Namibia and the Southern African Development Community

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Introduction

The relationship between Namibia and the Southern African Development Community (SADC) can be understood on the basis of the history and trajectories of the community on the one hand, and Namibia’s developmental objectives – of which its foreign policy is an instrument – on the other. This paper aims to shed light on SADC’s integration agenda and Namibia’s participation in it. At the same time, the discussion intends to contribute to an understanding of Namibia’s foreign policy as exemplified by its participation in the SADC regional integration scheme.

SADC is a product of the unique historical circumstances of southern Africa. The countries1 of the region cemented their cooperation in pursuing the political agenda of liberating themselves from the yoke of colonialism through the Frontline States (FLS). In 1980, an economic dimension was added to the political cooperation through a different entity, the Southern African Development Coordination Conference (SADCC),2 with broader membership than the FLS. The agenda for economic cooperation and development aimed at complementing the political strategy. SADCC’s primary objective was to reduce the region’s economic dependency on apartheid South Africa, and to enable them to effectively support the struggle for the independence of Namibia and the democratisation of South Africa. With the independence of Namibia and the imminent demise of apartheid in South Africa, SADCC was reconstituted as SADC3 in 1992. The new body aimed at attaining a higher level of cooperation that –4

… would enable the countries of the region to address problems of national development, and cope with the challenges posed by a changing, and increasingly complex, regional and global environment more effectively.

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1 The FLS consisted of Angola, Botswana, Lesotho, Mozambique, Tanzania, Zambia and, from 1980, Zimbabwe. Nigeria also participated in FLS meetings.
2 Founding members were Angola, Botswana, Lesotho, Malawi, Mozambique, Swaziland, Tanzania, Zambia and Zimbabwe. Namibia joined after its independence in 1990.
3 Angola, Botswana, Lesotho, Malawi, Mozambique, Namibia, Swaziland, Tanzania, Zambia and Zimbabwe.
4 SADC (1993a:3).
Namibia formally acceded to SADCC in 1990 as its tenth member state. However, the relationship between Namibia and SADCC dates back to the organisation’s establishment in 1980. Over the years, Namibia had been represented by its national liberation movement, the South West Africa People’s Organisation (SWAPO). SWAPO was recognised by the Organisation of African Unity (OAU), the United Nations (UN), and a significant number of governments as the sole and authentic representative of the people of Namibia. It virtually acquired the status of a government in exile and, thus, had an observer status in virtually all continental and most international organisations.

SWAPO’s – and, for that matter, Namibia’s – participation in SADCC was initially based on two considerations, namely geopolitics, and long-term development. SADCC was regarded as complementing the efforts by national liberation movements and the FLS to expedite the independence of Namibia, and the democratisation of South Africa. Namibia, as a coastal state, was to play an important role in reducing the region’s dependence on the South African transport system for their exports and imports. The Namibian port of Walvis Bay was to form a strategic nexus with Angolan ports along the west coast of Africa, while the Mozambican and Tanzanian ports would serve the east coast of the region. This was part of the backdrop against which South Africa’s attempts to hold onto Walvis Bay after Namibia’s Independence should be seen.

The Government of the Republic of Namibia was part of the ongoing process of transformation in the region, therefore, and positioned itself to meet its obligations and assumed responsibilities within the broad SADC programme. Thus, Namibia’s policy on SADC has evolved through the process of negotiating the various SADC instruments, starting with the Treaty Establishing SADC and the various protocols.

The SADC integration process did not follow the conventional linear approach to market integration, starting with a Preferential Trade Area (PTA), graduating to a Free Trade Area (FTA), followed by the establishment of a Customs Union, then a Common Market, and ultimately, an Economic Union. Instead, SADC committed itself to what it called “development integration”. The regional body developed a complex agenda from the very outset that rested on three pillars, namely politics, peace and security; functional cooperation; and trade and investments or market integration. SADC’s approach was, thus, a ‘big bang’ that was made possible by pre-existing elements of cooperation in the realm of politics through the FLS, functional cooperation through SADCC, and market integration.

This complex agenda makes it difficult to measure progress: one has to look at various sectors without a clear notion of what the determining factors are in the process. For instance, in the case of trade integration, an economist would ask whether the arrangements were trade-creating or trade-diverting. In short, they would have a set of

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5 SADC (1993:8).
indicators and benchmarks by which progress or lack thereof could be measured. The SADC experiment cannot be judged on the basis of a single economic activity or sector, however, but rather in terms of the three broad areas of political cooperation, functional cooperation, and market integration.

Indeed, it is in relation to these broad areas that the relationship between Namibia and SADC can be understood in terms of the country’s contribution to and benefits from the regional grouping. Thus, this study will look at Namibia’s role in SADC in terms of how the country benefits or could potentially derive greater benefits from regional cooperation and integration, on the one hand, and how it can contribute to the global common good in the process, on the other. This will be done through an analysis of the three broad areas that have characterised SADC efforts for integration and development, namely –

• cooperation in the area of politics, defence and security
• functional cooperation for the development of infrastructure and the management of natural resources, among other things, and
• trade and investments.

Namibia and cooperation in the areas of politics, defence and security

Regional integration by its very nature requires some degree of political cooperation to create a framework within which specific political and or economic objectives are pursued. Here I am not referring to the facilitating role of politics, but rather to politics itself as an object of cooperation. I will first outline briefly the objective of cooperation in the area of politics, defence and security. Secondly, I will discuss the process that led to the establishment of the institutional mechanism for cooperation in the areas of politics, defence and security within SADC. Lastly, I will analyse SADC’s effectiveness and capacity to deal with conflicts within the region.

Objective of cooperation

The Treaty establishing SADC made provisions for cooperation in the areas of politics, defence and security with the view to developing –

… common economic, political, social values and systems, … democracy and good governance, respect for the rule of law and the guarantee of human rights.

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6 A Declaration by the Heads of State or Governments of Southern Africa: Towards the Southern African Development Community; cited in Mandaza & Tostensen (1994:153).
Cooperation in the areas of politics, defence and security was viewed as a prerequisite for the success of regional integration in southern Africa. The experience of instability in the region – which emanated from the political subjugation of the region’s peoples by colonial regimes, the destabilisation of independent states by the South African regime, and the struggle for national liberation – was something that the region did not want to see repeated after the end of apartheid. Political instability in southern Africa had caused untold suffering and loss of life. Infrastructure had been destroyed and there was a lack of economic and social progress. With the end of apartheid, there was a commitment to ensure that the region’s peoples reaped the peace dividend. Mechanisms had to be put in place to ensure that peace in the region was sustained. To achieve this would require the institution of democratic bodies, good governance, popular participation, and respect for the rule of law.

The region had a tradition of cooperation in the areas of politics, defence and security before the adoption of the SADC Treaty, primarily through the FLS, prior to the democratisation of South Africa. The FLS provided an opportunity for the leaders of the region to work together on complex political issues through an informal structure that was deemed to have been successful. The cooperation through the FLS imbued a measure of mutual trust among its members. However, the fact that not all members of SADC were members of the FLS created tensions and mistrust that had to be overcome by inclusive regional mechanisms for cooperation in the areas of politics, defence and security.

**Establishment of an institutional mechanism**

When the process for the development of mechanisms for cooperation in the areas of politics, defence and security started as per the SADC Treaty, there was a parallel process to look at the future of the FLS in a post-apartheid southern Africa. Namibia had initially participated in FLS activities as an observer through SWAPO; after independence, it participated as a fully fledged member. Thus, Namibia was part of the political culture of the FLS. More often than not, Namibia took a similar position to that of the other FLS member countries. Namibia was also engaged in the discussion on the prospects for creating a successor organisation to the FLS, as well as on activating the provisions of the SADC Treaty to create an institutional mechanism for cooperation in these areas.

Some member states favoured the creation of a successor organisation to the FLS that would be independent from SADC, namely the Association of Southern African States (ASAS), on the basis that the issues of politics, defence and security could not be coordinated in the same fashion as other areas of cooperation within SADC. After protracted negotiations at ministerial level, the SADC Summit that took place in Gaborone in August 1995 resolved that the initiatives to create a successor organisation

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7 See Mbuende (2012:40–42).
to the FLS and that of creating an institutional mechanism within SADC, respectively, be synchronised. Ultimately, a compromise was reached to create a semi-autonomous structure within SADC in the form of the SADC Organ on Politics, Defence and Security. However, the complex structure of the Organ quickly proved impractical. Subsequently, a Protocol on Politics, Defence and Security was signed, which put the SADC Organ on Politics, Defence and Security on a sound footing.

The region’s capacity to deal with conflicts

The ability and resolve of the region to deal with conflict situations was put to test a number of times. SADC was involved in the process of the democratisation of South Africa; the civil war in Mozambique, which ended in 1994; and the situation in Angola. SADC has also been involved in the situation in Lesotho over many years. For example, SADC was instrumental in restoring the democratically elected government of Lesotho after what was termed a Palace Coup.8

A situation that gravely tested the resolve and capacity of the region to deal with conflicts within a member state was that of the Democratic Republic of the Congo (DRC). Euphoria had reigned as regards the DRC after the fall of President Mobutu Sese Seko. Southern African states – especially Angola, Namibia, South Africa, Zambia and Zimbabwe – were keen to develop close relations with the DRC for a variety of reasons ranging from romantic pan-Africanism to military, strategic and economic motivations. Angola, which shares borders with the DRC, wanted to make sure that the new government would not support the rebel movement, União Nacional para a Independência Total de Angola (UNITA, National Union for the Total Independence of Angola). There was also a belief that southern Africa, as a stable region, would in turn help to stabilise the DRC, and thereby extend the frontiers of stability and democracy. Some SADC member states encouraged the DRC to apply for SADC membership and ensured its admission.9 Not all SADC member states were enthusiastic about the inclusion of the DRC as they were not sure about the impact that a country with a long history of instability would have on the Community.

Shortly after the DRC had become a member of the regional body, the country was plunged into conflict. Its new President, Laurent-Désiré Kabila, asked fellow SADC member states to quash a rebellion supported by Rwanda and Uganda against his government. At a meeting in Harare, the Ministers of Defence of the various SADC member states considered the request of the Government of the DRC for military assistance and resolved that whichever member wished to intervene militarily should do so. Angola, Namibia and Zimbabwe decided to send in their troops. Other member states decided not to send troops to the DRC.

8 See (ibid.:45).
9 SADC Summit Communiqué, Blantyre, 1997.
Academics such as Laurie Nathan\textsuperscript{10} viewed the different approaches to the political situation in the DRC as a reflection of division within SADC, based on a lack of common values. He attributed this division to his characterisation of southern African states as being either more authoritarian or more democratic in terms of their domestic policies. He also distinguished between states with a militarist and those with a pacific approach in their foreign policies.\textsuperscript{11}

Committing or not committing troops to the DRC by SADC Member States did not necessarily reflect a division within the organisation. It is common practice in international organisations, i.e. that not all member states send troops to particular conflict areas. The deployment of troops in a multilateral context has always been a voluntary exercise. SADC allies have argued that their intervention was based on Article 4 of the SADC Treaty, read together with the objectives of the SADC Organ on Politics, Defence and Security in response to foreign invasion. In fact, Article 51 of the UN Charter recognises individual and collective self-defence against an aggressor state or non-state actor.

The distinction between the militarist and pacific approaches to foreign policy is not consistent with the practices of SADC member states in dealing with conflict situations in the region and beyond. There is much more to the decision by a particular member state to deploy or not to deploy troops in a specific situation. With regard to the DRC, some member states did not mind seeing the DRC Government fall because they did not see eye to eye with President Laurent Kabila. Some member states were indifferent to what was happening in the DRC at the time that Angola, Namibia and Zimbabwe decided to send troops. Furthermore, those member states who took a pacific approach in the case of the DRC took a militarist approach in the case of Lesotho – and vice versa.

SADC member states might have had their differences in terms of dealing with the situation in the DRC, but those differences were not articulated at SADC meetings. The SADC Summit held in Mauritius on 13–14 September 1998 welcomed the intervention in the DRC by its SADC allies. The question of the legality of the intervention has not been an issue as the principle of consent applied. Military intervention in the territory of the consenting state is an accepted principle and is an alternative to UN Security Council authorisation, whether states act unilaterally or as part of regional arrangements.

The shared experience of the three countries in the DRC brought them closer to each other to the point of virtually becoming a sub-military group within SADC. On 8 April 1999, Angola, the DRC, Namibia and Zimbabwe signed a Mutual Defence Treaty among themselves in Luanda. The Protocol read, inter alia, that —\textsuperscript{12}

\textsuperscript{10} Nathan (2004:7).
\textsuperscript{11} (ibid.).
\textsuperscript{12} Article 4, Angola, DRC, Namibia and Zimbabwe Mutual Defence Treaty.
[a]n armed attack against one of them shall be considered an attack against the other and that in the event of such an attack each of them will assist the Party so attacked by taking forthwith in collaboration with other parties, such action as it deems necessary including the use of armed force, to repel such attack and restore peace and security in the territory of the Party so attacked.

A joint decision-making body calling itself the *Angola–DRC–Namibia–Zimbabwe Cooperation Committee* was established to ensure the smooth implementation of the Treaty.

The signing of a defence treaty by these four countries raised eyebrows among academics, and was interpreted in the same fashion as being division within the Community. However, SADC has always adhered to the principle of variable geometry where a group of countries can forge ahead with cooperation in a particular area. The signing of the defence pact between the four countries in question offered an incentive for the expeditious conclusion of a similar agreement embracing all member states – as indeed provided for in the Protocol on Politics, Defence and Security. In fact, the SADC Mutual Defence Pact made similar provisions to those encompassed in the Mutual Defence Treaty between the four countries. Article 6 of the SADC Mutual Defence Pact reads as follows:

1. An armed attack against a State Party shall be considered a threat to regional peace and security and such an attack shall be met with immediate collective action.
2. Collective action shall be mandated by Summit on the recommendation of the Organ.
3. Each State Party shall participate in such collective action in any manner it deems appropriate.

While the three SADC countries were involved in military operations, the regional body itself was not found wanting in terms of trying to find a peaceful solution to the conflict. After months of fighting, civil society organisations approached the Executive Secretary of SADC, requesting him to explore the possibility of initiating consultations with the rebels with a view to bringing them to a negotiating table with the government. The Executive Secretary took up the matter with the SADC leadership and asked for permission to meet with the rebel leadership. He was authorised to talk to the rebels, and their first meeting took place in Zambia. He submitted a report to the SADC Chairperson on the rebels’ willingness to talk to the DRC Government.

A mediation process under the chairmanship of the late former President of Zambia, Frederick Chiluba, was set up at the SADC Summit in Mauritius in 1998. The DRC Government initially refused to occupy the same room as the rebels, so ‘proximity talks’ and shuttle diplomacy were conducted by a committee consisting of South Africa, Tanzania, Zambia, the SADC Secretariat, the Organisation of Africa Unity (OAU) and the UN. The group facilitated the Lusaka Accord, which was signed on 10 July 1999 in
Lusaka, Zambia. Apart from the two warring parties and the countries that had troops there, the Accord was also signed by President Chiluba, the SADC Executive Secretary, the OAU Secretary General, and a Representative of the UN Secretary General. The implementation of the Accord brought new players onto the scene and, subsequently, the UN assumed responsibility for overseeing the peace process. Namibia was the first country to withdraw its troops from the DRC after UN peacekeeping troops had been deployed.

SADC has also been seized with the situation in Zimbabwe. Former South African President Thabo Mbeki was assigned the responsibility of mediating between the Zimbabwe African National Union – Patriotic Front (ZANU–PF) and the Movement for Democratic Change (MDC) to find an amicable solution to the political crisis in that country. Mbeki – and SADC, for that matter – pursued what was termed quiet diplomacy, that is, a non-confrontational approach where controversial issues are discussed behind closed doors. The approach was criticised by non-state actors in the region as well as a number of Western governments, who believe that South Africa had the capacity to force Zimbabwe into a desired course of action through sanctions and other punitive measures.\footnote{See Fowale (2001); Dugger (2008).}

Serving President Jacob Zuma has subsequently assumed the role of mediator, but the issue remains unresolved. Namibia has been an ardent supporter of quiet diplomacy in the case of Zimbabwe.

Indeed, Namibia has been an active participant in the arena of maintaining international peace and security through SADC. It has consistently pursued an independent policy – even at the risk of being isolated on some controversial issues. A case in point was the proposed imposition of sanctions against Nigeria following the execution of Ken Saro-Wiwa and eight other Ogoni human rights activists. At a SADC Extra-ordinary Summit held in Pretoria at the request of Nelson Mandela, South Africa’s President at the time, to consider the possibility of imposing sanctions against Nigeria, Namibia was vocal against such a move. As a result, the idea was aborted, and a decision was taken to allow the Commonwealth Committee of Eight – of which two SADC member states, South Africa and Zimbabwe – time to deal with the issue instead.\footnote{Communiqué of the Extraordinary SADC Heads of State and Government Summit on Nigeria, Pretoria, 11 December 1995.}

Namibia placed a high premium on its international relations from the time that the country attained its independence. Namibia attached great importance to African solidarity, cooperation with other developing countries, and North–South cooperation. This is partially because there had always been a significant international relations and multilateral component to the struggle for national independence through the UN. The
first generation of Namibian leaders spent years in the corridors of the OAU and the UN during the struggle for independence and, thus, further deepened those relations after the country attained its independence. The country has also expended substantial resources in the maintenance of international peace and security through the regional mechanism of SADC, as well as via the African Union (AU) and the UN. Namibia was among the first countries to put its forces in place for the SADC Brigade, which is now part of the AU’s Standby Force.

Namibia and the SADC Parliamentary Forum

A discussion on Namibia’s contribution to SADC, especially in the area of democracy and good governance, would be incomplete without reference to its involvement in the SADC Parliamentary Forum. This is not because Namibia hosts the Forum, but because of the catalytic role played by the late Dr Mosé Tjitendero, former Speaker of the National Assembly of the Republic of Namibia. The Forum would have been unthinkable without Dr Tjitendero’s pioneering work and personal input. He convened a meeting in Windhoek in October 1993 to map out a strategy for the region’s parliaments to contribute to regional integration. This resulted in what came to be known as the Windhoek Initiative.

There were at least two broad aspects to these initial discussions. The first was how parliaments, as representatives of the people, could help disseminate knowledge to the people on regional integration and catalyse their involvement in the process. The second aspect related to parliaments’ role in contributing to regional integration through their deliberative and legislative functions. Most regional and international instruments are ratified by parliaments; thus, a greater appreciation of regional integration issues by members of parliament will help to speed up the ratification of such instruments.

Options were also considered as to whether the SADC Parliamentary Forum would constitute the nucleus of a fully fledged regional parliament or simply serve as a parliamentary association. For some reason, the SADC Treaty did not provide for the establishment of a regional parliament. However, Article 9(2) of the Treaty provided for the creation of other institutions upon the decision of the Council of Ministers and/or the Summit of Heads of State or Government. The Forum was, thus, created in accordance with Article 9(2) of the Treaty.

It was clear from the outset that the Executive, the Council of Ministers and the Summit did not wish to create a legislative body with oversight functions. Instead, the SADC Parliamentary Forum was to become a parliamentary association rather than a regional parliament – even though the Forum’s Constitution includes the aspiration of transforming the Forum into a regional legislature. Thus, the SADC Parliamentary Forum was established in 1997 as an inter-parliamentary body and an autonomous SADC institution, as per the provision of Article 9(2). Ten years later, the late former President of Zambia, Levy Mwanawasa, was the only SADC head of state or government to call for the transformation of the Forum into a fully-fledged legislature, along the lines of the
East African Legislative Assembly and the Economic Community of West African States (ECOWAS) Parliament.\textsuperscript{15}

The establishment of the SADC Parliamentary Forum as an association rather than a parliament has been a blessing in disguise. The Forum has been quite dynamic and proactive in many areas. It has established itself as a moral and political authority whose views are taken seriously by the people of the region and internationally. It has set up committees dealing with important issues such as HIV and AIDS, regional integration, gender, democracy, conflict resolution, and inter-parliamentary cooperation. The most notable achievement is in the area of elections observation and the development of the Norms and Standards for Elections in the SADC Region, that were adopted by the SADC Parliamentary Forum Plenary Assembly in Windhoek on 25 March 2001.

**Namibia and functional cooperation in SADC**

Functional cooperation has been the most successful pillar of SADC’s efforts towards cooperation in terms of directly impacting on the lives of the people of the region. Indeed, functional cooperation is a central tenet of the development integration model pursued by SADC and not an add-on – as is the case in the market integration approach. Development integrationists would argue that one has to produce before one trades. Trade integrationists, on the other hand, maintain that the market stimulates investments – and production, for that matter. These aspects, namely functional cooperation and market integration, are not mutually exclusive; however, the level of economic development will, to a certain extent, dictate the approach to integration.

I will single out seven sectors to underscore the importance of functional cooperation to Namibia in the context of SADC. This is not to say that other sectors are not important, of course. The brief discussion will demonstrate to some extent how indispensable regional economic cooperation and integration are to Namibia. SADC is viewed as a ‘talk shop’ by the uninformed. The analysis below will hopefully illustrate that regional integration affects the life of individual citizens in a positive way, and could do more in the future.

**Fisheries and marine resources**

Namibia joined SADC at a time when the organisation was concentrating on development cooperation. The SADC Programme of Action, which represented cooperation in the various sectors, was managed through the sector-coordinating system according to which every member state was given the responsibility of coordinating cooperation in a specified area. Namibia believed that it had a comparative advantage in the fisheries sector. However, fisheries were being coordinated by Malawi at the time that Namibia

\textsuperscript{15} Lusaka Times, 26 June 2007.
joined SADC. Malawi was keen to continue with its coordination role in view of its huge resources in Lake Malawi and the investments that they had made in the sector coordination unit. However, Malawi’s efforts were primarily concentrated on freshwater fisheries, so there was a gap in terms of marine fisheries. A compromise was reached to split the fisheries sector into Inland Fisheries on the one hand, and Marine Fisheries and Resources on the other. Namibia was thus given the responsibility of coordinating the latter subsector.

Namibia developed a sound policy in the fisheries sector with the assistance of the Government of Norway. In fact, Namibia’s management of the sector was rated by experts as one of the most well-managed on a global scale. Thus, Namibia was able to use its own experience to provide regional leadership in the management of fisheries and marine resources.

A SADC Protocol on Fisheries was adopted in August 2001, which inter alia provided for the management of shared resources, law enforcement, access agreements, high sea fishing, artisanal fisheries, aquaculture, protection of the environment, human resource development, trade and investment, and information exchange.

Legal affairs

Another area for which Namibia assumed coordinating responsibility on behalf of the region was in legal affairs. It was through its coordination of the legal sector that Namibia ultimately came to host the SADC Tribunal.

The Tribunal was initially viewed as a dispute settlement mechanism within SADC. Article 16(1) of the SADC Treaty reads as follows:

The Tribunal shall be constituted to ensure adherence to and the proper interpretation of the provisions of the Treaty and subsidiary instruments and to adjudicate upon such disputes as may be referred to it.

However, further details relating to powers, functions, procedures and other related matters were to be prescribed in a Protocol. This refers primarily to SADC instruments such as the Treaty, Protocols and other SADC agreements. It is the Protocol on Tribunal of SADC that broadened the Tribunal’s mandate to cover SADC law. This Protocol provides the Tribunal with jurisdiction over disputes between member states, and between natural or legal persons and member states. The Tribunal was to develop its own jurisprudence –

… having regard to applicable treaties, general principles and rules of public international and any rules and principles of the law of States.

16 Article 16(4).
In fact, SADC law virtually covers everything under the sun: the principles and objectives of the organisation range from development to the promotion of democracy, good governance and the rule of law.

On 18 August 2005, before the Protocol on Tribunal was ratified, the SADC Summit in Gaborone appointed members to the Tribunal in accordance with Article 4(4) of the Protocol. The members were sworn in on 18 November 2005 in Windhoek, and subsequently started to operate. Article 38 of the Protocol provides that it enters into force 30 days after the deposit of instruments of ratification by two-thirds of the member states. That has not yet happened, even though the Tribunal has been operational since then and has heard a number of cases. It has been argued that the amendment of the SADC Treaty in 2001 made the Tribunal an integral part of the Treaty and, therefore, obviated the need for the Protocol on Tribunal to be ratified. By implication, if one ratified the Treaty, then the Protocol – as part of the Treaty – was automatically ratified.

Citizens of the region have started to make use of the Tribunal’s services. One such group is Zimbabwean farmers, who claimed that the country’s land reform programme was discriminatory and that they had been denied justice. The Tribunal ruled in favour of the farmers, but the Zimbabwean Government has refused to abide by the Tribunal’s ruling.

According the Treaty, a decision by the Tribunal is final, without the possibility of appeal. Once a party refuses to abide by the decisions of the Tribunal the aggrieved party has the right to approach the Tribunal again to enquire about the circumstances relating to non-compliance. If no progress is made on the issue at hand, the Tribunal reports the matter to the Summit for a final decision. The matter between the Zimbabwean farmers and the Zimbabwean Government had in fact reached this stage before the Extraordinary Summit in May 2011.

The Government of Zimbabwe’s argument is that the Tribunal is not properly constituted as its Protocol has not been ratified. Zimbabwe’s Minister of Justice, Patrick Chinamasa, said the following in this regard: 17

> We hereby advise that, henceforth, we will not appear before the Tribunal and neither will we respond to any action or suit instituted or pending against the Republic of Zimbabwe.

The SADC Summit of 20 August 2010 directed the Committee of Ministers of Justice and Attorneys General to review the role, responsibilities and terms of reference of the SADC Tribunal. The SADC Secretariat itself commissioned a study in September 2010, the outcome of which was submitted and discussed during a Committee of Ministers of Justice meeting on 14–15 April 2011 in Swakopmund, Namibia. Whilst the study

17 AllAfrica.com, 13 May 2011; last accessed 19 October 2013.
and recommendations by the expert consultant seemed to support the competence of the Tribunal, in many respects the Committee expressed concern about the scope of the Tribunal’s jurisdiction and the law it was expected to apply. The Extraordinary Summit of SADC Heads of State and Government on 20 May 2011 in Windhoek received and considered the Committee’s own report and recommendations on the study. The Extraordinary Summit subsequently decided not to reappoint or replace members (judges) of the Tribunal, and upheld the moratorium on the Tribunal receiving or hearing new cases until the Protocol on the Tribunal had been reviewed and approved. A progress report in this respect is to be submitted by August 2011, and a final report by August 2012.18

**Transport and communications**

The realm of transport and communications is another area in which Namibia, along with other coastal nations, is well-positioned to make a significant contribution to regional integration as well as derive benefits from it. Regional integration is inconceivable without a well-developed transport infrastructure to facilitate the movement of persons, goods and services. SADC therefore identified the field of transport and communications as a priority sector.

Cooperation in transport and communication has been particularly important to the landlocked countries in SADC, who depend on access to other member states’ ports for their exports and imports. Other areas of cooperation such as trade and investments as well as tourism cannot be pursued effectively without transport and communications. Thus, SADC started coordinating investments into developing and rehabilitating transport and communications infrastructure, and has advanced to the level of policy harmonisation and the adoption of common standards in the region.

Namibia has turned its potential as one of SADC’s coastal states into an opportunity for regional integration in the transport and communications sector by way of investing substantial resources in a regional transport network. In this respect Namibia created the Walvis Bay Corridor Group, a public–private partnership designed to promote the optimal utilisation of four regional road networks, known as *transport corridors*. These are as follows:

- The Trans-Kalahari Corridor connecting the port of Walvis Bay to Botswana and the Gauteng Province in South Africa
- The Trans-Caprivi Corridor connecting Namibian port of Walvis Bay to Zambia and Lubumbashi in the DRC
- The Trans-Kunene Corridor that links Namibia with Angola, and
- The Trans-Oranje Corridor that links Namibia to South Africa.

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The Walvis Bay Corridor Group functions as a one-stop shop, bringing together transport regulators and transport operators, among others.

Through its investment in transport networks, Namibia continues to contribute towards the attainment of the regional integration objective targeting the efficient movement of persons, goods and services. At the same time, Namibia benefits from transit trade and tourism generated by these transport networks.

**Agriculture and natural resources**

Another area of crucial importance to Namibia is that of agriculture and food security. The importance of this sector lies in the fact that around 70% of the nation depends directly or indirectly on agriculture. Furthermore, this sector is vulnerable because of precarious weather conditions and a predominantly arid to semi-arid landscape. The country is a net food importer, and vulnerable to development beyond its borders in respect of food security, food availability, and food access because of pricing. Namibia stands to benefit from cooperation in the area of agriculture, therefore.

While production takes place at the national level, the sector lends itself to cooperation in the areas of agricultural training and research. Another area in which cooperation in the sector has benefited Namibia is that of early warning systems. SADC has set a Regional Early Warning System for food security that operates as an integrated entity comprising a unit based in Harare and autonomous national early warning units in each of the countries. The regional unit feeds information into the national units, and vice versa. This enables each country to be aware of the situation at the regional level and how it could benefit from that through import or export, depending on whether the country concerned has a deficit or surplus. Through this system, SADC is able to assess the availability of food in the region and any likely shortfall so that appropriate measures can be taken. This system has proved effective during regional drought years, when coordination of imports and transport are important. Under these circumstances, extensive efforts are made to ensure that there is no congestion at the ports so that food can be delivered without delay to where it is needed.

**Shared watercourses**

Management of shared watercourses has also been an important area of cooperation. Namibia is a water-scarce country with no perennial rivers except those along its borders with Angola, Botswana, South Africa and Zambia. Thus, the utilisation of this strategic resource for human consumption, agriculture, and hydroelectric power depends on Namibia’s cooperation with its neighbours. In fact, about 70% of SADC watercourses are shared by two or more countries. Instead of being a potential source of conflict if appropriate action were not taken, water has provided incentives for cooperation. A Protocol on Shared Watercourses in SADC, which was based on the Helsinki Rules
on the Uses of the Waters of International Rivers\textsuperscript{19} adopted in August 1966, was initially signed in 1995. It was revised in 1997 to take into account the United Nations Convention on the Law of the Non-navigational Uses of International Watercourses,\textsuperscript{20} and came into force in 2003. The Revised Protocol stresses the importance of taking a basin-wide approach to water management rather than individual national approaches. Member states have therefore entered into specific basin-wide agreements such as those serving the Okavango River Basin, the Kunene River Basin, the Orange-Senqu River Basin and the Zambezi River Basin.

**Energy**

Power is another area in which Namibia’s cooperation with its neighbours is of cardinal importance. Access to a secure and low-cost energy supply is essential for social and economic development. The cost of energy could also be a disincentive for investment. Development is unthinkable without energy, and Namibia is far from being self-sufficient in this resource. The country imports power from its neighbours, principally South Africa, but also exports power to Botswana and Zambia. Namibia is also part of a plan to bring power from the DRC through Zambia and into Botswana and South Africa.

In addition, Namibia participates in the Southern African Power Pool formed in 1995 through an inter-governmental Memorandum of Understanding that came into effect on 28 September 1995 and was revised on 23 February 2006. It was the first international power pool outside North America and Western Europe. The objectives of the Southern African Power Pool include the development of a world-class, efficient, reliable and stable interconnected electrical system in southern Africa. It also aims at creating a more efficient regional electricity market. This is to be achieved, inter alia, through the harmonisation of relations between member utilities.\textsuperscript{21}

**Namibia and trade and investment in SADC**

Integration theorists consider trade as the lynchpin of regional integration. The word integration has virtually become synonymous with trade liberalisation and market integration. Regional trade agreements facilitate the movement of goods and services within SADC, thereby creating a competitive market that helps to enhance member states’ global competitiveness. Furthermore, the existence of a large market allows for the development of economies of scale, which attract both domestic and foreign direct investment. While SADC has not adopted a market integration approach per se, trade and the desire to create a larger market have been important aspects of economic cooperation

\textsuperscript{19} The Helsinki Rules were superseded by the Berlin Rules of 21 August 2004.
\textsuperscript{20} UN General Assembly Resolution 51/229.
and regional integration in southern Africa. Right from the very onset, a sector on trade and industry was created to promote intraregional trade and industrial development. The SADC Framework and Strategy for Building the Community stated that, in addition to functional cooperation, 22

... there will be an active trade and market integration component, aimed at creating a unified regional market, by reducing the barriers to cross-border investment, trade in goods and services, and the eventual free movement of labour.

Foreign direct investment in Namibia and southern Africa as a whole, with a few notable exceptions, has been of the colonial type, namely investments aimed at exports to industrialist countries via the extractive industries, including mining, and agriculture. This pattern of investment and trade does not have the transformative impact on the region’s economies as investment for the domestic market has. Indeed, it is the existing pattern of investment that SADC countries would like to transform through regional integration.

Namibia, as a small market, had a vested interest in being part of a larger economic space through regional cooperation and integration. For example, Namibia has been part of the Southern African Customs Union (SACU) since the establishment of the South West African Administration in the country by South Africa, following Germany’s loss of colonies after the First World War. Namibia acceded to SACU immediately after its independence to avoid any disruption in its economy. SACU membership has been important to Namibia as it has provided access to the South African market.

Nonetheless, membership of SACU has not been without its challenges, as South African products have not always been competitive vis-à-vis agricultural products from Zambia and Zimbabwe. Thus, Namibia needed to diversify its imports. Namibia wanted to establish closer economic relations through, among other things, preferential trade arrangements with countries such as Angola and Zambia, where Namibian leaders had spent years in exile. Its SACU membership has, to a certain extent, limited the pace at which Namibia could establish closer economic relations through preferential trade arrangements with any third party, however, as the other SACU members have to concur with such a proposal. One way of fostering close economic relations with non-SACU countries in southern Africa was through SADC, where all SACU members were also represented.

Progress in creating a unified regional trade regime through SADC has been very slow. Member states have been relying on arrangements other than a SADC regime for trade among themselves. A number of important bilateral trade agreements have been struck between the various countries of the region, some of which predated SADC.

22 SADC (1993:8).
These bilateral agreements are more advanced than the regional trade regime in that they contribute to the development of local business in terms of taking advantage of neighbouring markets, and can become building blocks for a common regional trade regime. The problem, however, is that they are so different from each other. For example, – 
• there is SACU, which involves five SADC member states
• there is an FTA between Malawi, Zambia and Zimbabwe
• there is a Free Trade Agreement between Namibia and Zimbabwe, and
• some members of SADC were also members of the Common Market of Eastern and Southern Africa (COMESA) and, thus, participated in COMESA’s trade liberalisation scheme.

In fact, trade in the SADC region has been greatly facilitated not by a region-wide instrument, but by these bilateral and multilateral subsets.23

In addition, there have been commitments to trade liberalisation measures that SADC member states individually undertook in the context of other initiatives. Some member states were implementing structural adjustment programmes and trade liberalisation policies without regard to the regional situation, however. In this regard, they brought down their tariffs significantly beyond what their counterparts in the region were prepared to offer one another. There were attempts by some of these countries to urge other SADC members to bring their tariffs on a par with theirs. The response was that the pace of trade liberalisation should not be externally induced but based on internal considerations.

Consequently, members of the SADC region have had an unlevel playing field in terms of access to each other’s markets. Some countries accessed their neighbours’ liberalised markets while applying the less liberal regional regime. Moreover, structural adjustment programmes have not only created an unlevel playing field, they also buttress trade imbalances in southern Africa.

Thus, member states had no common trade regime before the SADC Trade Protocol signed in 1996 was adopted. This Protocol aimed to create an FTA within eight years, i.e. by 2004. A Trade Negotiating Forum was therefore established to allow member states to negotiate the details of such an enterprise. The signing of the Trade Protocol also involved considerable behind-the-scenes consultations to allay some member states’ fears. Still, more than 17 years later, we are yet to see the FTA envisaged in 1996. Instead, we have seen the introduction of more ambitious enterprises, such as the decision to establish a Customs Union. This was not necessarily an incremental process, as the FTA has not yet been attained.

From the outset, Namibia has been part of the process of developing a SADC trade regime. This process culminated in the adoption of the SADC Trade Protocol. Namibia was one of the member states that signed and ratified the Protocol speedily. Namibia has also participated in trade negotiations as a member of SACU. In terms of the SACU agreement, any further agreement with a third party has to be agreed upon by all the other SACU members. Namibia has been keen to develop a thriving trade with other SADC members as South African products, especially in the agricultural arena, have not always been competitive. For example, Namibia negotiated and entered into a bilateral free trade agreement with Zimbabwe, a move which was agreed to by the other SACU members. Discussions on a free trade agreement with Zambia were stalled, however, and subsequently had to be dealt with through a SACU-wide agreement. The idea of bilateral trade agreements was to allow for trade integration to move at a faster pace than that prevailing within SADC, while at the same gaining access to duty-free or low-duty products from the rest of the region.

The sluggishness of trade negotiations in the SADC context was taking place in a dynamic global context promoting freer trade. Consequently, there was a risk for the SADC process to be overtaken by developments in the World Trade Organisation (WTO), thereby rendering the entire SADC endeavour redundant. Regional trading blocs are usually precursors to global trade liberalisation and competitiveness. Through integration, a region can prepare itself for global competition. Competitiveness at regional level would allow for enhanced productivity and efficiency. Fortunately for SADC’s regional arrangements, the similarly slow pace of the conclusion of the WTO Doha Round has offered SADC a second chance. It should speedily put into effect the commitments by member states under its Trade Protocol.

Equally important is the Tripartite Agreement between SADC, the East African Community and COMESA, which aims to create an FTA. Variable geometry, which is one of the fundamental principles of this Agreement, allows each of the regional organisations to implement its own programme without being bogged down by a potentially slower process because of the large number of players involved. Interestingly enough, the Tripartite Agreement has not been concluded between regional organisations but between member states. This means there are no clear mechanisms for harmonising the three organisations’ programmes except through the actions of member states. Given the relatively weak intergovernmental processes in the regional organisations themselves, however, the decision-making process could be painfully slow. Furthermore, past experience has shown that such an approach is not effective. A good example of this was the Cross-border Initiative that involved COMESA, the Indian Ocean Commission, and SADC. The decisions taken at tripartite level were not necessarily integrated into each respective organisation’s programmes. Thus, member states played differential roles in the arrangements. Nonetheless, although there is no reason why progress should

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not be made in the Tripartite Agreement, given the overall trend towards global trade liberalisation, the bilateral as opposed to a multilateral approach is a cause for concern and a potential recipe for failure.

Trade liberalisation in itself cannot bring about economic development: only investments that can generate wealth through the production of various goods and services and create employment at the same time can achieve that. In fact, trade is an effect of production, and production is made possible by investments.

Africa’s share of the investment flow is very low, and has not yet reached a level that will reduce poverty. As to why Africa – including southern Africa – did not attract foreign direct investment, the reasons given have been political stability, risk of policy reversal, inefficient physical and technological infrastructures, and the size of the market.

Countries of the SADC region have taken measures to create a favourable environment for domestic and foreign investment. Most of them have promulgated investment laws and special incentives for foreign investors such as the repatriation of profits, borrowing on local markets, grants for training local workers, and arbitration mechanisms in the event of disputes between investors and the government. Most SADC countries, including Namibia, have signed investment protection treaties with a number of industrialised countries. In addition, all SADC member states are simultaneously members of the World Bank Multilateral Investments Guarantee Agency (MIGA). MIGA promotes foreign direct investment by providing political risk insurance guarantees against political and non-commercial risk such as breaches of contract and expropriation.

It is argued that the existence of markets that are larger than what any single SADC country can offer has the effect of attracting more investment towards them and has the benefit of the potential to create economies of scale. One should hasten to add that the response to SADC members’ individual and collective efforts to create a favourable investment climate was not commensurate with the actual flow of investments: although there has been a marked growth in export from Africa over the years, this was not underpinned by an increase in investment flows or improved productivity.

Most SADC countries have also undertaken policy reforms that try to address some of these impediments to investments. The region has also tried to complement member states’ efforts in specific areas. For example, a system of themes was introduced, which allowed the Summit to focus on specific areas in which the region needed to make progress.

In addition, despite having a policy framework, whether or not to invest depended on the decisions taken by individual businesspersons and/or companies. Another factor to take into account is that the SADC region has largely attracted investments in the extractive sectors and in the production of raw materials for export to industrialised countries.
There is, therefore, a need for investments in value addition so that more jobs can be created and the economies of the countries of the region can be transformed.

Conclusion

Regional integration is not optional for small countries like Namibia. It has been important from the point of view of promoting political cooperation as well as peace and stability in the southern African region. Political cooperation enhances a small country’s bargaining power in continental and global affairs. In the case of Namibia, the country has actively participated in the arena of maintenance of peace and security within SADC and beyond, and has expended substantial resources in so doing. The country also has not hesitated to articulate an independent position on a vast array of issues – despite its size.

Regional integration plays an important economic role in terms of functional cooperation, through which SADC countries work together in a number of areas. The area of transport and communication has been important to Namibia, as the country has been able to offer export and import routes to a number of neighbouring countries. The management of shared resources such as water and energy has been equally important from the point of view of economic development and resilience.

Being part of a larger economic and political space has been crucial in making the country attractive to foreign investors. Countries with small markets find it difficult to attract foreign direct investment in anything but the extractive industries. Such investments do not necessarily have a transformative impact on the economy of the receiver country.

The greatest benefit of regional integration to Namibia will come through the dynamic effect of integration, which will result in investment and job creation. This effect often comes about as a result of confidence by investors that things are working, that is, there is a reduction of risk premium. In this regard, strong institutions, and commitment to as well as delivery on a regional integration schedule in the various fields, are vital. It is also crucial for Namibia to stay the course insofar as the implementation of its commitments is concerned. Regional integration needs drivers: countries that act while others drag their feet.

In many respects, southern Africa is a functioning entity in terms of shared knowledge, joint development of infrastructures, joint management of shared resources, etc. However, political instability in a few SADC member states has had an adverse effect on the process of integration and development over the years. After 1994, there was a great deal of optimism about the region’s future, following the end of apartheid in South Africa, the end of civil war in Mozambique, and the transition to democracy in Malawi. However, the region subsequently had to deal with the situation in Lesotho, then the one in the DRC, and then Angola. Now SADC is confronted with unstable situations in
Madagascar and Zimbabwe. The situations prevailing in such political hotspots need to be resolved so that integration and development can proceed apace.

References


