Legal Obligations within SADC to Strengthen Security on the Territory of its Member States

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Abstract

This paper examines legal obligations within SADC to strengthen security on the territory of its member states from two angles of analysis, that is, at the SADC and member states levels. In this regard, it highlights SADC security problems and mechanisms which are at its disposal to address them. The study then identifies those legal obligations that must be complied with for the sake of peace and security in southern Africa region and determines how they can be and are implemented in different member states facing insecurity problems. The analysis relies on a formal and comparative approach based on SADC legal instruments, other official documents and concrete cases, in combination with the perspective of international relations. The paper concludes that while SADC is a collective security system which possesses enough legal power and authority to deal with insecurity problems in southern Africa region, it faces several challenges to carry out its obligations and to guarantee the respect of obligations which its member states bear in the quest for peace. One of these challenges is financial dependance on external doners. Recommandations are made in order to improve SADC efficacy and success on the ground.

Introduction

Law does not suffice to address security problems in southern Africa. To borrow Hart's conception of law as a set of « coercive orders »,[1] these include legal obligations which are prescriptions and requests to do or not to do something, or face a given consequence in case of non-compliance. One of the main objectives of the Southern African Development Community (SADC) is to prevent, manage and resolve conflicts, crises and other security matters on the territory of its member states. In order to be efficient, there must be an environment which can allow these obligations to be observed, carried out or implemented on the ground. This necessitates not only political will of SADC and individual member

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1 Hebert L.A. Hart, The Concept of Law, Second Edition, With a Postscript Edited by Penelope A. Bulloch and Joseph Raz, Oxford, 1961, p.23.

states, but also resources that require the political will to turn these obligations into a tangible reality of peace and security.

There are different categories of security. Foremost, SADC must maintain and streghten human security, which implies the satisfaction of basic needs of individuals and the protection of their fundemental rights and freedoms.[2] In fact, any institution within any society is supposed to serve first the interests of human beings who live within it in order to be meaningful for all. It is self evident that such human security is possible only where different SADC member states stay themeselves in peace. State security should therefore be considered as a prerequisite for human security. In addition, SADC pursues the realisation of regional security which normally derives from both human security and peace as well as stability within its member states.[3] A good understanding of legal obligations within SADC to stregnthen these kinds of security must lead to the distinction between SADC's obligations as a supranational organisation with its independent legal status, and its member states' obligations on security matters in southern Africa. SADC's obligations should not be conflated with those which lie with its member states, even though both categories are complementary and necessary mechanisms to deal with common insecurity concerns of the region.

This paper examines these obligations from two axes of analysis, that is, at the SADC and member states levels. From a methodological point of view, the study embraces a formal approach which enables to look into diverse SADC legal instruments and to identify established obligations that must be complied with for the purpose of maintaining peace and security in southern Africa region. But to make the analysis more concrete, it also examines how these legal obligations can be and are implemented in different cases on the ground. Given the complexity of the notion of security as one of SADC's objectives, it is important to combine the aforementionned formal and comparative approach with the perspective of international relations.

Thus, section 1 identifies SADC's security problems on the territory of its member states and classifies them in light of SADC legal instruments and other official documents. Section 2 describes the mechanisms which the organisation can use or effectively uses to deal with these security problems. The aforementionned legal obligations can be just one such mechanisms and are examined in section 3. Section 4 highlights successes and challenges that SADC encounters while seeking to maintain peace and strengthen security on the territory of its member states. A conclusion follows with recommendations.

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2 African Union Non-aggression and Common Defence Pact (31 janvier 2005), article 1 (k). See also Balingene Kahombo, The Peace and Security Council of the African Union: Rise or Decline of Collective Security in Africa?, KFG Working Paper Series, No.23, Berlin Potsdam Research Group "The International Law: Rise or Decline?", Berlin, December 2018, p.10.

3 SADC Treaty (17 August 1992), article 5 (1) (c).

I. SADC Security Problems

SADC is an organisation created in 1992 and comprises the territory of sixtheen member states constituting the southern Africa region.[4] This is the largest part of the continent compared to the other four African regions acknowledged by the African Union (AU): Central Africa, East Africa, West Africa and Northern Africa.[5] Such a vaste territory is a big challenge to security if several member states are simultanouesly affected by crises. It also implies the mobilisation of extensive resources to maintain peace and security.

There are currently several types of open security problems within SADC. First, armed conflicts and international crimes committed in this context, as is the case in the Democratic Republic of the Congo (DRC). Despite the fact that President Félix Antoine Tshisekedi Tshilombo came to power in January 2019, following the elections of 30 December 2018 and the peaceful transfer of power by former President Joseph Kabila, the eastern part of the country is still bloodied by countless Congolese and foreign armed groups. Their number was estimated at 122 in 2020.[6] The situation dramatically worsened in November 2021 as M23 rebels, mainly supported by the Rwanda Defence Force (RDF), resumed their attacks against the Congolese army whereas they were supposed to be stationned in Rwanda and Uganda waiting for their demobilisation and return to civil life.[7] Protracted conflicts in eastern DRC have now lasted for nearly 30 years. The country is well known for its tremendous natural resources, including numerous strategic minerals, oil, gas, rivers and forests. It became a SADC member only on 28 February 1998. To the author's knowledge, this is the only place where there are real armed conflicts in SADC region. Other countries stay relatively in peace, except recent terrorist insurgency in Mozambique. Even Angola, which lacked security since its independence in 1975 due to the armed conflict between loyalist forces and rebels led by Jonas Savimbi, is now stable after the end of its civil war in 2002.

Second, the expansion of terrorism. Again, this especially happens in the DRC. Terrorist and islamist methods are now widespread in a number of armed groups, like the militiamen of the Cooperative for the Development of the Congo (CODECO) or the Ugandan rebels of the Allied Democratic Forces (ADF) based in North Kivu and Ituri provinces where they constantly attack civilians, kidnap or kill them with machetes. The

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4 Angola, Botswana, the Union of Comoros, Democratic Republic of the Congo, Eswatini (Swaziland), Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, United Republic of Tanzania, Zambia, and Zimbabwe.

5 See Treaty Establishing the African Economic Community (03 June 1991), article 1 (d). The African diaspora was declared the sixth region of the African Union. See Assembly/AU/Res. 1 (XVIII), Resolution on the Diaspora, Assembly/AU/14(XVIII) Add.3, 18th ordinary session of the AU Assembly, Addis Ababa (Ethiopia), 29–30 January 2012.

6 Kivu Security Tracker, The Landscape of Armed Groups in Eastern Congo : Missed Opportunities, Protracted Insecurity and Self-Fulfilling Prophecies, Report, February 2021, p.3.

7 UN Security Council, Rapport final du Groupe d'experts sur la République démocratique du Congo (S/2022/479), 14 June 2022, paras 58 and 60.

ADF in particular reportedly even affiliated with the Islamic State (ISIS),[8] while maintaining other networks in several countries, such as Uganda, Rwanda, Tanzania, Somalia and even Mozambique. In the northern part of the latter country, terrorism is precisely active in the region of Cabo Delgado where insurgents are suspected to be also linked to Daech. According to Liesl Loaw-Vaudran, 'the conflict erupted in Mozambique's northern Cabo Delgado province just a few years after some of Africa's biggest gas reserves were discovered in the Rovuma Basin off the coast. Mozambicans see this as no coincidence'.[9] They 'blame the discovery and bad governance of resources, notably natural gas and rubies, for the escalation of terrorism in the province'.[10]

Third, there are democracy and governance deficits.[11] Fraudulent elections and unconstitutional change of government, as well as their records of human rights violations can be deplored. A case in point is Zimbabwe with a long period of Mugabe's dictatorship since independence in 1980. For example, during the 2008 presidential election, Mugabe's government resorted to political violence to force the opposition candidate, Morgan Tsvangirai, to withdraw from the presidential race after leading the incumbent president at the first round.[12] Mugabe confiscated power until the 2017 coup d'Etat. Madagascar has had similar problems with two coups perpetrated by Marc Ravalomanana in May 2002 and Andry Rajoelina in March 2009.[13] In Lesotho, the army and the police used to intervene in politics. For example, « prime minister Thomas Thabane suspended Parliament to prevent a vote of no confidence and fired the Chief of the Army, actions that precipitated a military coup in August 2014 ».[14] While the army supported deputy Prime Minister, Thabane benefited from the police's loyalty but was forced to flee to South Africa.[15]

The meeting of the SADC Ministerial Committee of the Organ on Politics, Defence, and Security Cooperation (MCO) held in Pretoria on 19 July 2022 added other security threats, namely, organised transnational crimes such as trafficking in persons, illicit drugs trafficking, and corruption, maritime security on Indian and Atlantic oceans, as well as threats to critical infrastructure, including theft and vandalism of electricity and water

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8 UN Security Council, Rapport à mi-parcours du Groupe d'experts sur la République démocratique du Congo (S/2022/967), 16 December 2022, paras 27 and 28.

9 Liesl Loaw-Vaudran, The many roots of Mozambique's deadly insurgency, Institute for Security Studies (ISS) Today (08 September 2022) < https://issafrica.org/iss-today/the-many-roots-of-mozambiques-deadly-insurgency> 28 February 2023.

10 Ibid.

11 Adriana Lins de Albuquerque and Cecilia Hull Wiklund, Challenges to Peace and Security in Southern Africa : the Role of SADC, FOI Studies in African Security Programme, Swedish Defence Research Agency, Stockholm, December 2015, p.3.

12 Marystella Auma Simiyu, African Union Support to Elections in Africa: Rethinking the Preventive Role, *Law in Africa*, vol.25, 2022, p.202.

13 Serugo Jean Baptiste and Balingene Kahombo, Taking Stock of African Union's Sanctions against Unconstitutional Change of Government, *Law in Africa*, vol.25, 2022, pp.165 and 167.

14 Lins de Albuquerque and Wiklund, *supra* note 11, p.3.

15 Ibid.

infrastructure.[16] There are also cases of humanitarian problems, due to armed conflicts or natural disasters, such as fire and floods, especially in coastal states such as Mozambique.

In short, the bulk of security concerns in the SADC region are men-made whilst others are natural phenomenons. In some countries, such as the DRC and Mozambique, armed conflicts and insecurity are favoured by bad governance of natural resources or their foreign lust, which make them complex situations for SADC to address them.

II. SADC Peace and Security Mechanisms

The question is now how SADC manages to deal with threats to peace and security that have been identified above in southern Africa region. The answer can be found in SADC legal instruments which serve as the 'constitution' of the organisation and in its practice. The main legal instruments are the SADC founding treaty of 1992 and the Protocol on politics, defence and security cooperation of 2001. The security vision embodied in these treaties was incorporated in the SADC Strategic Indicative Plan for the Organ on Politics, Defence and Security Cooperation in 2004 ((SIPO I) as revised in 2010 (SIPO II),[17] SADC Vision 2050[18], and SADC 2020 Regional Indicative Strategic Development Plan (RISDP 2020–2030).[19] Other instruments are SADC mutual defence Pact of 2003, SADC anti-corruption Protocol of 2001, SADC Protocol on extradition of 2002, and the Protocol on mutual legal assistance in criminal matters, adopted in October 2002.

In light of these legal instruments and policy documents, SADC appears to have at its disposal at least seven main mechanisms to deal with security concerns in southern Africa region. First, dialogue and mediation subject to self-defence. According to the Protocol on the Organ,[20] these are prevailing mechanisms before resorting to any other means to resolve crises and conflicts. These mechanisms are frequently used in any case of constitutional crises such as in Zimbambwe. For example, in 2008, following the contested presidential elections, SADC mediation led to the conclusion of the Global Political Agreement pro-

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16 DefenceWeb, SADC defence and security body sees three threats to peace and security (22 July 2022) <https://www.defenceweb.co.za/featured/sadc-defence-and-security-body-sees-three-threats -to-peace-and-security/>26 August 2022.

17 SADC Strategic Indicative Plan for the Organ on politics, defence and security cooperation (2004), Revised Edition, Maputo, 05 August 2010< https://www.sadc.int/sites/default/files/2021-08/03514 _SADC_SIPO_English.pdf> 28 February 2023.

18 Southern African Development Community (SADC) Vision 2050, Gaborone, Botswana, 2020<https://www.sadc.int/sites/default/files/2021-08/SADC_Vision_2050..pdf>.

19 Southern African Development Community (SADC) Regional Indicative Strategic Development Plan
(RISDP) 2020–2030, Gaborone, Botswana, 2020< https://www.sadc.int/sites/default/files/2021-08 /RISDP_2020-2030.pdf> 28 February 2023.

20 Protocol on Politics, Defence and Security Cooperation (14 August 2001), article 2.2 (f).

viding for power-sharing between the ruling party of President Mugabe, the Zimbabwe African National Union-Patriotic Front (ZANU-PF), and the opposition led by Tsvangirai.[21]

Second, peacekeeping missions that can be deployed with the consent of the host state and possibly other parties involved in the crisis or conflict. It is the case of SADC Mission in Mozambique (SAMIM) whose deployment was authorized by the Summit of Heads of States and Government on 21 July 2021 to fight against insurgency in Cabo Delgado as 'a regional response to support the Republic of Mozambique to combat terrorism and acts of violent extremism'.[22]

Third, coercive measures which may be either military interventions without the consent of the host state, or the imposition of political, economic and targeted sanctions against governments or individuals. Regarding military interventions, a case in point are SADC efforts that brought its member states, namely, Malawi, South Africa and Tanzania, to join the Intervention Brigade of MONUSCO under Security Council's mandate in order to disarm armed groups in eastern DRC and particularly M23 in 2013.[23] Concerning the imposition of sanctions, Madagascar is a suitable example. The AU Peace and Security Council (PSC), supported by SADC, imposed targeted sanctions plus diplomatic isolation on Madagascar and its political leadership in March 2010 after *Andry Rajoelina's* government had failed to implement agreements reached in a bid to restore constitutional order following the 2009 coup d'état.[24]

Fourth, collective self-defence and collective action in case of agression.[25] Prior to the adoption of the SADC mutual defence Pact, collective self-defence was activated in 1998 by Angola, Zimbabwe and Namibia to defend the DRC which had been invaded by Uganda, Burundi and Rwanda. It is important to note that this was done while SADC had failed to undertake a collective action because of divisions among member states, some of which, such as South Africa, preferring to solve the conflict through dialogue and other peaceful means.

Fifth, security sector reform as a strategy to prevent violence and foster political stability. This is the case of 'the Communiqué of the Double Troika Summit of SADC Heads of State and Government of 15 September 2017, which approved the deployment of

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21 Simiyu, *supra* note 12, p.204.

22 Statement by His Excellency Dr. Hage G. Geingob, President of the Republic of Namibia and Chairperson of the SADC Organ on Politics, Defence and Security regarding the recent developments on the SADC Mission in Mozambique (SAMIM) (11 January 2023)< https://www.sadc.int/sites/default/files/2023-01/Statement%20by%20the%20Chairperson%20of%20the%20SADC%20Organ%20on%20Politics%2C%20Defence%20and%20Security%20regarding%20the%20recent%20developments%20on%20the%20SADC%20Mission%20in%20Mozambique%20%28SAMIM%29_Jan%202023.pdf> 28 February 2023.

23 See CS, Rés.2098 (2013), 28 mars 2013, para.9.

24 PSC/PR/BR(CCXX), 17 March 2010, para.4.

25 SADC Mutual Defence Pact (August 2003), article 6 (1).

the SADC Preventive Mission in the Kingdom of Lesotho (SAPMIL)'.[26] The Mission was a 'multidimensional force comprising of a total of 258 personnel, as follows 207 Military, 24 Police, 15 Intelligence and 12 Civilian Experts for an initial period of six months, with effect from 20 November 2017'.[27] It was mandated to assist the Kingdom of Lesotho to implement security sector reforms. SAPMIL successfully ceased its operations on 20 November 2018, 'which resulted in the significant improvement of the security situation in Lesotho'.[28]

Sixth, SADC can deploy elections observer missions to prevent electoral contestations and violence on the territory of member states. These missions are responsible for reporting on the respect of democratic standards during elections processes, in accordance with SADC Principles and Guidelines Governing Democratic Elections, adopted in 2015.

Seventh and last, SADC promotes cooperation in criminal matters between member states. This cooperation is realised through harmonization of the latter's criminal legislation in areas such as corruption, terrorism and trafficking in persons.[29] It also includes extradition as well as judicial and police cooperation.[30]

SADC relies on a variety of institutions to achieve its objectives. Some of these institutions are domestic organs and services, especially in the area of cooperation in criminal matters.[31] At the regional level, the Organ on Politics, Defence and Security Cooperation (OPDSC) was established by the Protocol of 14 August 2001 as the main institution responsible for promoting peace and security in southern Africa.[32] OPDSC structure comprises the Summit, consisting of a Troika (Chair of the Organ, Outgoing Chair of the Organ and Incoming Chair of the Organ), the Ministerial Committee, the Inter-State Politics and Diplomacy Committee, and the Inter-State Defence and Security Committee. The SADC Troika of the Organ currently includes Namibia (Chair of the Organ), South Africa (Outgoing Chair of the Organ) and Zambia (Incoming Chair of the Organ).[33]The Organ operates separately from other SADC institutions. For example, the mere fact that there are two separate presidencies, the Chairperson of the SADC Summit and the Chair of

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26 PSC/PR/COMM(DCCXLVIII), 24 January 2018, para.2.

27 Ibid.

28 Ministerial Statement on Zambia's Chairmanship to the SADC Organ on Political, Defence and Security Cooperation (29 February 2019)<https://www.parliament.gov.zm/sites/default/files/imag es/publication_docs/Ministerial%20Statement%20on%20SADC%20Securrity%20Council.pdf> 1 March 2023.

29 See Balingene Kahombo, La coopération judiciaire pénale fondée sur les traités de la CEEAC, du COMESA et de la SADC, *Librairie africaine d'études juridiques*, vol.5, 2010, pp.9 – 12.

30 Ibid., p.13.

31 Ibid., p.18.

32 Protocol on politics, defence and security cooperation, articles 2 (1) and 11 (2).

33 See Communiqué of the Extra-Ordinary SADC Troika Summit (31 January 2023) <https://www.sa dc.int/sites/default/files/2023-01/COMMUNIQU%C3%89%20OF%20THE%20EXTRA-ORDIN ARY%20SADC%20TROIKA%20SUMMIT%20Namibia%2C%2031%20January%2C%202023. pdf>.

the Organ is enough to mark a difference at the level of Heads of State and Government. This may of course create discripancies between parallel institutions.[34] Be it as it may, the Organ reports and makes recommendations to the Summit of SADC Heads of State and Government which is the supreme policy and decision-making body of the Community.[35] It is particularly the case where SADC must decide to intervene on the recommendation of the Organ.[36]

The SADC Standby Force is the military branch of the organisation. It was created in 2007 and operationnalised in 2016. Under the Memorandum of Understanding on the SADC Standby Force of 2007, this body is mandated to carry out all SADC military actions : peace missions, prevention missions, humanitarian actions, military interventions or collective coercive actions.[37] As SADC peace policy and doctrine prioritise dialogue and mediation, the Standby Brigade is more a means of last resort. The Community relies on a mediation support unit (within the Secretariat) and the Panel of Elders who act as SADC mediators. Sometimes, instead of using these mediation institutionnalised mechanisms, SADC appoints mediators on a case by case basis generally among serving or retired heads of state.[38] Efforts are made through these institutions to implement SADC's obligations to ensure peace and security in southern Africa.

III. Types of Legal Obligations to Strengthen Security

SADC is a supranational organisation which has legal status that makes it a distinct legal person from its member states. A distinction must therefore be made between SADC's obligations and those which lie with the latter.

Concerning SADC, there are two basic ideas. First, dealing with security issues in southern Africa is dictated by SADC 'constitution'. In this regard, article 5 (1) (c) of the SADC founding Treaty provides that one of SADC's objectives is to 'consolidate, defend and maintain democracy, peace, security and stability'. In the same vein, article 2 (1) of the Protocol on politics, defence and security cooperation prescribes that SADC's objective is to promote peace and security in southern Africa by resolving 'significant inter-state conflict between state parties or between a state party and a non-state party'.[39]

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34 See Nathaly Xavier Schutz, The Security Integration in Southern Africa: SADC and OPDS, *Brazilian Journal of African Affairs*, vol.1(1), 2016, p.220.

35 Protocol on Politics, Defence and Security Cooperation, article 3(1). See also SADC Treaty, article 10.

36 SADC Mutual Defence Pact, article 6(2).

37 Memorandum of Understanding amongst the Southern African Development Community Member States on the Establishment of a Southern African Development Community Standby Brigade (16 August 2007), article 4.

38 Dimpho Motsamai, Evaluating the Peacemaking Effectiveness of SADC, Doctoral Thesis, Faculty of Commerce, Law and Management, University of Witwatersrand, 2018, p.30.

39 Protocol on Politics, Defence and Security Cooperation, article 11 (2) (a).

Such significant conflicts include conflict over territorial boundaries or natural resources, acts of agression or other forms of illegal use of military force, conflicts that threaten regional security or the security of a state party, civil war, insurgency, large-scale violence and military coups.[40]

Second, if SADC is vested with this mandate it is simply because it also aims to promote development in the region through integration and other socio-economic measures. As the AU acknowledges, assuring peace and security is a precondition for achieving its socio-economic agenda and 'the engine to propel African development'.[41]

As such, SADC must be considered as a collective security system which possesses legal power and authority to deal with insecurity problems in southern Africa region. It is one of the AU regional mechanisms on conflict prevention, management and resolution, and an integral part of the African Peace and Security Architecture (APSA), as contemplated by various AU treaties and policy documents.[42] With this nature, SADC operates in a complex institutional landscape and thus must comply with some obligations which its owes to the AU and even the United Nations (UN) when it has to discharge its peace and security mandate or mission.

With respect to the United Nations, SADC must recieve authorization of the Security Council whenever it wishes to undertake a military intervention and any other coercive action on the territory of its member states, pursuant to article 53 (1) of the UN Charter. But this does not mean that SADC would leave grave situations escalate pending such UN Security Council's authorization. Rather it must assume its responsibility even when there is not any timely action decided at the global level. This understanding is consistent with the view of the AU itself as expressed in "the Common African Position on the Proposed Reform of the United Nations", also called "*The Ezulwini Consensus*". The Position was adopted by the AU Executive Council in March 2005 in reaction to the report of the UN Secretary-General's High-Level Panel on Threats, Challenges and Change, issued in the context of the emerging doctrine of the responsibility to protect in 2004.[43] *The Ezulwini Consensus* indicates:

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40 Ibid., article 11 (2) (a)-(b).

41 Emeka A. Ndaguba, Peace Operations in Southern Africa: Challenges and Prospects for the Southern African Development Community Standby Force, *Journal for Transdisciplinary Research in Southern Africa*, vol.14 (1), 2018, p.5.

42 See Protocol Relating the Establishment of the Peace and Security Council of the African Union (9 July 2002), article 16 (1); Memorandum of Understanding on Cooperation in the Area of Peace and Security between the AU, the REC and the Coordinating Mechanisms of the Regional Standby Brigades of Eastern Africa and Northern Africa (2008); Ext/Assembly/AU/1–2/(II), Solemn Declaration on a Common African Defence and Security Policy, 2nd Extraordinary Session of the Assembly of the African Union, Sirte (Libya), 27–28 February 2004, part IV, para.14.

43 United Nations, 'A More Secure World: Our Shared Responsibility -Report of the Secretary General's High-Level Panel on Threats, Challenges and Changes' (2004), paras.185 and 203<http://www.un.org/en/peacebuilding/pdf/historical/hlp_more_secure_world.pdf> accessed 28 February 2023.

> *Since the General Assembly and the Security Council are often far from the scenes of conflicts and may not be in a position to undertake effectively a proper appreciation of the nature and development of conflict situations, it is imperative that Regional Organisations, in areas of proximity to conflicts, are empowered to take actions in this regard. The African Union agrees with the Panel that the intervention of Regional Organisations should be with the approval of the Security Council; although in certain situations, such approval could be granted "after the fact" in circumstances requiring urgent action (...).[44]*

In relation to the AU, all SADC security activities must comply with the objectives and principles of the Union and information must be given to the AU PSC for the purpose of coordination of efforts at the continental level.[45] It is important to note that the APSA operates pursuant to the principles of subsidiarity and complementarity between the AU and Regional Economic Communities/Regional Mechanisms, which implies tacking into account comparative advantages, the proximity with the scenes of conflicts, mutual involvement and participation, and reduced costs of operations or activities.

As to obligations of SADC member states, they are diverse. First, member states must respect principles of peaceful coexistence between nations, including equal sovereignty of states, peaceful settlment of disputes, non-use of force and non-interference in each others's domestic affairs. Some of these principles have acquired the status of customary international law and others are enshrined in SADC legal instruments.[46] Second, member states must observe a number of prohibitions to prevent crises and violence, such as the probition of agression and any form of destabilisation, as well as of unconstitutional change of government. Third, SADC member states have the duty to respect values of democratic governance. In this regard, article 4 (c) of the SADC founding Treaty provides that member states shall act in accordance with 'human rights, democracy and the rule of law'. Fourth, they have the obligation to cooperate in criminal matters, in sharing intelligence information pursuant to relevant SADC treaties but subject to national security, or in the implementation of SADC collective action. Each member state which is a party to the SADC mutual defence Pact is thus required to 'participate in such collective action in any manner it deems appropriate'.[47] It is self-evident that this must begin with sharing the financial costs incurred as a result of such a collective measure.

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44 Ext/EX.CL/2 (VII), The Common African Position on the Proposed Reform of the United Nations: *"The Ezulwini Consensus"*, 7th Extraordinary Session of the Executive Council of the African Union, Addis-Ababa (Ethiopia), 7–8 March 2005, p.6.

45 Protocol Relating the Establishment of the Peace and Security Council of the African Union, article 16 (1) (a) and (3).

46 SADC Treaty, article 4.

47 SADC Mutual Defence Pact, article 6 (3).

IV. Success and Challenges

SADC has now a bit more than 30 years since its creation in 1992. It has so far managed to establish a multidemensional approach to peace and security which includes both military and non-military threats, as well as a policy based on the pursuit of maritime, regional, state and human security. It has also institutionnalized several means of action to address these threats adequately : dialogue and mediation, peace missions, prevention missions, humanitarian actions, military interventions, imposition of sanctions and other coercive actions.

However, whilst SADC has the authority and tough legal powers to implement this policy on the territory of its member states, it has used them only in a limited number of cases. This because not only southern Africa appears to be one of the less insecured regions of the continent, but also, in several instances, SADC resorts to ad hoc mechanisms, such as ad hoc mediation, whereas some member states prefer the canons of bilateralism. This was the case of collective self-defence by Angola, Namibia and Zimbabwe when the DRC was victim of agression by Uganda, Rwanda and Burundi in 1998. This collective self-defence prevented the fall of the entire DRC under the control of rebels supported by those invaders.

In the same vein, it is thanks to the Intervention Brigade of MONUSCO, with three SADC member states (Malawi, South Africa and Tanzania) as troops contributing countries, that the M23 rebels were defeated in North-Kivu province in 2013. A relative calm was observed in this part of eastern DRC until november 2021 when these rebels coming from Rwanda and Uganda and backed by these states resumed their attacks against the Congolese army. Elections were fortunately already held in December 2018, which resulted in the pacific transfer of power between the former President Joseph Kabila and the incumbent Félix Antoine Tshisekedi Tshilimbo. The governance crisis though remains a major problems and probably one of the root causes of continuous conflicts and state failure in eastern DRC.[48]

SADC has also been successfull in state buidling through security sector reform in Lesotho. As noted above, SADC deployed its prevention mission, SAPMIL, to provide technical assistance to this country. The task was huge due to the political context within Lesotho where real power lay with the security forces, and particularly the army. Assisting Lesotho in security sector reform was meant to build a professional army and police with servicemen who are apolitical and under the authority of legitimate civil authorities. This was predicated on the fact that instability in this country is often due to police and military interferences in politics and the culture of coups d'état. SAPMIL successfully terminated its mandate in November 2018. A key indicator is the current good health of democracy. New legislative elections were held on 7 October 2022 and won by Ntsokoane Samuel Matekane's party allowing him to become the new Prime Minister. At its extra-ordinary

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48 Marc-André Lagrange et Thierry Vircoulon, République démocratique du Congo: à l'est rien de nouveau, *Études de l'IFRI*, décembre 2022, p.3.

session of 31 January 2023, the SADC Troika Summit welcomed Matekane's commitment 'to prioritise the implementation and completion of the comprehensive national reforms process, and approved the Action Plan for the Lesotho Reform Oversight Committee to monitor the finalisation of the reforms process in the Kingdom of Lesotho'.[49]

In Mozambique, in the gas-rich Cabo Delgado province, SADC is contributing through SAMIM to the struggle against terror and violent extremism amids diverging economic and geopolitical interests related to the exploitation of natural resources.[50] SAMIM is an independent force from the mission deployed by Rwanda which maintains 2,500 troops in the same region on the request of the government of Mozambique.[51] Its personnel is composed of 2,000 soldiers who come from Botswana, Lesotho, Tanzania and Zambia. Other countries, such as Angola and South Africa, provide logistical support. Even if security is not yet completely restored in Cabo Delgado and SAMIM suffers heavy losses regarding the killing of its soldiers,[52] SADC member states have demonstrated their strong polititical will and ability to undertake a peace mission and to use force in the format of the regional Standby Brigade to maintain order and security on the territory of another member state. This first SADC's offensive mission could serve as a roll-model for other peace operations in the future.

However, financial autonomy is a big challenge for SADC as is the case for the AU at the continental level. SAMIM itself has been made possible thanks to the financial support of the European Union (EU) for around 17 million Euros.[53] It is important to find out an alternative solution like imposing a special levy within SADC member states to cover expenses incurred as a result of its peace missions and to seek support from the AU peace fund.

The greatest security challenge though remains the risk of total collapse of the DRC. The danger is now very high given the fact that the latter is still held back by protracted armed conflicts, governance deficits, endemic corruption and persistent chaos. This creates a risk of explosion in southern Africa comparable to what has happened in Sahel after the desintegration of Libya. The main reason is that the DRC is a huge and strategic country which is like a bridge connecting all other regions of the African continent : North, South, East and West. Among threats to peace observable within it are the presence of

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49 Communiqué of the Extra-Ordinary SADC Troika Summit, *supra* note 33, para.9.

50 Amaniafrica, **Ministerial meeting on the situation in Mozambique and Operations of SAMIM (07 November 2022) <** https://amaniafrica-et.org/ministerial-meeting-on-the-situation-in-mozambique-and-operations-of-samim/**> 04 March 2023.**

51 News24, Two SADC soldiers killed in Cabo Delgado, Mozambique (01 December 2022) < https://www.news24.com/news24/africa/news/two-sadc-soldiers-killed-in-cabo-delgado-mozambique-20221201> 02 March 2023.

52 Reuters, Over 30 militants, two soldiers killed in insurgent clash in Mozambique (30 November 2022) <https://www.reuters.com/world/africa/over-30-militants-two-soldiers-killed-insurgent-clash-mozambique-2022-11-30/>02 March 2023.

53 Amaniafrica, *supra* note 50.

numerous armed groups, terrorism and the illicit proliferation of amunitions. As such the DRC has the potential to export these threats to the entire SADC region in case of complete desintegration. Such state collapse can also provoke a big humaniratian crisis and illegal migrations of Congolese who would be seeking a haven of peace where they can live in better conditions. Given popular intolerance against migrations in some SADC countries, such as South Africa and Angola, xenophobia could be in the rise in the region.

All this could worsen the security situation within SADC. That is why the organisation must get involved significantly in DRC affairs to maintian peace and stablity, and to consolidate state authority. SADC now seems to understand this because it has sent a delegation to Goma on 03 March 2023 in order to evaluate the security needs in eastern DRC and make recommendations of possible actions to decide at the regional level.[54] SADC's principle position is that it strongly condemns 'the upsurge of conflicts and activities of armed groups, including M23 rebels and the support provided to the armed groups by foreign forces'.[55]

Finally, SADC has resolved 'to initiate dialogue amongst the Member States of different Regional Economic Communities (RECs) that have deployed forces in the DRC with a view to establish and implement mechanisms for the effective coordination of their interventions in the DRC'.[56] Attention must be paid here to member states of the East African Community (EAC), namely, Kenya, Burundi, Uganda and South Sudan, which are contributing to the EAC Regional Intervention Force mandated to disarmed negatives forces in eastern DRC.[57] It would be interesting to see how EAC could collaborate with SADC on the ground should the latter decide to intervene with its own military means.

Conclusion

Although SADC is an organisation created first for economic integration purposes, this study has demonstrated that it also addresses security issues that are critical to its member states and southern Africa region. Integration can further peace and vice versa for the sake of socio-economic development and better living conditions for peoples. In this regard, SADC is a collective security system which possesses enough power and authority to prevent, manage and resolve insecurity problems in southern Africa region.

To achieve its objective to maintain peace and strenghten security, SADC counts on a variety of means. These means are primarily legal instruments and its operational mechanisms of action. Security problems that SADC must fight include threats to human, state and regional security. These threats notably relate to conflicts over territorial boundaries

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54 Radio Okapi, Journal Soir (03 March 2023) <https://www.radiookapi.net/journal-journal-tshiluba/journal-soir-28> 04 March 2023.

55 Communiqué of the Extra-Ordinary SADC Troika Summit, *supra* note 33, para.12.

56 Ibid., para.13.

57 See Communiqué : The Second Heads of State Conclave on the Democratic Republic of the Congo, Nairobi (Kenya), 21 April 2022, paras 5 (b) and 7 (b) and (c) (on file with the author).

or natural resources, acts of agression or other forms of illegal use of military force, civil war, insurgency, large-scale violence and military coups, terrorism, maritime security on Indian and Atlantic oceans, organized transnational crimes such as trafficking in persons, illicit drugs trafficking and corruption, as well as threats to critical infrastructure, including theft and vandalism of electricity and water infrastructure The main mechanism which enables SADC to address these concerns is its OPDSC. In doing so, SADC must prioritise dialogue and mediation to maintain peace. But SADC also counts on preventing agressive behaviours of its members states. That is why under its founding treaty and customary international law, these member states are obliged to respect principles of peaceful coexistence between nations, such as equal sovereignty of states, peaceful settlment of disputes, and non-use of force. Where it is necessary, SADC can resort to force by using its military branch, the SADC Standby Force, in order to carry out peace missions, prevention missions, humanitarian actions, military interventions or other types of collective coercive measures. Therefore, for the sake of peace and security in the region, state sovereignty cannot bar SADC's action.

In practice, SADC has undertaken actions in several member states, such as mediation to solve the 2008 constitutional crisis in Zimbabwe following rigged presidential elections, the deployement of SAPMIL to provide technical assistance to Lesotho in security sector reform, and of SAMIM to combat insurgency, terrorism and violent extremism in the gas-rich Cabo Delgado province in Mozambique. Through these actions, SADC demonstrated its ability to use successfully its peace and security architecture whilst its member states were willing to provide their support. However, it has used them only in a limited number of cases, this because not only southern Africa is one of the less insecured regions of the continent, but also, in several instances, SADC resorts to ad hoc mechanisms, whereas some member states prefer the canons of bilateralism. However, bilateralism has the potential to undermine the operation of the organisation.

SADC faces several challenges in its quest for peace and security, beginning with financial dependance on external doners. Its peace mission in Mozamibique, for instance, is largely funded by the EU. SADC should envision to impose a special levy within its member states to cover expenses incurred as a result of its peace missions and to seek support from the AU peace Fund.

Finally, there is a potential to worsen the security situation within SADC due to the expansion of terrorism, from the DRC to Mozambique. The risk of total disintegration of the DRC is very worrying. The danger is now high given the fact that the DRC is still held back by continuous armed conflicts, democracy and governance deficits as well as persistent chaos. Its total collapse could export all the current threats to peace within it to the entire region. Thus, in order to prevent this risk from occurring, SADC should significantly get involved in DRC affairs and undertake appropriates actions to maintian peace and stablity, and help the Congolese government to consolidate state authority.