



Canadian Friends Service Committee

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Submission to the House of Commons' Standing Committee on Citizenship and Immigration

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Outline of submission:

The submission presents the Religious Society of Friends (Quakers) relationship to pacifism and conscientious objection. It outlines rights of conscience within international law and commentary on their application with specific reference to their universality that such rights explicitly include conscientious objection to military service and that such objection can develop when one serves in the military. It notes Canada's own constitutional protection for rights of conscience and its centuries of accommodation of conscientious objectors. It offers a definition of "conscientious objection" that is consistent with international standards. It outlines a suggested way forward for Canada to implement a provision for conscientious objectors to the Iraq War to be able to apply for permanent residency within Canada using existing mechanisms within the immigration process. Within this process, the basis on which a determination of conscientious objection could be made is addressed.

Friends and conscientious objection:

Founded in the 1640s in civil war torn England, the Religious Society of Friends (Quakers) has professed its pacifism and assisted the war-affected including non-Quaker conscientious objectors for over 350 years. Our personal commitment to pacifism is well-stated in a 1660 letter to King Charles II:

"Our weapons are spiritual, and not carnal, yet mighty through God, to the plucking/pulling down of the strongholds of sin and Satan, who is the author of wars, fighting, murder, and plots. Our swords are broken into ploughshares, and spears into pruning-hooks, as prophesied of in Micah iv. Therefore we cannot learn war any more, neither rise up against nation or kingdom with outward weapons."¹

In 1876, Friend Lucretia Mott, best known from the anti-slavery and suffragette movements, concisely stated the modern ethos of Quaker peace:

"If we believe that war is wrong, as everyone must, then we must also believe that by proper efforts on our part it can be done away with."²

This belief is at the root of the Religious Society of Friends' non-partisan humanitarian assistance to victims of war (which earned Friends the Nobel Peace Prize in 1947) and extensive work in conflict prevention and post-conflict reconstruction. It also informs our quiet diplomacy work at the international

¹ Letter to Charles II from the people called Quakers, 1660, available at: <http://criticalconcern.com/A%20Declaration%20to%20Charles%20II%201660.htm>

² From "The Friends Peace Testimony Reconsidered", available at: <http://www.quakerhouse.org/pt-reconsider-02.htm>

level since the establishment of the League of Nations through the Quaker United Nations Offices, including work on securing rights for conscientious objectors globally.

As Mennonite Central Committee is addressing Canada's accommodation of conscientious objectors over the centuries in its submission, we will not speak to it here. We are grateful for Canada's consistent support of rights of conscience particularly when it was not a popular decision. We note that Friends had a significant role assisting American conscientious objectors from the Viet Nam War and now from the Iraq War. We have never encouraged the so-called US "war resisters" to come to Canada. We consistently have instructed them to consider all of their legal options within the US before making a decision. Many were able to do this discernment, while others did not have any access to information before they found themselves at a crossroads: flee or violate their conscience.

Rights of conscience:

There has been much discourse about the legality of the Iraq War in relation to the asylum cases of the so-called US "war resisters". Another pre-eminent issue in their right to asylum, or in Parliament creating an in-Canada provision to allow them to apply for permanent residency status, is rights of conscience.

Canada is a signatory to international instruments that guarantee rights of conscience, which include conscientious objection to military service. Rights of conscience are "fundamental freedoms" under the Charter of Rights and Freedoms, a part of Canada's Constitution (*see appendix*), their guarantee "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society"³ This kind of qualification also exists with regard to the international instruments cited. Limits on guarantees are circumscribed in such a way that the current wave of "war resisters", more accurately "conscientious objectors", from the Iraq War would not be subject to them – that is, they should have full access to protection as conscientious objectors to military service.

The right to conscientious objection to military service derives from the right to freedom of thought, conscience and religion. It can be based on religious, ethical, moral, philosophical, humanitarian or related motives. These rights are outlined in the Universal Declaration of Human Rights (Article 18) and International Covenant on Civil and Political Rights (ICCPR) (also Article 18) (*see appendix*), both to which Canada is a signatory.

HRC General Comment 22 on Article 18 of ICCPR

The Human Rights Committee's General Comment 22 (*see appendix*) makes key interpretive comments on Article 18 of the International Covenant on Civil and Political Rights relevant to conscientious objectors to the Iraq War:

- **The right of conscience "encompasses freedom of thought on all matters"**. As such, it applies to war, be that objection to all war or, we would assert, a particular war.
- **Religion is not a prerequisite to a right of conscience**. Article 18 "protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief". Many of the conscientious objectors to the Iraq War base their conscientious objection on humanitarian grounds, which is a legitimate exercise.
- **Article 18 "does not permit any limitations whatsoever on the freedom of thought and conscience"**. Indeed, "these freedoms are protected unconditionally". Whether or not the Iraq War is legal or not is irrelevant as is whether or not the soldiers are decision-makers or "mere foot soldiers"—they continue to possess their rights of conscience.

³ Article 1, Charter of Rights and Freedoms, 1982. See: <http://laws.justice.gc.ca/en/charter/#garantie>

- **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.” This said, limitations “must not be applied in a manner that would vitiate the rights guaranteed in article 18”.** National security is not an allowable restriction. Limitations must be precise and “directly related and proportionate to the specific need on which they are predicated.” There is strong evidence from US soldiers who have considered or sought conscientious objection status within the US military that these rights have been limited either by being informed by officers that they are “not allowed” to apply, or will be automatically refused, or within the military court system where conscientious objectors to the Gulf War were singled out for harsher treatment than regular deserters (*see appendix for quote from letter to Prime Minister Harper from the American Friends Service Committee, dated 20 November 2007*).
- **“When [conscientious objection to military service] 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.”** Some conscientious objection is based on a specific religious, pacifist faith or conviction, while others are not – thus, Catholics can be conscientious objectors as well as Quakers, and equally someone can have a non-religious ethical objection, the case for many of the so-called US “war resisters”.
- **Conscientious objection to military service is based in the right to freedom of thought, conscience and religion where it intersects with the obligation to use ‘lethal force’. It did not, however, specify that this had to be an objection to the use of lethal force in all circumstances.** Significantly, the first recognition at international level of conscientious objection to military service was the recognition of selective objection in the context of refusal to enforce apartheid by service in military or police forces (UN General Assembly resolution 33/165, adopted without a vote in 1978). The Commission on Human Rights has not sought to delimit the scope, merely stating “the right of everyone to have conscientious objections to military service”.

While the ICCPR does not explicitly refer to a right to conscientious objection, in its 1993 General Comment the Committee believed that such a right could 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.”

However, just over a year ago (3 November 2006), a landmark decision by the Human Rights Committee concerning two conscientious objectors from the Republic of Korea⁴, clearly determined that conscientious objection to military service is protected by Article 18 of the ICCPR. This ruling has laid to rest any suggestion that conscientious objection to military service was not protected by the Convention.

UNHRC Resolution 1998/77 on conscientious objection:

Another critical interpretive document related to conscientious objection to military service is Resolution 1998/77 of the UN Human Rights Commission (adopted without a vote). Resolution 1998/77 put forth critical interpretive comments that bear upon the cases of the US conscientious objectors to the Iraq War, specifically, the Commission:

⁴ The decision is available at:

[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/26a8e9722d0cdadac1257279004c1b4e?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/26a8e9722d0cdadac1257279004c1b4e?Opendocument) A commentary on the decision by the Quaker UN Office-Geneva is available at: <http://www.quno.org/geneva/pdf/humanrights/BP2007COKoreaDecision.pdf>

- Recognised that “conscientious objection to military service derives from principles and reasons of conscience, including profound convictions, arising from religious, moral, ethical, humanitarian or similar motives”. **That is, conscientious objection is not limited to any form of religious motivation.**
- Drew “attention to the right of everyone to have **conscientious objections to military service as a legitimate exercise of the right to freedom of thought, conscience and religion**, as laid down in article 18 of the Universal Declaration of Human Rights and article 18 of the International Covenant on Civil and Political Rights”;
- Draws attention to **the right of everyone to have conscientious objections to military service** as a legitimate exercise of the right to freedom of thought, conscience and religion, as laid down in article 18 of the Universal Declaration of Human Rights and article 18 of the International Covenant on Civil and Political Rights; Was aware that “that persons performing military service may develop conscientious objections”.
- Called upon “States that do not have such a system to **establish independent and impartial decision-making bodies with the task of determining whether a conscientious objection is genuinely held in a specific case**, taking account of the requirement not to discriminate between conscientious objectors on the basis of the nature of their particular beliefs”. This clearly implies a right to object to a particular war, not just be opposed to all war.
- Emphasized “that States should take the necessary measures to **refrain from subjecting conscientious objectors to imprisonment** and to repeated punishment for failure to perform military service”
- Affirmed “**the importance of the availability of information about the right to conscientious objection to military service**, and the means of acquiring conscientious objector status, to all persons affected by military service;

Resolution 1998/77 makes clear that conscientious objection to military service is a legitimate exercise of rights of conscience even from within the military. Its contents are a complete foil to the experience of the US conscientious objectors to the Iraq war:

- All of the US soldiers who fled to Canada volunteered for military service—they were not drafted. All *developed* a conscientious objection to the Iraq War because of significant legal and moral questions, or their direct experience.
- Regardless of whether they applied for CO status, none would have access to an independent system for determining their conscientious objection (decisions are made by their commanding officer).
- Almost all had no access to information about conscientious objector status or other forms of discharge.
- All of the US “war resisters” would be subject to, imprisonment on return for failure to perform military service, partly as they would not likely be afforded CO status, which is a result of a system biased against conscientious objectors even as the US military has policy by which to accommodate them.

The volunteer soldier and conscientious objection:

Countries would not implement processes for conscientious objection within their military systems if they themselves did not think this was a credible and possible development. Indeed, it is through experience itself that many basic human attributes, including conscience, are developed. Most volunteers for the

military are very young (17-24 years old) and may not have the life experience, or have done adequate reflection, to be able to realistically assess their ability to participate in war or the use of lethal force.

Even so, there are limits to what a soldier will do—not only prescribed by their conscience, but by law. The legality of a war, the likelihood of participation in military actions that would transgress one's country's own laws and commitments regarding the use of force—these are questions that soldiers should wrestle with to protect the dignity and reputation of their country, refusing to participate if by conscience they can do no other. If they are to be penalized for this refusal, or desert to avoid such penalization, they should have access to asylum as set out in the sections relevant to military personnel in the UNHCR Handbook⁵. In such cases, penalisation would be a form of persecution for they are not only asserting their conscience, they are protecting people from human rights violations and their country from possible international condemnation and war crimes. This view is evidenced in the various US soldiers who have long and distinguished service within the US military who have come to Canada.

Summary—rights of conscience:

In summary, rights of conscience guaranteed in Article 18 of the International Covenant on Civil and Political Rights applies to everyone, be their motivation religious, moral, ethical, or humanitarian. Conscientious objection to military service is a legitimate exercise of this right. Military personnel—volunteer or conscript—can develop a conscientious objection. Relational rights of conscience can only be limited “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” and “limitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in article 18.” National security is not an acceptable limit. No such laws have been enacted, to our knowledge, among states participating in the Iraq War. Legal provisions for conscientious objectors from within the military in the United States (and, coincidentally, Canada) do not include “independent and impartial decision-making bodies with the task of determining whether a conscientious objection is genuinely held” as proscribed in General Comment 22 on Article 18 of the ICCPR. This has resulted in a lack of adequate access for soldiers to impartial decisions, let alone access to information on conscientious objection itself.

But are they refugees?

The “war resisters” have unqualified non-derogable rights as conscientious objectors to military service—but are they refugees? Such a question is answered by the experience of the soldiers as weighed against the relevant section (167-173) of the UN High Commission for Refugees (UNHCR) Handbook⁶. We believe that they qualify as refugees under the Handbook and draw your attention to paragraph 170:

There are, however, also cases where the necessity to perform military service may be the sole ground for a claim to refugee status, i.e. when a person can show that the performance of military service would have required his participation in military action contrary to his genuine political, religious or moral convictions, or to valid reasons of conscience.

Clearly, from all that has been published and testimony given in hearings and courts, these young men and women fit this requirement. There are limits however:

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

⁵ UN High Commission for Refugees Handbook, available at: <http://www.unhcr.org/home/PUBL/3d58e13b4.pdf>

⁶ UN High Commission for Refugees Handbook, available at: <http://www.unhcr.org/home/PUBL/3d58e13b4.pdf>

condemned by the international community as contrary to basic rules of human conduct, punishment for desertion or draft-evasion could, in the light of all other requirements of the definition, in itself be regarded as persecution. (paragraph 171, UNHCR Handbook)

While the Iraq War is condemned by people around the world, did not meet the standards set out in Chapter VII of the UN Charter⁷ with respect to threats to and breaches of the peace, and has included countless documented violations of basic rules of human conduct, there is a strange consensus that these young deserters do not qualify as refugees. How does one measure “condemnation by the international community” without subjectivity? Are Americans disqualified as potential refugees on the basis of nationality? Given the outcomes of the military trials related to the abuses at Abu Ghraib prison in Iraq, how can it be asserted that “mere foot soldiers” are not in need of protection if they squelch conscience and follow orders? We are left questioning the rationale of the Courts.

Given the weight of their case, Canada’s history of accommodation of conscientious objectors, and our obligations as captured in international agreements and our Constitution, there is a compelling argument to create the means for conscientious objectors to the Iraq War to be able to access an in-Canada program

Definition of conscientious objection:

Given the necessity of a definition of a conscientious objection to military service within any provision created by Canada, the following is offered:

Conscientious objection to military service derives from principles and reasons of conscience, including profound convictions, arising from religious, moral, ethical, humanitarian or similar motives. Such objections may be related to service in the military, participation in war or the use of lethal force in all or limited circumstances.

This definition derives from international instruments and commentary within which Canada was an active participant and contributor. The Department of National Defence (DND) instituted policy and procedures for conscientious objection to military service in 2004.⁸ This is an outcome of Canada’s participation in the first Gulf War when a soldier in Victoria, BC sought to register his conscientious objection and there were no policy or procedures in place, beyond the Charter of Rights and Freedoms. Canadian Friends Service Committee issued comments towards the development of a policy. Canada’s policy does not meet international standards, in particular because the decision is not made by an independent, impartial body and in some of the limitations set on expressions of conscience. As such, we could not recommend it as the standard for use in evaluating conscientious objectors to the Iraq War should they be allowed to apply in-Canada for status. As a footnote, to our knowledge, DND has accommodated those very few Canadian soldiers who have sought release as conscientious objectors, even if their objections did not fit within the policy.

What could an in-Canada policy look like?

An in-Canada application process for conscientious objectors to the Iraq War should be a modification of existing immigration processes. As most would not qualify under the “points system”, this aspect of evaluation should not be applied. In addition, as they as would not be being sponsored, like a spouse or a refugee, yet may well have limited financial means, the requirements for a particular level of financial

⁷ Charter of the United Nations. Available at: <http://www.un.org/aboutun/charter/>

⁸ Department of National Defence, DOAD 5049-2 (conscientious objection). Available at: http://www.admfincs.forces.gc.ca/admfincs/subjects/daod/5049/2_e.asp

means should be waived. As such a status would be a programmatic form of “humanitarian and compassionate” accommodation, this should be an acceptable modification.

All applicants should be subject to many of the same requirements that are applied to other immigrants such as police checks, collection of personal information including information on their family members and places of residence, letters of support regarding their application, medical examination, etc. A caveat would be that any outstanding warrants that are related to their desertion should not pre-empt qualification for permanent residency.

Most akin to those undertaking spousal sponsorship, the applicants will need to provide within their application package a detailed narrative. Instead of providing information that illustrates validity of a committed relationship, this narrative will illustrate the applicant’s conscientious objection. It would chronicle the development of their conscientious objection to participating in the Iraq War; efforts they made to seek a discharge from the military, or a rationale as to why they did not take such action; their decision to go Absent Without Leave (AWOL); and their decision to come to Canada. Letters of support should provide information that supports the credibility and sincerity of the applicant’s conscientious objection and their suitability to become a permanent resident of Canada.

Some staff within Immigration Canada would need to be designated and trained in rights of conscience as they pertain to conscientious objection to military service in order to be able to adjudicate this part of the application.

Given that the only significant new requirement would be for a narrative relevant to one’s conscientious objection and the training of some designated staff to adjudicate such applications, it would appear that implementation of a program would not be onerous upon the Government to implement.

Conclusion:

Conscientious objection is about personal conviction, not cowardice. We all possess it, we all experience its development over our lifetimes, and demonstrate it in different ways through our lives lived.

Rights of conscience as they pertain to conscientious objection to military service are extensive and applicable to conscientious objectors to the Iraq War. Canada has an obligation to protect conscientious objectors as a part of its commitment to the International Covenant on Civil and Political Rights and as a part of its extensive tradition of making provisions to accommodate conscientious objectors.

For Friends, this began with the cultivation of Nantucket Quakers as immigrants to Dartmouth, NS in the 1780s; they were promised exemption from military service (and favourable taxation) to move their successful whaling operations to Canada. Lord Simcoe, Lieutenant-Governor of Upper Canada, “promised exemption [to compulsory military service] to Quakers, Mennonites and Brethren in Christ to encourage them to immigrate to Canada. This promise became law in the Militia Act of 1793.”⁹ Further accommodations evolved in subsequent centuries. The Viet Nam War is significant as Canada allowed American conscientious objectors –deserter and “draft dodger” – to come to Canada regardless of religious belief and whether they opposed all war or just that particular war.

An accommodation for conscientious objectors to the Iraq War, one that would benefit people on all sides of the conflict, would be an evolution in practice consistent with our history and our values.

⁹ A Short History of Conscientious Objection in Canada, available at: <http://mcc.org/canada/co/history.html>

Appendix:

Universal Declaration of Human Rights, Article 18:

<http://www.un.org/Overview/rights.html>

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

International Covenant on Civil and Political Rights, Article 18:

http://www.unhcr.ch/html/menu3/b/a_ccpr.htm

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.

Charter of Rights and Freedoms, Article 2:

<http://laws.justice.gc.ca/en/charter/>

2. Everyone has the following fundamental freedoms:
 - a) freedom of conscience and religion;
 - b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
 - c) freedom of peaceful assembly; and
 - d) freedom of association.

Human Rights Committee General Comment 22 (U.N. Doc. HRI/GEN/I/Rev.1 at 35 (1994):

<http://www1.umn.edu/humanrts/gencomm/hrcom22.htm>

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 headcoverings, 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.

United Nations Commission on Human Rights, Resolution 1998/77—Conscientious objection to military service:

<http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/5bc5759a53f36ab380256671004b643a?Opendocument>

The Commission on Human Rights,

Bearing in mind 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,

Recalling its previous resolutions on the subject, most recently resolution 1995/83 of 8 March 1995, in which it 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 well as article 18 of the International Covenant on Civil and Political Rights and General Comment No. 22 of the Human Rights Committee, adopted at its fortyeighth session in 1993,

Having considered the report of the Secretary-General (E/CN.4/1997/99),

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

Aware that persons performing military service may develop conscientious objections,

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,

1. Draws attention to the right of everyone to have conscientious objections to military service as a legitimate exercise of the right to freedom of thought, conscience and religion, as laid down in article 18 of the Universal Declaration of Human Rights and article 18 of the International Covenant on Civil and Political Rights;
2. Welcomes the fact that some States accept claims of conscientious objection as valid without inquiry;
3. Calls upon States that do not have such a system to establish independent and impartial decision-making bodies with the task of determining whether a conscientious objection is genuinely held in a specific case, taking account of the requirement not to discriminate between conscientious objectors on the basis of the nature of their particular beliefs;
4. Reminds States with a system of compulsory military service, where such provision has not already been made, of its recommendation that they provide for conscientious objectors various forms of alternative service which are compatible with the reasons for conscientious objection, of a noncombatant or civilian character, in the public interest and not of a punitive nature;
5. Emphasizes that States should take the necessary measures to refrain from subjecting conscientious objectors to imprisonment and to repeated punishment for failure to perform military service, and recalls that no one shall be

liable or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country;

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

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

8. 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;

9. Requests the Secretary-General to transmit the text of the present resolutions to Governments, the specialized agencies and relevant intergovernmental and non-governmental organizations and to include the right to conscientious objection to military service in the public information activities of the United Nations, including the United Nations Decade for Human Rights Education;

10. Also requests the Secretary-General to collect information from Governments, the specialized agencies and intergovernmental and nongovernmental organizations on recent developments in this field and to submit a report, within existing resources, to the Commission at its fiftysixth session;

11. Decides to consider this matter further at its fifty-sixth session under the agenda item entitled "The question of conscientious objection to military service".

58th meeting (22 April 1998) [Adopted without a vote. See chap. XXII.]

UN High Commission for Refugees Handbook, Chapter 5—Special Cases:

B. Deserters and persons avoiding military service

<http://www.unhcr.org/home/PUBL/3d58e13b4.pdf>

167. In countries where military service is compulsory, failure to perform this duty is frequently punishable by law. Moreover, whether military service is compulsory or not, desertion is invariably considered a criminal offence. The Penalties may vary from country to country, and are not normally regarded as persecution. Fear of prosecution and punishment for desertion or draft-evasion does not in itself constitute well-founded fear of persecution under the definition. Desertion or draft-evasion does not, on the other hand, exclude a person from being a refugee, and a person may be a refugee in addition to being a deserter or draft-evader.

168. A person is clearly not a refugee if his only reason for desertion or draft-evasion is his dislike of military service or fear of combat. He may, however, be a refugee if his desertion or evasion of military service is concomitant with other relevant motives for leaving or remaining outside his country, or if he otherwise has reasons, within the meaning of the definition, to fear persecution.

169. A deserter or draft-evader may also be considered a refugee if it can be shown that he would suffer disproportionately severe punishment for the military offence on account of his race, religion, nationality, membership of a particular social group or political opinion. The same would apply if it can be shown that he has well-founded fear of persecution on these grounds above and beyond the punishment for desertion.

170. There are, however, also cases where the necessity to perform military service may be the sole ground for a claim to refugee status, i.e. when a person can show that the performance of military service would have required his participation in military action contrary to his genuine political, religious or moral convictions, or to valid reasons of conscience.

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

172. Refusal to perform military service may also be based on religious convictions. If an applicant is able to show that his religious convictions are genuine, and that such convictions are not taken into account by the authorities of his country in requiring him to perform military service, he may be able to establish a claim to refugee status. Such a claim would, of course, be supported by any additional indications that the applicant or his family may have encountered difficulties due to their religious convictions.

173. The question as to whether objection to performing military service for reasons of conscience can give rise to a valid claim to refugee status should also be considered in the light of more recent developments in this field. An increasing number of States have introduced legislation or administrative regulations whereby persons who can invoke genuine reasons of conscience are exempted from military service, either entirely or subject to their performing alternative (i.e. civilian) service. The introduction of such legislation or administrative regulations has also been the subject of recommendations by international agencies.²⁴ In the light of these developments, it would be open to Contracting States, to grant refugee status to persons who object to performing military service for genuine reasons of conscience.

174. The genuineness of a person's political, religious or moral convictions, or of his reasons of conscience for objecting to performing military service, will of course need to be established by a thorough investigation of his personality and background. The fact that he may have manifested his views prior to being called to arms, or that he may already have encountered difficulties with the authorities because of his convictions, are relevant considerations. Whether he has been drafted into compulsory service or joined the army as a volunteer may also be indicative of the genuineness of his convictions.

Quote from letter to Prime Minister Harper from American Friends Service Committee, dated 20 November 2007 (Full text available from Oskar Castro of AFSC at ocastro@afsc.org):

“An example of the overtly biased treatment of those claiming a conscientious objection to war at that time is evidenced in the case of former Army Captain Yolanda Huet-Vaughn, M.D. who publicly denounced the Gulf War and declared an unwillingness to participate in it for moral and ethical reasons. The chief prosecuting officer in her court-martial, Capt. David Harney, explicitly stated that that Army was seeking harsher penalties for conscientious objectors than those whose desertion or AWOL status was apolitical. He is quoted as saying,

‘If this were a straight forward desertion case, a dismissal and total forfeiture [of pay] might be appropriate. However, gentlemen, her conduct warrants more than that... Tell the accused that what she did was wrong, and that what those soldiers did that went [to the Persian Gulf] as right and honorable.’ (Source: *The Nation* – *GULF WAR C.O.s - A YEAR LATER/The High Price of Conscience* by Bruce Shapiro, January 20, 1992)

“Essentially, it was made clear in the case of Huet-Vaughn that the military was not seeking the harshest of penalties to those service members who simply went AWOL, disappeared from their units, or went on lengthy Unauthorized Absences. Those service members were usually given minimal penalties and then simply discharged contrary to the harsh treatment received by AWOL service members who claimed a conscientious objection to war. There were also cases of conscientious objectors being tortured, beaten and humiliated with impunity.”