of the authorities to take account of these needs and demands and to respond to them with practical institutional measures – especially in the field of legislation. Modifications in legislation are indeed always desirable as a means of improving community's social relations democratically. The obtaining, by immigrant workers, of equal access to all the different areas of social responsibility, for example, depends first and foremost on changes in their legal status.

The dynamic relation between associative pressure and institutional authority thus depends on the energy of the one and the capacity of the other.

The same is true of defence: both the associative and institutional elements are essential if one wants to enable a society to exercise – in as united a way as possible – a policy of nonviolent resistance to external aggression or internal coups.

Any alternative system of defence should therefore embrace as many as possible of the associative and institutional protagonists, and set about co-ordinating their activities.

5. The Role of These Actors in Civilian Resistance in the Past

No doubt the authors of "La Dissuasion Civile" were right to note that "we have no historical reference in matters of nonviolent civilian defence – which implies organized preparation in peace time – since, until now, no country has institutionalized it" (6). But their conclusion: "the efficiency of nonviolent civilian defence can neither be validated nor invalidated by History" (6) puzzles me.

For the historical experience which they call one of nonviolent resistance is in fact much wider since this historical experience was enacted not only by the civilian society, but also by the institutional agents of the State (central or subordinate authorities) and it is not only an anticipation but also a realization of nonviolent civilian defence, even without preliminary investment or training.

Just by way of example, let us look at a few historical cases:

RESISTANCE - DEFENCE

CONFLICT	INSTITUTIONAL AGENTS	ASSOCIATIVE AGENTS
Battle of the Ruhr 1923	Berlin government German administration	Management associations Trade unions
Norway 1940-45	MILORG-SIVORG (combined military/civilian resistance) co-ordinated by the King and Government in exile	The Churches Teachers' associations Sports associations
Belgium 1940-45	Government in London Secretaires generaux (administration) Courts Local officials	Political, social movements Religious communities 2 Jewish Defence Committee
East Germany 1953	People's police (VOPOS)	Workers' groups Popular mass movements
Czechoslovakia 1968	Czech Communist Party, (14th Congress)	Trade unions Free radio stations
Civil Rights Movement (King/ USA) 1954-68	Supreme Court (*) Presidential support (Kennedy)	Civil Rights Movements Numerous associations Various church groupings
Poland (August 1980 to December 1981)	Governmental delegations Horizontal structures of the Polish United Workers' Party (PUWP) Progressive fraction of the Party	Solidarnosc Rural Solidarnosc KOR-KSS Workers' Defence Committee - Social Self Defence Committee
Poland (since December 1981)	Minority fractions of Diet Fractions of official unions	Underground Solidarnosc Catholic church especially at parish level KOS Social Defence committee

* Ruling of 17 May 1954: "Segregation in education is against the Constitution.

6. Prospects of Structuring Nonviolent Civilian Defence

Basing ourselves on the research carried out so far mainly by the Belgian MIR-IRG (9), we propose the setting up on an alternative defence system which takes into account the special features of our own particular social and political context.

The model represented in the diagram (next page) is thus not 'for export', but rather represents one specific application of a system of defence which supports itself (as a body on two legs) on both the associative and institutional agents.

The following comments refer to the figures in the diagram:

I. In order to ensure the involvement, at the highest level, of both the associative and institutional protagonists, the 'Ministry of Civilian Defence' should be made up of two elements: a permanent administration and a Council whose job it would be to direct, give impetus, and supervise. Council members should include at least: representatives of public authorities, representatives from both sides of industry (i.e. management and unions – both of whom have already had much experience in consultation in my country), and various parties representing the cause of peace. By the latter we mean the different independent voluntary groups engaged in research in the fields of peace and the development of nations.

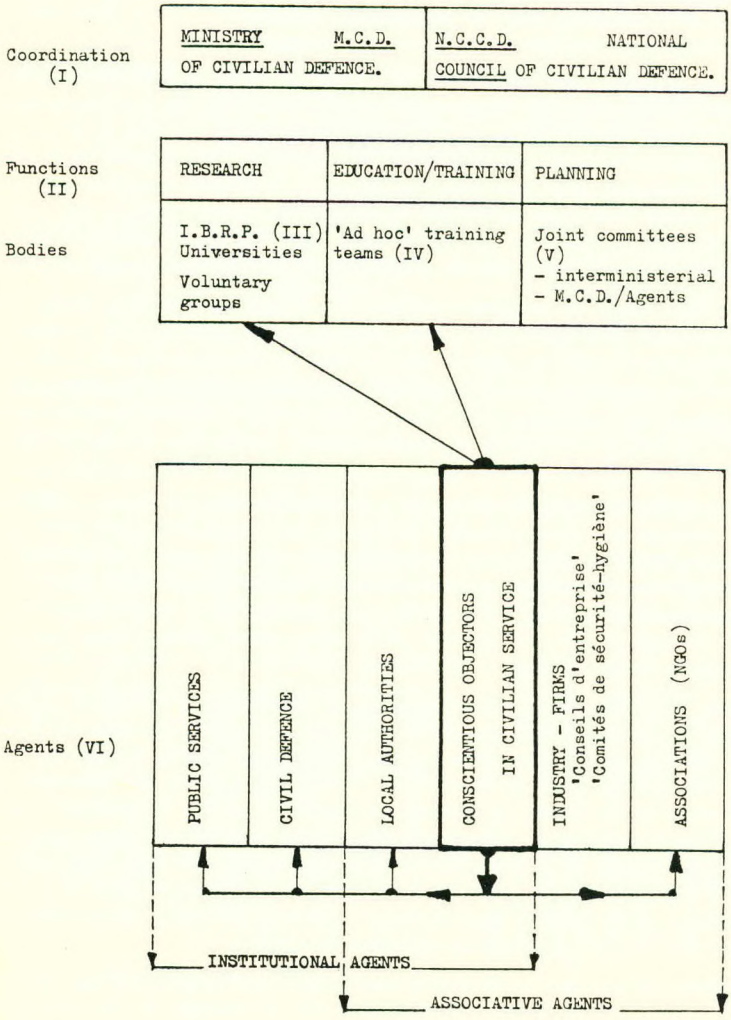
II. The MCD would be concerned mainly with overall co-ordination rather than 'hierarchical direction'. The three most obvious areas to be co- ordinated are: research on conflict, on international relations, and on non-military conflict resolution; education and training of all those potentially involved in defence, whether in public service, private firms or voluntary associations; planning of the material resources and infrastructures to ensure the continued autonomous functioning of communications, production and distribution in times of crisis or international conflict, etc.

III. I.B.R.P. (Institut Belge de Recherche pour la Paix) – a sort of Belgian PRIO, the necessary bill to create which was put before the Belgian Parliament in October 1983. Such a body would be of tremendous value for the development of peace research in Belgium. its work would complement that of the universities and voluntary groups which are so short of resources (both money and staff). The MCD would have the job of reviewing the results of the various research projects and possibly of directing one or other of these bodies to carry out particular pieces of work.

IV. Given that education and training must be extended progressively to all those involved in defence, 'ad hoc' training teams should be set up to carry out training in public service, in industry, and in associative groups. Those teams already in existence – the FOC (Formation des Objecteurs de Conscience – University of Peace and Confederation of Civilian Service for the Youth) in francophose Belgium, and the Burgerdiest voor de Jeugd in the Flemish community – already provide prototypes for future teams. An initial (and still limited) training of conscientious objectors has started last June (1985 eds.) in Belgium. It is organized by the Ministry of Interior, under the supervision of a pedagogical commission, constituted of three 'partners': the administration, the conscientious objectors' organizations and conscientious objectors themselves.

V. Working out and implementing the practicalities involved in ensuring that economic, political and cultural control would at all times be retained by the population,

A Model of Nonviolent Civilian Defence.



requires some sort of co-ordination between the various competent ministries (e.g. Transport, Public Health, Environment, Employment, etc..), and between the mcd and those involved in defence – i.e. local authorities, Civil Defence groups, industry and firms (via existing worker/management councils), and voluntary bodies. This co-ordination should be organized in Joint committees (MCD abd ministries; MCD and various 'protagonists'), and regulated by the MCD.

VI. Listed here are various 'protagonists' who seem to us to have an essential role to play in nonviolent defence. Their classification as 'institutional' or 'associative' produces some overlapping: local authorities are institutional (they form part of the constitutional make up of the country) and also associative in so far as they are particularly close to individual citizens and there are often 'joint' local groups – i.e. semi-official, semi-private; similarly, Belgian conscientious objectors may accomplish their civilian service either in the public sector or in private organizations (these presently number over one thousand). As far as industry is concerned, there exist two sorts of bodies concerned with joint social action: works councils (for consultation on the organization of labour and on investment/employment policy), and the Health and Safety committees.

7. Setting Strategic Priorities

If we underline the potential contributions of conscientious objectors in civilian defence, as shown in the diagram, we can measure their importance.

From these I will derive the following strategic priorities:

7.1. Defence of the diversity in conscientious objectors' assignments in order to develop a genuine permanent education policy

This policy has been remarkably defined in a decree set forth the French speaking community of Belgium, passed on 8th April 1976 (10). Article 2 of this decree is as follows:

> Is considered a voluntary organization of permanent education (./.) the one whose aim is to ensure, especially in the adults development, of:
>
> a) a critical awareness and knowledge of social realities;
>
> b) the ability to analyse, choose, act and evaluate;
>
> c) responsible attitudes and active participation in social, economic, cultural and political activity.

Thus permanent education is to be understood as being the factor and dynamic of awareness, social analysis and, consequently, of personal and collective intervention in the organizational mechanisms of society.

By its positive approach permanent education's aim is to encourage the citizens to participate in all the wheels of society, to make them subjects of their history rather than objects sought after, used or rejected by society.

7.2. Developing research relating to transarmament and nonviolent conflict resolution through the creation of national and international institutions such as the project for a Belgian Institute of Peace Research which we have mentioned, or the French 'Institut de Recherche sur la Résolution Non- violente des Conflits' (IRNC) which recently held an international seminar in Strasbourg on the theme: 'Civilian strategies of defence'.

7.3. The development, in countries where conscription and alternative service for conscientious objectors exist, of specific training for conscientious objectors; training focused on their role in society as well as their role in defence (11).

7.4. The development of training in nonviolent action and civilian resistance for all potential agents of civilian defence, in particular within public administration (12).

7.5. The development of dialogue between conscientious objection movements, unions and political organizations in order to assert the credibility of options and projects of which the conscientious objectors are bearers.

7.6. Engage in dialogue with political and military leaders to confirm the value of 'civilian deterrence', to indicate a possible solution to the mad arms race and set up combined consultative bodies of defence matters, modelled on a 'National Council of Civilian Defence' as suggested for Belgium.

These trends seem to me to confirm the irreversible insertion of conscientious objection in the 'ethics of responsibility' capable of concrete confrontation of the real problems of democracy and security.

It is the refusal of states to engage in such strategies which ought to be called a policy of irresponsibility.

Notes

1. Raymond Aron, De l'objection de conscience, re-edited in Etudes politiques, Gallimard, Paris 1972, p. 345.
2. J. De Munck, Objection de conscience et libéralisme in Revue Nouvelle, Brussels, January 1985.
3. Pierre Sudreau, La stratégie de l'absurde, Plon, Paris 1980.
4. Christian Mellon, Jean-Marie Muller, Jacques Semelin: La Dissuasion civile, Fondation pour les Etudes de Défense nationale, Paris 1985.
5. Op.cit., p. 42.
6. Op.cit., p. 61-62.
7. Robert Polet, The Polish Summer, War Resisters' International, London 1981.
8. Robert Polet, 1980-83; Solidarite ou l'espoir polonais, in Les lecons de l'Histoire: résistances civiles et défense populaire non-violente, dossier No 2 de Non-violence Politique, MAN, Montargis, France 1983.

9. Belgian sections of the International Fellowship of Reconciliation (IFoR) and War Resisters' International (WRI). Their working group on transarmament publishes since 1979 regular dossiers on these questions.

10. A definition which, by the way, was elaborated in consultation between the authorities (at the time, the Belgian Ministry of French Cultural Affairs, whose Department is now part of the Ministry of the French Community) and the in the field promoters of permanent education, represented by the Conseil Superieur de l'Education Populaire.

11. Robert Polet, Co training: proposals for a training policy adapted to the missions entrusted of the be entrusted to COs in time of war or threat of war, Ministry of the Interior and Civil Service - General administration of Selection and Training, Brussels, May 1984, (in French).

12. Fiches documentaires pour une autre defense, No 24, September 1985: L'administration sous une occupation - La resistance des fonctionnaires, MIR-IRG, Brussels - Charleroi.

Rebecca McCormick

4.7. THE INTERNATIONALISATION OF ALTERNATIVE SERVICE

From its very beginning, the idea of conscientious objection has been linked with that of international solidarity: The ideals of the first conscientious objectors, for the most part of religious pacifists, were of an international co-operation and understanding that would supersede the violent resolution of conflicts between nations. The concept of alternative civilian service, which arose in response to the extension of conscription during the First World War, had likewise from the start an international vocation. The Service Civil International (SCI) called for an international civilian service as early as 1920, and was the first organisation to set up international work camps for emergency relief in areas ravaged by the Great War, creating the precedent for many later efforts.

The world-wide devastation after the Second World War, and the permanent military readiness in the decades following, gave a new urgency to the ideal of internationalism. In the new world climate, even those who accepted to notion of military defence had to recognise the impossibility of a purely national defence. Military policy, even decisions regarding the manpower needs of national armies, was increasingly made at a supranational level by military alliances. International alternative service was still rejected by states which sent their conscripts across the globe but kept their conscientious objectors at home.

Despite the paradox and urgency of this new situation, the ideal of an international conscientious objector service, which the SCI and other peace groups saw as "more conducive to peace than participation in armed forces", took a back seat to the separate national struggles that had to be fought for the recognition of conscientious objection as a right under national law. These struggles are far from over. Nevertheless, the international dimension of civilian service for conscientious objectors has come again to the fore, for the following reasons: 1) International law and international institutions are increasingly the venue for efforts to improve national legislation. They provide both the possible framework and a legal basis for internationalisation. 2) A minimal infrastructure and sufficient precedent now exist for the realisation of a truly international alternative service.

Formal Arguments for the Internationalisation of Alternative Service

A number of reports and resolutions of international bodies give direct or indirect support to the internationalisation of alternative service. The most frequent reference is to service in the developing countries: The Council of Europe's Resolution No. 337 (1967, Article C, Par. 3) calls on State to employ conscientious objectors in "social work or other work of national importance, having regard also to the manifold needs of the developing countries", and the European Parliament's Resolution of 7 February 1983 (pt. 4) refers similarly to conscientious objector service of "benefit of the community, particularly in the social field and in the field of aid and development co-operation". The UN Sub-Commission on Human rights Report, by Eide and Mubanga-Chipoya, cites precedents for international development service in many countries, including the international work of the SCI (Ch. 2, Art. C, Par. 110). These carefully worded recommendations for international development

service for conscientious objectors at least refer to the subject directly and open the door for a further broadening of the concept.

No official resolution of the Council of Europe or the European Parliament has as yet called for an international service within their member states, but the resolutions already cited give a certain indirect support to the idea. The most significant argument is for the standardization of legislation of the member states. Point 6 of the European Parliament Resolution of 7 February 1983 emphasizes "the need to approximate the legislation of the Member States of the Community governing ... alternative forms of service". This argument is valid only as long as approximation is taken to mean to the highest, and not to the lowest, common denominator. Nevertheless, the power of precedent and example counts for a great deal in changes of attitude and legislation, and we will return to the practical argument given by the two European countries that currently provide for conscientious objector service abroad.

A second, somewhat weaker argument can be based on the call for an end to discrimination against the conscientious objector to the conscript, and the abolition of conscientious objection as a "sanction". This argument is based on an effective difference of treatment, which allows the posting of conscripts abroad but not that of conscientious objectors, and does not suppose a freedom of choice in the matter for either one. (V. Resolution 337 of the Council of Europe, Art. C. Par 2; European Parliament Resolution of 7.2.83, pt. 4) Finally, the general provisions for the development of European co-operation and a sense of international solidarity can be used as moral. if not legal, arguments, within European and international institutions.

Indeed, it is in the end the force of example and these and other moral arguments that will count in the establishment of an international service for conscientious objectors, more than the largely indirect and insufficient legal arguments the European Community, and the various UN bodies will undoubtedly play a key role in bringing this about, but perhaps more as a venue for the distribution of information, the formulation of proposals, and the carrying out of projects, than for the resolutions they pass. If a comprehensive international alternative service is launched, existing programs for the exchange of young people, for technical assistance to underdeveloped regions, or for emergency relief may well provide the needed framework for that service in its initial form.

Existing Precedents for International Alternative Service

The earliest widespread precedent for international service for conscientious objectors followed the line suggested above. During the peacetime in the United States following the Second World War, recognised conscientious objectors could go abroad for alternative service through UN agencies, where they were placed by UN non- governmental organisations. Thus, the necessary infrastructure and supervision was provided, not by the national state, but by an international body.

Currently, several European countries, including Belgium, Denmark, the Netherlands, the Federal Republic of Germany, and in slightly different form Italy and France, provide for unarmed service for young men otherwise subject to conscription, in the developing countries. (V. Eide-Mubanga-Chipoya Report, p. 22, Ch.2, C, Par. 110.) in these cases, it is not the UN or another independent international agency that assigns or supervises

the development workers, but rather the national state. This cannot be properly seen as a conscientious objector service, for while those taking part may be conscientious objectors, their service is considered a replacement for or exemption from alternative conscientious objector service, on quite different legal grounds. Indeed, the frequent para-military organisation of this form of service, and its subjection to national security needs, it is an alternative to armed military service generally open to very few – only trained engineers, teachers and technicians need apply. Nevertheless, service in the developing countries can be a valid alternative for a conscientious objector wishing to work for international goals, and is a first step toward the replacement of international security and solidarity for national defence.

Only two European states currently allow international alternative service for conscientious objectors outside the developing world. The Federal Republic of Germany's program for conscientious objectors abroad, like their development service, is not officially a conscientious objection service. Rather, like those recognised conscientious objectors who perform replacement service in the Third World, those who work abroad for a specified time with recognised social and cultural organisation are exempt from further military obligations. Unlike development workers, they are not paid for that service and receive no insurance of other social welfare benefits. Nor do they receive written official confirmation of their release from military obligations, since the program rests on a ministerial agreement rather than legislation.

The German international peace service began in 1969, when the Ministry for Labour and Social Welfare approved a request from the Aktion Sühnezeichen Friedensdienste (ASF) for conscientious objectors to be allowed to take part in their work camps and other projects abroad. Permission was granted for recognised conscientious objectors to work in projects organised by the ASF, a group working for international reconciliation that was founded by German Protestants in the 1950's. If these conscientious objectors worked at as ASF project for a continuous period of 18 months, they would thereafter be exempt from further national service obligations. Nine other organisations have since been granted similar approval to take part in the peace service: The Service Civil International and Eirene are the most important of these. Today, in a given year, ASF send approximately 60 conscientious objectors abroad, Eirene and SCI from 5 to 10 each, and the other organisationsd from 1 to 2 each. The volunteers serve in both Eastern and Western Europe, in Israel, and around the world.

While there is no official quota for the number of conscientious allowed to go abroad in a given year, the organisations involved, both the German and the 'host' organisations, have a difficult time assigning, financing, and supervising their conscientious objector volunteers. There are no longer enough places for all receiving their assignments. Soon it will be even more difficult for these conscientious objectors, as the Ministry announced on 20 June 1985 that they will from now on be called up for alternative service in Germany if they have not been placed within one year of official approval of their service abroad. And now ASF is planning to cut down on the number of conscientious objectors in its volunteer projects. However, the service itself is not in danger – this was affirmed by the Secretary of State responsible for the program in response to a question in Parliament in 1985.

In an application of the revised statute of conscientious objection of 1983, the French

Ministry of National Solidarity approved conscientious objector service abroad in short-term missions of up to six months in March 1984. Approval for longer projects in European Community member states followed at the end of that year. As in Germany, the program started at the initiative of peace organisations, in this case the Service Civil International, and was an application of existing law at ministerial level rather than the result of new legislation. Its provisions are somewhat different, however: French conscientious objectors in service abroad receive the same financial support from the state as those at home, but the voluntary organisations responsible for their assignments pay extra travel and insurance costs. For both short and long-term missions, service abroad is only possible through approved French organisations with a representative abroad, most often in practice the SCI. Furthermore, the objector must work at least three months with the organisation in France before continuing his service abroad. Approval for individual projects is granted at ministerial level for short-term projects; at Cabinet levet for long term ones.

Despite the favourable financial conditions and the quick approval of projects, few French conscientious objectors have so far applied for assignments abroad – only four are currently involved in long-term projects in EEC member states. No exact figures are available for those in short-term projects or in other countries. The contrast with the German situation, where the absence of financial support and long delays in assignments for conscientious objectors do not dissuade hundreds of young men from applying, is striking: The explanation for this is evidently that the program is still in its infancy. Aspiring conscientious objectors are not yet aware of the possibilities of alternative service abroad; foreign branches of voluntary organisations are not yet aware that they may hire French conscientious objectors for their projects.

Nevertheless, the existing German and French provisions for conscientious objector service abroad provide the necessary precedent and the elements of a structure for a truly international service. Both experiments have brought fruitful results: They have shown that the problems of finance, administration and supervision facing any international scheme can be overcome, and that conscientious objectors can make a contribution to international peace and understanding. Instead of waiting for new laws that would specifically permit international service for conscientious objectors, the German and French conscientious objector and peace organisation have shown that much can be achieved by pushing existing legislation to its limit. They have pointed the way for other national organisations to look again at existing legislation in their countries to see if they too can push for an international extension of conscientious objector service. When they are ready, the organisations involved in existing international projects for conscientious objectors, such as ASF and SCI, will be able to provide the help and advice needed for national movements to move from receiving or host organisations for conscientious objectors to ones which could send their own conscientious objectors abroad.

Conclusion

International law, unexplored possibilities within national legislation, the support of international institutions, and the precedent of national projects all demonstrate the feasibility of an international alternative civilian service for conscientious objectors. We have seen how an argument can gleaned from resolutions passed by the Council of Europe and

the European Parliament. If the Eide-Mubanga-Chipoya Report is approved in two years time, this argument will carry much more weight. These same international bodies, along with the United Nations agencies, may also provide a possible framework for the development of projects and the carrying-out of a future international service, both a development service in the Third World that would be in keeping with the Lomé Accords on co-operation and development, and for a service within Europe, both East and West. Most importantly, we have seen how existing national programs for conscientious objector service abroad have dealt with potential obstacles and given an incentive for a future international service.

All the above points are necessary pre-conditions for an international service for conscientious objectors, but are they sufficient? Only a sustained international campaign pooling the experience of several decades of peace and volunteer social service in various countries, lobbying national and international institutions, spreading information, providing legal and administrative advice, training and supervising the work of volunteers, can in the end bring the ideal into reality. The European Bureau for Conscientious Objection is willing to take its place alongside other international and national organisations to see that this work for international peace and co- operation is carried out.

5 CONSCIENTIOUS OBJECTION AND CONSCRIPTION - CASE STUDIES

Guido Grünewald

5.1. THE GERMAN CASE

When on the 23rd May, 1949, the Parliamentary Council (Parlamentarischer Rat) enforced the Basic Law (Grundgesetz) of the Federal Republic of Germany, the right of conscientious objection was legally established for the first time in a German state. Article 4, paragraph 3 of the Basic Law says: "No one may be compelled, against his conscience, to perform military service as a combatant. Details shall be regulated by a Federal law." Considering the experience of World War II, the idea of war resistance has thus for the first time met with a broader response.

War Resistance before World War II

Up to the end of World War II, conscientious objection in Germany had been the matter of religious minorities. The ruling monarchs and dukes had granted various privileges to Mennonites and Quakers concerning the exemption from military service in return for a compensatory payment. But with the national unification by way of war and the establishment of the German Empire in 1871, these exceptional regulations were abolished. This was a logical consequence for a state striving in imperialistic expansions for a "place in the sun", with its military in an outstanding position in society. The bourgeois peace movement, especially the Deutsche Friedensgesellschaft (DFG = German Peace Society) which numbered about 10.000 members in 1914 in fact adopted a national view and assented to a war of defence. War Resistance was definitely rejected for "committing the terrible crime of betraying one's fatherland", as Alfred Herrmann Fried said, the theorist of the Peace Society up to World War I. As the Social Democrats too spoke in favour of defending the fatherland, there were only a few war resisters in Germany during World War I, most of which were members of religious sects, especially of the Seventh Day Adventists. The objectors were partly declared feeble-minded and deported to asylums, but some were even executed.

In Germany, war resistance attained significance only after World War I, then the movement of "Radical" or "Young Pacifism" developed, according to which the refusal of any kind of military service was regarded as a means to prevent war. The reasons for the rise of this new wing in the German peace movement were on the one hand the strong impression the movement of the British war resisters during World War I had left with some German pacifists who were in Britain at that time, but on the other hand the realisation that first of all conscription had given the world war its total character. The War Resisters gathered in the Bund der Kriegsdienstgegner (BdK = Union of War Resisters), founded in 1919. In 1921 the BdK took part in the foundation of War Resisters' International (WRI), the still existing international umbrella-organization of war resisters. But even at its zenith the BdK was not able to gain more than 3.000 members.

In the Peace Society, too, where the radical pacifists had taken over leadership in 1929, the number of members decreased at the end of the twenties. The war resisters failed particularly to establish permanent contacts with the working-class movement. Both organizations were dispersed by the National Socialists in 1933. During World War II,

there were about several thousand conscientious objectors in Germany, mostly Jehovah's Witnesses, the majority of which were killed in concentration camps. The reasons for the small number of German war resisters – apart from state terror – are foremost to be seen in the political atmosphere of the Weimar Republic which was pervaded by the idea of revising the treaty of Versailles and by striving for establishing Germany again as a great power which seemed to require a German rearmament. Another reason was the long authoritarian tradition to which the mere idea of war resistance seemed to be a sacrilege. Thus the churches supported Hitler's war till the end, and even the Bekennende Kirche (Confessional Church) which stood in opposition to nazism could not decide to condemn the German war of aggression.

Conscientious Objection as a Basic Right

After 1945 an anti-militarist and pacifist mood prevailed among the German population which had its root in the experiences of World War II and resulted in a rejection of any kind of military. Due to this mood statements about the right of conscientious objection and the proscription of war were for the most part embodied in the constitutions for the federal states which were passed in 1947 and 1948. Opinion polls made by newspapers showed that 85 per cent of those questioned asked for a constitutional right of conscientious objection. The Parliamentary Council, too, received numerous petitions from the population which demanded the right of conscientious objections. The constitution makers did not intend to concede conscientious objection only to religious minorities, as the following facts point out: when the later Bundespräsident (president) Heuss declared himself against the rights of conscientious objection saying that in a case of emergency "a mass abrasion of conscience" had to be apprehended, the social democratic deputy answered: "... We've gone through a mass sleep of conscience. During that mass sleep of conscience millions of Germans have said 'an order is an order', and according to that they killed. This paragraph may have a great educational effect and we hope it will have, because it gives everyone the decision of conscience whether he wants to accept such an order or, as colleague Dr. Schmid says, wants to serve his country in another way. Just in this situation after the war and after the totalitarian system, where we must put an end to this attitude 'an order is an order', I believe that if we really want to establish democracy this paragraph is appropriate."

The right of conscientious objection as it is fixed in the Basic Law is therefore a genuine, autonomous basic right which is not restricted to religious minorities and had constitutional primacy in comparison to conscription which was introduced later. The constitution makers expected by its introduction an educational influence, a democratic-emancipatory and peace securing effect. In connection with the peace commitment of the Basic Law as expressed in the articles 24 and 26 (inhibition of a war of aggression, assertion of a system of collective security) the right of conscientious objection actually gains political significance.

Early Limitations of the Basic Right of Conscientious Objection in the Process of Rearmai

When in the end of 1950 if became apparent that Bundeskanzler (chancellor) Adenauer and the governing political and economic forces in accord with the United States were

working for a German rearmament, the right of conscientious objection soon got under severe pressure. As the majority of the population strictly rejected a German military contribution up to the middle of the fifties, the basic right of conscientious objection seemed to be a hindrance in the government's view, particularly because many young people regarded war resistance as an appropriate means to express their protest against rearmament. The government itself excepted about 25 to 30 per cent of conscripts to refuse military service after the introduction of conscription. Therefore it became important to make the content of the executive law to article 4 paragraph 3 of the Basic Law which was going to be passed as restrictive as possible. Even though there was not yet any conscription leading politicians of the governing parties defamed war resisters as shirkers thus trying to put conscientious objection as a whole into twilight and to make the "true" objectors look like idealistic dreamers. The proposals made by the governmental camp during the debate about the executive law to article 4 paragraph 3 of the Basic Law clearly aimed at reducing the right of conscientious objection to an exception from conscription. The constitutional lawyer Ulrich Scheuner from Bonn who had a decisive share in the government's draft of the conscription bill wrote that the government did not consent to the attitude of war resistance. The conscientious objector had to realize "that he was expected to pass an alternative service in order to confirm his civic attitude and loyality". The alternative service should last longer than the military service, be paid worse and be performed in camps as a sort of "practical labour service". The Abteilung Blank (department Blank), predecessor of the ministry of defence, called the right of conscientious objection as exceptional right, too. The objector "may for his part reject military service and pass an alternative service – this right is explicitly granted. It is not to be restricted by the executive law. But he must not question the liability of a previously passed law of conscription or the right and the moral duty of the state to defend itself. That would be resistance. No state can allow that, unless he gives itself up."

In firm defence of the basic right of conscientious objection stood youth organizations, parts of the Protestant Church and pacifist organizations, which in 1949 had formed the Arbeitsgemeinschaft Deutscher Friedensverbände (ADF = Federation of German Peace Associations). Besides various small groups (German branches of Service Civil International and IFOR) three larger pacifist organizations arose after 1945. The Deutsche Friedensgesellschaft was founded anew 1945 by some people who had been active members already in Weimar Germany. Admittedly the Peace Society stood up for the right of war resistance for everyone but held a sceptical position against the idea of mass war resistance of the twenties and thirties when its appeal for mass war resistance had failed to meet with good response. The DFG concentrated on working out proposals to solve the German question and the Berlin problem during the following years. Within the peace movement it gradually lost its importance because it was not able to gain new members. On the other hand, the Internationale der Kriegsdienstgegner (IdK = International of War Resisters) founded in 1947 as successor of the BdK resumed the tradition of radical pacifism as laid down in the principles of WRI. In several initiatives the IdK interceded for a comprehensive legal regulation of conscientious objection. As a foreign policy it stood up for the neutralization of Germany. The IdK which numbered about 4.000 members in 1956 refused any one-sided comment on the cold war and accepted communists as members as long as they supported

the principles of pacifism. In 1953 the Gruppe der Wehrdienstverweigerer (GdW = Group of Objectors to Military Service) was founded in Cologne. the GdW did not represent the fundamental pacifism of WRI. It rather followed a pragmatic course and had set itself the task of defeating the compulsory military service and of propagating conscientious objection. It mainly relied on young workers and employees closely connected with the young trade-unionists and young socialists. Due to unconventional methods of propaganda (organization of car processions, spreading of small stickers) the GdW was able to win about 5.000 members until 1957.

Within the ADF a Ausschuss für Fragen der Kriegsdienstverweigerung (Committee for Questions of Conscientious Objection) was formed which tried to influence the legal regulation of conscientious objection by negotiating with the department Blank. In March 1954 the Committee presented the draft of an executive law to article 4 paragraph 3 of the Basic Law which conceded conscientious objection "based on moral reasons" and provided a tribunal which should consist of a judge and jurors to be nominated by the army, the chamber of physicians, the churches and the pacifist organizations. According to the draft the objector was obliged to perform either an alternative service without weapons in the army or a peace service between both of which he could choose. But despite its rather compliant position the Committee did not succeed to gain any concessions in the negotiations with the department Blank. In December 1954 the committee therefore felt compelled to warn against the plans of the department.

With the conscription law a far reaching limitation of the basic right of conscientious objection had become a law. It was passed on 6th July 1956 and defined the details of the principle laid down in article 4 paragraph 3 of the Basic Law. In this conscription law only those persons are acknowledged as conscientious objectors who "reject to participate in any use of arms in conflicts between the states". This means that against the votes of the catholic and protestant churches situational objections i.e. the refusal to serve in a specific war is not covered by the law. Besides it was resolved to introduce an examination of conscience and an alternative service which has to be passed outside of the army. The establishment of an examination of conscience created an unsolvable conflict: Since conscience cannot be examined by legal means and the courts in their jurisdiction defined conscience in an idealistic way, a psycho-pathological phenomenon is asked for as an evidence for the decision of conscience to be true; not the one who does not want to kill is acknowledged, but the one who cannot kill.

According to the law, the person who intended to reject military service had to put forward a written petition which should be well-founded. The tribunal consisting of a chairman and three assessors determined if the petition was justified. The chairman was appointed by the ministry of defence, while the assessors were elected like jurors. According to the law, the chairman who led the proceedings had no right to vote, he only advised the assessors. But in fact many cases were such that he impinged on the decision by his way of questioning and leading the hearing. If the objector was not acknowledged he had the right to claim a new proceeding at a second tribunal which likewise did not meet in public. In case of a repeated refusal he could appeal to an administrative court which decided definitively, except in cases of fundamental significance where a revision at the supreme administrative court was conceded.

The alternative service became effective only in 1960. Analogous to the military service its duration was fixed on 12 months. In 1962, both were extended to 18 months. The alternative service was to be performed mainly in hospitals, sanatoriums, asylums and nursing homes. Although this regulation was essentially moderated compared to the government's original draft, the alternative service turned out to be unattractive in the following years. Thus an inquiry made in 1965 showed that 28 per cent of the Zivildienstleistenden (ZDL = conscientious objectors performing alternative service) performed the jobs of unskilled workers. Furthermore many objectors had to put up with an interruption of their vocational education, for they were often summoned only several years after they had been acknowledged. Contrary to the decision of the war resisters to perform a peace service the alternative service did not offer any possibility to contribute to the social and political conditions of peace but showed clearly the characteristics of a mere substitute to military service.

War Resistance as a Marginal Phenomenon

After the introduction of conscription in 1956 the number of conscientious objectors remained surprisingly low. In 1957 and 1958 together only 2.500 young men refused military service, and also in the following years till 1966 the number stayed below 6.000 yearly (see table 1). The social stratification of the objectors corresponded chiefly to that of the population. Conscientious objection was generally founded on religious or humanitarian-ethical motives while political arguments were less important. During these years war resistance was characterized by individual renunciation of violence and of the armed forces without combining the refusal with its political and social background.

The small number of conscientious objectors was a surprise because even in the end of 1956 about 45 per cent of the population had declared themselves against conscription. The reasons for this development are manifold. All conceptions of security policy were dominated by the East-West conflict at that time. A deeply rooted anti- communism and the widely accepted enemy-image of aggressive world communism, which seemed to be confirmed by the Soviet intervention in Hungary in 1956, the ultimatum concerning Berlin and the construction of the Wall in 1961, made the Bundeswehr (Federal Armed Forces) look like an unavoidable burden. The refusal to perform military service, which was conceived as a necessary duty now, under these circumstances became suspicious to serve the interests of the enemy, even if involuntarily. Moreover conscientious objection looked like opposition to the state against the background of an authoritarian tradition. Thus for large parts of the youth a decision to refuse military service was equivalent to a break away from a commonly accepted field of conceptions which in addition had to be defended in front of a state tribunal. After all for many young men conscientious objection was no topical question since the army called up only about half of the conscripts so that there were many possibilities to get an exemption. It should also not be overlooked that larger parts of the conscripts at that time simply did not know that there was a basic right of conscientious objection which actually could be claimed.

Without doubt the unattractive alternative service and the examination of conscience formed a deterring barrier for conscientious objectors, too. Especially for potential objectors with a low educational level the examination of conscience worked as a preventive

deterrence, so that the basic right of conscientious objection gradually developed into a privilege of high school students who became over- represented among the objectors. Since complaint about inquisitional proceedings at the tribunals which were not public became more frequent in the sixties and some objectors even were arrested by the army after they had not been acknowledged at both stages of the tribunal and had consequently been called up, apparently even high school students were increasingly deterred by the examination of conscience. Otherwise it is merely possible to explain why the number of objectors stagnated or even decreased while at the same time especially young people participated in the yearly Easter-Marches with increasing numbers showing that the security policy by the government was no longer unanimously accepted by the youth.

During those years the pacifist organizations played a rather limited role. They counselled conscientious objectors and tried to assist them during the alternative service. The objectors were also supported by advisers nominated by the protestant church; the catholic church followed only after the Vaticanum II. To negotiate with the government on behalf of the conscientious objectors was now the business of the Zentralstelle für Recht und Schutz der Kriegsdienstverweigerer aus Gewissensgründen (Central Board for the Right and the Protection of the Conscientious Objectors) which in 1957 had succeeded the Committee for Questions of Conscientious Objection. Its membership included besides the pacifist organizations church groups and political youth organizations. The attempt of the Central Board to establish a peace service abroad failed since the government was not ready to make any concession.

The GdW was transformed into the Verband der Kriegsdienstverweigerer (VK = Union of Conscientious Objectors) in 1958 after some groups of the IdK had joined. The failure of a complete fusion of both organizations was mainly due to the fact that GdW claimed to include a rigorous anti-communist clause into the statute. This was rejected by most members of the IdK. Accordingly the VK followed a strictly anti-communist course during the following years. Consequently IdK and VK co-existed, largely without contact, although the membership demanded a fusion from time to time and there was a close co-operation in some districts. Both organizations were actively involved in the yearly Easter-Marches which started in 1960 and gradually gained momentum during the sixties. But even though both IdK and VK in fact became political peace organizations which criticised very early the plans for an Emergency Power Act and also organized early protests against the American war of aggression in Vietnam, their public image remained that of being associations of interests concerning conscientious objection. Both organizations did not succeed in enlarging their membership (together about 12.000) for most members left these organizations after they had performed alternative service. In the mid- sixties IdK and VK demanded the unconditional abolition of the examination of conscience for the first time.

"Silent Change" of a Basic Right as a Consequence of Rising Numbers of Conscientious Ob

Together with the protest movement of the youth in the end of the sixties war resistance evidently gained importance. In comparison with the preceding year the number of objectors doubled up to 12.000 in 1968 and mounted up to 40.618 in 1976. Conscientious objection lost its extreme minority character and was gradually accepted by the majority

of the public although it still was regarded as an exception. Opinion polls clearly showed that especially among young people conscientious objection was seen now as a legitimate alternative to military service. To the general public, however, war resistance remained ambiguous: The decision to refuse military service was still regarded as something disgraceful while at the same time the objectors as people performing alternative service i.e. transporting sick people, working in nursing assistance or ambulance service and assisting disabled persons, became increasingly popular.

The social stratification of conscientious objection changes. Since 1968 pupils and students became greatly over-represented; the increase in conscientious objection came mainly out of the middle class. The type of objector change as well. More in the foreground stepped the politically conscientious resister who did not see his decision as a pure personal confession but regarded it in its social context. Especially the American war of aggression in Vietnam played an outstanding role as an initiator for the decision to refuse military service, while resisting soldiers, whose number also enlarged considerably, mainly put forward the possibility of an internal intervention of the armed forces after the Emergency Power Act has been passed.

The politicians and the military reacted to the increasing number of war resisters with defamations and by taking administrative steps toward a further restriction of the right of conscientious objection. The Christian Democratic deputy Schröder spoke of an "organized misuse by extreme groups" while Helmut Schmidt, minister of defence at that time, held school responsible for the growing number of objectors. The number of so-called youth officers visiting schools who make there propaganda for the army increased while the organizations of the war resisters did not get access to schools. The stereotype statement that only every third objector was drafted to alternative service made them appear as shirkers, although according to official records the objectors were summoned to the same extent as the other conscripts (see graphic 1). In 1968, the Supreme Court passed a judgment saying that now the objector had to prove that his decision of conscience was a serious one. Moreover, the court considerably limited the possibility of conscientious objection on account of political reasons in 1971. The tribunals, too, became more and more repressive. The number of those objectors who were acknowledged decreased drastically, and in 1973 only 40,1 per cent of the proposers were acknowledged by the tribunals in the first stage, the corresponding numbers for the second stage of appeal and for the administrative court being 32,6 per cent and 69,5 per cent respectively (see table 2). The proceeding became more and more a lottery with ever decreasing winning numbers.

The alternative service, too, remained not untouched by this development. An attempt to put ZDL into central camps failed in 1970 due to a strike of those concerned who were supported by other ZDL and by parts of the public. In 1971 the ZDL founded the Selbstorganisation der Zivildienstleistenden (SOdZDL = Self-Organization of the ZDL). Various protest and a token strike on 1st April 1971 in which about 2.800 ZDL participated prevented the plans put forward by the newly appointed state agent for the ZDL (staatlicher Zivildienstbeauftragter) and some politicians to use ZDL for technical work (unskilled work at fire- brigades, the Federal Railway or the Federal Mail) to be realized. The amendment to the law on the alternative service in 1973 stated that the alternative service was to be performed mainly in the social field and established a special Bundesamt

für den Zivildienst (Federal Office for the Alternative Service). Compared to military service, the alternative service was prolonged to 16 months, and the disciplinary regulations were tightened up. The role of the ZDL remained confined to that of a low paid unskilled worker; it was not allowed that ZDL performed responsible jobs or came into contact with children and young people.

In 1973, military authorities aggravated the measures against the war resisters again. With reference to a law passed in the time of Hitler, the military authorities attempted to penalize the advisers of the pacifist organizations for ostensibly improper legal aid. Thus they tried to deter the advisors and to incriminate the pacifist organizations. In fact, all proceedings had to be stopped later, however, since the public did not support these measures.

At the same time, more and more objectors were drafted into the army because their petitions were definitively considered. Because a great part of the called-up refused to wear a uniform and to use weapons according to their decision of conscience, many objectors were sentenced to several months imprisonment, other fell mentally ill or evaded the call-up by fleeing abroad. A few even committed suicide. Altogether several thousand objectors were subject to this practice. The Supreme Court in several judgments sanctioned the criminal prosecution of conscientious objectors by stating that in times of peace the "ability of activity" of the armed forces is superior to the basic right of conscientious objection. The Supreme Court thus paved the way to reduce the content of article 4 paragraph 3 of the Basic Law by legal means even though the constitution says that basic rights are not to be restricted.

The Failed Attempt to Reform the Law Concerning Conscientious Objection

Under the impression of the aggravated examination of conscience a minority opinion developed in the juridical literature which considers it impossible to examine conscience by legal terms and therefore concluded that the tribunals were against constitution. Above all the state examination of conscience was increasingly criticised by the public. Political youth organizations, the trade unions (DGB = Deutscher Gewerkschaftsbund), the federation of youth organizations (Bundesjugendring) and the synod of the protestant church all spoke up for the abolition of the examination of conscience. The Katholische Arbeitsgemeinschaft für Kriegsdienstverwigerung and Zivildienst (KAK = Catholid Committee for Conscientious Objection and Alternative Service) and the Evangelische Arbeitsgemeinschaft zur Betreuung der Kriegsdienstverweigerer (EAK = Protestant Committee to Assist Conscientious Objectors) held a conference in April 1974 where several hundred of church advisers for conscientious objectors and assessors at the tribunals demanded the abolition of the examination of conscience. The Deutsche Friedensgesellschaft-Vereinigte Kriegsdienstgegner (DFG-VK = German Peace Society-United War Resisters) presented a draft of a law according to which every war resister had to be acknowledged within one month after having filed a written petition; he should be obliged to perform a peace service of 15 months. (With about 13.000 members, the DFG-VK was by now the largest pacifist organization after in 1968 first DFG and IdK had merged and the VK had joined in 1974.) Even the governing parties SPD (Social Democratic Party) and FDP (Free Democratic Party) supported the abolition of the examination of conscience. They were motivated by

the public opinion which in face of reports about objectors being arrested by the army and a reduced feeling of threat due to the policy of detente supported by majority a free choice between military and alternative service. Especially young people about whose votes there was a strong competition at that time opposed the state examination of conscience increasingly. For the government to give in to this mood, however, has to be attributed to the fact that up to the mid- eighties a surplus of conscripts was to be expected.

The parliamentary parties of the coalition in June 1975 presented a draft of a bill which already had been modified due to an intervention by the minister of defence. The draft provided that for conscripts who had not been called up the examination of conscience should be suspended. In case that not enough conscripts were available for the armed forces the tribunals were to be established again. For conscripts who had not yet been called up or who as reservists had filed a petition the tribunals should remain in force. According to the governing parties the alternative service was to be prolonged to 18 months. Morowver, in the future ZDL should be employed in places far from their homes, they should be employed even in civil defence and partly be put into central camps.

The parties of the opposition CDU (Christian Democratic Union) and CSU (Christian Social Union) presented an alternative draft which in principle held on to the tribunals and pleaded only for them to be improved and accelerated. Actually the Parliament (Bundestag) passed the draft of the governing parties in April 1976, but the parties of the opposition managed this draft to fail due to their majority in the Bundesrat (chamber consisting of representatives of the federal states). Then the coalition presented a slightly modified draft in February 1977 which was passed by the Parliament in May.

The reform act came into power on the 1st August 1977. It had many shortcomings. Since the tribunals were to be established again if there were too many conscientious objectors finally conscientious objection was linked to the personnel-planning of the armed forces. Thus the primacy of armed defence of the country over the basic right of conscientious objection was fixed. The prolongation of the alternative service offended against article 12a paragraph 2 sentence 2 of the Basic Law, according to which the alternative service shall not last longer than the military service, and had a clear function of deterrence. It was also critizised that for conscripts already called up and for reservists the tribunals remained in force and thus two classes of conscientious objectors were created. Moreover, there was no provision for any amnesty for those objectors who obeying their conscience had come into conflict with the law. The federal states were requested only to reprieve those objectors who just were in prison.

Even that compromising law had no chance. The opposition appealed to the Supreme Court (Bundesverfassungsgericht) which previously stopped the new regulation on the 1st December 1977 and finally abrogated in on the 13th April 1978 saying that it offended against the constitution. A token strike of one day at 27th December 1977 in which 5.000 out of the 24.000 ZDL took part and a rally in Dortmund at the following day in which 12.000 people participated did not have any influence on the decision of the court.

In its judgment the Supreme Court rejected the free choice between military and alternative service as offending the constitution. Only those conscripts were to be recognized as conscientious objectors whose decision of conscience the auhtorities were sufficient certain to be true. The Supreme Court, however, left it up to the legislator how to determine

whether a decision of conscience was true. The court judged the former tribunals to be compatible with the constitution. Instead of the tribunals, however, the alternative service could be organized in such a way that normally no fake objectors were to be expected. In this context the court did not have any objections to prolong the alternative service up to 24 months.

The judgment of the Supreme Court was the last one step on as way by which a basic right which originally has been granted unconditionally was transformed to a basic right with numerus clausus (closed numbers). The Supreme Court that only in 1970 characterized the right of conscientious objection as an "irrevocable, not limitable basic right" actually established the primacy of the military, since it implicitly consctructed a constitutional order for the armed defence of the country, and thus degraded the basic right of conscientious objection to an exceptional right. Thereby the court adopted the doctrine of a constitutional order for the armed forces which had been developed above all by jurists being employed by the minister of defence in the public discussion about reforming the examination of conscience. In fact the corresponding provisions of the Basic Law (article 87a paragraph 1, article 73 sentence 1 and article 12a paragraph 1) only make possible the armed defence of the country. They empower the legislator to establish general conscription, but they do not oblige them to draw up an army or to establish conscription and to keep it. Accordingly, one of the judges in the Supreme Court reproached his colleagues in a minority vote for having passed a legally untenable judgment.

Statistical manipulation by the defence authorities played a role in finding this judgment, too. An artificially increased demand for the armed forces was constructed while the numbers of the petitions filled by conscientious objectors were inflated by double-counting those petitions which had been filed according to the provisions of the former law and precautionary had also been filed according to the provisions of the new law. By this way the court was influenced by suggesting that already within the next years too few conscripts were available for the armed forces and that there were too few jobs for conscientious objectors so that many objectors had not to perform any service at all. The government did not counter these manipulations. By their behaviour during the trial observers had the impression that they were not unhappy about the failure of that law which had mainly been passed due to the pressure of the leftist deputies.

The Last Step: The Supreme Court Sanctions the "Silent Change of Constitution"

After the reform act had failed the old examination procedure was in power again. According to observers the proceedings were partly even more restrictive than formerly so that conscientious objectors were imprisoned by the army again. The Zentralstelle organized a conference "Freedom of Conscience as a Human Right" in March 1981 where is was again proved that the proceedings at the tribunals were arbitrary and where the abolition of the tribunals was demanded unconditionally. ZDL increasingly were employed in places far away from their homes. The attempt to put ZDL into a central camp in Dortmund failed again because of the opposition the concerned ZDL who got support by the welfare organizations they were employed with.

In spite of these deterring conditions the number of conscientious objectors still increased (see table 1). Since only few proceedings had been held in 1977 because everybody

had been waiting for the reform act tens thousands of petitions piled up at the tribunals. The politicians therefore had to look for a new solution.

A group consisting of members of all parliamentary parties presented the draft of a bill in May 1979 which provided an examination of the written petition which had to be filed together with an explanation; a hearing was to be held only in case of doubt. The draft failed, however, since the CSU led by Franz-Josef Strauss insisted on the hearing as a rule and on prolonging the alternative service to 18 months. The governing parties SPD and FDP and the parties of opposition CDU and CSU then presented separate drafts in May 1979. According to the draft of the governing parties it was possible to acknowledge the objector without a hearing; the alternative service should last 16 months as formerly. The opposition insisted on a hearing in principle and intended to extend the alternative service to 18 months. The prolongation was justified by arguing that soldiers are obliged to participate in military exercises after having performed military service. In fact only one sixth of the conscripts is called up to military exercises, and related to all reservists the military exercises lasted 3,5 days on the average during the preceding decade.

In the end the draft of the governing parties came to continue the examination of conscience, too, since it should not be allowed to acknowledge the conscientious objectors without a hearing if they used identical phrases in their written explanations. With more than 40.000 petitions per year this was inevitable, however. Therefore both drafts were critizised by the organizations of war resisters and by the two major churches at a hearing held by the Parliament Committee for Labour and Social Welfare (Bundestagsausschuss für Arbeit und Sozialordnung) on 16th January 1980. When they voted in Parliament on 3rd July 1980 eleven Social Democratic deputies voted together with the opposition and therefore the draft of the governing parties was rejected as a consequence. The draft of the opposition was rejected, too.

After the Parliamentary elections in October 1980 SPD and FDP supported a serious prolongation of the alternative service, too. A draft put forward by the Social Democratic Minister Of Labour and social Welfare already provided that the alternative service should last 20 months. But in spite of increasing numbers of conscientious objectors and a growing peace movement nothing happened until the autumn of 1982. After the FDP had left the government and had formed a new coalition with CDU and CSU (Helmut Kohl became the new Chancellor on 1st October 1982), both the governmental parties and the SPD now in opposition presented new drafts in November and October respectively. Both draft had in common that conscripts who had not yet been called up could be acknowledged by a written procedure without a hearing, that for soldiers, reservists and notified conscripts the former examination of conscience should remain in force essentially and that the alternative service was to be prolonged. They differed as to how detailed the written petition was to be explained and documented, whether the chairman of the tribunal should be employed by the minister of defence and how long the alternative service should last (19 versus 20 months). At a hearing on 8th December 1982 both drafts were critizised sharply by a large majority of the invited experts, the organizations of war resisters and the trade unions. Nevertheless, the draft of the governing parties was passed in Parliament already on 16th December 1982. A motion put forward by the SPD that the government should prepare an amnesty for objectors who had not been acknowledged and therefore had evaded military

service was rejected. On 27th January 1983 several thousand ZDL protest by a token strike and demonstrations against the new regulation.

The new law came into power on 1st January 1984. Provisionally it is limited to 30th June 1986. According to the law there is a first examination by the Bundesamt für den Zivildienst for conscripts who have not yet been called up. This examination is based on the written explanation, detailed curriculum vitae, certificate of conduct by the police. The Bundesamt can reject the petition if it considers the explanations of the objector to be inconclusive; then the objector can appeal to an administrative court. If the Bundesamt doubts that the statesments made by the objector are true the petition is passed on to the tribunal which in principle holds a hearing. The chairman of the tribunal is appointed by the minister of defence and has full voting power. If the objector is rejected he can appeal to a second tribunal and finally to an administrative court if he is rejected again. For soldiers, reservists and notified conscripts the oral examination of conscience continues.

According to the new law the alternative service lasts one third longer than the military service (today 20 months). It has been transformed to a longer and more troublesome alternative. ZDL today often are employed in places far away from their homes. Actually also the new law fixes the priority of social welfare as field of employment, but ZDL can also be employed now in environmental conservation and in conservation of nature as well as in landscape management which allows for jobs which differ not too much from a labour service. The number of "easy" administrative jobs has been reduced sharply (for the division related to the fields of work see table 3). Moreover, the ZDL are increasingly housed collectively but presently there are no plans to put them into central camps apparently.

The new law of conscientious objection combines in a cumulative way the two options allowed by the Supreme Court, namely to continue a formal examination of conscience and to aggravate the alternative service. The tribunals have not been abolished at all. The proportion of those acknowledged at the new tribunals is even lower than previously. In 1984, only 47 percent of the objectors were acknowledged at the tribunals in the first stage; in the second stage of appeal 50 per cent were acknowledged and 56 per cent at the administrative courts. In the written procedure the Bundesamt in many cases asks questions concerning the content of the petition and explanation. Since the law came into power the Bundesamt actually has acknowledged more than 85 per cent of the objectors. But is should not be overlooked that momentarily about one third of the jobs in the alternative service are not filled. The vague wording of the law makes two extremes possible: that 99 percent of the objectors are acknowledged or that 99 per cent are rejected. Against the background of too few conscripts in the years coming due to the slump in the birth rates there is a reason to be afraid that the present liberal practice of acknowledgement by the Bundesamt will be aggravated sharplyu in future.

On the 2nd October 1985 the government has stated in a report that the new law concerning conscientious objection and the new regulation of the alternative service have proved worthwhile. The government therefore has decided to extend the law up to 31st December 1990. Since the military service is to be prolonged to 18 months from 1st July 1989 the duration of the alternative service will be 24 months then. The Supreme Court explicitly has sanctioned such a duration when on 24th April 1985 it rejected an appeal concerning the new law made by the federal states of Bremen, Hamburg, Hessen and

Nordhein-Westfalen all of which are governed by the SPD and by the parliamentary party of the SPD. In its judgment the Supreme Court against the facts explicitly stated that there is a "constitutional basic decision for an effective defence of the country by arms" and justified the longer duration of the alternative service by arguing that the legislator is allowed to compensate for the (allegedly) uneven burden in the military and alternative service. Two judges have contradicted the decision in a minority vote.

As a consequence to the degradation of the basic right of conscientious objection sanctioned by the Supreme Court there is an intensified discussion about absolute resistance (Totalverweigerung). The radical resisters radically reject any participation in the preparation for war. Consequently they refuse to perform the alternative service, too, arguing that it is a ffulfillmentof conscription and an integral part of modern war-fighting concepts. The first absolute resisters appeared in the mid-seventies. Meanwhile they number between 10 and 30 per year. The defence authorities today press for a severe punishment and summon the absolute resisters anew if they have got less than one year of imprisonment.

Conclusion

With the judgment of the Supreme Court in April 1985 the basic right of conscientious objection has been actually depraved of its privileged status. A basic right which was guaranteed unconditionally by way of a silent change of the constitution has turned into a basic right with numerus clausus which gets restricted if there are too many conscientious objectors. The freedom of conscience which as a lesson derived from the terror of totalitarian nazism and German militarism was meant to protect the individual from compulsive claims by the state has actually been degraded to a function of conscription. The chairman of the Zentralstelle reverend Ulrich Finckh therefore has called the judgment of the Supreme Court as "ideological coup d'etat" by which the free democratic constitutional state has been transformed into an authoritarian constitutional state.

The government and the military were able to push through this develpment in spite of a growing peace movement which in the years from 1981 to 1983 succeeded in bringing hundreds of thousands of people into the streets. An action conference of the peace movement held in November 1983 actually called for massive war resistance as an answer to the deployment of Pershing II and cruise missiles, and in December 1983 some well known writers made a similar appeal to the public. But while in certain occupational groups like for instance among physicians and nurses it is discussed to refuse to participate in exercises for disaster control which are linked to civil defence, the appeals for massive war resistance have met with little response. Apparently most supporters of the peace movement are atomic pacifists which still believe in the necessity of conventionally equipped forces.

Vice versa for the conscientious objectors it is true that the objection which is motivated politically for some time already has decreased. The vast majority of the objectors today is unpolitical. Only a few of them take part in peace activities, and most of them are distinct individualists. Thus only a few become members of the organizations of war resisters, so that the DFG-VK for example have the impression that for many objectors the decision to refuse military service is less a decision against actual preparation for war than a decision for the alternative service being one of two compulsory state services.

Objectively the basic right of conscientious objection and the decision to refuse military service nevertheless has a political dimension as the reaction by the government and the military shows. By means of military service and maneuvers the state demonstrates that the option of the use of military force is still a possible and legitimate one. That is questioned by the refusal to perform military service notwithstanding if that is a politically conscious decision or is due to a basic civil orientation. Analysing essays written by pupils and group discussions held by young people about military service, the peace researcher Hanne-Margret Birckebach has shown that young people in general, including those who actually perform military service, have an unambiguous civil orientation due to the process of civilization (Norbert Elias) and that they reject the use of military force. The military service, however, fulfills a conservating and integrating function in that it seemingly promises the young men relief from the working system they experience as boring and repressive. Thus they hope on the one hand to escape the system of control of the civil work and to get again a chance to play while on the other hand they hope to learn there the discipline necessary to endure in an alienated system work. If this is true it is possible in principle to convince the conscripts of the potentially peace endangering effect of the military service. But as long as the pacifists do not succeed in replacing military service by pacifist vivacity as a means by which the civil working conditions can be born and changed conscientious objection in the Federal Republic of Germany will remain the matter of a minority and the basic right of conscientious objection actually will continue to be an exceptional right.

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Appendix

Table 1

Development of the number of petitions filed by conscientious objectors 1956-1984

Year the petition was filed	total number of petitions	petitions filed by soldiers
1956-58	2447	32
1959	3257	51
1960	5439	68
1961	3804	90
1962	4489	162
1963	3311	217
1964	2777	205
1965	3437	272
1966	4431	418
1967	5963	871
1968	11952	3495
1969	14420	2600
1970	19363	3198
1971	27657	3805
1972	33792	3305
1973	35192	3100
1974	34150	2684

		petitions filed by	
		notified conscripts	soldiers
1975	32565	1103	1386
1976	40618	474	1439
1977	*69969	1962	2114

		petitions filed by		
		notified conscripts	soldiers	reservists
1978	39698	1463	1196	1703
1979	45454	1387	2155	2436
1980	54193	1500	2642	4737
1981	58051	1307	2712	5767
1982	59776	1016	2723	5952
1983	68334	616	1955	6157
1984	43875	731	1583	4822

* 34692 petitions filed according to the provisions of the new law.

Table 2

Proportions of acknowledged at the tribunals and the administrative courts in the years 1967

Year	Prüfungsausschuss tribunal, 1.stage	Prüfungskammer tribunal, 2.stage	Verwaltungsgericht administr. court
1967	65,2	54,1	
1968	66,3	55,6	
1969	64,4	49,2	
1970	57,0	49,5	
1971	51,3	42,0	90,0
1972	44,2	33,9	68,1
1973	40,1	32,6	69,5
1974	45,5	35,9	65,6
1975	50,8	38,1	

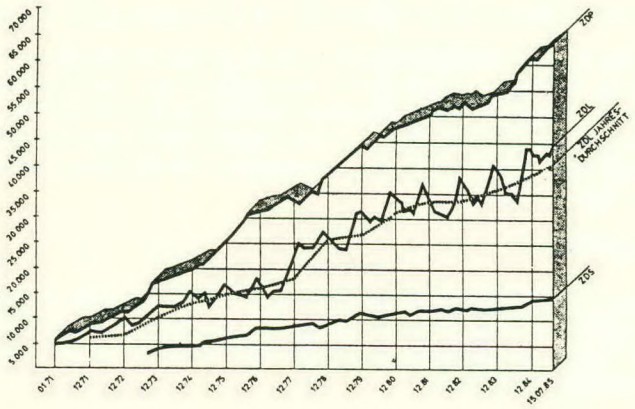
Table 3

Division of the jobs for ZDL related to fields of work and personnel (date: 15th July 1985)

field of work	number of jobs	in percent	number of jobs occupied	in percent
01 nursing assistance	37.296	57,9	24.770	66,4
02 craft activities	7.897	12,3	5.480	69,4
03 Gardening and agricultural activities	1.282	2,0	797	62,2
04 commercial and adminstrative activitis	2.668	4,1	1.010	37,9
05 supply activities	3.024	4,7	2.065	68,3
06 activities in environmental conservation	727	1,1	493	67,8
07 driver's service	2.141	3,3	1.578	73,3
08 activities in transportation of sick people in ambulance service	7.110	11,0	5.208	73,2
09 individual assistance to severely disabled persons	2.301	3,6	1.337	59,8
Total	64.446	100,0	42.778	66,4

Graphic 1

Institutions employing ZDL and jobs for ZDL in the years 1971 to 1985 (date: 15th July 19



ZDS = institutions employing ZDL (Zivildienststellen)
ZDL-Jahresdurchscnitt = ZDL on yearly average
ZDL = conscientious objectors performin alternative service (Zivildienstleistende)
ZDP = jobs for ZDL (Zivildienstplätze)

Jens Drivsholm

5.2. SCANDINAVIA

5.2.1. CONSCRIPTION IN DENMARK

Who?

All healthy men over the age of 18 are obliged to perform military service. But in fact not all men are called up. Further the possibility for more optional sort of military service by renunciation of the service-lottery after the examination of those liable for military service, increases the chances getting a Blank. The 'blanks' are transferred to a category of reserve. Excepted are certain urgent needed skills, who have none or little chances to 'escape' even if they are in 2nd class healthy.

Which Service and Where?

On the session of examination, the young man is asked if he has some wishes. Often he (maybe later) chooses to renounciate the change for a Blank to get better odds for his wish, if his number is low. Some middle groups in the service-lottery will get a transfer to the municipal/parochial civil defence.

Objection

If the young man refuse to have any affairs with the conscription system he will have to pay for it, and he will end in prison to make his 'service'.

Else if he joins the session of examination and in writing states that he has literally 'conscientious reasons' for the objection, at the latest within four weeks of the receipt of the call-up papers, he will be transferred to civilian service.

Length

It has been 9 months for compulsory military service. Doctors and dentists respectively 13 and 14 months as officers.

But the latest amicable settlement in the Parliament about the Defence states the possibility for 12 months for action-troups and engineers.

On the other hand compulsory civil defence service used to be 8 months inclusive guard duty but is now lowered to 6 months. (There is a big need for sub-officers who will have further 3 months.)

Municipal/parochial civil defence service is 1 month + 50 hours per year in two years. (When changed to civilian service it is 11 weeks.)

Compulsory civilian service (conscientious objection) is 11 months.

Total objectors normally get 9 months in prison but can be released after half time for good conduct.

Changes

Right now this late autumn (1985)the government is trying to make the civilian service to a real service of replacement. If it is passed through it means that civilian service = actual military or civil defence service + 1 month. E.g. 7, 10, 13,14 or 15 months. It is p.t. uncertain how long time "conscientious objectors-from-the-beginning" will have to serve.

Other reduction to the civilian service is included as well.

This is in broad line some key information on the compulsory service in Denmark.

Martin Scheinin

5.2.2. CONSTITUTION, CONSCRIPTION AND CONSCIENTIOUS OBJECTION IN FINLAND

Introduction

The task of this paper is not to give a general outline of the finnish situation concerning conscientious objection. In this respect I refer to the annex of my paper which gives a summary of the Finnish law on CO's now and after 1987. (1)

The purpose of my paper is to wiew at the Finnish system of conscription and conscientious objection from the point of wiew of constitutional law and especially the fundamental rights of citizens.

The Constitution of Finland

The most important fundamental law of Finland is the Constitution Act of Finland (Suomen Hallitusmuoto), which originates with only minor amendments from 1919. The Constitution Act was not very modern even at the time when it was created, but now the Finnish constitution is one of the oldest and most old-fashioned in Europe. The Constitution Act (below: CA) contains certain articles concerning the fundamental rights of citizens (chapter II), but these provisions are defective, general and - when their actual effects are concerned - ambiguous.

The Finnish constitution is a combination of parliamentary democracy and strong presidential power. A unique feature is the institution of so-called exceptional laws. They are laws which are considered to be in some respect deviations from the contents of the constitution, for instance laws which contain limitations to the fundamental rights of citizens. In Finland a bill which is concerned to be inconsistent with the constitution is not rejected, nor is the constitution amended so that it permits the limitation proposed in the bill. The Finnish solution is to accept the bill by the same qualified majority which is needed to amend the constitution. In practice this means a 5/6 majority in one Parliament or approval in two Parliaments with intervening elections and a 2/3 majority in the latter Parliament. Here lies also a juridical basis for the Finnish consensus-democracy.

There is no constitutional court in Finland. Neither do the courts have the right to investigate the constitutionality of laws passed by Parliament. This means among other things that the fundamental rights of the citizens do not give protection against laws, even if the citizen considers the law to violate a fundamental right safeguarded by the written constitution.

CA does contain a provision (art. 92) which gives protection against inconstitutional decrees passed by the government: "If a provision in a decree is contrary to a constitutional or other law, it shall not be applied by a judge or other official." (2)

The situation described above means that the control of the constitutionality of bills and the protection of fundamental rights is strongly in the hands of Parliament itself. In

practice it is Parliament's Committee on Constitutional Law which performs this task. It decides whether a bill can be accepted in the normal manner or does it need a backing of a 5/6 majority in order to be enacted.

The democratic aspect of this situation is that Parliament itself has the legislative power and the task to protect the fundamental rights of citizens. The problem is that questions concerning constitutionality of a bill and protection of important fundamental rights are often turned into an arithmetical question concerning the needed qualified majority. Fortunately there is a tendency that the Committee on Constitutional Law pays nowadays more attention to real protection of fundamental rights than it did in previous decades.

Conscription and the Constitution

Finland is very strongly a country of general conscription. This has to do with historical and psychological reasons. Military service is compulsory and even if some 10 per cent of conscripts are disqualified because of medical reasons, this disqualification rate is remarkably smaller than in many other countries.

Finnish constitution does not, however contain a provision concerning conscription. The committee which drafted CA proposed such a provision, but in the eventful process of making CA in 1917-1919 this provision was substituted with the following: "Every Finnish citizen must take part in, or make his contribution to, the defence of the Country as prescribed by law." (Art. 75). The formulators of this provision justified their proposal explicitly with the need to leave open the choice between different systems of organizing the defence of the country. My interpretation is that as Finland had just gone through a civil war between the Reds and the Whites, a military system based on general conscription was to some extent regarded as politically dangerous as it would give arms also to the hands of the defeated Reds or their sons.

History is, however, capricious. Meanwhile the process of making CA was still unfinished, a temporary Military Service Act was accepted, also in 1919. This law was not based on the provision of the actual CA, but on the draft provision contained in the proposal of the preparatory committee. All the subsequent Military Sercice Acts (1922, 1932, 1950) have had their starting point in the temporary law of 1919 and their constitutionality and relationship to article 75 of CA has never been examined by Parliament's Committee on Constitutional Law.(3)

Article 75 of CA is not a provision presupposing conscription. It permits conscription (as well as other systems of organizing the country's defence, including unarmed civil resistance). And for the citizen, it does not set a duty (to perform military service), but it is a provision of liability: Because of article 75 of CA every citizen is in a position that the legislative has the power to create a duty to take part or assist in the country's defence. This power is used by accepting laws.(4)

I think that the question of so called constitutional duties or fundamental duties is more general than a question dealing just with the Finnish case. There exists a strong opinion at least since the Weimar repuplic in Germany that a constitution of a democratic society is always asymmetric in that respect that the constitution can grant citizens genuine freedoms (privileges) and even rights but it is doubtful if one can speak of "fundamental