Forum: General Assembly Third Committee

Issue: The question of conscientious objection to military service

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Introduction

On December 10, 1948, the General Assembly adopted the Universal Declaration of Human Rights. One of its articles, Article 18, established that “Everyone has the right to freedom of thought, conscience and religion...and...to manifest his religion or belief in teaching, practice, worship and observance.” This article implicitly includes the right to conscientious objection to military service.

On December 16, 1966, the General Assembly adopted the International Covenant on Civil and Political Rights. It similarly included an Article 18 establishing the “right to freedom of thought, conscience and religion”, again implicitly upholding the right to conscientious objection to military service. Article 18 of the Covenant also strengthened the original article from the Declaration by stating that “No one shall be subject to coercion which would impair his freedom...to adopt...a...belief of his choice.”

Despite the adoption of these two landmark treaties, the right to conscientious objection remains a divisive topic. Due to the lack of specificity in both treaties, conscientious objectors still face discrimination and suffer from laws which may violate international human rights law. In places where military conscription still exists, conscientious objectors have no legal recognition, although many member states have acceded to both documents.

Thus, it has come to the General Assembly Third Committee’s attention to address the question of conscientious objection to military service.

Definition of Key Terms

Conscientious objection to military service

Conscientious objection to military service refers to the objection to participation in military service. The Commission on Human Rights, the precursor to the Human Rights Council, wrote in resolution 1998/77 that the objection ‘derives from principles and reasons of conscience, including profound convictions, arising from religious, moral, ethical, humanitarian or similar motives’.
As the right to conscientious objection is not explicitly stated in UN treaties and documents, it is referred to as a *derivative right*, derived from the rights guaranteed in Articles 18 in the treaties both previously mentioned. Similarly, there is no official definition of conscientious objection in any UN treaty.

As a result, member states have disputed the legality of the right to conscientious objection and found other ways to contest the work of the UN and its associate bodies, to justify the absence of such a right in law. The UN, associated organisations and regional human rights courts have upheld the right for the majority of the time, although they have acknowledged, at times, the right of member states to self-govern and enact their legislation as they see fit. Therefore, jurisprudence has played an essential part in several of these cases.

**Selective conscientious objection**

Selective conscientious objection accepts some legitimacy of military action but objects explicitly to a particular facet of the military action. For example, it was common for someone to object to military service in South Africa as it was assisting apartheid. The General Assembly acknowledged selective conscientious objection in resolution 33/165, where it ‘Calls upon Member states to grant asylum to another State...to persons compelled to leave their country of nationality solely because of a conscientious objection to assisting in the enforcement of apartheid through service in military...’.

This form of conscientious objection is not recognised globally, although countries like Australia, Germany and Norway, do recognise it. In some countries, like the Netherlands, a soldier who has a selective conscientious objection to a particular conflict may only seek a discharge, even though conscientious objection is recognised.

**Non bis in idem**

A Latin expression, used as a legal term that denotes that no one shall be tried twice for the same offence. In Article 14 of the International Covenant on Civil and Political Rights, it mentions that ‘No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law...of each country’.

This right is essential as member states frequently abuse it. Countries that do not recognise conscientious objection repeatedly jail conscientious objectors for refusing to perform military service; various courts have ruled this kind of action as degrading or inhuman treatment.

**Conscription**

Conscription is mandatory enlistment into the armed forces. Today, most countries do not have conscription, but in countries that do, conscientious objection becomes something of an issue. Often, these countries conflate conscientious objectors with draft dodgers--although not all explicitly object to...
military service--some may only object to the use of lethal weapons. Some have argued before international courts that conscription amounts to forced labour; however, Article 8 of the International Covenant on Civil and Political Rights excludes ‘Any service of a military character’ in its definition of forced labour.

**Alternative service**

Alternative service refers to service obligated by conscientious objectors to perform in place of military service. Such service often takes the form of civilian or non-lethal military service, and although not a requirement in international law, endorsed by UN bodies. The reason is that it prevents discrimination of conscientious objectors, who may lack the military credentials and thus are disadvantaged when seeking employment in the future. UN bodies have also expressed concern and regret that some member states’ alternative service is punitive; for example, people who do not wish to perform military service in Syria have to pay to perform alternative service.

**Amnesty**

Amnesty is an official pardon given to people who have committed offences. The concept of amnesty becomes a focal point when a country decides to transition and recognise conscientious objection; in this situation, conscientious objectors convicted of draft-dodging or refusing to wear a uniform should receive amnesty, as well as refugees returning from other countries.

**Background Information**

**History of conscientious objectors**

The earliest recorded conscientious objector dates back to the year 295 when Maximilanus refused to serve as a soldier owing to his Christian faith. He was eventually executed and subsequently canonised as Saint Maximilian of Tebessa.

The term saw greater use in the twentieth century during the First and Second World War. Following the adoption of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, more countries began implementing the right to conscientious objectors in law, although many still face challenges today.

**Current complications**

This section will focus on the challenges faced by conscientious objectors today, with specific sections to outline each challenge and the UN response to it.
Legality--conscientious objection or refusal to perform military service?

The distinction between conscientious objection and illegal refusal to perform military service is difficult to establish, and it is for this reason that member states have challenged the legality of conscientious objection.

International treaties do not contain an explicit definition, or endorsement, of the right to conscientious objection, and in general regional treaties have followed this precedent. Some regional treaties have the right listed in its articles, like the Charter of Fundamental Rights of the European Union. It states in article 10: ‘the right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.’ The Ibero-American Convention on Young People’s Rights, not widely ratified, states in article 12 that ‘Youth have the right to make conscientious objection towards obligatory military service.’

The best authority on the legality of conscientious objection would probably be the Human Rights Committee, the committee, under the jurisdiction of the UN, in charge of monitoring the implementation of the International Covenant on Civil and Political Rights. In its General Comment No.22, it states:

‘The Covenant does not explicitly refer to a right of 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.’

In other words, while the committee recognises the lack of explicitness in the Covenant, it still believes that the right to conscientious objection is pursuant to article 18 and the right to guarantee freedom of conscience. Again, not a very clear judgement, paving the way for challenges to this conclusion.

In 2004, Korean members of the Jehovah’s Witness, a pacifist Christian group, took their case to the Human Rights Committee. They had been imprisoned for refusing to perform military service, citing article 18 of the Covenant, which they argued gave the right to conscientious objection. The case is now known as Yoon et al. v. Republic of Korea.

The Korean government challenged this interpretation and questioned the Human Rights Committee whether a conscientious objector claim could only be made in countries which had recognised the right (the ROK did not then recognise conscientious objectors). The Korean government cited article 8, paragraph 3 of the Covenant:
(c) For the purpose of this paragraph the term “forced or compulsory labour” shall not include:

[...]

(ii) Any service of a military character, and, in countries where conscientious objection is recognised, any national service required by law of conscientious objectors…'

The argument was that since Article 8 made it clear that alternative service conscientious objectors have to undertake is only applicable to countries where conscientious objection is recognised, the government had no necessity to guarantee alternative service. Hence the conscientious objectors were required to perform military service.

The Human Rights Committee concluded that ‘article 8 of the Covenant itself neither recognises nor excludes a right of conscientious objection’ and that the claim to conscientious objection ‘is to be assessed solely in the light of article 18 of the Covenant…’.

Another argument made by the ROK was that guaranteeing the right to conscientious objection would impede social cohesion. The Committee concluded that ‘the State party has failed to show what special disadvantage would be involved for it if the rights of the authors’ under article 18 would be fully respected’. This conclusion essentially meant that the Committee could not see how fully respecting article 18—ensuring conscientious objection—would create a special disadvantage for the conscientious objectors in question. It also concluded:

‘As to the issue of social cohesion and equitability, the Committee considers that respect on the part of the State for conscientious beliefs and manifestations thereof is itself an important factor in ensuring cohesive and stable pluralism in society. It likewise observes that it is in principle possible, and in practice common, to conceive alternatives to compulsory military service that do not erode the basis of the principle of universal conscription…'

Translated: the Committee believes that the issue of social cohesion should fall on the responsibility of the State and that being able to express conscientious beliefs is in itself, essential in ensuring social cohesion. Additionally, the Committee sees that it is entirely possible to provide alternative service which still ensures social cohesion.

A member of the committee dissented and argued that paragraph 3 of Article 8 of the Covenant ‘presents an obstacle to the Committee’s conclusion.’ However, the majority view of
the Committee affirmed the right to conscientious objection as well as the need to provide alternative service.

More cases involving the Republic of Korea would soon follow, however. In *Jung et al. v. Republic of Korea*, imprisoned conscientious objectors argued that their rights guaranteed under Article 18 were violated. The ROK repeated an argument used in the previous case--that it was necessary to ensure national security and that there was a lack of public agreement regarding the nature of conscientious objection. The Committee concluded that it could find ‘no reason to depart from its earlier position’ and reaffirmed the conclusions of *Yoon et al. v. Republic of Korea*. The Committee would reaffirm this position in cases that followed suit, like *Jeong et al. v. Republic of Korea*.

These communications by the Committee are highly relevant as regional courts had previously departed from the judgement made by General Comment No.22 in 1993. Following these communications, regional human rights courts and commissions like the European Court of Human Rights would reverse rulings and conclude, for example, ‘the court reiterates..that the Convention...must be interpreted in the light of present-day conditions and of the ideas prevailing in democratic states today...’ Jurisprudence plays a crucial role in all these rulings.

At the diplomatic level, member states have also disagreed with the legality of conscientious objection. The Commission on Human Rights, which preceded the Human Rights Council, passed several resolutions concerning the matter, most of which were adopted without a vote. The first resolution on this matter, 1987/46, was adopted by a vote of 26 for, two against and 14 abstentions. Nevertheless, the passing of these resolutions did not come without discord.

On April 24, 2002, a joint letter written by 16 member states to the Commission said that they did 'not recognise the universal applicability of conscientious objection to military service.' In 2006, the Republic of Singapore commented that 'resolution 2004/35 goes beyond what is prescribed in the international law and the applicable human rights instruments.'

However, these resolutions passed are not legally-binding, meaning member nations have no legal responsibility to enact them in law. These resolutions do have an irrefutable moral force, so, taking the Commission’s previous resolutions as indicative of a trend in international law, we can conclude that some states consistently object, although conscientious objection enjoys broad, though not universal, support.
Disputes regarding the nature of conscientious objection

The title of this issue is ‘the question of conscientious objection to military service’. The salient part of the title is the final phrase, ‘to military service’. This is because conscientious objection to military service paradoxically may not mean a conscientious objection to military service.

As previously mentioned, a particular form of conscientious objection is selective conscientious objection, which is not legally recognised globally.

There are also other ways how someone may conscientiously object to military service. For example, some may only object to lethal military service and may be happy to perform non-lethal military service.

Some countries only recognise conscientious objection to lethal military service, while some countries also recognise conscientious objection to any form of military service, even if it is non-lethal. This form of conscientious objection is what is known as a total objection.

The UN’s stance on this distinction appears to be ambivalent. In Westerman v. the Netherlands, the Human Rights Committee concluded that it recognised the right to conscientious objection only in the context of the obligation to use lethal force. The Committee rejected the individual’s application for recognition as a conscientious objector, and he was sentenced to imprisonment for refusing to wear a uniform. At the same time, when countries like the United States recognise conscientious objectors as people who have ‘a...objection to participation in war in any form…’, the UN has neither endorsed such a definition nor discredited it.

Another nature of conscientious objection that member states have disputed is when to enforce this right. Some countries only allow for conscientious objection during peacetime; the UN has criticised such an arrangement.

So, this could be an area that delegates could address.

The legality of limitations on freedom of thought, conscience and religion

Illegal, would be the quick response, even though some member nations argue that public emergencies should guarantee them the authority to curb such a right. The Human Rights Committee, in its General Comment No.22, stated: ‘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.’
Applying to be a conscientious objector

In countries where conscientious objection is not recognised, there is no application process. In countries that do, the application process varies from country to country, and so too do the requirements.

Firstly, regarding time limits. In most countries, the application for conscientious objection must be submitted before enlistment in the armed forces, and with adequate time to ensure a review of the application. Failure to do so may result in criminal charges. If such a situation arises, the defendant should remain a civilian, rather than be court-martialed, since the offence is the refusal to join the armed forces, rather than an offence committed in the armed forces.

Secondly, regarding formal requirements for conscientious objector status. In most countries, the applicant has to demonstrate a sincere ethical, moral or religious objection to participation in the armed forces. Some states may interview applicants and require formal evidence to support their convictions. Member states must not discriminate against certain religious or ethical groups during this process; for example, while the Jehovah’s Witness is a notable pacifist group, that does not mean that a Muslim cannot be a pacifist as well.

The decision-making process varies from country to country. There are, however, conditions that may result in disqualification. These include conviction of a criminal offence, employment by the state police, having a gun license, participation in hunting, or having a political motivation. The UN has asked member states to be more open-minded; after all, legal possession of a firearm does not necessarily refute an applicant’s stated pacifism.

Thirdly, about applications for those serving voluntarily. Some who volunteered for the armed forces may have a change of belief and wish to seek conscientious objector status. Unfortunately, many states take the position that the question of conscientious objection to military service applies only to conscripts, and that, since their armies consist of volunteers, no one is likely to seek conscientious objector status. This is quite an unreasoned opinion. Army volunteers are human, and as such, they may change beliefs. Only a limited number of countries, like Canada, Croatia, Germany, the Netherlands, the United Kingdom and the United States recognise that army volunteers may become conscientious objectors during army service. These countries either allow these conscientious objectors to transfer to non-combat duties or allow for an honourable discharge.

Lastly, about applications for those serving in the reserves. The right to apply varies, depending on the country. The majority of the time, however, reservists may only seek a discharge.
**Addressing alternative service**

In general, the provision of alternative service is favourable to mandating conscientious objectors to seek a discharge, in order to reduce the impacts of discrimination.

As previously mentioned, some countries deliberately make alternative service punitive in order to deter conscientious objectors from seeking alternative service. If the right to conscientious objection is recognised in the member state, having such an arrangement seriously impedes a person’s right to express his/her conscience, religion or beliefs. Thus, the provision of alternative service must not be punitive.

Some states’ alternative service is longer than the usual military service, justified because alternative service is generally less onerous than military service. The UN has recognised and accepted such an argument, although at the same time it has warned member states to be mindful of the duration of the alternative service.

Upon completion of the alternative service, conscientious objectors should ideally receive a certificate of their completion; this should be similar to those who have completed their military service, again to reduce discrimination. Conscientious objectors performing alternative service should also have equal financial and social rights as those who have completed military service.

**Deserters, asylum seekers, refugees and amnesty**

Situations may arise whereby a conscientious objector deserts the military and seeks asylum in another country during a conflict. Providing amnesty for these refugees will facilitate their return. In resolution 2004/35, the Commission on Human Rights asked states ‘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.’

**Other issues**

Minors should never be conscripted and be in a situation to seek conscientious objection as the conscription of minors is a war crime under the Rome Statute.

Repeated imprisonment violates the *non bis in idem* principle of international law; conscientious objectors can thus accuse the military of degrading treatment.

The UN discourages states from referring conscientious objectors to capital punishment. The Sub-Commission for the Promotion and Protection of Human Rights in resolution 1999/4 called ‘upon all states...not to apply the death penalty where refusal to undertake military service...is the result of conscientious objection to such service’.
Accessible information

Potential conscientious objectors must be able to obtain relevant information about their cause. If they do not and are forced to complete military service, this may impede on their right to express their right to freedom of conscience.

In some countries, the information regarding conscientious objection accompanies draft papers, which makes it readily accessible. Member states should also take more effort to publish the information online.

In countries where conscientious objection is not legally recognised, there may be laws which criminalise the distribution of information regarding conscientious objection.

NGOs, like “At Ease” in the UK, have also played significant roles in providing counselling to members of the Armed Forces.

Major Countries and Organizations Involved

The Human Rights Committee

The United Nations Human Rights Committee is an independent body of experts that monitors the implementation of the International Covenant on Civil and Political Rights. State parties to the Covenant must regularly submit reports to the Committee detailing how they are implementing the Covenant's guaranteed rights. The committee then examines the report and addresses its concerns to the State party.

At times, the Human Rights Committee has acted as a tribunal settling disputes between State parties and conscientious objectors claiming the state violated their rights. These decisions are known as “communications”, and act as precedents for various legal bodies in the world to follow.

Republic of Korea

The Republic of Korea is known as one of the most vociferous opponents to the right to conscientious objection. As the Republic of Korea is officially still at war with its northern neighbour, conscription for men is still in place, and for many years, conscientious objection was illegal. Many conscientious objectors, mostly Jehovah’s Witnesses, were imprisoned. The Republic of Korea was also frequently involved with communications with the Human Rights Committee.

However, in November 2018, the Supreme Court of the Republic of Korea decriminalised conscientious objection.
Despite this, it is unclear whether the defence ministry has established an alternative service, or whether incitement to conscientious objection remains a crime. The Republic of Korea’s stance has changed for conscientious objection, but by how much, remains another question.

**United States of America**

The US is one of the first countries which had an identifiable conscientious objection movement, particularly during the 60s at the height of the Vietnam War. Today, as the draft system is not currently active, conscientious objection is not a significant issue in the US. Despite this, conscientious objectors in the US enjoy strong legal backing and have many rights.

The legal definition of a conscientious objector in the US is set out in the Department of Defense instruction 1300.6: a conscientious objector is someone who has “a firm, fixed and sincere objection to participation in war in any form or the bearing of arms, by reason of religious training and/or belief”. Under this definition, total objectors are also recognised; this definition also recognises that pacifism is not essential for someone to qualify as a conscientious objector (see *Welsh v. United States* supreme court case). The US also allows volunteers to seek conscientious objector status.

So, the US is a strong proponent of the right to conscientious objection and likely to criticise states where it is illegal.

**Germany**

Germany abolished compulsory military service and alternative service in 2011. Before 2011, however, Germany had one of the most comprehensive application programmes for conscientious objectors. Currently, Germany also allows for selective conscientious objection and conscientious objection for volunteers. Like the US, it is likely to criticise states which do not grant the right.

**Finland**

Finland conscripts all men between the ages of 18 and 60. Conscientious objection is allowed, and there is an alternative service for conscientious objectors. Those who refuse to complete either service are jailed, although this is not registered into the person’s record.

International bodies heavily criticised Finland for only allowing conscientious objection during peacetime. Amendments mean that conscientious objectors can now perform non-combat duty in the event of a crisis.

Finland provides an excellent example of a country which has conscription but is also able to provide a compromise for conscientious objectors.
Turkey

Conscription is mandatory for all men between the ages of 20 and 41 in Turkey. Conscientious objection and public promotion of conscientious objection are both illegal.

International bodies have previously criticised Turkey for repeatedly imprisoning conscientious objectors. Turkey is likely to be one of the staunchest opponents towards the right to conscientious objection.

Israel

Conscription is mandatory for both men and women over the age of 18 in Israel. Conscientious objection is allowed and is reviewed by the Committee for Granting Exemptions from Defence Service for Reasons of Conscience. The Human Rights Committee has criticised the Israeli arrangements, noting in 2010 that it was concerned 'at the independence of the “Committee for Granting Exemptions...”, which is composed, with the exception of one civilian, of officials of the armed forces.' The Human Rights Committee asked that the Committee for Granting Exemptions ‘should be made fully independent.’

Also, the Human Rights Committee raised concerns about how those whose conscientious objector applications were denied ‘may be repeatedly imprisoned’.

Israel’s stance appears ambivalent. While it recognises conscientious objection, not all measures are put in place to guarantee such rights fully.

Timeline of Events

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<th>Date</th>
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<tr>
<td>December 19, 1966</td>
<td>International Covenant on Civil and Political Rights adopted.</td>
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<tr>
<td>March 10, 1987</td>
<td>The Commission on Human Rights adopts resolution 1987/46. It is the first resolution on the subject of conscientious objection to military service.</td>
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<td>July 30, 1993</td>
<td>The Human Rights Committee releases General Comment No. 22</td>
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<td>April 24, 2002</td>
<td>16 states write a joint letter to the Commission on Human Rights stating that they did “not recognise the universal applicability of conscientious objection to military service.”</td>
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<td>2004</td>
<td>The Office of the High Commissioner of Human Rights publishes its first report regarding conscientious objection.</td>
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November 3, 2006  The views written in *Yoon et al. v. Republic of Korea* are adopted.
October 8, 2013  Resolution 24/17 is adopted by the Human Rights Council without a vote.
November 1, 2018  The Supreme Court of the Republic of Korea decriminalises conscientious objection.

**Relevant UN Treaties and Events**

- Universal Declaration of Human Rights, December 10, 1948 (*A/RES/217 (III) A*)
- International Covenant on Civil and Political Rights, December 19, 1966 (*A/RES/2200(XXI)A-C*)
- Human Rights Committee General Comment No.22, September 27, 1993, (*CCPR/C/21/Rev.1/Add.4*)

**Previous Attempts to solve the Issue**

The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights established the legal foundation from which the right to conscientious objection is derived. The Human Rights Committee has authored general comments and communications resolving disputes and affirming the right to conscientious objection. While these documents are not legally binding, they do serve to establish a legal precedent in international law.

Similarly, the Office of the High Commissioner for Human Rights has submitted reports since 2004 regarding the issue to both the Commission on Human Rights and the Human Rights Council for review. The 2019 report has yet to come out.

The Commission on Human Rights had previously passed numerous resolutions to resolve the question of conscientious objection. Its successor, the Human Rights Council, has followed suit, with the most recent resolution adopted in 2013.

United Nations attempts to protect conscientious objectors mostly involve provisions for asylum-seeking conscientious objectors. The 1951 Convention relating to the Status of Refugees provides an international framework to protect these refugees, only if these conscientious objectors receive refugee
status. Ultimately, one can only claim refugee status if their refusal to perform military service is based on sincere reasons of conscience.

Several United Nations resolutions have recognised this phenomenon and the need to protect asylum seekers. The General Assembly resolution 33/165 in 1978 asked member states to grant asylum or safe transit to those who left their country because of a conscientious objection to assisting in the enforcement of apartheid. Recently, the Human Rights Council resolution 24/17 ‘Encourages States...to consider granting asylum to those conscientious objectors to military service...owing to their refusal to perform military service when there is no provision...for conscientious objection to military service’.

United Nations resolutions also addressed the issue of providing post-conflict amnesty to these refugees. Commission on Human Rights resolution 2004/35 ‘encourages States...to consider granting...amnesties...in law and practice, for those who have refused to undertake military service on grounds of conscientious objection’.

**Possible Solutions**

It is essential to note that the General Assembly and Human Rights Council resolutions are non-legally binding. Thus, despite the ostensibly overwhelming consensus displayed by the numerous resolutions adopted without a vote, it should be noted that member states consenting to such proposed resolution(s) had no legal obligation to follow them. For example, the Republic of Korea was a member of the Human Rights Council when it adopted Resolution 24/17 without a vote in 2013.

Therefore, delegates must navigate the murky diplomatic waters by emulating previous resolutions. Delegates should write clauses that reaffirm the derivative basis for the right to conscientious objection but are tactful enough so that opposing states can support it. Delegates should write clauses which encourage states to have more independent application processes but be backed with information from the Human Rights Committee not to appear unfounded. Delegates should propose that states consider alternative service for conscientious objectors rather than imprisonment, but not be too assertive to cause member states to feel that they are explicitly being ordered by the UN to grant the right immediately.

In many ways, the question of conscientious objection is very similar to the question of child marriage: there is no clear direction for the implementation of specific measures in the resolution.

What delegates definitely can address is the dissemination of information regarding conscientious objection. Frequently, countries which do not recognise conscientious objection have strict “incitement to disaffection” laws that prevent the relaying of relevant information. The United Nations can
consider implementing global awareness programmes to highlight the plight of these conscientious objectors. It can also emphasise greater cooperation with NGOs, to provide clearer counselling to those who may need to seek conscientious objector status.

Bibliography


Appendix or Appendices

I. OHCHR guide to conscientious objection