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The Wide Range of Negotiation Forms Used in the Resolution of Conflicts in Switzerland¹

Peter Knoepfel

1 Introduction

Any search for mediation solutions in the day-to-day world of Swiss politics and administration would have to be based on a very loose interpretation of the concept of mediation. At all levels, the Swiss political-administrative system is quite simply saturated with a wide range of institutional patterns used for reaching compromise. Such patterns can be found, for example, in the classical civil action, whereby in many cantons the "negotiator" (Justice of the Peace) must provide an official document to the effect that all efforts to reach an out-of-court settlement have failed. In many cantons, the procedural rules for the administrative courts contain explicit instructions on how to negotiate possible compromises with the disputing parties before the judges retire to make their definitive judgement. Compromise formulae devised to give subordinate minorities a fair opportunity to participate in parliamentary affairs are also guaranteed at higher levels of the political system by cantonal and federal parliamentary law and established political custom.

In this context, it is difficult to identify mediation solutions in the strict sense and to distinguish them clearly from other instruments used in reaching a consensus. Mediation processes in the strict sense are understood here—as in the Berlin Equipe (cf. Fietkau & Weidner 1992: 22 ff., cf. also Hoffmann-Riem & Schmidt-Assmann 1990)—as processes of negotiation "whereby conflicts of interest between two or more parties are settled with the help of a neutral negotiator (mediator)" (Weidner 1993: 232). The object of such procedures is the search for solutions "which represent optimum acceptability to all those involved in the conflict. . . . Central to this process is the reciprocal sounding out of scope for action and . . . the search for new solutions through fair dialogue and . . . the involvement of persons or groups who/which would have few or no rights of participation in formal processes . . ." (ibid.).

1 This essay is a slightly revised version of the essay published in Dally, Weidner & Fietkau 1994.

Such procedures necessitate therefore not only the quest for compromise by the parties involved, which is guaranteed in Switzerland through numerous institutional safeguards, but also the intervention of a conflict manager (mediator). As will be demonstrated in the course of this essay, such a person is rarely to be found in conflict resolution procedures which involve substantive negotiations between the parties. The parties generally manage to agree among themselves on the scope for possible compromise solutions, in order to avoid the uncertainty of a verdict from the people—something which is impossible to predict with any degree of certainty—or an Federal Court order from far-off Lausanne. Before this background, following a short (and necessarily impressionistic) review of the solutions reached in three important historical Swiss conflicts (section 2), I propose therefore to present some typical conflict constellations which reflect the general climate in Switzerland and then to take a more detailed look at mediation processes (section 3). In section 4, I will demonstrate the familiarity of Swiss political-administrative culture with a wide range of conflict-negotiation mechanisms which clearly qualify the intrinsic value of "mediation processes" (section 5).

2 Some (Impressionistic) Historical Anecdotes: Switzerland and Its Mediation Tradition

The dispute between "centralists" and "federalists", which characterises almost all referendums on the competence of the federal authorities,² goes back a long way in Swiss history. The following key historical events are just two illustrations of this point:

"The Charter of Stans", 22 December 1481:

This "charter" can be seen as the first historical compromise to be reached between the townlands [Stadtorte], which supported the consolidation (and expansion) of centralised power,³ and the regional cantons [Landkantone] which were keen to retain their federal independence. The chronicler reports:

The request by Freiburg and Solothurn to be included in the confederation, gave rise to a complete split: the Laender wanted no more towns. When delegates reconvened for a diet in Stans . . . following the unproductive negotiations, things were already in a bad way. There seemed to be no prospect of reaching a consensus. Then . . . just as the meeting was drawing to a subdued close, the Vicar of Stans, Heinrich Imgrund, entered the conference room pleading for unity among the

- 2 In accordance with Federal Swiss constitutional law such transfer of competences always necessitates a change in the constitution, which must in turn be passed in a referendum by a majority of the people and a majority of cantons.
- 3 The old states [Alte Orte], which at the time combined to form a—very loose—confederation of states, already had a few common (central state) bodies and laws.

confederates in the name of the hermit, Niklaus von der Flüe, and as the bearer of his message. Brother Klaus' messenger succeeded in attaining the impossible. Everybody stayed on, the negotiations were restarted and concluded in peaceful mutual understanding. On December 22nd, Freiburg and Solothurn were admitted to the confederation of the eight members and the Charter of Stans was signed" (Dürrenmatt 1963: 133).

Brother Klaus is reputed to have uttered the now famous sentence: "Stecket den Zun nid zu wit" which literally translated means "Don't make the fence too long", i.e. don't let things get out of hand. The chronicler comments: "Towns and Laender, which were on the brink of a definitive split, found . . . their way back to each other" (ibid.: 134).

The "Act of Mediation" of 19 February 1803:

In this instance, the mediator was not a compatriot but a foreigner all the way from Paris. The Frenchman in question was none other than his Excellency, the Primary Consul of the French Republic, Napoleon Bonaparte, who forced the almost irrevocably divided centralists (representatives of the unified Swiss state) and federalists (restorative, often anti-democratic cantons) to reach a compromise in the form of a new constitution, which was actually referred to as the "Act of Mediation". As part of this process, the subsequent Emperor and defender of Jacobean ideals of unification made some important concessions to the federalists—who had been in opposition since the demise of the old confederation—to whom the centralists, following lengthy negotiations, also felt able to give some ground. However, the price paid for Napoleon's strategic mediation services was the military capitulation of Switzerland to France which put the 16,000 soldiers of the Swiss army at Bonaparte's disposal for his conquests. The same document forbade Switzerland to become involved in any military alliances (cf. Schweizer Lexikon 1992: 500).

The conflicts between the centralists and federalists were often heightened by parallel religious tensions, the roots of which—as was the case in the rest of Europe—lay in the Reformation conflicts of the first half of the 16th century. Even today, the Catholic cantons still vote differently to Protestant cantons on certain, predominantly value-based, issues. Numerous compromise mechanisms have also developed along this line of conflict, the historical roots of which extend far back in the past. The following two treaties illustrate this point:

The "Kappel Milk Soup" of October 1531:

On the occasion of this historic meal, which temporarily united friend and foe from both sides in the religious battles between Zurich and the central Swiss towns, the Catholic choir master Hans Schönbrunner is reputed to have made the following comment on the "heretic" reformer Huldrych Zwingli, who had just fallen in battle: "A believer like you [i.e. even though you are a Protestant, P.K.], I know that you are an honest confederate. May God forgive you your sins". This confessional

divide has had repercussions to the present day: For example, on Good Friday in the Appenzell region, which was divided along religious lines in 1597, some Catholic farmers in Inner-Rhodes spread manure with undisguised glee while the Protestant residents of Outer-Rhodes are commemorating "their" Saviour with a crucifixion procession. However, "loyal good compatriots and confederates"⁴ can be found on both sides of the border which divides these half cantons.

In the second half of the 1840s, the radical Protestant and conservative Catholic cantons became involved in the bitter Swiss Civil War of 1847 [Sonderbundskrieg]. Brother Klaus did not manage to prevent this war, nor was it interrupted by the festive partaking of milk soup. When all attempts at reconciliation had failed, the representatives of the separatist cantons walked out of the diet, and the emissaries from the radical cantons simply decided to proceed with military intervention on 4 November 1874. The radicals' victory paved the way for the foundation of the Federal Swiss state, with the adoption of the constitution on 12 September 1848, the basic principles of which are still in force today.⁵ Up to the advent of the socialist movement in the early 20th century, Swiss politics was dominated by the radical/Protestant and conservative/Catholic schism. As both camps had the support of substantial majorities at cantonal level, they were forced to reach compromises at federal level. However, the authorities responsible for the implementation of federal policy were (and still are) the largely autonomous cantons. Federal policies had to be open to compromise to have any chance of being implemented by both radical and conservative cantonal authorities.

With the rise of the Socialists, the rift between the two camps deepened—particularly in the urban cantons, but also in some of the rural textile-producing cantons in Eastern Switzerland. Swiss politics and administration—from local-authority up to federal level—is to this day strongly influenced by this divide. This is the root of the opposition between the "bourgeoisie" and "social democrats" which came to a head presumably for the last time during the Cold War in the 1950s. The following two short anecdotes illustrate the way in which this conflict was "worked out":

The defeat of the General Strike of 11 November 1918:

Starving in the immediate aftermath of the First World War, and further weakened by a flu epidemic, in Autumn 1918, the Swiss Workers' Movement decided to call a general strike for the first (and last) time. Historians today agree that low wages, reluctance to negotiate and the almost complete lack of social welfare

4 "Mitlandleute und Bundesgenossen", this form of address is used by the Landammänner [heads of relevant administrative districts] from both cantons when the addressing members of the traditional *Landsgemeinde* [local community] on the last Sunday in April.

5 The complete revision of the Constitution of 29 May 1874 involved, in particular, an extension of civil rights.

provision forced the trade unions and political left to take this step. None of the consensus-based negotiation mechanisms, which in later years would lead to the negotiation of collective labour agreements and ensure relative peace in the world of work, were available at the time. The national parliament, with its exclusively middle-class membership, and the middle-class parliamentary majority decided to quash the General Strike movement by calling in the Swiss Army. Important lessons were learned by our grandfathers on both sides of the divide during those dark November days. The direct outcome was the emergence of a greater willingness to negotiate particularly on the side of the employers by the late 1920s. Since—at the latest—the completion of the first machine and metal industry agreement in the second half of the 1930s,⁶ the world of work in Switzerland has been dominated by a unique predisposition towards negotiation, which accounts for the fact that up to the present day collective labour agreements have always been reached, even in the most difficult of economic climates.

It was a generation later that the famous concordance was passed in the form of the so-called "Zauberformel" [Magic Formula], which authorised the definitive participation of the Social Democrats in government. This breakthrough was achieved in December 1959.⁷ Since then, at federal level "the interactive negotiation of scope for action" (cf. Weidner 1993: 232) has become the central focus of Swiss politics in the treatment of bills which are threatened by referendums.

As opposed to this—and despite all protests—valid negotiated solutions have not been found in the battle of the sexes. As is well known, the Swiss electorate was unable to bring itself to recognise women's suffrage at national level until 1968 (!) and it took a judgement by the Federal Court to bring the last canton (Appenzell Inner-Rhodes) to see sense in this matter in 1990. The equality clause of the constitution, ratified by the people and cantons on 14 June 1981, remained largely ignored in political, economic and social fact until the mid 1990s. Actual equality legislation was not debated by the Swiss legislature until the March session of 1994. The extent to which the latent conflict between the sexes continues to permeate professional, political and social reality is demonstrated by the strong reaction of key economic parliamentarians to individual provisions in this law which, despite their obviousness, met with strong resistance and on occasion, rejection.⁸

6 First agreement between the Swiss Machine and Metal Industrialist Association and the Swiss Metal and Watchmakers Association, 19 July 1937.

7 From 1943 to 1953, the Social Democrats only had one representative on the Federal Council [Bundesrat].

8 For example, the—rejected—demand for burden of proof in the case of gender-specific discrimination in cases of promotion, bonuses, etc.

3 Typical Present-day Conflict Constellations in Switzerland

In addition to a certain historically rooted structural potential for conflict (cf. Knoepfel 1995: 285-290), the traces of which can still be observed, it is possible, from an analytical perspective, to identify the following four typical conflict constellations in contemporary Switzerland:

(1) "Zero-sum conflicts" in which compromise is almost unattainable:

Such conflicts cannot be solved through the payment of compensation, even in periods of economic boom and large budget surpluses. They include, on the one hand, actual value conflicts, which are (at present) almost impossible to reduce to (resolvable) conflicts of interests (on this central distinction for mediation processes, cf. Weidner 1993: 239, cf. also Wälti 1993: 212). In Switzerland, such conflicts continue to surround issues such as the disposal of nuclear waste and—more recently—the question of the controlled distribution of hard drugs to drug addicts by the state. In such cases, a parliamentary majority would generally hesitate to impose solutions on a minority. The standard Swiss approach to solving such conflicts consists in the "cantonalisation" of the problem (i.e. transfer of responsibility to the cantons, as in the abortion issue), in the recourse to empty formulae (e.g. the nuclear waste issue) or in lamenting a government which is accused of being incapable of decision making but is then deliberately abandoned and left to find a solution to the conflict (e.g. the drugs problem).

Similarly substantial compromises to almost insoluble conflicts arise (mainly within the cantons) along the axis of town centres—suburban authorities—rural areas, (cf. Klöti, Haldemann & Schenkel 1993 or Knoepfel, Imhof & Zimmermann 1995) between German and French-speaking Switzerland and, to a somewhat lesser extent, along the demarcation lines between religious confessions (Catholic/Protestant). Whereas the town/country and German Switzerland/West Switzerland conflicts tend to focus on the areas of ecology, traffic and the European question,⁹ the division between members of the two state religions generally tends to be reflected in the type of value conflicts¹⁰ described above.

(2) "Special victims" in areas disadvantaged by the effects of a policy:

In Switzerland—as in other European countries—some areas suffer an above-average level of disadvantage arising from spatialised (cf. Knoepfel & Kissling-Näf 1993a) central-state policies.¹¹ Such areas include, for example,

9 In particular with reference to environmental and traffic issues. Cf. GfS & IDHEAP (1993).

10 For example, the abortion issue.

11 Conversely, there are, of course, areas which reap above-average advantages from such federal policies (e.g. the city of Bern, which provides a home for almost the entire direct federal administration).

the regions along the north-south transit axis (in particular Umerland and northern Tessin) and the canton of Aargau, where almost the entire Swiss nuclear power industry is concentrated. At cantonal level, it is possible to observe similar policy-based negative effects in the canton capitals or other larger cities (commuter structures). This can give rise to conflicts between the capital city and the cantons, or between the cantonal and federal governments. These conflicts tend to flare up in connection with the construction of new, or the extension of existing infrastructure projects by the state¹² or the cantons.¹³ The increase in the spatialisation of central state policies has resulted in a rise in these vertical tensions between the centralised state and local instances in Switzerland (cf. Knoepfel & Kissling-Näf 1993a: 277 ff.).

(3) "Foreign judges":

Civil rights and individual autonomy are nothing less than sacred to the Swiss. Natives of the early "subject cantons" recall in horror the "foreign" rule of the Swiss governors who controlled certain cantons (e.g. Waadt) up to the year of the 1798 revolution. In the case of the canton of Jura, "foreign" rule still existed until very recently (1979); Jura was finally conceded its own judges by the populations of Bern and Switzerland on the occasion of the foundation of the canton in 1982. Conversely, anyone wishing to interfere with cantonal borders or seeking to question the autonomy of local authorities in Switzerland will quickly come up against a brick wall. Thus there are no regional parliamentary executive bodies operating in the agglomerations at a level between the local authorities and the cantons, although the need for such bodies exists, both in the areas of regional development and also, more recently, the development of the transport system in order to achieve a reduction in air pollution. In this instance, however, the conflict is not about "foreign" judges, but new "native" judges. As the negative outcome of the referendum of 6 December 1992 on entry to the European Economic Area shows, the people are not exactly willing to place their confidence in the reputedly "technocratic" judges of Brussels.

4 Eight Recent and Current Processes Involving Mediation or Mediation-style Activities

The conflict resolution processes presented here all focus directly or indirectly on the area of environmental policy. The specific sectors involved include waste management, energy, nature conservation and transport. The presentation is based on

12 Particularly motorways or new railway lines.

13 For example, waste incineration plants or hazardous waste landfills.

case studies—both completed and ongoing—newspaper reports, IDHEAP¹⁴ course materials and other literature.¹⁵

4.1 *Waste*

In this section, I have chosen to present three sample cases from the large number of ongoing and completed conflict management processes surrounding the designation of locations for waste management facilities in Switzerland. Each of the three cases involves hazardous waste treatment plants which, under the provisions of the latest waste management legislation, must be constructed on Swiss soil as the export of hazardous waste is now almost entirely prohibited.¹⁶ The controversy surrounding the construction of such plants is not solely concerned with the choice of technology for the plants.¹⁷ Due to the ancillary pollution effects caused by the operation of such plants (increased traffic, impact on the countryside, etc.), the choice of the actual sites for the construction of plants using non-controversial technology generally gives rise to conflict also. There is no need to emphasise the fact that in such cases local minorities often have to endure disproportionate disadvantages so that the service in question can be provided for the majority. "The affected minority is . . . not automatically prepared to undertake this 'sacrifice' Why here? People often refer to passing the buck when it comes to decisions on the designation of sites for such plants. The Saint-Florian-principle¹⁸ . . . is based on the same principle" (Wälti 1993: 211).

4.1.1 The Licensing Procedure for the CIBA-GEIGY Hazardous Waste Incineration Plant in Basle-Town¹⁹

In this case, which had started in Summer 1985 and came to a successful conclusion on 2 May 1991, the CIBA-GEIGY, Sandoz and Hoffmann-La Roche companies faced opposition from altogether eleven groups. The groups originated from the immediate locality of the proposed site for the plant,²⁰ neighbouring

14 Institut de hautes études en administration publique.

15 In particular: the Schweizerische Jahrbuch für Politische Wissenschaft (1993), which deals with the topic of "implementation problems".

16 In Article 30 §4 of the draft for the revision of the Federal Act on the Environment published in the Bundesrat Botschaft [Federal Council publication] of 7 June 1993, p. 45 f. (commentary), 121 (text).

17 The incineration of hazardous waste is less of an issue in Switzerland than in Germany.

18 Saint Florian is the patron saint of fire protection and the prayer to Saint Florian includes a request to the Saint to direct any potential fires away from the prayer to other victims!

19 Cf. Knoepfel & Zuppinger (1996).

20 Aktion Selbstschutz [Self-Protection Action Group] and Gruppe Sondermüllöfen-Gegner (SMOG) [Opponents of the hazardous waste incinerator].

Germany,²¹ the canton of Basle-Town²² and all over Switzerland.²³ In addition to the Co-ordinating Office for Environmental Protection of the Canton of Basle Town [Koordinationsstelle für Umweltschutz des Kantons Basel-Stadt], which was responsible for the allocation of the license, the authorities involved included the Director of the Basle Town Building and Construction Department and the Basle Town administrative court. The supporters of the plant included the Swiss Commission for Waste Management, the Federal Office for the Environment, Forests and Landscape [BUWAL = Bundesamt für Umwelt, Wald und Landschaft] and the neighbouring canton of Basle-County which expressed interest in using the facility for the incineration of its own hazardous waste. And of course the various more or less neutral ecology departments were also involved in this process. It was one of these offices which conjured up the "obligatory" alternative procedure for such situations.

Following bitter open conflict between CIBA-GEIGY and its opponents, particularly the Germans, who repeatedly raised the issue of dioxins, an agreement was reached on this highly controversial issue. This was ultimately possible because following the initial negotiations with its opponents—against the difficult background of the Sandoz fire (of 1 November 1986)—CIBA-GEIGY set the highest possible technological standards for the plant, and began to conceive the project not merely as a company project but as a regional project and hence a public service. The opponents finally withdrew their administrative court appeal when a written agreement had been signed between them and the project organisation. In this agreement, CIBA-GEIGY undertook to observe more stringent quality standards for particulate matter, NO_x and dioxin emissions than those prescribed in the federal and cantonal legislation. It was also agreed to implement permanent monitoring of air pollutant emissions and the environmental organisations were to have a part in this procedure. No actual mediator emerged in the course of this process, however the director of the Co-ordinating Office for Environmental Protection of the Canton of Basle Town, who held intensive individual and round table discussions with the various partners in the conflict, and finally succeeded in getting the participants to relent, played a key role in the process.

21 Morgenluft [Morning Air] pressure group (Weil am Rhein), Lörrach Regional Authority [Landratsamt], Weil am Rhein Municipal Authority, Freiburg Regional Council [Regierungspräsidium], SPD Baden-Württemberg.

22 Worldwide Fund for Nature (WFN) Basle Section, Social Democratic Party of the Canton of Basle-Town.

23 WFN Switzerland, Democratic Jurists [Demokratische Juristen].

4.1.2 Decision to Locate a Hazardous Waste Landfill in French-speaking Switzerland²⁴

This process, which ran for a period of five years (1989-1993), culminated in the successful, legally-binding allocation of three sites totalling 18 hectares for the construction of a hazardous waste landfill, to be used for the disposal of hazardous waste originating from five western Swiss cantons.²⁵ No appeals were submitted. The process was organised from the outset on the basis of a project management structure and thus proceeded, almost to its completion, from outside the course of standard administrative procedure.²⁶ A specialist technical consultancy selected 32 sites out of 72 locations with suitable hydro-geological conditions on the basis of 13 criteria. The 32 sites were then narrowed down to 14 on the basis of an evaluation using five weighted criteria, developed by representatives of the local authorities from the areas concerned, environmental organisations and other interested parties, as part of regional groups. These criteria (in decreasing order of importance) were: lowest possible quality of the potential site in terms of forest and countryside amenities; an acceptable level and density of projected traffic movement for the affected areas; vicinity to a motorway link; optimum integration of the plant into the landscape; and the existence of a suitable pit (e.g. quarry, gravel pit).

These criteria, which were developed with consensus between representatives of authorities from the potential sites, were also applied in the subsequent phase by a similarly constituted pilot group: the outcome of this process was the nomination of five possible sites at the end of 1992. Detailed studies commissioned by the administration resulted to the passing of legally binding zone plans for three of these five locations during 1993. During this latter phase, the project management structure was gradually re-integrated into the standard regional development planning procedure of the canton in question (Waadt) so that the necessary cantonal land use plans could be drawn up within the correct planning procedure. It is well known that this procedure provides an opportunity for public participation, in that landowners, third parties and local authorities affected by the planned measure have a right of appeal. In this instance, however, the deadline for appeals came and went without a single appeal being registered.

24 Cf. Knoepfel (1995: 245-259).

25 Freiburg, Waadt, Neuenburg, Jura, Valais.

26 Such project management structures are now used in several other cantons for the implementation of planning processes for large plants and facilities (examples can be found in the cantons of St. Gallen, Aargau, Thurgau and Valais—cf. crucial cantonal decision of the governing council [Regierungsrat] of Thurgau of 9 July 1985 (RRB 1244) and guidelines published by the Valais governing council of 8 July 1993 concerning the acceleration of procedures. General literature on this topic: Kissling-Näf (1997).

The special feature of the chosen programme management structure lay in the way in which its operative centre was consciously removed from the administration: this operative centre was the Study Group for Town and Country planning [C.E.A.T–Communauté d'études pour l'aménagement du territoire], a foundation financed by the West Swiss cantons and administered by the Technical University in Lausanne. The purpose of this foundation is to carry out and commission studies on all aspects of regional development. A planning consultancy (also independent) was responsible for the technical issues which arose in the course of the planning process. The authorities of the two cantonal administrations involved (Freiburg and Waadt) were only represented on the steering committee, which had the job of taking the most important strategic decisions for the project. Mediators have no role to play in this kind of structure, as the main focus is the implementation of–suitable–solutions rather than the actual resolution of conflicts. And so in this case, conflict management was merely used as a means to achieving the main purpose of the management structure. Conflict management was, however, from the outset seen as a central project instrument, as it was assumed that it would be impossible to enforce the selection of a site against the will of the local authority. As the operative centre of this project organisation, working outside the state administration, C.E.A.T. assumed the task of mediation, although neither this organisation nor any other third party appeared in the guise of actual mediators. C.E.A.T. employees²⁷ did not assume the role of "neutral" persons but, on the basis of their independence from the state administration, both in terms of procedure and in the content of their work, acted instead as "honest brokers" in a matter of public good. It was their job to establish–professional–consensus. The role of C.E.A.T. could therefore be accurately described as providing a social, technological service to the administration.

4.1.3 Designation of a Site for a "Landfill for Incinerated Residual Waste" in the Canton of Aargau²⁸

Although it began at a far later date (end of 1992) and lasted only a year (to the end of 1993), this process followed in some respects the same course to the last detail as the case in French-speaking Switzerland described above. The project group "Preventive Conflict Management" based at the Technical University (ETH) in Zurich, and thus centred outside the administration, had (surprisingly enough) no knowledge of the experience in West Switzerland.²⁹ Twenty-seven of the 32

27 And specifically its General Secretary, Michel Rey, who personally led the project.

28 Cf. Knoepfel (1995: 191-243).

29 This is surprising because the West Swiss process was described as early as 1990 in a publication entitled "Konfliktbewältigung durch Verhandlungen" [Overcoming conflict through negotiation]; cf. Knoepfel & Rey (1990).

sites originally proposed were eliminated in the first two stages of the procedure. The canton of Aargau plans to establish the planning law requirements (use plan) for a maximum of three landfill sites in East Aargau by the turn of the century. The next step involved the institutionalisation of a "democratic co-operation process" among the local authorities in the areas where sites were still under consideration. These groups were established and academically supervised by a team of experts from the Technical University in Zurich. For six months, 80 inhabitants from the areas in question, divided into four commissions, worked on an evaluation of the eleven sites and presented a recommendation for the further processing of the projected sites to a "delegation of officials" (cf. *Neue Zürcher Zeitung* 20/21 November 1993: 22), which consisted of representatives from the state administration under the direction of the cantonal minister for public works.

The process, which is clearly based on P. Dienel's concept of the "citizens' report" [Bürgergutachten] (Dienel 1991), does not use mediation in the strict sense of the word. The project director, Werner Baumann, provided the specialist supervision on the side of the canton, and the Technical University project group were responsible for the implementation of the consensus-building process. The project group provided the framework for the process of consensus-building without itself taking on the role of neutral mediator as in the Neuss process in the Federal Republic of Germany (cf. Weidner & Fietkau in this volume). Like the experiment in French-speaking Switzerland, this form of alternative dispute resolution could be described as political dialogue supported by project management, as it is termed by Weidner in this volume.

4.2 *The Energy Sector*

The following three processes from the energy sector have either been recently concluded or are still underway (March 1994). Two of the processes concern the use of hydro-electric power, which is the primary source of electricity production in Switzerland, and the third conflict concerns the ultimate disposal of radioactive waste produced by the four Swiss nuclear power stations which cover approximately 40 per cent of Swiss electricity requirements.

4.2.1 Upgrading of the Major "Cleuson/Dixence Hydro-electric Station" in the Canton of Valais³⁰

In this case, where the planning process was initiated in autumn 1988, the company implementing the project, "Ouest-Suisse SA and Grand Dixence SA", which had the support of the canton Valais, faced strong and quite promising opposition

30 Cf. Knoepfel et al. (1995: 19-181).

from the WFN Switzerland (Worldwide Fund for Nature) and WFN Valais. On 4 November 1992, the environmental protection organisations signed an out-of-court settlement prior to the termination of appeal proceedings at the Federal Court. In the agreement, the environmental organisations undertook not to exercise their right of appeal against the planned 1,100 MW increase in the station's operating capacity for the generation of electricity to meet peak-time demand (total project cost: 1.1 billion Sfr). In return, the project company and the canton of Valais undertook to provide the following four services for the benefit of the public:

- securing of undetermined water through exclusion of various streams from the power station water system (with regular monitoring);
- creation of an ecological compensation area in the valley floor (gravel pit "des épines"), and its designation as a nature conservation zone with the involvement of an equal representation commission;
- study of the effects of construction work and operation of the power station on the Rhone water system;
- creation of biotope zones in the areas of Nendaz, La Praya and Hérémece.

These compensatory measures represent a total investment of approximately five million francs by the company Ouest-Suisse SA and Grande Dixance SA.

In this instance, the institutional pressure in the form of the imminent Federal Court judgement, the outcome of which neither side could comfortably predict, was the force driving them to a negotiated solution. In this case, therefore, there was also no need for actual mediators to invite the parties to meet at the negotiation table. The insight that both parties would be better served by an agreed solution than by an outright victory for one or other in the form of a court judgement was sufficient as a mediating agent. There can be no doubt that the balanced personality of the former president of the Swiss Banks Commission from Valais (Mr. Bodenmann), who worked for such a solution with both sides, was a significant help. The formal invitation by the Federal Court to both parties to meet at its buildings, and the chairing of the discussion by the acting judges also contributed to the establishment of consensus. Active mediation did not, however, figure in this solution.

4.2.2 Swiss Transport and Energy Management Department's "Hydro-electric Power" Conflict Resolution Group

The addition to the Swiss constitution of an article prohibiting "for the duration of ten years . . . the issuing of framework, construction, opening and operating licences in accordance with federal law for new installations for the generation of

nuclear power (nuclear power stations or reactors for heating purposes)" was endorsed by the people on 23 September 1990.³¹ This constitutional moratorium on nuclear power stations inspired the Federal Council [Bundesrat] to herald the dawning of an era of "energy peace". The concrete objective was to find ways and means of realising the "Energy 2000" programme, the aims of which included the stabilisation of energy consumption at 1990 levels and a five per cent increase in the generation of energy from hydro-electric power. The Swiss Transport and Energy Management Department convened four conflict resolution groups with the task of assembling the various interested parties at a round table. Of the four, the group which is most likely to be the first to fulfil this mandate is the "Hydro-electric power conflict resolution group" [KOWA-Konfliktlösungsgruppe Wasserkraft]. Like the other groups, its director is a neutral person who is recognised as a mediator by all the groups addressed. In the case of KOWA, this person is Walter Schiesser, the former domestic affairs editor of the *Neue Zürcher Zeitung*. The group's 24 members include representatives from the environmental protection organisations, the electricity industry, the federal administration³² and the cantons.

4.2.3 Designation of Sites for Ultimate Disposal of Radioactive Waste³³

The National Association for the Storage of Radioactive Waste [NAGRA-Nationale Genossenschaft für die Lagerung radioaktiver Abfälle] was founded in 1972 by the electricity companies, nuclear power station operators and national authorities. In March 1982, the association published a list of possible sites for the ultimate disposal of low and medium level radioactive waste. At the end of 1993, NAGRA made an application to the relevant federal and cantonal authorities for permission for the construction of exploratory shafts at three locations (Oberstock/Uri, Ollon/Vaud and Piz Pian Grand/Grisons). Permission was granted by the national authorities, but NAGRA was also commissioned to examine an additional site in compliance with the licensing procedure. Following a lengthy search, an additional site at Wellenberg (Canton Nidwalden) was also designated. The tests at all four sites were due for completion in 1993. The Federal Council's decision to award framework authorisation was to have been submitted to the Swiss parliament, and this was to have been followed by further

31 Article 19 of the transitional provisions for the Swiss Federal Constitution of 29 May 1874, passed in the referendum of 23 September 1990 ("Stop the construction of nuclear power stations" initiative).

32 The Federal Offices for Water Management, Energy and Environment, Forests and Landscape are represented.

33 Cf. Wälti (1993: 205 ff.) and her contribution in this volume. See also Enderlin Cavigelli in this volume.

authorisation procedures at cantonal and local authority level. The process was highly adversarial. In an effort to improve the acceptance of nuclear waste disposal policy in Switzerland and to smooth the path for the actual selection of the site, an initial discussion was held in 1991 at national level between the authorities, operators (NAGRA, energy industry) and environmental protection organisations. An attempt to replace co-operation with confrontation was made, with the inclusion of a neutral third party elected by the federal authorities. However, the "waste disposal conference" collapsed shortly afterwards because the environmental organisations refused to attend any further sessions after the Federal Council authorised an increase in the capacity of the Mühleberg nuclear power station. The need for the safe disposal of radioactive waste was not disputed by anyone, but this decision destroyed the fragile relationship of trust. Waste disposal policy also met with strong resistance from the local authorities and cantons involved (cf. the contributions of Wälti and Enderlin Cavigelli in this volume).

4.3 *Nature Conservation*

On 19 June 1987, the Swiss parliament passed a revision of the 1966 Federal Act on the Conservation of Nature and Protection of Habitats [NHG-Bundesgesetz über den Schutz von Natur und Heimatschutz] as a counter-proposal to the Rothen-turm Initiative,³⁴ which was adopted shortly afterwards. This act provides a legal basis for implementing the protection of biotopes through the passing of the relevant inventories (Article 18a). In accordance with the provisions of this act, on 21 January 1991, the Federal Council passed the decree on the protection of raised bogs and carrs of national importance, which contains a list of 518 raised bog areas with a surface area of 15 km². A further decree brought about the introduction of regulations on the protection of lowland moors of national importance,³⁵ which inventoried 1084 biotopes with a total surface of 185 km². In accordance with the new constitutional provisions and Articles 18a and 5 of the Nature Conservation Act, the Federal Council intends to pass a third decree on the protection of moor landscapes of exceptional beauty and national importance (Moorland Decree).³⁶ As a result of the implementation of this decree, 91 sites with a total area of 926 km² are to be protected through special measures to be implemented by the cantons. The aim of the decree is the maintenance of biotopes of national importance (financed in part from federal subsidies).

34 Ratified in the referendum of 6 December 1987.

35 Decree on the protection of Lowland Moors of National Importance, 7 September 1994 (SR.451.33); came into effect on 1 October 1994.

36 Moorland decree; planned to come into effect on 1 July 1995.

This virtual torrent³⁷ of spatially-defined protective federal legislation led to the emergence of an opposing faction in the affected cantons. In 1992 and 1993, the opposition took the form of five initiatives in the cantons of Obwalden, Schwyz, Graubünden, Nidwalden and Zug, which led the relevant National Council [Nationalrat—parliamentary chamber representing the people] commission to pass a motion demanding the mitigation of the absolute protection of the moorlands provided under the revision of the relevant article of the constitution. The consultations concerning the important revision of the NHG³⁸ (worthy of note for other reasons too) have not yet been completed. It would seem that the issues surrounding countryside conservation policy have given vent for the first time to the people's increasingly critical mood with respect to environmental protection.

The opposition described above has not just been aimed at the national inventory policy in the revision of the legislation, it also affects previous laws and decrees in the area of nature conservation. The cantons protested against what, from their point of view, were too generously drawn-up perimeters for the designated nature reserves and against the purportedly over-stringent limitation of land uses in these areas. With this in mind, the Federal Office for the Environment, Forests and Landscape (BUWAL) joined forces with the Swiss tourism association and established a working group. The aim of this group was to bring together "the various interests in the areas of landscape and moorland conservation, tourism and agriculture" (*Année politique suisse—Schweizerische Politik* 1993: 195).³⁹ A study by BUWAL and the farmers' association, which was carried out in connection with the care and maintenance of moorlands and the resulting loss of income for agriculture, revealed annual costs ranging between 27 and 29 million Swiss francs (1991 basis). A legal basis for the compensation of 90 per cent of losses in the agricultural sector is to be provided under the terms of the current revision of the NHG (*ibid.*).

37 Other inventories also exist in addition to these three protective inventories. These include the federal inventory of landscapes of national importance of 21 November 1977 (121 sites), SR. 451.11, the inventory of historical transport routes in Switzerland of national importance (currently being drawn up), the federal inventory of alluvial sites of national importance of 28 October 1992, SR. 451.31 and the inventory of Swiss villages, the appearance of which is worthy of protection on the basis of the relevant decree of 9 September 1981, SR. 451.12 and the inventory of Swiss wetlands which was compiled by the cantons.

38 The topic under discussion is the right of complaint for environmental protection organisations (resolution of the National Council (Nationalrat—200 seat parliamentary chamber) of December 1993: abolition of right of complaint with 101:86 votes).

39 The main bone of contention was whether inventoried moorlands of national import should continue to operate, renew or create tourist attractions.

In addition to these general agreements, BUWAL is also to participate in negotiations on the final definition of protection parameters and land use regulations with the governments of the relevant cantons. As in the controversial case of the crop rotation plots,⁴⁰ the cantons perceived the one-sided definition of the protective boundary provided by academics and officials from Bern as a genuine insult. They were not prepared to accept the conservation requirements, which were becoming more and more restrictive, and the federal inventories, which in many instances impinged on their territory. Thus, in the course of 1993, official representatives of the Swiss nature conservation and countryside protection authorities had to face various arbitration sessions at which they found themselves the target of, in part, rather "wild" accusations from the cantonal regional development, financial, and even the nature conservation authorities. Approximately 90 protected objects were discussed during these meetings, and in most cases the relevant boundaries were adjusted in favour of the cantons, or the land use regulations were relaxed somewhat.

This approach to the arbitration of conflicts between national and cantonal authorities is a completely standard procedure in Switzerland, and formal mediators are not involved here either. The procedure is not formalised in any other way. Procedures are usually initiated through the opposition of the cantonal governments to a specific measure for the implementation of a policy proposed by the national authorities and the initiation usually takes the form of a letter from the cantonal government to the Federal Council, a formal decision by the cantonal parliaments to submit a formal proposal to the national authorities⁴¹ and even informal support of the cantonal government for popular initiatives seeking a change in the federal constitution.⁴²

As was the case with the above-mentioned moorland protection decree, the federal authorities are not formally obliged to take notice of the cantons' protests, if the latter were given ample opportunity to air their grievances prior to the issuing of the decree. This was the issue at the very heart of the disagreement in this particular instance: whereas the relevant federal authority (BUWAL) was of the opinion that adequate discussions had been held with the cantons as part of the licensing procedure for the relevant decrees, the cantons felt they had been literally caught unaware by the inventories. This argument cannot be dismissed out of hand, given the increasing flood of licensing procedures for matters of

40 In accordance with Article 16 ff. of the Regional Development Decree of 2 October 1989 (SR. 700.1)—on the extreme conflict between the national, cantonal and local authorities, cf. case study in: Zimmermann & Knoepfel (1987).

41 In extreme cases: cantonal initiative for dealing with a procedure, in accordance with Article 93 §2 of the Swiss Constitution.

42 As is the case with the—unexpectedly—ratified Alpine Initiative of 20 February 1994 which was publicly supported by the Landammann of the canton of Uri.

greater and lesser importance now dealt with by the cantons. It is also possible that as a result of pressure from the various circles involved, the cantonal authorities in question only became aware of the political impact of the inventories after the decrees had been issued and thus decided to demand the "subsequent negotiations". Conversely, Bern (the seat of government) may well have been prepared for this kind of reaction, given that there was leeway for retreat in the designation of the boundaries of the reserves. And so in this case too, the subsequent resolution of conflict through negotiation formed an integral part of the strategy for the implementation of federal policy aims.

4.4 *Transport*

As late as the end of the 1970s, cantonal planning directors and members of the Council of States [Ständerat—chamber of the Swiss parliament representing the cantons] ran the risk of losing their seats if they did not succeed in getting hold of a "bit of national motorway" for their cantons. However, since the late 1970s, the opposite is more likely to be the case, and people living in the immediate vicinity of such roads are no longer willing to act as willing recipients of the "present" of new or expanded stretches of motorway. The probable cause of this turnabout was the establishment of a commission (Biel Commission) for the revision of the national road network by the Swiss deputies on 22 June 1977, as a result of pressure arising from a popular initiative. The commission took almost ten years to complete its evaluation of the national road network⁴³ plan, which had been passed with a simple federal resolution, i.e. without a referendum, on 21 June 1960. The N9 motorway in central and northern Valais was not included in the list of the six stretches of motorway to be examined by the Biel Commission. Despite this, in 1979 the deputies passed a motion arising from a petition by environmental protection activists in the canton of Valais demanding the redesign or reduction of the motorway in this area, despite the fact it was not actually under inquiry (cf. Knoepfel & Zimmermann 1987).

The Federal Office for Road Construction then appointed Professor Philippe Bovy from the Technical University in Lausanne to examine the layout of the motorway. The mandate was to study its general layout and capacity, the number of motorway feeders and the links between the new road and the cantonal road network. The possibility of building the road in phases was also to be examined. Current and future transport requirements and the effects of the work on the environment, landscape, agriculture and tourism, road safety and the cantonal economy were also to be analysed in greater detail as part of this study.

43 The result of the evaluation led to the elimination of the N6 (link between the cantons of Bern and Valais through the construction of the so-called Rawyl tunnel).

From 1980 to 1982, Professor Bovy carried out a technology-political social experiment which in certain respects was unusual for its time. He subdivided the stretch of motorway from Riddes (central Valais) to Brig (northern Valais) into eight partial stretches which he then re-evaluated one by one on the basis of an iterative process. Almost ten years prior to the emergence of an actual "mediation trend" in the French and German literature, and before the practical application of mediation or mediation-style processes in administrations, Bovy, an academic with an engineering background, actually implemented a procedure of this kind on his own and, moreover, without any knowledge of the (earlier) relevant literature (cf. Knoepfel 1977). He formed regional citizens' groups with representatives of the various interested groups (farmers, environmental protection organisations, offices of the cantonal administration) and the local authorities for each partial stretch of motorway. These groups started by developing a number of variants, which were subjected to a technical feasibility study. The next step involved the evaluation of the variants by regional groups. The three variants which emerged with the best results in this evaluation were then used as a basis for planning drawings produced locally by members of Bovy's team and then evaluated again by the regional groups (Bovy 1982). In this way it was possible to achieve significant improvements in the layout of the road,⁴⁴ which with one exception (Sierre-Leuk stretch through the Pfyn forest) were also accepted by the hard core of the opposition. In 1984, most of the proposals developed by Bovy were passed under the standard planning permission procedure without difficulty.⁴⁵

Of the various procedures implemented in Switzerland involving the resolution of conflicts through mediation, Bovy's procedure, which since 1982 has become something of an insider's tip among regional developers and political scientists in West Switzerland and has been presented at numerous teaching events, probably comes closest to the definition of mediation procedures given at the beginning of this essay. Bovy, the "mediator", was never certain that a consensus could be

44 Better integration of the road into the landscape, significant reduction in the visible sections of the road (from 32.3 km to 8.2 km), reduction in noise (62 per cent reduction of residential areas exposed to noise), reduced use of land (approx. 23 per cent reduction), reduction in use of materials (approx. 50 per cent reduction), improvement in relation to nature protection (reduction of objects affected from twelve to three). The cost of implementing all of these improvements represented mere price increase of ten per cent.

45 In the case of the stretch between Sierre and Leuk which could not be solved satisfactorily, the cantonal office for construction of national motorways developed various variants between 1984 and 1993 at considerable expense. Several delays resulted from the adoption of the Alpine Initiative on 20 February 1994 and the planning block passed by the Swiss Transport and Energy Department which followed immediately after. The N9 was not classified as a transit road in the Alpine region by the Swiss cantons. At present (summer 1998), the newly elected cantonal government seems to have come finally to an agreement with environmental organisations on the N9 in the contested areas.

reached and that the consensus, once reached, would be acceptable to the authorities responsible for the standard planning procedures. If the procedure had failed, the controversial original variant could have been used, as it had been passed under the standard planning procedure.

4.5 *Discussion and Conclusion*

There can be no doubt that other examples of this kind of mediation-style negotiation could be found in day-to-day Swiss activities at cantonal or local authority level, whereby (partly) public forums for the resolution of conflicts have been implemented in parallel with, or instead of, formal administrative procedures. The selection of recent environmental conflicts presented here can, however, be taken as fairly representative of the current situation in Switzerland. In terms of objects demanding protection, for the present, nature and the countryside tend to gain greater prominence than, for example, noise, soil conservation (hitherto little politicised), prevention of air pollution—a priority issue with the authorities (cf. Imhof 1994)—(qualitative) water conservation, prevention of major accidents at industrial plants and protection against environmentally harmful substances.

Mediation-style negotiation processes are always used in these areas when (for whatever reason) a legislative solution cannot be reached through parliament and/or a referendum and the realisation of—spatialised—national or cantonal policies is faced with strong local resistance. These negotiation procedures can be viewed as consensus-building processes which serve the "contextualisation" of central state policies in local or regional "policy carpets". Such policy carpets severely restrict access from higher levels. "The integration of a new central state policy is difficult to achieve without the agreement of the actors from existing arenas" (Knoepfel & Kissling-Näf 1993b: 13). Even in cases where a legislative basis exists, anyone wishing or seeking to exploit the resource of *Lebensraum* today needs

... not only a representative-democratic mandate from a national parliament, but also ... the silent consensus of the people affected by the implementation of the measure in order to integrate the work into local and regional policy resources. ... Consensus is a scarce and valuable resource which is permanently sustained through the generation and promotion of understanding. The negotiating position of the central state forces authorities repeatedly to generate understanding on a daily basis, i.e. to justify the use of spatial resources. The negotiating state is a state which generates understanding—not only in the abstract but concretely at local level—by seeking understanding for its requirements—and legitimises itself through negotiated and reciprocal services (ibid.: 17).

Typically, most of these negotiation processes involve multi-faceted conflicts. The CIBA-GEIGY waste incineration furnaces case led to negotiations between local opponents and cantonal authorities. In the procedure for the designation of sites

for landfills in Waadt and Aargau, negotiations also took place between a series of local authority, regional and cantonal actors, and the conflict surrounding the extension of the Grande Dixence hydro-electric station involved local-authority representatives, the canton of Valais, the electricity company "Ouest Suisse SA" which is active in all of French-speaking Switzerland, and the Swiss WFN. The diplomatic minefield that the search for an ultimate disposal site for radioactive waste became ultimately involved negotiations between national authorities, cantonal governments, local-authority representatives and national environmental protection organisation and the (all Swiss) association NAGRA. Even in case of the revision of the layout of the N9 motorway in the canton of Valais, the federal and local authorities were equal partners with the cantonal actors in the negotiations.

Negotiations which go beyond the normal scope of day-to-day Swiss life and hence require special structures are obviously instigated when the conflict surrounding a particular project could cause simultaneous and permanent damage to the increasingly fragile balance between the federal, cantonal and local authorities. In such cases it is not merely the controversial project as such which is at risk but also the glass bead game, which represents a series of historical conflicts, and subsumes a comprehensive, almost inexplicable Swiss compromise as a political achievement.

Such negotiation solutions based on the interactive teasing out of scope for action do not represent the sole method in Switzerland used in the negotiation of solutions. Even in the absence of statistical proof (cf. Kriesi 1985), it is possible to establish that these kinds of conflict resolution mechanisms are the absolute exception in Switzerland. In general, "shorter" conflict resolution processes are preferred, whereby the aim is not necessarily reaching complete consensus between all parties at any price. However, an international comparison would probably show a relatively high degree of acceptance of the results achieved from the opposing parties, even in conflict resolution mechanisms which are not based on full and comprehensive negotiations. In these processes, the basic structure of political-administrative culture in Switzerland, which is rooted in compromise, generally produces relatively wide-ranging and hence "acceptable" solutions which also take into account the wishes of the underdog.

The five examples below represent, in my opinion, the most important types of conflict resolution mechanisms which are not based on full, comprehensive negotiations within the Swiss political and administrative system:

(1) The resolution of conflicts through parliamentary motions or referendums

When consensus is not achieved following lengthy negotiations, a vote is taken. The "grand old principle" of majority rule through parliamentary and/or direct democracy has been known to provide a solution for many disputes in Switzerland. Numerous examples of this can also be found in the area of environ-

mental policy. For example, due to the efforts of a popular initiative, the authorities of Tessin were forced to let the people decide on the "most environmentally friendly" incineration technology. As a result, a very long drawn out dispute among experts was solved over a short weekend (6 June 1993), when the people voted for the infamous "thermoselect process". The municipal authorities in Winterthur faced a similar experience when, following slow-moving negotiations, the designation of a site for a hazardous waste incineration plant in the eastern industrial zone was "secured" through a cantonal government decision against their will.⁴⁶ Another expert dispute concerning the acceptability of nuclear power plants was also quickly resolved by the people on the weekend of 23 September 1990, and as early as 23 February 1953, the people were called on to vote on the acceptability of the hydro-electric power facility in the Rhine area of Rheinau. The long drawn out negotiations on the ecological acceptability of military training areas,⁴⁷ three stretches of motorway,⁴⁸ protection of moorlands⁴⁹ and the acceptability of transit traffic on alpine roads⁵⁰ were all resolved in a similar manner. In all of these (and numerous other) cases, processes of more or less intensive negotiation were abruptly broken off and resolved in this decisive manner. The parliamentary tool of counter-proposal against popular initiatives and the taking into account of the threat of a referendum enable the executive to move considerably closer to the minority position.

(2) Decision by a judge

The administrative court procedure which is so to speak the standard procedure used in the resolution of environmental conflicts in the Federal Republic of Germany is used to a significantly lesser extent in conflict resolution in Switzerland. This is due on the one hand to the fact that in contrast to the Basic Law [constitution] of the Federal Republic of Germany,⁵¹ the Swiss legal (protection) system⁵² does not recognise any general clause providing for legal protection through the administrative courts. In accordance with Article 97 ff. of this act, certain important decisions which are of significance

46 Decision of the Zurich cantonal government of 14 February 1992 on the land use directory scheme. As opposed to this the town of Winterthur implemented a constitutional law and administrative court appeal which was rejected on 17 June by the Federal Court (AZ: 1 A 226/1992; 1 P 634/1992).

47 Ballot of 6 June 1993 (initiative rejected).

48 Referendum of 2 July 1987 (rejected "Kleeblatt-Initiative"—clover initiative).

49 Adopted popular initiative of 6 December 1987.

50 Adopted popular initiative of 20 February 1994.

51 Article 19 §4.

52 Federal act of December 1983 on the organisation of federal justice administration, SR 173.110.

for environmental law cannot be accessed through administrative court procedures. In these cases, legal disputes must be resolved by the Federal Council.⁵³ Another probable factor here, as reflected in this system, is that in Switzerland there is a certain reluctance to use judges in the solution of political conflicts.⁵⁴

(3) Co-operative solutions (cf. Knoepfel 1994)

The implementation of the Swiss Environmental Protection Act of 7 October 1983 (SR. 814.01) and the numerous decrees issued by the cantons on that basis has led to the highly unpredictable development of an informal administrative procedure in the area of redeveloping former waste disposal sites. In most cantons, a formal redevelopment procedure as prescribed in the act (Article 16) has yet to be established. The sole provision in the redevelopment procedure is that the industrial and commercial concerns must submit redevelopment proposals to the cantonal authorities by a specified deadline. These proposals can generally be clarified to the satisfaction of the authorities and plant operators in the course of negotiations. There have been few instances whereby definitive orders for individual and special redevelopment measures have been opposed and rejected by operators.

(4) Professionalisation and standardisation

Some environmental conflicts, which as recently as a few years ago would have been dealt with through a long drawn out processes, can now be dealt with with considerably greater ease due to the fact that a common language for conflict has been developed on both sides of the respective divide. This means that misunderstandings which used to occur on a regular basis can now be relatively speedily resolved. This development can be explained on the one hand by the standardisation of many former contentious pollution quality standards, and on the other hand by the ecological "professionalisation" of personnel at the national environmental protection agencies, environmental organisations and the representatives of industry and commerce. We have all of them to thank for a veritable blanket educational campaign in Swiss universities

53 This was indeed the case in the highly controversial appeal against the authorisation granted for a second high-voltage cable across the Gemmi Pass which was ultimately decided by the Swiss Department of Justice and the Police (the installation of the high-voltage cable was rejected); cf. Knoepfel & Zimmermann (1989). The same also applies to appeals against planning applications, the awarding of concessions and subsidies of all kinds (Article 99 of the Organisation Act).

54 The Swiss Federation has no constitutional jurisdiction, through which, for example, the constitutionality of federal legislation can be tested by the Federal Court. This principle was already integrated into the Federal Constitution of 29 May 1874 (SR. 101) (Article 113 §3).

and advanced technical institutions over the past ten years. A professionalised service in the areas of the culture of dispute and conflict regulation technologies is also in the process of being established (cf. Renn & Webler 1995, cf. also Weidner 1993: 240). The examples of mediation-style conflict resolution procedures described above are ample evidence for this development.

(5) Avoidance of conflict

If all conflicts in Switzerland were solved through negotiation, ballots, legal proceedings, cooperation or professionalisation, Switzerland would not exist. On the contrary, our country has, with all its conflicts, survived very well up to now exactly because all of the Swiss authorities from the local to the federal authorities have developed a very varied range of strategies for avoiding decisions on controversial matters. It would appear that it is easier to live with the—all too familiar—implementation deficits on the part of some well-known cantons, with the more or less familiar "translation errors" in German, Italian and French legal texts and with the open or concealed federal illegalities in the administrative practices of one or another canton, than to pursue relentlessly and at any price a solution for every individual conflict. The nudge and the wink, the alleged "oversight", or a positively ingenious application of the "perspective limited to arbitrary cases" by federal authorities and the federal legal system⁵⁵ can be viewed as the—in my opinion very astute—instruments of this kind of conflict avoidance strategy. These instruments, which lend a very individual stamp to the Swiss "glass bead game", were developed and constantly refined under the clear demarcation of the autonomy of the various ethnic, cultural and linguistic communities.

5 Switzerland neither has Mediators nor Needs Them

In conclusion, I feel that the above examples demonstrate that Switzerland does not have much need for mediators, as its entire political and administrative culture and institutions are suffused with numerous negotiation elements, the product of which is the oft-cited "Swiss compromise". For the present and the immediate future, the value of mediation processes will remain extremely negligible because, despite extensive potential for conflict—which in comparison to other countries is also a fundamental aspect of Swiss life—the national and cantonal authorities pro-

⁵⁵ The "restricted perspective of arbitrariness", which is applied on the basis of Article 4 of the Swiss constitution by the Federal Court in constitutional court disputes, remains, in my opinion, Swiss conflict technology's unique contribution to this "political wisdom". No lawyer, not even today, could provide an exact definition of this wonderful world of the "evaluation of arbitrariness".

vide for forms of negotiation on a more or less defined scale. In most instances there is no need for a mediator as a "neutral, negotiating person" (Weidner 1993: 232) who helps in the resolution of environmental conflicts: In many cases such an institution would probably face rejection, as it would be interpreted as a confession by the (traditional and new) institutions, and also the "major" parties to the conflict, of their inability to reach an independent resolution of their disputes.

This essay was hopefully able to demonstrate that the exceptional ability of Swiss interest groups of all kinds to deal with conflict through negotiation accounts for the considerable capacity for dealing with conflict within our institutions. This capacity needs to be developed and nurtured in the context of conflict management training (as is offered to local authority politicians by the IDHEAP), research and development in the area of "social engineering" or "risk discourse"⁵⁶ and in connection with the new organisational developments in public administration.⁵⁷ It is far from beyond the bounds of possibility that in the future other countries will find themselves making use of Switzerland's rich culture of negotiation.

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57 For example, on project management or customer-friendly administration.

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