamental step towards the promotion of peace, tolerance, friendship and brotherhood among all peoples. Today the obligation of the international community is to

hear the voice of the voiceless, which strongly demands the right to live in a world free of wars and conflicts!

Chapter 6

Education: A key instrument for a sustainable peace

Francisco Rojas Aravena

1. Introduction

In a world full of uncertainties, with increasing conflicts, it is necessary to improve and protect human rights and protect the planet. Cooperation is the only alternative. Solidarity is essential. We need to stop the war, the danger of atomic escalation in the new European war. It is critical to establish a global *Pact on Education* and we need to sign the *Peace with Nature* and *Peace with the Oceans*. Education is the essential tool for changes, to achieve peace and prosperity as well as reconciliations. It is also necessary for protecting the life on the planet. The University for Peace (UPEACE) is a global higher-education entity that promotes peace through knowledge, tolerance, peaceful coexistence and understanding among human beings.

The international system is strained by the COVID-19 pandemic and their heritage. The war in Europe, in view of the Russian invasion of Ukraine and the atomic threat, as well as the continuity of other wars and conflicts have put stability at risk in different regions and countries. These conflicts generate insecurity for the whole international system. Various factors create complexities that prevent an effective solution to civil wars. Among these are the rise of violent extremism, illicit markets and organized crime, the last of which takes advantage of these situations to expand its illegal networks and facilitates the proliferation of small arms and light weapons in the world, without any control by national authorities.¹ In addition we experience the major climate emergency, the possibility to see the Anthropocene is real. Our Common House is in danger. This is the most important threat to life on the planet. The danger of the Anthropocene impacts humanity. The climate emergency generates new space for conflicts both at the international level and inside the societies, for example the fight for water emerges in different regions. Furthermore, it is necessary to recognize the crisis of democracy and multilateralism.

During a war, all rights – individual and collective – disappear, even beyond agreements and war treaties. Enormous atrocities are committed against citizens. The most vulnerable – children, women and the elderly – are the

¹ UN Doc. A/69/968.

most affected. Wars generate physical and psychological damage that generates an impact beyond moments of open conflict, battles and armed combat, in the long term. Wars also ruin physical infrastructure, industry bases, pipelines and government structures. Wars also destroy schools and hospitals. They produce fear and poverty as well as generate social ruptures which cause pain that is transmitted inter-generationally.

National factors are the most important determinants of the increase in conflict, violence and civil wars in different parts of the world. A lack of vision and leadership, (un)governance and a lack of effective institutions, make it difficult to generate conflict mitigation and transformation policies. Weak institutions are eaten away by corruption, organized crime and very poor public management, all of which serve as an incentive to maintain and exacerbate conflicts or for them to express themselves in recurrent cycles. Violent conflicts increase inequality and produce polarization, which leads to long periods dedicated to the healing of deep societal wounds once pro-peace “agreements” have been reached. Under these conditions, unemployment, corruption and exclusion are consolidated, and with them, the repeated increase of violence and the recurrence of civil wars.

To the abovementioned factors, it is necessary to add new expressions of ethnic, tribal and religious interests, which increase political polarization, exclusion and, in many cases, the oppression of minorities or even majority populations by those who hold power and exercise it violently.

The United Nations has stressed that these conflicts have effects with serious consequences for women. In many cases, in the context of civil wars, sexual violence becomes an instrument of war as well as an instrument of terror, triggering further violence and producing socio-cultural fractures that last for generations. These new wars are different from those of the Cold War, which were of an inter-state nature; today’s wars are of an intra-state,² domestic and intra-societal nature. In many cases, domestic civil wars overlap and are linked to inter-state, neighbourhood and regional wars,³ i.e. as “intermestic” conflicts.

To address many of these situations of violence, polarization and tension, the United Nations takes important actions for peace, including peacekeeping missions. At present, nearly 100,000 women and men serve and risk their lives under the banner of the United Nations, in twelve peacekeeping

² <https://www.systemicpeace.org/conflictrends.html>

³ <http://visionofhumanity.org/app/uploads/2019/07/GPI-2019web.pdf>

operations in different parts of the world.⁴ The fundamental objective of these missions is to protect the civilian population and support peace processes, which in many cases are fragile. The changes experienced within this new conflictiveness exceed the response-capacity of the multilateral system. It is recognized that peace is insufficient, weak, fragile and, in many places, that violence still prevails, with parties seeking to achieve “a military victory” that is not possible.

Like wars, pandemics have plagued humanity. They have caused death, misery, panic and desolation throughout history. In the twentieth and twenty-first centuries, humanity has suffered from various pandemics of different magnitude and scope. The COVID-19 pandemic is universal and is plaguing the entire planet. COVID-19 is generating essential changes in the most diverse areas of the planet. The transformations that have already taken place, because of a variety of containment measures, as well as the post-crisis effects, will be profound, lasting and long-term. The UN Secretary-General stated that “The COVID-19 pandemic is one of the most dangerous challenges this world has faced in our lifetime. It is above all a human crisis with severe health and socio-economic consequences.”⁵ The virus that threatens the health of humanity has already generated serious and widespread impacts.⁶

The impact on food security as a consequence of the Russia-Ukraine war is real; it is complex and will require an international effort to prevent famines in various regions of the world. The economic impacts thus far have negative – great global inflations are one – multiplier effects that aggravate the recession and demand ever-greater resources to address the crisis, both in central and middle-income countries or in those that are lagging. Informal economies are correlated with deficient social policies. Uncertainty also dominates the economy. Various studies and analyses indicate that the economic effects will be even more extensive than those generated by the 2008 financial crisis.

The drastic drop in the world’s stock markets anticipates a major recession, as does reduced production due to the restriction measures in place for a large portion of the world’s citizens. Similarly, the breakdown of global production chains is causing major imbalances in different economic systems. At the

⁴ <https://peacekeeping.un.org/en/data>

⁵ “Statement by the Secretary-General on COVID-19” (8 April 2020), <https://www.un.org/sg/en/content/sg/statement/2020-04-08/statement-the-secretary-general-covid-19>.

⁶ For current data see WHO Coronavirus (COVID-19) Dashboard, <https://covid19.who.int/>.

same time, the value of raw materials is falling, which mainly affects the countries of the Global South. Regarding this situation we must add workers who belong to the informal sector, who are currently completely paralyzed. Smaller enterprises face catastrophic losses that threaten their overall survival. Millions of workers are exposed to a loss of operation and financial solvency due to unemployment.⁷

The conjunctions of this are simultaneous crisis affecting the international system with an unforeseen setback in international cooperation and multilateralism. This is the biggest debacle since World War II, UN Secretary-General António Guterres has stated. Multilateralism is regressing, and with the international order becoming fragmented, there are important fractures present. There is also a failure to achieve consensus to meet virtually to focus on saving lives in the face of the ravages of the pandemic, which is primarily affecting the most developed countries of the West. The death toll will undoubtedly continue to rise when the spread continues towards the countries in the South, which have fewer resources and health structures, as well as weaker institutions.⁸

2. A fragile and strained multilateral system

At present, no State actor, transnational company or international organization has the capacity to address alone the great challenges facing humanity and the world. Only concerted action and cooperation will make it possible to face up to the new major threats and planetary risks. Climate change, nuclear weapons, large traditional arsenals, light weapons, new pandemics and resistance to antibiotics can only be confronted through multilateral partnerships and international cooperation. Increased awareness of the kind of proactive and preventive actions to be implemented, based on the three pillars of the United Nations – peace and security, human rights, and sustainable development – will generate opportunities for success for all. Achieving greater participation of women within societies, in their diverse leaderships, is an essential step to reduce many forms of violence and conflict.

To train and educate for sustainable peace is to promote multilateralism, shared responsibilities, mutual understanding, gender equity and inclusion. In education, these values are interlinked with the promotion of broad, non-discriminatory participation and the promotion of equity within the

⁷ ILO. ILO Observatory: Covid-19 and the Workplace. 7 April 2020.

https://www.ilo.org/global/about-the-ilo/WCMS_743154/lang--es/index.htm

⁸ <http://www.ceipaz.org/publicaciones.php>

framework of children's rights and those of indigenous peoples. In other words, it is not enough to teach about a particular subject. It is essential to develop holistic views with founding values, and to build shared views as a basis for concerted action in favour of people and the planet. These facilitate and promote, in the first place, State policies at the national level that allow us to define and agree on global public goods.

Global changes and changes in power relations are taking on new forms. Geo-economic and strategic reconfigurations are changing the balance of power in the world and within regions.⁹ Instability tends to be perpetuated. Xenophobic, highly radical, hostile and hateful visions are reappearing. All this generates fear and uncertainty. Faced with these situations, it is essential to develop educational policies based on the values of a Culture of Peace and Non-violence.

Education is the essential tool for realizing mankind's greatest achievements. Education based on values is the key tool for advancing on the core issues identified by humanity in parliamentary multilateralism. Through education, cooperation, synergies and convergences are strengthened to achieve specific goals in the promotion of human rights. This type of education allows for great achievements regarding the prevention of torture, slavery and human trafficking. In matters of sustainable development, it makes access to water and food viable. In matters of disarmament – both nuclear and conventional – it establishes spaces for negotiation and substantive agreements. Similarly, in this field, light weapons, which are the ones that cause most deaths in the world, should be included. The culture of legality, as part of education for a Culture of Peace, makes it possible to combat corruption and impunity.

Global issues must be solved globally. Borders have been re-established and the sovereignty of the Nation State is once again strongly expressed within the context of the expansion of the COVID-19 pandemic and the new global tensions. It seems that sovereignty is seeking to recover from the changes that interdependence established with globalization. Now – in the context of the pandemic, the war and different threats – nativism is gaining strength in different regions of the world.

One hundred years after the creation of the League of Nations, we must rethink the lessons of history and of multilateralism. We have learned that prevention, education in values, and mediation must prevail as essential

⁹ Francisco Rojas Aravena, "Introduction: Hazardous and Erratic Times – Greater and Deeper Conflicts", in: Francisco Rojas Aravena (ed.), *The Difficult Task of Peace: Crisis, Fragility and Conflict in an Uncertain World* (Palgrave Macmillan, Cham: 2020), p. 3.

instruments and tools for facing the new global challenges, particularly in an era of uncertainty, filled with mistrust. The *2030 Agenda*¹⁰ stands as the guide for humanity to achieve peace, prosperity and progress while simultaneously protecting the planet.

Peace work is complex and full of obstacles. In a global system plagued by macro-conflicts and illogical confrontations – with great economic, political, cultural and social polarization – our responsibility is to build a *Sustainable Peace* through words and not war. Education in values and the shaping of a *Culture of Peace and Non-violence* is the way forward. In our interdependent world, only cooperation and the development of a solid, lifelong education based on a Culture of Peace can resolve and prevent conflicts, violence and war. Education, respect for human rights, empowerment of women, tolerance, dialogue and the promotion of universal values are the foundation for it. Building peace requires us to work for peace. This is the essential task of multilateralism; there are no single-State options for achieving peace, prosperity and the protection of the planet. It is a universal task that goes beyond a particular region. The goals and the great public goods are achieved based on cooperative action and multilateral partnership.

Achieving the great objectives of multilateralism is a fundamental aspiration of the United Nations. Its 75th anniversary marks a new starting point for the post-pandemic context, to establish the parameters and the way forward with the *2030 Agenda*, which was facing evidenced difficulties before the pandemic, difficulties that will be aggravated by the COVID-19 pandemic as well as the war in Europe and its consequences. Readjustments to the *2030 Agenda* will be fundamental to avoid global frustrations over the impossibility of achieving the goals that humanity had set for itself.

3. Peace education – an essential task

In 1980, the United Nations General Assembly established in its resolution 35/55 the University for Peace, placing high-level education as the essential tool to contribute to the establishment of a sustainable peace.¹¹ Changing people's minds and reaching their spirits to transform conflicts is at the heart of the University's mission, including to educate for the prevention and de-escalation of conflict. We are all co-responsible for thinking and building the paths of peace. It is up to all of us to prevent polarization and violence. It is up to all of us to stop the discourse of hatred and the emergence of terrorism.

¹⁰ UN Doc. A/RES/70/1.

¹¹ See UN Docs. A/RES/35/55 and A/RES/73/90.

We are all responsible for alerting and preventing the paths that lead to the emergence of war.

The exercise of human rights requires an environment of peace and a respect for the life and dignity of people. Nobel Laureate and UPEACE Council member Ouided Bouchamaoui quoted Confucius: “Education generates confidence. Trust generates hope. Hope generates peace.”¹² Mistrust is associated with the use of violence. Violence has only one tendency: more violence. Similarly, war produces more wars. They create destruction, poverty, pain and death. With the destructive power of weapons – atomic and conventional – the possibility of destruction of the planet increases, more so in a context where arms control treaties are being denounced and where military spending continues to rise.¹³

Deactivating polarization, re-humanizing the context and generating the basis for reconciliation in different societies is fundamental. Without peace, there is no development and no progress. It is a question of creating a new reality capable of producing stability, progress and peace, with an even greater emphasis today in the context of the continuity of COVID-19 pandemic and the European war. To this end, confidence-building is paramount. Education and a Culture of Peace make it possible to build trust and construct new options for the future based on collaboration. Confidence-building creates more trust. Peace produces development. Sustainable peace produces sustainable development for all.

Humanity’s actions are contributing to global warming and climate emergency; with this, global progress becomes resentful. Humanity’s courses of action are not only destroying life on the planet and deteriorating biodiversity, but human existence itself. It is essential to break this pattern of behaviour.

The absence of education based on democratic values and the strengthening of civic friendship and harmonious values facilitates authoritarianism. Today, de-democratization and authoritarianism are growing in the world. Situations of fear, polarization and xenophobia are produced and exacerbated. From there, conflicts and ungovernability increase while social peace decreases. It is essential to regain confidence in institutions to restore democratic

¹² Ouided Bouchamaoui, “The Role of Education in Achieving Peace”, UPEACE’s 2018 Commencement Keynote Speech, p. 5, available online at <https://www.upeace.org/files/Publications/Ideas%20for%20Peace%2015-The%20Role%20of%20Education%20in%20Achieving%20Peace.pdf>.

¹³ <https://www.sipri.org/media/press-release/2020/global-military-expenditure-sees-largest-annual-increase-decade-says-sipri-reaching-1917-billion>.

governance and hence the Rule of Law.¹⁴ Education establishes a barrier before violence and the use of force cross the critical threshold and become violent crises. Education, prevention and mediation play a fundamental role in attaining a sustainable peace and transforming humanity through its empowerment in peace.

Education reduces fear through understanding. Fear is one of the main sources of conflict and violence. Fear is overcome by understanding what fear attempts to hide. Collaboration and joint construction overcome fear, create trust and open new opportunities to empower and transform societies and humanity. Education involves knowledge, participation, inclusion, interculturality, understanding, dialogue and the building of mutual trust, all foundations of social cohesion. These are its instruments to confront the “culture of fear” that generates stereotypes, exclusion, fanaticism, hatred, and opens the way to terrorism.

In a time filled with uncertainties, fake news, increasing inequalities and violence, education fulfils a fundamental task. It allows for new ways of thinking, it makes it possible to design ways of incorporating innovation and its application in prevention, and it enables the generation of knowledge for the development of resilience.

The exercise of rights by all people requires knowledge about them. Education promotes the development of comprehensive policies for the protection of the weakest and most vulnerable. In this case, the promotion of knowledge about the rights of children is an essential aspect for both the present and future of humanity. Almost a third of the world’s population is under 15 years of age. We have a global co-responsibility in the protection of children and youth. As we have pointed out, in contexts of absence of peace, development is not possible, nor is the exercise of any right. The possibilities for progress disappear. In contexts of war, the rule of law does not exist; neither does the possibility of access to justice. Fear and destruction prevail there. Moreover, in the current context of the COVID-19 pandemic and the European war, the possibilities of achieving the goals established by SDG 16 are very limited, given that the call for a cessation of hostilities made by the Secretary-General of the United Nations, H.H. Pope Francis and other leaders has not achieved its objective. Similarly, violence, particularly domestic violence against women, has increased significantly in all parts of the world during the pandemic. Other forms of violence linked to organized crime and drug trafficking continue to expand in all regions of the world.

¹⁴ <https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2020>.

Wars produce millions of displaced people. UNHCR estimates that global forced displacement has reached 103 million at mid-2022,¹⁵ which demonstrates the seriousness of the situation. Of these, a significant proportion are children who see their opportunities for advancement curtailed. The work of thousands of civil society volunteers who, together with the United Nations, protect refugees in camps – all in partnership with States for the reception of refugee families – is admirable. It is very important to emphasize that there are “new” refugees, environmental refugees and internally displaced persons due to climate change, in all parts of the world. There are already millions of people and families who are displaced from their places of origin because of climate change and its consequences in terms of desertification, floods, hurricanes, tornadoes and other climatic phenomena.

To educate is to make change possible. To educate is to open spaces for transformation. Even more so, in this new stage full of uncertainties, only education and science will be able to contribute to mark the paths through which we must travel to recover the stability of the planet and the prosperity of its people. To strengthen educational processes and develop a Culture of Peace is to open up more and better paths to non-violence, to the sustainability of peace. Educating for peace is an essential task in an interdependent world that faces new and serious threats in addition to traditional ones. Educating for change is educating for democratic coexistence and harmony. To educate is to promote the recognition of our shared global responsibilities, with people and with the planet.

To achieve peace, education is the central path. Ambassador Anwarul Chowdhury stressed that a key ingredient in building a culture of peace is education. The development of education based on values of tolerance, peace and solidarity contributes to stability and democratic governance in different societies. Establishing a culture of peace and non-violence involves changing habits, attitudes and customs and proposes new forms of understanding, coexistence, cooperation and solidarity. We face new global challenges that aggravate inequality, exclusion, sectarianism, xenophobia, intolerance and hate speech; all of which promote the emergence of violence.

A comprehensive look at how to transform and resolve violent conflicts was given to us by the *Declaration on a Culture of Peace* twenty years ago. This declaration pointed out that “peace not only is the absence of conflict, but also requires a positive, dynamic participatory process where dialogue is

¹⁵ <https://www.unhcr.org/refugee-statistics/> (last update 27 October 2022).

encouraged and conflicts are solved in a spirit of mutual understanding and cooperation.”¹⁶ A number of recommendations have emerged from this declaration, including: fostering a Culture of Peace through education; promoting sustainable economic and social development; promoting respect for all human rights; ensuring equality between women and men; fostering democratic participation; advancing understanding, tolerance and solidarity; supporting participatory communication and the free flow of information and knowledge; and promoting international peace and security.¹⁷ These positive processes are based on the permanent universal values and pillars of the United Nations – peace and security, human rights, and development. Similarly, and significantly, they are based on the Universal Declaration of Human Rights.

Crisis Diplomacy makes it possible to confront risks and threats based on developing skills to recognize the roots of conflict, and to open up space for negotiation. This means placing dialogue at the centre and promoting mutual understanding on the basis of cooperation and transparency. Educating in and for confidence-building is the initial step that can augur well for success.

Education and research into the deep roots of conflict can change the context in which manifestations and the propensity for conflict, violence and war are analyzed. These analyses provide an understanding of violence-prone behaviours. From there, it is possible to open spaces for the transformation of disputes and establish spaces for the shared understanding of them. The participation and inclusion of the actors involved is fundamental. This is a first step towards developing forms for the associated construction of solutions, starting with confidence-building measures. The absence of trust erodes the set of possible actions. The results of a better understanding of the roots of the conflict make it possible to establish paths for creating confidence-building measures, as well as to establish safer steps towards conflict-transforming behaviours that can set the conflict on the path to peaceful resolution.

In an interconnected world, where globalization has dissolved national communication barriers, it is essential to promote education and a culture that fosters dialogue. In an interdependent world, it is important to develop comprehensive visions of different phenomena, based on inter- and multi-cultural perspectives, capable of comprehending the different phenomena. This is the responsibility of every one of us.

¹⁶ Declaration on a Culture of Peace, UN Doc. A/RES/53/243, chapter A, preambular para. 4.

¹⁷ Programme of Action on a Culture of Peace, UN Doc. A/RES/53/243, chapter B.

Education in values for a Culture of Peace promotes human dignity. This education makes it possible to respect human dignity through a holistic view of the facts and their consequences. The construction of a global citizenship,¹⁸ as well as the development of a shared historical vision based on mutual understanding and reciprocal knowledge, makes it possible to overcome prejudice while deconstructing the discourse of hate. The generation of associative knowledge, through joint, shared action and mutual understanding, makes it possible to prevent the repetition of crimes against humanity, genocide and extreme violence.

The development of education for peace opens up opportunities to create greater spaces for the non-use of force, the development of essential values of peace, and a culture of non-violence. Peace education strengthens an awareness that limits and reduces the use of weapons and the threats of their use. In conjunction with major agreements, such as that adopted by the United Nations for the complete prohibition of the development of nuclear weapons, a global consensus on light weapons must be promoted. These are the weapons that have the greatest impact – daily – on premeditated crimes in all our societies. Establishing strong public policies, creating more arms control and developing unarmed areas in cities will generate greater protection for society as a whole. By reducing violence, more economic undertakings will be possible as well as safe and stable spaces for coexistence will be built, developing societies that live in peace.

The different processes of reconciliation, dialogue and peace are based on mutual understanding and learning to see others' perspectives and their understanding of the cultural, social, economic and political frameworks in which they operate. When this happens, it is possible to build a shared view that allows us to have a collegial and collective understanding. This is essential given that conflicts are transformed on the ground, at the local level. It is there that prevention must act – where the international system must support both protection and the promotion of dialogue. It must also make viable the mechanisms that will ensure the transition to social stability and peace. That is where conciliation and mediation should take place. That is where lessons learned and good practices should be expressed. Academic institutions play a decisive role in the multiplier effect and the dissemination of these practices, which are fundamental for progress and the goals set forth by the *2030 Agenda for Sustainable Development*.

¹⁸ <https://en.unesco.org/themes/gced>.

The goals of the *2030 Agenda* make it possible to promote education that empowers and transforms the values of individuals, societies and humanity. The *2030 Agenda* is the path for cooperation and planetary solidarity. It is the best prevention in the face of the current emergency generated by the pandemic and the continuity of conflicts. Education is the mechanism for building a stable world with greater certainty, especially for achieving a sustainable peace.

4. Concluding remarks

The planet is demanding our cooperation. Interdependence demands us to cooperate. Education for peace points us in that direction. This education established universal values and inalienable rights and guides the capacities to agree, prevent and mediate. The use of language, speech and teaching reaffirms that education is essential for living in a community, for living the values of democracy, human rights and peace. This is possible when the great goals established by SDG 16 are met: peace, justice and strong institutions. The international partnership that the United Nations represents, along with effective multilateralism, makes it possible to broaden the avenues for sustainable development, which is synonymous with a sustainable peace.

The changes generated by the processes of globalization, interdependence, the scientific-technical revolution, artificial intelligence and robotics are demanding changes in existing paradigms, ways of thinking and the design of new public goods. This set of processes demands learning to learn.

In contexts of peace, the dangers to human rights are lessened. When peace advances, so does development. If we want peace, we must work for peace. This is a multilateral associative task, impossible to develop within the confines of national frameworks. We must develop complex concepts and notions to face the complex transnational and global challenges as well as threats emerging from the international level.

The University for Peace is contributing to the great task of educating for peace and the development of a Culture of Peace through its postgraduate courses and the dissemination of knowledge and research. The actions of its 4,500 graduates, new agents of peace, contribute – from global agencies to grassroots organizations – to solving the conflicts of the emerging world. We educate for prevention. We educate for proactivity in times of conflict. We educate for a Culture of Peace and for sustainable peace. Our programmes in International Law, Human Rights, Peace Education, Gender and Peacebuilding, Environmental Governance and Sustainable Management of Natural Resources, Leadership and Sustainable Development, Peace and

Conflicts, Indigenous Sciences, among others, seek to contribute to a change in humanity towards the universal values promoted by the Charter of the United Nations. Our main statement and principle and motto is: “If you want Peace, work for Peace”.

Part III.

Freedom of Conscientious Objection to Military Service



Chapter 7

The practice of judicial and quasi-judicial human rights bodies on conscientious objection to military service

Gentian Zyberi and Eduardo Sánchez Madrigal

1. Introduction

This chapter analyses the issue of conscientious objection to military service as developed by the UN Human Rights Committee (HRCttee or Committee) and the main regional human rights mechanisms, with a focus on relevant case law and other practice. While attention to this issue and efforts to address it go back many decades, its articulation and acceptance as part of international human rights law is more recent.¹ It has been pointed out that it makes a significant difference if conscientious objection is legally drawn from the unconditionally protected freedom to have or adopt a religion or belief of one's choice (*forum internum*) or rather as a manifestation of one's religion or beliefs (*forum externum*), which may be limited pursuant to article 18(3) of the Covenant.² Since the various human rights mechanisms differ in their respective approaches to conscientious objection to military service, those differences are noted and discussed.

After introducing the topic of conscientious objection to military service (section 2), the analysis turns to the practice of the UN Human Rights Committee (section 2(a)) and then in turn to that of the three regional human rights systems, the European (section 2(b)), Inter-American (section 2(c)) and African (section 2(d)). Some of the landmark cases and the positions of relevant quasi-judicial and judicial mechanisms will be analyzed, before providing some concluding remarks (section 3). The analysis focuses mainly on the practice of these human rights mechanisms, which for the regional courts and commissions is limited to selected landmark cases, whereas for the Committee it also includes concluding observations adopted as part of the State reporting procedure under the International Covenant on Civil and

¹ See among others, Hitomi Takemura, *International Human Right to Conscientious Objection to Military Service and Individual Duties to Disobey Manifestly Illegal Orders* (Springer, 2009), pp. 19-82; Jeremy K Kessler, "The Invention of a Human Right: Conscientious Objection at the United Nations, 1947-2011", *Columbia Human Rights Law Review* 44 (2013), p. 753.

² Heiner Bielefeldt, Nazila Ghanea, and Michael Wiener, *Freedom of Religion or Belief: An International Law Commentary* (Oxford University Press, 2016), p. 259. See also William A Schabas, *Nowak's CCPR Commentary* (3rd revised edn NP Engel Publisher, 2019), pp. 501-503.

Political Rights (ICCPR or Covenant). Relevant scholarly writing and various United Nations (UN) and other reports are included in the analysis.

2. Conscientious objection to military service

Conscientious objection is a very contentious subject matter in human rights law.³ Within this broader topic, conscientious objection to military service remains controversial.⁴ This type of conscientious objection stems from the refusal by individuals to perform compulsory military service based on their genuinely held religious or other beliefs that forbid the use of lethal force.⁵ The right to conscientious objection is explicitly included or otherwise read into some human rights treaties.⁶ This right has also been acknowledged in thirteen resolutions adopted by the Commission on Human Rights and the Human Rights Council between 1987 and 2022.⁷ The UN has grappled with this issue already since 1971,⁸ and then quite regularly in numerous reports.⁹

³ See generally “OHCHR and conscientious objection to military service”, available at <https://www.ohchr.org/en/conscientious-objection>; and OHCHR, *Conscientious Objection to Military Service* (2012) HR/PUB/12/1. See also Bielefeldt, Ghanaea and Wiener (n 2), p. 258; Takemura (n 1); Marie-France Major, “Conscientious Objection and International Law: A Human Right?” (1992) 24 *Case Western Reserve Journal of International Law* 349. More generally, see Richard Sorabji, *Moral Conscience through the Ages: Fifth Century BCE to the Present* (Oxford University Press, 2014) especially at pp. 201-214.

⁴ While many States recognize this right, there are some that have not done so yet. For example, Turkey is the only Member State of the Council of Europe that has not recognized the right to conscientious objection to military service.

⁵ Bielefeldt, Ghanaea and Wiener (n 2), p. 259.

⁶ See among others Article 18, ICCPR; Article 9, ECHR; Article 10(2), Charter of Fundamental Rights of the European Union; Article 12, Ibero-American Convention on the Rights of Youth; Article 6(3)(b) Pact of San José.

⁷ Commission on Human Rights resolutions 1987/46, 1989/59, 1991/65, 1993/84, 1995/83, 1998/77, 2000/34, 2002/45 and 2004/35; Human Rights Council resolutions 20/2, 24/17, 36/18 and 51/6. See also “Report of the Human Rights Council Advisory Committee on the Right of Peoples to Peace” (16 April 2012) UN Doc A/HRC/20/31, containing a draft declaration on the right to peace, with Article 5 on the “Right to conscientious objection to military service”.

⁸ See “Conscientious Objection to Military Service”, Report prepared in pursuance of resolutions 14 (XXXIV) and 1982/130 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities by Asbjørn Eide and Chama Mubanga-Chipoya, members of the Sub-Commission, (1983) UN Doc E/CN.4/Sub.2/1983/30/Rev.1. For a historical overview on the UN, see Takemura (n 1), pp. 19-82.

⁹ A list of recent reports on conscientious objection to military service includes E/CN.4/2004/55 (2004); E/CN.4/2006/51 (2006); A/HRC/4/67 (2007); A/HRC/9/24 (2008); A/HRC/23/22 (2013); A/HRC/35/4 (2017); A/HRC/41/23 (2019), A/HRC/50/43 (2022), at <https://www.ohchr.org/en/conscientious-objection/reports>.

Other organizations also have addressed this issue in their publications or work.¹⁰

In her third quadrennial report in 2022, the United Nations High Commissioner for Human Rights (High Commissioner) analyzes developments in this area since 2017, highlighting promising practices and remaining challenges concerning conscientious objection to military service.¹¹ While noting progress, with States having adopted laws and regulations introducing a genuine alternative service of a civilian nature and decriminalizing conscientious objection, leading to the release of imprisoned objectors, this 2022 report also points out that many individuals seeking to exercise the right to conscientious objection to military service continue to face violations of this and other rights because some States and *de facto* authorities do not recognize that right or fail to ensure its full implementation in practice.¹²

(a) The practice of the UN Human Rights Committee

The general practice of the Committee includes general comments, decisions on individual complaints and concluding observations on State reporting.¹³ The analysis here focuses mainly on individual communications, but includes also general comment no. 22, as well as relevant concluding observations issued in more recent years. The ICCPR does not explicitly refer to a right of conscientious objection, but Article 8 (3)(c)(ii) on slavery and forced labor recognizes that for purposes of that paragraph “the term ‘forced or compulsory labour’” shall not include “Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors”. It was in its general

¹⁰ See among others OSCE/ODIHR and DCAF, “Human Rights of Armed Forces Personnel: Compendium of Standards, Good Practices and Recommendations” (OSCE/ODIHR, DCAF 2021) 126-142 at https://www.osce.org/files/f/documents/6/5/480143_1.pdf.

¹¹ OHCHR, “Analytical Report: Conscientious Objection to Military Service” (11 May 2022) UN Doc A/HRC/50/43.

¹² *Ibid.*, executive summary.

¹³ See among others OHCHR, Fact Sheet No 15 (Rev 1): “Civil and Political Rights: The Human Rights Committee” (2005); Anja Seibert-Fohr, “The UN Human Rights Committee” in Gerd Oberleitner (ed), *International Human Rights Institutions, Tribunals, and Courts* (Springer, 2018), pp. 117-141; Yogesh Tyagi, *The UN Human Rights Committee: Practice and Procedure* (Cambridge University Press, 2011). On conscientious objection to military service see generally Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* (Oxford University Press, 2013), pp. 579-584; William A Schabas, *Nowak’s CCPR Commentary* (3rd revised edn NP Engel Publisher, 2019), pp. 509-518; Paul M Taylor, *A Commentary on the International Covenant on Civil and Political Rights* (Cambridge University Press, 2020), pp. 507-511.

comment no. 22 (1993) that the Committee first acknowledged that such a right could be “derived from its Article 18, inasmuch as the obligation to use lethal force might seriously conflict with the freedom of conscience and the right to manifest one’s religion or belief”.¹⁴ While the position of the Committee prior to 1993 was that the ICCPR does not provide for a right to conscientious objection, in its subsequent jurisprudence it has held that repression of the refusal to be drafted for compulsory military service, exercised against persons whose conscience or religion prohibited the use of arms, is incompatible with the absolutely protected right to hold a religion or belief.

While the Committee has found a violation of the right to conscientious objection to military service in several individual communications, most of which have concerned Turkmenistan and the Republic of Korea,¹⁵ the first case where it did so was decided in November 2006.¹⁶ Since 2011, shifting the dimension of protection from *forum externum* to *forum internum*, the Committee has consistently noted that the right to conscientious objection to military service inheres in the right to freedom of thought, conscience and religion, entitling any individual to exemption from compulsory military service if it cannot be reconciled with the individual’s religion or beliefs.¹⁷ In emphasizing the obligation of the State to provide an alternative public service, the Committee has clarified that:

¹⁴ General Comment no. 22 (20 July 1993), UN Doc CCPR/C/21/Rev.1/Add.4, para. 11.

¹⁵ See the following ten cases, namely *Nasyrlyayev v Turkmenistan*, Communication No 2219/2012; *Uchetov v Turkmenistan*, Communication No 2226/2012; *Aminov v Turkmenistan*, Communication No 2220/2012; *Matyakubov v Turkmenistan*, Communication No 2224/2012; *Yegendurdyyew v Turkmenistan*, Communication No 2227/2012; *Young-kwan Kim et al v Republic of Korea*, Communication No 2179/2012; *Durdyyev v Turkmenistan*, Communication No 2268/2013; *Dawletow v Turkmenistan*, Communication No 2316/2013; *Nazarov et al v Turkmenistan*, Communication No 2302/2013; *Jong-bum Bae et al v Republic of Korea*, Communication No 2846/2016; and *Petromelidis v Greece*, Communication No 3065/2017. The Committee found inadmissible the following six cases, namely *Ch H O v Canada*, Communication No 2195/2012; *J v K & C M G v K-S v the Netherlands*, Communication No 483/1991; *J P v Canada*, Communication No 446/1991; *T W M B v the Netherlands*, Communication No 403/1990; *J P K v the Netherlands*, Communication No 401/1990; *H A E D J v the Netherlands*, Communication No 297/1988. The Committee found no violation in *G M Brinkhof v Netherlands*, Communication No 402/1990.

¹⁶ HRCtee, *Yoon and Choi v Republic of Korea* (n 15) para. 9. See also dissenting opinion of Ms. Ruth Wedgwood. For a detailed discussion of the evolution of the position of the Committee see among others Bielefeldt, Ghanea and Wiener (n 2), pp. 265-269.

¹⁷ See among others, *Jeong et al v Republic of Korea*, Communication No 1642-1741/2007, para. 7.3; *Jong-bum Bae et al v Republic of Korea* (n 15) para. 7.3; *Durdyyev v Turkmenistan* (n 15), para. 7.3.

“The right must not be impaired by coercion. A State may, if it wishes, compel the objector to undertake a civilian alternative to military service, outside the military sphere and not under military command. The alternative service must not be of a punitive nature; it must be a real service to the community and compatible with respect for human rights.”¹⁸

This is an important element that has directed States towards ensuring adequate civilian alternatives. The Committee has pushed conscientious objection as far as holding that the fundamental character of the freedoms enshrined in article 18(1) of the Covenant is reflected in the fact that the provision could not be derogated from, even in a time of public emergency, as stated in article 4(2) of the Covenant.¹⁹ This finding seems to combine *forum internum* and *forum externum* protection. In addressing various restrictions imposed on conscientious objectors, the Committee found, for the first time, a violation of article 12(2) in the case of a conscientious objector who was prohibited from leaving his country, not only because of the excessive duration of the restriction on the author’s freedom to leave, but also since the restriction had been imposed for having legitimately exercised his right to freedom of conscience.²⁰

Concluding observations are an important tool for the Committee to address structural problems in States parties to the ICCPR. Notably, the Committee has observed that State parties should ensure the legal recognition of conscientious objection to military service.²¹ Additionally, it has also clarified that related legislation should be accessible without discrimination

¹⁸ This paragraph is derived from the dissenting opinion of former Committee member Hipólito Solari-Yrigoyen in *Yoon and Choi v Republic of Korea* (n 16) as adopted by the majority in *Jeong et al v Republic of Korea* (n 17) and then completed by the Committee in *Jongnam Kim et al v Republic of Korea*. For a detailed discussion of the evolution of the position of the Committee see Schabas (n 2), pp. 509-516. See among others *Min-Kyu Jeong et al v Republic of Korea*, Communication No 1642-1741/2007, para. 7.3; *Jongnam Kim et al v Republic of Korea*, Communication No 1786/2008, para. 7.4; *Abdullayev v Turkmenistan*, Communication No 2218/2012, para. 7.7; *Mahmud Hudaybergenov v Turkmenistan*, Communication No 2221/2012, para. 7.5; *Ahmet Hudaybergenov v Turkmenistan*, Communication No 2222/2012, para. 7.5; *Sunnet Japparow v Turkmenistan*, Communication No 2223/2012, para. 7.6; *Akmurad Nurjanov v Turkmenistan*, Communication No 2225/2012, para. 9.3; and *Shadurdy Uchetov v Turkmenistan*, Communication No 2226/2012, para. 7.6.

¹⁹ See general comment 29 “States of Emergency (Article 4)” (24 July 2001) para. 11, UN Doc. CCPR/C/21/Rev.1/Add.11. See also *Nazarov et al v Turkmenistan* (n 15) para. 7.3; *Dawletow v Turkmenistan* (n 15) para. 6.3; *Durdyyev v Turkmenistan* (n 15) para. 7.3; *Jong-bum Bae et al v Republic of Korea* (n 15) para. 7.3; and *Petromelidis v Greece* (n 15), para. 9.3.

²⁰ *Petromelidis v. Greece* (n 15), para. 9.9.

²¹ See among others, Concluding observations on Eritrea, CCPR/C/ERI/CO/1, para. 38.

as to the nature of the beliefs, including religious or non-religious beliefs grounded in conscience, justifying the objection.²² Additionally, in its recommendations the Committee has emphasized that any alternative service for conscientious objectors should be of a civilian nature,²³ and must be neither punitive nor discriminatory in nature or duration by comparison with military service.²⁴ These recommendations are important in drawing States' attention to this problem and providing them with guidance as to what legislative and other measures would be necessary to bring their practice in compliance with the Covenant.

Not all States have ratified the Covenant and even some of those that have done so do not recognize the universal applicability of the right to conscientious objection to military service.²⁵ Despite the progress achieved over decades due to the engagement by various stakeholders, including the Committee, the UN Human Rights Council through the Universal Periodic Review and other procedures,²⁶ and other human rights actors, still persons who exercise this right are often discriminated, persecuted, or even imprisoned in many countries.

(b) The practice before the European system of human rights protection

The term European system of human rights protection here is limited to the European Convention on Human Rights (ECHR) and its individual complaint mechanism. Initially, the system was two-tier, with the Commission and the Court (ECtHR or European Court), and since the entry into force of Protocol 11 in 1998, it evolved into a one-tier system with the Court. Initially, Article 9 of the ECHR was interpreted restrictively on the basis that it had to be read

²² See among others, Concluding observations on Tajikistan, CCPR/C/TJK/CO/3, para. 46; Concluding observations on Belarus, CCPR/C/BLR/CO/5, para. 48; and Concluding observations on Ukraine, CCPR/C/UKR/CO/8, para. 30.

²³ See among others, Concluding observations on Eritrea, CCPR/C/ERI/CO/1, para. 38; Concluding observations on Lithuania, CCPR/C/LTU/CO/4, para. 26.

²⁴ See among others, Concluding observations on Tajikistan, CCPR/C/TJK/CO/3, para. 46; Concluding observations on Belarus, CCPR/C/BLR/CO/5, para. 48; and Concluding observations on Ukraine, CCPR/C/UKR/CO/8, para. 30.

²⁵ As of 1 October 2022, the Covenant has been ratified by 173 States. See "Status of Ratification Interactive Dashboard", available at <https://indicators.ohchr.org>.

²⁶ While not dealt with here, the work of the Special Rapporteur on Freedom of Religion or Belief and the Working Group on Arbitrary Detention are relevant. For a detailed discussion of the work of the latter see Leigh Toomey, "The Right to Conscientious Objection to Military Service: Recent Jurisprudence of the United Nations Working Group on Arbitrary Detention", *Human Rights Law Review* 19 (2019), pp. 787-810.

in conjunction with Article 4(3)(b).²⁷ The general practice of the Commission was that conscientious objectors did not have the right to exemption from military service, and that each State party to the ECHR could decide whether or not to grant such a right.²⁸ This initial position must be understood in a general context where many European States had a compulsory military service, and where the principle of subsidiarity of the ECHR system was more pronounced. The situation has changed with more States shifting to a system of a standing professional army and the ECHR individual complaint mechanisms becoming involved on addressing certain matters, including that of conscientious objection to military service.

On its part, the European Court has decided several cases concerning conscientious objection to military service.²⁹ However, it was not until July 2011 that the ECtHR found that,

“Article 9 does not explicitly refer to a right to conscientious objection. However, it considers that opposition to military service, where it is motivated by a serious and insurmountable conflict between the obligation to serve in the army and a person’s conscience or his deeply and genuinely held religious or other beliefs, constitutes a conviction or belief of sufficient cogency, seriousness, cohesion and importance to attract the guarantees of Article 9 ... Whether and to what extent objection to military service falls within the ambit of that provision must be assessed in the light of the particular circumstances of the case.”³⁰

The European Court decided in this way based on the interpretation of the ECHR as a living instrument and tracking the consensus that had emerged among European countries (overwhelming majority of which had already recognized in their law and practice the right to conscientious objection)³¹ and that emerging from specialized international instruments.³² Importantly, in reaching this important decision, the ECtHR referred to the practice of the

²⁷ David Harris *et al*, *Law of the European Convention on Human Rights* (3rd edn, Oxford University Press, 2016), p. 601.

²⁸ See among others ECtHR, “Factsheet – Conscientious Objection” (2022), available at https://www.echr.coe.int/Documents/FS_Conscientious_objection_ENG.pdf.

²⁹ Some of the landmark cases include *Thlimmenos v Greece*; *Ülke v Turkey*; *Erçep v Turkey*; *Enver Aydemir v Turkey*; *Papavasylakis v Greece*; *Adyan and Others v Armenia*; *Mushfig Mammadov and Others v Azerbaijan*; *Teliatnikov v Lithuania*. See also ECtHR, “Guide on Article 9 of the European Convention on Human Rights: Freedom of Thought, Conscience and Religion” (2022), at https://www.echr.coe.int/Documents/Guide_Art_9_ENG.pdf.

³⁰ ECtHR, *Bayatyan v Armenia* [Grand Chamber] (2011) Application No 23459/03, para. 110.

³¹ *ibid* para. 103.

³² *ibid* paras. 102-103.

Committee,³³ the Charter of Fundamental Rights of the European Union,³⁴ and the Parliamentary Assembly and the Committee of Ministers of the Council of Europe.³⁵

It has been noted that the European Court continues to view conscientious objection to military service as an external manifestation of an individual's religion or belief (*forum externum* approach).³⁶ That said, it appears that the *forum externum* position of the European Court has not resulted in it finding that any of the permissible limitations on manifestation of religion or belief had been applicable in the cases it had considered.³⁷ Despite the improvements over the years to the legislative framework and related practices, and the case law of the ECtHR, the situation in Europe still continues to reveal various problems.³⁸

(c) The practice before the Inter-American system of human rights protection

Historically, legal developments concerning the right to conscientious objection have been rather scarce in the Inter-American System of human rights protection (IAS). Although the Ibero-American Convention on the Rights of Youth (IACRY) recognizes the right of young people to object to obligatory military service, the foundational documents of the IAS contain little or no mention to such a right. Indeed, the American Declaration of the Rights and Duties of Man (American Declaration), a non-binding document of the Organization of American States (OAS),³⁹ refers exclusively to “the right to religious freedom and worship”, without establishing any connection to freedom of conscience or of thought.⁴⁰ Although, the American Convention on Human Rights (Pact of San José) does, on the other hand, recognize the rights to freedom of thought and of conscience,⁴¹ the only explicit mention to conscientious objection is found in relation to compulsory

³³ *ibid* para. 105.

³⁴ *ibid* para. 106.

³⁵ *ibid* para. 107.

³⁶ OHCHR Analytical Report (n 11) para. 13 (footnote omitted).

³⁷ *Ibid*.

³⁸ See among others, European Bureau for Conscientious Objection, “Annual Report: Conscientious Objection to Military Service in Europe, 2021” (EBCO, 2022), <https://www.ohchr.org/sites/default/files/2022-05/EBCO-HRC50.pdf>.

³⁹ For a current list of all 35 member States, see OAS, “Member States”, https://www.oas.org/en/member_states/default.asp.

⁴⁰ American Declaration of the Rights and Duties of Man (adopted 2 May 1948), art III.

⁴¹ American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978), art 12.

labor and military service.⁴² In contrast to the IACRY, however, the wording of article 6 of the Pact of San José does not imply a recognition of conscientious objection as a human right. Rather, in its paragraph 3(b), article 6 acknowledges States' capacity to regulate conscientious objection in the following terms:

“Article 6. Freedom from Slavery

[...]

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

b. military service and, *in countries in which conscientious objectors are recognized*, national service that the law may provide for in lieu of military service;”⁴³

Similarly, the discussions leading to the adoption of the Pact of San José, held at the Inter-American Specialized Conference on Human Rights in 1969,⁴⁴ reveal little controversy surrounding the right to conscientious objection. The topic was only briefly addressed by the International Labour Organization (ILO), which, in its comments to draft article 6 (article 5 in the draft project), suggested adjusting the English text of paragraph 3(b) in order to match the spirit of its Spanish homologue and of the Forced Labour Convention (No. 29).⁴⁵ According to ILO, in the list of activities that are not to be considered forced labor, the English wording “military service” could be erroneously interpreted as including those that are not of a strictly military nature, as opposed to the Spanish text, which originally referred to “*el servicio de carácter militar*” (service of a military character).⁴⁶ Nonetheless, ILO’s recommendations on the matter were implemented *contrario sensu* in the final text of the Pact of San José⁴⁷ and the Spanish version was amended by

⁴² Ibid art 6(3)(b).

⁴³ Ibid (emphasis added).

⁴⁴ OAS, “Documents of the 1969 Inter-American Specialized Conference on Human Rights (*travaux préparatoires*)” (only available in Spanish) (7-22 November 1969) OEA/Ser.K/XVI/1.2.

⁴⁵ Ibid., “Comments by the International Labour Organization to the Draft Project of the Inter-American Convention on Human Rights” (in Spanish) (17 October 1969) Doc 14, 130 para. 5; See also Forced Labour Convention (No 29) (adopted 28 June 1939, entered into force 1 May 1932) art 2(2)(a); Takemura (n 1) 113-114; Ludovic Hennebel and Hélène Tigroudja, *The American Convention on Human Rights: A Commentary* (Oxford University Press, 2022), p. 259.

⁴⁶ Comments by ILO (n 45).

⁴⁷ Takemura (n 1).

the drafters to read simply “*el servicio militar*” (military service). ILO’s recommendations were considered merely formal by the State delegations to the drafting conference⁴⁸ and led to no substantial discussion on the right to conscientious objection in relation to article 6 or to any other provision of the project.⁴⁹

Moreover, there were no significant developments following the entry into force of the Pact of San José in 1978 and the issue remained mostly unaddressed until the turn of the century.⁵⁰ Decided by the Inter-American Commission on Human Rights (IACHR) in 2005, the case of *Cristián Daniel Sahli et al v. Chile* marked the first time a pronouncement on conscientious objection was made by either of the IAS bodies.⁵¹ There, the petitioners alleged that by requiring them to render obligatory military service despite their opposition, Chile had infringed upon their rights to privacy and to freedom of conscience.⁵² The IACHR, however, was not convinced by the petitioners’ arguments that a right to conscientious objection could be derived from article 12 of the Pact of San José exclusively.⁵³ Instead, it held that, from a reading of article 12 in the light of article 6(3)(b), follows the logical conclusion that the Pact of San José safeguards the right to conscientious objector status, but only in relation to countries where such a status is recognized by their domestic laws:⁵⁴

“Does Article 12 of the American Convention allow for a reading that an individual may invoke conscientious objector status as

⁴⁸ OEA/Ser.K/XVI/1.2 (n 44) “Act of the Fifth Session of Commission ‘I’ (summary)” Doc 43, correction 1 (17 November 1969) 179-180.

⁴⁹ Takemura (n 1), p. 114.

⁵⁰ See IACHR, *Cristián Daniel Sahli et al v Chile* [Merits] (2005) Case No 12.219, Report 43/05, OEA/Ser.L/V/II.124 Doc 5, para. 36, where the IACHR acknowledges the limited jurisprudential development.

⁵¹ The IAS is characterized by a two-tier structure consisting of a commission and a court. The blueprint for the IAS in its current form was provided by the Pact of San José, which stipulates that both the IACHR and IACtHR are competent to ensure compliance with the human rights obligations enshrined therein. For members of the OAS that have not ratified the Pact of San José, the American Declaration remains the primary source of human rights obligations and the IACHR the only body with jurisdiction to enforce them at the regional level.

⁵² *Sahli et al v Chile* (n 50), paras. 2 and 10-19.

⁵³ *Ibid.*, paras. 11, 37 and 85-86.

⁵⁴ Federico Andreu, “Artículo 6. Prohibición de la Esclavitud y Servidumbre” in Christian Steiner and Patricia Uribe, *Convención Americana Sobre Derechos Humanos Comentada* (Supreme Court of Justice of Mexico 2014) 177-178; Marco Huaco Palomino, “Artículo 12. Libertad de Conciencia y de Religión” in Christian Steiner and Patricia Uribe, *Convención Americana Sobre Derechos Humanos Comentada* (Supreme Court of Justice of Mexico 2014) 310-311; Office of the High Commissioner for Human Rights, “Conscientious Objection to Military Service” (United Nations, 2012), HR/PUB/12/1, pp. 16-17.

grounds for an exemption from compulsory military service? Yes and no. The term is mentioned only once in the American Convention, in Article 6(3)(b), which expressly excepts military service and “in countries in which conscientious objectors are recognized”, national or alternative service, from the definition of “forced or compulsory labor.”

Consequently, the American Convention, in Article 12, read in conjunction with Article 6(3)(b), expressly recognizes the right to conscientious objector status in those countries in which conscientious objectors are recognized.”⁵⁵

Sahli et al. implied a departure from earlier statements made by the IACHR in its 1997 and 1998 Annual Reports, where it invited States “whose legislation still does not exempt conscientious objectors from military service or alternative service, to review their legal regimes and make modifications consistent with the spirit of the international law of human rights.”⁵⁶ Although made “outside the individual petition context,”⁵⁷ the IACHR’s recommendations hinted at an implicit recognition of States’ duty to regulate conscientious objection to compulsory military service.⁵⁸ This seemingly progressive approach was, however, abandoned by the IACHR in *Sahli et al.*, favoring a more strict interpretation of article 6 instead.⁵⁹ In reaching its decision, the IACHR referred to the interpretative guidance of the Human Rights Committee, which, in its general comment no. 22, “explicitly recognized the existence of the right [to conscientious objection], as derived from article 18 (freedom of conscience) of the Covenant, but only in those States that have provided for conscientious objector status in their domestic law.”⁶⁰ It also referenced the jurisprudence of the European system of human rights protection, which, at the time the decision in *Sahli et al.* was rendered, conditioned the legitimate exercise of conscientious objection to its recognition in the relevant State’s national legal order.⁶¹

Although the conceptual development of conscientious objection has been limited in the IAS, the IACHR has had the opportunity to address the issue

⁵⁵ *Sahli et al v Chile* (n 50), paras. 85-86.

⁵⁶ IACHR, “Annual Report 1997” OEA/Ser.L/V/II.98, 1053-1054, and “Annual Report 1998” OEA/Ser.L/V/II.102, 1194.

⁵⁷ *Sahli et al v Chile* (n 50), para. 36.

⁵⁸ Takemura (n 1) 115.

⁵⁹ *Ibid.*

⁶⁰ General Comment No. 22 (n 14), para. 11; *Sahli et al v Chile* (n 50), paras. 38-39, 48 and 50.

⁶¹ *Sahli et al v Chile* (n 50), paras. 38 and 59-83.

on a number of occasions, post-*Sahli et al.* Its line of reasoning, however, has remained almost unaltered and all of its decisions concerning conscientious objection have so far been in relation to article 6(3)(b). In the subsequent case of *Alfredo Díaz Bustos v. Bolivia* (also decided in 2005), the IACHR was faced with the question of whether or not Bolivia had violated the petitioner's rights of freedom of religion and equal protection of the law by failing to recognize his status as a conscientious objector.⁶² The IACHR did not have an opportunity to examine the merits of the case, however, as the parties opted for reaching a friendly settlement instead.⁶³ In its report on the case, and clearly evoking the rationale of *Sahli et al.*,⁶⁴ the IACHR considered the settlement to be "fully consonant with the evolving nature of international human rights law, which protects the status of conscientious objector *in those countries in which that status has been established by law.*"⁶⁵

The cases of *Xavier Alejandro León Vega v. Ecuador* (2006) and *Luis Gabriel Caldas León v. Colombia* (2010) brought no significant conceptual novelties either, as the IACHR has only pronounced itself on the admissibility of the former⁶⁶ and archived the latter due to lack of information from the petitioner.⁶⁷ In contrast with the admissibility decision in *León Vega*, where the IACHR re-asserted its position from *Sahli et al.* and *Díaz Bustos*,⁶⁸ the more recent case of *José Ignacio Orías Calvo v. Bolivia* (2020) reveals an inclination towards aligning its interpretative standards with the criteria found in the larger *corpus* of international human rights law.⁶⁹ Indeed, in its admissibility decision, the IACHR noted that it "shall take into account the current conception of the content and scope of the rights invoked by the alleged victim" when deciding on the merits of the *Orías Calvo* case, given that "human rights treaties are living instruments, with interpretation that

⁶² IACHR, *Alfredo Díaz Bustos v Bolivia* [Friendly Settlement] (2005) Case No 14/04, Report 97/05, OEA/Ser.L/V/II.124 doc 7 paras 2, 11-15.

⁶³ *ibid* paras 3-4, 16; María Carmelina Londoño Lázaro and Juana Inés Acosta López, "La Protección Internacional de la Objeción de Conciencia: Análisis Comparado entre Sistemas de Derechos Humanos y Perspectivas en el Sistema Interamericano" (2016) 9(1) Anuario Colombiano de Derecho Internacional 233, 239.

⁶⁴ Takemura (n 1) 117.

⁶⁵ *Díaz Bustos v Bolivia* (n 62) para. 19 (emphasis added).

⁶⁶ IACHR, *Xavier Alejandro León Vega v Ecuador* [Admissibility] (2006) Case No 278-02, Report 22/06, OEA/Ser.L/V/II.124 doc 5, paras 32-24.

⁶⁷ IACHR, *Luis Gabriel Caldas León v Colombia* [Archived] (2010) Case No 11.596, Report 137/10, paras 10-12.

⁶⁸ *León Vega v Ecuador* (n 66) para. 31.

⁶⁹ IACHR, *José Ignacio Orías Calvo v Bolivia* [Admissibility] (2020) Case No 1384-16, Report 147/20, OEA/Ser.L/V/II.Doc 157, para. 12.

must go side by side with the evolution of times and current lifestyles.”⁷⁰ The form that this renewed approach would take is unclear, given that conscientious objection remains a contested concept among the different international human rights mechanisms. Since 2011, in particular, the HRCttee and the ECtHR have adopted divergent interpretations concerning the nature and scope of the right to conscientious objection. Consequently, to incorporate the reasoning of either body into an eventual ruling on the *Orias Calvo* case would imply two distinct possibilities for the IACHR.

On the one hand, adherence to the HRCttee’s current rationale would mean recognizing conscientious objection as a standalone right derived from the *forum internum* dimension of the right to freedom of conscience and religion, i.e., from the freedom “to maintain or to change one’s religion or beliefs.”⁷¹ It would also imply that the protection offered by article 12(2) of the Pact of San José against restrictions that might impair the freedom to maintain or to change one’s religion or beliefs extends to conscientious objection as well.⁷² On the other hand, bringing the IAS closer to the standards of its European counterpart would involve linking the right to conscientious objection to the freedom to “manifest one’s religion and beliefs” (*forum externum*).⁷³ What this means in practice is that the right to oppose military service on religious or conscience grounds would no longer be conditioned by the domestic recognition of conscientious objector status, but would be subject “to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.”⁷⁴

Moreover, despite the complexity of the IAS’ two-tier system, freedom of conscience and religion has been addressed on very few occasions by either of its main bodies, and only the IACHR has dealt with the issue of conscientious objection specifically.⁷⁵ For its part, the Inter-American Court of Human Rights has averted the opportunity to address conscientious objection completely, even in cases whose subject matter could have arguably warranted a related pronouncement.⁷⁶ Thus, establishing a stronger link between conscientious objection and either the *forum internum* or the *forum*

⁷⁰ *Ibid.*, para. 12; See also OHCHR Analytical Report (n 11) para. 36.

⁷¹ Bielefeldt, Ghana and Wiener (n 2), p. 289.

⁷² *Ibid.*, p. 289.

⁷³ *Ibid.*, pp. 290-291; Pact of San José (n 41), art 12(1).

⁷⁴ Bielefeldt, Ghana and Wiener (n 2), pp. 289-290; Pact of San José (n 41), art 12(3).

Londoño Lázaro and Acosta López (n 63), pp. 240, 250-251.

⁷⁵ *León Vega v Ecuador* (n 66), para. 31.

⁷⁶ For instance, it has been argued that, in accordance with the principle of *iura novit curia*, the IACtHR could have addressed the issue of conscientious objection in the case of *Artavia Murillo et al v Costa Rica*. See Londoño Lázaro and Acosta López (n 63), p. 241.

externum dimensions of article 12 could help increase the IAS' engagement with freedom of conscience and religion by expanding the range of circumstances in which violations may be rightfully alleged. Nevertheless, considering its current procedural backlog and structural challenges,⁷⁷ any of the changes that the IACHR has seemingly set out to do through the *Orias Calvo* case can be reasonably expected to take place in the long run.

(d) The practice before the African system of human rights protection

Compared to the other regional systems of human rights protection, legal developments concerning the right to conscientious objection have been largely lacking in the African system. While its foundational instrument, the African Charter on Human and Peoples' Rights (Banjul Charter), recognizes the rights most commonly associated with conscientious objection, it does so in overly general terms.⁷⁸ Indeed, the Banjul Charter dedicates only a couple of sentences to regulating the rights to freedom from forced labor (article 5) and of conscience and religion (article 8), and neither contains any reference to conscientious objection whatsoever (in relation to military service or otherwise). The concept of conscientious objection was also entirely absent from earlier drafts of the Banjul Charter, even though a more detailed enunciation of the scope of both articles was suggested prior to the adoption of its final text.⁷⁹ The same is true for other relevant documents that have come to supplement the Banjul Charter over the years, although it should be noted that the African Charter on the Rights and Welfare of the Child (1990) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003) do contain prohibitions against recruiting children in armed conflicts.⁸⁰ Although no standard concerning conscientious objection to military service has thus far been established by any of the existing judicial and quasi-judicial mechanisms of the African system, inferences may be drawn from the African Commission on Human and

⁷⁷ See IACHR, "Differentiated Actions to Address the Procedural Backlog in Friendly Settlement Agreement Procedures" (2020) Resolution 3/2020. See also Cecilia M Bailliet, "Measuring Compliance with the Inter-American Court of Human Rights: The Ongoing Challenge of Judicial Independence in Latin America" (2013) 31(4) *Nordic Journal of Human Rights* 477, 479-480.

⁷⁸ African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) OAU Doc CAB/LEG/67/3 rev 5, 21 ILM 58.

⁷⁹ Rachel Murray, *The African Charter on Human and Peoples' Rights: A Commentary* (Oxford University Press, 2019), pp. 134 and 251-252.

⁸⁰ African Charter on the Rights and Welfare of the Child (adopted 1 July 1990, entered into force 29 November 1999) Article 22(2); Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted 1 July 2003, entered into force 25 November 2005) Article 11(4); See also HR/PUB/12/1 (n 17), p. 29.

Peoples' Rights' (ACHPR) engagement with articles 5 and 8 of the Banjul Charter.

In contrast with its regional counterparts in Europe and the Americas, the Banjul Charter includes freedom from slavery and forced labor within article 5 prohibition of torture and cruel, inhuman and degrading treatment. Cases alleging violations of article 5 have been abundant at the ACHPR, particularly in relation to conditions of detention and imprisonment, as well as to the imposition of the death penalty and severe punishments.⁸¹ Slavery and forced labor, on the other hand, have received less attention.⁸² Although both the ECHR and the Pact of San José explicitly refer to military service and service *in lieu* of military service as exceptions of what is to be considered forced labor, article 5 of the Banjul Charter makes no such clarification.⁸³ The ACHPR has specified, however, that article 5 includes “not only actions which cause serious physical or psychological suffering, but which humiliate or force the individual against his will or conscience.”⁸⁴

Such interpretation is fully consistent with the ACHPR's findings in the case of *Media Rights Agenda v. Nigeria*, where it held that the text of article 5 should be interpreted as extending “to the widest possible protection against abuses, whether physical or mental.”⁸⁵ Authors such as Killander have followed the same reasoning and suggested that the right to respect for dignity, as embedded in article 5, may cover certain rights not explicitly recognized by the Banjul Charter.⁸⁶ The ACHPR's disposition to include a

⁸¹ See, e.g., ACHPR, *Huri-Laws v Nigeria* [Merits] (2000) Communication No 225/98, para. 40; *Curtis Francis Doebller v Sudan* [Merits] (2003) Communication No 236/00, paras 36-44; *Institute for Human Rights and Development in Africa (on behalf of Esmaila Connateh and 13 Others) v Angola* [Merits] (2008) Communication No 292/04, para. 50; See also, Murray (n 79), pp. 132-133.

⁸² However, in light of the relevance of the issue of contemporary forms of slavery, the Committee for the Prevention of Torture in Africa has suggested the preparation of a General Comment on article 5 of the Banjul Charter. See CPTA, “Africa Torture Watch: A Newsletter of the African Commission on Human & Peoples' Rights” (Fifth Edition) (2015), 3-10.

⁸³ The ACHPR has nonetheless explained the concepts of slavery and forced labor in connection to the right to work (article 15), describing them as “all forms of work or service exacted from any person under the menace of any penalty and/or for which the said person has not offered himself/herself voluntarily.” See “Guidelines and Principles on Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights” (2010), para. 59.

⁸⁴ *Doebller v Sudan* (n 84), paras. 36-37 (emphasis added).

⁸⁵ ACHPR, *Media Rights Agenda v Nigeria* [Merits] (2000) Communication No 224/98, para. 71.

⁸⁶ Magnus Killander, “African Human Rights Law in Theory and Practice”, in Sarah Joseph and Adam McBeth (eds), *Research Handbook on International Human Rights Law* (Edward

wider variety of safeguards within the scope of article 5 is perhaps most clearly evidenced in its general comment no. 2, where it affirmed that “State parties must ensure that women are not treated in an inhumane, cruel or degrading manner when they seek to benefit from reproductive health services.”⁸⁷

Coincidentally, general comment no. 2 also constitutes the only pronouncement on conscientious objection within the AS, given that the ACHPR interpreted the right to health care without discrimination as implying States’ duty to remove “ideology or belief-based barriers” to health services reserved for women.⁸⁸ Limited as it might be, and although not dealing with conscientious objection to compulsory military service specifically, such allusion serves to indicate the direction that the ACHPR’s reasoning could take if eventually faced with the issue. In the absence of clearer criteria, it could be inferred that forcing an individual to render military service against his deeply-held beliefs may also fall within the wide “array of physical and mental abuses”⁸⁹ prohibited by article 5.

In a similar vein, as explained by Takemura, recognition of freedom of conscience under article 8 offers sufficient legal basis from which a right to conscientious objection to military service could be eventually derived.⁹⁰ Whether such a right is grounded on the right to profess (*forum internum*) or the right to freely practice a religion or belief (*forum externum*) would determine if it could be subject to limitations.⁹¹ If ever faced with the issue of opposition to military service on religious or conscience grounds, however, it seems likely that the ACHPR would choose to focus on the latter over the former and adopt a rationale similar to that found in the IACHR’s *Sahli et al.* decision or in the ECtHR’s post-*Bayatyan* jurisprudence. This would respectively imply making domestic recognition of such a right a *sine qua non* condition for its “free practice” or allowing it to be subject to restrictions when so required.

Elgar Publishing, 2010), p. 393; See also Olufemi Amao, “Civil and Political Rights in the African Charter”, in Manisuli Ssenyonjo (ed), *The African Regional Human Rights System: 30 Years after the African Charter on Human and Peoples’ Rights* (Brill | Nijhoff, 2011), p. 36.

⁸⁷ ACHPR, “General Comment No 2 on Article 14.1 (a), (b), (c) and (f) and Article 14. 2 (a) and (c) of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa” (2014), para. 36; Murray (n 79), p. 166.

⁸⁸ General Comment No. 2 (n 90), para. 25.

⁸⁹ *Doebbler v Sudan* (n 84), para. 37.

⁹⁰ Takemura (n 1), p. 20.

⁹¹ Bielefeldt, Ghanaea and Wiener (n 2), p. 259.

One reason for this assumption is that, so far, the ACHPR has mostly engaged with the *forum externum* dimension of article 8, having defined freedom of conscience and religion as including, among other things, “the right to worship, engage in rituals, observe days of rest, and wear religious garb.”⁹² Another reason is that such an approach would be consistent with the spirit of the Banjul Charter, which has notably been criticized for its restrictive articulation of civil and political rights. According to Amao, for instance, many of its substantive provisions contain “clawbacks” that condition the exercise of certain rights “to the extent permitted in domestic law.”⁹³ Article 8 is no exception to this, as it allows for the imposition of measures restricting freedom of conscience and religion if necessary to preserve a State’s “law and order”.

Both the ACHPR’s focus on the external manifestations of article 8 and the Banjul Charter’s stringent articulation of certain rights can be identified in the references made by the ACHPR to conscientious objection in its general comment no. 2:

“...While it is true that [health care providers] may invoke conscientious objection to the direct provision of the required services, State parties must ensure that the necessary infrastructure is set up to enable women to be knowledgeable and referred to other health care providers on time... However, the right to conscientious objection *cannot be invoked* in the case of a woman whose health is in a serious risk, and whose condition requires emergency care or treatment.

... State parties should particularly ensure that health services and health care providers do not deny women access to contraception/family planning and safe abortion information and services because of, for example, requirements of third parties or for reasons of conscientious objection.”⁹⁴

However, the direction that the African system might take concerning the right to conscientious objection to military service, if any, remains to be seen.

⁹² ACHPR, *Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v Kenya* [Merits] Communication No 276 / 2003, para. 165.

⁹³ Amao (n 86), pp. 30-31.

⁹⁴ General Comment No. 2 (n 90), paras. 26 and 48 (emphasis added).

3. Concluding remarks

Conscientious objection to military service is a human right which has been acknowledged and developed over the last decades as a response to individuals refusing compulsory military service. The right has been mainly grounded on freedom of thought, conscience and religion in various treaties, including article 18 of the Covenant, Article 9 of the ECHR, or a combination of relevant articles, such as Articles 12 and 6 of the Pact of San José. While the right has been increasingly accepted for conscripts, in practice it seems more difficult for professional soldiers to assert this right. This latter issue might receive increased attention in the coming years, as individuals might change opinion after enrollment in military service or express their opposition to specific military missions or operations. In 2010, the Committee of Ministers of the Council of Europe recommended that “professional members of the armed forces should be able to leave the armed forces for reasons of conscience.”⁹⁵

The Human Rights Committee has developed this right through its practice, including general comment no. 22, numerous decisions of individual communications and concluding observations on State reporting. The right has also been developed to varying degrees within the two regional systems of human rights protection, namely the European and the Inter-American, with the African system still to follow suit. To some extent, the legal developments concerning this right over time also show the interaction and cross-fertilization of relevant practice among various human rights mechanisms.

Returning to the right itself, first and foremost its recognition constitutes a strengthening of individual autonomy, enabling decision-making based on the conscience of the person concerned. Without such a broad acknowledgement and the legal protection provided under the Covenant system, as well as under regional human rights systems, individuals would have continued to be punished for their acts of disobedience. The recognition and the evolution of the right over time shows that international and regional human rights mechanisms can effect change at the national level through an iterative process of constructive dialogue with the States concerned.⁹⁶ The aim is for all States to introduce a genuinely civilian alternative service,

⁹⁵ Council of Europe: Committee of Ministers, “Recommendation CM/Rec(2010)4 of the Committee of Ministers to member States on human rights of members of the armed forces” (24 February 2010), para. 42.

⁹⁶ See among others, Gráinne de Búrca, *Reframing Human Rights in a Turbulent Era* (Oxford University Press, 2021), pp. 38-47 and figure 2.1.

which is not punitive in terms of its length and nature. Anti-war and anti-colonial activists worked to challenge national policies – of war-making and apartheid – at the United Nations.⁹⁷ This anti-war and anti-colonial advocacy, in turn, shaped the reasoning by which the Commission on Human Rights, the General Assembly, and the Human Rights Committee did, eventually, declare a right of conscientious objection.⁹⁸ While perhaps somewhat far-fetched, a potential effect of this right over the long term could be the reinvigoration of the individual nature of the right to peace.

⁹⁷ Kessler (n 1), p. 791.

⁹⁸ *Ibid.*

VOICE: Lazaros Petromelidis, with Georgios Karatzas

A landmark decision of the Human Rights Committee in the case of a Greek conscientious objector

“I have refused on ideological grounds to enlist for military service in 1992, when there was no provision for alternative civilian service in Greece. I was prosecuted for insubordination, prohibited from exiting the country and an arrest warrant was issued. In 1998, after the first law on alternative civilian service, my first application was rejected, and I was officially recognized as a conscientious objector only after my first arrest. However, I was initially required to perform 39 months of alternative service, while as a conscript of the same age and family status I could serve only four months of military service and buy out another eight. After I didn’t report for such a punitive and discriminatory alternative service, my conscientious objector status was revoked, and a series of repeated call-ups for military service, arrests and sentences by military courts began.

Until 2014, I have been convicted five times for insubordination, found myself in custody at least four times, and paid two financial penalties instead of imprisonment. My repeated appeals to Greece’s Supreme Administrative Court and Court of Cassation were rejected. Therefore, one of the few options left was to submit a complaint to the Human Rights Committee.

In 2021, the Committee, in a landmark decision, found violations of the articles 9(1), 12(2), 14(7), and 18(1) of the International Covenant on Civil and Political Rights.

While it is not the first time that the Committee has examined a case involving a punitive and discriminatory alternative service, this is the first case where the conscientious objector has not reported for such service at all. Furthermore, the Committee found for the first time a violation of article 12(2) in a case of a conscientious objector who was prohibited from leaving his country, not only because of “the excessive duration of the impugned interference but also the fact that it has been imposed on the author for having legitimately exercised his right to freedom of conscience”.

The Committee applied its jurisprudence as of the *ne bis in idem* principle, finding a violation of article 14(7) for the repeated punishment of a conscientious objector, and as of the violation of article 9(1) about arbitrary

detention as punishment for legitimate exercise of freedom of religion and conscience.

In terms of admissibility, it is noteworthy that the Committee accepted to examine the case as a whole, despite the fact that some of the court proceedings had ended many years ago.

According to the Committee, Greece is obliged to make full reparation and therefore to expunge my criminal record, reimburse all sums paid as financial penalties instead of imprisonment, and provide adequate compensation; and to 'review its legislation with a view to ensuring the effective guarantee of the right to conscientious objection under article 18 (1) of the Covenant, for instance, by providing for the possibility to undertake alternative civilian service that is not punitive and discriminatory in nature'."

Chapter 8

Foundations in freedom of thought, conscience, and religion or belief

Ahmed Shaheed and Laura Rodwell

1. Introduction

Although generally associated with religious beliefs,¹ conscientious objection to military service has only recently acquired the status of a universal human right, recognized by key human rights bodies as part of the right to freedom of thought, conscience and religion or belief.² This newfound international legal protection has meant the controversy surrounding conscientious objection has only heightened; aside from implementation and application gaps,³ its normative scope remains unsettled as evident from the inconsistencies in how human rights mechanisms address it, despite a clear trajectory toward increasing the protections afforded to conscientious objectors.⁴ In addition, some types of conscientious objection to military service enjoy more widespread protection, such as those grounded in total opposition to war as opposed to resistance in engaging in particular wars or specific forms of conduct in warfare.⁵ Even within groups that advance these claims, some objectors may find easier acceptance of their position than others due to differences based on context, time and place.⁶ Some States continue to reject that they have an international obligation to respect conscientious objection to military service on the grounds of public order, general welfare and national security.⁷ Further, amidst growing diversity of and polarization within societies, conscience-based claims for exemption from generally applicable laws in other areas of life are increasing, such as in

¹ Özgür Heval Çınar, *Conscientious Objection to Military Service in International Law* (Palgrave Macmillan 2013) 17-21. See also Hitomi Takemura, “Ethics of Conscientious Objection”, in Lester R Kurtz (ed), *Encyclopedia of Violence, Peace and Conflict* (3rd edn, Academic Press, 2022) 268-275.

² See above [chapter 7](#).

³ OHCHR, “Analytical Report: Conscientious Objection to Military Service” (2022), A/HRC/50/43, paras. 31-53.

⁴ Heiner Bielefeldt and Michael Wiener, *Religious Freedom under Scrutiny* (University of Pennsylvania Press, 2020) 162-164.

⁵ Andrea Ellner, Paul Robinson and David Whetham, “Sometimes They’ll Give a War and Nobody Will Come”, in idem (eds), *When Soldiers Say No: Selective Conscientious Objection in the Modern Military* (Ashgate, 2014) 1-15.

⁶ Ibid.

⁷ See A/HRC/50/43 (n 3) para 11.

healthcare settings, making it imperative to establish a more coordinated legal approach.⁸

While these contestations highlight the controversial nature of some aspects of conscientious objection, the grounding of a right to conscientious objection to military service in freedom of thought, conscience and religion or belief not only affirms the traditionally recognized association between certain religious groups (most notably some denominations of Christianity)⁹ and pacifism, but also transforms that understanding by recognizing the equal validity of non-religious convictions that have also increasingly underpinned objections to war.¹⁰ It also marks a U-turn by international and regional judicial and quasi-judicial bodies on how they have historically addressed conscientious objection.¹¹

Thus, the protections afforded to conscientious objection through international guarantees for freedom of thought, conscience and religion or belief are far-reaching and require a detailed and full investigation. While this chapter will not attempt to do that, it will highlight some of the implications for conscientious objection to military service from the growing understanding that it is entitled to all the protections offered by the human right to freedom of religion or belief and by extension by the full human rights framework. This chapter will reflect on the notions of conscience and of freedom of conscience before highlighting various types of claims made under conscientious objection to military service. It will then recount the current positions on this right that have been adopted by the UN Human Rights Committee and, at the regional level, by the Council of Europe which has the most significant engagement on this issue. This will be followed by an identification of the key features of the right to freedom of religion or belief and an exploration of their implications for conscientious objection to military service.

⁸ Susanna Mancini and Michel Rosenfeld, “The New Generation of Conscience Objections in Legal, Political and Cultural Context”, in idem (eds), *The Conscience Wars: Rethinking the Balance between Religion, Identity, and Equality* (Cambridge University Press, 2018) 1-19.

⁹ Çınar (n 1). See also Julie Saada and Mark Antaki, “Conscience and Its Claims: A Philosophical History of Conscientious Objection”, in Mancini and Rosenfeld (n 8), 23-57.

¹⁰ Çınar (n 1), 21-26; Noam Lubell, “Selective Conscientious Objection in International Law: Refusing to Participate in a Specific Armed Conflict” (2002) 20 *Netherlands Quarterly of Human Rights* 407. See also Richard Sorabji, *Moral Conscience Through the Ages: Fifth Century BCE to Present* (Oxford University Press, 2014) 202-207.

¹¹ Bielefeldt and Wiener (n 4).

2. What is conscience and why is it important?

There are many conceptions of conscience,¹² but it is largely understood as the “inner tribunal that holds man accountable for his actions”¹³, and is “coextensive” and therefore “essential” with being human.¹⁴ The Universal Declaration of Human Rights appeals to the “conscience of mankind” and asserts that all human beings are “endowed with reason and conscience and should act towards one another in the spirit of brotherhood”,¹⁵ perhaps suggesting that conscience can be individual, social and collective. Across a spectrum of views on political authority and personal autonomy, at one end is the Hobbesian supremacy of the law over conscience in that the collective will represented by the people (“collective conscience”¹⁶) is more likely to be closer to moral truths and virtue than an individual quest for the moral truth.¹⁷ At the other end is the view, associated with Butler, that conscience is independent of the law and established religion, and is based on autonomous moral experience.¹⁸ Other conceptions of conscience highlight competing ideas about how conscience recognizes moral truth.¹⁹ For some, conscience is fallible and needs to be nurtured and guided by an “infallible” external authority such as religious doctrine to aid the discovery of the truth.²⁰ For others, conscience is an infallible and irrepressible inner understanding of right and wrong, that is intuitive and independent of external authority.²¹ Even amongst groups who share similar views on the nature of conscience and how it governs one’s moral compass, they can often promote radically different belief systems.

¹² See for example, Sorabji (n 10) 215-224; Thomas E Hill Jr, *Human Welfare and Moral Worth: Kantian Perspectives* (Oxford University Press, 2002) 277-309; Gananath Obeyesekere, “Buddhism and Conscience: An Exploratory Essay” (1992) 120 *Daedalus* 219; Paul L Heck, “Conscience Across Cultures: The Case of Islam” (2014) 94 *The Journal of Religion* 292; and Jayne Hoose, *Conscience in World Cultures* (University of Notre Dame Press, 1990).

¹³ Lorenzo Zucca, “Is there a Right to Conscientious Objection?”, in Mancini and Rosenfeld (n 8) 130.

¹⁴ Steven D Smith, “The Phases and Functions of Freedom of Conscience”, in John Witte, Jr and M Christian Green (eds), *Religion and Human Rights: An Introduction* (Oxford University Press, 2011) 155.

¹⁵ Universal Declaration of Human Rights (1948), article 1.

¹⁶ Zucca (n 13).

¹⁷ *Ibid.*; and Helen M Alvera and Jefferey B Hammond, “Introduction”, in *idem* (eds), *Christianity and the Laws of Conscience: An Introduction* (Cambridge University Press, 2021) 1-20.

¹⁸ Zucca (n 13) 133-135.

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ Saada and Antaki (n 9) 27-35.

There is also disagreement as to the relationship between rationality and conscience: whether one is responsible for the dictates of their conscience, or whether an essential quality of conscience is “volitional necessity” in that an individual is helpless before it (i.e. “lacks choice”) and therefore cannot be held responsible for the demands of their conscience.²² Such inner demands may follow from consciously made choices about their beliefs, or subconsciously from social norms and practices, which can permeate religious (and non-religious) doctrines, and may explain how those with the same conceptions of conscience can hold vastly different views depending on their cultural and social backgrounds. Despite this, with some norms so intertwined with one’s own sense of self, external influence does not cause one to feel any less strongly about their moral beliefs, indeed they may not themselves recognize that their strong moral ethos was formed as a result of internalized standards. Some hold the view that an individual’s willingness to face social or legal consequences, as a result of adherence to their deeply held beliefs, itself demonstrates the seriousness of their commitment.²³

The Kantian perspective of conscience highlights that despite being part of existence as a rational being, one’s conscience itself is somewhat distinct from concepts of reason. Our moral beliefs may be defined through our capacity to reason, and our judgement may critically appraise how to exercise those beliefs, but it is one’s conscience that may determine whether such actions were morally just.²⁴ Conscience often “brings into focus a sometimes painful awareness, not that our action is ‘objectively’ wrong but that we are not even making a proper effort to guide ourselves by our own deepest moral beliefs.”²⁵ When one’s conscience determines our actions wrong through a lack of reason or an inability to act in accordance with our own judgement, it can cause significant mental and spiritual harm.

All of these different conceptions of conscience have implications for arguments about the scope of freedom of conscience and the relationship between law and conscience. International and regional human rights mechanisms have not defined what is constitutive of conscience but stress its capacious scope by signalling that it is related to a wide range of beliefs and

²² See Andrew Koppelman, “Conscience, Volitional Necessity, and Religious Exemptions” (2009) 15 *Legal Theory* 215. See also Yossi Nehushtan, “Selective Conscientious Objection: Philosophical and Conceptual Doubts in Light of Israeli Case Law”, in Ellner, Robinson and Whetham (n 5) 140.

²³ Çınar (n 1).

²⁴ Hill (n 12) 281.

²⁵ *Ibid.*

convictions, including religious, ethical, moral, humanitarian and similar grounds.²⁶

3. Freedom of conscience

As Alvera and Hammond note, various conceptions of conscience have developed over time in a non-linear fashion, and (along with) their variations, gained ascendancy at different times, echoing many of the debates that persist today.²⁷ Conscience has been regarded by thinkers as both infallible and subjective at varying points in the history of philosophical thought, with social theories at times championing the individual over the community, including religious authorities, then conversely prioritizing the will of the majority over religious conscience.²⁸ By and large, these conceptions recognize conscience as an inherent and inviolable attribute, the protection and nurture of which is necessary for moral or personal integrity, understood as coherence between belief and action.²⁹ The freedom to maintain coherence between belief and action is regarded as immeasurably valuable since “autonomy, identity (self-hood) and self-respect are all dependent on personal integrity”.³⁰ For many, conscience is an attribute that is “central to what gives human beings a special dignity”.³¹ These conceptions note the “vulnerability” of conscience to harm generated by coercion and therefore the need for freedom, an insight which Nussbaum characterises as “necessary for a workable doctrine of political liberty”.³²

Nehushtan makes the important point that freedom of conscience itself does not imply that one has access to a choice, as in freely choosing one out of many available options, including, for example, how one may “choose a religion”.³³ Rather, it recognizes that in certain situations, an individual may

²⁶ For example, the Commission on Human Rights, in resolution 1987/46, recognized that conscientious objection to military services is grounded in “principles and reasons of conscience, including profound convictions, arising from religious, ethical, moral or similar motives”. The Parliamentary Assembly of the Council of Europe, in resolution 1967/337 specifies “humanitarian” as an additional specified basis. UN Commission on Human Rights, Conscientious objection to military service, 10 March 1987, E/CN.4/RES/1987/46; and Parliamentary Assembly of the Council of Europe (PACE), “Right of conscientious objection”, Resolution 1967/337 (1967) Doc 2170.

²⁷ Alvera and Hammond (n 17) 2-3.

²⁸ Ibid.

²⁹ Zucca (n 13).

³⁰ Patrick Lenta, “The Value of Personal Integrity” (2016) 29 (2) *Ratio Juris* 246-263.

³¹ Smith (n 14) 155.

³² Martha Nussbaum, *Liberty of Conscience: In Defense of America’s Tradition of Religious Equality* (Basic Books, 2008) 53.

³³ Nehushtan (n 22) 139-141.

not have a choice at all other than to do what their conscience dictates, if they want to avoid an inner verdict of guilt.³⁴ What the conscientious objector, therefore, is seeking is not so much an assertion of their autonomy, but protection against the State “invading” their autonomy.³⁵ Nevertheless, while non-coercion is crucial to moral agency, it does not follow that all actions that are guided by one’s conscience necessarily lead to a social good, as in the case of the “wicked” actions motivated by volitional necessity or conscience that Koppelman highlights.³⁶ What therefore follows is a “defeasible right” to act according to one’s conscience, subject to an assessment of all relevant circumstances.³⁷

Notwithstanding the lack of consensus over what constitutes conscience, its existence remains undisputed, whether from a secular perspective or a theological worldview. Moreover, throughout history, conscience has served as a vehicle to articulate opposition to oppression and persecution regardless of whether such persecution, usually against dissenters or those who hold minority views, was carried out in the name of religion or because of one’s beliefs.³⁸ Thus, respect for freedom of conscience has been frequently associated with ideas of religious toleration, or as a means to attain and sustain true and meaningful faith.³⁹ Today, however, freedom of conscience is not only associated with freedom of religion or religious toleration but also, and perhaps more so, with freedom *from* religion altogether, and therefore in many ways is distinct from freedom *of* religion.⁴⁰ The distinction between religious authority and conscience-based convictions is a product of the disestablishment of religion via the Protestant Reformation.⁴¹ The rise of humanism, as well as Abolitionists in the 19th century, and groups who opposed enlisting in the First World War, may have further advanced that distinction, along with more recent actors, including anti-apartheid activists, anti-nuclear campaigners, and objectors invoking violations of international humanitarian law. Although the delegates who drafted the international bill of rights may have believed in vastly different conceptions of conscience and its relationship with religion and secular beliefs, a role that the right to

³⁴ Ibid.

³⁵ Ibid.

³⁶ Koppelman (n 22).

³⁷ Lenta (n 29).

³⁸ Çınar (n 1).

³⁹ Smith (n 14) 156-158.

⁴⁰ Leonard M Hammer, *The International Human Right to Freedom of Conscience: Some Suggestions for its Development and Application* (Ashgate, 2001) 9-27; and Marika McAdam, *Freedom From Religion and Human Rights Law: Strengthening the Right to Freedom of Religion and Belief for Non-Religious and Atheist Rights-Holders* (Routledge, 2018).

⁴¹ Smith (n 14) 156-157.

freedom of conscience has served is to demand that non-religious beliefs be given no less weight than those that are religious.⁴² This *de jure* position however does not translate to a *de facto* situation of equality.⁴³ In determining claims of conscience, those that are grounded in religious beliefs are easier to demonstrate than those that are non-religious or idiosyncratic.⁴⁴

4. Conscientious objection to military service: total and selective

Conscientious objection to military service falls into two broad categories – total opposition to war that is grounded in pacifist beliefs related to religious or moral concerns, or selective or partial objection to participating in a particular conflicts or certain aspects of war.⁴⁵ The latter type is often related to notions of “just war”, in terms of both *jus ad bellum* and *jus in bello*.⁴⁶ The first category of objection, or total objection to war, has a longer history of recognition, is more easily and widely accommodated by States, and is often identified with, but not limited to, religious groups.⁴⁷ However, even in this case, there are numerous challenges and controversies that centre around means of assessment, nature, duration and conditions of alternative service, and non-discrimination in regard to the basis of such claims, or the gender of objectors.⁴⁸

Typically, persons belonging to religious groups that have pacifism as a core tenet of their belief, such as Quakers and Jehovah’s Witnesses, may find it comparatively easier to demonstrate the conscience-based nature of their objection to war, especially if such a group has a long history of existence in that country and the State recognizes that community as a religious minority, entitled to the protections provided for under article 27 of the International Covenant on Civil and Political Rights.⁴⁹ By contrast, individuals who belong to religious groups that do not have a general objection to fighting in their doctrines but nevertheless raise objection on the basis of their sincerely held

⁴² Hammer (n 40) 9-7; Linde Lindkvist, *Religious Freedom and the Universal Declaration of Human Rights* (Cambridge University Press, 2017) 21-60. See also OHCHR, *Beirut Declaration and its 18 Commitments on Faith for Rights* (2017), A/HRC/40/58, annexes I and II.

⁴³ McAdam (n 40).

⁴⁴ Brian Leiter, *Why Tolerate Religion?* (Princeton University Press, 2013; Winnifred Fallers Sullivan, *Impossibility of Religious Freedom* (Princeton University Press, 2018).

⁴⁵ Çinar (n 1).

⁴⁶ Lubell (n 10).

⁴⁷ Çinar (n 1). See also quadrennial analytical reports of the Office of the High Commissioner for Human Rights; and chapters 10 and 11 in this volume.

⁴⁸ See for example, OHCHR (n 3). See also chapter 10 by Rachel Brett in this volume.

⁴⁹ See chapter 12 by Nazila Ghanea and Michael Wiener in this volume.

non-orthodox religious beliefs, as well as those whose objection is grounded in non-religious beliefs, may face a higher burden of proof to validate their claim.

Despite alternative service often being cited as a solution for religious or belief groups who do not wish to partake in violence or perpetuating harm, this approach is not without its own controversy. Whilst some religious groups, such as Quakers and Mennonites, are willing to partake in non-combatant military roles as a means of alternative service, many conscientious objectors strongly refuse to engage in any roles that may directly contribute to the “war effort”, commonly referred to as absolutists. This claim is legitimate: one does not need to be a direct combatant to facilitate or meaningfully contribute to conflict, especially when considering the changing landscape of modern warfare. Thus, international legal mechanisms recommend greater provisions for alternative service that is civilian in nature with no military affiliation, that is also not punitive in nature through long service durations or similar restrictions.⁵⁰ Whilst providing means of alternative service has been commonplace for certain religious denominations, due to their long history of pacifist thought, States have been less willing to widen these accommodations to account for other faith and non-faith groups. Calls to do so have even resulted in the removal of this right to groups that were previously afforded it,⁵¹ in an attempt to lessen accusations of discrimination, despite this move itself perpetuating discriminatory treatment between objectors and serving civilians. Notwithstanding some examples, a clear trajectory has been evident towards greater acceptance of alternative service, including in States historically opposed to such notions, such as the Republic of Korea.

An additional variant of total opposition to war would be where a serving conscript with no prior pacifist beliefs, converts to a religion or ethical belief system or otherwise embraces such a pacifist worldview. In this case, the threshold of proof of having sincerely adopted a pacifist worldview is likely to be even higher, with a presumption by the authorities of “opportunism” or “desertion” which have been traditional grounds for State objection to recognizing conscientious objection to compulsory military service.⁵² However, freedom of religion or belief, including the freedom of conscience, unconditionally protects the right to change one’s religion or belief and

⁵⁰ OHCHR (n 3), A/HRC/50/43, paras. 23-25.

⁵¹ See Human Rights Committee, Concluding Observations on the Seventh Periodic Report of Finland, CCPR/C/FIN/CO/7 (3 May 2021), para. 36.

⁵² Hammer (n 40) 212. See also Melissa Bergeron, “Selective Conscientious Objection: A Violation of the Social Contract”, in Ellner, Robinson and Whetham (n 5) 49-62.

imposes a non-derogable duty on States to respect the right of people to adopt, maintain or change their religion or belief, even during times of war.⁵³ It is rational to presume that serving conscripts exposed to the brutality of war may be more likely than non-serving members of the general populace to adopt pacifist views, especially in conflicts where the futility of war is plainly apparent, or States engage in illegal wartime behaviour.

While all of the above claims are related to total objection to war, a second type of objection, and even more controversial, is selective objection – based on grounds of conscience related to violations of *jus ad bellum* and *jus in bello*. A soldier may have weighty reasons to believe that the motives for initiating a particular war violate international law and that therefore participating in such a war would be an immoral act and contrary to their religious or ethical commitments, and that one cannot be absolved for knowingly participating in what amounts to an international crime. Alternatively, a soldier may find that the manner of conducting a war, including the nature of a specific duty assigned to them, such as in relation to target selection or means used, violates international humanitarian law and therefore amounts to criminal behaviour. And the overlap between ethical and religious beliefs and principles of international humanitarian law means that objections to these violations also have a strong basis in their religious or moral beliefs.⁵⁴ Such claims may be even harder for objectors to prove, if a State refuses to admit to disproportional war tactics or criminal behaviour in conduct, as is often the case.

A key concern often raised in regard to these objections that centre around *jus ad bellum/jus in bello* is that selective opposition may involve political motives – a desire to prevent war or to end a war or in other ways change policy, and therefore may constitute civil disobedience.⁵⁵ There may be purely political motives for dissuading a State from initiating or continuing a war or refusing to follow certain orders that violate the laws of war.⁵⁶ These may not qualify as conscientious objection. However, these can be distinguished conceptually from conscientious objection that is concerned primarily with protecting cohesion between the objector’s religious or moral beliefs on the one hand and their actions on the other. In practice, an ethically grounded objection to the manner of conducting a war need not be free from

⁵³ Ahmed Shaheed and Rose Richter, “Freedom of Thought, Conscience and Religion”, in Christina Binder, Manfred Nowak, Jane A Hofbauer and Philipp Janig (eds), *Elgar Encyclopedia of Human Rights* (Elgar, 2022) 284-293.

⁵⁴ Lubell (n 10); and Nehushtan (n 22).

⁵⁵ Nehushtan (n 22).

⁵⁶ *Ibid.*

any desire to change policy which would be an unrealistic demand to expect from an ethically motivated person. Many religious doctrines actively decree that a believer's faith must inform all aspects of their lives, and any decisions they make must be appraised through the lens of faith. As Brownlee notes, "in some cases, a single act can be described as both civil disobedience and conscientious objection, such as the selective, communicative objection – draft dodging – engaged in by many U.S. national guard members during the Iraq War".⁵⁷ Thus, although civil disobedience emanates from political ends, it may also be grounded in ethical motivations. However, the distinction which Raz makes that civil disobedience is essentially a public action, while conscientious objection is a private action in that it seeks to avoid burdening one's conscience, is important for freedom of religion or belief.⁵⁸ As expressive actions designed to change the conduct of others fall outside the private sphere, civil disobedience would enjoy a lesser degree of protection than an ethically-grounded objection not to serve. The latter is passive in nature, is concerned about preserving personal integrity and seeks to free the objector from dilemmas resulting from coerced conduct. Nevertheless, viewed from the perspective of freedom of religion or belief, even if there are sound religious and moral reasons for a "by-stander" to act, it is relevant to note that not every "act which is motivated or influenced by a religion or belief" may be protected under international law,⁵⁹ particularly when such acts impact on others, and fall within the external sphere of manifestation of beliefs.

5. The journey to recognition as a universal human right

A significant stumbling block to entrenching a right to conscientious objection to military service in international law was the concern about the impact that granting such exemption would have on the State capacity to defend itself against attack, at a time when a large number of countries relied on conscription to raise armies. However, as highlighted by Kessler, a number of developments coalesced into a greater willingness by many States to develop a sustained engagement on this issue.⁶⁰ Crucial to this was emerging State practice of shifting to voluntary service, and a partial precedent set in 1978. In the context of international concern over apartheid

⁵⁷ Kimberley Brownlee, "Conscientious Objection and Civil Disobedience", in Andrei Marmor (ed.), *The Routledge Companion to Philosophy of Law* (Routledge, 2012) 231.

⁵⁸ Joseph Raz, *The Authority of Law: Essays on Law and Modernity* (Clarendon Press, 1979) 276-277.

⁵⁹ European Commission of Human Rights, *Arrowsmith v. UK*, application no. 7050/75 (12 October 1978), para. 71.

⁶⁰ Kessler (n 1).

in South Africa (at least in this instance), there was a duty to oppose or not participate in the enforcement of State power.⁶¹ In addition, sustained interest on this issue was maintained by drawing links to the relevance of conscientious objection to a wider set of global interests such as concerns of the youth and the pursuit of peace.⁶² And while the issue still polarized States, the study commissioned by the UN Commission on Human Rights in 1982 provided a basis for States to take up the issue on a regular basis and advance standard setting.⁶³ Persistent efforts by civil society advocates, societal changes in many countries, and a less confrontational approach between the major world powers may have contributed to the breakthrough moment when in 1987⁶⁴ the Commission on Human Rights adopted resolution 1987/46 that appealed to States to “recognise that conscientious objection to military service should be considered a legitimate exercise of the right to freedom of thought, conscience and religion”.⁶⁵ Importantly, the preamble to the resolution asserted “that conscientious objection to military service derives from principles and reasons of conscience, including profound convictions, arising from religious, ethical, moral or similar motives”, thereby expanding the grounds on which such claims can be raised.⁶⁶ Highlighting an emerging consensus, only two States voted against this resolution.⁶⁷ This was followed in 1989 by what Nowak has termed “definitive recognition” of the right to conscientious objection by the Commission, which was reiterated in numerous subsequent resolutions by the Commission and later the Human Rights Council.⁶⁸

These developments at the international level were accompanied – or in part preceded – by developments at the European regional level. In its resolution 337/1967, the Parliamentary Assembly of the Council of Europe affirmed a right to conscientious objection to military service.⁶⁹ It explicitly linked the

⁶¹ Ibid. See also David S Weissbrodt, “The United Nations Commission on Human Rights Confirms Conscientious Objection to Military Service as a Human Right” (1988) 35 *Netherlands International Law Review* 53.

⁶² See UN Commission on Human Rights, “Conscientious objection to military service” (10 March 1987) E/CN.4/RES/1987/46 and Kessler (n 1).

⁶³ Asbjørn Eide and Chama Mubanga-Chipoya, *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 (1983); and Kessler (n 1).

⁶⁴ Ibid.

⁶⁵ Commission on Human Rights (n 62).

⁶⁶ Ibid.

⁶⁷ Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (2nd revised edn, NP Engel Publisher, 2005) 422-423.

⁶⁸ Ibid.

⁶⁹ PACE (n 26).

right to freedom of thought, conscience and religion enshrined in article 9 of the European Convention on Human Rights and recognized that, as noted above, such objections can arise from “reasons of conscience or profound conviction arising from religious, ethical, moral, humanitarian, philosophical or similar motives.”⁷⁰

In 2000, at the European Union level, the Charter of Fundamental Rights recognized a right to conscientious objection under its provision on the freedom of thought, conscience and religion provision in article 10(2).⁷¹

These developments inspired and accompanied shifts in the practice of the UN Human Rights Committee and the European Court of Human Rights which had earlier categorically rejected that a right to conscientious objection was protected by the respective human rights instruments they are mandated to apply. The Human Rights Committee has made two shifts to its earlier stance. The initial position taken in examining petitions submitted to the Committee, was to categorically reject that the International Covenant on Civil and Political Rights protected a right to conscientious objection.⁷² However, in 1993, in General Comment no. 22 on the right to freedom of thought, conscience and religion, the Committee outlined its recognition that a right to conscientious objection can be “derived” from article 18 of the Covenant “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.”⁷³ And in subsequent jurisprudence, beginning with *Yoon and Choi v Republic of Korea*, the Committee considered the right to be part of the *forum externum*, the external sphere of the manifestation of one’s beliefs, and therefore subject to limitation.⁷⁴ However, since 2011, the Committee has taken the view that a right to conscientious objection *inheres* in the right to freedom of religion or belief, and ruled out any possibility of limitation of the right as it belongs to the unconditionally protected *forum internum* (the internal, private aspect of faith or belief, afforded unconditional and absolute protection).⁷⁵

The European Commission of Human Rights too had initially taken the approach that conscientious objection to military service was not recognized

⁷⁰ Ibid.

⁷¹ Charter of Fundamental Rights of the European Union, 2010 OJ C 83/02.

⁷² See for example, *LTK v Finland* Communication No. 185/1984 (1985).

⁷³ General Comment No. 22 (20 July 1993), CCPR/C/21/Rev.1/Add.4, para. 11.

⁷⁴ Human Rights Committee, *Yoon and Choi v Republic of Korea*, Communication Nos. 1321-1322/2004 (2007).

⁷⁵ See *Jeong et al v Republic of Korea*, Communication Nos. 1642-1741/2007 (2011).

by the European Convention.⁷⁶ However, in 2011, the Grand Chamber of the European Court of Human Rights found objection to military service where it is “motivated by a serious and insurmountable conflict between the obligation to serve in the army and a person’s conscience or his deeply and genuinely held religious or other beliefs, constitutes a conviction or belief of sufficient cogency, seriousness, cohesion and importance to attract the guarantees of article 9” of the European Convention.⁷⁷

6. Protections offered by the framework for freedom of religion or belief

Although the references to a right to conscientious objection in the drafting of the Covenant were sparse and not substantive, these occurred in relation to the framing of the provision on freedom of religion or belief. While this might highlight the long association of respect for conscientious objection with religious toleration,⁷⁸ some delegates, such as the Indian representative,⁷⁹ stressed that secular motives may also comprise valid grounds for such accommodation, reflecting the understanding of many delegates that freedom of thought, conscience and religion covers both religious and secular worldviews equally.⁸⁰ As noted by Lubell, the recognition that conscientious objection to war was protected by the universal human right to freedom of thought, conscience and religion or belief marked a departure from earlier practice based on models of religious toleration.⁸¹ Thus, before examining the implications of this shift, this chapter will outline the scope of protections tenable under freedom of religion or belief.

Enshrined in article 18 of the Universal Declaration of Human Rights,⁸² codified in article 18 of the International Covenant on Civil and Political Rights,⁸³ and elaborated in the 1981 United Nations Declaration on the Elimination of Forms of Intolerance and of Discrimination Based on Religion or Belief,⁸⁴ the protections guaranteed under freedom of religion or belief are far-reaching, are of profound importance to the religious and the non-religious alike and are foundational to a democratic society. These guarantees

⁷⁶ *Grandrath v Germany*, App no. 2299/64 (ECHR, 1966), para. 33.

⁷⁷ *Bayatan v Armenia*, [GC] App no. 23459/03 (ECHR 2011), para. 110.

⁷⁸ Çinar (n 1).

⁷⁹ Leonard M Hammer, *The International Human Right to Freedom of Conscience: An Approach its Application and Development*. PhD Dissertation (SOAS n.d) 188-90.

⁸⁰ Kessler (n 76) 757-760; and Hammer (n 40) 28-50.

⁸¹ Lubell (n 10).

⁸² UDHR (n 15).

⁸³ UNGA, Resolution 2200A/XXI (16 December 1966).

⁸⁴ UNGA, Resolution 36/55 (25 November 1981).

uphold the freedom of individuals to adopt, maintain or change their religion or belief without any coercion and to manifest such beliefs in public or in private, and alone or in community with others, in worship, observance, teaching or practice.⁸⁵

These freedoms consist of two broad dimensions, as noted above: an inner sphere (*forum internum*) that enjoys absolute protection at all times, and an external sphere (*forum externum*) of manifestation which may be limited on an exceptional basis that must meet specific requirements identified by international law. Thus, any such limitation must be narrowly articulated and must meet the strict standards of legality, legitimacy and proportionality. These require that limits must be clearly articulated by law and the aim pursued must comply with the exhaustive grounds specified in article 18(3) of the Covenant, namely, the needs to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. No such measure can be discriminatory in intent or in effect while the rule of proportionality dictates that the limitation must be the least restrictive measure that is necessary to achieve the aim and should not destroy the essence of the right itself. Moreover, and of particular importance to conscientious objectors, no derogation from any part of this right is permitted even in times of public emergency that threatens the life of the nation.⁸⁶

The prohibition on coercion includes the duty upon the State to refrain from taking any measures that may impair the ability of individuals to maintain their freely held views or beliefs or the liberty to change them at will, and the obligation to protect individuals against compulsion by third parties. Policies or practices such as those which restrict a person's access to education, medical care, employment or the enjoyment of other human rights on the basis of a person's religion or belief can have the same intention or effect as restrictions on the ability of persons to enjoy their religious liberty and are prohibited.⁸⁷ Moreover, the protections afforded to the freedom of thought against coercion apply equally to the protections offered to freedom of conscience, including freedom from being subjected to torture and other cruel, inhuman and degrading treatment or punishment.⁸⁸ In this context, it would be relevant to note that treatment which causes psychological harm can result in "personality disruption", and that protection against such harm

⁸⁵ General Comment No. 22 (n 73).

⁸⁶ *Ibid.* See also Shaheed and Richter (n 53).

⁸⁷ *Ibid.*

⁸⁸ For a detailed analysis of the protections offered by the freedom of thought, see UN Special Rapporteur on Freedom of Religion or Belief, "Freedom of Thought", UN Doc. A/76/380 (5 October 2021).

to an individual's agency and autonomy is also an objective of upholding freedom of conscience.⁸⁹

Although "religious freedom" or "religious liberty" is widely used as a shorthand, international law protects freedom of thought, freedom of conscience, and freedom of religion equally, and protects holders of theistic, atheistic, non-theistic and non-religious beliefs.⁹⁰ Thus, holders of a non-religious belief whose convictions "attain a certain level of cogency, seriousness, cohesion and importance" qualify for the same level of protection as holders of religious beliefs.⁹¹ However, in examples of conscientious objection, greater clarity may be needed on the threshold to one's beliefs being regarded as sufficiently serious and cogent, and what reasoning would be designated as "political". Despite most objectors rooting their opposition to war and conflict around arguments such as the sanctity of life, it would not be unreasonable to suggest other, less traditional objections may arise. For example, a conscript may object to certain actions in war due to the immense environmental degradation caused, or a vegetarian conscript may object to the use of animals in combat and refuse to engage in missions involving them. It is currently unclear whether these deeply-held beliefs would meet the threshold for conscientious objection, especially when such beliefs are often regarded as political in the current international climate.

While the jurisprudence on the application of article 8 (3)(c)(ii) of the Covenant already cover several aspects of State obligations in regard to *how* exemptions from military service are to be afforded, the recognition of a right to conscientious objection to military service as a derivative or an inherent part of freedom of religion or belief has numerous implications for conscientious objectors.

These include first and foremost, the affirmation that their opposition to military service is a legitimate exercise of their freedom of conscience which is important not only for the legal protection but also serves the expressive function of supporting the moral validity of their position.

Secondly, the protection afforded to those who object on the grounds of philosophical or non-religious convictions is of the same level as that available to those who invoke religious beliefs. The State obligations on non-discrimination follow not only from the protections on freedom of religion or

⁸⁹ Ibid.

⁹⁰ General Comment no. 22 (n 73).

⁹¹ *Campbell and Cosans v UK*, Appl. Nos. 7511/76, 7743/76 (ECtHR 25 February 1982) para. 36.

belief under the Covenant; the existence of these duties was also stressed even when the Human Rights Committee regarded, as implied in the construction and interpretation of article 8 (3)(c)(ii), that accommodation for conscientious objectors was a matter at the discretion of States.⁹² Such obligations follow from numerous other provisions in the Covenant such as articles 2 and 26. However, the protection of conscientious objection as a universal human right under freedom of religion or belief possibly expands and strengthens the scope of the protection against discrimination. Where article 27 may have served as a basis to extend a discretionary waiver against conscription, a disadvantage that may arise from not belonging to a group that can invoke article 27 rights may be diminished if not eliminated in regard to claims for exemption under article 18. This situation may have applied to Finland prior to 2018.⁹³

Thirdly, freedom of thought, conscience and religion or belief also protects the right to non-disclosure of one's beliefs, and State efforts to assess the sincerity of the claim for exemption from military service may violate the claimant's right to privacy or the right not to manifest their beliefs. This protection has implications for the degree of intrusion that the State may be able to justify as permissible to ascertain sincerity of the claimants, potentially creating a dilemma. As suggested by Sir Nigel Rodley, a distinctive feature of this situation where a person has to disclose their beliefs is they are being required to do it "for the purpose of staying within the law and ipso facto avoiding being put in a position of being at risk of having to deprive another person of life."⁹⁴

Fourthly, the protection against derogation due to public emergency that threatens the life of a nation is significant to ensure that the enjoyment of the right is practical rather than illusory, giving rights-holders the protection in a situation of particular importance for objectors. The non-derogation provisions may also be invoked in situations noted in article 8 (3)(c)(iii). Thus, a military or other "service exacted in cases of emergency or calamity threatening the life or well-being of the community" may not constitute "forced labour" but it may, depending on the nature of the service that is demanded, constitute a violation of the rights of a conscientious objector.

⁹² See also Arcot Krishnaswami, "Study of Discrimination in the Matter of Religious Rights and Practices", UN Doc E/CN.4/Sub.2/200/Rev.1 (United Nations, 1960) 73.

⁹³ Human Rights Committee (n 26).

⁹⁴ Individual Opinion of Committee Member Sir Nigel Rodley, jointly with members Mr. Krister Thelin and Mr. Cornelis Flinterman (concurring), *Atasoy and Sarkut v Turkey*, Views adopted on 29 March 2012, CCPR/C/104/D/1853-1854/2008, appendix II.

Some have viewed conscientious objection to military service in the context of a host of other types of conscience-based claims that are advanced in the name of freedom of conscience, mostly on the basis of religious beliefs.⁹⁵ For some, these represent a spectrum of claims, and it has been noted that conscience-based voices have historically become prominent as the authority of the State declined or that growing pluralism and diversity may also account for challenges to generally applicable laws.⁹⁶ Some of these perspectives suggest or imply that there could be “flank effects” on protections for conscience-based objection to military service from these other claims. However, others have proposed distinctions, or schema that can help distinguish between opposition to military service and some other types of objections.⁹⁷ The primary features identified are that the conscientious objector to military service seeks to withdraw from the public arena and, as is now widely accepted, possibly without creating concerning costs to society. In fact, perhaps the contrary is the case. Evidence is often cited that accommodating the conscientious objector to military service benefits society in material ways, in addition to the intangible but worthy benefits to society if all are able to exercise their moral agency. Lubell summarizes these arguments as follows, noting that they would likely have equal validity even in the case of selective objectors:

“the importance of limiting the demands that conflict with the individual’s conscience; not to create bitter and alienated citizens; conscientious objectors would make bad soldiers and disturb morale of forces; it is more economically productive to divert objectors to alternative service than to place them in prison; the existence of conscientious objectors serves society by reminding of the importance of holding moral and social convictions.”⁹⁸

A second distinction that is highlighted is that at the core of most objections to military service is the opposition to killing in any circumstance, that is the abhorrence of the necessity to use lethal force, as noted in General Comment No. 22. The appeal of the objector therefore is to the sanctity of life without necessarily causing or immediately causing harm to another. Even where pacifism is rooted in non-religious grounds, such as opposition to militarism, the appeal is grounded in values that society cherishes such as end

⁹⁵ See for example Smith (n 14); and Zucca (n 13).

⁹⁶ Zucca (n 13).

⁹⁷ See for example, Kent Greenawalt, *Exemptions: Necessary, Justified or Misguided?* (Harvard, 2016); and Mancini and Rosenfeld (n 8).

⁹⁸ Lubell (n 10) 413.

to wars and violence.⁹⁹ This may perhaps be contrasted with situations where accommodating the conscientious objector imposes an immediate and directly attributable cost to others, as may be the case in some situations where freedom of religion or belief is invoked to deny service to an identifiable person as in healthcare settings.

Numerous other forms of objection that invoke a conscientiously held belief may relate to denial of service that does not cause immediate material harm but could cause dignity-based harm, such as in the case of refusals to serve LGBTIQ people, as highlighted in several recent cases, including those related to officiating in same-sex marriage ceremonies or in other forms of service to same sex couples. From a libertarian perspective these claims, along with other forms of objection, may all qualify for protection. From an egalitarian perspective, however, the impact on the rights of others from the exercise of these claims is likely to be given prominence.¹⁰⁰

In recognizing that conscientious objection to military service enjoys absolute protection, Sir Nigel stressed that the protections under article 18 for the right to conscientious objection to military service must be interpreted in the “penumbra” of article 6 of the Covenant on the right to life. Thus, the “value underlying” conscientious objection to military service, namely “sanctity of human life”, puts it on “another plane than that of other deep human goods protected by the Covenant. [...] The right to refuse to kill must be accepted completely.”¹⁰¹

7. Conclusion

Conscientious objection to military service has a long and historical association with religion or the freedom to follow pacifist religious beliefs, identifiable particularly within Christian groups. Notions of toleration and freedom of conscience have evolved over time, adding individualistic and non-religious or humanistic perspectives to older ideas of minority rights. In recent times, in addition to pacifist ideas that envisage total objection to war, the growth of volunteer armies and the establishment of international human rights and humanitarian law standards, have resulted in the growth of selective objection to war. Together with declining political authority of States, especially in regard to their conduct in relation to *jus ad bellum* and *jus in bello*, and increased democratic accountability and transparency, may have altered the relationship between the soldier and the State due to

⁹⁹ Çınar (n 1).

¹⁰⁰ Mancini and Rosenfeld (n 8).

¹⁰¹ Sir Nigel (n 94).

diminishing “invincible ignorance” that may have previously provided a wider basis for compliance with all military orders. The proliferation of digital media and social networks has lessened the ability to promote a State-enforced notion of a righteous or “glorious” war, with many now able to see the destructive nature of conflict without ever experiencing it first-hand. To compound this, the increasing polarization of State politics has resulted in large swathes of country populations vehemently disagreeing with the practices of their own government, including in times of war. Many of these issues raise controversial questions about the scope of conscientious objection and about how States may ascertain genuine objection claims and implement laws that recognize conscientious objection.

As Eide and Mubanga-Chipoya noted in their 1983 study, the primary grounds on which a right to conscientious objection can be constructed is through the right to freedom of religion or belief which is capacious enough to recognize a very broad range of grounds for refusal of military orders.¹⁰² Further, shift in international law towards more expansively protecting the right to conscientiously object to war ensures broader protection for freedom of religion or belief overall, strengthening human rights realization and offering civilians greater privacy from States wishing to infringe on their *forum internum*. The status of freedom of religion or belief as a non-derogable right is of particular relevance to conscientious objectors, without which the very essence of the right could be imperilled where it is most needed, in terms of both the absolute nature of the protection offered to the *forum internum* and non-derogability of the right overall. As noted by Sir Nigel in his concurring opinion in *Atasoy and Sarkut*:

“It is precisely in time of armed conflict, when the community interests in question are most likely to be under greatest threat, that the right to conscientious objection is most in need of protection, most likely to be invoked and most likely to fail to be respected in practice.”¹⁰³

Exemption from general laws remains a hotly contested area although accommodating total objection to military service appears to enjoy a growing – if not an evident – consensus. The key arguments that were advanced to justify refusing to extend such protection was the perceived negative impact on national security and public safety. That argument appears to be losing ground as in the case of Republic of Korea, which had previously invoked this justification, and had imprisoned many conscientious objectors, but has

¹⁰² Eide and Mubanga-Chipoya (n 63).

¹⁰³ Individual Opinion (n 94).

now recognized conscientious objection and offered alternative means of service.

Moreover, whether from prudential grounds or principled grounds, the fundamental importance of respecting freedom of conscience for all is becoming more and more evident. The recognition that conscience is co-extensive with humanity, and that freedom of conscience is essential for human dignity, makes the protections for freedom of conscience foundational not just for accommodating conscientious objections to military service but also for turning “swords into ploughshares” by moral agents.

VOICE: Angelos Nikolopoulos and Georgios Karatzas

Conscientious objection and personal data: a positive example from Greece

“In January 2022, the Hellenic Data Protection Authority (HDPa) issued an important decision concerning the protection of personal data of conscientious objectors.¹ The decision concerns the data included in the certificate of military status issued by the military authorities; a document usually requested to certify that someone has no military duties anymore. The HDPa ruled in favour of a conscientious objector who had appealed to this independent authority against the decision of the military authorities to issue a certificate which reveals that he has been recognized as a conscientious objector and has performed alternative civilian service instead of military service.

The HDPa found that the certificate of military status issued was illegal for containing unnecessary information and requested from the Minister of National Defence to issue a new one in accordance with the principle of “data minimisation”. This principle means that a data controller should limit the collection of personal information to what is directly relevant and necessary to accomplish a specified purpose.

The HDPa found that such certificate should not reveal that someone has performed alternative civilian service (meaning he is a conscientious objector), but only that he does not have military duties anymore. The same authority issued a similar decision for those who have been exempted from military service for medical reasons. Such information should not be revealed either. The only information necessary is that they do not have military duties.²

Previously, the Greek Ombudsman has taken similar positions, following the complaints of several conscientious objectors. The Ombudsman stated that, insofar the alternative service applies only to conscientious objectors, this indirectly leads to the disclosure of religious or other beliefs which led to conscientious objection, and it is a violation of the right to freedom of thought, conscience and religion, which includes the right of a person not to reveal his/her religion. The Ombudsman makes also reference to laws and regulations about personal data protection, including the Regulation (EU) 2016/679, which requires that “Personal data shall be: [...] (c) adequate, relevant and limited to what is necessary in relation to the purposes for which

¹ https://www.dpa.gr/sites/default/files/2022-01/3_2022%20anonym.pdf [in Greek].

² https://www.dpa.gr/sites/default/files/2022-01/2_2022%20anonym.pdf [in Greek].

they are processed ('data minimisation')".³ According to the Ombudsman, if the purpose of the military status certificate is to certify that the person has no military duties pending, then the reference to the manner, the time and the place where someone has fulfilled such duties is unnecessary for the purpose and therefore it is illegal. Furthermore, the Ombudsman accepted the conscientious objectors' complaints that such certificate may lead to unfavourable treatment in the labour market.

The above positions of the two independent authorities are, therefore, not only important for data protection but also for the freedom from discrimination."

³ <https://eur-lex.europa.eu/eli/reg/2016/679/2016-05-04>.

Chapter 9

Human Rights of Conscientious Objectors vis-à-vis Armed Non-State Actors and *De Facto* Authorities

Michael Wiener and Andrew Clapham¹

1. Recognizing a legal dilemma

This article could have been one of the shorter academic contributions, consisting of just one paragraph. We could have confined ourselves to looking at the Guidelines on International Protection No. 10, issued first in 2013 by the United Nations High Commissioner for Refugees (UNHCR), and which bluntly note that “only States can require military conscription”, and go on to state that “[i]nternational law does not entitle non-State armed groups, whether or not they may be the *de facto* authority over a particular part of the territory, to recruit on a compulsory or forced basis”.² We could have simply written that because such non-State actors are not entitled to conscript under international law – there is no regulation of conscription under that law and no legal issues arise. If international law contains no authorization for armed group to engage in conscription, then there is no need to attempt to explain how international law regulates such an (un)authorized conscription.

Alessandra Spadaro recently noted:

“As far as states are concerned, conscription is an exception to the prohibition of forced labour (Article 8(3)(c)(ii) International Covenant on Civil and Political Rights, Article 6(3)(b) American Convention on Human Rights, Article 4(3)(b) European Convention on Human Rights, Article 2(2)(a) Convention concerning Forced or Compulsory Labour No. 29). The prerogative of states to conscript individuals is tempered by the conscripted individuals’ right of conscientious objection, which derives from their freedom of thought, conscience, and religion or belief.

¹ An article based on this book chapter is also published by the Stockton Center for International Law in the journal *International Law Studies*, volume 99 (2022), pp. 731-772.

² UN High Commissioner for Refugees (UNHCR), *Guidelines on International Protection No. 10: Claims to Refugee Status related to Military Service within the context of Article 1A (2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees*, 12 November 2014, HCR/GIP/13/10/Corr. 1, para. 7, available at: <https://www.refworld.org/docid/529ee33b4.html>.

Armed groups arguably do not have any right to conscript individuals under international law (UNHCR [Guidelines on International Protection No. 10], para. 7). As it has been noted elsewhere,

‘if an armed group adopts a (rebel) law to forcibly conscript civilians in the territory over which it exercises de facto control, civilian populations would find themselves under two competing sets of laws with which it is impossible to comply: to refuse forcible recruitment would violate the rebel law, while to comply would invoke individual criminal responsibility under the State’s domestic law prohibiting insurrection.’³

So States have an obligation not to engage in forced labour, and at the same time retain an exception for conscription. Similarly States also have an exception to their duty to respect the right to life, under certain circumstances they may apply a judicial death penalty. In neither case does this mean that armed non-State actors can enjoy these exceptions to their obligations not to engage in forced labour or killings. Everyone has an obligation not to engage in forced labour or killing, in our view only States have the privilege of enjoying the exceptions spelled out in the human rights treaties.⁴

On reflection, the conundrum is not so different from the laws of war. Even though armed groups do not have the right to start an armed conflict, once they are engaged in an armed conflict there are rules with which they have to comply. Frédéric Mégret has suggested one might think about the similar duality in the context of detention “in terms of a *jus in detentio*, and a *jus ad detentium*”, although he himself says this “terminology is a bit misleading”.⁵ Drawing on Mégret, if it helps, we are separating out the *jus ad conscriptum*

³ Alessandra Spadaro, “‘Rebel Courts’ Book Symposium – The Prosecution of Conflict-related Offences by Courts of Armed Groups”, 2 June 2022, available at <https://www.armedgroups-internationalallaw.org/2022/06/02/rebel-courts-book-symposium-the-prosecution-of-conflict-related-offences-by-courts-of-armed-groups>, referencing Matias Thomsen and Sophie Rondeau, *Forcible Recruitment of Adults by Non-State Armed Groups in Non-International Armed Conflict* (Diakonia International Humanitarian Law Centre, Bromma: 2019), at 15.

⁴ Andrew Clapham, “Detention by Armed Groups under International Law”, 93 *Int’ L. Stud.* 1 (2017), pp. 1-44 at 31-33.

⁵ Frédéric Mégret, “Detention by Non-State Armed Groups in NIACs: IHL, International Human Rights Law and the Question of the Right Authority”, in Ezequiel Heffes, Marcos D. Kotlik and Manuel J. Ventura (eds), *International Humanitarian Law and Non-State Actors* (Asser, The Hague: 2020), pp. 169-94 at 170.

from the *jus in conscriptio*, and we are stating that there is no need to conceive of an equality of belligerents in either branch.⁶

In recent years, scholars have highlighted that non-State armed groups may not only suffer from a lack of willingness to abide by the rules, but their disrespect of certain rules may – in Marco Sassòli’s analysis – be due to a “lack of ability”.⁷ He suggests that in the context of a conflict between a State and an armed group “we must consider abandoning the fiction of the equality of belligerents and require full respect of customary and conventional rules of IHL from the government, while demanding respect only according to their ability from their enemies.”⁸ In the end he considers that the “equality of belligerents is a fiction” in non-international armed conflicts.⁹ However, abandoning the equality of belligerents under international humanitarian law may be too much to ask for others, such as Yuval Shany, who considers this would be to throw the “baby out with the bathwater”, and instead he proposes that we supplement international humanitarian law standards “by norms derived from international human rights law”.¹⁰ He prefers this to a rejection of the equality of belligerents under international humanitarian law because, unlike international humanitarian law (IHL),

“human rights law is not based on a notion of equality or reciprocity; hence its lopsided application (assuming that non-state actors are subject to fewer human rights obligations than states) raises fewer doctrinal objections than those raised by a departure from the principle of belligerent equality in IHL. Since human rights law is not invested with the reciprocity-based “baggage” that accompanies IHL norms, it

⁶ Moral philosophers have also played with the idea that ordinary life furnishes examples of situations where one may not have the right to engage in certain activity, but nevertheless when one does one will be bound by a separate set of rules covering that activity which one had no right to be engaged in in the first place. Consider the examples provided by Ripstein who refers to the rules of the road and parenting. *Ad vehendum* refers to the rules governing the entitlement to drive, while *in vehendo* cover the manner of driving. Even if you are not licenced to drive, the second set of rules apply. Similarly, even if one is not entitled to the custody of a child (*ad parentem*) as in a kidnapping, the rules *in parente* would still apply. Arthur Ripstein, *Rules for Wrongoers: Law, Morality, War* (Oxford University Press, New York: 2021) at 31-33.

⁷ Marco Sassòli, “Introducing a sliding-scale of obligations to address the fundamental inequality between armed groups and states?”, vol. 93 *IRRC* (2011) 426-31.

⁸ *Ibid.* at 431.

⁹ *Ibidem.*

¹⁰ Yuval Shany, “A rebuttal to Marco Sassòli”, vol. 93 *IRRC* (2011) 432-6 at 432 and 435.

constitutes a better legal area for developing asymmetric obligations than the latter body of law.”¹¹

Our analysis and normative approach combines these insights and proposes a set of human rights standards applicable on “a sliding scale” to *de facto* authorities and armed groups, based on their control over people and territory, alongside their *capacity* and *ability* to fulfil these obligations. These obligations do not mirror those of States; first, as States have, under international law, certain rights to demand compulsory labour from their citizens, while non-State actors have no such rights. Secondly, because the aim of human rights law has never been concerned with providing a level playing field for a fight to resolve differences. Rather, human rights law empowers individuals to enforce their demands for respect for their dignity and an environment to allow human beings to flourish. Let us turn then to the real-world problem.

The reality on the ground is dramatic for many individuals in several regions across the globe. They face human rights challenges related to coerced recruitment by armed non-State actors and *de facto* authorities including arbitrary detention and punishment due to conscientious objection and denial of freedom of conscience more generally. The estimated numbers of those who are living in areas controlled by non-State armed groups range from an estimation of 66 million people (as of September 2020),¹² or 60-80 million individuals living under the direct State-like governance of armed groups (as of March 2021),¹³ or of 50-60 million people living under the full territorial control of armed groups and approximately 100 million individuals in areas where this control is contested or fluid (as of July 2021).¹⁴

¹¹ *Ibidem*.

¹² Ezequiel Heffes, *Detention by Non-State Armed Groups under International Law*, Cambridge University Press, Cambridge: 2022, p. 176, referring to <https://www.icrc.org/en/document/communities-facing-conflict-climate-change-and-environmental-degradation-walk-tightrope>.

¹³ Annyssa Bellal, <https://www.geneva-academy.ch/news/detail/425-from-words-to-deeds-groundbreaking-studies-on-farc-ep-and-mnla-and-dedicated-new-website>; see also ICRC Position Paper, “ICRC Engagement with Non-State Armed Groups Why, how, for what purpose, and other salient issues”, *International Review of the Red Cross* (2020), 102 (915), pp. 1087-1098 at 1088.

¹⁴ Irénée Herbet and Jérôme Drevon, “Engaging armed groups at the International Committee of the Red Cross: Challenges, opportunities and COVID-19”, *International Review of the Red Cross* (2020), 102 (915), pp. 1021-1031 at 1026 and 1029.

Both academic commentary¹⁵ and the Office of the United Nations High Commissioner for Human Rights (OHCHR)¹⁶ have stressed that persons who live in territory controlled by armed groups or *de facto* authorities often face human rights protection gaps. Noting that some *de facto* authorities do not recognize the right to conscientious objection to military service or fail to ensure its full implementation in practice, the 2022 report by OHCHR concludes that many individuals face violations of this right along with other rights, and it recommends bringing policies and practices into line with international human rights norms and standards.¹⁷

Already in 2013, former High Commissioner Navi Pillay stressed that “[h]uman rights do not have any borders. It is vital to address underlying human rights issues in disputed territories, regardless of the political recognition or the legal status of a territory.”¹⁸ Indeed, people living in such territories face not only security, development and humanitarian concerns, but they also have only limited access to effective legal remedies which ultimately leads to human rights protection gaps. Yet, the High Commissioner stressed that “all human rights should be enjoyed by all people at all times regardless of these constraints”.¹⁹

The objective of this article is to elucidate the human rights of conscientious objectors and to offer substantive guidance for protecting their rights *vis-à-vis* armed non-State actors and *de facto* authorities. This is a field where multiple agencies are engaging with a variety of actors. The terminology is constantly changing. Most recently the civil society group Geneva Call explained that, from now on, they will be referring to these actors as “Armed Groups and *de facto* Authorities – AGDA”. Geneva Call’s consultations had revealed “that in practice a vast number of armed groups operate as hybrids, maintaining or claiming some form of relationship with state structures. Therefore, using ‘Armed Non-State Actors’ or ‘ANSA’ to describe them can be misleading. It is seen by many actors as a breach of neutrality by Geneva

¹⁵ Heiner Bielefeldt, Nazila Ghanea and Michael Wiener, *Freedom of Religion or Belief: An International Law Commentary* (Oxford University Press, Oxford: 2016), pp. 286-288.

¹⁶ OHCHR, Conscientious objection to military service, 1 May 2017, A/HRC/35/4, para. 56. See also OHCHR’s analytical report of 11 May 2022, A/HRC/50/43, paras. 51-53.

¹⁷ A/HRC/50/43, paras. 56-57.

¹⁸ OHCHR, “Human rights do not have any borders: Pillay”, Press release of 14 February 2013, available at <https://www.ohchr.org/en/press-releases/2013/02/human-rights-do-not-have-any-borders-pillay>

¹⁹ *Ibid.*

Call, as the term ANSA implicitly qualifies them.²⁰ Because our review covers a range of reports and publications by various agencies we will be referring to armed non-State actors, armed groups, *de facto* authorities, and *de facto* administrations without treating these terms particularly consistently or as terms of art.²¹ The key point is that some groups will indeed consider themselves as States (even if they are only recognized by a few States) but for our purposes their international obligations will be derived from non-treaty law and practice as none of them are parties to the international human rights treaties nor do they report to the human rights treaty bodies.²²

After briefly looking into recent practice by international human rights mechanisms (see below section 2), we will focus on the engagement by UN independent experts with several *de facto* authorities concerning freedom of

²⁰ Geneva Call, “Armed Groups and de facto Authorities (AGDA): Geneva Call adapts its engagement terminology”, 15 July 2022, available at <https://www.genevacall.org/armed-groups-and-de-facto-authorities-agda-geneva-call-adapts-its-engagement-terminology/>.

²¹ The problem highlighted by Geneva Call also arises for UN entities, such as Commissions of Inquiry. See for example a 2018 report of the UN Commission on Human Rights in South Sudan: “The Commission would highlight that in the context of South Sudan control over some towns has shifted between the government and opposition forces multiple times over the course of the conflict, in some cases a town might change hands perhaps twelve times in as many months. In addition, while some armed groups are allied with the Government, other armed groups may change allegiance from day-to-day, moving from being part of the opposition to being part of the Government and then perhaps even breaking away again.” (A/HRC/37/CRP.2, 6 March 2018, at para. 149).

²² For the most recent example of conscription by entities whose designation is contested see the concern expressed by UN High Commissioner for Human Rights Michelle Bachelet: “We are also concerned about confirmed allegations of forced conscription by Russian-affiliated armed groups at the end of February 2022, in Donetsk and Luhansk.” (OHCHR, “Ukraine: High Commissioner updates Human Rights Council”, Statement of 5 July 2022, available online at <https://www.ohchr.org/en/statements/2022/07/ukraine-high-commissioner-updates-human-rights-council>). See also OHCHR Ukraine, “Situation of human rights in Ukraine in the context of the armed attack by the Russian Federation: 24 February – 15 May 2022”, 29 June 2022, available online at <https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-06-29/2022-06-UkraineArmedAttack-EN.pdf>, para. 109: “Men complained of being trapped in a situation where refusing to be recruited would trigger criminal prosecution under the ‘legislation’ of self-proclaimed ‘republics’, while conscription would constitute a crime under Ukrainian legislation.” (footnotes omitted). For the related observations of the mission of experts established under the Organization for Security and Co-operation in Europe (OSCE) Moscow Mechanism, see the note verbale 256/2022 of the OSCE Office for Democratic Institutions and Human Rights, transmitting their *Report of Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes Against Humanity Committed in Ukraine (1 April - 25 June 2022)*, p. 31, ODIHR.GAL/36/22/Corr.1 (July 14, 2022), <https://www.osce.org/files/f/documents/3/e/522616.pdf>: “In mid-April, for example, local social media groups in Donetsk highlighted how philharmonic and opera musicians, circus performers, educators, and social professionals were forcibly enlisted as ‘volunteers’, despite having no connection to the military.”

conscientious objection (see below section 3). The concluding chapter will use the eighteen points recommended in 2022 by OHCHR to bring “national laws, policies and practices relating to conscientious objection to military service” in line with international human rights law,²³ with a view to adapting these points to the specificities of armed non-State actors and *de facto* authorities (see below section 4 and Annexes).

2. Recent practice by international human rights mechanisms

(a) *Human rights obligations of armed non-State actors*

International human rights treaties focus mainly on the obligations of the States parties.²⁴ UN treaty bodies are mandated to monitor the implementation by State parties of their obligations under the respective international human rights treaties, which only rarely address non-State armed groups directly.²⁵

The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (CRC-OPAC) notably includes two references that directly address non-State armed groups. Its preamble condemns “with the gravest concern the recruitment, training and use within and across national borders of children in hostilities by armed groups distinct from the armed forces of a State, and recogniz[es] the responsibility of those who recruit, train and use children in this regard.”²⁶ In addition, its article 4(1) prohibits armed groups that are distinct from the armed forces of a State, under any circumstances, from recruiting or using in hostilities persons under the age of 18 years. This provision in an Optional Protocol, which is only open for signature by a State that is party to the Convention on the Rights of the Child or has signed it,²⁷ is noteworthy since it addresses the legal obligations of armed non-State actors and has been applied by the UN

²³ A/HRC/50/43, para. 57.

²⁴ See Andrew Clapham, “Non-State Actors”, in Daniel Moeckli, Sangeeta Shah, Sandesh Sivakumaran and David Harris (eds), *International Human Rights Law*, 4th edn (Oxford University Press, Oxford: 2022) pp. 583-604 especially at 590-1.

²⁵ Some exceptions are article 4(1) of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict as well as article VII (5) of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa.

²⁶ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, A/RES/54/263, annex I, preambular para. 11.

²⁷ *Ibid.*, article 9(1). See also article 9(2): “The present Protocol is subject to ratification and is open to accession by any State. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.”

Commission of Inquiry in Syria to this effect. The Commission concluded in 2013 that “[a]nti-Government armed groups are also responsible for using children under the age of 18 in hostilities in violation of the CRC-OPAC, which by its terms applies to non-State actors.” The summary also makes the same point: “Both Government-affiliated militia and anti-Government armed groups were found to have violated the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, to which the Syrian Arab Republic is a party.”²⁸

Similarly, at the regional level, one objective of the African Union Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa is to “[p]rovide for the respective obligations, responsibilities and roles of armed groups, non-state actors and other relevant actors, including civil society organizations, with respect to the prevention of internal displacement and protection of, and assistance to, internally displaced persons”.²⁹

In 2013, the Committee on the Elimination of Discrimination against Women (CEDAW) took an important step by stressing in its general recommendation no. 30 on women in conflict prevention, conflict and post-conflict situations, that “under certain circumstances, in particular where an armed group with an identifiable political structure exercises significant control over territory and population, non-State actors are obliged to respect international human rights”.³⁰ In addition, the CEDAW Committee explicitly addressed armed non-State actors, urging them “(a) To respect women’s rights in conflict and post-conflict situations, in line with the Convention; (b) To commit themselves to abiding by codes of conduct on human rights and the prohibition of all forms of gender-based violence.”³¹

Beyond the treaties and the treaty monitoring bodies we have a body of customary international human rights law, *jus cogens* obligations, and

²⁸ Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, A/HRC/22/59, 5 February 2013, Annex X, para. 44 and p. 2. See further Tilman Rodenhäuser, “International legal obligations of armed opposition groups in Syria”, *International Review of Law* 2015:2 at <http://dx.doi.org/10.5339/irl.2015.2>

²⁹ Art II(e) of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), https://au.int/sites/default/files/treaties/36846-treaty-kampala_convention.pdf.

³⁰ Committee on the Elimination of Discrimination against Women, General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, 1 November 2013, CEDAW/C/GC/30, para. 16.

³¹ *Ibid.*, para. 18.

general principles of international law.³² The UN's monitoring bodies, including its Commissions of Inquiry and Special Procedures have been applying human rights law to armed non-State actors and engaging directly with the armed groups themselves over their alleged violations.³³ The doctrinal debate remains lively and yet several scholars prefer to move on and address the practical problems associated with the lives of those living under the control of non-State actors rather than remaining mired in the logics of legal legitimacy. As recently asserted by Katharine Fortin:

“even if readers are not convinced by the legal legitimacy of the practice, the reality that the application of human rights to armed groups controlling territory and exercising functions of government is now fairly commonplace provides enough of a reason to study how different human rights norms [...] can be operationalized, when applied to such groups.”³⁴

(b) Effective control

In his 2015 report to the UN Human Rights Council, the former Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, provided examples of how UN special procedures and commissions of inquiry have “addressed human rights violations committed in the name of religion by armed groups with effective control over territory”, such as the Taliban,

³² The Special Rapporteur of the International Law Commission on the topic of “general principles of law” has stated that “they ought to apply in the relations between subjects of international law generally” (A/CN.4/732, 5 April 2019, at para. 126). Whether or not a *de facto* authority or an armed group can be considered a “subject of international law” is a complex doctrinal debate beyond the scope of this paper. See Jochen A. Frowein, “De Facto Regime”, in *Max Planck Encyclopedia of Public International Law* (2013), at para. 3: “State practice shows that entities which in fact govern a specific territory for a prolonged period will be treated as partial subjects of international law.”

³³ Andrew Clapham, “Non-State Actors” (supra note 23) at 599-600; Jean-Marie Henckaerts and Cornelius Wiesener, “Human Rights Obligations of Non-State Armed Groups: An Assessment Based on Recent Practice”, in Ezequiel Heffes, Marcos D. Kotlik, and Manuel J. Ventura (eds), *International Humanitarian Law and Non-State Actors* (Asser, The Hague: 2020) 195-227; Ginevra Le Moli, “From ‘Is’ to ‘Ought’: The Development of Normative Powers of UN Investigative Mechanisms”, *Chinese Journal of International Law*, vol. 19 (2020) 625-81.

³⁴ Katharine Fortin, “The Procedural Right to a Remedy When the State has left the Building? A Reflection on Armed Groups, Courts and Domestic Law”, *Journal of Human Rights Practice*, vol. 14 (2022) 387-414, at 390; see also Joshua Joseph Niyo, “Legal fragmentation and obligations for armed non-state actors: can international humanitarian law and international human rights law learn from each other?”, in Norman Weiß and Andreas Zimmermann (eds), *Human Rights and International Humanitarian Law: Challenges Ahead* (Elgar, Cheltenham: 2022) 32-53.

Hezbollah, Al-Shabaab and Islamic State in Iraq and the Levant (ISIL).³⁵ In this context, the Special Rapporteur also defined the term “effective control” to mean “that the non-State armed group has consolidated its control and authority over a territory to such an extent that it can exclude the State from governing the territory on a more than temporary basis”.³⁶ His successor, Ahmed Shaheed, also stated in a subsequent thematic report to the Human Rights Council that the international community must consider prioritizing its immediate focus on “[l]imited State powers, whereby parts of the country are beyond the effective control of the Government, where there is generalized disregard for the rule of law”.³⁷ Furthermore, his report annexed the 2017 Beirut Declaration on “Faith for Rights”, drawing an analogy between the notion of effective control, which provides the foundation for responsibilities of non-State actors in times of conflict, with “a similar legal and ethical justification in case of religious leaders who exercise a heightened degree of influence over the hearts and minds of their followers at all times”.³⁸

Armed non-State actors *without* effective control over territory were also held to have committed human rights violations, as illustrated notably in two UN reports published in 2009 about attacks on civilians by the Lord’s Resistance Army in the Democratic Republic of the Congo (DRC) as well as in Western and Central Equatoria States, Southern Sudan. Thus, even in situations without effective control by an armed non-State group, civilians may be affected by *de facto* conscription. For example, the Lord’s Resistance Army was found to have abducted “especially children who are more malleable and easily conditioned in order to strengthen its labour and fighting forces in case

³⁵ Heiner Bielefeldt, Report of the Special Rapporteur on freedom of religion or belief, 29 December 2014, A/HRC/28/66, para. 55, referring to A/56/253, paras. 27 and 30 (concerning the Taliban); A/HRC/2/7, para. 19 (concerning Hezbollah); A/HRC/18/48, para. 31 (concerning Al-Shabaab); and

www.ohchr.org/Documents/HRBodies/HRCouncil/ColSyria/HRC_CRP_ISIS_14Nov2014.pdf (concerning Islamic State in Iraq and the Levant).

³⁶ A/HRC/28/66, para. 55, referring to article 42 of the Regulations respecting the Laws and Customs of War on Land; CCPR/C/21/Rev.1/Add.13, para. 10; and CAT/C/GC/2, para. 16.

³⁷ Ahmed Shaheed, Report of the Special Rapporteur on freedom of religion or belief, 5 March 2019, A/HRC/40/58, para. 64.

³⁸ A/HRC/40/58, annex I, para. 19.

of attack”³⁹ and they “were forcibly recruited as child soldiers.”⁴⁰ The UN Special Rapporteur on extrajudicial, summary or arbitrary executions also noted with deep concern that thousands of children had reportedly been abducted by the Lord’s Resistance Army, and that many of the abducted boys were “forcibly recruited as soldiers.”⁴¹

The Special Representative of the UN Secretary-General for Children and Armed Conflict recently noted that the commanders of six armed groups and factions in DRC had “signed unilateral commitments to end and prevent child recruitment and use and the other grave violations”, which reportedly led to the release of more than 260 children by armed groups following direct engagement by the United Nations.⁴²

The precise scope of human rights obligations of armed non-State actors has been developed in recent years. In 2014, a report by the United Nations Mission in the Republic of South Sudan stressed that “[t]he most basic human rights obligations, in particular those emanating from peremptory international law (*ius cogens*) bind both the State and armed opposition groups in times of peace and during armed conflict”, including the “prohibitions of extrajudicial killing, maiming, torture, cruel inhuman or degrading treatment or punishment, enforced disappearance, rape, other conflict related sexual violence, sexual and other forms of slavery, the recruitment and use of children in hostilities, arbitrary detention as well as of any violations that amount to war crimes, crimes against humanity, or genocide.”⁴³ In 2022, the Commission on Human Rights in South Sudan continued to document incidents of rape and sexual violence perpetrated by armed men “who have been identified as part of regular or of non-State armed

³⁹ United Nations Organization Mission in the Democratic Republic of the Congo and OHCHR, *Summary of fact finding missions on alleged human rights violations committed by the Lord’s Resistance Army (LRA) in the districts of Haut-Uélé and Bas-Uélé in Orientale province of the Democratic Republic of Congo*, December 2009, https://www2.ohchr.org/SPdocs/Countries/LRARReport_December2009_E.pdf, para. 32.

⁴⁰ OHCHR, *Attacks on civilians in Western and Central Equatoria States, Southern Sudan, between 15 December 2008 and 10 March 2009 by the Lord’s Resistance Army (LRA)*, December 2009, https://www2.ohchr.org/SPdocs/Countries/LRARReport_SudanDecember2009.doc, para. 8.4.

⁴¹ Asma Jahangir, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 25 January 2000, E/CN.4/2000/3, para. 38.

⁴² Virginia Gamba, Report of the Special Representative of the Secretary-General for Children and Armed Conflict, 26 July 2021, A/76/231, para. 34.

⁴³ United Nations Mission in the Republic of South Sudan (UNMISS), *Conflict in South Sudan: A Human Rights Report*, May 2014, https://unmiss.unmissions.org/sites/default/files/unmiss_conflict_in_south_sudan_-_a_human_rights_report.pdf, para. 18.

forces”, and the Commission recommended that all armed forces and non-State armed groups “[o]rder, clearly and publicly, all troops and allied militias to comply fully with international human rights law and international humanitarian law”.⁴⁴

From the outset the Commission highlighted that with regard to torture: “The African Commission has interpreted torture as the ‘intentional and systematic infliction of physical or psychological pain and suffering in order to punish, intimidate or gather information. It has found that torture can be carried out by ‘State or non-State actors at the time of exercising control over such person or persons.’”⁴⁵ And the Commission was clear:

“While armed opposition groups cannot become parties to international human rights treaties, such non-state actors are increasingly deemed to be bound by certain international human rights obligations, particularly those actors exercising de facto control.”⁴⁶

(c) Obligations of States

Of course, addressing any human rights obligations of armed non-State actors should not let off the hook the States concerning their obligations as the primary duty-bearers. With regard to the due diligence obligation of territorial States, the former Special Rapporteur on torture, Nils Melzer, noted in 2017 that “even where armed groups have brought part of the national territory under their control, Governments are not absolved from doing everything

⁴⁴ Commission on Human Rights in South Sudan, Conflict-related sexual violence against women and girls in South Sudan, 21 March 2022, A/HRC/49/CRP.4, paras. 37 and 226. See also the list of serious violations of human rights and international humanitarian law found by the Commission on Human Rights in South Sudan in its 2019 report (A/HRC/40/69, para. 96) as well as the recruitment and use of children as analyzed in the Commission’s 2020 report (A/HRC/43/56, paras. 45-57 and annex II).

⁴⁵ Report of the Commission on Human Rights in South Sudan, 23 February 2018, A/HRC/37/CRP.2, para. 109, citing “African Commission on Human and Peoples’ Rights, communication No. 279/03-296/05, ‘Sudan Human Rights Organization and Centre on Human and Peoples’ Rights and Evictions v. Sudan, 27 May 2009, paragraph 156.”

⁴⁶ *Ibid.*, para. 120, footnoting “United Nations International Commission of Inquiry on the Central African Republic (S/2014/928), 22 December 2014, paragraphs 41 and 107; Report of the Secretary-General’s Panel of Experts on Accountability in Sri Lanka, 31 March 2011, paragraph 188. See also Report of the International Commission of Inquiry to investigate all Alleged Violations of International Human Rights Law in the Libyan Arab Jamahiriya, 2 March 2012, paragraph 18.”

feasible in the circumstances to protect their citizens”.⁴⁷ These obligations may include diplomatic, economic, judicial or other measures that are in the State’s power to take and in accordance with international law.⁴⁸ Melzer also stressed that “the exercise of control by an organized armed group as de facto authority over the population of a State does not deprive the people living in this territory of their rights.”⁴⁹

In addition to the residual obligations by the State that has lost effective control over part of its territory, other States may also incur responsibility under international law. The European Court of Human Rights held that State responsibility could “arise when as a consequence of military action – whether lawful or unlawful – it exercises effective control of an area outside its national territory”, which leads to the State’s obligation to secure human rights in such an area due to “the fact of such control whether it be exercised directly, through its armed forces, or through a subordinate local administration”.⁵⁰

It is worth separating out a few ideas that tend to get confused. First, in order for the European Convention to apply extraterritorially the applicant will have to bring themselves within one of the accepted exceptions to the territoriality principle under the Convention. In the present context this means that the State has effective control of the relevant area either through its own armed forces or a subordinate entity. The European Court of Human Rights has developed the relevant factors to be taken into account to determine a sufficient nexus with the subordinate authority in the context of the

⁴⁷ Nils Melzer, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 14 February 2017, A/HRC/34/54, para. 46. We might add that these State obligations under international law are not confined to its *citizens*, the Government must take all possible measures, without discrimination, to ensure that *all individuals* in that part of the territory can effectively enjoy their rights; Human Rights Committee, Concluding observations on the third periodic report of the Republic of Moldova, 31 October 2016, CCPR/C/MDA/CO/3, paras. 5-6; Concluding observations on the third periodic report of Georgia, 26 October 2007, CCPR/C/GEO/CO/3, para. 6.

⁴⁸ European Court of Human Rights, *Ilaşcu and Others v. Moldova and Russia*, judgment of 8 July 2004, application no. 48787/99, paras. 313 and 331; *Catan and Others v. Moldova and Russia*, Grand Chamber judgment of 19 October 2012, applications nos. 43370/04, 8252/05 and 18454/06, para. 109.

⁴⁹ A/HRC/34/54, para. 46, quoting Human Rights Committee, General comment no. 26 on issues relating to the continuity of obligations to the International Covenant on Civil and Political Rights, 29 October 1997, CCPR/C/21/Rev.1/Add.8/Rev.1, para. 4.

⁵⁰ European Court of Human Rights, *Loizidou v. Turkey*, application no. 15318/89, Grand Chamber judgment of 18 December 1996, para. 52; *Cyprus v. Turkey*, application no. 25781/94, Grand Chamber judgment of 10 May 2001, para. 76.

relationship between Armenia and the Nagorno-Karabakh Republic (“NKR”). In *Chiragov and Others v. Armenia*, the Court concluded in 2015:

“All of the above reveals that Armenia, from the early days of the Nagorno-Karabakh conflict, has had a significant and decisive influence over the ‘NKR’, that the two entities are highly integrated in virtually all important matters and that this situation persists to this day. In other words, the ‘NKR’ and its administration survive by virtue of the military, political, financial and other support given to it by Armenia which, consequently, exercises effective control over Nagorno-Karabakh and the surrounding territories, including the district of Lachin. The matters complained of therefore come within the jurisdiction of Armenia for the purposes of Article 1 of the Convention.”⁵¹

The Court is at pains to explain that this test for establishing jurisdiction is not the same as the international law test for determining attribution and hence direct State responsibility.⁵²

In its *Avanesyan v. Armenia* judgment, the European Court of Human Rights recently applied this principle of obligations within the jurisdiction of Armenia resulting from the “NKR” surviving due to “military and other support”, to the case of a conscientious objector from the Nagorno-Karabakh region. It held that the conscientious objector “had no possibility – or was deprived of the possibility – to perform alternative civilian service instead of military service, a circumstance which led eventually to his conviction and imprisonment” in the unrecognized “NKR”, and the European Court concluded that Armenia had violated the applicant’s freedom of conscience.⁵³ The Court found that “Armenia was responsible for the acts and omissions of the ‘NKR’ authorities and was under an obligation to secure in that area the rights and freedoms set out in the Convention. Therefore, the Government’s

⁵¹ European Court of Human Rights, *Chiragov and Others v. Armenia* (merits), application no. 13216/05, Grand Chamber judgment of 16 June 2015, para. 186.

⁵² *Ibid.* at para. 168, citing *Catan and Others v. the Republic of Moldova and Russia*, application nos. 43370/04, 8252/05 and 18454/06, Grand Chamber judgment of 19 October 2012, para. 115: “the test for establishing the existence of ‘jurisdiction’ under Article 1 of the Convention has never been equated with the test for establishing a State’s responsibility for an internationally wrongful act under international law.”

⁵³ European Court of Human Rights, *Avanesyan v. Armenia*, application no. 12999/15, judgment of 20 July 2021, paras. 5, 36 and 58-59.

argument that the ‘NKR’ was a separate entity where the Alternative Service Act did not apply is artificial for the purposes of the present case”.⁵⁴

Once it is established that the alleged human rights violations fall within the jurisdiction of the State, two possibilities emerge for finding a violation. Either the State is responsible for failing to fulfill its responsibilities in the area under its control (direct or indirect) or the acts concerned are attributable to the State under the international law rules on State responsibility. These rules on attribution have been spelled out by the International Law Commission.

The International Law Commission’s Draft Articles on Responsibility of States for Internationally Wrongful Acts provide in article 8 that “[t]he conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct”.⁵⁵ Thus the responsibility of a State may flow from giving specific instructions, providing direction or exercising control over non-State actors relating to the conduct that is said to have amounted to an internationally wrongful act. Those acts are then attributable to the State. The commentary to article 8 stresses that “[e]ach case will depend on its own facts, in particular those concerning the relationship between the instructions given or the direction or control exercised and the specific conduct complained of.”⁵⁶ The fact that a State may assume responsibility for the conduct of a (group of) person(s) under the above-mentioned conditions does not exclude concurrent responsibility by a non-State actor concerning those decisions that were or were not taken under the instructions, direction or control of that State.

In some circumstances the acts of *de facto* authorities may be attributed to the State to the extent that they are “in fact exercising elements of the governmental authority in the absence or default of the official authorities

⁵⁴ Ibid., para. 58. See also the discussion below under section 3(d) as well as European Court of Human Rights, *Christian Religious Organization of Jehovah’s Witnesses in the NKR v. Armenia*, application no. 41817/10, judgment of 22 March 2022, para. 79.

⁵⁵ Article 8 of the International Law Commission’s Draft articles on Responsibility of States for Internationally Wrongful Acts, A/CN.4/SER.A/2001/Add.1 (Part 2), p. 47.

⁵⁶ Ibid., p. 48 (commentary on draft article 8, para. 7).

and in circumstances such as to call for the exercise of those elements of authority”.⁵⁷

Depending on the circumstances, there may consequently be several duty-bearers with simultaneous and overlapping obligations, i.e. (1) the territorial State that has lost effective control over part of its territory, (2) the State that exercises effective control, either directly or through a subordinate authority, over this territory or people in it, and (3) non-State actors who exercise control over the territory or people and whose conduct affects the human rights of the individuals under their control (armed groups and *de facto* authorities).⁵⁸

To the extent that UN Commissions of Inquiry have grappled with this problem we might reproduce here the approach of the UN Commission on Human Rights in South Sudan, which sets out the standard to which it held the State with regard to the acts of non-State actors. In short, it depends on the substantive rights in issue:⁵⁹

“Under international law, including human rights law, the State may be held generally responsible for the wrongful conduct of non-State individuals or groups when the latter are acting in “complete dependence” on the State.⁶⁰ A State might also be held responsible in cases in which non-State individuals or groups act on its instructions or under its direction or its ‘effective control’,⁶¹ and also when its own

⁵⁷ Article 9 of the International Law Commission’s Draft Articles on Responsibility of States for Internationally Wrongful Acts, A/CN.4/SER.A/2001/Add.1 (Part 2), p. 49. Applied in UN doc. A/HRC/2/7, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt; the Representative of the Secretary-General on human rights of internally displaced persons, Walter Kälin; and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, Mission to Lebanon and Israel, 2 October 2006, endnote 19.

⁵⁸ OHCHR, Report of the Office of the United Nations High Commissioner for Human Rights on the question of human rights in Cyprus, 22 January 2014, A/HRC/25/21, para. 11.

⁵⁹ Report of the Commission on Human Rights in South Sudan, A/HRC/37/CRP.2, 23 February 2018, paras. 116-8 (footnotes in the original).

⁶⁰ International Court of Justice (ICJ), *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, judgment of 26 February 2007, paras. 392 and 399.

⁶¹ International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, Article 8, See also ICJ, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, *Merits, Judgment*, 1986 paragraphs 109-110; and *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, *Judgment*, 2007 paragraphs 400, 401.

agents acknowledge and adopt the conduct of non-State groups.⁶² States must investigate the use of lethal force by their agents, particularly those involved in law enforcement.⁶³ For State investigations to be effective, they must be as prompt as possible, exhaustive, impartial, independent and open to public scrutiny.”⁶⁴

The African Commission on Human and Peoples’ Rights has explained that:

“A State can be held responsible for killings by non-State actors if it approves, supports or acquiesces in those acts or if it fails to exercise due diligence to prevent such killings or to ensure proper investigation and accountability.”⁶⁵

With regard to sexual violence, the United Nations Committee on the Elimination of Discrimination against Women has recently explained:

“Article 2 (e) of the Convention explicitly provides that States parties are required to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. This obligation, frequently referred to as an obligation of due diligence, underpins the Convention as a whole and accordingly States parties will be responsible if they fail to take all appropriate measures to prevent as well as to investigate, prosecute, punish and provide reparation for acts or omissions by non-State actors which result in gender-based violence against women.”⁶⁶

⁶² International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, Article 11. In its General Comment No. 3 on the African Charter on Human and Peoples’ Rights: The Right to Life (Article 4), the African Commission on Human and Peoples’ Rights expressed the view that a State could be held responsible for killings by non-State actors if it approved, supported or acquiesced in those acts. See also the Report on the Commission of Inquiry on Burundi, September 2017 (A/HRC/36/54), paragraphs 23-27.

⁶³ See the United Nations Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted on 24 May 1989 by the Economic and Social Council Resolution 1989/65, paras. 9, 10, 17.

⁶⁴ See, for example, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 2005, A/RES/60/147, annex.

⁶⁵ Paragraph 9 of the General Comment General Comment No. 3 on the African Charter on Human and Peoples’ Rights: The Right to Life (Article 4), adopted during the 57th Ordinary Session of the African Commission on Human and Peoples’ Rights held from 4 to 18 November 2015 in Banjul, The Gambia.

⁶⁶ General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19, CEDAW/C/GC/35, 14 July 2017, para. 24(b) (footnotes omitted).

In sum, a State that has lost control of territory to an armed group or *de facto* regime may have residual obligations to the people in that area. A State may incur responsibility abroad where it is in effective control of territory or supporting a subordinate authority that is dependent on it. Whether or not the acts of the subordinate authority or armed group are attributable to a State, the State – depending on its level of control – will have obligations to investigate and punish acts by non-State actors. These positive obligations, or due diligence obligations will vary according to the substantive human rights at issue. Particular scrutiny will be involved where the non-State actor has violated the right to life or engaged in gender-based violence.

(d) De facto authorities

What are the implications of referring to non-State actors as *de facto* authorities? In this context the former UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Agnès Callamard, provided some terminological clarifications in her 2020 report to the Human Rights Council. Referring to a UN publication from 2006, she defined the term armed non-State actors as “[g]roups that have the potential to employ arms in the use of force to achieve political, ideological or economic objectives; are not within the formal military structures of States, State-alliances or intergovernmental organizations; and are not under the control of the State(s) in which they operate.”⁶⁷ As a sub-group, she specifies that *de facto* authorities are “armed non-State actors exercising exclusive control over a specific territory, meaning that they ‘exist side-by-side with the established authorities’; in effect have displaced State authority and thus exercise ‘effective sovereignty’.”⁶⁸

Since 2005, several UN Special Procedures mandate-holders have noted that it was especially appropriate and feasible to call for an armed group to respect

⁶⁷ Agnès Callamard, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on armed non-State actors: the protection of the right to life, 7 December 2020, A/HRC/38/44, para. 4 (footnote 5), referring to Gerard McHugh and Manuel Bessler, *Humanitarian Negotiations with Armed Groups: A Manual for Practitioners* (United Nations, New York: 2006), <https://www.unocha.org/sites/unocha/files/HumanitarianNegotiationswArmedGroupsManual.pdf>, p. 87 (which uses this definition for the term “Armed Groups”).

⁶⁸ A/HRC/38/44, para. 46.

human rights norms when it “exercises significant control over territory and population and has an identifiable political structure”.⁶⁹

Much more recently, in their 2021 joint statement, a total of forty-five UN special procedures mandate-holders noted that “at a minimum, armed non-State actors exercising either government-like functions or *de facto* control over territory and population must respect and protect the human rights of individuals and groups.” The mandate-holders recommended that armed non-State actors “should (1) expressly commit and signify their willingness to respect, protect and fulfil human rights; (2) implement their human rights responsibilities in their codes of conduct or other internal documents; (3) ensure proper and genuine accountability within their ranks and organizations for abuses of human rights.”⁷⁰ The signatories of this joint statement included the Special Rapporteur on freedom of religion or belief as well as the Special Rapporteur on minority issues, since religious or belief minorities are in particularly vulnerable situations vis-à-vis armed non-State actors.

It has been pointed out that international humanitarian law in non-international armed conflicts provides only limited protection in terms of freedom of thought and conscience as well as minority rights, “which have traditionally fallen into the realm of human rights law.”⁷¹

(e) Freedom of conscience

Freedom of thought, conscience, religion or belief is protected under article 18 of the International Covenant on Civil and Political Rights, which guarantees in paragraph 2 that “[n]o one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.” In its jurisprudence on conscientious objection to military service,

⁶⁹ Philip Alston, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 22 December 2004, E/CN.4/2005/7, para. 76; Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt; the Representative of the Secretary-General on human rights of internally displaced persons, Walter Kälin; and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, Mission to Lebanon and Israel, 2 October 2006, A/HRC/2/7, para. 19.

⁷⁰ OHCHR, *Joint Statement by independent United Nations human rights experts on human rights responsibilities of armed non-State actors*, 25 February 2021, <https://www.ohchr.org/en/press-releases/2021/02/joint-statement-independent-united-nations-human-rights-experts-human-rights?LangID=E&NewsID=26797>

⁷¹ Tilman Rodenhäuser, “The legal protection of persons living under the control of non-State armed groups”, *International Review of the Red Cross* (2020), 102 (915), pp. 991–1020, at p. 1011.

the UN Human Rights Committee has also, since 2011, stressed the prohibition of coercion in the context of military service, recalling that “[r]epression of the refusal to be drafted for compulsory military service, exercised against persons whose conscience or religion prohibited the use of arms, is incompatible with article 18 (1) of the Covenant”.⁷² While the UN Human Rights Committee only monitors the compliance of the treaty by States parties, the formulation of article 18(2) deliberately takes a rights-holder perspective and suggests that the duty-bearers are not limited to States.⁷³

The 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981 Declaration) is more explicit in this context by referring also to non-State actors, since its article 2(1) provides that “[n]o one shall be subject to discrimination by any State, institution, group of persons, or person on the grounds of religion or belief.”⁷⁴ This provision “establishes direct responsibilities of religious institutions, leaders and even each individual within religious or belief communities”.⁷⁵ The 2017 Beirut Declaration, adopted by “faith-based and civil society actors working in the field of human rights”, also notes that “[u]nder certain circumstances, in particular when non-State actors exercise significant/effective control over territory and population (e.g. as de facto authorities), they are also obliged to respect international human rights as

⁷² See for example Human Rights Committee, *Jeong et al. v. Republic of Korea*, Views of 24 March 2011, CCPR/C/101/D/1642-1741/2007, para. 7.4; *Atasoy and Sarkut v. Turkey*, Views of 29 March 2012, CCPR/C/104/D/1853-1854/2008, para. 10.5; *Jong-nam Kim et al. v. Republic of Korea*, Views of 25 October 2012, CCPR/C/106/D/1786/2008, para. 7.5; *Young-kwan Kim et al. v. Republic of Korea*, Views of 15 October 2014, CCPR/C/112/D/2179/2012, para. 7.4; *Zafar Abdullayev v. Turkmenistan*, Views of 25 March 2015, CCPR/C/113/D/2218/2012, para. 7.8; *Petromelidis v. Greece*, Views of 2 July 2021, CCPR/C/132/DR/3065/2017, para. 9.4; *Arslan Begenchovich Begenchov v. Turkmenistan*, Views of 11 March 2022, CCPR/C/134/D/3272/2018, para. 6.4. See also Heiner Bielefeldt, Nazila Ghanea and Michael Wiener, *Freedom of Religion or Belief: An International Law Commentary* (Oxford University Press, Oxford: 2016), pp. 267-269; see also for further references to the situation under EU law, at the Council of Europe and under certain regional regimes Dominic McGoldrick, “Thought, Expression, Association, and Assembly”, in Daniel Moeckli, Sangeeta Shah, Sandesh Sivakumaran and David Harris (eds), *International Human Rights Law*, 4th edn (Oxford University Press, Oxford: 2022) 209-34 at 218.

⁷³ Compare the open formulation of article 18(2) of the ICCPR with the explicit reference to the obligation of States Parties under article 18(4): “The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.”

⁷⁴ Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, A/RES/36/55, annex, article 2(1).

⁷⁵ Beirut Declaration on “Faith for Rights”, A/HRC/40/58, annex I, para. 18.

duty bearers”.⁷⁶ Furthermore, commitment XV on “Faith for Rights” adopted by the same participants in Beirut includes the pledge to fully respect “everyone’s freedom to have, adopt or change a religion or belief” as well as the commitment not to coerce anyone.⁷⁷ Thus with regard to terminology we suggest referring to “coerced recruitment” by armed non-State actors, which makes the inherent link to the prohibition of coercion more apparent than the alternative formulations “compulsory recruitment” or “forced recruitment”.

In addition, the Declaration on the Right to Peace, as adopted by the General Assembly on 19 December 2016, is formulated in a broad manner with regard to the potential duty-bearers and rights-holders, through “[i]nviting solemnly all stakeholders to guide themselves in their activities by recognizing the high importance of practicing tolerance, dialogue, cooperation and solidarity among all human beings, peoples and nations of the world as a means to promote peace” and its article 1 declares that “[e]veryone has the right to enjoy peace such that all human rights are promoted and protected and development is fully realized.”⁷⁸ The Declaration on the Right to Peace the Beirut Declaration and the 1981 Declaration are not designed as treaties to be ratified by States. Their formulations can therefore afford to be more inclusive in terms of addressing not only States but also all entities that may negatively impact on the human rights of individuals under their control, including armed non-State actors and *de facto* authorities.

3. Engagement by UN independent experts with *de facto* authorities in Afghanistan, Cyprus, Moldova and Azerbaijan and the related case law of the European Court of Human Rights

Against this legal background, we now examine how UN independent experts (“special procedures”) have engaged with *de facto* authorities and consider observations by international human rights mechanisms on conscientious objection against coerced recruitment by armed non-State actors. The focus will be on four examples of UN engagement with the *de facto* authorities in Afghanistan (Taliban), Cyprus (northern part), the Republic of Moldova (Transnistrian region) and Azerbaijan (Nagorno-Karabakh region), we incorporate the case law of the European Court of Human Rights in each relevant context.

⁷⁶ Ibid., A/HRC/40/58, annex I, para. 19 (endnote 7).

⁷⁷ 18 commitments on “Faith for Rights”, A/HRC/40/58, annex II, commitment XV.

⁷⁸ Declaration on the Right to Peace, A/RES/71/189, annex, preambular para. 37 and article 1.

(a) Afghanistan (Taliban)

The United Nations have long reported on, and engaged with, the Taliban concerning coerced recruitment in Afghanistan. Already in January 1995, when the Taliban only controlled some southern provinces, the then UN Special Rapporteur on the situation of human rights in Afghanistan, Felix Ermacora, noted that the representatives of the Taliban informed him that they intended to create a national army and collect weapons.⁷⁹ His successor, Special Rapporteur Choong-Hyun Paik, added in February 1997, that “[t]he introduction and strict enforcement of a number of repressive measures by the Taliban movement prompted [...] a number of young men fearing forcible conscription, to leave Kabul, either for Pakistan or the north of the country.”⁸⁰ A year later, he reported on a massive campaign of coerced recruitment in the Kandahar and Helmand provinces, where “some villages had set up observation posts to watch out for conscription teams” and reportedly a district centre of the UN Food and Agriculture Organization “had been expropriated for conscription purposes.”⁸¹ His successor, Special Rapporteur Kamal Hossein, referred to “credible reports that Taliban forces under the command of Mullah Dadallah systematically executed ethnic Uzbek prisoners in Samagan Province in early May 2000”, including “Hazara conscripts who refused to serve with the Taliban and young men who had been arbitrarily detained in Samangan shortly before.”⁸²

Several Special Rapporteurs also submitted a letter to the Taliban “in a humanitarian spirit”, alleging human rights violations. The three UN Special Rapporteurs on torture, summary executions, and Afghanistan alleged violations of the right to life of at least thirty male prisoners from Herat prison on 15 July 1996, contrary to the statement of a Taliban official who had

⁷⁹ Felix Ermacora, Final report on the situation of human rights in Afghanistan submitted by the Special Rapporteur, 20 January 1995, E/CN.4/1995/64, para. 17, which also provides some interesting details about the Special Rapporteur’s engagement with the Taliban in December 1994: “The Special Rapporteur met with the members of the new *Taliban Shura* (Council), as well as with the head of the judiciary, *Maulavi* Sayed Mohammad Paksami. At this juncture, reference must be made to the fact that the human rights officer of the Centre for Human Rights and the official United Nations interpreter who accompanied the Special Rapporteur during his mission to Afghanistan and Pakistan, both of whom are women and who have extensive and long-standing experience concerning his mandate, were not permitted by the *Taliban* to accompany the Special Rapporteur during his visit to Kandahar.”

⁸⁰ Choong-Hyun Paik, Final report on the situation of human rights in Afghanistan, 20 February 1997, E/CN.4/1997/59, para. 94.

⁸¹ Choong-Hyun Paik, Situation of human rights in Afghanistan, 12 March 1998, E/CN.4/1998/71, para. 32.

⁸² Kamal Hossain, Report on the situation of human rights in Afghanistan, 9 March 2001, E/CN.4/2001/43, para. 43.

“stated subsequently that those persons had not been executed but had been killed in an armed confrontation”.⁸³ Following alleged massacres of civilians by Taliban forces in Mazar-I-Sharif in August 1998, Special Rapporteur Asma Jahangir transmitted an urgent appeal to the head of the Taliban Council in order “to ensure the physical integrity of the civilian population of Bamyan and other parts of Afghanistan under Taliban control.”⁸⁴ In 2000, she reported that the Taliban Council had not responded to her communication and she expressed deep concerns at reports “that thousands of children, some no more than 14 years of age, have been recruited by Taliban and opposition forces in Afghanistan”, while acknowledging that “Taliban authorities have denied these claims.”⁸⁵ The Taliban also rejected the 1998 memorandum by the Special Rapporteur on the situation of human rights in Afghanistan as “vast propaganda which only provokes baseless prejudices and brainwashes the people.”⁸⁶ The Taliban did not respond to the two urgent appeals sent in early 2001 by Abdelfattah Amor, UN Special Rapporteur on freedom of religion or belief, who had shared his concerns about the protection of religious minorities and monuments in Afghanistan, which led the Special Rapporteur to consider “that the case of the Taliban is an instance not only of the use of religion for political purposes, but of obscurantism as well”.⁸⁷

⁸³ Bacre Waly Ndiaye, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 19 December 1997, E/CN.4/1998/68/Add.1, paras. 444-445.

⁸⁴ Asma Jahangir, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 6 January 1999, E/CN.4/1999/39, para. 25. Asma Jahangir was from 1998 to 2004 the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, and subsequently the UN Special Rapporteur on freedom of religion or belief from 2004 to 2010.

⁸⁵ Asma Jahangir, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 25 January 2000, E/CN.4/2000/3, paras. 15 and 38.

⁸⁶ Choong-Hyun Paik, Interim report on the situation of human rights in Afghanistan submitted by the Special Rapporteur of the Commission on Human Rights in accordance with General Assembly resolution 52/145 and Economic and Social Council decision 1998/267, 26 October 1998, A/53/539, para. 5, which reproduces an unofficial translation of a note issued by the Leadership of the Islamic Emirate of Afghanistan on human rights at Mazar-I-Sharif, in reply to the Special Rapporteur’s memorandum: “To illustrate the author’s short-mindedness, it is enough to reject this unjust claim of his which states that Taliban kill even animals, women and children, or rape women. All of these accusations are baseless, and are only directed to disrespect Islam.” Subsequently, the UN Sub-Commission on the Promotion and Protection of Human Rights adopted resolution 1999/14 on the situation of women and girls in Afghanistan, which “calls upon Muslim religious leaders and scholars to give special attention to the extremely difficult and unprecedented situation of women in Afghanistan, and to use their authority and their knowledge with a view to bringing the policies and practices of the Taliban into line with the true spirit of Islam and the principles of human rights and fundamental freedoms” (E/CN.4/Sub.2/1999/54, page 44, para. 10).

⁸⁷ Abdelfattah Amor, Elimination of all forms of religious intolerance, 31 July 2001, A/56/253, paras. 27 and 30.

In addition to Special Rapporteurs, the UN Secretariat reported on coerced recruitment by the Taliban during their effective control over large parts of Afghanistan from 1996 to 2001. The Secretary-General's report on the question of conscientious objection to military service noted in January 1997 that "[i]n view of the present conflict it is difficult to assess whether there is a coherent policy of conscription superseding policy of the previous regime under which conscription existed" and that in Afghanistan "[u]ntil recently, conscientious objectors were tried and imprisoned. Now they are arrested and sent to the army", referring to information received from Amnesty International.⁸⁸ In December 1999, the Secretary-General's follow-up report on conscientious objection to military service indicated that "[i]t is not known if the Taliban has introduced legislation on conscription since it came to power."⁸⁹

While the first Taliban regime was toppled in December 2001, they returned to power in the whole country two decades later, capturing Kabul again in August 2021. Yet it is difficult to get verified information about the current level of child recruitment in Afghanistan,⁹⁰ and none of the twenty-seven written submissions received in the call for inputs for the 2022 OHCHR report on conscientious objection to military service referred to the situation in Afghanistan.⁹¹ Three Special Rapporteurs jointly sent an allegation letter to the Taliban in November 2021, including on violations of freedom of thought, conscience, religion or belief of persons belonging to minorities, but the Taliban have not responded to this communication.⁹² Richard Bennett, the newly appointed Special Rapporteur on the situation of human rights in Afghanistan, met with Taliban representatives in May 2022, who assured him "that they will respect the international human rights treaties ratified by Afghanistan, albeit as far as consistent with Sharia law".⁹³ However, in

⁸⁸ Secretary-General, The question of conscientious objection to military service, 16 January 1997, E/CN.4/1997/99, pp. 15 and 46.

⁸⁹ Secretary-General, Report of the Secretary-General submitted pursuant to Commission resolution 1998/77, 17 December 1999, E/CN.4/2000/55, annex, page 15.

⁹⁰ Virginia Gamba, Report of the Special Representative of the Secretary-General for Children and Armed Conflict, 4 January 2022, A/HRC/49/58, para. 3.

⁹¹ <https://www.ohchr.org/en/calls-for-input/calls-input/call-inputs-ohchr-report-conscientious-objection-military-service-50th>.

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<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26763>; see in this context also Ibrahim Salama and Michael Wiener, "'Faith for Rights' in Armed Conflict: Lessons from Practice", *Journal of Human Rights Practice* (forthcoming).

⁹³ Richard Bennett, Statement by the United Nations Special Rapporteur on the situation of human rights, following his visit to Afghanistan from May 15-26, 2022, available online at https://www.ohchr.org/sites/default/files/2022-05/26052022-Afghan-SR-visit_press-statement.docx.

August 2022, Bennett stated – jointly with fifteen UN special procedures – that “the daily reports of violence [...] gives us no confidence that the Taliban has any intention of making good on its pledge to respect human rights.”⁹⁴

(b) Cyprus (northern part)

Another avenue of engaging with *de facto* authorities on conscientious objection is through in situ visits by UN independent experts. Heiner Bielefeldt, the Special Rapporteur on freedom of religion or belief, visited the divided island of Cyprus in March-April 2012, meeting in its southern part with the Government of the Republic of Cyprus, and in the northern part he held meetings with the *de facto* authorities. In his mission report, Bielefeldt noted that “[a]s a result of violent conflicts in the 1960s and following the military intervention by Turkish troops in 1974” only a few hundred Christians continued to live in the northern part and that the number of Muslims living in the southern part was also small.⁹⁵ He criticized the fact that there were no provisions dealing with conscientious objection to military service in the northern part, and therefore conscientious objectors faced the risk of punitive measures. He highlighted a case that had been transferred from a “military court” to the “constitutional court” in the northern part and five additional individuals who had submitted written refusals to take part in military training in the north.⁹⁶ To the *de facto* authorities in the northern part of the island, he recommended that they should recognize the right to conscientious objection to military service and that “[c]onscientious objectors should have the option to perform alternative civilian service which should be compatible with their reasons for conscientious objection and have no punitive effects.”⁹⁷

The *de facto* authorities responded to each of the Special Rapporteur’s other recommendations in his 2014 follow-up table, with the notable exception of

⁹⁴ Special Procedures, Afghanistan: UN human rights experts warn of bleak future without massive turnaround, 12 August 2022, available online at <https://www.ohchr.org/en/statements/2022/08/afghanistan-un-human-rights-experts-warn-bleak-future-without-massive-turnaround>.

⁹⁵ Heiner Bielefeldt, Report of the Special Rapporteur on freedom of religion or belief: Mission to Cyprus, 24 December 2012, A/HRC/22/51/Add.1, para. 21.

⁹⁶ *Ibid.*, para. 68.

⁹⁷ *Ibid.*, para. 87. In para. 69, Special Rapporteur Bielefeldt also reiterated the substantive guidance on conscientious objection to military service in the Human Rights Committee’s general comment no. 22 (CCPR/C/21/Rev.1/Add.4, para. 11) and in his predecessors’ reports (E/CN.4/1992/52, para. 185; A/HRC/6/5, para. 22).

his recommendation on conscientious objection.⁹⁸ Special Rapporteur Bielefeldt included follow-up information from two civil society organizations concerning the above-mentioned case of conscientious objector Murat Kanatli, which had in the meantime been decided by the “constitutional court”, which is reported as stating “that the unavailability of alternative service constitutes an interference with the right to freedom of thought, conscience and religion safeguarded in the Article 23 of the Constitution” and that “the duty is upon the legislator to provide in laws and regulations for alternative service to military service and when doing so to review the article of the Constitution that relates to the duty of armed service.”⁹⁹ While this decision cited regional¹⁰⁰ and international¹⁰¹ jurisprudence on conscientious objection, however, only one individual opinion held that the “constitutional court” should apply these directly to the *Kanatli* case, which was consequently referred back to the “military court”. The latter sentenced him on 25 February 2014 to a fine or ten days’ imprisonment in default of payment, while the “military court” disregarded the cited case law of the European Court of Human Rights and even argued that Murat Kanatli’s objections based on his political beliefs would not have constituted a conviction of sufficient cogency, seriousness, cohesion and importance to be protected under article 9 of the European Convention on Human Rights.¹⁰² His appeal against this decision was dismissed by the “security forces appeal court” on 9 October 2014, and – at the regional level

⁹⁸ <https://www.ohchr.org/sites/default/files/Documents/Issues/Religion/FollowUpCyprus.pdf>, p. 18.

⁹⁹ As reported by the International Fellowship of Reconciliation (IFOR) and Conscience and Peace Tax International (CPTI), Submission to the 111th Session of the Human Rights Committee for the attention of the Country Report Task Force on Cyprus, April 2014, http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/CYP/INT_CCPR_ICO_CYP_17198_E.doc, p. 7, referring to Constitutional Court of the TRNC, D2.2013, Case No. 13/2011, decision of 10 October 2013, with the following caveat: “It must be made clear that the reporting of this decision, including its references to the ‘Constitution of the TRNC’ does not imply any acceptance on the part of the interveners of the legitimacy of the *de facto* administration in the northern part of Cyprus.”

¹⁰⁰ European Court of Human Rights, *Bayatyan v Armenia*, application no. 23459/03, judgment of 7 July 2011; *Ercep v Turkey*, application no. 43965/04, judgment of 22 November 2011; and *Savda v Turkey*, application no. 42730/05, judgment of 12 June 2012.

¹⁰¹ Human Rights Committee, *Atasoy and Sarkut v Turkey*, Views of 29 March 2012, CCPR/C/104/D/1853-1854/2008.

¹⁰² International Fellowship of Reconciliation (IFOR), Submission to the 113th Session of the Human Rights Committee, Cyprus, February 2015, https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/CYP/INT_CCPR_CSS_CY_P_19627_E.doc, p. 8.

– the case *Kanatli v. Turkey* is currently pending before the European Court of Human Rights.¹⁰³

In addition to these decisions by *de facto* “courts” in the northern part of Cyprus, a “parliamentary committee” also investigated the possibility of instituting alternative service for conscientious objectors and took evidence from representatives of the conscientious objection movement in September 2016.¹⁰⁴ Subsequently, a draft amendment, which would have included conscientious objection and alternative service, was discussed by a “parliamentary committee” in February 2019, however, following a change of the *de facto* authorities the draft amendment was withdrawn during autumn 2019.¹⁰⁵

It is noticeable that the mission reports of several UN Special Procedures¹⁰⁶ address their human rights recommendations *inter alia* to the *de facto* authorities, whereas the European Court of Human Rights and the Government of the Republic of Cyprus stated that Turkey had effective control over northern Cyprus and thus redress should have been requested from Turkey.¹⁰⁷ While the European Court of Human Rights did not wish to “elaborate a general theory concerning the lawfulness of legislative and administrative acts” of the *de facto* authorities, it noted “that international law recognises the legitimacy of certain legal arrangements and transactions in such a situation, for instance as regards the registration of births, deaths and

¹⁰³ *Kanatli v. Turkey*, application no. 18382/15, lodged on 6 April 2015 and questions to the parties communicated on 28 May 2018 (<https://hudoc.echr.coe.int/eng?i=001-184213>). In addition, the European Court of Human Rights has communicated on 25 January 2021 questions to the parties in *Haluk Selam Tufanli v. Turkey*, application no. 29367/15 (<https://hudoc.echr.coe.int/eng?i=001-208228>) and also accepted on 10 January 2020 the conscientious objection case of *Halil Karapasaoglu v. Turkey*, application no. 40627/19.

¹⁰⁴ OHCHR, Conscientious objection to military service: Analytical report of the Office of the United Nations High Commissioner for Human Rights, 1 May 2017, A/HRC/35/4, para. 57; <https://www.ohchr.org/sites/default/files/Documents/Issues/RuleOfLaw/ConscientiousObjection/IFOR.pdf>, p. 12.

¹⁰⁵ OHCHR, Approaches and challenges with regard to application procedures for obtaining the status of conscientious objector to military service in accordance with human rights standards, 24 May 2019, A/HRC/41/23, para. 9; A/HRC/50/43, para. 52; <https://www.ohchr.org/sites/default/files/2022-05/CPTI-HRC50.pdf>, pp. 2-3.

¹⁰⁶ See the Cyprus mission reports by the Special Rapporteur on freedom of religion or belief (A/HRC/22/51/Add.1, paras. 81-87), Special Rapporteur in the field of cultural rights (A/HRC/34/56/Add.1, paras. 107-108) and Working Group on Enforced or Involuntary Disappearances (on its Cyprus mission in A/HRC/51/31/Add.1, paras. 29 and 33, as well as on its Turkey mission in A/HRC/33/51/Add.1, paras. 28 and 79 as well as its follow-up report in A/HRC/45/13/Add.4, pp. 30-31).

¹⁰⁷ See the comments by the Government of the Republic of Cyprus in A/HRC/22/51/Add.2, para. 3, A/HRC/34/56/Add.2, para. 3, and A/HRC/51/31/Add.2, p. 2.

marriages, ‘the effects of which can be ignored only to the detriment of the inhabitants of the [t]erritory’¹⁰⁸ thereby applying the ICJ’s *Namibia exception* to the Cyprus context.¹⁰⁹

Furthermore, applicants in Strasbourg must have exhausted the local remedies, since in the words of Judge Pinto de Albuquerque:

“The so-called ‘Namibia exception’ has been enshrined in the Court’s case-law, since the cases on the Turkish invasion of Cyprus, with the practical consequence that, when confronted with violations of Article 8 of the [European Convention on Human Rights] and Article 1 of Protocol No. 1 [to the Convention], the current and former inhabitants of a territory must exhaust the local remedies even in the case of a judicial system established by an unrecognised political regime, and even where they did not choose voluntarily to place themselves under its jurisdiction.”¹¹⁰

This illustrates the potential relevance of acts by *de facto* authorities, although it does not mean recognizing Statehood or the lawfulness of the acts, but rather acknowledges that “there is a judicial system operating *de facto* in that territory which could provide [the applicants] with effective redress.”¹¹¹

As explained above,¹¹² there may be separate or concurrent responsibility of the State and/or non-State actor, depending on the circumstances and facts of each case, notably if the *de facto* authorities (including any “ministries”, “courts” and “parliamentary committees”) took decisions under the instructions, direction or control of the State or not. With regard to the question of human rights in Cyprus, OHCHR noted in 2014 that “[a]s the norms contained in the Universal Declaration of Human Rights constitute customary international law, they should be enjoyed by all, including those residing in regions of protracted conflict. In turn, these rights need to be guaranteed by the authority that has effective control of the territory,

¹⁰⁸ European Court of Human Rights, *Loizidou v. Turkey* (merits), application no. 15318/89, judgment of 18 December 1996, para. 45.

¹⁰⁹ International Court of Justice, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion of 21 June 1971, I.C.J. Reports (1971), p. 16, at p. 56, para. 125.

¹¹⁰ European Court of Human Rights, *Chiragov and Others v. Armenia* (merits), application no. 13216/05, Grand Chamber judgment of 16 June 2015, Dissenting Opinion of Judge Paulo Pinto de Albuquerque, para. 4.

¹¹¹ *Ibid.*, para. 5.

¹¹² See discussion above under section 2(c) and the 2014 OHCHR report on the question of human rights in Cyprus, A/HRC/25/21, paras. 5-11.

regardless of its international recognition and international political status.”¹¹³

It remains to be seen how the regional and international human rights mechanisms may ultimately reconcile their diverging approaches, and how they will answer the underlying question of the nature of the right to conscientious objection. That is, whether it “inheres” in the absolutely protected right to hold a belief (*forum internum* approach of UN human rights mechanisms)¹¹⁴ or if it is rather considered an external manifestation of one’s religion or belief, which may thus be subject to certain limitations (*forum externum* approach of the European Court of Human Rights).¹¹⁵ Yet these different interpretations in the global and regional jurisprudence will most likely lead to the same result in practice since the *forum internum* approach already excludes the possibility of any restrictions, while in the *forum externum* approach the burden of justifying limitations lies with the State (or *de facto* authority) and it seems difficult to justify restricting a conscientious objector’s freedom to manifest his religion or belief without unnecessarily vitiating or jeopardizing the right’s essence.¹¹⁶ In a similar vein, the Quaker United Nations Office noted in March 2022 that, so far, the *forum externum* position of the European Court of Human Rights “has not resulted in it finding that any of the permissible limitations on manifestation of religion or belief have been applicable in the cases that it has considered.”¹¹⁷

¹¹³ OHCHR, Report of the Office of the United Nations High Commissioner for Human Rights on the question of human rights in Cyprus, 22 January 2014, A/HRC/25/21, para. 11.

¹¹⁴ Human Rights Committee (CCPR/C/101/D/1642–1741/2007; CCPR/C/106/D/1786/2008; CCPR/C/104/D/1853–1854/2008); Working Group on Arbitrary Detention (A/HRC/42/39, para. 60 (b); A/HRC/WGAD/2019/84, para. 42); Special Rapporteur on freedom of religion or belief, Special Rapporteur on freedom of opinion and expression as well as Special Rapporteur on minority issues (<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25740>).

¹¹⁵ European Court of Human Rights, *Bayatyan v. Armenia*, application no. 23459/03, Grand Chamber judgment of 7 July 2011, para. 112; *Adyan and others v. Armenia*, application no. 75604/11, judgment of 12 October 2017, para. 72; *Mushfig Mammadov and others v. Azerbaijan*, applications nos. 14604/08, 45823/11, 76127/13 and 41792/15, judgment of 17 October 2019, paras. 92–99; *Aghanyan and others v. Armenia*, applications nos. 58070/12 and 21 others, judgment of 5 December 2019, para. 13.

¹¹⁶ Heiner Bielefeldt and Michael Wiener, *Religious Freedom Under Scrutiny* (University of Pennsylvania Press, Philadelphia: 2019), p. 163.

¹¹⁷ Quaker United Nations Office, Input for OHCHR Report on Conscientious Objection to Military Service, March 2022, <https://www.ohchr.org/sites/default/files/2022-05/QUNO-HRC50.pdf>, p. 6.

(c) Republic of Moldova (Transnistrian region)

The human rights of conscientious objectors in the Transnistrian region of the Republic of Moldova have also been addressed by several UN independent experts. In 2012, Special Rapporteur Heiner Bielefeldt reported that the Transnistrian region had unilaterally declared independence from the Republic of Moldova in 1991, but has not been recognized as an independent State by the United Nations, nonetheless he noted that the region is outside the *de facto* control of the Republic of Moldova.¹¹⁸ Bielefeldt expressed concern about the custodial sentence in a Transnistrian penitentiary of a Jehovah’s Witness as a result of repeated refusals to undertake military service on the grounds of conscientious objection.¹¹⁹ At the time of the Special Rapporteur’s mission, there was no provision for exemption from service or alternative service in the Transnistrian region, and all young men who refused military service were subject to criminal sanction such as a fine or deprivation of liberty.¹²⁰ In the Transnistrian region of the Republic of Moldova, the Special Rapporteur met with the “Minister for Justice” and the *de facto* authorities indicated to him that – as a compromise – conscientious objectors were offered “to serve in the army without direct involvement in the use of weapons”.¹²¹ However, Bielefeldt pointed in his mission report to a resolution from the UN Commission on Human Rights, stressing that alternative service should be “compatible with the reasons for conscientious objection, of a non-combatant or civilian character, in the public interest and not of a punitive nature”.¹²² He also quoted the Human Rights Committee to reiterate that there should neither be differentiation among conscientious objectors on the basis of the nature of their particular beliefs nor discrimination against conscientious objectors because they had failed to perform military service.¹²³ Bielefeldt also explicitly urged the *de facto* authorities “[t]o cease without delay practices of detaining persons objecting

¹¹⁸ Heiner Bielefeldt, Report of the Special Rapporteur on freedom of religion or belief: Mission to the Republic of Moldova, 27 January 2012, A/HRC/19/60/Add.2, para. 6.

¹¹⁹ *Ibid.*, paras. 41 and 69.

¹²⁰ *Ibid.*, para. 53. See also European Court of Human Rights, *Aslanian v. the Republic of Moldova and Russia*, application no. 74433/11, judgment of 13 July 2021, paras. 6-9 and 32-39.

¹²¹ A/HRC/19/60/Add.2, paras. 6 and 54.

¹²² *Ibid.*, para. 54, referring to Commission on Human Rights resolution 1998/77, E/CN.4/RES/1998/77, operative para. 4.

¹²³ A/HRC/19/60/Add.2, para. 54, referring to Human Rights Committee general comment no. 22, CCPR/C/21/Rev.1/Add.4, para. 11.

on grounds of religion or conscience to military service, as well as to develop rules for alternative service for such conscientious objectors”.¹²⁴

In a separate, yet related initiative, the United Nations engaged a Senior Expert on Human Rights in Transnistria, Thomas Hammarberg, who established a dialogue with the relevant office holders during three fact-finding visits and presented his first report in February 2013. With regard to the prosecution and imprisonment of conscientious objectors, in particular Jehovah’s Witnesses, the Senior Expert was informed by the *de facto* authorities that “no attempts have been made in recent months to conscript members of this community to military service and that a court recently awarded compensation to a member of the community who had previously been prosecuted for refusing military service.”¹²⁵ Thomas Hammarberg recommended to the *de facto* authorities that “[t]he law on military conscription should be amended to allow for a civil alternative for those whose conscience [or belief] prevent[s] them from [taking part in] military activities.”¹²⁶ The UN Human Rights Committee, in its concluding observations on the Republic of Moldova, referred to his recommendations, calling on the State party to “review its policies and take all measures appropriate to ensure that individuals in Transnistria can effectively enjoy their rights guaranteed under the Covenant.”¹²⁷

In May-June 2018, Hammarberg conducted a follow-up visit in order to assess progress in the implementation process since his first report. After the 2018 visit, he published the updated observation that “[o]ne of the most notable positive developments during the past five years is the adoption of the Law on alternative civil military service, allowing the conscientious objectors to serve alternative military service.”¹²⁸ The Office of Public Information of Jehovah’s Witnesses also commended that the Transnistrian region had amended its “laws to provide an alternative civilian service option

¹²⁴ A/HRC/19/60/Add.2, para. 87(c); see further about follow-up visits in 2014, Heiner Bielefeldt, Elimination of all forms of religious intolerance, 5 August 2014, A/69/261, para. 20; as well as <https://mid.gospmr.org/en/Tyf>.

¹²⁵ Thomas Hammarberg, Senior Expert, *Report on Human Rights in the Transnistrian Region of the Republic of Moldova*, 14 February 2013, https://childhub.org/sites/default/files/library/attachments/1583_Senior_Expert_Hammarberg_Report_TN_Human_Rights_original.pdf, p. 39.

¹²⁶ *Ibid.*, pp. 9, 40 and 47 (with slightly varying formulations as indicated in square brackets).

¹²⁷ Human Rights Committee, Concluding observations on the third periodic report of the Republic of Moldova, 31 October 2016, CCPR/C/MDA/CO/3, para. 6.

¹²⁸ Thomas Hammarberg, Senior UN Human Rights Expert, *Follow-up Report on Human Rights in the Transnistrian Region*, 2018, https://www.undp.org/content/dam/unct/moldova/docs/Follow-up_Report_TH_2018.pdf, p. 31.

for conscientious objectors”.¹²⁹ Since February 2018, however, conscientious objectors who visit the Transnistrian region have reportedly been required to perform military service, even though they no longer live in the region, and another amendment of December 2019 gives priority to the personnel needs of the *de facto* authorities.¹³⁰

Even though the implementation of freedom of conscientious objection is not perfect in the Transnistrian region, civil society organizations have noted that “recognition of conscientious objection is also beginning to reach places which are not internationally-recognised – most notably Transdnistria [sic]”.¹³¹ This example has been used to illustrate the possibility of persuading entities that are unrecognized, or whose status is disputed, to abide by international legal standards.¹³² The concerted efforts by civil society, UN independent experts and OHCHR have arguably contributed to addressing the legal limbo faced by conscientious objectors who live in a territory that is no longer under effective control of the territorial State.

(d) Azerbaijan (Nagorno-Karabakh region)

With regard to Jehovah’s Witnesses living in Nagorno-Karabakh, who were arrested by the “local police” in 2010, the Special Rapporteur on freedom of religion or belief submitted a communication to the Government of Azerbaijan, with the request “to transmit the allegation letter to the relevant authorities and to take all necessary measures to guarantee that the rights and freedoms of the members of Jehovah’s Witnesses are respected.”¹³³ The Government of Azerbaijan responded that it “was unable to fulfill its obligations in respect to human rights in the occupied territories”, which were “under control of the Republic of Armenia and the illegal separatist regime”, and that the Republic of Armenia, as “an occupying power, was fully

¹²⁹ Office of Public Information of Jehovah’s Witnesses, *Information on Conscientious Objection to Military Service Involving Jehovah’s Witnesses – Contribution for the OHCHR Quadrennial Analytical Report on Conscientious Objection to Military Service*, 21 March 2022, <https://www.ohchr.org/sites/default/files/2022-05/OPIJW-HRC50.pdf>, p. 1.

¹³⁰ *Ibid.*, p. 19; A/HRC/50/43, para. 51.

¹³¹ European Bureau for Conscientious Objection, *Annual Report – Conscientious Objection to Military Service in Europe 2021*, 21 March 2022, <https://www.ohchr.org/sites/default/files/2022-05/EBCO-HRC50.pdf>, p. 76.

¹³² Conscience and Peace Tax International (CPTI), *Conscientious objection to military service: CPTI submission for the Thematic Report by the Office of the United Nations High Commissioner for Human Rights*, 2022, <https://www.ohchr.org/sites/default/files/2022-05/CPTI-HRC50.pdf>, p. 2.

¹³³ Heiner Bielefeldt, Report of the Special Rapporteur on freedom of religion or belief: Summary of cases transmitted to Governments and replies received, 14 February 2011, A/HRC/16/53/Add.1, para. 13.

responsible for the protection of human rights and freedoms as well as norms and principles of international humanitarian law in these territories.”¹³⁴ Special Rapporteur Heiner Bielefeldt observed in his report to the Human Rights Council that “[t]he international community, Member States and all relevant de facto entities exercising government like functions should direct all their efforts to ensure that there are no human rights protection gaps and that all persons can effectively enjoy their fundamental rights wherever they live.”¹³⁵

Interestingly, during the Council’s interactive dialogue in Geneva, this formulation was repeated verbatim by the Armenian delegate, who added that Armenia “sincerely hope[s] that the Special Rapporteur’s clear message will be heard by the appropriate duty bearer in that particular case.”¹³⁶ Subsequently, Heiner Bielefeldt was informed that, upon appeal of the Jehovah’s Witnesses living in the Nagorno-Karabakh region, “the de facto ‘courts’ overturned the initial administrative convictions, relying on the International Covenant on Civil and Political Rights and the Special Rapporteur’s observations that registration cannot be a precondition for holding peaceful religious meetings.”¹³⁷

At the regional level, in its judgment *Avanesyan v. Armenia*, the European Court of Human Rights decided a case of another Jehovah’s Witness and conscientious objector from the same region. Artur Avanesyan was born in a town situated in the unrecognised “Nagorno Karabakh Republic” (abbreviated as “NKR” in the judgment of the European Court of Human Rights), and he has held an Armenian passport since 2012.¹³⁸ Following a summons, he was arrested in Armenia’s capital Yerevan and handed over to the officers of the “NKR” police, transporting him to the “NKR”, where he was sentenced in 2014 to two and a half years’ imprisonment.¹³⁹

In its judgment of 20 July 2021, the European Court of Human Rights found no particular circumstances in this case (which took place prior to the latest

¹³⁴ *Ibid.*, paras. 15-16.

¹³⁵ *Ibid.*, para. 24.

¹³⁶ Statement of Armenia, *Interactive Dialogue with the Special Rapporteur on Freedom of Religion or Belief*, 10 March 2011, <https://extranet2.ohchr.org/Extranets/HRCExtranet/portal/page/portal/HRCExtranet/16thSession/OralStatements/100311/Tab2/Item3-ID-Armenia.pdf>, p. 2.

¹³⁷ Heiner Bielefeldt, Report of the Special Rapporteur on freedom of religion or belief, 24 December 2012, A/HRC/22/51, para. 43 (footnote 16).

¹³⁸ European Court of Human Rights, *Avanesyan v. Armenia*, application no. 12999/15, judgment of 20 July 2021, para. 5.

¹³⁹ *Ibid.*, paras. 17-19.

hostilities between Armenia and Azerbaijan until 10 November 2020) that would require it to depart from its findings in previous judgments, which held that, at the relevant time, Armenia exercised effective control over the “NKR” and the surrounding territories, and that “by doing so, Armenia was under an obligation to secure in that area the rights and freedoms set out in the Convention”.¹⁴⁰ The European Court noted that, while alternative civilian service was available in Armenia to conscientious objectors like the applicant, he was not able to take advantage of that option because he was apparently considered liable for military service in the “NKR” which, unlike Armenia, did not recognise the right to conscientious objection.¹⁴¹

The European Court held that, even assuming that the applicant was a “citizen” of the “NKR” as argued by the Government, “Armenia was responsible for the acts and omissions of the ‘NKR’ authorities and was under an obligation to secure in that area the rights and freedoms set out in the Convention”.¹⁴²

On the substance of the complaint, the Court found that interference with the freedom to manifest one’s religion or belief was not necessary in a democratic society:

“This freedom is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it. [...]

[I]n so far as the Court has had an opportunity to consider the issue at hand, it has made clear that a State which has not introduced alternatives to compulsory military service in order to reconcile the possible conflict between individual conscience and military obligations enjoys only a limited margin of appreciation and must advance convincing and compelling reasons to justify any interference. In particular, it must demonstrate that the interference corresponds to a ‘pressing social need’ [...].

The Court has also held that any system of compulsory military service imposes a heavy burden on citizens. It will be acceptable if it is shared

¹⁴⁰ Ibid., paras. 36-37.

¹⁴¹ Ibid., para. 57.

¹⁴² Ibid., para. 58.

in an equitable manner and if exemptions from this duty are based on solid and convincing grounds. However, a system which imposes on citizens an obligation which has potentially serious implications for conscientious objectors, such as the obligation to serve in the army, without making allowances for the exigencies of an individual's conscience and beliefs and with imposition of penalties in case of refusal, will fail to strike a fair balance between the interests of society as a whole and those of the individual."¹⁴³

Artur Avanesyan was imprisoned for more than two years until his release on 6 September 2016, following a general amnesty declared by the *de facto* authorities,¹⁴⁴ albeit without recognizing conscientious objection or offering alternative civilian service. Such provisions would have saved Artur Avanesyan and other conscientious objectors from being convicted and imprisoned by the *de facto* authorities. It also would have avoided the Strasbourg judgment that found Armenia in violation of the European Convention of Human Rights and liable for non-pecuniary damage as well as costs and expenses. Preventing embarrassing condemnations and escaping financial risks may, one might hope, be convincing incentives for the involved States and non-State actors to address the underlying human rights concerns of conscientious objectors in such situations.

4. Developing a graduated framework based on capacity

As illustrated in the above-mentioned examples involving several *de facto* authorities, some of them have been exercising effective control over territory and population for decades, whereas others only recently resumed power. In addition, other armed non-State actors, even if they do not reach the level of a *de facto* authority, may also impact to varying degrees the human rights of

¹⁴³ *Ibid.*, paras. 53 and 55-56; the Court has not clearly identified what would constitute a legitimate aim for a restriction of freedom to manifest a belief in this context. In *Teliatnikov v. Lithuania*, application no. 51914/19, judgment of 7 June 2022, at para. 94 it comes close to suggesting that public safety or the protection of the rights of others could provide legitimate aims: "Although it does not appear to have been explicitly argued by the Government, that constitutional duty [of a citizen to perform mandatory military service or alternative national defence service] could be seen as having been aimed at the protection of public safety as well as the rights and freedoms of others. Be that as it may, the Court considers it unnecessary to determine conclusively whether that aim was legitimate for the purposes of Article 9 § 2 [of the European Convention on Human Rights]".

¹⁴⁴ Office of Public Information of Jehovah's Witnesses, *Information on Conscientious Objection to Military Service Involving Jehovah's Witnesses – Contribution for the OHCHR Quadrennial Analytical Report on Conscientious Objection to Military Service*, 21 March 2022, <https://www.ohchr.org/sites/default/files/2022-05/OPIJW-HRC50.pdf>, p. 18.

individuals. As Special Rapporteur Agnès Callamard noted, “the content and extent of the armed non-State actors’ human rights obligations are determined by three interlinked indicators: (a) the nature and extent of their control; (b) the level of their governance; and (c) consequently, the extent of their capacity”.¹⁴⁵ Focusing on their control, governance and capacity, she has suggested a context-dependent, actor-specific and graduated approach to the right to life,¹⁴⁶ which could also be useful as a legal approach in the context of conscientious objection.

For this purpose, we will adapt – by tailoring to the specificities of armed non-State actors and *de facto* authorities – the eighteen points that were suggested in the 2022 analytical report of OHCHR as guidance for bringing “national laws, policies and practices relating to conscientious objection to military service” in line with international human rights norms and standards.¹⁴⁷ While this formulation may not at first glance seem to be addressed to non-State entities, the report did highlight that: “many individuals seeking to exercise the right to conscientious objection to military service continue to face violations of that and other rights, because some States and *de facto* authorities do not recognize that right or fail to ensure its full implementation in practice.”¹⁴⁸

Therefore, it seems advisable to follow a graduated approach, which provides for differentiated obligations based on the capacities of the relevant States, *de facto* authorities with exclusive control over territory, and armed non-State actors.

In the first category (Annex I, below), States are bound by their treaty-based and customary law obligations relating to international armed conflict and the related war crimes that prohibit compelling prisoners of war or other protected persons from serving in the forces of a hostile power, as well as compelling the nationals of a hostile State from taking part in the operations

¹⁴⁵ Agnès Callamard, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on armed non-State actors: the protection of the right to life, 7 December 2020, A/HRC/38/44, para. 52.

¹⁴⁶ *Ibid.*, paras. 66-77, referring to the principle of non-discrimination and the armed non-State actors’ obligation to respect the right to life, their obligation to protect, prevent and investigate all forms of violence against women and their obligation to fulfil minimum survival requirements.

¹⁴⁷ OHCHR, Conscientious objection to military service: Analytical report of the Office of the United Nations High Commissioner for Human Rights, 11 May 2022, A/HRC/50/43, para. 57.

¹⁴⁸ *Ibid.*, para. 56 and the report’s summary on p. 1.

of war directed against their own State, even if they were in the belligerent's service before the commencement of the inter-State war.¹⁴⁹

States should aim to fulfill all eighteen points as detailed in the 2022 OHCHR report.¹⁵⁰ Furthermore, it has been suggested that States should avoid forced conscription of persons who “clearly demonstrate allegiance to the armed non-state actor against which the State is fighting, in particular where such allegiance is determined by ethnic or religious affiliations,” because arguably “it would amount to an outrage upon personal dignity to force such persons to engage in military operations against that group”.¹⁵¹

De facto authorities and armed groups should abide by an adjusted version of the eighteen points of the 2022 OHCHR report on conscientious objection set out in Annex II, below. With regard to the terminology used in the annexed guidelines for *de facto* authorities and armed groups, the term “military service” is replaced by “armed service”. Similarly, the annexed list uses the terms “coerced recruits” or “voluntary members” within the *de facto* authorities’ armed service, instead of the terms “conscripts” or “professional members of the armed forces”. While States may sign, ratify, accede or succeed to the International Covenant on Civil and Political Rights (including its article 18), the obligations of *de facto* authorities related to freedom of thought, conscience, religion or belief are based on the principle underlying that article and article 18 of the Universal Declaration of Human Rights, which is reflected in customary international law.¹⁵²

In human rights law, military service that contradicts an internally held strong belief would be a violation of freedom of conscience and of customary international law. As William Schabas explains in his recent study of customary international human rights law: “in some countries compulsory military service has been refused by individuals who argue that it is incompatible with their religion or belief. If the refusal amounts to

¹⁴⁹ ICC Statute Arts 8(2)(a)(v) and 8(2)(b)(xv), for details on the scope of the customary rule and on national legislation see Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law - Volume II Part 2 Practice* (Cambridge University Press, Cambridge: 2005) Rule 95, paras 1905-2044; see also Hague Convention IV (1907) Art. 23(h).

¹⁵⁰ A/HRC/50/43, para. 57.

¹⁵¹ Matias Thomsen and Sophie Rondeau, *Forcible Recruitment of Adults by Non-State Armed Groups in Non-International Armed Conflict* (Diakonia International Humanitarian Law Centre, Bromma: 2019), pp. 23-24, applying the reasoning related to the allegiance test developed by the International Criminal Tribunal for the former Yugoslavia in *Prosecutor v. Tadić*, IT-94-1-A, Appeals Chamber, judgement of 15 July 1999, para. 166, <https://www.icty.org/x/cases/tadic/acjug/en/tad-aj990715e.pdf>.

¹⁵² William A. Schabas, *The Customary International Law of Human Rights* (Oxford University Press, Oxford: 2021), pp. 200-207.

manifesting their religion, the State may contend that the right is not unrestricted. But if the individual can claim this is part of the *forum internum*, then there can be no limitation.”¹⁵³

Thus, the annexed guidance for *de facto* authorities and non-State armed groups, even those without exclusive control over territory, demands respect of the right to freedom of thought, conscience, religion or belief as well as of the prohibition of any coercion.

Ultimately, everyone’s freedom of conscientious objection and right to refuse to kill must be fully and equally protected, irrespective of whether the conscientious objectors happen to live in a territory that is under the control of a State or when their human rights are negatively affected through the acts and omission of a *de facto* authority or an armed non-State actor.

ANNEXES

1. *Guidance for States on conscientious objection to military service*

States should bring their national laws, policies and practices relating to conscientious objection to military service into line with international humanitarian law and international human rights law, norms and standards through abiding by the following:

(a) In occupied territory the occupying State is forbidden under Article 51 of the Fourth Geneva Convention (1949) from compelling protected persons to serve in its armed forces. Similarly, under Article 40, protected persons of enemy nationality in a State’s own territory may not be compelled to do work directly related to the conduct of military operations in an international armed conflict with the State of the individual’s nationality.

(b) Compelling a prisoner of war, or a protected person mentioned in the previous paragraph, to serve in the forces of the hostile power is a grave breach of the Third Geneva Convention (1949), a war crime, and a crime under the Statute of the International Criminal Court.¹⁵⁴

(c) It is forbidden to compel the nationals of the hostile party in an international armed conflict to take part in the operations of war directed

¹⁵³ Ibid. at 206.

¹⁵⁴ Statute of the International Criminal Court, Art 8(2)(a)(v).

against their own country, even if they were in the belligerent's service before the commencement of the war. Such an act constitutes a war crime under the Statute of the International Criminal Court.¹⁵⁵

(d) Beyond the situations in paragraphs a, b and c, States that do not accept claims of conscientious objection as valid without an inquiry should establish independent and impartial bodies under the full control of the civilian authorities.

(e) No inquiry process is required by international law and consideration should be given to accepting claims of conscientious objection to military service as valid without such a process.

2. Guidance for States, de facto authorities and armed groups on conscientious objection to armed service

(a) States, *de facto* authorities and armed groups should not forcibly recruit persons who clearly demonstrate an allegiance, including through ethnic or religious affiliations to the other party to the conflict.

(b) The right to conscientious objection to armed service derives from the right to freedom of thought, conscience, religion or belief pursuant to article 18 of the Universal Declaration of Human Rights as well as the prohibition of coercion pursuant to article 18 of the International Covenant on Civil and Political Rights.

(c) All persons affected by armed service should have access to information about the right to conscientious objection and the means of acquiring objector status.

(d) The process of applying for status as a conscientious objector should be free and there should be no charge for any part of the whole procedure.

(e) The application procedure should be available to all persons affected by armed service, including coerced recruits, voluntary members and reservists.

(f) The right to object applies both to pacifists and to selective objectors who believe that the use of force is justified in some circumstances but not in others.

¹⁵⁵ *Ibid.*, Art 8(2)(b)(xv).

- (g) Alternative service arrangements should be accessible to all conscientious objectors without discrimination as to the nature of their religious or non-religious beliefs.
- (h) Coerced recruits and volunteers should be able to object before the commencement of armed service, or at any stage during or after armed service.
- (i) After any decision on conscientious objector status, there should always be a right to appeal to an independent civilian body.
- (j) The personal information of conscientious objectors should not be disclosed publicly by the State, *de facto* authority or armed group, and their records should be expunged.
- (k) Application procedures should be based on reasonable and relevant criteria and should avoid imposing any conditions that would result in automatically disqualifying applicants.
- (l) The process for consideration of any claim of conscientious objection should be timely and all duties involving the bearing of arms should be suspended pending the decision.
- (m) Conscientious objectors should not be repeatedly punished for not having obeyed a renewed order of armed service.
- (n) Individuals who are imprisoned or detained solely based on their conscientious objection to armed service should be released.
- (o) Alternative service must be compatible with the reasons for conscientious objection, be of a non-combatant or civilian character, be in the public interest and not of a punitive character.
- (p) Any longer duration of alternative service in comparison to armed service is permissible only if additional time for alternative service is based on reasonable and objective criteria.
- (q) Those who support conscientious objectors or who promote the right to conscientious objection to armed service should fully enjoy their freedom of expression.

VOICE: Murat Kanath

“My journey started in 1993, when I was actively involved in Salih Askeroglu’s conscientious objection campaign. We had many experiences in this campaign, but while in front of the Military Court, when Salih Askeroglu was arrested, I clearly understood that we need peace activism, but it is not that simple...

A long time later, in 2007, ‘The Initiative for Conscientious Objection in Cyprus’ was established to voice our demand for the right to conscientious objection to also be legalized in the northern part of Cyprus and I rejected to join the reservist service because there was no way that I could participate in any war or preparations for war...

After this process, I have refused to participate in reservist service since 2009 and for this I was sentenced to ten days imprisonment for refusing to pay the fine sentence. As I have stated outside the military court:

‘Considering that we have thousands of friends and acquaintances in Cyprus, it is clear that we cannot take sides in a war on this island which would cause suffering to our people and humanity, regardless of their religion, language, colour or gender. Who is the enemy for us? Everybody on the other side of the barbed wire? Everyone who we see every day and drink coffee with on Ledra Street? [ed. Ledra Street is a street in the old part of the capital Nicosia and it is divided with a checkpoint]

Those people with whom we have continuously protested against war in front of the USA’s, Israel’s or other embassies, are these our enemies? Will we draw weapons against each other in our country while we struggle together against wars in other territories? Or are those with whom we organize bi-communal activities for the reunification of Cyprus meant to be our enemies?

The stories of missing peoples’ relatives teach us that there no difference in the pain, no matter what the religion or race. They are all still suffering. Are we to take part in another war and add new pains to old ones? Has war ever resolved any problem for good?

When we talk about the ‘defence of our homeland’, as Cyprus is our homeland as a whole, how are we to defend against the other side of a barbed wire that has been put there in the middle?

In fact, there are thousands of young people on both sides of Cyprus who are not joining this war mechanism for whatever reason. They show clearly that they will not be part of this war. So, what is the reason of ignoring this demand?’

My ten-day imprisonment in February 2014 triggered Greek Cypriot anti-militarist activists; first they declared their conscientious objection for solidarity, and later on, it turned into a movement which continuously creates pressure to the Republic of Cyprus government to implement the rules and laws about conscientious objection...

The matter needed to be taken to the next level, so in 2015 we appealed to the European Court of Human Rights (ECtHR) against Turkey, for violations of the rights to liberty and security, a fair trial, freedom of thought, conscience and religion, an effective remedy, and prohibition of discrimination, and are still waiting for the decision. The journey continued with others declaring their conscientious objection and being sentenced to jail and then appealing to the ECtHR.

As I see it, this is a journey, and as Cavafy put it, Ithaca is not only the destination, but gives us a lot through the journey. In our conscientious objection journey we have gained a lot, learned a lot and our struggles continue for a better world for those who are coming after us.”

Chapter 10

Contributions by civil society to shaping freedom of conscientious objection to military service

Rachel Brett

1. Introduction

The recognition of conscientious objection to military service as part of the right to freedom of thought, conscience and religion was the culmination of a long process for non-governmental organizations (NGOs) involved with this issue.¹ The United Nations (UN) process is the main focus for this chapter because, as the international standard, it sets the unified universal framework. However, it needs to be recognized that the UN was neither the beginning nor is it the end of the process for those working on the issue. As always, the international and regional bodies can play a significant part in relation to the promotion and protection of human rights but what matters is what happens within States.

NGOs, and civil society actors more broadly, have been crucial in getting the recognition of conscientious objection at the UN, shaping how it is defined and developing – and continuing to develop – UN human rights bodies’ understanding of the issue, the disparate beliefs that lead to it, and the extensive repercussions for those who claim it. Equally, NGOs have taken the UN standards into regional fora as well as into the individual countries, and have encouraged, supported and advised conscientious objectors in their real-life struggles of conscience as well as with the military, tribunals and societal attitudes.

However, this chapter also explores some of the lesser-known issues and connections around conscientious objection to military service in order to provide context and enhance the understanding of the issue and the complexities of human conscience which give rise to it. It is precisely these complexities, connections and ramifications which make this issue so hard to comprehend for those not intimately engaged in it, and thus make the role of NGOs in exploring, analysing and explaining it so important.

¹ See Rachel Brett, “Quaker Human Rights Work at the United Nations: Conscientious Objection to Military Service”, in Bertrand Ramcharan and others (eds), *The Protection Roles of Human Rights NGOs Essays in Honour of Adrien-Claude Zoller* (Brill Nijhoff, 2022).

2. Religious groups vs individuals

Although the earliest known example of conscientious objection to military service is an individual case (Maximilianus in 295),² during succeeding centuries there was a practice of exempting certain religious groups from military requirements; examples include Mennonites during the Dutch war of independence in 1575,³ and in Canada during the First World War. A more recent example is the exemption from both conscription and alternative service for Jehovah's Witnesses in Finland, which was only abolished in 2019 after the issue had been raised in the Human Rights Committee. In fact, the Human Rights Committee had raised a question about this form of discrimination in the earlier case of *Brinkhof v Netherlands*⁴ (while finding against the applicant).

Clearly, some religious groups are strongly associated with a refusal to fight, notably Quakers, Mennonites and the Brethren (known as the "Three Historic Peace Churches") and the Jehovah's Witnesses. The association of conscientious objection with certain pacifist religious groups persists with some States still requiring that to be recognized as a conscientious objector a person is a member of a "recognised religious group which requires pacifism of its members", e.g. Kyrgyzstan⁵ and Belarus.⁶ Even where this is not a legal requirement, in practice recognition may be limited or biased in favour of members of such religious groups, e.g. Greece.⁷

By contrast, some States only provide exemptions for ministers from "recognised religious groups" and do not include Jehovah's Witnesses in their list of such groups (e.g. Lithuania)⁸. This linkage of conscientious objection with certain religious groups means that at times it can be difficult

² Peter Brock, *Pacifism in Europe to 1914* (Princeton University Press, 1972) 13.

³ *Ibid.*, 167.

⁴ *Godefriedus Maria Brinkhof v The Netherlands* Communication 402/1990 (UN Human Rights Committee, 27 July 1993), CCPR/C/48/D/402/1990.

⁵ UN Human Rights Committee, *Concluding Observations on the Second Periodic Report of Kyrgyzstan* (2014), CCPR/C/KGZ/CO/2, para. 23.

⁶ War Resisters' International, "Conscientious Objection to Military Service 2017-2022" (2022) Submission in response to Call for Inputs to OHCHR report on conscientious objection to military service (50th session of the HRC)); UN Human Rights Committee, *Concluding Observations on the Fifth Periodic Report of Belarus* (2018), CCPR/C/BLR/CO/5, para. 47.

⁷ "Greece: A Victory for Transparency Reveals Zero Recognition of COs on Ideological Grounds. Serious Deterioration for COs Intensifies" (*War Resisters' International*, 1 August 2022), <https://wri-irg.org/en/story/2022/greece-victory-transparency-reveals-zero-recognition-cos-ideological-grounds-serious>.

⁸ *Teliatnikov v Lithuania* Application No. 51914/19 (ECHR, 7 June 2022).

to discern whether the authorities' negative attitudes is primarily to the objection to military service or to the religion itself.⁹

It should also be noted that such group exemptions from military obligations are not exclusive to pacifists but included some other minorities (presumably because of concerns about their loyalty), e.g. the UK did not conscript the Irish during the First World War while accepting Irish volunteers.

A crucial point in the development of conscientious objection as an individual claim was the decision in 1916 of British Quakers to take a principled position that, contrary to their earlier practice, they would not seek an exemption to conscription for Quakers that was not equally applicable to other conscientious objectors,¹⁰ and indeed to support all conscientious objectors.¹¹ This universal approach has been the position taken in the Quaker work at the UN.

The association of conscientious objection to military service with the right to freedom of thought, conscience and religion was not the preferred choice of the NGOs working on the issue at the UN. The initial proposal was to have a separate, free-standing recognition of conscientious objection to military service as a right in the (single) Covenant on Human Rights that was originally being drafted as the legally binding treaty counterpart to the Universal Declaration of Human Rights.¹² The failure to achieve this, and lack of progress with some subsequent efforts, led to a discussion amongst the NGOs resulting in a strategic decision to try to bring recognition of conscientious objection within one of the existing rights rather than to persist in trying to gain its recognition as a separate one. This led to positioning it at the intersection between the right to freedom of thought, conscience and religion and the right to life. One of the concerns about this was, precisely, that it might be limited to religious objectors and, indeed the first successful resolution at the UN Commission on Human Rights only cited "religious or similar" reasons as the basis of objection (resolution 1989/77). Therefore,

⁹ For example, see the situation in the Russian Federation set out in Jehovah's Witnesses Office of Public Information, "Information on Conscientious Objection to Military Service Involving Jehovah's Witnesses: Contribution for the OHCHR Quadrennial Analytical Report On Conscientious Objection To Military Service" (2022) Submission in response to Call for Inputs to OHCHR report on conscientious objection to military service (50th session of the HRC)) 11–12.

¹⁰ Willis H Hall, *Quaker International Work in Europe since 1914* (Imprimeries Réunies 1938) 52–53.

¹¹ *Ibid* 61.

¹² Rachel Brett, "Persistent Objectors at the United Nations" [2007] *The Friends Quarterly* 301–309.

once the initial recognition was ensured, considerable attention has been given to both stressing in principle that it is for those of any religion and none, and supporting those whose objection is not based on religion to bring their cases. It is notable that although much of the UN work was done by Quakers and other religious NGOs, major non-religious NGOs such as War Resisters International, Amnesty International and the International Commission of Jurists were also major players, and at times also youth organizations such as ISMUN (International Youth and Student Movement for the UN).

Amongst the key points in developing recognition for the right at the UN was, therefore, the steady expansion of the list of explicitly stated grounds for conscientious objection in the resolutions of the UN Commission on Human Rights from the earliest which only gave “religious or similar motives”,¹³ to “religious, moral, ethical, humanitarian or similar motives”.¹⁴ For each resolution the active NGO participants discussed which term to add and then presented it, with reasons, to the State leading the resolution that year.

Similarly, NGOs were instrumental in bringing the cases to the UN Human Rights Committee that led to its explicit recognition of the right to conscientious objection. War Resisters International and the Quaker UN Office had worked closely with conscientious objectors in the Republic of Korea over many years, and when they reported their disappointment at the failure of two Jehovah’s Witness cases at the Constitutional and Supreme Courts, the Quaker UN Office immediately urged them to submit the cases to the Human Rights Committee as these were the ideal cases to create the precedent needed. Neither the Government nor the Committee doubted the genuine nature of the men’s beliefs, the Republic of Korea had conscription with no provision for conscientious objectors, and both men had been sent to prison. However, after this initial – breakthrough – case,¹⁵ in discussion between the local and international NGOs it was decided that the second group of cases¹⁶ from the Republic of Korea would include a Buddhist, a Catholic and a non-religious conscientious objector. This was important domestically as well as internationally because of the perceived association

¹³ UN Commission on Human Rights, “Resolution 1989/59: Conscientious Objection to Military Service” (1989), E/CN/4/RES/1989/59.

¹⁴ UN Commission on Human Rights, “Resolution 1998/77: Conscientious Objection to Military Service” (1998), E/CN/4/RES/1998/77. Regrettably, through an oversight, the word “moral” was omitted in UN Human Rights Council, “Resolution 24/17: Conscientious objection to military service” (2013) A/HRC/RES/24/17!

¹⁵ *Yoon and Choi v Republic of Korea*, Communication Nos. 1321-1322/2004 (UN Human Rights Committee, 3 November 2006), CCPR/C/88/1321-1322/2004.

¹⁶ *Eu-min Jung et al v Republic of Korea*, Communication Nos. 593 to 1603/2007 (UN Human Rights Committee, 23 March 2010), CCPR/C/98/D/1593-1603/2007.

of this issue with the Jehovah's Witnesses. Unfortunately, this aspect of the cases was not brought out in the Views of the Human Rights Committee, although the positive reason for this was the Committee's position that the basis of their objection was not an issue.

The success at the UN means that it is clear that in international human rights law, conscientious objection to military service is an individual right, which despite coming under "freedom of religion" is not limited to claims based on religion nor to claims associated with certain pacifist religious groups. This is helped by the Human Rights Committee's approach in not only validating conscientious objection to military service coming within Article 18 of the Covenant, making reference to both conscience and religion, but also their broad understanding of religion as encompassing, theistic, non-theistic and atheistic beliefs, as set out in General Comment No. 22¹⁷ and subsequent case law.

However, as noted above, this broad scope is not yet recognized in law or practice in all States which recognize conscientious objection. In addition to the issues already mentioned, there have at times been particular challenges for those who are claiming a religious basis for their conscientious objection from a religion that does not have a pacifist "doctrine", such as Catholics and the Orthodox Churches.¹⁸

3. Varied grounds for conscientious objection to military service

The historic peace churches and some other base their conscientious objection to military service on one or more of the Biblical injunctions not to kill, to love one's neighbour and not to make war, as in fact do many individuals. For some individuals this is a prohibition on personally bearing arms rather than a broader rejection to being in, supporting or being associated with the military, and so they are willing to serve in the military as non-combatants, for example, in medical or ambulance units. For others, any association with the military is not acceptable, which is why the NGOs worked long and hard to develop the understanding of the requirements for alternative service with a clear separation from the military in the work undertaken, conditions and authority, and also "compatible with the reasons

¹⁷ UN Human Rights Committee, "CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)" (1993), CCPR/C/21/Rev.1/Add.4.

¹⁸ International Fellowship of Reconciliation, "Submission to the 115th Session of the Human Rights Committee: Greece (Military Service, Conscientious Objection and Related Issues)" (2015).

for the objection”.¹⁹ This phrase was explicitly picked up by the UN Special Rapporteur on religious intolerance²⁰ in 1992.²¹

There are a broad variety of other grounds on which individuals base their objection to military service. This was recognized in Human Rights Committee General Comment No. 22 which makes clear that it covers “religious or other beliefs”, and that “there shall be no differentiation among conscientious objectors on the basis of the nature of their particular beliefs”.²² The individual nature is also clear in the Committee’s jurisprudence, most recently in the case of *Lazaros Petromelidis v Greece*,²³ where the Committee stated that conscientious objection “entitles any individual to an exemption from compulsory military service if such service cannot be reconciled with that individual’s religion or beliefs.”

Many States or authorities legislating for or administering conscientious objection have difficulty in understanding and accepting the broad variety of grounds on which such claims are made. As already indicated, there are those who still see it, in law or practice, as a pacifist religious groups’ issue, but even those with a greater understanding of the variety of beliefs or positions of conscience on which it is based have difficulty.

This means that in some cases there are specific restrictions, e.g. in Greece²⁴ and a number of other countries, having ever had a gun licence bars acceptance as a conscientious objector, although this is not considered a problem in the United States of America where there is an understanding that a conscientious objector might well be prepared to shoot animals but not people. A number of countries exclude persons who have a criminal record, not necessarily even limiting it to those who are convicted of a crime of

¹⁹ UN Human Rights Council, “Resolution 24/17: Conscientious objection to military service” (n 14) para. 9, reiterating previous UN Commission on Human Rights resolutions.

²⁰ The mandate was renamed in 2000 as Special Rapporteur on freedom of religion or belief.

²¹ Special Rapporteur on freedom of religion or belief, “Implementation of the Declaration of the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief: Report Submitted by Mr. Angelo Vidal d’Almeida Ribeiro, Special Rapporteur Appointed in Accordance with Commission on Human Rights Resolution 1986/20 of 10 March 1986” (1991) Annual Report, E/CN.4/1992/52, para. 185.

²² UN Human Rights Committee, “CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)” (n 17).

²³ *Lazaros Petromelidis v Greece*, Communication No. 3065/2017 (UN Human Rights Committee, 2 July 2021), CCPR/C/132/D/3065/2017, para. 9.3.

²⁴ Office of the United Nations High Commissioner for Human Rights, “Approaches and challenges with regard to application procedures for obtaining the status of conscientious objector to military service in accordance with human rights standards” (2019), A/HRC/41/23, para. 46.

violence. This again links what may be irrelevant issues and also fails to consider the possibility of change; in other words, at most this should be a rebuttable presumption. In Israel, there appears to be an assumption that a pacifist has to be a vegan and cannot wear leather.²⁵ If considered relevant at all, such issues or supposed criteria should be things to be addressed or explained by the applicant rather than automatically leading to exclusion.

Some of those who reject any alternative service (even if of a civilian nature and under civilian control) as well as military service do so on the grounds that the alternative service only exists because of the conscription and is, therefore, itself inherently part of the military system. Others do not accept that the State has a right to conscript, and some do not accept the State's right to compel them to work at all. Both groups are known as "total objectors" because of their rejection of both military and alternative civilian service. Finland has a number of such total objectors who claimed discrimination because Jehovah's Witnesses were automatically exempted from both military and alternative service, but the claims of others for such an exemption would not be considered. The Human Rights Committee "expressed concern that the preferential treatment accorded to Jehovah's Witnesses was not being extended to other groups of conscientious objectors"²⁶ and recommended that the Government extend such exemption to other groups of conscientious objectors. To the Committee's regret the Government of Finland instead adopted Act No. 330/2019 which removed the exemption from military and civilian service accorded to Jehovah's Witnesses, thus levelling down rather than up.

The challenge of understanding and endeavouring to judge the depth or validity of a conscientious objection claim is one of the reasons why NGOs have encouraged States to accept claims without subjecting them to assessment by a tribunal or other decision-making body. The UN Commission on Human Rights and Human Rights Council resolutions "welcome" such an approach.²⁷ Indeed Governments seldom evidence a full understanding, let alone acceptance, of the complexities and nuances of the human conscience, and it has, therefore, been a major role of the NGOs both in their engagement with the conscientious objectors from different perspectives, backgrounds and convictions to seek to analyse and explain these to the Governmental authorities, courts and tribunals as well as to the

²⁵ Ibid., 48.

²⁶ UN Human Rights Committee, *Concluding Observations on the Sixth Periodic Report of Finland* (2013), CCPR/C/FIN/CO/6, para. 14.

²⁷ UN Human Rights Council, "Resolution 24/17: Conscientious objection to military service" (n 14).

UN and regional bodies. At the same time, drawing on their global connections they are often able to draw on better examples from other countries to encourage positive changes. The long campaigns for recognition of conscientious objection in both the Republic of Korea and in Colombia are examples of this persistent pressure using legal means by supporting interventions in the highest domestic courts, political advocacy, and the UN human rights system. Although both have been successful in gaining recognition of conscientious objection the work continues because the procedures and outcomes leave much to be desired.²⁸

4. Gender and masculinity

Service in the military is a rite of passage for men in many countries. Traditionally in most countries women were not conscripted (or even allowed to volunteer) though both are changing. The experience of women conscientious objectors may be different from those of men. Certainly in Israel for a time it was easier for women to be accepted as conscientious objectors although this changed when the discrepancy was challenged in court – unfortunately by making it harder for women rather than making it easier for men. In some instances, it seems that Eritrean women conscientious objectors were less likely to be recognized as refugees because of assumptions about conscription being an issue only for men. Women in voluntary armed forces who become conscientious objectors may also face different issues. Although there is at present little information on this, it is worth noting that, on being returned to the United States of America from Canada, US conscientious objector Kimberley Rivera was court-martialled and sentenced to military prison, gave birth during her imprisonment and was, therefore, also separated from her new-born child pending her release.

In addition, homosexuals/LGBTI persons were excluded in many cases. This combination of circumstances has led to a range of responses, including for example Mehmet Tarhan’s battle with the authorities in Turkey who would not accept his claim as a conscientious objector but wanted him to seek exclusion as a homosexual.²⁹ Some claims of conscientious objection, and not only from LGBTI persons or women, are based around this concept of a certain form of masculinity as being integral to the armed forces (and their behaviour).

²⁸ Brett (n 1).

²⁹ “The Case of Conscientious Objector Mehmet Tarhan” (*War Resisters’ International*, 22 June 2005), <https://wri-irg.org/en/story/2005/case-conscientious-objector-mehmet-tarhan>.

Interestingly, these links were identified by the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity in March 2022 in the context of the Russian military operation against Ukraine and the Ukrainian government's edict that military age men could not leave the country. Specifically, the Independent Expert stated: "A particularly telling example is that of trans and gender-diverse people whose legal identity documents do not correspond with their gender or physical presentation, who encounter severe difficulties at checkpoints, border crossings, reception centers, health facilities and other critical locations." He highlighted that the result "includes challenges in evacuating from civilian enclaves through humanitarian corridors, securing medical exemptions from male-only compulsory military service, being admitted at border crossings as refugees" amongst other things.³⁰

The links between discriminatory attitudes and documentation have a different aspect in Belarus³¹ where military identification documents for transgender men indicate that they are unfit for service under category 19a (serious mental disorder) of the Disease Schedule approved by the Ministries of Health and Defence. Using mental health grounds to exclude conscientious objectors, as opposed to actually recognizing them as conscientious objectors, is practised in many countries and in addition to being a violation of their right to recognition as a conscientious objector can have continuing negative effects in countries where the military service record has to be produced, e.g. for subsequent employment.

More generally, the documentation issued to indicate that a person no longer has military obligations can also be problematic if it is different for those who do alternative service than for those who undertook the military service. This is the case in Greece, although this has been successfully challenged by a conscientious objector, leading the Hellenic Data Protection Authority to find that the certificate of military status should only state that the individual has no outstanding military duties without identifying that they did alternative service (or had been exempted for medical reasons): it is not yet clear whether this will now apply automatically or has to be raised for each individual. A further problem may arise if a fee is charged for the document. A specific

³⁰ See Victor Madrigal-Borloz (Independent Expert on protection from violence and discrimination based on sexual orientation and gender identity), "Ukraine: Protection of LGBTI and Gender-Diverse Refugees Remains Critical – UN Expert" (22 March 2022), <https://www.ohchr.org/en/press-releases/2022/03/ukraine-protection-lgbti-and-gender-diverse-refugees-remains-critical-un>.

³¹ UN Human Rights Committee, *Concluding Observations on the Fifth Periodic Report of Belarus* (n 6).

point requiring that he not be charged for his *libreta militar* was included in the friendly settlement of the *Bustos v Bolivia* case at the Inter-American Commission on Human Rights³² as Bustos' objection extended to paying this form of "military tax". In the same way, a system of paying a fee³³ or tax instead of doing military service is not equivalent to the right to be a conscientious objector.³⁴

5. Selective objection

In addition to those who are pacifists or have other objections to military service at any time, there are what are known as "selective objectors". This is a disparate group of those who would be willing to fight in some circumstances but not all. Although this is often seen as a highly contentious issue, it should be noted that there is a long Christian tradition of accepting that some, but not all, wars are "Just Wars". A different form of selective objection based on religion was the case of Aydemir who as a Muslim refused to serve in a secular Turkish army, grounds not accepted by the European Court of Human Rights.³⁵ For some selective objectors there is a general principle of, for example, willingness to defend their country but not to participate in aggressive wars – a principle which may, of course, be harder to maintain in practice.

It is obvious why many governments have particular difficulty in accepting the right of their citizens to form their own judgment about participation in a State-sanctioned conflict, and why so many selective objectors end up seeking asylum. A rare example of a State recognized ground of selective objection is Norway's acceptance of refusal to be involved in the use of nuclear weapons. However, selective objection in the form of refusal to enforce apartheid was endorsed by the UN before the general right of conscientious objection to military service.³⁶ Framing this as conscientious

³² *Alfredo Diaz Bustos v Bolivia* (Friendly Settlement) Case 14/04 (Inter-American Commission on Human Rights, 27 October 2005), Report No. 97/05.

³³ See, for example, "Communication from the Authorities (24/09/2018) Concerning the Case of Ulke Group v Turkey (Application No. 39437/98)" (Committee of Ministers of the Council of Europe 2018) Information made available under Rule 82a of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements DH-DD(2018)938; UN Human Rights Committee, *Concluding Observations of the Human Rights Committee: Syrian Arab Republic* (2005), CCPR/CO/84/SYR, para. 11; UN Human Rights Committee, *Concluding Observations of the Human Rights Committee: Mongolia* (2011), CCPR/C/MNG/CO/5, para. 23.

³⁴ See, e.g. Tajikistan, Jehovah's Witnesses Office of Public Information (n 9) 14–15.

³⁵ *Aydemir v Turkey* Application No 36554/10 (ECHR, 6 November 2018).

³⁶ UN General Assembly, "Resolution 33/165: Status of persons refusing service in military or police forces used to enforce apartheid" (1978), A/RES/33/165.

objection was specifically included by the NGO drafter of the text. More recently both the UN Working Group on Arbitrary Detention and the Special Rapporteur on Freedom of Religion or Belief have taken up cases of selective conscientious objectors.³⁷

Examples of selective objection include some Israeli's objection to military service on the grounds of the military's role in the Occupied Palestinian Territories. During the wars of the Yugoslav succession, some conscientious objectors seeking asylum in other countries – including those who had done their compulsory military service in the pre-conflict Yugoslav National Army (JNA) cited their objection to fighting other Yugoslavs as the reason for their refusal. The decision-makers in deciding on asylum for such cases distinguished them from those seeking to avoid military service as a matter of personal convenience. (Ironically, in many countries it is easier to avoid military service by legal or irregular payment, getting a physical or mental health exemption, or leaving the country to study abroad, than as a conscientious objector).

The link between minorities, their actual or potential repression, doubts about their loyalty and/or the use of government armed forces against the “mother country” of a minority creates tensions which some States resolve by not conscripting them, but in other situations leads to conscientious objection. For example, as already noted, the UK did not conscript the Irish during the First World War when it was still part of the UK, and Israel does not conscript all its citizens. It is interesting to note that the UN Commission on Human Rights resolution 1989/59 was co-sponsored by Hungary – the first Warsaw Pact country to do so – and it is likely that this was linked to concern about the situation of Hungarian minorities in neighbouring countries.

6. Conscientious objection and voluntary/professional armed forces

It is important to recognize that the main emphasis on and in the development of conscientious objection to military service has been and continues to be in

³⁷ “Opinion No. 24/2003 (Israel)” in Commission on Human Rights, *Opinions Adopted by the Working Group on Arbitrary Detention* (2004), E/CN.4/2005/6/Add.1, 18; “USA 34/2012” in UN Human Rights Council, *Communications Report of Special Procedures: Communications Sent, 1 December 2012 to 28 February 2013; Replies Received, 1 February to 30 April 2013* (2013) A/HRC/23/51 28; UN Human Rights Council, “Approaches and Challenges with Regard to Application Procedures for Obtaining the Status of Conscientious Objector to Military Service in Accordance with Human Rights Standards” (2019) Report of the Office of the United Nations High Commissioner for Human Rights A/HRC/41/23 para. 26; UN Human Rights Council, “Conscientious Objection to Military Service” (2017) Analytical report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/35/4, para. 63.

those States with conscription. In States with entirely voluntary service – and where enrolment in the military is often seen as a prestigious and well-paid profession, and/or the route to upward mobility in society – there is less pressure for recognition of conscientious objection. This can lead to a perception that this is an issue in only some countries or regions and only for some religions.

Indeed the only free-standing provision on the subject (as opposed to being situated under the right to freedom of thought, conscience and religion) is in the Ibero-American Convention on the Rights of Youth and explicitly only applicable in relation to “obligatory military service”.³⁸ If the UN is to develop work on youth rights as a particular category, it is essential that in relation to conscientious objection it is not limited only to situations of conscription but addresses the full scope of the issue³⁹ since this regrettable limitation fails to do justice to the situation of those who join the armed forces and then develop a conscientious objection,⁴⁰ whether during an initial period of service, or later, for example while being in the reserves and, therefore subject to possible recall.

Many States fail to accept that the possibility of leaving at the end of a contract period, with or without having to reimburse costs of some form of training or other “buying out” provisions, are not equivalent to or appropriate for conscientious objection claimants. This, of course, becomes more acute in times of war, conflict or deployment, when such provisions may in any case be suspended, e.g. Ukraine⁴¹ despite the Human Rights Committee’s explicit, repeated clarification that the right to freedom of thought, conscience

³⁸ Ibero-American Convention on Young People’s Rights (adopted October 2005, entered into force 1 March 2008), art 12.

³⁹ See e.g. UN Human Rights Council, “Youth and Human Rights” (2018) Report of the United Nations High Commissioner for Human Rights, A/HRC/39/33, paras. 53-54.

⁴⁰ A position explicitly endorsed by the UN Working Group on Arbitrary Detention in UN Working Group on Arbitrary Detention, “Submission of the UN Working Group on Arbitrary Detention” (2022) Submission in response to Call for Inputs to OHCHR report on conscientious objection to military service (50th session of the HRC)).

⁴¹ “Ukraine Suspended Right to Conscientious Objection to Military Service” (*Connection e.V.*, 5 September 2022), <https://en.connection-ev.org/article-3614>, referencing Ministry of Defence of Ukraine, “Official Reply of the Ministry of Defence of Ukraine to Public Information Request of Ukrainian Pacifist Movement Asking to Provide Information about Implementation, under Conditions of Martial Law and Mobilization, of the Constitutional Right of Citizens to Replace the Performance of Military Duty with Alternative (Non-military) Service in Case If the Performance of Military Duty Contradicts the Citizen’s Beliefs” (21 August 2022).

and religion cannot be derogated from even in times of public emergency.⁴² States which recognize conscientious objection for professional/volunteer members of their armed forces may have limitations on it, such as the USA’s requirement that it has to be an objection to “all wars”, not a selective objection to a particular conflict.

7. Conscientious objection to military service, advocacy for it and against war and militarisation

Even in States where conscientious objection is recognized, the information about it and how to apply may not be readily available. NGOs play a major role in making such information available, as well as advocacy for changes and improvements in the provisions. Where it is not recognized, speaking in favour of conscientious objection can be a criminal offence, e.g. under Article 318 of the Turkish Criminal Code “alienating the public from military service” which was amended in 2013 to specifically address statements or conduct that “encourage and inspire people to desert or not to participate in military service”.⁴³ According to Human Rights Without Frontiers, in its submission to the Human Rights Committee in the case of *Shamil Kakhimov*, Tajikistan gave three reasons for its ruling that Jehovah’s Witnesses are allegedly extremist and had to be banned, the first of which was advocating for the establishment of alternative civilian service in lieu of compulsory military service.⁴⁴

Even where it is generally permitted to advocate for, or provide information about, conscientious objection, there may be incitement to disaffection laws that apply when addressing such information to members of the armed forces or encouraging them to resist deployment, especially in times of war/armed conflict. See, for example, the case of *Arrowsmith v. United Kingdom (7050/75)* where, in 1978, the European Commission on Human Rights ruled it was “a necessary restriction on the exercise of free speech in the interests of national security and for the prevention of disorder”, and thus her criminal conviction did not violate the European Convention on Human Rights. Given the subsequent developments in relation to the recognition and scope of the

⁴² UN Human Rights Council, “Conscientious Objection to Military Service” (2022) Analytical report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/50/43, para. 5.

⁴³ Conscientious Objection Watch, “Conscientious Objectors to Military Service: Briefing Paper Regarding the OHCHR of Turkey” (2022) Submission in response to Call for Inputs to OHCHR report on conscientious objection to military service (50th session of the HRC)).

⁴⁴ “Tajikistan: The UN Declared Illegal the Ban of Jehovah’s Witnesses” (*Human Rights Without Frontiers International*, 23 September 2022), <https://hrwf.eu/tajikistan-will-shamil-kakhimov-be-released-after-the-un-declared-illegal-the-ban-of-jehovahs-witnesses/>.

right to conscientious objection to military service and of freedom of expression this is an area that deserves to be revisited. The regressive position of the European Commission on Human Rights interpreting the European Convention as not recognizing a right to conscientious objection to military service influenced the Human Rights Committee in taking that position initially. Once the Human Rights Committee had definitely changed its position,⁴⁵ the NGOs took the first opportunity to submit an *amicus curiae*⁴⁶ brief to the European Court of Human Rights in the case of *Bayatyan v Armenia*⁴⁷ setting out the developments in international human rights law, as well as the general European situation on conscientious objection. The resulting judgement established the recognition of conscientious objection to military service as a protected part of the right to freedom of thought, conscience and religion under Article 9 of the Convention.

The binding judgments of the European Court of Human Rights – though not, unfortunately, universally implemented – have had positive effects within Europe in relation to conscientious objection and some of the procedures applicable to it. It is to be hoped that equivalent developments will occur soon within the Inter-American Human Rights system, but taking on board the further progress made at the UN in recent years. The African Human Rights system has not yet addressed the issue of conscientious objection but may have an opportunity to do so when considering the *Jehovah's Witnesses v*

⁴⁵ See Rachel Brett and Laurel Townhead, “Conscientious Objection to Military Service”, in Geoff Gilbert, Françoise Hampson and Clara Sandoval (eds), *Strategic Visions for Human Rights: Essays in Honour of Professor Kevin Boyle* (Routledge, 2012) 91–107, for an explanation of how the NGOs used the different procedures available to engage with the Human Rights Committee and then did an *amicus curiae* brief for the European Court on Human Rights, where cases were the only means available to change its position, highlighting how the Human Rights Committee’s interpretation/understanding had moved from the same original position to a recognition of conscientious objection as protected under the right to freedom of thought, conscience and religion. The NGOs were also able to present the almost universal recognition of Council of Europe member States, and the position of various European bodies on the issue, including Committee of Ministers of the Council of Europe, “Recommendation CM/Rec(2010)4 of the Committee of Ministers to Member States on Human Rights of Members of the Armed Forces” (2010) Recommendation of the Committee of Ministers CM/Rec(2010)4 para. 42.

⁴⁶ Amnesty International and others, “In the Grand Chamber of the European Court of Human Rights (Application No. 23459/03): Vahan Bayatyan v Armenia: Written Comments Submitted By Amnesty International, Conscience And Peace Tax International, Friends World Committee For Consultation (Quakers), International Commission Of Jurists, And War Resisters’ International, Pursuant To Article 36 § 2 Of The European Convention On Human Rights And Rule 44 § 3 Of The Rules Of The Court”.

⁴⁷ *Bayatyan v Armenia* Application No 23459/03 (ECHR, 7 July 2011).

Eritrea communication to the African Commission on Human and Peoples' Rights.⁴⁸

8. Citizenship

In many countries there is a legal or social link between citizenship and the requirement (of men) to do military service. For example, in 1994 a Presidential Decree revoked the citizenship of Eritrean born Jehovah's Witnesses for refusing to perform national service.⁴⁹ Another example is the Naturalization Oath of Allegiance to the United States of America which includes

“I will bear arms on behalf of the United States when required by the law; that I will perform noncombatant service in the Armed Forces of the United States when required by the law;”

This text was only added by the 1950 Immigration Act. Previously, the US Supreme Court had ruled that the language in the oath about supporting and defending the Constitution and laws of the United States against all enemies implied a promise to bear arms. This was challenged in the case of *Girouard v. U.S.* (328 U.S. 61) with the Court ruled that the wording in the oath of allegiance did not imply a promise to bear arms and that a refusal to bear arms was justified on the basis of religious training and beliefs.⁵⁰

Under current US law, an applicant opposed to bearing arms or performing non-combatant service can take a modified oath that omits either or both of these provisions.

In the context of oaths, it is interesting to note that not only are there alternatives in the US formula, but that many countries now have multiple options in relation to oaths and affirmations in various contexts, e.g. in courts of law. In the past, oaths have also been used as a way of excluding religious or other minorities, e.g. to exclude Jews from the UK Parliament prior to 1858. The fact that there is so little attention to the question of oath-taking nowadays indicates the way in which it has become accommodated routinely. In addition to the formal link between military service and citizenship itself, unrecognized conscientious objectors may not be able to exercise rights

⁴⁸ *Three Jehovah's Witnesses v. State of Eritrea* Communication 716/19, mentioned in Jehovah's Witnesses Office of Public Information (n 9) 5.

⁴⁹ *Ibid.*

⁵⁰ “History of the Oath of Allegiance” (*U.S. Citizenship and Immigration Services*), <https://www.uscis.gov/citizenship/learn-about-citizenship/the-naturalization-interview-and-test/history-of-the-oath-of-allegiance>.

which require them to produce identity documents if they are to avoid repeated punishment for their continued refusal of military service and thus are barred from exercising many of the rights of citizenship including the right to vote or stand for election, e.g. in Turkey.⁵¹

9. Conclusion

The centrality of religious groups and NGOs in supporting individual conscientious objectors and advancing the understanding of and advocating for the recognition of the right of conscientious objection to military service at national, regional and international level cannot be overstated. Part of the strength of the work has been the combination of different actors – levels, skills, interests – so that grassroots activism was linked with international advocacy and legal interventions, and, of course, persistence over many decades. It is worth noting that the first statement about conscientious objection to military service was made to the UN by Service Civil International in 1949.⁵² The Human Rights Committee’s landmark decision recognizing it as a protected right in an individual case⁵³ was issued in 2006 – 57 years later! Equally important to recognize the long duration in attaining domestic recognition of conscientious objection in many States. It is unlikely that recognition would have happened without the dogged persistence of NGOs and individual conscientious objectors themselves.

Part of the role of civil society organizations was feeding the reality of the situation for conscientious objectors into the international and regional bodies – even those who were sympathetic or supportive often did not understand the full ramifications, nor the multiplicity of grounds for objection, in the real world, but tended to focus initially on simply whether or not conscientious objection was recognized, and then to some extent on the length of any alternative service required. The NGOs have been central in collecting and feeding into the UN processes material about how and when information is provided – and by whom – who makes the decision, and on what basis, and whether a negative decision be appealed to an independent body, all so essential for the principle of recognition of conscientious objection to become a practical reality.

⁵¹ *Case of Ülke v Turkey* Application No 39437/98 (ECHR, 24 January 2006).

⁵² Service Civil International, “Conscientious Objection to Armed Service” (1949) NGO Submission to the UN Commission on Human Rights, E/CN.4/NGO/1/Add.1.

⁵³ *Yoon and Choi v Republic of Korea* (n 15).

The *Ulke v Turkey*⁵⁴ case was a breakthrough in recognizing the legal and social impacts of being an unrecognized conscientious objector which the European Court of Human Rights tellingly designated as tantamount to “civil death”, although it was disappointing that the Court dodged taking a position on conscientious objection itself while finding that his treatment was “inhuman and degrading” and thus a violation of Article 3 of the European Convention on Human Rights.

A particular current example, is the impact on children of Korean conscientious objectors and the fact that the Committee on the Rights of the Child should be alerted to the interference with the child’s right to maintain a direct relationship with parents and the right to family life by this form of separation.⁵⁵ This is a specific example of the way in which NGOs have sought to show the links to other (more mainstream?) human rights issues, such as freedom of expression, statelessness and the right to change one’s religion or belief.

In addition to analysing, documenting and feeding in to the international and regional systems from the direct lived experience of conscientious objection, a major role for the NGOs has been feeding back to conscientious objectors and local organizations the international and regional standards and the potential legal, quasi-legal and political possibilities of using the associated mechanisms – as well as solidarity and sharing of strategies across borders. This has included *amicus curiae* interventions or feeding in to cases being brought in national courts, two notable examples being in the cases of Colombia and the Republic of Korea,⁵⁶ each of which resulted in changes in favour of recognition of conscientious objection in those countries.

⁵⁴ *Case of Ülke v Turkey* (n 51).

⁵⁵ Asia-Pacific Association of Jehovah’s Witnesses, “Alternative Civilian Service in South Korea” (2022).

⁵⁶ Amnesty International and others, “Conscientious Objection to Military Service in the Republic of Korea: Amicus Curiae opinion by Amnesty International, Friends World Committee for Consultation (Quakers), the International Commission of Jurists, the International Fellowship of Reconciliation, and War Resisters’ International” (2014).

VOICE: Julián A. Ovalle Fierro

“Colombia. Hasta los años 90s ‘las batidas’ (*Detenciones arbitrarias con fines de reclutamiento*) eran una presencia fantasmagórica que podía aparecer en cualquier momento, recuerdo. Los jóvenes, especialmente los hombres rurales, también aquellos de los pueblos y en las periferias empobrecidas de las ciudades, vivimos con ese fantasma. La libreta militar era el objeto que necesario portar para contrarrestar la detención que, revestida de legalidad, siempre amenazaba. Un servicio militar muy obligatorio y poco legítimo. Crecimos en medio de una guerra en la que vivimos desde siempre, en medio de ella aprendimos a vivir alegres, porque en todo caso la alegría no es obligatoria, es necesaria para sostener la vida, la vida en la ciudad y en los campos, a pesar del fantasma, la alegría.

Viví siempre en la ciudad capital. Las calles eran sutilmente rodeadas por una red de cacería militar, camiones con militares con la misión de reclutar para el servicio militar, militares agresivos y decididos a cumplir con los números de reclutados, que crecieron constantemente desde que se inauguró el Plan Colombia, el plan de EEUU de fortalecer militarmente a Colombia a finales del siglo pasado.

Pasaron los años en mí, las vivencias de la guerra que se acercaron a mi familia, la llegada a la universidad pública, la conciencia de mi privilegio, el encuentro con el dolor y el hastío de la guerra en mí y en mis amigos, la decisión de no hacer parte de la guerra, la decisión de hacer algo al respecto, la objeción de conciencia. El reclutamiento ya no fue más para mí un fantasma, se convirtió en una presencia a la cual encarar. La sensación de lo fantasmal se aclaró con la comprensión de que el reclutamiento y la participación directa en la guerra es una forma muy crítica de la militarización de las vidas, no solo a través de la obligación legal, sino por la coerción de distintos grupos armados desplegados por toda la geografía nacional. Entonces la libreta militar no fue más un documento de salvación ante el reclutamiento, ni un requisito para la graduación de la universidad: se convirtió en un signo de la participación del orden militarista que, transversal en las instituciones escolares, familiares, políticas, se concretaba con ese documento que me reconocería como reservista del Ejército. A pesar de saber las consecuencias de no tramitar ese documento nunca lo hice, nunca lo haré.

En el año 2006 fundamos la Acción Colectiva de Objetores y Objetoras de Conciencia ACOOC. Fuimos tan creativos como pudimos, aprendimos en la solidaridad y el compromiso colectivo en construir una forma en la que la

Noviolencia fuera una estrategia de acción política colectiva entre hombres y mujeres. Entendí que la violencia se comporta como un mandato impuesto para reproducir y mantener en quien lo obedece, un mandato muy masculino, por cierto. Entendí desde que el militarismo es una forma de estructuración cultural se reproduce en la guerra y que esta es un crimen patriarcal, colonialista y transnacional. Como ACOOC enfocamos nuestro interés en construir alternativas a la militarización a través de la promoción de la objeción de conciencia al militarismo, objeción a la guerra y en ese sentido, objeción al servicio militar obligatorio. Nos organizamos en torno a la acción directa noviolenta, la educación popular, el acompañamiento psicosocial y jurídico y en tejer una red internacional de solidaridad, la cual además de activarse en caso de reclutamiento de objetores, fue muy importante porque permitió hacer incidencia en instancias institucionales de derechos humanos nacionales e internacionales. Esta forma de organización colectivo funcionó en el propósito del reconocimiento de la objeción de conciencia y del cese más o menos definitivo de las ‘batidas’; actualmente seguimos adelante con nuestra lucha antimilitarista luego de podernos graduar de la universidad sin la libreta militar.”

English translation:

“Colombia. Until the 1990s, ‘batidas’ (arbitrary detentions for recruitment purposes) were a ghostly presence that could appear at any time, I remember. Young people, especially rural men, but also those in the villages and in the impoverished peripheries of the cities, lived with that ghost. The military passbook was the object that was necessary to carry to avoid detention that, dressed up as legality, always threatened. Military service was very compulsory and not very legitimate. We grew up in the midst of a war in which we have always lived, in the midst of which we learned to live happily, because in any case, happiness is not compulsory, it is necessary to sustain life, life in the city and in the countryside, despite the ghost, happiness.

I always lived in the capital city. The streets were subtly surrounded by a network of military hunting, trucks with military men with the mission to recruit for military service, aggressive military men determined to meet the numbers of recruits, which grew steadily since the inauguration of Plan Colombia, the US plan to strengthen Colombia militarily at the end of the last century.

The years passed by, the experiences of the war that came close to my family, the arrival at the public university, the awareness of my privilege, the encounter with the pain and weariness of the war in me and in my friends, the decision not to take part in the war, the decision to do something about it, the

conscientious objection. Conscription was no longer a ghost for me, it became a presence to face. The sense of the ghostly became clearer with the realization that conscription and direct participation in war is a very critical form of the militarization of lives, not only through legal obligation, but through the coercion of different armed groups deployed throughout the national geography. So the military passbook was no longer a document of salvation from conscription, nor a requirement for graduation from university: it became a sign of participation in the militarist order that, transversal in school, family and political institutions, was concretized with that document that would recognize me as an army reservist. Despite knowing the consequences of not processing this document, I never did it, I never will.

In 2006 we founded the Collective Action of Conscientious Objectors (ACCOOC). We were as creative as we could be, we learned in solidarity and collective commitment to build a way in which nonviolence was a strategy of collective political action between men and women. I understood that violence behaves as an imposed mandate to reproduce and maintain in those who obey it, a very masculine mandate indeed. I understood that militarism is a form of cultural structuring that is reproduced in war and that war is a patriarchal, colonialist and transnational crime. As ACCOOC we focus our interest in building alternatives to militarization through the promotion of conscientious objection to militarism, objection to war and in that sense, objection to compulsory military service. We organized ourselves around nonviolent direct action, popular education, psychosocial and legal accompaniment and weaving an international solidarity network, which, in addition to being activated in the case of recruitment of objectors, was very important because it allowed us to influence national and international human rights institutions. This form of collective organization worked towards the recognition of conscientious objection and the more or less definitive cessation of the 'raids'; we are currently continuing our anti-militarist struggle after being able to graduate from university without a military passbook."

Chapter 11

Human rights advocacy and implementation of conscientious objection

Derek Brett

1. The emergence of conscientious objection to military service

“Conscientious objection to military service”. What exactly is it? And why should the concept have become widely recognized only during the 20th Century? After all war – and therefore presumably opposition to war – is as old as human history.

There are certainly Roman antecedents. Maximilianus, canonized as St Maximilian, is often labelled “the first conscientious objector” having been put to death for his refusal to enlist in the Legions, which as the son of a legionary he was obliged to do.¹

However, for many subsequent centuries military service, in so far as it existed, was a hierarchical obligation. Only once the State was directly calling on citizens to serve did the question of exemption become meaningful. Even then, the suggestion that one might refuse, rather than evade, the obligation required the development of a concept of individual autonomy. Exemption was easier for the State to concede first as a group right of specific minority religious denominations which were known to have an explicitly pacifist doctrine, and in fact there is a long history of such cases; Mennonites in the Netherlands in 1575, the privileges granted to Doukhbours in 1760 by Catherine the Great in exchange for their colonization of lands between the Black and Caspian Seas, the Anabaptists who were exempted even in the French *levée en masse* of 1793, often quoted as the first example of conscription in the modern sense.

In the United States of America, a State built largely by pacifist refugees from religious persecution in Europe, exemptions were often described as in response to “religious scruples”. The term “conscientious objection”, which turned the focus from group doctrine to the individual conscience, was first heard in response to campaigns for the introduction of conscription in English-speaking countries which had a tradition of all-volunteer armies.²

¹ P. Brock, *Pacifism in Europe to 1914* (Princeton University Press, 1972), p. 13.

² See R.J.Q. Adams and P.P. Poirier, *The Conscription Controversy in Great Britain, 1900-1918* (Macmillan, 1987).

The phrase itself had been seemingly first coined in the UK in the 1890s by the opponents of compulsory vaccination, and was only subsequently adopted by those opposing conscription.³

The introduction of the concept of conscience at once shifted the focus on to the beliefs of the individual rather than the teachings of his religion, although of course in individual cases the two could be impossible to separate. At the same time, the focus on “conscience” widened the scope of those who might claim such an objection to adherents of all religions, and none – “secular” pacifists, following say the teachings of Tolstoy, atheists, believers in international socialism; later also to those inspired by Buddhism, feminism, or the example of Gandhi.

To objectors from all traditions, perhaps the common basis is that expressed in the commandment “Thou shalt not kill.” This rapidly expands from a refusal personally to take human life to a refusal to train and subsequently go prepared to take life. Thus the nearest to a universal description is that a conscientious objector is not prepared personally to bear arms.

For some this has been enough; they have been happy to accept unarmed military service, particularly in medical roles. Others rapidly came to the conclusion that by so doing they were simply freeing others to do more of the actual fighting. The prominent Quaker, Corder Catchpool, joined the new “Friends Ambulance Unit”, a volunteer body doing humanitarian work in the front line, early in the First World War. However, once conscription was introduced and many were imprisoned for refusing call-up, he came to feel that such witness was more important than performing “work which, pure in principle and intrinsically good as it is, would yet be done by the armies in our absence.”⁴

Most conscientious objectors, as a result of such considerations, have refused to accept any form of military service, or work – for instance in munitions factories – which contributes directly to the “war effort”. Some have extended this to a refusal of any form of participation in civil defence; symbolic rejection of any form of uniformed service has been widespread; at the extreme have been those who contend that the State itself is a war machine – such “total” or “absolute” objectors have therefore refused even any nominally civilian alternative service.

³ C.M. Braithwaite, *Conscientious Objection to Compulsions under the Law* (Sessions, York, England, 1995).

⁴ C. Catchpool, *On Two Fronts* (Headley Bros, London, 1918), p. 105.

By contrast, in the Second World War many British conscientious objectors served willingly as “fire-watchers” during air raids, and over 450 from the non-combatant corps volunteered for bomb disposal.⁵ Meanwhile in the United States many voluntarily took part in medical experiments, including a group who were starved to assist research towards the most effective way to give relief to famine-afflicted populations in immediately post-war Europe.⁶

An objection dictated by conscience does not necessarily entail a rejection of the rule of law – indeed, in so far as they are prepared to apply for exemption on such grounds, even those coming from an anarchist standpoint are submitting themselves to the rule of law. This implies a preparedness to accept any punishment which is deemed appropriate; just as some early conscientious objectors took a pride in subjecting themselves to risks or discomforts equal to those faced by persons performing military service, others vaunted the punishment they had to undergo, as proving their sincerity. The elevation of conscientious objection into a human right, however, makes any punitive or discriminatory treatment of conscientious objectors unacceptable, so that sometimes the punitive nature of alternative service provisions has itself been cited as a ground for conscientious objection.

An important distinction – although, it must be admitted, not one which would have been recognized as valid by many of those involved – may be made between arguments based on freedom of religion and on freedom of conscience.

Historical American concessions essentially concerned the freedom of religions, not of the individuals belonging to them. Exemptions were essentially on the basis of group identity. By contrast, and whatever their religious or philosophical background, most conscientious objection movements have been motivated by an opposition to war, of which minimizing their own participation is but an expression. They are not content themselves to be exempt; they would prefer that all refuse to serve.

This, however, does not apply to the most numerous category of contemporary conscientious objectors – the Jehovah’s Witnesses, who have no desire to interfere with what society outside their movement does; their concern is simply that their own members should not be forced to fight with “earthly weapons”, and they are satisfied if, for example, active members

⁵ <https://historicengland.org.uk/whats-new/features/blitz-stories/defending-the-home-front/>.

⁶ T. Tucker, *The Great Starvation Experiment* (Free Press, New York), 2006.

receive exemptions equivalent to persons in religious orders in other denominations.

2. Recognition at the national level

The Military Service Act of 27 January 1916, which introduced conscription in the UK, was the first to include a specific clause allowing application for exemption on account of “a conscientious objection to the undertaking of combatant service”.⁷

When the USA entered the First World War, conscription was imposed by the Act of 18 May 1917, which contained the clause that “nothing in this Act contained shall be construed to require or compel any person to serve [...] who is found to be a member of any well-founded religious sect or organisation [...] whose existing creed or principles forbid its members to participate in war [...]”.⁸ This wording owed more to the earlier American precedents than to the UK example, and indeed it was not until during the Viet Nam War that a reference to a belief in a “supreme being” was dropped from American legislation. Indeed, the USA continues to insist that it does not recognize conscientious objection to military service as an individual right, preferring to describe the accommodation of the beliefs of conscientious objectors as an “act of legislative grace”.

By the end of 1917, the UK and the USA were joined by Canada in introducing conscription with provisions for the exemption of conscientious objectors. Also Denmark, which had had conscription since 1848, introduced an Alternative Service Law on 13 December 1917, stating simply that “The Minister of Defence may exempt from military service persons who present valid evidence that their conscience forbids them such service. Such persons should be employed in civil duties for the State”.⁹

As might have been expected from the close association of conscientious objection with the growing movement of international socialism, one of the first results of the Russian Revolution was the release of all imprisoned conscientious objectors. When conscription into the Red Army was introduced, it was followed by successive decrees which had by the end of 1920 established exemption, either complete or on performance of alternative service, for all conscientious objectors. In subsequent years, the provisions were successively weakened, and they had vanished entirely by the 1939

⁷ D. Prasad and T. Smythe, *Conscription: A World Survey* (War Resisters International, London, 1968), p. 55.

⁸ Selective Service Act, 18 May 2017, Public law No. 12, 65th Congress, Section 4.

⁹ Prasad & Smythe, *op cit.*, p. 30.

Universal Military Service Law, this being justified on the grounds that there was allegedly no longer any demand. The Soviet Union thus has the regrettable distinction of being the only State in history which, having once made provision for conscientious objectors, subsequently renounced the right entirely.

During the First World War, the movement in the UK had been supplemented by, and those in the USA (both during the War and in the inter-war years) and Denmark largely driven by, the newly founded Fellowships of Reconciliation. These owed their inspiration to a conference of representatives of the peace committees of the European Protestant churches, which gathered at Konstanz in the last days of July 1914 in a doomed effort to halt the slide towards war. During the War, national Fellowships sprang up in a number of other countries – notably the German *Versöhnungsbund* – but none were successful in achieving legislation recognizing conscientious objection before 1919, when they united at a conference at Bilthoven in the Netherlands under the umbrella of the International Fellowship of Reconciliation (IFOR). Indirectly from the Bilthoven conference emerged another international organization which was to have a major continuing role in the conscientious objection movement – War Resisters’ International (WRI).¹⁰ In contrast to the firmly religious roots of IFOR (which maintains observer status with the World Council of Churches), WRI represents the secular, quasi-anarchist tradition of pacifism.

In 1920 also came the foundation by Swiss Quaker Pierre Ceresole of *Service Civil International*.¹¹ Many conscientious objectors pointedly availed themselves of this voluntary service scheme, which formed the blueprint for the alternative service provisions introduced in the inter-war years in the Netherlands, Sweden, Norway and Finland.

The outbreak of the Second World War brought not only the return of conscription in the UK, the USA and Canada, but its imposition for the first time in Australia and New Zealand, where very early conscription legislation with conscientious objection provisions had never been implemented in practice, even though large contingents from both had fought in the First World War. In 1940, Uruguay also promulgated conscription legislation which recognized conscientious objection.

¹⁰ See D. Prasad, *War Is A Crime Against Humanity: The Story of War Resisters’ International* (WRI, London, 2005).

¹¹ See C. Verrel, “Un long combat militant”, in *Cahiers de la Reconciliation* No. 1, 2013, pp. 17-19.

Up to this point the question (at least outside the USA) had not been discussed in terms of religious freedom, but in terms of resistance to war. Pragmatic provisions had been included in military recruitment legislation, to deal with the problem of those who might refuse orders once enlisted. In the early New Zealand legislation being Irish was treated as a ground of conscientious objection – the UK tackled the same perceived conflict of loyalties by never imposing conscription on any part of the island of Ireland.

The first wording which might be construed as implying a right of conscientious objection to military service came not in any international instrument, but in Article 4 of the 1949 *Grundgesetz* of the German Federal Republic. Both Germany and Austria when they eventually re-established armed forces included provisions for conscientious objectors.

By the end of the Second World War, conscientious objection to military service had been accepted in all States where the “historic peace churches” were strong. The focus turned on the one hand to campaigns for recognition in the majority-Catholic States of “southern Europe” – France, Belgium, Italy, Iberia – on the other to the introduction of the concept where it had hitherto been unknown – Greece, Turkey, Korea, Eritrea, Central Asia – by the evangelical activities of the Jehovah’s Witnesses. Everywhere, those imprisoned for the refusal of military service where conscientious objection was not recognized were overwhelmingly Jehovah’s Witnesses, but notable pacifists were also imprisoned in the course of campaigns for legislative recognition and a broad range of views were represented among those who applied to perform civilian service once the option became available.

In both France and Belgium repeated bills were brought forward from 1949 on. In France the long-promised conscientious objection legislation did not appear until after the world-wide publicity attracted by the hunger strike on which Louis Lecoin embarked in 1962, at the age of 74. Lecoin had first come to prominence in 1910, when as a soldier he had been imprisoned for disobeying orders to participate in putting down a national rail strike.¹² In Belgium, the case of Jean van Lierde, later to be a prominent supporter of the independence movement in the Congo, attracted wide attention. Convicted for the fourth time in 1952, he was sentenced to two years’ labour in the coal mines. In the face of the public reaction, the government relented the following year, and his sequence of prosecutions came to an end. In 1954, all imprisoned conscientious objectors were released and offered amnesty.

¹² M. Montet, “L’objection de conscience: une assurance sur la vie?”, in *Cahiers de la Reconciliation* No. 1, 2013, pp. 11-13.

Prosecutions however continued until an Alternative Service Law was passed in 1964.¹³

The first bill in Italy was also put forward in 1949, the year in which Pietro Pinna began a high-profile series of convictions, which eventually ended when he was declared unfit and discharged. Subsequently, a significant boost was given in 1963 by the campaign of Giuseppe Gozzini, who based his objection on his Catholic faith, and was supported by his priest. Although both were tried, the issue attracted the attention of the Second Vatican Council, which declared, "In present circumstances it seems equitable that the Law should consider humanely the cases of those who refuse military service for conscientious reasons."¹⁴ A law which made civilian alternative service available to all conscientious objectors was eventually passed in 1972.

Pepe Buena in 1971 led a walk from Geneva to Madrid to publicize his decision to refuse call-up into the Spanish army; only the seven Spaniards in the group were allowed to accompany him across the border. Recognition in Iberia had to await the post-dictatorship constitutions of the late 1970s, which were followed by implementing laws in Spain in 1984 and in Portugal in 1992.

In parallel with national campaigns, conscientious objection also began to attract increasing attention in what was to become the European Union, and in the Council of Europe. The importance of the 1967 resolution of the Parliamentary Assembly of the Council of Europe¹⁵, endorsed two decades later by the Council of Ministers,¹⁶ cannot be underestimated; it was on the basis of this that the Council of Europe demanded recognition of conscientious objection as part of the accession criteria for new members from Eastern Europe and the former Soviet Union. Similar pressure could unfortunately not be placed on the more recalcitrant of the existing Council of Europe members, Cyprus, which first introduced unarmed military service for conscientious objectors in 1992, Switzerland, which introduced civilian service only in 1996, Greece (1997), and Türkiye, which continues to hold out against any form of recognition.

Mention should be made of two *sui generis* situations which emerged outside Europe. In 1952, South Africa, then under the *apartheid* regime, introduced

¹³ Prasad & Smythe, op. cit., pp. 15-16.

¹⁴ Ibid., p. 79.

¹⁵ Resolution 337.

¹⁶ Recommendation R(87) 9, 8 April 1987.

obligatory military service for white males, with provisions for the exemption of conscientious objectors. This lasted until 1991. And in Israel, where, unusually, both men and women are subject to conscription, there has never been any legal recognition of conscientious objection, but a committee within the armed forces has functioned over the years in order to consider applications for exemption on grounds of conscientious objection. One feature common to both States was preparedness to consider only absolute pacifists, thus excluding the majority of conscientious objectors, who had selective objections to serving *apartheid* in South Africa or the occupation of the Palestinian territories by Israel.

Meanwhile international attention was seized by objection in the USA (and to a lesser extent in Australia and New Zealand) to the Viet Nam war. Despite the numbers of conscientious objectors during the two World Wars (very roughly 16,000 in the UK and 20,000 in the USA during the First World War; 60,000 and 100,000 respectively during the Second), as a proportion of those being called up this was minuscule – estimated in the USA as one in 600. Already the Korean War had seen a tenfold increase in this proportion; by 1970, half as many draftees were recognized as conscientious objectors as were actually inducted, by the following year two-thirds as many; by 1972 a majority – some 57% – were recognized as conscientious objectors. Many more evaded; as many as 50,000 may have fled abroad to avoid the draft, principally to Canada. The scale of objection not only contributed to the ending of the war, but also to the decision to suspend the draft.

In the years following the fall of the Berlin Wall, constitutional recognition spread fast in Eastern Europe and (with the exception of Turkmenistan) in the former Soviet Republics, followed by legislative provision sometimes after a considerable time-lag – a decade or more in Bulgaria, the Russian Federation, Armenia and Belarus. Azerbaijan stands out in that, even though the 1995 Constitution granted a right “to alternative service” this remains unimplemented at the time of writing, and despite previous judgements of the European Court of Human Rights a new imprisonment of a conscientious objector took place as recently as September 2022.¹⁷

In East Asia, Taiwan (not of course recognized by the United Nations) provided alternative service to conscientious objectors in 2000, followed two years later by Mongolia. Former Portuguese colonies – Angola, Mozambique, Cap Verde – recognized the right in Constitutions promulgated towards the end of the 20th Century – as did the Marshall Islands, which had

¹⁷ See F. Corley, *Azerbaijan: Conscientious objector jailing “very unexpected decision”*, Forum 18 News Service, 29 September 2022.

never had any armed forces. In Latin America, the right was recognized in Brazil (1988), Paraguay (1992) and Ecuador (1998). When Argentina suspended obligatory military service in 1994, this was accompanied by provisions allowing for the exemption of conscientious objectors should it be reinstated. In 2005, Bolivia agreed in a friendly settlement before the Inter-American Commission to “encourage, together with the Deputy Ministry of Justice, congressional approval of military legislation that would include the right to conscientious objection to military service”¹⁸ – an undertaking which, unfortunately, it has yet to honour.

While the number of States worldwide recognizing conscientious objection has grown, so the number actually implementing conscription has shrunk. In 1963, the year when France and Luxembourg first introduced conscientious objection provisions, the last British conscript was demobilized. Luxembourg abolished conscription in 1967, Belgium suspended it in 1992, the Netherlands and France in 1997. In Spain, some 2,000 “insumisos” accepted call-up, but then remained in barracks, refusing all orders. This hastened the abandonment of conscription in 2002, in which year Aganiz felt able to write of “The European farewell to conscription?”¹⁹. Further States followed each year until 2010, when both Germany and Sweden suspended conscription; the number of States where conscription was accompanied by conscientious objection provisions, having peaked at about thirty, was halved.

In general, this was driven not by any difficulty in finding willing conscripts, but by a new trend towards the “professionalization” of armed forces. No longer dependent so much on manpower numbers as on advanced technology, they wanted more highly-trained personnel, committed for a longer period than the traditional length of conscript service. The desire to cling to conscription was more marked among politicians concerned about “national unity” or “social cohesion” than in the military itself.

For a short time, it seemed as though the anti-militarist movement could cease to argue for a right of conscientious objection, but instead turn its attention to reversing the logic first expressed in the European Convention on Human Rights,²⁰ by arguing that military service itself constituted forced labour. More recently, however, the trend has reversed. At the end of 2013, Ukraine ended military conscription, only to reimpose it after the events of early 2014.

¹⁸ Inter-American Commission on Human Rights: Report no. 97/05, petition 14/04, friendly settlement, Alfredo Díaz Bustos – Bolivia, 27 October 2005, para. 16, I, e.

¹⁹ In L. Mjoset and S. van Holde, *The Comparative Study of Conscription in the Armed Forces* (Elsevier, Amsterdam, 2002), pp. 307-336.

²⁰ See Article 4(3).

Lithuania, and later Sweden soon reinstated a form of conscription, to be followed most recently by Latvia, and in the renewed international atmosphere it was discussed in a number of other States. A change of government in Georgia meant that its suspension of conscription was as short as had been Ukraine's. Elsewhere, Kuwait and Morocco have also brought back conscription and the United Arab Emirates have introduced it for the first time.

The rate at which new States have recognized conscientious objection to military service has slackened since the first decade of the present century. This perhaps reflects that the easy fruit had already been picked. Each of the recent individual advances has however been of major international significance, and has also, in a new development, involved active engagement by coalitions of international NGOs, over and beyond their traditional role in facilitating international solidarity.

This was first seen with regard to Colombia. The State, relying on successive rulings of the constitutional court, had insisted in the face of recommendations from the UN Human Rights Committee²¹ that the obligation to defend the country overrode the guarantee of freedom of religion or belief in a different article of the Constitution. Eventually, following a petition from the *Asociacion Colectiva de Objetores y Objektoras de Conciencia*, advised and supported by the *Universidad de los Andes*, the constitutional court overturned its previous jurisprudence in Decision 728 of 2009, which established that conscientious objection to military service was protected by the freedom of conscience clause in the Colombian constitution, and also by Colombia's international obligations, particularly as a party to the International Covenant on Civil and Political Rights. The Court called upon the National Assembly to bring in within two years legislation establishing an alternative civilian service for conscientious objectors – a recommendation which was belatedly followed in 2017. Meanwhile, the court asserted, individual conscientious objectors could assert the right by means of a tutela action. This option was harder to implement in practice than in theory, particularly given the persistence of the illegal forced recruitment practices known as *batidas*, which meant that often the right could be asserted only in retrospect.

There was no provision for non-national organizations to intervene in the Colombian Constitutional Court, but during the preparation of the petition

²¹ CCPR/CO/80/COL, 26 May 2004, para. 17.

WRI, the Quaker UN Office²² and Conscience and Peace Tax International gave much encouragement and gathered together background information about developments in State practice and, crucially, upon the evolution of the jurisprudence of the UN Human Rights Committee on the issue. This was useful spadework when the next challenge emerged in the very month of Decision C-728, namely the Chamber decision of the European Court of Human Rights in the case of *Bayatyan v Armenia* which decided that there had been no violation of the freedom of thought, conscience and religion.

In an expanded, weightier, coalition with Amnesty International and the International Commission of Jurists, the three NGOs obtained permission to submit an amicus brief for the appeal in the Grand Chamber. This document was quoted extensively in the Judgement²³ in which the Court, reversing its previous jurisprudence, found a violation of Article 9 of the European Convention (freedom of thought, conscience and religion). This judgement, followed by similar cases, was influential in persuading Armenia to establish a genuine civilian service for conscientious objectors, which it eventually did in 2013.

The same coalition²⁴ was assembled to intervene, through the good offices of Amnesty Korea, in a series of cases being brought by the Jehovah's Witnesses to the Constitutional Court of the Republic of Korea, which had become certainly in numerical terms the major violator in the world of the rights of conscientious objectors. Since the 1950s, over 18,000 Jehovah's Witnesses, joined by an increasing numbers from other churches and of secular objectors, had suffered long terms of imprisonment for their refusal of military service, while the constitutional court, even in the face of repeated recommendations and a growing body of jurisprudence from the UN Human Rights Committee, had continued to take a line similar to that of its Colombian counterpart. These cases were eventually decided in 2018, with, as in Colombia, a recommendation to the legislature that it provide a civilian alternative service for conscientious objectors, the first attempt at which came in 2019.

²² The Quaker UN Office has a policy of not intervening on individual country situations lest this have negative effects for in-country Quakers. It did however feel able to participate in these interventions where its role related to the assembly in international jurisprudence.

²³ Application No. 23459/03, Grand Chamber Judgment of 7 July 2011.

²⁴ Except that the International Fellowship of Reconciliation took the place of Conscience and Peace Tax International.

This latest “triumph” for the recognition of conscientious objection nevertheless contains a chilling warning of the challenges remaining, as will be discussed in the next section.

So what is the current situation? On the surface, the right of conscientious objection to military service appears to be universally recognized. For more than thirty years, resolutions on the subject at the UN Human Rights Council and its predecessor the Commission on Human Rights have been adopted without a vote. Costa Rica, which abolished its armed forces in 1949, has been one of the core sponsors of Human Rights Council resolutions despite having no domestic provisions. Other States in a similar situation – Andorra, Honduras, Liechtenstein, Mexico, Panama, San Marino – have co-sponsored resolutions. In all, over 70 UN Member States, and a number of *de facto* authorities²⁵ have, in word or deed, expressed support for the right.

This still represents a minority of UN members. However, it must be borne in mind that a majority of States have never had, or are no longer enforcing, conscription, so face the issue only in the relatively rare cases where serving members of the armed forces develop conscientious objections. A number of States have no armed forces at all.²⁶ In many others, conscription is far from universal. In much of Africa, for instance, the nominal provisions inherited from French colonial rule apply only to men with relatively advanced educational qualifications, and include an element of development service (former British colonies, in Africa and elsewhere, have generally inherited a tradition of volunteer armed forces). Elsewhere, although conscription nominally persists, the annual needs of the military are far smaller than the number of potential conscripts, meaning that in practice only those who are willing to volunteer have been called up. The *Vera et al v Chile* case in the Inter-American system²⁷ was dismissed mainly because of the unlikelihood that the complainants would ever actually be called up.

In many other States, the issue has simply not arisen. Sometimes the repression of the freedom of thought and conscience is simply too all-pervasive. But elsewhere the thought of refusing, rather than simply evading, military service may not have occurred to anyone. As already observed, conscientious objection can emerge only where there is a concept that the individual can challenge the State. In history this idea has crossed national borders at least as often as it has emerged spontaneously. Briefly, during the

²⁵ See above [chapter 9](#) by Michael Wiener and Andrew Clapham.

²⁶ C. Barbey, *Non-Militarisation: Countries Without Armies - Identification criteria and first findings* (Alad islands Peace Institute, Finland), 2015.

²⁷ Case 12.209, Judgement of 10 March 2005.

2010 Arab Spring, the concept seemed to be taking hold in Egypt. The “No Conscription” movement is still active there, but few individual objectors have come forward, and there is no sign of any legislative accommodation.

The number of States in which the right has been asserted but is still actively denied – meaning that conscientious objectors know that they face at least the possibility of imprisonment – is very small. As well as Egypt, Türkiye, Azerbaijan and Turkmenistan have already been mentioned. Singapore continues to imprison a fluctuating number of Jehovah’s Witness objectors, reaching as many as thirty in some recent years. Then there is Eritrea, which after gaining independence in 1993 has imposed indefinite military service on men and women alike – and indefinite terms of imprisonment on those Jehovah’s Witnesses brave enough to declare themselves as conscientious objectors. Many more of their countrymen have escaped military service by fleeing abroad.

Türkiye has in recent years avoided imprisoning conscientious objectors, preferring to impose repeated fines. This non-imprisonment must be welcomed, however, it remains the classic instance where conscientious objectors can suffer what the European Court of Human Rights has labelled “civil death”,²⁸ because the requirement to perform military service and therefore the liability to prosecution and the restriction of rights persist irrespective of the number of successive punishments imposed.

3. The nature of provision

At different paces and at different times, the provision in States for conscientious objectors has followed a pattern of gradual liberalization, both in terms of who may be accepted and of the conditions attached.

At first, usually, only objectors on religious grounds are accepted. Often recognition is restricted to members of a few named denominations.²⁹ When the possibility of recognition is later extended also to those with moral or ethical objections, it has usually been subject to hostile interrogation by a military tribunal (which may eventually be replaced by a civilian body). Reports of the questions asked by such a tribunal from different dates and cultures are remarkably similar. “What would you do if a German/Turk/Arab was about to rape your sister?” is a favourite. Tellingly, the membership of

²⁸ European Court of Human Rights, *Ulke v Turkey*, Application No. 42730/05, Judgement of 24 January 2006.

²⁹ For instance, 10 in the case of Ukraine.

such tribunals has often included a psychiatrist, reflecting perhaps a military prejudice that conscientious objection is at heart some sort of mental disorder.

Only eventually did some States – by no means all – accept the inherent impossibility of reading, let alone assessing, another person’s conscience and have moved to the acceptance “without enquiry” of declarations of conscientious objection.

Other, sometimes arbitrary, limits on eligibility may be imposed. Some States have for example ruled that persons who have ever held a firearms licence, even for sporting purposes, or been members of a hunting association, cannot be recognized as conscientious objectors.

Then there is the question of alternative service. Although the requirement that conscientious objectors perform some sort of alternative service has been the norm, it has never been universal. Under the initial UK legislation, even while many of those recognized as conscientious objectors were sentenced to hard labour in prisons, others received complete exemption. In Israel, the decisions have either been a sentence of imprisonment or complete exoneration from all national service obligations. In Norway, difficulties in finding enough alternative service placements eventually led to the decision to abolish the requirement.

But when initially established, both unarmed military service and civilian service for conscientious objectors were typically of a duration significantly greater than that of armed military service. There could be other discrimination, for instance in remuneration or (as in Greece or the Russian Federation) with regard to where the service might be performed. Often an attempt was made to justify discrepancies in duration by the restrictions (e.g. confinement to barracks) associated with military life, even when many alternative service placements entailed similar restrictions. Sometimes, as for some years in Armenia, conscientious objectors found that nominally civilian service was taking place in military institutions, under military command, in uniform, and even receiving military rations. Again, best practices eventually emerged where the conditions of the different services were effectively equalized.

But this does not happen immediately. The newly-introduced provisions in the Republic of Korea, for example, replace what had become invariable prison sentences of eighteen months with “alternative service” of exactly twice the length, also to be performed in “corrective institutions”. Conscientious objection is no longer formally criminalized, but most would

consider that the new conditions are otherwise more punitive than what went before.

Usually, the passage of time has revealed a steady liberalization, but sometimes there have been temporary set-backs, when for instance the duration of alternative service has not been expressed in relation to that of military service so that it has not immediately reflected shortenings in the latter. Also, sometimes, there has been a trade-off, as in Austria where in 1996 the acceptance without enquiry of claims was accompanied by an increase in duration of alternative service – in effect substituting a test of willingness for the theoretical examination of motives.

Sometimes, too, there has been political pressure to make alternative service less attractive. A succession of such proposals have been brought forward in Switzerland in recent years. Although it is argued in favour of such proposals that they are often justified in terms of not weakening the military, such a claim is hard to reconcile with the relatively small proportion of those eligible who are actually called upon to serve. It seems more to reflect a feeling that anti-militarist attitudes are themselves somehow socially destructive. This points the way to the big challenge which lies beyond all question of legal measures – to obtain social acceptance of conscientious objection.

There is still a long way to go before conscientious objection is fully “normalized”. Most societies treat persons as normal irrespective of the way they vote, where and how they worship, whether or not they drink, smoke, or eat meat. But all too often conscientious objectors still seem to be held apart – in some way stigmatized. Particularly in wartime, the initial tendency to stigmatize all objectors as traitors or cowards was to some extent countered by the instances of those who, in tasks such as bomb disposal, showed themselves willing to accept dangers at least as great as faced by those on active military service. In post-war Germany the initially negative popular opinion was reportedly reversed after a sympathetic conscientious objector performing alternative service became a stock character in TV hospital dramas. By the time conscription was abolished in Germany, more persons annually were performing alternative service as conscientious objectors than military service – and the potentially catastrophic consequences for the health service were often used as an argument against abolition. Conscientious objection had arguably become the norm.

As long as conscientious objection is seen to be a foible of esoteric religious cults, or as some sort of psycho-social disorder, it does not matter how generous the provisions; these are simply an act of toleration. As long as the conditions of conscientious objectors remain discriminatory as compared

with those of military service; as long as not having performed military service has lasting effects on their ability to function as members of society, they remain stigmatized as somehow less than full members of society.

4. Expanding the focus

The international protection which conscientious objection has so far received has usually been with regard to military service, although conscientious objections have been claimed in various other directions, to compulsory vaccination, to the taking of oaths,³⁰ to singing the national anthem or saluting the flag,³¹ to abortion,³² to gay marriage,³³ or to joining a hunting association.³⁴

Objection to military service has been expressly justified with reference to the obligation to use lethal force, which impinges on the right to life, which must by definition underpin all other human rights, and the most nearly universal moral edict, “Thou shalt not kill”. In general, this does not apply to other conscientious objections, arguably with the exception of objection to carrying out an abortion. This particular objection however tends to manifest in ways which raise other issues. It seems reasonable that no individual with strong conscientious objections to abortion should be obliged to carry out or assist with an abortion, but should this extend to obstructing others from doing so? Conscientious objectors to military service do not gain the right to demand that no one else may enlist, providing no precedent for any right of hospital workers who are not directly involved to insist on an “institutional” conscientious objection.

How far may the concept of conscientious objection to military service be extended? In principle, although much more rarely in practice, the protection has been extended to “selective” objection to certain types of military action or the means used (imposition of *apartheid*, wars of aggression, service in an

³⁰ C.M. Braithwaite, *Conscientious Objection to Compulsions under the Law* (Sessions, York, England), 1995.

³¹ Summary Records, Second Periodic Report of Zambia under the International Protocol on Civil and Political Rights, CCPR/C/SR.1489, paras. 23-40.

³² See for example Parliamentary Assembly of the Council of Europe, resolution 1763/2010, The Right to Conscientious Objection to Lawful Medical Care.

³³ European Court of Human Rights, *Eweida and others v UK*, Applications nos 48420/10, 36516/10 and 59842/10, Judgement of 15 January 2013.

³⁴ European Court of Human Rights, *Herrmann v Germany*, Application no. 9300/07, Judgement of 26 June 2012.

army of occupation, even to military service under the cover of a “nuclear umbrella”³⁵).

What about indirect contribution to the “war effort”? The principle that any alternative offered to conscientious objectors should be consistent with the nature of the objection has been accepted to apply to unarmed military service. In response to a large number of refusals, the Russian Federation abandoned the objector placements in munitions factories which had initially taken place under the 2004 Law. Civilians in Belgium and the United Kingdom have likewise successfully resisted rulings that they were no longer eligible for unemployment benefit because they had refused posts in armaments factories.

An interesting case was that of the “Motherwell Two”, engine drivers at the EWS rail depot in Motherwell, Scotland, who in January 2003 refused to take a train load of munitions on the narrow single-track West Highland Line to Loch Long for loading on to the aircraft carrier *Ark Royal* in preparation for the invasion of Iraq. As few drivers are trained to operate that line, they were successful in forcing the shipment instead to be transported instead piecemeal on inadequate roads. No disciplinary action was taken, the drivers themselves sought no publicity, and every attempt was made to hush up the story, which emerged only when a journalist got wind of the road convoys and investigated.³⁶

The most obvious extension of the concept of conscientious objection to military service is however in the field of taxation. As historically it has usually been to fund military expenditures that taxes have first been levied, there are ancient precedents. Canonized in 1220 for his refusal as Bishop of Lincoln to pay taxes to fund the French wars, St Hugh is now regarded as the patron saint of the peace tax movement.³⁷ Gross³⁸ traces the modern tax resistance back to the revolt against Charles I’s “ship money” which led to the English Civil War of the mid-17th Century. However, on that occasion

³⁵ According to an amendment made in 1990 to the relevant Norwegian law, beliefs “related to the use of weapons of mass destruction as they might be expected to be used in the present day defence” may be seen as a legal ground for conscientious objection.

³⁶ War Resisters’ International, CO Update No. 93, January-April 2017.

³⁷ A. Harang, *Peace Tax 2010: the issue, the history, the movement* (Norwegian Peace Tax Alliance, 2010), p. 9, quoting H. Meyr-Harting et al., *St Hugh of Lincoln* (Clarendon Press, Oxford, 2002).

³⁸ J. Dowell, “John Hamden and the Ship Writs”, in Gross, D. (ed) *We Won’t Pay: A Tax Resistance Reader*, published privately 2008, ISBN1434898253, pp. 9-16.

the revolt was not against the use of the tax to raise a navy, but against the King's circumventing Parliament in order to do so.

Ironically, but perhaps appropriately, it was however against those who coined the slogan "no taxation without representation" that "war tax resistance" first came into prominence. Quakers corporately refused to pay the taxes imposed to pay for the American Revolutionary War,³⁹ and they were joined by members of the other "historic peace churches" – many Mennonites and some Brethren. Property was seized and auctioned, and many were jailed.⁴⁰

Nevertheless, it was a non-pacifist, Henry David Thoreau, who established himself as the prophet of the modern war tax resistance movement with his pamphlet "Resistance to Civilian Government (Civil Disobedience)"⁴¹ where he wrote about his experience of imprisonment in 1845 for refusing to pay the poll tax levied in Massachusetts for the Mexican-American war.

Throughout the 19th century, many Quaker Yearly Meetings in the USA continued nominally to support war tax resistance, but the issue was almost forgotten until 1941, when a specifically-named "Defence Tax" levy of 10% was added to income tax in the USA. A number of organizations, including the Women's International League for Peace and Freedom and the (Quaker) American Friends Service Committee, called for a recognition of conscientious objector status for taxpayers. Few however actually resisted; until the Viet Nam war only six war tax refusers were imprisoned, all of them nominally for contempt of court.⁴²

Once again, it took not just a war, but a deeply unpopular war, to spark widespread tax refusal. An inestimable boost was given to the movement when just before tax day 1964 the singer Joan Baez announced that she was withholding 60% of her (not inconsiderable) tax bill for 1963 in protest at the war. Initiatives and supporters mushroomed, the emphasis generally being on practical measures to deprive government of revenue, rather than asserting any freedom of conscience right, although the latter soon followed. Taxes specifically earmarked for military purposes have always attracted more opposition; thus it is estimated that between 200,000 and 500,000 persons

³⁹ A splinter movement, "The Free Quakers of Philadelphia" who actively supported the Revolution, was "disowned".

⁴⁰ R. Benn and E. Hedemann (eds), *War Tax Resistance: A guide to withholding your support from the military* (War Resisters League, New York, 2003, fifth edition), op cit., p. 73.

⁴¹ Reprinted in Gross, op. cit., pp. 190-206.

⁴² Benn and Hedemann, op. cit., p. 74.

refused to pay the earmarked telephone tax whereas by the end of the war perhaps 20,000 were withholding some or all of their income tax.⁴³

It so happened that the embroilment of the USA in the Viet Nam war coincided with the end of conscription in the United Kingdom. While there was no longer an opportunity to take a stand of conscientious objection against conscription into military service, some were quick to point out that all were arguably being conscripted into paying for military expenditure, so the possibility of taking a stand of conscientious objection was open to all. In 1964, Quakers in Kent brought to the Society of Friends nationally an appeal for a legal right of conscientious objection to the conscription of income “for what they regarded as immoral purposes, contrary to the Spirit and teaching of Christ”, pointing out that modern war required large sums of money rather than large armies.⁴⁴

Meanwhile, resistance in Switzerland, particularly before there was any recognition of conscientious objectors to military service, was focused on the special military exemption tax which had to be paid by all men of the liable age who did not perform military service in any particular year. This system has subsequently twice been criticized by the European Court of Human Rights as discriminatory, but in cases which did not involve opposition to military expenditure as such.⁴⁵

The movement appears to have suddenly “gone global” at the beginning of the 1980s. In the UK, “Conscience – the Peace Tax Campaign” was founded in 1980, followed over the next three years by national campaigns in Australia, Belgium, Canada, Germany (*Netzwerk Friedenssteuer*), Italy, the Netherlands, New Zealand and Spain. Campaigns in France, Japan and Switzerland were already underway. The first of the ongoing sequence of International Conferences of War Tax Resisters and Peace Tax Campaigns took place in Tübingen, Germany in September 1986; in 1994, the decision was taken to found Conscience and Peace Tax International (CPTI) to lobby on the issue at the international level.

It might be generalized that in Europe and other parts of the world the tax objection movement has largely been distinguished from the American antecedents by seeking legal recognition of a means to object, and even in “peacetime”, rather than seeking to deny funding for an unpopular war. That

⁴³ Ibid., pp. 75-76.

⁴⁴ C. Evans, *The Claims of Conscience: Quakers ad conscientious objection to taxation for military purposes* (Quaker Home Service, London, 1996), p. 29.

⁴⁵ *Glor v Switzerland*, 2009; *J. Ryser v Switzerland*, 2021.

said, it was in the USA that the first attempt at legislation was made in 1972 in the Bill brought forward by Congressman Ronald Dellums, “the World Peace Tax Fund Act”; a similar Bill was brought forward in the Senate by Senator Mark Hatfield in 1975. The National Campaign for a Peace Tax Fund was founded to support these efforts, and with its assistance bills have been brought forward in each subsequent Congress, for many years by the late Senator John Lewis of Georgia, former ally of Martin Luther King.

In 1986, Bills were put forward in the Parliaments of Belgium, Germany and the UK to allow conscientious objection to the payment of taxes for military expenditure. These were followed by Bills in Australia, the Netherlands and Italy (all 1989), Canada (1999), Norway (2000) and Spain (2005). In many cases, the attempt at legislation has – so far – been one-off, but in Belgium for many years and still in the United Kingdom and Germany, bills are put forward at regular intervals.

The first attempt to appeal such a case internationally was by Tony Croft⁴⁶ in the case of *C v UK* under the European Convention on Human Rights. The then Commission found the case inadmissible, as it did in 1986 in a case concerning the agreement of Quaker Peace and Service to withhold taxes on behalf of Quaker staff.⁴⁷ In *C v UK*, the Commission found “The obligation to pay taxes is a general one which has no specific conscientious implications in itself. Its neutrality in this sense is also illustrated by the fact that no tax payer can influence or determine the purpose for which his or her contributions are applied, once they are collected.”⁴⁸ In 2013, the European Court itself declared inadmissible the appeal from the Peace Tax Seven by reference to the decision of the Commission in *C v UK*.

In 1991, a Canadian Quaker doctor, Jerilynn Prior, was the author of a communication to the UN Human Rights Committee. This case was likewise deemed inadmissible by the Committee: “Although article 18 of the Covenant certainly protects the right to hold, express and disseminate opinions and convictions, including conscientious objection to military activities and expenditures, the refusal to pay taxes on grounds of conscientious objection clearly falls outside the scope of protection of this article.”⁴⁹

⁴⁶ This and other cases were anonymized in the official reports, but widely publicized by the complainants themselves.

⁴⁷ Evans, *op cit*.

⁴⁸ European Commission of Human Rights, Application no. 10358/83, Admissibility decision of 15 December 1983.

⁴⁹ *J.P. v Canada*, Communication No. 446/1991, Decision of 7 November 1991.

This precedent was followed in dismissing two further communications brought to the Committee, *JvK & CMGvK v Netherlands*⁵⁰ and *KV & CV v Germany*⁵¹. In the second, the case was further inadmissible on the grounds that the facts concerned a date before Germany had acceded to the Optional Protocol which grants the right of individual communication under the Covenant. Had it been considered on its merits, would the fact that it came subsequent to General Comment no. 22 have made any difference?

Certainly the upsurge of activism on tax objection around the turn of the century was boosted by the progress which was being made at the time with regard to the recognition of a right of conscientious objection to military service. However, arguments for the expansion of that recognition into the field of taxation were logical and theoretical only, whereas the advances with regard to military service had been carried forward by substantial and continuing developments in State practice, to which context General Comment no. 22 itself pointedly refers. By contrast, there is not a single instance of a precedent in national practice with regard to tax objection.

In terms of expanding the logic of the concept, as in the geographical extent of effective provision, perhaps the willingness of States currently puts a brake on the progress which can be made on the basis of the recognition of conscientious objection to military service under the freedom of religion or belief. Perhaps, therefore, it is time to explore the possibility of alternative approaches. The final section of this chapter makes a number of suggestions in this respect.

5. Expanding the scope of recognition

There is little challenge to the growing orthodoxy that the right of conscientious objection to military service is protected under the freedom of thought, conscience and religion. The right is almost universally recognized, even if there remain gaps in implementation and in the scope of the recognition.

This categorization, however, was by no means a foregone conclusion. In the drafting of the European Convention and the International Covenant on Civil and Political Rights, objection to military service might well have been mentioned instead under the right to life, and indeed the only actual reference in these texts was confusingly in the section relating to forced labour. Had the relevant articles on freedom of religion or belief not contained a specific

⁵⁰ Communication No. 483/1991, Decision of 23 July 1992.

⁵¹ Communication No. 568/1993, Decision of 8 April 1994.

reference to “conscience” in their titles, the link to the subsequent development of interpretation would have been far harder to establish.

As there does not currently seem to be much scope for further expansion of recognition in State practice, perhaps it is time to search for other avenues to advance the right. Over the years there have been some successes, and some failures, in this respect, and a number of openings for further progress suggest themselves.

It should not, for example, be forgotten that the first explicit acknowledgement by the United Nations of conscientious objection to military service was in the 1979 General Assembly resolution which called upon members to grant asylum to conscientious objectors refusing to serve in armed forces enforcing *apartheid*.

One obvious avenue, which has not however so far yielded any result, is the right to life. In 2019, the Human Rights Committee published its General Comment no. 36 on the right to life. Submissions to the Committee during the drafting process from Friends World Committee for Consultation (Quakers) and from the International Fellowship of Reconciliation argued unsuccessfully that the right should be interpreted as including a right to refuse orders to take life, whether in the context of military service or judicially.

More success has been recorded where military service impinges on specifically protected groups. This gives a substantive opening, for example for the Committee on the Elimination of Discrimination Against Women which called for a recognition of the right of conscientious objection in successive Concluding Observations on Periodic Reports from Eritrea,⁵² where women as well as men are subject to universal conscription.

Children are more comprehensively protected against any military recruitment by the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (CRC-OPAC). However, given their stage of intellectual, spiritual and emotional development persons who volunteer for military service as children (which CRC-OPAC sadly does not ban) might be expected to be unusually prone subsequently to develop conscientious objections, and their ability to leave without undue enquiry ought to be defended, and in for instance Israel and Russia the deadlines for applying for recognition as a conscientious objector

⁵² CEDAW/C/ERI/CO/5, 12 March 2015, paras. 9-10. CEDAW/C/ERI/CO/6, 10 March 2020, paras. 10-11.

and the sort of evidence required means that preparation must in practice start from the age of 16, which seems unreasonable.

With the solitary exception of the Ibero-American Convention on the Rights of Youth, there is no normative protection of youth rights, but given that military service overwhelmingly involves the young, the question of conscientious objection has intermittently been raised in this context. For instance, in 2018, the UN High Commissioner for Human Rights identified conscientious objection to military service as one of five areas of “challenges and discrimination against youth”⁵³ and during the same year the General Assembly of the European Youth Forum of the Council of Europe adopted a comprehensive resolution on the Right to Conscientious Objection to Military Service in Europe, which calls upon all member organizations to promote conscientious objection as a youth right.⁵⁴

In recent years, an increasing number of conscientious objectors have openly identified as LGBTIQ. In this area, international standards are developing rapidly. Nevertheless, to date this does not appear to strengthen the cause of conscientious objection to military service; many report that they suffer more discrimination on the basis of their gender identity than of their conscientious objection.

In other contexts, it has been found that a failure to recognize a right of conscientious objection to military service may in itself lead to violations of other rights. Having already ruled that the refusal of a second or subsequent call up to military service might amount to repeated punishment for the same crime “if such subsequent refusal is based on the same constant resolve grounded in reasons of conscience”, thus breaching the principle of *ne bis in idem*, protected under Article 14 of the International Covenant on Civil and Political Rights⁵⁵ (a position subsequently endorsed by the Human Rights Committee),⁵⁶ the UN Working Group on Arbitrary Detention has found that in the case of a conscientious objector even the first detention was arbitrary, as arising directly from the exercise of a Covenant right. Conscientious

⁵³ A/HRC/39/33, paras. 53-56.

⁵⁴ See “EBCO welcomes the Resolution on the right to conscientious objection to military service in Europe adopted by the General Assembly of the European Youth Forum”, available at: <http://www.ebco-beoc.org/node/439>.

⁵⁵ Opinion No. 24/2003 (Israel), 28 November 2003, reported in E/CN.4/2005/6/Add.1.

⁵⁶ General Comment no. 32, 23 October 2007, para. 54.

objection to military service may also lead directly to violations of the right of freedom of movement⁵⁷ and freedom of expression.⁵⁸

Economic and social rights may also be engaged. In 2000, the Quaker Council for European Affairs submitted to the European Committee of Social Rights a “collective complaint” against Greece, under the Social Charter of the Council of Europe. The Committee found that the duration of alternative service, compared with that of military service, constituted a disproportionate restriction on “the right of the worker to earn his living in an occupation freely entered upon”, and thus violated Article 1.2 of the Charter.⁵⁹ The situation of conscientious objectors to military service has not hitherto been addressed under the International Covenant on Economic, Social and Cultural Rights (ICESCR), but the nature of the alternative service introduced in the Republic of Korea in 2019 begs a challenge under that Covenant and under the right to a family life. Specifically open to challenge under the right to education have been the rules in many States which have prevented from graduating at the end of university studies men who cannot present proof that they have satisfied the military service requirement. No formal challenge has been made on such grounds under the ICESCR or to the Special Rapporteur on the Right to Education, but success was achieved domestically in Colombia when – after several years of campaigning – Julián Ovalle Fierro and Diego Carreno were successful in challenging through the courts for the right to obtain their university degrees despite never having received the *libreta militar*.⁶⁰

Then there are the perspectives from religious communities and faith-based organizations. It is wrong to think that because conscientious objection to military service can be portrayed as a religious freedom issue that all churches will be sympathetic. In fact, until the Second Vatican Council (1962-1965), the Roman Catholic church actively campaigned against it, even in nominally secular States, such as France. The Orthodox churches, likewise, have tended to maintain that their members cannot be conscientious objectors – and unlike

⁵⁷ European Court of Human Rights, *Ulke v Turkey*, Application No. 42730/05, Judgement of 24 January 2006. UN Human Rights Committee, *Petromelidis v Greece*, Views of 2 July 2021, CCPR/C/132/D/3065/2017.

⁵⁸ European Court of Human Rights, *Ulke v Turkey, No.2*, Application no. 2458/12, Judgment of 15 November 2016.

⁵⁹ European Committee on Social Rights Decision on the Merits, Complaint 8/2000, published in 2001. (The immediately previous decision of the Committee, also against Greece, had found that the provision refusing trained career officers permission to resign their Commissions for twenty-five years violated the same article; although this does not directly relate to conscientious objection it obviously bears on the situation of a professional soldier who develops conscientious objections during service.)

⁶⁰ See above the [chapter](#) by Julián A. Ovalle Fierro.

the Roman Catholics, the Orthodox Churches are members of the World Council of Churches (WCC). Other churches may resent what they see as preferential treatment for evangelical pacifist sects, which might be seen as competing with them for members.

The closing declaration of the Kingston conference, which ended the WCC's "Decade to overcome Violence", nevertheless included a strong endorsement of conscientious objection to military service, and even of tax objection; this was subsequently reflected in a Minute of the Central Committee. Attention switched to the forthcoming General Assembly, which was to take place in Busan, Republic of Korea, in November 2013. Of course it was desirable that the WCC's support for conscientious objection be endorsed by the General Assembly; that this would take place in the Republic of Korea was simultaneously an opportunity and a challenge. The flourishing, largely evangelical churches in the country where Christianity is advancing most rapidly tend to be strongly committed to the State's military response to the partition of the peninsula. The fact that Jehovah's Witnesses are so prominent among conscientious objectors simply reinforces the prejudice against them and the identification of the mainstream church with military service. In the event, conscientious objection to military service was mentioned in three of the four "statements adopted as part of the report of the Public Issues Committee" (the exception was the declaration on statelessness). Concerns about offending the host country had led to considerable reluctance to mention the issue in the statement on peace and reunification of the Korean peninsula. As a compromise, a minute of dissent was attached to the adopted text, signed not only by the representatives of the "historic peace churches" but by a number of individuals from other delegations, including one brave Korean Methodist, and by the entire Evangelical Church in Germany, reading: "The following delegates and entire delegations wished to register their dissent that the statement does not include a concern of special relevance to the Korean peninsula, namely the plight of conscientious objectors to military service."⁶¹

The engagement of the World Council of Churches continues. The following WCC Assembly, which took place in Karlsruhe, Germany in September 2022, built on this, adopting a declaration drafted by the Public Issues Committee which *inter alia*: "Denounces every instance of the violation of

⁶¹ For a fuller account of the issue at the World Council of Churches, see the newly-published "Ecumenism and Peace: from Theory and Practice to Pilgrimage and Companionship" (Gelassenheit Publications and World Council of Churches Press, August 2022), by Fernando Enns, Mennonite member of the WCC Central Committee and co-ordinator of the Peace Churches group which was responsible for drafting the Minute of Dissent.

freedom of religion or belief, and affirms the freedom of religion or belief for all people of faith and people of no faith everywhere, and the right of conscientious objection, for a peaceful world.”⁶²

And then of course there is the Human Right to Peace. It is frustrating how the right of conscientious objection to military service, which had been firmly included in the civil society texts of the Luarca and Santiago Declarations, was the first thing to be, by the unanimous agreement of States, edited out in the negotiations which led to the final declaration as adopted by the General Assembly in 2016. It should not be suggested that progress on conscientious objection to military service as an aspect of freedom of thought, conscience and religion has gone as far as it might, and certainly it is essential to maintain the status it has already achieved under that right. But perhaps the lack of substance achieved in the 2016 Declaration on the Right to Peace is a blessing in disguise. Might the open page which it provides perhaps be the space on which can be written the next leap forward and broadening of the applicability of the concept?

⁶² “The Things that Make for Peace: Moving the World to Reconciliation and Unity”, Document PIC 01.3 rev, available at <https://www.oikoumene.org/sites/default/files/2022-10/ADOPTED-PIC01.3rev-The-Things-That-Make-For-Peace-Moving-the-World-to-Reconciliation-and-Unity.pdf>.

VOICE: Robin Brookes

“In 2003, our country declared war on Iraq. The reason for doing this was founded on shaky intelligence and the thinly veiled desire of UK Prime Minister Tony Blair to ingratiate himself with the US President George W. Bush. As I watched them wind up for the war, it was immediately clear to me that I could not be involved and in fact had a moral duty to resist the path to war. I had considered withholding my income tax before, but this war made the choice very straight forward. Behind this decision lay twelve years of deliberation considering the role my taxes played in preparing for war. I didn’t act before because I feared the consequences for my family and the people we employed in our small company, but this needless act of belligerence swept away all doubts. I risked prison, several British war tax resisters had been jailed before and/or had their goods seized. I was prepared for those consequences. I discovered that there is an energy that comes with that. An empowerment that carried me forward.

Having made the commitment, I made contact with other war tax resisters with the help of the non-governmental organization Conscience. At Conscience’s suggestion, seven of us decided to jointly bring a case under the Human Rights Act, citing Article 9 of the European Convention on Human Rights: The right to freedom of thought, conscience and religion. We sought a judicial review and formed ourselves into the Peace Tax Seven, which by good fortune comprised a wide cross-section of British citizens. We were three women and four men, we came from different parts of the country, covered a wide span of ages and different professions. There were four Quakers, two Church of England and one Buddhist. While we were unsuccessful in even getting as far as a judicial review hearing, the preliminary hearing in the High Court and subsequently the Appeal Court heard the full length of our arguments. We were received with surprising sympathy from the benches. The three law lords who heard our appeal went as far as to say in their summing up: “... *the Strasbourg authorities ... have taken what may be thought to be a rather strict or narrow line on the manifestation of religious and philosophical belief in a number of areas central to the daily life of the individual citizen in the modern state, such as employment, education and fiscal responsibilities. In some respects the reasoning may be legally and logically unsound.*” after which they referred us on to the European Court of Human Rights who summarily dismissed our case with a curt, single paragraph letter.

In becoming a conscientious objector, I was not trying to disengage myself from the conflict, in fact I was engaging with it non-violently. Conscientious

objectors are also peace activists, and our desire is to change the way governments deal with conflict. We would be delighted if we could redirect our taxes destined for the military to developing the tools and institutions needed to resolve conflict non-violently.”

Part IV.

Linking the Dots



Chapter 12

The minority perspective under the right to peace and freedom of conscientious objection

Nazila Ghanea and Michael Wiener

1. Introduction

Persons belonging to religious or belief minorities may face specific challenges in enjoying the right to peace and freedom of conscientious objection to military service. The Human Rights Council Advisory Committee noted in its 2011 progress report on the right of peoples to peace that while all individuals share the same human dignity, there are nevertheless “certain groups with specific vulnerability who deserve special protection”, including “minorities stereotyped with endangering national security.”¹ The former Special Rapporteur on freedom of religion or belief, Ahmed Shaheed, reported in March 2022 that conscientious objectors from religious or belief minorities had faced compulsory conscription, violating their right to conscientious objection to military service.² In May 2022, the Office of the United Nations High Commissioner for Human Rights voiced particular concern about cases of punishment, arbitrary detention and repeated trial of unrecognized conscientious objectors, often persons belonging to religious or belief minorities and those holding pacifist tenets.³

These recent UN concerns illustrate the breadth and depth of human rights violations against persons belonging to minorities based on their pacifist and other beliefs, both as targets of violence and also as conscientious objectors to military service. However, as evident in the previous chapters of this book, a dedicated minority perspective has largely been absent from discussions on the right to peace and freedom of conscientious objection during the elaboration of related norms and standards.

While freedom of conscience is protected under article 18 of the Universal Declaration of Human Rights (1948), there is no explicit reference to conscientious objection to military service or to minority protection in the

¹ Human Rights Council Advisory Committee, *Progress report on the right of peoples to peace* (Human Rights Council, Geneva: 2011), A/HRC/17/39, para. 60.

² Ahmed Shaheed, *Rights of persons belonging to religious or belief minorities in situations of conflict or insecurity* (Human Rights Council, Geneva: 2022), A/HRC/49/44, para. 31.

³ Office of the United Nations High Commissioner for Human Rights, *Conscientious objection to military service* (Human Rights Council, Geneva: 2022), A/HRC/50/43, para. 56.

Universal Declaration of Human Rights. This omission was deliberate as evidenced in Part C of General Assembly resolution 217 (III) of 10 December 1948, which decided “not to deal in a specific provision with the question of minorities” in the text of the Universal Declaration of Human Rights in view of the difficulties of adopting “a uniform solution of this complex and delicate question, which has special aspects in each State in which it arises”.⁴ In the same resolution, however, the General Assembly considered that “the United Nations cannot remain indifferent to the fate of minorities” and thus requested the Commission on Human Rights and the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities to prepare a thorough study of the problem of minorities, with a view to effectively protecting racial, national, religious or linguistic minorities.⁵

The formulation “problem of minorities” already shows that minority issues were considered more as part of the problem rather than part of the solution in relation to the understanding of the universal human rights, dignity and worth of each individual, as upheld in the Universal Declaration of Human Rights. The historical background to this viewpoint was the negative connotation of the system of minority protection under the League of Nations, as developed between the first and second World Wars. Indeed, as outlined below, the minority “protection” under the League was squarely considered to have led to the Second World War.

The challenge of minorities, human rights and peace, however, stretches far beyond the important question of conscientious objection to military service. A broader consideration of the historical background of the question minorities, human rights and peace will be followed by a consideration of the more recent relationship between these topics, before turning our attention to conscientious objection. Our hypothesis is that viewing minorities as “misfits” in the debate on peace and security led to neglecting a timely consideration of the question of recognizing conscientious objection to military service by the United Nations, and also triggered inadequate attention to the insecurity they often suffer.

2. The historic legacy of the League of Nations

From 1919 to 1923, several multilateral and bilateral treaties dealing with the protection of minorities had been adopted under the umbrella of the League of Nations as well as unilateral declarations made by States as part of their

⁴ General Assembly resolution 217 (III) of 10 December 1948, A/RES/217(III), part C, paras. 2 and 4.

⁵ *Ibid.*, paras. 1 and 5.

admission to the League of Nations.⁶ However, these treaties and declarations did not aim at protecting minorities broadly and they only imposed specific obligations on some new nation States, particularly in Central and Eastern Europe, while the old-established States were not willing to grant similar minority protection in their own territories.⁷ Essentially the treaties constituted reciprocal State arrangements for their security and in light of their fear of the “minorities” belonging to the “other”.

Several States that were obligated by the system of minority protection suggested in the 1920s that such protection should be generalized and apply to all States with minorities. However, these requests were rejected. For example, the French representative de Jouvenel claimed in 1925 that “France had not signed any such treaties because she had no minorities”, whereas the British Empire’s representative Viscount Cecil argued that “the proposal to extend the suggested procedure to the whole world and to make the League of Nations responsible for supervising its application would impose a crushing burden on the League.”⁸ The Lithuanian representative Galvanauskas sharply responded that in France “there might be minorities, for instance, in the matter of religion” and he asked for “a minimum of

⁶ See Jennifer Jackson Preece, *National Minorities and the European Nation-States System* (Oxford University Press, Oxford: 1998), pp. 73-74, referring to the multilateral treaties of Versailles (28 June 1919), Saint Germain-en-Laye (10 September 1919), Neuilly-sur-Seine (27 November 1919), Paris (9 December 1919), Trianon (4 June 1920), Sèvres (10 August 1920) and Lausanne (24 July 1923). In addition, minority protection obligations were accepted in bilateral treaties (German-Polish Convention relating to Upper Silesia of 15 May 1922 and the Convention concerning the Territory of Memel of 8 May 1924) and in unilateral declarations made by several States (Finland on 27 June 1921, Albania on 2 October 1921, Lithuania on 12 May 1922, Latvia on 7 June 1923, Estonia on 17 September 1923), see Peter Hilpold, “The League of Nations and the Protection of Minorities – Rediscovering a Great Experiment”, *Max Planck Yearbook of United Nations Law*, Vol. 17 (2013), pp. 87-124, at p. 92.

⁷ Heiner Bielefeldt and Michael Wiener, *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* (United Nations Audiovisual Library of International Law, New York: 2022), p. 1. Furthermore, with regard to several former German colonies (Class B mandates), the League of Nations’ mandate system explicitly referred to freedom of conscience by providing that “[o]ther peoples, especially those of Central Africa, are at such a stage that the Mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals [...]” (article 22(5) of the 1919 Covenant of the League of Nations, available online at https://libraryresources.unog.ch/ld.php?content_id=32971179).

⁸ League of Nations, *Protection of Linguistic, Racial or Religious Minorities by the League of Nations: Resolutions and Extracts from the Minutes of the Council, Resolutions and Reports adopted by the Assembly, relating to the Procedure to be followed in Questions concerning the Protection of Minorities* (League of Nations, Geneva: 1929), C.24.M.18.1929.I, pp. 43-44.

international conscience concerning the question of minorities.”⁹ Yet three years later, the French Foreign Minister (and Nobel Peace Laureate) Aristide Briand declared to the Assembly of the League of Nations that “[t]he minorities question must not be made a lever to undermine the position of the governments or to disturb the peace. If any act of justice was proposed which would disturb world peace – I should be the first to call upon those promoting it to abandon it in the interest of peace.”¹⁰

Against this background of intrigues, suspicions and *realpolitik*, the mixed experiences of the League of Nations (in the sense of a negative “leagacy”) discredited the very idea of protecting minority rights as such in the eyes of many.¹¹ In 1934, Poland rejected any collaboration with the League’s organs in relation to minority questions until a uniform international minority protection system was introduced, which – as Peter Hilpold notes – ultimately “set the final death blow to this system”.¹²

After the Second World War, there was a paradigm shift, moving away from the League’s protection of minorities towards the United Nations’ focus on upholding the universal human rights of each individual. In 1950, a study submitted by the UN Secretary-General to the Commission on Human Rights noted that the League of Nations’ minorities protection system “has to a large extent been supplanted by another and [...] does not possess the standing that it had immediately after the First World War”, also because it “was an exceptional regime which applied to a minority of States” and had been “established for the benefit of one section of the population.”¹³

The UN Special Rapporteur on minority issues, Fernand de Varennes, poignantly remarked that the League’s minorities treaties “are often misrepresented as enshrining collective rights that contributed to the inherently unstable interwar period, and hence were factors in preparing the conditions for the onset of war, if not a direct cause of it.”¹⁴ In addition,

⁹ *Ibid.*, p. 47.

¹⁰ League of Nations, Official Journal Special Supplement No. 64 (1928), pp. 82-83.

¹¹ See Heiner Bielefeldt, Nazila Ghanea and Michael Wiener, *Freedom of Religion or Belief: An International Law Commentary* (Oxford University Press, Oxford: 2016), p. 443.

¹² Peter Hilpold, “The League of Nations and the Protection of Minorities – Rediscovering a Great Experiment”, *Max Planck Yearbook of United Nations Law*, Vol. 17 (2013), pp. 87-124, at p. 97.

¹³ Commission on Human Rights, *Study of the Legal Validity of the Undertakings Concerning Minorities* (United Nations, New York: 1950), E/CN.4/367, p. 41.

¹⁴ Fernand de Varennes, *Study on the concept of a minority in the United Nations* (UN General Assembly, New York, 2019), A/74/160, para. 25; Fernand de Varennes, *Protection of the*

Asbjørn Eide referred to the division of ethno-nations sometimes causing serious conflicts between kin States and home States, noting that “[e]thnic tensions exploited by kin States contributed to the eruption of the Second World War.”¹⁵ The former Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, also flagged that “the political context of bilateral or multilateral agreements harboured the risk that the specific minorities were seen as receiving protection by certain foreign powers”, which resulted in some of these minority protection mechanisms getting “eventually turned against the very groups they were supposed to protect.”¹⁶

This formulation that the minorities regime had been “supplanted” by universal human rights protection juxtaposes the League and UN approaches as old and exceptional versus new and universal respectively. Yet the UN study did not rule out the possibility of retaining or adopting provisions to protect minorities “in certain special cases, [...] even in the world of today.”¹⁷ These caveats show the lukewarm reception and critical assessment of the League of Nations’ mandate of protecting some minorities in some States in 1950. After the passing of further decades, the international community came to “widespread agreement that the failures and deficiencies of the League minority system far outweigh its limited successes.”¹⁸

3. The triad of minorities, human rights and peace

This historical background may have caused the (mis)perception that minorities, human rights and peace constituted a Bermuda Triangle in assuming that whenever these three issues intersect, they all risk disappearing under mysterious circumstances. As Larry Kusche has argued “[t]he Legend

rights of minorities in the institutions, structures and initiatives of the United Nations (UN General Assembly, New York, 2022), A/77/246, para. 30.

¹⁵ Asbjørn Eide, *Progress report on the update to the study on peaceful and constructive approaches to situations involving minorities submitted by Asbjørn Eide in accordance with Sub-Commission resolution 2002/16* (Commission on Human Rights, Geneva: 2003), E/CN.4/Sub.2/2003/21, para. 11.

¹⁶ Heiner Bielefeldt, *Protecting the freedom of religion or belief of persons belonging to religious minorities* (Human Rights Council, Geneva, 2012), A/HRC/22/51, para. 18.

¹⁷ E/CN.4/367, p. 41. It took until 1966 for the adoption (and until 1976 for the entry into force) of the legally binding International Covenant on Civil and Political Rights, which protects freedom of conscience (article 18) and also provides that persons belonging to religious minorities “shall not be denied the right, in community with the other members of their group, [...] to profess and practise their own religion” (article 27).

¹⁸ Jennifer Jackson Preece, *National Minorities and the European Nation-States System* (Oxford University Press, Oxford: 1998), p. 90.

of the Bermuda Triangle is a manufactured mystery”¹⁹ concerning suspicious incidents in this geographic region in the North Atlantic Ocean. Similarly, also the allegedly contaminated relationship between minorities, human rights and peace should be demystified and unpacked. In fact, the present article contends that addressing minorities, human rights and peace in a holistic manner would be mutually beneficial and reinforce each of them.

Moving on from the historical burdens, have developments in international human rights enabled a new understanding of the relationship between minorities, human rights and peace to be struck? It has to be admitted that minorities have not been able to fully shed the State suspicions surrounding them. The nature of these has expanded from Second World War suspicions of them being played politically, to implicating them in separatism and secession, doubting their loyalty to the State, and denying their existence due to the alleged risks they carry.

There is another dimension to this insecurity and that relates to minorities as targets of hate speech, scapegoating particularly in times of political turmoil and violence. This also leads its own disturbances to peace. In short, and as observed by the UN Special Procedures, minorities are “often the targets, rather than the perpetrators, of violence”.²⁰ Both these aspects lead to minorities finding themselves “securitized” or problematized as a security concern.

This contrasts with the assertion of the preamble to the 1992 Declaration that “the promotion and protection of the rights of persons belonging to [...] minorities” contributes to “the political and social stability of States in which they live”.²¹ International human rights requires States to ensure the “liberty and security of person” of “everybody”, including minorities.²² Furthermore,

¹⁹ Larry Kusche, *The Bermuda Triangle Mystery – Solved* (Prometheus Books, Amherst: 1995), p. 277.

²⁰ Gay McDougall, *Report of the independent expert on minority issues* (Human Rights Council, Geneva: 2010), A/HRC/16/45, para. 28.

²¹ A/RES/47/135, annex, preambular para. 5.

²² International Covenant on Civil and Political Rights, article 9(1). The topic of advancing the safety and security of religious minorities in armed conflict was also the subject of an Arria-formula meeting of the UN Security Council (i.e. the informal meeting of the members of the UN Security Council initiated by one or more members of the Security Council) in 2019 (See: <https://www.securitycouncilreport.org/whatsinblue/2019/08/aria-formula-meeting-advancing-the-safety-and-security-of-persons-belonging-to-religious-minorities-in-armed-conflict.php>). The former Special Rapporteur on freedom of religion or belief warned against making “broad generalizations about the role of faith in either contributing to or preventing conflict” or

States are called upon to ensure the “existence and the [...] identity”²³ of minorities. The Special Procedures have gone further and recognized the need for a “proactive approach” to minority rights in order to prevent tensions deteriorating into “violent conflict”²⁴ and provide early warning regarding conflicts.²⁵

In brief, one can conclude that although minority grievances certainly cannot be denied as contributors to intra-state conflicts,²⁶ the inclusion of minorities and responsiveness to their grievances can prevent such escalation. Indeed, regional mechanisms, such as that of the Organization for Security and Co-operation in Europe (OSCE) High Commissioner on National Minorities, have been set up to provide “‘early warning’ and, as appropriate, ‘early action’ at the earliest possible stage in regard to tensions involving national minority issues that have the potential to develop into a conflict within the CSCE area, affecting peace, stability, or relations between participating States”.²⁷

The stakes for preventive diplomacy and reducing risks are very high. As Special Rapporteur Fernand de Varennes notes, in the increase in violent conflicts around the world in recent years one can observe that “most of the drivers of these conflicts involve minority grievances of exclusion, discrimination and inequalities linked to violations of the human rights of minorities”.²⁸ He provides support for this assertion in noting that “of the 10 ‘conflicts to watch’ identified by the International Crisis Group in 2020, 6 (in Afghanistan, Burkina Faso, Ethiopia, Ukraine, Yemen, as well as Jammu and Kashmir) involve ethnic, religious or linguistic cleavages”.²⁹ His report also

assuming “causal relationships between violations of freedom of religion or belief and violent conflict”, yet he welcomed attention to the “significant effects of conflict on religious or belief minorities”; see Ahmed Shaheed, *Rights of persons belonging to religious or belief minorities in situations of conflict or insecurity* (Human Rights Council, Geneva: 2022), A/HRC/49/44, para. 3.

²³ A/RES/47/135, annex, article 1(1).

²⁴ A/HRC/16/45, para. 26.

²⁵ A/HRC/16/45, para. 40.

²⁶ Fernand de Varennes, *Conflict prevention through the protection of the human rights of minorities* (Human Rights Council, Geneva: 2022), A/HRC/49/46, paras. 20-28.

²⁷ Conference for Security and Co-operation in Europe (CSCE), *Helsinki Document 1992*, available at <https://www.osce.org/files/f/documents/7/c/39530.pdf>, Helsinki Decisions, chapter I, para. 23.

²⁸ A/HRC/49/46, introductory summary, p. 1.

²⁹ *Ibid.*, para. 44.

provides seven “push and pull factors” that increase or diminish the likelihood of conflict resulting.³⁰

How could these challenges be addressed in a human rights-based manner? The 2021 Forum on Minority Issues on the theme of “Conflict prevention and the protection of the human rights of minorities” made several recommendations relating to hate speech, the inclusion of minorities in peace agreements, working closely with faith-based actors, and addressing the exclusion of minority youth:

- All States, international organizations, NGOs, civil society, media and social media companies should confront, dismantle and replace hateful narratives and hate speech about minorities by launching campaigns aimed at raising awareness of minority issues and engaging those with influence over communities, such as political, religious and community leaders and civil society actors in advocating for peaceful coexistence.³¹
- Whenever peace agreements are signed, States must ensure that minority issues are mainstreamed in the agreements by: (a) Including relevant minority rights provisions; (b) Including minority women in peace processes; (c) Ensuring that where religion is a decisive factor, freedom of religion or belief and prohibition on the grounds of religion are respected, including other human rights of religious minorities, which should be an essential part of conflict prevention, resolution, transformation and reconciliation.³²
- States, the United Nations, international and regional organizations and civil society are encouraged to work closely in supporting the positive contributions of faith-based actors, including through the promotion of the Beirut Declaration and the “Faith for Rights” toolkit.³³
- Furthermore, States should fully harness and support young people’s contribution to peace through investment in their capacities, redressing the structural barriers that limit minority youth participation in peace and security, facilitating youth exchange programmes within post-conflict regions and emphasizing

³⁰ Ibid., para. 54.

³¹ *Recommendations of the Forum on Minority Issues at its fourteenth session on the theme “Conflict prevention and the protection of the human rights of minorities”* (Human Rights Council, Geneva: 2022), A/HRC/49/81, para. 27(e).

³² Ibid., para. 44.

³³ Ibid., para. 58.

partnerships and collaborative action, where minority youth are viewed as essential partners for peace.³⁴

These, and other recommendations, are steps along putting into action and implementing all three pillars of the United Nations – peace and security, development and human rights – which “are equally important, interrelated and interdependent.”³⁵ These three pillars are also explicitly addressed in the 2016 Declaration on the Right to Peace, which guarantees in its article 1 everyone’s “right to enjoy *peace* such that all *human rights* are promoted and protected and *development* is fully realized”³⁶ (emphasis added).

4. Resolutions on the right to peace and conscientious objection to military service

The two preceding parts of this book already touched on the references to minorities in UN resolutions on the right to peace and conscientious objection to military service. The contention of this chapter is that since peace and the right to peace are considered “vital” for the “full enjoyment of all human rights by all”³⁷ this also implicates the question of minorities. Persons belonging to minorities, too, should have access to the full enjoyment of all human rights and therefore deserve careful consideration under the banner of the right to peace.

The preamble of the 2016 Declaration on the Right to Peace recalls that constantly promoting and realizing “the rights of persons belonging to national or ethnic, religious and linguistic minorities as an integral part of the development of a society as a whole and within a democratic framework based on the rule of law would contribute to the strengthening of friendship, cooperation and peace among peoples and States”.³⁸ Apart from the added reference to peace, this is almost a verbatim quote from the preamble of the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.³⁹ This formulation, which was suggested

³⁴ *Ibid.*, para. 52.

³⁵ Declaration on the commemoration of the seventy-fifth anniversary of the United Nations (2020), A/RES/75/1, para. 6.

³⁶ Declaration on the Right to Peace (2016), A/RES/71/189, annex, article 1.

³⁷ A/RES/71/189, preambular paras. 1-2.

³⁸ A/RES/71/189, annex, preambular para. 34.

³⁹ A/RES/47/135, annex, preambular para. 6. For the *travaux préparatoires* of this preambular paragraph of the 1992 Declaration, see E/CN.4/1982/30/Add.1, para. 12: “The question was raised whether in view of the adoption by the General Assembly at its thirty-sixth session of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on

by diplomats from the Western European and Others Group during the intergovernmental negotiations in 2015,⁴⁰ explicitly acknowledges the underlying links between minority rights (on the individual level), democracy and rule of law (on the societal level) as well as peace (on the inter-State level). This minority rights approach could also help promoting “equality and non-discrimination, justice and the rule of law, and guarantee freedom from fear and want as a means to build peace within and between societies”, as required in article 2 of the 2016 Declaration on the Right to Peace. It may also serve as a strategic entry point for mainstreaming a minority perspective into “appropriate sustainable measures to implement” the 2016 Declaration on the Right to Peace (article 3) and into “the great universal task of educating for peace by engaging in teaching, research, post-graduate training and dissemination of knowledge” (article 4).

Minority rights are not only relevant in the context of the right to peace itself, but also with regard to pacifists. Conscientious objection to military service is regularly claimed by persons belonging to religious or belief minorities.

In the first consensual UN resolution 1989/59 on conscientious objection to military service, the Commission on Human Rights referred to the report prepared by Mr. Eide and Mr. Mubanga-Chipoya for the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1983.⁴¹ The two Sub-Commission members had noted in their report that “[i]n almost all societies, only a minority holds the opinion that it is immoral to participate in the use of armed force. But the fact that it is a minority opinion does not make it an any less profound and tenaciously held conviction, which ought to be respected.”⁴² Thus they stressed the individual component of freedom of conscientious objection to military service, rather

Religion or Belief, provision should continue to be made in the draft Declaration for ‘religious minorities’. It was argued that the Declaration adopted by the Assembly encompassed more than religious freedoms and intolerance, but it did not refer specifically to the role of minorities in that context. It was suggested that in the future work on the draft Declaration, a reference to the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief should be included in the third preambular paragraph of the draft Declaration on minorities.”

⁴⁰ Information from David Fernández Puyana; see also the text of the draft UN declaration on the right to peace presented by the Chairperson-Rapporteur on 24 April 2015, A/HRC/29/45, annex, preambular para. 33.

⁴¹ Commission on Human Rights resolution 1989/59, preambular para. 9.

⁴² Asbjørn Eide and Chama Mubanga-Chipoya, *Conscientious objection to military service*, Report prepared in pursuance of resolutions 14 (XXXIV) and 1982/30 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities by Mr. Asbjørn Eide and Mr. Chama Mubanga-Chipoya, members of the Sub-Commission, E/CN.4/Sub.2/1983/30/Rev.1, para. 26.

than focusing on any collective rights of the minority community. Such exemptions had been granted in several countries as group rights to the “historic peace churches”, such as the Church of the Brethren, Mennonites and Religious Society of Friends (Quakers).⁴³

5. Individual and collective dimensions

For conscientious objectors to military service, some States still legally require membership in – or are *de facto* biased in favour of members of – a recognized religious group which advocates pacifism.⁴⁴ However, such an approach is not in line with international human rights law. The UN Human Rights Committee has for example raised concerns about Kyrgyzstan limiting conscientious objection to military service only to members of registered religious organizations whose teaching prohibits the use of arms.⁴⁵ Accepting conscientious objection to military service only with regard to certain religions, which appear in an official list, is also incompatible with articles 18 and 26 of the International Covenant on Civil and Political Rights.⁴⁶ In addition, the Committee concluded in 2013 that Finland should extend the preferential treatment accorded to Jehovah’s Witnesses also to other groups of conscientious objectors;⁴⁷ yet in 2021 the Committee expressed concern that Finland has in the meantime removed the exemption from military and civilian service accorded to Jehovah’s Witnesses, in contrast to the Committee’s previous recommendations.⁴⁸

At the regional level, the European Court of Human Rights recognized the relationship between individual and collective minority rights in its landmark judgement by the Grand Chamber in the case of *Bayatyan v. Armenia*. Starting with the tenets of the religious group in question (Jehovah’s Witnesses), the Grand Chamber noted that the group’s “beliefs include the conviction that service, even unarmed, within the military is to be opposed”.⁴⁹ From this collective perspective the Grand Chamber then deduced that also in the individual case of Mr. Vahan Bayatyan the “applicant’s objection to military service was motivated by his religious beliefs, which were genuinely held and were in serious and insurmountable conflict with his obligation to

⁴³ See above [chapter 11](#) by Derek Brett.

⁴⁴ See above [chapter 10](#) by Rachel Brett.

⁴⁵ CCPR/CO/69/KGZ, para. 18; CCPR/C/KGZ/CO/2, para. 23.

⁴⁶ CCPR/CO/73/UKR, para. 20; CCPR/C/UKR/CO/6, para. 12.

⁴⁷ CCPR/C/FIN/CO/6, para. 14.

⁴⁸ CCPR/C/FIN/CO/7, para. 36.

⁴⁹ European Court of Human Rights, *Bayatyan v. Armenia*, application no. 23459/03, judgment of 7 July 2011, para. 111.

perform military service.”⁵⁰ Subsequently, the Grand Chamber returned to its reasoning regarding the collective dimension in order to rebut the Government’s arguments of unjust inequalities and alleged risks for public order if the authorities allowed all “religious organisations to interpret and comply with the law in force at the material time as their respective religious beliefs provided.”⁵¹ On the contrary, the Grand Chamber stressed that:

“Although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of people from minorities and avoids any abuse of a dominant position. Thus, respect on the part of the State towards the beliefs of a minority religious group like the applicant’s by providing them with the opportunity to serve society as dictated by their conscience might, far from creating unjust inequalities or discrimination as claimed by the Government, rather ensure cohesive and stable pluralism and promote religious harmony and tolerance in society.”⁵²

6. Concluding remarks

The above-mentioned vision of the European Court of Human Rights for ensuring cohesive, peaceful, pluralistic and respectful societies also corresponds to the objectives of the Beirut Declaration and its 18 commitments on “Faith for Rights”,⁵³ notably its commitments II, VI, XVII and XVIII.

Its commitment XVIII aims at conveying “Faith for Rights messages to enhance cohesive societies enriched by diversity, including in the area of religions and beliefs.”⁵⁴ Furthermore, the faith-based actors pledge in commitment VI “to stand up for the rights of all persons belonging to minorities within our respective areas of action and to defend their freedom of religion or belief as well as their right to participate equally and effectively in cultural, religious, social, economic and public life, as recognized by international human rights law”.⁵⁵ The latter refers back to the 1992 Declaration, on which this formulation is based, albeit with the additional

⁵⁰ Ibid.

⁵¹ Ibid., para. 84.

⁵² Ibid., para. 126 (references omitted).

⁵³ <https://www.ohchr.org/en/faith-for-rights>. See also below [chapter 13](#) by Ibrahim Salama and Michael Wiener, “Bridging the divides through ‘Faith for Rights’”.

⁵⁴ A/HRC/40/58, annex II, commitment XVIII.

⁵⁵ Ibid., commitment VI.

commitment towards *equal* participation of all persons belonging to minorities as well as the clarification that this constitutes “a minimum standard of solidarity among all believers.”⁵⁶ Commitment II clarifies that the (self)definition of believers is – in line with international human rights standards – as broad and inclusive as possible since theistic, non-theistic, atheistic or any other believers are equally protected under article 18 of the Universal Declaration of Human Rights and of the International Covenant on Civil and Political Rights. This is also illustrated in the terminology of “religious or belief minorities” in commitment XVII, which pledges to implement the Beirut Declaration “through exchange of practices, mutual capacity enhancement and regular activities of skills updating for religious and spiritual preachers, teachers and instructors, notably in areas of communication, religious or belief minorities, inter-community mediation, conflict resolution, early detection of communal tensions and remedial techniques”.⁵⁷

In this context, the #Faith4Rights toolkit translates the “Faith for Rights” framework into practical peer-to-peer learning and capacity-building programmes. It stresses that religious leaders can play a very important role by promoting messages of peace and fostering dialogue, for example “between the Rohingya refugees and host communities”⁵⁸ in Bangladesh and elsewhere. The #Faith4Rights toolkit also features a video on “Standing up for minority rights” concerning a dialogue between Serbs and Croats meeting in Brussels, where one participant noted that “the pair-work sessions forced us into simple conversations and the results were very good.”⁵⁹ Furthermore, the toolkit highlights minorities’ stories conveyed through short films during a film festival and competition in Iraq, which included the story of a pianist living amidst war, the tale of a minority child who sneaks into a classroom desperate to be educated as well as the Iraqi retelling of the classic children’s story Cinderella, highlighting the plight of a girl who is orphaned by war and raised by her grandmother.⁶⁰

⁵⁶ Ibid. In contrast, the 1992 Declaration in its article 2(2) merely refers to “the right to participate effectively in cultural, religious, social, economic and public life”.

⁵⁷ Ibid., commitment XVII.

⁵⁸ Office of the High Commissioner for Human Rights, *#Faith4Rights toolkit* (United Nations, Geneva: 2022), p. 64, quoting the former UN Special Adviser on the Prevention of Genocide, Adama Dieng.

⁵⁹ Ibid., p. 40, quoting Jelena who participated in this project by the Conference of European Churches in partnership with the Quaker Council for European Affairs and the Church’s Commission for Migrants in Europe.

⁶⁰ Ibid., pp. 40 and 67, referring to the 3By3 Film Festival 2019 in Baghdad.

Finally, in the online course by the United States Institute of Peace on “Religions, Beliefs, and Human Rights: A ‘Faith for Rights’ Approach” (launched on 6 December 2022, together with the present book at the University for Peace), Special Rapporteur Fernand de Varennes compellingly links the dots between religious or belief minorities, human rights and peace as follows:

“Unfortunately, too often what we are seeing is that most of the world’s violent conflicts today are conflicts within a State where religious and other minorities have grievances of exclusion and discrimination, in other words of injustice and denial of human rights, which have not been sufficiently addressed. And I think this underlines the importance of the ‘Faith for Rights’ approach, because it highlights – it puts the spotlight on – the minority dimension in most of today’s conflicts, something unfortunately the UN and other international initiatives on conflict do not address sufficiently because well, today, they tend to be focused more on conflict-peacebuilding, in other words once a conflict has started, rather than prevention, and seldom they look at what are the actual real drivers of most conflicts today, and that is the treatment of minorities, not only minorities as victims.”⁶¹

Let’s return to our opening question, how can a minority perspective contribute to implementing the right to peace and freedom of conscientious objection across the globe. This chapter has, rather ambitiously, sought to associate the lack of consideration of minorities in the pursuit of the right to peace to the delay and reluctance which conscientious objection to military service received consideration in international human rights standards and jurisprudence. It also acknowledged the twin aspects of the discomfort of the pursuit of peace and security with minorities, and contrasted these with human rights standards. The recognition of freedom of conscientious objection to military service in the human rights arena gives us hope that the understanding of the relationship between minorities and security can become more discerning and nuanced, as the UN Special Procedures have been calling for over more than a decade. We have argued that “Faith for Rights” offers one framework to recast this more balanced and holistic understanding between minorities, human rights and peace in a way that is both mutually beneficial and reinforcing. The great potential for bridging the

⁶¹ See <https://youtu.be/3n7YzYwrlII>. For the full online course by the United States Institute of Peace on “Religions, Beliefs, and Human Rights: A ‘Faith for Rights’ Approach”, see <https://www.usip.org/academy/catalog-global-campus-courses>.

divides through the “Faith for Rights” framework and its peer-to-peer learning methodology will be elaborated in the next chapter in more detail.

Chapter 13

Bridging the divides through “Faith for Rights”

Ibrahim Salama and Michael Wiener

1. The Beirut Declaration and its 18 Commitments

“The Beirut Declaration on Faith for Rights emphasizes that freedom of thought and conscience precede all freedoms, for they are linked to human essence, to an individual’s right to choice and to freedom of religion or belief. As highlighted in the corresponding 18 commitments and #Faith4Rights toolkit, article 18 of the Covenant does not permit any limitations whatsoever on freedom of thought and conscience, which are absolutely protected under international human rights law, covering all ethics and values a human being cherishes, whether of a religious nature or not.”¹

This quote from the 2022 analytical report of the Office of the United Nations High Commissioner for Human Rights concerning conscientious objection to military service alludes to the potential of the “Faith for Rights” framework for bridging divides of complex intersectional nature. This may relate to the following five divisive issues. First, religions and beliefs are often portrayed as antagonistic towards each other, including on intra-religious basis, which may lead to socio-cultural tensions,² hatred, conflicts and even mass crimes.³ Second, religion(s) and human rights also have been traditionally juxtaposed as presumably irreconcilable competitors that aim at convincing or even converting the other side into their doctrine.⁴ Third, international law tends

¹ Office of the United Nations High Commissioner for Human Rights (OHCHR), *Conscientious objection to military service* (2022), A/HRC/50/43, para. 8, referring to A/HRC/40/58, annex I, para. 5 and annex II, commitment I as well as <https://www.ohchr.org/Documents/Press/faith4rights-toolkit.pdf>, pp. 13-14.

² Kofi Annan, “Foreword”, in: Giandomenico Picco (ed.), *Crossing the Divide: Dialogue Among Civilizations* (Seton Hall University, South Orange, NJ: 2001), p. 11: “People can and should take pride in their particular faith or heritage. But we can cherish what we are, without hating what we are not.”

³ Koumbou Boly Barry, *Report of the Special Rapporteur on the right to education* (2019), A/74/243, para. 61.

⁴ Ibrahim Salama and Michael Wiener, “Religion and Human Rights: From Conversion to Convergence”, in Peter Prove, Jochen Motte, Sabine Dressler and Andar Parlindungan (eds), *Strengthening Christian Perspectives on Human Dignity and Human Rights: Perspectives from an International Consultative Process* (World Council of Churches Publications and Globethics.net, Geneva: 2022), pp. 129-136 at p. 134.

to be compartmentalized into different fields such as international humanitarian law, human rights law, refugee law and international criminal law, which occasionally overlap with each other. It is only recently that holistic attempts were conducted for addressing responsibilities of religious actors both in times of peace and conflict.⁵ Fourth, the three realms of the Good (ethics), God (religions or beliefs) and Rights (international human rights law) are rarely seen holistically, let alone in an inclusive and equal manner that covers all theistic, non-theistic, atheistic or any other beliefs.⁶

Lastly, within international human rights law, the different components of freedom of thought, conscience, religion or belief have also received unbalanced attention of advocacy, progressive development and institutional scrutiny at the national, regional and international levels. Attention has rather focussed mainly on freedom of religion or belief, with the notable exception of the Special Rapporteur's 2022 report to the UN Human Rights Council also delving into freedom of thought.⁷ However, freedom of conscience remains largely neglected and undervalued in multilateral discussions, academia and jurisprudence.⁸ In their partly dissenting opinion in the case of *Eweida and Others v. the United Kingdom*, two judges of the European Court of Human Rights flagged that the majority should have relied in their judgment on freedom of conscience, stressing that "moral conscience [...] is what enjoins a person at the appropriate moment to do good and to avoid evil. In essence it is a judgment of reason whereby a physical person recognises the moral quality of a concrete act that he is going to perform, is in the process of performing, or has already completed."⁹ Highlighting the pre-eminence of

⁵ See Ibrahim Salama and Michael Wiener, "Compliance Symposium: 'Faith for Rights' in Armed Conflict" (2020), available online at <http://opiniojuris.org/2020/10/22/compliance-symposium-faith-for-rights-in-armed-conflict/>; and "'Faith for Rights' in Armed Conflict: Lessons from Practice", *Journal of Human Rights Practice* (forthcoming).

⁶ The two co-authors discussed this point together with Christine Housel (Globethics.net) and Dr. Fadi Daou (University of Geneva), inter alia at the #Faith4Rights panel discussion during the Nelson Mandela World Moot Court Competition on 21 July 2022 (<https://www.chr.up.ac.za/faith4rights>).

⁷ Ahmed Shaheed, *Report of the Special Rapporteur on freedom of religion or belief* (2022), A/HRC/49/44.

⁸ Already on 14 November 1960, the Saudi representative Jamil Baroody stated in the General Assembly's Third Committee that "since 1948, considerable attention had been given to the question of freedom of religion, whereas that of freedom of thought and conscience had been sadly neglected" (A/C.3/SR.1021, para. 10). For a brief historic overview on the recognition of freedom of conscience see Özgür Heval Çınar, *Conscientious Objection to Military Service in International Human Rights Law* (Palgrave Macmillan, New York: 2013), pp. 7-15.

⁹ European Court of Human Rights, *Eweida and Others v. the United Kingdom*, applications nos. 48420/10, 59842/10, 51671/10 and 36516/10, judgment of 15 January 2013, partly dissenting opinion of Judges Vučinić and De Gaetano, para. 2 (concerning the third applicant, Ms. Ladele).

conscience, they quoted the Roman Catholic Cardinal St. John Henry Newman, who already in 1875 had noted that “there are extreme cases in which Conscience may come into collision with the word of a Pope, and is to be followed in spite of that word.”¹⁰ In addition, the two judges stressed the legal differences between freedom of conscience and religious freedom. Both under the European Convention on Human Rights (article 9) and the International Covenant on Civil and Political Rights (article 18), the internal freedom of conscience cannot be restricted, whereas the external freedom to manifest one’s religion or beliefs may be subject – only – to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. This is also reiterated in Commitment I on “Faith for Rights” which stresses that freedom of thought and conscience as well as freedom to have or adopt a religion or belief of one’s choice are “unconditionally protected by universal norms, [and] are also sacred and inalienable entitlements according to religious teachings.”¹¹

Furthermore, the notion of “conscience” has also influenced the development of international humanitarian law, international criminal law, and international refugee law. The preambles of the Hague Conventions of 1899 and 1907 elevate “public conscience” to the function of ultimate source of equal human dignity by stating that “in cases not included in the Regulations adopted by [the High Contracting Parties], the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience.”¹² Under international criminal law, the States Parties to the 1998 Rome Statute of the International Criminal Court stress that during the twentieth century “millions of children, women and men have been victims of unimaginable

¹⁰ Ibid., quoting John Henry Cardinal Newman, *A letter to His Grace the Duke of Norfolk* (C.P.S., New York: 1875), chapter 5, p. 71.

¹¹ 18 Commitments on “Faith for Rights” (2017), A/HRC/40/58, annex II, commitment I.

¹² *Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land*, The Hague (18 October 1907), preambular para. 8, available at <https://ihl-databases.icrc.org/ihl/INTRO/195>. See also the slightly different wording in *Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land*, The Hague (29 July 1899), preambular para. 9, available at <https://ihl-databases.icrc.org/ihl/INTRO/150>: “Until a more complete code of the laws of war is issued, the High Contracting Parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity, and the requirements of the public conscience”.

atrocities that deeply shock the conscience of humanity”.¹³ And under international refugee law, UNHCR’s Guidelines on International Protection No. 10 note that conscientious objectors who base their objection on thought or conscience (rather than religion) “will not be able to refer to the practices of a religious community or teachings of a religious institution in order to substantiate their assertion”, but they should “be able to articulate the moral or ethical basis for their convictions.”¹⁴ Conscience is therefore a factor, if not an actor, that goes even deeper than beliefs and constitutes the ultimate custodian of personal values which determine human choices.

How could the above-mentioned five divides between and among religion(s), belief(s), human rights, international law, and freedom of conscience be bridged in practice? Is it an impossible task to fulfil in a human rights-based manner? The “Faith for Rights” framework addresses this challenge and provides both a fundamental approach and an operational methodology for reconciling these parallel tracks, which are often politically manipulated against each other. Already in 2015, Professor Cherif Bassiouni suggested to the co-authors in Geneva to analyze failure stories and worst practices in this area and to build on decades of expertise by all relevant stakeholders. What does not work in the area of religion and human rights is dogmatism, fragmented approaches for opportunistic reasons, theological debates even in “good faith”, conversion overshadowing convergence, photo sessions that do not even scratch the surface, and the denial that objective tensions do exist between human interpretations of religions and human rights.

This analysis led to collaboratively elaborating, adopting and implementing the “Faith for Rights” framework since 2017. The framework consists of two soft law instruments¹⁵ (the – preambular – *Beirut Declaration* and its –

¹³ *Rome Statute of the International Criminal Court* (17 July 1998), preambular para. 2, available online at <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>.

¹⁴ UNHCR, *Guidelines on International Protection No. 10: Claims to Refugee Status related to Military Service within the context of Article 1A (2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees* (3 December 2013), para. 68, available online at <https://www.unhcr.org/publications/legal/529efd2e9/guidelines-international-protection-10-claims-refugee-status-related-military.html>.

¹⁵ Zeid Ra’ad Al Hussein, Rabat+5 Symposium on the follow-up to the Rabat Plan of Action, Rabat, 6-7 December 2017, <https://www.ohchr.org/en/statements/2017/12/rabat5-symposium-follow-rabat-plan-action-rabat-6-7-december-2017>; Ahmed Shaheed, Reports of the Special Rapporteur on freedom of religion or belief, A/HRC/37/49, para. 29; A/73/362, para. 63; A/74/358, para. 73; and A/HRC/46/30, para. 79(d); United Nations, *Human Rights Report 2018* (UN Human Rights Office, Geneva: 2019), p. 347; Heiner Bielefeldt and Michael Wiener, *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* (Office of Legal Affairs, New York: 2021), p. 5,

operational – 18 Commitments on “Faith for Rights”) as well as an implementation methodology based on peer-to-peer learning (the *#Faith4Rights toolkit*).¹⁶ At the framework’s launch in March 2017, the then High Commissioner for Human Rights, Zeid Ra’ad Al Hussein, highlighted the common objective to foster developing peaceful societies, which uphold human dignity and equality for all and where diversity is not just tolerated but fully respected and celebrated.¹⁷ His successor, Michelle Bachelet, stressed the crucial role played by religious leaders in either defending or undermining human rights, peace and security; she argued that “[r]espect for human rights shapes societies that are more peaceful, more resilient, more sustainably developed”.¹⁸ Furthermore, on his first day in office, High Commissioner Volker Türk highlighted the importance of working with governments, civil society organizations, parliamentarians and faith leaders to advance the cause of human rights as “a common language of humanity”.¹⁹

2. Faith for Rights and Peace

The section header “Faith for Rights and Peace” has a double meaning. On the one hand, because faith-based actors are among the most powerful educators, they can be strategic for preventing human rights violations that ultimately end up jeopardizing peace (i.e. Faith for “Rights and Peace”). On the other hand, peace is also a vital component and objective of the “Faith for Rights” framework, starting by socio-cultural inclusion and full respect for all minority rights within societies at the national level. The “Faith for Rights” approach is designed for managing and celebrating the enriching cultural and religious diversity within societies so that they blossom inclusively and peacefully (i.e. “Faith for Rights” and Peace).

https://legal.un.org/avl/pdf/ha/ga_36-55/ga_36-55_e.pdf; Birgit van Hout, Addressing Hate Speech and Preventing Incitement to Violence in Europe, 10 March 2022,

<https://europe.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=2609&LangID=E>; Ibrahim Salama and Michael Wiener, *Reconciling Religion and Human Rights: Faith in Multilateralism* (Edward Elgar, Cheltenham: 2022), pp. 30-41.

¹⁶ All related documents are available online at <https://www.ohchr.org/en/faith-for-rights>.

¹⁷ Zeid Ra’ad Al Hussein, *OHCHR expert meeting on “Faith for Rights”*, 28 March 2017, available online at <https://www.ohchr.org/en/statements/2017/03/ohchr-expert-meeting-faith-rights?LangID=E&NewsID=21451>.

¹⁸ Michelle Bachelet, *Global Summit on Religion, Peace and Security*, 29 April 2019, available online at <https://www.ohchr.org/en/statements/2019/04/global-summit-religion-peace-and-security?LangID=E&NewsID=24531>.

¹⁹ Volker Türk, *Arrival of new High Commissioner Volker Türk at Palais Wilson*, 17 October 2022, available online at <https://www.unognewsroom.org/story/en/1502/volker-tuerk-new-un-human-rights-high-commissionner>.

The two above-mentioned meanings are deeply ingrained in the “Faith for Rights” framework. From Beirut in 2017, the faith-based and civil society actors have launched together “the most noble of all struggles, peaceful but powerful, against our own egos, self-interest and artificial divides”, with a view to transcending “preaching to action” as well as promoting “mutual acceptance and fraternity among people of different religions or beliefs and empower[ing] them to defeat negative impulses of hatred, viciousness, manipulation, greed, cruelty and related forms of inhumanity.”²⁰ Through the Beirut Declaration, they reach “out to persons belonging to religions and beliefs in all regions of the world” in order to enhance “cohesive, peaceful and respectful societies on the basis of a common action-oriented platform agreed by all concerned and open to all actors that share its objectives.”²¹ They also valued that the Beirut Declaration and its preceding Rabat Plan of Action on the prohibition of incitement to discrimination, hostility or violence (2012)²² were “both conceived and conducted under the auspices and with the support of the United Nations [...], and enriched by UN human rights mechanisms such as Special Rapporteurs and Treaty Body members.”²³ The Beirut Declaration also emphasizes the importance of enabling religious actors “to assume their responsibilities in defending our shared humanity against incitement to hatred, those who benefit from destabilising societies and the manipulators of fear to the detriment of equal and inalienable human dignity.”²⁴

What is the underlying definition of – and vision for – peace? As the 2016 Declaration on the Right to Peace recognizes, “peace is not only the absence of conflict but also requires a positive, dynamic participatory process where dialogue is encouraged and conflicts are solved in a spirit of mutual understanding and cooperation, and socioeconomic development is ensured”.²⁵ Thus peace is not just the absence of war and should also not be mistaken for the tranquillity of a graveyard,²⁶ but seeking peaceful societies

²⁰ Beirut Declaration on “Faith for Rights” (2017), A/HRC/40/58, annex I, para. 6.

²¹ *Ibid.*, para. 7.

²² Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (2012), A/HRC/22/17/Add.4, appendix.

²³ Beirut Declaration on “Faith for Rights” (2017), A/HRC/40/58, annex I, para. 7.

²⁴ *Ibid.*, para. 8.

²⁵ Declaration on the Right to Peace (2016), A/RES/71/189, annex, preambular para. 16.

²⁶ Immanuel Kant, “Toward Perpetual Peace”, in: Immanuel Kant, *Practical Philosophy*, translated and edited by Mary J. Gregor (Cambridge University Press, Cambridge: 1996), p. 317. See also Heiner Bielefeldt and Michael Wiener, *Religious Freedom Under Scrutiny* (University of Pennsylvania Press, Philadelphia: 2020), p. 66; as well as below [chapter 14](#) by Heiner Bielefeldt, “Amplifying the peace-building potential of human rights”.

demands a holistic human rights-based approach. Alluding to the opening paragraph of the Constitution of UNESCO,²⁷ the authors of the Beirut Declaration stressed that “[w]ar starts in the minds and is cultivated by a reasoning fuelled by often hidden advocacy of hatred” and that speech “constitutes one of the most crucial mediums for good and evil sides of humanity.”²⁸ Identifying positive and remedial speech as “the healing tool of reconciliation and peace-building in the hearts and minds”, the supporters of the Beirut Declaration have committed to support each other and to assume their responsibilities in countering incitement to hatred “on the basis of the thresholds articulated by the Rabat Plan of Action.”²⁹ The latter refers explicitly to creating a culture of peace and nurturing social consciousness, stressing that any legislation against hate speech “should be complemented by initiatives from various sectors of society geared towards a plurality of policies, practices and measures nurturing social consciousness [...] with a view to creating and strengthening a culture of peace”.³⁰ In addition, “States should promote intercultural understanding, including on gender sensitivity”, in line with their responsibilities to build a culture of peace and end impunity.³¹ This formulation from the 2012 Rabat Plan of Action already foreshadows the preamble of the 2016 Declaration on the Right to Peace, which recalls that “the culture of peace and the education of humanity for justice, liberty and peace are indispensable to the dignity of human beings and constitute a duty that all nations must fulfil in a spirit of mutual assistance and concern”.³² Its article 1 also brings together peace and security, development and human rights – the three pillars of the United Nations – succinctly in 21 words by proclaiming that “[e]veryone has the right to enjoy peace such that all human rights are promoted and protected and development is fully realized.”³³

²⁷ Constitution of the United Nations Educational, Scientific and Cultural Organization (1945): “The Governments of the States Parties to this Constitution on behalf of their peoples declare: That since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed [...]”, available online at <https://www.unesco.org/en/legal-affairs/constitution>. See also Ibrahim Salama and Michael Wiener, “Individual and communal flourishing through ‘Faith for Rights’”, in: Michael Reisman and Roza Pati, *Human Flourishing: The End of Law. Essays in Honor of Siegfried Wiessner* (Brill, Leiden: 2023).

²⁸ Beirut Declaration on “Faith for Rights” (2017), A/HRC/40/58, annex I, para. 20.

²⁹ *Ibid.*, para. 20. The Rabat threshold test (A/HRC/22/17/Add.4, appendix, para. 29) takes into account (a) the social and political context, (b) status of the speaker, (c) intent to incite the audience against a target group, (d) content and form of the speech, (e) extent of its dissemination and (f) likelihood of harm, including imminence.

³⁰ Rabat Plan of Action, A/HRC/22/17/Add.4, appendix, para. 35.

³¹ *Ibid.*, para. 43.

³² Declaration on the Right to Peace (2016), A/RES/71/189, annex, preambular para. 26.

³³ *Ibid.*, article 1.

In this regard, Commitment XVI on “Faith for Rights” quotes the founder of the Bahá’í Faith, Bahá’u’lláh, who noted already in the 19th century that “[t]he progress of the world, the development of nations, the tranquility of peoples, and the peace of all who dwell on earth are among the principles and ordinances of God.”³⁴ This religious quote was selected by the participants of the Beirut expert workshop to illustrate their “Faith for Rights” commitment “to leverage the spiritual and moral weight of religions and beliefs with the aim of strengthening the protection of universal human rights and developing preventative strategies that we adapt to our local contexts, benefitting from the potential support of relevant United Nations entities.”³⁵ Additional religious quotes in the Beirut Declaration and its 18 Commitments refer to the Ancient Egyptian Middle Kingdom, Rigveda, Buddha, Confucius, Mahābhārata, Torah, Talmud, New Testament, Qur’an, Hadith, Imam ‘Alī ibn Abī Ṭālib, Shantideva, Jalāl al-Dīn Muḥammad Rūmī, Guru Granth Sahib and Abdu’l-Bahá. Furthermore, they also contain belief or spiritual quotes emanating from the Golden Rule, the Native American leader Sitting Bull, the humanist philosopher A.J. Ayer and a general recommendation on harmful practices adopted in 2014 jointly by the UN Committee on the Elimination of Discrimination against Women and the UN Committee on the Rights of the Child. This broad range of sources – indicated in the Beirut Declaration as merely “illustrative and non-exhaustive”³⁶ – shows how religions, beliefs and human rights mechanisms have been addressing similar questions over several millennia.

Even contemporary developments, such as the novel coronavirus and the respiratory disease it causes (COVID-19), reveal the importance of solidarity, humanity and collaboration with a human rights-based approach. Shortly after the World Health Organization declared the COVID-19 outbreak a global pandemic on 11 March 2020, the international multi-religious organisation Religions for Peace issued the following statement: “Our core responsibility as faith actors is to translate ethical values into concrete actions. A compelling way to do this is to promote human rights, fraternity and solidarity through the ‘Faith for Rights’ framework. Beyond religious institutions and faith leaders, such a joint approach to face the current health crisis – and its severe economic and social implications – is also an individual

³⁴ Bahá’u’lláh, *Tablets of Bahá’u’lláh revealed after the Kitáb-i-Aqdas*, Compiled by the Research Department of the Universal House of Justice and translated by Habib Taherzadeh with the assistance of a Committee at the Bahá’í World Centre, p. 44, available online at <https://www.bahai.org/library/authoritative-texts/bahauallah/tablets-bahauallah/tablets-bahauallah.pdf>.

³⁵ 18 Commitments on “Faith for Rights” (2017), A/HRC/40/58, annex II, commitment XVI.

³⁶ *Ibid.*, endnote 1.

responsibility. The ‘Faith for Rights’ framework and its 18 commitments reach out to individual theistic, non-theistic, atheistic or other believers in all regions of the world to enhance cohesive, peaceful and respectful societies on the basis of a common action-oriented platform. To fulfil this responsibility of believers, in this broad definition of religion or belief, we encourage faith actors to use the online #Faith4Rights toolkit.”³⁷ This toolkit includes peer-to-peer learning exercises for each of the 18 commitments on “Faith for Rights” as well as more than a dozen cases to debate, for instance about hate speech by religious and political leaders in the context of a pandemic.³⁸

3. Peer-to-peer learning methodology

The methodology of peer-to-peer learning, as advanced through the #Faith4Rights toolkit, is characterized by a democratic and egalitarian bottom-up approach; every participant of such an exercise has something to contribute as well as something to learn. This interactive approach is not only a pedagogical premise but it also allows for constructive engagement between faith and rights actors. Instead of carrying out top-down “training” or “teaching” of *the right answers* to complex interdisciplinary issues, let alone theological questions, the peer-to-peer learning methodology provides space for an open discussion among equal peers of possible *rights-based answers* to practical problems in multi-religious and multi-cultural societies. This is also the reason why the #Faith4Rights toolkit avoids the terms “trainer” or “teacher”, but instead provides tips to a “facilitator” on how to steer the debate when addressing a difficult topic, how to manage diversity and how to optimize peer-to-peer learning based on concrete situations and experiences. Yet these facilitators are essentially also participants, who may learn as much as – and often even more than – the other participants. Similarly, the topics and agenda of a peer-to-peer learning event can be decided on the spot by all participants, which requires considerable flexibility and sound preparation. However, the facilitator(s) should not cling to any pre-prepared notes but instead pick up pertinent points directly from the discussion and tailor any questions or exercises to the participants’ needs, backgrounds and interests. A degree of “calculated spontaneousness” has

³⁷ Religions for Peace, *Statement by Religions for Peace on Coronavirus Crisis* (19 March 2020), available online at <https://www.rfp.org/statement-by-religions-for-peace-on-coronavirus-crisis/> and in the *#Faith4Rights toolkit* (2022), <https://www.ohchr.org/sites/default/files/Documents/Press/faith4rights-toolkit.pdf>, p. 77.

³⁸ OHCHR, *#Faith4Rights toolkit* (2022), p. 96.

proven extremely rewarding in terms of the liveliness and richness of peer-to-peer learning.

The tasks of a facilitator may seem daunting and even intimidating, given the potential of heated discussions on complex issues that may include deeply held personal convictions and contemporary conflicts that are based on – or at least attributed to – religious divides. This underlines the importance of the facilitator being familiar with human rights education methodologies and also having substantive knowledge in the realms of both faith and human rights.³⁹ It may also be advisable to have a team of two (or more) facilitators, ideally gender-balanced, who could complement one another in facilitating the peer-to-peer learning debates in plenary or in smaller working groups. Discussing case studies and real-life experiences aims at shifting from “abstract inter-religious dialogues, with little concrete outcomes, into individual and joint positive actions by faith actors in defence of human dignity for all.”⁴⁰

Faith-based actors, academics, human rights experts and United Nations entities have collected good practices and lessons learned in the “Faith for Rights” framework. Since 2020, several peer-to-peer learning engagements have been piloted in different forms and regions, both online and offline. OHCHR launched the #Faith4Rights toolkit, both as a website and printable PDF, in its first edition in January 2020.⁴¹ Over two years, the toolkit received some 24 smaller updates and additions, leading to the launch of the second edition in 2022. Furthermore, Religions for Peace and the UN Committee on the Elimination of Discrimination against Women organized webinars on confronting COVID-19 from the prism of faith, gender and human rights as well as on keeping the faith in times of hate; each of these webinars attracted more than 2,000 views.⁴² In addition, the International Center for Law and Religion Studies at Brigham Young University (ICLRS) created in 2022 a website focussing on five modules of the toolkit (introduction; religious and belief pluralism; women, girls and gender equality; minority rights; and incitement to hatred) as well as a Facilitator Training Guide for conducting “Faith for Rights” sessions.⁴³ Moreover, the Global Campus of the United States Institute of Peace (USIP) launched in 2022 a self-paced online course on “Religions, Beliefs, and Human Rights: A ‘Faith for Rights’ Approach”, addressing the role of religious and faith-based actors in promoting human

³⁹ Ibid., p. 5.

⁴⁰ Ibid., p. 7.

⁴¹ Both are available online at <https://www.ohchr.org/en/documents/tools-and-resources/faith4rights-toolkit>.

⁴² OHCHR, *#Faith4Rights toolkit* (2022), p. 35.

⁴³ <https://faith4rights.iclrs.org/>.

rights and how the intersection of religion and human rights can facilitate sustainable peace.⁴⁴ In addition, several peer-to-peer learning events on “Faith for Rights” have been conducted across the globe together with academic institutions in Amsterdam, Beirut, Collonges, Erlangen, Essex, Geneva, Jakarta, Misau, Montréal, Oslo, Oxford, Paris, Portimão, Pretoria, Provo, San José, Surabaya, Surrey and Uberlândia.⁴⁵ OHCHR is also developing an informal network of #Faith4Rights facilitators and a peer-to-peer learning programme for professional faith leaders, specifically those who are either in-training, recently qualified or young faith leaders.

4. Lessons from peer-to-peer learning tailored to different audiences

It is vital for the success of each peer-to-peer learning exercise to be tailored to the specific context and needs of the participants. To learn more about their background and interests, the facilitator(s) could for example start the peer-to-peer learning event with an introductory round, asking the participants to briefly state (1) their first name, (2) one or more identity factors, (3) what they are hoping to take away from the event and (4) how their expertise could be useful for the other participants.

If every participant indicates his or her first name at the outset, this already creates a personal approach compared to using one’s family name, academic titles or institutional affiliations. The second question about one or more identity factors has proven to reveal the hidden fact that we all have multiple identities. These features of the exercise immediately go into the substance of peer-to-peer learning; participants should be encouraged to state not only the “usual suspects” identity factors such as their national, ethnic or religious background, but also some other factors that they self-define as important for their identity, for example specific educational interests, work experience, health issues or family history. In addition, this exercise also shows how diverse human beings are, beyond the traditional “boxes” that we tend to group people in, either subconsciously or overtly. The third question then allows each participant to outline what he or she expects to gain from the peer-to-peer learning event – or to admit that this concept is new to them, which is perfectly normal and can only enhance the added value of the exercise as the facilitator explains the methodology further. The fourth question is meant to trigger a self-reflection about what each participant could

⁴⁴ <https://www.usip.org/academy/catalog-global-campus-courses>.

⁴⁵ OHCHR, *Report on the rights of persons belonging to national or ethnic, religious and linguistic minorities* (2021), A/HRC/49/36, para. 68; OHCHR, *Report on combating intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons, based on religion or belief* (2022), A/HRC/49/86, para. 36.

chip into the discussion. Again, it is fine if some participants do not wish or know how to answer this question; what ultimately counts is that they become aware of the two-way street involved in peer-to-peer learning and to own the exercise as genuinely interactive participants, not merely recipients. Ideally, each participant answers these icebreaking (and deep-diving) questions in less than three minutes. This could be timed with a sand clock or mobile phone countdown in order to promote conciseness as well as to ensure equal treatment of and respectful listening to all participants.⁴⁶

Of course, these four questions may not be an appropriate opening round for all peer-to-peer learning events everywhere. For example, during an armed conflict or in a post-conflict situation, the facilitator might consider that the second question about the self-defined identity factor would be too sensitive for (some of) the participants. Furthermore, the last two questions might be too complex to answer for children, depending on their age.⁴⁷ However, the opening round could be adapted according to their evolving capacities and the local context.

In this chapter, we would like to share some lessons from peer-to-peer learning tailored to different audiences, including (a) children, (b) youth, (c) students and scholars, (d) parliamentarians, (e) judges and prosecutors, (f) civil servants, (g) diplomats, (h) UN independent experts, (i) national human rights institutions, (j) faith-based actors, (k) human rights defenders and (l) peer-learning facilitators. Obviously, the participants of peer-to-peer learning events usually relate to several of these twelve profiles, however, we would like to present below various ideas for exercises and discussion clustered according to these categories, even if they ultimately overlap in practice.

(a) Children

Peer-to-peer learning is equally suited for and can be adapted to children. It can be considered for various types of school learning and participatory activities. Childhood is the most fertile phase where seeds of inclusive societies should be planted. Teachers will assume the role of facilitators, including the contextualization of the topic and related material for discussions among children. Any peer-to-peer learning with children will largely depend on their age and level of maturity as well as the consent by their parents or legal guardians. This is important because international

⁴⁶ OHCHR, *#Faith4Rights toolkit* (2022), p. 11.

⁴⁷ See article 1 of the Convention on the Rights of the Child (A/RES/44/25, annex): “For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

human rights law guarantees “the right of the child to freedom of thought, conscience and religion”⁴⁸ as well as “the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.”⁴⁹ In this context, the UN Committee on the Rights of the Child noted that “[t]he more the child himself or herself knows, has experienced and understands, the more the parent, legal guardian or other persons legally responsible for the child have to transform direction and guidance into reminders and advice and later to an exchange on an equal footing.”⁵⁰ There are therefore numerous precautions when discussing about faith and rights with children, either in the presence of their parents or without them.

A substantive entry point for discussion with older children and their parents or legal guardians could be Commitment XII, which pledges to promote respect for “the right not to receive religious instruction that is inconsistent with one’s conviction.”⁵¹ The facilitator could explain that the rights of all persons to be exempted from instruction in a particular religion are “valuable because they allow for diversity in education and may promote the realization of the right to education with due respect for cultural diversity and the cultural rights of learners.”⁵² A related discussion topic could be how to distinguish such instruction in a particular religion from “public school instruction in subjects such as general history of religions and ethics”, since the latter is permissible – even against the wishes of parents or legal guardians – “if it is given in a neutral and objective way.”⁵³ Yet this distinction between religious instruction and education about general history of religions and ethics may be difficult to establish clearly in practice, since it depends not only on the curriculum and textbooks but also on the teacher’s way of presenting these topics to the pupils.⁵⁴ In addition, the dynamic nature of the child’s evolving

⁴⁸ Ibid., article 14(1).

⁴⁹ Ibid., article 14(2). See also article 18(4) of the International Covenant on Civil and Political Rights as well as article 13(3) of the International Covenant on Economic, Social and Cultural Rights (which both contain the following text, see A/RES/2200(XXI), A, annex: “The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians [...] to ensure the religious and moral education of their children in conformity with their own convictions.”).

⁵⁰ Committee on the Rights of the Child, *General comment no. 12: The right of the child to be heard* (2009), CRC/C/GC/12, para. 84.

⁵¹ 18 Commitments on “Faith for Rights” (2017), A/HRC/40/58, annex II, commitment XII.

⁵² Koumbou Boly Barry, *Report of the Special Rapporteur on the right to education* (2021), A/HRC/47/32, para. 24 (with footnote 20 referring to module 12 of the #Faith4Rights toolkit).

⁵³ Human Rights Committee, *General comment no. 22: Freedom of thought, conscience or religion* (1993), CCPR/C/21/Rev.1/Add.4, para. 6.

⁵⁴ Ibrahim Salama and Michael Wiener, *Reconciling Religion and Human Rights: Faith in Multilateralism* (Edward Elgar Publishing, Cheltenham: 2022), p. 200.

capacities implies that at a certain point – depending on the individual child’s personal situation and maturity, which needs to be determined on a case-by-case basis, – his or her freedom of religion or belief will ultimately prevail over the parental rights.⁵⁵ All this may complicate the task of a facilitator of a peer-to-peer learning event, especially if children and their parents or legal guardians participate at the same time.

For younger children, Commitment XII could be transposed into child-friendly language by identifying the most important elements and simplifying the human rights message, without losing the core substance of the “Faith for Rights” commitment.⁵⁶ In this context, the facilitator may wish to consult a helpful guide for producing child-friendly texts, including the methodology of getting children involved, sample consent forms and the following tips from children to make a document child-friendly:

“Do:

- Use simple, clear language
- Explain difficult words
- Give examples
- Make it colourful
- Use images that are relevant to the children and their context

Don’t:

- Make it too long
- Make it too simple – don’t patronise them
- Have pages of black and white print
- Use images and pictures that are not relevant or are just for decoration”⁵⁷

The facilitator could also talk with the children about the toolkit’s case to debate on environmental issues (Annex D): An interfaith group of religious leaders in the State of Secularita posted faith-based quotes on stickers above

⁵⁵ Heiner Bielefeldt, Nazila Ghanea and Michael Wiener, *Freedom of Religion or Belief: An International Law Commentary* (Oxford University Press, Oxford: 2016), pp. 67, 221 and 437; Michael Wiener, “Children and the 18 Commitments on ‘Faith for Rights’”, in Philip Jaffé, Özlem Lakatos, Nicole Langenegger Roux, Zoé Moody, Christian Nanchen and Jean Zermatten (eds), *Droits de l’enfant et croyances religieuses: Autonomie, éducation, tradition* (Centre interfacultaire en droits de l’enfant, Geneva/Sion: 2020), pp. 32-37, at p. 33.

⁵⁶ OHCHR, *#Faith4Rights toolkit* (2022), p. 63.

⁵⁷ Child Rights Connect, *Adapting the child-friendly example of the Convention on the Rights of the Child (Convention) with and for children in your context* (Child Rights Connect, Queen’s University Belfast, Centre for Children’s Rights and UNICEF, Geneva: 2019), available online at https://www.childrightsconnect.org/wp-content/uploads/2019/08/cf_crc_translation_guide_final.pdf, p. 3.

the water taps in public schools, indicating “Save water, it is a divine gift!”⁵⁸ This scenario – hypothetical, yet close to the lived reality of many pupils – allows for a free-flowing discussion about complex issues such as the role of religion in public schools, the meaning of secularism and environmental protection. In this context, the #Faith4Rights toolkit also refers to the complaint by sixteen children, including Greta Thunberg, about States failing to prevent and mitigate the consequences of climate change, and the 2021 decision by the UN Committee on the Rights of the Child.⁵⁹ The facilitator may also wish to discuss the outcome document on “Climate change and environmental protection” as debated during the 2019 session of the OIC Independent Permanent Human Rights Commission,⁶⁰ as well as the World Council of Churches’ commitments to children⁶¹ and its “Roadmap of Communities and Churches for an Economy of Life and Ecological Justice”.⁶² These concrete examples may facilitate discussing the faith-based and legal dilemmas related to intergenerational climate justice that children and future generations will have to face even more than today’s older persons. The notion of the rights of future generations will certainly be of interest to children.

(b) Youth

Another, again overlapping, category of participants of peer-to-peer learning events may involve youth (or “young people”), whose age is – according to different and inconsistent definitions – in a range between 10 and 32 years.⁶³

⁵⁸ OHCHR, *#Faith4Rights toolkit* (2022), p. 93.

⁵⁹ *Ibid.*, referring to the decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 104/2019 (adopted on 22 September 2021), CRC/C/88/D/104/2019. See also the Committee’s open letter to the authors which includes a simplified explanation of the case, available online at https://www.ohchr.org/sites/default/files/2021-12/Open_letter_on_climate_change.pdf.

⁶⁰ <https://www.oic-iphrc.org/ckfinder/userfiles/files/Final%20Outcome%20document%20of%2016th%20%20Session%20Thematic%20Debate%20on%20Environmental%20Protection%20and%20Climate%20%20Change.pdf>.

⁶¹ https://www.oikoumene.org/sites/default/files/Document/CommitmentsToChildren_WCC_EN_G.pdf.

⁶² https://www.oikoumene.org/sites/default/files/Document/Roadmap%20Magazine_3.4_homeprinting.pdf.

⁶³ OHCHR, *Youth and human rights* (2018), A/HRC/39/33, para. 13: “There is no consistent definition of the term ‘youth’. At the United Nations, the age range from 15 to 24 years has traditionally been used; however, as that range was originally chosen only for statistical

Youth are the most dynamic and promising population, and they are our future. Peer-to-peer learning on the complex connection between beliefs and rights is therefore of strategic importance.

The facilitator may for example discuss conscientious objection to military service, which is most relevant for this age group since young people are drafted into compulsory military service in many States around 18 years.⁶⁴ The facilitator could ask the participants if their national laws still include obligatory military service, if only men are covered by conscription, and if participants have already received their call-up papers. Additional questions could be what reasons should qualify as conscientious objection to military service and who should ultimately decide upon this? How should any alternative service be organized in order to comply with the conscientious objector's reasons? In this context, the facilitator could read in advance of the session the 2022 analytical report to the UN Human Rights Council, which provides detailed guidance in line with international norms and standards.⁶⁵

purposes, it is not used consistently. For example, some United Nations organizations use 'young people' as an umbrella term for 'youth' and 'adolescents', spanning the ages 10 to 24. The Committee on the Rights of the Child uses 'adolescents' in its general comment No. 20 (2016) on the implementation of the rights of the child during adolescence; however, as it clarifies, it does not seek to define adolescence but instead focuses on the period of childhood from age 10 until the 18th birthday. For others, such as the United Nations Human Settlements Programme, 'youth' refers to the ages 15 to 32, while still others use the age range from 15 to 29 years. The Committee on Economic, Social and Cultural Rights refers to youth and young people interchangeably, but without referring to a specific age range. Security Council resolution 2250 (2015) and the progress study on youth and peace and security define 'youth' as 18 to 29 years of age. Such a disparity of approaches can be problematic, particularly since the challenges faced by a 15-year-old are different from those faced by a 29-year-old."

⁶⁴ *Ibid.*, para. 53.

⁶⁵ OHCHR, *Conscientious objection to military service* (2022), A/HRC/50/43, para. 57: "(d) The application procedure should be available to all persons affected by military service, including conscripts, professional members of the armed forces and reservists; (e) The right to object applies both to pacifists and to selective objectors who believe that the use of force is justified in some circumstances but not in others; (f) Alternative service arrangements should be accessible to all conscientious objectors without discrimination as to the nature of their religious or non-religious beliefs; (g) Conscripts and volunteers should be able to object before the commencement of military service, or at any stage during or after military service; (h) No inquiry process is required by international law and consideration should be given to accepting claims of conscientious objection to military service as valid without such a process; (i) States that do not accept claims of conscientious objection as valid without an inquiry should establish independent and impartial bodies under the full control of the civilian authorities; (j) Application procedures should be based on reasonable and relevant criteria and should avoid imposing any conditions that would result in automatically disqualifying applicants; (k) The process for consideration of any claim of conscientious objection should be timely and all duties involving the bearing of arms should be suspended pending the decision; [...] (o)

If participants are interested, they could also simulate the discussion between a conscientious objector to military service and members of a decision-making body that determines whether the conscientious objection is genuinely held in a specific case. This exercise should be introduced by the facilitator as a hypothetical role play, in which the participants do not necessarily indicate their personal convictions but instead invent possible questions of the decision-making body and hypothetical answers of the conscientious objector. The aim is to sensitize the participants to the range of ethical and procedural dilemmas rather than forcing them to divulge their own views or internal reasoning.

A further step of the peer-to-peer learning could be to discuss if conscientious objection(s) should only be legally recognized with regard to military service or also against other comparable issues. In this regard, the facilitator could give some national or international examples such as conscientious objections against paying taxes for military appropriations,⁶⁶ or for supporting a different religion; against carrying out an abortion or implanting contraceptive coils;⁶⁷ against facing the flag and singing the national anthem at school ceremonies;⁶⁸ or against the domestic duty for landowners to join a hunting association and tolerate the hunt of wild animals on their property.⁶⁹ Are there compelling – legal and ethical – reasons for treating these conscientious objections differently? Would it open the floodgates if any subjective reasons were covered under the absolutely protected freedom of conscience? Again, the facilitator would need to be well prepared for such a discussion, ideally raising these questions for each participant to answer individually and confidentially, rather than trying to impose a standard solution (which may not exist in the first place).

Furthermore, many young people have grown up as digital natives, however, the facilitator needs to take into account the participants' different socio-economic backgrounds and level of Internet penetration in their societies,

Alternative service must be compatible with the reasons for conscientious objection, be of a non-combatant or civilian character, be in the public interest and not of a punitive character; (p) Any longer duration of alternative service in comparison to military service is permissible only if additional time for alternative service is based on reasonable and objective criteria”.

⁶⁶ See above the [chapter](#) by Robin Brookes.

⁶⁷ See Heiner Bielefeldt, Nazila Ghanea and Michael Wiener, *Freedom of Religion or Belief: An International Law Commentary* (Oxford University Press, Oxford: 2016), pp. 298-301.

⁶⁸ Human Rights Committee, Summary record of the 3926th meeting, 14 October 2022, Consideration of the seventh periodic report of Japan, CCPR/C/SR.3926, paras. 30 and 56; as well as the Committee's concluding observations, CCPR/C/JPN/CO/7, paras. 38-39.

⁶⁹ European Court of Human Rights, *Herrmann v. Germany*, application no. 9300/07, judgment of 26 June 2012.

which may have led to a digital divide as well as gaps between women and men in their access to information and communications technologies.⁷⁰ The #Faith4Rights toolkit suggests for the 18 commitments a tweeting exercise, which aims at summarizing, either individually or in small groups, each “Faith for Rights” commitment in less than 140 characters and “social-mediatize” its key message. Such exercises have been piloted by OHCHR in youth workshops since 2018, including in Marrakech where some participants spontaneously sent the resulting tweets to their social networks from their personal Twitter accounts. They also made the recommendations to support civil society actors who are working on human rights of young people and youth unions to engage more in national and international human rights mechanisms as well as to establish a special human rights protection mechanism on digital space to support communication strategies and multimedia campaigns for combating hate speech and enhancing equality.⁷¹

In this context, the facilitator could also watch the #Faith4Rights Webinar during the Price Media Law Moot Court Competition 2022, which included a Research and Policy Manager of Meta’s Oversight Board Administration who explained decisions about content moderation of hate speech on Facebook and Instagram.⁷² Meta has indicated that it looks to authorities such as the International Covenant on Civil and Political Rights as well as the Rabat Plan of Action when making content decisions.⁷³ The Oversight Board has also drawn upon the six factors from the Rabat Plan of Action to assess the capacity of speech to create a serious risk of inciting discrimination, violence or other lawless action.⁷⁴ “New technologies – including digital

⁷⁰ OHCHR, *Promotion, protection and enjoyment of human rights on the Internet: ways to bridge the gender digital divide from a human rights perspective* (2017), A/HRC/35/9, para. 3.

⁷¹ OHCHR, *The Beirut Declaration and its 18 Commitments on Faith for Rights: Report and Outlook*, 15th edition (2022), available online at <https://www.ohchr.org/sites/default/files/Documents/Press/Faith4Rights.pdf>, p. 86.

⁷² University of Oxford Faculty of Law, *Price Media Law Moot 2022: #Faith4Rights Webinar* (2022), available online at <https://www.law.ox.ac.uk/events/price-media-law-moot-2022-faith4rights-webinar> and video recording at <https://www.youtube.com/watch?v=MJpu8D5bOHo>.

⁷³ Oversight Board, *Case decision 2020-003-FB-UA* (2021), para. 8.3 under 1, available online at <https://www.oversightboard.com/decision/FB-QBJDASCV>.

⁷⁴ Oversight Board, *Case decision 2021-001-FB-FBR* (2021), p. 30, available online at <https://www.oversightboard.com/sr/decision/2021/001/pdf-english>. Subsequently, the Oversight Board has accounted “for differences between international law obligations of States and human rights responsibilities of businesses” and thus it “focused on the social and political context, intent, the content and form of the speech and the extent of its dissemination”, see Oversight Board decision on *Knin cartoon (2022-001-FB-UA)*, para. 8.3 under III, available online at <https://www.oversightboard.com/decision/FB-JRQ1XP2M/>. Yet afterwards the

broadcasting, mobile telephony, the Internet and social networks – vastly enhance the dissemination of information”,⁷⁵ however, the Rabat Plan of Action also flagged the importance of combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence, and violence against persons based on religion or belief (Human Rights Council resolution 16/18) with constant follow-up at the national and international levels. Similarly, in an open letter of 5 November 2022, High Commissioner Volker Türk called for Twitter’s content moderation policies to continue barring hatred that incites discrimination, hostility or violence on the platform, and he stressed that “hate speech has spread like wildfire on social media platforms in countries with starkly different cultural, political and religious contexts – with horrific, life-threatening consequences for thousands of people.”⁷⁶

In addition, the Council of Europe’s 2022 recommendation to member States on combating hate speech also builds on the six criteria of the Rabat Plan of Action, and with regard to human rights education the UN “Faith for Rights” framework and toolkit with its peer-to-peer learning methodology is labelled a “useful tool”.⁷⁷ The facilitator may wish to outline these global, regional and national standards in order to illustrate how the various duty-bearers should collaborate in countering incitement to hatred, while not undermining freedom of expression. Finally, the participants could discuss the toolkit’s case to debate on blasphemy charges (Annex A) and apply the Rabat threshold test to this hypothetical scenario, by using the hyperlinked online guides and calculators for analyzing hate speech.⁷⁸

Oversight Board has again used the full six-part threshold test in its decision *Tigray Communication Affairs Bureau (2022-006-FB-MR)*, para. 8.3 under III, available online at <https://www.oversightboard.com/decision/FB-EI154YLY/>.

⁷⁵ Rabat Plan of Action, A/HRC/22/17/Add.4, appendix, paras. 40-41.

⁷⁶ OHCHR, *Open letter from Volker Türk, United Nations High Commissioner for Human Rights, to Mr. Elon Musk, Chief Executive Officer at Twitter* (5 November 2022), available online at https://www.ohchr.org/sites/default/files/documents/press/2022-11-05/22-11-05_Letter_HC_to_Mr_Elon_Musk.pdf, p. 1.

⁷⁷ Council of Europe, *Recommendation CM/Rec(2022)16 of the Committee of Ministers to member States on combating hate speech: Explanatory Memorandum* (20 May 2022), CM(2022)43-addfinal, available online at https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a6891e, paras. 32, 35, 125 and 184.

⁷⁸ OHCHR, *#Faith4Rights toolkit* (2022), p. 90, referring to <https://pjp-coe.int/en/web/human-rights-speech/analyse>.

(c) *Students and scholars*

Students, especially those studying law or international relations, would certainly find the interdisciplinary “Faith for Rights” approach positively intriguing. They may be interested in discussing one of the more detailed moot court cases that are included in the #Faith4Rights toolkit in its annexes H to M. These six hypothetical scenarios allude – or even explicitly refer – to the Rabat Plan of Action and the “Faith for Rights” framework, for example in the case of the Price Media Law Moot Court Competition 2020 regarding hate speech, artificial intelligence and conversion issues.⁷⁹ Furthermore, the case of the Moot Court Competition by the Brazilian Center of Studies in Law and Religion quotes Commitment IV, calling on politicians and other stakeholders to prevent the use of “doctrinal secularism” from reducing the space for religious or belief pluralism in practice.⁸⁰ In addition, the case of the Nelson Mandela World Human Rights Moot Court Competition 2020 involves questions about religious symbols, a hologram procession and protestors holding placards with the hashtag #Faith4Rights.⁸¹ Organizing peer-to-peer learning events online or offline during such moot court competitions has also proven useful since the participants are already familiar with related legal arguments that they have been researching for their written memorials and rehearsing for their oral presentations as applicant or respondent in the moot competition. Shorter workshops or webinars may also focus on one of the toolkit’s cases to debate (Annexes A to G), which can be discussed during a session between an hour and 90 minutes.⁸²

In addition to moot courts, other innovative forms of peer-to-peer learning with students and scholars could involve massive open online courses (MOOC) and Masters programs. Their interactive implementation and stimulating discussions with a human rights-based approach are key. The #Faith4Rights toolkit refers to the MOOC on freedom of expression with almost 5,000 participants in 2021, organized by the Bonavero Institute at the University of Oxford and UNESCO.⁸³ In addition, the University for Peace’s Master of Arts in Religion, Culture and Peace Studies (2021–2022) included a course on countering hate speech, which focused on the related hard law

⁷⁹ Ibid., pp. 97–102.

⁸⁰ Ibid., pp. 103–105.

⁸¹ Ibid., pp. 107–112.

⁸² University of Pretoria Centre for Human Rights, *Invitation: Peer-to-peer learning webinar on #Faith4Rights* (2021), available online at <https://www.chr.up.ac.za/latest-news/2598-peer-to-peer-learning-webinar-on-faith4rights> and video recording at <https://www.youtube.com/watch?v=zHfZounCnUg>.

⁸³ OHCHR, *#Faith4Rights toolkit* (2022), pp. 47 and 49, referring to the video recording at https://www.youtube.com/watch?v=tylK_hUfaY#t=1120s.

norms and soft law standards as well as discussed the toolkit's case study on incitement to hatred by political and religious leaders during the pandemic.⁸⁴ Online, hybrid and offline elements can also be combined, for example by encouraging the participants to complete ahead of the peer-to-peer learning event the above-mentioned USIP micro-course on "Religions, Beliefs, and Human Rights" or the "Faith for Rights" modules on the ICLRS website. This enables a common knowledge basis and level playing field for all participants once the peer-to-peer learning event begins, thereby also saving time during the workshop or webinar. Furthermore, it may trigger useful questions and suggestions by the participants to focus on a specific thematic area, thereby tailoring the event to their personal interests and societal needs.

(d) Parliamentarians

Organizing peer-to-peer learning events with members of parliaments is important because the tensions between beliefs and rights tend to divide lawmakers. Parliamentarians are also potential victims of populism and election-related calculations. A better knowledge by parliamentarians of the complementarities between faith and rights is conducive to comparing national experiences and may even yield concrete legislative follow-up action. In preparation of such a peer-to-peer learning event, the facilitator may wish to use the resources of the "Leave No One Behind" dialogue series in 2021-2022, which was co-organized by the Freedom of Religion or Belief Leadership Network, International Panel of Parliamentarians for Freedom of Religion or Belief, Religions for Peace, African Parliamentarians for Human Rights, the "Faith for Rights" Initiative and the Danish Institute for Human Rights.⁸⁵ This dialogue series explored the interrelated topics of freedom of religion or belief and the Sustainable Development Goals (SDG), gender, education, civic space and freedom of expression, health and climate change. The thematic briefing papers for each of the six dialogues and their full video recordings may be useful resources for the facilitator and participants.⁸⁶ Current or former parliamentarians, religious leaders and faith-based actors shared their experiences, exploring any gaps and opportunities towards action. As a follow-up, more than 100 signatories called in their public statement to integrate religious or belief communities' experiences of

⁸⁴ University for Peace, *Religion, Culture and Peace Studies* (2022), available online at <https://www.upeace.org/programmes/religion-culture-and-peace-studies>.

⁸⁵ International Panel of Parliamentarians for Freedom of Religion or Belief, "Leave No One Behind" – *Realising Freedom of Religion or Belief and the Sustainable Development Goals* (2021), available online at <https://www.ipppforb.com/newsroom/2021/25/06leave-no-one-behind-realising-freedom-of-religion-or-belief-and-the-sustainable-development-goals>.

⁸⁶ <https://www.ipppforb.com/resources>.

inequality and needs into SDG planning, policy and action at a country level so that no one is left behind.⁸⁷

In this context, the #Faith4Rights toolkit suggests a peer-to-peer learning role play about collective apprehensions by a religious minority against perceived police brutalities in the hypothetical State of Polis and a draft law prohibiting arms, even if licenced, in places of worship.⁸⁸ The participants could simulate a parliamentary hearing of the different views in order to inform the legislative process on the draft law, playing various roles for example as a member of parliament, a religious leader or an atheist civil society activist, respectively. The facilitator may ask participants to use the existing procedural options in their own country or to invent such a consultative process.

Another peer-to-peer learning exercise could be to ask the participants to draft constitutional provisions on freedom of religion or belief as well as come up with an “ideal” legal relationship between the State and religion(s).⁸⁹ The facilitator could help them by asking pertinent questions, based on real-life examples from Constitutions around the globe, which illustrate good practices but also the potential pitfalls of certain formulations.⁹⁰ As flagged in Commitment IV, both the notions of “State religion” and “doctrinal secularism” may lead to discriminating against minorities or reducing the space for diversity of religions and beliefs.⁹¹ Yet, drafting non-discriminatory laws is easier said than done. It requires comprehensive consultations, notably with inputs from religious or belief minorities and other disadvantaged groups.⁹² The facilitator should also try to raise awareness about possible discrimination in applying such laws and how to prevent any authoritarian abuse through devising institutional safeguards and ensuring meaningful control by judicial, legislative or administrative institutions. In this regard, the UN publication on “Human Rights and Constitution Making”

⁸⁷ International Panel of Parliamentarians for Freedom of Religion or Belief, *Global Commitment to Ensure “No One is Left Behind” on the Basis of their Religion or Belief* (2022), available online at <https://www.ipppforb.com/newsroom/2022/29/06global-commitment-to-ensure-no-one-is-left-behind-on-the-basis-of-their-religion-or-belief>.

⁸⁸ OHCHR, *#Faith4Rights toolkit* (2022), p. 94.

⁸⁹ *Ibid.*, p. 29.

⁹⁰ Ibrahim Salama and Michael Wiener, *Reconciling Religion and Human Rights: Faith in Multilateralism* (Edward Elgar Publishing, Cheltenham: 2022), pp. 118-122.

⁹¹ 18 Commitments on “Faith for Rights” (2017), A/HRC/40/58, annex II, commitment IV.

⁹² Ahmed Shaheed, *Rights of persons belonging to religious or belief minorities in situations of conflict or insecurity* (2022), A/HRC/49/44, para. 78; OHCHR/Equal Rights Trust, *Protecting Minority Rights: A Practical Guide to Developing Comprehensive Anti-Discrimination Legislation* (United Nations, Geneva: 2022).

provides useful guidance on a rights-based approach to constitutional reform and how to draft a constitutional bill of rights, including freedom of religion or belief.⁹³

(e) Judges and prosecutors

A peer-to-peer learning event with judges and prosecutors is important to compare notes on the fluctuating judicial precedents in the complex areas of religion and human rights. Their peer-to-peer learning should ideally also involve discussing real or hypothetical cases concerning religious or belief issues. The related jurisprudence of international human rights mechanisms and regional courts may not be fully known by the participants. Therefore the facilitator may wish to check online databases for any pertinent decisions with regard to the participants' State(s) from UN treaty bodies, communications by Special Procedures, recommendations through the Universal Periodic Review and judgements from regional human rights courts.⁹⁴ Concluding observations by UN treaty bodies and OHCHR reports may include specific guidance on the application of domestic laws in order to ensure their compliance with international human rights norms and standards. For example, the UN Human Rights Committee has criticized a domestic anti-blasphemy law, even though it had been upheld by the Constitutional Court, and the UN Committee reiterated its view that this law was "inconsistent with the provisions of the [International Covenant on Civil and Political Rights] and that it should be repealed forthwith."⁹⁵ With regard to freedom of conscientious objection to military service, OHCHR concluded that "(l) After any decision on conscientious objector status, there should always be a right to appeal to an independent civilian judicial body; (m) Conscientious objectors should not be repeatedly punished for not having obeyed a renewed order to serve in the military; (n) States should release individuals who are imprisoned or detained solely based on their

⁹³ OHCHR, *Human Rights and Constitution Making* (United Nations, New York and Geneva: 2018), available online at https://www.ohchr.org/sites/default/files/Documents/Publications/ConstitutionMaking_EN.pdf.

⁹⁴ For the jurisprudence of UN human rights treaty bodies see <https://juris.ohchr.org/>. For communications by Special Procedures see <https://spcommreports.ohchr.org/>. For recommendations from the Universal Periodic Review see <https://uhri.ohchr.org/>. For judgements of the European Court of Human Rights see <https://hudoc.echr.coe.int/>. For judgements of the Inter-American Court of Human Rights see https://www.corteidh.or.cr/casos_sentencias.cfm?lang=en. For judgement of the African Court on Human and Peoples' Rights see <https://www.african-court.org/cpmt/latest-decisions/judgments>.

⁹⁵ Human Rights Committee, *Concluding observations on the initial report of Indonesia* (2013), CCPR/C/IDN/CO/1, para. 25; Human Rights Committee, *List of issues prior to submission of the second periodic report of Indonesia* (2020), CCPR/C/IDN/QPR/2, para. 18.

conscientious objection to military service.”⁹⁶ Such national and international examples could be discussed further by the participants, also in view of their own experiences and domestic case law.

Yet, it seems less confrontational and more conducive to an open debate if the facilitator presents a hypothetical case study, which is invented but may be inspired by several national practices. The #Faith4Rights toolkit includes some cases to debate on blasphemy charges, secularism and hate speech,⁹⁷ which may be interesting for peer-to-peer learning events with judges and prosecutors. If time permits, they could also discuss one of the more detailed moot court cases,⁹⁸ which resemble due to their adversarial nature to the work of judges, prosecutors and lawyers. The participants could thus divide themselves into three groups, representing the mooting applicant, respondent and bench of judges, respectively. At the end of the session, the facilitator may wish to provide feedback on the discussion and add any arguments or precedents from international and regional jurisprudence. In follow-up, the judges and prosecutors will be well-equipped to take into consideration relevant international human rights norms, standards and case law in their national context.

(f) Civil servants

Another key stakeholder for changing policies and practices are civil servants. Regardless of the content of laws and public policies in the areas of social cohesion and the management of cultural and religious diversity, it is ultimately the quality of civil servants who implement related legislation and public policies that determines the achievement of their goals. Peer-to-peer learning for civil servants in the area of management of cultural and religious diversity is a *condicio sine qua non* for peaceful societies where religious and other minorities are fully respected and integrated in the socio-cultural fabric of our increasingly diverse societies. Such peer-to-peer learning events may target a variety of civil servants, from different countries, regions, departments, levels of seniority, gender, religious or belief affiliation etc. Ideally, such diversity is reflected among the participants since their complementary or contrasting perspectives may enrich the discussions. It is also beneficial to include the voices of domestic civil society and international human rights mechanisms in such peer-to-peer learning.

⁹⁶ OHCHR, *Conscientious objection to military service* (2022), A/HRC/50/43, para. 57.

⁹⁷ OHCHR, *#Faith4Rights toolkit* (2022), pp. 90, 93 and 96.

⁹⁸ *Ibid.*, pp. 97-122.

In this regard, the facilitator could provide a real-life example from the interactive dialogue in 2017 between the UN Committee on the Elimination of Discrimination against Women and the delegation of Nigeria. The Minister of Women and Social Development explained to the Committee in Geneva her Government's efforts to raise religious leaders' awareness of the importance of amending discriminatory marriage laws.⁹⁹ Committee members then drew the delegation's attention to the Rabat Plan of Action and the "Faith for Rights" framework, which could serve as useful tools in encouraging different faith communities to work together to promote human rights, and they asked about measures to increase support for gender-related awareness-raising programmes among women's groups, local communities, traditional and religious leaders, prominent male figures, teachers and members of the media.¹⁰⁰ In its concluding observations, the Committee recommended expediting "the repeal or amendment of all discriminatory laws identified by the Nigerian Law Reform Commission and include religious leaders in the process of addressing issues of faith and human rights, so as to build on several 'faith for rights' initiatives and identify common ground among all religions in the State party, as acknowledged by the delegation."¹⁰¹ This recommendation and concrete options for implementation were discussed in 2020-2021 during peer-to-peer learning events at Bauchi State University with civil servants from different regions of Nigeria.¹⁰²

In this context, the facilitator could also refer to the European Union's Gender Action Plan III (2020), which encourages "cooperation with a broad range of actors, such as local authorities and civil society organisations, women's rights activists, human rights defenders, young people, religious and faith-based organisations" and it explicitly calls on the EU to "support mobilisation of religious actors for gender equality in line with the Faith for Rights framework."¹⁰³ In follow-up, OHCHR and the European Commission Directorate-General for International Partnerships organized a series of peer-

⁹⁹ CEDAW/C/SR.1518, para. 14.

¹⁰⁰ CEDAW/C/SR.1518, paras. 16 and 43.

¹⁰¹ CEDAW/C/NGA/CO/7-8, para. 12. See also the OHCHR report to the Working Group on the Universal Periodic Review, *Compilation on Nigeria* (2018), A/HRC/WG.6/31/NGA/2, para. 13.

¹⁰² OHCHR, *Report on the rights of persons belonging to national or ethnic, religious and linguistic minorities* (2021), A/HRC/49/36, para. 68.

¹⁰³ European Commission/High Representative of the Union for Foreign Affairs and Security Policy, *Joint communication to the European Parliament and the Council. EU Gender Action Plan (GAP) III – An ambitious agenda for gender equality and women's empowerment in EU external action* (25 November 2020), JOIN(2020) 17 final, pp. 3 and 6.

to-peer learning events in 2021 on using the #Faith4Rights toolkit in the context of the EU Gender Action Plan.¹⁰⁴

These examples also illustrate the bridges that should be built between faith-based actors, civil society, human rights experts, civil servants and diplomats. The facilitator could conclude the peer-to-peer learning session by stressing the importance of linking the discussions in Geneva, New York and capital cities with the daily work of civil servants and civil society at the grassroots level. Participants could share their concrete experiences and brainstorm together about creative ideas for implementing the recommendations by UN treaty bodies, special procedures and the universal periodic review in their local contexts.

(g) Diplomats

The role of diplomats in handling religious issues in the multilateral context is crucial. The challenge in this aspect is that diplomats may be tempted to reflect the existing national divides rather than resolving them. Diplomats, however, have both the potential and the skills for bridging the divides on religion in international negotiations, as evidenced in numerous situations across the globe and at UN headquarters. In the “Faith for Rights” context, the facilitator could give some examples from the Human Rights Council, Forum on Minority Issues and Special Procedures. In 2018, the High Commissioner’s update on the situation of human rights of Rohingya people called upon the Government of Myanmar to “increase efforts further to promote tolerance and peaceful coexistence in all sectors of society in accordance with Human Rights Council resolution 16/18 and the Rabat Plan of Action. In addition, the Beirut Declaration and its 18 commitments on ‘Faith for Rights’ can be useful to address advocacy of hatred that incites to violence, discrimination or hostility, particularly when it is conducted in the name of religion or belief.”¹⁰⁵ The Human Rights Council took up this recommendation in its annual resolutions on the situation of human rights in Myanmar, each of which explicitly refer to the Rabat Plan of Action.¹⁰⁶

In a similar vein, the 2021 Forum on Minority Issues enumerated the Rabat Plan of Action and Beirut Declaration as reference instruments for preventing conflicts involving minorities.¹⁰⁷ The Forum encouraged “States, the United

¹⁰⁴ OHCHR, *Report on combating intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons, based on religion or belief* (2022), A/HRC/49/86, para. 36.

¹⁰⁵ A/HRC/38/CRP.2, para. 49.

¹⁰⁶ A/HRC/RES/43/26, para. 26; A/HRC/RES/46/21, para. 34; A/HRC/RES/49/23, para. 26.

¹⁰⁷ A/HRC/49/81, para. 3.

Nations, international and regional organizations and civil society [...] to work closely in supporting the positive contributions of faith-based actors, including through the promotion of the Beirut Declaration and the faith for rights toolkit.”¹⁰⁸ Again, part of this formulation was picked up by the Human Rights Council in its 2022 resolution on prevention of genocide.¹⁰⁹ Special Rapporteur Ahmed Shaheed also highlighted in his 2022 report the role of religious leaders, influencers and other civil society actors in promoting reconciliation, peacebuilding and conflict prevention through constructive discourse and other interfaith initiatives, such as the “Faith for Rights” framework which aims at exchanging practices, engaging in interfaith projects and collectively promoting human rights.¹¹⁰ Furthermore, he called on States to prohibit incitement – online and offline – to discrimination, hostility, or violence based on religion or belief, consistent with international human rights law and standards, including Human Rights Council resolution 16/18, the Rabat Plan of Action as well as Beirut Declaration and its 18 Commitments on “Faith for Rights”.¹¹¹ Civil society, including faith-based actors, should promote interfaith engagement – for example through the #Faith4Rights framework – and “promote inclusive, peaceful and just conflict resolutions and to prevent tensions arising, particularly where conducted in the name of religion or belief.”¹¹²

Such inter-faith and intra-faith engagement needs to be broad and inclusive in terms of the involved religions, beliefs, gender, opinions, origins and other status. With regard to the representativity of faith-based actors, Azza Karam rightly highlights “the difference between religious institutions – largely male dominated and rife with internal power dynamics – and non-formal religious actors serving at the heart of their communities. With and to whom are we actually talking when we are speaking with representatives of faith-based organisations (FBOs)? Moreover, who is excluded from the dialogue and consultation tables? Further, to what extent is the outreach taking into consideration or, indeed, contributing to issues of asymmetries of power among religious groups and communities?”¹¹³

¹⁰⁸ *Ibid.*, para. 58.

¹⁰⁹ A/HRC/RES/49/9, operative para. 22.

¹¹⁰ A/HRC/49/44, para. 66.

¹¹¹ *Ibid.*, para. 78(b).

¹¹² *Ibid.*, para. 80.

¹¹³ Azza Karam, “Genocide Prevention, Religion, and Development”, in Jolyon Mitchell, Suzanna R. Millar, Francesca Po and Martyn Percy (eds), *The Wiley Blackwell Companion to Religion and Peace* (John Wiley & Sons, Hoboken N.J.: 2022), pp. 530-540, at p. 534.

The #Faith4Rights toolkit also stresses the importance of inclusivity, diversity and pluralism, noting that “universal human rights norms and the ‘Faith for Rights’ framework provide such common platform”¹¹⁴ for interfaith engagement and joint action. Following a “Faith for Rights” approach in an inclusive manner could ultimately lead to impactful *diplocacy*, i.e. a strategic combination of *diplomacy* and *advocacy* for human rights, which may even *deblock* protracted conflicts as well as *de-bloc* traditional regional or religious alliances. It may also facilitate a technical *deep-log* analysis of any underlying problems and tensions – both online and offline – in increasingly multi-religious societies which are interconnected through social media. With the neologism *diplocacy* we would like to allude to these important facets of human rights engagement with the various duty-bearers and rights-holders. Diplomats, UN independent experts, faith-based actors and other civil society representatives may thus jointly promote, protect and respect human rights, not only through quiet diplomacy or public advocacy of naming and shaming, but also “through dialogue in a pragmatic problem-solving mode” and with substantive knowledge based on constructive engagement and “comparative analysis, enriched by research that generates empirical evidence and pragmatic solutions.”¹¹⁵

Secretary-General António Guterres also stressed in his Call to Action for Human Rights the overall purpose of achieving positive impact: “This means being open to all available channels and opportunities to engage. There is a place for negotiations behind the scenes, a place for building and strengthening national capacities, a place for supporting different stakeholders, and a time when speaking out is essential.”¹¹⁶ In this context, engaging with the Security Council as well as creatively leveraging the full spectrum of other tools, channels and actors is vital in order “to raise awareness, prevent crisis and protect people effectively.”¹¹⁷

¹¹⁴ OHCHR, #Faith4Rights toolkit (2022), p. 12.

¹¹⁵ Ibrahim Salama and Michael Wiener, *Reconciling Religion and Human Rights: Faith in Multilateralism* (Edward Elgar Publishing, Cheltenham: 2022), pp. 30-31. See also Ibrahim Salama, “Human Rights Diplomacy from a UN Perspective: A Complement to Advocacy”, in Michael O’Flaherty, Zdzisław Kędzia, Amrei Müller and George Ulrich (eds), *Human Rights Diplomacy: Contemporary Perspectives* (Brill, Leiden: 2011), pp. 129-153.

¹¹⁶ Secretary-General, *The Highest Aspiration: A Call to Action for Human Rights* (United Nations, New York: 2020), p. 3, available online at https://www.un.org/sg/sites/www.un.org.sg/files/atoms/files/The_Highest_Aspiration_A_Call_To_Action_For_Human_Right_English.pdf.

¹¹⁷ *Ibid.*, p. 6.

(h) UN independent experts

United Nations independent human rights experts have a crucial role to play in rendering the interaction between beliefs and rights more mutually reinforcing rather than exclusive. At times, even international human rights experts find it difficult to advocate against inadmissible reservations on human rights treaties when they are invoked in the name of religion or belief. Yet independent human rights experts have the advantage of genuinely representing all cultural and religious backgrounds.

In addition to the above-mentioned examples of a “Faith for Rights” approach by the Human Rights Council and its Special Rapporteurs, also UN Treaty Bodies have been using the Rabat Plan of Action and Beirut Declaration in their monitoring and standard setting. The facilitator of a peer-to-peer learning event could refer to the related discussions between members of the UN Committee on the Elimination of Discrimination against Women and representatives from States parties, including Botswana, Costa Rica, Fiji, Niger and Nigeria.¹¹⁸ In addition, the UN Human Rights Committee has used the Rabat threshold test and Beirut Declaration for the difficult question of defining what is a “peaceful assembly”. The facilitator could highlight the importance of clear guidance in order to avoid undue limitations of freedom of expression and other human rights, especially if authoritarian governments try to stifle any criticism and dissent. In this context, the six-part threshold test of the Rabat Plan of Action facilitates catching the “real” cases of incitement to hatred and violence, while fully protecting the right of peaceful assembly and freedoms of religion, belief, expression and association. This is also the approach taken by the Human Rights Committee in its General Comment No. 37 on the right of peaceful assembly, adopted in July 2020, which explicitly refers in its footnote to the Rabat and Beirut standards: “In accordance with article 20 of the Covenant, peaceful assemblies may not be used for propaganda for war (art. 20 (1)), or for advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (art. 20 (2)). As far as possible, action should be taken in such cases against the individual perpetrators, rather than against the assembly as a whole. Participation in assemblies whose dominant message falls within the

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https://www.ohchr.org/sites/default/files/Documents/Issues/Religion/CEDAW_Excerpts.pdf.

scope of article 20 must be addressed in conformity with the requirements for restrictions set out in articles 19 and 21.”¹¹⁹

A concrete peer-to-peer learning exercise could be for the participants to draft a shadow report to a UN Treaty Body, based on the lived experiences in their home countries and real human rights problems, for example related to gender equality and hate speech. The facilitator should also explain the working methods of UN treaty bodies¹²⁰ and how to maximize the chances of civil society inputs getting picked up in the list of issues and concluding observations of the committees. Participants should also be strategic and check the reporting calendar when the State party is due to be considered by the UN treaty body in question and what the deadlines are for civil society submissions. If the timing works out, participants may also wish to submit the shadow report they drafted during the peer-to-peer learning event to the committee in question and thus inform the work of UN treaty bodies in real life. On the other hand, participants may discover that their home country has not ratified a specific human rights treaty or has not opened the possibility for considering communications on individual cases. The facilitator could then explore together with the participants any other avenues for raising the human rights situation or cases to UN bodies such as Special Rapporteurs or the Universal Periodic Review.

(i) National human rights institutions

National human rights institutions (NHRIs) are the most evident and legitimate actor to reconcile tensions within a State among religious interpretations and human rights through constant dialogue and creative methodologies. At the domestic level, NHRIs can also take up individual cases or address systematic discrimination emanating from State practice or extremist interpretations of religion or beliefs. In follow-up to the previous peer-to-peer exercise, the facilitator could ask the participants to research about the mandate of their national human rights institution and draft a submission on a pertinent human rights issue. The facilitator may give some background on the Paris Principles relating to the Status of National Institutions, notably concerning the composition and guarantees of

¹¹⁹ CCPR/C/GC/37, para. 50, with footnote 60 referring to “General comment No. 34, paras. 50–52; International Convention on the Elimination of All Forms of Racial Discrimination, art. 4; and Committee on the Elimination of Racial Discrimination, general recommendation No. 35 (2013) on combating racist hate speech. See also the Rabat Plan of Action, para. 29, and the Beirut Declaration on Faith for Rights (A/HRC/40/58, annexes I and II).”

¹²⁰ OHCHR, *Working with the United Nations Human Rights Programme: A Handbook for Civil Society* (United Nations, New York/Geneva: 2008), chapter IV, available online at https://www.ohchr.org/sites/default/files/AboutUs/CivilSociety/Documents/Handbook_en.pdf.

independence and pluralism, including of different trends in philosophical or religious thought:

“The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

- (a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;
- (b) Trends in philosophical or religious thought;
- (c) Universities and qualified experts;
- (d) Parliament;
- (e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).¹²¹

If the peer-to-peer learning event also includes NHRI representatives, they may wish to explain how the Paris Principles’ guidance on composition and guarantees of independence and pluralism work in practice. They could also describe how the Global Alliance of National Human Rights Institutions (GANHRI), through its Sub-Committee on Accreditation, reviews and accredits NHRIs in the peer-based process which is undertaken by NHRI representatives from Africa, Americas, Asia-Pacific and Europe.¹²² They may also share any experiences in engaging with *de facto* human rights bodies, such as ombudsperson institutions in situations where the State is no longer controlling parts of its internationally recognized territory; a recent publication by the European Network of NHRIs flags in this context that “[t]he human rights of individuals who live in these territories are especially

¹²¹ General Assembly, *Principles relating to the Status of National Institutions* (20 December 1993), A/RES/48/134, annex, Composition and guarantees of independence and pluralism, para. 1.

¹²² See <https://ganhri.org/accreditation/> and European Network of National Human Rights Institutions (ENNHRI)/Commission Nationale Consultative des Droits de l’Homme de la République Française (CNCDDH), *The Accreditation of National Human Rights Institutions: Practical Guide* (ENNHRI/CNCDDH, Brussels/Paris: 2019).

at risk, given the cultural, ethnic, religious, political tensions that often characterises these situations and a lack of effective remedies and meaningful access to regional and international human rights protection mechanisms.”¹²³ Participants of a peer-to-peer learning event could compare and contrast the experiences of persons belonging to religious or belief minorities in various protracted conflicts and with a specific focus on freedom of conscientious objection to military service.¹²⁴

(j) Faith-based actors

Faith-based actors are the category of stakeholders that need the “Faith for Rights” framework most compellingly. After all, the framework is meant to empower faith actors to become who they really are, i.e. defenders of human dignity and equal rights for everyone. The term “faith-based actors” encompasses a broad range of persons, essentially all those who may wish to define themselves as such. International human rights law equally protects theistic, non-theistic, atheistic or any other believers, which is also highlighted in Commitment II on “Faith for Rights”. The UN Human Rights Committee commented already in 1993 that article 18 of the International Covenant on Civil and Political Rights “is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions”.¹²⁵ UN Treaty Bodies and Special Rapporteurs have clarified that not only followers of traditional theistic religions are protected but also agnostics, animists, atheists, free thinkers, humanists, new religious movements, religious minorities, secularists and non-theistic believers. This wide and inclusive scope of protection of freedom of thought, conscience, religion or belief should also be borne in mind by the facilitators of peer-to-peer learning events.

One practical challenge for the facilitator may be that they do not know the backgrounds of the participants in advance of the peer-to-peer learning event. As mentioned above, the introductory round may already give the facilitator

¹²³ ENNHRI, *Promoting and Protecting Human Rights in Non-Government Controlled, Non-Recognised and Other Disputed Territories: The Role and Responsibilities of National Human Rights Institutions* (ENNHRI, Brussels: 2020), p. 4, available online at <https://ennhri.org/wp-content/uploads/2020/09/Promoting-and-Protecting-Human-Rights-in-NGCT-Full.pdf>.

¹²⁴ See the case studies on Afghanistan (Taliban), Cyprus (northern part), the Republic of Moldova (Transnistrian region) and Azerbaijan (Nagorno-Karabakh region) in [chapter 9](#) above by Michael Wiener and Andrew Clapham, “Human rights of conscientious objectors vis-à-vis armed non-state actors and *de facto* authorities”.

¹²⁵ Human Rights Committee, *General comment no. 22: Freedom of thought, conscience or religion* (1993), CCPR/C/21/Rev.1/Add.4, para. 2.

some indications about the participants' identities and expectations. Yet their substantive ideas could be elucidated further through the positioning exercise, in which the facilitator asks participants to position themselves either in the left corner of the room if they think that "religion is part of the problem" or in the right corner if they consider religion being part of the solution (or somewhere in the middle). Other possible questions by the facilitator could be if religion or rights are more important to them as well as if they think that faith and rights are complementary or rather separate from each other.¹²⁶ While this positioning exercise is suitable as an icebreaker at the beginning of the workshop, the facilitator could also ask the same questions again at its end, which would allow each participant to see if the peer-to-peer learning event has ultimately changed his or her position(s).

(k) Human rights defenders

The notions of "faith-based actors" and "human rights defenders" should not be regarded as separate or irreconcilable. On the contrary, the Beirut Declaration on "Faith for Rights" precisely aims at enabling faith-based actors to assume their responsibilities and natural role as human rights defenders at the national and international levels.¹²⁷ Supported by religious quotes from the Old Testament and Qur'an, the Beirut Declaration stresses the duty "to practice what we preach, to fully engage, to speak up and act on the ground in the defence of human dignity long before it is actually threatened."¹²⁸ Against this background, the facilitator of a peer-to-peer learning event could ask participants to add further pertinent faith quotes, either from their own or other traditions, that support these human rights commitments. As the #Faith4Rights puts it, the "aim of this exercise is to widen the cultural and spiritual foundation of modern human rights norms by grounding them in corresponding faith traditions."¹²⁹

The facilitator could also try to demystify the terms "faith-based actors" and "human rights defenders", for example by asking if and how their perceived dichotomy could be resolved in practice. This question may lead participants to challenge the underlying stereotypes that faith-based actors are mainly seen as conservative theistic pressure groups, whereas most human rights

¹²⁶ OHCHR, *#Faith4Rights toolkit* (2022), p. 11.

¹²⁷ Beirut Declaration on "Faith for Rights" (2017), A/HRC/40/58, annex I, para. 8.

¹²⁸ *Ibid.*, para. 14, quoting "Oh you believers, why don't you practice what you preach? Most hateful for God is preaching what you don't practice." (Qur'an 61: 2-3) and "Speak up for those who cannot speak for themselves, for the rights of all who are destitute. Speak up and judge fairly; defend the rights of the poor and needy." (Proverbs 31:8-9).

¹²⁹ OHCHR, *#Faith4Rights toolkit* (2022), p. 30.

defenders are considered to be liberal-minded secular activists.¹³⁰ The facilitator could also encourage a brainstorming about the positive roles of faith-based actors as human rights defenders through simulating an “Advice to the president”: Each participant should draft – on maximum one page – a proposal for outreach and awareness-raising about the 18 commitments or any additional pledges on “Faith for Rights”. Participants present their own proposals briefly and then evaluate their peer’s ideas on the basis of the following seven criteria: (1) conciseness, (2) clarity, (3) action-orientation, (4) substantiation of the proposal by standards and material provided by the #Faith4Rights toolkit, (5) practical feasibility, (6) description of action points needed to implement the proposal and (7) how to measure its impact.¹³¹ Designing, presenting and evaluating themselves the proposals in this peer-to-peer learning exercise may prepare the participants for working as faith-based human rights defenders also in their everyday lives.

(l) Peer-learning facilitators

Lastly, peer-learning facilitators may themselves also be the target audience of peer-to-peer learning events. The main features of the “Faith for Rights” framework are the complexities of its contextualisation and the sensitive nature of controversial issues that may well often arise during the peer-to-peer learning encounters. In view of the demanding tasks of facilitators, as they need to be well grounded in both disciplines of beliefs and rights, it is vital for them to exchange good practices and lessons learned from facilitating related workshops or webinars. An informal network of facilitators and community of practice for online, offline and hybrid peer-to-peer learning on “Faith for Rights” may also lead to synergies between existing programs. The facilitators should frankly analyze what works and what doesn’t. They could also share hypothetical cases that they have adapted to specific contexts or target audiences.

At the meta-level, facilitators may also wish to explore together how to draft a new case to debate. Such hypothetical cases may obviously be inspired by real-life problems and judicial precedents from national and regional courts or UN human rights mechanisms. However, the hypothetical case scenario should ideally be in a grey area, which allows both sides of an adversarial

¹³⁰ Ibid., p. 20: “Perceptions about religions are often negative in the human rights sphere and vice versa. The mainstream view, in both disciplines, seems to conceive them in a competition mode: one is divine while the other is human-made. In addition, the human rights environment is projected as secular and liberal. Religions, in the general stereotype, are rather associated with conservatism.”

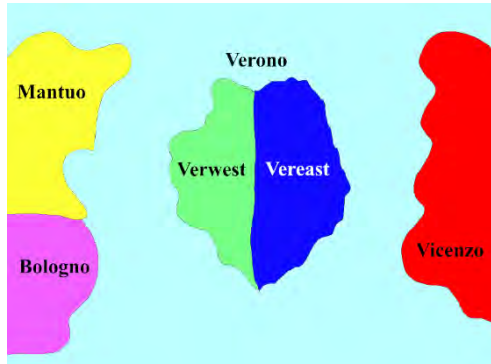
¹³¹ Ibid., p. 87.

debate, e.g. between applicants and respondents in a moot court competition, to come up with legal arguments in their favour.

To conclude this chapter, we have drafted – and already used in peer-to-peer learning events with young persons and faith-based actors – a case to debate on conscientious objection to military service (see below, Appendix). Its title “star-crossed relations”, the names of protagonists and the locations of this hypothetical case allude to William Shakespeare’s *Romeo and Juliet* (1597), albeit set in a modern context of two star-crossed lovers, who have been torn apart due to their conscientious objections and who got imprisoned by States and *de facto* authorities, respectively. The hypothetical case combines questions of refugee law,¹³² selective conscientious objection against getting involved in a specific armed conflict,¹³³ and the human rights responsibilities of armed non-State actors and States.¹³⁴ We trust that discussing this hypothetical case in a “Faith for Rights” peer-to-peer learning event may ultimately raise awareness about freedom of conscientious objection to military service and the right to peace.

Appendix: Hypothetical case to debate on star-crossed relations

After a long civil war, the island of Verono has been divided for a decade into two parts. On one side, the Government of its western part, Verwest, represents the Republic of Verono in international organizations and receives military support – upon the Government’s invitation – from the State of Mantuo. On the other side,



¹³² Human Rights Committee, *K.E.R. v. Canada*, Decision adopted by the Committee under the Optional Protocol concerning communication No. 2196/2012, 28 July 2017, CCPR/C/120/D/2196/2012. See also Court of Justice of the European Union, *Shepherd v. Bundesrepublik Deutschland*, case C-472/13, judgment of the Second Chamber of 26 February 2015.

¹³³ OHCHR, *Conscientious objection to military service* (2017), A/HRC/35/4, paras. 15 and 63; as well as OHCHR’s 2022 report, A/HRC/50/43, paras. 12, 17, 40 and 57(e).

¹³⁴ European Court of Human Rights, *Avanesyan v. Armenia*, application no. 12999/15, judgment of 20 July 2021. See also [chapter 9](#) above by Michael Wiener and Andrew Clapham, “Human rights of conscientious objectors vis-à-vis armed non-state actors and *de facto* authorities”.

Verono's eastern part is effectively controlled by the *de facto* authorities of Vereast. They have only been recognized by the neighboring State of Vicenzo, which has also stationed around 1,000 soldiers in Vereast and funds a considerable part of the *de facto* authorities' annual budget.

Julian, a 20-year-old peace activist from Vereast, received call-up papers from the *de facto* authorities of Vereast, however, as a secular pacifist he objects to any use of force and he also does not want to be involved with soldiers from Vicenzo. During a civil society event organized in the buffer zone, he met Romea, a 21-year-old woman who had volunteered to serve in the armed forces of Mantuo and had just started her deployment in Verwest. They fell in love, secretly got engaged and planned to flee abroad together. However, Julian's passport has been confiscated by the *de facto* authorities, which do not recognize conscientious objection to armed service. After unsuccessfully challenging his conscription before the *de facto* courts and refusing twice to serve for Vereast's armed forces, Julian has been placed under house arrest for two years (one year for each refused call-up), with soldiers from Vicenzo guarding the entrance of his house around the clock.

Romea, who expected a baby with Julian, decided to desert her duties for Mantuo's military and fled from Verwest to the State of Bologno. There she applied for asylum, explaining that her conscience and personal circumstances prevented her from continuing to fight in this – as she calls it – “unjust proxy war in Verono”. Her asylum application attracted some media attention both in Bologno and nearby Mantuo. Following critical remarks from Mantuo's military leadership, the Minister of Interior of Bologno stated on public television that “Romea is not a refugee, but a romantic deserter, who should pay a price rather than get rewarded”. Subsequently, her asylum claim was rejected, and she appealed in vain in Bologno's courts against her extradition to Mantuo. Immediately after her deportation, she was detained by the border guards of Mantuo, court-martialed and sentenced to one year imprisonment. In a military hospital in Mantuo she subsequently delivered birth to a girl, who has been placed with her parents while Romea serves her prison sentence.

Romea asks you to represent her and Julian, who has also signed a power of attorney, before domestic and regional courts or international human rights mechanisms. Please explore any possible legal avenues for challenging the acts by Verwest, Vereast, Vicenzo, Mantuo and Bologno, respectively.

Chapter 14

Amplifying the peace-building potential of human rights

Heiner Bielefeldt

1. Introduction

Human rights are part and parcel of a complex peace project. They normatively qualify the *goal* of peace, and they pave the *way* to that goal, thus assuming their peace-building role at two interconnected levels. Genuine peace must be more than the absence of warfare; it requires a normative framing based on respect for everyone's human dignity. In a nutshell, this is the *goal* of a human rights-based peace. At the same time, the evolving infrastructure of human rights protection supports the development of trustful relationships, both domestically and internationally. Cherishing trustful and trustworthy relations is the central task on the *way* to building peace. It presupposes a set of public institutions – courts of justice, independent monitoring agencies, complaint procedures, public forums etc. – through which people can claim their rights and work towards political accountability.

Human rights can unfold this dual role in building peace – qualifying the goal and paving the way to that goal – because of their complex nature. They represent far reaching normative aspirations as well as legally binding institutions. While their normative aspirations ultimately transcend any given set of positive legal standards, the evolving infrastructure of courts, monitoring agencies and other institutions aims to implement those aspirations – if usually in a step-by-step fashion. Human rights are not a utopian dream for a better world; they are supposed to take effect in the “real world”, i.e. an imperfect world characterized by political and ideological divides, multi-dimensional power asymmetries, crisis phenomena and numerous open or concealed conflicts. Accordingly, human rights fulfill their peace-building role without an ultimate guarantee of success.

This article briefly explores the peace-building potential of human rights in its two main dimensions. It first deals with the aspirational dimension by sketching the contours of a human rights-based concept of peace, which accommodates a diversity of viewpoints, open political debates and non-violent conflicts. The main point is that people should be free to take an *active ownership* in the ongoing task of building peace (section 2). Subsequently, the article turns to the institutional dimension of human rights protection. The various institutions linked to human rights protection help building

sustainable trust through structures of accountability (section 3). The article concludes with a short summary (section 4).

2. Towards a human rights-based concept of peace

(a) *Beyond political tranquility*

Although the absence of warfare or other forms of open violence is a necessary (“negative”) precondition of peace, it does not suffice to capture the full (“positive”) meaning of peace. Above all, it would be wrong to reduce peace to mere political tranquility or a superficial societal harmony. As Immanuel Kant once put it ironically, it would be stupid to mistake the dead silence surrounding a graveyard for real peace.¹

Political tranquility is an ambivalent phenomenon, to say the least. At the domestic level, tranquility can be the fruit of good governance; but it can also be the result of intimidation and repression supported by ubiquitous surveillance technologies put in place to stifle any political dissent. The societal “harmony”, which authoritarian regimes often boast of having accomplished, may actually reflect the loss of political hope in large parts of the population. What on the surface looks like a stable political situation without any serious political challenges may in fact be the breeding ground for growing resentment and clandestine aggression. Tranquility can even turn out to be the proverbial “silence before the storm”. Moreover, it is an old recipe of autocratic governments to uphold the illusion of a perfect internal harmony by externalizing feelings of frustration and projecting them upon “foreign agents” or other imagined enemies. Scapegoating and hostile conspiracy theories² thrive in a climate of authoritarianism. Even where authoritarian control politics is on the surface effective in preserving political tranquility, it falls far short of creating the conditions of genuine peace.

At the international level, too, the absence of warfare at best represents the negative precondition of peace. In many cases, it may be little more than the result of unilateral intimidation or precarious bilateral deals. While a “frozen conflict” is certainly preferable to open violence, it still lags far behind sustainable peace. To be sure, a temporary ceasefire can be an important step on the way towards peace, if it provides opportunities for humanitarian aid and various relief activities; but the pause of warfare can also be used to prepare for renewed and increased military engagement. The same is true

¹ See Immanuel Kant, *Toward Perpetual Peace. A Philosophical Project* [1795], in Immanuel Kant, *Practical Philosophy. The Cambridge Edition of the Works of Immanuel Kant*, Trans. Mary J. Gregor, Cambridge University Press, 1996, pp. 311-351, at p. 317.

² Antisemitism is an open or concealed ingredient of most conspiracy theories.

with regard to a precarious equilibrium facilitated by military deterrence. Although mutual deterrence may temporarily prevent the eruption of open violence, it usually creates incentives for permanently modernizing the arsenal of weapons and broadening available military options. The typical result is ongoing competition in rearmament in a climate of growing mutual mistrust. Deterrence based on the possession of nuclear arms or other weapons of mass destruction is even more problematic, since it presupposes the willingness, at least hypothetically, to commit war crimes. It is just unthinkable ever to employ weapons of mass destruction in practice without thereby breaching most elementary principles of international humanitarian law. Nothing could be more remote from genuine peace.³

What is the difference between negative and positive peace? A widely shared idea traceable to the sources of different religious and philosophical traditions is that real peace requires a substantive normative basis. In short, peace rests on justice. Among the oldest testimonies is Psalm 85, which concludes with the vision of a peace based on trust, love and justice: “Love and faithfulness meet together; righteousness and peace kiss each other.”⁴ Baruch Spinoza proposes the following positive definition: “Peace is not an absence of war, it is a virtue, a state of mind, a disposition for benevolence, confidence, justice.”⁵ In a similar fashion, Martin Luther King declares, “True peace is not merely the absence of tension: it is the presence of justice.”⁶ Quite a number of contemporary NGOs combine justice and peace in their names, thus confirming the close normative interwovenness of the two concepts.

(b) The foundational significance of human dignity

Human rights contain a modern concept of positive peace. The 1948 *Universal Declaration of Human Rights* (UDHR) professes: “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”. It is no coincidence that this first sentence of the preamble of the first international human rights document places justice and peace in close succession. However, the first normative concept occurring in the preamble of the UDHR is the “inherent dignity”, which is to be recognized in all humans. The notion of human dignity represents the insight that we humans

³ To abolish all nuclear arms is the purpose of the Treaty on the Prohibition of Nuclear Weapons. See <https://www.un.org/disarmament/wmd/nuclear/tpnw/>.

⁴ Psalm 85, 10. Quoted from *The Holy Bible. New International Version*, New York: International Bible Society, 1978.

⁵ Baruch Spinoza, *Theologico-Political Treatise* [1670], Cambridge University Press, 2007.

⁶ See <https://digitalcollections.tricolib.brynmawr.edu/object/sc89235>.

– indeed all of us – have something in common that commands respect. It is upon the basis of this universal respect that justice and peace can develop.

Yet what exactly does human dignity mean?⁷ We mostly refer to human dignity when protesting against its violation. Everyone will agree that slavery is a blatant offence to human dignity. To treat a fellow human as a mere commodity, which could be trafficked, sold and exploited, is obviously in total breach of the basic respect that human beings owe each other. The same is true for acts of torture, which reduce the victim to a helpless bundle of pain and shame. Policies of State censorship, which aim to stifle public debate, rob people of their freedom to communicate with each other openly; this too offends their human dignity. Forced evictions violate the dignity of those who end up living unprotected in the streets. Racist ideologies, which depersonalize the person by reducing them to just an “exemplar” of an allegedly “inferior” group, are a slap in the face of our common humanity and thus incompatible with human dignity.

When analyzing what is at stake in these and other offences to dignity, we can infer that human dignity has much to do with the *potential of responsible agency, which we all share as humans*. To respect human beings implies to treat them, on par with others, as responsible subjects, not as mere objects. What the just cited examples of violations have all in common is that they blatantly deny such respect, for instance, by trafficking human beings like cattle, stifling their voices through policies of censorship or depersonalizing them through derogatory racist stereotypes. At the end of the day, any human rights violation is at the same time an offence to human dignity. Human dignity is not a separate entitlement; rather, it constitutes *the common denominator* running through all human rights provisions.

When linking human dignity to the potential of responsible agency, it is important to highlight the word “potential”. Otherwise, the invocation of responsible agency could lead to perfectionist, meritocratic or elitist readings of dignity. Examples from past and present demonstrate that the language of dignity has often been reserved for a particular class of self-declared “distinguished” people. As a result, the invocation of dignity could assume strong elitist overtones. However, in the framework of human rights, the concept of human dignity has a different function. It represents a *fundamental status position of respect, in regard to which all human beings are equal*. Rather than merely recognizing dignity in appreciation of specific empirical

⁷ The following sections largely follow Heiner Bielefeldt *Sources of Solidarity. A Short Introduction to the Foundations of Human Rights*, Erlangen: FAU University Press, 2022, pp. 32-35. Available online: <https://opus4.kobv.de/opus4-fau/frontdoor/index/index/docId/19111>.

skills, merits or successful performances, the concept of human dignity defines an egalitarian status position of all of us as *addressees of normative demands*, i.e. expectations of responsible agency, which we share with our fellow humans. Human dignity, thus understood, cannot exist in different degrees; it is ingrained in the human condition. An internally differentiated human dignity would be an absurdity; it would amount to a blatant betrayal of our common humanity. The fundamental status position of respect, as it is defined by human dignity, must therefore equally include those who – due to grave cognitive impairments – are factually unable to fully manifest their responsible agency. In that case, fellow humans have to step in and actively protect their dignity and rights to allow them to live a respectful life in an inclusive human society.⁸

If someone willingly and knowingly fails to live up to legitimate expectations of responsible conduct, he or she is usually held “responsible” for their actions or omissions, in grave cases even before a criminal court. Everyday parlance thus corroborates that we continue to ascribe the potential of responsible agency also to people who factually fail to act responsibly. Even warlords or former autocrats, when standing before a criminal court, should of course be able to exercise all the rights connected to fair trial. They are humans after all, and it is only *as humans* that they can even stand before a court.

Responsible agency is a potential that we humans share with each other. This defines a bond of egalitarian solidarity, which includes all of us.⁹ No one has to produce an IQ certificate in order to qualify for full membership in the human family; and no one has first to demonstrate basic cognitive or social skills before being entitled to respect of their dignity as humans. Respect for human dignity is of foundational significance for the human rights approach. We all are “dignitaries” in the context of human rights. Prior to any specific acts of lawmaking, human rights derive their moral justification from the necessity actively to guarantee everyone’s equal dignity as the *non-negotiable precondition of respectful coexistence* in an inclusive human society.

In practice, to respect human beings in their inherent dignity means treating them, on par with others, as subjects of their own volition, never as mere objects. In line with this basic insight, human rights aim to liberate people

⁸ See Suzanne Cahill, *Dementia and Human Rights*, Bristol University Press, 2018.

⁹ See Waldron, *One Another’s Equal. The Basis of Human Equality*, Cambridge/Mass.: The Belknap Press of Harvard University Press, 2017, pp. 215-256.

from all forms of repression or relationships of unilateral dependency.¹⁰ Positively speaking, they empower people by according everyone their basic rights to freedom and equality. In the words of the UDHR, the “inherent dignity” of all human beings receives its institutional backing in the shape of “equal and inalienable rights”, to which “all members of the human family” are entitled. This idea of equal rights to freedom for all carries a peculiar weight. It radiates an authority that reaches across regional, political, religious or cultural boundaries, thus assuming its foundational role for “freedom, justice and peace in the world”.

(c) Facilitating active ownership in a lively peace

Based on respect for everyone’s human dignity, human rights provide a strong normative basis for a peace that goes beyond the mere absence of warfare or other forms of open violence. Naturally, the normative contours that define the human approach also affect the conceptualization of a human rights-based peace. The main point is that people should not only benefit *passively* from a peaceful order managed in a top-down fashion. Rather, people should have opportunities to take broad and *active* ownership in maintaining peaceful relations both domestically and at the international level. This follows from the liberating spirit that runs across the various human rights provisions. For instance, people have the rights to discuss the shortcomings of existing policies of conflict prevention, propose new initiatives in bilateral or multilateral trust building, expose structures of injustice to public scrutiny, join NGOs with agendas of justice and peace, organize public demonstrations or pray for peace in their synagogues, churches, mosques or other places.

The peace-building significance, which defines the human rights approach as a whole, comes to the fore in each of the specific human rights provisions. The various rights – from the right to life to the prohibition of torture or from the right to education to the provisions of non-discrimination – all play their specific part in facilitating justice and peace. An obvious example is freedom of expression,¹¹ which often figures as the epitome of a political right, given its strong role in facilitating democratic discourse. Justice and peace can only flourish where people have an opportunity to voice their grievances openly, express their wishes and publicly call for political reforms. Freedom of expression furthermore opens the space for negotiating the terms of political

¹⁰ See Jürgen Habermas, “The Concept of Human Dignity and the Realistic Utopia of Human Rights”, in *Metaphilosophy*, Vol. 41, No. 4 (2010), pp. 464-480.

¹¹ See Article 19 of the International Covenant on Civil and Political Rights (ICCPR), adopted by the UN General Assembly in 1966, in force since 1976.

coexistence and cooperation within and between countries. When wishing to come together with others to express their political positions more effectively in the public sphere, people can use their right to peaceful assembly.¹² Peaceful demonstrations against tyranny or endemic corruption are most impressive manifestations of people's yearnings for justice and peace, and the way governments handle such demonstrations indicates their respect – or lack of respect – for human rights in general. When wishing to solidify their joint commitment in a more sustainable manner, people can furthermore make use of their freedom of association.¹³ This right facilitates the establishment of different organizations, ranging from political parties to trade unions to international NGOs. Human rights also provide effective access to legal remedies in case of violations. Whoever feels that their rights have been unduly infringed upon, including by State agencies, can resort to judicial remedies, such as courts of justice. Access to effective legal avenues is a human rights demand in itself.

Human rights also support the ongoing fight against power asymmetries caused by gross economic disparities. One important contribution is the right to establish independent trade unions.¹⁴ This right has been the main strategic demand put forward by workers movements since the 19th century, because it is only through collective self-organizations that employees can mobilize the necessary resilience against pressure coming from powerful entrepreneurs or companies. The right to basic social security, too, has a protective function against forms of unilateral economic dependency.¹⁵ Another example is the right to water.¹⁶ Questions of water management and water distribution have meanwhile assumed an explicit human rights dimension. Again, the main purpose of this right is to overcome the power asymmetries between those who exercise control over water resources and those who, being utterly dependent on such resources, are exposed to economic exploitation or other forms of unilateral pressure.

A specific test case within a human rights-based understanding of peace is the right to claim conscientious objection to compulsory military service. It constitutes an important component of the right to freedom of thought,

¹² See Article 21 of the ICCPR.

¹³ See Article 22 of the ICCPR.

¹⁴ See Article 8 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted by the UN General Assembly in 1966, in force since 1976.

¹⁵ See Article 9 of the ICESCR.

¹⁶ This right has been derived as an implicit (not explicit) component of the ICESCR by the UN Committee tasked with the monitoring of that Covenant. See UN Committee on Economic, Social and Cultural Rights, General Comment No. 15 (2002), E/C.12/2002/11.

conscience, religion or belief.¹⁷ Under international human rights law, States with a system of mandatory military service are obliged to offer viable alternatives for persons who, due to their freely articulated moral convictions, refuse to take arms.¹⁸ Even in situations of military threats, people must not be used by those in power as mere tools of warfare; instead, they deserve respect as subjects of their own convictions and decisions. The right to act – or not act – in accordance with one’s own profound religious or moral convictions is not a luxury reserved for times of political stability. It remains valid also in the situation of a serious political crisis.

The list of examples just given is far from exhaustive. It should suffice to illustrate that the various human rights provisions complement each other mutually. Together they facilitate a *lively peace*, in which people can take active ownership rather than remaining passive beneficiaries of a peaceful top-down order. A human rights-based peace requires space for the articulation of different viewpoints, thus also accommodating public political controversies and non-violent conflicts. A peace thus conceptualized, however, differs substantially from a superficial political harmony, which often merely conceals authoritarian structures, and it certainly is the very opposite of the deadly silence surrounding a graveyard, to refer again to Kant’s ironic remark. Indeed, a human rights-based peace can even occasionally become somewhat noisy.

3. Promoting institutions of accountability

(a) *Responsible trust facilitated through trustworthy institutions*

I have argued so far that the normative aspirations underlying human rights define a concept of peace that goes beyond the mere absence of violence. However, this understanding is still incomplete. What is additionally required on the way towards peace is an *institutional setting of binding agreements* on how to shape the terms of coexistence. Peace cannot flourish without legal institutions, which may create a certain degree of predictability in domestic and international politics thus facilitating the development of trust between all participating parties. While at the domestic level, national constitutions specify the interplay of a country’s public institutions, international law comprises a labyrinthian web of conventions, standards and State customs. Some of these explicitly deal with issues of conflict prevention, disarmament,

¹⁷ See article 18 of the ICCPR.

¹⁸ See Heiner Bielefeldt, Nazila Ghanea and Michael Wiener, *Freedom of Religion or Belief: An International Law Commentary*, Oxford University Press, Oxford: 2016, pp. 258-305.

the non-proliferation of nuclear arms or the prohibition of specific weapons of mass destruction.

It is also with regard to this complex institutional dimension that human rights unfold their peace-building potential.¹⁹ In order to get traction in “the real world”, human rights need an infrastructure of institutions, such as national and international courts of justice, forums of informal conflict settlement, parliamentary commissions, national human rights institutions, treaty monitoring bodies linked to the various human rights conventions, formally mandated expert bodies etc. No less significant than institutions of public law, however, is the contribution of independent civil society organizations, usually called non-governmental organizations (NGOs). They comprise single-issue organizations, specialized on the promotion of one particular right or advocating for one particular group of people, as well as organizations working on a broad range of human rights.

When describing the task of creating synergies between various forums, organizations and mechanisms, César Rodríguez-Garavito invokes the metaphor of an evolving “human rights ecosystem”. While some monitoring bodies have the advantage of periodicity, others have the advantage of speed; while some types of activity may help evoke broad publicity, others add the necessary normative and empirical precision; while local organizations operate close to the people, international organizations facilitate exchange of experiences across borders. In the words of Rodríguez-Garavito: “As with every ecosystem, the emphasis should be on the highly diverse contributions of its members, and the relationships and connections among them.”²⁰

Implementation of human rights inter alia presupposes Statehood. The purpose is to harness the enforcement power of States in order to implement human rights effectively. Under national constitutions as well as international human rights law, States serve as the formal guarantors of the rights of those under their jurisdiction. After all, they are the ones adopting constitutional bills of rights, and they are likewise the ones signing and ratifying international human rights conventions at regional and global levels. States are expected not only to respect human rights; they should also shoulder the complex task of providing an adequate infrastructure of human rights

¹⁹ For an overview see Walter Kälin and Jörg Künzli, *The Law of International Human Rights Protection*, Oxford University Press, Oxford: 2009.

²⁰ César Rodríguez-Garavito, “Towards a Human Rights Ecosystem”, in Doutje Lettinga and Lars van Troost (eds), *Debating the Endtimes of Human Rights. Activism and Institutions in a Neo-Westphalian World*, Amnesty International Netherlands, Amsterdam: 2017, pp. 39-45, at p. 44.

protection, including a system of independent courts of justice. Given the experience that quite a number of States are notorious violators of human rights, this may look somewhat paradoxical. In fact, it is an area full of tensions and pitfalls, which is the reason why international forums, courts and monitoring agencies have to exercise vigilance by constantly reminding States of their responsibility and exposing existing shortcomings, trespasses and emerging problems to public scrutiny. Civil society organizations play an important role in this regard; they can exercise criticism and initiate public campaigns. Indeed, without the active contribution of civil society, most institutions and forums of international human right protection would be empty shells.²¹

While harnessing the enforcement mechanisms of States, human rights at the same time hold States *accountable* for what they do or fail to do. To strengthen structures of accountability is one of their most important contributions to peace, because structures of accountability facilitate the long-term development of trust. Yet here again an important qualification is needed. The trust facilitated by human rights cannot be a “blind trust”, i.e., the kind of passive trust autocratic regimes demands of those under their jurisdiction. In keeping with the goal of a human rights-based peace sketched above, trust-building required on the way to that goal must accommodate open debates, controversies and professional fact-checking. The guiding idea is “*responsible trust*” linked to evolving structure of accountability. From a human rights perspective, trust can only be accorded to institutions and organizations, whose “trustworthiness” can be permanently tested. Formal mechanisms of “checks and balances” in combination with a broad landscape of independent media and self-mandated civil society organizations can mutually complement each other in building such critical trust.

(b) An important distinction: “rule of law” versus “rule by law”

Nowadays, nearly all governments worldwide claim to practice the rule of law. Most States have constitutions, which include constitutionally guaranteed bills of rights; they distinguish between formally separated legislative, administrative and judicial State functions; and they accept international human rights conventions through formal ratification. At first glance, one might conclude that rule of law is a widespread reality. At closer inspection, however, major differences come to the fore. The decisive question is whether the State utilizes contemporary legal mechanisms as mere instruments of governance, or whether the government subjects itself

²¹ See Bielefeldt, *Sources of Solidarity*, op. cit., pp. 145-165.

systematically and effectively to the primacy of law – in particular human rights law. Whether or not a government feels bound by the rule of law, above all, manifests itself in the availability and effectiveness of independent control mechanisms. While an independent judiciary plays the main role within the formalized system of “checks and balances”, a diverse landscape of independent media and self-mandated civil society organizations is no less important for holding the government accountable for its actions and omissions.

Examples from all over the world provide ample evidence that it is always a priority of autocratic regimes to undermine the independence of the judiciary, to maximizing control over the media and to shrink the space for civil society activities through smear campaigns or the threat of punishments. While still paying lip service to the significance of constitutional bills of rights, they typically invoke a state of emergency as a pretext to circumvent their actual implementation. Likewise, autocratic regimes try to erode the effectiveness of international human rights mechanisms, for example by denying their citizens access to international complaint procedures, blocking independent fact-finding missions or establishing fake-NGOs, which narrowly operate in the interest of their government.²²

In order not to be deceived by mere facades of human rights abidance, it is helpful to distinguish conceptually between “rule *of* law” and “rule *by* law”. Rule *by* law is trivial. With the exception of some local warlords, political power today is always exercised through functionally differentiated administrative apparatuses based on legal mechanisms. Modern Statehood cannot function without a certain degree of predictability facilitated by abstract legal norms and professional lawyers and administrators. Even autocratic regimes need some sort of “law and order”. It is all the more important to insist that rule *of* law is something different. It is not just a technique of effective governance. Rule of law requires structures of accountability, in the shape of independent control institutions, as just mentioned. Human rights provide the normative yardstick by which to check whether States actually fulfill their responsibilities towards the people under their jurisdiction.

To be sure, in political reality, things are not always black and white. Even in old-established democracies with a long tradition of rule of law, those in power have “politicized” courts in order to undermine their independence or stigmatized NGOs as fifth columns allegedly operating in the interest of

²² These fake NGOs are usually called GONGOs. The acronym stands for “governmental organized non-governmental organizations”.

hostile foreign powers. The distinction between “rule of law” and “rule by law” nonetheless remains important; it has an indispensable heuristic function. It reminds us of the need to cherish structures of accountability, which help develop the responsible trust that is needed on the way to a human rights-based peace.

(c) The trust-building potential of the rule of law

States with a domestic culture of rule of law are in a much better position to develop sustainable forms of cooperation at the international level. Obviously, sustainable cooperation presupposes mutual trust based on agreed principles. In order to check whether the parties actually deliver what they have promised, independent monitoring agencies can be put in place. Such monitoring agencies may also accept information provided by independent societal sources, including media and NGOs. If States are accustomed to subject themselves to such forms of independent monitoring at home, it will be quite natural for them to also accept analogous mechanisms in their external dealings. Structures of accountability in keeping with the rule of law thus similarly apply internally and internationally. By contrast, autocratic States, which typically shun any independent monitoring in the domestic arena, will likely try to prevent the establishment of monitoring mechanisms in their external affairs, too. Their whole modus operandi goes against checks and balances, including critical fact-checking, by agencies outside their direct political control.

In an article titled “Authoritarian International Law?”, Tom Ginsburg recently analyzed this correlation between internal and international attitudes towards independent monitoring. His empirical findings are strikingly clear. Comparing democracies based on rule of law and autocracies that lack a culture of rule of law, Ginsburg concludes that “the two types of regimes differ in their demand for transparency”.²³ However, since transparency provides a precondition to any binding international agreements, “we see that democracies are overwhelmingly more likely to engage in publicly reported treaty-making”.²⁴ This is particularly clear when it comes to bringing complaints before international tribunals. Around 90 percent of the cases brought before the International Court of Justice “were brought by democracies”, according to Ginsburg.²⁵ Instead of ratifying legally binding conventions, autocracies prefer bilateral “deals”. Even if non-democratic

²³ Tom Ginsburg, “Authoritarian International Law?”, *American Journal of International Law*, vol. 114, issue 2 (2020), pp. 221-260, at p. 230.

²⁴ *Ibid.*, p. 234.

²⁵ *Ibid.*, p. 235.

governments cooperate multilaterally in organizations like the *Shanghai Cooperation Organization*, the *Gulf Cooperation Council* or the *Eurasian Economic Union*, such cooperation remains largely government-centered and thus institutionally shallow. “Instead of third-party dispute resolution, we are observing a softer ‘dialogue and mutual respect’ framework that is less rule-bound [...]”²⁶ The most surprising finding in Ginsburg’s study is the observation that autocratic governments are more inclined to contract binding agreements with democracies than with other autocracies. “Any given authoritarian regime is more than ten times as likely to conclude a treaty with a democracy than with a fellow authoritarian.”²⁷ Even though autocratic regimes may share a number of concrete interests, it seems difficult for them to develop mutual trust.

Trustful relations best flourish in a climate of transparency, which allows continuously to check the actual trustworthiness of public institutions. Human rights play a major role in this regard – both as a critical yardstick and as a motor of developing structures of accountability. The various institutions needed to implement human rights aim to facilitate political accountability, which itself is a precondition of a responsible trust (not blind trust). Responsible trust, in turn, mirrors the key principle on which the entire infrastructure of human rights protections rests: the potential of responsible agency that defines the core meaning of human dignity.

4. Conclusion

Human rights are neither a simple recipe for peace nor a guarantee of peace. Such a guarantee is ultimately impossible. However, human rights provide practical guidance on how to move towards peace. On the one hand, they define the goal of peace, which should not be equated with an unqualified political harmony. Real peace rests on respect for human dignity, which is to be safeguarded through a broad range of human rights. From a human rights perspective, peace can only flourish based on the ownership of many people, who are willing to raise their voices against injustice and propose political reforms towards more freedom, equality and inclusivity. On the other hand, peace requires continued efforts in building trust. Human rights contribute to those efforts by promoting institutionalized forms of accountability. Public institutions whose trustworthiness can be tested through independent monitoring procedures, including civil society organizations, are best suited to facilitate responsible trust within and between countries. Thus, any effort

²⁶ *Ibid.*, p. 257.

²⁷ *Ibid.*, p. 234.

to strengthen the infrastructure of human rights protection is at the same time a long-term contribution to building peace.

Chapter 15

Concluding remarks and outlook

Michael Wiener and David Fernández Puyana

As detailed in the chapters above, the right to peace and freedom of conscientious objection to military service have been regarded as contentious issues at the national, regional and international levels. While many pacifist conscientious objectors and peace activists would see both rights like two sides of one coin, these rights have been delinked in multilateral diplomacy over the past decades due to political considerations and different views across the various regions and religions.

In light of the non-consensual intergovernmental discussions on the right to peace – on the one side of the coin – it seems unlikely that there may be sufficient enthusiasm for reopening the text of the Declaration on the Right to Peace as adopted by the General Assembly in 2016, or even to start drafting a legally binding convention on this topic. Furthermore, the suggestion by civil society organizations that the Human Rights Council should appoint a thematic Special Rapporteur on the Human Right to Peace is also not being pursued actively by States.

With regard to conscientious objection – on the other side of the coin – Volker Türk and Alice Edwards noted that claims to refugee status related to military service are “among the most complex to determine and [...] have been subject to varying international practice”.¹ While many States have recognized freedom of conscientious objection and have introduced a genuine alternative service of a civilian nature, some other States repeatedly objected against recognizing the universal applicability of conscientious objection to military service.²

However, there are several entry points for reinvigorating a holistic debate. One possibility may reside in follow-up to the two existing streams of Human Rights Council resolutions on the promotion of the right to peace and on conscientious objection to military service. In its resolution 41/4 of 11 July 2019, the Human Rights Council invited “Governments, agencies and

¹ Volker Türk and Alice Edwards, “Introductory Note to the Guidelines on International Protection No. 10 on Claims to Refugee Status related to Military Service”, *International Journal of Refugee Law*, Vol. 27, No. 1 (2015), pp. 166-171, at p. 167.

² E/CN.4/2002/188, annex; A/HRC/35/4, paras. 9 and 61-62; A/HRC/50/43, paras. 11 and 55-56. See also above [chapter 2](#) by Michael Wiener, “The missing link between the right to peace and conscientious objection to military service”.

organizations of the United Nations system, and intergovernmental and non-governmental organizations to disseminate the Declaration on the Right to Peace and to promote universal respect and understanding thereof” and it also requested the Office of the High Commissioner for Human Rights (OHCHR) “to pay appropriate attention to the right to peace in its work”.³ The 2022 quadrennial OHCHR report pursuant to the Human Rights Council resolutions on conscientious objection to military service includes a paragraph specifically on the right to peace, reiterating the recommendation of the related intersessional workshop that human rights education should focus on non-discrimination, religious tolerance, the prohibition of propaganda for war and the right to conscientious objection to military service.⁴ The quadrennial report also notes the remaining challenges “that not all States recognize the right to conscientious objection to military service for all who are affected and in all circumstances, or that some States fail to fully implement international human rights law and standards”.⁵

In its resolution 51/6 of 6 October 2022, the Human Rights Council encouraged States to consider implementing the recommendations of this OHCHR report “in their efforts to bring or improve national laws, policies and practices, including with regard to application procedures, alternative service and non-discrimination of any kind, in line with States’ obligations under international human rights law and applicable international human rights standards.”⁶ In order to close this implementation gap, the OHCHR report refers to the suggestion of drafting “a study of the linkages between the right to conscientious objection to military service and the right to peace”.⁷ The present publication thus brings together the perspectives of diplomats, UN experts, civil society organizations, academics, conscientious objectors and peace activists across the globe. This also follows the Human Rights Council’s repeated calls for strengthened international efforts to foster a global dialogue for the promotion of a culture of tolerance and peace at all levels, based on respect for human rights and diversity of religion(s) and belief(s).⁸

³ A/HRC/RES/41/4, operative paras. 5 and 6.

⁴ A/HRC/50/43, para. 10.

⁵ *Ibid.*, para. 31.

⁶ A/HRC/RES/51/6, operative para. 2.

⁷ A/HRC/50/43, para. 31.

⁸ A/HRC/RES/16/18, operative para. 9; A/HRC/RES/19/25, operative para. 9; A/HRC/RES/22/31, operative para. 11; A/HRC/RES/25/34, operative para. 13; A/HRC/RES/28/29, operative para. 14; A/HRC/RES/31/26, operative para. 14;

Another entry point for awareness-raising and grassroots activities could be the United Nations' global work around the annual celebration of the International Day of Peace, observed every year on 21 September.⁹ In this context, Secretary-General António Guterres focused in 2018 on the right to peace, by stressing “that there is more to achieving peace than laying down weapons. True peace requires standing up for the human rights of all the world's people. That is why this year's theme for the International Day of Peace is: ‘The Right to Peace — The Universal Declaration of Human Rights at 70’.”¹⁰ In addition, the General Assembly has declared 5 April the International Day of Conscience, as “a means of regularly mobilizing the efforts of the international community to promote peace, tolerance, inclusion, understanding and solidarity, in order to build a sustainable world of peace, solidarity and harmony”.¹¹ In the context of educational and awareness-raising activities organized around International Day of Conscience, the links between the right to peace and freedom of conscientious objection to military service could be highlighted by States, United Nations entities, businesses, academia and civil society organizations.

Furthermore, the Secretary-General's 2021 report “Our Common Agenda” proposed a New Agenda for Peace as a key component of the Summit of the Future, which will be held on 22-23 September 2024.¹² One of its suggested pillars is investing in prevention and peacebuilding: “The new agenda for peace could involve a set of commitments to provide the necessary resources for prevention, including at the national level; reduce excessive military budgets and ensure adequate social spending; tailor development assistance to address root causes of conflict and uphold human rights; and link

A/HRC/RES/34/32, operative para. 14; A/HRC/RES/37/38, operative para. 14; A/HRC/RES/40/25, operative para. 14; A/HRC/RES/43/34, operative para. 14; A/HRC/RES/46/27, operative para. 14; A/HRC/RES/49/31, operative para. 14.

⁹ General Assembly resolution 36/67 of 30 November 1981 proclaimed the third Tuesday of September as International Day of Peace; General Assembly resolution 55/282 of 7 September 2001 decided that the International Day of Peace shall be observed on 21 September each year, with this date to be brought to the attention of all people for the celebration and observance of peace.

¹⁰ United Nations, *Secretary-General Stresses ‘Standing Up for Human Rights for All’, in 100-Day Countdown to International Peace Day* (13 June 2018), available online at <https://press.un.org/en/2018/sgsm19090.doc.htm>.

¹¹ General Assembly resolution 73/329 of 25 July 2019, *Promoting the Culture of Peace with Love and Conscience*, A/RES/73/329, operative paras. 1-2.

¹² General Assembly resolution 76/307 of 8 September 2022, *Modalities for the Summit of the Future*, A/RES/76/307, operative para. 3.

disarmament to development opportunities.”¹³ Furthermore, the Secretary-General stresses that the fundamental values of the United Nations “are found in every culture and religion around the world: peace, justice, human dignity, equity, tolerance and, of course, solidarity.”¹⁴ While the report does not explicitly refer to the 2016 Declaration on the Right to Peace or to freedom of conscientious objection to military service, these two human rights could be incorporated in the prevention pillar of the New Agenda for Peace with the following two suggested key messages that are based on resolutions adopted by the General Assembly and Human Rights Council as well as related OHCHR reports:

- States should respect, implement and promote equality and non-discrimination, justice and the rule of law, and guarantee freedom from fear and want as a means to build peace within and between societies.¹⁵
- States should bring their national laws, policies and practices relating to conscientious objection to military service into line with international human rights norms and standards.¹⁶

In “Our Common Agenda”, the Secretary-General also calls for an effective multilateral system that “is prepared and ready to act or adapt in the face of present and new risks; prioritizes and resources the tasks that matter; delivers results; and can hold all actors, State and non-State, accountable for commitments made.”¹⁷ Ensuring accountability of States and non-State actors alike could help protecting the human rights of conscientious objectors not only against their State of nationality but also *vis-à-vis* armed non-State actors and *de facto* authorities that effectively control territory and population.¹⁸

The report “Our Common Agenda” stresses the centrality of human rights, and it builds on the Secretary-General’s Call to Action for Human Rights, which he issued in 2020 on the occasion of the seventy-fifth anniversary of the United Nations. The Call to Action explicitly refers to freedom of thought,

¹³ Secretary-General, *Our Common Agenda* (United Nations, New York: 2021), para. 89 (e), available online at https://www.un.org/en/content/common-agenda-report/assets/pdf/Common_Agenda_Report_English.pdf.

¹⁴ *Ibid.*, para. 13.

¹⁵ Declaration on the Right to Peace, A/RES/71/189, annex, article 2.

¹⁶ A/HRC/50/43, para. 57 and A/HRC/41/23, para. 60 as well as Human Rights Council resolution 36/18.

¹⁷ Secretary-General, *Our Common Agenda* (United Nations, New York: 2021), para. 107.

¹⁸ See above [chapter 9](#) by Michael Wiener and Andrew Clapham, “Human rights of conscientious objectors *vis-à-vis* armed non-state actors and *de facto* authorities”.

conscience and religion as well as to the protection of minorities in a people-centred manner and with a focus “on preserving human dignity, preventing human rights violations and responding promptly and effectively when such violations occur.”¹⁹ It stresses that each community, including minorities, “must feel that its identity is respected and that it can fully participate in society as a whole.”²⁰ This call for seeing human diversity as an asset – rather than a threat – is also quoted in the #Faith4Rights toolkit, with its overarching objective of fostering peaceful societies, which uphold human dignity and equality for all and where diversity is not just tolerated but fully respected and celebrated.²¹

As explained above in chapters 12 and 13, the “Faith for Rights” framework may serve – with its detailed soft law standards and peer-to-peer learning methodology – as a useful tool for promoting the right to peace and freedom of conscientious objection to military service. Protecting religious or belief minorities is at the core of the “Faith for Rights” framework,²² and the Declaration on the Right to Peace also stresses the importance of promoting and realizing minority rights.²³ In addition, the thirtieth anniversary, on 18 December 2022, of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities²⁴ may be a good opportunity for raising awareness about the inherent linkages with the Declaration on the Right to Peace of 19 December 2016.

At the social and societal levels, a holistic debate around these two rights could also have the positive effect of addressing any barriers for, and stigma against, those seeking to exercise their freedom of conscientious objection to military service. The related OHCHR reports in 2017 and 2019 stressed that States must “neither discriminate against conscientious objectors in relation to their civil, cultural, economic, political or social rights nor stigmatize them as ‘traitors’.”²⁵ In some States, however, conscientious objection to military service is considered a form of “extremism” which may trigger arbitrary

¹⁹ Secretary-General, *The Highest Aspiration: A Call to Action for Human Rights* (United Nations, New York: 2020), pp. 6 and 8, available online at https://www.un.org/sg/sites/www.un.org.sg/files/atoms/files/The_Highest_Aspiration_A_Call_To_Action_For_Human_Right_English.pdf.

²⁰ *Ibid.*, p. 3.

²¹ OHCHR, *#Faith4Rights toolkit* (2022), p. 10.

²² A/HRC/40/58, annex II, commitment VI; <https://www.ohchr.org/Documents/Press/faith4rights-toolkit.pdf>, pp. 37-42.

²³ A/RES/71/189, annex, preambular para. 34.

²⁴ A/RES/47/135, annex.

²⁵ A/HRC/35/4, para. 65; A/HRC/41/23, para. 60 (m).

arrests, bans, censorship and detentions.²⁶ In another State, the stigmatization of conscientious objectors as holders of a criminal record and so-called “traitors” reportedly had consequences in the social sphere, such as difficulties for marriage and ostracization from their families.²⁷

By contrast, the terms “culture of peace” or “right to peace” are connotated positively, which in turn could ameliorate the perception of conscientious objectors and alternative forms of civilian service if seen through a peace lens. This was already alluded to in resolutions by the Commission on Human Rights in 2004 and by the Human Rights Council in 2013, both of which encouraged “States, as part of post-conflict peace-building, to consider granting, and effectively implementing, amnesties and restitution of rights, in law and practice, for those who have refused to undertake military service on grounds of conscientious objection”.²⁸ Similarly, such an approach could improve the dynamics also for total objectors, who decline both military and non-military service,²⁹ as well as for conscientious objectors against taxation for military expenditures connected with military operations in support of

²⁶ See for example the summary record of the UN Human Rights Committee’s consideration of the eighth periodic report of the Russian Federation on 20 October 2022: “Reiterating the concerns expressed and recommendations made by the Committee in paragraphs 19 and 20 of its previous concluding observations (CCPR/C/RUS/CO/7), [Ms. Tigroudja] said that the Committee was concerned that there was still no clear definition of extremist activity or extremism in domestic legislation, that courts conducted only a superficial assessment of such activity before reaching a decision, that there had been interference with Jehovah’s Witnesses’ right to profess their religion, that conscientious objection and the refusal to accept blood transfusions were considered forms of extremism, that the punishments imposed for extremism were particularly severe, ranging from censorship to arbitrary arrest and detention, and that no action had been taken in response to findings of the Working Group on Arbitrary Detention in that regard” (CCPR/C/SR.3934, para. 48). See also the Human Rights Committee’s subsequent concluding observations, adopted on 31 October and 1 November 2022 (CCPR/C/RUS/CO/8, paras. 30-31). For another example see Human Rights Committee, *Vladimir Adyrkhayev, Behruz Solikhov and “The Religious Association of Jehovah’s Witnesses in Dushanbe” v. Tajikistan*, Views of 7 July 2022, CCPR/C/135/D/2483/2014, paras. 2.5, 5.3 and 9.4-9.6.

²⁷ A/HRC/35/4, para. 42, with reference to the allegation letter sent on 11 December 2015 by the Special Rapporteur on freedom of religion or belief to the Republic of Korea, KOR 4/2015, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=20362>.

²⁸ Commission on Human Rights resolution 2004/35, operative para. 4; Human Rights Council resolution 24/17, operative para. 14. See also the report submitted by the Special Rapporteur of the Sub-Commission on the Promotion and Protection of Human Rights, Emmanuel Decaux, *Issue of the administration of justice through military tribunals*, E/CN.4/2006/58, para. 25.

²⁹ A/HRC/35/4, para. 32.

armed conflicts that violate international human rights law or international humanitarian law.³⁰

Lastly, another entry point for implementing a human rights-based approach is to consistently engage with youth at the national, regional and international levels. The General Assembly stressed that “[y]outh is the missing piece for peace and development”³¹ and it established in 2022 the United Nations Youth Office, with a mandate to “lead engagement and advocacy for the advancement of youth issues across the United Nations, in the areas of peace and security, sustainable development and human rights”.³² As noted by the High Commissioner for Human Rights, conscientious objection to military service concerns young people more than any other group and she regretted the lack of implementation of jurisprudence and of recommendations made in international and regional human rights instruments, and the fact that some States did not recognize or implement fully the right to conscientious objection to military service in practice.³³ Against this background, OHCHR and the newly established United Nations Youth Office could collaborate strategically to safeguard both freedom of conscientious objection to military service and the right to peace across the globe.

The present book has traced the politicized delinking of the right to peace from freedom of conscientious objection to military service over the past seven decades. It argues that bringing these inherently twin rights (back) together constitutes a missing piece for peace. This would obviously require concerted efforts and peer-to-peer learning discussions between State officials, civil society organizations, faith-based actors, national human rights institutions, academics and UN experts etc. A promising entry point for (re-)starting such a holistic debate could be the following statement by the former Chairperson of the UN Human Rights Committee, the late Sir Nigel Rodley: “The right to refuse to kill must be accepted completely.”³⁴

³⁰ Article 5(6) of the Santiago Declaration on the Human Right to Peace, reprinted in Carlos Villán Durán and Carmelo Faleh Pérez (eds), *The International Observatory of the Human Right to Peace*, Spanish Society for International Human Rights Law, Lueca: 2013, pp. 444-460, at p. 452.

³¹ General Assembly resolution 75/1, adopted on 21 September 2020, *Declaration on the commemoration of the seventy-fifth anniversary of the United Nations*, A/RES/75/1, para. 17.

³² General Assembly resolution 76/306, adopted on 8 September 2022, *Establishment of the United Nations Youth Office*, A/RES/76/306, operative para. 3 (a).

³³ A/HRC/39/33, paras. 53-56; A/HRC/50/43, para. 9.

³⁴ Human Rights Committee, *Atasoy and Sarkut v. Turkey*, Views adopted on 29 March 2012, CCPR/C/104/D/1853-1854/2008, appendix II, Individual opinion of Committee member Sir Nigel Rodley, jointly with members Mr. Krister Thelin and Mr. Cornelis Flinterman (concurring).

Short biographies of the contributors

Arnoldo André Tinoco is Minister for Foreign Affairs and Worship of the Republic of Costa Rica. He obtained a Dr. iur. (Ph.D.) Degree at the University of Hamburg, Germany in 1988, specializing in private and public international law. He was President of the Costa Rican Chamber of Commerce from 2010 to 2013, and International Arbitrator for the Free Trade Agreement between the Republic of Costa Rica and the Republic of Chile in 2007. He was also Professor of International Law at the University of Costa Rica from 1984 to 1994.

Annyssa Bellal is Executive Coordinator of the Geneva Peacebuilding Platform. She is an international lawyer with more than 18 years of experience in the area of conflict studies, both at the academic and policy levels, with a particular expertise on the issue of armed non-State actors. She also worked as a legal adviser for the Swiss NGO Geneva Call, the Office of the United Nations High Commissioner for Human Rights as well as the Swiss Department of Foreign Affairs. In 2011, she acted as the Head of the International Humanitarian Customary Law Project at the International Committee of the Red Cross. She has engaged directly with armed non-State actors in the field, notably in Syria, Iraq and the Democratic Republic of the Congo.

Heiner Bielefeldt was UN Special Rapporteur on freedom of religion or belief from August 2010 until October 2016. Holding both a Ph.D. in Philosophy from the University of Tübingen and a post-doctoral Habilitation Degree in Philosophy from the University of Bremen, he teaches in the areas of political science, philosophy, law and history. From 2003 to 2009 he served as Director of the German Institute for Human Rights, and during 2008-2009 he was Chair of the Subcommittee on Accreditation of National Human Rights Institutions of the International Coordinating Committee. In 2009, he was appointed professor in the newly created Chair of Human Rights and Human Rights Policy at the University of Erlangen.

Derek Brett was the main representative of Conscience and Peace Tax International (CPTI) at the United Nations in Geneva from 2002 to 2011, and again since 2020, and currently serves on the CPTI Board. In 2005, he authored the CPTI thematic global survey on Military Recruitment and Conscientious Objection. From 2012 to 2019 he represented the International Fellowship of Reconciliation at the United Nations in Geneva.

Rachel Brett was representative (human rights and refugees) at the Quaker United Nations Office in Geneva from 1993 to 2014. She is the author of numerous publications on human rights, the role of non-governmental organisations, child soldiers as well as co-author of the books, *Young Soldiers: Why They Choose to Fight* and *Children: the Invisible Soldiers*. She is a Fellow of the Human Rights Centre of the University of Essex, and previously taught law and international human rights law there as well as initiating and acting as principal researcher for the Essex Project on the Organisation for Security and Cooperation in Europe.

Robin Brookes is a retired toy designer/maker and latterly an energy assessor for new houses. He has been a peace campaigner since the 1980s when cruise missiles were stationed in the United Kingdom of Great Britain and Northern Ireland. He joined the non-governmental organization “Conscience” in the United Kingdom then and became a war tax resister in 2003. He is on the executive committee of “Conscience – Taxes for Peace Not War” and chair of the board of “Conscience and Peace Tax International”.

Andrew Clapham is Professor of International Law at the Graduate Institute. He was the first Director of the Geneva Academy of International Humanitarian Law and Human Rights (2006-2014). He teaches international human rights law, the laws of war, and public international law. Prior to coming to the Institute in 1997, he was the Representative of Amnesty International at the United Nations in New York. He has worked as Special Adviser on Corporate Responsibility to High Commissioner for Human Rights Mary Robinson, and Adviser on International Humanitarian Law to Sergio Vieira de Mello, Special Representative of the UN Secretary-General in Iraq. He was elected as a Commissioner of the International Commission of Jurists in 2013. He is currently serving as a member of the UN Commission on Human Rights in South Sudan.

David Fernández Puyana has been Ambassador and Permanent Observer of the University for Peace to the United Nations in Geneva since 2018. Previously he served as legal and technical consultant at the Permanent Mission of Costa Rica to the United Nations in Geneva and assistant to the Chairperson-Rapporteur of the UN Open Ended Working Group on the right to peace. He was also senior expert on peace and human rights at the UNESCO Liaison Office in Geneva. He obtained the title of Doctor in Law with European Mention by the University of Pompeu Fabra (Spain) and he holds a LL.M. in Human Rights Law by the University of Essex (United Kingdom), an M.A. on Human Rights Protection by the University of Alcalá

de Henares (Spain) and M.A. on International Relations by the University of Pompeu Fabra.

Antonio de Filippis is a conscientious objector to military service from Italy who did his civilian service in a family home of the Pope John XXIII Community (Associazione Comunità Papa Giovanni 23). He was involved in the campaign for self-reduction of civilian service, which aimed to challenge the longer duration of civilian service compared to military service. The Italian Constitutional Court subsequently ruled that the extra eight months would be forfeited because they were the expression of punitive intent and so civilian service was equated in duration with military service.

Nazila Ghanea has been the UN Special Rapporteur on freedom of religion or belief since August 2022. She is Professor in International Human Rights Law at the University of Oxford and serves as Associate Director of the Oxford Human Rights Hub and is a Fellow of Kellogg College. She also served as a member of the OSCE Panel of Experts on Freedom of Religion or Belief and on the Board of Trustees of the independent think tank, the Universal Rights Group. She has been a visiting academic at a number of institutions, including Columbia and New York University, and previously taught at the University of London and Keele University, United Kingdom, as well as in China.

Gordan Grlić Radman is Minister of Foreign and European Affairs of the Republic of Croatia. From 2017 to 2019, he served as the Ambassador to the Federal Republic of Germany and from 2012 to 2017 as the Ambassador to Hungary. From 2011 to 2014, he was Secretary of the Danube Commission. Gordan Grlić Radman studied Engineering in Agricultural Economics, in Management Studies and in the field of international relations. In 2007, he defended the doctoral dissertation on “Neutrality and the New European Security Architecture” at the Faculty of Political Science, University of Zagreb. In 2010, he was appointed to the academic grade of research associate at the same university.

Christian Guillermet Fernández is Vice-Minister of Multilateral Affairs of Costa Rica. He was the Deputy Permanent Representative of Costa Rica to the United Nations in New York and Geneva. He was elected Chairperson-Rapporteur of the United Nations Open Ended Working Group on the right to peace from 2013 to 2015. Previously he was the regional representative of the Office of the United Nations High Commissioner for Human Rights for Latin America, Director General for Foreign Policy at the Ministry of Foreign Affairs of Costa Rica and he served at the Office of Ombudsperson of Costa Rica.

Wolfgang S. Heinz is Senior Lecturer at the Free University Berlin in the Department of Political Science. He is former Chair of the UN Human Rights Council Advisory Committee and former Rapporteur of its drafting group on the right to peace. Until 2019 he was Senior Policy Advisor at the German Institute for Human Rights, a national human rights institution according to the Paris Principles. From 2005 to 2017, he was also member of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Council of Europe).

Murat Kanath is a board member of the European Bureau for Conscientious Objection (EBCO), an activist and conscientious objector. He refused to attend reservist service when called to attend training for military mobilisation in the northern part of Cyprus in 2009. In February 2014, he was convicted for failing to serve in the reservist service and sentenced to a fine and ten days' imprisonment in default of payment. At the regional level, his case is currently pending before the European Court of Human Rights.

Georgios Karatzas is a conscientious objector and human rights defender from Greece. He has represented conscientious objector Lazaros Petromelidis in his case before the UN Human Rights Committee. He has collaborated with various organisations, including Amnesty International, the European Bureau for Conscientious Objection (EBCO), the International Fellowship of Reconciliation (IFOR) and War Resisters' International (WRI), in advocacy efforts for the rights of conscientious objectors within the United Nations and European mechanisms and procedures.

Angelos Nikolopoulos studied Law at the University of Athens and holds an LL.M. in Public Law as well as a master's degree in Political Science and Sociology. He is a certified lawyer and member of the Athens Bar Association. He has significant experience in General Data Protection Regulation compliance projects and works as Data Protection Officer in both public and private sectors. He is member of the Board of the European Bureau for Conscientious Objection.

Julián Andrés Ovalle Fierro is an antimilitarist and conscientious objector. He distrusts unanimity, likes divergence and dissents from any authority without legitimacy. He was born in Colombia, that is to say, in the war. He is determined not to stop doing what is necessary to bring out of hiding the militarism that mimics the culture. He is psychologist and master in Communication and Politics, student and defender of the Public University.

Lazaros Petromelidis lives in a working-class suburb near the port of Piraeus and considers conscientious objection not an individual choice but a matter of the whole Greek society. Being an active member of the Association of Greek Conscientious Objectors, he studied Economics which he understands as a social science. Working in the social sector since 1995 in supporting marginalized persons, today he is coordinating the outreach workers of the City of Athens in support of homeless persons.

Laura Rodwell is Communications Coordinator at a humanitarian and development organization. She holds a Master of Arts in Theory and Practice of Human Rights as well as a Bachelor of Arts in Philosophy and Politics from the University of Essex, United Kingdom. She received the Deborah Fitzmaurice Prize awarded to the most academically accomplished MA Theory and Practice of Human Rights student in the academic year 2020-2021. She was also a member of Essex University's Death Penalty Sentencing Mitigation Unit.

Francisco Rojas Aravena was elected as the eighth Rector of the University for Peace (UPEACE) in 2013 and re-elected for a second term in 2018. He has a Ph.D. in Political Science from the University of Utrecht (Netherlands) and a M.S. in Political Science from the Latin American Faculty of Social Sciences (FLACSO), and he specializes in international relations, human security, integration, Latin American political systems, negotiations – theory and practice – as well as international security and defence. He served as the Secretary-General of FLACSO (2004-2012) and Director of FLACSO Chile (1996-2004).

Maria Mercedes Rossi is the main representative of the Associazione Comunità Papa Giovanni XXIII (APG23) at the United Nations Office in Geneva since 2009. She holds a degree in Medicine (MD) and a Speciality in Infectious Diseases from the University of Bologna (Italy), a Diploma in Tropical Medicine and Hygiene (D.T.M. & H) obtained in London at the Royal School in Tropical Medicine and a Master in Public Health (MPH) from the Prince Leopold Institute in Antwerpen (Belgium). She worked as a missionary doctor under the Catholic Diocese of Ndola in Zambia for twenty years from 1988 to 2008.

Eduardo Sánchez Madrigal is a research assistant at the Norwegian Center for Holocaust and Minority Studies. He is affiliated to the project “Mass Atrocity Responses”, which addresses topics such as resistance against large-scale human rights abuses, mass atrocity prevention, protection of religious minorities, and transitional justice. He has previously worked as a legal practitioner and as a teaching assistant in Mexico, as well as a research

assistant at the Norwegian Centre for Human Rights. He has also served as Acting Managing Editor (2020-2022) of the Nordic Journal of Human Rights and as Vice-Chair (2016-2020) of the Year-in-Review, an annual publication by the American Bar Association, Section of International Law: Mexico Committee. His research interests include the implementation of the Responsibility to Protect (R2P) and the role of religious actors in mass atrocity dynamics.

Ibrahim Salama is Chief of the Human Rights Treaties Branch at the Office of the United Nations High Commissioner for Human Rights, where he also leads the “Faith for Rights” programme. Previously he headed the UN secretariat for the preparatory process of the 2009 United Nations World Conference Against Racism (Durban Review Conference), was independent expert of the Sub-Commission on the Promotion and Protection of Human Rights, and he was elected Chairperson of the Intergovernmental Working Group on the Right to Development.

Ahmed Shaheed is Professor of International Human Rights Law in the School of Law and Human Rights Centre at the University of Essex. He served as the UN Special Rapporteur on Freedom of Religion or Belief from 2016 to 2022, having previously served as the UN Special Rapporteur on the situation of human rights in the Islamic Republic of Iran from 2011 to 2016. Hailing from the Maldives, he served as Foreign Minister of Maldives between 2005 and 2010, member of the Constitutional Assembly from 2004 to 2007, and led the government’s efforts to fast-track human rights and governance reforms between 2003 and 2007, which led to the transition to democracy in 2008.

Michael Wiener has been working at the Office of the UN High Commissioner for Human Rights since 2006. He co-organized the expert workshops that led to the adoption in 2012 of the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. Since 2017 he has worked on the design and implementation of the Beirut Declaration and its 18 commitments on “Faith for Rights”. Since 2011 he also has been a Visiting Fellow of Kellogg College at the University of Oxford, and during his UN sabbatical leave in summer 2022 he was Senior Fellow in Residence at the Graduate Institute of International and Development Studies in Geneva.

Gentian Zyberi is a Professor of International Law and Human Rights at the Norwegian Centre for Human Rights, Faculty of Law, University of Oslo. Professor Zyberi has been a member of the UN Human Rights Committee (2019-2022) and a member of the Permanent Court of Arbitration, The

Hague, the Netherlands (2016-2028). Over the last two decades, he has done research, published and taught in the areas of international human rights, international humanitarian law, international criminal law and public international law at various universities in the Netherlands, Albania, China, the United States, Kosovo, and Norway. His research interests include the role of international courts and tribunals in developing international law, the protection of community interests in international law, and transitional justice processes, especially in the Balkans.

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I. Declaration on the Preparation of Societies for Life in Peace (1978)

General Assembly resolution 33/73 (UN Doc. A/RES/33/73), adopted on 15 December 1978:

The General Assembly,

Recalling that in the Charter the peoples of the United Nations proclaimed their determination to save succeeding generations from the scourge of war and that one of the fundamental purposes of the United Nations is to maintain international peace and security,

Reaffirming that, in accordance with General Assembly resolution 95 (I) of 11 December 1946, planning, preparation, initiation or waging of a war of aggression are crimes against peace and that, pursuant to the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, of 24 October 1970,¹ and the Definition of Aggression of 14 December 1974,² a war of aggression constitutes a crime against the peace,

Reaffirming the right of individuals, States and all mankind to life in peace,

Aware that, since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed,

Recognizing that peace among nations is mankind's paramount value, held in the highest esteem by all principal political, social and religious movements,

Guided by the lofty goal of preparing societies for and creating conditions of their common existence and co-operation in peace, equality, mutual confidence and understanding,

Recognizing the essential role of Governments, as well as governmental and non-governmental organizations, both national and international, the mass media, educational processes and teaching methods, in promoting the ideals of peace and understanding among nations,

Convinced that, in the era of modern scientific and technological progress, mankind's resources, energy and creative talents should be directed

¹ Resolution 2625 (XXV), annex.

² Resolution 3314 (XXIX), annex.

to the peaceful economic, social and cultural development of all countries, should promote the implementation of the new international economic order and should serve the raising of the living standards of all nations,

Stressing with utmost concern that the arms race, in particular in the nuclear field, and the development of new types and systems of weapons, based on modern scientific principles and achievements, threaten world peace,

Recalling that, in the Final Document of the Tenth Special Session of the General Assembly,³ the States Members of the United Nations solemnly reaffirmed their determination to make further collective efforts aimed at strengthening peace and international security and eliminating the threat of war, and agreed that, in order to facilitate the process of disarmament, it was necessary to take measures and pursue policies to strengthen international peace and security and to build confidence among States,

Reaffirming the principles contained in the Declaration on the Granting of Independence to Colonial Countries and Peoples, of 14 December 1960,⁴ the Declaration on the Strengthening of International Security, of 16 December 1970⁵ and the Declaration on the Deepening and Consolidation of International Detente, of 19 December 1977,⁶

Recalling the Declaration on the Promotion among Youth of the Ideals of Peace, Mutual Respect and Understanding between Peoples, of 7 December 1965,⁷

Further recalling the Universal Declaration of Human Rights, of 10 December 1948,⁸ as well as the International Covenant on Civil and Political Rights, of 16 December 1966,⁹ and bearing in mind that the latter states, inter alia, that any propaganda for war shall be prohibited by law,

I

³ Resolution S-10/2.

⁴ Resolution 1514 (XV).

⁵ Resolution 2734 (XXV).

⁶ Resolution 32/155.

⁷ Resolution 2037 (XX).

⁸ Resolution 217 A (III).

⁹ Resolution 2200 A (XXI), annex.

Solemnly invites all States to guide themselves in their activities by the recognition of the supreme importance and necessity of establishing, maintaining and strengthening a just and durable peace for present and future generations and, in particular, to observe the following principles:

1. Every nation and every human being, regardless of race, conscience, language or sex, has the inherent right to life in peace. Respect for that right, as well as for the other human rights, is in the common interest of all mankind and an indispensable condition of advancement of all nations, large and small, in all fields.
2. A war of aggression, its planning, preparation or initiation are crimes against peace and are prohibited by international law.
3. In accordance with the purposes and principles of the United Nations, States have the duty to refrain from propaganda for wars of aggression.
4. Every State, acting in the spirit of friendship and good-neighbourly relations, has the duty to promote all-round, mutually advantageous and equitable political, economic, social and cultural co-operation with other States, notwithstanding their socio-economic systems, with a view to securing their common existence and co-operation in peace, in conditions of mutual understanding of and respect for the identity and diversity of all peoples, and the duty to take up actions conducive to the furtherance of the ideals of peace, humanism and freedom.
5. Every State has the duty to respect the right of all peoples to self-determination, independence, equality, sovereignty, the territorial integrity of States and the inviolability of their frontiers, including the right to determine the road of their development, without interference or intervention in their internal affairs.
6. A basic instrument of the maintenance of peace is the elimination of the threat inherent in the arms race, as well as efforts towards general and complete disarmament, under effective international control, including partial measures with that end in view, in accordance with the principles agreed upon within the United Nations and relevant international agreements.
7. Every State has the duty to discourage all manifestations and practices of colonialism, as well as racism, racial discrimination and apartheid, as contrary to the right of peoples to self-determination and to other human rights and fundamental freedoms.

8. Every State has the duty to discourage advocacy of hatred and prejudice against other peoples as contrary to the principles of peaceful coexistence and friendly co-operation.

II

Calls upon all States, in order to implement the above principles:

- (a) To act perseveringly and consistently, with due regard for the constitutional rights and the role of the family, the institutions and the organizations concerned:
 - (i) To ensure that their policies relevant to the implementation of the present Declaration, including educational processes and teaching methods as well as media information activities, incorporate contents compatible with the task of the preparation for life in peace of entire societies and, in particular, the young generations;
 - (ii) Therefore, to discourage and eliminate incitement to racial hatred, national or other discrimination, injustice or advocacy of violence and war;
- (b) To develop various forms of bilateral and multilateral co-operation, also in international, governmental and non-governmental organizations, with a view to enhancing preparation of societies to live in peace and, in particular, exchanging experiences on projects pursued with that end in view;

III

1. Recommends that the governmental and nongovernmental organizations concerned should initiate appropriate action towards the implementation of the present Declaration;
2. States that a full implementation of the principles enshrined in the present Declaration calls for concerted action on the part of Governments, the United Nations and the specialized agencies, in particular the United Nations Educational, Scientific and Cultural Organization, as well as other interested international and national organizations, both governmental and non-governmental;
3. Requests the Secretary-General to follow the progress made in the implementation of the present Declaration and to submit periodic reports

thereon to the General Assembly, the first such report to be submitted not later than at its thirty-sixth session.

II. Declaration on the Right of Peoples to Peace (1984)

General Assembly resolution 39/11 (UN Doc. A/RES/39/11, annex), adopted on 12 November 1984:

The General Assembly,

Reaffirming that the principal aim of the United Nations is the maintenance of international peace and security,

Bearing in mind the fundamental principles of international law set forth in the Charter of the United Nations,

Expressing the will and the aspirations of all peoples to eradicate war from the life of mankind and, above all, to avert a world-wide nuclear catastrophe,

Convinced that life without war serves as the primary international prerequisite for the material well-being, development and progress of countries, and for the full implementation of the rights and fundamental human freedoms proclaimed by the United Nations,

Aware that in the nuclear age the establishment of a lasting peace on Earth represents the primary condition for the preservation of human civilization and the survival of mankind,

Recognizing that the maintenance of a peaceful life for peoples is the sacred duty of each State,

1. *Solemnly proclaims* that the peoples of our planet have a sacred right to peace;
2. *Solemnly declares* that the preservation of the right of peoples to peace and the promotion of its implementation constitute a fundamental obligation of each State;
3. *Emphasizes* that ensuring the exercise of the right of peoples to peace demands that the policies of States be directed towards the elimination of the threat of war, particularly nuclear war, the renunciation of the use of force in international relations and the settlement of international disputes by peaceful means on the basis of the Charter of the United Nations;
4. *Appeals* to all States and international organizations to do their utmost to assist in implementing the right of peoples to peace

through the adoption of appropriate measures at both the national and the international level.

III. Human Rights Committee General Comment on Freedom of Thought, Conscience or Religion (1993)

Human Rights Committee General Comment No. 22 on Article 18 of the International Covenant on Civil and Political Rights (UN Doc. CCPR/C/21/Rev.1/Add.4), adopted on 30 July 1993:

1. The right to freedom of thought, conscience and religion (which includes the freedom to hold beliefs) in article 18.1 is far-reaching and profound; it encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others. The Committee draws the attention of States parties to the fact that the freedom of thought and the freedom of conscience are protected equally with the freedom of religion and belief. 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, as stated in article 4.2 of the Covenant.

2. 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. Article 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community.

3. Article 18 distinguishes the freedom of thought, conscience, religion or belief from the freedom to manifest religion or belief. It does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one’s choice. These freedoms are protected unconditionally, as is the right of everyone to hold opinions without interference in article 19.1. In accordance with articles 18.2 and 17, no one can be compelled to reveal his thoughts or adherence to a religion or belief.

4. The freedom to manifest religion or belief may be exercised “either individually or in community with others and in public or private”. The freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts. The concept of worship extends

to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulae and objects, the display of symbols, and the observance of holidays and days of rest. The observance and practice of religion or belief may include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or head coverings, participation in rituals associated with certain stages of life, and the use of a particular language customarily spoken by a group. In addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as the freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications.

5. 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 or to adopt atheistic views, as well as the right to retain one’s religion or belief. Article 18.2 bars coercion that would impair the right to have or adopt a religion or belief, including the use of threat of physical force or penal sanctions to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert. Policies or practices having the same intention or effect, such as, for example, those restricting access to education, medical care, employment or the rights guaranteed by article 25 and other provisions of the Covenant, are similarly inconsistent with article 18.2. The same protection is enjoyed by holders of all beliefs of a non-religious nature.

6. The Committee is of the view that article 18.4 permits public school instruction in subjects such as the general history of religions and ethics if it is given in a neutral and objective way. The liberty of parents or legal guardians to ensure that their children receive a religious and moral education in conformity with their own convictions, set forth in article 18.4, is related to the guarantees of the freedom to teach a religion or belief stated in article 18.1. The Committee notes that public education that includes instruction in a particular religion or belief is inconsistent with article 18.4 unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians.

7. In accordance with article 20, no manifestation of religion or belief may amount to propaganda for war or advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. As

stated by the Committee in its General Comment 11 [19], States parties are under the obligation to enact laws to prohibit such acts.

8. Article 18.3 permits restrictions on the freedom to manifest religion or belief only if limitations are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others. The freedom from coercion to have or to adopt a religion or belief and the liberty of parents and guardians to ensure religious and moral education cannot be restricted. In interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all grounds specified in articles 2, 3 and 26. Limitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in article 18. The Committee observes that paragraph 3 of article 18 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. Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner. The Committee observes that the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations on the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition. Persons already subject to certain legitimate constraints, such as prisoners, continue to enjoy their rights to manifest their religion or belief to the fullest extent compatible with the specific nature of the constraint. States parties' reports should provide information on the full scope and effects of limitations under article 18.3, both as a matter of law and of their application in specific circumstances.

9. The fact that a religion is recognized as a state religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including articles 18 and 27, nor in any discrimination against adherents to other religions or non-believers. In particular, certain measures discriminating against the latter, such as measures restricting eligibility for government service to members of the predominant religion or giving economic privileges to them or imposing special restrictions on the practice of other faiths, are not in

accordance with the prohibition of discrimination based on religion or belief and the guarantee of equal protection under article 26. The measures contemplated by article 20, paragraph 2 of the Covenant constitute important safeguards against infringement of the rights of religious minorities and of other religious groups to exercise the rights guaranteed by articles 18 and 27, and against acts of violence or persecution directed towards those groups. The Committee wishes to be informed of measures taken by States parties concerned to protect the practices of all religions or beliefs from infringement and to protect their followers from discrimination. Similarly, information as to respect for the rights of religious minorities under article 27 is necessary for the Committee to assess the extent to which the right to freedom of thought, conscience, religion and belief has been implemented by States parties. States parties concerned should also include in their reports information relating to practices considered by their laws and jurisprudence to be punishable as blasphemous.

10. If a set of beliefs is treated as official ideology in constitutions, statutes, proclamations of ruling parties, etc., or in actual practice, this shall not result in any impairment of the freedoms under article 18 or any other rights recognized under the Covenant nor in any discrimination against persons who do not accept the official ideology or who oppose it.

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

IV. Advisory Committee Draft Declaration on the Right to Peace (2012)

Report of the Human Rights Council Advisory Committee on the right of peoples to peace (UN Doc. A/HRC/20/31, annex), published on 16 April 2012:

Draft declaration on the right to peace

Preamble

The Human Rights Council,

Reaffirming the common will of all people to live in peace with each other,

Reaffirming also that the principal aim of the United Nations is the maintenance of international peace and security,

Bearing in mind the fundamental principles of international law set forth in the Charter of the United Nations,

Recalling General Assembly resolution 39/11 of 12 November 1984, in which the Assembly proclaimed that the peoples of our planet have a sacred right to peace,

Recalling also the African Charter on Human and Peoples' Rights, which states that all peoples have the right to national and international peace and security,

Recalling further that all Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State or in any other manner inconsistent with the purposes of the United Nations,

Convinced that the prohibition of the use of force is the primary international prerequisite for the material well-being, development and progress of countries, and for the full implementation of the human rights and fundamental freedoms proclaimed by the United Nations,

Expressing the will of all peoples that the use of force must be eradicated from the world, including through full nuclear disarmament, without delay,

Adopts the following:

Article 1. Right to peace: principles

1. Individuals and peoples have a right to peace. This right shall be implemented without any distinction or discrimination for reasons of race, descent, national, ethnic or social origin, colour, gender, sexual orientation, age, language, religion or belief, political or other opinion, economic situation or heritage, diverse physical or mental functionality, civil status, birth or any other condition.
2. States, severally and jointly, or as part of multilateral organizations, are the principal duty-holders of the right to peace.
3. The right to peace is universal, indivisible, interdependent and interrelated.
4. States shall abide by the legal obligation to renounce the use or threat of use of force in international relations.
5. All States, in accordance with the principles of the Charter of the United Nations, shall use peaceful means to settle any dispute to which they are parties.
6. All States shall promote the establishment, maintenance and strengthening of international peace in an international system based on respect for the principles enshrined in the Charter and the promotion of all human rights and fundamental freedoms, including the right to development and the right of peoples to self-determination.

Article 2. Human security

1. Everyone has the right to human security, which includes freedom from fear and from want, all constituting elements of positive peace, and also includes freedom of thought, conscience, opinion, expression, belief and religion, in conformity with international human rights law. Freedom from want implies the enjoyment of the right to sustainable development and of economic, social and cultural rights. The right to peace is related to all human rights, including civil, political, economical, social and cultural rights.
2. All individuals have the right to live in peace so that they can develop fully all their capacities, physical, intellectual, moral and spiritual, without being the target of any kind of violence.
3. Everyone has the right to be protected from genocide, war crimes, the use of force in violation of international law, and crimes against humanity. If States are unable to prevent these crimes from occurring within their

jurisdiction, they should call on Member States and the United Nations to fulfil that responsibility, in keeping with the Charter of the United Nations and international law.

4. States and the United Nations shall include in mandates of peacekeeping operations the comprehensive and effective protection of civilians as a priority objective.

5. States, international organizations, in particular the United Nations, and civil society shall encourage an active and sustained role for women in the prevention, management and peaceful settlement of disputes, and promote their contribution to building, consolidating and maintaining peace after conflicts. The increased representation of women shall be promoted at all levels of decision-making in national, regional and international institutions and mechanisms in these areas. A gender perspective should be incorporated into peacekeeping operations.

6. Everyone has the right to demand from his or her Government the effective observance of the norms of international law, including international human rights law and international humanitarian law.

7. Mechanisms should be developed and strengthened to eliminate inequality, exclusion and poverty, as they generate structural violence, which is incompatible with peace. Both State and civil society actors should play an active role in the mediation of conflicts, especially in conflicts relating to religion and/or ethnicity.

8. States should ensure democratic governance of military and related budgets, an open debate about national and human security needs and policies, defence and security budgeting, as well as accountability of decision makers to democratic oversight institutions. They should pursue people-oriented concepts of security, such as citizens' security.

9. To strengthen international rule of law, all States shall strive to support international justice applicable to all States equally and to prosecute the crime of genocide, crimes against humanity, war crimes and the crime of aggression.

Article 3. Disarmament

1. States shall engage actively in the strict and transparent control of arms trade and the suppression of illegal arms trade.

2. States should proceed in a joint and coordinated manner and within a reasonable period of time to further disarmament, under comprehensive and

effective international supervision. States should consider reducing military spending to the minimum level necessary to guarantee human security.

3. All peoples and individuals have a right to live in a world free of weapons of mass destruction. States shall urgently eliminate all weapons of mass destruction or of indiscriminate effect, including nuclear, chemical and biological weapons. The use of weapons that damage the environment, in particular radioactive weapons and weapons of mass destruction, is contrary to international humanitarian law, the right to a healthy environment and the right to peace. Such weapons are prohibited and must be urgently eliminated, and States that have utilized them have the obligation to restore the environment by repairing all damage caused.

4. States are invited to consider the creation and promotion of peace zones and of nuclear weapon-free zones.

5. All peoples and individuals have the right to have the resources freed by disarmament allocated to the economic, social and cultural development of peoples and to the fair redistribution of natural wealth, responding especially to the needs of the poorest countries and of groups in situations of vulnerability.

Article 4. Peace education and training

1. All peoples and individuals have a right to a comprehensive peace and human rights education. Such education should be the basis of every educational system, generate social processes based on trust, solidarity and mutual respect, incorporate a gender perspective, facilitate the peaceful settlement of conflicts and lead to a new way of approaching human relationships within the framework of the Declaration and the Programme of Action on a Culture of Peace and dialogue among cultures.

2. Everyone has the right to demand and obtain the competences needed to participate in the creative and non-violent resolution of conflicts throughout their life. These competencies should be accessible through formal and informal education. Human rights and peace education is essential for the full development of the child, both as an individual and an active member of society. Education and socialization for peace is a condition sine qua non for unlearning war and building identities disentangled from violence.

3. Everyone has the right to have access to and receive information from diverse sources without censorship, in accordance with international human rights law, in order to be protected from manipulation in favour of warlike or aggressive objectives. War propaganda should be prohibited.

4. Everyone has the right to denounce any event that threatens or violates the right to peace, and to participate freely in peaceful political, social and cultural activities or initiatives for the defence and promotion of the right to peace, without interference by Governments or the private sector.

5. States undertake:

(a) To increase educational efforts to remove hate messages, distortions, prejudice and negative bias from textbooks and other educational media, to prohibit the glorification of violence and its justification, and to ensure the basic knowledge and understanding of the world's main cultures, civilizations and religions and to prevent xenophobia;

(b) To update and revise educational and cultural policies to reflect a human rights-based approach, cultural diversity, intercultural dialogue and sustainable development;

(c) To revise national laws and policies that are discriminatory against women, and to adopt legislation that addresses domestic violence, the trafficking of women and girls and gender-based violence.

Article 5. Right to conscientious objection to military service

1. Individuals have the right to conscientious objection and to be protected in the effective exercise of this right.

2. States have the obligation to prevent members of any military or other security institution from taking part in wars of aggression or other armed operations, whether international or internal, which violate the Charter of the United Nations, the principles and norms of international human rights law or international humanitarian law. Members of any military or other security institutions have the right to disobey orders that are manifestly contrary to the above-mentioned principles and norms. The duty to obey military superior orders does not exempt from the observance of these obligations, and disobedience of such orders shall in no case constitute a military offence.

Article 6. Private military and security companies

1. States shall refrain from outsourcing inherently State military and security functions to private contractors. For those activities that may be outsourced, States shall establish a national and an international regime with clear rules regarding the functions, oversight and monitoring of existing private military and security companies. The use of mercenaries violates international law.

2. States shall ensure that private military and security companies, their personnel and any structures related to their activities perform their respective functions under officially enacted laws consistent with international humanitarian law and international human rights law. They shall take such legislative, administrative and other measures as may be necessary to ensure that such companies and their personnel are held accountable for violations of applicable national or international law. Any responsibility attributable to a private military or security company is independent and does not eliminate the responsibility that a State or States may incur.

3. The United Nations shall establish, together with other international and regional organizations, clear standards and procedures for monitoring the activities of private military and security companies employed by these organizations. States and the United Nations shall strengthen and clarify the relationship and accountability of States and international organizations for human rights violations perpetrated by private military and security companies employed by States, intergovernmental and international non-governmental organizations. This shall include the establishment of adequate mechanisms to ensure redress for individuals injured by the action of private military and security companies.

Article 7. Resistance and opposition to oppression

1. All peoples and individuals have the right to resist and oppose oppressive colonial, foreign occupation or dictatorial domination (domestic oppression).

2. Everyone has the right to oppose aggression, genocide, war crimes and crimes against humanity, violations of other universally recognized human rights, and any propaganda in favour of war or incitement to violence and violations of the right to peace.

Article 8. Peacekeeping

1. Peacekeeping missions and peacekeepers shall comply fully with United Nations rules and procedures regarding professional conduct, including the lifting of immunity in cases of criminal misconduct or the violation of international law, to allow the victims recourse to legal proceedings and redress.

2. Troop-contributing States shall take appropriate measures to investigate effectively and comprehensively complaints against members of their national

contingents. Complainants should be informed about the outcome of such investigations.

Article 9. Right to development

1. Every human person and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

2. Everyone shall enjoy the right to development and economic, social and cultural rights and, in particular:

(a) The right to adequate food, drinking water, sanitation, housing, health care, clothing, education, social security and culture;

(b) The right to decent work and to enjoy fair conditions of employment and trade union association; the right to equal remuneration among persons who perform the same occupation or function; the right to have access to social services on equal terms; and the right to leisure;

(c) All States have an obligation to cooperate with each other to protect and promote the right to development and other human rights.

3. All peoples and individuals have the right to the elimination of obstacles to the realization of the right to development, such as the servicing of unjust or unsustainable foreign debt burdens and their conditionalities or the maintenance of an unfair international economic order that generates poverty and social exclusion. States and the United Nations system shall cooperate fully in order to remove such obstacles, both internationally and domestically.

4. States should pursue peace and security and development as interlinked and mutually reinforcing, and as serving as a basis for one another. The obligation to promote comprehensive and sustainable economic, social, cultural and political development implies the obligation to eliminate threats of war and, to that end, to strive to disarmament and the free and meaningful participation of the entire population in this process.

Article 10. Environment

1. Everyone has the right to a safe, clean and peaceful environment, including an atmosphere that is free from dangerous man-made interference, to sustainable development and to international action to mitigate and adapt to environmental destruction, especially climate change. Everyone has the right to free and meaningful participation in the development and implementation of mitigation and adaptation policies. States have the responsibility to take

action to guarantee these rights, including technology transfer in the field of climate change, in accordance with the principle of common but differentiated responsibility.

2. States have the responsibility of mitigating climate change based on the best available scientific evidence and their historical contribution to climate change in order to ensure that all people have the ability to adapt to the adverse effects of climate change, particularly those interfering with human rights, and in accordance with the principle of common but differentiated responsibility. States, in accordance with United Nations Framework Convention on Climate Change, with the resources to do so, have the responsibility for providing adequate financing to States with inadequate resources for adaptation to climate change.

3. States, international organizations, corporations and other actors in society are responsible for the environmental impact of the use of force, including environmental modifications, whether deliberate or unintentional, that result in any long-lasting or severe effects or cause lasting destruction, damage or injury to another State.

4. States shall take all the necessary measures to ensure development and protection of the environment, including disaster preparedness strategies, as their absence poses a threat to peace.

Article 11. Rights of victims and vulnerable groups

1. Every victim of a human rights violation has the right, in accordance with international human rights law and not subject to statutory limitations, to know the truth, and to the restoration of the violated rights; to obtain the investigation of facts, as well as identification and punishment of those responsible; to obtain effective and full redress, including the right to rehabilitation and compensation; to measures of symbolic redress or reparation; and to guarantees that the violation will not be repeated.

2. Everyone subjected to aggression, genocide, foreign occupation, racism, racial discrimination, xenophobia and other related forms of intolerance or apartheid, colonialism and neo-colonialism deserve special attention as victims of violations of the right to peace.

3. States shall ensure that the specific effects of the different forms of violence on the enjoyment of the rights of persons belonging to groups in situations of vulnerability, such as indigenous peoples, women suffering from violence and individuals deprived of their liberty, are taken fully into account. They have the obligation to ensure that remedial measures are taken, including

the recognition of the right of persons belonging to groups in situations of vulnerability to participate in the adoption of such measures.

Article 12. Refugees and migrants

1. All individuals have the right to seek and to enjoy refugee status without discrimination, if there is a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of one's nationality and is unable or, owing to such fear, unwilling to avail oneself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, unwilling to return to it.

2. Refugee status should include, inter alia, the right to voluntary return to one's country or place of origin or residence in dignity and with all due guarantees, once the causes of persecution have been removed and, in case of armed conflict, it has ended. Special consideration should be given to challenges, such as the situation of war refugees and of refugees fleeing hunger.

3. States should place migrants at the centre of migration policies and management, and pay particular attention to the situation of marginalized and disadvantaged groups of migrants. Such an approach will also ensure that migrants are included in relevant national plans of action and strategies, such as plans on the provision of public housing or national strategies to combat racism and xenophobia. Although countries have a sovereign right to determine conditions of entry and stay in their territories, they also have an obligation to respect, protect and fulfil the human rights of all individuals under their jurisdiction, regardless of their nationality or origin and regardless of their immigration status.

Article 13. Obligations and implementation

1. The preservation, promotion and implementation of the right to peace constitute a fundamental obligation of all States and of the United Nations as the most universal body harmonizing the concerted efforts of the nations to realize the purposes and principles proclaimed in the Charter of the United Nations.

2. States should cooperate in all necessary fields in order to achieve the realization of the right to peace, in particular by implementing their existing commitments to promote and provide increased resources to international cooperation for development.

3. The effective and practical realization of the right to peace demands activities and engagement beyond States and international organizations, requiring comprehensive, active contributions from civil society, in particular academia, the media and corporations, and the entire international community in general.
4. Every individual and every organ of society, keeping the present Declaration constantly in mind, shall strive to promote respect for the right to peace by progressive measures, national and international, to secure its universal and effective recognition and observance everywhere.
5. States should strengthen the effectiveness of the United Nations in its dual functions of preventing violations and protecting human rights and human dignity, including the right to peace. In particular, it is for the General Assembly, the Security Council, the Human Rights Council and other competent bodies to take effective measures to protect human rights from violations that may constitute a danger or threat to international peace and security.
6. The Human Rights Council is invited to set up a special procedure to monitor respect for and the implementation of the right to peace and to report to relevant United Nations bodies.

Article 14. Final provisions

1. No provision of the present Declaration may be interpreted as conferring on any State, group or individual any right to undertake or develop any activity or carry out any act contrary to the purposes and principles of the United Nations, or likely to negate or violate any of the provisions of the Declaration or of those in international human rights law, international labour law, international humanitarian law, international criminal law and international refugee law.
2. The provisions of the present Declaration shall apply without prejudice to any other provision more propitious to the effective realization of the human right to peace formulated in accordance with the domestic legislation of States or stemming from applicable international law.
3. All States must implement in good faith the provisions of the present Declaration by adopting relevant legislative, judicial, administrative, educational or other measures necessary to promote its effective realization.

V. Human Rights Council Resolution 24/17 on Conscientious Objection to Military Service (2013)

Human Rights Council resolution 24/17 (UN Doc. A/HRC/RES/24/17), adopted on 27 September 2013:

The Human Rights Council,

Bearing in mind that everyone is entitled to all the rights and freedoms set forth in the Universal Declaration of Human Rights without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

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

Reaffirming also that the right to freedom of thought, conscience and religion shall include freedom to have or to adopt a religion or belief of one's choice, and freedom, either individually or in community with others and in public or private, to manifest one's religion or belief in worship, observance, practice and teaching, and that no one shall be subject to coercion which would impair one's freedom to have or to adopt a religion or belief of one's choice, as well as that freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others,

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

Recalling also all previous relevant resolutions and decisions, including Human Rights Council resolution 20/2 of 5 July 2012 and Commission on Human Rights resolutions 2004/35 of 19 April 2004 and 1998/77 of 22 April 1998, in which the Commission recognized the right of everyone to have conscientious objection to military service as a legitimate exercise of the right to freedom of thought, conscience and religion, as laid down in article 18 of the Universal Declaration of Human Rights, article 18 of the International Covenant on Civil and Political Rights and general comment No. 22 (1993) of the Human Rights Committee,

Noting general comment No. 32 (2007) of the Human Rights Committee, in which it stated that repeated punishment of conscientious objectors for not having obeyed a renewed order to serve in the military based on the same constant resolve may amount to punishment in breach of the legal principle *ne bis in idem*,

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

Aware that persons performing military service may develop conscientious objections,

1. *Recognizes* that the right to conscientious objection to military service can be derived from the right to freedom of thought, conscience and religion or belief;

2. *Takes note* of the analytical report on conscientious objection to military service presented by the United Nations High Commissioner for Human Rights to the Human Rights Council at its twenty-third session,¹ pursuant to resolution 20/2;

3. *Encourages* all States, relevant United Nations agencies, programmes and funds, intergovernmental and non-governmental organizations and national human rights institutions to cooperate fully with the Office of the High Commissioner by providing relevant information for the preparation of the next quadrennial analytical report on conscientious objection to military service, in particular on new developments, best practices and remaining challenges;

4. *Takes note* of the publication by the Office of the High Commissioner of a guide entitled *Conscientious Objection to Military Service* (2012);

5. *Acknowledges* that an increasing number of States recognize conscientious objection to military service not only for conscripts but also for those serving voluntarily, and encourages States to allow applications for conscientious objection prior to, during and after military service, including reserve duties;

¹ A/HRC/23/22.

6. *Recognizes* that an increasing number of States that retain compulsory military service are taking steps to ensure the establishment of alternatives to military service;

7. *Welcomes* the fact that some States accept claims of conscientious objection to military service as valid without inquiry;

8. *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 to military service 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;

9. *Urges* States with a system of compulsory military service, where such provision has not already been made, to 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;

10. *Emphasizes* that States should take the necessary measures to refrain from subjecting individuals to imprisonment solely on the basis of their conscientious objection to military service and to repeated punishment for refusing to perform military service, and recalls that repeated punishment of conscientious objectors for refusing a renewed order to serve in the military may amount to punishment in breach of the legal principle *ne bis in idem*;

11. *Calls upon* States to consider releasing individuals imprisoned or detained solely on the basis of their conscientious objection to military service;

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

13. *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 Convention relating to the Status of Refugees of 1951 and the Protocol thereto of 1967, to consider granting asylum to those conscientious objectors to military service who have a well-founded fear of persecution in their country of origin owing to their refusal to perform military service when there is no provision, or no adequate provision, for conscientious objection to military service;

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

15. *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;

16. *Welcomes* initiatives to make such information widely available, and encourages States, as applicable, to provide information to conscripts and persons serving voluntarily in the military services about the right to conscientious objection to military service;

17. *Urges* States to respect freedom of expression of those who support conscientious objectors or who support the right of conscientious objection to military service;

18. *Encourages* States to use the information contained in the above-mentioned report and guide of the Office of the High Commission and in the present resolution to consider introducing appropriate legislation, policies and practices regarding conscientious objection to military service, and to address any discriminatory provisions therein, and to inform the enforcement of an adequate legal framework to ensure that the right can be respected in practice;

19. *Invites* States to consider including in their national reports, to be submitted to the universal periodic review mechanism and to United Nations human rights treaty bodies, information on domestic provisions related to the right to conscientious objection;

20. *Decides* to continue consideration of this matter under the same agenda item in accordance with its annual programme of work.

VI. Declaration on the Right to Peace (2016)

General Assembly resolution 71/189 (UN Doc. A/RES/71/189, annex), adopted on 19 December 2016:

The General Assembly,

Guided by the purposes and principles of the Charter of the United Nations,

Recalling the Universal Declaration of Human Rights,¹ the International Covenant on Civil and Political Rights,² the International Covenant on Economic, Social and Cultural Rights² and the Vienna Declaration and Programme of Action,³

Recalling also the Declaration on the Right to Development,⁴ the United Nations Millennium Declaration,⁵ the 2030 Agenda for Sustainable Development,⁶ including the Sustainable Development Goals, and the 2005 World Summit Outcome,⁷

Recalling further the Declaration on the Preparation of Societies for Life in Peace,⁸ the Declaration on the Right of Peoples to Peace⁹ and the Declaration and Programme of Action on a Culture of Peace,¹⁰ and other international instruments relevant to the subject of the present Declaration,

Recalling the Declaration on the Granting of Independence to Colonial Countries and Peoples,¹¹

Recalling also that the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations¹² solemnly proclaimed the principle that States shall refrain in their international

¹ Resolution 217 A (III).

² See resolution 2200 A (XXI), annex.

³ [A/CONF.157/24](#) (Part I), chap. III.

⁴ Resolution 41/128, annex.

⁵ Resolution 55/2.

⁶ Resolution 70/1.

⁷ Resolution 60/1.

⁸ Resolution 33/73.

⁹ Resolution 39/11, annex.

¹⁰ Resolutions 53/243 A and B.

¹¹ Resolution 1514 (XV).

¹² Resolution 2625 (XXV), annex.

relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations; the principle that States shall settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered; the duty not to intervene in matters within the domestic jurisdiction of any State, in accordance with the Charter; the duty of States to cooperate with one another in accordance with the Charter; the principle of equal rights and self-determination of peoples; the principle of the sovereign equality of States; and the principle that States shall fulfil in good faith the obligations assumed by them in accordance with the Charter,

Reaffirming the obligations of all Member States, as enshrined in the Charter, to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations, and to settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered,

Acknowledging that the fuller development of a culture of peace is integrally linked to the realization of the right of all peoples, including those living under colonial or other forms of alien domination or foreign occupation, to self-determination as enshrined in the Charter and embodied in the International Covenants on Human Rights,² as well as in the Declaration on the Granting of Independence to Colonial Countries and Peoples contained in General Assembly resolution 1514 (XV) of 14 December 1960,

Convinced that any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a State or country or at its political independence is incompatible with the purposes and principles of the Charter, as stated in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, contained in General Assembly resolution 2625 (XXV) of 24 October 1970,

Recognizing the importance of the settlement of disputes or conflicts through peaceful means,

Deeply deploring all acts of terrorism, recalling that the Declaration on Measures to Eliminate International Terrorism¹³ declared that acts, methods and practices of terrorism constitute a grave violation of the purposes and principles of the United Nations and may pose a threat to international peace and security, jeopardize friendly relations among States, threaten the territorial integrity and security of States, hinder international cooperation and aim at the destruction of human rights, fundamental freedoms and the democratic bases of society, and reaffirming that any acts of terrorism are criminal and unjustifiable regardless of their motivations, whenever and by whomsoever committed,

Stressing that all measures taken in the fight against terrorism must be in compliance with the obligations of States under international law, including international human rights, refugee and humanitarian law, as well as those enshrined in the Charter,

Urging all States that have not yet done so to consider, as a matter of priority, becoming parties to international instruments related to terrorism,

Reaffirming that the promotion and protection of human rights for all and the rule of law are essential to the fight against terrorism, and recognizing that effective counter-terrorism measures and the protection of human rights are not conflicting goals, but are complementary and mutually reinforcing,

Reaffirming also the determination of the peoples of the United Nations, as expressed in the Preamble to the Charter, to save succeeding generations from the scourge of war, to reaffirm faith in fundamental human rights, to promote social progress and better standards of life in larger freedom, and to practice tolerance and live together in peace with one another as good neighbours,

Recalling that peace and security, development and human rights are the pillars of the United Nations system and the foundations for collective security and well-being, and recognizing that development, peace and security and human rights are interlinked and mutually reinforcing,

Recognizing that peace is not only the absence of conflict but also requires a positive, dynamic participatory process where dialogue is

¹³ Resolution 49/60, annex.

encouraged and conflicts are solved in a spirit of mutual understanding and cooperation, and socioeconomic development is ensured,

Recalling that the recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, and recognizing that peace is promoted through the full enjoyment of all inalienable rights derived from the inherent dignity of all human beings,

Recalling also that everyone is entitled to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights can be fully realized,

Recalling further the world commitment to eradicate poverty and to promote sustained economic growth, sustainable development and global prosperity for all, and the need to reduce inequalities within and among countries,

Recalling the importance of the prevention of armed conflict in accordance with the purposes and principles of the Charter and of the commitment to promote a culture of prevention of armed conflict as a means of effectively addressing the interconnected security and development challenges faced by peoples throughout the world,

Recalling also that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women, on equal terms with men in all fields,

Reaffirming that, since wars begin in the minds of human beings, it is in the minds of human beings that the defence of peace must be constructed, and recalling the importance of the settlement of disputes or conflicts through peaceful means,

Recalling the need for strengthened international efforts to foster a global dialogue for the promotion of a culture of tolerance and peace at all levels, based on respect for human rights and diversity of religions and beliefs,

Recalling also that development assistance and capacity-building based on the principle of national ownership in post-conflict situations should restore peace through rehabilitation, reintegration and reconciliation processes involving all those engaged, and recognizing the importance of the peacemaking, peacekeeping and peacebuilding activities of the United Nations for the global pursuit of peace and security,

Recalling further that the culture of peace and the education of humanity for justice, liberty and peace are indispensable to the dignity of human beings and constitute a duty that all nations must fulfil in a spirit of mutual assistance and concern,

Reaffirming that the culture of peace is a set of values, attitudes, traditions and modes of behaviour and ways of life, as identified in the Declaration on a Culture of Peace, and that all this should be fostered by an enabling national and international environment conducive to peace,

Recognizing the importance of moderation and tolerance as values contributing to the promotion of peace and security,

Recognizing also the important contribution that civil society organizations can make in building and preserving peace, and in strengthening a culture of peace,

Stressing the need for States, the United Nations system and other relevant international organizations to allocate resources to programmes aimed at strengthening a culture of peace and upholding human rights awareness through training, teaching and education,

Stressing also the importance of the contribution of the United Nations Declaration on Human Rights Education and Training¹⁴ to the promotion of a culture of peace,

Recalling that respect for the diversity of cultures, tolerance, dialogue and cooperation, in a climate of mutual trust and understanding, are among the best guarantees of international peace and security,

Recalling also that tolerance is respect, acceptance and appreciation of the rich diversity of our world's cultures, our forms of expression and ways of being human, and the virtue that makes peace possible and contributes to the promotion of a culture of peace,

Recalling further that the constant promotion and realization of the rights of persons belonging to national or ethnic, religious and linguistic minorities as an integral part of the development of a society as a whole and within a democratic framework based on the rule of law

¹⁴ Resolution 66/137, annex.

would contribute to the strengthening of friendship, cooperation and peace among peoples and States,

Recalling the need to design, promote and implement, at the national, regional and international levels, strategies, programmes and policies, and adequate legislation, which may include special and positive measures, for furthering equal social development and the realization of the civil and political, economic, social and cultural rights of all victims of racism, racial discrimination, xenophobia and related intolerance,

Recognizing that racism, racial discrimination, xenophobia and related intolerance, where they amount to racism and racial discrimination, are an obstacle to friendly and peaceful relations among peoples and nations, and are among the root causes of many internal and international conflicts, including armed conflicts,

Inviting solemnly all stakeholders to guide themselves in their activities by recognizing the high importance of practising tolerance, dialogue, cooperation and solidarity among all human beings, peoples and nations of the world as a means to promote peace; to that end, present generations should ensure that both they and future generations learn to live together in peace with the highest aspiration of sparing future generations the scourge of war,

Declares the following:

Article 1

Everyone has the right to enjoy peace such that all human rights are promoted and protected and development is fully realized.

Article 2

States should respect, implement and promote equality and non-discrimination, justice and the rule of law, and guarantee freedom from fear and want as a means to build peace within and between societies.

Article 3

States, the United Nations and specialized agencies should take appropriate sustainable measures to implement the present Declaration, in particular the United Nations Educational, Scientific and Cultural Organization. International, regional, national and local organizations

and civil society are encouraged to support and assist in the implementation of the present Declaration.

Article 4

International and national institutions of education for peace shall be promoted in order to strengthen among all human beings the spirit of tolerance, dialogue, cooperation and solidarity. To this end, the University for Peace should contribute to the great universal task of educating for peace by engaging in teaching, research, post-graduate training and dissemination of knowledge.

Article 5

Nothing in the present Declaration shall be construed as being contrary to the purposes and principles of the United Nations. The provisions included in the present Declaration are to be understood in accordance with the Charter of the United Nations, the Universal Declaration of Human Rights¹ and relevant international and regional instruments ratified by States.

VII. Beirut Declaration and its 18 Commitments on “Faith for Rights” (2017)

Report of the Special Rapporteur on freedom of religion or belief (UN Doc. A/HRC/40/58, annexes I and II), published on 5 March 2019:

Annex I

Beirut Declaration on Faith for Rights

“There are as many paths to God as there are souls on Earth.” (Rumi)¹

1. We, faith-based and civil society actors working in the field of human rights and gathered in Beirut on 28-29 March 2017, in culmination of a trajectory of meetings initiated by the Office of the United Nations High Commissioner for Human Rights (OHCHR),² express our deep conviction that our respective religions and beliefs share a common commitment to **upholding the dignity and the equal worth of all human beings**. Shared human values and equal dignity are therefore common roots of our cultures. Faith and rights should be mutually reinforcing spheres. Individual and communal expression of religions or beliefs thrive and flourish in environments where human rights, based on the equal worth of all individuals, are protected. Similarly, human rights can benefit from deeply rooted ethical and spiritual foundations provided by religion or beliefs.

2. We understand our respective religious or belief convictions as a source for the protection of the **whole spectrum of inalienable human entitlements** – from the preservation of the gift of life, the freedoms of thought, conscience, religion, belief, opinion and expression to the freedoms from want and fear, including from violence in all its forms.

–“Whoever preserves one life, is considered by Scripture as if one has preserved the whole world.” (Talmud, Sanhedrin, 37,a).

–“Someone who saves a person’s life is equal to someone who saves the life of all.” (Qu’ran 5:32)

–“You shall love the Lord your God with all your heart, all your soul, all your strength, and with your entire mind; and your neighbour as yourself.” (Luke 10:27)

–Let them worship the Lord of this House who saved them from hunger and saved them from fear.” (Sourat Quraish, verses 3,4)

–“A single person was created in the world, to teach that if anyone causes a single person to perish, he has destroyed the entire world; and if anyone saves a single soul, he has saved the entire world.” (Mishna Sanhedrin 4:5)

–“Let us stand together, make statements collectively and may our thoughts be one.” (Rigveda 10:191:2)

–“Just as I protect myself from unpleasant things however small, in the same way I should act towards others with a compassionate and caring mind.” (Shantideva, *A Guide to the Bodhisattva's Way of Life*)

–“Let us put our minds together to see what life we can make for our children.” (Chief Sitting Bull, Lakota)

3. Based on the above, among many other sources of faith, we are convinced that our **religious or belief convictions are one of the fundamental sources** of protection for human dignity and freedoms of all individuals and communities with no distinction on any ground whatsoever. Religious, ethical and philosophical texts preceded international law in upholding the oneness of humankind, the sacredness of the right to life and the corresponding individual and collective duties that are grounded in the hearts of believers.

4. We pledge to disseminate the **common human values that unite us**. While we differ on some theological questions, we undertake to combat any form of exploitation of such differences to advocate violence, discrimination and religious hatred.

–“We have designed a law and a practice for different groups. Had God willed, He would have made you a single community, but He wanted to test you regarding what has come to you. So compete with each other in doing good. Every one of you will return to God and He will inform you regarding the things about which you differed.” (Qu’ran 5, 48)

–“Ye are the fruits of one tree, and the leaves of one branch.” (Bahá’u’lláh)

5. We believe that freedom of religion or belief does not exist without the **freedom of thought and conscience** which precede all freedoms for they are linked to human essence and his/her rights of choice and to freedom of religion or belief. A person as a whole is the basis of every faith and he/she grows through love, forgiveness and respect.

6. We hereby solemnly launch together from Beirut the **most noble of all struggles, peaceful but powerful**, against our own egos, self-interest and artificial divides. Only when we as religious actors assume our respective roles, articulate a shared vision of our responsibilities and transcend preaching to

action, only then we will credibly promote mutual acceptance and fraternity among people of different religions or beliefs and empower them to defeat negative impulses of hatred, viciousness, manipulation, greed, cruelty and related forms of inhumanity. All religious or belief communities need a resolved leadership that unequivocally dresses that path by acting for equal dignity of everyone, driven by our shared humanity and respect for the absolute freedom of conscience of every human being. We pledge to spare no effort in filling that joint leadership gap by protecting freedom and diversity through “faith for rights” (F4R) activities.

–“*We perfected each soul within its built in weakness for wrong doing and its aspiration for what is right. Succeeds he or she who elevate to the path of rightness.*” (Qu’ran 91, 7-9)

7. The present declaration on “Faith for Rights” **reaches out to persons belonging to religions and beliefs in all regions of the world**, with a view to enhancing cohesive, peaceful and respectful societies on the basis of a common action-oriented platform agreed by all concerned and open to all actors that share its objectives. We value that our declaration on Faith for Rights, like its founding precedent the Rabat Plan of Action on incitement to discrimination, hostility or violence (October 2012), were both conceived and conducted under the auspices and with the support of the United Nations that represents all peoples of the world, and enriched by UN human rights mechanisms such as Special Rapporteurs and Treaty Body members.

8. While numerous welcomed initiatives attempted over time to link faith with rights for the benefit of both, none of these attempts fully reached that goal. We are therefore convinced that **religious actors should be enabled**, both nationally and internationally, to assume their responsibilities in defending our shared humanity against incitement to hatred, those who benefit from destabilising societies and the manipulators of fear to the detriment of equal and inalienable human dignity. With the present F4R Declaration, we aim to join hands and hearts in building on previous attempts to bring closer faith and rights **by articulating the common grounds** between all of us and **define ways in which faith can stand for rights** more effectively so that both enhance each other.

–“*Mankind is at loss. Except those who believe in doing righteous deeds, constantly recommend it to one another and persist in that vein.*” (Qu’ran 103, 2-3)

9. Building on the present declaration, we also intend to **practice what we preach** through establishing **a multi-level coalition**, open for all independent

religious actors and faith-based organisations who genuinely demonstrate acceptance of and commitment to the present F4R declaration by implementing projects on the ground in areas that contribute to achieving its purpose. We will also be charting a roadmap for concrete actions in specific areas, to be reviewed regularly by our global coalition of Faith for Rights.

10. To achieve the above goal, we pledge as believers (whether theistic, non-theistic, atheistic or other³) to fully adhere to **five fundamental principles**:

(a) Transcending traditional inter-faith dialogues into **concrete action-oriented Faith for Rights (F4R) projects at the local level**. While dialogue is important, it is not an end in itself. Good intentions are of limited value without corresponding action. Change on the ground is the goal and concerted action is its logical means.

–“*Faith is grounded in the heart when it is demonstrated by deeds.*” (Hadith)

(b) **Avoiding theological and doctrinal divides** in order to act on areas of shared inter-faith and intra-faith vision as defined in the present F4R declaration. This declaration is not conceived to be a tool for dialogue among religions but rather a joint platform for common action in defence of human dignity for all. While we respect freedom of expression and entertain no illusion as to the continuation of a level of controversy at different levels of religious discourse, we are resolved to challenge the manipulation of religions in both politics and conflicts. We intend to be a balancing united voice of solidarity, reason, compassion, moderation, enlightenment and corresponding collective action at the grassroots level.

(c) **Introspectiveness** is a virtue we cherish. We will all speak up and act first and foremost on our own weaknesses and challenges within our respective communities. We will address more global issues collectively and consistently, after internal and inclusive deliberation that preserves our most precious strength, i.e. integrity.

(d) **Speaking with one voice**, particularly against any advocacy of hatred that amounts to inciting violence, discrimination or any other violation of the equal dignity that all human beings enjoy regardless of their religion, belief, gender, political or other opinion, national or social origin, or any other status. Denouncing incitement to hatred, injustices, discrimination on religious grounds or any form of religious intolerance is not enough. We have a duty to redress hate speech by remedial compassion and solidarity that heals hearts and societies alike. Our words of redress should transcend religious or belief boundaries. Such boundaries should thus no longer remain a free land for manipulators, xenophobes, populists and violent extremists.

(e) We are resolved to **act in a fully independent manner**, abiding only by our conscience, while seeking partnerships with religious and secular authorities, relevant governmental bodies and non-State actors wherever Faith for Rights (F4R) coalitions are freely established in conformity with the present declaration.

11. Our **main tool and asset is reaching out to hundreds of millions of believers** in a preventive structured manner to convey our shared convictions enshrined in this F4R declaration. Speaking up in one voice in defence of equal dignity of all on issues of common challenges to humanity equally serves the cause of faith and rights. Human beings are entitled to full and equal respect, rather than mere tolerance, regardless of what they may believe or not believe. It is our duty to uphold this commitment within our respective spheres of competence. We will also encourage all believers to assume their individual responsibilities in the defence of their deeply held values of justice, equality and responsibility towards the needy and disadvantaged, regardless of their religion or belief.

–*“People are either your brothers in faith, or your brothers in humanity.”*
(Imam Ali ibn Abi Talib)

–*“On the long journey of human life, Faith is the best of companions.”*
(Buddha)

12. We aim to achieve that goal in a concrete manner that matters **for people at the grassroots level** in all parts of the world where coalitions of religious actors choose to adhere to this declaration and act accordingly. We will support each other’s actions, including through a highly symbolic annual Walk of Faith for Rights in the richest expression of our unity in diversity each 10th of December in all parts of the world.

13. Articulating through the present declaration a common vision of religious actors, on the basis of the Rabat Plan of Action of 2012 and follow-up meetings, would provide the tipping point for **disarming the forces of darkness**; and help dismantling the unholy alliance in too many hearts between fear and hatred. Violence in the name of religion defeats its basic foundations, mercy and compassion. We intend to transform the messages of mercy and compassion into acts of solidarity through inter-communal social, developmental and environmental faith-based projects at the local, national, regional and global levels.

14. We **fully embrace the universally recognised values** as articulated in international human rights instruments as common standards of our shared humanity. We ground our commitments in this F4R declaration first and

foremost in our conviction that religions and beliefs share common core values of respect for human dignity, justice and fairness. We also ground these commitments in our acceptance of the fact that “*Everyone has duties to the community in which alone the free and full development of his personality is possible*”⁴. Our duty is to practice what we preach, to fully engage, to speak up and act on the ground in the defence of human dignity long before it is actually threatened.

–“*Oh you believers, why don't you practice what you preach? Most hateful for God is preaching what you don't practice.*” (Qu'ran 61: 2-3)

–“*Speak up for those who cannot speak for themselves, for the rights of all who are destitute. Speak up and judge fairly; defend the rights of the poor and needy.*” (Proverbs 31:8-9)

15. Both **religious precepts and existing international legal frameworks** attribute responsibilities to religious actors. Empowering religious actors requires actions in areas such as legislation, institutional reforms, supportive public policies and training adapted to the needs of local religious actors who often are one of the main sources of education and social change in their respective areas of action. International conventions and covenants have defined key legal terms such as genocide, refugee, religious discrimination and freedom of religion or belief.⁵ All these concepts have corresponding resonance in different religions and beliefs. In addition, numerous declarations and resolutions⁶ provide elements of religious actors' roles and responsibilities that we embrace and consolidate in this F4R declaration.

16. We agree as human beings that **we are accountable to all human beings** as to redressing the manner by which religions are portrayed and too often manipulated. We are responsible for our actions but even more responsible if we do not act or do not act properly and timely.

–“*We will ask each of you about all what you have said and done, for you are accountable*” (Quran, Assaafat, 24)

–“*Every man's work shall be made manifest.*” (Bible, 1 Corinthians iii. 13)

17. While States bear the primary responsibility for promoting and protecting all rights for all, individually and collectively to enjoy a dignified life free from fear and free from want and enjoy the freedom of choice in all aspects of life, we as religious actors or as individual believers do bear a distinct responsibility to **stand up for our shared humanity and equal dignity of each human being** in all circumstances within our own spheres of preaching, teaching, spiritual guidance and social engagement.

–“Whoever witnesses an injustice or wrong doing should change its course by his hand. If He or she cannot do that, they by his words. If he or she is unable to do that then by their hearts. This would be the weakest of acts of faith” (Hadith)

18. **Religious communities, their leaders and followers** have a role and bear responsibilities independently from public authorities both under national and international legal instruments. By virtue of article 2 (1) of the 1981 UN Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion of Belief, “no one shall be subject to discrimination by any State, institution, group of persons or person on the grounds of religion or belief”. This provision establishes direct responsibilities of religious institutions, leaders and even each individual within religious or belief communities.

19. As much as the notion of effective control⁷ provides the foundation for responsibilities of non-State actors in times of conflict, we see a similar legal and ethical justification in case of religious leaders who exercise a **heightened degree of influence over the hearts and minds of their followers** at all times.

20. Speech is fundamental to individual and communal flourishing. It constitutes one of the most crucial **mediums for good and evil sides of humanity**. War starts in the minds and is cultivated by a reasoning fuelled by often hidden advocacy of hatred. Positive speech is also the healing tool of reconciliation and peace-building in the hearts and minds. Speech is one of the most strategic areas of the responsibilities we commit to assume and support each other for their implementation through this F4R declaration on the basis of the thresholds articulated by the Rabat Plan of Action.

21. Under the International Covenant on Civil and Political Rights (article 20, paragraph 2), States are obliged to prohibit any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. This includes **incitement to hatred by some religious leaders in the name of religion**. Due to the speaker’s position, context, content and extent of sermons, such statements by religious leaders may be likely to meet the threshold of incitement to hatred. Prohibiting such incitement is not enough. Remedial advocacy to reconciliation is equally a duty, including for religious leaders, particularly when hatred is advocated in the name of religions or beliefs.

22. The clearest and most recent guidance in this area is provided by the 2012 Rabat Plan of Action⁸ which articulates **three specific core responsibilities of religious leaders**: (a) Religious leaders should refrain from using messages of

intolerance or expressions which may incite violence, hostility or discrimination; (b) Religious leaders also have a crucial role to play in speaking out firmly and promptly against intolerance, discriminatory stereotyping and instances of hate speech; and (c) Religious leaders should be clear that violence can never be tolerated as a response to incitement to hatred (e.g. violence cannot be justified by prior provocation).

Annex II

18 commitments on “Faith for Rights”

We, faith-based and civil society actors working in the field of human rights and gathered in Beirut on 28-29 March 2017, express the deep conviction that our respective religions and beliefs share a common commitment to **upholding the dignity and the equal worth of all human beings**. Shared human values and equal dignity are therefore common roots of our cultures. Faith and rights should be mutually reinforcing spheres. Individual and communal expression of religions or beliefs thrive and flourish in environments where human rights, based on the equal worth of all individuals, are protected. Similarly, human rights can benefit from deeply rooted ethical and spiritual foundations provided by religions or beliefs.

The **present declaration on “Faith for Rights” reaches out to persons belonging to religions and beliefs in all regions** of the world, with a view to enhancing cohesive, peaceful and respectful societies on the basis of a common action-oriented platform agreed by all concerned and open to all actors that share its objectives. We value that our declaration on Faith for Rights, like its founding precedent the Rabat Plan of Action, were both conceived and conducted under the auspices and with the support of the United Nations that represents all peoples of the world, and enriched by UN human rights mechanisms such as Special Rapporteurs and Treaty Body members.

The 2012 **Rabat Plan of Action**⁸ articulates three specific core responsibilities of religious leaders: (a) Religious leaders should refrain from using messages of intolerance or expressions which may incite violence, hostility or discrimination; (b) Religious leaders also have a crucial role to play in speaking out firmly and promptly against intolerance, discriminatory stereotyping and instances of hate speech; and (c) Religious leaders should be clear that violence can never be tolerated as a response to incitement to hatred (e.g. violence cannot be justified by prior provocation).

In order to give concrete effect to the above three core responsibilities articulated by the Rabat Plan of Action, which has repeatedly been positively invoked by States, we formulate the following chart of **18 commitments on “Faith for Rights”**,⁹ including corresponding follow-up actions:

I. Our most fundamental responsibility is to **stand up and act for everyone’s right to free choices** and particularly for everyone’s freedom of thought, conscience, religion or belief. We affirm our commitment to the universal norms⁵ and standards⁶, including Article 18 of the International Covenant on Civil and Political Rights which does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one’s choice. These freedoms, unconditionally protected by universal norms, are also sacred and inalienable entitlements according to religious teachings.

–*“There shall be no compulsion in religion.” (Qu’ran 2:256)*

–*“The Truth is from your Lord; so let he or she who please believe and let he or she who please disbelieve” (Qu’ran 18:29)*

–*“But if serving the Lord seems undesirable to you, then choose for yourselves this day whom you will serve...” (Joshua 24:15)*

–*“No one shall coerce another; no one shall exploit another. Everyone, each individual, has the inalienable birth right to seek and pursue happiness and self-fulfilment. Love and persuasion is the only law of social coherence.” (Guru Granth Sahib, p. 74)*

–*“When freedom of conscience, liberty of thought and right of speech prevail—that is to say, when every man according to his own idealization may give expression to his beliefs—development and growth are inevitable.” (‘Abdu’l-Bahá)*

–*“People should aim to treat each other as they would like to be treated themselves – with tolerance, consideration and compassion.” (Golden Rule)¹*

II. We see the present declaration on “Faith for Rights” as a **common minimum standard for believers (whether theistic, non-theistic, atheistic or other)**, based on our conviction that interpretations of religion or belief should add to the level of protection of human dignity that human-made laws provide for.

III. As religions are necessarily subject to human interpretations, we commit to **promote constructive engagement on the understanding of religious texts**. Consequently, critical thinking and debate on religious matters should

not only be tolerated but rather encouraged as a requirement for enlightened religious interpretations in a globalized world composed of increasingly multi-cultural and multi-religious societies that are constantly facing evolving challenges.

IV. We pledge to **support and promote equal treatment** in all areas and manifestations of religion or belief and to denounce all forms of discriminatory practices. We commit to **prevent the use of the notion of “State religion” to discriminate against any individual or group** and we consider any such interpretation as contrary to the oneness of humanity and equal dignity of humankind. Similarly, we commit to prevent the use of “doctrinal secularism” from reducing the space for religious or belief pluralism in practice.

–*“Then Peter began to speak: ‘I now realize how true it is that God does not show favoritism’.” (Acts 10:34)*

V. We pledge to **ensure non-discrimination and gender equality** in implementing this declaration on “Faith for Rights”. We specifically commit to revisit, each within our respective areas of competence, those religious understandings and interpretations that appear to perpetuate gender inequality and harmful stereotypes or even condone gender-based violence. We pledge to ensure justice and equal worth of everyone as well as to affirm the right of all women, girls and boys not to be subjected to any form of discrimination and violence, including harmful practices such as female genital mutilation, child and/or forced marriages and crimes committed in the name of so-called honour.

–*“A man should respect his wife more than he respects himself and love her as much as he loves himself.” (Talmud, Yebamot, 62,b)*

–*“Never will I allow to be lost the work of any one among you, whether male or female; for you are of one another.” (Qu’ran 3, 195)*

–*“O mankind, indeed We have created you from male and female and made you peoples and tribes that you may know one another.” (Quran 49:13)*

–*“In the image of God He created him male and female. He created them.” (Genesis 1, 27)*

–*“The best among you is he who is best to his wife” (Hadith)*

–*“It is a woman who is a friend and partner for life. It is woman who keeps the race going. How may we think low of her of whom are born the greatest. From a woman a woman is born: none may exist without a woman.” (Guru Granth Sahib, p. 473)*

–“*The world of humanity is possessed of two wings - the male and the female. So long as these two wings are not equivalent in strength the bird will not fly. Until womankind reaches the same degree as man, until she enjoys the same arena of activity, extraordinary attainment for humanity will not be realized*” (‘Abdu’l-Bahá)

–“*A comprehensive, holistic and effective approach to capacity-building should aim to engage influential leaders, such as traditional and religious leaders [...]*” (Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practices, CEDAW/C/GC/31-CRC/C/GC/18, para. 70)

VI. We pledge to **stand up for the rights of all persons belonging to minorities** within our respective areas of action and to defend their freedom of religion or belief as well as their right to participate equally and effectively in cultural, religious, social, economic and public life, as recognized by international human rights law, as a minimum standard of solidarity among all believers.

VII. We pledge to **publicly denounce all instances of advocacy of hatred that incites to violence, discrimination or hostility**, including those that lead to atrocity crimes. We bear a direct responsibility to denounce such advocacy, particularly when it is conducted in the name of religion or belief.

–“*Now this is the command: Do to the doer to make him do.*” (Ancient Egyptian Middle Kingdom)

–“*Repay injury with justice and kindness with kindness.*” (Confucius)

–“*What is hateful to you, don’t do to your friend.*” (Talmud, Shabat, 31,a)

–“*Whatever words we utter should be chosen with care for people will hear them and be influenced by them for good or ill.*” (Buddha)

–“*By self-control and by making dharma (right conduct) your main focus, treat others as you treat yourself.*” (Mahābhārata)

–“*You shall not take vengeance or bear a grudge against your kinsfolk. Love your neighbor as yourself*” (Leviticus 19:18)

–“*Therefore all things whatsoever ye would that men should do to you, do ye even so to them: for this is the law and the prophets.*” (Matthew 7:12)

–“*Ascribe not to any soul that which thou wouldst not have ascribed to thee, and say not that which thou doest not.*” (Bahá’u’lláh)

VIII. We therefore pledge to establish, each within our respective spheres, policies and methodologies to **monitor interpretations, determinations or other religious views that manifestly conflict with universal human rights norms and standards**, regardless of whether they are pronounced by formal institutions or by self-appointed individuals. We intend to assume this responsibility in a disciplined objective manner only within our own respective areas of competence in an introspective manner, without judging the faith or beliefs of others.

–*“Do not judge, or you too will be judged. For in the same way you judge others, you will be judged, and with the measure you use, it will be measured to you.” (Bible, Matthew 7:1-2)*

–*“Habituate your heart to mercy for the subjects and to affection and kindness for them... since they are of two kinds, either your brother in religion or one like you in creation...So, extend to them your forgiveness and pardon, in the same way as you would like Allah to extend His forgiveness and pardon to you” (Letter from Caliph Ali to Malik Ashtar, Governor of Egypt)*

–*“The essential purpose of the religion of God is to establish unity among mankind. The divine Manifestations were Founders of the means of fellowship and love. They did not come to create discord, strife and hatred in the world. The religion of God is the cause of love, but if it is made to be the source of enmity and bloodshed, surely its absence is preferable to its existence; for then it becomes satanic, detrimental and an obstacle to the human world.” (‘Abdu’l-Bahá)*

IX. We also pledge to refrain from, advocate against and jointly **condemn any judgemental public determination by any actor who in the name of religion aims at disqualifying the religion or belief of another individual** or community in a manner that would expose them to violence in the name of religion or deprivation of their human rights.

X. We pledge **not to give credence to exclusionary interpretations claiming religious grounds** in a manner that would instrumentalize religions, beliefs or their followers to incite hatred and violence, for example for electoral purposes or political gains.

XI. We equally commit **not to oppress critical voices** and views on matters of religion or belief, however wrong or offensive they may be perceived, in the name of the “sanctity” of the subject matter and we urge States that still have anti-blasphemy or anti-apostasy laws to repeal them, since such laws have a stifling impact on the enjoyment of freedom of thought, conscience, religion or belief as well as on healthy dialogue and debate about religious issues.

XII. We commit to further **refine the curriculums, teaching materials and textbooks** wherever some religious interpretations, or the way they are presented, may give rise to the perception of condoning violence or discrimination. In this context, we pledge to promote respect for pluralism and diversity in the field of religion or belief as well as the right not to receive religious instruction that is inconsistent with one's conviction. We also commit to **defend the academic freedom and freedom of expression**, in line with Article 19 of the International Covenant on Civil and Political Rights, within the religious discourse in order to promote that religious thinking is capable of confronting new challenges as well as facilitating free and creative thinking. We commit to support efforts in the area of religious reforms in educational and institutional areas.

–*“The only possible basis for a sound morality is mutual tolerance and respect.” (A.J. Ayer)*

XIII. We pledge to build on experiences and lessons learned in **engaging with children and youth**, who are either victims of or vulnerable to incitement to violence in the name of religion, in order to design methodologies and adapted tools and narratives to enable religious communities to deal with this phenomenon effectively, with particular attention to the important role of parents and families in detecting and addressing early signs of vulnerability of children and youth to violence in the name of religion.

–*“Don't let anyone look down on you because you are young, but set an example for the believers in speech, in conduct, in love, in faith and in purity.” (1 Timothy 4:12)*

XIV. We pledge to promote, within our respective spheres of influence, the imperative necessity of ensuring **respect in all humanitarian assistance activities** of the *Principles of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Response Programmes*,¹⁰ especially that aid is given regardless of the recipients' creed and without adverse distinction of any kind and that aid will not be used to further a particular religious standpoint.

XV. We pledge **neither to coerce people nor to exploit persons in vulnerable situations** into converting from their religion or belief, while fully respecting everyone's freedom to have, adopt or change a religion or belief and the right to manifest it through teaching, practice, worship and observance, either individually or in community with others and in public or private.

XVI. We commit to **leverage the spiritual and moral weight of religions and beliefs** with the aim of strengthening the protection of universal human

rights and developing preventative strategies that we adapt to our local contexts, benefitting from the potential support of relevant United Nations entities.

–*“Love your neighbour as yourself. There is no commandment greater than these” (Mark 12, 31)*

–*“But love your enemies, do good to them and lend to them without expecting to get anything back. Then your reward will be great” (Luke 6, 35)*

–*“The God-conscious being is always unstained, like the sun, which gives its comfort and warmth to all. The God-conscious being looks upon all alike, like the wind, which blows equally upon the king and the poor beggar.” (Guru Granth Sahib p. 272)*

–*“The religion of God and His divine law are the most potent instruments and the surest of all means for the dawning of the light of unity amongst men. The progress of the world, the development of nations, the tranquility of peoples, and the peace of all who dwell on earth are among the principles and ordinances of God.”(Bahá'u'lláh)*

XVII. We commit to support each other at the implementation level of this declaration through **exchange of practices**, mutual capacity enhancement and regular activities of skills updating for religious and spiritual preachers, teachers and instructors, notably in areas of communication, religious or belief minorities, inter-community mediation, conflict resolution, early detection of communal tensions and remedial techniques. In this vain, we shall explore means of developing sustained **partnerships with specialised academic institutions** so as to promote interdisciplinary research on specific questions related to faith and rights and to benefit from their outcomes that could feed into the programs and tools of our coalition on Faith for Rights.

XVIII. We pledge to **use technological means more creatively and consistently** in order to disseminate this declaration and subsequent Faith for Rights messages to enhance cohesive societies enriched by diversity, including in the area of religions and beliefs. We will also consider means to produce empowering capacity-building and outreach tools and make them available in different languages for use at the local level.

Endnotes

¹ All quotations from religious or belief texts were offered by participants of the Beirut workshop in relation to their own religion or belief and are merely intended to be illustrative and non-exhaustive.

² OHCHR organized related international meetings, expert seminars and regional workshops, including in Geneva (October 2008), Vienna (February 2011), Nairobi (April 2011), Bangkok (July 2011), Santiago de Chile (October 2011), Rabat (October 2012), Geneva (February 2013), Amman (November 2013), Manama (2014), Tunis (October 2014 and April 2015), Nicosia (October 2015), Beirut (December 2015) and Amman (January 2017).

³ See UN Human Rights Committee, general comment no. 22 (1993), UN Doc. CCPR/C/21/Rev.1/Add.4, para. 2.

⁴ Article 29, paragraph 1, of the Universal Declaration of Human Rights (1948).

⁵ These include the Convention on the Prevention and Punishment of the Crime of Genocide (1948); Convention Relating to the Status of Refugees (1951); International Convention on the Elimination of All Forms of Racial Discrimination (1965); International Covenant on Civil and Political Rights (1966); International Covenant on Economic, Social and Cultural Rights (1966); Convention on the Elimination of All Forms of Discrimination against Women (1979); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984); Convention on the Rights of the Child (1989); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990); Convention on the Rights of Persons with Disabilities (2006); and International Convention for the Protection of All Persons from Enforced Disappearance (2006).

⁶ These include the Universal Declaration of Human Rights (1948); Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief (1981); Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992); Principles of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Response Programmes (1994); UNESCO Declaration on Principles of Tolerance (1995); Final Document of the International Consultative Conference on School Education in Relation to Freedom of Religion or Belief, Tolerance and Non-Discrimination (2001); Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools (2007); United Nations Declaration on the Rights of Indigenous Peoples (2007); The Hague Statement on “Faith in Human Rights” (2008); Camden Principles on Freedom of Expression and Equality (2009); Human Rights Council resolution 16/18 on Combating Intolerance, Negative Stereotyping and Stigmatization of, and Discrimination, Incitement to Violence and Violence against, Persons Based on Religion or Belief (and Istanbul Process, 2011); Rabat Plan of Action on the prohibition of advocacy

of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (2012); Framework of Analysis for Atrocity Crimes (2014); Secretary-General's Plan of Action to Prevent Violent Extremism (2015); as well as the Fez Declaration on preventing incitement to violence that could lead to atrocity crimes (2015).

⁷ Under certain circumstances, in particular when non-State actors exercise significant/effective control over territory and population (e.g. as de facto authorities), they are also obliged to respect international human rights as duty bearers (see UN Docs. CEDAW/C/GC/30, para. 16; A/HRC/28/66, paras. 54-55).

⁸ See UN Doc. A/HRC/22/17/Add.4, annex, appendix, para. 36.

⁹ See Article 18 of the International Covenant on Civil and Political Rights: “(1) Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. (2) No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice. (3) Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. (4) The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.”

¹⁰ See www.icrc.org/eng/assets/files/publications/icrc-002-1067.pdf.



A Missing Piece for Peace

The monumental sculpture *Broken Chair*, which stands twelve meters high in front of the United Nations Office at Geneva, illustrates both the despair and dignity of victims of armed violence. In addition, the chair's mutilated fourth leg could be regarded as a symbol for various lacunae in the eternal endeavour of attaining peace across the globe. One of these missing pieces is the unresolved relationship between the right to peace and freedom of conscientious objection to military service, whose legal foundations, respectively, have been contested by some governments over the past decades.

In view of recent United Nations resolutions and thematic reports on the right to peace and on the right to conscientious objection to military service, there seems to be growing momentum for addressing both human rights in a holistic manner. The 2022 analytical report by the Office of the High Commissioner for Human Rights (UN Doc. A/HRC/50/43, para. 31) explicitly refers to the idea of compiling “a study of the linkages between the right to conscientious objection to military service and the right to peace”.

Following up on this suggestion, this book brings together chapters written by experts who have been involved in elaborating the 2016 Declaration on the Right to Peace or in shaping freedom of conscientious objection to military service since the 1980s. The contributors include diplomats, civil society representatives, academics and United Nations independent experts from the Advisory Committee, Human Rights Committee, a Human Rights Council-mandated investigation as well as former and current Special Rapporteurs. This book also contains short personal stories about positive experiences and practices by conscientious objectors and peace activists.

Its publication in open access through University for Peace (UPEACE) Press is emblematic in view of the explicit reference, in article 4 of the Declaration on the Right to Peace, to UPEACE and its General Assembly-based mandate to contribute to the great universal task of educating for peace by engaging in teaching, research, post-graduate training and dissemination of knowledge. The book is co-edited by Dr. Michael Wiener (Senior Fellow in Residence at the Geneva Graduate Institute of International and Development Studies during his UN sabbatical leave in 2022) and H.E. Dr. David Fernández Puyana (Permanent Observer of UPEACE to the United Nations in Geneva).