Preface

The task of this study lies in clarifying the efforts of contemporary public international law, across several categories, in relation to the rights and duties of individuals to the international community. Individual criminal accountability is an interesting development of the international community, challenging a traditional framework of public international law. At the same time, the argument whether individuals may stand up and take action against their own country on the basis of international obligations and international human rights is also a stimulating topic for public international law. It necessitates interdisciplinary research within public international law.

Therefore this study will tackle this ambitious task, though not exhaustively. Both international criminal justice and the right to conscientious objection in international human rights law are developing notions. Aspirations to create a world of peace and stability may contribute to the further development of these two notions. The importance given to the individual within the international community is at the heart of this study. Individuals should not sit on the sidelines, shielded by their States; instead, they need to take international law seriously in the twenty-first century, when, like it or not, the fearfully ambiguous word ‘globalisation’ is the word for our times (Annan 2000, pp. 9–17). The right to conscientious objection under international law may sometimes serve as a means of advancing peace and disarmament. In this connection, the duty of individuals to contribute to international peace and security will be discussed by means of examining international criminal law, specifically the issue of the defence of superior orders.

The rising number of conscientious objectors may be considered domestically as either a problematic or an illuminating phenomenon by many societies. This study aims to provide views to support the latter argument. In doing so, the issues are studied through the lens of public international law, especially international human rights law and international criminal law. Studies of international human rights law on the issue of conscientious objection and international criminal law on the issue of the defence of superior orders have guided this study in its ‘rights and duties’ approach.
It can be logically claimed that if individuals have the duty to disobey manifestly illegal orders under international criminal law, then they do not need to claim their rights to disobey manifestly illegal orders under public international law. However, the right and duty to disobey manifestly illegal orders under public international law may not necessarily be a case of ‘either-or’, as the rights and duties of individuals under public international law are often non-self-executing in the national dimension. Therefore the right and the duty of individuals to disobey manifestly illegal orders should supplement each other to strengthen their normativeness.

In order to clarify the rights and the duties of individuals, the relationship between the defence of superior orders and the right to conscientious objection is discussed in Chap. 1, followed by a brief background of the phenomenon of conscientious objection. Chapters 2–4 deal with the aspect of the right to disobey manifestly unlawful orders, though the argument is not confined to selective conscientious objectors, who only object to participating in unlawful wars and/or the use of weapons. Rather, Chaps. 2–4 provide a general view of the right to conscientious objection in international law, because its status under international law is by no means clear even today. Chapter 5 looks at conscientious objectors as asylum seekers from the viewpoint of international refugee law. As opposed to the rights of individuals, Chap. 6 focuses on the duty of individuals to disobey manifestly illegal orders. The restrictions on the defence of superior orders and several other humanitarian norms imposed on individuals are studied in view of the right to conscientious objection, discussed in Chaps. 2–4.

References

International Human Right to Conscientious Objection to Military Service and Individual Duties to Disobey Manifestly Illegal Orders
Takemura, H.
2009, XII, 253 p., Hardcover
ISBN: 978-3-540-70526-0