Appendixes

Conscription as a global phenomenon

| Conscription | No conscription |
|---|---|
| THE AMERICAS | |
| *Argentina | Barbados |
| Bolivia | Canada |
| Brazil | Costa Rica |
| *Chile | Dominican Republic |
| *Colombia | Grenada |
| *Cuba | Guyana |
| *Ecuador | Jamaica |
| El Salvador | Panama |
| Guatemala | USA |
| Haiti n.e. | |
| Honduras n.e. | |
| Mexico | |
| Paraguay | |
| *Peru | |
| Puerto Rico n.e. | |
| *San Marina | |
| Uruguay | |
| *Venezuela n.e. | |
| THE PACIFIC | |
| Korea Democratic | Australia |
| People's Republic | Fiji |
| Korea Republic | Hong Kong |
| Philippines n.e. | Japan |
| | Nauru |
| | New Zealand |
| | Papua / New Guinea |
| | Samoa / Tonga |
| THE ATLANTIC | |
| Cape Verde | Bahamas |
| | Trinidad and Tobago |

EUROPE

*Albania
Austria
Belgium
*Bulgaria
*Cyprus
*Czechoslovakia
France
German Democratic Republic
German Federal Republic
Gibraltar
Greece
Hungary
Italy
Poland
Portugal
*Rumania
Spain
Switzerland
*Yugoslavia
Holy See
Ireland
Liechtenstein
Luxembourg
Malta
Monaco
United Kingdom

SCANDINAVIA

Denmark
Finland
Norway
Sweden
Iceland

AFRICA

| | |
|---|---|
| *Algeria | Botswana |
| *Angola | Brunei |
| *Benin | Burundi |
| *Egypt | Cameroon |
| *Equatorial Guinea | Central African Republic |
| *Gabon | Chad |
| *Guinea | Congo |
| *Ivory Coast | Ethiopia |
| *Libya | Gambia |
| Madagascar | Ghana |
| *Mali | Kenya |
| Morocco | Lesotho |
| Namibia | Liberia |
| *Niger | Malawi |
| South Africa | Mauritania |
| *Tunisia | Mauritius |
| Upper Volta n.e. | Nigeria |
| Zaire n.e. | Rwanda |
| | Senegal |
| | Sierra Leone |
| | Somalia |
| | Sudan |
| | Surinam |
| | Swaziland |
| | Tanzania |
| | Togo |
| | Uganda |
| | Zambia |
| | Zimbabwe |

ASIA

| | |
|---|---|
| *Afghanistan | Bangladesh |
| *Burma | Bhutan |
| *China | India |
| Kampuchea | Indonesia |
| Laos | Malaysia |
| Mongolia | Nepal |
| *Singapore | Pakistan |
| *Thailand | Sikkim |
| *USSR | Sri Lanka |

MIDDLE EAST

| | |
|---|---|
| Iran | Bahrain |
| Iraq | Lebanon |
| Israel | Oman |
| *Jordan | Qatar |
| Kuwait | United Arab Emirates |
| *Saudi Arabia | |
| *Syria | |
| *Turkey | |
| Yemen | |

* indicates that these states make no provision for conscientious objection to military service.

n.e. indicates that, though there may be legislation for conscription, it is not generally enforced.

A comparative table reflecting the variety of needs felt by states for military personnel

| | Ratio of military to medical personnel (early 1980's) | Conscription | Population-millions mid '80s | Military mid '82 | Increase after full mobilisation of reserves 1982 |
|---|---|---|---|---|---|
| +Ethiopia | 122.0 : 1 | None | 31,5 | 250.000 | up to 50% |
| Syria | 35.4 : 1 | No CO provision | 9,0 | 222.500 | up to 50% |
| Afghanistan | 25.8 : 1 | No CO provision | 15,9 | 46.000 | up to 600% |
| Israel | 22.0 : 1 | Conscription | 3,9 | 174.000 | up to 100% |
| Iraq | 21.0 : 1 | Conscription | 13,1 | 342.300 | up to 100% |
| Cuba | 8.3 : 1 | No CO provision | 9,9 | 127.500 | up to 50% |
| Iran | 6.1 : 1 | Conscription | 33.1 | 2.350.000 | up to 400% |
| Egypt | 5.1 : 1 | No CO provision | 39,8 | 452.000 | up to 100% |
| China | 4.7 : 1 | No CO provision | 976,6 | 4.000.000 | up to ? |
| India | 3.2 : 1 | None | 673,2 | 1.104.000 | up to 50% |
| World average | 2.3 : 1 | (NB 26m in military uniform; 52m civilian support service for the military) | | | |
| USSR | 1.5 : 1 | No CO provision | 266,7 | 3.105.000 | up to 400% |
| USA (approx.) | 1.5 : 1 | None | 227,3 | 2.116.800 | up to 100% |
| German Fed. Rep. | 1.4 : 1 | Conscription | 60,9 | 495.000 | up to 400% |
| France | 1.3 : 1 | Conscription | 53,5 | 492.000 | up to 100% |
| Italy | 1.2 : 1 | Conscription | 56,9 | 370.000 | up to 400% |
| *South Africa | 1.0 : 1 | Conscription | 29,3 | 81.400 | up to 400% |
| UK | 1.0 : 1 | None | 55,9 | 327.600 | up to 100% |
| Sweden | 1.0 : 1.2 | Conscription | 8,3 | 64.500 | up to 600% |
| Finland | 1.0 : 1.3 | Conscription | 4.9 | 36.900 | up to 600% |
| Norway | 1.0 : 1.3 | Conscription | 4,1 | 421.000 | up to 100% |
| Japan | 1.0 : 2.3 | None | 116,6 | 245.000 | up to 50% |
| Canada | 1.0 : 2.8 | None | 23,9 | 82.900 | up to 100% |

+ The only military government in this list.

* The South African figure is distorted because conscription applies only to white South Africans, the white population is 4.0 m.

These statistic are taken from The War Atlas by Kidron and Smith, Pan Reference 1983 and originate in IISS & WHO documents. Their accuracy in detail is less significant than the relative positions of states.

See also the position of the same states in world arms trade table.

Comparative table of world arms exports

| | World arms exports % of world trade 1977-80* | 1979-81+ |
|---|---|---|
| Ethiopia | - | |
| Syria | - | |
| Afghanistan | - | |
| Israel | - | |
| Iraq | 0.017% | |
| Cuba | 0.026% | |
| Iran | - | |
| Egypt | 0.13% | |
| China | 0.58% | |
| India | 0.021% | |
| USSR | 27.4% | 36.5% |
| USA | 43.3% | 33.6% |
| German Fed. Rep. | 3.0% | 3.0% |
| France | 10.8% | 9.7% |
| Italy | 4.0% | 4.3% |
| South Africa | 0.2% | |
| UK | 3.7% | 3.6% |
| Sweden | 0.48% | |
| Finland | 0.19% | |
| Norway | 1.3% | |
| Japan | 0.016% | |
| Canada | 0.31% | |

* USA Arms Control & Disarmament Agency. Kidron & Smith. + SIPRI Yearbook 1982. Kidron & Smith. The six states mentioned here share 90% of world trade in arms.

EUROPE. COMPARATIVE TABLE

| Country | Min. length of basic military training | Min. length of alternative service | Type of service available (replacing mil. service) | | No. of men liable for conscription | No. of applicants for CO status | Percentage of COs cf. military conscripts | Year in which statistics taken |
|---|---|---|---|---|---|---|---|---|
| | | | within army | outside army | | | | |
| ALBANIA | 24 months | none provided | n.a. | n.a. | n.k. | n.k. | n.k. | — |
| AUSTRIA | 6 months | 8 months | yes | yes | n.k. | 4,242 | n.k. | 1982°° |
| BELGIUM | 10 months | 15 months | yes | yes | c. 49,250 | 2,428 | 4.93 % | 1982°° |
| BULGARIA | 24 months | none provided° | n.a. | n.a. | n.k. | n.k. | n.k. | — |
| CSSR | 24 months | none provided° | n.a. | n.a. | n.k. | n.k. | n.k. | — |
| CYPRUS | 26 months | none provided | n.a. | n.a. | n.k. | n.k. | n.k. | — |
| DENMARK | 9 months | 11 months | yes | yes | 46,498 | 816 | 1.75 % | 1980°° |
| FINLAND | 8 months | 12 months | yes | yes | c. 42,000 | 1,174 | 2.8 % | 1982+ |
| FRANCE | 12 months | 24 months | yes | yes | n.k. | 1,508 | n.k. | 1981°° |
| GDR | 18 months | 18 months | yes | no | n.k. | n.k. | n.k. | — |
| FRG | 15 months | 20 months | yes | yes | c.295,000 | 68,334 | c.23.0 % | 1983°° |
| GREECE | 26 months | 48 months | yes | no | c.152,000 | none | n.a. | 1982+ |
| HUNGARY | 24 months | none provided° | n.a. | n.a. | n.k. | n.k. | n.k. | — |
| ICELAND | no conscription - n.a. | | n.a. | n.a. | n.a. | n.k. | n.a. | — |
| IRELAND | no conscription - n.a. | | n.a. | n.a. | n.a. | none | n.a. | — |
| ITALY | 12 months | 20 months | yes | yes | n.k. | c. 7,000 | n.k. | 1981°° |
| LUXEMBOURG | no conscription - n.a. | | n.a. | n.a. | n.a. | none | n.a. | — |
| MALTA | no conscription - n.a. | | n.a. | n.a. | n.a. | n.k. | n.a. | — |
| NETHERLANDS | 14 months | 18 months | no | yes | 122,636 | 1,460 | 1.2 % | 1982°° |
| NORWAY | 12 months | 16 months | no | yes | c. 34,000 | c. 2,810 | 8.3 % | 1982°° |
| POLAND | 24 months | none provided° | n.a. | n.a. | n.k. | n.k. | n.k. | — |
| PORTUGAL | 18 months | none provided | n.a. | n.a. | c. 18,700 | c. 4,000 | c.20,0 % | 1982+ |
| RUMANIA | 30 months | none provided | n.a. | n.a. | n.a. | n.k. | n.k. | — |
| SPAIN | 15 months | (22 months) | (n.k.) | (yes) | c.234,000 | n.k. | n.k. | 1982+ |
| SWEDEN | 9 months | 12 months | no | yes | 57,579 | 4,138 | 7.18 % | 1981°° |
| SWITZERLAND | 11 months | none provided | n.a. | n.a. | n.a. | 745 | n.a. | 1983°° |
| TURKEY | 20 months | none provided | n.a. | n.a. | c.489,000 | n.k. | n.k. | 1982+ |
| UN. KINGDOM | no conscription - n.a. | | n.a. | n.a. | n.k. | n.k. | n.k. | — |
| USSR | 24 months | none provided | n.a. | n.a. | n.k. | n.k. | n.k. | — |
| YUGOSLAVIA | 18 months | none provided | n.a. | n.a. | n.k. | n.k. | n.k. | — |

KEY:

n.a. = not applicable
n.k. = not known
+ = statistics taken from organizations or private sources
°° = Official government statistics
characters in brackets indicate conditions of projected law

° = no official alternative service provided, although another form of work may be accepted as an alternative, or cases where administrative arrangements to serve in non-combatant units of the armed forces have been possible.

Quaker Council for European Affairs, Brussels.

## 1.5. CONSCRIPTION AND THE GROWTH OF WAR

The rapid development of the accuracy, fire power and range of weapons in the 19th and early 20th centuries are well-known. The primitive cannon used at the Battle of Waterloo (1815) differed little from those employed in previous centuries. Loading was slow and entirely manual: first an explosive charge of gunpowder and then a spherical solid iron cannon-ball were placed in position from the exit end of the cannon, by means of a long pole. Well before the end of the 19th century, shells shaped like rockets and containing a new high explosive, TNT, invention by Alfred Nobel, were being quickly and mechnically loaded into the charge of a rifled barrel, which turned the shell on its flight path thereby giving it greater accuracy. By 1914 shells 16" in diameter were being accurately aimed at targets 20 miles distant. At the naval Battle of Trafalgar (1805), British and French ships engaged at a range of a few hundred yards and did most of their fighting at ranges of less that a hundred yards. At the Battle of Jutland (1916), the fleets of Great Britain and Germany fought at ranges of 10 to 20 miles. The machine gun, really a machine rifle, was greatly developed in the latter part of the 19th century and before World War I could fire 120 bullets a minute.

It is frequently assumed that these developments were the sole or the main cause of the unprecedented death toll of 12.5 million men in this war. The questioning of this widely held assumption leads directly to a study of war as a killing machine. Traditionally war has not been seen in this way. Military historians have concerned themselves with strategy, tactics, weaponry and acts of individual or collective valour. The numbers killed or wounded have been seen as purely identical, except as a measure of success or failure. Comparisions between battles using the criterion of the rate of killing, how many, over a fixed period of time, are virtually unknown.

An instructive comparison can be made between the Battle of Senlac Hill (1066) commonly known as the Battle of Hastings, the Battle of Crecy (1346) and the Battle of Somme (1916). The Battle of Hastings is chosen as the relevant information is, unlike that for many contemporary battles, readily available. The carnage was such that the victor, William of Normandy (William I of England) resolved among the piles of dead at the end of the fighting, that he would build a monastery close to the site of the battle. This became known as Senlac (The lake of Blood) Hill. The monastery housing priceless documents of the period still stands and is known as Battle Abbey.

The Battle of Somme could easily be replaced for the purposes of this comparison by another major battle of World War I, but it has some special significance as the first major battle in which tanks are used. The Battle of Crecy is one of the most frequently quoted battles in military history, largely because it was won by particularly powerful weapon, the long bow.

The main weapons employed at the Battle of Hastings were Bows (short) and arrows, swords, battle axes, and lances. Both armies had cavalry and infantry. There were no fire arms. The battle lasted a maximum of eight hours on a front of 4-500 yards. The combined armies of Harold of England and William of Normandy numbered approximately 25.000. Approximately 8.000 men were killed. The numbers seriously wounded were not recorded.

Apart from the few able to walk, they would have been "finished off" at the end of the day, as a humanitarin release to their sufferings.

By the time of the Battle of Crecy, the long bow had been developed. It was a heavy bow approximately 6 feet (1.84 m) in length. Its range was 250-300 yards. It sould kill a man at 180 yards and at shorter ranges could easily pierce chain armour. Plate armour had been introduced in about 1300 and was replacing chain armour, which was cheaper, though less effective. During the Battle of Crecy, French knights were literally pinned to their horses by arrows that penetrated their plate armour at short ranges.

The army of Edward III of England numbered approximately 20.000 men. (He had landed with 30.000 men, but had lost 10.000 in earlier fighting and by disease.) Approximately half of the army consisted of Longbowmen, the rest were armed with swords and spears.

Philip VI of France had an army of 100.000, 15.000 of which were Genoese crossbowmen. The total forces of the field of Battle therefore numbered 120.000. The battle lasted for a maximum of six hours during which time over 30.000 men were killed.

The Battle of Somme lasted 20 weeks, from 1st July to 15th November 1916. The site was a 20 mile stretch of the river Somme to the north of Paris. The battle was fought with infantry and artillery armed with the most modern weapons. It is futile to quote the sizes of armies as troops were constantly being replaced. The initial British attack involved 100.000 men with another 400.000 in reserve. The German forces on July 1st were perhaps slightly less. 15 British tanks were used in the fighting but were not significant. Aircraft were also used, mainly to guide the massive artillery on both sides. (On the first day 1 gun per yard on the British side.) Attacks were preceded by hours of shelling with the aim of destroying the enemy's lines and when the attacking infantry finally went "over the top" on their trenches, they were met with continuous machine gun fire. A contemporary account records wave after wave of troops being mown down "like human cornstalks". By the end the first day 60.000 of the original British 100.000 were casualties and 20.000 of them were dead.

At this point, if mass armies had not existed, the battle would have ended. At most it would have lasted another one or two days, when the supply of fighting men on both sides, would have made its continuance unlikely to benefit either side. Like the Battle of Solferino in 1859, there would have been an end to the fighting without victory. Conscription had however produced vast armies: French, German and British. The young men of the three most populated and highly developed countries in Europe had become compulsory soldiers: the killing machine could continue. On some days, the death toll fell to as little as 2.500 but most of the time it was nearer 10.000. By the time winter snow ended the battle in November, approximately 600.000 men had been killed on each side making a total of 1.200.000 dead, or an average of 8.570 deaths a day. Though the killing machine had covered a vastly greater area, the rate of killing had been considerably less that at the Battle of Crecy and about the same as that at the Battle of Hastings.

In case the first two examples be regarded as isolated cases, far removed from the general scale of battles in history, it should be recorded i) that at the Battle of Marathon (490 B.C.) the total armies of Philip II of Macedon, Persians and Greeks numbered just over 100.000; ii) that the famous mass army of Genghis Khan (1167-1227) which conquered

almost a third of the world's land surface, never numbered more than 250.000 men and iii) that Napoleon, the pioneer of conscripted armies, fought his Italian campaign with only 38.000 men and won the Battle of Austerlitz (1806) with 66.000 men and 169 guns.

Mass conscripted armies and not military technology have been the principal reason for death tolls in the 20th century, being measured in hundreds of thousands or millions, instead of thousands and tens of thousands. The killing machine has operated over larger areas and for longer periods of time.

Nineteenth century militarists, recognising the sheer power of numbers, demonstrated in the Napoleonic wars, demanded conscription as the only way of obtaining massive armies. Conscientious objection was a barrier to that objective and therefore could not be tolerated.

A short examination of was as a killing machine could be regarded as a morbid and sterile exercise, whose conclusions are obvious. Indeed once we have adopted the idea of thinking of war as a killing machine, it becomes obvious that the more you feed into the machine, the greater the output. The exercise however has two other values. Firstly, it forces us to recognise the very basic nature of its derive for conscription and against conscientious objection. Secondly it is a reminder of how recently in human history, has war become a serious threat to society. For the 5.000 years of military history, since the earliest recorded army of Sumer, ruler of Ur (approximately 3.000 B.C.), war has been a means of settling disputes, but killed and maimed only a minute proportion of the citizens of any country. It is only in the last century that war has threatened human society itself. That process began with conscription, continued with aerial bombardment and has reached an ultimate potential of complete destruction with nuclear weapons. Only a century of even recognising the enemy, is one of the reasons that humankind has made so little progress towards peace. It helps, when the threats of nuclear and star wars seem so overwhelming, to recall that we are not at the end of a long struggle against war that has continued for tens of centuries, but that we are only a little way along the road from the great beginnings made by our predecessors in the greatest cause of civilised humanity.

Sources used

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Ulrich Herz

## 1.6. THE NÜRNBERG PRINCIPLES RECONSIDERED

### Historic Backgound

The item "a draft Code of Offences against the Peace and Security of Mankind" has for a long time intermittently been on the Agenda of the UN General Assembly. It emanates from a resolution adopted by the General Assebly at its first session, 1946, affirming the Principles of international law recognized by the Charter of the Nürnberg Tribunal and the Judgement of the Tribunal, One year later, in 1947, the International Law Commission was established by the GA and directed to deal with the matter under two aspects, namely

> a) to formulate the principles of international law recognized in the Nürnberg Charter, and
>
> b) to prepare a draft Code of Offences against the peace and security of mankind, indicating clearly the place to be accorded to these principles.

The main reason why the General Assembly asked for a new formulation of the Nürnberg Principles was most probably to relieve these principles of the "ad hoc character" which they had in the context of the Nürnberg Tribunal. The wish to establish them as a substantial and persistent element of international law made it reasonable to have them reformulated and/or further developed in a separate document,

The preparation of a draft Code was at that time deemed to be the first proper step in order to constitute a judicial framework for the future application and implementation of these principles.

As early as 1950 the International Law Commission had performed the first part of its mandate and as a result of its work submitted a "formulation" to the General Assembly. The document had the character of a codification of seven principles. From the point of view of the continued deliberations regarding a draft Code, Principle VI constituted the core of the new "formulation". It reads as follows:

> The crimes hereinafter set out are punishable as crimes under international law:
>
> (a) Crimes against peace:
>
> (i) Planning, preparation, initation of waging of a war of aggression or a war in violation of international treaties, agreements or assurances;

(ii) Participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned under (i).

(b) War crimes:

Violations of the laws or customs of war which include, but are not limited to, murder, ill-treatment or deportation to slave-labour or for any other purpose of civilian population of or in occupied territory, murder or ill- treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity.

(c) Crimes against humanity:

Murder, extermination, enslavement, deportation and other inhuman acts done against any civilian population, or persecutions on political, racial or religious grounds, when such acts are done or such persecutions are carried on in execution of or in connection with any crime against peace or any war crime.

Leaving procedural subtleties aside we can say that this formulation of the principles, though not formally adopted by the General Assembly, in any case has been generally accepted insofar as no further substantial discussion has occured about the text of this document.

In 1951 the ILC delivered a first draft Code to the GA, but this proposal was returned to the Commission for further consideration.

Three years later, in 1954, the ILC submitted a second – so far its latest – version of a draft Code to the General Assembly.

In a very comprehensive way the content of the four Articles of this draft can be summed up as follows:

Article 1 characterizes offences against peace and security of mankind as "crimes under international law, for which the responsible individuals shall be punished".

Article 2 deals with the offences to be included in the Code. Not expressively but in fact the trinity of crimes according to the Principle VI (see above), "crimes against peace; war crimes and crimes against humanity", has been abandoned. Instead in twelve paragraphs, several of them with subparagraphs, a great number of offences are enlisted. In the absence of headings or characterizing attributes there can, nevertheless, a certain threefold structure of the catalogue be discerned. There is some affinity with the original division into three categories of crimes.

Paragraphs 1-9 of Article 2 refer to relationships between states. Acts mentioned are – inter alia – aggression; intervention, encouragement of armed bands (on the territory of another state); annexation; terrorist activities etc.

Two paragraphs, though belonging to the same general category, are of a somewhat different character. Paragraph 7 thus pertains to a state's violation of its obligations under a treaty which is designed to ensure international peace and security by means of restrictions or limitations on armaments. Paragraph 9 is a typical "residual item" to be interpreted and applied more or less ad libitum: it refers to "the intervention ... of a State in the internal or external affairs of another State, by means of coercitive measures of an economic or political character in order to force its will and thereby advantages of any kind". (A critic with an inclination for sarcastic comments might say that this paragraph condemns foreign policy in the way in which it usually is performed, at least by Big Power States.)

The second category, comprising paragraphs 10 (with five subparagraphs) and 11, has to do with acts committed by authorities or private individuals with intent to destroy, "in whole or part, a national, ethnic, racial or religious group as such" and with "inhuman acts" such as murder, extermination, enslavement, deportation or persecutions, committed against any civilian population on social, political, religious or cultural grounds.

The third category finally, expressed in paragraph 12, talks without any further specifation about "acts in violation of the laws or customs of war". Evidently this refers to the historically established body of international law in the Hague-Geneva tradition.

The two remaining articles of the draft Code have the function of determining the interpretation of the term "the responsible individual" (used in Article 1). Article 3 says that "the fact that a person acted as Head of State or as responsible Government official does not relieve him of responsibility for committing any of the offences in this Code", while Article 4, focussing on the other end of the hierarchy scale, tells that the fact that somebody has committed the offence pursuant to an order of his Government or of a superior does not relieve him of responsibility "if, in the circumstances at the time. it was possible for him not to comply with that order".

The submittance of this draft Code to the General Assembly in 1954 brought to the fore a dilemma of procedure. The Assembly had at an earlier session constituted a "Special Committee of the Question of Defining Aggression". Since "aggression" was one of the key concepts of Article 2 in the draft Code, and since this draft Code furthermore seemed to be connected with another item on the GA agenda, namely the question of an international

criminal jurisdiction, the Assembly decided to postpone further consideration of the draft Code.

With this GA decision the item "Offences against the peace and security of mankind" was practically buried for a period of twenty years.

In December 1974 the GA was able to pass a consensus resolution on the "Definition of Aggression". Now it was understood, however, that this "definition" probably would not be very helpful for the further work on the draft Code. Remembering, further, that the global situation had changed to a considerable degree, the GA preferred to draw out a substantial consideration of the draft Code for a number of years. As late as at its 36th session, in 1981, the GA finally invited the International Law Commission to resume its work on this item. The wording of the GA's invitation made it clear enough that "resume" in this context aimed at a start more or less from scratch.

The GA did not expect this work to be completed in a short time: it requested the ILC to consider "the possibility of presenting a preliminary report to the Assembly at its thirty-eight session bearing, inter alia, on the scope and the structure of the draft Code".

The ILC entered into its work by appointing a Special Rapporteur, Ambassador Doudou Thiam of Senegal. It also established a Working Group, composed of twelve experts, to give him assistance.

In accordance with the request the International Law Commission submitted to the 38th General Assembly, as part of its Annual Report, a memorandum under the head-linme DRAFT CODE OF OFFENCES AGAINST THE PEACE AND SECURITY OF MANKIND. This memorandum (in the following referred to as THE SPECIAL REPORT) was based upon the work done by the Special Rapporteur and his experts and on a general debate on the topic in the ILC plenary.

## A New Approach

For the first time since 1950/51 the whole complex of the Nürnberg Principles thus in autumn 1983 has been the subject of substantial and intense discussions in the General Assembly. This should open the way for a new round of public debate on this important issue. The issue has obviously assumed quite a new dimension insofar as nuclear war preparation has become the most terrible and alarming threat against the peace and security of mankind which makes it pertinent to ask whether such preparation should not be codified as one kind of such offences.

## Changed preconditions

That this debate actually must start more or less from scratch is mainly due to the fact that the global situation has changed radically since the Nürnberg Principles first were conceived and since they under five years' period at the beginning of the 50ies were further developed. At that time the political thinking was till under the impression of what might be called "the historic Nürnberg syndrome": the idea that crimes against peace, war crimes and crimes against humanity were committed by one or another aggressive nation, misled by one or a couple of political madmen and culprits. To-day we know that acts of the type described in Article 2 of the 1954 draft Code are committed all over the world, by states of

any political structure, by organized groups of various kinds, by fanatic individuals. Crimes against the peace and security of mankind have become somerhing of a world epidemic.

Further, in the first decade of the existence of the United Nations, this international body could be expected to develop into some kind of supranational authority, at least as far as the fundamental questions of peace and security were concerned. The International Court of Justice, notwithstanding the very specific and rather restrictive function given to it in the Charter, could still be hoped for either successively to have its mandate and competence expanded or to be complemented by a similar Second International Court, devoted to the protection of human rights and, in the last instance, provided with resources for the implementation of its decisions.

Now we know that most of these hopes and expectations have been frustrated. The only occasion, when an attempt was made to implement the embryo of an institutionalized supranational order which actually is embodied in the UN Charter, i.e. the machinery of collective security, this happened to result in a failure – not far from disaster (Korea 1950-53).

Another development which has taken place during the last three decades and which, paradoxically enough, makes a judicial procedure of Nürnberg type (or similar) at one and the same time more feasible "in theory" and less workable in practice is the new pattern of international intercommunication.

From one point of view we have got an enormously increased international intercommunication and even an expanded co-operation marked by a broad variety of treaties, agreements, conventions etc directing and regularizing international relationships. We actually have to-day both a broad corpus of formally established international law and a multitude of habitually exercised international practice. This refers, however, almost exclusively to the fields of geographic, economic, social and cultural communication. As a result of this process international relationships are about to be fairly well harmonized in those areas where the parties concerned either objectively or according to their own interpretation of conditions and possibilities have a certain congruency of interests.

At the same time we have in our time witnessed a growing lack of willingness on the part of States to enter into engagements and agreements which in one way or another might restrict the option of the single nation. New conventions have had a tendency to become "weaker" as far as obligations are concerned; ratifications have been postponed or finally denied; claims for exceptions from the rule, for facultative procedures etc have become more and more frequent. We can take the comprehensive body of international instruments for the protection of human rights as a test case. Admittedly some progress has been discernible in certain regional areas, the European Council with its relatively homogenous membership and with its constitutional elevation above both east-west and north-south problems being the outstanding example. On the global level, however, it has proved to be extremely difficult to reach results. The implementation machinery of the two Covenants (together with its facultative /!/ Protocol) are defective in nearly every respect and therefore deeply unsatisfying.

It is, thus, evident, that a code with the intent to identify and punish offenders of rules which after all refer to political behaviour must be expected to be met by the sovereign member States of the UN with suspicion and reservation.

These are some of the reasons why the re-consideration of the Nürnberg Principles, as reflected in the Special Report, is not only tentative, cautious and timid but in some respects rather indicates a retreat from positions which 1950/54 could be conceived as politically possible.

The International Law Commission has interpreted its mandate in a restrictive way. As mentioned nothing else than "a preliminary report" was expected: it should, "inter alia", bear "on the scope and the structure of the draft Code".

## The Main Structure of the Special Report

The ILC has subdivided its document in three parts with the following headings:

(1) Scope of the draft

(2) Methodology of the draft

(3) Implementation of the Code

Actually only the first one of these three sub-items has been considered at some length. The two remaining, comprising not more than one page each, have been left in an extremely fragmentary condition or rather been reduced to a preliminary list of questions "for further consideration".

As an anticipatory summary of the Special Report it can be stated on the credit side that three elements of the original Nürnberg concept have been either expressively re-affirmed on implicitly taken for granted. The first one is perhaps rather a question of semantics. The draft Code is characterized as a code about offences; the term "crimes" is frequently used in the text as a synonym. As in the Nürnberg Charter the tone of the two key-words is evidently and throughout one of moral condemnation; the notion "offences against the peace and security of mankind" being understood as "offences against humanity". Thus the Code becomes a kind of correlation (with a negative indicator) to the legal instruments for the protection of Human Rights. This is quite clearly another, more challenging language than that of the UN Charter Article 2 (4), which strictly enough but without any appeal to a moral reaction or motive states that "members shall refrain (!) ... from the threat or use of force ...". This, of course, implies the condemnation of the opposite, but is not understood as a moral claim.

Point two is a substantial and crucial one: the strong – actually strongest possible – re-affirmation of the principle of individual responsibility for the offences or crimes in question. Up to the time of the Nürnberb Tribunal international law was a law which had States as its subject. Individual persons could not be charged "under international law", in any case not by anybody else than the authorities of their own country. After Nürnberg this individual responsibility is in principle "established". A re-affirmation of this was a main element of the 1954 draft Code and according to the Special Report it shall remain the core of the "scope and structure" of a revised draft Code.

The third element preserved from Nürnberg tradition is that "responsibility" in this context should mean penal responsibility. i.e. that the "offence" must have some kind of punishment as its equivalent. We know that this was, in a sense, the very purpose of the Nürnberg Tribunal. In the Special Report this element is declared to be an indispensable part of the draft Code. But, as we shall see, there specific emphasis is not put upon this point and the issue is, in any case, not further discussed.

Apart from this threefold Nürnberg-inheritance most of the reasoning in the Special Report is a reasoning from scratch, but at the same time a reasoning of a tentative and partly even ambivalent character.

## The Scope of the Draft

Under this headline the Special Report deals with the question of how to determine "the content of the draft". The determination of the content refers to two dimensions: "rationae materiae" and "rationae personae"; or, in a more ordinary language, the question of to which offences the code should be applied and to which subjects the penal responsibility may be attributed?

In the first respect the ILC when investigating this item, has been in a similar dilemma as the GA had been in 1954: it had to relate its work to an earlier exploration which covered part of the issue. There existed since a number of years a rather elaborated document, in response to a request from the GA outlined by the ILC itself, which dealt with the international responsibility of States. A determination of the content of a draft Code regarding offences against the peace and security of mankind had to be harmonized, in one way or another, with this earlier draft. In one of its paragraphs, 19, a relatively broad definition had been given of what should be categorized as "internationally wrongful acts". Among these acts a specific category was distinguished as "international crimes". The criterion of such a qualification is according to this document that these latter offences result "from a breach by a State of an international obligation essential for the protection of fundamental interests of the international community". Examples mentioned in the draft are breaches of international obligations prohibiting aggression, safeguarding the right of self-determination, safeguarding human beings and presservation of the human environment. It appears from this list that even the limited concept of "international crimes", as defined in the draft on State responsibility, still has a rather broad amplitude.

In the Special Report the question is raised whether the draft Code should cover "the wide variety of international crimes as a whole" or whether offences against the peace and security of mankind should be considered to be sui generis. If they were, they had to be codified in a separate document – the draft Code now under consideration.

The Special Report gives preference to this latter alternative. What the members of the ILC have in mind is a separation of "the most serious of offences". Seriousness "may be measured either by the Extent of the calamity or by its horrofic character".

This choice of alternative is clearly in line with the Nürnberg tradition. The morally challenging character of the codification of "offences against the peace and security of mankind" would be lost, if these acts were "hidden" among a broad deversity of "international crimes".

But so far in the text of the Special Report it is still left open as to exactly which crimes, on the ground of their seriousness, should be categorized as "offences against the peace and security of mankind". The consideration of this question is abruptly closed by reference to "this category of crimes, each of which will be defined in the draft Code". The Report proceeds, under a new heading, to the question of who should be the subjects of the draft Code, i.e. to whom the responsibility should be attributed. Five pages later, however, under the heading of "Methodology", the Report surprisingly returns to the former question: which offences, more specifically, should be included in the Code?

The reason for this interruption in the logical treatment of the subject seems to emanate from the disagreement among the members of the Commission as to which conclusions the Special Report finally should arrive at.

In the argumentation recorded so far there has been full consensus among the members. But when the reasoning proceeds to the second "scope"-aspect, that of the subject of the draft Code, contending opinions have made the deliberations more complicated. The members found, apparently, that the conflicting ideas had to be settled before the question of the content "rationae materiae" finally could be answered.

## Individual Responsibility Versus State Responsibility

in 1947, when the General Assembly formulated its mandate to the ILC, the crucial point of the conceived draft Code was the principle of an individual penal perponsibility. this concept, as we have mentioned above, was the specific contribution of the Nürnberg Charter.

The 1954 daft Code is strictly focused upon this concept. Its first Article defines in a categorical way the offences under donsideration as "crimes ... for which the reponsible individuals shall be punished".

With Nürnberg as a historic testimony this idea of an individual responsibility for crimes committed on behalf of a State has become an axiom, judicially and politically. But in due time it was understood that, in a broader perspective, this concept of individual responsibility in itself was not a real solution of the problem of crimes committed collectively in the name and at the instigation of States. This raised the question of a penal State responsibility. Even – or perhaps especially – the Nürnberg trial had, of course, in the last instance been intended and considered as a judicial condemnation of the Nazi regime, represented by its political and military leaders.

Thus, according to the Special Report, "the prevailing opinion" among the members of the Commission has been that there theoretically is and, thus, in practice should be a criminal responsibility of the State, and that this should be "set forth in the draft". This majority among the members maintains that "failure to recognize the State as a subject of criminal law would simply mean allowing those offences to go unpunished" (and, it was understood, to continue). But when further explaining what "criminal (or penal) responsibility" actually means, this same majority in its argumentation shifts over from the terms offences/crimes to the weaker concept of "a system of sanctions", exemplifying with "moral of financial sanctions, among many others" (author's question: which others?). "many others", in this context, seems to reflect uncertainty about the whole matter.

Characteristically enough the continued recording of the "prevailing opinion" within the Commission is based upon the presumption that if such a penal code were in force, the question of punishment would in practice be less relevant, since the inclusion of penal consequences would stregthen the preventive and deterrent effect of the Code. Thereby some of the practical and political difficulties of how to implement the punishment of a State would virtually be minimized. It appears from this reasoning, that the "prevailing opinion" regarding a penal State responsibility is, after all, a somewhat ambiguous one.

The arguments against the idea of a penal or criminal responsibility of States are – as far as they are recorded in the Special Report – mainly of a pragmatical character. Even members of the Commission, who share the "prevailing opinion", seem to admit that it would be "unrealistic to believe that States suspected of having committed international war crimes would agree to an international tribune exercising its jurisdiction over them". Some members pointed out, in a more theoretical argument, that a criminal responsibility on the part of the State does not exist in current international law and it would be both premature and politically unwise to allow such a new element to enter into the system through the "backdoor" of a specific international code.

Aware of the lack of consensus among its members and recognizing the political nature of the problem, the ILC preferred the "solution" to leave it to the General Assembly to express its views on this point. As is easily understood, that means that we are going to have this problem with us for at least a number of years.

Methodology

Under the heading "Methodology" the Report, as mentioned, returns to the question: how should offences against the peace and security of mankind be identified? Which crimes, in concrete terms and/or by working definitions, would be included in the Code?

In order to understand the line of reasoning in the Commission it seems necessary to go back to the fundamental Principles introduced in the Nürnberg Charter and applied by the Nürnberg Tribunal. We quoted above Article VI (in the version of the 1950 "formulation") with the reference to three categories of crimes: Crimes against peace, War crimes and Crimes against humanity. As studies and investigations about the draft Code proceeded, it became more and more evident, however, that this threefold crime classification is incomplete and to some degree inconsistent. The first category, Crimes against peace, were in this version "defined" by reference to another undefined concept: war of aggression. The second category, War crimes, was related to something which empirically existed as part of the current international law: the laws (= conventions, treaties etc) and customs of warfare. The third category , finally, Crimes against humanity, had in the original text an undue restriction: it referred to certain acts "carried on in execution of or in connection with any crime against peace or any war crime". This reduced the third category to no more than an appendix to the two others; historically it resulted in the somewhat shocking fact that the Nürnberg Tribunal's application of the Principles excluded those crimes against humanity that had been committed by the Nazi regime earlier than 1939. All these acts of persecution etc aginst jews, political opponents, religious and other minorities were not legally condemned in Nürnberg – as far as they had been committed before 1939. By definition they could not be included among crimes against humanity!

All this, of course, was in the last instace the consequence of the fact that the impelling motive behind the Nürnberg Trial was the political purpose. While the legal basis has to be "put together" – literally! – from various fragments of international law, the final result of the trial was after all anticipated. That must be admitted now, nearly 40 years later. Though the authors of the Nürnberg Charter pretended that the Principles were based upon existing, generally accepted international law (a claim which was challenged already at that time and which has been strongly challenged since then), the main intention was to lay the ground for a future application of these Principles. They were deemed to be necessary for the building of a peaceful world society. It must also be remembered that this body of international jurisdiction had to be created within a very short time and under a strong political pressure.

The ILC draft Code of 1954 had, as we learnt, abandoned the crime trinity of Nürnberg, though it preserved at least an appearance of a subdivision into three main categories. In any case there was a marked change in terminology. "Crimes against peace" had been altered into the more adequate "any act of aggression". The term "crimes against humanity had been dropped completely. And the imprecise, abstract notion "war crimes" now was presented in the usual language of international law: "acts in violation of the laws and customs of war".

The Special Report of 1983 leaves it open as to whether the catalogue of crimes presented in Article 2 of the 1954 draft (see above) shall still be considered as relevant or not. It chose, however, another approach in order to arrive at a new codification of the "offences against the peace and security of mankind". The procedure chosen was to start from the broadest enumeration of internationally "wrongful acts" and to separate from this list "the most serious" offences. The result of this scrutiny was an unanimous conclusion expressed in the following way: "The regime of the criminal responsibility of individuals for offences against the peace and security of mankind ... stands apart from the general regime of responsibility for internationally wrongful acts." (We know the reason why in this sentence the responsibility of States is omitted.)

But it still remained for the ILC to clarify which are "the most serious" crimes /offences. Under "Methodology" this discussion is continued. The ILC admits that the criterion of "seriousness" is, as they put it, "a subjective one". But in the last instance this deficiency is converted into a virtue: it should be made clear from the outset, the Commission argues, that the list of offences contained in the draft (whatever may be the items on this list) "is not exhaustive and is subject to change as a result of development in international society".

For a critical observer it is evident that the ILC with this comprehensive statement is not only "begging the question" but is opening the door – in any case far wider than either necessary or suitable – for a dangerous move from a judicial to a political judging procedure. No code or law, of course, is thought to stand unchanged for ever. But making the content "ratione materia" dependent upon "developments in international society" casts us back into all the predicaments of the Nürnberg Tribunal: the risk of being impressed – or in the extreme case even manipulated – by political forces and by more or less incidental power constellations. This is actually not a good "methodology": it should be strongly challenged whether it could be called a permissive one.

The members of the ILC might themselves have had a feeling of doubt in this respect. Somewhat surprisingly under the headline "Conclusions", at the end of the whole Report, they refer to this discussion in the form of one plain statement: "These offences will be determined be reference to a general criterion and also to the relevant conventions and declarations pertaining to the subject." This, of course, sounds a little bit more hopeful and reliable. But it postpones the solution of the problem.

Implementation

This last part of the Special Report is the most fragmentary one. It is opened by stating that a Code, to be implemented or applied, needs two further elements, namely, in the order used by the Commission, "a scale of penalties" and "a judicial organization (courts, rules of competence and procedure, judgements, enforcement of judgements etc)".

For the sake of our attempt to analyse and evaluate the findings of the Special Report it seems suitable to shift the order of the rwo sub-items.

A judicial organization is, of course, absolutely indispensable if the Code shall be more than just a guideline for proper behaviour. The Special Report does not spend more than half of a page on this subject. This is so much more regrettable as the 1954 draft completely omitted this aspect. Even being aware of the preliminary character of the Special Report one must find this cursory treatment unsatisfactory and disappointing. A guess is that it has something to do with the disagreement among the members on whether a penal State responsibility should be ackowledged or not.

Here is perhaps the place to point out, that in one sense this distinction between individual responsibility and State responsibility is, of course, something of an abstraction. Even if a penal State responsibility were acknowledged in the code, the court would have to deal with an individual person or several individual persons as defendants. So was actually the case at the Nürnberg Tribunal, though the final intent was, as mentioned, to condemn a criminal regime. But the reason for the ILC not including a penal State responsibility in the draft is, as appears from the earlier quotation, that "it was unrealistic to believe that States suspected of having committed international crimes would agree to an international tribunal exercising its jurisdiction over them". That must mean that it would scarcely be possible either to charge a political or military leader for criminal acts committed by his State, unless this State were either politically/militarily defeated (as Nazi Germany was) or by its own decision had changed the political regime and dismissed the former leaders. In this latter case it can be expected that the State itself, in accordance with its own jurisdiction, would charge these individual persons (cf. the case of Argentina). In the first-mentioned case, namely that the offending State is defeated in a war or otherwise overthrown, the judicial procedure can easily be suspected of being just a kind of confirmation that the fight (war?) against the defeated was a justified one. There might be some merit in such judgement, too, but it often or always leaves a feeling that the ground of the judgement has been vengeance rather than justice.

The only statement the Commission makes regarding the judicial organization in case of offences against the peace and security of mankind is that according to the prevailing opinion in the Commission "an international criminal jurisdiction would be necessary".

The character of such an international criminal jurisdiction is left open in the Special Report.

## Two Main Models

Two main models of such an international jurisdiction seem conceivable. The one would mean a codification of the content of those offences, both ratione materiae and ratione personae, while the trial, the judgement and the enforcement of the judgement were left to the national courts. The Special Report mentions marginally in an earlier context that already now there are signs that the judgements of national courts could pay regard to elements of international law which are not formally included in the country's own criminal law. The Special Report quotes parts of a ruling delivered by the Chambre d'accusation of the Court of Appeal of Lyon stating – in the Klaus Barbie case – "that, because of their nature, crimes against humanity ... do not come solely under French criminal law but also under an international punitive order ...". At the same time it is clear that the legal proceedings of national courts against Nazi war criminals constitute a specific type of case and that they could and should not be considered as suitable models for the application of international law. But there are less extreme cases where some kind of "weighing" between elements of national law and elements of international law seems to be not only feasible but, from the point of view of an international order, highly reasonable: the Lieutenant Calley case (USA; "Song My") could be mentioned as an example.

Three specific varieties of this first main model should perhaps be shortly mentioned here. The first concerns those crimes against the peace and security of mankind, which have their victims among people – officials; ordinary people – in the offenders' own country. We can exemplify with the terrorist activities of the Baader-Meinhof-, The IRA- or the EPA/Frap-type. These acts, of course, fall under the competence of the national courts. But with regard to the character of the offences – and the fact that the national courts, at least in the eyes of the offenders represent the counterpart – it could be suitable to give the national courts in these cases an international extension both with regard to the composition of the body of judges and to the jurisdiction applied.

The other variety refers to the relationship between international ("universal") law and national law. If we define "international law" strictly as established international law – established by treaties, conventions etc – it might happen, or it could not even be avoided, that the scope of "international law" becomes narrower than progressive countries (or circles of progressive people) want it to be. There could be conceived a procedure, according to which a State binds itself (or a number of States bind themselves) to apply, in their national jurisdiction, a Convention which either is still in the stage of a draft of not yet in force because of a lack of ratifications.

A third variety is, of course, a regional Convention System, with or without a supra-national Court entitled to make judgements. The European Convention System is one such example; several similar models can be envisaged.

But in a longer perspective and from a broader outlook it is beyond all doubt that the only real solution would be the second main model: the establishment of an international criminal court exercising jurisdiction over offenders of the peace and security of mankind – individual offenders as well as States.

There is, however, no proper reasoning on this matter to be found in the Special Report. In its summarizing conclusions the ILC confines itself to putting two questions before the General Assembly, namely 1) whether the Commission's mandate extends to the preparation of the statute of a competent international criminal jurisdiction for individuals and 2) whether such jurisdiction should be competent with respect of States.

A Scale of Penalties

Concerning the question of "a scale of penalties", finally, the Special Report does not contain more than one sentence, namely that "there would appear to be no doubt that the draft should tackle the problem of penalties". This sub-item is, however, not even touched upon in the Commission's own summarizing of the Report.

In the absence of any substantial argument about the function of "a scale of penalties" in the context of the draft Code the author of this paper may be allowed to express a few personal reflexions on this item.

In national jurisdiction the prevailing doctrine, at least in Western democratic societies, refers punishment/penalties to the comprehensive concept of prevention. As is well known this concept has various aspects and various interpretations. We usually distinguish between individual and general prevention. We can imagine the preventive psychological process both as a rational calculus ("does it pay to commit the crime or does it not?", "how big are the chances/risks to escape/to be hurt by the punishment" etc). We can also rely upon the potential offender's fear of being punished; "preventive" then becoming identical with "deterrent". We can finally have in mind that the enforcement of the punishment, for example some time's stay in prison, might have an individual rehabilitation effect and thus in the final instance prevent crimes etc.

But generally speaking the belief in these various kinds of preventive effects has become considerably weakened in most democratic States during the last decades. So has, in consequence, the frequency of enforced punishment (of a serious type, like imprisonment).

In this respect the Nürnberg heritage is a terrible one. The penalties applied there – penalty of death; lifetime imprisonment – were of the type which could not even theoretically be conceived to have an individually preventive effect. The potential generally preventive effect of these types of punishment is according to our modern knowledge and experience extremely low. That depends primarily upon the fact that these serious crimes in very many cases, perhaps in most cases, in themselves are combined with extraordinary risks of being hurt or being killed. These crimes are further usually committed in a mood of fanaticism and desperation, in a blind belief of doing exactly what is right or what is necessary. The possibility of a later punishment is not in the mind of the offenders. Religious, ideological, political and similar motives are their driving forces. In the perverted conscience of this type of person the threat of criminal persecution – if they at all are aware of it – as well as selfpunishment (starvation to death) or suicide are considered as a possibility or a condition which actually strengthens the ruthlessness of the action.

These reflexions do not contain an answer to the question of what function and what importance should be attributed to "a scale of penalties" as one part of a Code of offences against the peace and security of mankind. Nor do these comments challenge the Special Report's statement that "there would appear to be no doubt that the draft should

tackle the problem of penalties". But it may perhaps be accounted to the merit of the International Law Commission that it in this first, preliminary report has not given any high preference to this part of its work. The codification of offences against the peace and security of mankind is, actually, the most urgent need. We, the people, want to know which are the crimes that threaten our survival in peace and security.

From this point of view there are strong grounds for the International Law Commission to "tackle", in its continued deliberations, one type of offence against the peace and security of mankind which has so far been neglected: The Illegality of Weapons of Societal Destruction.

## 2 MILITARY SYSTEM IMPOSING ON YOUTH

Seppo Randell

## 2.1. THE IMPACT OF CONSCRIPTION ON SOCIAL ATTITUDES

I am afraid that I haven't exactly any news to tell you, because the study I am referring to, was published about 20 years ago. I hope, that what I am going to say, will, nevertheless, act as the starting point for the discussion on the topic of my speech "The Impact of Coscription on Social Attitudes".

Some 25 years ago, Finland had a shortage of applicants to the military career, and of regular army officers, too. The Ministry of Defence wanted to know the reasons for that matter, and, as young assistant in sociology, I got a scholarship and assignment to study this shortage and the causes of it. Since I had recently completed my national military service, I quite naturally thought that I knew something about it through my own experience. Rather implicitly, if even intuitively, I figured that the compulsory service as such somehow contributed to this state of affairs.

Thus I was able to collect an extensive questionnaire material, which consisted of the responses of about one thousand male high school students, who were just about to graduate, from all over the country. Another thousand included almost exactly the same amount of the Reserve Officer School (ROS) students, draftees also from all over the country, who were completing their military service.

According to preliminary analyses (1), it was surprisingly obvious that, among the ROS students, the popularity of military career was smaller than among the high school students. With respect to a few other potential careers, there were practically no differences at all. The first examples, accordingly, pointed towards the anticipated direction: the military seemed to counteract itself.

Further analyses (2,3,4) revealed the following main results. Firstly, the attitudes and the conception of the ROS students were structurally different from those of the high school students, being more uniform; the standard deviations of the attitudes of the former were systematically and significantly smaller than those of the latter. Furthermore: the structure of their attitudes was also "narrower" or more "one-dimensional" as measured by determinant values of the oblique rotations of the respective factor solutions. Secondly, from the point of view of the content of the attitudes, the ROS students were more positive or optimistic concerning both the chances and the willingness to defend the country. But, in addition, they were definitely more reluctant to choose the military career than the high school students. Also, their conceptions about the Finnish military schools and "the typical military officer" were considerably more negative than those of the high school students, or than their conceptions about other institutes of higher education or about a number of potential civilian careers.

The conclusion was obvious: the national military service alienated young men from the military career. How important, as compared to some other factors, and permanent this influence was, I didn't know and don't know, because I did not study these aspects.

The theoretical frame of reference I developed, frankly speaking, afterwards, which I guess is rather often the case. I was greatly impressed and influenced by the works of Goffman (5), Homan (6,7) and Etzioni (8), which were published in the fifties and in the beginning of the sixties. Accordingly, the micro level thinking can be roughly described as

follows. The society composed by the draftees is a total institution (Goffman), or a total organization (Etzioni), where social interaction not only becomes more frequent but also more intense. This tends to contribute to the uniformation of attitudes, conceptions and images of the draftees (Homans a). But because the garrison as the society of the draftees is also an organization were coersive power is used, in addition to the uniformation of attitudes, also hostile alienation takes place in the draftees. Therefore, their conceptions concerning the representatives and symbols of the organization, the military personnel, become more negative (Etzioni, Homans b).

The frame of reference had also a macro level background. In the beginning of the sixties, a vivid sociological discussion was going on in Finland. Several "seminars on patriotism" (9) were held, where, of the sociologists, especially Erik Allardt and Yrjö Littunen were active. Their message was that Finland was no more the same agrarian country with a uniform culture as in the beginning of the century. Quite the contrary, she was entirely different, differentiated, industrialized, a pluralistic society, where, according to Littunen, it was even allright to shout: "Disagreement is power" (10).

To put it shortly: in the beginning of the sixties Finnish sociologists repeated exactly the main ideas represented by Emile Durkheim in his De la division du travail social, published in 1893, relevant in France already then. There are two kinds of solidarity: primitive mechanic solidarity based on structural uniformity and similarity, and modern organic solidarity based, contrarywise, on structural differentiation and variety. In a modern society, it is absurd to demand for a return to the old times.

Obviously then, the basic problem of this author became, how, in a democratic, pluralistic society an authoritarian subsystem, more particularly the military organization based essentially on compulsory national service, is possible. Or, more generally, how organic solidarity as the main concept and mechanic solidarity as the subconcept are related to each other and are possible side by side or including each other mutually. This is, as one can easily see, one of the "eternal questions" in sociology. To me, the problem was not so much philosophical; rather the level was attidinal or behavioral.

The study and the frequent discussions afterwards had a considerable impetus on the re-evaluation and rearrangement of certain rules covering the military service. Especially, there was a genuine attempt to reduce the character of a garrison as a total institution. Thus the so called garrison boundaries were entirely abolished, the boundary between service and free time was sharpened, the positive right to leaves to the draftees was guaranteed, instead of the former principle of remuneration because of good behaviour, to mention some examples.

How is the situation today? That is a matter of discussion. In fact, I have sometimes thought of repeating my research as such. Would I get about the same results as 20 years ago? I think I would. But at least one reservation should be made: according to fresh information (11) given by the Headquarters Information Office, during the past few years there have been about three times more applicants than it has been possible to take into Kadettikoulu (Military Officer School).

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Hannu Sikkilä

## 2.2. CONSCRIPTION AND YOUTH CULTURE

According to my observations conscientious objection has most often been examined from the point of view of the social and political sciences. In the following I intend to approach the understanding of conscientious objection from the viewpoint of development psychology. Thus the main emphasis will be on adolescent development. I do not intend to deal with conscientious objection as seen as the effort to resolve some difficult internal conflict. I will abstain from the description and understanding of the matter from viewpoint of normative development.

My speech is composed as follows: First I will try to describe the rise of youth culture and how adolescence has changed during this century. My second task is to describe the birth of adolescent ideology and self-ideal from the viewpoint of dynamic developmental psychology (which is based on psychoanalytical theory). Finally I will examine the connections between youth culture and conscientious objection.

The concepts of childhood and adolescence, and the behavioral expectation linked to them, vary from one culture to another with the change of historical factors. Up to the end of the Middle Ages in western culture childhood, in the psycho-social sense, only extended to the latency stage, at approximately the age of seven. In the sexual sense adulthood was seen as beginning already with physical puberty.

Initially an extended childhood and adolescence were the privilege of the upper social class. The rise of the manufacturing industry, and the abundant use of child and adolescent labor which followed it, gave adolescents an identity separate from childhood. However, only from the beginning of the Twentieth century did adolescence begin to signify a culturally separate period also for working class adolescent age groups (Keniston 1971, Hägglund 1979).

The possibility of spending a relatively long adolescence as a stage of social and psychological development is thus new; it is a result of the economic and educational development of the western industrialized countries. It can be claimed that only with the wide-scaled formalization of education did a separate "adolescent class" and separate youth cultures take shape in society.

### The Social Background of Youth Culture

Youth culture in its present form is only about a thirty year old phenomenon. After the Second World War young people have endeavored more and more to create their own identity in peer groups and in youth culture. Adolescence has been subject to radical change during the last thirty or forty years. Adolescence has become a significant stage of human growth; youth as a whole has become an important part of social life.

The birth of youth culture has been affected by the lengthening of the process of formal education, the lowering of the age of puberty and, accompanying the former, the lengthening of the puberty and adolescent stages as well as the disappearance of clear rites of adolescence maintained by parents. The change in the economic position of youth in relation to their parents has also been important. After the Second World War parents

have no longer controlled the economic future of adolescents to the same extent as before, as in for example the passing down of professions. Youth have come to share in the general growth of wealth. Thanks to good wages the economic position of adolescents has improved, thus increasing their social self-support and independence. Adolescents have gradually formed a group with purchasing power as consumers of the products of youth culture. Thus adolescents have themselves increasingly maintained, through their own economic participation, commercial youth culture (Hebdige 1979, Mitchell 1980).

A significant feature of youth cultures, of their birth and diffusion, is their international character. Developed mass communications and the copy-distribution (records, cassettes, videos) of the culture industry create uniform symbols for the youth of America and Europe, and Asia as well. The abundance of culture products makes it possible for young people to choose to an unprecedented extent those phenomena of youth culture which interest them the most.

Fast economic growth has shaken the whole of social life. It has for its part placed adolescents in a completely distinct position in comparison to their parents. On the one hand adolescents can adapt to the multisided environment of post-industrial society better than their parents. On the other hand as an interest group they can best oppose this development (Mitchell 1980). Regarding all this change Margaret Mead (1971) has pertinently observed that: "The representatives of adult culture are in relation to adolescent culture in the same position as emigrants once were in moving from their homeland to a foreign cultural environment." This expresses the fact that adults need adolescents to enable them to follow the social change of society. Thus the creation of a strong adolescent identity has become a more important factor in a multi-dimensional society than socialization (school, profession, abilities, and various roles); it is first created to meed adolescents' own need to affect adult cultures and partially change them. Then as young people become adults they abandon their own creation and now adopt adult culture in a somewhat converted form.

## Development Crises and Youth Culture

According to Erik H. Erikson (1968) the goal of adolescent development is identity formation. During an adolescence of ten years a young person must endure changes in the environment as well as in relation to his own body. The young person's sexuality awakens and matures. In the beginning stage of development diffuse sexuality is only gradually directed toward the search of heterosexual company. Its precondition is emotional detachment from one's own parents and from the forms of satisfaction offered by the family (Hägglund 1979). A young person in different stages of adolescent development can obtain support in different manners from youth culture in his endeavor to integrate his budding, growing and maturing sides into his own identity.

The connections between culture and identity have been defined as follows: Culture is a system of symbols and norms which gives people the means for interaction with objective reality. The identification- environment forms a part of culture in which the objects of identification are mutual. Youth culture has both of these features: It represents a young person's means for comprehending objective reality in the midst of his own changes and offers mutual objects of identification (Hägglund 1979). Erikson (1977) has shown that youth culture offers sufficient proximity and neutrality for the developmental purposes of

the area. Youth culture creates unanimity and provides a frame of reference in learning the sides of the ego still requiring growth and development. Young people are united psychologically in their own culture above all by their shared need to find their own sexual body and put it to their own use.

On this basis it is to be understood that youth culture is characterized by physicalness, exaggeration of freedom and the experience of overwhelming external threat. Adolescents go through their "struggle with the dragon", i.e., the breaking away from the taboos, prohibitions and attachments of the childhood world by transferring the experiences linked with it into the present. Youth culture is the stage for these experiences; here, dictated by their own impulses, young people can conjure them forth, project them elsewhere, deny them or sublimate them.

Young people traverse the various stages of adolescent crises taking refuge in one another in such tasks dictated by growth which would seem overwhelming to a young person alone. Of these crises the most important are the crises of sex, the identity crises, the crises of breaking away from the family and the cultural crises.

## The Development of Ideology in Adolescence

In certain stages of life people need new ideas and orientations just as surely and urgently as they need air and nutrition. Below, following Erikson (1968), I will call ideology that which young people on either side of the age of twenty seek from various doctrines. Ideology is part of our personal morals, on the basis of which important decisions are made, eg. concerning participation in the armed services. In the sense meant by Erikson ideology signifies an unconscious intention upon which religious, scientific and political thought are based. Ideology endeavors at a specific time to adapt facts to thought and thought to facts in order to create a world view which is convincing enough to support the identity of the individual and the community. The simplified overall picture created by ideology is by no means arbitrary or consciously controllable, although it can be exploited like all unconscious human endeavors. It proves its strength by forming a seemingly logical overall picture of historical events and by considerably affecting the development of the identity of individuals and thus their "ego-strength".

When further developed ideology can signify an organization whose members have common dress and common goals. More loosely it is a worldview which is in harmony with predominating theory, present knowledge and commonsense, but at the same time with much more; utopian view, cosmic feeling or logical doctrine which are all considered self- evident.

The still developing and unstable ideology of a young person takes shape in relation to his moral instance, i.e., superego. The individual's concepts of good and bad, right and wrong belong to the sphere of the moral instance; its functions carry out the continual critical supervision of the rest of the personality on the bais of these norms and moral concepts. Also belonging to the sphere of the moral instance are those ideals and ideas (ideology) which the individual seeks to follow and emulate. This side of the moral instance, i.e., superego is called the ego-ideal (Tähkä 1982).

The ego-ideal is that part of the personality's structure which changes during the whole time of the individual's development, even in old age. In childhood the ego-ideal

is strongly bound to caretakers and educators. In adolescence it goes through upsetting change and is always formed by the prevailing cultural norms. To a large extent the ego-ideal motivates humanistic and creative action; it is evidently a more important bridge between culture and the instinctual needs of the individual than the fixated superego formed in childhood which is more the seat of morality and moralism. The mature ego-ideal has only direction and aim; like personal narcisism it has neither a permanent space nor aspiration for perfection (Hägglund, T-B).

## Youth Culture, Growth and the Field of Trial of Ideals

The adolescent personality is not yet complete, neither are the different parts of the self integrated into a whole in the same way as in an adult person's personality. Stabilization of the personality occurs, however, at the latest at the age of 22 and 23 (Hägglund, V. 1985).

Adolescent groupings such as various "movements", the peace movement, the green movement, the hippy movement etc represent the collective personification of young adults' ego-ideal (Wittenburg 1968).

The protective features of collective identity, that is the possibility of achieving mutual unanimity and closeness, are most pure among youth cultures. Group action is a necessary intermediate stage in a young adult's process of individuation and breaking away from his parents. This process is furthered by the tension of conflict between generations, i.e., the generation gap, arising between youth groups and adult culture (Hägglund, T-B. and Sikkilä 1985).

That things are still unclear, still under consideration and trial, can appear in many ways. The diffused self appears as various splits. This means that characteristics are split off from the self and from the closest objects of emotion (self and object-representations). The paradoxicalness of adolescence is due to this. He both loves and hates his mother and father, not like a healthy adult for whom the the emotions of love and hate are integrated into a whole; rather the experiences them in different states of emotion as completely different people in relation to them depending on the prevailing state of the self (Hägglund, V. 1985).

Adolescents follow a certain model for experiencing their parents which is given by the relationship between their own selves and the splits linked to objects. This model is appropriate since it furthers development and growth and can gradually lead to greater integration (op.cit.)

At first the young person is not able to experience his parents with empathy or as whole persons due to his own diffused self and own diffused mental world. During adolescent regression (developmental retrogression during which early childhood experiences are reactivated) the mother is more easily retained as an object of good in so far as the young person associates her with the self and object-representations of his childhood, feeling that received from her care and satisfaction. Simultaneously, however, the young adult transfers his gratefulness and attachment elsewhere, for example to an ideology in which there is ample motherly care and world-saving features. The exoticism and femininity of the mother are at the same time completely denied. For the maintenance of this type of split the young adult need the support of youth culture and his peers (Hägglund, V. 1985).

The young adult does not want to become an active worker in any organized ideology, in any political or religious system, since his mental world with its splits would then be shaken. He just wants to join in feeling and experiencing certain things as very good and others as very bad. He wants to idealize, protest and react emotionally. He can then experience his own self as more whole thanks to the support provided by an ideology or a group. He is also ready to easily change ideologies when his development demands it. Ideology gives rather strong narcissistic support when the young person's self is still diffused and the ideological content of the unconscious, which is often very open, can contain the hope that the "mother-congregregation", the "mother- political message", "mother-love", "mother-beauty" etc would eliminate futile inequality, difference, selfishness and jealousy. The Extension of the symbolical or ideological mother would divide all equally among her children, would be completely fair (Hägglund, V. 1985).

Youth Culture Traditions and Conscientious Objection

Each generation of youth culture reacts to the socio-historical condition of society and on that basis forms its own youth culture. The traditions of youth culture seem to take shape after every few years on the basis of a certain spirit of the times. In addition to age the formation of traditions is influenced by the level and length of education and by social class. On the basis of these circumstances the types of youth cultures can be divided into the following traditions (Brake 1980, Mitchell 1982, Heiskanen and Mitchell 1985, Hägglund and Sikkilä 1985):

- the general cultural tradition of adolescents, which probably corresponds to "actual" youth culture (like punk) and it is often linked to early adolescence and physical puberty (approximately 11-15 year olds) when the young person shapes his own body changes and sexuality.

- the social-ideological adolescent counter-culture to which belong politically active young people. Usually young people in the middle or latter stages of adolescence (15-18, and 18-23) year olds) join these youth cultures when the central event is the search for and adoption of identity as a gradual process. This period ties in with the crises of identity and breaking away from the family.

- the intellectual counter-culture tradition, which also attracts older adolescents, i.e., young people in the middle and latter stages of adolescence. The most well known form of the counter- culture is the conscious drop-out culture. Influential manifestations of the counter-culture after the Second World War have been the culture brought about by the so-called beat generation and the hippy movement in the USA. Both of these had clear connections with their socio-ideological counterpart the radical student movement. Perhaps the majority of the conscientious objectors of western culture are recruits from the intellectual counter-culture tradition.

The most well known examples of this tradition after the Second World War are radical student movements, but pacifists, supporters of peace movements and conscientious objectors are also found on the edge of this youth culture tradition.

Although in recent years general adolescent culture has, particularly thanks to the punk-movement and the growing threat of nuclear war, adopted anti-war attitudes and the "message" of the peace movements it is my view that the main body of conscientious objectors still come from the young adult counter-cultures.

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Ilpo Helén

## 2.3. COMMENTARY ON THE CONSCRIPTION ARMY AS A SOCIAL INSTITUTION

I do not even try to make comments on the psychological side of Hannu Sikkilä's paper. I feel fundamentally incompetent to do that. I only want to point out that there is a danger in his approach of combining, on the one hand, the framwork of personal psychology and, on the other, the question "what is the cultural, especially subcultural, background of refusing compulsory military service?". I think that this approach can easily lead to the bias charasteristic of the studies of youth subcultures in the 50's and the 60's, namely considering those subcultures as something deviant, abnormal and in need for normalisation. It is worth reminding that this tradition began by studing juvenile delinquents. I would like to take a radically different point of view. In the following paper I will make some rather general remarks on the character of the conscript army as a social instituion and on the cultural implications of that character.

### I

Let the point of departure be Louis Althusser's thesis on ideology and ideological state apparatuses (1, Althusser 1971 a). There are two elements in Althusser's thesis which are central in this context. Firstly, the process of subjection takes place through ideology (or, as W.F.Haug states it, "ideological" /Haug 1979/). In Althusser's theory the concept of ideology is parallel to the concept of unconscious. Unconscious comes into being when an infant becomes a human subject; it is an essential part of human existence. "The unconscious is eternal, i.e. it has no history (2, Althusser 1971 a, p. 152)."

Now Althusser claims that ideology is in the same sense eternal and ahistorical as unconscious is. Ideology interpellates individuals as human and social subjects. This process of subjection has dual character: on the one hand, individual becomes a human and social actor, but, on the other hand, individual is deprived and the subjectivity of an individual is fundamentally limited. Subject is 'always-ready': it exists before an individual as a kind of formula into which an individual has to fit.

The second claim is: The function of ideoligical state apparatuses (3) is to give material form to ideology, that is, to shape it into concrete ideologies. It is noticable that Althusser does not situate concrete ideoligies at the level of consciousness. Rather, ideologies work through everyday practices and rituals.

> This ideology talks of actions: I shall talk of actions inserted into practices. And I shall point out that these practices are governed by the rituals in which these practices are inscribed, within the material existence of an ideological apparatus. (Althusser 1971 a, p. 158).

The conscript army has certain features and functions which justify the claim that it is an ideological state apparatus (3). It really tries to give concrete content and material

form to the ideology /ideological that "represents the imaginary relationship of individuals to the real conditions for their existence" (ibid., p. 153). This ideological function of the conscript army seems to be maintaining and reproducing a kind of universal and perverted notion of democracy and citizenship, namely, that every male has to go through the same ordeal and fulfill the same duty of becoming a proper citizen. But this is only half of the picture. In fact, the function of conscription and the conscript army is also to differentiate and classify.

II

As an attempt to describe how the concrete subjection works and in what way the army fulfills its ideological function, Michel Foucault's book 'Discipline and Punish' (1977) is very useful. In this book Foucault describes and explains the development of punishment and prison system.

In general, Foucault's main concern is the mechanisms and the practice of power and their relationship to knowledge (4). One of Foucault's main thesis is that power is not only oppressing and depriving: power also produces for example knowledge, discourses, subjects. Peters Dews (1984, p. 77) summarizes Foucault's effort this way:

> ... combing the themes of centralization and increasing efficiency of power with the theme of replacement of overt violence by moralization. Power in modern societies is portrayed as essentially oriented towards the production of regimented, isolated, and self-policing subjects.

But how does power based on internalized moral come into being? Another of Foucalt's main thesis is that power is corporal, that it works in and through the body.

> ... it is always the body that is at issue - the body and its forces, their utility and their docility, their distribution and their submission ...

> ... it is largely as a force of production that the body is invested with relations of power and domination; but, on the other hand, its constitution as labour power is possible only if it is caught up in a system of subjection (in which need is also a political instrument meticulously prepared, calculated and used); the body becomes a useful force only if it is both a productive body and a subjectd body. (Foucault 1977, p. 25-26).

The keyword in 'Discipline and Punish' is discipline (5) as a practice which is at the same time generalizing and differentiating. Foucault finds the seeds of disciplinary practice in the change of the training methods of the army in the late 18th century (ibid., p. 135-136). The purpose for which discipline was introduced was to intensify military training. In general, discipline and intensification are closely interwoven.

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