recommendation that is is a right to ask for alternative service. The Macciocchi Report on Conscientious Objection was endorsed by the European Parliament in February 1983. this recommends that military and alternative service be of equal length, and that alternative service may not be regarded as a sanction and therefore must be organised in such a way as to respect the dignity of the person concerned, and benefit the community, particularly in the social field and the field of aid and development cooperation.

At the UN level little concrete progress has been made. In 1978 the UN General Assembly passed Resolution 33/165 by which it recognised the right to refuse army or police service used to enforce Apartheid. At least one Swiss objector has cited the aims of the UN Disarmament Decade as being in harmony with his conscientious objection.

Few national Governments have respected international recommendations, but both formal recommendations and statements in debate, at the UN for example, are a tool that national lobbyists can use, both for proposed reforms and for raising awareness. There are constant new initiatives at both the European and UN level aimed at better provisions for both conscientious objection and alternative service. The Netherlands was the main sponsor of the UN resolution on conscientious objection in March 1985 which if passed would have stated that conscientious objection to military service is a legitimate exercise of the right to freedom of thought, conscience and religion. It also recommended that non-military service be introduced which did not conflict with the convictions of the objector. The resolution was postponed until February 1987.

Many groups continue to act as watchdogs in case legislation is proposed to degrade the status of alternative service or introduce a punitive aspect. Many non-governmental organisations have elaborated their own standard which they can measure against state practice, and use in 'positive lobbying'.

Conclusion

Where conscription exists I believe there is a right to conscientious objection. Conscientious objection includes the right, even the responsibility, to serve society in positive, constructive ways which give witness to one's deeply held beliefs. The right to contribute positively to the development of one's society should not, for that matter, be limited to conscientious objectors but should be a basic human right.

Since the basis of conscientious objection is freedom of conscience, the right to refuse compulsory forms of alternative service should also be respected, especially when the nature of the work provided is objectionable. But we cannot expect states which depend on conscription to do more than provide meaningful alternative service outside of the military framework. To ask the state provide exemption from both military and alternative service is to oppose the conscription system itself, and perhaps even the compulsory nature of the state. This we certainly have a right to do, though as with so many of our brothers and sisters in far more oppressive situations, we must be prepared to pay the cost under the current system. Those of us who would refuse even constructive forms of civilian alternative service should be encouraged to consider carefully both the motivation and effect of our action. We must avoid the tendency to self-righteousness and ideological puritanism and ask ourselves instead from which position can we most effectively contribute to eliminating

the cancer of violence from our societies and global community. The task is too essential and our numbers too small to afford luxury of ineffective witness.

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Ulrich Herz

4.3. CONSCIENTIOUS OBJECTION AS A NATIONAL RIGHT AND AN INTERNATIONAL OBLIGATION

In a world of sovereign states, and with an institutionalized world community, the United Nations, which so far has national soverignity as one of its constitutional principles, legislation is a prerogative of the national state. From a juridical point of view there are not other laws than national laws, and the individual, being a citizen of the state, is obliged to obey them. A nation has the laws it decides to have.

"International law" is far more ambiguous and gliding concept. We can consider it gliding a scale from "international law in the proper sense" to something which is scarcely definable and not even acknowledged by all scientific experts. Let us look upon these both fringes of the scale. "International law in the proper sense" means that two nations of a couple of nations, after deliberations and negotiations, have reached at agreements which have been formalized in the shape of treatises, conventions, covenants or similar judicial instruments. After having passed a number of procedural processes (signing, ratification etc) these documents have become parts the legislation of the countries in question.

That means however still, in the overwhelming number of cases, that the interpretation and implementation of these pieces of "international law in the proper sense" exclusively or mainly are within the competence of any single country. Under certain circumstances the International Court of Justice may have an internediate function, but the preconditions for that are so specific and restricted that we can leave this possibility out of our discussion.

We have in the other end of the scale reminiscences from something which once was called "natural law", certain general but vague ideas about what should not only be a common moral standard for all mankind but what all human beings yearning to accept and to apply. there has, as you know, been much quarrel about this in the history of human thinking, but the whole discussion about human rights still to some degree is based upon the belief that there might exist such a basic "natural" – and thus international – law. Some of the "international laws in the proper sense" – such as the conventions, protocols etc associated with Haag and Geneve, actually have emanated from such concepts refering to "natural law".

In the middle of the scale, finally, we have something usually called "customary" or "habitual" international law, a kind of more or less generally accepted rules of behaviour in the intercourse between nations. These rules might either just only been established by practice or even been expressed in internationally accepted documents of a lower dignity (codes, recommendation, declarations etc). These elements in international law – if we want to preserve the term – are, however, not binding for any nation and they are most often moulded in a way which makes them not directly applicable to national legislation and implementation.

This is, in principle, the prevailing system. But what, then, is the place of human rights in this system, apart from these reminiscent ideas I mentioned?

As you know, we had in the Western world during the last decades of the the 18th century a wave of political ideas which became manifested in the famous "declarations"

on civil and political rights and freedoms: the French and the American "catalogues" of human rights. In the course of time the core of these rights and freedoms has been incorporated with the legislation of most Western countries, either expressively as parts of their written constitution or as an immanent lelement of their broad body of legislation.

These rights and freedoms were intended to be fundaments for the structure of national societies. Their essential purpose is to establish and guarantee certain "areas of freedom" for the individual citizen and thus, at the same time, to limit or restrain the supremacy of the national authorities. The idea to give these rights and freedoms some kind of "institutionalization" on a super (or supra-) national level was not alive elsewhere than possibly in the minds of some "utopian" philosophers.

In this respect, however, the Second World War marked a turning-point. From 1944 onwards we had strong endeavour to establish a globally accepted codification of human rights. In the first instance this was done in the shape of The Universal Declaration of Human Rights. In my following exposition I disregard the elements of "social, economic and cultural" rights which were included in this declaration and later codifies in a separate document; I restrict myself to the "civil and political" rights which are the relevant ones for our purpose.

After several years of deliberations, further investigations and a number of formal procedures the Covenant on Civil and Political rights came into being as an instrument of international law. It has successively been ratified by the vast majority of UN Member Countries. In this sense its provisions have become parts of the national legislation of these countries, since the Covenent, in principle, is of a binding character for those who have signed and ratified it. But only a minority of states have ratified the so called "Protocol", which would make the implementation of these provisions subject to some kind of supernational examination and/or control.

Leaving aside all the intricate problems which are connected with the relationship between the wording of the various articles of the Covenant and the bewildering variety of interpretations and implementations practised in the countries which acceded the document we can, nevertheless, consider the Covenant to be a kind of target or norm for most countries in the world. Even the Eastern countries, originally with a doubtful attitude to the whole idea of universal human rights, have verbally accepted the Covenant; whether this means more than a purely verbal acceptance is, as you know, a subject of dispute and disagreement. A growing number of the new-established countries in the Third world declare at least sympathy with the provisions of the Covenant and have in many cases even formally approved it. There are a very few countries which either expressively deny these provisions or wittingly act against them, South Africa being the most remarkable example. – In the mind of some Western observers the Soviet Union and its allies must be included into the same category, but this is, as mentioned, a more complicated story.

The most crucial question in our context is, however, whether there are, under prevailing circumstances, any ways or methods through which national legislation in the field of human rights can be influenced or modified by any kind of supranational body of institution.

As long as we look at this question in a global prespective no other such body or instrument that the United Nations with its different branches, special agencies etc is a

potential source of such an influence. Actually it can do so and currently does so through three types of decisions.

The first "channel" for such UN influence is a process, usually initiated by the General Assenbly, to establish specific conventions, covenants, codes which are intended either to complement the Covenant on Civil and Political Rights or to give some of its articles a more precise or more specifies content. So far we have only a few examples of attempts to use this "channel" which finally would end up in a new piece of "international law in the proper sense", i.e. binding obligations for those member countries who would sign and ratify such a new document. The most well known example is the Convention on Genocide, actually established immediately after World War II and under the direct impression of what happened in certain parts of the world for a period of ten, fifteen years. This was, in a sense, the first global codification of a fundamental human right, or more atrictly speaking: the first attempt to ban – in the form of a generally accepted international law – the violation of fundamental human rights. Insofar is this convention unique. Attempts to "outlaw" discrimination in a similar way have – so far – not advanced longer that to a "declaration", which from a juridical point of view is a far weaker instrument. – For the time being efforts are made to create a similar type of convention, covenant or code refering to "war crimes and offences against the peace and security of mankind"; a category of crimes/offences, among which, according to a strong opinion both among experts and "ordinary people" the production, deployment and use of nuclear weapons (and similar weapons for massive destruction) should be included. However, these endeavours have not advanced very far. (Cf the authors second contribution to this volume.)

The second "channel" or possibility would be UN resolutions, taken in the General Assebly (in the first place) or virtually in another UN forum, aimed to be a kind of guidelines how certain parts or elements of "international law" in the broader and weaker sense of this concept should be respected by member states on the national level, either it may be expressed eventually in national legislation or (the usual case) just only become a model of administrative practice. Most of the UN recommendations are instruments of this kind: they are not binding in any way and how far they actually are respected is an open question.

A third such "channel" is formally institutionalized in the shape of the UN Commission on Human Rights. It is not the place here to describe – still less to try to analyze – the way or the ways through which it has a chance actually to influence or even in a properly efficient manner to control the member states' observance either of the articles of the Covenant or of these weaker guidelines of the type declarations, recommendations etc. There is an established procedure according to which UN member states periodically on a voluntary basis "report" about their legislation and practice in the field of human rights, and these reports are followed up by a kind of hearing about their implementation of "the spirit and the letter" of the Covenant. But the competence of this UN Commission on Human Rights (together with a number of "sub-commissions") is evidently very restricted.

Nevertheless, through the three channels mentioned a gradual internationalization of national observance of human rights could at least be imagined – and to some degree actually is accomplished.

You know, of cource, that in certain regional institutional areas the machinery for such

a mutual assimilation of legislation and administrative practice regarding the protection of human rights is more developed and works more efficiently. That refers in the first place to Europe (= Western Europe) with its two "semisupranational" – if such a term is permissable – bodies the European Council and the European Parliament. There we have institutions and established procedures for such a current supervision and verification. – There are afforts, too, to establish similar accomplishemnts as a partial result of the ESK-process (cf the "human right basket").

So much about the general possibilities of an internationalization of the pattern of behaviour of sovereign states in the field of human rights. But what, now, about the specific subject of our seminar: Conscientious Objection?

Let us, to begin with, put the question in the following way: What are the legal fundaments of a national right for an indivudual citizen to refuse military service?

As I mentioned before: a number of countries chose spontaneously under the influence of certain political ideas or ideologies to include such a provision into their legislation, and in such case the law itself – and nothing else – is "the legal basis". This might seem trivial enough. But here and now we are concerned with the implementation (application) of those laws (where they exist), with their virtual improvement and with the establishing of those laws in countries where they so far do not exist. Do we have international standards for such a threefold policy on the national level?

Let us look at the Covenant. Our intention is, of course, immediately drawn to the famous first sentence of article 18: "Everyone shall have the right to freedom of thought, conscience and religion..." The very term "conscience" links of course at least all English speaking people this "password" to he concept of conscientious objection, which, in English, is synonym with "refusal of military service".

However, this refers to semantics rather than to the explanation/interpretation of international law. As a matter of fact there is, unfortenately, no document of global/universal international law which in a authorized way defines "conscience" in this context as having any direct connection with "refusal of military service". Expert exegesis of the phrase "freedom of thought, conscience and religion" tell us that the middle term of this phrase at least originally was intended to clarify that freedom should be guaranteed not only for religions as a "belief" (equivalent to a "thought") but also to acting according to this religion. This, of course, is no more than an information about language; but the fact remains that the right to refuse military service cannot be derived from the wording of article 18 through an undeniable derivation. We have to move from the word ("conscience") to the spirit. That has explicitly been done – in an authorized UN text – as late as a few years ago, in General Assembly resolution 33/165 of 1978. The curious or paradoxal thing is, however, that this, essentially, is not a resolution about conscientious objection but a resolution about apartheid. I return to this "paradox" in a short while.

It must however be mentioned here, very shortly, that the situation differs to some extent if we look at the matter not in the context of the Universal Declaration on Human Rights or the Covenant on Civil and Political Rights but in the context of the European Declaration on Human Rights. Here, we meet the same phrase – Article 9 – "freedon of thought, conscience and religion", and here, too, we lack a definition of declaration of the concept conscience either in the Declaration itself or in formally authorized explanations

– with one important exception. Let us call this exception "semi-authorized".

In the famous resolution of 1967 the Consultative Assembly of the Council of Europe declared the right to refuse military service as "logically deriving from Article 9 of the European Convention", which, by the way, was a very appropriate way of describing the interrelationship. However, this decision of the Consultative Assembly was never confirmed by the Committee of Ministers; it does not have the dignity of an properly authorized interpretation of the European Convention and does not constitute a binding obligation for the members of the European Council. (I leave aside a resolution taken by the European Parliament 1983 – it is favourable, from our point of view, but it is unlikely that it would pass the whole "chain" of procedures to make it legally valid.)

But again back to the events on the global level. At several occasions during the 40 years of UN history attempts have been made and initiatives have been taken in order to put the item "Refusal of military service" on the agenda either of the General Assembly or of the UN Commission on Human Rights. Some of them have been successful insofar as the Secretary General was requested (more than once) to gather information from the member states whether they had any provisions in this respect and how they dealt with resisters, if they had some kind of compulsory military service. A report about this was delivered by the Secretary General, but according to usual procedures in the UN transmitted from one UN body to another, postponed from one session to another, sent back to the GS for up-dating etc. The matter was never dealt with in a substantial manner. There were, evidently, obstacles for a real and open discussion of the whole item.

The "drivers" were most often either non-governmental organisations or, in a few number of cases, some single member state or a small group of states. Why took a majority of states either a doubtful or a purely negative attitude? There are, of course, several reasons, different for various types of countries. It may be understandable that countries without compulsory military service are not especially interested in this question at all. The Eastern countries are generally not inclined to give the individual too much freedom of choice; a war resister, in their opinion, is questioning the whole system. – For many of the new-established countries in the Third world military service appears as both a symbol of and an instrument for unity and national self-determination. In the majority of Western countries, finally, military service is deeply rooted in the historic traditions, considered (officially) as an "honour" rather than as a burden, and individual refusal, therefore, might be permitted by law, as a concession to a certain sort of people, but the military-administrative complex is not very fond of it and wants to minimize the cases. So many national delegations to UN fora have reasons to keep their fingers away from any attempt to establish an international standard for the individual right to refuse military service in national forces.

Before proceeding (or returning) to what happened in the General Assembly in 1978 we should make it clear that the vast majority of those countries which in their legislation have some kind of provisions for war resisters have the right to refuse strictly constricted to persons who can prove that they have a "genuine ethical conviction", which means, in the language of the laws, that their conviction under all circumstances forbids them to raise arms against any other person. This attitude usually is designated as an "absolut" or "total" objection; Eide-Chipoya use the term "pasifist objection". This is opposed to

what is called "partial", "selective" or "conditionned" objection. Eide-Chipoya refer to this position as "objection to the purpose of, or means used, in armed actions". Actually only very few countries – if any! – really accept this type of motiv, even though the wording of the law might give the impression that they do.

Against this background it is highly surprising that the first UN document, which asked for certain provisions in connection with conscientious objection; GA resolution 33/165 of 1978, refered to a specific case of "selective" objection, namely the refusal to serve "in military and police forces which are used to enforce apartheid". I mentioned earlier that this resolution strictly speaking is not a resolution in favour of conscientious objection but a link in a UN campaign against apartheid. The resolution does not establish a right to refuse military or police service under these specific circumstances, nor does it steadfast an obligation under international law to refuse military service under the circumstances mentioned. The resolution actually just only requested the right of asylum to the persons "compelled to leave their country ... solely because of a conscientious objection to assisting in the enforcement of apartheid through service in military or police forces". By expanding the UN Declaration of Territorial Asylum these persons should be protected in the same way as certain other categories (political refugees etc) earlier covered by the articles of this Declaration.

This GA resolution 33/165 was in due time submitted to the UN Commission on Human Rights, for further consideration and investigation. Since a couple of years the Commission had among its files a request from the General Assembly to deliver (or to order) another "up-to-date- information" about conscription, refusal of military service etc in UN member states. Sometimes in between the Commission had, for other purposes, established s Sub-commission on Prevention of Discrimination and Protection of Minorities. This type of sub-commissions, usually established on an ad-hoc basis, consists of members nominated by the governmental delegations but not subordinated to them and usually not professional politicians or diplomats but experts in the specific field of such a sub-commission.

Somewhat curiously the UN Commission on Human Rights found that the two GA requests, the far older one regarding information about (inter alia) conscientious objection and the more recent one concerning asylum to apartheid resisters, could be "placed" under the roof of the Sub-commission on Prevention of Discrimination and Protection of Minorities. Apartheid, evidently, had to do with "discrimination" and conscientious objection could virtually for protection of "minorities". The Sub-commission, thus, found it convenient to initiate a "joint" investigation of the two items. Two scientists, Asbjörn Eide from Norway and Mugamba Chipoya from Zambia were asked to deliver such a report. Their mandate was, in the first instance, to produce "an analysis of the various dimensions of conscientious objection to military service and its interrelationships with the promotion and protection of human rights".

Since E-C has presented a first draft of their study the members of the sub-commission found that they wanted to specify what they had had in mind when they asked for an analysis of "the various dimensions of conscientious objection". As a result of these new considerations E-C received an extended mandate. They now were instructed to scrutinize three specified issues.

The first one refered exclusively to selective objection. In this respect a further specification had been made. E-C were asked to consider: a) refusal to do military service in forces connected with apartheid (= the initial request from the GA), b) refusal to participate in wars of aggression, and c) refusal to engage in other "illegal warfare". It is evident, that these three cases were deemed to constitute not so much a right to refuse but rather an obligation (under international law) to refuse.

Now, however, the sub-commission had found out – presumably from the material E-C had presented, that another "dimension" of conscientious objection necessarily had to be stressed in the context of the investigation, namely war resistance "on grounds of conscience or deeply held personal conviction". It was understood, lately enough, that the "classical" situation of conscientious objection after all was worth while to be studied under international aspects, which would mean, in this case, an investigation of conscientious objection as a human right.

The Third part of the enlarged mandate had its reference "back" to the purpose of the request which GA resolution 33/165 had made, namely an examination of the provisions regarding asylum for war resisters in the "selective" apartheid situation.

I presuppose that the main content of the report, which was delivered by Eide and Chipoya 27 June 1983, is available for the reades of this volume; otherwise it can be found in SIPRI Yearbook 1985 (pages 639/649). this is not the place to repeat it.

What must be done, however, is to report about three shortcomings which in the final instance changed this promising endeavour to assure conscientious objection as a civil right under national law and as an international obligation under international law into a breakdown.

The first of these three shortcomings is inherent already in the Report itself, though Eide and Chipoya cannot be blamed for this deficiency. In the course of their investigation – and in the course of preparatory deliberations and consultations with both their collegues in the sub-commission and with delegations in the Commission on Human Rights. Eide and Chipoya became aware that there actually were no chances to get the idea of selective objection accepted, though this had been the origin of the whole process. They therfore felt obliged to put the stress of their recommendation on the second part of their mandate, refusal of military service "on grounds of conscience or deeply held conviction". They deemed the establishment of such a right to be "a minimum request".

As far as selective refusal is concerned, E-C performed a splendid analysis of how the individual obligation of such a refusal must be considered "logically deriving" (to use the famous phrase from Strassbourg resolution 337) from certain principles and standards of interntational law. They increased the number of those cases of instances of "selective" refusal from three (mentioned in the mandate: apartheid; wars of aggression; other illegal warfare) to five: a) military actions connected with apartheid, b) military activitied amounting to genocide, c) actions likely to include gross violations of human rights, d) armed forces likely to be used for illegal occupation of foreign territory and e) armed forces likely to resort to the use of weapons of mass destruction or weapons which have been specifically outlawed by interntational law. This is a more exhaustive list of individual actions which should be strictly forbidden under international law.

However, in their recommendations E-C express the request of a national legislation

the individual citizen's obligation to refuse these types of armed services in a more "soft" language, and they abstain from any attempt to explain or propose how such a legislation could be implemented. The reason is that this, of course, could not be done within the framework of an exclusively national system of courts and legal procedures; no national authority would ever admit that the own nation is about to commit offences of this type and that the individual citizen, consequently, should have not only the right but an obligation to refuse any engagement or involvement in these actions.

The second shortcoming in this context referred to the Eide- Chipoya Report was dealt with in the UN Commission on Human Rights. The Netherlands made – together with a small number of co-sponsors – an honourable attempt to introduce a draft resolution which was intended to promote the core of the recommendations expressed in the Report. However, the drafters had not felt themselves able to second the idea of "selective" objection: they had in their text, apart from a verbal reference to apartheid, dropped the five cases of "obligatory" refusal (under international law) and confined their recommendation to the right to refuse military service solely on grounds of conscience or profound conviction. One can imagine that the delegation from the Netherlands had done so not "on grounds of profound conviction" but as a compromise in the hope to get this "weak" resolution accepted by a majority of members of the Commission.

Third shortcoming: this modest calculation proved to have overestimated the willingness of the member states to enter into commitments of such a delicate nature. Characteristically enough none of the member states frankly rejected the whole proposal – but none was either prepared to dare a struggle: the Commission decided, finally, to postpone the deliberation of this item on the agenda until 1987. – "Requiescat in pace" would perhaps be a proper closing rejoinder as far as this act is concerned.

Now it is up to us, the non-governmental organisations to start the whole process from scratch again, trying to put pressure upon politicians, diplomats, UN officials, scientists and other people "in charge" to pursue the excellent work done by Eide and Chipoya. This seminar should be the beginning of this process.

Riikka Pilli-Sihvola

4.4. CONSCIENTIOUS OBJECTION AS A HUMAN RIGHT

Hundreds of young people, in more than a dozen countries, are currently in prison because of their refusal on grounds of conscience to perform military service. Amnesty International (AI) works for the release of prisoners of conscience, a category of which includes persons "imprisoned, detained or otherwise physically restricted by reason of their political, religious or other conscientiously held beliefs of by reason of their ethnic origin, sex, colour, or language, provided that they have not used or advocated violence".

According to guideline adopted by International Council of AI in 1980, a conscientious objector to military service is understood to be "a person liable to conscription for military service who for reasons of conscience or profound conviction arising from religious, ethical, moral, humanitarian, philosophical, political or similar motives refuses to perform armed service or any other direct or indirect participation in wars or armed conflicts". AI works for the release of individual conscientious objector who fall within these guidelines. AI also works for the development of law and procedure which make due provision for conscientious objectors.

AI take no position on whether states should provide for conscription or not. it does not agree of disagree with the motives of conscientious objectors (which may be of religious, ethical, moral, humanitarian, philosophical or political character). AI only works for the release of individual conscientious objectors who fall within the guideline described earlier.

During the past decade, there has been a marked increase in tolerance towards conscientious objectors to military service. While legislation in some countries still prescribes severe sentences, imposition of such sentence is now rare. Many governments have liberalized their laws by broadening the grounds on which conscientious objection may be accepted, by simplifying recognition procedures and by increasing the possibilities for alternative service.

In some countries, there is no legal provision at all for conscientious objection to military service: persons objecting to military service on whatever grounds are routinely imprisoned. In other countries, only certain grounds for refusal (e.g. religious motives) are considered acceptable. All other lead to imprisonment. Prison sentenced imposed on conscientious objectors vary from several weeks to four or five years in some cases. In some countries, conscientious objectors are again imprisoned if, after having served their sentence, they persist in refusing to perform military service. This may lead to several consecutive sentences for the same offense. In some countries the alternative service which recognized conscientious objectors are required to perform may be up to twice as long as ordinary military service. AI opposes periods of alternative service which must be considered as a punishment for a person's conscientiously held convictions.

The right to refuse military service for reasons of conscience is founded in the Universal Declaration of Human Rights (article 18) which provides for freedom of thought, conscience and religion. The International Covenant on Civil and Political Rights (article 18) also provides for freedom of thought, conscience and religion. Other similar provisions are made in

the European Convention of Human Rights and Fundamental Freedoms (article 9),

the American Declaration on the Rights and Duties of Man (article 3),

the American Convention on Human Rights (article 12) and

the African Charter on Human and People's Rights (article 8).

Limitations on the right to act in conformity with one's conscience can under article 29, paragraph 2 of the Universal Declaration of Human Rights only be imposed "for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society".

Inter-governmental organizations have so far been reluctant explicitly to proclaim the right to refuse military service on conscientious grounds.

Consultative Assembly of the Council of Europe which is an advisory body composed of members of parliament adopted resolution 337 (1967) on 26 January 1967. This resolution sets out the basic principles of the right to conscientious objection to military service. The resolution also consists of principles concerning procedure (persons should be informed of the rights they are entitled to exercise, the decision-taking body shall be entirely separate from the military authorities, right to appeal, applicants should be granted a hearing) and the basic principles of the alternative service (social and financial equality of recognized conscientious objectors and ordinary conscripts shall be guaranteed, conscientious objectors are employed in social work or other work of national importance – having regard also to the manifold needs of the developing countries).

The Council of Europe's Committee of Ministers, however, has repeatedly refused to urge member-states to bring their legislation into line with these principles and to introduce the right of conscientious objection to military service into the European Convention on Human Rights. Nevertheless, the Council of Europe's Steering Committee for Human Rights is now elaborating a draft-recommendation on conscientious objection to military service for adoption by the Committee of Ministers.

On 7 February 1983 the European Parliament adopted a resolution on conscientious objection. The resolution was proposed by Mrs. Macciocchi. In that resolution the European Parliament noted that protection of freedom of conscience implies the right to refuse to carry out armed military service and to withdraw from such service on grounds of conscience. It also stressed that the performance of alternative service may not be regarded as a sanction and must therefore be organized in such a way as to respect the dignity of the person concerned and benefit the community. It also considered that the duration of such alternative service when carried out within a civil administration or organization should not exceed the period of normal military service including military exercises following the period of basic military training.

The question of conscientious objection has been on the agenda of the United Nation's Commission on Human Rights since 1971. Several questionnaires have been sent to member-states and several reports have been prepared, among them the report by Mr. Eide and Mr. Mubanga-Chipoya to the Commission on Human Rights in 1983. Yet no UN

body has ever adopted a comprehensive resolution proclaiming the right to conscientious objection to military service.

On 20 December 1978 the UN General Assembly adopted resolution 33/165 by which it recognized "the right of all persons to refuse military service in military or police forces which are used to enforce apartheid".

In March 1985 the UN Commission on Human Rights decided to defer until 1986 a draft-resolution which would have stated that "conscientious objection to military service is a legitimate exercise of the right to freedom of thought, conscience and religion". The resolution would have appealed to states "to take measures aimed at recognizing the right to be exempted from military service on the basis of a ggenuinely held conscientious objection to armed service".

Appendix 1

AMNESTY INTERNATIONAL POLICY GUIDELINES ON CONSCIENTIOUS OBJECTION TO MILITARY SERVICE

(as adopted by its International Council, Vienna, 1980)

1.

A conscientious objector is understood to be a person liable to conscription for military service who, for reasons of conscience or profound conviction arising from religious, ethical, moral, humanitarian, philosophical, political or similar motives refuses to perform armed service or any other direct or indirect participation in wars or armed conflicts.

2.

Where a person is detained/imprisoned because he or she claims that he or she on the grounds of conscience described in paragraph 1 above objects to military service, Amnesty International will consider him or her a Prisoner of Conscience, if his or her imprisonment is a consequence of one or more of the following reasons:

(a) the legal code of the country does not contain provisions for the recognition of conscientious objection and for a person to register his or her objection at a specific point in time;

(b) a person is refused the right to register his or her objection;

(c) the recognition of conscientious objection is so restricted that only some and not all of the above-mentioned grounds of conscience or profound conviction are acceptable;

(d) a person dies not have the right to claim conscientious objection on the above-mentioned grounds of conscience or profound conviction developed after conscription in to the armed forces;

(e) he or she is imprisoned as a consequence of his or her leaving the armed forced without authorization for reasons of conscience developed after conscription into the armed forces; if he or she has taken such reasonable steps to secure his or her release by lawful means as might grant him or her release from the military obligations on the grounds of conscience or if he or she did not use those means because he or she has been deprived of reasonable access to the knowledge of them;

(f) there is not a right to alternative service outside the "war machine";

(g) the length of the alternative service is deemable as a punishment for his or her conscientious objection.

3.

A person should not be considered a Prisoner of Conscience if he or she is not willing to state the reason for his or her refusal to perform military service, unless it can be inferred from all the circumstances of the case that the refusal is based on conscientious objection.

4.

A person should however not be considered a Prisoner of Conscience if he or she is offered and refuses comparable alternative service outside the "war machine".

CONSULTATIVE ASSEMBLY OF THE COUNCIL OF EUROPE

RESOLUTION 337 (1967) ON THE RIGHT OF CONSCIENTIOUS OBJECTION

The Assembly,

Having regard to Article 9 of the European convention on Human Rights which binds member States to respect the individual's freedom of conscience and religion,

Declares:

A. Basic Principles

1. Persons liable to conscription for military service who, for reasons of conscience or profound conviction arising from religious, ethical, moral, humanitarian, philosophical or similar motives, refuse to perform armed service shall enjoy a personal right to be released from the obligation to perform such service.

2. This right shall be regarded as deriving logically from the fundamental rights of the individual in democratic Rule of Law States which are guaranteed in Article 9 of the European Convention on Human Rights.

B. Procedure

1. Persons liable for military service should be informed, when notified of their call-up, of the rights they are entitled to exercise.

2. Where the decision regarding the recognition of the right of conscientious objection is taken in the first instance by an administrative authority, the decision-taking body shall be entirely separate from the military authorities and its composition shall guarantee maximum independence and impartiality.

3. Where the decision regarding the recognition of the right of conscientious objection is taken in the first instance by an administrative authority, its decision shall be subject to control by at least one other administrative body, composed likewise in the manner prescribed above, and subsequently to the control of at least one independent judicial body.

4. The legislative authorities should investigate how the exercise of the rights claimed can be made more effective by ensuring that objections and judicial appeals have the effect of suspending the armed service call-up order until the decision regarding the claim has been rendered.

5. Aplicants should be granted a hearing and should also be entitled to be represented and to call relevant witnesses.

C. Alternative Service

1. The period to be served in alternative work shall be at least as long as the period of normal military service.

2. The social and financial equality of recognised conscientious objectors and ordinary conscripts shall be guaranteed.

3. The Governments concerned shall ensure that conscientious objectors are employed in social work or other work of national importance – having in regard also to the manifold need of the developing countries.

UNITED NATIONS GENERAL ASSEMBLY

RESOLUTION 33/165 ON THE STATUS OF PERSONS REFUSING SERVICE IN MILITARY OR POLICE FORCES USED TO ENFORCE APARTHEID

(adopted 20 December 1978)

The General Assembly,

Mindful that the Charter of the United Nations sets forth, as one of the purposes of the Organization, the achievements of international co- operation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion,

Recalling article 18 of the Universal Declaration of Human Rights, which states that everyone has the right to freedom of thought, conscience and religion,

Conscious that the Proclamation of Teheran, the Lagos Declaration for Action against Apartheid and other United Nations declarations, conventions and resolutions have condemned apartheid as a crime against the conscience and dignity of mankind,

Having regard to section II, paragraph 11, of the Lagos Declaration, which proclaims that the United Nations and the international community have a special responsibility towards those imprisoned, restricted or exiled for their struggle against apartheid,

Taking note of the report of the Special Committee against Apartheid,

1. Recognizes the right of all persons to refuse service in military or police forces which are used to enforce apartheid;

2. Calls upon Member States to grant asylum or safe transit to another State, in spirit of the Declaration on Territorial Asylum, to persons compelled to leave their country of nationality solely because of a conscientious objection to assisting in the enforcement of apartheid through service in military or police forces;

3. Urges Member States to consider favourably the granting to such persons of all the rights and benefits accorded to refugees under existing legal instruments;

4. Calls upon appropriate United Nations bodies, including the United Nations High Commissioner for Refugees, the specialized agencies and non-governmental organization, to provide all necessary assistance to such persons.

RESOLUTION ON CONSCIENTIOUS OBJECTION ADOPTED BY THE EUROPEAN PARLIAMENT ON 7 FEBRUARY 1983

The European Parliament,

- having regard to Article 9 of the European Convention of Human Rights, which guarantees the rights of freedom of thought, conscience and religion,
- having regard to Resolution 337 (1967) and Recommendation 816 (1977) of the Consultative Assembly of the Council of Europe on the right of conscientious objection,
- having regard to the laws of the Member States of the European Community concerning the right of conscientious objection,
- having regard to the case law of the Court of Justice of the European Communities and the Joint Declaration of Parliament, Council and Commission in which these institutions stressed the prime importance they attach to the protection of fundamental rights as derived in particular from the European Human Rights Convention,
- having regard to motions for resolutions Doc. 1-796/80, Doc. 1- 803/79 and Doc. 1-244/80,
- having regard to Petitions Nos 14/80, 19/80, 26/80 and 42/80,
- having regard to the report of the Legal Affairs Committee and the opinion of the Political Affairs Committee (Doc. 1-546/82),

1. Recalls that the right to freedom of thought, conscience and religion is a fundamental right;
2. Notes that protection of freedom of conscience implies the rights to carry out armed military service and to withdraw from such service on grounds of conscience;
3. Points out that no court or commission can penetrate the conscience of an individual and that a declaration setting out the individual's motives must therefore suffice in the vast majority of cases to secure the status of conscientious objector.
4. Stresses that the performance of alternative service as provided for in Resolution No. 337 (1967) of the Consultative Assembly of the Council of Europe may not be regarded as sanction and must there fore be organized in such a way as to respect the dignity of the person concerned and benefit the community, particularly in the social field and in the field of aid and development cooperation;
5. Considers that the duration of such alternative service when carried out within a civil administration or organization should not exceed the period

of normal military service including military exercises following the period of basic military training;

6. Emphasizes the need to approximate the legislation of the Member States of the Community governing the right of conscientious objection, the status of conscientious objector, the procedures to be applied and alternative forms of service;

7. Stresses the need for the procedures to be designed in such a way that they involve no additional waiting period and administrative complications as is often the case at present;

8. Calls on the governments and parliaments of the Member States of the Community to examine their respective legislation in this field;

9. Supports efforts to include a right of conscientious objection in the Convention on Human Rights;

10. Instructs its President to forward this resolution to the Commission, the governments and parliaments of the Member States, and the Parliamentary Assembly of the Council or Europe.

Kari Palonen

4.5 REFUSAL OF MILITARY SERVICE AS A POLITICAL ACT AND ITS SIGNIFICANCE FOR THE INDIVIDUAL

In the title of my contribution I have rejected the customary expression 'conscientious objection'. I claim that using this term would prevent the understanding of the problems I will discuss here. As an alternative for 'conscientious objection' I use expressions like 'refusal of military service' and 'refusal to enter the military', corresponding to the German term 'Wehrdienstverweigerung'. I am not sure that I have found the most precise English formulations, but I will initiate a debate on the terminology in order to make the re-thinking on the phenomenon more conscious.

My aim here is to re-think the existential situation of the individual faced by conscription in order to make intelligible the political character of the very act of refusing military service. From this perspective I then discuss the significance of the act of refusal for the individual's relation to politics in general.

I start by trying to make intelligible the procedure of 'conscientious examination', which is often treated with ridicule. The original interntion of this procedure is well understandable, but problems appear with cases of obstinate refusal without appeal to conscience. To understand this situation is to see the main point in the act of refusal in itself, while the 'reasons' are merely ornamental. The way towards an adequate interpretation of the 'refuser's' situation goes through the discussion of his confrontation with demands of 'Staatsräson'.

From conscience to Reasons

In the modern 'sovereign' state the individual has to 'obey' even the laws he does not accept. This principle is both challenged and strengthened by certain exception, of which the case called 'conscientious objection' to military service is perhaps the most obvious one.

An exception strengthens the rule, if it is 'functionalized' so that the threat to the rule is minimized and the nuisance produced by consequent following of the rule is countered with the exception bound to definite conditions and forms. An attempt to functionalize the refusal to serve in the military lies in the very concept of 'conscientious objection'. It signifies a divide et impera -policy towards the refusers in trying to distinguish between those appealing to a 'conscience' which 'objects' to serve, from other refusers.

'Conscience' is thus understood as a kind of 'state' in the person, which 'compels' him to refuse military service. It is a 'fact'. The procedure of conscience examination is intelligible as an examination of finding out, whether this factual state is present in the person appealing to it or not. Task of the examination commission is to prove this appeal to be valid.

When they 'disapprove' this appeal, the person in question should, according to the logic of the situation, also himself be 'converted', i.e. he should recognize that his claim to possess a 'state in himself' preventing him to serve in the military has been mistaken. He

has not 'known himself' profoundly. For this kind of examination the 'test cases' concerning certain extreme situations are wholly intelligible: they try to improve the self-knowledge of the candidate for 'conscientious objection'

Against this procedure there are, however, some methodological arguments. From modern philosophy of science we know the difficulty or rather impossibility in both verifying and falsifying a statement as well as a certain asymmetry in favour of the falsification. Another asymmetry also working against the candidate is that what is examined are the statements appealing to conscience, not the real experience of the conscience.

Constitutive for the situation is, furthermore, the assumption that the act of refusing to serve in the military is only a logical conclusion from the factual state of conscience. The act of refusal in itself is presupposed to have no autonomy. In other words, the refusal of military service is presupposed to be based on a 'fact', not on a decision.

According to the logic of the situation, all the refusers who have not 'proven' their appeal to conscience or who do not appeal to it at all, should be sent to the military – if they sill refuse to do it – to prison. But let us also make a 'test case' similar to those of the examination commissions. Logically, the 'compulsion' of the conscience should be independent of a law providing an exception on the basis of conscience. From history we know, however, that in these cases the fact of conscience has by no means always led to refusal of military service, if judged 'illegal', while the refusal not appealing to the conscience but to the individual's decision has sometimes been more obstinate than the appeal to conscience, when both are considered 'illegal'. By this 'test case' we can argue against the assumption that the act of refusal is a situation-independent logical consequence of possessing a conscience of a certain kind.

A tacit acknowledgement of this possibility together with the pragmatic difficulties of attempted mass imprisonment of obstinate refusers of military service – i.e. with calculations about the 'Staatsräson' towards these refusers – has, in practice, led to a reversal of the examination procedure. This is the case when instead of speaking in terms of conscience the refusal from military service is accepted in cases of appealing to 'reasons' or 'grounds' of a specific kind.

The point is that while conscience is presumed to be a mere fact, reasons or grounds are always principles, something normative. This also changes the character of the examination procedure: the question is no longer of a logical relation between two facts – conscience and the act of refusal – but between a principle and a fact. A principle does not 'compel' any act, it at most 'forbids' to do something and allows to do something.

The normative character of reasons and grounds makes them subject to deliberation and decision by the individual. An appeal to them as a basis to the refusal to serve in the military is a hypothetic – not a categoric – interpretation of the relation between the norm and the fact. Furthermore, the questions of fact and norm are here not independent: the norms are not created in the abstract but are related to factual situations, and may be changed when 'threating' to allow (or to forbid) the entering into the military in a way that this hyupothetic consequence is altered.

All this make the 'reason examination' much more difficult that the conscience examination. When the appeal to reasons is based on a choice of the individual, the seemingly obvious question of examining the sincerity of the pretendant becomes doubtful: what

reasons could an examination commission have to an interpretation is a hypocrite when he himself obstinately denies this? How could a commission argue that its hypothetic interpretation of the relation between the given reasons and the act of refusing to enter into the military is better than the opposite interpretation of the pretendant himself? When interpretations conflict, the examination commission can maintain its superiority over the refuser only by referring to a naked 'Staaträson' – and this reference made open might already be against the demands of the 'Staaträson' itself.

From Reasons to Acts

The favourite device for simplifying the treatment of the pretendants to refusal of the military service has been the division of 'reasons' into sufficient and non-sufficient ones. Compared with mere appeals to conscience this division both enlarges the use of the exceptional measure and makes a further division of the refusers into 'good and bad boys' thus trying to strengthen the 'functional' character of the possibility of the refusal of military service.

The paradigmatic case of the sufficient or legitimate reasons are those appealing to religion, later completed 'ethical' reasons. The paradigm of illegitimate reasons are the 'political' ones. Let us look closer at this distinction between the ethical and the political from the viewpoint of the conceptual history.

To use the distinction between ethical and political reasons as a basis for distinguishing between legitimate and illegitimate grounds for refusal presupposes an universal polar opposition between the ethical and the political. this does not hold at all for several important consceptions of politics, e.g. for that of Hans Kelsen, for whom politics consists of a combination of ethics and techniques (1). More generally, the alleged gap between ethical and political consideration has been subject to several attempts of 'bridge-building'.

From the cases of allegedly illegitimate refusal of military service we may find two different views both opposing the ethical and the political to each other. A distinction between a tolerable (i.e. harmless) 'absolute pacifism' and an intolerable 'relative pacifism' is attempted with applying to killing of the Kantian distinction between the categoric and the hypothetic imperative, distinction between normative and teleological grounds (2). They have, however, different consequences: when the former distinction is applied strictly, only the 'suicidal' refusal of all self-defence is accepted as legitimate, while the latter distinction allows also the possibility of a normative but merely hypothetic imperative, excluding only an appeal to pure expediency as a ground for refusal.

The history of the 'politics vs. morals' -debate allows, however, also to question the opposition between the normative and the teleological. Militarists like Treitschke, on the one hand, have tried to 'ethicise' the war through introducing a specific 'state ethics' appealing to the expediency, i.e. through ethicizing the doctrine of 'Staatsräson'(3). A non-normative pacifism, on the other hand, is developed e.g. by Kurt Hiller in the 1920's in Germany through appealing to a 'vital egoism', inspired by the Nietzschean ethics (4).

In other words, attempts to distinguish between 'ethical' and 'political' reasons in the work of the examination commissions are based on a historically dubious distinction which does not make justice to the arguments which reject the simplifying dichotomy. Those

refusers not belonging to the standard types are obviously subject to wilful treatment due to misunderstanding of their reasoning.

Another case related to the 'political vs. ethical' dichotomy which is disturbing for the reason examination concerns the subject matter of the refusal. Those who for the reason examinators have 'strong' reasons for their refusal are often more ready to accept a non-weapon service in the military than others who have 'weaker' grounds for the refusal: they also reject the military as an institution and, correspondingly, also a non-weapon service in this institution. This refusal may be even of a categoric character, thus totally mixing the simple ethical vs. political dichotomy and manifesting that the use of this dichotomy in itself is a mere expedient instrument for the defenders of 'Staatsräson'.

The resort to the distinction between normative and teleological ground is often justified between the difference 'any army anywhere and anytimes' and 'this army here and now'. The point is, however, that the act of refusal concerns the latter, while the reasons presupposed to concern the former, imaginary case. Again, it is not difficult to see that those who have 'weaker' reasons at the imaginary level often are more obstinate in their refusal at the concrete level than those having 'stronger' reasons at the imaginary level.

In short, there is neither a 'natural' point of 'refusal of military service in general', which could serve as a definite basis for the comparison with the reasons, nor a singular, unilinear hierarchy of the possible objects of the refusal. Let us only mention several alternative objects for the refusal: carrying of weapon, shooting, killing, serving in a conscription army (in contrast to a voluntary one), serving in a casern-based army (in opposition to a militia), serving in a hierarchic army (in opposition to an egalitarian 'red guard' led by soldiers' councils electing the officers by vote and by rotation), serving in an army based on an unconditional obedience (in contrast to one leaving the decision of shooting and killing in each case to the individual himself).

Replacing conscience by reasons leads to numerous questions of interpretation and judgment, which by necessity appear to those whose request to refuse the military is rejected as wilful. Contrary to the case of conscience a commission for reason examination may hardly imagine to convince and convert a pretendant to refusal by arguments. All negative decisions manifest more or less openly that arguments are only lip-service to detect the de facto resort to 'Staatsräson', i.e. to regulating the number of accepted and rejected cases by other means than by arguments, like by reasons of military strategy, by fluctuations of public opinion and above all by making the 'alternative' to military service still more punishment-like and boring than earlier.

The removal of the examination commission – a la lex Pihlajamäki in Finland – appears from this perspective only as an abolishment of an obsolete institution no longer 'functional' in treating the refusals. This removal not only replaces indirect sanctions by more direct ones but also tacitly recognizes that what counts are neither conscience nor reasons but acts of refusal themselves. For the individual faced by the conscription 'reasons' appear rather as excuses for acting just as he acts: they do not make the act in itself different.

Refusal as Politics

For the individual any law contains implicitly the alternative 'to obey or not to obey',

even if the coice of the latter is concealed both by the legal text and by the near-by universal practice of obedience. The case of conscription for the entire male youth of a country tends – despite all the tale on 'duty' or 'obligation', all the propaganda for the 'men's school' et – to hold the alternative of not-entering the military open: the universal conscription is by no means an eternal institution; it is not even today universal, mighty countries not using a peace-time conscription; its stategic significance is doubtful; the half part of the population is liberated from the duty; some others are not 'taken up' etc. Especially the legal possibility of an 'alternative service' outside the military, bound to specific conditions relativizes the question of obedience. In other words, the confrontation with conscription is experienced as a more genuine choice situation for the individual than with most other laws.

"... im politischen Bereich der Erwachsenen (ist) das Wort Gehorsam nut ein enderes Wort ... für Zustimmung und Unterstützung" (5). These words of Hannah Arendt on the Eichmann trial criticizing the apology of Eichmann and other nazis for their conduct in the Third Reich can also be extended to the discussion of conscription. The overwhelming part of the young men entering the military do not experience the situation as one of a decision between the alternatives 'to enter or not to enter'. Their conduct is – to borrow another expression from Arendt on Himmler, Eichmann and other nazis (6) – like that of 'good family fathers' taking any 'job' for sustaining their family, also that of the hanger. In this sense the apparent non-decision of entering the military has no excuse but has to be treated as a 'political' act of accepting and supporting the military and conscription institutions and the demands of the 'Staaträson', of which they are an expression.

When already the naive entry into the military has a political aspect, this aspect is obvious in every case of refusing the military. Despite the 'social worker syndrome' (7) of many refusers and the functionalizing attemps to make the 'alternative service' harmless etc, everyone refusing the military enters by this act into a confrontation with the interests of the state (as they are interpreted by those upholding the conscription). The form of refusal and perhaps the reasons for refusing may make the confrontation more or less intense – e.g. by distinguishing the legalized 'alternative servants' from the 'illegal' refusers like prisoners and deserters or those consciously confronting the 'Staatsräson' in the conscription from those driven to confrontation without intention to seek it. But these modification of intensity do not alter the paradigmatic character of the act of the refusal itself.

Until now I have spoken of the 'political' aspect of the situation of the individual faced by conscription in a way compatible with widely different conceptions of politics. When I now begin to distinguish the degrees of choice and confrontation I will narrow and specify step by step the meaning of the concept and enter into opposition with some of its current meanings.

The naive entry to the military has 'political consequences' in the sense of supporting the conscription etc, but it is questionable, whether it already is an 'act of politics'. To be this a minimum degree of consciousness and intentionality is required. Anyone refusing the military cannot avoid this minimum of intentionality – by the very fact of being confronted with an exception clause bound to special procedures in order to be accepted. In this sense the refusal is an act of the individual's 'policy', which consciously rejects something and

tries to change something (8). This view consciously rejects the 'policy monopoly of the state' in many conventional concepts of politics and claims that the individuals can have a policy of their own in their relation to the state and are thus not only limited to support some proposals for the policy of the state against others.

In this perspective the situation of being faced with conscription contains a significant potential for the individual to create a policy of his own, compared with the conventional paradigm for political acts by the individual, like voting, where the choice is only between 'policies of others through others' – often, of course, important for the life of the individual. Also acts like joining or leaving a party or working in an interest policy, rather tending to deny the whole possibility. The challenge of being faced with conscription is for the individual perhaps even a privileged situation for forming a policy of his own in relation to the state.

In the confrontation between the individual and the state we may distinguish several dimensions. One of them concerns the legitimacy of the state, where the refusal of military service is perhaps more visible and more directly concerned with the 'roots' of the state organization than other forms of law-breaking or civil disobedience (9). Therefore, it is no wonder that just here there is provided an exception, which may both mitigate the confrontation (loyal 'alternative servants') and provoke a challenge to intensify it. But a real danger for the legitimacy of the state may the refusal become only as a mass phenomenon and by conscious common action (10).

Here my discussion remains, however, at the level of the intensity of the individual's experience. Compared with other confrontation situations with the state the act of refusing military service is dramatic especially in the totality of the confrontation for the refuser's person and life during a period. For a young man faced by conscription the act of refusing the military signifies also a radical novelty as a situation: he seldom if ever has been confronted with anything even analogous to that situation of confrontation and challenge for a formation of a personal policy to meet the confrontation. When understanding 'politics as a dramatic action situation' (11), the act of refusing the military becomes nearly a paradigm for this kind of situation in the life of the individual.

A Chance for Politicization

The dramatic character of the refusal is also obvious in its significance for the later life of the individual: it as if divides the time for him into 'before' and 'after' that paradigmatic act. Although this in a sense is true also to those serving in the military, in the individual's relation to politics there is a crucial difference, for the reason that no refuser can avoid the experience of a dramatic confrontation with the state.

Considered as an experience shaping the future of the individual the refusal of the military as a political act may have a widely different significance. According to the character of the break constitutive for 'politics as a dramatic action situation' I interpret the political significance of the act of refusal through three 'pure types' of experiences: an exceptional occasion, a conversion and a metamorphosis (12). Let us call these alternatives as ideal types of politicization through the refusal of the military.

In the first type the experience of being 'politicized' in an extraordinary situation, which is followed by a 'return to normalcy' (perhaps already during the 'alternative ser-

vice'). the rise of political action and of the experience of acting politically arises directly from the confrontation with the 'Staatsräson' as a kind of self-defence, although the refuser experiences the political action as intensively as others and although he even may proudly remember his experiences and tell stories about them, he returns to the life of a 'good family father' (whether actually being one or not) after the 'critical' situation. Only a re-actualization of the confrontation in the form of imminent war of another personal threat may awake in him the 'need' or the 'duty' to act politically again. (13).

The two other types have in common that the experience of the refusal signifies for the individual a 'turning point' towards a politicization of the life. The confrontation with the 'Staatsräson' signifies a kind a paradigmatic learning situation not permitting any return to an a- or unpolitical 'normalcy'. (it might be guessed that the level of the previous political interest tends to be higher than in the first group so that the a- or unpolitical 'normalcy' has been overcome already before the refusal situation.)

The paradigmatic significance of the refusal of the military service as if 'teaches' that the confrontation with the demands, threats and suggestions of the 'Staatsräson' is something which can be met also elsewhere. The conversion signifies a critical sense for this kind of confrontation situations and the readiness to meet them with the 'abilities' learnt in the context of refusing the military, like those of reading between the lines and distinguishing significant nuances if the texts with which the individual is confronted in his life, or that of a strategic and tactical judgment – why not found Clausewitz-study circles during the 'alternative service'! In other words, the self- defence learnt during the refusal situation is extended to analogous situations of acting politically later and elsewhere.

Between conversion and metamorphosis there are hardly differences in the acts themselves, but the experience of acting politically is interpreted differently. While the conversion remains at the level of an extended self-defence, metamorphosis can be interpreted as a conversion to a 'political way of life'. The challenge of conflict and confrontation is not in calling for self-defence but in calling for an 'agonal' way of life, enjoying the conflict as the very substance of a life worth of living. (14). The strategic and exegetic abilities are used not only defensively but also provocatively, aiming not so much at success than at giving chances for the individual to develop and improve his qualities in the 'performing art' of politics (15).

Common to both 'defensive' forms of acting politically related to experiences to refuse the military service is a longing for a situation, where the individual would not have a need for acting politically, while differing in the judgment, whether this state is in the present or in the future. The conversion to a 'political way of life' signifies a break with this longing towards the absence of politics: it means a readiness to live always at the margin of the state and the society, neither integrated in them nor isolated from them but engaged in a subversive action against them. But in a sense a person adopting a political way of life is also tempted by the enter of the 'play' of the 'established politics' in state and society – in order to 'test' his 'capacities' in the 'performing art of politics' also at this arena. (16).

Without conscription army there would be no genuine possibility for understanding the refusal of the military as a political act of a high quality. A corollory of this is: without conscription there would be no possibility of 'misusing' the political act of refusing the military as a unique chance for the politicization of the individual. This does not signify

a llegitimization of the conscription army – who defends it for this reason! – but rahter reminds that any institution can be consciously 'misused' against the intentions of its creators. As an existential situation the conscription system can be interpreted from the perspective of a challenge for the individual to form a policy of his own towards the state and to learn to politicize himself for the rest of his life.

Notes:

1. Cf. esp. Hans Kelsen, Allgemeine Staatlehre, Berlin, Springer 1927, 27-45.

2. The first distinction is emphasized by Kant's moral philosophy in a narrow sense, esp. by Kritik der praktischen Vernunft, 1785 (quoted from Reclam edition, Leipzig 1978), while the latter distinction serves as one between ethical and political considerations in Zum ewigen Frieden, 1795 (quoted from Werkausgabe, Bd XI, Frankfurt/M, Suhrkampf 1978).

3. Heinrich v. Treitschke, Politik, Bd I, ed. by Max Cornicelius, Leipzig , Hirschel, 1897, esp. 105. For the ambiguities in the notion of Staatsräson cf. Friedrich Meinecke, Die idee der Staatsräson in der neueren Geschichte, 1924, Werke 1, München, Oldenburg 1960.

4. Cf. esp. Kurt Hiller, Linkspazifismus, 1920 (quoted from Pazifismus der Tat – revolutionärer Pazifismus, Berlin, Ahde 1981. For the relations between politics, morals and pacifism in Kurt Hiller's work cf. also Kari Palonen, Politik zwischen Erlebnis und Ziel. Über den Beitrag Kurt Hiller's zur Begriffsgeschichte der Politik, in Politik als 'chamäleonartiger' Begriff. Reflexionen und Fallstudien zum Begriffswandel der Politik, Department of Political Science, University of Helsinki, Research Reports, Series A, N 68/1985, 13-34. For changes in the politics vs. morals conroversy in the late 19th and early 20th Germany cf. also Kari Palonen, Politik als Handlungsbegriff. Horizontwandel des politikbegriffs in Deutschland 1890-1933, Helsinki, Societas Scientiarum Fennica, Commentationes Scientiarum Socialum 28, 1985, 88-94.

5. Hannah Arendt, Eichmann in Jerusalem, German edition, Reinbek 1983 (1963), 329.

6. Cf. already Hannah Arendt, Organisierte Schuld, 1945, in Verborgene Tradition, Frankfurt/m, Suhrkamp 1976, esp. 40-43.

7. The expression is due to Klaus Sondermann.

8. For 'politics as policy' -conceptions cf. Karl Rohe, Politik. Begriffe und Wirklichkeiten, Stuttgart, Kohlhammer 1978, 61-63. For the history of these conceptions cf. Kari Palonen, Politik als Handlungsbegriff, op.cit., esp. 96-114.

9. Hannah Arendt's distinction between 'conscientious objection' and 'civil disobedience' fails to consider the possibility of interpreting the individual's act

of refusal of the military as a poltical one, cf. Civil Disobedience, 1970, In Crises of the Republic, Harmondsworth, Pelican 1973, esp. 47-56.

10. In the late twenties Kurt Hiller developed strategies of revolution through a mass refusal of the military service as well as other services to the military and to the war industry, cf. esp. his essays Militanter Pazifismus (1927) and Wie verhindern wir den nächsten Krieg (1929), both in Der Sprung ins Helle, Lepzig, Lindner, 13-21, 107-119.

11. Cf. Kari Palonen, Politics as a Dramatic Action Situation, in Ilkka Heiskanen & Sakari Hänninen (eds.), Exploring the Basis of Politics, Helsinki, The Finnish Political Science Association 1983, 13-31.

12. Ibid., 26-31.

13. Cf. Max Weber's division of the individual's relation to politics to 'normal times' and to 'great moments' (like war!), in Der Nationalstaat und die Volkswirtschafspolitik (1895), in Gesammelte politische Schriften, Tübingen 1971, 18-19.

14. Hannah Arendt, Vita activa oder Vom tätigen Leben, München, esp. 164-185.

15. Cf. ibid., 201-202.

16. Cf. in this respect the development of Joschka Fischer from a militant Sponti to the first Green minister favoring Realpolitik, see esp. his essay collection Von grüner Kraft und Herrlichkeit, Reinbek,Rowolt 1984.

Robert Polet

4.6. CONSCIENTIOUS OBJECTION AND POLITICAL STRATEGY

Up until the present day the history of conscientious objection, one of individual or mass rebellion, has been confined within the limits of an order, whether it be moral, subjective or absolute.

In an article dated 1934 Raymond Aron, the well-known French philosopher and sociologist, summarized this point of view in a brief, peremptory sentence: "Conscientious objection may only be founded on an absolute religious or conscientious imperative." (1).

Even when it is recognized by law, it is as if C.O. were "exorcised": "the objector's protest, which is a menace to the institutional system and social order, finds itself thrown back into the private domain and thus, literally, desocialized." (2).

If, from time immemorial, one has wished to confine C.O. within the ethics of (individual) beliefs, the objetor's aim has generally been to inscribe his commitment within the ethics of (collective) responsibility.

In this, the end of the 20th century, conscientious objection runs through public opinion, circulates in social communication networks and links up with the aspirations of a majority of world opinion:

- the aspiration of people to put an end to the infernal spiral of the arms' race; their will has manifested itself in the great pacifist demonstrations of 1981, 83 and 85, as also in many opinion polls, even when these were commissioned by the European and American political and military establishments;
- the aspirations of churches to find new roads towards peace international cooperation;
- the recommendations made by trade unions and their international bodies in favour of arms industry conversion;
- the recommendations by the Council of Europe, the European Parliament and the United Nations in favor of the recognition of the Right to conscientious objection as a human right.

The question that is put today is as follows: in what way may these majority aspirations and the minority commitments of conscientious objectors be structured into a coherent strategy? What are the aims and what stages may be settled on?

The aims, as I see them, are set on two levels: social struggles and democratization or "civilization" of defence.

1. The struggle for more individual and collective freedom is first and foremost a struggle against imperialism.

The greatest threat to, and source of destruction for, human beings is not militarism. It is first and foremost imperialism. Johan Galtung has shown how this imperialism constitutes the fundamental structural violence by means of which some groups of people oppress others – economically (exploitation), politically (domination) and ideologically or culturally (alienation). The struggle against these forms of structural violence is led by

the combined progressive, democratic forces (with all their strengths and weaknesses) in politics, trade-unionism and the field of culture.

Secondary to, or derived from, this first adversary, comes militarism. To overcome all forms of imperialism, one must first break its armed might. The antimilitarist and nonviolent movements therefore make a specific, vital contribution to the overall political struggle for social change. Their priority must always be to ensure that the antimilitarist contribution links up with the struggle of popular movements as a whole.

It is necessary to point this out to remind us that it is imperative that antimilitarist activities and social objectives form a single coherent whole, and that the political behaviour of conscientious objectors should be intelligible to the great mass of the people. This potential linkage is vital to avoid ending up as prophetic peripheral groups.

2. To redirect the defence policy of the present strategy of power, suspicion and tension – a strategy of the absurd – to quote one of General de Gaulle's ministers (3), would be to "civilize" a defence which may constantly escape the control of its promoters. "Civilizing" defence would lead to a strategy of "détente" and "civilian deterrence" (4). Whilst military deterrence – mostly nuclear – underlines the important losses which an enemy could incur through his aggression, civilian deterrence is largely geared to reduce the hope of "profit" by "threatening" the enemy with real danger if he were to send his troops beyond his borders: not military danger, but ideological, political, diplomatic and economic danger (5).

Conscientious objectors have a specific role to play on the two levels of social struggles and defence. To appraise this role may I suggest the following steps:

1. In what way can defence be globally defined?
2. In what way may a democratic society be democratically defended?
3. Who are the potential actors of this defence? Associative and institutional actors.
4. The parallel between the interplay of these actors in everyday life and in defence.
5. The role of these actors in civilian resistance in the past.
6. Prospects of structuring nonviolent civilian defence.
7. Setting strategic priorities.

1. A Definition of "Defence"

Defence is the sum of means brought into play by the national community to preserve the population's autonomy and controlling capacity. These capacities include:

- on the economic level
  - \+ economic, energy, food resources, etc;
  - \+ economic capacities (infrastructures, means of production, etc);

+ economic, technological and scientific capabilities ("savoir- faire");

- on the political level

+ institutions which are the expression of democratic legitimacy as personified by their representatives (Parliament, the Regions, Provinces, Counties, town councils and the instituted bodies of the "social negotiaors");

- on the cultural level

+ social culture, cultural inheritance, national and regional identities.

The aim of defence is precisely that the people of a country and those that represent them should always be in control of all these structural and existential elements: to ensure the security of society in its economic, social, political and cultural component parts.

It may then be understood that implementing a "defence policy" means taking steps to prevent and/or manage conflict so as to preserve sovereignity and independence of the territory and its democratic institutions, and the security of the population.

Thus this defence policy comprises, on the one hand, management of military means of defence, but also, on the other hand, the preparation in times of peace, of civilian means of defence for the time of war:

- maintaining governmental and administrative activity;
- providing the people with security and supplies;
- maintaining economic and social life;
- raising the population's moral and logistical support for the military and civilian operations;
- developing civilian resistance in all channels of associative life.

2. Democratic Defence and a Democratic Society

Such global and unitarian defence of a nation may only be completed in an homogeneous society, closeknit by democratic life preceding the time of conflict.

For me the nature of democracy is evaluated to the quality of the relationship established between civilian society or the society of citizens and political society or the society governed by the authorities.

This implies:

a) On the level of civilian society, the effective exercise of civilian liberties and human rights – individual and collective right; qualitative rights such as freedom of speech, of education or of worship, and quantitative or economic rights such as the rights to a minimum wage, to living accommodation to health, etc.

Central to these rights is freedom of association which is the very core of associative activity. It opens out as much on the economic level – freedom to create enterprises – as on the philosophical, religious or political level – freedom to create all sorts of associations and to express any options or opinion - and also on the social and union level – the right to free

union, independent of any power group, and last but not least mutual benefit insurance societies (equivalent to National Health insurance in Britain) and cooperatives.

Development of this multiform and pluralistic associative activity measures, in a way, the degree of democracy reached in society and one can understand how at the same time it gives an idea of the will to survive together and so of the potential spirit of defence of this society.

b) On the level of political society, that is the political establishment, democracy implies political pluralism, a legal context open to alternate power, to open and pluralistic national, regional and local organizations controlled by assemblies which are freely elected and freely modified, organizations where disputes amongst themselves or between citizens and themselves are settled by independent courts working under rules of national and international law.

c) On the level of relationships between civilian and political societies, as democratic society implies numerous exchanges

- of information from the ruling power to the citizens on the rules of democracy and the rights of citizens in every field;
- of support to private (or voluntary) associative initiative through public subsidization of collectively useful initiatives;
- of negotiations in institutions set up for that purpose:

  + economic and social negotiation between employers, workers and government,

  + economic and financial negotiation between the above mentioned and the financial sector,

  + negotiations between producers, consumers and government,

  + negotiations on women's rights

  + negotiations between government, conscientious objectors in civilian service and the hundreds of associations which employ them,

  + and so on.

The more there are of these social dialogue institutions, the more dialogue between associative and institutional bodies is enriched, and the more the quality of democracy increases.

In a society which, on the contrary, reduces associative activity to a minimum through a State monopoly of financial, economic, social, cultural and ideological power, this state centralizes these powers and establishes totalitarianism.

The associative and institutional agents who are the founders of democracy must also, logically, be the joint founders of democratic defence.

3. Potential Protagonists of Defence

By institutional agents we mean any institutional, administrative or other body set up by the authorities of the particular country, within the institutional framework of that country.

By associative agents we means any movement or grouping composed of individual citizens who have come together freely to pursue a particular social, philosophical, cultural, political, economic, sporting, etc objective.

The institutional network varies from one country to another, although in Europe (the European Community and the Council of Europe) a more or less uniform and restrictive institutional structure is being developed in economic, agricultural, research, social rights or fundamental human rights matters.

Added to this budding European structure one should also describe the institutional structures of the different countries with their governments, administrations, public enterprises or state participation at the diverse national, regional and local levels. That is neither necessary nor possible here. The main thing is to measure their diversity, their quality and their importance.

It would however be useful to make an inventory, in each of our countries, of the institutions where negotiation takes place between political (or institutional) society and civilian (or associative) society, in order to identify our favoured action sites.

As to the associative network, it merits all our attention. Let us take a brief look at only one of the associative networks, that of the organizations which employ conscientious objectors in civilian service in a small country like Belgium. It must be said however that already a quarter of those organizations are of public (governmental) nature.

So it is double network: public, for the whole range of State services or organizations created by the authorities – counties, boroughs, social welfare institutions, etc and private, for the whole range of non-governmental organizations – non-profit making organizations, international associations, foundations, state approved organizations, etc. This double network thus covers multiple sectors of activity.

In the "Health" sector, hospitals first come into the mind, this includes psychiatric hospitals for adults and children. But there are also mental health services, medical research and health education.

In the "aid to the handicapped" sector, there is a range of specialized institutions from mental homes to workshops for the handicapped, occupational therapy, health care and education for backward children.

The "Welfare" sector covers a vast number of activities stemming from welfare centers, homes for abandoned children, battered women, vagabonds, etc.

The "social" sector also includes organizations giving limited help such as reception centers or urgently needed help for the deprived. Situated between the social and cultural sectors there are the literacy projects, material, moral or legal help services to immigrants, to the young and to women in difficult situations.

Finally the cultural sector itself covers a number of activities:

- scientific: activities engaged in by universities or specialized institutions such as the National Observatory, the National Meteorological Institute and many

other public or private centres;

- educational: university activities, education centres, research groups into educational help for schools, etc;
- the arts: research, creation, renovation, protection, etc ranging from art schools through mediatheques to theatres;
- permanent education: this vast sector, supported by the specialized services of the Flemish, French and German speaking Communities, comprises hundreds of groups or services closely linked to different tendencies, philosophical (lay or religious), political (from the Jacquemotte Foundation of communist obedience to the Education Centre for conservative executives, through many organizations linked to the Socialists or Christians, and also through the just as numerous independent pluralistic organizations such as the League of Families, the Youth information centres and many others);
- meetings and actions for peace and development: here also you will find pluralistic organizations and more "politicized" groups engaged in research, conscientization and education.

This is only a cursory glance but it demonstrates how far reaching the network of these organization is and the depth of its socio-political ramifications. All this social activity is concerned with the functioning of these organizations and with the quality and quantity of services rendered by them to the collectivity.

4. The Parallel between the Involvement of These Agents in Social Activity and in Defence

Whereas the realm of defence (be it national or collective) is, on the whole, not a very familiar one to members of the general public, they are more aware of problems in the social sphere, because these are nearer to home and are a more everyday occurrence.

Here, the distinction between institutional and associative agents is immediately obvious. As a result of pressure applied by a whole host of "pressure groups" (associations, movements, other lobbyists), the authorities have to turn their attention to numerous areas of everyday life. As examples, we might mention: national and regional development, housing, transport, women's rights, young people's rights, workers' rights (economic and social), television and radio, conscientious objection, etc. In all these areas (and many more not mentioned here), institutional bodies have been set up as a result of public demands/needs, which, in the majority of cases, have been voiced by groups or individual citizens. In addition, consultative/participatory bodies are set up to try to settle – as best they can – the disputes arising between citizens and the state. Such bodies include: the Commission for Women's rights, the Consultative Commission on National and Regional Development, the EEC Economic and Social Council (for consultation between the European Commission and union/management representatives)etc.

As far as the sphere of social struggle, touched above, is concerned, it is known that the way the population's problems evolve both on the capacity of the various groups to voice these problems, and the validity of their case. It also depends on the capacity