



FORCED CONSCRIPTION UNDER INTERNATIONAL LAW

Conscription refers to compulsory military service. The issue is treated differently depending on whether the conscription is compelled by the government or a nonstate actor. Under international law, conscription is viewed as an exercise of a state's sovereignty, and no provisions of international law prohibits it. For nonstate armed actors (rebels/paramilitary/extremist groups), forced conscription is always a violation, similar to involuntary servitude or abduction, because nonstate actors do not have the same privileges as a sovereign state. Recruitment by nonstate actors must always be voluntary, and free of any and all coercion.

Despite its sovereign privileges, the state may still violate an individual's rights by compelling military service in certain cases. The following situations may be considered examples of violations:

- Picked up arbitrarily without any conscription order/notice
- Sent to fight without any opportunity to appeal the conscription order (no due process)
- Given an extreme ultimatum: either fight for the state or die/be tortured
- Sent to fight when suffering from a serious medical issue or disability
- Recruited as a child (discussed in more detail below)

In countries with compulsory military service, some states allow for conscientious objection on strictly religious grounds. But the right to object is

not clearly protected under international law. The Human Rights Council has said that states should refrain from repeated punishment for conscientious objection, implying that some punishment might be okay. On the issue of whether a person can claim refugee status after deserting or evading military service, the UNHCR Handbook states that "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.... be regarded as persecution."

Child Recruitment Under International Law

Unlike adults, child recruitment is forbidden by all parties to conflict, whether they are state or nonstate actors. The age at which a child can legally be recruited varies, but according to the Additional Protocols of the Geneva Conventions and the Rome Statute, it is a war crime to use children under the age of 15 for military purposes. The Convention on the Rights of the Child raises the age threshold to children younger than 18. Most countries, including Syria, have signed the Convention. The Convention's Optional Protocol on Armed Conflict (OPAC) is focused solely on the military recruitment of children, prohibiting a state's conscription of children and nonstate group's voluntary recruitment of children under the age of 18. For states, it makes a narrow exception for children 16 and older, as long as the recruited child

is not sent to war. The use of child soldiers may also be considered human trafficking in most situations, but an individual state's human trafficking laws would apply.

Documentation of Child Recruitment

Since there is a strict prohibition on enlisting children, this is a relatively easy atrocity to document. The major factors turn on 1) if the victim was recruited into the armed forces of a state or nonstate group; and 2) the age of the victim at the time of the recruitment. If the victim was 14 or younger, then it is a clear violation of international humanitarian law, no matter which group was responsible. If the victim was between 15 and 17, then there is likely a violation of international human rights law, but it would depend on the circumstances of the case and the affiliation of the responsible party. Remember that no matter how old or young the victim is, a nonstate group can never forcibly recruit because this is always considered a violation.

The difficulty arises in how to collect the documentation. If the victim is still a child, there are many ethical considerations to take into account. In armed conflict, children are the most vulnerable members of society. Young children have not developed sufficiently to be able to process the horrors they witness in conflict, and for child soldiers who repeatedly witnessed and participated in these horrors, they are likely to suffer from deep psychological trauma. As such, it is incredibly important to avoid causing additional harm to the victim. Thus, you should ask yourself the following: is it possible to document this case without interviewing the child? Is the child old enough to provide informed consent? Is it appropriate to include the parents during the interview in this situation (it may be preferable to include the parents unless they aided in the recruitment)? Do I have the training to ethically interview children? Are there psychological support services available to which I can refer the child? Is the child still vulnerable to exploitation and do I have the tools to extract the child from the situation?

If you determine that you are not capable of ethically conducting an interview without causing additional harm to the child, then record as much information as you can about the case without the interview and, if possible, contact another trusted documentation or investigatory group that has the proper tools available. Do not refer the child without his/her full consent or the consent of the parents.

Killing Child Soldiers on the Battlefield

Recruitment is clearly forbidden, but once a child has been recruited and is fighting on the battlefield, how should they be treated by the opposing force? There is no definitive answer in international law, but it is generally accepted that if a combatant faces an armed child in battle, and the child is shooting or is threatening to shoot, the combatant is justified in using lethal force against the child. Self-defense is not a war crime. Of course, shooting the child should be the last resort, but in the midst of battle, it may be difficult to judge proper alternatives. Ideally, armed units that know they will face children on the battlefield should receive training on how to better assess the situation and encourage the children to surrender so they can be taken into protective care.

Justice for the Crimes of Child Soldiers

In human rights literature, child soldiers are treated as victims who suffered a violation and need to be protected. But what if the child committed grave violations themselves? How should a child soldier be dealt with if s/he murdered innocent civilians, committed rape, or tortured detained combatants? International humanitarian law does not stipulate an age of responsibility for war crimes, crimes against humanity, and genocide. The ICC will not prosecute anyone under the age of 18, not because it believes they should not be prosecuted, but because it prefers to leave such trials to states. The ICC is mandated to prosecute those most responsible, which would likely never include a child. The age of criminal responsibility

is set by national jurisdictions, which differs from country to country. Experts advise that child soldiers who commit atrocities should be held accountable, but through alternative justice mechanisms that focus on rehabilitation rather than retribution. Transitional justice mechanisms have the opportunity to strike the right balance of accountability and protection/rehabilitation. For example, post-conflict commissions in Sierra Leone and Liberia decided not to prosecute children and instead treat them as victims, only prosecuting the adults who forced them into the wars. Instead, both countries focused on rehabilitation and restoration instead.

Post-conflict states generally adopt disarmament, demobilization, and reintegration (DDR) programs to rehabilitate combatants into society. These programs can include a focus on children to address the specialized needs of child soldiers,

such as mechanisms to trace and reunify children with their families, school programs that help kids catch up on missed education, and funding for psychological care.

Aside from rehabilitation programs, transitional justice mechanisms can provide a platform for restorative justice, facilitating redress to victims without putting a child on trial. For example, South Africa's Truth and Reconciliation Commission requested that children testify to the atrocities they suffered and committed, without assigning guilt or recommending a prison sentence. Another option is to have the child sit with the victim(s) and a facilitator/mediator to give the victim(s) an opportunity to share their experiences and the harms they suffered and have the child acknowledge the harm, make an apology, and perhaps pay reparations.