

REGIONAL SECURITY: SADC MILITARY INTERVENTION THE CASES OF ZIMBABWE AND MADAGASCAR. A COMPARATIVE ANALYSIS WITH ECOWAS. THE CASES OF LIBERIA AND SIERRA LEONE

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Declaration

“I the undersigned, hereby declare that the work contained in this dissertation for the purpose of obtaining my degree of LLB (Honours) is my own original work and that I have not used any other source than those listed in the bibliography and quoted in the references.”

Signature:

Date:

Supervisor’s Certificate:

I, Mr Francois X. Bangamwabo hereby declare that the research and writing of this dissertation was carried out under my supervision.

Supervisor’s signature:

Date:

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Dedication

To my LORD and my SAVIOUR JESUS CHRIST, my wife and my family.

Abstract

This study addresses the questions whether or not the Southern Africa Development Community OPDS have the legal capacity to order military intervention and whether or not the OPDS tries to deliberately avoid ordering military intervention under the guise of the so called “quiet diplomacy” in order to protect some individuals or political groups. These questions are prompted by the observation made that the dynamics of conflict in Africa necessitate the intervention of sub-regional organisations in internal conflicts that threaten the peace and security of the region, and SADC is no an exception. While this may appear to be a usurpation of the power of the UN Security Council it stand to reason that if regional organisations are not proactive in situations of regional threat to peace and security, they might become redundant. Particular focus is made of the responses by SADC OPDS to the Madagascar and Zimbabwe conflicts, which are then measured against the approaches taken by ECOWAS to the conflicts in Liberia and Sierra Leone. Ultimately it comes to this that the failure by SADC to militarily intervene in the coup d’état in Madagascar and its failure to halt the violence and gross human rights violations that ensued in Zimbabwe leaves a lot to be desired.

List of Acronyms

ADF	Alliance Democratic Forces
ADFL	Alliance Des Forces de' mocratiques pour la/ Liberation du Congo Zaire
ADP	The Democratic Alliance of the People
ANC	African National Congress
AU	African Union
BBC	British Broadcasting Co-operation
BCP	Basutoland Congress party
BDF	Botswana Defence Force
BNP	Basotho National Party
CDR	Coalition Pour le d'efense de la republique
CIA	Central Intelligence Agency
CLM	Congolese Liberation Movement
CNRD	The National Council of Democratic resistance
DRC	Democratic Republic of Congo
ECOWAS	Economic Organisation of West African States
EX-FAR	Ex-Rwandan Armed Forces and Militia
FAA	Angolan Armed Forces
FAC	Forces Arme'es Congalaises
FALC	Armed Forces for the Liberation of Cabinda
FAR	Forces Arme'es Rwandaise
FDD	Forces Pour La Democratie
FNLA	National Front for the Liberation of Angola
FNL	National Liberation Front
FPR/RPF	Front Patriotique Rwandais/ Rwandan Patriotic Front
FRPI	Patriotic force of Resistance in Ituri

FRODEBU	Front Pour La Democratie Au Burundi
FRONASA	Front for National Salvation
HRWAP	Human Rights Watch Arms Project
ICISS	International Commission on Intervention and State Sovereignty
ISDSC	Inter-State Defence and Security Committee
KM	Kikosi Maalum
LEC	Lesotho Evangelical Church
LCD	Lesotho Congress for Democracy
LDF	Lesotho Defense Force
LHWP	Lesotho Highlands Water Project
LNCM	Lesotho Network for Conflict management
LRA	Lords Resistance Army
MDR	Democratic Republic Movement/ Mouvement De'mocratique Republicain
MONUC	UN Mission in the Democratic Republic of Congo
MLC	Mouvement De Liberation Congo
MLRZ	The Revolutionary Movement for the Liberation of Zaire
MP's	Members of Parliament
MPLA	Movement for the Liberation of Angola
MRND	Mouvement Re'volutionnaire National Pour Le De'veloppment
NATO	North Atlantic Treaty Organisation
NDA	National Democratic Alliance
NGOs	Non-Governmental Organisations
xviiiNRA	National Resistance Army
NRM	National Resistance Movement
OAU	Organisation of African Unity
OMIB	OAU Military Observer in Burundi

OPDS	Organ of Politics Defence and Security
PL	Liberal Party/ Parti Libe'ral
PRP	The Party of Popular Revolution
PSD	Social Democratic Party/ Parti Social De'mocrate
PPDSC	Protocol on Politics Defence and Security Co-operation
PRA	Popular Resistance Army
RANU	Rwandan Alliance for National Unity
RCC	Roman Catholic Church
RCD	Rassemblement Congolais Pour La Democratie
RPA	Rwandan Patriotic Army
RPF	Rwandan Patriotic Front
RSA	Republic of South Africa
SA	South Africa (n)
SACP	South African Communist Party
SADC	Southern African Development Community
SANDF	South African National Defence Force
SOCEBO	Congolese Society for the Exploitation of Timber
UN	United Nations
UNDP	United Nations Development Programme,
HDR	Human Development Report
UNEP	United Nations Environmental Programme
UNHCR	United Nations High Commissioner for Refugees
xixUNITA	National Union for the Total Independence of Angola
UNLA	Ugandan National Liberation Army
UNMIR	United Nations Assistance Mission for Rwanda
UNSC	United Nations Security Council
UNTAC	United Nations Transitional Authority in Cambodia
UK	United Kingdom of Great Britain and Northern Ireland

UPDF Ugandan People's Defence Force

US United States of America

USSR United Soviet Socialist Republics

ZANU-PF Zimbabwe African National Union-Patriotic Front

CHAPTER 1

1.1 Introduction

The dynamics of conflict especially in Africa leaves one in no doubt that sub regional Organisations might be forced to intervene in conflicts within their respective region especially, when such conflicts threaten peace and security of the entire neighbours. Some might argue that allowing regional Organisations to intervene in conflicts within their region might amount to usurpation of the UN Security Council's power. However, if regional Organisations are not proactive in situations of regional threat to peace and security, they might become redundant. The intervention by ECOWAS in the Sierra Leone and Liberian conflicts is in furtherance of the overall mandate of the Organisation namely, economic cooperation, peace and security. ECOWAS recognises that economic cooperation within the sub region cannot thrive in an atmosphere devoid of peace and security. On the other hand, the failure by SADC to militarily intervene in the coup d'état in Madagascar and its failure to halt the violence and gross human rights violations that ensued in Zimbabwe leaves a lot to be desired. This paper will examine whether or not SADC through its OPDS on Politics Defence and Security failed in its mandate to maintain peace in the region in comparison to its sister regional Organisation ECOWAS.

1.2 Legal Question

The role of the SADC's Protocol on Politics, Defence and Security Co-operation (hereinafter called the OPDS) has been questioned in international law particularly its responsibility to protect SADC citizens. This will be discussed in light of the SADC's OPDS failure to militarily intervene in Zimbabwe and Madagascar; yet, ECOWAS militarily intervened in Sierra Leone and Liberia under almost identical circumstances.

The legal question is:

Does the SADC OPDS have the legal capacity to order such military intervention? Or does the OPDS try to deliberately avoid ordering military intervention under the guise of the so called "quiet diplomacy" in order to protect some individuals or political groups?

1.3 Historical Background

The political crisis in Zimbabwe and Madagascar came at a point where SADC was making significant progress on the establishment and strengthening economic ties amongst its member states. Peters-Berries¹ submits that what is often called the ‘Zimbabwe Crisis’ is a complex situation, which has its origins in a number of structural factor emanating from the country’s special history.

Zimbabwe

However, in as much one may want to admit that the problem in Zimbabwe is indeed a ‘complex situation’ there appears to be little that has been done on the international front by the Southern African regional bloc to seriously resolve that ‘crisis’ by flexing its muscles as provided for by the protocol on politics, defence and security co-operation. It has been said that the land issue has been at the centre of the Zimbabwe ‘crisis’, of course to some extent this may be correct, but, if one has to dig deeper into the Zimbabwe situation, it can be observed that a sincere lack of a strong political and legal structure was actually the cause of the so called Zimbabwe crisis.

The author is of the opinion that, the land problem was a result of failed political and comprehensive legal structure. It seems as if there was kind of an obsession at Zimbabwe independence in 1980, such a euphoria that both the newly independent Zimbabwe government and the international community failed to detect potential explosive cracks in the political structure.

As early as 1983, the Gukurahundi² massacre went on unabated. It is estimated that about 20 000³ people were killed in what others have defined as genocide. The author is of the opinion that this was a clear indication that Zimbabwe government under the leadership of

¹Peters-Berries, C. 2002. “The Zimbabwe Crisis and SADC: How to Deal with a Deviant Member State?” In Hanshom, D. Peters-Berries, C. Breytenbach, W.Hartenberg, T. Maier, W. Meyns, P (Ed.) *Monitoring Regional Intergration in Southern Africa*, Namibia: Macmillan Publishers, p. 185.

² Gukurahundi was term coined by the ZANU PF led government that explained an operation executed in the Matebeleland Province which is the home of the majority of the Ndebele speaking people. These people mainly supported ZAPU which was led by the late Dr Joshua N. Nkomo. ZAPU was later subsumed in 1987 under the Zimbabwe Unity Accord which paved way for ZANU PF to dominate the political affairs of Zimbabwe. This resulted in Zimbabwe becoming more of a one-party state, until the formation of the Movement for Democratic Change in 1999.

³ Catholic commission for Justice and peace in Zimbabwe and Legal Resources Foundation, *Breaking the Silence, Building True Peace: A Report on the Disturbances in Matebeleland and the Midlands, 1980 to 1988* (Harare: CCJPZ/LRF, 1997).

the Robert Gabriel Mugabe (Mugabe) had little respect for international law. It is beyond the scope of this paper to discuss the Gukurahundi massacre in detail and its consequences under international law, save to say that no official reports either national or international were made and no national or international criminal tribunal has been established to bring justice to the affected victims.

Be that as it may, political events took over that resulted in the formation of the Movement for Democratic Change (MDC), War Veterans being awarded unbudgeted grants and being allowed almost de facto para-military status, the loss of constitutional referendum in February 2000 and the violent land grab from the white farmers to mention that just but a few.

All these factors resulted in the complete breakdown of the rule of law⁴ with an increasingly authoritarian political system that vested far-reaching and barely uncontrollable powers in the office of the Executive President.⁵ Over the last fifteen years this has allowed Mugabe to ignore Supreme Court Orders, to utilise the police, secret intelligence arm called the Central Intelligence Organisation (CIO) and the army to quell opposition in both the urban and rural areas and to shun international criticism.

Madagascar

On the other hand, Political tensions on the Indian Ocean island of Madagascar between President Marc Ravalomanana and Andry Rajoelina, the former mayor of the capital city, escalated in early 2009, culminating in the President's forced removal from office.⁶ In preceding weeks, over 135 people were killed in riots and demonstrations.⁷ Under intensifying pressure from mutinous soldiers and large crowds of protestors, Ravalomanana handed power to the military on March 17, 2009.⁸

The military then transferred authority to Rajoelina, who has declared a transitional government. Days prior to President Ravalomanana's resignation, the U.S. Ambassador to Madagascar had expressed concern that the country could face civil war.⁹ The political

⁴ Peters-Berries (2002:186).

⁵ Section 31 (1) (h) (1) of the Constitution of the Republic of Zimbabwe.

⁶ Ploch, L. 2010. Madagascar's Political Crisis. Available at www.crs.gov. Last accessed on 26 October 2011.

⁷ Policy Archive. 2009. Available at www.policyarchive.org. Last accessed on 26 October 2011.p.1.

⁸ Kariuku, A. 2009. *Madagascar an Economy's Downward Spiral*. Available at www.consultancyafrica.com. Last Accessed on 26 October 2011.p.1.

⁹ European Union. 2009. Available at European Union. <http://congressionalresearchreports.com>. Last Accessed on 26 October 2011.p.1.

uncertainty has strained relations between international donors and Madagascar, which was the first country to sign a U.S. Millennium Challenge Account compact, worth an estimated \$110 million.¹⁰

Following coups in Mauritania and Guinea in 2008, the African Union (AU), the United States, and the European Union (EU), among others, warned against an unconstitutional transfer of power on the island nation.¹¹ They suspended most foreign aid and threatened sanctions. The AU has suspended Madagascar from the regional body until constitutional order is restored, as has (SADC).¹²

1.4 Impact of the Zimbabwe and Madagascar crisis in SADC

Briefly, the developments in Zimbabwe and Madagascar have had a negative impact on SADC particularly the SADC's power and willingness to maintain peace and security in the region. Oosthuizen¹³, shares the same sentiments expressed by Peters-Berries¹⁴ who both conclude that the Zimbabwe and Madagascar crisis has damaged the international reputation of SADC and in the West under-mined the credibility of some of its leading politicians. Also, it has negative economic consequences, it has had implications regarding land policies in South Africa, Namibia and Malawi. Lastly, it has slowed down the pace of regional economic integration, and it has exposed the need for a compact regional security OPDS which is more robust and proactive.

1.5 Statement of the problem

The place and relevance of SADC's OPDS on Politics, Defence and Security Co-operation (hereinafter called the OPDS) to resolve political disputes in the SADC region through military intervention has come under scrutiny in the last few years. Questions have been raised about the OPDS's competence, impartiality and ability to resolve political differences within the SADC region in light of the political tensions in Zimbabwe and Madagascar. Some

¹⁰ Ploch, A. 2011. *Madagascar's Political Crisis*. Available at www.fas.org. Last accessed on 26 October 2011. p.1.

¹¹ Fayyaz, Z. 2009. *Keeping Promises*. www.hir.harvard.edu. Last accessed on 26 October 2011. p.1.

¹² Security Council Report Update Report. *The Resurgence of Coup D'état in Africa*. 2009. www.secutitycouncilreports.org. Last Accessed on 26 October 2011. p.1.

¹³ Oosthuizen, G.H. 2006. *The Southern African Development Community*. Cape Town. Institute for Global Dialogue, p.315. The author avers that SADC is not functioning optimally and this it is unlikely to change in the foreseeable future. Oosthuizen goes on to say that ultimately, it is the regions' people who pay the price – sometimes with their lives. One can only agree with this observation in that the Zimbabwe and Madagascar crisis have exposed the weakness in SADC member states.

¹⁴ Peters-Berries (2002:188).

individuals, countries and international Organisations have advocated for military intervention in the troubled countries such as Zimbabwe and Madagascar under the auspices of SADC but SADC has been defiant. On the contrary, ECOWAS did not waste time to intervene in the intra-political strife in Liberia and Sierra Leone. For instance ECOWAS intervened in Liberia on 24 August 1990 without authorisation of the UNSC (which later approved the intervention). Yet, SADC chose not to intervene in Zimbabwe in Madagascar, while, gross human rights violations continued unabated.

1.6 Literature Review

It is interesting to note there is a lot of literature that focuses on the various OPDSs of SADC. Most of this literature deals with the general aspects and operations of SADC including the general obligations of SADC to maintain regional peace and security. However, not much is written on the regional body's capacity to militarily intervene in intra-state conflict as provided for by Article 11 (2) (b) of OPDS which provides that:

‘The OPDS may seek to resolve any significant intra-state conflict within the territory of a State Party and a “significant intra-state conflict...”’

The OPDS further provides five methods on which the Summit can use to resolve intra state conflict and for the purposes of this paper, methods three and four provided in Article 11 (3) (c) which says:

‘Where peaceful means of resolving a conflict are unsuccessful, the Chairperson acting on the advice of the Ministerial Committee may recommended to the summit enforcement action be taken against one or more of the disputant parties.’

Furthermore, Article 11 (3) (d) provides:

‘The summit shall resort to enforcement action only as a matter of last resort and, in accordance with Article 53 of the United Nations Charter, only with the authorisation of the United Nations Security Council.’

Shaw¹⁵ submits that the SADC OPDS on Politics, Defence and Security Co-operation was established in 1996 and a Protocol was adopted in 2001. Shaw further says that under this Protocol the objective of the OPDS is to promote peace and security in the region and in

¹⁵ Shaw, M.N. 2010. *International Law Sixth Edition*. Cambridge; Cambridge University Press. p. 1028-1030.

particular to ‘consider enforcement action in accordance with international law as a last resort where peaceful means have failed’.

What Shaw did not elucidate is what amounts to enforcement action? Could this mean that the OPDS has the capacity to order military intervention as a last resort? Article 11 (2) (b) provides *inter alia* that the OPDS may seek to resolve any significant intra-state conflict within the territory of a State Party. Article 11 (3) (c) and (d) provide that where peaceful means of resolving conflict are unsuccessful, the Chairperson acting on advice of the Ministerial Committee may recommend to the Summit that enforcement action be taken against one or more of the disputant parties but only with the authorisation of the UNSC.

If these provisions are to be given a purposive interpretation that seeks to uphold human rights in accordance with international law, then it can be argued that the OPDS has the jurisdiction to order military intervention in intra-state conflict such as the one that was in Madagascar and Zimbabwe.

Meyns¹⁶ is one of the few authors that has tried to explain the establishment, functions and the role of the OPDS. Although the author uniquely offers a detailed exposé into the historical background and the challenges of the OPDS, he still fails to zero in on the possibility of military intervention by the OPDS. Nevertheless, his analysis of the OPDS and the personality clashes of some of the former and current head of states and governments, Robert Mugabe and Nelson Mandela provided an excellent platform to debate the relevance of the OPDS as it stands today.

Morgenstern¹⁷ in his book highlighted the challenges of international organisations in taking decisive actions against the principle of Sovereignty. One aspect that has not been adequately settled is the extent to which international law can allow a state to exercise its sovereignty. In a state where a government brutally commits gross human rights violations, can the international community not intervene all for the sake of respecting state sovereignty? Is there a limitation of state sovereignty in SADC where for instance it authorises state intervention?

¹⁶ Meyns, P. 2002. “The Zimbabwe Crisis and SADC: How to Deal with a Deviant Member State?” In Hanshom, D. Peters-Berries, C. Breytenbach, W.Hartenberg, T. Maier, W. Meyns, P (Ed.) *Monitoring Regional Integration in Southern Africa*, Namibia: Macmillan Publishers, p. 141.

¹⁷ Morgenstern, F. 1986. *Legal Problems of International Organisations*. Dyfed. Grotius Publications Limited. p. 1.

Goldsmith and Posner¹⁸, posit the limitation of international law. In other words the authors are of the opinion that in certain situations international law has limitations which may lead to the disgruntlement of the people. Therefore, could it be possible that the failure by OPDS to militarily intervene in Zimbabwe and Madagascar can be equated to the limitations of international law? It is argued in this paper that there is more to it than just international limitations especially in the case of OPDS since ECOWAS did not succumb to limitations.

Cassese¹⁹, making his remarks on the use of force by states argues that, military intervention under Article 11 of OPDS for instance requires the final authorisation of UNSC. Cassese opines that it is difficult to gain consensus of the UNSC for authorise military intervention and in his own words ‘the current continuing rift among States makes it highly unlikely that major Powers will sit round a table and agree upon a better, more detailed and up-to-date legal regulation of force’.²⁰ Whether Cassese’s view point holds water in the OPDS regime will be debated in this paper.

Kaczorowska²¹ submits that since the adoption of the UN Charter members states have, in addition to the right of self-defence, relied on a number of controversial grounds to justify use of military force. It is submitted that where international law places too many onerous obligations to justify use of force, member states can use other means to justify their use without seeking UNSC authorisation.

This is another option that could have been taken by the SADC member states that were totally against intra-state conflict in Zimbabwe and Madagascar. Ironically, Zimbabwe, Angola and Namibia intervened in Democratic Republic of Congo without proper authorisation of SADC. Therefore, why did SADC appear to have exercised double standards?

Buzan and Waever²² share contrary views with Kaczorowska and Levitt, the former do not subscribe to the notion that the intervention by South Africa and Botswana in Lesotho was controversial but rather they submit that such military intervention was done under the

¹⁸ Goldsmith, J.L. & Posner, E.A. 2005. *The Limits of International Law*. Oxford: Oxford University Press, p.3

¹⁹ Cassese, A. 1986. “Return to Westphalia? Considerations on the Gradual Erosion of the Charter System”. In Cassese, A (Ed.) *The Current Legal Regulation of the Use of Force*, Dordrecht: Martinus Nijhoff Publishers, p.520.

²⁰ Cassese (1986:520).

²¹ Kaczorowska, A. 2002. *Public International Law*. London: Old Bailey Press, p.407.

²² Buzan, B & Waever, O. 2003. *Regions and Powers*. Cambridge: Cambridge University Press, p.235.

auspices of SADC. They aver that ‘SADC acted in Lesotho in 1995’. It is the lack of clarity over the actual mandate of the OPDS that has prompted the research of this paper. Divergent views discussed above by international law experts are clear indication that there are gaps as to the extent to which OPDS has the capacity to order military intervention.

McCoubrey and White²³ argue that voluntary sanctions are not adequate measures of combating aggression, or removing threats to peace or breaches of the peace. It is surprising that in the wake of the Zimbabwean crisis only the Western countries were quick to impose sanctions on the trade of certain products in Zimbabwe and also on specific cronies of Mugabe. Sanctions or military intervention which was the best and more justifiable action that SADC could have taken?

Yehuda²⁴ adds another dimension to the whole concept of maintaining international peace. He posits two very important concepts when he rhetorically questions the purpose of the UN Charter. He answers this by saying that the purpose on the UN as per Article 1 is to (i) maintain international peace security and (ii) not to achieve and maintain peace. These are the same values and principles found in the SADC Treaty. Is it not true that the purpose of OPDS is also to maintain regional peace and security by being more proactive in intra-state conflict?

Levitt²⁵ commenting on ECOWAS military intervention says that ECOWAS intervention was a watershed in the *jus ad bellum* and should be considered as the first authentic post-Cold War case of humanitarian intervention, but also one aimed at creating an enabling environment for democracy. The submissions by Levitt should also be considered in light of the political violence that ensued in both Madagascar and Zimbabwe.

Wilson²⁶, says that rules of international law governing the internal conflict are of paramount importance. She submits that in the case of rebellion (here she is referring to as situation where a group of people are rebelling against a legitimately elected government) the prevailing view in international law has been that assisting the legitimate government is lawful whereas assisting the rebel is not.

²³ McCoubrey , H. & White, N.D. 1992. *International Law and Armed Conflict*. Dartmouth: Dartmouth Publishing Company Limited, p.139.

²⁴ Yehuda,M. 1975. *Concepts of a Just War*. Leyden: A.W. Sijthof International Publishing Company, p. 39.

²⁵ Levitt, J.I. 2008.” Pro-Democratic Intervention in Africa. *In Africa Mapping New Boundaries in International Law*” (Levitt, I. Ed), Oregon: Hart Publishing p. 115.

²⁶ Wilson, H. 1990. *International Law and the Use of Force by Liberation Movements*, Oxford: Oxford University Press, p. 29.

However, she does not explain the position of in international law where a legitimate government no longer enjoys the support of the majority of the citizens and the legitimate government uses violent and unlawful means to stay in power. If a regional body such as SADC through its OPDS comes to the assistance of the ‘rebels’ is that just not justified in international law?

Paulsson²⁷ takes a completely new route with regards to the argument on military intervention. Paulsson links the failure of military intervention to the denial of justice in international law.²⁸ Did the failure of military intervention by the OPDS where the rights of Madagascar and Zimbabwean citizens were being utterly disregarded resulted in the denial of justice in international law?

Mtetwa²⁹ elaborates on the breakdown of the rule of law in Zimbabwe. She avers that although at first glance the constitution appears to guarantee the separation of powers, an analysis of the executive actions over the past twenty years has shown that such separation exists in name only.³⁰ In a well written article the author states that the Zimbabwean government has increasingly refused to comply with court orders with politicians openly declaring that they would not comply with court judgments which they did not like.

However, Mtetwa does not to highlight the contribution of SADC to Zimbabwe’s breakdown of the rule of law. Did SADC’s by failure to militarily intervene in Zimbabwe contributed to the breakdown of the rule of law in Zimbabwe?

This research attempts to address some of these pertinent questions as it analyses the prospects of military intervention in SADC.

1.7 Research objectives

The objectives of this research are:

- (a) To analyse the possibility of the OPDS to order military intervention in a member state(s) where there is continued excessive political violence which results in the deaths of civilians and under-mining the values of democracy as well the principles and spirit of SADC.

²⁷ Paulsson, J. 2006. *Denial of Justice in International Law*. Cambridge: Cambridge University Press, p. 57.

²⁸ Paulsson (2006:57).

²⁹ Mtetwa, B. 2006. “Zimbabwe”. In Konrad Adenauer Foundation (Ed.) *Rule of Law*, Bonn: Bouvier, p. 336.

³⁰ Mtetwa (2006:336).

- (b) To establish whether the OPDS has in spite of its legal capacity, deliberately withheld its power to militarily intervene as a way protecting the interests of certain political groups or individuals in Madagascar and Zimbabwe.
- (c) To establish whether citizens of a member state can hold the OPDS accountable where the OPDS fails to exercise its military powers.
- (d) To establish the basis upon which ECOWAS militarily intervened in both Liberia and Sierra Leone.
- (e) To investigate whether ECOWAS has a different institutional framework than SADC. Or whether ECOWAS more proactive than SADC.
- (f) To establish the implications (if any) in international law for SADC's failure to militarily intervene.
- (g) To highlight the lessons (if any) that SADC can learn from ECOWAS.

1.8 Structure of the study

Chapter one discusses the outline and content of the research.

Chapter two discusses the establishment and creation of the OPDS. In this chapter a detailed analysis of the creation of SADC and its OPDS will be analysed. A detailed discussion of the OPDS's legal capacity and jurisdiction to militarily intervene in intra-state conflict will be investigated. In addition, the relevant articles in the SADC Treaty as well as the OPDS will be discussed. Also, this chapter highlights the strengths and weaknesses of the OPDS.

Chapter three discusses the political impasse in Madagascar and Zimbabwe and the efforts of the OPDS to resolve these disputes. In this chapter a detailed analysis of the Madagascar and Zimbabwe crisis will be done. This includes the various attempts by the SADC to resolve this political impasse. An examination as to whether the situation in Madagascar and Zimbabwe justified military intervention will be done.

Chapter four focuses on the military intervention in Liberia and Sierra Leone by ECOWAS. This chapter will look at the historical backgrounds in these two countries and why ECOWAS finally militarily intervened in both countries. The application of international law relied on by ECOWAS and the reaction of other UN bodies in particular UNSC will be discussed.

Chapter five is a comparative analysis between the SADC OPDS and ECOWAS on the military intervention.

Chapter six is a discussion on the limitations of regional security in military intervention focussing mainly on the use of force, state sovereignty as well humanitarian intervention. It also examines the main findings, the way forward and concludes the key outcomes of the research.

1.9 Research Methodology

This research was based mainly on qualitative desk research.

1.10 Limitations of the study

Firstly, this research was purely desk research, no interviews were conducted as such the findings of this research are only limited to the analysis of what other authors have written and the input by the author. Secondly, the topic on military intervention is a wide area of international law that encompasses a number of international law aspects, the author has tried to limit this research only to military intervention and other related international law principles necessary for this topic. This paper does not in any way try to be exhaustive on this topic but it seeks to add and invoke debate on this area of law.

CHAPTER TWO

THE SADC OPDS ON POLITICS, DEFENCE AND SECURITY CO-OPERATION (OPDS)

2.1 Introduction

Before dwelling in detail on the creation and establishment of the OPDS it is only logical to examine the events that culminated to its creation. This is mainly because the OPDS does not exist in vacuum but it is inter-twined with other arms of its constitutive body (SADC Summit) which is administered in terms of the SADC Treaty. It is beyond the scope of this research to zero in much on the SADC Treaty. Only minimum and necessary attention will be given to the SADC Treaty in order to give impetus to the main focus of this research which is the possibility of military intervention in SADC with main focus on Zimbabwe and Madagascar.

2.2 Historical Background on the OPDS

The SADC Workshop on Democracy, Peace and Security, which was held in Windhoek from 11 to 16 July 1994, set SADC on a course towards formal involvement in security co-ordination, conflict mediation, and even military co-operation at heads of states level.³¹ Importantly, one of the Windhoek working groups on conflict resolution recommended that:

"... Conflict Resolution and Political Co-operation become a 'Sector', the responsibility for which would be allocated to a SADC member state"³²

It also recommended that a Protocol on Peace, Security and Conflict Resolution should be drawn up. The Windhoek proposals were subsequently referred to the next meeting of the Council of Ministers in Botswana.³³ At the next meeting of SADC Foreign ministers, convened in Harare on 3 March 1995, the creation of an Association of Southern African States (ASAS)³⁴ was recommended. It was envisaged that ASAS would function independent of the SADC Secretariat, and that it would report directly to the SADC Heads of State and

³¹ The SADC OPDS. 1999. Published in Monograph No 43: *Building Security in Southern Africa*, November 1999. Available on <http://www.iss.co.za/pubs/monographs/no43/SADCOPDS.html> Last accessed 12 Feb 2011.

³² SADC Workshop on Democracy, Peace and Security, which was held in Windhoek from 11 to 16 July 1994.

³³ At this meeting, it was decided rather to establish a wing for conflict mediation and prevention, as opposed to a sector.

³⁴ Under Chapter 7, Article 21(3) (g) of the SADC Treaty.

Government.³⁵ It was also envisaged that ASAS would incorporate two specialised SADC sectors, one dealing with political affairs and the other with military security.³⁶

ASAS would be guided by the principles set out in the July 1994 Windhoek document.³⁷ These included, inter alia, the sovereign equality of all member states; respect for the sovereignty and territorial integrity of each state, the inalienable right of a state to independent existence; peaceful settlement of disputes through negotiation, mediation or arbitration; and military intervention of whatever nature to be decided upon only after all possible remedies have been exhausted, in accordance with the charters of the OAU and the UN.

2.3 Challenges of ASAS

The first sign that the ASAS proposal was going to run into problems at the Johannesburg Summit came from Alfred Nzo³⁸, who told a press briefing that the Foreign ministers of SADC would have to look at the name ASAS again and decide whether it would be an association or a sector.³⁹

Too many commentators state that the decision to delay the creation of ASAS was rooted in a disgruntled President Robert Mugabe who felt that Zimbabwe had a right to a commanding position in any new grouping, similar to the role it had played in the Front Line State (FLS) and was piqued at the increased dominance of South Africa.⁴⁰ Zimbabwe had apparently insisted that the permanent chairmanship of ASAS should be given to the longest serving SADC head of state i.e. Mugabe), but it was Namibia's proposal that a two-yearly revolving chairmanship would be more appropriate which proposal won the day.⁴¹

³⁵ SADC OPDS Published in Monograph No 43 (1999).

³⁶ SADC OPDS Published in Monograph No 43 (1999).

³⁷ SADC OPDS Published in Monograph No 43 (1999).

³⁸ Former Foreign Affairs Minister Republic of South Africa

³⁹ *ANC Daily News Briefing*. 1999. Available at www.e-tools.co.za. Last accessed on 29 October 2011.

⁴⁰ Speaking in parliament on the Foreign Affairs budget vote on 18 May 1995, South African Minister of Foreign Affairs, Alfred Nzo would confirm that "... the Foreign Ministers of SADC have proposed that the former Front-line States be turned into a new political and security arm of the SADC".

⁴¹ The final communiqué issued in Johannesburg would eventually omit any mention of the name ASAS, but simply state that: "The Summit reviewed its decision of Gaborone in August 1994, to establish the sector on Political Co-operation, Democracy, Peace and Security. The Summit considered and granted the request of the Foreign Ministers of SADC, that the allocation of the sector to any Member State be deferred and that they be given more time for consultations among themselves and with Ministers responsible for Defence and Security and SADC Matters, on the structures, terms of reference, and operational procedures, for the sector."

2.4 OPDS an Overview 1996-2001

Having moved away from the ASAS, the OPDS was established in 1996.⁴² However a dispute erupted between the Chairperson of the OPDS, Zimbabwe's President Robert Mugabe and the Chairperson of SADC, South Africa's President Nelson Mandela, as to how the OPDS was to conduct its affairs in relation to the overall structures of SADC.⁴³ The result was that the OPDS remained dormant for several years, until an Extraordinary SADC Summit in March 2001 decided on a far reaching restructuring of the organisation's areas of co-operation, in the context of which the OPDS was given a special position, albeit one integrated into overall SADC structures under the ultimate authority of the SADC Summit, rather than separate from the remaining SADC structures.⁴⁴

From its inception the OPDS was predominantly dormant. This dormancy stage of the OPDS subsisted despite the Lesotho intra-state conflict of 1994.⁴⁵ When the Lesotho intra-state conflict started there was no proper structure at the functions and limitations of the OPDS.⁴⁶ In order to fully appreciate the vacuum created by the clashes between Mugabe and Mandela it is important to outline the nature and causes of the Lesotho conflict together with the reaction by the SADC member states.

2.4.1 Lesotho Intra-state conflict

In January 1994, fighting erupted between rival factions of the Lesotho army. Due to Lesotho's history of political instability and military intervention in politics, this development worried neighboring countries. Essuman-Johnson⁴⁷ submits that the fear was that the problem might spill over into South Africa at a time when the latter was walking a tight rope towards the first all race elections scheduled for April 1994.⁴⁸ An emergency meeting of Southern African states was called to search for immediate ways to diffuse the tension. The meeting moved a motion to support the democratically elected Basuto Congress Party (BCP) and was

⁴² Meynes (2002:141)

⁴³ Meynes (2002:141)

⁴⁴ Meynes (2002:141)

⁴⁵ Landsberg, C. 2003. "In Search of Sub-Regional Political and Security Community: The Institutional and Governance Dimension of SADC". In Oluwu, D & Mukwena, R (Ed). *Governance and Southern Africa and Beyond*. Windhoek. Gamsberg. MacMillan. p. 21.

⁴⁶ Landsberg (2003:21)

⁴⁷ Essuman-Johnson, 2009. "Regional conflict resolution mechanisms: A comparative analysis of two African security complexes". Available at www.academicjournals.org. Last accessed on 4 April 2011.

⁴⁸ Essuman-Johnson (2009:1)

unanimously supported.⁴⁹ There was a proposal to send a combined military contingent if the situation did not quickly return to normal.⁵⁰ On May 23, 1998 a general election was held in Lesotho the result of which was rejected by the opposition which claimed that it was rigged in favour of the ruling party.⁵¹

The military intervention in Lesotho has left many international law jurists in limbo. A number of articles have been written in attempt to explain on who exactly militarily intervened in Lesotho. The two schools of thought are that:

- (i) South Africa and Botswana intervened in Lesotho without the authorization of SADC.
- (ii) SADC itself intervened in Lesotho regardless of who the actors were.⁵²

These arguments are based on the notion that there was no proper legal framework in SADC that authorized military intervention because of the gap created between the period of 1996-2001. The first school of thought supports Levitt⁵³ who subscribes to the notion that it was South African and Botswana that intervened. Levitt states that:

‘...From an operational standpoint, it clearly was not co-ordinated by the SADC secretariat or other authority in the organisation...’

The submission by Levitt⁵⁴ is a clear indication that the legal vacuum created between 1996-2001 did not help SADC as an organisation. It appears as if each country was acting in its own interest. Levitt attributed this to the fact the then Lesotho Prime Minister Phakalitha Mosisili requested South Africa, Botswana, Zimbabwe and Mozambique to militarily intervene in Lesotho to restore law and order in ‘accordance with ‘SADC agreements’.⁵⁵ Robert Mugabe the then OPDS Chairperson refused to receive communications from Mangosuthu Buthelezi who was the then Acting President of South Africa.⁵⁶ However, following this impasse South Africa and Botswana militarily intervened in Lesotho without any SADC legal framework.

⁴⁹ Essuman-Johnson (2009:1)

⁵⁰ Essuman-Johnson (2009:1)

⁵¹ Rosenburg, A. 2003. *Nelson Mandela's Africa's Invasion*. Available at <http://archive.frontpage.com>. Last accessed on 29 October 2011. p.1.

⁵² Levitt (2002:133)

⁵³ Levitt (2002:133)

⁵⁴ Levitt (2002:134)

⁵⁵ Levitt (2002:134)

⁵⁶ Levitt (2002:134)

The opposing school of thought shares the same sentiments expressed by Essuman-Johnson⁵⁷ who argues that following political tensions in Lesotho, SADC set up a commission of inquiry to investigate the opposition allegation but found no evidence of fraud. There was an attempted coup and the situation prompted the:

‘ SADC to intervene on September 22, 1998 with a SADC force led by South Africa. The force was made up of the South African defence force (SADF) and the Botswana defence force (BDF)’.

In this way order was restored to Lesotho. Although the Lesotho case may provide pointers to the shape of things to come, the case’s exposes the weaknesses and lack of decisiveness within SADC.⁵⁸

2.4.1.1 Question of Mandate

Mashishi⁵⁹ argues that the intervention by South Africa in Lesotho was not a SADC initiative but it was orchestrated by South Africa in order to safeguard its own interests. He raises this argument which the author is in total agreement with when he offers an in depth analysis of the mandate and morality of South Africa’s intervention.

Mashishi says that the decision to initiate peacemaking intervention in Lesotho was made without explicit SADC authorization.⁶⁰ Mashishi further submits that it is hard to imagine how South African intervention in Lesotho, which resembled a military invasion and occupation of the Kingdom of Lesotho, could have followed a SADC mandate for peacemaking.⁶¹ In fact, a requested mandate was granted but only after the intervention took place. Also at the very same time, South African government had been against the intervention of Zimbabwe, Angola and Namibia in the DRC, and reported that the decision taken by Mugabe and his colleagues was not on behalf of the SADC.⁶² A statement made by the late Parks Mankahlana⁶³ revealed that:

“There is no way that the people who met at Victoria Falls and Harare can have met under the auspices of the SADC.”

⁵⁷ Essuman-Johnson (2009:410).

⁵⁸ Essuman-Johnson (2009:411).

⁵⁹ Mashishi, A.K. 2003. *Intervention in Africa: Assessing the Rationale behind Sub-Regional Peacemaking Military Interventions*. Available at <http://edocs.nps.edu>. Last accessed 4 April 2011.

⁶⁰ Mashishi (2003:81).

⁶¹ Mashishi (2003:81).

⁶² Mashishi (2003:81)

⁶³ Former Spokesperson for the then President Nelson Mandela.

The mandate from the SADC was obtained afterwards by the South Africans, which indicates that a sub-regional organisation is only effective when a hegemony wants to utilise it for its own purposes, whether before the operation or afterwards.⁶⁴ Why did SADC approve the actions of South Africa in Lesotho without even questioning their actions of by-passing the mechanisms setup by the sub-regional organisation? The author is of the opinion that this is tacit admission by SADC, that although in certain circumstances military intervention is the only solution, there are also other situations that become too delicate to meddle with.

It is submitted that between the period 1996-2001 OPDS had serious legal cracks that needed to be dealt with if the organ was to be effective in future. The fact that out of the fourteen SADC countries only five countries expressed their views and even less intervened militarily goes to explain the lack of cohesion in SADC when it comes to issues of regional military intervention. So what happened to the rest of the SADC countries?

Whether South Africa and Botswana intervened out of their own volition or under the auspices of SADC, the fact remains that military intervention in SADC with regards to intra-state conflict should be inevitable. It would have been helpful if SADC had set the correct precedent by taking the necessary measures. The Lesotho debacle was only the beginning of the weakness of SADC's security structure. The author's conclusion on this issue is in line with Mashishi's⁶⁵ reasoning which he sums as follows:

‘It was the South African government that received a request from Lesotho; it was South Africa that initiated the possibility of mounting peacemaking intervention in Lesotho; it was South African troops that single-handedly intervened in Lesotho without a proper mandate from the SADC’.

2.4.2 DRC intra-state conflict

If the Lesotho circus was not sufficient, the events in DRC were much more embarrassing for the SADC region, in the same period of 1996-2001. Since 1996 a regional war has raged in and around the Democratic Republic of Congo (DRC). What began as an internal crisis for

⁶⁴ However, the South African government maintained that the military intervention did not constitute an invasion while the SANDF maintained that there was not only a proper SADC mandate, but also a moral obligation on South Africa and Botswana to intervene in Lesotho. Furthermore the South African Minister of Safety and Security reportedly confirmed that SADC had authorized a possible military intervention in the event of a coup in Lesotho, which was vehemently denied by SADC structures. At the SADC summit in Grand Baie the week before the intervention, SADC Heads of State had merely “expressed concern at the civil disturbances and loss of life following the recent elections” and welcomed the mediation initiatives led by the South African government, not approving peacemaking intervention as reported by South African officials.

⁶⁵ Mashishi (2003:84)

the troubled Central African state, expanded to take in an assortment of military players from a medley of marauding armed groups to government armies fighting extraterritorial wars⁶⁶.

The war which brought Laurent-Desire Kabila and the AFDL (Alliance des Forces Democratiques pour la Liberation du Congo-Zaire) to power in the DRC, in May 1997, was actually embedded in the larger context of three hostilities:⁶⁷ the Great Lakes conflict, the rebellion in Southern Sudan and the Angolan civil war.⁶⁸ Zaire, as the DRC was then known, constituted the junction where the various paths of this undeclared war zone converged.

2.4.2.1 Major political events that caused the intra-state conflict

(i) Frustrated by what was perceived as “Tutsi hegemony” in the region, increasing numbers of local militia, such as the Mai-Mai and the Bembe, lent a helping hand to the Ugandan, Rwandan and Burundian rebel groups.⁶⁹ On a number of occasions, elements of Kabila’s new Congolese army gave support to insurgents, e.g. by escorting them to the Rwandan border on commando raids.⁷⁰

(ii) The unresolved issue of the status of the Banyarwanda and the Congolese Tutsi in particular was the second enduring problem.⁷¹ The problem is attributed to the attitude of a number of Rwandan and Congolese Tutsi, civilians and military alike. They were said to behave as if they are operating in occupied territory.⁷²

(iii) Soon after taking power, Kabila faced a major dilemma. During the rebellion, it was clear that his own military and political base was small and that he needed the material support of external forces.⁷³ Rwanda and Uganda supplied this support in the first phase of the war and Angola (in part through the Katangese Gendarmes) during the second phase.⁷⁴

⁶⁶ Essuman-Johnson (2009:413)

⁶⁷ Institute for Justice and reconciliation. 2010. *IJR DRC Country Profile 2010*. Available at www.ijr.org.za. Last accessed on 29 October 2011. p.1.

⁶⁸ Manahl, C.R. 2000. *From Genocide to Regional War: The breakdown of International Order in Central Africa*. Available at www.africa.ufl.edu. Last accessed on 29 October 2011.p.1

⁶⁹ Reyntjens, F. 1999. *Briefing the Second Congo War: More than a Remake*. Available at www.jstor.org . Last accessed on 29 October 2011.p.1.

⁷⁰ Ray, E. 2000. *Congo U.S Military and Corporate Recolonisation of the Congo*. Available at www.thirdworldtraveler.com. Last accessed on 29 October 2011. p.1.

⁷¹ Cogen, M & Reyntjens, F. 1999. *The Great Lakes; Kivu and the Search for Peace*. Available at www.ieru.ugent.be. Last accessed on 29 October 2011.

⁷² Cogen & Reyntjens (1999).

⁷³ Dagne, T. 2001. *The Democratic Republic of Congo: Background and Current Developments*. Available at www.fas.org. Last accessed on 29 October 2011.

⁷⁴ Dagne (2001)

(iv) By early 1998 the signs of a worsening relationship between the Kabila regime and its Rwanda and Ugandan sponsors became increasingly apparent.⁷⁵ In April of that year, civil society Organisations in South Kivu warned against “threats of a foreign aggression” and noted “a strong concentration of foreign troops on the other side of the border as well as a massive infiltration of men” into the Uvira region.⁷⁶

(v) On July 26, Kabila ordered the Rwandan “and other foreign troops” out of the country.⁷⁷ On August 2, fighting broke out in the eastern areas of Goma, Bukavu and Uvira and in Kinshasa where Rwandan and Banyamulenge troops attempted to seize military camps.⁷⁸

(vi) A rebel movement, calling itself Rassemblement Congolais pour la Democratie (RCD), emerged.⁷⁹ The rebellion spread in the East with Ugandan, Rwandan and Burundian troops spearheading the offensive.⁸⁰ Rwandan Ugandan and Banyamulenge troops also seized the Kitona army base and captured a rapidly widening area, including the port of Matadi and the Inga power dam.⁸¹

2.4.2.2 Call for SADC Military Intervention

Ngoma⁸² says that the military intervention in the Democratic Republic of the Congo (DRC) in 1998 by Angola, Namibia and Zimbabwe was widely discussed, and views differed as to the correctness of the action. Ngoma shares the sentiments expressed by Meynes⁸³ by stating that the fact that only some members of the Southern African Development Community (SADC) and not all had participated spiced up the debate even more.⁸⁴ There were claims of an intense rivalry in the sub-regional grouping and views that the survival of the grouping was critically threatened.⁸⁵

⁷⁵ Dagne (2011).

⁷⁶ Cogens & Reyntjens (1999).

⁷⁷ UNSC. 1998. Letter Addressed from the UNSEC to President of the UNSC. Available at www.undemocracy.org. Last accessed on 29 October 2011.

⁷⁸ Essuman-Johnson (2009).

⁷⁹ All Africa.Com. 2001. Rebels Hold Preparatory Talk for Inter Congolese Dialogue. Available at allafrica.com. Last accessed on 29 October 2011.

⁸⁰ Plummer, C. 2007. The Kitona Operation: Rwanda’s Africa’s Odyssey. Available at www.militaryhistoryonline.com. Last accessed on 29 October 2011.

⁸¹ Plummer (2007)

⁸² Ngoma, N. 2003. *Hawks, Doves or Penguins? A critical review of the SADC military intervention in the DRC* Available at www.iss.co.za; last accessed on 5 April 2011.

⁸³ Meyns (2002:154)

⁸⁴ Meynes (2002:154).

⁸⁵ Meynes (2002:154).

2.4.2.3 Implications of the decisions (or the lack of decisions) relating to DRC

Angola, Namibia and Zimbabwe as the group of states that formed the 'SADC Allies' sent troops to the DRC in response to the request by the DRC government,⁸⁶ while South Africa as a sub-regional powerhouse did not.⁸⁷ Tanzania on the other hand though sharing the longest border with the DRC preferred to remain neutral in the entire affair.⁸⁸ Zambia, also sharing a fairly long border with the DRC opted to take on a mediatory role.⁸⁹

As with South Africa and Botswana's militarily intervention in Lesotho simply to protect their own interests, so was Angola, Namibia and Zimbabwe's⁹⁰ intervention in the DRC. It has been argued that the military intervention in DRC was not a SADC decision though the call was made to the SADC member states. These events indicate the rift that appeared in the SADC region as to the capacity of SADC to order military intervention in a troubled state.

Meyns argues that following this meeting two separate directions emerged:

(i) Zimbabwe which still held the chair of the OPDS called for a special meeting⁹¹ of the Inter-State Defence and Security Commission (ISDSC) Defence ministers. At this meeting it was decided that:

'Those SADC countries able to do so should give assistance to President Kabila'⁹²

The wording of the statement by the ISDSC Defence ministers is a clear indication that SADC did not commit itself as a body but left it to individual member states to decide. The result was that Angola, Namibia and Zimbabwe's interventions.

It has been argued that the DRC conflict was both intra-state and inter-state as a result this may have contributed to the unwillingness by other SADC member states. If the conflict was intra-state, then Angola, Namibia and Zimbabwe would have justified their actions by arguing that Rwanda and Uganda had violated DRC's sovereignty. This would have been in

⁸⁶ Dagne (2001)

⁸⁷ Essuman-Johnson (2009)

⁸⁸ Ngoma (2003)

⁸⁹ Ngoma (2003)

⁹⁰ Talks on the DRC crisis began within days of the beginning of the hostilities. At the request of Uganda's President Museveni, Mugabe convened an ad hoc meeting which also involved DRC, Rwanda, Angola, Namibia, Tanzania and Zambia in Victoria Falls on 7 and * August 1998. South Africa did not attend the meeting.

⁹¹ The meeting was held on 18 August 1998, in Harare.

⁹² Punungwe, G. 1999. "The SADC OPDS on Politics Defence and Security". In Baregu, M(Ed) *The Crisis in the Democratic Republic of Congo*. Harare: SAPES cited by Meynes (2002:155)

line with Article 51 of the UN Charter which allows for individual or collective self-defence in such cases.

On this point Chigara is of a contrary opinion, that is, the applicability of Article 51 of the UN Charter would have only been possible if the UNSC had judged the situation in question to be a threat to international peace. This argument is partly valid, given the current developments in international law, particularly the military intervention in Libya by NATO authorized by the UNSC⁹³.

2.4.2.4 Question of Mandate

Evidently, Namibia, Botswana and Zimbabwe not militarily intervene in the DRC under the auspices of SADC. This is the same scenario when South African and Botswana intervened in Lesotho. In line with this reasoning Hwang⁹⁴ says that if the Zimbabwe-led intervention was indeed an act of collective self-defence under SADC auspices, one would have expected SADC to have authorised such an operation at the level of the SADC OPDS Summit, with a specific mandate, and perhaps that SADC would have appointed the Head of Mission and Force Commander. Hwang⁹⁵ cites De Coning who has referred to this new trend as ‘neo-interventionism’, whereby the interventionists do not enter as peacemakers but as allies of one side of the conflict.

Nonetheless, the fact that the DRC occupied Zaire’s seat at the UN and SADC admitted the DRC as a member implies that the Kabila regime was internationally recognised as the legitimate government in 1997. Thus, as mentioned above, Zimbabwe, Angola and Namibia accepted Kabila’s reasoning, namely that the DRC was the victim of a foreign invasion – by Rwanda and Uganda – and the SADC member states were duty bound to react to a threat against one of its members. This type of intervention in the DRC appeared to be identifiable as ‘part self-defence, part collective security’.⁹⁶

The justification by Angola, Namibia and Zimbabwe to send troops to the DRC is premised on the distress calls from the DRC regime. The ‘SADC allies’ argued that their intervention

⁹³ Resolution 1973

⁹⁴ Hwang, K. D. 2006. The Remaking Of SADC Politico-Security Regionalism in the Post-Cold War Era. Available at <http://upetd.up.ac.za>. Last accessed on 4 April 2011.

⁹⁵ Hwang (2006:171)

⁹⁶ De Coning (2000:286)

had been based on the SADC Treaty, Article 4, read in conjunction with the objectives of the OPDS, in response to hostile action by foreign states that required a defensive response by SADC.

However, there is a view that the involvement in the conflict by the three SADC states was motivated by their desire to protect their political and economic interests in the embattled country. Ngoma⁹⁷ states that the justification for the intervention was based on the reports that Zimbabwe had invested about US \$200 million⁹⁸ in the DRC, which also had huge debts with Zimbabwean state arms corporations. Moreover, together with Angola and Namibia, Zimbabwe is a part owner of a commercial bank in the country.⁹⁹

It is against this background that SADC Heads of state and government sought to find a lasting solution to the gaps created by the period 1996-2001, that is, creating more compact SADC security instrument and clarifying the regional body approach as far as military intervention is concerned. This happened on 14 August 2001 in Blantyre, Malawi when the SADC member states adopted the Protocol on Politics, Defence and Security Co-operation (PPDSC).

2.5 Institutional Legal Framework of Protocol on Politics, Defence and Security Co-operation (PPDSC)

The PPDSC was launched under Article 4 of the SADC treaty¹⁰⁰, which provides the guiding principles of the OPDS such as: the respect for the sovereignty, a commitment to solidarity, peace, security, human rights, democracy, the rule of law, and the promotion of economic development.¹⁰¹ Article 4 (c) of the SADC Treaty espouses two main important objectives of the treaty as firstly, common political values and secondly, the promotion and defending peace and security.

⁹⁷ Ngoma (2004:4)

⁹⁸ Ngoma (2004:4)

⁹⁹ Ngoma (2004:4)

¹⁰⁰ SADC Treaty entered into force in October 1993.

¹⁰¹ SADC was initially incapable of placing the OPDS under the structure of SADC as a whole. That is, SADC could not manage to integrate the OPDS into SADC. The 1996 SADC Summit stipulated that the OPDS would 'function independently' of other SADC structures (see SADC Communique, 1996). Owing to this decision, SADC was put to have two summit level bodies with no clear authority relations between them. Indeed, this led to the rivalry between South Africa and Zimbabwe. Whereas Zimbabwe insisted that the OPDS was an autonomous security mechanism, South Africa argued that the OPDS should be subordinate to the SADC Summit, which the SADC Treaty declared 'the supreme policy-making institution of SADC' under Article of 10(1).

2.5.1 Establishment of the OPDS

Article 9 (1)(b) of the SADC Treaty establishes the OPDS. This article read in conjunction with Article 10¹⁰² means the OPDS is not an autonomous body as previously advocated for by Zimbabwe. The correct interpretation of this article results in the logical conclusion that OPDS reports to the Summit, the Summit has the ultimate responsibility on deciding on matters submitted to it by the OPDS including military intervention.¹⁰³

Article 10(a) OPDS provides that:

1. The Summit shall select a Chairperson and a Deputy Chairperson of the OPDS on the basis of rotation from among the members of the Summit except that the Chairperson of the Summit shall not simultaneously be the chairperson of the OPDS.
2. The term of office of the Chairperson, Incoming Chairperson and the Outgoing Chairperson of the OPDS shall be one year respectively.
3. The Chairperson of the OPDS shall consult with the Troika of the Summit and report to the Summit.
4. There shall be a Ministerial Committee of the OPDS, consisting of the Ministers responsible or:
 - a. foreign affairs;
 - b. defence;
 - c. public security; or
 - d. state security,from each of the Member States, which shall be responsible for the coordination of the work of the OPDS and its structures.
5. The structure, functions, powers and procedures of the OPDS and other related matters shall be prescribed in a Protocol.
6. The Secretariat shall provide Secretariat services to the OPDS.
7. Decisions of the OPDS shall be taken by consensus.

These are some of the most critical provisions to emanate from the SADC Treaty that are fundamental to the creation of fully functional OPDS with a clear structure. They clarify any ambiguity that might have existed prior to the ratification of the PPDSC. Hammerstad¹⁰⁴

¹⁰² Article 10 (1) provides: The Summit shall consist of the Heads of State or Government of all Member States, and shall be the supreme policy-making Institution of SADC.

¹⁰³ The integration of the OPDS into the main SADC structure was a marked improvement from the previous Frontline States' arrangements in terms of the governance of this security sector. It reduced the possibility of contentious deployment of troops in the region and created more transparency of the work of the OPDS. Although knowledge of issues and decisions taken by the OPDS is not readily accessible to the public, except in the form of a communiqué, the OPDS is required to obtain approval for its engagements from Summit.

¹⁰⁴ Hammerstad, A. 2003. "A Long Road to SADC Security Integration: Is the OPDS on Politics, Defence and Security Heading in the Right Direction?." In Leviit, J.I (Ed) *Africa Mapping New Boundaries in International Law*. Oxford. Hart Publishing.

supports this submission when he says that the PPDSC is SADC's roadmap to security integration.

2.5.2 Salient features of PPDSC for military intervention

The Preamble of the PPDSC provides some of the desires of the member in so far as regional security is concerned. It states inter alia that SADC member states are convinced that:

‘That peace, security and strong political relations are critical factors in creating a conducive environment for regional co-operation and integration;

That the OPDS constitutes an appropriate institutional framework by which Member States could co-ordinate policies and activities in the area of politics, defence and security;’

This is undoubtedly a clear expression of intention of the SADC member states that at the centre of sound regional integration and economic development is the need to have a region that lives in peace and tranquillity. In other words, it is an admission on the part of SADC member states that in the absence of regional security it will be difficult if not impossible for the region to promote values of democracy and human rights. The preamble of the PPDSC sets the meaning and purpose of the protocol. The following articles of the PPDSC add impetus to values and aspirations of the SADC member states in so far as security and military intervention is concerned.

Article 2 of PPDSC sets out twelve objectives of the OPDS, and the key objectives in so far as military intervention is concerned are as follows:

Article 2 (1)

The general objective of the OPDS shall be to promote peace and security in the Region. This article is couched in a very wide fashion in that the use of the word ‘general objective’ is too broad to give it a specific meaning. The effect of such broad meaning is that where necessary the OPDS may rely on this particular provision to justify military intervention. There is nothing in this objective which restricts the member states from instituting military intervention especially where diplomacy has failed.

Levitt¹⁰⁵ on this point says that the key aims of the OPDS are to protect the people and development of the region against the breakdown of law and order and against interstate and intrastate conflict. Therefore, it is correct to state that by virtue of this article the OPDS supports cooperation in regional security through conflict management and by coordinating the participation of member states in international and regional peacekeeping.

Article 2 (2)

The objectives of the OPDS protocol as provided by Article 2 (2) of the OPDS concisely illustrate collective security arrangements. According to Likoti¹⁰⁶, these are geared towards protection of human rights and serve as guiding principles for the OPDS, as they seek to:

- a) protect the people and safeguard the development of the region against instability arising from the breakdown of law and order, intra-state conflict, interstate conflict and aggression;
- b) promote political co-operation among the member states and the evolving common political value system and institutions;
- c) develop a common foreign policy in areas of mutual concern and interest and lobbying as a region on issues of common interest in international fora;
- d) promote regional co-ordination and co-operation on matters related to security and defence and establish appropriate mechanism of conflict prevention, management, and resolution to this end;
- e) prevent, contain and resolve inter and intra-state conflict by peaceful means and through mediating inter-and intrastate disputes;
- f) use preventative diplomacy to pre-empt conflict in the region, both within and between states, through an early warning systems and consider enforcement action in accordance with international law and as a matter of last resort where peaceful means have failed;

¹⁰⁵ Levitt, J. 2002. *The Evolving Intervention Regime in Africa: From Basket Case to Market Place?* Available at <http://www.jstor.org>. Last accessed: 26 April 2011.

¹⁰⁶ Likoti, F, J.2006. *African Military Intervention in African Conflicts: An Analysis of Military Intervention in Rwanda, the DRC and Lesotho*. Available at www.uwc.ac.za. Last accessed on 16 April 2011.

- g) promoting and enhancing the development of democratic institution and practices within the territories of State Parties and encourage the observance of universal human rights as provided for in the charters and conventions of the UN and OAU;
- h) developing a collective security capacity and concluding a mutual defence pact for responding to external military threats, and building up regional peacekeeping capacity within national armies that could be called on to act within the region and elsewhere;
- i) develop close co-operation between the police and state security services of the States Parties in order to address cross-border crime as well as promoting a community based approach to domestic security;
- j) observe, and encourage the State Parties to implement, United Nations and African Union and other international conventions and treaties on arms control, disarmament and peaceful relations between states;
- k) develop the peace-keeping capacity of national defence forces and co-ordinate the participation of the State Parties in peace-keeping operations; and
- l) enhance regional capacity in respect of disaster management and co-ordination of international humanitarian assistance and also address conflicts outside the region that affect peace and security in Southern Africa.

The OPDS in its quest to execute its mandate of conflict management and prevention must follow procedures contained in Article 11 section 4.¹⁰⁷ In respect of both inter-and intra-state conflicts, the OPDS should seek to obtain the consent of the disputant parties to its peacemaking efforts.¹⁰⁸

The Chair, in consultation with the other members of the Troika¹⁰⁹, may table any significant conflict for discussion in the OPDS. According to this subsection, any state party may request the Chair to raise any significant conflict for discussion in the OPDS and in consultation with the other members of the troika.

¹⁰⁷ Likoti (2006:168-170)

¹⁰⁸ Likoti (2006:168-170)

¹⁰⁹ Article 3 (3) The Troika shall consist of the Chairperson of the OPDS, the Incoming Chairperson who shall be the Deputy Chairperson of the OPDS and Outgoing Chairperson.

Similarly, the OPDS shall respond to a request by a state party to mediate in a conflict within the territory of that state and shall endeavour by diplomatic means to obtain such a request where it is not forthcoming. Finally, and in accordance with Article 11 section 4(e), the exercise of the right of individual or collective self-defence shall be immediately reported to the Security Council and to the Central OPDS of the African Union Mechanism for Conflict Prevention, Management and Resolution.

2.5.3 Legal Capacity of OPDS for Military Intervention

Article 11 (1)(c) provides that the OPDS shall seek to manage and resolve inter- and *intra-state conflict* by peaceful means. (my emphasis). To begin with this provision lays the thinking behind the minds of the member states in that first and foremost at that realm of each internal conflict is the need for peaceful resolution of disputes. In other words, the SADC member states try by all means necessary to resolve domestic disputes peacefully. Thus, the SADC member states endeavour to avoid military intervention and only use it as a last resort. SADC has done this by instituting various mechanisms.¹¹⁰

However, Hammerstad¹¹¹ submits that internal conflicts are more salient than external ones and as such SADC members cannot afford to disregard traditional means of settling conflicts. What Hammerstad seems to be advocating is that in as much as peaceful means of conflict management may be the 'logical' thing to do; it has been proved in certain internal conflicts that military intervention may be the only way to resolve such internal disputes.

Therefore, in as much as article 11 (1) (c) attempts to advocate for peaceful settlement of internal conflicts, it is not always practical as illustrated by the internal conflicts in Lesotho and the DRC.

¹¹⁰ The commitment to collective security is expressed in the security architectures of the AU and regional economic communities (RECs). Understanding the security sector in Southern Africa, therefore, requires knowledge of regional political and security dynamics and structures. Other supporting structures include SADC standby force (SSF). Regional early warning centres (REWCs), as envisaged by the AU Continental Early Warning Centre (CEWS), potentially have a wide focus area that includes traditional and non-traditional security threats. There have been lengthy delays in the launch of SADC's early warning centre. It was eventually launched in July 2010. The functioning of the SADC EWC also seems to limit the slow of information as it is largely state intelligence driven.

¹¹¹ Hammerstad (2003:145)

2.5.4 Jurisdiction of the OPDS on Military Intervention

Article 11 (2) provides that:

b) The OPDS may seek to resolve any significant intra-state conflict within the territory of a State Party and a 'significant intra-state conflict' shall include:

(i) Large-scale violence between sections of the population or between the state and sections of the population, including genocide, ethnic cleansing and gross violation of human rights;

(ii) A military coup or other threat to the legitimate authority of a State;

(iii) A condition of civil war or insurgency; and

(iv) A conflict which threatens peace and security in the Region or in the territory of another State Party.

This article expressly clothes the OPDS with jurisdiction to intervene militarily in intra-state conflict. In as much as the OPDS may militarily intervene in inter-state conflict¹¹², Article 11 (2) (b) clearly outlines instances and circumstances under which the OPDS may militarily intervene in intra-state conflict.

Firstly, PPDS says that OPDS may seek to 'resolve' any significant intra-state conflict. What is important here is that in 'resolving' intra-state conflict the OPDS is not limited to use only peaceful means but also in the event that peaceful means fail, the OPDS has the jurisdiction to use force in the form of military intervention.

Secondly, the PPDS goes on to try and define what amounts to 'significant intra-state conflict'. The beauty of this article is that it is couched in such a way as to give it a very broad interpretation. For instance article 11 (2) (b) (ii) states that significant intra-state conflict shall include

large-scale violence between sections of the population or between the state and sections of the population, including genocide, ethnic cleansing and gross violation of human rights.

¹¹²Article 11 (2)(a) The OPDS may seek to resolve any significant inter-state conflict between State Parties or between a State Party and non- State Party and a 'significant inter-state conflict' shall include:
(i) a conflict over territorial boundaries or natural resources;
(ii) a conflict in which an act of aggression or other form of military force has occurred or been threatened; and
(iii) a conflict which threatens peace and security in the Region or in the territory of a State Party which is not a party to the conflict.

What amounts to large-scale violence is not defined. The effect of this is that it is left to both OPDS and the Summit of the Heads of State and Government to determine whether or not a particular state of affairs in a domestic conflict amounts to intra-state violence that is envisaged by the PPDSC so as to justify military intervention.

This raises two pertinent questions in this study. Did the violence in Zimbabwe that started in the late 1990 amount to large-scale violence that would have justified military intervention? Did the violence that ensued in Madagascar satisfied the concept of large-scale violence that would have justified military intervention? These questions will be addressed in more detail.

Moreover, the PPDSC provides under the same article that the OPDS has jurisdiction in intra-state conflict where there is gross violation of human rights. The PPDSC did not provide guidelines as to what constitutes ‘gross violation of human rights’, again it is left to the OPDS in consultation with the Summit to determine whether a particular state of affairs in a member state amount to gross violation of human rights so as to justify military intervention. Steiner, Alston and Goodman¹¹³ pose a very thought provoking question by asking that:

‘How would you identify the alleged human rights violation in each story?’

It is submitted that the answer to this question is a complex one, due to the controversies that surround the whole question of human rights and whether there is a difference between human rights violations and gross human rights violations. It is argued that the point of view from which one sees it will ultimately decide whether certain abuses amount to either human rights or gross human rights violations.

It is this uncertainty that creates divisions on whether or not OPDS should have militarily intervened in Zimbabwe and Madagascar. In most cases, the relationship between the heads of state and governments appears to have more weight in determining military intervention in a particular state rather the alleged intra-state conflict.

As such, the notion of military intervention based on gross human rights violations although acceptable, is hampered by the PPDSC’s failure to give guidelines as to what qualifies as

¹¹³ Steiner, H. J. Alston, P. Goodman, R. 2008. *International Human Rights in Context*. Oxford, Oxford University Press. p. 4. In line with this, it is submitted that the human rights movement now forms an indelible part of our legal, political and moral landscape and it also faced with many challenges. Human right are violated within individual states and not in outer space or on the high seas.

gross human rights violations. This ambiguity may be futile for maintaining regional security. The danger is that the OPDS may be faced with the same dilemma it was faced with in the Lesotho and DRC intra-state conflicts where individual member states intervened out of their own volition rather than militarily intervening based on the standard set by the OPDS.

Therefore, one seeks to find out whether the intra-state conflict in Zimbabwe amounted to gross violations of human rights that would have justified military intervention in that state? Or whether the state of affairs in Madagascar also amounted to gross violations of human rights as per the PPDS that would allow justified military intervention? If the answer to the two questions above is in the affirmative, why then did the SADC member states not opt for the route of military intervention seeing that diplomatic efforts had failed and the rights of the citizens of these two countries were being violated. Furthermore, SADC regional security was at serious risk. What other factors might have contributed to non military intervention in these two countries even though the situation on the ground clearly revealed the need for military intervention, since the actions of the two ‘governments’¹¹⁴ were contrary to the ideals and aspirations of SADC?

Article 11 (2) (b) (ii) adds another dimension to the issue of SADC military intervention. In this article, it is undoubted that where there is a military coup or other threat to the legitimate authority of a State SADC through its OPDS has jurisdiction to militarily intervene in a member state. This is mainly because at the core of good governance and security are the general principles of democracy, which will definitely be impinged upon by any coup or threat of a coup.

On this point it is argued that where there is military coup in a SADC member state then there is no need for any peaceful negotiations, OPDS should swiftly move in militarily to restore peace. This military intervention will ensure that there is limited disruption to the main systems of government and also make certain that the lives of the affected citizens are protected. In addition, there should be least interference with the basic rights of citizens especially in service provision. This must be done to maintain and protect international investments which are key to economic development in the region.

¹¹⁴ The legitimacy of these governments has been questioned. In the case of Zimbabwe since the controversial 2000, 2005 and 2010 Parliamentary elections as well the 2002, 2008 and the rerun Presidential elections, the authenticity of Mugabe led ‘government has been challenged in various quarters.

Therefore, negotiations by the conflicting parties under the auspices of SADC may then be arranged after the military intervention. In describing the whole aspect of military intervention Likoti¹¹⁵ seems to support the above reasoning when he asserts that military intervention in intra-state conflict involves:

“...The sending of large quantities of troops either to stabilise a regime against rebels or to help overthrow an established set of authorities...More often, the intervention is the result of a crisis; troops are sent in rapidly, often catching the regime or rebels by surprise”.

If Likoti’s argument is mirrored against the events in Madagascar then surely the OPDS would have used its jurisdiction to bring stability to that embattled country. Do the events in Madagascar justify military intervention under Article 11 (2) (b) (ii)? The answer to this question will be investigated in the next chapter.

Article 11 (2) (b) (iii) is an interesting one in so far as military intervention is concerned. In this provision, it is said that OPDS has military jurisdiction in a SADC member state where the intra-state conflict has ‘A condition of civil war or insurgency’. The first question that one has to answer is; should there be actual physical civil war or a ‘condition’ of civil war meaning the political or civil unrest is sufficient to justify military intervention.

The second question is: if only a ‘condition’ is sufficient then what kind of ‘condition’ should it be? Surprisingly the PPDS does not offer any guidelines as to the factors that amount to this ‘condition’ espoused by Article 11 (2) (b) (iii). It is left to the OPDS in consultation with the Summit to interpret certain happenings of events as to whether such an event fulfils the ‘conditions’ that call for military intervention. The situation that happened in Zimbabwe does not fulfil the requirements of civil war but appears to be have within the ambit of these undefined ‘conditions’.

In instances of actual civil war there is very little question on military intervention. SADC has an unquestionable mandate not only to maintain peace and security but also it has a duty to restore order as well ensuring regional stability. In so doing, SADC through OPDS can easily militarily interfere in intra-state conflict for purposes of regional security. However, OPDS is yet to use this jurisdiction in SADC. OPDS’s failure to act in accordance with this jurisdiction in countries like the Lesotho, DRC and Madagascar has been criticised. In the same light, although the Zimbabwean crisis cannot be said to have fulfilled the elements of

¹¹⁵ Likoti (2006:39)

civil war, the OPDS can be said to have got that right by default because the OPDS did not pronounce itself on that aspect.

In the same vein, it is argued that the Zimbabwe predicament did satisfy the second leg of

“A condition of civil war...”

If this argument is true then, OPDS should have used its jurisdiction to military intervene in Zimbabwe. The basis of this would have been based on a condition of civil war as provided for by Article 11 (2) (b) (iii) of the PPDS. Why then did OPDS not exercise military intervention in Zimbabwe taking into account the political violence which was between ZANU PF and MDC as well the violent takeover of white commercial farms?

With the temptation of venturing into this discussion and at the same time being cautious of not pre-empting the next chapter which discusses this issue in detail, it is important to state that the failure by the OPDS to exercise this jurisdiction was a failure of both OPDS and the Summit. It must be highlighted that the Summit in such instances should take the initiative to discuss the prospects of exercising this jurisdiction, in the event the OPDS does not do so. For the Summit to wait for OPDS to kick that ball rolling in so far as exercising this jurisdiction will be undermining the values and aspiration of the SADC people. It can be said that the Summit should be proactive when it comes to regional security.

At the time of writing this paper there was civil unrest in Malawi and nineteen (19) people has been reported killed in one day.¹¹⁶ Although this paper is not focussing on Malawi, this event cannot escape the lens of the Protocol. Malawi being a SADC member state one would have expected a more proactive role by OPDS. The analogy of Malawi is important in the sense that the same conditions in Malawi prevailed in Zimbabwe and Madagascar but with meaningful little action from OPDS.

If the death of nineteen people in one day cannot make SADC Heads of State and Government call for an extra-ordinary emergency meeting to discuss such gross violations of human rights with the prospects of military intervention then one wonders what it will take or how many lives of innocent unarmed SADC citizens should be killed before such military action can be taken.

¹¹⁶Mapondera, D. 2011. *Body Count Missed 1 Victim , 19 Killed in Anti Mutharika Protests*. The Malawi Post. Available at <http://www.maravipost.com>. Last accessed 7 October 2011. p.1.

This also explains why the Zimbabwe and Madagascar crises have been treated with kid gloves. There appears to be too much of a lacklustre approach by the SADC Heads of State and Government. It is about time that Summit through its OPDS should set a precedent once and for all by militarily intervening in intra-state conflict where lives are being lost at the hands to state machinery.

It does not help the SADC citizens to have other countries outside the region deploring the abuse of SADC citizens in a particular SADC member state. Yet, our very own body is either quiet, or it is not united in its decisions in dealing with a deviant member state. It is very slow to react and when it does react the situation would already deteriorated as in the cases of Zimbabwe and Madagascar.

CHAPTER 3

THE MADAGASCAR AND ZIMBABWE INTRA-STATE CONFLICTS

3.1 Introduction

The so called Zimbabwe and Madagascar crises came at a point when SADC was slowly healing from the divisions caused by the military interventions in DRC and Lesotho. One would have thought the divisions and the political tensions that emerged from these two conflicts would be sufficient lessons for the regional bloc to embark on a more solidified approach to intra-state conflict.

However, as would be shown below not many lessons were learnt from these conflicts and if anything the intra-state conflicts in these two countries went on to expose the weaknesses of the SADC security systems and the capacity to deal with intra-state conflict. What follows is a discussion as to whether SADC made the right decision by not militarily intervening in Zimbabwe and Madagascar. At the heart of this discussion is whether SADC's failure to militarily intervene in these two countries was a deliberate move which was meant to protect certain individuals?

3.2 The SADC Involvement in MAGADASCAR

3.2.1 Background

Madagascar has a very volatile background in so far as political tensions and feuds are concerned. At this point it is not necessary to dig into the political squabbles in Madagascar but focus will mainly be on the events that culminated in 2009 and beyond. Where necessary reference will be made only to the key political activities that took place prior to 2009. Subsequent to independence in 1960, power was first handed to the military in 1972, in a context of widespread unrest.¹¹⁷

In 1975 a military coup brought Didier Ratsiraka to power¹¹⁸, who ruled through authoritarian military means until 1993. Later on Albert Zafy was elected to the presidency.¹¹⁹ After another constitutional crisis in 1996, Zafy was impeached for breach of the constitution and

¹¹⁷ Cawthra, G. 2010. *The Role of SADC in Managing political crisis and conflict*. Available at www.fes.de. Last accessed 29 October 2011.

¹¹⁸ Constitution net Supporting Constitutional Building Globally. 2010. *Constitutional History of Madagascar*. Available at www.constitutionnet.org. Last Accessed on 19 October 2011.p.1

¹¹⁹ Cawthra (2010:13)

Ratsiraka was voted back into power until December 2001 when democratic elections led to a disputed result.¹²⁰ Ratsiraka's contender in these elections was Marc Ravalomanana. He claimed victory with 52 per cent of the votes and declared himself President in a disputed election.¹²¹

Despite his controversial rise to power, Ravalomanana and his party, Tiako-I-Madagasikara (TIM), dominated the polity (and many would argue the economy) until the crisis of 2009.¹²² Eventually, however, Ravalomanana established his grip on power, including over the military, and after legislative elections international support gradually shifted in his favour. His government was eventually recognised¹²³ internationally and Ratsiraka was obliged to flee the country for exile in France after the collapse of his support base, in particular the militias he had set up.¹²⁴

Andry Rajoelina, emerged as the key political opponent of Ravalomanana, and in January 2008 won a local election to become mayor of the Antananarivo.¹²⁵ A position formerly occupied by Ravalomanana. A wealthy and popular public figure, at least in the capital, Rajoelina owned a television channel, VIVA, which was shut down by the government in December 2008 when it attempted to broadcast an interview with former president Ratsiraka.¹²⁶

Rajoelina's supporters took to the streets of Antananarivo in a series of increasingly large popular demonstrations (numbered in the tens of thousands by most accounts).¹²⁷ The Madagascar council of churches, in which the Catholic church was prominent, attempted to mediate, and a number of international actors, including SADC, became engaged.¹²⁸ When

¹²⁰ Cawthra (2010:13)

¹²¹ Cawthra (2010:13)

¹²² Africa Policy Institute Madagascar. 2009. *Madagascar Regional Path to Peace*. Available at www.africapi.org. Last Accessed on 19 October 2011.p.6.

¹²³ The OAU, by now the AU, held out recognition for some time, on the basis of the principle of not supporting unconstitutional changes of government (even though by then Ravalomanana had secured the support of the High Constitutional Court for this presidency).

¹²⁴ Asimov, J. 2011. *Madagascar's Political Institutions*. Available at www.africanworldpolitics.site.wesleyan.edu. Last Accessed on 19 October 2011. p.1

¹²⁵ Africa Policy Institute Madagascar (2009:7)

¹²⁶ Perry, A. 2009. *Madagascar Roiled by Power Struggle*. Available at www.time.com. Last Accessed on 19 October 2011. p.1.

¹²⁷ Corbett, C. 2009. *Pressure on for Madagascar Leader*. Available at <http://news.www.bbc.co.uk>. Last Accessed on 19 October 2011. p.1

¹²⁸ Corbett (2009).

demonstrators marched on the presidential palace, a protected area, on 7 February, several were shot dead by soldiers and others wounded – in total up to 100 were killed by the end of the confrontations.¹²⁹

On 17 March Ravalomanana handed over power to the highest ranking officer in the armed forces asking that a military *directoire* be set up to rule the country.¹³⁰ The military promptly handed over the keys of office to Rajoelina, arguing that a popular uprising had taken place and a legitimate government already existed, and Ravalomanana was obliged to leave the country¹³¹, hoping to gather international including SADC support for his return, while his supporters in turn took to the streets of Antananarivo.

The seizure of power was widely condemned internationally as a coup d'état. Certainly it was an unconstitutional change of government, as there was no provision in the constitution for Ravalomanana to hand over power to the military, nor for the military to in turn transfer power to Rajoelina.

3.2.2 Response by SADC

In a somewhat surprising development SADC opted to follow the negotiation process as was done by the AU, UN¹³² and other international groups.¹³³ The day after the unconstitutional change of government on 17 March, Zambia called for Madagascar's suspension from the bloc, while the OPDS met on 19 March and took a position of refusing to recognise Rajoelina.¹³⁴ The OPDS indicated that it would consider imposing sanctions if the constitutional order was not restored. The following day, the AU's PSC followed suit.

¹²⁹ Cawthra (2010:14)

¹³⁰ McGreal, C & Corbett, C. 2009. *Madagascar President Marc Ravalomana Resigns*. Available at www.guardian.co.uk. Last Accessed on 19 October 2011. p.1.

¹³¹ Ravalomana went into exile in South Africa. In 2011 he attempted to go back to Madagascar but his trip was foiled mainly due interference by President Jacob Zuma.

¹³² Initially mediation had been carried out by the Madagascar Council of Churches, but this soon passed to the international community in the form primarily of the AU and the UN. Given the relative lack of coherent political parties, the mediators invited the participation not just of the Ravalomanana and Rajoelina camps, but also the two former presidents, Ratsiraka and Zafy.

¹³³ These included the International Organisation of la Francophonie, the AU, SADC, the Indian Ocean Commission, the European Union and the UN, which were jointly grouped as the International Contact Group (ICG).

¹³⁴ Chapman, C.T. 2011. *Former Sm Simao Discusses the Madagascar Crisis*. Available at www.dazzlepod.com. Last accessed on 19 October 2011. p.2.

At the extraordinary summit of the OPDSC held on 31 March, Madagascar was suspended from membership.¹³⁵ The executive secretary of SADC, Thomaz Salamao, urged Rajoelina ‘to vacate the office of the president as a matter of urgency, paving the way for unconditional reinstatement of President Ravalomanana’.¹³⁶

3.2.2.2 Military Intervention as an Option

The option of a military intervention using SADC was mooted by King Mswati,¹³⁷ and logistics, such as the provision of transport aircraft by Angola were discussed. This came as something of a shock to most Madagascans, and was exploited by Rajoelina, who whipped up nationalist fervour around the issue. It has been reported that that the armed forces were actively preparing to fight back against any SADC military intervention.¹³⁸

The Common Market for Eastern and Southern Africa (COMESA)¹³⁹ also supported the option of military intervention to restore democracy, in a statement adopted at a summit held in Zimbabwe and chaired by King Mswati III of Swaziland.¹⁴⁰ The irony of the authoritarian regime of Mswati adopting such a position, and in crisis-ridden Zimbabwe¹⁴¹, appeared to be lost on the participants.¹⁴² Ravalomanana also descended on Swaziland,¹⁴³ to lobby for support, military or otherwise, and at the end of March, a summit of SADC itself affirmed its earlier position of supporting his reinstatement and suspending Madagascar from membership.¹⁴⁴

Why then did SADC not support the military intervention in Madagascar as was suggested by Mswati? Was it an issue of double standards on the part of SADC? Was SADC protecting certain individuals or a regime? There is no doubt that the events in Madagascar were a clear coup d’état. A more detailed analysis on the failure of SADC to avert a military a coup and uphold democracy in Madagascar will be discussed in Chapter five.

3.2.3 SADC’s Mandate and Achievements in Madagascar

¹³⁵ Chapman (2011).

¹³⁶ Chapman (2011).

¹³⁷ Chapman (2011).

¹³⁸ Africa Policy Institute (2009).

¹³⁹ Africa Policy Institute (2009).

¹⁴⁰ Africa Policy Institute (2009).

¹⁴¹ Bauer, G. & Taylor, S.D. 2005. *Politics in Southern Africa*. Colorado. Lynne Reinner Publishers. p. 179.

¹⁴² Cawthra (2010:20).

¹⁴³ Cawthra (2010:20).

¹⁴⁴ Cawthra (2010:20)

There is very little achievement that SADC has brought about in Madagascar. The regional bloc has again opted for the prolonged negotiations which took almost ten years for Zimbabwe to start the rebuilding process. The suspension of Madagascar by SADC does not bring much hope to the Madagascans since not many SADC countries trade with the Madagascar except South Africa. It is submitted that SADC once again failed the Madagascan citizens and indirectly the SADC citizens.

3.3 The SADC Involvement in ZIMBABWE

3.3.1 Background

Zimbabwe occupies a special place within the ranks of SADC mostly because of its political history and the fact that it was the first country to Chair the OPDS. It was also instrumental in the transition of Southern African Development Coordinating Committee (SADCC) to SADC and the role played by Robert Mugabe in the set up and operations of OPDS.

This study focuses on the key political violence that happened towards late 1990's into the year 2000 and beyond which put SADC in the spotlight in so far as regional security is concerned. As indicated in chapter one there were clear signs of political intolerance by ZANU PF as early 1980-1987 just after independence especially for dissenting views that directly opposed machinations of ZANU PF. For some reason the international community failed to address this situation at that early stage and the result was the catastrophic meltdown of the political and economic situation in 1999 and beyond.

Hendricks and Musavengana¹⁴⁵ argue that directly related to the economy, in 1997 the government was arm-twisted by the militant ZNLWVA¹⁴⁶ to pay each of the more than 50 000 'war veterans' Z\$50 000 (roughly US\$4 500 at that time), plus monthly pensions of Z\$2 000. Then came 14 November 1997, a day that became known as 'Black Friday' when the Zimbabwe dollar lost 74 per cent of its value from 'around Z\$10 to below Z\$30 to the US\$ over four hours of trading time'.¹⁴⁷ As a result the MDC a political party was formed in 1999

¹⁴⁵ Hendricks, C. & Musavengana, T. 2010. *The security sector in Southern Africa*. Available at www.iss.co.za. Last accessed on 10 October 2011.

¹⁴⁶ To obviate the threat that the war veterans' movement posed to its hegemony, over the years ZANU-PF has deftly manipulated the legitimate concerns of excombatants and used members of ZNLWVA for its own partisan political purposes.

¹⁴⁷ In synchronisation, the stock market followed suit, 'wiping away 46 per cent from the value of shares as investors scrambled out of the Zimbabwe dollar'

as a coalition of labour based unions that responded to the political and economic decline in the country. The MDC then embarked on a political run that has been in continuous clashes with ZANU-PF.

In February 2000 a referendum for a new constitution was proposed, which would have returned the government to a bicameral parliament and established an executive president assisted by a prime minister, and extended indefinitely the period Mugabe could be President.¹⁴⁸ Mugabe added to the draft presented by the constitution committee authorization for the government to seize farmland without compensating the owners, assigning this responsibility to the British government.¹⁴⁹ Land reform had been an important issue in Zimbabwe since independence.

The 2000 constitutional referendum was the first test case of the strength of the opposition (MDC) as well character and popularity for ZANU-PF in the wake of economic and political decline. This was the first real defeat for Robert Mugabe and his cronies. Raftopolous and Mlambo¹⁵⁰ submit that the defeat of the Government by an MDC-led campaign in a 2000 constitutional referendum precipitated the current crisis when the government unleashed a wave of terror against supporters of the MDC and white commercial farmers whom it blamed for having sponsored the new opposition party.

Convinced that the MDC was a front for white, particularly white farmer, interests, ZANU-PF hit back with the fast-track land reform exercise under the banner of the Third Chimurenga¹⁵¹ economic war. Hendricks and Musavengana argue that what made the land reform programme a feasible strategy for hitting back at political opponents and mobilising the populace behind ZANU-PF was the fact that, for a variety of reasons, the land question had never been fully and satisfactorily resolved since independence in 1980.¹⁵²

In the land grab violence that ensued Zimbabwe was in a state of anarchy because even in urban areas where the people were suspected to be MDC supporters were attacked and

¹⁴⁸ Hendricks & Musavengana (2010:147)

¹⁴⁹ Hendricks & Musavengana (2010:147)

¹⁵⁰ Mlambo, A. & Raftopoulos, B. 2010. *The Regional dimensions of Zimbabwe's multi-layered crisis: an Analysis*. Available on www.kas.de Last accessed on 7 October 2011.

¹⁵¹ Chimurenga is a term that was used by ZANU-PF and its allies in the liberation struggle from white colonial rule. It is a term that is synonymous with violence and intolerance of unprecedented degrees.

¹⁵² Hendricks & Musavengana (2010:147)

killed¹⁵³ by ZANU-PF thugs or militias. The author is of the opinion that would have invited SADC to consider military intervention since the country had virtually been grounded to a halt due to political violence.

The MDC and its sympathisers did not sit back on their laurels but also responded violently by attacking killing ZANU-PF supports countrywide.¹⁵⁴ How many Zimbabweans had to die for SADC to military intervene and stop this violence? To whose benefit were the endless dialogues by SADC on Zimbabwe?

In the midst of this political violence it was clear that both the MDC and ZANU-PF were fully prepared for full blood large scale violence. It is argued that were it not that the state security agents¹⁵⁵ were on the side of ZANU-PF who then used extra police and military weapons as well tactics, the violence would easily disintegrated into a civil war. Despite this, the MDC and its supporters still managed to orchestrate some violence against ZANU-PF members in all the elections that spanned the years 2000, 2002, 2005 and 2008 elections.

3.3.2 Response by SADC

SADC remained publicly silent on issues of human rights, and although it did encourage the promotion of free and fair elections, it failed to exercise any criticism of electoral processes, congratulating the ‘people of Zimbabwe’ and the government after each election.¹⁵⁶ During the early period of the crisis SADC did not give itself any mediation role, and it was only

¹⁵³ Bauer & Scott (2005:178) report that as of February 2002 over 100 people most MDC supporters had been killed.

¹⁵⁴ The Information Ministry went on to accuse the MDC of “concentrating on violence and the preparation of a full-scale military war,” accusations very similar to those made against ZAPU in the mid-1980s, after Mugabe had decided it could not be tolerated even as a member of a coalition government. Mugabe used the justice system to tie up opposition leaders in legal battles, just as he had with the ZAPU leadership.

¹⁵⁵ The systematic use of torture against members and suspected members of the MDC. Those responsible included “agents of Mugabe’s Zimbabwe African National Union-Patriotic Front (ZANU-PF) political party, police officials, agents of the Central Intelligence Organization, and members of the pro-Mugabe youth militia.” The targeted detention and torture of MDC supporters and journalists provided yet another level of intimidation for those opposing the Mugabe and the government. The ZANU youth movement, one generation younger, was active again, attacking MDC supporters and burning MDC homes, offices, and vehicles and even attempting assassination of Tsvangirai.

¹⁵⁶ Amnesty International, Zimbabwe Human Rights NGO Forum and Zimbabwe Lawyers for Human Rights. 2007. *Human rights issues must be at the centre of any dialogue between the government of Zimbabwe and the opposition political parties*. Available at www.humanrightsinitiative.org. Last accessed on 24 October 2011.

when the matter of Zimbabwe was referred to the AU at its Sharmel-Sheik summit in June 2008¹⁵⁷, that the AU directed that SADC be put in charge of mediating a solution to the crisis.

3.3.3 SADC's Mandate & Achievements

SADC's mandate thus came directly from the AU.¹⁵⁸ In turn, at its 2008 Dar-es-Salaam conference, SADC appointed the then South African president Thabo Mbeki as chief mediator.¹⁵⁹ SADC generally presented a united front, which most observers have interpreted as being in support of the incumbent regime, and it has been widely criticized internationally for failing to take a public stand against human rights violations, breaches of the rule of law and repression. However, Botswana openly broke ranks after the fiasco of the 2008 presidential elections, condemning Mugabe as repressive.¹⁶⁰ As indicated earlier on President Ian Khama called for internationally-supervised elections, and Zambia and Tanzania were willing to speak out against Mugabe/ZANU-PF and support positions taken by the MDC-T.¹⁶¹

¹⁵⁷ Africa Union. *11th AU Summit 24 June-1 July 2008*. Available at www.africa-union.org. Last accessed on 24 October 2011. p 1 -2

¹⁵⁸ Africa Union. *Regional Economic Communities*. Available at www.africa-union.org. Last accessed on 24 October 2011. p.1

¹⁵⁹ The appointment of Mbeki proved to be controversial, with the MDC-T arguing that he was pro- ZANU-PF.

¹⁶⁰ Mabuza, E. 2008. *Khama in SA over Zimbabwe Impasse*. Available www.allafrica.com. Last accessed on 24 October 2011. p.1.

¹⁶¹ Mutasa, T. 2009. *SADC's Responsibility on Zimbabwe*. Available at www.newzimbabwe.com. Last accessed on 24 October 2011. p.1.

CHAPTER 4

ECOWAS MILITARY INTERVENTION IN SIERRA LEONE AND LIBERIA

4.1 Introduction

This chapter focuses on the intervention by Economic Community of West African States (ECOWAS) and its military arm, the Economic Community of West African States Monitoring Observer Group (ECOMOG) in the Liberia and Sierra Leone conflicts. The chapter enquires into the legality and legitimacy of the military intervention, against the backdrop of existing international law prohibition on the use of force, and the principle of non-intervention in the domestic affairs of sovereign states.

Furthermore, this chapter tries to bring out the non-hesitation of ECOWAS to militarily intervene in intra-state conflicts within its region which is contrary to the approach taken by OPDS. The first part of this chapter deals with the brief historical background of ECOWAS, followed by an analysis of its legal instrument that it used to justify its military intervention in Sierra Leone and Liberia. The last part of this chapter deals with the analysis of the conflicts in these two countries and the eventual military intervention by ECOWAS.

4.2 An Overview Of ECOWAS

ECOWAS was founded in 1975 as a sub regional group of fifteen West African countries.¹⁶² Eight of the countries are French speaking whilst the five of the remaining are English speaking and two speak Portuguese.¹⁶³ The organisation's mission is to promote economic integration in all fields of economic activity, particularly industry, transport, telecommunications, energy, agriculture, natural resources, commerce, monetary and financial questions, and social and cultural matters.

¹⁶² Agyapong, W. 2005. *Military intervention in intrastate conflicts in West Africa: economic community of West African states monitoring group as a case study*. Available at <http://www.dtic.mil>. Last accessed on 6 October 2011.

¹⁶³ The Organisation is comprised of Burkina Faso, Benin, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo. The Organisation also includes the following institutions: the Authority of Heads of States and Government, Council of Ministers, Community of Parliament, Economic and Social Council, Community Court of Justice, Executive Secretariat and the ECOWAS Bank for Investment and Development.

ECOWAS mainly restricted their interactions to purely economic matters and less focused on political issues confronting West Africa.¹⁶⁴ Political matters were mostly left up to states to deal with each other. The economic rationales for integrative schemes of ECOWAS are clearly spelt out in Article 2(1) of the treaty. The article states that ECOWAS seeks:

“To promote cooperation and development in all fields of economic activity, for the purpose of increasing and maintaining economic stability.”

However, a mechanism was put in place to handle the possibility of interstate conflicts; whereas, *intrastate* matters were completely based on a non-interference principle. The events that ensued in Liberia in 1989 changed this tradition when ECOWAS decided to intervene in this civil war.

It was quite clear from the onset that the security role was not an explicit task for this West African Organisation. However, the sub regional leaders became aware of the serious gap and adopted the “Protocol on Mutual Defense Assistance”¹⁶⁵ in Freetown, Sierra Leone, on 29 May 1989.

4.2.1 Protocol on Mutual Defense Assistance

At a summit in Lome on December 10 1999, member states of ECOWAS adopted the protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security.¹⁶⁶ The Mechanism thus became the Organisation’s constitution on collective security in the West African-region. In a clear departure from the OAU/AU traditional principle of non-intervention in the internal affairs of member states, the Mechanism empowers ECOWAS to intervene in internal conflicts of member states as a result of massive violation of human rights and a breakdown of the rule of law.

The protocol provides for a non-standing military force to be used to render mutual military aid and assistance to a member state that falls victim to aggression.¹⁶⁷ The protocol obliges member countries to respond to any member’s request during an internal conflict situation where the conflict has foreign involvement and is likely to affect security in the entire sub region. Mashishi notes that despite the fact that this protocol was activated during the

¹⁶⁴ Mashishi (2003:33)

¹⁶⁵ Levitt (2003:112)

¹⁶⁶ Levitt (2003:122)

¹⁶⁷ Buzan, B & Waever, O. 2004. *Regions and Powers. The Structures International Security*. Cambridge. Cambridge University Press. p. 239.

Liberian conflict, only few members (mainly from the Anglophone countries) heeded the call initially to form the force that came to be known as ECOMOG.¹⁶⁸

4.2.2 ECOWAS Ceasefire Monitoring Group (ECOMOG)

ECOMOG as an intervention force was established in August 1990 as a result of the Liberia conflict.¹⁶⁹ ECOMOG operates under the directives of the authority of the heads of state of ECOWAS. This authority is usually exercised, on behalf of all heads of states, by an elected head of state sitting as chairperson of the Community.¹⁷⁰ Day-to-day issues and political directives are handled by the ECOWAS Secretariat, which is headed by an executive secretary. Military operations are entrusted to the force commander. There are also two other supervisory political structures namely: the Defence Council¹⁷¹ and the Defence Commission.¹⁷²

4.2.3 ECOMOG Intervention missions

Khobe submits that in its intervention operations, ECOMOG has usually been deployed at the request of a legal government to stop a situation from degenerating further into anarchy.¹⁷³ In Liberia, the government virtually existed only in the Presidential Palace while its opponents had little control over the actions and activities of combatants fighting for them.¹⁷⁴ Consequently, civilians became principal targets of the conflict.¹⁷⁵ The security and economy of neighbouring states were strained by the influx of refugees and criminal armed groups.

In Sierra Leone, the government was removed in a military mutiny and the succeeding illegal regime could not control the activities of the enlisted ranks that carried out the

¹⁶⁸ Mashishi (2003:4)

¹⁶⁹ Buzan & Waeber (2004:239)

¹⁷⁰ ECOWAS Treaty.

¹⁷¹ The Defence Council consists of the ministers of Defence and Foreign Affairs of member states and is headed by the current chairperson of the Community. It is this Council that examines the situation on the ground, decides the strategy to be adopted and the means of intervention to be used.

¹⁷² The Defence Commission consists of chiefs of defence staff of the armed forces of member states. It is a purely technical committee that advises on military operations.

¹⁷³ Khobe, M.M. 2000. *The Evolution and Conduct of ECOMOG Operations in West Africa*. Available at www.iss.co.za; Last accessed on 3 August 2011.

¹⁷⁴ Levitt (2003:113)

¹⁷⁵ Khobe (2000)

mutiny.¹⁷⁶ Thus, the state actually protected criminals who went plundering other people's property, raping women and murdering opponents.

4.3 Liberia Intra-State Conflict

There are different opinions as to the actual cause of the civil war in Liberia. Addo¹⁷⁷ submits that the Liberian civil war was sparked by several factors, including the quest for wealth and power, ethnicity and bad governance. The war lasted (intermittently) for almost fourteen years, ending in July 2003. It was interspersed with the election of Taylor's government into power from 1997-2003.¹⁷⁸ This civil war drew in both state and non-state warring factions. ECOMOG carried out two separate intervention operations in Liberia.

The first Liberian civil war occurred from August 1990 to July 1997¹⁷⁹. During this eight-year period, ECOMOG was opposed and attacked by the National Patriotic Front of Liberia (NPFL) who saw ECOMOG as an occupation force. This eventually led to peaceful free and fair presidential and parliamentary elections, on 19 July 1997, with Charles Taylor becoming the president.¹⁸⁰

The second ECOMOG Intervention operation in Liberia occurred five years later in August 2003.¹⁸¹ Two rebel movements, the Movement for Democracy in Liberia (MODEL) and the Liberia United for Reconciliation and Democracy (LURD), invaded from the north and west and controlled a large part of the country.¹⁸² The rebel groups demanded the resignation of the president and a fresh election.¹⁸³

President Taylor yielded to enormous pressure by ECOWAS leaders and agreed to the rebel's demands on the condition that an ECOMOG force be formed to provide security to the

¹⁷⁶ Levitt (2003:113)

¹⁷⁷ Addo, P.2005. *Peace-making in West Africa: Progress and Prospects*. Available at www.kaiptc.org. Last accessed 3 August 2011. p.6.

¹⁷⁸ Addo (2005:13)

¹⁷⁹ The actual period varies as other authors have submitted that the war ended in October 1998. The reason for these dates may be attributed to different documentation and the complicated events that led to the civil war. For the purposes of this paper it is submitted that the first civil war ended in July 1997.

¹⁸⁰ Agyapong (2005:7)

¹⁸¹ Agyapong (2005:7).

¹⁸² Meredith, M. 2009. *The State of Africa*. Cape Town. Jonathan Ball Publishers.p.572

¹⁸³ Agyapong (2005:7).

interim government until fresh elections were held.¹⁸⁴ Consequently, ECOWAS employed ECOMOG, made up of mainly Nigerian Troops, to intervene with logistical support from the US.¹⁸⁵ This force was known as ECOWAS Mission in Liberia (ECOMIL).¹⁸⁶ ECOMOG forces now numbering about 3,500 troops, continued to maintain security in Monrovia and facilitated the signing of a Comprehensive Agreement in Accra on 18 August 2003 which brought in the UN.¹⁸⁷ The agreement¹⁸⁸ requested the UN to deploy a force to support the NTGL to implement the agreement.

On 19 September 2003, the Security Council adopted resolution 1509 (2003), authorizing a UN mission to be known as United Nations Mission in Liberia (UNMIL).¹⁸⁹ The force strength was earmarked at 15,000 soldiers and 1,115 civilian police officers and at its inception was the largest on-going UN peacekeeping mission in the world.¹⁹⁰ Once more, the Security Council requested the Secretary General to transfer authority of the mission area from ECOMIL to UNMIL on 1 October 2003 and absolve the ECOMIL troops.¹⁹¹ Approximately 3,500¹⁹² ECOMIL troops became UNMIL troops on 1 October 2003 all in the quest for peace in the West African sub region.

4.4 Sierra Leone Intra-State Conflict

4.4.1 Background

Sierra Leone got her independence in 1961 after 174 years of colonial rule.¹⁹³ Like many other African states, Sierra Leone is a multi ethnic society, is made up of 17 ethnic groups.¹⁹⁴

¹⁸⁴ Hoffman, D. 2009. "Despot deposed: Charles Taylor and the Challenge of state reconstruction in Liberia." In Southhall, R & Melber, H. (Ed). *Legacies of Power*. Cape Town. Human Science Research Council.p.308.

¹⁸⁵ Nanda, V.P. 1994. Civil War in Liberia. A Reexamination of the doctrine on Nonintervention. In McCarthy-Arnolds, E. Penna, D.R & Sobrepena, D.J.C (Ed).*Human Rights and the Global System*. London. Greenwood Press. p. 73.

¹⁸⁶ ECOWAS Mission. 2010. *ECOWAS International Conference Two Decades of Peace Process in West Africa. Achievements-Failures-Lessons*. Available at www.comm.ecowas. Last Accessed on 24 October 2011. p.15.

¹⁸⁷ Comprehensive Agreement in Accra on 18 August 2003

¹⁸⁸ Comprehensive Agreement in Accra on 18 August 2003.

¹⁸⁹ United Nations. *United Nations Mission in Liberia*. Available at www.un.org. Last Accessed on 24 October 2011.p.1.

¹⁹⁰ International Crisis Group (ICG). 2003. *Liberia: Security Challenges*. Available at <http://www.crisisgroup.org>. Last Accessed on 7 October 2011. p.1.

¹⁹¹ ICG (2003:1)

¹⁹² ICG (2003:2)

¹⁹³ Simon, O.B. 2006. *Legality and Legitimacy of Military Intervention in Intra States Conflict: A Case Study of ECOWAS Intervention in Sierra Leone*. Available at <http://wiredspace.wits.ac.za>. Last Accessed on 7 October 2011. p. 36.

¹⁹⁴ Simon (2006:36)

The two largest are the Temne who occupy large sections of the northern region, and the Mende, who dominate the south and eastern parts of the country.¹⁹⁵ The two groups account for about 60% of the country's population.¹⁹⁶

Intra-state conflict in Sierra Leone, is complex and therefore requires a patient and careful analysis in order to understand it.¹⁹⁷ The two major parties in the post-colonial era were, the All Peoples Congress (APC) led by Siaka Stevens, and the Sierra Leone Peoples Party (SLPP) led by Milton Margai.¹⁹⁸ After Siaka Steevns, Momoh took over in 1986 and continued in the footsteps of Stevens surrounding himself with his Limba kinsmen.¹⁹⁹ He was also unable to tackle the issue of graft and corruption, which had become the hallmark of Sierra Leone politics.²⁰⁰ The conflict in Sierra Leone started brewing furiously when the government of Joseph Momoh suspended the payment of salaries, notably of teachers and the military.²⁰¹

This eventually led to the disintegration of authority, unemployment, and crime.²⁰² The weak state system and the general economic decline affected government's ability to respond effectively to the rebellion.²⁰³ Simon argues that due to the non-payment of the security agencies and the army, the morale was so low that instead of protecting the state and the population against the Revolutionary United Front's (RUF) abuses, some soldiers chose to moonlight as rebels to loot and harass the population.²⁰⁴

When the army took over power in 1992 and Captain Valentine Strasser became the Chairman of the National Provisional Ruling Council (NPRC),²⁰⁵ they promised that the RUF insurgency would be dealt with immediately. Jubilation greeted the coup and Sierra Leoneans

¹⁹⁵ United Nations High Commissioner of Refugees. *Sierra Leone: Conflicts between the Mende and Temne Tribes and particularly the Kamajors targeting of the Temne*. Available at www.unchr.org. Last Accessed on 19 October 2011.

¹⁹⁶ Simon (2006:36)

¹⁹⁷ Simon (2006:37)

¹⁹⁸ Meredith, M. 2006. *The State of Africa*. Capetown. Jonathan Publishers. p.562.

¹⁹⁹ Simon (2006:37)

²⁰⁰ Simon (2006:37)

²⁰¹ Simon (2006:37)

²⁰² Meredith (2006)

²⁰³ Meredith (2006)

²⁰⁴ Simon (2006:43)

²⁰⁵ Simon (2006:43)

looked forward to a hopeful end of the conflict.²⁰⁶ However, the NPRC could not live up to its promise. They instead became involved in the very corrupt practices that had marred the previous regimes so the argument goes.²⁰⁷ It is obvious from the above background that political injustice, manipulation, ethnic politics, disruption of the rule of law, corruption on all levels of government bureaucracy, mismanagement, misappropriation, and embezzlement of state funds, all contributed to the civil war in Sierra Leone.²⁰⁸

The RUF²⁰⁹ rose from the ashes of the abandoned Sierra Leone's radical students "revolutionary" project. March 23, 1991 is a date most Sierra Leoneans would prefer to wish away.²¹⁰ It was on this date that the RUF combatants invaded Sierra Leone from Liberia at Bomaru in Kailahun district, and Mano River Bridge, Pujehun district.²¹¹ The RUF was to hold sway in Sierra Leone for the next eleven years. The initial force that entered Sierra Leone was made up of two units: Vanguard²¹² and Special Forces.²¹³ It is instructive to note that the territory through which the RUF invaded Sierra Leone was under the control of Charles Taylor's NPFL.

While Taylor's involvement in Sierra Leone was to retaliate against the country, for its involvement in ECOMOG operations in Liberia.²¹⁴ It is also argued that Taylor wanted unlimited access to the rich agricultural and diamond lands in south-eastern Sierra Leone, in order to pay for his war efforts in Liberia.²¹⁵

²⁰⁶ Simon (2006:43)

²⁰⁷ Meredith (2006)

²⁰⁸ Levitt (2003:116)

²⁰⁹ Levitt (2003:116)

²¹⁰ Simon (2006:45)

²¹¹ Simon (2006:46)

²¹² The Vanguard consisted of those who trained in Libya in 1987/88 and disgruntled Sierra Leoneans recruited in Liberia. Sankoh, Abu Kanu, and Rashid Mansaray were part of the first group.

²¹³ The Special Forces on the other hand were the National Patriotic Front of Liberia (NPFL) fighters who were on loan to RUF by Charles Taylor.¹⁶⁴ This also included about 200 Burkinabe regular soldiers.

²¹⁴ Levitt (2003)

²¹⁵ Incidentally, Taylor is reported to have approached few members of Momoh's government in 1989 to provide him with a base to invade Liberia. However, they reported him to the security agents after taking his money and he was arrested, jailed and later expelled from Sierra Leone.

4.4.2 ECOMOG Military Intervention

The Protocol on Mutual Assistance on Defense (MAD) was adopted in 1981²¹⁶ and it provided for three scenarios under which ECOWAS can legitimately intervene in another state.

Article 16

When an external armed threat or aggression is directed against a Member State of the Community, the Head of State of that country shall send a written request for assistance to the current Chairman of the Authority of ECOWAS, with copies to other Members. This request shall mean that the Authority is duly notified and that the AAFC are placed under a state of emergency. The Authority shall decide in accordance with the emergency procedure as stipulated in Article 6.²¹⁷

Article 17

When there is a conflict between two Member States of the Community, the Authority shall meet urgently and take appropriate action for mediation. If need be, the Authority shall decide only to interpose the AAFC between the troops engaged in the conflict.

Article 18

1. In the case where an internal conflict in a Member State of the Community is actively maintained and sustained from outside, the provisions of Articles 6,8²¹⁸ 9²¹⁹ and 16 of this Protocol shall apply;
2. Community forces shall not intervene if the conflict remains purely internal

ECOWAS intervention in Sierra Leone was the second time it was intervening militarily in the sub region. The first was in 1990 in Liberia when the magnitude of the crisis and the human suffering made it difficult for the force to be challenged, despite the indications that the authors of the intervention could have had other reasons.

²¹⁶ Protocol Relating to Mechanisms of Conflict Prevention. 10 December 1999. Available at www.comm.ecowas.int. Last accessed on 7 October 2011.

²¹⁷ Article 6 (1) The Authority on the occasion of the annual ordinary meeting of ECOWAS shall examine general problems concerning peace and security of the Community; (2). The Authority may also hold extraordinary sessions on defence matters where circumstances so require ;(3). The Authority shall decide on the expediency of the military action and entrust its execution to the Force Commander of the Allied Forces of the Community (AAFC); (4). Decisions taken by the Authority shall be immediately enforceable on Member States.

²¹⁸ Article 8 (1). The Defence Council shall meet on the convocation by its Chairman to prepare the items of the Agenda of Sessions of the Authority dealing with defence matters;2. In an emergency, the Defence Council shall examine the situation, the strategy to be adopted and the means of intervention to be used.

²¹⁹ Article 9 In case of armed intervention, the Defence Council assisted by the Defence Commission shall supervise with the authority of the State or States concerned, all measures to be taken by the Force Commander and ensure that all necessary means for the intervention are made available to him. The actions of the Force Commander shall be subject to competent political authority of the Member State or States concerned.

The controversy that ECOWAS' intervention raised in academic and political circles still reverberates.²²⁰ This is understandable given the dynamics of the Sierra Leone conflict. Unlike the Liberia conflict, Nigeria unilaterally intervened in Sierra Leone so the argument goes without the endorsement of the United Nations or even the sub regional body.²²¹

Secondly, the RUF seems to have had more support from some ECOWAS leaders than the NPFL did.²²² The ECOMOG intervention in Sierra Leone developed out of ECOWAS role in the conflict in Liberia and out of earlier commitments of Nigeria and Guinea two key member states to assist the government of Sierra Leone in its fight against the RUF.

²²⁰ Buzan & Waever argue that most of the big securities were internal. Some authors aver that Nigeria bullies the ECOWAS community and as such its intervention has been controversial.

²²¹ Buzan & Waever submit that the paradox of this poto-complex is that Nigeria is both its mainstay (as the sponsor of ECOWAS) and itself nad hanging on the brink of failure as a state.

²²² Meredith (2006)

CHAPTER 5

ECOWAS & SADC SYSTEMS COMPARED

5.1 Madagascar and SADC Membership

In August 2005 Madagascar joined SADC, which some took as indication of an intention by Ravalamona to move away from the traditional French post-colonial influence.²²³ He was also seen as moving closer to the US and opening up the country to Eastern interests, notably China and South Korea.²²⁴ The Membership to SADC by Madagascar certainly clothed SADC with the authority to exercise full and exclusive jurisdiction over Madagascar in line with the spirit and tenor of SADC and this includes military intervention.

So did SADC miss an opportunity to assert itself as a regional powerhouse that will not tolerate and condone coup d'état in the region when it failed to militarily intervene in Madagascar? If one was to take the events in Madagascar and place those events under the auspices of ECOWAS, then certainly ECOWAS would have wasted in no time in militarily intervening in Madagascar. In order to do justice to this discussion, the first question that one has to ask is whether the events in Madagascar amounted to a coup d'état?

5.1.1 Madagascar's coup d'état

As already pointed in above Ravalamona was democratically and constitutionally elected president whose mandate was violently taken over from him and given to the military and the military in turn gave the power to govern the country Rajoelina who was not elected by anyone into that office. Do the events that happened in Madagascar amount to a coup d'état in the strictest sense of the word?

McGowan²²⁵ states that coup d'état involves the sudden, often violent overthrow of an existing government by a small group in contrast to 'revolutions' achieved by large numbers of people working for basic social, economic and political change. Thus, a coup is a change in power from the top that always results in the abrupt replacement of leading government

²²³ Ploch (2010)

²²⁴ Wild Madagascar. 2008. *South Korea to Lease Half of Madagascar's Arable Land for Corn, Oil Production*. Available at <http://news.mongabay.com>. Last accessed on 29 October 2011.

²²⁵ McGowan, P.J. 2001. *African Military Coups D'etat*. Available at www.jstor.org. Last Accessed on 17 August 2011.

personnel, but may or may not alter a state's fundamental social and economic policies or entail a significant redistribution of power among political groups.²²⁶

Ibrahim²²⁷ avers that a coup d'état refers not any take-over but a successful and overt seizure of power by the military. Therefore, if what happened in Madagascar is coup d'état what then should have been the appropriate response by SADC?

When the situation in Liberia deteriorated ECOWAS was quick to set up the ECOMOG with the direct intention of military intervention, yet, when the situation in Madagascar also deteriorated SADC was not quick to act, and when it did act, it only suspended Madagascar from being a member of SADC. Suspending Madagascar was not the right option for SADC to take. SADC should have militarily intervened and by so doing it would have set the right precedent and it would have redeemed itself from the ills of the Lesotho and DRC controversies as a body that should be taken seriously.

As it stands SADC has failed in its mandate especially the hesitation to order military intervention in Madagascar's coup d'état. As noted earlier Mswati actually mooted the idea of military intervention, and it is argued in this paper that Mswati though his own personal credentials may affect his credibility but in the case of Madagascar he was right. Military intervention should have been the appropriate action that SADC should have taken in Madagascar. It is surprising that not one SADC member supported him, but they rather chose suspending Madagascar from SADC. It is clear that such suspension has yielded very little results, because Rajoelina is still in power and countries like China have continued to trade with Madagascar.

In the event that there is an election in Madagascar the chances are that Rajoelina is likely to win that election and SADC would have no choice but to accept him as the legitimately elected President of Madagascar. SADC will lift the ban on Madagascar and things will be back to normal. The author submits that SADC missed an opportunity to establish itself as a regional body that has the SADC people at heart and that should not hesitate not to take military action where such action is needed.

²²⁶ McGowan (2001).

²²⁷ Ibrahim, A. 2009. "Guarding the State or Protecting the Economy? The Economic Factors of Pakistan's Military Coups". Available at www.lse.ac.uk. Last Accessed on 17 August 2011.

The military intervention by ECOWAS in Sierra Leone was principally targeted to restore the Kabbah government after the AFRC military junta overthrew him in a coup.²²⁸ More importantly, the intervention was also targeted at ending the sufferings being experienced by the civilian population in Sierra Leone. In the same light, OPDS should have militarily intervened to restore Ravalomonana to power.

5.1.2 OPDS Legal Capacity to Intervene in Madagascar

Article 2 (2) (a) states one of the objectives of the OPDS as to:

“a) protect the people and safeguard the development of the region against instability arising from the breakdown of law and order, intra-state conflict, interstate conflict and aggression”

It can be said that OPDS failed to protect the people of Madagascar by allowing the ousting of a democratically elected government by some unruly elements within that state. Yet, the intervention by ECOWAS through ECOMOG in Liberia was to halt an attack by insurgents who were led by Taylor. The intentions of Taylor and his NPFL was to execute a coup d'état in the same fashion Rajoelina did.

As of May 1990 the NPFL controlled significantly more territory than Doe's collapsing regime, which had lost effective control of the state. One observes the same unfolding events in Madagascar when Rajoelina and his supporters continued their violent demonstrations, Ravalomonana also lost effective control of the state and the military took over. Ravalomonana responded by calling for emergency intervention from SADC and other international bodies but with no success.

Having concluded that what transpired in Madagascar was a coup d'état whichever way one looks at it. One can safely conclude that SADC failed to militarily intervene in Madagascar when it had the power and opportunity to do so. On other hand, when there was a threat of coup d'état in both Liberia and Sierra Leone ECOWAS did not hesitate to militarily intervene in these two countries.

Yet, if SADC had militarily intervened in Madagascar it was going to do so within the realms of OPDS, and without being apologetic for its actions. When one examines the conditions of

²²⁸ Simon (2006:97)

military intervention in Liberia and Sierra Leone, the Madagascar saga was a more legal cause that justified military intervention, nonetheless, SADC chose not to militarily intervene.

Therefore, it can be said that ECOWAS has an upper hand and it has a more closely knit and a well orchestrated security system as compared to SADC. Not only has ECOMOG demonstrated its readiness to play an active role by employing military intervention to uphold the principles of democracy that are key to the regional economic and development despite the criticisms levelled against its operations.

Even if the actions of ECOMOG were premature as some critics have argued, what matters most is the willingness of ECOWAS to assert its role and send a clear message within its region that deliberate failure by a member state to protect fundamental rights of its citizens will not be tolerated by ECOWAS. If need be it will militarily intervene to ensure and safeguard the protection of its citizens. This is what is lacking in SADC, a clear leadership crisis in so far as regional security is concerned.

5.1.3 OPDS Legal Capacity to Intervene in Zimbabwe

The events in Zimbabwe were somewhat different in that although there was widespread violence from 1999 onwards, these events were not in any way close to coup d'état like in Madagascar or Liberia. Although the opposition and other civic society groups had called for some of intervention by SADC in order to stop the mayhem. As observed earlier on, it took almost ten years for SADC to meaningfully come up with a roadmap for Zimbabwe when Mbeki was appointed by SADC as a mediator in the Zimbabwe crisis.

However, what happened in Sierra Leone resonates much with the events in Zimbabwe in that the wide spread violence in both countries had grown to such unprecedented levels of which ECOWAS realised that in Sierra Leone such violence would only be resolved by military intervention. SADC on the other hand, faced with a similar situation in Zimbabwe did not militarily intervene. The question is why did SADC take almost ten years to try and resolve the Zimbabwe crisis? Why did the initiative come from the AU and not SADC itself?

Cawthra²²⁹ argues that the failures by SADC to take decisive action on Zimbabwe let alone to order military intervention can be traced back to the fact that the dominant trend within SADC is the continuation of the liberation solidarity of the FLS period, with the former

²²⁹ Cawthra (2010:30)

liberation movements, SWAPO, MPLA, FRELIMO and ANC lining up in solidarity. They are joined by the DRC, the government of which owes its very survival to the ‘SADC allies’ who intervened in 1997/8.

5.2 Similarities between SADC and ECOWAS

What the two regions have in common is lack of cooperation due to some political and economic preferences. For instance the so called SADC intervention in the Lesotho was conducted by two countries Botswana and the South Africa. How can a SADC operation mission be administered by two countries? It is suggested that military intervention has been enforced either on bi-partisan basis or on economic and political factors. In the same way, it has been stated that Nigeria single handedly intervened in Sierra Leone. How can ECOWAS military intervention be conducted only by one state?

The more one member state is threatened by political instability in one country and if it has the military power to intervene such a country can manipulate either the SADC or ECOWAS security system and militarily intervene. It can do so to purely secure its own ambitions and desires rather promoting the objectives of these regional bodies. This was the same scenario that happened in Sierra Leone, it has been stated that Nigeria intervened in Sierra Leone because it had much to lose as a country in comparison with other ECOWAS member states. The military intervention by Nigeria drew a lot of criticisms in the international sector.

The author submits that the so called SADC military intervention in the DRC by Angola, Zambia and Zimbabwe is a SADC operation but rather a mission that was done these countries who had their own economic interest to protect. Even if it is argued that this was a SADC operation, can it honestly be argued that a regional security force can be constituted only by three countries, the question is what happened to the other ten member states of SADC who were part of Treaty at that time? Therefore, both ECOWAS and SADC still have a long way to go in conducting their regional security operations in a more transparent and cooperative manner.

CHAPTER 6

LIMITATIONS OF MILITARY INTERVENTION AND CONCLUSION OF STUDY

6.1 Limitations of Military Intervention

The PPDSC places limitations in line with international law in so far as military intervention in SADC is concerned. These include but are not limited to the principle of state Sovereignty, Use of force and the principle of Non-Intervention. Furthermore, the PPDSC seeks not to usurp the powers of the UNSC which is mandated the ultimate authority to maintain peace and security within the realms of international conflict. These limitations will be discussed beginning with state Sovereignty.

6.1.1 State Sovereignty and Regional Security

Traditionally, state authority within its own territorial borders was regarded as inviolable. The principle of non-intervention derives from customary international law, and is strengthened by the prohibition of the use of force in article 2(4) of the Charter, and article 2(7) of the Charter, which states that: ‘Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State’. The only proviso is that ‘this principle shall not prejudice the application of enforcement measures under Chapter VII’.

The principle of the state sovereignty finds its expression in the Charter of the United Nations Article 2 (7) which states that:

“The Organisation is based on the principle of the sovereign equality of all its Members”

Basically this means that each state has a *prima facie* exclusive jurisdiction over a territory and the permanent population of the people living there.²³⁰ As a general rule states have a duty of non-intervention in the area of exclusive jurisdiction of another state. This was enunciated in *Island of Palmas Arbitration: The Netherlands v US*²³¹ where it was held inter alia that state sovereignty is the right to exercise therein, to the exclusion of any other state, the functions of a sovereign. These general principles equally apply to regional bodies such as ECOWAS and SADC. These regional organisations are as a general rule expected to

²³⁰ Kaczorowska (2002:93)

²³¹ (1928) 2 RIAA 829

adhere to these international law principles. In action between state and the regional body has to be by consent, otherwise, if a regional body interferes in the affairs of a sovereign state without its consent, it can be argued that the regional body is violating article 2 (1) of the UN Charter.

It is submitted that the whole concept of exercising exclusive jurisdiction by developing countries that have natural resources which the developed countries have direct interest in can be said to be a fallacy. Events in the world have shown that there are instances where some developed countries have interfered directly or indirectly with the affairs of developing countries the motive behind being the need for natural resources. This intervention has been in some instances in the form of fuelling political instability,²³² supporting rebel groups,²³³ plundering or exploitation of natural resources²³⁴ and the manipulation of essential commodities on the world markets²³⁵.

In the same context Article 2 (7) of the Charter prohibits intervention into another state on matters essentially within the domestic affairs of such state is very clear. However, it is submitted that matters that are purely domestic have not be defined in international law. In other words there are no clear guidelines as to what constitutes a purely domestic affairs that does not require interference.

The nature of the internal affairs of a particular state, viewed in light of human rights will determine whether or not a certain state of affairs deserved that application of the principle of sovereignty or not. It can be said that the test for state sovereignty in the 21st century can be said to be whether or not the actions of the sovereign country are violating the human rights of its citizens. Having said this, under what circumstances can regional security organisations derogate from the principle of state sovereignty?

²³² Libyan crisis and oil reserves.

²³³ France and Cote d'Ivoire cocoa production.

²³⁴ Zambia and its copper.

²³⁵ The World Markets that run by USA, Britain, Japan, China, Russia, German and China determine the prices of commodities such as gold, platinum, diamonds, steel, oil etc. The major reserves and actual commodities are found mostly in developing countries in Africa and Asia, yet the selling prices of these commodities is determined by USA and its European counterparts. The Africans and Asians have little say in the pricing but they are told at what price to sell their commodities which has a direct effect on the production and supply levels by the developing countries.

6.1.2 Derogation from state sovereignty

Traditionally international law was concerned with relations between sovereign states, and individuals had no recourse to seek remedies against abuse perpetrated by their own state.²³⁶ However, the development and enforcement of individual and collective human rights has the potential to erode traditional conceptions of state sovereignty.²³⁷ In recent times, following the commitment in the Charter to promote and encourage ‘respect for human rights and fundamental freedoms’ and the adoption of the *Universal Declaration of Human Rights*, there has been a proliferation of human rights treaties and declarations which have had the effect of increasing recognition that human rights are a matter of international concern.²³⁸

Further, there has been wide acceptance of international humanitarian law as codified in the Geneva Conventions. These include Geneva Convention relative to the Treatment of Prisoners of War, Geneva Convention relative to the Protection of Civilian Persons in Time of War (2nd part) and the two Additional Protocols (Protocol Additional to the Geneva Conventions of 12 August 1949, and to the Protection of Victims of Non-International Armed Conflicts (Protocol II)). There are other treaties relating to war crimes and crimes against humanity such as the Convention on the Prevention and Punishment of the Crime of Genocide.

In *Prosecutor v Dusko Tadic* ICTY Case No IT-94-1-A (*Tadic case*) the Appeals Chamber addressed changing conceptions of state sovereignty. It stated that:

“Dating back to a period when sovereignty stood as a sacrosanct and unassailable attribute of statehood, this concept recently has suffered progressive erosion at the hands of the more liberal forces at work in the democratic societies, particularly in the field of human rights”.

The traditional focus in international law on protection of state sovereignty is being eroded by human rights law and growing recognition of the principle that human rights are a matter of international concern.²³⁹ This was confirmed in the *Tadic case* which recognised that ‘norms concerning crimes against laws and customs of war due to their highly ethical and moral content have a universal character, not a territorial one’.

²³⁶ Kaczorowska (2002)

²³⁷ Shaw (2010)

²³⁸ Steiner et al (2008)

²³⁹ Brownlie, I. 2003. *Principles of Public International Law*. Sixth Edition. Oxford: Oxford University Press.

6.1.3 Use of force

There is a strong focus in both SADC Treaty and the ECOWAS Treaty just as articulated in the UN Charter on the requirement for member states to pursue non-violent, co-operative means to maintain international peace and security, and a prohibition of the use of force against the territorial integrity or political independence of any state. The prohibition of the use of force in international law is articulated in Article 2(4) of the Charter which requires that:

“All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations”.

The prohibition is reaffirmed in the Declaration of Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. This Declaration reinforces the focus in the Charter on the pacific settlement of disputes and recognises:

‘No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State.’

Further, it imposes duties on states to refrain from the threat or use of force and to co-operate in the maintenance of peace and security”. Hardie²⁴⁰ states that Article 2(4) goes beyond the direct or indirect use of force to include threats of force. The 1996 Advisory Opinion on *The Legality of the Threat or Use of Nuclear Weapons* the ICJ holds that, ‘the notions of ‘threat’ and ‘use’ of force stand together. Thus, if the use of force itself in a given case is illegal for whatever reason then the threat to use such force will likewise be illegal. Some authors argue that the prohibition of the use of force in Article 2(4) is qualified by the phrase ‘the territorial integrity and the political independence of States’, so that intervention that does not interfere with either the territorial integrity or the political independence of the targeted State is potentially legal.²⁴¹

²⁴⁰ Hardie, K. 2009. Humanitarian intervention, human rights and the use of force in international law. Available at [www. http://researchrepository.murdoch.edu.au](http://researchrepository.murdoch.edu.au) Last accessed on 17 August 2011

²⁴¹ Kathleen (2009:21)

6.1.4 Interpretation of the scope of the prohibition of the use of force

In trying to determine the scope of the use of force in international law the Charter as a whole must be considered. More particularly, articles 39, 51 and 53 which deal with related concepts such as ‘use or threat of force’, ‘threat to the peace’, ‘breach of the peace’, ‘act of aggression’, ‘armed attack’, and ‘aggressive policy’. The use of different terminology with different meanings contributes to confusion as to the nature and level of force required to constitute a breach of article 2(4).

6.1.5 The principle of non-intervention

In the *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)*²⁴² the Court sought to distinguish different forms of force in terms of their gravity, and in its judgment concluded that the financial support, supply of weapons, intelligence and logistical support given to the military and paramilitary activities of the Contras in Nicaragua by the United States, up to the end of September 1984, constituted a clear breach of the principle of non-intervention, as opposed to a breach of the prohibition of the use of force. Referring to the content of the principle of non-intervention the ICJ relates it to the principle of state sovereignty, and declares that:

“A prohibited intervention must accordingly be one bearing on matters in which each State is permitted, by the principle of state sovereignty, to decide freely. One of these is the choice of a political, economic, social and cultural system, and the formulation of foreign policy”.

Article 2(4) deals with inter-state conflict; it does not cover civil wars and insurrection within a state. However, support for freedom fighters or terrorists who foment insurrection is an issue that has always resonated deeply with states.

The focus in the Charter on state sovereignty, non-intervention, and a prohibition of the use of force, is reinforced by a number of attempts by the General Assembly, such as the 1949 resolution on the Rights and Duties of States, the 1963 resolution on the Inadmissibility of Intervention, the 1970 Declaration on Friendly Relations, the 1974 Definition of Aggression, and the 1987 Declaration on the Non-use of Force, to further elaborate on the duty to refrain from intervention in the internal affairs of states.

²⁴² ICJ Reports 1986.

The notion that intervention that involves substantial military operations directed and controlled by a state and carried out by mercenaries, volunteers or other irregulars can constitute a violation of article 2(4) has strong support among legal authorities. However, for the majority in the *Nicaragua case*, a deciding factor was a high degree of direction or control exercised by the offending state so that the actions that constitute direct or indirect intervention can be imputed to that state.

This approach appears to be consistent with article 8 of the draft articles on ‘Responsibility of States for Internationally Wrongful Acts 2001’ adopted by the International Law Commission (ILC) at its 53rd session in 2001 and submitted to the General Assembly for consideration. Article 8 states:

“The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of that State in carrying out the conduct”.

6.1.6 Exceptions to the prohibition of the use of force

The Charter explicitly recognises only two exceptions to the prohibition of the use of force in article 2(4). These exceptions are:

- (i) (a) individual or (b) collective self-defence as provided for in article 51, and
- (ii) action authorised by the Security Council under Chapter VII of the Charter.

Article 51 of the Charter provides that:

“Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security”.

6.1.7 Limited use of force and UNSC

Article 51 also envisages a limited use of force. The use of force in self-defence is obviously intended to be of a subsidiary nature, as the Charter provides that any use of force will ultimately be regulated by the Security Council in accordance with the Charter. The Charter accords the Security Council a privileged position as the principal decision maker of the

United Nations, and it provides in Article 25 that member states are required to ‘accept and carry out the decisions of the Security Council in accordance with the present Charter.’²⁴³

6.1.8 Humanitarian Intervention

The ratification of the United Nations Charter in 1945 severely curtailed the legality of unilateral military actions, including humanitarian interventions.²⁴⁴ It appears that with the ratification of the United Nations Charter, humanitarian intervention is only justified when there is a clear finding that the humanitarian situation implicates international peace. Consequently, the possibility of unilateral or unauthorized intervention appears completely precluded by the United Nations Charter. Despite the almost universal adoption of the United Nations Charter, unilateral humanitarian interventions have not disappeared from the international scene.

²⁴³ The NATO intervention in Kosovo, directed at the Milosevic regime and conducted without UN authorisation, on the grounds of saving Kosovars from Serbian atrocities, was widely regarded as illegal, but potentially legitimate. Although the majority of commentators agree that the NATO intervention was contrary to article 2(4) of the UN Charter, there is considerable disagreement about the gravity of the violation. A draft Security Council resolution to condemn the intervention was defeated; it has been argued that UN Security Council Resolution 1244 of 10 June 1999 could be taken to imply *post facto* approval of the military action in Kosovo; and, NATO forces sought to portray their actions as an exceptional exercise of force that was justified by humanitarian necessity in an attempt to minimise any effect as a precedent for further unauthorised ‘humanitarian’ intervention.

²⁴⁴ Nowrot, K. 1998. *The Use of Force to Restore Democracy*. Available at www.auilr.org. Last accessed 2 November 11.

6.2 Concluding Remarks and Recommendations

There is no doubt that the drafters of the SADC Treaty had good intention on establishing the OPDS. The debate about the legality and legitimacy of third party intervention in the “domestic” affairs of sovereign states has been ongoing. This research has focused on the prospects of military intervention by SADC in Madagascar and Zimbabwe. In assessing these two cases the research measured the involvement by SADC against the intervention by ECOWAS in the Sierra Leone and Liberia conflict.

The research has enquired into the legality and legitimacy of these interventions, against the backdrop of existing international law prohibition on the use of force, and the principle of non-intervention in the domestic affairs of sovereign states. An analysis of the emerging trend of humanitarian intervention and the current emphasis on human security has been done in order to determine whether these interventions were legally justified.

While acknowledging the importance of states in international relations, this study has enquired into the shift of security from “state centric” to “people centric”. This study made a case for sustained efforts in the area of intervention on humanitarian grounds.

It has further been argued that regional organisations should have a pre-emption right to intervene in conflicts that affect their regions of influence. However, the study also has recognised that this concept might be subject to abuse by powerful nations if not well managed.

6.2.1 SADC

The study therefore recommends the importance of a well articulated framework that will serve as a standard for future interventions in SADC. It can be said that SADC failed to militarily intervene in Madagascar when it had the power to do so. This exposed the weakness in the regional body security structure and it is correct to say that in so far as regional security in SADC is concerned, there is still a lot of work that needs to be done.

One may say that although the Zimbabwean issue is not a clear cut case for military intervention, however, there was a very high chance that SADC might have exercised military intervention jurisdiction based on humanitarian grounds, not necessary to fight but

to restore peace and order that would have contributed to the region's economic development.

On the Madagascar case the, the OPDS had the legal capacity and jurisdiction to militarily intervene but it missed that opportunity and played second fiddle to ECOWAS.

Therefore, it is now time that SADC should flex its military muscles and be counted as among the best regional bodies that are serious about economic development which can only take place in a secure and peaceful atmosphere.

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