

Conscientious Objection

to Military Service

and Asylum

Handout for Reasoning Workshop



Quaker
United Nations Office



Connection e.V.



Conscientious Objection to Military Service and Asylum

The Reasoning workshop will recall and explore the WCC Central Committee Minute on conscientious objection, taking into account the national and international experience and the role of religious groups and communities in promoting and protecting conscientious objection for those in their own country and those fleeing persecution and seeking asylum in other countries using different examples.

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Human Right to Conscientious Objection

The United Nations recognises the right of conscientious objection to military service as part of the right to freedom of thought, conscience and religion (Article 18 of the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights). It „inheres in the right to freedom of thought, conscience and religion. It entitles any individual to an exemption from compulsory military service if this cannot be reconciled with that individual's religion or beliefs.“

Who

Conscientious objection may be based on a formal, religious position but this is not required. The question is does the obligation to use lethal force seriously conflict with the individual's freedom of conscience, religion or belief. A person may become a conscientious objector after joining the armed forces, whether as a conscript or as a volunteer.

Decision-making process

The UN has welcomed the fact that some States accept claims of conscientious objection as valid without inquiry. If this is not the case, the decision must be taken by an independent and impartial body under the control of civilian authorities.

Punishment

Unrecognised conscientious objectors may not be punished more than once for their continued refusal to undertake, or continue in, military service on grounds of conscience.

Alternative Service

Any alternative service in lieu of compulsory military service must be compatible with the reasons for the objection, of a civilian character, outside the military sphere and not under military command, in the public interest, a real service to the community, compatible with respect for human rights and not of a punitive nature. „Punitive“ covers both the duration and the type of service and the conditions under which it is served.

Discrimination

No discrimination is permitted among conscientious objectors on the basis of the nature of their particular religion or belief nor between the terms and conditions of military and alternative service. Nor may conscientious objectors subsequently be subjected to discrimination in relation to any economic, social, cultural, civil or political rights because they have not done military service.

Conscientious Objection and Asylum

The failure of States to recognise conscientious objection to military service at all, or the particular objection of the individual concerned, leads to conscientious objectors facing repression, prosecution or new recruitment. This is why they seek protection abroad in other countries. But over and over again such applications for asylum are rejected. Generally, prosecution and persecution of conscientious objectors or deserters is not regarded as a valid reason to be granted asylum.

International Recommendations

The UN High Commissioner for Human Rights stated in a report in 2004 that „asylum should be granted to those conscientious objectors compelled to leave their country of origin because they fear persecution owing to their refusal to perform military service.“

The European Union adopted a Directive on the question of asylum in 2004 stating that refugee status could be granted if “acts of persecution take the form of prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts against peace, a war crime, or a crime against humanity”. This rule put in force a recommendation of UNHCR in its Handbook published 1979.

Practice

No country regularly applies the recommendation to grant asylum or refugee status for persons who have to face persecution or prosecution because of their conscientious objection. The rule of the European Union is in force since 2006. Unfortunately the application of one U.S. AWOL soldier, André Shepherd, who referred to it, was rejected some weeks ago in a decision of the migration office of Germany. In other recent cases only New Zealand accepted applications of Kurdish objectors deciding that “no one can be compelled to undertake military service where a real chance exists that this will require the refugee claimant to commit human rights abuses.”

Harsh punishment

Another reason for refugee status could be the actual practice of punishment of deserters and conscientious objectors as in Eritrea where they have to face torture, incommunicado detention or unlimited punishment up to more than ten years or in Turkey where they have to face repeated punishment and a „civil death“ which the European Court of Human Rights recognised as inhuman and degrading treatment.

Colombia

Facts and Comments

Conscription: Yes

Liability: All men between the ages of 16 and 28.

Duration of military service: Military service for those who have completed secondary education (Bachilleres) lasts for a year, for others it is 2 years.

Recruitment: There is an existing system to recruit young men by registering their schools with the district commanders. Furthermore there are various forms of forced recruitment by the army: at bus stops, in market places, on the street the military pick up youths. Who cannot prove that he has a military service record or a valid reason to be exempted, is forcibly recruited.



Right to conscientious objection: There is no right to conscientious objection. On 14 October 2009, the Constitutional Court of Colombia ruled on a „demand of unconstitutionality“ submitted by several Colombian organisations in March 2009. Surprisingly, the Court ruled that the right to conscientious objection is protected under the Colombian constitution. The Court gave it as a task to the Colombian Congress to pass a law on CO but this has not yet happened.

CO-Movement: Some youth and peace organizations are supporting COs in Colombia. Those who announce they are COs have no clear guarantee that they may leave the armed forces. There are known to be hundreds of COs but precise numbers are not available.

Prosecution: Some objectors are forcefully recruited in raids. They are imprisoned by the military if they do not fulfill orders. In some cases conscientious objectors made so-called *tutelas* (writ for protection) and succeeded to be released from military service. Graduation from university is not possible without the military card.

Alternative Service: Does not exist.

Eritrea

Facts and Comments

Conscription: Yes

Liability: National service is mandatory for men aged 18 to 40 and women aged 18 to at least 27.

Duration of military service: Initially was meant to be 18 months long: 6 months military training and 12 months active service and frequent forced labour which was to be followed by additional reserve duties. However, since 1998 it has been extended indefinitely. Much of the adult population of Eritrea is currently engaged in mandatory national service. They are obliged to work in the military or in military controlled civil institutions and companies for years.



Right to conscientious objection: Does not exist.

CO-Movement: Within Eritrea a conscientious objection movement does not exist. Some objectors have been imprisoned for more than ten years without any charges or court martial.

Thousands are deserting and fleeing the country because they do not see any chance of being discharged. They are asking for asylum in other countries. Hundreds have been sent back from African and European countries. European countries deport Eritrean deserters after denying asylum. In countries like Germany, Italy, Israel or South Africa exile political and civic organizations formed by objectors and deserters from Eritrea exist.

Prosecution: Official rules are not practiced. The usual punishment for evading or deserting military service is imprisonment. When caught, draft evaders and deserters have been subject to brutal beatings and tied in contorted positions. They are held in prison incommunicado. Some of the prisons are built in the underground in the hottest area of Eritrea.

The Eritrean government has arrested parents and relatives of those who have deserted or avoided conscription and asked them to pay substantial financial fines. Those who failed to pay have been imprisoned or forced to serve in place of their siblings or relatives.

Alternative Service: Does not exist.

Israel

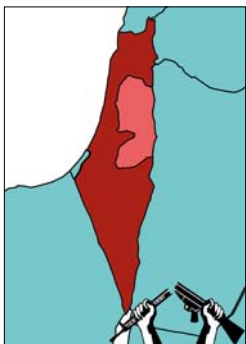
Facts and Comments

Conscription: Yes

Liability: All Jewish men and women and Druze men. Exempted are married and women with children as well as Jewish male scholars studying in Yeshiva religious schools.

Duration of military service: 3 years for men; 2 years for women. Men have to fulfil a four-week reserve duty yearly until the age of 42.

Right to conscientious objection: There is existing a so-called Conscience Committee of the army to decide about applications of COs. In fact nearly nobody is accepted.



CO-Movement: About two hundred students, who are finishing the High School, are declaring their objection every year in a public letter. Furthermore a number of reservists are refusing.

Most COs are known as 'partial objectors', people who do not refuse to perform military service but decline to serve in Lebanon and the Occupied Territories.

The organisation *New Profile* reported: 25% of the Jewish men and

Druze, 42% of the Jewish Women are not recruited. 17,5% of the Jewish men and 4% of the Jewish women are released before they fulfil the conscription. 99% of the Arab people are not recruited. Altogether only 44% of people are really called up.

Prosecution: Since Failure to fulfil a duty imposed by the National Defence Service Law is punishable by up to two years' imprisonment. Attempting to evade military service is punishable by up to five years' imprisonment.

In practice: After refusing the orders in the military COs are normally sentenced to one to four weeks and recruited again afterwards. After some sentences (one to eight times) they are declared as unfit. In 2004 five objectors were sentenced after several arrests to a prison sentence of one year so that they were in prison for two years altogether.

Alternative Service: Does not exist. It is possible to fulfil a voluntary service.

South Korea

Facts and Comments

Conscription: Yes

Liability: All men are liable.

Duration of military service:
21 months.

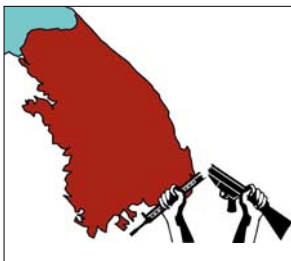
Right to conscientious objection: The right of conscientious objection is not recognized.

CO-Movement: Since the 1950's mostly Jehovahs Witnesses are declaring their conscientious objection, some hundreds a year. Since 2000 there are a growing number of political activists and pacifists who are declaring their conscientious objection, supported by different local groups and organizations as well as on international level.

Most recently, the UN Human Rights Committee has ruled that the Republic of Korea must introduce the right to conscientious objection. The former government announced preparation of a regulation but the present government stopped it.

Prosecution: Since the 1950's, more than 15,000 conscientious objectors have been imprisoned in South Korea for refusing to perform military service. Every year, about 900 draft-age men, mostly Jehovah's Witnesses, plus some conscientious objectors of other religions and pacifists, are convicted and imprisoned (normally for 18 months) because they refuse to perform military service. Draft evasion is punishable by up to three years' imprisonment. Their criminal conviction debars them from certain jobs.

Alternative Service: There are no provisions for alternative service.



Turkey

Facts and Comments

Conscripton: Yes

Liability: All men between 19 and 40 are liable for military service. In practice there is no upper limit of age.

Duration of military service: The length of military service is 15 months. University graduates may perform 6 months' military service, or 12 if they train to become reserve officers.

Right to conscientious objection: Is not recognized.

CO-Movement: Some hundred resisters have declared their conscientious objection since 1990. There are groups and platforms which are working for a right of conscientious objection and supporting imprisoned COs.

Estimates are that about 300,000 are avoiding military service. Some hundreds of draft evaders fled the country and asked for asylum mostly in Europe. Their asylum applications were often denied.



Prosecution

COs may be punished for avoiding military service. COs who attract media attention or publish articles about their refusal

to perform military service may also be punished to between six months' and two years' imprisonment for „alienating the people from the armed forces“.

In the past, there have been several cases of COs who have been sentenced. The most well known case was Osman Murat Ülke, who spent a total of 30 months in prison on several charges of disobeying orders. All conscientious objectors are considered as draft evaders or deserters and are threatened by repeated recruitment and/or punishment. Practically they do not have a legal status while living in Turkey.

Alternative Service: Does not exist. Following the judgment of the European Court of Human Rights the case of Osman Murat Ülke January 2006, the Turkish government declared at the Council of Europe a law solving the problems would be prepared. However, it is doubtful that a law will be implemented.

USA

Facts and Comments

Conscription: No

Right to conscientious objection: Military personnel who develop a conscientious objection to military service may apply for reassignment to non-combatant duties or discharge from the Armed Forces. CO status is only granted to a CO „who is conscientiously opposed to participation in war in any form; whose opposition is founded on religious training and belief; and whose position is sincere and deeply held.“



Movement of Resisters: Each year about 100 soldiers ask to be granted CO status. About the half are accepted. In other cases like Agustín Aguayo conscientious objectors are court martialed because they still refuse to carry weapons.

Since 2003 about 30.000 soldiers deserted or went AWOL. Some known cases of AWOLs, deserters and resisters (who refused to obey orders) were sentenced to from 6 to 15 months.

About 100 asked to get asylum in Canada, one soldier, André Shepherd, is seeking asylum in Germany. None of them has been accepted until now.

Prosecution: In peacetime, desertion may be punished by up to five years' imprisonment if the desertion was intended to avoid hazardous or important duties. Otherwise, the maximum penalty is three years' imprisonment or two years if the deserter voluntarily returns to the military. AWOL (Absent Without Leave) could be punished with up to two years. The penalty may also include dishonourable discharge from the armed forces and forfeiture of all pay and allowances.

Alternative Service: Does not apply since no conscription.

International Standards

The Commission on Human Rights recognizes 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, and that persons performing military service may develop conscientious objections, and encourages States (...) 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;

UN Commission on Human Rights resolution 1998/77

Directive of Council of the European Union on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection: „Acts of persecution can take the form of prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts against peace, a war crime, or a crime against humanity, as defined in the international instruments or acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations“.

Directive 2004/83/EC of April 29, 2004

UN Human Rights Committee: Under article 18 of the International Covenant on Civil and Political Rights, the Human Rights Committee has held that conscientious objection to military service inheres in the right to freedom of thought, conscience and religion. It entitles any individual to an exemption from compulsory military service if this cannot be reconciled with that individual's religion or beliefs.

UN Human Rights Committee: Ruling to Min-Kyu Jeong et al v Republic of Korea, 5 April 2011

The Human Rights Committee has stated that repeated punishment of conscientious objectors for not having obeyed a renewed order to serve in the military (...) if such subsequent refusal is based on the same constant resolve grounded in reasons of conscience comes within the prohibition of the *ne bis in idem* principle.

UN Human Rights Committee: General Comment 32 on Article 14, of 23 August 2007

World Council of Churches (WCC)

Conscientious Objection

Therefore, the central committee of the WCC, meeting in Geneva, Switzerland, 26 August - 2 September 2009:

A. **Reiterates** existing WCC policy and reaffirms its support for the human right of conscientious objection for religious, moral or ethical reasons in accordance with the Universal Declaration of Human Rights (1948) and other international laws, as churches have an obligation to support those who refuse to take part in violence.

B. **Calls upon** WCC member churches, wherever they are in a position to do so, to uphold the right of refusal to bear and use arms and to encourage church members to uphold that right as well.

C. **Deploras** the situation that men, women and children in many parts of the world are forced into armed service under governments and also under non-governmental forces or paramilitary organizations.

D. **Encourages** member churches to address their respective governments and military organizations to recognize and honour conscientious objection to military service as a human right under international law.

E. **Calls upon** churches to encourage their members to object to military service in situations when the church considers armed action illegal or immoral.

F. **Encourages** churches to study and address the issue of military or war taxes and of alternatives to military service.

G. **Calls upon** all Christians to pray for peace, abandon violence and seek peace through nonviolent means.

Organizers

Rachel Brett is representative for Human Rights & Refugees at the *Quaker UN Office*, Geneva, Rachel Brett has been directly involved in achieving recognition of the right of conscientious objection to military service by the UN human rights bodies, and has also worked with the UN High Commissioner for Refugees in interpreting the international standards in relation to conscientious objection to military service, draft evasion, desertion and asylum.



Yohannes Kidane deserted from the Eritrean army in 2003. Since then he is living in Germany. He is founder and activist of *Eritrean Antimilitarist Initiative* which is supporting deserters and conscientious objectors from Eritrea. The *Eritrean Antimilitarist Initiative* is all-party, independent from other organizations and based on non-violence and grass-root principles. The group is collaborating with similar groups in Germany and other countries

Rudi Friedrich, General Secretary of *Connection e.V.* in Germany, is engaged in achieving recognition of the human rights of conscientious objection and acknowledgment of the prosecution of conscientious objectors and deserters as a reason for asylum. The organisation collaborates with groups opposing war, conscription and the military. Beyond Europe, the network extends to Turkey, the U.S., Israel, Latin America and Africa. The organisation offer counseling and information to refugees and support for their self-organization.



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Conscientious Objection and Asylum

Call for Action

The World Council of Churches (WCC) urged the United Nations already in 1973 to recognize conscientious objection to military service as „a valid expression of the right of freedom of conscience“.Up to the present day, many governments have refused that call. In countries such as Turkey, Colombia, Israel, South Korea or Eritrea, conscientious objectors are subject to persecution, detention, torture and even death. Likewise, groups and organisations in those countries are often exposed to threats and persecution.

Even in countries in which the right to conscientious objection exists, it often does not apply to volunteers, serving soldiers or reservists. In the U.S., for example, men and women who have joined the military but, after experiencing the reality of war, make up their minds to object to a particular war are subject to prosecution, and the general recognition provisions are not always followed correctly.

This is why thousands seek refuge abroad. However, they often find that the prosecution of their conscience-based decision is not recognized as a ground for asylum. This stands in contradiction with the United Nations Universal Declaration of Human Rights which is based on the principles of the freedom of conscience as universal and any such decision in any country as an expression of human, political or religious rights. This principle was strengthened by the central committee of the WCC in September 2009.

With the working group we would like to strengthen the work of initiatives and organisations which support men and women in different countries who, facing great risks of repression, detention and persecution, have taken a conscience-based decision against war and military service. This is a very real, practical contribution to peace. Conscientious objectors and deserters should be encouraged and supported – in their countries of origin as well as in exile.

With the working group we would like to strengthen as well the demand to acknowledge the human right of conscientious objection, both as fundamental refusal of any use of weapons and as refusal of concrete armed actions.

Furthermore we would like to strengthen the demand that conscientious objectors who still have to face prosecution, get asylum in other countries.