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## **THE IMPACT OF THE TRC ON THE MILITARY: PRESSURES, PROBLEMS AND IMPONDERABLES**

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### **INTRODUCTION**

South Africa, in some ways similar to other countries that have moved from authoritarian rule to democracy, has instituted a Truth and Reconciliation Commission (TRC).<sup>1</sup> The end results of this process cannot yet be gauged. The effects of such a process on the military, its morale, its structures of command and control, as well as on issues that involve military professionalism and ethics in the short, medium and long term, are open to speculation. It is important to remember that truthfinding – or the TR process, for that matter – should be dealt with in such a way that it does not create/worsen fault lines in the broader military system. This is even more crucial where the military is going through a process of simultaneous restructuring, 'rightsizing' and integration, as is the South African National Defence Force (SANDF). This paper proceeds from the assumption that the process of truth and reconciliation is necessary for both normative and practical reasons. Notwithstanding these reasons, however, it outlines a series of practical challenges that confront the armed forces in internalising the principles of the TRC into its institutional discourse.

TRCs are usually instituted where a transition from authoritarian rule to democracy has taken place and the new incumbents feel – mostly as a result of pressures within civil society, but also as a result of the current international and human rights dialogue on how to deal with a violent past – that steps should be taken to unearth the past. The truth phase, as it is called, in some cases also implies a need for a phase of restitution (the so-called justice phase). Due to the differences in the contexts of countries, these phases display a variety of characteristics.<sup>2</sup> An important characteristic of the process, though not entirely derived from the truth process, is the stated intention to 'defuse' the military or disengage them permanently from politics. This process, within the ambit of democratisation and the consolidation of democracy, however, is not the sole intention or prerogative of a society involved in a truth and reconciliation process. It is rather an imperative for sustainable and transparent democracy.<sup>3</sup> It speaks for itself that one of the guarantees for democracy – where free non-violent competition is allowed and the rules of the game are respected by competitors for power in such a democratic system<sup>4</sup> – are civilian controls over the military. A closer look will be taken at the (potential) impact of the TR process on the newly integrated military force in South Africa. In this contextual interpretation that looks at pressures, problems and imponderables, it is accepted that we are in a process where a democracy in form (symbolic / representative / polyarchal democracy) has yet to become entrenched to achieve sustainable or consolidated democracy. Where there might be structures that allow for participation

in a democracy that exists in form, we contend that such structures should furthermore allow meaningful choices to participants in order to produce political value, efficacy and inclusive deliberation. On a metalevel, the arguments in the paper accept the need for and will be informed by a preference for consolidation of democracy (building a democratic community) as a priority. It is also accepted that for some this will take place within the ambit of nationbuilding in South Africa – or at least a discourse on what constitutes the South African nation.<sup>5</sup> There is little doubt that the debate on sustainable democracy, situated within a potential framework of nationbuilding, will impact on the structures, composition and future of the armed forces. More so in a society that has opted for a TR process by means of a TRC in the aftermath of transition from authoritarian rule to democracy.<sup>6</sup>

Human rights monitors very conservatively estimate that more than 200 political assassinations took place, while over 15 000 people died in faction violence, with dozens of prisoners dying in custody. These deaths and dislocations exclude those that died within liberation movements as a result of "struggles within the struggle."<sup>7</sup>

The activities of the TRC will essentially impact on the South African military. So far the tendency was to attribute human rights violations to security personnel (and the military by implication), rather than the political leadership that represented the NP apartheid regime. This tendency is expected to continue, unless interest groups within civil society actively start to organise and galvanise in favour of steps to be taken against the political leadership that was finally responsible for actions devised and undertaken to maintain apartheid and the Pax Pretoriana. It can be expected that (attempted) criminal trials against political leaders/top security officials (such as the Magnus Malan trial), as well as line functionaries (such as in the De Kock trial and the Trust Feeds case), may indicate that top political figures are or will increasingly be implicated. It will result in them being subpoenaed, and in this manner they will be drawn into the TR process, both in its truth and its justice phases.

It can be expected, not unlike the situation in Argentina and Chile (see below), that the TRC will have an effect on the morale (current perception of the military), the future structures (in terms of (re)professionalisation), command and control structures, as well as the professional conduct of the military in an emerging democracy (including the issue of military ethics).

#### HISTORY OF TRCS/GENEALOGY OF TRCS

The South African version of truth and reconciliation did not develop in isolation. Throughout the world, TRCs have developed as a possible way or process to address the past, as a result of internal and international discussions on how to deal with human rights transgressions under authoritarian repression.

Between 1974 and the present, nineteen countries have taken steps to unearth the truth about their violent past by means of appointed or commissioned bodies. Among them are Argentina, Bolivia, Uruguay, Uganda, Chile, Chad and El Salvador, with the Surinam also considering this route.<sup>8</sup> There are countries however, that have chosen not to embark on such a process for various reasons, such as Spain, Namibia and Zimbabwe. These countries effectively drew a veil over the past, or to paraphrase Carver, were "drawing a line through the past (as) an operative principle that could serve reconciliation."<sup>9</sup>

Of these attempted commissions, those instituted by Argentina, Chile and Uruguay gained prominent attention in the international political and human rights debate.<sup>10</sup> Some international observers of the TR process contend that those in Argentina,

Chile and Uruguay were the most prominent, within the ambit of *justicia en lo posible* (justice as far as possible).

In Argentina, a TRC was appointed after the military Junta fell from power, following the defeat of Argentina by Britain in the Falklands/Malvinas war. The Sabato Commission, named after its leader Ernesto Sabato, was appointed under the new government of President Alfonsín, the first democratically elected leader of the Argentinean democracy. The Commission was to look into the death of an estimated 9 000 people at a time of excessive human rights violations during the so-called dirty war or *guerra sucia*, as the military directed war against leftist subversion was to become known (1976 -1983). The military referred to this process in rather euphemistic terms as a *proceso de reorganización nacional* (national reorganisation) intended to produce an Argentina without socialist perversions. The Sabato Commission consisted of independent, respected members of the national élite and reported on 8 961 missing persons. Due to *Punto Final* legislation – the 'amnesty' that the military conferred upon itself before hastily vacating the corridors of power – a moratorium was put on initial legal processes against previous transgressors of human rights. In June 1987, investigations came to a near standstill as a result of the *Due Obedience Law* that argued "that low and middle ranking officers ... acted under orders and duress and should not be prosecuted for human rights abuses."<sup>11</sup> The situation was compounded by three military uprisings of middle ranking officers that resisted further investigations and the possibility of legal proceedings flowing from this law against human rights transgressors. Further prosecutions were stopped as fears escalated that the fragile Argentinean democracy might collapse under internal strains.

In 1986 the report of the Sabato Commission appeared, entitled *Nunca Mas* (never again). For many people, the publication of the report was a victory for transparency and democracy. Others were dissatisfied that initial prosecutions ground to a halt. Some observers believe that the Government should have been more resolute and swift in trying those military and security personnel involved in gross abuses of human rights. As time passed, the officers closed ranks and the Government increasingly had to attend to economic and administrative priorities.<sup>12</sup> In summarising this experience, the South African political philosopher and expert on ethics, André du Toit argues: "In the eyes of some observers the Argentine attempt to achieve justice for past abuses had overreached itself, endangering the democratic transition and eventually forcing the civilian government to legitimate the self amnesty of the previous military rulers."<sup>13</sup>

Notwithstanding this criticism, Argentina's attempt at a TR process, has been the first to attract widespread international attention and is looked upon by some as an example in their search for truth and justice in times of a difficult political transition. While the Commission succeeded commendably in the truth phase to unearth and expose the past, it fell short in the justice phase when it had to deal with the perpetrators of human rights abuses and in providing restitution for victims.<sup>14</sup>

In the case of Argentina, however, the military has not been defused yet. There were substantial cuts in budgets, some (re)professionalisation of forces took place, and military influence over policy planning, implementation and execution has waned considerably. Dix,<sup>15</sup> however, is of the opinion that it is too early to argue whether a full-scale return to democracy marks such societies or whether we are witnessing the emergence of a more institutionalised form of military involvement. Following this, he argues that it is also too early to say that an amicable and sound relationship between professional military autonomy and a consolidated, transparent and sustainable democracy has been arrived at in such a society.

The more, if not most successful attempt at a TRC, occurred in Chile under the leadership of Rettig, where human rights abuses were investigated between 1973 and 1990. The new democratic Government of Patricio Aylwin decided to deal with the Chilean past of human rights abuses by means of an eight-person commission. An important task of the Commission was to achieve "justice as far as possible" by unearthing the past and creating the conditions necessary for effective national reconciliation. Care was taken to appoint a commission that was without apparent political bias. Eight respected figures were selected to investigate the disappearance of 3 400 persons (2 920 cases fitted the mandate) during seventeen years of military rule under Pinochet. Each case was extensively covered in a countrywide investigation. The report of the Chilean National Commission on Truth and Reconciliation eventually consisted of 1 350 pages. Individual perpetrators of human rights abuses were not named – a fact that caused great discontent among human rights activists and the Chilean Left. Subsequently, a law was passed by the Chilean Congress that granted compensation to victims or families of victims mentioned in the report. For Fraser and Weissbrodt<sup>16</sup> the Commission represents an important step in the evolution of commissions of enquiry into human rights violations and they argue that other countries can learn from the Chilean experience. For Du Toit, the South African observer, the Commission and its process had merit: "Chile much more than Argentina and Uruguay, had managed to settle some accounts with the past in a way that actually contributed to national reconciliation."<sup>17</sup> Although the success of the Chilean Commission stands in stark contrast to less successful commissions, such as those in Uganda, Chad and Uruguay, and compares well with that in Argentina, the process did not satisfy all the critics from the left and human rights organisations/activists. Some felt that it fell short in its justice phase, with regard to restitution and/or steps taken against past perpetrators of human rights abuses.

Other commissions were marginally successful or not at all. The Uruguayan experience fell short in both phases. The whole exercise had a minimally positive – if not frustrating – impact.<sup>18</sup> Similar experiences were shared by Uganda, which initiated two commissions of inquiry into deaths and disappearances, following allegations of violence under Idi Amin (circa 1974). After many delays, a report was published, but no details on individual cases were released. A subsequent report appeared in 1995. The commission of inquiry into crimes by former president Habre and associates in Chad (1991-1992), reported in some detail on 4 000 cases of human rights violations, and mentioned the fact that up to 40 000 people could have been killed. The names of perpetrators were made public in one of the few cases where such a report was compiled.<sup>19</sup>

## **GENERIC PRINCIPLES ARISING FROM TRCS**

A member of the Rettig Commission, Jose Zalaquett, provided a framework for TRCs. Firstly, they are to inquire into human rights abuses to attain openness about a violent past in a way that would achieve national reconciliation, while allowing for justice as far as possible. Zalaquett provides four typologies of situations in which repressive governments are replaced by democratic governments. These are:

\* situations in which there has been a clear victory over oppressors with few political constraints – the Allied victory over Germany at the end of World War II;

\* a situation where defeated forces lost legitimacy, but retained control of the armed forces that restrains the process of dealing with past abuses – Argentina (1983) and Greece (1974);

\* a situation where military rulers allowed a civilian government to come to power, following negotiations (or on their own terms). The former military force is thus still influential and does not suffer a lack of cohesiveness that imposes constraints on how to deal with the past – Uruguay (1984); and

\* a situation of gradual transition from dictatorship to democracy with the possibility of 'popular forgiveness' in a society where human rights abuses have ceased – Brazil; Spain (circa 1977 and onwards) also conceivably belongs to this category.<sup>20</sup>

The Dutch human rights theorist and practitioner, Daan Bronkhorst, tried to modify this typology by introducing the concept of two phases of transition, namely the genesis phase (being either a military dictatorship or a one-party state) and the transformation phase with four main types of sub-typologies:

\* a military-take-over;

\* a peaceful, but sudden leap to a new order;

\* a gradual shift from the old powers to the new; and

\* some kind of a truce or balance between the old government (and more specifically loyal parts, if not all of the army) and opposition (the contenders who might or might not include defectors and security personnel from the previous regime).<sup>21</sup>

When considering South Africa, it has to be taken into account that by the end of the 1980s, the country reflected praetorianism of a special kind: a severely restricted democracy within a racially divided society where ethnic mobilisation brought and maintained white power, with strong securocratic underpinnings. The military in South Africa was progressively drawn into politics by the politicians, and not through their own design, as in most Latin American cases. From being a constitutional army for a white minority, it moved as a result of a shift in the locus of state power during the 1980s to a dominant position. The power shift occurred from the National Party (NP) dominated parliament and cabinet, to an executive presidency and the State Security Council (SSC).<sup>22</sup>

The era of white domination through the dual strategy of (sham) reform and oppression (the 'dove' and 'hawk' sides of apartheid), assisted by the structures of the para military joint management system, brought about the undermining of parliamentary sovereignty within an already restricted racial democracy, the undermining if not total negation of rule of law,<sup>23</sup> and human rights excesses through a plethora of covert and not so covert structures and activities. The implementation of the tricameral parliamentary system would exacerbate, rather than alleviate the situation.<sup>24</sup>

By the middle of 1994, when power was transferred to a majority as a result of non racial democratic elections, South Africa fell within the typologies suggested by Zalaquett and Bronkhorst, as a country that could potentially qualify for a TR process. The military, as well as other security agencies, were brought onto centre stage to secure the survival of the minority state and waiving the rules – with a negative impact on broader society – became the rule more than the exception.<sup>25</sup>

In view of the South African condition (political legacy and moral considerations), the generic principles for TR processes include justice, reconciliation, truth, compassion,

honesty, humility and openness. Other issues that might influence the TR process could be the concept of Ubuntu (inclusiveness, tolerance, being-through-others, African oneness in diversity, etc.) and the inculcated values of democratic debate and discussion as a result of the development of the democratic movement and some strands of liberalism (weight given to rational and open discussion).

## **THE TRC DEBATE IN SOUTH AFRICA AND RESULTANT ACTION**

By the end of 1992, different options were available to South Africans and the international community in dealing with the apartheid past. These options were:

- \* Nuremberg type trials;
- \* legal proceedings against perpetrators of apartheid crimes;
- \* a national truth and reconciliation process through a designated TRC; and
- \* amnesia (simply to forgive and forget, or to draw a line through the past).

The last option was arguably not a possibility, given the extent of the human rights violations under apartheid. Nuremberg type trials would have proven equally difficult. There was no victor, or vanquished. The South African Government, while seen as illegitimate by the vast majority of South Africans, represented a significant economic, cultural and military portion of South Africans. Furthermore, in a flurry of internal and international debate (admittedly and arguably amidst great foreign pressure and internal resistance) the NP chose a negotiated transition at the beginning of the 1990s. While the United Nations General Assembly stopped just short of declaring apartheid a crime against humanity, some countries in the UN Security Council seemingly had some patience with the minority regime's actions. The end of the eighties brought a political and military stalemate where neither the incumbents nor the challengers in South Africa could wrench the other out of power without extensive losses and suffering/social dislocation.

Some people argued for legal proceedings against apartheid offenders/violators of human rights once democracy was achieved.<sup>26</sup> They were in the minority and represented political groupings such as the Azanian Peoples' Organisation (AZAPO) and some of the leaders of the Pan-Africanist Congress (PAC), as well as families of victims.

By 1993/94 the debate shifted. Apart from the fact that South Africa fitted the Zalaquett typology better and that the debate on TRCs gained international momentum, allegations started to surface that there had also been gross human rights violations by the liberation movements, especially the ANC. In 1991, the ANC appointed the Commission of Enquiry into Complaints by former African National Congress Prisoners and Detainees in reaction to these persistent allegations. Although the ANC was the first non-government organisation and possibly the first liberation organisation to appoint such a commission, the report did not silence the criticism. A second commission, the Commission of Enquiry into Certain Allegations of Cruelty and Human Rights Abuses Against ANC Prisoners and Detainees by ANC members, was headed by three commissioners – one from the USA, one from Zimbabwe and one from South Africa – and was perceived to be more independent than the first commission. (The report was positively received by Amnesty International, for example). The second report called for a "process of national disclosure of all violations of human rights from all sides" making use of "similar bodies established in a number of countries in recent years to deal with the past."<sup>27</sup>

Consequently, major human rights bodies began calling for a TR process. The Institute for Democracy in South Africa (IDASA) held a national conference in 1993 in

Cape Town that popularised the idea of a national TR process. Lawyers for Human Rights (LHR) and the Legal Resources Centre (LRC) soon followed suit.<sup>28</sup>

The possible leading role played by prominent thinkers in the ANC camp, such as Albie Sachs and Kader Asmal, and their advocacy of a TRC should not be underestimated. Prominent IDASA members, such as Alex Boraine (later to become deputy chairperson of SA's TRC), and Afrikaans intellectuals, such as Johan Degenaar and Lourens du Plessis, also debated and sometimes advocated such an option. These factors probably contributed to a shift in the debate.

The idea was soon mooted in the Constituent Assembly by Dullah Omar, Kader Asmal and others after the 1994 elections. In June 1994, the establishment of a truth commission was publicly announced. In June 1995, the Promotion of National Unity and Reconciliation Act No 34 of 1995 was promulgated.

The Act stipulated that the TRC must complete its work in eighteen months (a period that could be extended to two years by the President). Operating through three plenary committees – human rights violations, amnesty and reconciliation and reparation – its work will involve hearing the stories of victims of gross human rights violations, considering applications for amnesty from perpetrators of human rights violations and making recommendations on reparation/restitution to victims, as well as attempting to institutionalise practices, structures and attitudes to prevent similar future excesses.

### **THE RIGHT OF EXISTENCE: WHY THE TRC IS ESSENTIAL TO THE FUTURE OF THE SOUTH AFRICAN ARMED FORCES**

The security services, more so than any other state apparatus or individual, clearly have the most to gain and, if badly managed and conceptualised, to lose through their involvement in a TR process. Past human rights excesses strike at the normative and constitutional heart of the security services, and any attempt to dismiss or 'forget' these activities will perpetually haunt the security services in the future. Outlined below are a number of reasons impelling the armed forces to enter into and engage with the TR process, while at the same time acknowledging the practical and policy challenges with which this process of engagement will have to contend.

The TRC and the processes it envisages are essential to both the political and institutional survival of the armed forces. The armed forces must not only engage in the process of truth and reconciliation, but must actively internalise both its values and principles in their various discourses, for a combination of normative and pragmatic reasons.

The Normative Rationale for the Institution of the TR Process Within the Armed Forces

The ethical principles that underpin any TR process (justice, reconciliation, truth, honesty, humility and compassion) are among those that govern the role of the armed forces in a democracy. These values should be reflected in the military identity of the armed forces (as reflected in the values and principles upon which its military professionalism is defined); its military culture (a culture based on proven legitimacy amongst its internal and external stakeholders); and its political relationships (as an institution accountable to the citizenry and subordinate to its elected authority).

The armed forces and nationbuilding:

The armed forces play an important role in nationbuilding, especially when it is part of the process of creating a democratic political culture, as in South Africa. While imparting a series of military-specific values to their members, armed forces play a much broader role in internalising the social and political values of the nation into their personnel. Any disjuncture between the defined values of a nation-in-process (as reflected in the TRC and internalised in national policy), and the armed forces, will bedevil the forces' relationship with both political and civil society.

The ethical basis of military professionalism:

Definitions of military professionalism in a democracy admit to both a normative and a technical component. The normative component refers to those values upon which this professionalism is based and admits to three different forms – universal moral values (those defined in international law and human rights); non-universal moral values (those that reflect the ethical basis of a particular society and its forms of cultural, religious and social organisation); and universal non-moral values (standard military values pertaining to, for example, honour, integrity, duty, and obedience). The technical component of military professionalism refers to the managerial, staff and technical ability of the armed forces to translate their mandate into effective operational terms.

It is in relation to the normative categories of military professionalism that the values of the TRC are most relevant. Given their origin in the precepts of international law and their adherence to international human rights practice, they are central to the universal moral values upon which both the South African Constitution and the role of the armed forces are defined. Furthermore, given the fact that the values of the TRC are also predicated on South African values – as reflected in and emerging from both the transition process and its largely Christo-centric culture – these values should be strongly reflected in the ethical culture of the armed forces. Indeed, the TR process is eminently Christian in character, as Story argues:

"The truth commission is the most magnanimous way of dealing with past sins that any nation has devised. The churches have supported the process because it approximates remarkably to the Jesus model of how forgiveness and reconciliation happen. This model reverses the usual order of things: it places the emphasis first on the victim, rather than the perpetrator. This has been the pattern of the commission hearings. The sufferers have spoken first and by telling their stories of pain to the nation, they have been able to regain some of their dignity and begin their long journey of healing. That is more important than anything."<sup>29</sup>

These ethical values – both universal moral values and non-universal moral values – are central to the identity and functioning of armed forces within a democracy. The late Samora Machel's perceptive aphorism that "a soldier without politics is a mercenary" can well be amended to read "a soldier without morality is a mercenary", as far as the role of the armed forces in a democratic order is concerned.

The values of the TRC also relate to the universal non-moral values of the armed forces. Some of these values and their relationship to the values of the TRC deserve individual mention:

\* The concept of honour in its broadest sense refers to those central values of honesty, integrity, courage, bravery, and simplicity which imbue the armed forces with its own military-specific identity. Clearly, a value such as honesty is central to the TR process – without which it cannot proceed or gain legitimacy. Integrity – basic decency and sound principle – has underpinned the activities of the TRC to date, but

is also equally important to the department of both officers and rank-and-file in relation to one another and to civil society.

\* The principle of command responsibility is essential to the functioning of all armed forces operating in democracies. An officer takes responsibility for the activities of his or her subordinates in the line of duty regardless of whether these have been authorised or not. This principle is essential to the integrity of command, legitimacy of leadership, and the creation of mutual respect between officers and subordinates. The TRC, likewise, operates on the assumption that both political and military responsibility will be taken for operations executed. Accountability for operations executed should proceed in a downward manner from political sanction for the operation, to military authorisation of the operation and, finally, actual execution of the operation itself.

Some of the former armed forces have committed themselves to this principle of downward accountability. The ANC, for instance, has committed itself to collective political responsibility for the actions of its Army, Umkhonto We Sizwe. However, this commitment has been further concretised by its former Commander, Joe Modise, taking military responsibility for the actions of the Army and publicly committing himself to being accountable in this regard, although debate is ongoing in the ANC on what constitutes a human rights abuse. Many of the senior ministers of the former government have refused to take political responsibility for the activities of their security forces – leading, in many instances, to accusations of betrayal by convicted security force members. The Malan trial represents an example of a case where former military commanders appear reluctant to take responsibility for the actions of their subordinates – regardless of whether these actions were authorised by them or not. The precedent that appears to be set is of subordinates – the proverbial 'foot soldiers' – being left to fend for themselves while their officers either deny knowledge of or responsibility for the actions of their troops – a perception reinforced by recent presentations to the TRC.

It could be argued that the principle of visionary leadership as articulated in the TRC should also constitute one of the values upon which military leadership is predicated. Such a vision should be prepared to acknowledge the limitations of the past, while at the same time boldly committing the institution to the challenges of the future. This visionary leadership is of particular importance during a transition where a high level of uncertainty and insecurity exists within an organisation as to its future. The creation of a new institutional culture for the armed forces:

The transformation of the armed forces involves a normative, structural and cultural component. The normative component, as referred to above, involves the creation of a new ethical code for the armed forces and its alignment with the political values of the country and the social values of its people. Structural transformation involves the right sizing of the armed forces and the creation of a cost-effective and well-managed institution that is aligned with both its constitutional mandate and its operational responsibilities.

Cultural transformation involves the creation of an institution that is representative of the diverse cultures of those members who constitute the organisation, and is a process that strives to unify these traditions into a cohesive cultural matrix. It is important to stress, however, that traditions are not ends-in-themselves. Many traditions are rooted in practices and historical experiences that are highly problematic, both in terms of their moral validity and their acceptability to large sectors of the population. It is highly undesirable, for instance, to retain such war cries as "We're going to South Angola, we're going to kill that Sam Nujoma", even if it

has been sung by thousands of white conscripts over many decades. Similarly, it could prove divisive if the slogan, "Kill the Boer, Kill the Farmer", was retained as a rallying cry in basic training.

What is required is a judicious cultural audit of the diverse military traditions that were brought to the integration process via their seven different integrating armies. To contextualise these traditions, it is necessary to situate them within a historical context and assess their veracity against the period from which they emerged. The TRC is an invaluable process in this regard. It has the potential to uncover those aspects of our common history that are divisive and to highlight the extent to which certain activities can alienate sectors of both society and the armed forces in the future (the Cassinga commemoration being a case in point). It is only on the basis of an open and truthful account of our diverse military histories, that a culture that proves capable to accommodate the diverse traditions and aspirations of both our citizens and our military personnel can be created.

The creation of an institutional culture that is representative of the diverse positive traditions of the different integrating armed forces, should not be interpreted as a lesson in forgetting the less salubrious aspects of our history that are uncovered in the process. That which is recalled and which proves contentious should be openly and honestly recorded in the annals. The consequences of selectively interpreting our own or any history can still prove to be divisive as recent examples have confirmed. Two examples suffice in this regard. De Gaulle, in attempts to overcome the legacy of French collaboration with the Nazi government as testified to by the activities of the Vichy Government and the fragmented and partial nature of the French Resistance, tried to create a post-war identity that was somewhat liberal in its interpretation of reality. The basis of this myth was the questionable assertion that all French people resisted Nazi occupation and that only a handful of sycophantic individuals supported the Nazis. Recent revelations, however, have demonstrated that French support for the occupiers was more substantial than recent record suggests – revelations that have had divisive effects on both French society and the body politic.

Similarly, recent studies in Germany have indicated the extent of German complicity during the Nazi period. It operated on two levels. The first was the relatively high levels of political and social support that the Nazis received from socially significant sectors of the population. The second was the extent to which even average civil servants in the employ of the State were supportive of and sympathetic towards the Nazi project during this period. The recent publication of Daniel Goldhagen's book, *Hitler's Willing Executioners: Ordinary Germans and the Holocaust*,<sup>30</sup> outlines the extent of this involvement, and has deeply divided German society and brought tensions to the surface of the national psyche that most people assume have been forgotten.

It is only on the basis of an open and truthful account of our diverse military histories that a culture, capable of accommodating the diverse traditions and aspirations of both our citizens and our military personnel, can be created, and that the basis for an honest and objective historical record can be established. This will sometimes entail a painful process of myth deconstruction and a re-examination of those cherished concepts that hitherto underpinned the historical discourse of the former armies in this country. Examples in this regard include such concepts as 'apolitical' or 'professionalism', as well as those historical accounts that claim that certain major battles were won or that certain armies were solely responsible for the eventual liberation of the country.

## Of Budgets, Institutional Cohesion and Personal Catharsis: The Pragmatic Basis for the TRC

The principles underpinning the TRC and upon which it is established, constitute approved government policy negotiated by virtually all major stakeholders in political society. For pragmatic reasons, the armed forces are compelled to abide by and respect government policy and ensure that its dictates are reflected in their activities. The practical consequences of failing to do so are various – souring of civil-military relations, reduced budgets, loss of legitimacy, undermining of institutional cohesion and morale.

Creating a new contract zone: the TRC and civil-military relations:

A clean and open acknowledgement of the past by members of the armed forces can contribute significantly to the creation of a new relationship between the political and military authorities. Apart from bestowing considerable legitimacy and credibility upon the armed forces in the eyes of both political society and the public, it can provide the transparency within which an enduring partnership can be created in future. While relations between the armed forces and parliament have improved considerably since 1994 (to a considerable extent due to the facilitating role of both the Defence Ministry and the Defence Secretariat in this relationship), a fair degree of distrust still exists between the two players. Much of the distrust from the parliamentary defence committees relates to the activities of the armed forces prior to 1994 (chemical weapons projects, covert operations, slush funding, activities of former military personnel, etc.).

Until such time as these proverbial ghosts are 'laid to rest', a degree of tension and suspicion will invariably characterise the relationship. The armed forces can ill-afford such a relationship, particularly in terms of their budgetary requirements and their popular legitimacy. Budgetary requirements cannot be underestimated in this scenario. Elected authorities are unlikely to approve major projects if it is felt that the armed forces either cannot fulfil their constitutional mandate or be trusted in the administration of matters of national defence. This is not an idle observation, as the Canadian experience illustrates.

One of the compelling reasons why the Canadian armed forces have been unable to proceed with their major weapons purchases in recent years has been the distinct souring of politico-military relations in light of the excesses committed by Canadian armed forces deployed in Somalia. The 'cover-ups' within the armed forces that ensued in the wake of the murder of two Somalian boys by an élite parachute regiment, have resulted in the emergence of an attitude among politicians that translates itself into "Why should we give the military anything until they clean up their act." Indeed, the failure of Canada to obtain the Upholder submarines from the UK has been widely attributed to this sentiment. Any attempts by the former armed forces in South Africa – particularly by individuals now holding office in the SANDF – to conceal past activities, contain immense potential to alienate and sour civil-military relations (as recent TRC submissions have starkly revealed).

Maintaining cohesion and building morale: the Janus-face of the TRC process:

It could be argued that the effective management of the TR process can contribute to the maintenance of cohesion and the building of morale within the armed forces. It can be argued with equal validity, however, that this process can also contribute to division and distrust within the ranks. This paper argues that the TR process, to a certain extent, is a double-edged sword, but maintains that diplomatic and visionary management of the process can contribute to the establishment of greater levels of institutional cohesion than would be the case if the TRC was ignored.

The consequences of not internalising the principles and practices of the TRC within the armed forces would be various. Among the most important implications would be the following:

\* Creating the basis for divisions within the armed forces in the future: The SANDF is unique in the sense that it has progressed further with the integration process than any other state department. Notwithstanding problems of representivity and the persistence, in a muted form, of an 'us' and 'them' scenario, a fair measure of institutional cohesion and camaraderie is emerging within the officer corps and, to a lesser extent, within the lower ranks. The consequences of this delicate unity being ruptured by revelations of human rights abuses within the officer corps, is real. Participation by SANDF members in the TR process, therefore, should be managed in such a manner that it preserves and consolidates this unity without glossing over the historical past. Suggestions in this regard are outlined in the concluding section of this paper.

\* Undermining discipline, respect and courtesy within the Armed Forces: All armed forces, whether conventional or guerrilla, operate on the basis of generic military values, such as mutual respect, discipline and courtesy. Distrust and enmity within and between officers and lower ranks will bedevil this culture and ultimately undermine the operational readiness and capabilities of the armed forces themselves.

In addition to the reasons cited above, personal catharsis remains an eminently sensible justification for ensuring that the TR process is instituted within the armed forces. Notwithstanding the reservations that many military personnel have expressed about the TR process – an uncertainty based largely on misconceptions, fear, unfamiliarity and concern over careers – many individuals have expressed both a need and a desire to account for their past activities. The psychological and symbolic value of such accounts cannot be underestimated and the opportunity for members of the SANDF to participate in the TR process in a structured manner, should surely be investigated.

## **THE TRC AND THE ARMED FORCES: SUGGESTED POLICY AND MANAGEMENT GUIDELINES**

The reality of the TR process and its relationship to the present armed forces lies in the fact that it is not the present institution, the SANDF, that accounts for its past activities and applies for amnesty on behalf of its members, but rather the former forces that were integrated into the SANDF on 27 April 1994. Practically, this means that the Department of Defence cannot solely develop policy on the relationship between the TRC and its members. This responsibility lies with the former armies and their respective political leaderships. However, this does not militate against the Department of Defence developing guidelines to facilitate the more effective management of the TR process within the Department and to contribute, under appropriate ministerial guidance, to the development of TR policy applicable to the armed forces in general.

A number of practical steps can be initiated within the DoD in order to facilitate a more constructive relationship between the DoD and the TRC. These include the following:

\* Victimisation of personnel participating in the TRC should be avoided and actively combated under all circumstances. This will require the establishment of

appropriate mechanisms to monitor the management of the TR process and assess its impact on the personnel within the DoD. Such a mechanism should consist of legal staff in the Department, as well as representatives from the seven armies presently integrated within the SANDF. This mechanism will also be responsible for overseeing the interaction between the TRC and the DoD, ensuring that effective communication is established at all levels of the organisation, and investigating the provision of appropriate support structures – legal assistance, psychological counselling, chaplain's services and policy support, as well as the convening of workshops on the TRC within the armed forces.

\* The institution of a comprehensive communication plan for the armed forces on all levels should be undertaken to provide clarity on the origin of and rationale for the TRC. This should outline its normative rationale and its origins in the multi-party debates of the CODESA and TEC period. Key definitions in the TRC process and the extent to which the different armed forces are prepared to commit themselves to these definitions should be provided. Critically, these would include:

\* a definition of a 'human rights abuse';

\* the context in which such an abuse can be defined – operations executed within or outside of the country's borders;

\* the acceptance of responsibility for abuses and the stage at which this occurs. Ideally this should provide a clear picture of the chain of command and responsibility, stretching from the political level (cabinet, parliament, government, or party-political), through executive command (the Chief or Commander of the force in question), down to operational command (who executed the order?);

\* an explanation of how the processes of the TRC operate – particularly with regard to amnesty committees; and

\* possible legal implications concerning participation in the TR process.

\* Although the TRC and its related legislation do not call for the removal of human rights offenders from office, it is clear that the retention of gross human rights offenders in office should be weighed against the divisive effects that such a move will cause within the armed forces. In certain circumstances it would be appropriate to shift manifestly contentious personnel 'sideways' into less public and critical posts. It would certainly be judicious to consider the backgrounds of those officers who might command operational forces in the field (particularly if these are either internal stability or international peace support operations) and, in some cases, if the retention of a particular officer in the force proves manifestly divisive, a diplomatic 'retrenchment' under suitable ministerial guidance could be considered.

\* A clear departmental policy statement should be issued on career implications, if any, if personnel participate in the TR process. Clarity in this regard will provide a greater degree of certainty for those officers and soldiers who may fear retribution.

\* Some form of pre-appearance preparation needs to be given to those officers who will testify before the TRC. The clashing styles of military forthrightness and bluntness contrasted with the contrition and empathy demanded by a process of reconciliation and healing are often starkly incompatible (leading to accusations of arrogance and insensitivity against certain officers). The emotional and human content and the importance of a TR process should be explained in minute detail to those officers appearing before the Commission.

\* The institution of a TR policy within the armed forces can be used creatively as a confidence-building exercise between members of the different armed forces. It can provide an opportunity for military personnel to confront the past and to understand the respective histories and cultures of the different military organisations. A range of measures can be instituted in this regard, including workshops consisting of military personnel, TRC members and facilitators, drawn from various conflict resolution and facilitating NGOs.

Resistance to the process can be expected, however, and this may well assume different forms, ranging from personal slander to internal demoralisation and victimisation. The manner in which such activities are dealt with, will crucially depend on the policy and management approach adopted by the command echelons to the TR process and its relationship with the armed forces.

Notwithstanding anticipated resistance and the current absence of a clear policy, on the process within the DoD, the TR process should be seen as an opportunity and not a threat to the armed forces. It will require some bold and decisive leadership from within the armed forces to ensure that the consequences of the TRC's activities will benefit the Commission. The process and its implications, furthermore, should be inter woven into the various projects aimed at reprofessionalising the armed forces (The Ministerial Task Group on Civic Education for instance), those examining the possible institution of new leadership, command and management principles within the DoD (the Transformation Project, for example), and those attempts to redefine and synthesise the traditions and diverse cultures of the different integrated forces into a cohesive unity (a process under way in the human resource component of the Defence Review).

## **CONCLUSION**

It was stated throughout this paper that the TR process should be embraced by the armed forces for eminently normative and pragmatic reasons. The benefits of this approach were clearly outlined above. The consequences of ignoring and not acknowledging the past have haunted relations between English and Afrikaans speaking white South Africans for almost a century since the Boer War. The consequences of this inadequate reconciliation are clearly evident in the divisions and animosities that have pervaded white politics since 1902. The country stands on the verge of the new millennium with the capacity to overcome the even more pronounced divisions within our society, that are far more severe than those faced by Boer and Brit at the signing of the Treaty of Vereeniging on 31 May 1902. We also have the vision, the common ground, and a shared negotiation process to avoid repetition of the mistakes caused by the effects of these divisions within the Union Defence Forces since 1910 to the present – divisions that precipitated the 1915-rebellion, the high levels of disaffection between 1912 and 1948, the Erasmus purges, and the eventual domination of the armed forces by an ethnic minority. It is an opportunity neither the country nor the new armed forces can afford to miss.<sup>31</sup>

ENDNOTES

1. See N Kollapen, *Accountability: The debate in South Africa*, *Journal of African Law*, 37(1), 1993, pp. 1-9; especially P Hayner, *Fifteen Truth Commissions, 1974-1994: A comparative study*, *Human Rights Quarterly*, 16(1), 1994, pp. 597-655; see also I Liebenberg, *The Truth and Reconciliation Commission in South Africa: Context, future and some imponderables*, *S A Journal of Public Law*, 1996, forthcoming.

2. Hayner, *ibid.*, pp. 597-604.

3. The defusing of the military or disengaging it from politics is a recurrent problem in democratising societies. The issue involves the close interrelationship between democracy, professionalism and civilian control. See, for example R H Dix, *Military coups and military rule in Latin America, Armed Forces and Society*, 20(3), 1994, pp. 439-456; R Luckham, *The military, militarization and democratisation in Africa: A survey of literature and issues, African Studies Review*, 37(2), 1994, pp 13-75. Two other relevant articles are S Baynham, *The subordination of African armies to civilian control: Theory and praxis, Africa Insight*, 22(4), 1992, pp. 259-263; and R Luckham, *Dilemmas of military disengagement and democratisation in Africa, IDS Bulletin*, 26(2), 1995, pp. 49-49-61. For a more contextualised analysis of disengaging the military from politics in a newly democratised society, see P W Zagorski, *Civil Military-Relations and Argentine democracy: The armed forces under the Menem government, Armed Forces and Society*, 20(3), 1994, pp. 423 - 437. For some earlier notes on civil-military relations in South Africa, see I Liebenberg and D Mavimbela, *Civil-Military Relations and a democratic South Africa, Centre for Constitutional Analysis Newsletter*, 4(1), 1994, pp. 1-4.

4. See T van Hanen, *The Process of Democratisation: A Comparative Study, 1980-1988*, Crane Russack, New York, n.d., for definitions of democracy derived from Diamond, Lipset, Linz, Mortino and Plamenatz that strongly links democracy and free competition. For a look at 'realist' democracy, placing more weight on representivity through political leaders, yet insisting on the importance of intra-leadership competition in his minimalistic definition of democracy, see J Schumpeter, *Classical and modern theories of democracy*, in J. Arthur (ed.), *Democracy: Theory and Practice*, Wadsworth, Belmont, 1992, pp. 89 106; also I Liebenberg, *Transition from Authoritarian rule to democracy in South Africa: The role of political leadership and some strategies to attain democracy*, unpublished MA Thesis, University of the Western Cape, Belville, 1994.

5. See the debate between Johann Degenaar, Neville Alexander and Ian Liebenberg in this regard, in N Rhodie and I Liebenberg, *Democratic Nationbuilding in South Africa*, Human Sciences Research Council, Pretoria, 1994; also I Liebenberg and P Duvenage, *Can the deep political divisions of the South African Society be healed? A philosophical and political perspective, Politeia*, 15(1), 1996, pp. 48-64.

6. The debate on nationbuilding is complex. Nationbuilding, both in Europe and elsewhere, has proved to be a torturous process. In Africa, nationbuilding reflected many convolutions and permutations – with adverse effects on many communities. While a paradigm of nationbuilding is bound to effect our political debate (i.e. the notion of the 'rainbow nation'), the building of a democratic community and the consolidation of democracy are of paramount importance. Can democratic nations be built? If so, under what conditions? Maybe Habermas's notion of "a nation of citizens" could be an informative principle here. So can a Benjaminian "openness towards the other" be of value. See N Rhodie and I Liebenberg, *Democratic Nationbuilding in South Africa*, Human Sciences Research Council, Pretoria, Introduction, Part 1.

7. See A Borraine, J Levy and R Scheffer, *Dealing with the Past: Truth and Reconciliation in South Africa*, IDASA, Rondebosch, 1994. The book and subsequent publications by IDASA and the Truth and Reconciliation Project, later to become the Justice in Transition Institute in its stated objective to facilitate South Africans to deal with the history and effects of the apartheid years, apparently popularised the idea of a TRC and strongly underplayed the "legal proceedings against (apartheid)

transgressors of human rights" - an option expounded by the PAC and AZAPO leadership, as well as family members of the Mxenges, Ribheiros and Anton Lubowski, some of the well-known anti-apartheid activists that died at the hands of security forces.

8. We are grateful to Pat van Heerden (New York University) for pointing out that, since 1994, more TRCs were embarked upon.

9. Kollapen, op. cit.

10. While Bolivia was the first of Latin American countries to address its past by means of a truth commission, it did not attract much international attention; see Liebenberg, 1996(a), op. cit., p. 18. Others were more topical; see D Bronkhorst, Truth and Reconciliation: Obstacles and Opportunities for Human Rights, Amnesty International Dutch Section, Amsterdam, 1995, pp. 86-89, 92-95; P W Fraser and D Weissbrodt, Report on the Chilean National Commission on Truth and Reconciliation, Human Rights Quarterly, 14(1), 1992, pp. 601 ff.; see also Hayner, op. cit.

11. Bronkhorst, op. cit., p. 91.

12. Hayner, op. cit., pp. 597-655.

13. See A du Toit, Laying the past to rest, Indicator SA, 11(4), 1994, pp. 63-69.

14. Hayner, op. cit., p. 614; see also Fraser and Weissbrodt, op. cit., p. 622. For more detail on the whole issue see Liebenberg, 1996(a), op. cit.; I Liebenberg, Die Waarheids- en Versoeningskommissie (WVK) in Suid-Afrika en die implikasies daarvan vir 'n Suid Afrikaanse Historikerstreit en Eietydse Geskiedskrywing, Journal for Contemporary History, December 1996 (forthcoming).

15. Dix, op. cit., pp. 452-453.

16. See Fraser and Weissbrodt, op. cit., p. 622.

17. Du Toit, op. cit., p. 66.

18. For more detail see Liebenberg, 1996(a), op. cit., pp. 21; Du Toit, op. cit., p. 66.

19. See Bronkhorst, op. cit., pp. 85-86.

20. As espoused in more detail in Liebenberg, 1996(a), op. cit., pp. 26 ff.

21. See Bronkhorst, op. cit., p. 34 for details. See also his appropriate examples: Uganda (1979) and Ethiopia (1992) within the ambit of a military victory, Greece a sudden leap from military dictatorship, Portugal, Brazil and Chile as gradual shifts from military rule and Uganda (1986) and El Salvador (1992) as truce-cases. South Africa is seen as a one-party rule situation moving through a gradual shift to democracy (1994). The Bronkhorst typology can be criticised for not being nuanced enough and too simplistic on the South African case. South Africa reflected a change from praetorianism of a special type (military brought to the centre stage not by themselves, but by politicians of a restricted racially based dominant party state) which can either be termed a gradual shift or truce. Some might even see elements of a sudden leap in the transition. See H Adam and K Moodley, The Negotiated

Revolution: Society and Politics in Post-apartheid South Africa, Jonathan Ball, Johannesburg, 1993, Introduction.

22. For a detailed description on the changing locus of state power, see I Liebenberg, *Ideologie in Konflik*, Taurus, Bramley, 1990, pp. 114 ff.; A Seegers, *The Military in the Making of Modern South Africa*, I B Taurus, London, 1996, Introduction; K W Grundy, *The Rise of the South African Security Establishment: An Essay on the Changing Locus of State Power*, SAIIA, Johannesburg, 1993; and K W Grundy, *The Militarization of South African Politics*, Oxford University Press, Oxford, 1988. P H Frankel described eloquently how the police was used to prop up the white state pre-1980 in South Africa in, *The Politics of Police Control*, *Comparative Politics*, 12(4), 1980, pp. 481-499, and also showed how the locus of state power were gradually shifted to the military in the following years. See P H Frankel, *Pretoria's Praetorians: Civil Military relations in South Africa*, Cambridge University Press, Cambridge, 1980; see also J C R Liebenberg, *Apartheid's Military in Politics: Naked Power Revealed*, *Journal for Contemporary History*, 15(1), June 1991, pp. 136-138.

23. See A Mathews, *Freedom, State Security and the Rule of Law: Dilemmas of the Apartheid Society*, Juta, Cape Town, 1986, esp. Part II and Part III, Chapter 13; also R I Rotberg, *Towards a Certain Future: The Politics and Economics of Southern Africa*, David Philip, Cape Town, 1981, pp. 71 ff., 86 ff.

24. For more detail see W van Vuuren, *Domination through Reform: The Functional Adaptation of Legitimizing Strategies*, *Politikon*, 12 (2), 1986, pp. 47-58; also W van Vuuren and I Liebenberg, *Government by Illusion: The Legacy and its Implications*, in A Minnaar, I Liebenberg and C Schutte (eds.), *The Hidden Hand: Covert Operations in South Africa*, HSRC, with IDASA and the Friedrich Naumann Stiftung, 1994, pp. 25-42. For an insider's perspective on the failure of the tricameral system, see I Omar, *Reform in Crises: Why the Tricameral Parliamentary System has Failed*, Jonathan Ball, Johannesburg, 1988. In a well-written article, P du Toit and C Heymans argue that the tricameral constitution was prone to centralise rather than democratise power after its inception; see Du Toit and Heymans, *The 1983 Constitution of South Africa – Towards democracy or not?*, *Politikon*, 12(2), 1986, pp. 79-85. Indeed this happened with adverse consequences for South Africans.

25. I Liebenberg, *Transition, Democratisation and the Rules of the Game*, in Minnaar, Liebenberg and Schutte, op. cit., pp. 108 ff.

26. See in this regard I Liebenberg, *Apartheid, Guilt and Retribution: To Confess or Not to Confess*, *Prospects*, 1(4), December, pp. 14-15.

27. Liebenberg, 1996(a), op. cit., p. 29.

28. See M Sithole for an exposé of this phenomenon in the Zimbabwean War of Liberation or Chimurenga, in *Zimbabwe: Struggles within the Struggle*, Rujeko, Salisbury/Harare, 1979. For more detail on internal ANC struggles, see S Ellis and T Sechaba, *Comrades against Apartheid: The ANC and the SACP in exile*, James Currey, London, pp. 176 ff. For some details on PAC struggles within the struggle, see T S Plaatjie, *The Enemy from Within: PAC Internal Conflicts 1959-1993*, paper read at the Vista Academic Staff seminar, Sebokeng, 13 March 1996.

29. Bishop Story, *Apartheid's Criminals should know the Wrath that will Replace Forgiveness if They Fail to Repent Soon*, *Sunday Independent*, 27 October 1996.

30. D Goldhagen, *Hitler's Willing Executioners: Ordinary Germans and the Holocaust*, Little, Brown and Co, New York, 1996.

31. Our thanks to HSRC colleagues and others who either critically or constructively commented on various aspects of this paper. Among them are Graham Hendricks, Ian Hirschfeld, Annelie Jooste, Bafana Makhubu, Mandla Seleokane, Charl Schutte and Pat van Heerden. The authors, however, take responsibility for the final product. Our colleagues, in being thanked for their robust and friendly co-operation, should not be burdened with the thoughts and arguments expressed here.

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