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Editorial

The first edition of the ZEI Regional Integration Observer (RIO) in 2012 is taking a closer look at regional integration efforts in Southern and East Africa. The respective integration schemes, which are under scrutiny here, are the Southern African Development Community (SADC) and the East African Community (EAC). On the one hand, the SADC has transformed itself from an anti-apartheid block, consisting of the so-called frontline-states into one of the "building-blocks" of continental African integration in the framework of the African Union (AU). In this process, South Africa developed from an enemy state because of Apartheid to a leading regional power. On the other hand, the EAC has experienced a second birth. The EAC had existed as a union from 1967 to 1977 but was dismantled. However, during the 90´s, the integration process was revived. Today, the EAC is one of the frontrunners in regional integration in the whole of Africa with clearly defined goals from a Common Market up to a Political Union. Nevertheless, for the SADC as well as the EAC, there are still many bumps in the road. One of them is the problem of overlapping membership, as there are not only SADC and EAC, but also COMESA, CEMAC and ECCAS as existing integration efforts in the southern part of Africa. One of the latest attempts to contribute to the rationalization of these different projects was the Tripartite Arrangement between SADC, EAC and COMESA with the goal to establish a Free Trade Area. Although the motives sound noble, it is doubtful if the practical implementation and functioning of such an FTA is realistic in the near future, as not only states bring in their vested interests but also the different regional institutions. The articles of this RIO help in understanding whether this is a step into the wrong direction or if it could become a real advancement.

Matthias Vogl, Junior Fellow at ZEI

Signing of an Interim Agreement with a view to an Economic Partnership Agreement between the European Community, of the one part, and the SADC EPA States, of the other part in 2009. Catherine Ashton, then EU Commissioner for Trade and Daniel Neo Moroka, Minister of Trade of Botswana. © European External Action Service.

The Southern African Development Community - a state 20 years after the foundation

** Ariane Kösler*

Fifteen states of the southern African region have come together to build the Southern African Development Community which aims to develop "sustainable and equitable economic growth and socio-economic development that will ensure poverty alleviation with the ultimate objective of its eradication, enhance the standard and quality of life of the people of Southern Africa and support the socially disadvantaged through regional integration" as agreed upon in the foundation treaty of 1992. Furthermore the development they are pursuing shall be constitutional and democratic and they have decided to promote common political values and consolidate, defend and maintain peace, security and stability in the region.

A renewed structure

Since 2001 the SADC has gone through a profound restructuring exercise that included a revision of the treaty, the organizational structure and the strategic orientation. This – partially painful – process had become necessary to improve the governance and management structures as well as to focus the agenda and the projects clearly. Although the reform intended an increase of effectiveness and efficiency it lacked the introduction of real supranational structures (apart from the Tribunal).

The new SADC organizational structure concerned above all the secretariat. However, as mentioned, it did not receive far reaching competencies that would have enabled it to intensively push forward the integration process. The latter could as well be owed to the fact that "the protracted restructuring of the SADC Secretariat, has in essence meant that from 2004 to 2010 the SADC integration process has lacked the coordinating and harmonization presence of a stable Secretariat staffed by persons experienced in regional integration principles and supported by robust mechanisms for monitoring Member State compliance and progress in implementing the measures necessary for establishing and deepening social, economic and political integration."

A new strategic outline

In contrast, the new strategic outline, documented in the Regional Indicative Strategic Development Plan (RISDP) and the Strategic Indicative Plan for the Organ on Politics, Defence and Security Cooperation (SIPO) created a good basis for systematic improvement of the integration process. For the first time the two plans underlined the direction the SADC would take. A few years after its introduction, clear priorities were agreed upon. This gave the integration process a new incentive, that led to some progress in diverse fields of integration, most remarkably the official launch of the SADC free trade area in August 2008. This was according to the schedule for economic integration proclaimed in the RISDP. Nevertheless, in 2010 the scheduled launch of the customs union had to be postponed. Several reasons lay behind this decision. Peters lists loss of revenue, overlapping membership, general implementation weakness as well as the lack of willingness to give up some part of national sovereignty (as agreeing on one external tariff regime would imply) and the unsolved question of whether the customs union should serve the function of integrating the members into the global market or instead protect them from external competition.

Overlapping memberships – a persistent challenge

The overlapping membership is indeed a hurdle to the integration process of SADC. In Southern and East Africa there are several integration regimes, most importantly SADC, the Common Market for Eastern and Southern Africa (COMESA) and the East African Community (EAC). The challenge of overlapping memberships lies in the duplication of integration efforts, which is a waste of rare resources. Also, the different integration schemes tend to compete against each other and thus produce unnecessary inefficiencies. Gibb explains that the existence of such complicated structures and the difficulties in untangling it is based on the different integration goals and approaches that were followed, the internal dynamics that were triggered and loyalties that were created over the years.

In addition, the member states calculate (economic but more importantly political) costs and benefits strongly: This means that as long as the benefit from belonging to several integration schemes is there, they have little incentive to quit one of them. However, since 2008, SADC; COMESA and EAC started tripartite Summits that decided among others upon the harmonization of infrastructure master plans, the improvement of transport infrastructure and trade facilitation measures. And in 2011 negotiations for the establishment of a grand free trade area comprising all three integration regimes were started.

Economic heterogeneity of the SADC member states

The general implementation weakness is certainly also due to the economic differences between the SADC member states. Only Botswana, Mauritius and South Africa had been categorized as efficient market economies. In the latest ranking (2010) South Africa did not perform as well. Three countries (Namibia, Sambia, Madagascar) were identified as market economies with functional deficits in 2008. This situation ameliorated as Angola, Malawi and Mozambique have performed much better in 2010 than in 2008. Also, Lesotho, which had not been ranked at all in 2008, got quite a successful score. However, there are three countries in which the economic situation complicates market integration to a great extent: Tanzania (still a poorly functioning market economy), Zimbabwe and the Democratic Republic of Congo, where their classification as rudimentary market economies still has not changed, assuming that functioning market economies are a prerequisite for successful integration this quite colourful picture of economic performances explains to a certain degree the state of integration in the Southern African region.

Difficult setting of the Economic Partnership Agreement negotiations

Another factor that could jeopardize the efforts of the Southern and the Eastern region to grow together comes from outside: the still not finalized negotiations with the European Union on Economic Partnership Agreements (EPAs). The negotiation partners of the EU are not aligned within the frontiers of the integration schemes like SADC and COMESA but rather within various other groupings. In the SADC EPA group there are only the SACU member states plus Angola and Mozambique. Tanzania decided to change to the EAC-EPA group. The rest of the SADC members are part of the EPA group of Eastern and Southern Africa. The Democratic Republic of Congo negotiates in the CEMAC-EPA group. This is potentially dangerous for the SADC integration process as it could undermine the conclusion of further economic integration in the whole SADC region. Botswana, Lesotho, Swaziland and Mozambique signed the interim EPA in June 2009. In 2010 they suspended the process of ratifying the agreement, pending the conclusion of comprehensive regional negotiations, including the rest of the SADC EPA group members. South Africa´s separate trade agreement with the EU will stop existing as soon as the final EPA has been signed. This, however, is not trivial given that South Africa is a far stronger partner than the other SADC states to the EU. Granting the industrialized South Africa the same market access as the others seems to be difficult.

The regional power South Africa

When SADC was founded, South Africa went through a historic change from a racist Apartheid regime to a majority led democracy. During the times of the Apartheid, South Africa dominated his neighbors by means of destabilization. After the Apartheid regime was gone Nelson Mandela encouraged expectations for a new order of regional relations with statements on closer but mainly non-hegemonic economic relations. Many hoped, that South Africa would bring political modernization and economic growth to the region. Mandela as well as Mbeki cared not to intensify the already existent experience based fears of the region. The thought that South Africa would become a malign hegemon was widely spread, particularly, as this country had always been economically and military highly potent. In addition, the abolition of the Apartheid regime created a sense of high respect among the international community for the following governments.

South Africa has increasingly assumed an obligation to lead. If this in turn will lead to a reduction of fears and thereby political tensions with the African partners is still uncertain. More successful integration efforts such as a customs union or maybe the conclusion of the EPAs may contribute to a new relationship. In any case, South Africa is very anxious for its reputation. Therefore South Africa is especially earnest to cooperate in security matters and to resign from solo attempts. It is interested in a stable political relationship to its neighbors also because of successfully raised funds from the donor community. More than that, the integration in the SADC led to increasing negotiation efforts to enforce its interests, also in economic terms. So South Africa had to give in with faster tariff reduction periods vis a vis the economically weaker states. In return it gained a more benevolent political climate. All in all South Africa has become a regional power through the will to take responsibility in the region. And it prefers diplomatic means instead of aggressive power plays. Still it needs to be seen if its influence can overcome its ambivalence of economic and security interests.

The peace and security agenda

As pointed out, South Africa is strongly committed to create a peaceful and stable region and one of the instruments it has co-created within the SADC to realize this objective is SIPO. The agenda for peace and security of the SADC expressed in SIPO is differentiated in four parts: the political sector, the defence sector, the state security sector and the public security sector. What all these sectors have in common is that their first objective is to "protect the people and safeguard the development of Region against instability arising from the breakdown of law and order, intra-state and inter-state conflicts and aggression." Other objectives like preventing, containing and resolving inter- and intra-state conflicts by peaceful means or promoting the development of democratic institutions and practices by State Parties and encouraging the observance of universal human rights are also found in more than one sector. Therefore, they seem to be of high importance to the member states. The objectives shall be reached through certain strategies and activities that are also listed in SIPO. The question is then; if since the creation of SIPO the handling of the political challenges has proved successful.

Zimbabwe – enduring crisis and constant political challenge

For more than a decade Zimbabwe has been stuck in a political, societal and economic crisis, which is a catastrophe for the Zimbabwean population as well as an extraordinary burden for the SADC. One of its causes was the establishment of the Movement for Democratic Change (MDC) under the leadership of Morgan Tsvangirai and the lost referendum to change the constitution in February 2000. Both challenged Mugabe. Economically, Zimbabwe´s downfall has begun with the chaotic land reform that expropriated white famers to correct colonial property structures. The result was serious crop failures due to lack of experience and knowledge of the new, Mugabe-devoted landlords. Ever since, the elections have been characterized by violence and human rights violations by Mugabe´s regime. Zimbabwe experienced lack of rights, violence against foreigners and opposition adherents, a recession including enormous unemployment and inflation rates, cholera, corruption and flows of refugees. In the light of these circumstances the international public did not understand the so-called “quite diplomacy“ of the SADC and the former South African president Mbeki. However, the SADC did not stay as silent as was widely perceived. Some signs of criticism could be found in Mugabe´s untimely departure of the SADC summit in 2006 or in the claim of the SADC Organ troika to postpone presidency elections in 2008. With the Global Political Agreement (GPA) from September 2008 a glimpse of hope finally came up. This agreement redistributed power among the two opposing parties of Mugabe and Tsvangirai and resulted in a coalition government. The latter became a reality in 2009. Nevertheless, most of the promised reforms have not been implemented so far, mainly due to the resistance of Mugabe and his adherents to truly share power with the MDC and Tsvangirai. Human rights and press freedom violations have continued to take place. SADC was therefore caused to appoint a team for assisting in implementation of the GPA. The team is headed by Jacob Zuma, the president of South Africa. The team finally started to work in the end of 2011. This and the fact, that SADC leaders have decided to discuss the situation in Zimbabwe on the occasion of the AU summit in January 2012 has created new hope for crisis resolution.

The political divergence of the region

As much as the economic performance is very heterogeneous in Southern Africa, the political performances of the SADC member states vary as well. Peters has compared the relevant indices on political performance and has identified three distinct groups: the democratic countries (Botswana, Mauritius, Namibia, South Africa and to some extent the Seychelles), those countries with deficient democracies (Lesotho, Madagascar, Malawi, Mozambique, Tanzania, Zambia) and the autocratic countries (Angola, DRC, Swaziland and Zimbabwe). Concerning the tendency he states a “slow regressive development concerning democratic convergence.“ This is illustrated by the example of Zimbabwe as well as by the illegal and ultra vires suspension of the SADC Tribunal in 2011 by the member states. It is symptomatic of the difficult diplomatic processes in negotiating the route that integration shall take or the next steps in growing together.

20 years after its foundation

So the big challenges of the region in political, economic and sectoral integration seem to be even more challenging as far as the economic and political conditions in the member states are concerned. However, most of the member states have a real interest in ameliorating their economic situation through deeper relations with their neighbors and in a stable security-political environment, which could as well be guaranteed through integration efforts. In addition, there are existing external pushing factors. Globalization and the constant threat of marginalization also impend like a sword of Damocles over the Southern African states. Although 20 years after its foundation the SADC presents quite an ambiguous image, integration successes in the long run do not seem unreachable, at least as SADC takes one step after another.

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Notes:

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Southern African Development Community (SADC)

Facts and Figures

General

SADC started as the Southern African Development Cooperation Conferece (SADCC), a community of the so-called frontline states whose objective was the political liberation of Southern Africa, especially abolishing apartheid in South Africa. On August 17, 1992, SADCC was transformed into the Southern African Development Community (SADC).

Members

Angola, Botswana, Congo (DRC), Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe

Guiding Principles & Values

SADC’s Vision is that of a common future. It wants to provide economic well-being, improvement of the standards of living and quality of life, freedom and social justice and peace and security for the people of Southern Africa. This shared vision is anchored on the common values and principles and the historical and cultural affinities of the region.

Mission & Goals

The SADC Mission is to promote sustainable and equitable economic growth and socio-economic development through efficient productive systems, deeper co-operation and integration, good governance, and durable peace and security, so that the region emerges as a competitive and effective player in international relations and the world economy.

Institutions & Legal Framework

- Summit (Heads of State&Government)
- Council of Ministers
- Organ on Politics Defence and Security
- SADC Tribunal
- SADC Secretariat

Source
http://www.sadc.int/

The Success of Regionalism in Southern Africa

** Fredrik Söderbaum*

The failure to adequately understand regionalism in Southern Africa and Africa more broadly is caused by the overwhelming dominance of orthodox and Eurocentric theories and conceptualizations of regional integration, whereby 'progress' in regional integration is primarily defined in terms of EU-style institutionalization. From such perspective, regionalism in Southern Africa is usually considered primitive, weak or even as an outright 'failure'. This commentary offers an alternative interpretation, claiming that certain forms of regionalism in Southern Africa are both sophisticated and 'successful' — at least for those actors in control, first and foremost the ruling political elites and 'the plunderers'.

Regime-boosting regionalism

Regime-boosting regionalism seeks to strengthen the status, legitimacy and the general interests of the political regime (rather than the nation-state per se), both in the international arena and domestically. Many ruling (or crumbling) regimes and political leaders in Southern and Eastern Africa (and Africa as a whole) engage in symbolic and discursive activities, whereby they praise the goals of regionalism and regional organization, sign cooperation treaties and agreements, and take part in 'summitry regionalism', but without giving a commitment to or bearing the costs of policy implementation.

At first glance, regime-boosting regionalism has similarities with more conventional types of regional cooperation. Yet, it is different, because it neither promotes public goods nor broader national and societal interest. Regional cooperation is instead used as an image-boosting instrument whereby leaders can show support and loyalty for each other, which enables them to raise the profile, status, formal sovereignty and image of their often authoritarian regimes without ensuring implementation of agreed policies. Importantly, this does not represent a complete 'failure' or an absence of regional collaboration. Indeed, from the point of view of the political regimes that favour such discursive strategies, it is a rather 'successful' type of collective action, indicating a particular regionalization logic without formal 'regional integration' in the sense of sovereignty transfer. The point is thus that African political elites continue to participate in regional organizations that have long records of so-called 'failure' (in the sense of weak implementation of official policies). Those who believe that regional institutions exist in order to solve concrete collective action dilemmas cannot understand this tendency. The summits of heads of states of the main intergovernmental regional organizations, such as AU, COMESA and SADC, are gigantic and sometimes even majestic events where the political leaders can show to the world and their citizenry that they are promoting the cause of regional cooperation and that their political regime is 'important' (or at least 'visible') on the international arena. The summits and conferences are important components in discursive and even imaginary constructions of regional organizations, and this social practice is then repeated and institutionalized at a large number of ministerial and other meetings, which in reality involves no real debate and no wider consultation within or between member states. Importantly, the agreed policies are seldom implemented.

The overlapping membership of regional organizations on the African continent has been debated for several decades. And the seemingly ineffective overlap is often taken as an indicator of the 'failure' of African regionalism or at least as a poor political commitment to regionalism. Considering that the overlap is such a distinctive feature of regionalism in Africa, it is not only relevant to assess the negative impacts of the overlap in itself, but also ask in whose interests it prevails, even being institutionalized. From the perspective on regime-boosting, the maintenance of a large number of competing and overlapping intergovernmental regional organization may arguably be a deliberate strategy in order to increase the possibilities for verbal regionalism. Indeed, to the extent that policy implementation is not the main concern such pluralism may actually be a way to construct 'disorder' and competing regional agendas.

The many Spatial Development Initiatives (SDIs) and Development Corridors being established in Southern Africa also fit the regime-boosting perspective. It is astonishing how rapidly development corridors and the associated SDIs have become such a widespread and influential feature in Southern Africa and actually have been elevated to the status of a cure-all model for the region. Yet whether this is all simply hype is an important question to answer: the material dimension of the MDC is deeply intertwined with discursive variables. For instance, the axis between Johannesburg and Maputo has been a 'corridor' for more than a hundred years, but today the official view is that it should now be seen as a 'development corridor'. The point is that there is little in this gigantic project that deserves to be labelled 'development'. As a project, the MDC is created by a small number of political and economic entrepreneurs and policy-makers, grouped together in an epistemic community. These entrepreneurs have, rather successfully, managed to create an image that the involved governments and provinces are fostering development, economic growth and regional economic integration, while in reality the main thrust of the MDC is to facilitate private mega-projects and to enhance and broaden the on-going process of privatizing and restructuring the state along neoliberal principles.

Shadow regionalism

It is undisputed that many parts of Africa are characterized by a myriad of informal and non-institutional interactions and activities between a mosaic of informal workers and self-employed agents, families, business networks, petty traders, migrant labour, refugees, and so forth. However, rather than depicting these practices as a way for poor people to survive (hence, 'romanticizing the informal economy'), they can better be understood in the context of 'the informalization of politics and patronage'.

The concept of 'shadow regionalism' suggests that regime actors use their power positions within the state apparatus in order to erect a complex mode of regionalism, characterized by informality and driven by rent-seeking and personal self-interest. Shadow regionalism grows from below and is built upon rent-seeking or the stimulation of patron-client relationships. It undermines the regulatory capacity of the state and formal regionalism/regional integration (even if it may sometimes be sheltered by discursive and regime-boosting regionalism). Shadow regionalism suggests that certain rentier-classes actively seek to preserve existing boundary disparities (e.g. customs, monetary, fiscal and normative) and, exactly like the case of regime-boosting regionalism, try to resist implementation or rationalization of formal regional economic integration schemes. Indeed, the shadow (or 'trans-state') networks depend on the failure of both the formal economy and of policy-led regionalism. Consequently, when political leaders and policy-makers resist formal regionalism, this may very well be a deliberate strategy to maintain the status quo in order to not disrupt shadow activities.

The attempts to restrict shadow and trans-state informal flows have often been unsuccessful. In the current world order context where the state apparatus itself offers fewer opportunities for private accumulation and where formal barriers between countries have been reduced, shadow regionalism no longer stems only from the exploitation of existing border disparities. Instead it has expanded to more criminal activities, such as new trades in illicit drugs, including heroin, mandrax and cocaine, arms, light weapons and other merchandize of war. In certain respects shadow networks have entered a new phase, whereby they are better understood as 'networks of plunder', profiting from war and chaos or warlord politics. The networks of plunder can even be actively involved in the creation and promotion of war, conflict and destruction, as seen in the more turbulent parts of (Southern, Eastern and Central) Africa.

Avoiding parochialism
The dominance of a particular reading of European integration in combination with an exaggerated focus on EU-style institutionalization goes a long way to explain why so many academics as well as policymakers have so little to say about the realities of regionalism in Africa. But this does not imply that regionalism is unique.

Regime-boosting regionalism is undoubtedly tied to the supposedly specific characteristics of the African state-society complex as well as to Africa's particular insertion in the global order. Yet, the role of procedures, symbols, 'summitry', and other discursive practices of regionalism appear strongly in other regions as well. For example, there seems to be a strong sense of regime-boosting within ASEAN, particularly backed by the tradition of non-intervention. Likewise, there is little doubt that regime-boosting has been important historically in Europe. Some states have used Europe to legitimate their regimes (mirroring the African pattern) while others have used Euro-scepticism for similar aims. A similar pattern appears to exist in Africa.

Many scholars as well as policy-makers tend to be rather idealistic about state-led regional cooperation and regional integration, and therefore often fail to ask critical questions about for whom and what purpose regional activities are carried out. The concept of 'shadow regionalism' is perhaps the most provocative illustration of malign regional collaboration practices. However, patron-client relationships, corruption and informal politics are certainly not unique to Africa. It may again be relevant to draw the contrasts with the EU in terms of the role of rules for cross-border activity. What is interesting (and perhaps different) is that regional economic interactions in Europe have largely been seen as developing the impetus for the expansion of rules, whereas shadow regionalism in Africa suggests that informal trade thrives because 'there are no rules', or at least because of the continued presence of formal border disparities.

It appears that a more systematic implementation of regional trade and investment formulas in Southern Africa would necessarily compete with the interests of powerful political and economic elites. Yet, in this regard, following the European path may be beneficial from a development perspective.

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Obstacles to East African Community Integration

** Michel Ndayikengurukiye*

1. Introduction
The East African Community (EAC) was established in 1999 after the adoption of the Treaty for the Establishment of the East African Community. The Treaty, in Article 5 (1) provides that the objectives of the Community shall be to develop policies and programmes aimed at widening and deepening co-operation among the Partner States.

In order to achieve the above objectives, the Partner States undertook the process of establishing among themselves a Customs Union, a Common Market, then a Monetary Union and ultimately a Political Federation. The Customs Union and Common Market Protocols have been in force since 2005 and 2010 respectively while negotiations of the Monetary Union Protocol are ongoing. Despite these achievements, a number of challenges still undermine the smooth integration of East Africa. Among those challenges one can mention the difficulty to harmonize national laws, the lack of powers at the supra-national level and the low level of consultation to name but a few.

2. Problematic Harmonisation of Laws
The harmonization of laws is a Treaty requirement. The Treaty, in Article 126 (2) (b), provides that Partner States "shall through their appropriate national institutions take all necessary steps to harmonise all their national laws appertaining to the Community". The Common Market Protocol also has provisions that enjoin Partner States to harmonize their national laws. Article 32 provides that Partner States undertake to "progressively harmonize their tax policies and laws to remove tax distortions in order to facilitate free movement of goods, services and capital and to promote investment within the Community." Article 47 provides that "the Partner States undertake to approximate their national laws and to harmonize their policies and systems, for purposes of implementing this Protocol".

Harmonization or approximation of laws is tedious work that is currently being carried out by legal experts of the EAC Partner States under coordination of the Office of the Counsel to the Community (CTC). Among other challenges to the harmonization process are the scope of the work, conflicting commitments of national experts, different legal systems and financial restraints.

The duty of the legal officers who coordinate the work of the established sub-committee on the harmonization/approximation of laws, is realistically beyond their control. Experts sitting to discuss how to bring their respective national laws closer together will hardly achieve their goal. The problem with such an approach to the harmonization of laws is that the monitoring of compliance is not possible. There has to be a regional legal instrument passed by competent institutions to serve as a basis for national legislation. Harmonization of laws ought to have been done by a supra-national body with powers to make regional laws in specific areas where harmonization is needed. For this to happen, Partner States have to agree on specific areas of regional intervention. The European Union (EU) actually follows the same approach and it works quite well. The EU has six (6) areas in which it has exclusive competences. These are: Management of:

a. the customs union
b. the economic and monetary policy
c. competition laws
d. a common position in international trade negotiations
e. conservation of marine biological resources
f. the concluding of some international agreements.

The EAC would gain much in adopting a similar approach for its harmonization of laws for purposes of making the Common Market viable.

3. Lack of powers at supra-national level
Based on the EU model, EAC Partner States should pull together some of their sovereign powers and entrust the regional institutions to issue policies and legislate in specific agreed areas.

Secretariat
The EAC Secretariat has long been a coordinating body for meetings of the EAC policy organs; namely, the Summit and Council of Ministers and other related preparatory meetings. Yet, it is full of competent professionals competitively recruited within the Region and who are experts in their respective areas. If EAC wants a functioning Common Market, the mandate of the Secretariat must be expanded.

If the proposal to pull together some of the sovereign powers in specific areas and cede them to the EAC is accepted, the Secretariat should be empowered to initiate regional policies and legislation in those areas for adoption by the Council and EALA. At the same time, the Secretariat should be given powers to monitor compliance by Partner States with regional laws and policies. In case of non-compliance, the Secretariat should be empowered to take the failing state to the East African Court of Justice (EACJ) without following the almost impossible procedure for a reference to the EACJ by the Secretary General laid down in Article 29 of the Treaty.

The East African Legislative Assembly

The EALA is the legislative body of the Community. The most important functions of the EALA include approving the EAC Budget and considering EAC annual reports, audit reports and any other reports submitted to it by the Council. The Treaty, in Article 49 (2) (d), provides for additional functions of the EALA when it states that the EALA "shall discuss all matters pertaining to the Community and make recommendations to the Council as it may deem necessary for the implementation of the Treaty". It is clear that this provision gives the EALA the right to discuss Community related matters for purposes of making appropriate recommendations to the Council and not that of making relevant legislation. It would appear therefore that apart from matters relating to the EAC budget, annual reports and audit reports, the role of the EALA has been explicitly limited to discussing matters pertaining to the Community.

However, the Treaty gives a possibility for any EALA member to propose a motion or introduce a Bill so long as the motion relates to the functions of the Community and the Bill relates to a matter with respect to which Acts of the Community may be enacted. However, such matters do not come clearly from the reading of the Treaty. Perhaps cases where, by virtue of Article 59 (3) (b), the EALA requests the Council to make proposals on matters on which it considers that action is required on the part of the Community for the implementation of the Treaty may be interpreted to be cases in which Acts of the Community may be enacted. For purposes of legal certainty indispensable for the stability of the Common Market, areas of EALA legislative mandate should be very clear. Partner States should therefore clearly spell out areas of the EALA's legislative action. The EALA Acts in those areas should be of direct effect in all the Partner States; the same way EU directives are of direct effect in all EU member states. Partner States would have an obligation to adopt legislation that complies with the regional laws and policies and to adapt existing legislation to the same.

The East African Court of Justice

Many voices have raised the problem of insufficient jurisdiction of the Court to handle Community law related disputes. There has also been criticism against the persistent erosion of the existing jurisdiction through the establishment of parallel dispute resolution mechanisms (DRM) within the EAC. The following are examples of such parallel DRM: the Customs Union Protocol in Article 24 sets up an East African Community Committee on Trade Remedies (which has not yet been established); the East African Community Competition Act 2006, in section 44, provides for a Competition Authority, which has jurisdiction over disputes arising from the interpretation and application of the Act; the Common Market Protocol has given jurisdiction to consider Common Market related disputes mainly to national courts as it flows from Article 54 (2). In the context of a functioning Common Market, it is doubtful whether this arrangement will inspire confidence to cross-border investors.

4. Low level of consultation

Among other reasons for the collapse in 1977 of the old EAC lamented in the preamble to the Treaty there is the "lack of strong participation of the private sector and civil society in the co-operation activities." EAC integration is for the benefit of the peoples of East Africa and not for the pleasure of their leaders.

The lack of civil society participation has been evidenced by their exclusion from the Treaty amendment process carried out in 2006 and 2007. The amendments were carried out and completed in a record time of one week! (From 7 to 14 December 2006) and subsequently ratified within three (3) months. The amendments gave rise to a case that was brought before the EACJ. In that case, the Applicants sought to challenge the legality of those amendments and of the whole amendment process as contradicting the principle of the involvement of the private sector and civil society. The Court ruled that failure to carry out consultation outside the Summit, Council and the Secretariat was inconsistent with a principle of the Treaty and therefore constituted an infringement of the Treaty. The EAC leaders should therefore follow the wise advice of the Court and consult widely the East African peoples before taking important decisions on the Community.

5. Conclusion

In conclusion while the EAC customs union and common market were supposed to be functioning, the lack of powers at the supranational level and harmonized implementing laws constitute serious obstacles to the implementation of those integration milestones. The low level of participation by the people in the integration process is another such challenge. As it has been suggested in this paper, Partner States should consider pulling together part of their sovereignty in some areas to be championed by the regional institutions they have established. Regional laws and policies should uniformly be applied in all the Partner States for the stability and viability of the common market.

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During an intensive discussion on the interplay between decision making on the regional level and its implementation on the national level, H.E. Monique Mukaruliza, Rwandan Minister of East African Community Affairs encouraged ZEI Director Prof. Dr. Ludger Kühnhardt and ZEI Fellow Matthias Vogl to continue ZEI´s efforts in the field of comparative research and capacity development with a view on African regional integration. The Minister welcomed the ZEI activities as an important support for her work and that of other political and academic actors in the EAC. ZEI research on comparative regional integration in East Africa includes cooperation with scholars at Uganda's prestigious Makerere University.

South Africa and Angola: Southern Africa´s Pragmatic Hegemons

* *Adekeye Adebajo*

Lord Palmerston, the British statesman, noted that countries have neither permanent friends nor permanent enemies, but only permanent interests. Jacob Zuma, president of South Africa, which accounts for 80 percent of Southern Africa's economy, visited Angola in August 2009, leading a large business and ministerial delegation. Palmerston's dictum could not have been more apt: Angola, a country that South Africa's apartheid army had occupied and bombed during the 1980s, was now providing lucrative opportunities for South African businesses to rebuild the very infrastructure that the apartheid army had previously destroyed. Angola's future potential as a regional power is clear: this is a diamond and oil-rich state – among Africa's largest oil producers, with reserves of 4 billion barrels - and a strong, battle-hardened army that has intervened successfully in the Democratic Republic of the Congo (DRC) and Congo-Brazzaville. Angola is the only country that could become a future rival to South Africa in Southern Africa.

Apartheid South Africa's historical support for Jonas Savimbi's National Union for the Total Independence of Angola (UNITA) rebels strained relations even after South Africa's democratic transition in 1994. Some officials in the ruling Popular Movement for the Liberation of Angola (MPLA) accused the government of Nelson Mandela of ingratitude for their past support of the African National Congress (ANC), even alleging continued South African support of UNITA and a failure to back the government of Eduardo Dos Santos. Some in Luanda further accused Tshwane (Pretoria) of seeking to 'export' its own model of peacemaking – a government of national unity – which it felt was totally inappropriate, based on Savimbi's (who was killed in 2002) reneging on past peace accords. Then deputy president, Thabo Mbeki, was particularly criticized for promoting accommodation with UNITA. Mandela's state visit to Angola in 1998 helped to ease tensions somewhat, but relations between South Africa's president Mbeki and Dos Santos remained frosty after 1999, with Dos Santos declining all entreaties to pay a state visit to South Africa. The reported purchase of Angolan diamonds in UNITA-controlled areas by South African mining giant De Beers was another source of friction. From 2000, contacts increased between the militaries of both countries, and then deputy president, Jacob Zuma, visited Luanda in August 2004. Despite acrimonious diplomatic ties, bilateral trade increased from $97 million in 1995 to $460 million in 1998. By 2002, South Africa had become Angola's largest source of imports (12 percent) and a South Africa/Angola Chamber of Commerce was launched in 2003. But there were often disagreements in both countries' approach to resolving conflicts in the DRC and Zimbabawe. While Luanda sent troops to bolster the government in Kinshasa and pledged strong support for Robert Mugabe, Tshwane sought to adopt a more even-handed approach. Mbeki visited Luanda in August 2008 to brief Dos Santos about his mediation efforts in Zimbabwe, and Dos Santos attended the Southern African Development Community (SADC) summit in Johannesburg in the same month. But relations never became warm under Mbeki, amidst media reports that Dos Santos had helped to fund Jacob Zuma's legal costs following corruption charges after he was removed as South Africa's deputy president in 2005.

Angolan imports from South Africa increased by 500 percent between 2007 and 2008 through companies such as Pep Stores, as well as through several hundred South African exporters, even as Luanda became Tshwane's second largest African oil supplier after Nigeria. By 2007, Angola had become South Africa's second largest trading partner in Africa, and bilateral trade stood at $2.3 billion by 2009. Three months after assuming the presidency in May 2009, Jacob Zuma proved his determination to transform this relationship into a strategic one by making Luanda his first presidential state visit. South Africa's Department of Trade and Industry established an office in Angola and pushed for establishing trade corridors, while South Africa's Eskom and the Development Bank of Southern Africa (DBSA) provided support to Angola's electricity sector. Thousands of Angolan students study in South African secondary schools and universities: a potential source of future pro-South African elites.

Another important issue for South Africa/Angola relations is the 'China factor,' and possible competition between the springbok and dragon over economic opportunities in the country. Following Angola's difficulties in accessing loans from the World Bank and the International Monetary Fund (IMF) for its post-war reconstruction efforts after 2002 due to charges of corruption within the government, China stepped into the breach. Beijing provided $4 billion in loans to Angola, including for large-scale infrastructure projects involving roads, railways, and low-cost housing. This made China the largest player in the country's reconstruction efforts. Ironically, Beijing had historically supported UNITA as part of its broader ideological battle with the Soviet Union. By 2006, 45 percent of Angola's oil exports went to China. Two years later, Luanda had become Beijing's largest trading partner in Africa, accounting for 25 percent of China's total continental trade. One of the main drivers of South Africa's recent courting of Angola appears to be the lucrative relations of its BRIC (Brazil, Russia, India, China) partners with Luanda in its own back yard. Dos Santos paid his first ever state visit to South Africa in December 2010 where Zuma conferred on him the Order of the Supreme Companion of O.R. Tambo: the highest honour for a foreign citizen. There was talk of strengthening bilateral collaboration within SADC, the African Union (AU), and the United Nations (UN). A large trade delegation accompanied Dos Santos, and a high-level bi-national commission was consolidated. The growing ties have, however, raised diplomatic eyebrows. During the crisis in Côte d'Ivoire in 2011, the incumbent president, Laurent Gbagbo, refused to cede power to Alassane Ouattara, despite widespread international support for Ouattara's victory. Angola reportedly provided funds and soldiers to Gbagbo, and following a visit by Dos Santos to South Africa, Zuma refused to recognise Ouattara's victory. The Angolan tail was thus wagging the South African dog, until Tshwane rediscovered its moral compass and recognized Ouattara's victory. Between 2011 and 2012, Luanda – as chair of SADC – and Tshwane – as chair of the SADC security organ – have sought to coordinate their security policies and to promote economic integration in the region. Angola also supported the failed candidacy of South Africa's minister of home affairs, Nkosazana Dlamini-Zuma, to become chair of the AU Commission in January 2012.

South Africa's relations with Angola thus represent the most important shift in its post-apartheid foreign policy. Where Nigeria – which remains South Africa's largest continental trading partner – was a key strategic ally under the Mbeki presidency, Angola could now become South Africa's most important strategic ally in Africa. If the ties can transcend the current overreliance on the personal relationship between the two presidents, the strategic partnership between the two strongest powers in Southern Africa could potentially revive SADC, and provide a powerful ally for South Africa in both sub-regional and continental diplomacy. Where Mbeki sought leadership at the continental AU level that he struggled to translate into leverage at the sub-regional level (as leaders like Dos Santos and Robert Mugabe considered themselves more senior in the liberation pecking order), Zuma's strategy, if it succeeds in securing a strong partnership with Angola sub-regionally, could potentially give South Africa even greater influence at the continental level.

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The SADC and the crisis in Zimbabwe: the delicate art of cajoling and threatening one of your peers

** Vincent Darracq*

Since February 2009, a Government of National Unity (GNU) between the ruling ZANU-PF and the opposition parties (MDC-T and MDC-M) is ruling Zimbabwe, with incumbent Robert Mugabe as President and MDC-T Morgan Tsvangirai as Prime Minister. After the troublesome presidential elections of March 2008, this outcome was the result of the inter-party negotiations supervised by the then South African president Thabo Mbeki. This temporary government has been in charge of implementing the Global Political Agreement (GPA), a program of action aimed at laying the basis for a future free and fair election. However, since its inception, the GNU has been largely dysfunctional. Although the economic situation has improved, political affairs are in a state of stalemate: mainly because of the obstruction of ZANU-PF's hardliners, most of the measures planned by the GPA, like a new constitution and the instalment of various commissions, have failed to materialize, and political violence is ongoing. In that context, what has the international community done to encourage the Zimbabwean stakeholders to cooperate?

Here, we must focus on the role of the Southern African Development Community (SADC), the regional organization in Southern Africa, and especially South Africa. Mandated by the SADC, the regional power has been at the forefront of the efforts to resolve the crisis, right from the onset in the early 2000s. Until 2009, President Mbeki was the chief mediator; although he must take credit for the GPA and the GNU, he was largely suspected of being biased against the MDC-T. With the nomination of new South African president Jacob Zuma as SADC's facilitator in 2009, the tone of South African diplomacy has changed: Zuma and his facilitation team have been much more critical of the ZANU-PF, privately and publicly. This change can be explained in different ways: first, at home Zuma is supported by the South African Communist Party and the trade unions' confederation Cosatu, who have traditionally sided with the MDC-T; secondly, with about four million of (mostly) illegal Zimbabwean migrants in South Africa, which puts service delivery under pressure and fuels xenophobic sentiments in the country, the crisis in Zimbabwe has become a pressing domestic issue for South Africa; also, the new South African government is genuinely fed up with this ongoing crisis in its own backyard, which undermines its credibility abroad. But at least initially, Zuma's South Africa hasn't always been followed by the SADC. Some member states (Angola, Namibia, etc) as well as influential individuals (SADC's Secretary General) proved reluctant to stand by South Africa and its increasing criticism of the ZANU-PF. The ZANU-PF still appears to the former liberation movements leading these countries as a brother party, Mugabe has maintained a strong aura in the region and neighboring countries are wary of Tsvangirai, a mercurial figure. These inconsistencies within the SADC provided Mugabe and his supporters with room for manoeuvre. For instance, after the SADC Summit of August 2010 refused to endorse Zuma's report, Mugabe felt free to openly defy the Zuma team by unilaterally appointing some regional governors and ambassadors, in breach of the GPA.

However, this might be changing, as South Africa has seemed to be able to increasingly build support for its positions within the SADC. In March 2011, the SADC's Troika organ openly criticized the rampant political violence in Zimbabwe, implicitly pointing the finger at the ZANU-PF. At the SADC Luanda Summit in August 2011, the ZANU-PF failed to obtain the removal of Zuma as SADC's facilitator. Above all, whereas Mugabe and the ZANU-PF, boosted by the new revenues of the Marange diamonds fields, have made it clear that they want to bring the GNU to an end and organize new elections in 2012. With or without a new Constitution, the SADC, under South Africa's leadership, has kept firm: no elections in Zimbabwe as long as key provisions of the GPA conducive to free and fair polls (a new Constitution, the establishment of commissions on human rights and medias, etc) haven't been fully implemented. This slow shift within the SADC in dealing with Zimbabwe is due to South Africa's hard diplomatic efforts to build consensus, and especially to rally Angola and Namibia behind its positions. Especially, because of an intricate mix of strategic and economic interests, the Zuma administration has gone out of its way to rebuild South Africa's relations with Angola, which were very frosty under President Mbeki; this has been instrumental in securing Angola's tacit support for South Africa's initiatives in Zimbabwe. But there are limits to what South Africa and the SADC can do. The arsenal of pressures they can exert on the Zimbabwean stakeholders, especially the ZANU-PF, is narrow. Especially, in Southern Africa, the dominant political culture, marked by the experiences of the liberation struggle, prohibits harsh public statements. This contributes to explain why South Africa, even it has managed to rally on its side a significant number of influential member states, fails to get the SADC to adopt a more robust language against the ZANU-PF. With the ZANU-PF unwilling to compromise and rejuvenated by the money from diamonds which will enable it to pay its "footsoldiers" in the political struggles to come and to grease the state machine, Zimbabwe seems to be facing – again – a deadlock.

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