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Render to Caesar the Things That Are Caesar's, and to God the Things That Are God's": Conscientious Objection in the Russian Federation

Eric H. Anderson

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“Render to Caesar the Things That Are
Caesar’s, and to God the Things That Are God’s”:
Conscientious Objection in the
Russian Federation**

I. INTRODUCTION

The breakup of the former Soviet Union brought in its wake a myriad of changes. Many of these changes are economic, geographic, or political in nature. Others go to the heart of what some in the West have long taken for granted: recognition of fundamental human rights. Yet the recognition of these rights often produces tension between the individual and the state.

Perhaps the most striking example of discord between an individual’s rights and the state’s purpose is in the need to preserve national security. While most individuals recognize the need for national security, it is not uncommon for some to have religious, moral, or ideological convictions that directly conflict either with the very cause they are called upon to support or with the means used to carry out that cause.¹

Many countries reach the solution to this conflict through a compromise by allowing individuals to perform duties that, while more palatable to the individual, still contribute to the overall security of the country.² In practice, the government offers individuals the chance to opt out of regular military service and instead fulfill duties which relate less directly to the actions

* *Mark 12:17* (King James).

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1. See, e.g., CYNTHIA ELLER, *CONSCIENTIOUS OBJECTORS AND THE SECOND WORLD WAR: MORAL AND RELIGIOUS ARGUMENTS IN SUPPORT OF PACIPISM* 89-105 (1991).

2. See *THE NEW CONSCIENTIOUS OBJECTION: FROM SACRED TO SECULAR RESISTANCE*, 196-208 (Charles C. Moskos & John W. Chambers II eds., 1993) [hereinafter *THE NEW CONSCIENTIOUS OBJECTION*]; Matthew Lippman, *The Recognition of Conscientious Objection to Military Service as an International Human Right*, 21 *CAL. W. INT’L L.J.* 31, 39 (1990-91).

against which the individual protests.³ This is the realm of alternative service.

While many countries recognize the right to alternative service,⁴ Russia, by far the largest country in the world with one of the world's largest militaries, has been slow to provide any kind of alternative service.⁵ However, during the past several years, important steps have been taken toward ensuring that alternative civil service is available to those who object to regular military service.⁶

On November 15, 1994, a draft law, the "Federal law on Alternative Civil Service" ("ACS Draft"), was introduced to the State Duma of the Russian Federation.⁷ This draft law and its subsequent versions represent a significant step forward in the area of religious freedom and human rights in Russia, and strive to bring Russia's current legislation into conformity with international agreements⁸ and the December 1993 Russian Constitution.⁹

This Comment argues that both those who support a strong military and those who call for individual freedom of conscience have a vested interest in adopting an alternative service law as soon as possible. Part II outlines and defines the basic philosophical arguments for and against conscientious objection. Part III refines the definition of conscientious objection; Part IV outlines Russia's history and current approach to alternative service in light of this revised definition. Part V discusses recent efforts to pass an alternative service law and the obstacles and opposition to the adoption of an alternative service law in Russia. This

3. See ELLER, *supra* note 1, at 21-32.

4. Lippman, *supra* note 2, at 37-39.

5. Anton Bebler, *Conscientious Objection in Socialist States: A Comparative Perspective*, 24 *STUD. COMP. COMMUNISM* 103, 103 (1991); see *A Question of Conscience*, *ECONOMIST* (London), July 30, 1988, at 46. See generally Robert Arnett & Mary FitzGerald, *A Volunteer Red Army?*, 34 *ORBIS* 398, 400-01 (1990).

6. Mary Holland, *An Emerging Conception of Fundamental Rights in Contemporary Russia*, 1 *NEW EUR. L. REV.* 1, 9 (1992).

7. Federal'nyi zakon ob al'ternativnoi grazhdanskoi sluzhbe [Federal Law on Alternative Civil Service] (Nov. 15, 1994) [hereinafter ACS Draft] (tentative draft and subsequent drafts on file with author).

8. See, e.g., Marie-France Major, *Conscientious Objection and International Law: A Human Right?*, 24 *CASE W. RES. J. INT'L L.* 349, 356-57 (1992); Kevin J. Kuzas, *Note, Asylum for Unrecognized Conscientious Objectors to Military Service: Is There a Right Not to Fight?*, 31 *VA. J. INT'L L.* 447, 452-53 (1991).

9. KONSTITUTSIYA ROSSISKOI FEDERATSII [Constitution of the Russian Federation] [KONST. RF] art. 59; see *infra* part IV.B.4.

Comment concludes that Parliament's inaction poses a significant threat to Russia's democracy and national security.

II. THE PHILOSOPHICAL DEBATE REGARDING CONSCIENTIOUS OBJECTION

The question of whether a state should allow conscientious objection produces tension between the individual's moral outlook and the need for broad public consensus in order for a legal system to properly function.

A. *Arguments for Conscientious Objection*

Bertrand Russell championed the individual conscience in the following statement:

When a man considers a certain law to be bad, he has a right, and may have a duty, to try to get it changed, but it is only in rare cases that he does right to break it. I do not deny that *there are situations in which law-breaking becomes a duty: it is a duty when a man profoundly believes that it would be a sin to obey.* This covers the case of the conscientious objector. Even if you are quite convinced that he is mistaken, you cannot say that he ought not to act as his conscience dictates.¹⁰

Russell is certainly not alone in his suggestion, and indeed, many legal systems recognize some form of conscientious objection.¹¹ With respect to military service, one scholar, Sergio Lariccia, has even argued that conscientious objection is preferable to service:

The national state inherits in the name of sovereignty conceived in modern terms, the ancient duty of dying for the country, affirming in this way the preeminence of the nation above all other earthly goods. This nationalism and the mentality deriving from it has lagged behind with respect to the technological development of armament. People using arms to threaten another country know that they can at the same time destroy

10. BERTRAND RUSSELL, *AUTHORITY AND THE INDIVIDUAL* 69 (1968) (emphasis added), quoted in Sergio Lariccia, *Conscientious Objection in Italian Law*, in EUROPEAN CONSORTIUM FOR CHURCH-STATE RESEARCH, *CONSCIENTIOUS OBJECTION IN THE EC COUNTRIES* 113, 118 (1992) [hereinafter *EC COUNTRIES*].

11. For example, the Italian Constitutional Court has specifically held that conscientious objection to military service cannot be considered a crime. Lariccia, *supra* note 10, at 130. See generally *id.* at 130-33.

their own country. In this way from a moral point of view conscientious objection to the use of arms is now more justifiable than military service itself.¹²

Lariccia further noted that "the need to envisage a different defence model compared to that based on armed defence is one of the fundamental aspects of the problem of conscientious objection to military service."¹³

Certainly, there are strong policy reasons for recognizing conscientious objection to particular laws and in certain circumstances.

B. Arguments Against Conscientious Objection

Some have argued, however, that conscientious objection is per se incompatible with the rule of law. Jeremy Bentham stated:

If I say openly, I hate the law ergo it is not binding and ought to be disobeyed, no one will listen to me; but by calling my hate my conscience or my moral sense I urge the same argument in another and more plausible form; I seem to assign a reason for my dislike, when in truth I have only given it a sounding and specious name.¹⁴

One Dutch scholar stated that "[u]nrestricted freedom of conscience in foro externo implies the abolition of the legal order as a binding system of general rules."¹⁵ He concluded that "[o]n logical grounds I would even argue that the external freedom of conscience, guaranteed by a general provision of constitutional or international law . . . is as such incompatible with a legal system."¹⁶

In the United Kingdom, the "courts and the legislature are reluctant to make the conscience of the individual supreme"¹⁷

12. *Id.* at 137 (emphasis added).

13. *Id.* at 141.

14. J.D. McClean, *Protection of Freedom of Conscience in Fields Other than That of Military Service*, in EC COUNTRIES, *supra* note 10, at 291, 291 (quoting Jeremy Bentham).

15. Ben P. Vermeulen, *Conscientious Objection in Dutch Law*, in EC COUNTRIES, *supra* note 10, at 259, 262.

16. *Id.*

17. Francis Lyall, *Conscience and the Law: UK National Report*, in EC COUNTRIES, *supra* note 10, at 165, 179.

since this would "undermin[e] the general law through allowing each citizen what might amount to a right of private judgment on all matters."¹⁸ Indeed, Lord Bridge argued that "to contend that the individual . . . has a right of "conscientious objection" which entitles him to set himself above the law . . . is a doctrine which directly undermines the rule of law and is wholly unacceptable in a democratic society."¹⁹

One authority further noted that "in a state in which the rule of law prevails each individual's obedience is based on the expectation that all the rest are also bound by the law."²⁰ Under a democratic system, "the constant possibility of changing majorities presupposes that everybody, even members of a minority, will respect as the will of the entire people a law which has been passed by the majority."²¹

Thus, while many countries recognize conscientious objection in various forms,²² the concept is not necessarily well received in all camps. The opposing positions can, however, be largely harmonized by understanding how conscientious objection to a particular law changes over time. Therefore, Part III examines how a more careful definition of conscientious objection reconciles the opposing viewpoints.

III. DEFINING CONSCIENTIOUS OBJECTION

A. *The Basic Definition*

1. *Conscientious scruple defined*

Black's Law Dictionary defines *conscientious scruple* as:

18. *Id.* at 180.

19. *Id.* (quoting Lord Bridge in *X v. Morgan Grampian Ltd.*, 2 All E.R. 1, 13 (1990)).

20. Wolfgang Loschelder, *The Non-Fulfillment of Legally Imposed Obligations Because of Conflicting Decisions of Conscience - The Legal Situation in the Federal Republic of Germany (FRG)*, in EC COUNTRIES, *supra* note 10, at 27, 27.

I believe Loschelder's argument is only applicable in the preacceptance stage of conscientious objection. Once the "conscientious objection" has been accepted and the exemption allowed, then each individual, even the "conscientious objector," is still "bound by the law." What has changed is not each individual's obedience to law, but rather the actual provisions and parameters of that law.

21. *Id.*

22. A far from comprehensive list of countries accepting conscientious objection in some form would include France, Germany, Spain, Italy, Denmark, Holland, Belgium, the United Kingdom, Ireland, the United States, and others. See generally EC COUNTRIES, *supra* note 10.

An objection or repugnance growing out of the fact that the person believes the thing demanded of him to be morally wrong, his conscience being the sole guide to his decision; it is thus distinguished from an "objection on principle," which is dictated by the reason and judgment, rather than the moral sense²³

While Black's definition and its focus on "moral sense" are geared more toward the United States legal system than others, it is generally true that the term *conscientious objection* is applied only to those objections which rise to a certain level of seriousness.²⁴ Some countries require that conscientious objections be based on religious training or belief,²⁵ while others may accept social or even political objections.²⁶ Nevertheless, every regime attempts to distinguish routine, run-of-the-mill objections from those which rise to the level of seriousness such that they are worthy of being termed conscientious objections.²⁷

2. *Conscientious objection defined*

Conscientious objection can thus exist in many contexts, as long as it is deemed a sufficiently serious or properly motivated objection. Assuming that a particular objection rises to the necessary level of seriousness, conscientious objection takes the following basic form:

Government:²⁸ We want you to do X.

Individual: I don't want to do X.

It stands to reason that the more adamant the opposing parties feel about their particular position, the more likely a confrontation will arise between them.

23. BLACK'S LAW DICTIONARY 304 (6th ed. 1990).

24. Lippman, *supra* note 2, at 37.

25. ELLER, *supra* note 1, at 110-14; Lippman, *supra* note 2, at 37. *But see* Paul Ramsey, *Selective Conscientious Objection: Warrants and Reservations*, in *A CONFLICT OF LOYALTIES: THE CASE FOR SELECTIVE CONSCIENTIOUS OBJECTION* 31, 44-57 (James Finn ed., 1968) (discussing the U.S. Supreme Court's interpretation of religious conscientious objection).

26. Lippman, *supra* note 2, at 37.

27. *Id.*

28. The government is usually, though not always, the entity imposing the duty.

Given the above basic form, it is possible for an individual to have a conscientious objection to virtually any duty or obligation imposed upon him or her. While in practice most legal duties and obligations do not elicit the kinds of objections that rise to the seriousness of conscientious objections, various modern legal systems recognize conscientious objections to such acts as taking an oath,²⁹ serving as juror,³⁰ paying certain taxes,³¹ fulfilling certain contractual obligations,³² having a picture taken for a driver's license,³³ and even wearing a motorcycle helmet.³⁴ Included in this list would be the quintessential conscientious objection: refusal to perform military service. Thus, an individual can have a conscientious objection to literally any law or duty as long as the objection rises to the necessary level of seriousness.

To further refine this definition of conscientious objection, we must look at how conscientious objection arises in the first place and then examine how the party imposing the duty may respond to the objection. These questions are examined below.

B. Defining Conscientious Objection over Time

1. How conscientious objection arises initially

Objections to military service clearly illustrate how conscientious objection arises. Initially, the government must have a particular interest which it seeks to carry out by imposing the duty. In this case, the government has an interest in maintaining national security. Once the government determines that it will provide this protection, the government must create a mechanism for carrying out and protecting that interest. Historically, this mechanism has been a military force.

Once the government determines its interests, it establishes a plan for meeting those interests, and then acts (generally by passing laws and formulating regulations) to carry out that plan. I submit that every government, in formulating these laws, rules, and regulations, must necessarily address two fundamen-

29. Ronald B. Flowers, *Government Accommodation of Religious-based Conscientious Objection*, 24 SETON HALL L. REV. 695, 722-23 (1993).

30. *Id.* at 718.

31. *Id.* at 711-12.

32. Vermeulen, *supra* note 15, at 268.

33. Flowers, *supra* note 29, at 724-27.

34. McClean, *supra* note 14, at 300.

tal questions: the *fundamental duty question* and the *accommodation question*.

2. *The fundamental duty question*

The *fundamental duty question* can be concisely stated as follows: Assuming that a society confers a benefit, such as military protection, to individuals in that society, what duty, if any, do those individuals owe to the society as a whole?

A broad range of possible answers exists to the fundamental duty question. Some countries have determined that financial support fulfills the duty an individual owes to the state. This financial support is then used to contract with employees who make up a volunteer, professional army. In rough terms, this is the approach taken by the United States³⁵ and Great Britain.³⁶ In contrast, other countries have responded to the fundamental duty question by requiring that the citizens who receive military protection take an active part in providing that protection.³⁷ Thus, a system of regular conscription exists in many countries, including the Russian Federation.³⁸ While one can argue about the relative merits of a professional army versus a conscripted army, world practice suggests that requiring individuals in the society to perform military service is a reasonable approach to the fundamental duty question.

3. *The accommodation question*

Under systems of obligatory military service, some citizens will invariably disagree with the government's resolution of the fundamental duty question.³⁹ They may feel either that they owe no duty to the state for its military protection, or that they owe the state a duty other than active military service. These differ-

35. See, e.g., Mary P. Sullivan, Comment, *Conscientious Objection in an All-Volunteer Military: An Impermissible Accommodation of Religious Freedom?*, 43 MERCER L. REV. 751, 754 (1992).

36. See, e.g., Gwyn Harries-Jenkins, *Britain: From Individual Conscience to Social Movement*, in THE NEW CONSCIENTIOUS OBJECTION, *supra* note 2, at 67, 67.

37. Kuzas, *supra* note 8, at 473-77.

38. Holland, *supra* note 6, at 9; Helen Womak, *Russians Turn Draft-Dodging into a Fine Art*, INDEPENDENT (London), Apr. 6, 1996, at 15.

39. Conscientious objection can also arise in an all-volunteer army, but in such cases it is based on contractual obligations which the individual accepts and subsequently refuses to carry out.

ing viewpoints as to how the fundamental duty question should be answered give rise to the *accommodation question*: What duty, if any, does the government owe to such individuals in terms of protecting and respecting their opposing viewpoint? Stated another way: How should the government react toward those individuals who refuse to do what the government and the society as a whole have determined that each individual *should* do?⁴⁰

The natural tendency will be for the government to view an individual's objections as a refusal to participate in the collective good.⁴¹ However, faced with the accommodation question, the government may subsequently determine that the collective good is not really as necessary as originally thought, or that it can be achieved through other means, or that another collective good outweighs the first.

If the government allows an objecting individual to avoid the original duty altogether or to perform an alternative duty, then this accommodation subsequently functions as the original duty. Thus, any accommodation on the part of the government is, in reality, not an *exception* to the government's approach, but rather a *new approach* to the fundamental duty question. The duty imposed is different than it originally was before the accommodation; the new duty continues until another individual objects to that new duty, and the cycle is repeated. Over time, individual conscientious objections force a society to rethink its values and, therefore, what the society requires of each individual.⁴² The response to the accommodation question thus functions over time as a refinement of the government's answer to the fundamental duty question.

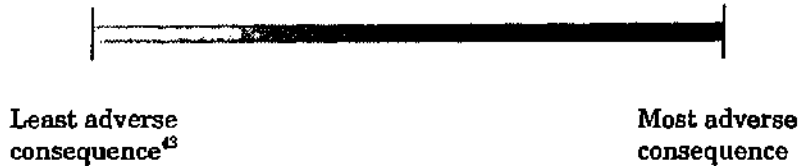
There are two extreme approaches that a government can take in answering the accommodation question without changing the fundamental duty. One is to impose the harshest possible consequence for refusal to fulfill the societal duty; the opposite

40. This could be termed the *reciprocal duty question*. However, because it involves a balancing of the original governmental interest against the interest of the individual in question, I prefer to call it the *accommodation question*.

41. Bebler, *supra* note 5, at 104; Lippman, *supra* note 2, at 31-32.

42. Charles C. Moskos & John W. Chambers II, *The Secularization of Conscience*, in *THE NEW CONSCIENTIOUS OBJECTION*, *supra* note 2, at 3, 3-20. See generally Margaret Levi & Stephen DeTray, *A Weapon Against War: Conscientious Objection in the United States, Australia, and France*, 21 *POL. & SOC'Y* 425 (1993) (arguing that the conscientious objection engenders social values).

extreme is to impose the least adverse consequence possible. Rather than simply two possibilities in a list of options, these represent the extreme ends of a continuum. Graphed, the consequences for refusal to fulfill one's fundamental duty are as follows:



In most societies, the harshest possible consequence for refusal to fulfill one's fundamental duty is loss of life.⁴⁴ An example of the possible consequences for refusal to fulfill one's fundamental duty, might be graphed as follows:



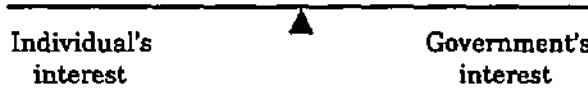
C. Consequences for Refusing to Fulfill the Fundamental Duty and Balancing of Interests

If a government refuses to accommodate the conscientious objector, the extent to which the individual will be punished depends on a balancing of interests. In the military setting, the gov-

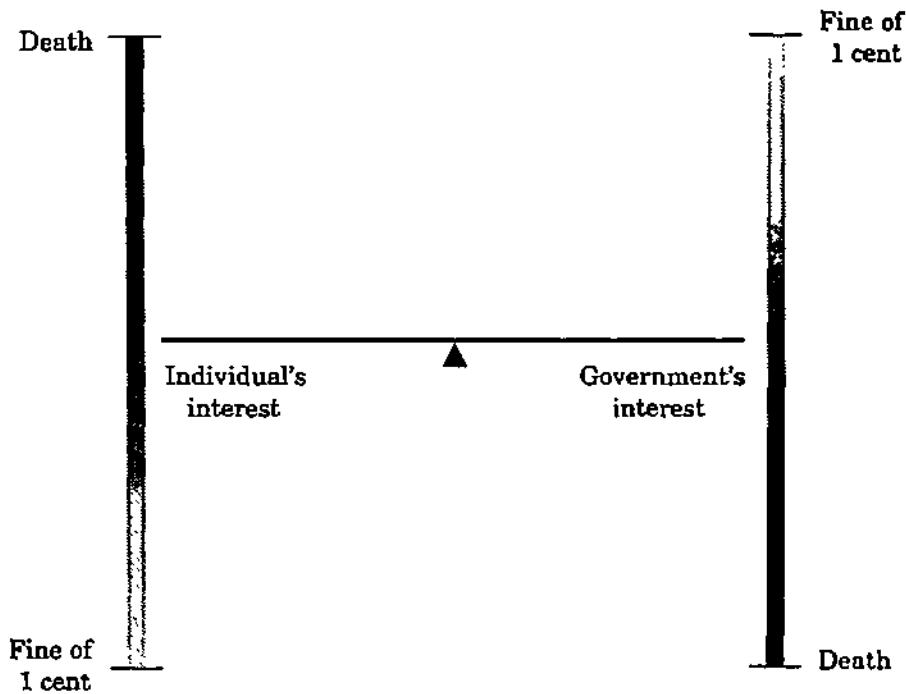
43. I have referred to the left end of the continuum as the "least adverse consequence" rather than "no adverse consequence." One might imagine a situation, however, where a particular objection would elicit no adverse consequence whatsoever, or, to push the logical possibility even farther, might even be commended. In either case, the fundamental duty is rewritten to not require the objected "duty." No adverse consequence for an individual's objection simply manifests that the response to the accommodation question functions as a refinement of the government's answer to the fundamental duty question over time. The point where a particular objection elicits either a neutral response or a positive response from the government is, by definition, a new answer to the fundamental duty question. In order for the original fundamental duty to continue to exist, the left end of the spectrum must be some kind of adverse consequence, albeit very minimal.

44. See generally Lippman, *supra* note 2, at 39-40 (noting that penalties resulting from the refusal to perform military service range from imprisonment to capital punishment).

ernment's interest in having the individual perform military service is balanced against the individual's interest in not performing the service. This can be visually depicted as follows:



This model makes clear that the possible *consequences* are on a continuum, but the *interests* are not. The interests are necessarily opposed, or otherwise the objection never would arise.⁴⁵ Therefore, it may be visually preferable to overlay the continuum of possible adverse consequences at either end of the balance of diametrically opposed interests. The model may be graphed as follows:



45. Once again, if the interests are not in opposition, the fundamental duty has already been rewritten.

To the extent that society places value, or gives weight to the governmental interest in having the individual serve, the consequences for failure to fulfill the fundamental duty will tend toward the portion of the continuum representing more adverse consequences. Conversely, to the extent that society gives weight to the individual's interest in not serving, the consequences will tend toward a less adverse consequence for refusal to serve.

Because, assuming that the government refuses to change the fundamental duty, the interests of the government and an individual with a conscientious objection are diametrically opposed, there is danger in trying to place full weight on both ends at the same time. If this is done, the bar will eventually snap.⁴⁶ Thus, a government's failure to recognize the extent of the weight society gives to the individual's interest in not serving may eventually backfire.

Most countries attempt to compromise and accommodate the individual conscience, either through modifying the fundamental duty or by providing lenient consequences for conscientious objectors.⁴⁷ In other words, more weight is being given to the individual's interest in not serving. Following the Cold War, many countries see less need for a large, active military. To the extent that the need for a large, active military decreases, the weight given to the government's interest in having a *particular* individual serve in the military decreases. These trends also hold true in Russia. More individuals and institutions in Russian society are recognizing individual conscience and questioning the government's interest in having such a large, powerful military.⁴⁸

However, some within Russia's power circles continue to deny these trends and seek to require military service as it had been during the Soviet period.⁴⁹ Because great weight is placed in contemporary Russia on both the individual's interest in not serving and the government's interest in having the individual

46. See *infra* part V.

47. See ELLER, *supra* note 1, at 21-26; Bebler, *supra* note 5, at 105-12. See generally RACHEL BARKER, CONSCIENCE, GOVERNMENT AND WAR: CONSCIENTIOUS OBJECTION IN GREAT BRITAIN 1939-45 (1982) (providing a look at Great Britain's handling of conscientious objectors during World War II).

48. See Stanley Goldsmith, *CND's Soviet Support*, SUNDAY TELEGRAPH (London), Nov. 20, 1988, at 2, available in LEXIS, News Library, TELEGR File. See generally Womack, *supra* note 38.

49. See generally Bebler, *supra* note 5 (noting that "Marxist-Leninist" countries are having a difficult time accepting conscientious objection).

serve, the bar is bending dangerously out of shape and threatens to snap; the result is that Russia's army is being decimated.⁵⁰ It is thus critical for Russia's opposing factions to adopt a compromise if they wish to avoid a situation of an all-or-nothing service that will only further decrease the already diminishing stability.⁵¹ This crisis and Russia's current attempts to resolve it can best be understood through an examination of its history in the context of this model of the evolution of conscientious objection over time.

IV. THE RUSSIAN SITUATION

A. *Alternative Service in Russia During the Early 1900s*

During the early part of the twentieth century, individuals in Russia who opposed regular military service were given the option of fulfilling an alternative service.⁵² Indeed, Russia, along with Great Britain and Denmark, was one of the first countries in the twentieth century to recognize the right to alternative service.⁵³ The 1918 Decree of the All-Russian Central Executive Committee provided that "individuals whose religious beliefs do not allow them to take up arms, may be required to learn only those duties which do not involve the use of arms."⁵⁴

The following January, Vladimir Lenin, President of the Council of Peoples' Commissariat, signed the Decree of the Council of the Peoples' Commissariat on the Exemption from Military Duty for Religious Beliefs.⁵⁵ This decree provided that "individuals, unable because of religious beliefs to take part in military

50. See Bill Keller, *Soviet Military Officers Pressing for Changes and a Trade Union*, N.Y. TIMES, Oct. 22, 1989, at A1; Anya Vakhrusheva, *Groups Seek Alternative to Army for Objectors*, MOSCOW TIMES, May 24, 1994, available in LEXIS, Europe Library, MOSTMS File; Womack, *supra* note 38.

51. See Womack, *supra* note 38.

52. Anatolii Pchelintsev, *Pravo na al'ternativnuuiu sluzhbu* [The Right to Alternative Service], in 3 RELIGIJA I PRAVA CHELOVEKA: NA PUTI K SVOBODE SOVESTI [RELIGION AND THE RIGHTS OF MAN: ON THE ROAD TO FREEDOM OF CONSCIENCE] 49 (1996) (giving an overview of the history of alternative service in Russia).

53. *Id.*

54. Dekret ob obiazatel'nom obuchenii voennomu iskusstvu [Decree on Compulsory Military Education] (Apr. 22, 1918), cited in Pchelintsev, *supra* note 52, at 49.

55. Dekret ob osvobozhdenii ot voinskoj povinnosti po religiozным ubezhdeniiam [Decree on the Exemption from Military Duty for Religious Beliefs] (Jan. 4, 1919) (on file with author), also cited in Pchelintsev, *supra* note 52, at 49 and M. Timofeev, *For Religious or Other Motivations*, in 10 Morskoi Sbornik [Naval Collection], 6 (1990).

service, [may substitute] the same . . . with socially useful work, according to the individual's own choosing."⁵⁶ At this very time, Russia was heavily engaged in World War I and sorely needed to reinforce its military ranks.⁵⁷ Nevertheless, Lenin and other leaders insisted on protecting the right of the individual to alternative service.⁵⁸ Unfortunately, this protection was short lived. Less than a decade later, attitudes in the young Soviet regime began to change, and courts began to ignore the right to alternative service.⁵⁹ Finally, in 1939, the right to alternative service was legislatively eliminated.⁶⁰

The absence of alternative service continued throughout the Soviet period as the balance on the conscientious objection model continued to shift to the right. The Soviet Union began expending tremendous resources on national defense,⁶¹ and not without reason. Russia was hit hard by the Japan-Russia War and World Wars I and II. Millions had died; St. Petersburg had been besieged, and the enemy had encroached heavily into Soviet territory.⁶² Such experiences created a strong perception of the need for a powerful, active military.⁶³ In addition, Soviet ideological currents taught the need to guard militarily against the evils of capitalism.⁶⁴ Thus, the government's interest in having individuals serve in the military received more and more credence, adding weight on the right side of the fulcrum.

At the same time, Soviet ideologies taught subjection of the individual will to that of the state.⁶⁵ Thus, little weight was given to individual conscience regarding military service. In addition, the quintessential reason for objecting to military service

56. *Id.* para. 1.

57. Pchelintsev, *supra* note 52, at 55; Timofeev, *supra* note 55, at 6.

58. Anton Bebler, *Socialist Countries of Eastern Europe: The Old Orders Crumble*, in *THE NEW CONSCIENTIOUS OBJECTION*, *supra* note 2, at 167, 167-70.

59. Pchelintsev, *supra* note 52, at 55-56.

60. *Id.* at 56; Timofeev, *supra* note 55, at 7.

61. MIKHAIL GERASEV ET AL., *RUSSIAN DEFENSE POLICY: CHALLENGES AND DEVELOPMENTS* 3 (Sergei Rogov ed., 1993); KEVIN P. O'PREY, *A FAREWELL TO ARMS?* 14-15 (1995).

62. See generally LIONEL KOCHAN & RICHARD ABRAHAM, *THE MAKING OF MODERN RUSSIA* (2d ed. 1983) (providing a comprehensive history of Russia from the sixth century through the late twentieth century).

63. JOHN BARBER & MARK HARRISON, *THE SOVIET HOME FRONT, 1941-45: A SOCIAL AND ECONOMIC HISTORY OF THE USSR IN WORLD WAR II* 209 (1991).

64. See *id.* at 207-11.

65. Bebler, *supra* note 58, at 168; Holland, *supra* note 6, at 9, 19.

has long been religious belief, but under an official doctrine opposing religion, it was logically impossible for a good Soviet citizen to have such beliefs. Therefore, throughout the Soviet era, the weight remained almost exclusively on the right side of the fulcrum.

Corresponding to this shift toward government interests, adverse consequences awaited those refusing to perform military service. Even as late as Gorbachev's era of *perestroika* and *glasnost*, conscientious objectors were routinely imprisoned for their refusal to serve. For example, in 1988 an Estonian youth, Taavi Kuusk, was sentenced to "two years and three months in a strict-regime labour camp" for "refusing to do military service on conscientious objection grounds."⁶⁶ In 1989, Amnesty International expressed concern over "the continued arrest of conscientious objectors" and called for the Soviet Union to recognize the right to conscientious objection.⁶⁷ The following year, human rights monitors estimated that despite the release of approximately 600 Soviet political prisoners during the Gorbachev era, at least 100 prisoners were still being held, including some thirty conscientious objectors.⁶⁸ By 1991, despite significant pressure from human rights groups, the Soviet Union had still not recognized the right to conscientious objection.⁶⁹ As late as 1995, conscientious objectors to the war in Chechnya faced the possibility of up to seven years in prison for deserting their units.⁷⁰ More recently, Alexander Seryogin, who claimed conscientious objector status under article 59.3 of the Russian Constitution, was convicted of draft dodging in a Moscow trial court on October 24, 1996.⁷¹ Seryogin received a two-year suspended sentence and has filed an appeal challenging the trial court's decision.⁷²

66. *Soviet Conscientious Objector Sentenced to Labour Camp*, REUTERS NEWS SERVICE—CIS & E. EUR., Mar. 10, 1988, available in LEXIS, World Library, TXTLNE File.

67. *Moscow Admits Damage from Wallenberg Case, Amnesty Says*, REUTERS NEWS SERVICE—CIS & E. EUR., Oct. 18, 1989, available in LEXIS, World Library, TXTLNE File.

68. *Conscience at the Summit*, N.Y. TIMES, May 18, 1990, at A30.

69. See *Conscientious Objectors-Conference*, MTI ECONews HUNG. NEWS AGENCY, July 16, 1991, available in LEXIS, News Library, MTI File.

70. Lyudmila Aleksandrova, *Number of Chechnya Deserters Put at 3000*, RUSSIAN INFO. AGENCY ITAR-TASS, Feb. 9, 1995, available in LEXIS, News Library, TASS File.

71. Patrick Henry, *Court Rules No Alternative to Army Service*, THE MOSCOW TIMES, Oct. 25, 1996, at A1.

72. Telephone Interview with Sergei Sorokin, Counsel for Alexander Seryogin at

B. Attitudes Shift Back to Alternative Service

Nevertheless, despite a less-than-perfect human rights record in the Soviet Union, attitudes toward religious freedom and conscientious objection began to change dramatically during the Gorbachev period. For example, since Gorbachev's *glasnost*,⁷³ alternative service has been an important issue in the republics and in neighboring countries, scholars in Russia have called for changes in laws regarding the military oath⁷⁴ and illegal orders,⁷⁴ Russia has become signatory to international agreements which support the right to alternative service,⁷⁵ several of Russia's recent domestic laws make reference to alternative service,⁷⁶ and the new Russian Constitution specifically provides for alternative service.⁷⁷

1. The experience of neighboring states

Despite Russia's hesitancy in introducing a program of alternative service, several neighboring countries have introduced such programs. In January of 1988, Poland became the first Warsaw Pact country to announce the creation of an alternative service program.⁷⁸ Later that year, some 400 dissidents in Eastern Europe signed an appeal to the Conference on Security and

the trial level (Nov. 29, 1996).

73. Anatolii Pchelintsev, *Ia torzhestvenno klianus' . . . [I Solemnly Swear . . .]*, PROTESTANT, Nov. 1991, at 4.

74. Anatolii Pchelintsev, *Prikaz i dolg: Razmyshleniia o predelakh sluzhebnogo povinoveniia [Command and Duty: Reflections on the Limits of Subordinate Obedience]*, in VOENNAIA REFORMA: ISTORIIA I PERSPECTIVY [MILITARY REFORM: HISTORY AND PERSPECTIVES] 131 (1991).

75. See KONST. RF, Explanatory Note: Rights and Freedoms of Man and the Citizen, para. 2 [hereinafter Constitutional Explanatory Note] (1993).

76. See, e.g., Zakon Rossiiskoi Federatsii ob oborone [Law of the Russian Federation on Defense] (Sept. 24, 1992), art. 3, para. 1, Vedomosti s'ezda narodnykh deputatov RF i verkhovnogo soveta RF [Vedomosti SND RF VS RF], No. 42, art. 2331 (Oct. 22, 1992) [hereinafter Defense Law]; Zakon Rossiiskoi Federatsii o voinskoi obiazannosti i voennoi sluzhbe [Law of the Russian Federation on Military Duty and Military Service], arts. 1.2, 3.2, 7.3, Vedomosti SND RF VS RF, No. 9, art. 325 (Mar. 4, 1993) [hereinafter Military Service Law].

77. KONST. RF art. 59 (1993).

78. Jackson Diehl, *Poland Bows to Dissent, Proposes Alternative to Military Service*, WASH. POST, Jan. 20, 1988, at A17.

Cooperation in Europe's Vienna meeting calling for the right to refuse military service.⁷⁹

Gorbachev's Soviet Union could not remain isolated from these trends. Russian officials and scholars began calling for the "need to replace the emphasis on the military dimension," and boasted that "Russians [were] now openly discussing issues like conscientious objection to military service."⁸⁰ In addition, by mid-1989, almost 1,000 religious buildings confiscated during the Soviet period were returned.⁸¹

Soon, the Soviet Union began to see direct effects of these trends within its own republics. In Latvia, students began refusing military service, and several of the People's Deputies made promises of more palatable military service in order to win elections.⁸² By 1990, Lithuania began demanding independence from the Soviet Union, with one of the principal platforms for independence being an end to compulsory military service in the Soviet army.⁸³ A law was also proposed in Lithuania which would have allowed conscientious objection for political as well as religious reasons.⁸⁴

2. *International agreements to which Russia is party*

During the Gorbachev era, the Soviet Union became signatory to several international agreements which provide for alternative service.⁸⁵ One of the most important of these is the Copenhagen Document, which was a result of the second meeting of the Conference on the Human Dimension of the Conference on Security and Cooperation in Europe, held in Copenhagen from June 5 through 29, 1990.⁸⁶ This meeting "constituted a major

79. See *A Question of Conscience*, *supra* note 5, at 46; John Tagliabue, *In East Bloc, An Expanding Network of Dissenters*, N.Y. TIMES, Mar. 22, 1988, at A12.

80. Goldsmith, *supra* note 48, at 2 (quoting Mikael Shein).

81. Patrick Worsnip, "Opium of the People" Makes a Comeback in Eastern Bloc, REUTER NEWS SERVICE—CIS & E. EUR., May 19, 1989, available in LEXIS, World Library, TXTLNE File.

82. *Conscientious Objection in the Baltic States*, BBC SUMMARY OF WORLD BROADCASTS, Sept. 23, 1989, available in LEXIS, World Library, TXTLNE File.

83. Michael Binyon, *Lithuania Rewards its Independence Champion—Algirdas Brazauskas*, TIMES (London), Jan. 16, 1990, available in LEXIS, World Library, TXTLNE File.

84. *Id.*

85. See Constitutional Explanatory Note, *supra* note 75, para. 2.

86. Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, June 29, 1990 (hereinafter Copenhagen

step forward on the road to common European standards in the field of human rights.⁸⁷ At the Copenhagen Meeting, a major concluding document was adopted, which, although vague in certain provisions,⁸⁸ "constituted the most remarkable human rights document adopted in the framework of the CSCE process since the signing of the Final Act of Helsinki in August of 1975."⁸⁹ Indeed, the Copenhagen Document is sometimes referred to as the "European Constitution on Human Rights."⁹⁰

In addition to important provisions on freedom of religion,⁹¹ freedom of speech,⁹² and equality before the law,⁹³ this "European Constitution" devotes an entire article to alternative service:

(18) The participating States

(18.1) note that the United Nations Commission on Human Rights has recognized the right of everyone to have conscientious objections to military service;

(18.2) note recent measures taken by a number of participating States to permit exemption from compulsory military service on the basis of conscientious objections;

(18.3) note the activities of several non-governmental organizations on the question of conscientious objections to compulsory military service;

(18.4) agree to consider introducing, where this has not yet been done, various forms of alternative service, which are com-

Document), *reprinted in* THE CONFERENCE ON SECURITY AND CO-OPERATION IN EUROPE: ANALYSIS AND BASIC DOCUMENTS 1972-1993, at 439 (Arie Bloed ed., 1993) [hereinafter THE CSCE].

87. Arie Bloed, *Two Decades of the CSCE Process: From Confrontation to Co-operation*, in THE CSCE, *supra* note 86, at 1, 93.

88. Bloed notes that:

The Copenhagen Document bears clear signs of the most controversial issues which could be solved only by compromising on carefully formulated clauses. This resulted in the insertion of a great number of escape clauses which strongly affect the obligatory character of the provisions concerned. Often the CSCE states only pledge to "endeavor" or to "consider" and in one case they were only prepared to "note."

Id. at 94-95.

89. *Id.* at 93.

90. *Id.*

91. Copenhagen Document, *supra* note 86, arts. 9.4, 25.4, 40.

92. *Id.* art. 9.1.

93. *Id.* art. 5.9.

patible with the reasons for conscientious objection, such forms of alternative service being in principle of a non-combatant or civilian nature, in the public interest and of a non-punitive nature;

(18.5) will make available to the public information on this issue;

(18.6) will keep under consideration, within the framework of the Conference on the Human Dimension, the relevant questions related to the exception from compulsory military service, where it exists, of individuals on the basis of conscientious objections to armed service, and will exchange information on these questions.⁹⁴

Russia, as successor to the Soviet Union, has expressed its intention to adhere to the provisions of the Copenhagen Document.⁹⁵

3. *Russia's domestic laws*

Several domestic laws promulgated during the early 1990s also manifest the significant shift of attitude in the Soviet Union toward the individual's interest in conscientious objection. Some of the more prominent laws that refer specifically to alternative service are the Russian Federation Law on Freedom of Conscience and Religious Organizations,⁹⁶ the Russian Federation Law on Defense,⁹⁷ and the Russian Federation Law on Military Duty and Military Service.⁹⁸

94. *Id.* art. 18.

95. See, e.g., Poiasnitel'naia zapiska k proektu federal'nogo zakona ob al'ternativnoi grazhdanskoi sluzhbe [Explanatory Note to the Federal Draft Law on Alternative Civil Service], para. 5 [hereinafter ACS Draft Explanatory Note] (on file with author).

96. Federal'nyi zakon o svobode sovesti i religioznikh organizatsiakh [Law on Freedom of Conscience and Religion], Pravda, Oct. 9, 1990, translated in 33 J. CHURCH & STATE 191-201 (1991). For an excellent, in-depth analysis and critique of this draft, see W. Cole Durham, Jr., et al., *The Future of Religious Liberty in Russia: Report of the De Burght Conference on Pending Russian Legislation Restricting Religious Liberty*, 8 EMORY INT'L L. REV. 1 (1994).

97. Defense Law, *supra* note 76, art. 3, para. 1.

98. Military Service Law, *supra* note 76, arts. 1.2, 3.2, 7.3.

4. *Russia's constitution*

On December 12, 1993, the people of the Russian Federation ratified by referendum a new constitution.⁹⁹ One of the most significant changes in the 1993 constitution in the area of human rights is the provision made for conscientious objectors to military service.¹⁰⁰ This provision explicitly gives conscientious objectors the right to substitute alternative service for regular military service:

1. Defense of the homeland shall be a duty and obligation of the citizen of the Russian Federation.

2. The citizen of the Russian Federation shall do military service in conformity with the federal law.

3. The citizen of the Russian Federation whose convictions and faith are at odds with military service, and also in other cases stipulated by the federal law *shall have the right to the substitution of an alternative civil service for military service.*¹⁰¹

Thus, the basic law of the Russian Federation explicitly provides the right to alternative service for those whose convictions are opposed to military service.

C. *The Accommodationism Model and a Revised Definition of Conscientious Objection as Applied to the Russian Federation*

The foregoing discussion provides a clear example of the descriptive value of the time-based definition of conscientious objection. Starting with the pre-Gorbachev period, the Soviet Union's heavy emphasis on military strength, coupled with a limited emphasis on individual conscience, tilted the balance heavily toward the right.¹⁰² As a result, conscientious objectors even up through the Gorbachev era were subjected to harsh penalties, principally imprisonment, sometimes in strict-regime labor

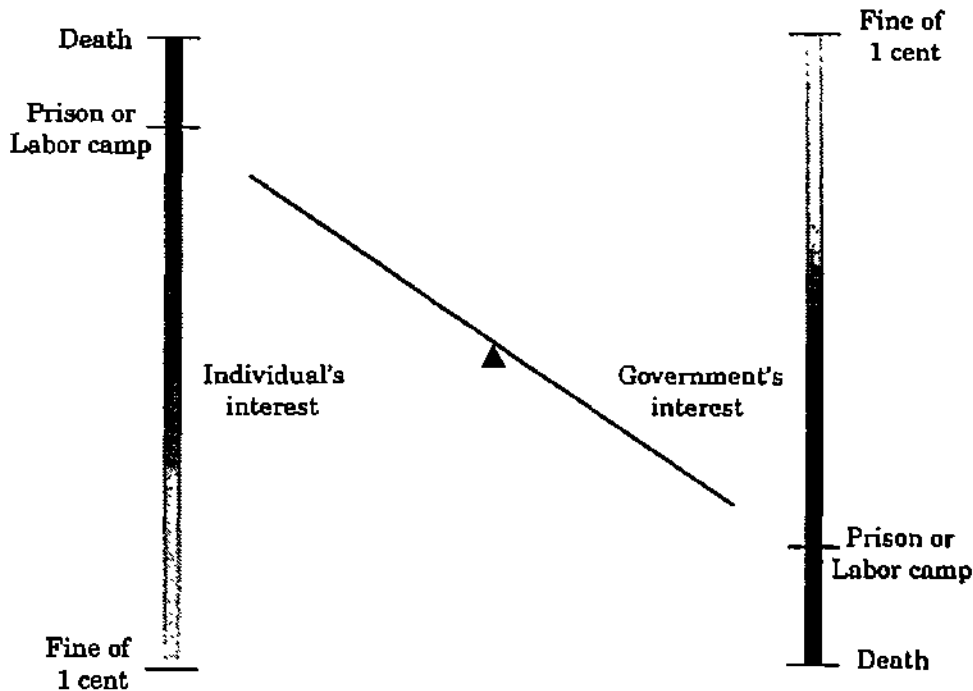
99. See ALEXANDER M. YAKOVLEV, *STRIVING FOR LAW IN A LAWLESS LAND: MEMOIRS OF A RUSSIAN REFORMER* 217 (1996) (providing a comprehensive look at the adoption of the Russian Constitution).

100. KONST. RF art. 59 (1993).

101. *Id.* (emphasis added).

102. See generally Bebler, *supra* note 5, at 104-06 (noting that there was a nonrecognition of the conscientious objection problem with harsh suppression of the conscientious objectors).

camps.¹⁰³ Thus, the graph in the late 1980s would appear as follows:



However, attitudes in the Soviet Union regarding the individual's and the state's interests began to shift dramatically during the Gorbachev era.¹⁰⁴ Russians and international observers began calling for more emphasis on the individual's freedom of conscience. These changes placed greater weight on the individual's interest in not performing active military duty. At the same time, the end of the Cold War produced criticism of the state's need to have and maintain such a large, active military.¹⁰⁵

Thus, Russia began to rethink its approach to the fundamental duty question. Ultimately, international example and attitude changes within the Soviet Union led to the adoption of several domestic laws specifically referring to a right of alternative

103. See *supra* part IV.A.

104. See generally EUGENE B. RUMER, *THE IDEOLOGICAL CRISIS IN THE RUSSIAN MILITARY* (1994).

105. See John Keegan, *Why Gorbachev Must Fight the Generals First*, *DAILY TELEGRAPH* (London), Nov. 23, 1988, available in LEXIS, News Library, TELEGR File.

service. Finally, in December 1993 alternative service was elevated to a constitutional right status.¹⁰⁶

From a legal standpoint, Russia's approach to the fundamental duty question has shifted from "We want you to perform regular military service" to "We want you to perform *either* regular military service *or* alternative civil service." Yet while the fundamental duty has been rewritten in principle, there has been no legislation implementing the right to alternative service. At a practical level, this lack of legislation allows tens of thousands of potential conscripts to avoid the draft.¹⁰⁷ Upholding the right to alternative service has placed great weight on the side of the individual's interest, leading to a continued tension between those favoring individual civil rights and those supporting the government's interest in a strong military.

V. LAW ON ALTERNATIVE CIVIL SERVICE IN THE RUSSIAN FEDERATION

An alternative service bill was introduced to the Russian Parliament in November 1994 and was approved by the Duma in its first reading.¹⁰⁸ However, at the second reading in May 1995, most deputies abstained from voting, thereby depriving the bill of the votes needed for passage.¹⁰⁹ One drafter of the bill noted that the Russian army "fiercely opposes allowing draftees to plead conscientious objection," and many deputies abstained "because they didn't want to vote against civil rights, but they didn't want to vote against the Army either."¹¹⁰

This situation clearly demonstrates the current pressures on both sides of the fulcrum and the results of the deadlock of those opposing forces. The failure to pass an alternative service law has only resulted in an increased decimation of the Russian army with no foreseeable end in sight. Despite the arguments of those who oppose alternative service, the constitutional right is

106. See *supra* part IV.B.4.

107. See ACS Draft Explanatory Note, *supra* note 95, para. 4; Vakhrusheva, *supra* note 50.

108. *Yeltsin Rejects Draft Law on Alternative to Military Service*, BBC MONITORING SERVICE: CIS, Feb. 11, 1995, available in LEXIS, World Library, TXTLNE File [hereinafter *Yeltsin Rejects Draft Law*].

109. Peter Ford, *Young Russians Want Out of Their Own Brutal Army*, CHRISTIAN SCIENCE MONITOR, Aug. 8, 1995, at A1.

110. *Id.* (quoting Maria Ivanyan).

regularly upheld by the courts, and potential conscripts avoid any kind of service altogether.¹¹¹ Thus, the only viable solution to the conscription problem is passage of an alternative service law. To assist this effort, this Comment reviews the key provisions of the ACS Draft¹¹² and compares them with international agreements and experience.

A. *Length of Alternative Civil Service*

1. *The ACS Draft provision*

The ACS Draft provision dealing with the length of alternative civil service is of particular interest. While the Russian Constitution is silent on the length of alternative service, article 6 of the ACS Draft provides that “[t]he length of alternative civil service shall be one and a half times the length of the legally-established maximum term of military service for the corresponding category of draftees.”¹¹³ Some of the arguments for and against a longer term are considered immediately below.

2. *Arguments for a longer term*

There are several cogent reasons for requiring alternative civil service to be of a longer term than regular military service. Wolfgang Loschelder, member of the faculty of law at the University of Bochum, has argued that a lengthier term is justified in an effort to determine the sincerity of the individual claiming a right to fulfill alternative service.¹¹⁴ He noted that one approach argues for “testing the seriousness of the decision [to object to military service] by means of an ‘irksome alternative.’”¹¹⁵ He further argued that “[i]t is compatible with the [German] constitution to balance the advantage of an exemption from legal obligations by imposing a burdensome alternative . . . [such as] alternative civil service instead of military service. . . . If the per-

111. See Vakhrusheva, *supra* note 50.

112. The draft law was designed in part to fulfill “the recommendations of the concluding document of the 1990 Copenhagen Conference on Human Measures, which was signed by the Soviet Union.” ACS Draft Explanatory Note, *supra* note 95, para. 5.

113. ACS Draft, *supra* note 7, art. 6.

114. Loschelder, *supra* note 20, at 32.

115. *Id.*

son concerned accepts this, it testifies to the seriousness of his decision."¹¹⁶

Another argument is that a longer term is necessary to preserve equality before the law. In effect, this argument suggests that allowing certain individuals to opt out of military service gives them a de facto advantage over individuals without such convictions of conscience. Thus, an increased burden is imposed on the exemption to equalize the effects of the law.

In sum, a lengthier term can be seen either as (1) a means for making alternative civil service equivalent to military service, or (2) a means for ascertaining the sincerity of conscientious objectors, thereby preventing abuse of the alternative service exemption.

3. *Arguments against a longer term*

One argument against a longer term is that it is a violation of equality before the law. The numerous provisions of the constitution and international agreements which speak of equality and the impermissibility of discrimination on the basis of religion or convictions of conscience seem to create a prima facie case against a longer term of service for those fulfilling alternative civil service.¹¹⁷

It is also argued that refusing to bear arms actually contributes to the stability and defense of the nation better than armed service. In this sense, conscientious objectors actually fulfill their obligation to defend their country better than those in military service.¹¹⁸

116. *Id.* The ACS Draft adopts a similar viewpoint: "The convictions of conscience . . . shall be corroborated by the strict fulfillment of the present law" ACS Draft, *supra* note 7, art. 4.

117. *See, e.g.*, Copenhagen Document, *supra* note 86, art. 18.4; ACS Draft, *supra* note 7, art. 3. Both of these provisions prohibit imposing requirements on alternative civil service that are "punitive" in nature.

118. One scholar has argued that:

[The ancient duty of dying for the country] has lagged behind with respect to the technological developments of armament. People using arms to threaten another country know that they can at the same time destroy their own country. In this way from a moral point of view conscientious objection to the use of arms is now more justifiable than military service itself.

Lariccia, *supra* note 10, at 137.

Moreover, the concern that an alternative service law which is too attractive would "empty the barracks" is extreme.¹¹⁹ International experience shows that even an attractive alternative service law will not necessarily "empty the barracks."

For example, the Danish alternative service law is favorable and "near the ideal from the point of [v]iew of the objectors."¹²⁰ Those fulfilling alternative service may be stationed in "various types of . . . social, cultural or philanthropic institutions,"¹²¹ and, more importantly, the duration of alternative service is equal to that of regular military service.¹²² This contrasts starkly with the first Danish law on conscientious objection, which required an alternative service of more than three times the length of regular military service.¹²³

Nevertheless, the change in Denmark from an alternative service of more than three times the length of regular military service to an alternative service of equal length has not "emptied the barracks." While the percentage of total conscripts who opt for alternative service has varied since the equalization of alternative service, it has never been greater than 11%, and in 1985 was at 0.6%. Compare this with the 1970 figure of 9.1% when alternative civil service was more than twice as long as regular military service.¹²⁴

119. "[W]e must also worry about preserving military service and avoid that too good a law on conscientious objection would empty the barracks." *Id.* at 129.

120. Erik Siesby, *Conscientious Objection in Danish Law*, in *EC COUNTRIES*, *supra* note 10, at 159, 162.

121. *Id.*

122. *Id.* at 162-63.

123. *Id.* at 163.

124. *Id.* The following figures represent the percentage of all conscripts fulfilling alternative civil service. The length of the two services was equalized in 1973.

1960	0.7%
1965	1.9%
1970	9.1%
1975	10.6%
1980	3.5%
1985	0.6%

Admittedly, there was a rise to 10.6% in 1975. While the law may have produced some change, note that in 1970, when the length of alternative civil service was *two and a half times* the length of military service, a figure of 9.1% was reported. The change from 1970 to 1975 is only 1.5%, which, although not insignificant, certainly does not amount to "emptying the barracks." *Id.*

In addition, Siesby attributes the variation in the percentage of conscripts partly

The Danish experience questions one of the main premises underlying the imposition of a longer term. It suggests that a burdensome alternative may be unnecessary to prevent abuse of alternative civil service. Other factors may be far more influential on an individual's decision on whether to opt for alternative civil service than a lengthier term of service or other "burdensome alternative."

4. *Status of the Russian alternative civil service term*

All things considered, the Russian draft provision requiring alternative civil service to be one-and-a-half times the length of regular military service will probably withstand scrutiny under both the Russian Constitution and international agreements. The Russian provision for a lengthier term is in line with majority *practice*, even if lip service is sometimes paid elsewhere to equal length.¹²⁵ In addition, the longer term of service and "burdensome alternative" may be particularly justifiable in Russia given the intense unpopularity of military service and the increasing number of draft avoiders.¹²⁶

B. *Committee and Guidelines*

Another key portion of the ACS Draft provides for the establishment of a draft committee and sets forth guidelines for the committee to follow in determining an individual's qualification for alternative service.¹²⁷ While all issues relating to alternative civil service certainly are not addressed by the ACS draft, the establishment of a committee and basic guidelines regarding the

"to the changing political climate caused by both domestic events and foreign affairs." *Id.* Finally, it is significant that the percentage of conscripts fulfilling alternative service dropped dramatically in 1980 to 3.5%, and in 1985 to less than 1%, the lowest figure in more than 25 years.

125. For example, the German Constitution explicitly states that alternative service "shall not exceed that of military service." GRUNDGESETZ [Constitution] [GG] art. 12a, para. 2 (F.R.G.). However, the Constitutional Court "ruled that a longer duration of the alternative service—amounting to approximately one third of the military service—is unobjectionable." Loschelder, *supra* note 20, at 35-36.

In Italy, the Constitutional Court held that alternative service could not be lengthier than military service, but the Minister of Defense responded by "formally leaving the duration of service the same in both cases, but holding the objector for a further three months to be spent in a training course." Lariccia, *supra* note 10, at 127-28.

126. See *supra* part V.A.

127. ACS Draft, *supra* note 7, arts. 9-15.

acceptance or rejection of applications for alternative service can only help to bring some measure of uniformity and cohesion to the process. The guidelines in the ACS Draft are infinitely better than the absence of such guidelines courts currently face. In addition, experts would be allowed to participate in the application review,¹²⁸ and the ACS Draft allows for judicial appeal of committee decisions.¹²⁹ If adopted, the provisions of the ACS Draft would be a significant step toward establishing uniformity, precedent, and ultimately the public perception of the rule of law in the area of both alternative and military service.

C. *Obstacles and Opposition to the ACS Draft*

Despite increased awareness of individual conscience, many in Russia oppose the ACS Draft, either because they oppose alternative service or because they feel that the draft is too liberal.¹³⁰ Some sentiments no doubt mirror those of General Wojciech Jaruzelski, a key military leader in Poland, who at the time Poland announced plans to implement an alternative service "referred to those who refused military service as 'wimps' who ha[d] rejected their duty to the nation."¹³¹ John Keegan has suggested that the principal "impediment to change in the Soviet system is imposed by the military."¹³² As early as 1988 he argued:

The West's demands for human rights legislation now put both the army's privileges and the army-Party relationship . . . at risk. . . . More ominously, its automatic power to conscript will be threatened if Western demands are extended to include the grant of conscientious objection [Gorbachev] is equally aware that *the Soviet army will be sufficiently canny and self-protective to detect the link between the extension of human rights and the contraction of its own military might.*¹³³

Another impediment may have been President Boris Yeltsin's criticism of the ACS Draft prior to its second reading for some

128. *Id.* art. 10.

129. *Id.* art. 14.

130. Press Conference with Sergei Yushenkov, Chair of the State Duma Committee for Defense (Federal Info. Systems Corp. Int'l News Broadcast, Sept. 18, 1995).

131. Diehl, *supra* note 78, at A17.

132. Keegan, *supra* note 105.

133. *Id.* (emphasis added).

minor "conceptual insufficiencies."¹³⁴ Yeltsin disapproved of the fact that the ACS Draft empowered local authorities to "tackl[e] the organizational issues of alternative civil service," and he also noted that a specific provision should be added to the bill which would give the armed forces "priority rights in employing conscripts . . . for jobs which have nothing to do with arms."¹³⁵ Yeltsin's complaints focused on easily remedied technical insufficiencies, and apparently he had little influence on the deputies who chose to abstain from voting in May 1995 at the ACS Draft's second reading. As already noted, the army has fiercely opposed any recognition of alternative service, and many deputies "didn't want to vote against the army."¹³⁶

Sergei Yushenkov, Chairman of the State Duma Committee for Defense, summarized the reasons for the deputies' abstention at the second reading as follows:

[I]t was a clash of the interests of the military establishment, the Defense Ministry which is against the law because it is too liberal and the pacifists who believe the law is too harsh. As a result we don't have the law. It seems to me that the truth lies somewhere in-between.¹³⁷

Another possible reason for Parliament's failure to pass an alternative service law could be that Parliament has been busy working on other major pieces of legislation, including new civil and land codes, as well as basic laws dealing with competition, investment, and securities regulation.¹³⁸ Besides, political prudence surrounding elections (parliamentary elections in December 1995 and presidential elections in June 1996) may have dictated avoidance of highly controversial issues such as alternative service. Nevertheless, as the abstention in May 1995 shows, the principal difficulty with passage of an alternative service law is

134. *Yeltsin Rejects Draft Law*, *supra* note 108.

135. *Id.*

136. Ford, *supra* note 109, at A1.

137. Press Conference with Sergei Yushenkov, *supra* note 130.

138. See, e.g., *Chast' pervaya grazhdanskogo kodeksa RF* [Part 1 of the Civil Code of the RF], *Sobranie Zakonodatel'stva RF* [Sobr. Zakonod. RF], 1994, No. 32, Item 3301 (outlining the fundamentals of civil legislation, including contractual relations and the existence of legal entities); *Federal'nyi zakon o rinke tsennikh bumag* [Federal Law on Securities Market], *Sobr. Zakonod. RF*, 1996, No. 17, Item 1918 (outlining the foundational legislation governing the securities markets).

not Parliament's lack of time or resources but Parliament's fear of taking a stand on the controversial issue.

VI. CONCLUSION

The definition of conscientious objection over time proposed by this Comment illuminates Russia's traditional hostility to conscientious objection, its shift toward individual rights, and its current dilemma. The Russian people have revised the fundamental duty through the 1993 constitution which allows alternative service for individuals who object to regular military service, ostensibly settling the debate on conscientious objection. The lack of implementing legislation, however, has led to the precarious situation where the forces are great on both sides of the individual interest/governmental interest balance.

Therefore, the key question is whether Parliament will appreciate the danger in both pursuing its present course of inaction and turning back the clock to the Soviet period. Given the current political climate, the examples of neighboring countries, and the increased awareness of individual freedoms and conscience, Parliament cannot, and should not, change the answer that Russian citizens as a whole have given to the fundamental duty question. Therefore, the challenge now is for parliamentary members, both liberals and conservatives, to cease the debate over the merits of alternative service, accept the fact that alternative service must exist in Russia, and enact the necessary legislation to implement this constitutional right.

Eric H. Anderson

