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Regional Institutions as Agents of Democracy: African Union and SADC Reactions to the Zimbabwe and Madagascar Crises

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The background

In African affairs, the transition from the “old” era to the “new” world, which occurred almost everywhere in the world, could be best detected in the Constitutive Act of the African Union, which was signed in July 2000. It laid down as one of the new institution’s objectives the establishment of the necessary conditions that would enable the continent to play its “rightful role” in the global economy and in international negotiations.¹ There is no doubt that Africa had a right to demand its rightful position in the global community of nations. This became all more important with the end of the Cold War and the advent of a wave of democratization, according to which there was only one way to run a country: by subscribing and applying democratic principles and ideas. Moreover, there has been a growing tendency to restrict considerably the principle that no third country could interfere with the domestic affairs of another country, in other words the principle of absolute sovereignty par excellence. Clearly, the AU Constitutive Act was moving towards this direction and was making all the right noises: it talked about promoting democratic principles and institutions, popular participation and good governance as well as about respecting human rights and the rule of law, while condemning and rejecting unconstitutional changes of government and permitting the African Union to intervene in its Member States when ‘grave circumstances’ were present.²

And the pan-African organization did not stop there. At the same time that African leaders signed the Constitutive Act they also adopted the Declaration on the Framework for a Response to Unconstitutional Change of Government.³ The mechanism envisaged in the Declaration has been put into operation and a number of Member States that failed to meet their obligations (e.g. the Comoros) have been prohibited from participating in AU meetings. This instrument, should be read in conjunction with the suspension clause in Article 30 of the Constitutive Act,⁴ should

¹ See Article 3(i) of the Constitutive Act.

² See Article 3(g) and Article 4 (h), (m) and (p) of the Constitutive Act. See further Konstantinos Magliveras and Gino Naldi, “The African Union – A New Dawn for Africa?” [2002] 51 *International and Comparative Law Quarterly* 415, 417-418.

³ Organization of African Unity Assembly, Declaration AHG/Decl. 5 (XXXVI).

⁴ It reads: “Governments which shall come to power through unconstitutional means shall not be allowed to participate in the activities of the Union”. On the basis of Article 30, Mauritania and Guinea have been suspended from the Organisation. In the former case, suspension was lifted in July 2009

be regarded as the culmination of previous similar instruments, notably the Algiers Declaration on Unconstitutional Changes of Government of 1999⁵ and the Lomé Declaration for an OAU Response to Unconstitutional Changes of Government of 2000.⁶ The AU armory was reinforced in January 2007 when the African Charter on Democracy, Elections and Governance was adopted by the Assembly.⁷

This last attempt to bring the continent on par with other parts of the world could be seen from different perspectives. A first perspective would be that it is an instrument promoting the following circular argument: is not enough that elections are held but elections must also be democratic and that the governance of states must also be based on democratic principles of which the holding of universal and free elections is a major component. A second perspective would be that the African Union is following the trend in intergovernmental political institutions to adopt instruments, which, on the one hand, contain a list of democratic and rule of law ideals and principles that Member States should uphold and observe and, on the other hand, endow their competent organs with the right to impose sanctions on those Members failing to comply with such principles. These institutions include the Commonwealth (it approved the Millbrook Action Programme on the Harare Declaration in November 1995),⁸ the Organisation of American States (it approved the Protocol of Washington of December 1992 amending the Treaty establishing OAS⁹ as well as the Inter-American Democratic Charter in September 2001),¹⁰ Mercosur (it adopted the Protocol of Ushuaia on democratic commitment that revised the Treaty establishing Mercosur), and of course the European Community (it adopted in 1997 the Treaty of Amsterdam which called for sanctions when a Member State violates the principles of democracy, the rule of law and the respect for human rights).¹¹ A third perspective would be that the African Union did not opt for another declaration but chose to embody the Charter in a multilateral treaty. In effect, this choice means that those Member States, which do not wish to be bound by the Charter (e.g. they might consider it to be a far reaching instrument that goes against national interests), are allowed to do so.

Naturally, those Members that decide to come onboard and participate in the Charter do have the high moral upground compared to those that have decided to stay away. Of course this might not work in all instances and could lead to embarrassing situations. Indeed, this has already happened. More specifically, in the 22 months that have lapsed since its adoption, the Charter has been ratified by only two states,

following the holding of elections in the country. For analysis of Article 30, see Konstantinos Magliveras and Gino Naldi, *The African Union*, The Hague: Kluwer law International, 2009, pp. 101 et seq.

⁵ Organization of African Unity Assembly, *Decision on Unconstitutional Changes of Government*, AHG/Dec. 142 (XXXV). See also *Decision on the Rights of Political Participation*, AHG/Dec. 141 (XXXV).

⁶ Organization of African Unity Assembly, *Declaration* AHG/Decl. 5 (XXXVI).

⁷ African Union Assembly, *Decision* AU/Dec. 147 (VIII).

⁸ Reproduced in (1997) *Commonwealth Yearbook* 51. For commentary, see K. Magliveras, *Expulsion from Participation in International Organisations: The Law and Practice Behind Member State' Expulsion and Suspension of Membership*, Kluwer Law International, 1999, pp. 186 et seq.

⁹ Reproduced in 33 *International Legal Materials* 1005 (1994). For commentary, see Magliveras, *ibid*, pp. 171-174.

¹⁰ Reproduced in 40 *International Legal Materials* 1289 (2001). For a comparison between the AU and the OAS Charters, see E.R. McMahon, *The African Charter on Democracy, Elections and Governance: A Positive Step on a Long Path*, Open Society Institute, Africa Governance Monitoring & Advocacy Project, May 2007. Note that although the African Charter has taken the form of a multilateral treaty, the OAS instrument has been adopted by the General Assembly as a resolution.

¹¹ Konstantinos Magliveras, *The European Constitution and the Question of Membership*, Athens: Hellenic Centre for European Studies, Paper 3/2005, September 2005, pp. 26 et seq.

Ethiopia and Mauritania: on 4 August 2005, the latter country was suspended from the African Union as a countermeasure for the military coup d'état that had taken place the day before. A fourth perspective would be that the Charter crystallized the opposition to unconstitutional changes of government and the drive towards democratic governance. These are two causes that have not only been pursued at pan-African level but also at sub-regional level.

And this brings us to examine how the 14-member strong Southern African Development Community (SADC) has dealt with the above issues. In 2002, the Principles and Guidelines Governing Democratic Elections in the SADC region were approved. This document, whose binding nature is only at a political level, referred to basic aspects of elections, which should not be considered as given in the continent's political affairs.¹² In particular, it covered the fundamentals of elections such as ensuring the transparency and integrity of the entire process; the setting up of election management bodies that will be impartial, well staffed and competent to deal with their mandate; the preventing of fraud while ensuring adequate funding for the elections; the establishment of judicial mechanisms to rule independently on electoral disputes, etc.

This instrument was preceded in August 2001 with the adoption of the Protocol on Politics, Defence and Security Co-operation, which was appended to the Treaty establishing SADC (1992). The purpose of the Protocol was to determine the powers and the activities of the so-called Organ on Politics, Defence and Security Co-operation within the context of the SADC structure. The Organ, which was originally conceived in 1996, is far more associated and concerned with collective security issues and to that extent in 2002 it drafted a Mutual Defence Pact. Notwithstanding this consideration, it is also true to say that one of the Protocol's stated objectives is to promote the development of democratic institutions and practices within the territories of the Member States and to encourage the observance of universal human rights, as these are recognized in African multilateral instruments as well as in the treaties which have been adopted under the auspices of the United Nations.

Even though the Organ is not directly involved with supervising the holding of fair, decent and independent general elections in Member States and indeed this is not its role, arguably it could be engaged in situations deriving from exactly the opposite, i.e. from elections that were mired with fraud and irregularities. And this because the Organ has been authorized to seek to resolve what has been termed as "any significant intra-state conflict" within the territory of the member States. Moreover, this term has been very broadly defined and encompasses including situations such as large-scale violence between different sections of the population or between the state and the population, including genocide, ethnic cleansing and gross violation of human rights; military coups or other threats to the legitimate authorities; and civil wars or insurgencies. Thus, if there was an unconstitutional change of government, which need not have necessarily been orchestrated by the army, or if the electoral process got derailed and led to large scale human rights abuses or in any other similar situation the Organ could proceed with exercising its powers within the wider context of its mandate.

As is the case with the African Union, the various provisions to be found in the Protocol of 2001 and in the Principles and Guidelines of 2002 should be read alongside the SADC Treaty. In particular, Article 4 of the latter cites human rights,

¹² K. Maltosa, *Democratisation at the Crossroads – Challenges for the SADC Principles and Guidelines Governing Democratic Elections*, ISS Occasional Paper 118, October 2005, Johannesburg: Institute of Security Studies.

democracy and the rule of law as guiding principles for all Member States. Even more importantly, Article 5 thereof gives the outline of the Organisation, which commits Member States to “promote common political values, systems and other shared values which are transmitted through institutions, which are democratic, legitimate and effective”. Moreover, Member States have undertaken the obligation to “consolidate, defend and maintain democracy, peace, security and stability” in this African sub-region.

It follows from the instruments that have been adopted at the level of both the African Union and SADC that the term “elections” should be synonymous to the term “democratic elections”. There are no doubts that the latter term incorporates notions such as “multiparty elections” and “legitimate formation of parliament”. To put it otherwise, it is not enough that elections are held by whoever is in power. On the contrary, elections will only be legitimised if they meet all the criteria that make up an electoral process “democratic elections”. In its turn, this means that the only way for changing the regime in power is through the holding of free and unhindered elections with popular participation. This is all very well and surely in line with the Western tradition. But it begs the question whether it is appropriate for Africa as a whole and for the SADC region in particular, where many a country are still a long way from achieving the fundamental elements of parliamentary democracy.

In effect, what the African Union and SADC documents fail to address is how the transition from a dictatorial/authoritarian/monarchic regime to a democratic and multiparty regime will be effected and guaranteed. Somehow, these documents assume that all respective Member States have democratic (in substance, not in theory) governments in power. Arguably, this is not the present state of affairs in Africa (and in its southern flank for that matter) but the goal to be achieved at some future stage. In the meantime and until this time has come, a real question could be put: may an undemocratically elected regime or a regime that has come to power and/or remains in power by employing violence and intimidation be removed in the same fashion that it assumed power in the first place? Or it is imperative that democratic means must be employed and no exceptions are permitted?

And to put the question in such a way so as to address the subject matter of the present paper: in the cases of Zimbabwe and Madagascar, is the only way to do away with the current regimes through the holding of free and universal elections or could more forceful measures be contemplated? As will be ascertained when examining the African Union and SADC reactions to developments in these two countries, the Organisations in question seem to believe that in some miraculous manner the bad guys will disappear and the good guys (whoever they might be) will assume the governance in these countries. In similar cases in the past, African multilateral institutions have been prepared to inflict sanctions and other measures of a punitive nature and continue to impose them for as long as the offending regime remains in power.

The present paper analyses the African Union and SADC responses to two southern Africa political crises, which have also been of concern to the international community. The first occurred in early 2009 and concerned the illegitimate change of government in Madagascar. The second is the maintenance in power until early 2009 of a clearly undemocratic and unconstitutional regime in Zimbabwe. The paper examines the discussions in each multilateral institution, evaluates the measures and sanctions taken and investigates to which degree the African Union and SADC cooperated with each other directly or indirectly, whether their responses were influenced by the actions taken by each other or whether they followed different and conflicting strategies. The main theoretical question that the paper attempts to

answer is which of the two Organisations is preferable as an agent of democratisation in those Member States where democratic ideals are still lacking. It concludes by arguing that, although sub-regional organisations like SADC can reach decisions more easily and, under certain circumstances, even impose their leverage more effectively, at the same time they remain under the influence of the views or interests that are invariably expressed by a few powerful sub-regional actors. And this could undermine the creation and maintenance of multilateral norms and rules.

The first part of the paper offers brief backgrounds in each of the two political crises. The second part analyzes the responses of the African Union and SADC and also relates to the direct or indirect involvement of third actors irrespective of whether they are in Africa or outside the continent. The third part compares the reactions of the two Organizations to the extent that they are comparable and attempts to reach conclusions on the main theoretical conclusion.

The Madagascar Crisis

The recent Madagascar political crisis erupted in December 2008 when the Ravalomanana government closed a TV station owned by Antananarivo Mayor Andry Rajoelina after it aired a speech by former President Didier Ratsiraka who lives in exile in France.¹³ Rajoelina accused Ravalomanana for authoritarianism and convened a public demonstration. The demonstration attracted tens of thousands of people but it run out of control and was followed by several days of rioting, burning and looting. At least 100 people were killed. Then the Mayor declared that he was taking over the government and announced a parallel cabinet. Ravalomanana responded by removing Rajoelina from office. The former Mayor found refuge in the French embassy.¹⁴ A few days later, thousands of demonstrators marched on the presidential palace. The 500-strong presidential guard opened fire, killing at least 28 people.¹⁵ Under the growing pressure from protesters and, especially, mutinous soldiers the President announced on March 17, 2009 that he was handing power to the military. Then, the military transferred power to Rajoelina who, in turn, formed a “transitional government” and promised elections.¹⁶

The Madagascar 2009 crisis was the result of a combination of factors. To a large extent it stemmed from the country's extreme poverty (most people survive on less than \$ 1 per day). Chronic food insecurity is estimated to affect almost 65% of the population. The living conditions of the urban poor had deteriorated sharply in early 2008 when the global food prices (especially the price of rice, the country's basic staple) doubled. Moreover, the collapse of the world market for vanilla, the country's primary export crop, has adversely affected the incomes of farmers.¹⁷ Indeed, since Marc Ravalomanana came to power in 2002 the country had been able to attract significant foreign investment (including an \$ 800 million titanium mine) and saw its tourist industry booming. These developments coupled with a liberal economic policy led to relatively high growth rates (about 5% per year). However, the benefits were unevenly distributed, especially among the country's different ethnic/regional groups.¹⁸ The rapidly growing population (Madagascar has one of the world's highest birth-rates) limited the real effect of growth rates on real incomes whilst

¹³ Lauren Ploch, *Madagascar's 2009 Political Crisis*, CRS Report for Congress, Washington DC: Congressional Research Service, May 18, 2009, p. 1.

¹⁴ *Ibid.*, p. 2.

¹⁵ 'Madagascar: An odd way to change a government', *The Economist*, March 19, 2009.

¹⁶ Lauren Ploch, *op. cit.*, pp. 3-4

¹⁷ *Ibid.*, p. 8.

¹⁸ Richard R. Marcus, *Political Change in Madagascar: Populist democracy or neopatrimonialism by another name?*, ISS Paper 89, August 2004, Johannesburg: Institute for Security Studies, p. 15.

unemployment among young people increased.¹⁹ The 2008 global economic crisis made things worse, especially by hurting considerably the tourism industry. This combined with rising food prices have created the preconditions for a revolt, especially in urban areas. After all, control of the urban mob was always important in national politics and was instrumental in both Marc Ravalomanana's rise to power in 2002 (when he used his position as Mayor of the capital, Antananarivo, as a base to contest the Presidency against the incumbent Didier Ratsiraka)²⁰, but also in his own ousting on March 17, 2009, when another Mayor of Antananarivo, Andry Rajoelina, was also able to mobilize successfully the urban mob, this time against Ravalomanana.

Marc Ravalomanana had made a number of serious political mistakes. First, he confused his private business interests (he is a self-made millionaire and owner of the food and retail conglomerate Tiko Group, which is Madagascar's largest indigenous corporation) with his public position. The joke in Madagascar was that he decided to enter politics by running for mayor because there was too much red tape to conduct his business unfettered.²¹ When he became president, he appointed several former managers of his companies to government positions, while rival businesses found themselves excluded from government contracts.²² This mixing of private and public interests seriously undermined the regime's legitimacy. In December 2008, international donors suspended over \$ 20 million in aid disbursements citing concerns over transparency and accountability in government dealings.²³ Secondly, Ravalomanana became increasingly autocratic, treating the country's traditional elite with "something close to contempt"²⁴ while reducing defence spending, thus losing crucial support in the Malagasy security forces.²⁵ Above all, he changed the constitution to let himself stand for a third term. Thirdly, and more importantly, Ravalomanana negotiated with the South Korean firm Daewoo Logistics an enormous deal, which concerned the leasing for 99 years of almost half of the Madagascar's arable land (more than three million acres) for agrofuel (maize and palm oil) production.²⁶ Many local observers but also transnational NGO activists accused him for signing a "neo-colonial agreement". Although the government argued that the project would bring infrastructure investment and create thousands of jobs for farm workers, the deal proved to be a highly sensitive issue in a country "where people are intensely attached to their ancestral land".²⁷ Andy Rajoelina became a fierce critic of the plan, claiming that it would displace too many farmers with little or no compensation. When Rajoelina declared himself president, he cited the constitution's provision that "Madagascar's land is not for sale not for rent" and announced the cancellation of the deal.²⁸ Daewoo reportedly expressed its frustration. Fourthly, since gaining power in 2002, Ravalomanana tried to reduce Madagascar's reliance on France, which however remained the country's largest trading partner. A series of disputes led to the removal of the French ambassador in July 2008. Not surprisingly, although Paris condemned the coup that brought

¹⁹ Stephen Ellis, 'Madagascar: roots of turmoil', *Opendemocracy*, March 23, 2009.

²⁰ Richard R. Marcus, *op. cit.*

²¹ Richard R. Marcus and Adrien M. Ratsimbaharison, 'Political Parties in Madagascar: Neopatrimonial Tools or Democratic Instruments?', *Party Politics*, Vol. 11 (4), p. 506.

²² *Ibid.*, pp. 507-8.

²³ Lauren Ploch, *op. cit.*, p. 8

²⁴ Stephen Ellis, *op. cit.*

²⁵ *Ibid.*

²⁶ Richard Spencer, 'South Korean company takes over part of Madagascar to grow biofuels', *Daily Telegraph*, November 20, 2008; 'Water: Sin aqua non', *The Economist*, April 8, 2009.

²⁷ Stephen Ellis, *op. cit.*

²⁸ 'Madagascar leader axes land deal', *BBC News*, March 19, 2009

Rajoelina to power, French policy-makers “appear to have been somewhat surprised by the strength of international condemnation” of Ravalomanana’s removal.²⁹

In June 2009, the new regime in Antananarivo announced that Ravalomanana has been sentenced in absentia to four years in jail for mixing private and public interests in the purchase of a new presidential jet.³⁰ Despite this development, the discussions that were organized in early August 2009 by the International Contact Group on Madagascar in Maputo, the capital of Mozambique, were very successful given the circumstances. As will later be explained, under the overall auspices of the African Union and with the participation of UN and EU representatives, Rajoelina, Ravalomanana and two former Presidents - Didier Ratsiraka and Albert Zafy – agreed, *inter alia*, to form a unity government tasked with holding elections before October 2010. When the opposing sides met again in late August they failed to agree on who was to hold the key posts. Acting unilaterally, Rajoelina announced a government that included some former allies of Ravalomanana and Ratsiraka, but none of the two former presidents or their entourage.³¹ The opposition, the AU, the SADC and several western countries refused to recognize the new authorities. The IMF, the EU and the United States froze aid worth hundreds of millions of dollars. Washington has also warned that if there was no progress towards restoring order, it will suspend Madagascar from its trade preferences.³² Following further talks between the opposing parties, which were again ushered by the International Contact Group, in early November 2009 an agreement on power sharing was reached which could (and for that matter should) prove adequate to prepare the country for the 2010 elections.

The Zimbabwe Crisis

Living standards in Zimbabwe declined sharply in the 1990s. Faced with high inflation, rising unemployment and shrinking social spending, the population became increasingly dissatisfied with the government. President Mugabe tried to retain power by following a three-pronged strategy: first, by rewarding key allies; secondly, by repressing all those who posed a potential threat to the regime; and thirdly, by rigging elections. The Zimbabwean government increased spectacularly the salaries of the military and rewarded high-ranking officers with expropriated farm-land. Thus, Mugabe retained the crucial loyalty of the armed forces: just before the 2002 presidential election, the commander-in-chief of the country’s defence forces publicly claimed that the military would not respect an opposition victory. Moreover, the regime has intimidated independent judges, arrested and tortured journalists and, above all, orchestrated the invasions of white-owned farms by veterans of the country’s war of independence. These invasions that began in 2000 racialized domestic politics, procured important spoils for Mugabe’s allies and served as a retaliation against the wealthy whites that supported the opposition Movement for Democratic Change (MDC).³³

The opposition won in a 2000 constitutional referendum and the government’s proposals were rejected. But all the parliamentary and presidential elections that followed in 2002 and 2005 were won by the governing ZANU-PF party. However,

²⁹ Stephen Ellis, *op. cit.*

³⁰ Richard Lough, ‘AU suspends Madagascar crisis talks’, *Reuters*, June 17, 2009.

³¹ ‘Madagascar PM says Maputo deal not viable’, *SABC News*, October 4, 2009.

³² Richard Lough, ‘No end in sight for Madagascar crisis’, *Mail & Guardian*, September 11, 2009. For the recent attitude of the United States towards Zimbabwe, see Lauren Ploch, *Zimbabwe: The Power Sharing Agreement and Implications for U.S. Policy*, Congressional Research Service, RL34509, March 25, 2009, available at www.crs.gov.

³³ Gideon Maltz, ‘Zimbabwe after Mugabe’, *Current History*, May 2006, pp. 214 - 215.

these victories for the Mugabe regime were to a large extent the result of large scale intimidation. The government has prevented opposition political rallies and threatened voters by withholding food and basic social services. In 2005 the security forces “swept the poor – potential demonstrators – out of the towns in Operation Murambatsvina, ensuring that there could be no popular uprising in view of the media”.³⁴ Morgan Tsvangirai, the leader of MDC, endured two treason trials and escaped multiple attempts on his life. Widespread fraud has also been reported by international election observers. However, the opposition failed to unite its forces: in 2005 MDC figures disagreed whether to contest elections for a newly created Senate and the party split, along ethnic lines, into two.

Western donors reacted to Mugabe’s increasingly authoritarian practices by markedly cutting aid. This policy added considerably to the country’s hardships. The land invasions, coupled with the government’s rejection of judicial rulings, terrified local and foreign investors. As white farms were the most productive in the country, agricultural production, which once accounted for more than 40 per cent of the output, collapsed. Tourist arrivals reached new lows. Zimbabwe was a mess. In 2006, an observer concluded dramatically that the country “is heading for steepening decline which will end, not in an uprising or resistance, but in mass poverty and starvation”.³⁵ By 2008 these words seemed prophetic: a general strike called by the MDC failed amid widespread fear of repression. Food shortages were extensive, with some seven million requiring food aid to survive.³⁶ A UN report concluded that most households have reduced the frequency of meals and 12 per cent go entire days without eating.³⁷ Inflation reached an inconceivable 231 million per cent, the highest rate in the world.³⁸ Unemployment was more than 90%. The health system has broken down. Due to the collapse of water supply, a cholera outbreak in August 2008 was estimated to affect tens of thousands of Zimbabweans.³⁹ Four million persons or one third of the population had left the country.⁴⁰ The vast majority of them, including many professionals like doctors and teachers, live in displaced camps in South Africa.

The March 2008 presidential and parliamentary elections changed the balance of political forces in Zimbabwe.⁴¹ The two MDC factions won 52.6% of the vote in the Assembly elections, and the ruling ZANU-PF lost control of parliament for the first time since independence in 1980. In the presidential election, Tsvangirai won 47.9% of the votes compared with Mugabe’s 43.2%. Following the delayed announcement of the final result that raised suspicion that the opposition’s candidate may had won an outright victory, the country was geared for a run-off on June 27. An unprecedented wave of state-orchestrated violence by the security forces, ZANU-PF youth militias and war veterans led to the death of 85 MDC supporters and the displacement of hundreds of thousands of people.⁴² As a result, Tsvangirai announced his withdrawal

³⁴ Richard Dowden, ‘Engaging with Mugabe’, *The Round Table*, Vol. 95 (384), April 2006, p. 284.

³⁵ Richard Dowden, *op. cit.*, pp. 284-5.

³⁶ International Crisis Group, ‘Zimbabwe: Engaging the Inclusive Government’, *Africa Briefing No 59*, 20 April 2009, p. 9.

³⁷ *Ibid.*

³⁸ That was the official annual rate by July 2008 (‘Inflation at 6.5 quidecillion novemdecillion [65 followed by 107 zeros] percent’, *IRIN*, 21 January 2009).

³⁹ ‘Cholera in Zimbabwe’, *World Health Organization*, December 2, 2008 (http://www.who.int/csr/don/2008_12_02/en/index.html).

⁴⁰ International Crisis Group, *op. cit.*, p. 10.

⁴¹ Susan Booyesen, ‘The presidential and parliamentary elections in Zimbabwe, March and June 2008’, *Electoral Studies*, Vol. 28, 2009, pp. 151-4.

⁴² Judy Smith-Höhn, ‘Unpacking the Zimbabwe Crisis: A Situation Report’, Pretoria: Institute for Security Studies, 10 September 2009, p. 2.

from the race. Nevertheless, the second-round of the election was held and Mugabe won 86% of the votes cast. What followed was an international outrage. Botswana called for excluding Zimbabwe's government from SADC and EU meetings.⁴³ Even the African Union Observer Mission concluded that the run-off elections "fell short of accepted AU standards".⁴⁴ Responding to growing international pressure, key figures of ZANU-PF agreed to SADC-mediated talks with the opposition.

After almost three months of negotiations, a power-sharing deal (commonly referred as the Global Political Agreement – GPA) was signed on September 15, 2008 between the ZANU-PF and the two MDC formations. The key element of the deal that was mediated by South Africa's President Thabo Mbeki, was the creation of an "inclusive government" of national unity. The executive powers would be shared between the two main protagonists: Robert Mugabe would remain President and head of the Cabinet while Morgan Tsvangirai was designated Prime Minister and would chair a council of ministers supervising the Cabinet. Arthur Mutambara, the leader of the second MDC party would be appointed Deputy Prime Minister. The government would be comprised of thirty one ministers, 15 nominated by ZANU-PF, 13 by MDC-Tsvangirai and 3 by MDC-Mutambara. Some observers have criticized the agreement arguing that once more "democracy has been satisfied for peace".⁴⁵

However, immediately after the signing of the deal, significant quarrels erupted on the concrete distribution of ministries. After months of talks, a coalition government was formed in February 2009. Many observers argued that the GPA is deeply flawed and expressed scepticism whether it can succeed in confronting Zimbabwe's serious economic and social problems. Particular emphasis was paid to the failure of the agreement to address the urgent need for security reform (ZANU-PF retained the Ministry of Defence) whilst the introduction of a twin-cabinet with overlapping mandates was characterized as "recipe for deadlock".⁴⁶ More worryingly, both Mugabe and Tsvangirai seem to consider the deal as a temporary solution. The MDC regards the GPA as a transitional process that can stabilize the country and lead to elections under a new constitution within two years. On the other side, ZANU-PF "is doing its utmost to delay drafting a new constitution and to prevent fresh elections, which it knows it is virtually certain to lose".⁴⁷ However, some initial measures of the new government were positive. Among them, the decision to replace the worthless Zimbabwean dollar with the US dollar and the South African rand helped reduce prices and halted inflation.⁴⁸ Also Mugabe lifted a ban on correspondents from international broadcasters and announced steps to end the state's monopoly over media.⁴⁹ However, continued efforts of ZANU-PF supporters to displace the few hundred remaining white farmers – despite a November 2008 ruling by the SADC tribunal that barred further evictions – raised serious doubts about the real power of the opposition and the viability of the coalition government.⁵⁰

AU and SADC Reactions

AU reaction towards Madagascar

⁴³ *Ibid.*, p. 8.

⁴⁴ *Ibid.*, p. 2.

⁴⁵ Andreas Mehler, 'Peace and Power Sharing in Africa: A Not So Obvious Relationship', *African Affairs*, Vol. 108 (432), 2009, pp. 453-473.

⁴⁶ Judy Smith-Höhn, *op. cit.*, pp. 4-5.

⁴⁷ "Robert Mugabe Off the Hook as Usual", *op. cit.*

⁴⁸ International Crisis Group, *op. cit.*, p. 8.

⁴⁹ 'Robert Mugabe Off the Hook as Usual', *The Economist*, September 10, 2009.

⁵⁰ International Crisis Group, *op. cit.*, p. 9.

When Ravalomanana overthrew President Ratsiraka in 2002, the OAU refused to recognize the new government and suspended Madagascar's membership. Speaking at the opening of the OAU Council of Ministers on 4 July 2002, South Africa's deputy president, Jacob Zuma, said that the decision to ban Madagascar from the Summit in Durban, which was also to be the inaugural meeting of the African Union, was "a clear indication of a new way of doing things, and Africa's commitment to good governance".⁵¹ One of the first decisions to be taken by the African Union was to uphold the earlier decision not to recognize Marc Ravalomanana on the ground that he had come to power unconstitutionally.⁵² As a result Madagascar's seat in the AU remained empty for a year until mid July 2003 when the Second Ordinary Meeting of the Assembly decided that Madagascar was to resume its seat and urged the country to continue its policy of national reconciliation.⁵³

What had happened that changed so radically the AU stance on the matter? The Organisation had insisted that Madagascar would have to hold a new election. However, by February 2003 several non-African states had recognized the new Malagasy government and this was the main factor behind the recommendation by the Central Organ (the predecessor to the Peace and Security Council)⁵⁴, which met at the level of heads of state and government, to the Assembly that the Organization should recognize Marc Ravalomanana as the legitimate President.⁵⁵

The reaction registered in 2002 was very much repeated after the events of March 2009. The following day from Rajoelina assuming the presidency, the Peace and Security Council met and, after invoking the aforementioned Article 30 of the AU Constitutive Act and the Lome Declaration on Unconstitutional Changes of Government of 2000, it resolved to suspend Madagascar from participation in AU activities.⁵⁶ The Peace and Security Council added to its decision that the takeover of power in Madagascar "mark[ed] another serious setback in the ongoing democratization processes on the continent and reinforces the concern over the resurgence of the scourge of coups d'état in Africa".⁵⁷ It is of some interest to note in order to show how different perspectives and attitudes are in Africa that the previous day, Muammar Qaddafi, the Chairman of the AU, had phoned Rajoelina to say that he would recognize the new regime!⁵⁸ It goes without saying that even if Qaddafi was expressing his prospects solely as leader of Libya his pronouncement carried a lot of weight given that that he held the office of chairperson.

The African Union did not restrict its reaction to the events in Madagascar to imposing the sanction of suspension. It moved with the aim of resolving the crisis

⁵¹ Richard Cornwell, *Madagascar: Stumbling at the First Hurdle ?*, ISS Occasional Paper 68, Pretoria, SA: Institute for Security Studies, April 2003.

⁵² African Union Assembly, *Decision on the Situation on Madagascar*, Assembly/AU/Dec. 7 (I), 10 July 2002.

⁵³ African Union Assembly, *Decision on Madagascar*, Assembly/AU/Dec. 4 (II), 12 July 2003. See further, Samuel M. Makinda and F. Wafula Okumu, *The African Union: Challenges of Globalization, Security and Governance*, London: Routledge, 2007, p. 42.

⁵⁴ K. Magliveras and G. Naldi, *The African Union*, op. cit., p. 130.

⁵⁵ R. Cornwell, *op.cit.*

⁵⁶ African Union Peace and Security Council, *Communiqué of the 181st Meeting*, Document PSC/PR/COMM (CLXXXI), 20 March 2009.

⁵⁷ Cited in Torn Burgis, 'Scramble to shore up Madagascar rebellion', *Financial Times*, March 20, 2009.

⁵⁸ 'Madagascar and Africa: A coup that is not yet irreversible', *The Economist*, March 26, 2009.

through negotiations and mediation.⁵⁹ Thus, it sent three well-known personalities to engage into discussions with the new regime: Ramtane Lamamra, who is the member of the AU Commission responsible for peace and security;⁶⁰ Pascal Yao Konan, an adviser to the Peace and Security Council; and Amara Essy, who is better known as the last Secretary General of the OAU and the person who, to a large measure, ensured the smooth transition from the old OAU to the new AU. As far as the mediation is concerned, it would appear that originally the role of mediator was to be assumed by Haile Menkerios, the UN Under-Secretary General for Political Affairs; he is an Eritrean national who was educated in the United States and has been for years the permanent representative of Eritrea to the United Nations. He had previously attempted to break an agreement between the opposing parties in Madagascar but not very successfully as the events of March 2009 showed. Judging by the events that followed it is rather clear that he did not play the role of mediator.

Talks that proved to be very significant were held in Maputo in early August 2009 under the mediation of former Mozambican President Joaquim Chissano. This first round of negotiations concluded with the signing of a large number of documents. Apart from the Maputo Political Accord on Madagascar, the other notable documents agreed upon include the Charter of the Transition, the Charter of Values, which aimed at promoting the spirit of non-violence, the culture of tolerance, pardon, reconciliation and mutual respect, an agreement to annul the charges relating to the events that took place in 2002 events and an agreement to discontinue the charges and the arrest warrants brought against both political and military personalities under the Ravalomanana regime.

On 25 August 2009, a second round of negotiations got off the ground again in Maputo and this time the aim was how to agree on the nitty gritty aspects of implementing the Political Accord. Both these rounds of talks were under auspices of the African Union and within the mandate of the Joint Mediation Team to Madagascar (JMTM), which included representatives of the AU, the SADC, the International Organization of la Francophonie (OIF) and the United Nations. Even though the African Union had the overall responsibility for addressing the situation, it is rather clear that the entity that has been taking the crucial decisions on concrete steps to be taken was the so-called International Contact Group on Madagascar, whose inaugural meeting had taken place on 30 April 2009. The AU Assembly has taken a rather back seat approach to developments in Madagascar and has left the initiative to the Contact Group.⁶¹ It was actually the latter, which in its meeting of 22 July 2009 resolved to hold the Maputo talks under the mediation of J. Chissano.⁶² The Contact Group comprises representatives from both intergovernmental organizations and individual members. This in the July 2009 meeting representatives from the following institutions and states were present: African Union, Common Market for Eastern and Southern Africa (COMESA), European Union (EU), Indian Ocean Commission (IOC), International Organization of La Francophonie, SADC, United Nations, Libya (as the holder of the AU chairmanship), Ethiopia (as the country chairing the Peace and Security Council for the month of July 2009) and finally the African states participating in the UN Security Council as well as its permanent members.

⁵⁹ O. Maunganidze, *Madagascar: Anatomy of a Recurrent Crisis*, Institute for Security Studies, Situation Report, October 16, 2009, p. 5.

⁶⁰ Note that unlike the Security Council of the United Nations where the General Assembly elects states as members, in the Peace and Security Council the AU Assembly elects individuals as members.

⁶¹ Assembly of the African Union, *Decision on the Activities of the PSC and the State of Peace and Security in Africa*, Assembly/AU/Dec. 252(XIII), July 3, 2009, at para. 11.

⁶² International Contact Group on Madagascar, *Communiqué of the Consultative Meeting on Madagascar*, Addis Ababa, July 22, 2009, available at <http://www.africa-union.org>.

What was at stake in the second round of talks was who was going to run the transitional government that, pursuant to the Political Accord, would be mandated to prepare Madagascar for elections in October 2010. It ended without consensus, even though it has been suggested that Rajoelina would have been named as the interim president. Naturally, the fact that the opposing sides could not agree on this matter was a significant setback for the negotiations. However, if Rajoelina were to be accepted by the other sides as interim president it would be argued that this would have seriously questioned the rapidness with which the African Union (and the SADC as will be later explained) reached the decision to suspend the state of Madagascar from participating in the Organization. To put it otherwise, Rajoelina's way of coming into power would have been vindicated and the African Union would have been seen as acting prematurely and possibly against the will of the Malagasy people.

However, this would not have been the only problematic aspect of this decision. As will be recalled, Article 30 of the Constitutive Act stipulates that the governments of the Member States that have come into power in an unconstitutional manner shall be suspended from participating in the Organization and not the Member State itself. On the contrary, the decision adopted by the Peace and Security Council on 30 March 2009 refers to "suspend *Madagascar* from participating in the activities of the AU until the restoration of constitutional order in this country" (emphasis added). The difference between suspending *the Member State of Madagascar* from participating and suspending *the unconstitutional regime of President Rajoelina* from participating is not some frivolous legal matter. The drafters of the Constitutive Act did not wish that the membership of the state in question be suspended (a situation that would arguably have meant that no Malagasy citizen could have held any office in the Organization). In contradistinction what has been deemed to be the unconstitutional government of that state could not claim to represent it and, consequently, it could not act in the various organs or participate in the AU activities.

This issue of representation is of immense importance and especially so in the dealings and the transactions that this state might have with other states and with the international community as well. In other words, what Article 30 is saying is that the unconstitutional government cannot be regarded as representing the state in question (and effectively its population) and, therefore, for as long as it remains in power the African Union will consider it as able to function on behalf of that state. Having said that, the membership of the state in question is not affected in the least and it continues to enjoy the rights and the benefits that derive from participating in the African Union.

The International Contact Group on Madagascar did not give up when faced with the stalemate in the talks in late August 2009 or when, shortly thereafter, Rajoelina established what he called a 'government of National Unity' from which, however, he excluded the other political powers in the country. The AU Peace and Security Council reacted to this development by threatening the Rajoelina regime and its supporters with 'appropriate measures, including targeted sanctions', if it did change immediately course of action and implement the terms and conditions of the Maputo Agreements.⁶³ One cannot fail to observe, that the Peace and Security Council based its right to impose the threatened sanctions on the aforementioned Lome Declaration of 2000 (a clearly not legally binding instrument), on the Protocol that established the PSC but not on the AU Constitutive Act. This is rather strange considering that the Act is the guiding instrument for all organs and whether specific actions can or cannot be taken should be first and foremost determined pursuant to its provisions.

⁶³ African Union Peace and Security Council, *Press Statement of the 202nd Meeting*, Document PSC/PR/BR (CCII), 10 September 2009.

Eager to find a solution to the crisis, on 6 October 2009 the International Contact Group convened a third meeting of its members in the capital of Madagascar under the auspices of the African Union.⁶⁴ There it was agreed to have another round of talks between the opposing sides in early November. Based on the firm understanding that the accords and the agreement agreed at Maputo were in force and had to be observed and implemented, negotiations commenced in Addis Ababa on 3 November 2009. Even though in the beginning they were mired, this time around they were successful. Four days later, the question of who will hold power until the elections scheduled for October 2010 was resolved: Rajoelina will remain President but he will have to share his executive powers with two other co-presidents, one each from the camps of former Presidents Ravalomanana and Albert Zafy. Judging at least from what was announced after the agreement was reached, there is no clear separation of authorities among the three presidents. What, however, is clear is that all major decisions would require the approval and the signing of all three persons. This effectively gives to each of them a veto power, which could be bad for the country, if it is exploited, but at the same time it affords them equality, which at least in the first crucial months could ensure that the Maputo accords will be respected and put into action.

It is too soon to know whether this latest agreement will hold and will prove to be enough to secure the necessary stable political conditions that will allow the preparation and holding of democratic elections in less than a year from now. Thus far, Rajoelina has not lost much considering his more than rapid elevation to power. He has been allowed to maintain his status as President and the only sacrifice that he had to endure was to share the power with two other persons. However, the events of March 2009 could arguably be seen from another perspective, namely that this was how things have always been in Madagascar. There was nothing new in the manner that Rajoelina came to power: it was bound to happen sooner or later and, if it had not been for him to overthrow the previous regime, most probably it would have been someone else. Without going into much detail, there are reasons why Madagascar has been embroiled in political instability and is characterized by lack of genuine democratic institutions. Of course these reasons are present in other African states as well.

SADC reaction towards Madagascar

The way to describe the response of the Southern Africa Development Community to the March 2009 events is 'prompt and forceful'. There may be a very straightforward way to explain this, especially if the inactivity in previous similar instances in other Member States is taken into consideration: there could not have been otherwise given the manner in which the African Union had already responded. In particular, on 19 March 2009, three SADC members, Mozambique, Angola and Swaziland, refused to recognize the new regime in Madagascar. These three states were not acting in their individual capacity but were acting as the members that make up the Defence, Political and Security Troika of the SADC. Even though it is not clear whether in such cases the Troika acts on behalf of the whole membership and whether such pronouncements are binding, the fact that the African Union had moved in so vigorously presumably dictated to a certain degree the response of the SADC. The matter was discussed in an Extraordinary Summit of the heads of state

⁶⁴ The meeting was welcomed by the 13th Africa-EU Ministerial Troika Meeting, which was held in Addis Ababa on 14 October 2009. This was rather to be expected since both the AU and the EU participate in the Contact Group!

and government, which was held on 30 March 2009 in Swaziland. The topics to be discussed was “to consider the political, economic and security situation in the Region, with special focus on the political situation in Madagascar and the economic recovery of Zimbabwe”.

The Communiqué, which was issued after the meeting, showed that the Summit dealt with the situation in Madagascar in consecutive steps in order to arrive at the decision to suspend the country from participating in SADC.⁶⁵ Thus, initially the Extraordinary Summit condemned the unconstitutional actions that had led to the illegal ousting of the democratically elected government of Madagascar and called for an immediate restoration of constitutional order. Thereafter, the Summit decided not to recognize Rajoelina as President of Madagascar and explained this determination on the fact that as his appointment violated the Constitution of Madagascar, democratic principles, as well as the core principles and values of the SADC Treaty, the AU Constitutive Act and the United Nations Charter. Following this determination, the Summit decided not to recognize Rajoelina as the new President of Madagascar as his appointment did not only violate the Constitution of Madagascar and democratic principles, but also violated the core principles and values of the SADC Treaty, the African Union Constitutive Act and the United Nations Charter. However, the Extraordinary Summit did not stop here but without citing any legal basis it went on to suspend Madagascar “[f]rom all Community’s institutions and organs until the return of the country to constitutional normalcy with immediate effect”. What exactly the Summit meant by ‘constitutional normalcy’ was that Rajoelina had to vacate the office of the president and do so at once guaranteeing the unconditional reinstatement of Ravalomanana.

In a rather unprecedented move, the Extraordinary Summit even discussed what the reaction would be if Rajoelina were to refuse to comply with the above decisions: the Organization would, in collaboration with the African Union and the United Nations, consider other options to restore ‘constitutional normalcy’. This insistence in adopting what would amount to a legalistic approach is a very interesting development and naturally begs the question why the heads of state and government thought it was imperative to apply it in this specific instance when one could cite other previous cases which can only be described as constitutional anomalies and of course Zimbabwe is the prime example. Is one to understand that the Member States are effectively divided into different categories according to status in the region, power, and leverage? Had it not been Madagascar but the offensive country was, say, South Africa, would the Organization have followed a similar course of action?

After the Extraordinary Summit had decided to suspend Madagascar, it urged the international community not to recognize the government of Rajoelina and, moreover, to put pressure to what was described as ‘the de facto authorities in Madagascar’ to restore the constitutional normalcy in the shortest time possible. Thereafter, the Summit addressed ‘all stakeholders’ (the content of the term is at least unclear but should include multilateral actors such as the European Union and the United Nations as well as their Member States). It asked them to refrain from taking any actions that are unconstitutional and inconsistent with the democratic values of southern Africa and of the continent as a whole or actions that could lead to further loss of lives, injury or destruction of property. By referring to the democratic values one cannot but point out that this is an idealistic reference because the very problem, as has been explained in the beginning of the present paper, is exactly the lack of these values. And it is not just that the deficiency of democratic values applies to few countries; on the contrary, it is a generic problem. Considering that in paragraph 21

⁶⁵ See paras 14-22 of the Communiqué, available at <http://www.sadc.int>.

of the Communiqué the Extraordinary Summit declared that Organization will continue to promote common political values and systems, which are transmitted through institutions that are democratic, legitimate and effective, one can only expect that this goal would apply throughout the territory of SADC and not only to selected Member States and, naturally, will be implemented in those countries whose regimes are characterized by the blatant violation of such values and institutions.

The fact that Rajoelina did not leave power led to the holding of another Extraordinary Summit which took place in South Africa on 30 June 2009. It marked the first time that Zuma participated in a meeting as Head of State of South Africa and as Chairperson of the SADC. Even though, as will be remembered the March 2009 Summit had warned Rajoelina that if he failed to comply with its decisions the Organization would resort to further measures, the tone at the meeting was definitely subdued compared to the previous Summit. In the Communiqué that was issued there was not even one reference to Rajoelina's unconstitutional regime.⁶⁶ In contradistinction, in the meeting the discussion moved towards acknowledging that the "ownership of the political dialogue in Madagascar must lie with the Malagasy people themselves". In effect, this meant that, as was actually happening with the negotiations promoted by the International Contact Group, the dialogue had to include all opposing parties and the side of Rajoelina could not be excluded. As put in the Communiqué, "The Extraordinary Summit ... urged the Malagasy people through their main political structures and representatives to be encouraged to take active ownership of the inclusive dialogue and refrain from any forms of exclusion in the process".

It was also resolved that the SADC will encourage and facilitate the all-party negotiations in Madagascar, which, according to the Communiqué, were endorsed principally by the African Union, the United Nations and the International Organisation of Francophone. To that end, it appointed former President Chissano, assisted by a high level team of mediators, to lead and coordinate the all-party dialogue. It is unclear whether Chissano is heading the International Contact Group because he was appointed by the SADC but what seems to be clear is that the Organization itself was left outside the mediation process (or to put it otherwise did not manage to play a major part in the proceedings even though the problem was with a country in its own region) and for this reason it needed to show its contribution in the process. In conclusion, in the months that had lapsed since the unprecedented for African regional affairs Summit in Swaziland the attitude of confrontation towards Rajoelina was played down considerably and the Organization had to accept, rather reluctantly one might say, that, despite the way he came into power, he was a political force that not only could not be ignored but his participation in the talks for finding a solution was given.

The next occasion for the SADC to discuss the situation in Madagascar was during the 29th Ordinary Summit of the Heads of State and Government, which was held in Kinshasa on 7 and 8 September 2009. The participating leaders did not have much to add to what was already been achieved, namely the various Maputo accords, and reiterated their decision on the suspension of Madagascar until the restoration of the constitutional order in that country and urged all political stakeholders to fully implement the Maputo agreements.

AU and SADC reactions towards Zimbabwe

⁶⁶ Available at <http://www.sadc.int>.

The African Union inherited the Zimbabwe crisis from the days of the OAU. However, the AU failed almost completely to respond to the growing deterioration in Zimbabwe's security, economic and social situation. Even during the chairmanship of Thabo Mbeki in 2002, the president of a country with significant leverage in Zimbabwe, the Assembly did not take any meaningful action.⁶⁷ As has been commented, the African Union has "twice buried reports critical of Zimbabwe drafted by its own Commission for Human and People's Rights".⁶⁸ In 2007 the African countries successfully proposed Zimbabwe as the region's preferred candidate for the chair of the UN Commission on Sustainable Development (CSD) despite strong western objections.⁶⁹ The OAU Council of Ministers deplored in relation to elections in Zimbabwe in June 2000 'the attempts by some foreign interests, through the massive injection of resources and manipulation of the media, to interfere in and influence the outcome of the elections as a threat to national independence'.⁷⁰

As far as SADC is concerned, during its annual summit held in Luanda, Angola, in December 2002 barred Robert Mugabe from becoming deputy chairman of the organization. Many analysts argued at that time that SADC's move not only sent a clear message to Mugabe that the countries of the region did not approve his policies but also "helped stoke pressure against him".⁷¹ But this stance proved to be more an exception than the rule. SADC election observers have given their seal of approval to several of Zimbabwe's flawed elections.⁷² A good example is the March 2001 presidential elections. SADC sent two separate election teams. The Council of Ministers team found that the elections were "free and fair". However, the Parliamentary Forum team was reluctant to reach a similar conclusion. After evaluating both reports SADC leaders approved the election!⁷³ A crucial development was the March 2007 brutal crackdown on members of the Zimbabwean opposition that seemed to embarrass regional leaders. The President of Zambia Leve Mwanawasa compared Zimbabwe to "a sinking Titanic whose passengers are jumping out".⁷⁴ An extraordinary SADC summit was held in Dar es Salaam, Tanzania two weeks later. Although the final communiqué of the summit did not mention the arrests and beatings of opposition members and supporters, civil society activists and ordinary Zimbabweans and even called for a repeal of international sanctions, SADC leaders decided to give President Mbeki a mandate to mediate talks among Zimbabwe's political forces.⁷⁵ That signaled some progress.

Post-apartheid South Africa has a lot of leverage to Mugabe: it is the main conduit for Zimbabwean trade and the main provider of the country's oil and electricity at subsidized prices – despite large arrears.⁷⁶ It has also provided significant bailouts to Zimbabwe. At that time Pretoria was following a "quiet diplomacy" policy towards Harare. The South African government argued that calls to isolate the regime through international sanctions would accelerate the country's economic downturn and

⁶⁷ Makinda and Okumu, *op. cit.*, p. 43

⁶⁸ Michelle D. Gavin, *Planning for Post-Mugabe Zimbabwe*, CSR No 31, New York: Council on Foreign Relations, October 2007, p. 11.

⁶⁹ *Ibid.*

⁷⁰ Organisation of African Unity Council of Ministers, *Decision on Developments in Zimbabwe*, CM/Dec.544(LXXII).

⁷¹ Jakob Chikuhwa, *A Crisis of Governance: Zimbabwe*, New York: Algora, 2004, p. 128

⁷² Michelle D. Gavin, *op. cit.*, p. 14

⁷³ *The Europa World Yearbook 2004*, 45th edition, Vol. 1, London: The Europa Publications, 2004, p. 332

⁷⁴ Michelle D. Gavin, *op.cit.*

⁷⁵ *Ibid.*

⁷⁶ Gideon Maltz, *op. cit.*, p. 217.

increase political instability. In 2003 South Africa was outvoted on the expulsion of Zimbabwe from the Commonwealth.⁷⁷

Thabo Mbeki's favorite phrase was to "let Zimbabweans solve their own problems".⁷⁸ The South African President tried to mediate between Mugabe and the international community. In exchange for offering to help rebuild Zimbabwe, Pretoria expected the ZANU-PF government to commit itself to free and fair elections, negotiate with the MDC and map out a political transition. However, by 2007 South Africa's "quiet diplomacy" had lost much of its credibility. Many claimed that South Africa's position "had become little more than an appeasement strategy".⁷⁹ Zimbabwean opposition forces contested Pretoria's neutrality and argued that South Africa tilted towards Mugabe. There are several possible explanations of Mbeki's perceived support for Mugabe. Some commentators have argued that a significant factor was the alleged economic interests at stake; others emphasized the historical ties forged during anti-colonial struggle; finally, some have underlined the common views on national sovereignty and "western interference" in domestic affairs.⁸⁰ However, the Confederation of South African Trade Unions (COSATU), a main partner of the ANC government, has protested repeatedly against the arrest and imprisonment of the trade unionists in Zimbabwe.⁸¹

Jacob's Zuma election as South Africa's president in May 2009 brought new hope for a tougher stance towards Mugabe. During a visit to Zimbabwe in August, Zuma called the new coalition government to meet the West's conditions for resuming development aid. "No African leader had dared say that before" commented the *Economist*.⁸²

Conclusions

As has been mentioned in the beginning of this paper, there is still a tendency in the international community to adhere to the strict principle of non-interference in the domestic affairs of Member States. Generally speaking, this also has been the preferred strategy of African political organisations as well. There are many factors that could explain this attitude and usually a combination of these factors is present: the lack of invitation from the incumbent government; lack of resources that would guarantee an effective and long-term, if needed, engagement; the anticipated excessive human and military costs; difficulty in forging a common position when different interests are at stake; and a firm belief that external actors can only have a marginal impact.⁸³ However, at the same time, regional institutions often seek to prevent external interference and escalation and this may act as a motive for involvement in domestic affairs. The type of the crisis and the danger of spill-over to neighboring states may also act as an incentive or, at other times, as a disincentive for intervention. The views of the international community on the action (or inaction for that matter) of regional institutions is also an important factor. Given that many leaders of former colonies have always been wary of foreign powers' interference in their domestic affairs (and often not unreasonably so), African political institutions have often been regarded as the most appropriate external actors that could

⁷⁷ Richard Dowden, *op. cit.*, p. 285.

⁷⁸ Cited in R. W. Johnson, 'Zimbabwe: The Case for Intervention', *Current History*, May 2007, p. 233.

⁷⁹ Christopher Landsberg, *Diplomacy of Liberation: International Politics and South Africa's Transition*, Johannesburg: Jacana Media, 2005, p. 176

⁸⁰ Ian Brimister & Brian Raftopoulos, 'Mugabe, Mbeki & the Politics of Anti-Imperialism', *Review of African Political Economy*, No 101, September 2004, pp. 385-400.

⁸¹ *Ibid.*, p. 399.

⁸² 'Robert Mugabe Off the Hook as Usual', *op. cit.*

⁸³ Mutiah Alagappa, 'Regional institutions, the UN and international security: a framework for analysis', *Third World Quarterly*, Vol. 18 (3), 1997, pp. 431, 432.

strengthen domestic democratic forces and pressurise leaders to abandon authoritarian practices.

On some occasions, regional institutions have assumed a larger than expected role in conflict containment and crisis management and have in the process played the role of mediator. However, the role of mediator presupposes impartiality and an aversion towards maintaining the *status quo*. To put it otherwise, mediation should not be seen as a nice way of keeping in power whomever has come to power⁸⁴ but try to give a working solution to the problem that has arisen even if this would entail an overhaul of established understandings and conventional practices. In these occasions where African organizations and played a larger role than what was originally envisaged, they have rather focused on applying solely diplomatic pressure, have tended to offer their good (but mostly ineffective) offices while enlisting the support of the United Nations (which they regard as having a constant obligation to deal with all African crises), and have refrained from imposing sanctions not to mention threatening military intervention.⁸⁵

However, the days where African organizations have stayed at a safe distance from Member States' domestic conflicts and disturbances are probably numbered. Like in other parts of the world, where regional institutions have assumed a far more proactive attitude when encountering instances of *coups d'etat* or unconstitutional running of states, African organizations are coming to terms with the fact that they have a role to play and a number of tasks which must be fulfilled. Moreover, it could be argued that actors from both inside and outside Africa expect that the continent's political organisations will be heavily involved in finding credible solutions and, moreover, take the necessary initiatives and ensure that the solutions will be devised.

In the two crises that the present paper has examined, both the African Union and the SADC have attempted to play a role, which was mainly as mediators focusing on diplomatic pressure for the peaceful settlement rather than on preserving democratic rules and norms. The African Union was more present in the *coup d'etat* in Madagascar, while SADC was more actively involved in the Zimbabwe crisis. In the case of Madagascar, the African Union (acting principally through the Peace and Security Council) shared its mediating role with other multilateral actors (like the European Union and the United Nations) acting within an ad hoc institutional set up, namely the International Contact Group). On the contrary, in the case of Zimbabwe, the SADC acted more or less on its own and the AU involvement was restricted in the Assembly adopting a number of resolutions and the Peace and Security Council deliberating it almost *ad infinitum*. However, in the case of Zimbabwe there was a single state, South Africa, that played a most crucial role first unilaterally and then on behalf of the whole of the SADC.

The difference in how these two crises were handled could be explained on the basis of their nature but also on the basis of the risks involved. In the case of Zimbabwe, the danger of spillover to neighbouring states was a very important consideration that acted as a strong incentive for mediation. In particular, the growing migratory waves of impoverished Zimbabweans to (the significantly more affluent) South Africa could not have been underestimated and played a significant factor in mobilizing South Africa's involvement and, in its turn, in making SADC take a far more proactive role and end its apparent *laissez pass * attitude. Another major factor, which is not

⁸⁴ In the words of former Tanzanian President Julius Nyerere, 'The OAU exists only for the protection of the African Heads of State', cited in *ibid*, p. 432.

⁸⁵ Of course there have very recently been some exceptions, e.g. the way the AU treated the constitutional crisis in the Comoros in 2007/2008; see Magliveras and Naldi, *The African Union*, op. cit., pp. 137-140

immediately obvious, is the external pressure that has been exerted. And this because non-African actors took the view that regional players are the most appropriate actors for mediating in Zimbabwe. Given South Africa's might and strength and taking into account its considerable economic and political leverage over Zimbabwe (a landlocked country) it is not surprising that states such as the United States and Great Britain have consistently tried to persuade South Africa to exert pressure to Mugabe and also to take on the role of mediator between the fighting political sides.

The way the role of mediator was played (initially) by South Africa and (thereafter) by the SADC as well, reminds one of how mediation must *not* be pursued. Indeed, they leaned towards the side of Mugabe, effectively giving his regime absolution for the anomalies it caused as well as for the suffering that its policies have inflicted on friends and foe alike. At the same time, they did not consider it appropriate to exert all their influence on the Mugabe regime by threatening measures of a punitive nature and not to mention by actually imposing sanctions. Of course it could be counter argued that what really matters is what happened at the end of the day and in the case of Zimbabwe a solution was found in power sharing, as it would have happened in any other democratic country. But evidently this is not tantamount to saying that a process of democratization has set foot on Zimbabwean soil and that the actions of SADC under the careful eye of South Africa have led to the application of democratic principles and norms. On the contrary, not only do these principles continue to be in a precarious situation but there is unfinished business which, from an institutional point of view, SADC (without the involvement of South Africa) will have to come to terms with and find pertinent ways to address it.

This unfinished business concerns the judgments that the SADC Court of Justice has delivered against the Mugabe regime by vindicating the owners of white-run arable land who saw their property being expropriated in a rather brutal way.⁸⁶ Although it is beyond the scope of this paper to discuss the question of Zimbabwe's non-compliance with the Court judgments, what is of concern here is the apparent aversion of the Mugabe regime towards basic human rights and fundamental freedoms. To put it otherwise, it is of no interest whether the Mugabe regime breaches the right to own and to possess property freely or the right to participate in the country's political affairs through unhindered participation in the election process or the right to decent living conditions which it annulled by causing hyperinflation and inflicting its consequences to the most needy sections of the population. On the contrary, what is of concern is the ethos that the Mugabe regime has cultivated of not complying with the obligations that the country has assumed by choosing to participate in multilateral instruments be it the AU Constitutive Act or the SADC Treaty or the African Charter of Human and Peoples' Rights and Duties or any other.

The Madagascar crisis resembles the situation in Zimbabwe in that it was also resolved through a power-sharing deal between the opposing political sides. The mediating role of the African Union, which to a large extent was channeled through the International Contact Group in which SADC also participated, proved crucial and brought about the desired results. But in sharp contrast to Zimbabwe, the reaction in Madagascar was much more swift and direct. This difference in approach could be explained as being the result of considerably more limited interests at play, a fact that permitted the taking of punitive action promptly, as well as of the African organizations' traditional leaning towards the incumbent regime, a fact that worked

⁸⁶ In late November 2008, the SADC Court ruled in favour of 78 white farmers who had brought an action against Zimbabwe over what they saw as the discriminatory policy of taking away the farms they used to run so as to resettle landless blacks.

in favour of Ravalomanana. At the same time, both the African Union and the SADC and none of their Member States would appear to have any significant leverage over Madagascar. What they could have done (and they actually followed this path) was to suspend the participation of Madagascar in their organs and activities. It is commendable that the African Union and the SADC acted so quickly and did not spend endless time (as they might have done in previous times or if the coup had occurred in another state) in discussing what the reaction ought to have been. However, a word of caution: the sanction of suspending the 'offending' state (or rather regime, as has been explained above) should not be employed in an automatic fashion without first analyzing in depth the situation and allow for some time to evaluate what is at stake. Moreover, just because the African Union, as the political organisation representing the whole continent, has suspended the 'offending' state, this should not be considered as imperative for the (sub)regional organization, in which the state in question participates, to follow suit.

Was the suspension of Madagascar and the threat for imposing further punitive action the defining developments that brought Rajoelina to the negotiating table, to the conclusion of the Maputo accords on 8 August 2009, and to the power sharing agreement with his political opponents in early November 2009? Maybe it was, maybe it was not. What, however, would appear to have played a far more forceful role was the intervention by the International Contact Group and especially the constructive role that the mediator, the former President of Mozambique Chissano. It is important to observe that the activation of this entity did not presuppose that the African Union and the SADC would have suspended Madagascar from their organs and activities. The Contact Group, with its wide participation of actors from various Member States and multilateral fora, could have assumed its role from the very beginning of this crisis. Should Rajoelina had not been forthcoming and have proven uncooperative, the sanction of suspension could have worked as a weapon to be used if and when the occasion arose. By effectively "punishing" Rajoelina from the very beginning, the AU and SADC may have lost the leverage they had on him.

Our original hypothesis, namely that (sub)regional organisations could impose their leverage much more effectively than regional ones can, is not confirmed. Although both SADC and its Members States had more leverage in the case of Zimbabwe than other (African or non-African) external actors, at the same time they had also much more interests that blocked a clear-cut and strong intervention in the country's domestic affairs. On the other hand, in the case of Madagascar the lack of significant interests (and leverage) led to a much quicker response by the African Union that led to a power-sharing deal. That's a diplomatic paradox. Indeed, in both cases the roles of both AU and SADC were restricted to mediation as both organizations tended to offer their good offices but they refrained from imposing sanctions (apart from suspension) or threatening military intervention.