



QUNO

Quaker United Nations Office



Conscientious Objection to Military Service and Refugee Status Determination

Najmah Ali

May 2021

This publication is part of QUNO's ongoing commitment to ensuring the full recognition of the right to conscientious objection to military service in law and practice. A reflection on the impact of over six decades of work towards this can be found here: <https://quno.org/long-term-commitment/>

For an introduction to and overview of the relevant international law please see:

Laurel Townhead, (2021) International Standards on Conscientious Objection to Military Service
Revised Edition: 2021 (Quaker United Nations Office, Geneva)

This publication and details of our current work can be found here:

<https://quno.org/areas-of-work/conscientious-objection-military-service/>

Human Rights & Refugees

QUNO's belief in the inherent worth of every individual leads us to work for the promotion and protection of human rights for all. Our Human Rights & Refugees programme raises up the concerns of marginalized groups, so they are better understood by international policy makers, which leads to stronger international standards. Frontline organizations can use these strengthened international standards as a tool to limit suffering, improve lives and challenge the root causes of injustice. Our work focuses on conscientious objectors to military service, children of prisoners, Indigenous Peoples, migrants and refugees. For more information or to share comments and feedback, please contact:

Laurel Townhead
Representative, Human Rights & Refugees
ltownhead@quno.ch

Najmah Ali
Programme Assistant, Human Rights & Refugees
nali@quno.ch

Acknowledgements

We are thankful to all the individuals and organisations that helped supply information for this report.

This report was made possible due to funding from Joseph Rowntree Charitable Trust.

Suggested citation: Najmah Ali (2021) Conscientious Objection to Military Service and Refugee Status Determination (Quaker United Nations Office, Geneva).

All QUNO work is published under a Creative Commons licence. More information and full details of the licence are available at creativecommons.org. Copies of QUNO publications can be downloaded free from our website: www.quno.org / Photo credit: Lee Nanjoo

Table of Contents

Background	4
Introduction	4
Terminology on Conscientious Objection to Military Service	5
Relevant International Human Rights Law and International Refugee Law	6
UNHCR Guidelines: Well-founded Fear of Persecution	6
UNHCR Guidelines: Convention Grounds	7
UNCHR Guidelines: Common International Protection Claims Relating to Conscientious Objectors to Military Service	8
Regional Jurisprudence	9
National Guidance	10
Specific country situations	10
Outdated guidance	10
Limited scope of conscientious objection to military service	10
Non-recognition of prosecution as persecution	11
Conclusions and Recommendations	11
Annex: National Guidance Summaries	12
Endnotes	15

Background

Quaker pacifism and resistance to normalized violence guide QUNO's long-standing commitment to the full recognition of the right to conscientious objection to military service. Historically, Quakers have objected to military service and have been persecuted for their conscientious objection; today we support those whose conscience calls them to reject military activity. QUNO has worked for over 60 years to secure and strengthen the recognition of the right to conscientious objection to military service through the UN.

Introduction

The right to conscientious objection to military service is a recognised right in international human rights law. However, as a result of gaps in implementation of this right, conscientious objectors continue to experience a range of human right violations throughout the world. QUNO advocates for the full recognition and implementation of the right to conscientious objection to military service for all whose conscience leads them to reject military service. Until this is achieved, refugee status should be granted to those fleeing persecution as a result of their conscientious objection to military service. To facilitate this, we encourage States to create and utilise specific guidance on refugee status determination to ensure international protection to conscientious objectors facing persecution. Lack of guidance, or guidance that does not fully reflect international standards, in this specific area, can result in further exacerbating human rights violations for conscientious objectors by denying them international protection.

The purpose of this paper is to support well informed refugee status determination for conscientious objectors to military service seeking asylum by highlighting relevant international and regional standards and jurisprudence and analyzing national guidance. We conclude with recommendations on how to ensure that persecution resulting from conscientious objection to military service is understood in refugee status determination procedures. Highlighting the main recommendation that States create and implement national guidance to ensure consistent and reliable decisions and protection measures for conscientious objectors fleeing persecution. This research has a strong European focus due to the information we were able to access. We are keen to carry out further research covering other countries and regions and encourage people with access to this information to contact us.

Terminology on Conscientious Objection to Military Service

Conscientious objection to military service – refers to situations in which an individual's opposition to military service 'derives from principles and reasons of conscience, including profound convictions, arising from religious, moral, humanitarian or similar motives'.¹ Conscientious objectors are sometimes classified as absolute, or partial or selective objectors. The former referring to individuals who object to all use of armed force or participation in all wars. The latter referring individuals who object to specific circumstances of the use of force, for example when questions around the legality of war arise, or use of a particular type of weapon. It is also important to note that conscientious objection may develop over time and for example, someone who joined the armed forces voluntarily, or did not object at the time of conscription, can later become a conscientious objector.

Alternative service – refers to service which States require of conscientious objectors instead of compulsory military service, this could be civilian service or a non-combatant role in the military. International human rights law requires that this service be compatible with the reasons for conscientious objection, in the public interest and not of a punitive nature.²

Desertion – refers to when an individual abandons their duty or post without permission, or resists the call up for military duties. Usually this refers to instances where an individual does not have any intention of returning to military service.³

Conscription – (sometimes called the draft), refers to the mandatory enlistment of people in national military service. Usually States that practice conscription have laws in place requiring people to perform military service when they are of a certain age, and covering any exemptions. Some States recognize the right to conscientious objection in their national laws and others do not yet do so.⁴

Draft evasion – refers to when a person doesn't register for or respond to a call for compulsory military service. In countries where there is conscription, this is often considered to be a criminal offence.⁵

Under international law States must make provision for individuals who object to military service for reasons of conscience. Despite this, there are States where individuals are not able to exercise their right to conscientious objection to military service, which can lead to persecution. Until such time as the right is fully recognized and implemented in law and practice, States need to ensure that conscientious objectors to military service can access international protection if they face persecution.

Relevant International Human Rights Law and International Refugee Law

There are various instruments that underpin the protection of the right to conscientious objection to military service under international human rights law. The right to conscientious objection inheres in the right to freedom of thought, conscience and belief as protected in the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights and regional human rights instruments, moreover it has been explicitly recognized by the Human Rights Committee and the Human Rights Council.⁶

The 1951 Refugee Convention is the foundation of international refugee law and provides the basis for assessing refugee claims. The refugee definition applies to anyone who:

Owing to 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 his nationality and is unable or, owing to such fear, is unwilling to avail himself 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, is unwilling to return to it.⁷

This paper will draw on the UN High Commissioner for Refugees (UNHCR) Guidelines on International Protection No. 10 which focuses on claims to refugee status related to military service.⁸ These guidelines provide assistance to States on how to interpret the 1951 Refugee Convention and its 1967 Protocol relating to the Status of Refugees in relation to cases of military service and sets out scenarios in which individuals may be entitled to international protection.

Below is a summary of this guidance including when a well-founded fear of persecution arises, the relation this has to convention grounds and what UNHCR has identified as common types of claims related to military service. While some of these are not directly related to

conscientious objection, we will briefly set them out in this paper. This highlights some of the circumstances in which individuals are entitled to refugee protection when persecution arises as a result of conscientious objection to military service.

UNHCR Guidelines: Well-founded Fear of Persecution

The UNHCR Guidelines first and foremost establish that when assessing if an individual has a well-founded fear of being persecuted, individual circumstances of the case must be considered including their background, their experience and up-to-date country of origin information.⁹ This guidance also urges decision-makers to not only take into account the personal experiences of the applicant but also the experiences of others in similar situations to establish reasonable likelihood of harm materializing.

According to the guidance:

Persecution will be established if the individual is at risk of a threat to life or freedom, other serious human rights violations, or other serious harm.¹⁰

It also goes onto say:

In assessing the risk of persecution, it is important to take into account not only the direct consequences of one's refusal to perform military service, but also any negative indirect consequences.¹¹

The refugee convention does not define what persecution is because:

The impossibility of enumerating in advance all the forms of maltreatment that might legitimately entitle a person to benefit from international protection.¹²

Consequently, there are situations where a fear of persecution could arise for conscientious objectors and these situations can intersect with others including being a conscientious objector and objecting to a particular

armed conflict. The refugee convention by its very nature encourages broad interpretation to ensure those who are at risk of persecution are afforded international protection where this is not available in their country.

UNHCR Guidelines: Convention Grounds

As specified by the refugee definition found in the 1951 Convention, refugees are individuals who as a result of a well-founded fear of being persecuted for reasons of:

race, religion, nationality, membership of a particular social group or political opinion.¹³

The UNHCR Guidelines underlines that convention grounds can be a contributing factor to the well-founded fear of persecution, it doesn't need to be the dominant or sole cause. In addition, individuals have complex identities and a number of grounds may intersect or overlap.¹⁴

Religion

According to the guidance, this ground does not just relate to religion, but also concepts of identity or way of life. It includes broader factors that can be classified as thought and conscience such as moral, ethical, humanitarian or any other views of this nature.¹⁵ On this, the guidance references the UNHCR Handbook on refugees which states that:

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.¹⁶

UNHCR's guidance related to military service clearly establishes that such religious convictions can be highlighted through not only religious beliefs but also other beliefs.

Political Opinion

Conscientious objectors to military service may also be able to rely on the political opinion ground for claims for refugee protection. Political opinion refers to any opinion, whether this opinion is held or expressed, by which the State, government, society or policy may be involved. It can also include situations where individuals are thought to hold a specific political opinion even if this is not their view. The UNCHR Guidelines point to situations of desertion or evasion as being expressions of political views in themselves which highlight an individual's disagreement with a State's policies.¹⁷

Race or Nationality

A well-founded fear of persecution can be established in relation to race and nationality, in instances where individuals from particular racial or national groups face harsher conditions in military service or are the only ones subject to conscription.¹⁸

Membership of a Particular Social Group

Membership of a particular social group does not have a closed definition but should be interpreted in an evolutionary and open manner to account for the developing nature of groups and perceived groups. Even if an individual is not a member of a particular social group, persecution may arise for perceived membership of a particular social group. UNHCR highlights that conscientious objectors are a particular social group due their shared belief as a result of their identity and the same can also be the case for deserters or draft evaders.¹⁹

UNCHR Guidelines: Common International Protection Claims Relating to Conscientious Objectors to Military Service

To provide more clarity, the UNHCR Guidelines highlights common circumstances in which individuals may claim asylum because they are conscientious objectors. This section can apply to recruitment by both State and non-State actors, recognizing that in situations of generalized violence, there is a threat of forced recruitment by both. In these situations, if the individual has the possibility of discharge, reassignment and/or effective remedy, without retribution, the issue of persecution will not arise.²⁰ Another factor to consider is if a State provides amnesties to those who evaded military service after a conflict has ended. Amnesties that provide protection for individuals may mean they would not be entitled to international protection.²¹

Objection to State Military Service for Reasons of Conscience

The first factor decision-makers can assess is the national law of the country of origin, including whether national law upholds the rights of conscientious objectors. For example, through laws that exempt conscientious objectors from military service, or laws that provide for alternative service and set out its nature and duration, or laws that govern the release of serving military personnel who develop a conscientious objection. In cases where the law does not allow for conscientious objection, decision-makers must assess the possible consequences for the applicant. The guidance provides the following example:

Where the individual would be forced to undertake military service or participate in hostilities against their conscience, or risk being subjected to prosecution and disproportionate or arbitrary punishment for refusing to so, persecution would arise.²²

The persecution threshold can also be met when individuals are pressurized to change their conviction, or are threatened by prosecution or punishment.

Claims related to military service may be expressed as an objection to all military service or to a particular armed conflict or the means or methods of warfare.²³

Conditions of State Military Service

While not entirely related to the case of conscientious objectors, the UNHCR Guidelines highlights the impact of the conditions of service on individuals, which can also arise for conscientious objectors. When individuals rely on the conditions of State military service in their protection claims, disliking State military service or a fear of combat is not enough for a claim. However, the guidance highlights that if the conditions are harsh and meet the persecution threshold, individuals must be provided with protection. For example, if the terms or conditions of military service amount to torture or other cruel or inhuman treatment, involve forced or compulsory labour, or violate the right to security and integrity of person. In addition, if individuals experience harsher conditions or are discriminated against as a result of their identity such as ethnicity or gender, persecution could arise. In these cases, it must be established whether these practices are systemic, authorized or tolerated by the State.²⁴

Forced Recruitment and or Conditions of Service in Non-State Armed Groups

Non-State armed groups are not permitted to recruit by coercion or by force, however, as stated earlier, this situation does occur. In this situation, an individual may be eligible for international protection if the other conditions are satisfied. In particular, it must be established that the State is unable, or unwilling to protect the individual from recruitment. Forced recruitment to non-State armed groups where the individual would be subjected to carrying out serious violations of international humanitarian law can constitute persecution.²⁵

Unlawful Child Recruitment

As outlined in the UNHCR Guidelines, there are limitations on the recruitment and participation of children in accordance with international human rights law and international humanitarian law both in State armed forces and non-State armed groups. In the case of children, there must be special attention paid to their vulnerability and the consequences they may face for objecting. Children who evade forced recruitment or prosecution or punishment for desertion would be

considered to have a well-founded fear of persecution. Children who volunteer under pressure or as a result of their parents' or communities' decisions will be entitled to refugee status. Children may experience persecution or harm in many situations as their unique position as children can sometimes be utilised in combat. Consequently, decision-makers must take into account the specific circumstances of the child and apply this when making a decision on their case to guarantee protection.²⁶

Regional Jurisprudence

There is limited regional or international jurisprudence on refugee claims from conscientious objectors to military service. In *EZ v Bundesrepublik*,²⁷ the European Court of Justice looked at the European Parliament Directive that covers standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection. The decision highlights the importance under this directive for EU Member States to consistently and uniformly provide refugee protection or subsidiary protection for people seeking international protection focusing on cases related to conscientious objection to military service.²⁸ The European Court of Justice found that in the context of the civil war in Syria there is a strong presumption that refusal to perform military service is connected to a reason which may give rise to entitlement to recognition as a refugee or a beneficiary of international protection.

The European Court of Justice is clear that if there is no provision to refuse military service then a conscientious objector cannot be expected to have made their objection known to the authorities (military or civilian).²⁹ The European Court of Justice is also clear that in the case of civil war and where there is no process to refuse military service "it is highly likely that the authorities

will interpret the refusal to perform military service as an act of political opposition, irrespective of any more complex personal motives of the person concerned".³⁰ The European Court of Justice concludes that the Directive can be interpreted to include those who refuse to perform military service where there is no process to refuse.

The findings are limited in their scope due to the questions asked of the European Court of Justice, but helpful in guiding national authorities in their assessment of comparable cases:

- not to require a proven declaration of objection to authorities in countries where there is no process to refuse military service
- that where there is no process to refuse military service, refusal will likely be interpreted as political opposition
- that where there is evidence of widespread war crimes and crimes against humanity by the military in question it is plausible that the person refusing military service would have had to participate directly or indirectly in the commission of these acts.

National Guidance

We sought to find national guidance for decision-makers specific to asylum claims from conscientious objectors to military service. We found several examples, but it is possible there are more. In some cases this guidance may exist but is not publicly available, in others cases there is not guidance on this issue despite the existence of comparable guidance on other refugee claims, for example those related to gender.³¹ We have been able to access guidance from Canada, Germany, The Netherlands, Sweden and the United Kingdom and we welcome that it is publicly available. Our analysis of the guidance is below and summaries are included in an Annex at the end of this paper.

In the guidance we were able to access, we identified some common themes in how States have outlined and interpreted international protection for conscientious objectors to military service. While our findings highlight that more needs to be done to align guidance documents to the UNHCR position, we found that some guidance was clear that an individual assessment of each case needs to occur to ensure that protection is not limited for any individual seeking protection.³²

Specific country situations

In two instances, we looked at documents related to specific country situations which made explicit reference to conscientious objection to military service. This is useful for both decision-makers and conscientious objectors as it can recognise the specific persecution faced by conscientious objectors in some countries.³³ This can be a positive practice, however, the existence of country specific guidance should not be interpreted to restrict refugee status for conscientious objectors to those from the limited number of countries for which there is specific guidance.³⁴

Outdated guidance

We found that some States' guidance is out of date as it either pre-dates the UNHCR Guidelines or doesn't take into account the developments in international human rights law related to conscientious objection.³⁵ In some cases, these documents were drawing on domestic case law that does not recognise the right to conscientious objection to military service presumably because they pre-date significant developments in explicit recognition of the right to conscientious objection to military service in regional and international jurisprudence and by the Human Rights Council.³⁶ By not taking into account developments by regional courts, treaty bodies and the UNHCR Guidelines, national guidance documents do not reflect the current position in international law and, if relied upon, may be limiting access to refugee status for conscience objectors to military service.

Limited scope of conscientious objection to military service

Guidance restricted to times of conflict

Another theme was the limitation to conscientious objectors who refuse to perform military service during times of conflict and not in peacetime.³⁷ As highlighted in the UNHCR Guidelines, individuals can object to military service both during wartime and peacetime. This narrow view of conscientious objection in the guidance may be limiting who is granted refugee status.

Guidance focused on refusal to undertake unlawful military conduct

In some guidance there is a strong emphasis on objection due to unlawful military conduct and this consequently sets limitations on the view of what it may be seen as legitimate to object to. This guidance should be broadened with other scenarios (including objection to lawful conduct) to ensure that the full scope of the right to conscientious objection to military service is covered.³⁸

Non-recognition of prosecution as persecution

Some guidance said that States have a right require military service and therefore it is not persecution to receive punishment for refusing to participate.³⁹ However, this is contrary to the UNHCR Guidelines

as there circumstances in which draft evaders and deserters can be considered refugees under international law if they are able to establish a well-founded fear of persecution. Prosecution of those seeking to exercise their right to conscientious objection should be viewed as persecution.

Conclusions and Recommendations

This paper aimed to assess the national level guidance available to asylum decision-makers for cases relating to conscientious objectors to military service. Whilst we would like to broaden this research beyond the relatively limited number of examples we were able to access, we are able to draw some initial conclusions and recommendations based on the information that we have. The guidance we were able to access highlights that the UNHCR Guidelines have not yet been used widely as the basis for drafting or updating guidance. Further, much of the guidance lags behind developments in the recognition of the right to conscientious objection to military service in international law. In light of these significant shortcomings and with the aim of ensuring international protection to conscientious objectors to military service facing persecution, we recommend:

- Signpost decision makers to the UNHCR Guidelines and ensure that they are familiar with circumstances in which conscientious objectors to military service should be granted refugee status .
- Create and regularly update guidance for asylum decision makers for cases of conscientious objectors to military service and ensure that this is in line with UNHCR Guidelines and international law and standards and request technical assistance from UNCHR where needed.
- Consult with conscientious objectors to military service and those working on conscientious objection in the development of these policies and guidance.
- Ensure availability and accessibility of the UNHCR Guidelines and any relevant national guidance to legal advisors and representatives, civil society and other stakeholders to enable them to effectively utilize the guidance to assist conscientious objectors to military service seeking asylum.
- Run training and information sessions on the UNHCR Guidelines and national guidance to ensure that legal representatives, decision-makers and advocates have a full understanding of the relevant international law and guidance.
- Develop communities of practice amongst legal representatives and advisors to strengthen the capacity and knowledge of those working on asylum cases for conscientious objection to military service.
- Undertake further research to assess whether decisions on individual cases are being made in line with UNHCR guidelines throughout different jurisdictions and identify where targeted dissemination of the UNHCR Guidelines and national guidance may be needed.

We encourage individuals, organisations and States with further information and examples of national guidance on asylum in conscientious objection to military service to contact us as we assess next steps to support well informed refugee status determination in cases of conscientious objectors to military service seeking asylum.

Annex: National Guidance Summaries

Canada

Canada's Immigration and Refugee Board has a number of legal resources including a resource on interpretation of the Convention on Refugees definition in case law. This document has a chapter on particular situations, in which military service is discussed.⁴⁰ Here it is highlighted that Canadian courts have established that conscientious objectors, deserters and draft evaders cannot be automatically considered as refugees and that it is not persecution for a country to have compulsory military service. Canada's position on this issue is based on leading case *Zolfagharkhani v Canada* from 1993⁴¹ in which it was decided being a conscientious objector does not automatically mean that someone is subject to persecution and entitled to asylum.

This document underlines that under international law the recruitment and engagement of children in armed conflict is prohibited, which is in line with UNHCR Guidelines.

Canada's response to military service and refugee status determination has been influenced by US military personnel being subject to the draft. As a result, a lot of this interpretation document reiterates that US citizens would most likely not be entitled to asylum because they are viewed as being able to receive protection in their own country without facing persecution.

On this, the guidance makes the following points:

- The presumption of state protection applies equally to cases where an individual claims to fear prosecution by non-state entities and to cases where the state is alleged to be a persecutor. This is particularly so where the home state is a democratic country like the United States.
- An individual coming from a democratic country will have a heavy burden when attempting to show that he should not have been required to exhaust all of the recourses available to him domestically before claiming refugee status.

Germany

Germany's Federal Office of Migration has an asylum guidance document which was published in 2016 which supplements their German Asylum Procedure Act.⁴² This guidance document sets out the convention grounds and defines some of the acts of persecution that are in the scope of German law but highlights that this is non-exhaustive. It also highlights that the law has a non-exclusive list of standard examples for acts of persecution and specifically notes the criminal prosecution or punishment due to refusal to perform military service. While not comprehensive, as it is only referred to as an example, below are some of the key points covered in this guidance in relation to asylum and military service:

- If an individual is punished or prosecuted for refusal to perform military service in connection with war crimes and comparable offenses this can be considered persecution.
- The individual can be granted protection if the refusal to perform military service takes place in the context of an armed conflict, but not during peacetime.
- In order to be considered a refugee in the case of a conscientious objector, the individual must establish that the prosecution and punishment threatened would be disproportionate. It needs to be highlighted that these acts go beyond what is necessary for the country concerned to be able to exercise its legitimate right to maintain an armed force.
- It is necessary that the conscientious objection of the person seeking asylum is the only way for them to avoid involvement in war crimes.
- If an individual does not initiate a procedure for recognition as a conscientious objector, they can be ruled out of protection unless they can prove this procedure is not available to them.
- If the persecution is carried out by non-state actors, and the individual is unable to receive protection, this individual can be given refugee status.

The Netherlands

The Netherlands has guidance in place for decision-makers on asylum and conscientious objection under their 2000 Vreemdelingen-circulaire law.⁴³ This law highlights that pursuant to Article 3.36 of the Aliens regulation, the Dutch Immigration and Naturalization Service will grant temporary asylum residence permits to foreign nationals who invoke refusal of service or desertion if the foreign national satisfies at least one of the conditions set out below. When assessing the conditions, the guidance places importance on ensuring:

The assessment of plausibility must take into account all the circumstances of the case, in particular the situation in the country of origin at the time, and the situation of the person concerned.

Status should be granted if either:

- the individual has made it plausible that he fears prosecution or punishment for refusal to perform military service during a conflict,
- Or
- performing military service involves offences or acts that fall under the exclusion clause of Article 1F of the Convention on Refugees. The exclusion clause refers to if an individual has (1) committed a crime against peace, a war crime, or a crime against humanity (2) they have committed a serious non-political crime (3) they are guilty of acts contrary to the purpose of the refugee.⁴⁴

In reference to the exclusion clause, the Immigration and Naturalization Service provides the cumulative conditions:

- The individual must highlight that there is an armed conflict in which war crimes are being committed or that there is a high probability that such crimes are being committed. This can be highlighted through condemnation by the international community and international bodies.
- The individual must be a member of the military personnel, including logistical or support. In the case where an individual has been called up to perform military service but does not carry this

out, the service states they will determine the scale in which war crimes were committed to determine if the individual would have been guilty of them.

- The individual must highlight that refusal of service is the only means of them not participating in war crimes. If the individual could have been exempt on the grounds of conscientious objection and they did not utilise this, they would not be entitled to international protection. In addition, they will take into account if an individual entered the service voluntarily or if there was an extension to assess their understanding of the acts being carried out.

In addition to this, according to the Immigration and Naturalization Service two further conditions need to be satisfied:

- The individual has a well-founded fear of disproportionate or discriminatory punishment, or other discriminatory treatment as a result of their refusal or desertion on one of the Convention Grounds.
- The individual has a conscientious objection because of religious or other deep-rooted convictions, which led to his refusal to perform military service or desertion, while there was no possibility for the individual to perform non-military service instead. On this, the guidance highlights that this also applies if the individual has a well-founded fear of being deployed against their own people or family in conflict.

Moreover, this guidance contains asylum policies for specific countries including Eritrea, for which conscripts and deserters should be granted temporary asylum when it is plausible they have deserted. In addition, it contains situations where the immigration and naturalization service assumes there is not a well-founded fear of being deployed against their own people in the case of Turkey and conscripted Kurds.

Sweden

In Sweden, we were not able to find any general guidance on cases of conscientious objection to military service and refugee status determination. However, like some other countries, the Swedish Migration Agency provides some guidance related to some specific countries. Specific country guidance is also useful to this research as it can provide an insight into how individual cases are assessed and whether this is in line with international law. Sweden has guidance on cases related to military service in Turkey and Eritrea.

Country Specific Guidance on Turkey

The guidance document outlines the criteria for military service in Turkey. It highlights that a conscientious objector or deserter can be considered a refugee if they can show they would receive a disproportionate punishment for refusal due to the convention grounds. According to this guidance, the situation for conscientious objectors in Turkey cannot be considered disproportionate or arbitrary. However, it highlights that an individual assessment of the risk needs to be made for each case.⁴⁵

Country Specific Guidance on Eritrea

The legal guidance on Eritrea is as a result of a domestic court case which sought to determine whether an Eritrean who had left Eritrea illegally and withdrew from national service should be considered a refugee. In this instance, the Migration Court of Appeal found that the applicant did have a well-founded fear of persecution as a result of political opinion. The act of unlawfully leaving Eritrea as well as refusal to carry out national service can be considered as opposition to the State. According to this document, the court found that the criminalization of exit of the country is closely linked to Eritrea's desire to control the population's national service.⁴⁶

United Kingdom

The United Kingdom's (UK) Home Office published a guidance document on military service and conscientious objection in 2013.⁴⁷ This document states that it is based on the UNHCR Handbook on Refugees as well as a domestic House of Lords judgement from 2003.⁴⁸ This judgement stated that the appellants would not be entitled to asylum as there was no internally recognised right to conscientious objection to conscription. Consequently, the guidance is limited in the protection it affords conscientious objectors seeking asylum. This guidance highlights that the UNHCR Handbook provides wider circumstances by which asylum might be granted, but limits this following the position set out by the House of Lords in *Sepet and Bulbul*.

This document makes specific reference to draft evasion and desertion and states that these acts are usually criminal offences, and that those who do not comply with the laws of their country cannot automatically be regarded as facing persecution.

It also maintains that as there is no right to conscientious objection or requirement for States to provide alternative service.

Therefore it is legitimate for States to treat conscientious objectors in the same way as any other draft evader. As a result, punishment for refusing to perform military service due to genuine reasons of conscience does not amount to persecution except in specific circumstances.

The limited circumstances in which this guidance envisages allows refugee status related to military service are as follows:

- If the individual would be associated with a military service that carries out acts that are contrary to the basic rules of human conduct.
- If the conditions of military service would be so harsh as to amount to persecution.
- In instances where the punishment for draft evasion or desertion are disproportionately harsh or severe.

Endnotes

- 1 UN Commission Human Rights Resolution 1998/77, 'Conscientious Objection to Military Service', E/CN.4/RES/1998/77, 22 April 1998.
- 2 Human Rights Council Resolution, Conscientious Objection to military service A/HRC/RES/24/17 8 October 2013.
- 3 Office of the High Commissioner on Human Rights, 'Conscientious objection to military service' HR/Pub/12/1 2012.
- 4 Office of the High Commissioner on Human Rights, 'Conscientious objection to military service' HR/Pub/12/1 2012.
- 5 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 1967 Protocol relating to the Status of Refugees.
- 6 For more in-depth information on the international standards on conscientious objection to military service please see: Laurel Townhead, International Standards on Conscientious Objection to Military Service (QUNO) 2021.
- 7 Article 1A(2) of the 1951 Refugee Convention
- 8 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 1967 Protocol relating to the Status of Refugees.
- 9 Ibid. page 4.
- 10 Ibid. page 5.
- 11 Ibid. page 5.
- 12 James C. Hathaway and Michelle Foster, The Law of Refugee Status, Second Edition (Cambridge University Press, 2014). 102.
- 13 Article 1A (2) of the 1951 Refugee Convention.
- 14 UNHCR Guidelines on International Protection No:10 page 10.
- 15 Ibid. page 10.
- 16 Ibid. page 10.
- 17 Ibid. page 11.
- 18 Ibid. page 11.
- 19 Ibid. page 11 and 12.
- 20 Ibid. page 5.
- 21 Ibid. page 10.
- 22 Ibid. page 5.
- 23 Ibid. page 6 and 7.
- 24 Ibid. page 8.
- 25 Ibid. page 8.
- 26 Ibid. page 9.
- 27 *EZ v Bundesrepublik Deutschland*, Case C-238/19, request for preliminary ruling, ECLI:EU:C:2020:945, European Union: Court of Justice of the European Union
- 28 Article 9(2)e of the European Union, Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011.
- 29 paras 29, 30.
- 30 para 60.
- 31 European Council on Refugees and Exiles, 'Asylum authorities: An overview of internal structures and available resources' 2019.
- 32 The summaries of the guidance are available in the Annex. This was the case for Germany, Sweden and The Netherlands.
- 33 Sweden and The Netherlands.
- 34 Canada.
- 35 Canada, the United Kingdom and The Netherlands.
- 36 Canada (case law from 1993) and the United Kingdom (case law from 2003).
- 37 Germany and The Netherlands.
- 38 Germany and The Netherlands.
- 39 Canada and the United Kingdom.
- 40 Immigration and Refugee Board, 'Military Service: Conscientious Objection, Evasion, Desertion 9.3.6 Available: <https://irb-cisr.gc.ca/en/legal-policy/legal-concepts/Pages/RefDef09.aspx#n936>.
- 41 *Zolfagharkhani v Canada* (Minister of Employment and Immigration), [1993] Canada Federal Court of Appeal, 15 June 1993.
- 42 German Guidance on Military Service, available: <https://www.proasyl.de/wp-content/uploads/2015/12/DA-Asyl.pdf>
- 43 Dutch guidance on military service, available: <https://wetten.overheid.nl/BWBR0012288/2020-10-01>.
- 44 Article 1F of the 1951 Refugee Convention.
- 45 Swedish Migration Agency, Legal guidance on Turkey and military, available: <https://lifos.migrationsverket.se/dokument?documentSummaryId=44641> section 4.5.6, 2
- 46 Swedish Migration Agency, Legal guidance note on Eritrea, available: <https://lifos.migrationsverket.se/dokument?documentSummaryId=39752>
- 47 UK Visas and Immigration, 'Military service and conscientious objection' 1 January 2013, available: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/257393/militaryservice.pdf
- 48 *Sepeet (FC) and Another (FC) V. Secretary of State for the Home Department*, [2003] UKHL 15 United Kingdom: House of Lords (Judicial Committee) 20 March 2003.

QUNO offices:

In Geneva:
13 Avenue du Mervelet
1209 Geneva
Switzerland

Tel: +41 22 748 4800
Fax: +41 22 748 4819
quno@quno.ch

In New York:
777 UN Plaza
New York, NY 10017
United States

Tel: +1 212 682 2745
Fax: +1 212 983 0034
qunony@afsc.org

quno.org

The Quaker United Nations Office

The Quaker UN Office, located in Geneva and New York, represents Friends World Committee for Consultation (Quakers), an international non-governmental organization with General Consultative Status at the UN.

QUNO works to promote the peace and justice concerns of Friends (Quakers) from around the world at the UN and other global institutions. It is supported by the American Friends Service Committee, Britain Yearly Meeting, the worldwide community of Friends, other groups and individuals.

