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Conscientious Objection to Military Service in Wartime

International Law

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Principle

Conscientious objection to military service is recognised by the United Nations as a right applicable at all times and in all circumstances. No circumstances justify abrogating or limiting it.¹

The UN recognises conscientious objection to military service as part of the right to freedom of thought, conscience and religion under Article 18(1) of the International Covenant on Civil and Political Rights and of the Universal Declaration of Human Rights.

No derogation is permitted from Article 18 of the Covenant even in time of emergency threatening the life of the nation.²

The UN Commission on Human Rights and UN Human Rights Council resolutions on conscientious objection to military service at no point make reference to peacetime, wartime, national emergency, mobilisation or any other circumstances, except in relation to the need for post-conflict amnesties for conscientious objectors to military service. Nor have the UN Special Procedures (Rapporteurs, Working Groups) made such distinctions.³

This clear cut legal position has the added benefit that it avoids any practical difficulties or challenges about whether there is a war or national emergency (who decides, on

¹For further information on the international standards, see Rachel Brett & Laurel Townhead: International Standards on Conscientious Objection to Military Service (QUNO, 2024) available at <https://quno.org/sites/default/files/resources/CO%20International%20Standards%20June%202024%20-%20Final.pdf>

²ICCPR Article 4:

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.
2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.

³See Conscientious objection to military service Analytical report of the Office of the United Nations High Commissioner for Human Rights (11 May 2022), A/HRC/50/43, para. 5

what basis) as this is irrelevant, including long-term situations of conflict and tensions where no peace agreement or declaration of peace has occurred.

NB It is important to highlight also the specific relevance for serving soldiers and reservists of access to recognition as Conscientious Objectors in times of war, mobilisation and emergency since these are times when the normal provisions for leaving or terminating military service are often suspended.

Human Rights Committee

The UN Human Rights Committee has explicitly insisted that Conscientious Objection cannot be limited only to peacetime but must also be recognised in time of war or mobilisation.⁴

Furthermore, the UN Human Rights Committee's recognition of Conscientious Objection as *inherent* in the right to freedom of thought, conscience and religion⁵ means that it cannot be limited or subject to additional restrictions on grounds of public safety, order, health, or morals or the fundamental rights and freedoms of others. (NB unlike some other provisions of the Covenant, national security is not included in this list).⁶ Before 2011, the Committee considered (but ruled out) State claims for not recognising conscientious objection on any of these grounds when considering individual cases under the First Optional Protocol to the Covenant.

States not Parties to the Covenant

There are 173 States Parties to the International Covenant on Civil and Political Rights⁷. However, the remaining States are also obliged to recognise conscientious objection to military service since the UN itself and its Special Procedures (Rapporteurs, Working Groups, etc) have also recognised the **universal** applicability of the right of conscientious objection at all times.

⁴Eg Concluding Observations on Finland CCPR/CO/82/FIN, para 14. None of the regional bodies – European, Inter-American, African – have yet specifically addressed the question of conscientious objection in war time. The Ibero-American Convention on Rights of Youth Article 12 does not distinguish between peacetime and wartime/emergency in its recognition of the right of youth to conscientious objection to military service.

⁵Their consistent position since *Jeung et al v Republic of Korea*, Communications Nos. 1642-1741/2007 (2011) and which has been adopted by other UN bodies which, therefore, means that even UN States which are not parties to the ICCPR are held to this standard by the UN. Conscientious objection is part of Article 18(1) of the Covenant (*forum internum*) and therefore not subject to the possible grounds for limitation under Article 18(3).

⁶Article 18(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.

⁷117 of whom are also Parties to the First Optional Protocol (individual complaints procedure)

Authorities not recognised as States

Furthermore, although only States can become parties to the Covenant, the UN and the Special Procedures have also addressed authorities not recognised as States drawing to their attention the obligation to recognise conscientious objection to military service.⁸

International Humanitarian Law and International Criminal Law

Although not explicitly about conscientious objection to military service, it is worth noting that under International Humanitarian Law⁹ compelling prisoners of war or protected persons (civilians) to serve in the forces of a hostile power is prohibited. Also prohibited is compelling the nationals of a hostile State from taking part in operations of war directed against their own State, even if they were in the belligerent's service before the commencement of the inter-State war.¹⁰ These are also war crimes under the Statute of the International Criminal Court.¹¹

⁸Eg Northern Cyprus, Republic of Moldova Transnistrian region

⁹Fourth Geneva Convention (1949), Art. 40, applicable in international armed conflicts

¹⁰Third Geneva Convention and Hague Convention IV (1907) Art.23(h)

¹¹Statute of the International Criminal Court Art. 8(2)(a)(v) and 8(2)(b)(xv)