

MILITARY TRADE UNIONS: A THREAT TO NATIONAL SECURITY ... REALLY?

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Introduction

The opinion piece by Eric Z. Mnisi claiming that national security has been sacrificed at the altar of soldiers' constitutional rights to form and join trade unions is a claim often muted, not only in South Africa but elsewhere. In the *Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel*, it is stated that, "unionization of military personnel is seen as conflicting with the unique nature of the military and its role in maintaining national security and public order".¹ This of course is not a new debate and is highly contested.

During the seventies, this was a heated topic when both the United Kingdom and United States of America faced the prospects of military unionism. At the time, similar claims were made that military unions will subvert military discipline and obedience,² disrupt the chain of command by creating an 'us-them' situation, and undermine unit *esprit de corps*³. This was refuted by countries with a long-standing tradition of some form of military unionism. Countries such as Austria, Belgium, Denmark,

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¹ OSCE Office for Democratic Institutions and Human Rights. 'Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel' (2008) at 65, available at www.osce.org/odihr.

² Hallenbeck, R 'Civil Supremacy and the Military Union: The Systemic Implications' in W Taylor, R Arango & R Lockwood (eds) *Military Unions: U.S. Trends and Issues* (Sage 1977) at 233–244; Harries-Jenkins, G *Group Representation in European Armed Forces*, CMRI Final Report (European Research Office 1980).

³ Mittelstadt, J 'The Army is a Service, Not a Job: Unionization, Employment, and the Meaning of Military Service in the Late-twentieth Century United States' (2011) 80 (Fall) *International Labour and Working Class History* at 29–52; Perselay, D 'The Realities of Military Unions' in Taylor et al op cit 172–180; Taylor et al op cit; Bartle, R & Heinecken L (eds) *Military Unionism in the post-Cold War Era. A Future Reality?* (Routledge 2006).

the Netherlands, Norway, Sweden and Switzerland, reported many positive benefits of having military personnel belong to associations and unions.⁴

So why the concern? Is South Africa a unique case to the extent that it is justifiable to restrict or revoke the rights of military personnel? What evidence exists to support the claims of a security threat, or is this just a fallacy? The purpose of this contribution is to debunk some of the claims in order to place the arguments against military trade unions in context. To do so it is necessary to briefly explain why certain countries, such as South Africa, have ended up having military unions. Specifically in the post-Cold War period, this is not a rare phenomenon.⁵ Following this, the various debates related to military unions and national security, as well as the effect on military discipline and the chain of command are deliberated. In conclusion, I reflect on whether the demise of military unions is a democratic imperative, rather than a threat to national security.

Reasons for unionisation

In terms of the right to belong to a trade union, the first issue at stake is that all citizens in democratic countries have the freedom to associate and assemble, including the right to protest. These are fundamental rights recognised in virtually all human rights treaties and enshrined in the South African Constitution. The challenge, however, is how to balance these rights without undermining the needs of the military in terms of loyalty, obedience and political subservience, given their unique nature, function and role in society. Given the many differences between countries, various forms of collective associations and unions have emerged to ensure that the human rights and welfare of military personnel can be accommodated, without undermining military effectiveness or national security. However, not all countries have faced the prospect of military unionism. Some have been able to circumvent trade unions by creating alternative models of dispute resolution, such as in Canada and the United States.⁶ Others, such as South Africa, despite attempts, have been unable to parry the union challenge.⁷

Typically, where some form of military unionism exists, it is in countries whose governments have come into power on the back of a strong labour movement

⁴ Caforio, G 'Unionization of the Military: Representation of the Interests of Military Personnel' in Caforio, G (ed) *Handbook of the Sociology of the Military* (Kluwer Academic/Plenum 2003) at 319.

⁵ Bartle & Heineken op cit.

⁶ Farley, K, Walker, R & Mendoza, D 'Freedom of Association and the Canadian Forces: Current Status and Future Trends' in Bartle & Heineken op cit 67–82.

⁷ Bartle & Heineken op cit.

and who have a socio-democratic political orientation. Where this is the case, labour rights are typically extended to the military, but only after these rights had been granted to the public service and police. South Africa has followed a similar pattern in terms of the extension of labour rights to the military. However, this alone does not explain the emergence of trade unions. There must be a mood, motive and opportunity to unionise. International experience indicates that where military personnel have perceived a decline in their relevance and status in society and a disinvestment of government in the military, unions are likely to emerge. This explains in part why one sees a sudden upsurge in military personnel demanding some form of collective representation in recent years.⁸

In the post-Cold War period, the implementation of neo-liberal public management principles aimed to cut state expenditure led to the erosion of military budgets, downsizing and rightsizing of the military, employment contracts of the military, and service conditions and tenure. Military leadership had no choice but to accept this, giving rise to widespread discontent and insecurity. Other societal trends too have contributed to the demand for some form of collective representation. This includes a rights-based culture, a rise in individualism, a change in the acceptance of authority and discipline, and in recruitment. Many joining the military today come from social classes where unionisation is long entrenched and where military employment is seen as a job, rather than a calling.⁹ This has been the case in South Africa too. Countries that have also recently seen the emergence of some form of collective representation are the United Kingdom, Ireland, France, Italy, Portugal, Spain, Poland and Slovenia.¹⁰ Many of these countries could not previously unionise as the 'legal' opportunity did not exist to allow this. It was only in 2014 that the European Court on Human Rights ruled that a blanket ban on military trade unions is illegal.¹¹ In South Africa, these rights were extended to military personnel by the Constitutional Court in 1999.

Threat to national security

This brings us to some of the concerns that the formation of military unions evoke. Contrary to popular perception, it is not strike action but the alliance of military leadership with the military unions that poses the greatest threat to civil-military relations, and national security. Although members of military associations

⁸ Ibid.

⁹ Caforio op cit 313.

¹⁰ European Organisation of Military Associations, available at <http://euromil.org/>.

¹¹ European Court on Human Rights. 20609/10, Matelly/France (2 October 2014).

and unions often protest, few have ever gone on strike. According to Caforio,¹² of far greater concern is where military leadership aligns themselves with the unions that an unacceptable corporative force is produced, which sooner or later opposes the government in power. Given the potential implication such intervention may have on civilian control over the armed forces, most countries tend to restrict the scope and activities of organisations representing military personnel.

To ensure that the military unions do not disrupt civil–military relations, most countries limit the rights of military professional associations and unions. With the exception of Austria and Sweden, no country allows military unions to strike and limitations are placed on the scope of collective bargaining. Typically, unions are unable to interfere in grievances of an operational or organisational nature; activities are constrained by normal regulations pertaining to military law and military discipline, and in most cases, the military unions cannot represent their members directly in grievances. This has ensured that the relationships with the various professional associations and military unions are typically cooperative or even corporatist. The same restrictions apply in South Africa, but here a distinctly confrontational pluralist style of labour relations has emerged.¹³

During the early 2000s, as the unions pushed to negotiate on all matters of mutual interest, so the relationship became more confrontational. This was hampered not only by power struggles between military leadership and the unions, but also by decision-makers outside the Military Bargaining Council (MBC), including the Secretary of Defence, the Minister of Defence and the Joint Standing Committee on Defence.¹⁴ Ultimately, this has led to the MBC suspending its activities and becoming defunct. The military unions were portrayed as ‘dangerous’ and militant.¹⁵ With military leadership resolute not to engage with the military unions, so grievances mounted. Over 4 000 grievances remained unresolved, and the military unions increasingly partook in protest action to make their concerns known.¹⁶ It was under these conditions that the 26 August 2009 protest or so-called

¹² Caforio op cit 316.

¹³ Heinecken L & Nel, M ‘Military Unions and the Right to Collective Bargaining: Insights from the South African Experience’ (2007) 23 (3) *International Journal of Comparative Labour Law and Industrial Relations* at 463–483.

¹⁴ Du Plessis, G *Minutes of the Military Bargaining Council Meeting*. CPP/D/HR POL/R/521/3/1/1/41 (Defence Headquarters 4–6 July 2001).

¹⁵ Department of Defence (DOD). ‘Briefing on Military Trade Unions to the Joint Standing Committee on Defence’ (2001), available at <http://www.pmg.org.za/docs/2001/viewminute.php?id+847>.

¹⁶ DOD. *Equal Opportunities and Affirmative Action Climate Survey*. 077/IG DOD EA/05-06 (Centre for Effect Analysis, Defence Inspectorate, 2006).

‘strike’ was evoked. The image of the police firing at protesting soldiers, prompted calls to ban military unions for the sake of national security.¹⁷

Would this event have happened had the long-standing grievances of soldiers been addressed? As Cortright¹⁸ aptly states:

Unions do not create employee grievances, they simply try to deal with them and erase their causes. The tensions that threaten military reliability cannot be traced to unionisation. They depend on military mission and on command ability to meet rank and file needs. Internal effectiveness hinges on the decisions of commanders, not labour leaders.

The solution lies with the ability of the chain of command and military leadership to resolve disputes and address the concerns of military personnel. In fact, for more than two decades, the Department of Defence acknowledged that their grievance mechanisms were inefficient and that there were no means to monitor the resolution of grievances and disputes.¹⁹ From this, it is clear that the biggest threat to national security is not the military unions, but the poor state of labour relations that led to this ‘fortunate’ event. I say ‘fortunate’, because it is this event, which ultimately led to the establishment of the Defence Force Service Commission, a new grievance procedure and the long overdue establishment of a Military Ombudsman. Labour relations in the Department of Defence are certainly in a better place now than it was before.

Effect on military discipline and chain of command

Another argument raised in the article by Mnisi is the effect that military unions may have on military discipline, chain of command and *esprit de corps*. The statement is made “without discipline and coherence within the ranks of the SANDF [South African National Defence Force], it will not be able to fulfil its constitutional mandate”. Members of the armed forces are subject to a system of military discipline, and having unions creates two distinct problems. The first is that raising collective grievances is considered equivalent to subordination, especially where collective action relates to the questioning of orders, or worse still – mutiny. To my knowledge, there is no evidence of this in the SANDF in terms of the involvement

¹⁷ *defenceWeb* ‘Sisulu Firm on De-unionising the SANDF’ (6 December 2010), available at http://www.defenceweb.co.za/index.php?option=com_content&view=article&id=11052

¹⁸ Cortright, D ‘Unions and Democracy’ in Taylor et al op cit.

¹⁹ Republic of South Africa. ‘Final Report of the INDFSC to the Honourable Min of Defence, L.N. Sisulu’ (15 April 2016) 39920 *Government Gazette* at 22–23, available at http://www.gpwonline.co.za/Gazettes/Gazettes/39920_15-4_Defence.pdf

of military unions. Neither is there any proof that military unions have disrupted vital operations to the extent that it has affected military functioning.

The second problem relates to the effect of military unions on the chain of command. The main concern here is where members act on the instructions of the union against the wishes of military leadership. It is difficult to say to what extent this has occurred except where members have executed their constitutional right to protest. However, what one does see is the emergence of three chains of command, which have eroded morale, cohesion, discipline and *esprit de corps* in the SANDF. The first is the official 'bureaucratic' chain of command, which as indicated has been largely ineffective in dealing with both individual and collective grievances. This provided fertile ground for unions, and contributed to a lack of trust in military leadership to address the discontent within the ranks. The second is the political chain of command, run through networks of patronage and favouritism of those politically connected or aligned to the ruling party. This has caused widespread resentment where it has affected promotion and career progression, and has contributed to a culture of mediocrity and decline in professionalism. Undoubtedly, this affects discipline and cohesion. The third is the military unions, to whom those who have lost trust in the chain of command and who are not politically connected resort to address their grievances, unfair labour practices and other injustices. This contributes to an unhealthy 'us-them' situation, reinforced where the military unions emerge victorious in their court cases.

This is not a healthy state of affairs on all three accounts. The unions alone cannot be blamed for this state of affairs. However, their conduct has often not endeared military personnel, who want some form of representation but find the concept of a professional association more palatable. This is most aptly reflected in a letter by Chaplain Treu, who resigned from the South African National Defence Union (SANDU) due to the critical stance the SANDU adopted in relation to Zuma's controversial deployment to the Central African Republic.²⁰ In a letter to SANDU, Treu stated,

I expect my union to be engaging with the Minister and the Secretary of Defence, lobbying on behalf of soldiers. I expect my union to be in discussion with the office of the Military Ombudsman to help define roles and perhaps even to forge some kind of partnership. I expect my union to be engaging at an academic level with institutions, think-tanks and universities where these matters are discussed and researched. I expect my union to be presenting papers at academic colloquia and submitting papers to academic

²⁰ Treu, AJ 'Why I am Resigning from SANDU' *politicsweb* (4 April 2013), available at <http://politicsweb.co.za/opinion/why-im-resigning-from-sandu>.

journals. I expect my union to be writing articles in newspapers and online forums, specifically to debate defence spending, the state of equipment and the service conditions of soldiers.

This is precisely the role that military unions and professional associations in Europe perform. According to Caforio,²¹ professional associations or unions are typically formed to –

- defend the moral and professional interests of members;
- enhance the profession in the eyes of the public;
- inform commanders on personnel problems;
- collaborate in solving personnel problems;
- inform members on personnel issues;
- defend the interests of retired personnel; and
- participate in bodies for social and cultural promotion.

However, in reality, most of the professional associations tend to focus on the material benefits and well-being of members, rather than defending the military profession and institution.²² Consequently, this has led to the blurring of the terms used to define military unions and associations, especially where they act in a like manner. So, what is in a name? It is what the military union or professional association does that is important.

Conclusion

As with the private sector, unions are not something that is welcomed by employers, even less so by the military. Trade unions essentially strive to defend and advance the interests of their members through an ‘active process of collective bargaining’ with an employer. Given the structure and function of the armed forces, this is fraught with difficulties, especially where the union is seen as an intruder, and military leadership continues to manage labour relations from a unitarist perspective.²³ This is not unique to South Africa. According to Farnham and Pimlott, the armed forces have “traditionally tended towards unitary structures and consensus values which have generally been accepted by managerial cadres and subordinates alike”.²⁴ In the past, military personnel have not felt the need to unionise as the state and military leadership have generally tended to the welfare of

²¹ Caforio op cit 319.

²² Heinecken, L ‘Outsourcing Public Security: The Unforeseen Consequences for the Military Profession’ (2014) 40 (4) *Armed Forces and Society* at 633.

²³ Heinecken, L. 2006. ‘South Africa: Facing the Challenge of Military Unionism’ in Bartle & Heinecken op cit 69.

²⁴ Farnham, D & Pimlott, J *Understanding Industrial Relations* (Bath Press 1995) at 46.

military personnel. However, this relationship has been eroded as national priorities have shifted and the relevance and importance of the military have declined.

As has been the case elsewhere, organisational and force restructuring, coupled with the declining conditions of service, career prospects, tenure, the decline in infrastructure and trust in military leadership have all contributed to the need for unions. In this regard, the SANDF is not unique. Many other countries have faced similar prospects and all have responded in different ways. What is unique is that the courts have granted the military trade unions in South Africa quite extensive rights, but instead of engaging in collective bargaining or even consultation, the military unions have been obliged to rely on the courts to resolve disputes. They have won case after case, which has highlighted the plight of soldiers and propelled issues into the public domain. Few can dispute that the military unions have brought about an improvement in what has otherwise been a defective labour relations system.

Secretly, many support the unions for the ‘watchdog’ role they play, even though they may reject or ridicule the conduct of the unions. Whether we like them or not, the unions give voice to the concerns of the ‘defenders’ of our democracy. They have existed for more than 20 years and it is a fallacy to claim that they pose a threat to national security. This exists only in the minds of those who feel threatened by the tenacity of the military unions to tackle violations and the abuse of power. One merely has to look at how the dismissal of soldiers in 2009 was dealt with,²⁵ and the Guptagate scandal to understand this tenacity.²⁶ As Duncan (2010) aptly points out, the military unions provide an important “safety valve for military personnel to speak in an unmediated voice and place a check on the growing culture of authoritarianism, corruption and politicisation of the military under the Zuma administration”.²⁷

One can therefore understand why many, closely aligned to the Zuma regime and who benefit from this patronage would like the military unions to perish. Whether the newly established Defence Force Service Commission (DFSC) and the Military Ombudsman will come to obviate the need for military unions is yet to be seen. Few can deny that the military unions have come to play an important oversight role and one wonders who will hold the Defence Force, its leadership and

²⁵ Helfrich, K. ‘Union Buildings “Special Leave” Protestors Recalled’ (25 May 2016). *defenceWeb*, available at http://www.defenceweb.co.za/index.php?option=com_content&view=article&id=43622&catid=74&Itemid=30

²⁶ *defenceWeb* ‘Guptagate Moves to the Military Courts’ (2 September 2013).

²⁷ Duncan, J *South Africa’s National Security Complex* (South African Civil Society Information Service, 1 December 2010).

the politicians to account if this voice too is silenced.²⁸ This is a far greater threat to our national security than the military unions.

²⁸ Duncan, J *The Danger of a Blindly Obedient Soldier* (South African Civil Society Information Service, 8 May 2012).