

SOME UNRESOLVED MILITARY ETHICAL DILEMMAS AT THE TURN OF THE CENTURY: AN INTROSPECTIVE LOOK AT SOUTH AFRICA'S RECENT MILITARY HISTORY*

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"History is neither a prison nor a museum, nor is it a set of materials for self-congratulation."¹

1. INTRODUCTION

The history of the South African National Defence Force (SANDF) in the post-apartheid era has been dominated to a large extent by the process of transformation. As a result, many of the activities of the Department of Defence towards the end of the last century revolved round the respective phases of the transformation process, described as integration, demobilisation and rationalisation.² In a recent article in *Armed Forces and Society*, Prof. James Winkates of the Air War College in the United States, described the transformation of the SANDF as "a good beginning". However, the author warned in the same breath that "the transformation story remains far from finished".³ The former Director of Defence Planning in the South African Ministry of Defence, Dr Rocky Williams, takes a similar view. In particular, Williams makes a strong case for the re-professionalisation of the SANDF through the institution of the truth and reconciliation process in the armed forces. The incorporation of the principles of the Truth and Reconciliation Commission (TRC) in the professional identity of the SANDF, Williams argues, will provide it with a strong moral-ethical base which, in turn, will enable the SANDF to fulfill its democratic role.⁴ The advantages of a common military culture and, in particular,

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¹ Alasdair MacIntyre, *A short history of ethics*, 2nd ed. (London: Routledge, 1998), p. 4.

² James Winkates, "The transformation of the South African National Defence Force: A good beginning", *Armed Forces and Society*, Vol. 26, No. 3, Spring 2000, pp. 466-7.

³ Winkates, p. 469.

⁴ Rocky Williams, "The role of the Truth and Reconciliation Commission in the re-professionalisation of the South African Armed Forces", *Strategic Review for Southern Africa*, Vol. XXI, No. 2, November 1999, pp. 65-70.

military professionalism for strengthening operational unity and cohesion among culturally diverse armed forces are borne out by the study of Elron *et al.*,⁵ who have found a common military culture to be an invaluable "integrating condition".

The necessity of the re-professionalisation of the SANDF with its concurrent moral-ethical reconstruction, as raised by Williams, implies that such characteristics are presently lacking in the military and that these shortcomings will not be rectified automatically by the transformation process. This is indeed supported by unfortunate events which have been reported of late, such as the Tempe, Phalaborwa and Simon's Town incidents, instances of racial discrimination and preferential treatment or the perennial intrigues which seem to plague staff courses. Phenomena such as these are naturally not restricted to the present. The lack of strong moral-ethical norms in the distant and the recent past, created fertile ground for abusive behaviour by members of all South African military forces, regular and irregular, and their leadership. Unfortunately much of this occurred in the context of South Africa's long history of internal conflict. This has resulted in a situation in which the deep societal divisions and strong public opinion created by that conflict colour moral-ethical analysis and argument so thoroughly that it is still very difficult to conduct any constructive debate over morality and warfare in South Africa. Inasmuch as this is no reason to shy away from these important issues, much wisdom relevant to the proper use of military power and sound military-ethical conduct can nonetheless be found in moral discourse about war and the use of armed force in South Africa in the 20th century in general and in our recent military history in particular.

The purpose of this paper is therefore to survey contemporary literature on military ethics for important tendencies and to compare them with South African understanding of these issues and the practice of them in this country towards the end of the last century.

In the first section a theoretical overview of military ethics will be presented, using as an organising device Prof. Martin Cook's idea that the theory of military ethics consists of two broad fields of knowledge, namely the ethics of military service and the ethics in military service.⁶ As far as the former is concerned, particular attention is paid to the use of military power for intervention in the domestic policies of another state. In the following section South African understanding of military ethical issues as evident from the Constitution and other foundational documents

⁵ Efrat Elron, Boas Shamir and Eyal Ben-Ari: "Why don't they fight each other? Cultural diversity and operational unity in multinational forces", *Armed Forces and Society*, Vol. 26, No. 1, Fall 1999, p. 84.

⁶ Martin L. Cook, "Moral foundations of military service", *Parameters*, Spring 2000.

will be discussed briefly. Thereafter the moral principles or criteria gleaned from contemporary literature will be used to discuss South Africa's intervention in Lesotho from a military ethical point of view, as well as certain moral issues concerning the use of military power and military service under the previous government which were highlighted by the TRC.

2. ETHICS OF MILITARY SERVICE AND ETHICS IN MILITARY SERVICE

James Toner⁷ defines military ethics as the study of honourable and shameful conduct in the armed forces. Patrick Mileham and Lee Willett⁸ on the other hand describe military ethics as "the spirit in which force is used to achieve political ends". Martin Cook's view of military ethics seems to embrace these two conceptions. He distinguishes between "ethics of military service" and "ethics in military service". The former address the moral basis of the military profession itself,⁹ whereas the latter deal with the unique moral demands made by the military profession on military personnel in terms of standards of ethical conduct.¹⁰

2.1 Ethics of Military Service

According to Cook the most fundamental issue of the ethics of military service is that the military serves particular states and their political leaders.¹¹ It follows that the moral basis of the military profession is defined by the moral basis of states themselves. In this sense it will be morally justified to devote one's professional life to national defence, and willingly assume the obligation to kill and die for one's country, if both the state and its use of military power is morally legitimate. Cook answers the question when the use of military force might be morally justified, by reference firstly to the international-legal justification for participation in warfare, which is embedded in the Just War Theory.¹² Positive International Law proceeds from the premise that in the modern international system, the political sovereignty and territorial integrity of states are the highest values and as such are inviolable rights. All states have equal moral claims to the twin rights of territorial integrity and political sovereignty and therefore each state has the right to be free of aggression by others and to use its military power in defence of those rights. From

⁷ James H Toner, *True faith and allegiance: The burden of military ethics* (Lexington, Kentucky: The University Press of Kentucky, 1995), p. 6.

⁸ Patrick Mileham and Lee Willett, "A force for good", *The World Today*, February 2000, p. 22.

⁹ Cook, p. 117.

¹⁰ Cook, p. 127.

¹¹ Cook, p. 118. See also Sam C Sarkesian and Thomas M Gannon: "Professionalism: problems and challenges" in Malham M Wakin (Ed.), *War, morality and the military profession* (Boulder, Colorado, Westview Press, 1979), p. 130.

¹² Cook, p. 120.

this perspective, the only justifying cause for the use of force is the defence of the territorial integrity and the political sovereignty of states.¹³ Secondly, Cook explains the morally justified use of force in terms of the duty of states to sustain their independent communities of citizens, first as individuals together with their individual rights, but also as an independent community with a shared value system or a common way of life. In this model the military serves the state in order to protect the "common life" and welfare of fellow citizens.¹⁴ Thirdly Cook argues that it might be morally justified to use military force for the protection or the advancement of national interests. He warns, however, that this argument is problematical because it depends on the state's definition of national interests and can thus lead to conflicting models of the proper use of military power, and obviously, of what military service entails: Are national interests defined solely in terms of self-defence and the well-being of the nation, or are they more global in nature so as to include universal moral ends such as promoting democracy, supporting human rights or the removal of oppressive political regimes?¹⁵

PH Liotta challenge the "narrow focus of realist-based conceptions of national interest". To him a nation is morally warranted to use military force in the pursuit of its "fundamental" or "core strategic interests", which he describes as "what a nation wants and what its citizens are willing to go to war over - and to die for -..." and those issues which have become "so significant that policymakers are unwilling to compromise...". This can include interests relating to the defence of the country or the region, the advancement of economic prosperity or a favourable world order or the promotion of values such as human rights and democratic principles.¹⁶ To prove his point Liotta refers to the Kosovo intervention of 1999 in which the NATO nations acted both in self-interest (European security) and in support of values like human rights and individual freedoms.¹⁷ Furthermore Liotta argues that the notion of national security in the contemporary world has come to mean more than protecting the country from external threats; it now includes economic security, environmental security and human security. The latter is related directly to creating suitable conditions for the advancement of the universal value of a favourable world order. To Liotta, the implications of this for the ethics of military service is that states are morally warranted to use their military power "for more than simply protecting a nation and its people from traditional threat-based challenges."¹⁸

¹³ Cook, p. 122.

¹⁴ Cook, p. 124.

¹⁵ Cook, p. 126.

¹⁶ PH Liotta, "To die for: National interests and strategic uncertainties", *Parameters*, Summer 2000, pp. 46; 48-9.

¹⁷ Liotta, pp. 49-50.

¹⁸ Liotta, pp. 46.

James Johnson follows the traditional just war approach to military ethics in which military service is regarded as morally just if the actual use of military force conforms to universally accepted norms. As such his focus is twofold when it is justified to resort to military force (*ius ad bellum*) and what it is justified to do in the use of such force (*ius in bello*). The former pertains to the ethics of military service and the latter to the ethics in military service. As far as the *ius ad bellum* is concerned, Johnson's point of departure is the classic set of seven principles, or moral criteria, for the right to resort to armed force, namely just cause, competent authority, right intention, reasonable hope of success, overall proportionality of good over harm, last resort and the goal of peace.¹⁹ Johnson holds that in just war logic the first three of these criteria have priority over the last four, which he describes as "prudential tests to be applied as additional checks..."²⁰

Johnson discusses the criteria of just cause, competent authority and right intention in both their historical and contemporary context and concludes that the post cold war era conception of the justified use of military force has much in common with the traditional just war *ius ad bellum*. In fact, the contemporary view is closer to the traditional view than to that of positive international law, which was formalised largely during the eras of total war and Cold War.²¹ The criterion of just cause is traditionally described as the defence of the innocent against armed attack or raiding across borders, the retaking of persons, property or other values wrongly taken and the punishment of evil. In its contemporary form, in other words that of developing customary international law, the concept of just cause includes uses of military force for the protection or advancement of national interests and the protection of universal values. It even allows for the pre-emptive use of force. It thus differs greatly from the narrowly defined national or regional self-defence against armed attack of positive international law which is built on the doctrine of the inviolability of state borders, which is restricted to the 'second use of force' or retaliation.²² The contemporary conception of competent authority still requires that the use of force must be authorised by a legitimate representative of a sovereign political entity who has the ability to control it by means of an effective chain of command, but now it also requires "a significant measure of international agreement..."²³ such as formal Security Council sanction or the tacit approval of the UN of joint action by a regional alliance. The criterion of right intention is satisfied in contemporary usage if the purpose of the use of force is both in accord with the just

¹⁹ James Turner Johnson, *Morality and contemporary warfare* (New Haven and London: Yale University Press, 1999), p. 41.

²⁰ Johnson, p. 34.

²¹ Johnson, p. 68.

²² Johnson, pp. 28; 66-7.

²³ Johnson, pp. 68-9.

cause, and no negative motivations are involved such as revenge, coercion, intimidation, territorial expansion or any other "imperial purpose".²⁴

In regard to the morality of contemporary warfare and relating directly to the ethics of military service, Johnson makes the profound point that the contemporary use of military power "is best understood as not to involve the making of war at all but to encourage the establishment of peace".²⁵ In this respect Johnson distinguishes two levels, acknowledged by contemporary society, of the legitimate use of military force below conventional warfare: firstly, what may be described as peace operations, and, secondly, the limited use of force to combat organised crime, to protect the rights of minorities, as a response to terrorist activity and for limited military strikes to remove an imminent threat to peace and stability.²⁶

As forcible intervention in local conflicts has become one of the most pressing issues in the post cold war world, Johnson investigates the phenomenon and, drawing on just war thinking, concludes that the traditional seven criteria are still valid to determine whether such intervention is morally justified or not, but that there are now certain additional moral obligations that policymakers should account for. The first obligations are those owed to the international order. They deal firstly with the moral obligation that the intervening states have to maintain the twin rights of political sovereignty and territorial integrity because these rights are still central features of the international system. Therefore the purpose of the intervention - the just cause - should be clearly defined and the operation carried out in such a way that the twin rights are not violated. The intentions of the intervening states should not be to benefit themselves, but to re-establish domestic order, enable the legitimate authorities to regain control while protecting the inhabitants and providing humanitarian assistance to the victims of conflict and, having rendered these services, to "get out, leaving the society on its own feet, its sovereignty and territorial borders intact".²⁷ Secondly, the intervening states have the obligation to protect the concept of international consensus. This pertains to the criterion of competent authority and means that there must be a substantial international consensus regarding the justifying purpose.²⁸ The intervening states also have a moral obligation towards their own political communities in the sense that no intervention is without cost and therefore the level of sacrifice required must be brought into the equation when the best balance or overall proportionality is considered.²⁹ Finally the intervening states have a moral obligation to the societies targeted for intervention in

²⁴ Johnson, pp. 28; 32; 105.

²⁵ Johnson, p. 67.

²⁶ Johnson, pp. 67-8.

²⁷ Johnson, pp. 105-6.

²⁸ Johnson, p. 109.

²⁹ Johnson, p. 112.

that they should focus on the needs of the victims of conflict in terms of humanitarian assistance, that is for protection from abuses of their individual rights and for provision of the necessities of life. This obligation also addresses the criterion of just cause and means that the forcible intervention may go on even against the wishes of the conflicting parties "up to the point of de facto belligerence on the part of the intervening forces".³⁰

In a study similar to that of Johnson, Desmond Bowen developed a set of four tests for policymakers to ensure that peace operations undertaken or authorised by the United Nations, do not end up as "expensive window dressing which places the military in jeopardy for inadequate reason".³¹ Bowen's first test in this regard corresponds to the just war criteria of just cause and just intention. It requires an analysis of the international community's broad objective to determine whether a political solution for the underlying problem has been worked out which will ultimately lead to peace, justice or at least the prospect of stability, and whether a political strategy has been designed to achieve the desired results.³² Bowen observes that the value of a military intervention force in situations of this nature "is in the disciplined coercion it brings when a political process is engaged and the resolution of the fundamental problem is being addressed".³³ Military intervention must therefore be no more than a component part of the political process. Conversely, forceful intervention should not take place in the absence of a viable political process.³⁴ Bowen's next test is whether a thorough appreciation has been made of all the risks and benefits of the intervention and if so, whether the military task was carefully weighed and clearly defined in the mandate. Clarity about the military objectives is essential for the proper planning of the operation and to ensure that the resources provided are in balance with the military tasks that need to be undertaken. Obscure and unattainable objectives, or a lack of resources, will not only bring the reputation and professional standing of the intervention force in disrepute, but will also undermine its ability to operate efficiently. As Bowen says, "the deployment of military force must be a practical measure responding to the realities on the ground, not a politico-military confidence trick".³⁵ Bowen's third test is the likelihood of success of the military operation as well as the overarching political process that must accompany it. Bowen notes that given the dynamic nature of such situations, it is essential that the progress made towards the

³⁰ Johnson, p. 117.

³¹ Desmond Bowen, "Something must be done - military intervention", *Studies in Conflict & Terrorism*, Vol. 23, No. 1, 2000, p. 18.

³² Bowen, p. 15.

³³ Bowen, p. 18.

³⁴ Bowen, pp. 15-6. However, Bowen concedes that there might be exceptional cases justifying military intervention when the solution to the wider political issue has not been identified such as "genocide, egregious human rights abuses and imminent threats to peace and stability" (p. 18).

³⁵ Bowen, p. 16.

achievement of the political and military objectives must be constantly kept under review to prevent the escalation or extension of the conflict beyond the thresholds identified in the mandate.³⁶ Fourthly, the local impact of the intervention must be assessed in advance to ensure that more good is done than harm and that proportionality of effort is achieved.³⁷

In brief, the authors cited above are in agreement that the use of military power is ethically justified by the moral legitimacy of the overarching political goals directing the application of military force. Military operations in furtherance of such goals are likewise morally legitimate. The use of military force for the attainment of immoral goals is, on the other hand, ethically unjustifiable and affects the moral standing of military professionals adversely.

States are morally warranted to apply military power for the defence of their inviolable rights, foremost among which are political sovereignty and territorial integrity. Likewise, the use of military power for the protection or the promotion of vital national interests, or universal values such as human rights, or for purposes of national security, is regarded as morally legitimate in contemporary society.

Following the just war tradition, Johnson argues that in addition to morally legitimate goals, the actual ways and means of using military power - the conduct of military operations - must also conform to universally accepted moral norms. For this purpose Johnson proposes the traditional set of just war criteria as contextualized for modern usage. However, as military intervention is essentially an impingement on the central pillars of the international system, Johnson maintains that the intervening states must adhere to certain additional moral obligations towards the international community, their own societies and the society targeted for intervention. In the same vein Bowen proposes a set of tests which the intervening states must account for prior to the commencement of military intervention. Of particular relevance is the notion that military intervention should always be a mere component part of the overall political strategy designed to deal with the fundamentals of the problem. Military service in pursuit of morally legitimate goals and objectives and in accordance with practices conforming to universally accepted moral norms, is in principle ethically just. In this respect, Johnson's interpretation of the just war idea as supplemented by Bowen's ideas, is particularly useful as a moral compass to assess the moral fabric of national militaries as well as the use of military force in general and forcible military intervention in the domestic affairs of sovereign states in particular.

³⁶ Bowen, pp. 16-7.

³⁷ Bowen, p. 17.

2.2 Ethics in Military Service

A casual reading of Toner's definition quoted above seems to indicate that military ethics is simply a study of opposite types of behaviour - honourable conduct versus shameful conduct, good versus bad, right versus wrong, virtue versus vice. However, Toner quickly dispels this notion when he states that professional ethics derives from three sources of knowledge, deontological, teleological and situational, and that ethics is really about the ability to distinguish between the opposites and use the various sources for wise decisionmaking and exemplary conduct.³⁸ The deontological sources include customs, traditions, rules, regulations, codes, laws and other prescriptive sources regulating professional military conduct. Teleological sources relate to the purpose or end results of military service and include aspects such as military values and principles, as well as institutional goals and objectives. The situational knowledge describes the context in which particular military ethical decisions are made and brings into play the stresses and strains pertaining to the specific situation.

Turning to the teleological sources of military ethics, few people would disagree that the military is part of the political system. The military is an instrument of policy and, as such, it serves the state and, perforce, civil society. As in any other professional-client relationship the military must adapt itself to the client's value system and in particular to the roles the client expects it to play. The institutional or professional value system of the military must therefore evolve from that of the national socio-political system that it serves. The same convergence is also true of that of the individual military professional who must ultimately adjust his/her way of life to the expectations of the profession and substitute the institutional concepts of integrity, duty, purpose, etc. for his/her own sense of ethics. In this way the moral perspectives of the profession become the dominating morality for the individual military professional. Conversely, as stated by Sarkesian and Gannon, unless the values of a democratic society are manifested in the military system, the latter cannot long maintain its credibility and legitimacy. In this sense it is imperative that military ethics converge with the ethical values of society.³⁹ This is not to say that the military ethic and the virtues associated with it must mirror the civilian ethic and the virtues associated with that. The military profession will always be, as Watson says, "if not at war, then at least in some measure of tension with the modern liberal state".⁴⁰

³⁸ Toner, p. 21.

³⁹ Sarkesian & Gannon, p. 138.

⁴⁰ Bardley CS Watson, "The Western ethical tradition and the morality of the warrior", *Armed Forces and Society*, Vol. 26, No. 1, Fall 1999, p. 46.

One of the principal values of democracy is that of civil supremacy over the military. Kemp and Hudlin see respect for the subsidiary principle of civilian control as "moral obligation" of military professionals,⁴¹ indicating an unconditional duty of loyalty to the political leadership. They see the principle consisting of two essential parts. Firstly, civilian government sets the ends of military policy whereas the military is limited to decisions regarding means in the implementation of policy. Secondly it is the prerogative of the civilian leadership to decide where the line between ends and means and thus between civilian and military responsibility, is drawn. The principle therefore implies an obligation of obedience on the part of the military as well as a duty of political neutrality, in other words of abstaining from influencing policy decisions.⁴² Obviously the opposite is also true; it is the duty of government to promulgate military policy and supply military command with cohesive political goals which can be converted into military strategic aims and operational objectives, as well as the means to achieve these objectives. In fact, the political-strategic goal structure is the directive element in the military system and as such is indispensable for purposeful functioning of the system as a whole.

The implication of this for ethics in military service is clear: It is not the ethical responsibility of the military professional to assess the moral worth of the state, nor is the military professional entitled to question the justice of government policy or the moral legitimacy of the state's use of military power. Cook's point in this regard is a profound one: The military professional "must serve the state *as it is...*" (original italics).⁴³

An important question at this point queries the ethical basis on which members of the military profession can justify the dedication of their professional lives in the service of the interests of states, which are built on the morally questionable foundation of conflict, conquest and injustice. The first attempt at an answer is the classical understanding of the ethical foundation of officership which is that all career officers despite national differences are morally equal members of the profession of arms. On this model the officer is obliged to serve the state with honour and integrity and to conduct military operations in a professional manner regardless of the moral legitimacy of such ventures. Another attempt at an answer is the notion of national loyalty of patriotism, which demands unwavering devotion to the legal authority, the so-called government of the day, in spite of its policies. However, the experiences of total war destroyed the idea of morally equal military professionals linking the ethical foundations of the profession directly to the moral

⁴¹ Kenneth W Kemp and Charles Hudlin, "Civil supremacy over the military: Its nature and limits", *Armed Forces and Society*, Vol. 19, No. 1, Fall 1992, p. 7.

⁴² Kemp & Hudlin, pp. 8-9.

⁴³ Cook, p. 123.

character of the state. The change is expressed in the famous words of General Eisenhower explaining why he refused a request for an interview by Colonel General Von Arnim, at one time the Commander in Chief of the German forces in North Africa during the Second World War:

"The tradition that all professional soldiers are comrades in arms has ... persisted to this day. For me, World War II was far too personal a thing to entertain such feelings. Daily as it progressed there grew in me the conviction that, as never before ... the forces that stood for human good and men's rights were ... confronted by a completely evil conspiracy with which no compromise could be tolerated."⁴⁴

Even a superficial survey of the deontological source of military ethics reveal an abundance of material which is beyond the scope of this paper to review. The proliferation of this type of publication, often official and legal, reveals the military's necessary emphasis on rules and absolute principles of duty, according to Watson.⁴⁵ An important segment relates to the *ius in bello* aspect of the just war tradition and the international law of armed conflict, as well as international treaties, conventions and protocols, including those originated by the UN. It deals, *inter alia*, with the avoidance of direct, international harm to non-combatants, avoidance of uses of force beyond the level necessary for accomplishing a legitimate aim, arms limitation and the provision of humanitarian relief to victims of conflict.⁴⁶ Another important segment deals with military codes such as codes of conduct for members of the armed forces or codified versions of the solaced laws of war, as well as codes of military discipline. Correctly applied these rules are valuable as guidance for the ethical problems that arise from day to day in military service. However, as Toner says, "Military codes of conduct alone are not enough: they can promote discussion of ethical concerns and serve as guides to right behaviour, but they cannot replace learning or serve as final arbiters of ethical choice."⁴⁷

In sum, Toner's conception that ethical conduct in the military is the outcome of an interaction between three sources of knowledge is a useful starting point for a detailed analysis of the subject. However, mere factual knowledge of these sources and the relationship between them, will not guarantee sound ethical conduct. The qualitative standards of ethical conduct and the core values that define it, need to be inculcated to the degree that they are fully integrated with the military profes-

⁴⁴ Cited by Cook, p. 125.

⁴⁵ Watson, p. 68.

⁴⁶ Johnson, p. 36.

⁴⁷ Toner, p. 95.

sional's own value system. This can obviously only be achieved after intensive courses of study with ample opportunity for experiential learning. The feasibility of a practical approach to the teaching of professional military ethics, is further supported by the fact that ethics in military service is always partly situational. However, it also implies, paradoxically, that in military ethics there are seldom perfect answers like right or wrong and therefore it is at best a casuistic study of the moral tensions or demands which are inherent in the military profession and which seem to confront military professionals regularly.

3. THE SOUTH AFRICAN UNDERSTANDING OF MILITARY ETHICAL ISSUES

The purpose, strategic posture and functions of the SANDF are based primarily on the constitutional provisions on defence, and on national security and defence policy.⁴⁸ The latter are also derived from the Constitution.⁴⁹ Given the fact that the South African constitution can be regarded as the repository of the national value system,⁵⁰ the National Defence Force is premised on national values and is thus the guardian of the Constitution in letter as well as in spirit. It is evident from the foundational documents in this regard, namely the Constitution, the White Paper on Defence⁵¹ and the Defence Review⁵² that the following statements are regarded by the policymakers as of particular importance for the South African military. To a great extent they helped to shape the transformation of the SANDF in terms of strategic posture, force design and functioning:

1. The Republic is a non-belligerent state and is committed to the pursuit of peace and harmony nationally and internationally.⁵³
2. The primary role of the SANDF is to defend and protect the sovereignty of the Republic, its territorial integrity and its people against external military aggression.⁵⁴

⁴⁸ Republic of South Africa, Department of Defence, *South African Defence Review* (Pretoria, 1998), p. 4.

⁴⁹ Republic of South Africa, "Constitution of the Republic of South Africa, 1996" (Act 108 of 1996). *Government Gazette*, Vol. 378, No. 17678, 18 December 1996.

⁵⁰ GE Davenish: *A commentary on the South African Constitution* (Durban, Butterworths, 1995), pp. vii; 22.

⁵¹ Republic of South Africa, Department of Defence, *South African White paper on Defence* (Pretoria, 1996).

⁵² Republic of South Africa, Department of Defence, *South African Defence Review* (Pretoria, 1998).

⁵³ Constitution of the Republic of South Africa, Sec 198 (a)-(b); *South African White Paper on Defence*, p. 4; *South African Defence Review*, p. 5.

⁵⁴ *South African Defence Review*, p. 7.

3. In the execution of its primary and secondary functions, the SANDF is to operate strictly in accordance with the Constitution and in compliance with South African domestic law, the principles of international law on armed conflict and the international treaties and conventions binding on the Republic.⁵⁵
4. The SANDF as a service to the state is subordinated to elected government and is accordingly subject to a hierarchy of civilian control. Civil supremacy over the SANDF is also achieved indirectly through institutional self-control exercised by a non-partisan and professional regular force, that is military professionalism.⁵⁶
5. The nature of the SANDF as a modern military institution is determined constitutionally and therefore the SANDF must contain all the characteristics of such a force.⁵⁷

It is clear from the above that the South African understanding of the issues that have a direct bearing on the morality of warfare in general and the ethics of military service in particular, conforms to that of the western model. All the paradigmatic building blocks are accounted for in the foundational documents and if fully operationalised should result in the transformed defence establishment envisaged therein. South Africa subscribes to the broad tradition of just war and with that undertakes to comply with the moral criteria and obligations of *ius ad bellum* and *ius in bello*. International law and customary international law at that, is law in South Africa. The country thereby endorses the necessity for restraint and justice in warfare and the institutionalisation of the rights of non-combatants and the responsibilities of combatants alike. In addition to the protection and advancement of national interests as a just cause for the use of military power, the state has come out strongly in support of the protection of universal values. In his now famous speech before the Joint Session of the US Congress in 1996, former President Mandela made a strong plea for a global vision of national interests in the following words:

"If what we say is true, that manifestly, the world is one stage and the actions of all its inhabitants part of the same drama, does it not then follow that each of us ... should begin to define the national interest to include the genuine happiness of others, however distant in time and space their domicile might be?"

⁵⁵ Constitution of the Republic of South Africa, Sec 198 (c), 199 (5); *South African White Paper on Defence*, p. 4; *South African Defence Review*, p. 5.

⁵⁶ *South African White Paper on Defence*, pp. 10-1.

⁵⁷ Constitution of the Republic of South Africa, Sec 200 (1).

As far as ethics in military service is concerned, the Department of Defence promulgated a Code of Conduct for uniformed members of the SANDF in the wake of the Tempe tragedy in 1999. The nature and purpose of the Code is described as follows:

"The Code is a distillation of the Constitution, the White Paper on Defence and international law. It is intended to capture the core values of the SANDF and a vision of military professionalism in a democratic South Africa. It provides a normative basis for unity, morale and discipline."⁵⁸

However, despite the firm grasp of military ethical theory alluded to above, the education, training and development of military professionals in South Africa do not include formal courses in professional military ethics. Education about military ethics is usually the domain of service academies and war colleges. None of the curricula of the South African Military Academy contains a course in military ethics,⁵⁹ nor is any substantial amount of time devoted to it during continued military training. At best military ethics is dealt with under the rubric of leadership in officers' formative training and during the respective staff courses and then only within the scope of a few lectures.

4. A MILITARY ETHICAL PERSPECTIVE ON SOME PROMINENT EVENTS AT THE TURN OF THE CENTURY

For an assessment of the country's military ethical record at the turn of the century, South Africa's intervention in Lesotho in 1998 is in many respects and obvious choice. Turning to the just war criterion of competent authority it is clear that the intervention on the part of South Africa was authorised by competent authority in the person of the Acting President and Commander-in-Chief, Minister Mangosutho Buthelezi. Furthermore a purposeful military chain of command was in place to control the operation from the South African side. The intervention was a joint effort by South Africa and Botswana under the auspices of the Southern Africa Development Community (SADC). In that sense and also because of the tacit acceptance of the intervention by the UN, or at least the lack of negative sanction from those quarters, the requirement of a substantial international consensus regarding the intervention as such, was satisfied. The more stringent requirement of international law that interventions must be "requested and consented to",⁶⁰ was

⁵⁸ Republic of South Africa, Department of Defence, *Bulletin*, No. 66/99, 28 September 1999, p. 1.
⁵⁹ University of Stellenbosch, Faculty of Military Science, *Yearbook of the Faculty of Military Science*.

⁶⁰ George Barrie, "South Africa's forcible intervention in Lesotho", *De Rebus*, January 1999, p. 46.

also met because the Prime Minister of Lesotho personally requested the SADC to intervene.⁶¹ However, one question is still unanswered in this respect and that is whether Prime Minister Mosisili's government was in overall control of Lesotho at the time and in that sense had the authority in terms of international law to seek assistance from other states.

The operational strategic objectives of the intervention, styled Operation Boleas, was, according to the SANDF, to create a stable environment in Lesotho, restore law and order to enable negotiations between the various political parties and to protect South African interests in the Katse Dam water scheme. The SANDF also suggested that the intervention was a peacekeeping operation.⁶² Acting President Buthelezi explained that the purpose of the intervention was to "neutralise a brewing military coup" and Foreign Minister Nzo said that "certain groups in Lesotho refuse to explore all peaceful means of dispute resolution (while) winning enough time to violently overthrow the government".⁶³ This implies that the intervention was in fact pre-emptive in nature and that military force was used without utilising the threat of forceful intervention to the full. Some aspects of the operational course of action, particularly the occupation of government buildings in the capital of Maseru and the royal palace as well as the headquarters of the Lesotho Defence Force (LDF), two nearby military bases and an airport,⁶⁴ support the notion of a pre-emptive attack. Johnson's idea of an additional obligation on the part of the intervening states is relevant at this point. It means that the SADC was obliged to state the purpose of the intervention clearly and to take precautions to prevent the impression that Lesotho's rights of territorial integrity and political sovereignty were being violated. Because of the abrupt way in which the forces were deployed, the opposite happened. Not only was the political purpose of the intervention ill-defined, but the military occupation of key points in and around Maseru created the impression that Lesotho's rights were in fact being violated. Furthermore the SADC planners failed Bowen's test of a highly visible political process of which the military action was expressly only a component part. In fact, Operation Boleas was launched because the political process failed to resolve the issues⁶⁵ or had already collapsed. Moreover, it is doubtful if humanitarian assistance to the victims of conflict ever was a prime reason for the intervention, especially in view of the subsequent events in Lesotho. As a result, the question

⁶¹ Theo Neethling, "Military intervention in Lesotho: Perspectives on Operation Boleas and beyond", *Online Journal of Peace and Conflict Resolution*, Issue 2.2, May 1999, p. 1.

⁶² Theo Neethling, "Military intervention in Lesotho", p. 2.

⁶³ Anthoni van Nieuwkerk, "Implications for South Africa's foreign policy beyond the Lesotho Crisis", *Accord Online*, Occasional Paper 3/99, p. 4.

⁶⁴ Theo Neethling, "Southern African military interventions in the 1990's: The case of SADC in Lesotho", in L du Plessis and M Hough, *Managing African conflicts: The challenge of military intervention* (Pretoria: HSRC Publishers, 2000), p. 290.

⁶⁵ Neethling, "South African military interventions in the 1990's", p. 288.

whether the criterion prerequisites of just cause were fulfilled substantially, can only be answered in the negative.

The criterion of just intention, especially as far as South Africa was concerned, presents a moral dilemma. Many observers voiced their concern at the time that South Africa had a hidden agenda with the intervention. In an article highly critical of the SADC initiative, Dr Francis Makoa of the National University of Lesotho argues that the intervention was a South African scheme to prop up the shaky Mosilisi government so as to help him to regain control of the state. He further argues that the intervention neither eliminated the root causes of the crisis nor created a climate for stability and in fact was "no more than an addition to a long list of divisive political issues in Lesotho".⁶⁶ If the critics of the intervention are correct on this score in any way, it naturally brings the criterion of last resort into dispute as well.

The criterion of overall proportionality increases the scope of the moral dilemma even more and places the political prudence of the decision to employ military force at all in serious doubt, particularly in view of the unsuspected resistance of the Lesotho Defence Force, resulting in 18 LDF and 9 SANDF members dead, the widening of the conflict area to include eventually not only Maseru but also the whole of lowland Lesotho and the accompanying chaos and destruction. Damage resulting from looting and arson to business enterprises amounted to R245,1 million.⁶⁷ A conclusion that Operation Boleas caused more harm than good and that proportionality of effort was not achieved, is in the light of this not at all far-fetched. Whether the intervening states fulfilled their obligation to Lesotho society to give priority to the provision of humanitarian assistance to the victims of conflict is similarly an open question, as is the question whether Lesotho in fact paid South Africa for its assistance,⁶⁸ and if so, whether that included payment for humanitarian aid. The extent to which the South African government fulfilled its obligation towards the people of South Africa in this instance also remains unknown. Furthermore a detailed study of the military ethical conduct of South African forces in Lesotho is still in abeyance.

In sum, it is clear from this brief survey that the numerous unresolved issues make it impossible to answer definitively whether the use of military power in Lesotho was morally justified or not. The same applies to the legitimacy of Operation Boleas from a military ethical point of view, despite the fact that the military ob-

⁶⁶ Francis K Makoa, "Foreign military intervention in Lesotho's election dispute: Whose project?", *Strategic Review for Southern Africa*, Vol. XXI, No. 1, June 1999, p. 85.

⁶⁷ Makoa, p. 67.

⁶⁸ Makoa alleges that between September and December 1998 the Lesotho government paid some R240 million to South Africa "for maintaining its military presence in Lesotho" (p. 84). However, see Neethling, 2000, p. 300.

jectives of the operation might have been accomplished.⁶⁹ However, these numerous unanswered questions and the obvious lack of a moral ethical rationale for the intervention were seemingly intuitively sensed by the press with the resultant negative media reportage which characterised Operation Boles.⁷⁰

A different series of events which no doubt captured the attention of many here and abroad, were the respective activities of the TRC.⁷¹ Of particular importance for the current discussion is the effect of the TRC hearings on perceptions of the morality of the South African Defence Force during the era of internal conflict prior to 1990. This is an important issue, not least because the so-called apartheid stigma accompanied the South African Defence Force (SADF) members who were integrated into the SANDF after 1994. The overall impression projected by the TRC hearings, which was further strengthened by prominent court cases carried by the media, or sensational news stories such as the Helderberg Disaster, was that the SADF was involved in gross human rights violations during the struggle against apartheid. Another lasting impression that is important from a military ethical point of view, is that those who testified before the TRC had acted on orders but were left in the lurch by their superiors because the latter refused to accept responsibility for the actions of their subordinates. R Williams, for one, commented on what he calls the "principle of downward accountability" and criticised the former government and its senior ministers as well as former military commanders, who refused to accept responsibility for the actions of their subordinates, or failed to respond to "accusations of betrayal by convicted security force members".⁷² However, the dilemma from a military-ethical point of view is whether this is a case of mere political posturing, or what is called a "conspiracy of silence" or a "paradigm of denial", or whether this is in fact a disregard for the attempts of the TRC at reconciliation, or indeed a disregard for the whole idea of justice and reconciliation inherent in the just war approach. Moreover, the bottom line in just war thinking remains valid and that is that until competent authority is proved, such security force actions are regarded as immoral *ab initio*.

It is evident that throughout the 1970s and 1980s SADF members were drawn into the service of the South African State in ways and for purposes about which many had serious reservations to say the least. Many of the prominent authors in this regard, lay the blame for the predicament in which military professionals

⁶⁹ For arguments that these objectives were in fact accomplished, see Neethling, "Military intervention in Lesotho", pp. 4-5.

⁷⁰ For an overview of media reports regarding the intervention in Lesotho, see Neethling, Southern African military interventions in the 1990's", pp. 291-4.

⁷¹ The Truth and Reconciliation Commission was established in December 1995 under the Promotion of National Unity and Reconciliation Act of 1995. The TRC Report is to be found on internet site <http://www.mg.co.za/mg/projects/trc/>.

⁷² Williams, p. 72, endnote 7.

increasingly found themselves, on the development of a praetorian culture in the SADF, the Total Onslaught/Total Strategy idea, the SADF's involvement in the State Security Council and the Security Management System as well as the counter-revolutionary warfare approach of the SADF. To that one can no doubt add the concept of total war which became so prevalent in the military that ideas, such as the end justifies the means, were accepted as doctrinal truths. Williams says that "many if not most" former SADF officers genuinely believed that they were fighting a communist-inspired onslaught⁷³ and therefore were convinced that what they had been instructed to do was in the national interest. The accuracy of "many" or "most" is not relevant here. What is relevant, though, is the fact that there were South African military professionals who did not agree with government's interpretation of the national interest or what had to be done to protect or advance these national interests, but who remained in the service because they regarded that as their true calling in life and not as merely another job. And this is the dilemma from a military ethical point of view: Is the military professionalism of those officers also contaminated to the point of immorality by immoral government policies, and if not, how can the military-ethical basis of their profession, or their ethics in military service, be described, not to free them from any blame, but to serve as a learning model to those who in the nature of things will in future be confronted by the same type of problems? For one thing is certain, and that is that a history of conflict, conquest and injustice, with only regional variations, is as Cook says, the story behind every other state in the world.⁷⁴ The qualitative refinement of the moral and ethical patterns of a nation and its armed forces alike requires a long-range goal and that, in turn, requires teaching, study and example.

5. CONCLUSIONS

South Africa's recent military history contains several instances of unresolved military ethical dilemmas. First and foremost among these is the discrepancy between the dubious manner in which military power was used in Lesotho and the sound understanding of military ethical issues reflected by various constitutional provisions as further clarified and concretised by the other foundational documents. Similarly striking is the sharp contrast between such exemplary moral insights and the apparent incomprehension that military conduct at the institutional or the individual level which is perceived to be morally corrupt, destroys popular support for a war effort and the morale of the forces alike. Likewise the spiritless attempt at professional military ethical education evidenced by the respective education and training curricula of the SANDF, especially in the light of South Africa's recent military history, is almost incomprehensible. An even greater dilemma is the

⁷³ Williams, p. 59.

⁷⁴ Cook, p. 123.

silence of South African academic literature about professional military ethics in a democracy notwithstanding the recent transgressions in this regard, and above all, the fact that no attempts has been made from that quarter to stimulate discourse about morality and warfare in contemporary South Africa.

In similar vein it is submitted that there are many unresolved military ethical dilemmas relating to military service under the old regime. This article has argued, for instance, that the question of competent authority regarding many security force operations during the years of internal conflict in South Africa, raises serious doubts. Those members of the former security forces who are criminally prosecuted for atrocities committed, argue in defence that they merely acted under orders. The political-military command structure on the other hand, either refuses to accept responsibility or denies involvement outright. No less important is the issue of the exceptional military professional value system of those SADF members, many of whom who are still in service, who did not serve in the SADF for political or ideological reasons or for pure self-interest, but for reasons of true military professionalism.

Scientific research into the issues raised above will no doubt help to clarify the dilemmas and at least dispel some of the speculations and misrepresentations in this regard. It will be eminently suitable as case studies in the moral education of those who still need to be taught the art of exemplary military conduct in adverse circumstances. Furthermore research of this nature is bound to generate a debate about military ethics in South Africa which is sorely missed at this juncture of our nation's history.

In closing it is fitting to recall Jacques Barzun's notable claim that the professions are destroyed from within: "When they lose competence and moral legitimacy they invite control by outsiders; they invite being treated as mere trades or businesses."⁷⁵

⁷⁵ Quoted by Watson, p. 70.