The Southern African Development Community in Zimbabwe

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Non-Intervention and Non-Indifference

By

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List of Acronyms

AFDL	*Alliances des Forces Democratiques pour la Liberacion du Congo*
AFDB	African Development Bank
ANC	African National Congress
AFS	African Standby Force
APSA	African Peace and Security Architecture
AU	African Union
CPA	Comprehensive Peace Agreement
COPAC	Committee of Parliament on the New Constitution
ECOWAS	Economic Community of West African States
ESAP	Economic Structural Adjustment Program
FLRP	Fast-track Land Reform Programme
FLS	Frontline States
GDP	Gross Domestic Product
GNU	Government of National Unity
ICISS	International Commission on Intervention and State Sovereignty
ICJ	International Court of Justice
IDPs	Internally Displaced Persons
IFIs	International Financial Institutions
IGAD	Intergovernmental Authority on Development
IMF	International Monetary Fund
IGO	Intergovernmental Organisation
ISDSC	Inter-State Defence and Security Cooperation Committee
JOMIC	Joint Monitoring and Implementation Committee
LDF	Lesotho Defence Force
MCPMR	Mechanism for Conflict Prevention, Management, and Resolution
MOU	Memorandum of Understanding
MDC	Movement for Democratic Change
MDC-M	Movement for Democratic Change-Mutambara
MDC-T	Movement for Democratic Change-Tsvangirai
MPLA	People's Movement for the Liberation of Angola
NATO	North Atlantic Treaty Organisation
NEPAD	New Partnership for Africa's Development

NCA	National Constitutional Assembly
NPA	National Prosecuting Authority
NPRC	National Peace and Reconciliation Commission
OAU	Organisation of African Unity
ONHRI	Organ on National Healing, Reconciliation, and Integration
OPDSC	Organ on Politics, Defence, and Security Cooperation
PF	Patriotic Front
PSC	Peace and Security Council
R2P	Responsibility to protect
RECs	Regional Economic Communities
RENAMO	Mozambican National Resistance
RFP	Rhodesian Front Party
SADC	Southern African Development Community
SADCC	Southern African Development Coordination Conference
SANDF	South African National Defence Force
SCU	Sector Co-ordinating Unit
SEOM	SADC Electoral Observer Mission
SIPO	Strategic Indicative Plan for the Organ
SIPO II	Strategic Indicative Plan for the Organ
SSLM	Southern Sudan Liberation Movement
TNC	Transitional National Council
TPLF	Tigray People's Liberation Movement
UFP	United Federal Party
UNGA	United Nations General Assembly
UNITA	National Union for the Total Independence of Angola
UNDP	United Nations Development Programme
WB	World Bank
WFP	World Food Programme
WHO	World Health Organisation
ZANLA	Zimbabwe African National Liberation Army
ZANU-PF	Zimbabwe African National Union-Patriotic Front
ZAPU	Zimbabwe African People's Union
ZCTU	Zimbabwe Congress of Trade Unions
ZEC	Zimbabwe Electoral Commission
ZNLWVA	Zimbabwe National Liberation War Veterans Association
ZIPRA	Zimbabwe People's Revolutionary Army

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PREFACE

This book aims to analyse the Southern African Development Community's (SADC) management of the non-intervention and non-indifference dichotomy during its mediation in Zimbabwe. Non-intervention and non-indifference are inherently mutually exclusive hence the idea of tension between them. The institutional configuration of SADC, at the ideational level, is such that it encompasses a commitment to sovereign equality and non-intervention. However, it also commits to intervention to advance regional stability, peace, and security. An uncertainty arises about the (supposed) relationship between these competing commitments; which concept or idea assumes precedence in the event of regional conflict or crisis that threatens regional stability? Additionally, the AU norm of non-indifference, which emerged in the aftermath of the deadly internecine conflict that engulfed Rwanda in 1994, has been embraced by SADC.

SADC opted for mediation in Zimbabwe which paradoxically allowed it to manage and mitigate the tension between non-intervention and non-indifference. The mediation process produced the GPA in 2008, which subsequently led to the establishment of the power-sharing government, the GNU, in 2009. As the guarantor of the GPA, SADC facilitated the agreement's implementation. During this stage of its mediation intervention in Zimbabwe, clashes centred on non-intervention and non-indifference frequently occurred. In particular, President Mugabe was often at loggerheads with SADC over its involvement in Zimbabwe, occasionally accusing the organisation of undermining the country's sovereignty. Despite Mugabe occasionally undermining the GPA, as was seen with his tendency to unilaterally appoint allies in strategic positions within the state, for example, SADC did not change its stance on the intervention method in Zimbabwe. The use of mediation, a peaceable method of intervention, allowed SADC to manage the tension between non-intervention and non-indifference during its conflict resolution role in Zimbabwe.

Keywords: Non-intervention, Non-indifference, Sovereignty, Intergovernmentalism, R2P, Conflict, Crisis, Mediation, Global Political Agreement (GPA), Peace, Security, African Union (AU), Southern African Development Community (SADC), Zimbabwe

CHAPTER 1

INTRODUCTION

1 A glance at the background

In March 2007, in Dar es Salaam (Tanzania), the Southern African Development Community (SADC) passed a resolution to initiate mediation intervention in Zimbabwe to address the conflict/crisis that resulted in the destabilisation of the country and the southern African region. During the meeting, the SADC Summit, an apex structure of the organisation, mandated South Africa to facilitate a 'dialogue' between the government and opposition parties to find a political solution to the issues or problems affecting the country (SADC *Communiqué* 2007). On 17 August 1992, President Robert Mugabe of Zimbabwe and other SADC leaders signed the SADC Treaty in Namibia, which acknowledged that the organisation might intervene in a member state to advance peace and security in Southern Africa.[1]. Indeed, it was based on promoting peace, stability, and security that the intervention in Zimbabwe was made.

However, considering that sovereignty/non-intervention and non-indifference/intervention are inherently contradictory concepts, an assessment of how SADC managed the oppositional principles during its mediation role in Zimbabwe may help to deepen understanding of how non-intervention and non-indifference may co-exist in regional governance. On the one hand, sovereignty and non-intervention are foundational to the inter-state system and help prohibit external intervention and interference, thus preserving national sovereignty and the integrity of the modern state while also preventing destabilising inter-state invasions (Baylis, Owens, and Smith 2011, 575). On the other hand, the norm of non-indifference saddles the African Union and its regional economic communities (RECs) with the responsibility to intervene to prevent, manage or resolve humanitarian crises

[1] Southern Africa, with the capital letter 's,' covers all 16 SADC member countries. These states are Angola, Botswana, Comoros, Democratic Republic of Congo, Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Tanzania, Zambia, and Zimbabwe.

on the continent (International Refugee Rights Initiative 2007). The above is in line with the recently emerged doctrine of responsibility to protect (R2P). International organisations like SADC are challenged to balance the importance of responsible intervention for humanitarian purposes without unreasonably diminishing or hindering the state (ICISS 2001).

The SADC mediation process lasted for a period of 7 years, starting from 2007, when a decision to intervene was officially made, to 2013, when the term of the Government of National Unity (GNU) expired, leading to an election that marked the end of SADC facilitated the transition. As it will be shown, SADC performed the roles of an instrument, platform, and actor, roles that its member states leveraged to resolve the crisis. Notwithstanding the aforesaid, the various statutory documents of SADC do not provide sufficient insight and clarity on the supposed nature of the relationship between sovereignty and intervention. As such, intervention by the organisation is uncertain. Establishing where that clarity lay required an extensive analysis of the SADC context, concepts, principles, decisions, activities of SA mediators, and the broader continental and international endorsement of SADC management of the contradictory principles and norms.

Despite its regional dimensions from cross-border spill-overs in refugees, forced migration, and investment perceptions, the Zimbabwean crisis was primarily an internal conflict, largely caused and driven by the violence of the ruling ZANU-PF unleashed on opposition supporters. The domestic effects of the conflict were severe, demonstrated through the pervasive undermining of political freedoms, internal displacement, the collapse of the economy, and violence generally (Hammar, Landau, and McGregor 2010, 268-269). Its regional effects mainly manifested in a regional refugee crisis marked by unprecedented migration of Zimbabweans to other countries in southern Africa (Oucho 2007, 2). Of course, a large-scale and unorganised influx of migrants creates instability for receiving countries, as the anti-migrant violence that gripped South Africa in 2008 highlights (Zondi 2008).

During the conflict, the ZANU-PF government often asserted that Zimbabwe was a ‘sovereign’ state when faced with external criticism over its human rights violations (*The Zimbabwean* 2007). This appeal to sovereignty by the ZANU-PF was meant to pre-empt and prevent intervention. During the period of SADC mediation in Zimbabwe, it was about minimising the effect of the mediation. This interpretation of sovereignty by the Zimbabwe government as excluding external interference, amongst others, renders the evaluation of SADC’s balancing of sovereignty and non-intervention, on

the one hand, and non-indifference and intervention, on the other, a significant undertaking.

2 Rationale for the book

According to Nye (2000:149), in its legal sense, sovereignty refers to "absolute control of a territory" by a nation-state. As such, the principle of sovereignty is inherently oppositional to external intervention, with intervention by its nature and in its broadest sense referring to "external actions that influence the domestic affairs of another sovereign state" (Nye 2000, 148). However, the post-Cold War international system, a period characterised by the decrease of inter-state conflicts and the increase of intra-state ones, has witnessed a rise in interventions by external forces/actors such as intergovernmental organisations and states (Harbom and Wallesteen 2010, 501; Murthy 2001, 210-211). Wallensteen (2012:16) defines conflict as a "social situation in which a minimum of two actors (parties) strive to acquire at the same moment in time an available set of scarce resources." This often involves violence and the violation of the human rights of ordinary people beyond the impacts on the economy, social stability, and general security. Accordingly, conflict resolution intervention flows from an understanding or assumption that the international community cannot be indifferent to human suffering, particularly in mediation.

The international norm of 'responsibility to protect' (R2P) posits that the international system is responsible for intervening in conflicts where lives are in grave danger, and domestic mechanisms cannot guarantee justice (Tesfaye 2012). It waives the state's right to sovereignty and non-interference to save lives (Tesfaye 2012, 52). The AU has increasingly leaned in favour of the principle of non-indifference, with its former Chairperson Professor Alpha Konare, who was also a former president of Mali, understanding this principle/concept to mean "courteous and united interference [in the affairs of member states]" (Ankomah 2007, 11). As a sub-regional organisation[2] Therefore and subject to the principle of subsidiary through which the AU devolves the implementation of

[2] In this book, SADC is variously referred to as a 'sub-regional or regional organisation or simply intergovernmental organisation. The AU is addressed as a regional, continental, or intergovernmental organisation. This distinction is important as it captures the hierarchical relationship of the two organisations, where SADC is a 'sub-regional arrangement' of AU.

principles, values, plans, and decisions to sub-regional bodies, the SADC is bound by the AU's principle of non-indifference.

3 Conceptual considerations

A principle is a "general law with the universal status of ... laws" (Escandell-Vidal 2004, 3). Within the international system of states, principles have a status of international law and are essential to understanding how the system works. Norms are regarded as guidelines for human action concerning "how certain people ought to behave, should behave, or may behave in some way" (Koller 2014, 157). While norms are general guidelines, they are reinforced by "social rules and orders with binding force" (2014:157); in the case of the inter-state milieu, social rules are system rules that condition state behaviour. Wiener (2007) argues that the meaning and implementation of norms are often contested. Within the international system, states usually disagree over many principles and norms, including those about the intervention question. This definitional discourse on the nature and meaning of principles and norms is expanded and discussed extensively in Chapter 2 of the book. The concept of sovereignty as it is presently interpreted and understood within the international system of states first emerged in 1648 in the Treaty of Westphalia which ended the so-called 'Thirty Years' War in Europe' (Goodman 1993, 27). The Treaty essentially recognised every nation-state and empire's right to exercise power within its borders as demarcated; thus, the concept of sovereignty was born. It has since become a fundamental principle within the international system and guides interactions between states (Ayoob 1995, 190-191). At the core of the sovereignty, the principle is the notion of juridical equality of states, despite variations that may exist regarding the states' military, political and economic power (Heiberg 1994, 20). Per this principle, states ought to desist from intervening in another state's internal affairs, and each state's independence must be upheld and respected by other states (Heiberg 1994, 19-21).

In exploring the principle of sovereignty, Krasner (1999) refers to international legal and Westphalian sovereignty. He argues that the two are concerned not with control matters but authority and legitimacy (Krasner 1999, 4). According to him, international legal sovereignty only extends recognition to states or territorial entities with formal juridical independence in terms of international law. Conversely, Westphalian sovereignty excludes external actors from a state's territory, whether *de jure* or *de facto*. In the current international system, the former form of sovereignty only applies to

states whose territory is not in contention and has formal juridical independence. At the same time, the other relates to the absolute exclusion of external interference. Similarly, Westphalian sovereignty is also based on the exclusion of external actors "from the domestic authority structures" (Krasner 1999, 20).

Intervention is related to the principle of sovereignty, which can be understood as the violation or weakening of sovereignty. Within the international system, the intervention has always been a controversial topic. Among the leaders of the Global South, intervention, especially humanitarian intervention, is viewed as a canny ploy to "legitimate the interference of the strong in the affairs of the weak" (Bellamy and Wheeler 2011, 512). Western powers have often used the principle of humanitarian intervention to justify military incursions that are aimed against weak states. Intervention by a third party in a conflict/crisis can take different forms, including humanitarian intervention, mediation, peace enforcement, and peacekeeping (Zartman and Touval 2007, 437-438). The international community sees this type of intervention as desirable and even necessary in some cases, especially in weaker states. Nonetheless, whatever form or shape the intervention takes, the intervention appears to remain contested and problematic for states.

Intergovernmental organisations (IGOs) loom large in international affairs. States set up, join and participate in IGOs, a process that also results in conferring upon the organisation the recognition that its actions are in pursuit of the common interests of the members (Haynes et al. 2011, 336-40). Transferring some measure of authority to IGOs does not necessarily mean that states expose themselves to supranational domination. Principles like national sovereignty serve to prevent intergovernmental and supranational overreach. The UN was established by states in 1945, immediately after the devastating World War 2, "to save succeeding generations from the scourge of war" (UN Charter 1945). This decision saw member states committing to remove threats that could lead to the outbreak of another international war. Accordingly, conditions under which sovereignty could be waived were defined, and Chapter VII of the UN Charter describes these criteria (UN 1945). However, Ayoob (2002:82) points out an inherent tension between international concern translated into intervention and the notion of sovereignty, with "sovereignty being the foremost" among the principles and norms of the inter-state system. Sovereignty remains a central principle around which the state-based international system is built.

Nonetheless, the doctrine of R2P and the norm of non-indifference are some of the post-Cold War developments that have gradually given salience to the question of intervention. In 2001 an *ad hoc* commission, the International Commission on Intervention and State Sovereignty (ICISS), was established by the Canadian government and consisting of representatives from the UN General Assembly (UNGA) to conceptualise humanitarian intervention under the theme of 'responsibility to protect' (R2P) (ICISS 2001). This development was in response to the speech made in the UNGA by the then UN Secretary-General Kofi Annan, who argued that the world had become globalised, international cooperation had increased, and that sovereignty was 'now' understood as not absolute. In the speech, he also grappled with normative matters involved in humanitarian intervention, arguing that the international community (specifically the UN) had a moral and ethical obligation to intervene to prevent suffering and violence (UN 1999). The speech was at the back of the UN's failure to intervene in the Rwandan genocide between April and July of 1994 that claimed the lives of over 800 000 people, and the Srebrenica (Bosnia) massacre of July 1995 that cost 8000 lives. The foundation for what would later become known as the doctrine of R2P was laid in the speech. The ICISS was set up to understand the implications of the call by the Secretary-General. It formally coined and operationalised the concept with its 'The Responsibility to Protect' report released in December 2001 (ICISS 2001).

In the report, the ICISS was concerned with redefining the principle of sovereignty to pave the way for humanitarian intervention. The report acknowledged the saliency of sovereignty as evidenced by the statement that "a sovereign state is empowered in international law to exercise exclusive and total jurisdiction within its territorial borders. Other states have the corresponding duty not to intervene in the internal affairs of a sovereign state" (ICISS 2001, 12). What is mentioned above asserts the principle of sovereign equality of states as contained in Article 2 of the UN Charter (UN Charter 1945, Article 2). Nevertheless, the report suggested that this crucial principle of sovereignty was not absolute but was guided by the UN Charter, which also frames it as a 'responsibility' rather than a mere 'control' (ICISS 2001, 13).

The report explained this by outlining three implications that flow from the assertion that sovereignty is a responsibility. Firstly, sovereign states are responsible for the safety and protection of the right to life of their citizens and for championing the citizens' welfare. Secondly, states are not just arbitrary exercisers of power but are accountable for their actions to the domestic-level stakeholders (citizens) and the international-level actors

(fellow states within the inter-state system). Thirdly and lastly, the report says that states are accountable for their actions, implying that punishment is possible in instances where fellow states deem a state's behaviour or actions irresponsible. In September 2005, the UNGA passed a resolution that resulted in the legalisation of the doctrine (UN 2012). This doctrine became binding on the international system, including on regional organisations, thus making interventions in countries under defined conditions possible.

This doctrine was compatible with some fundamental principles upon which the UN was founded. Article 1 of the UN Charter outlines the *raison d'être* of the UN as, amongst others, to maintain international peace and security and to take appropriate measures, including using force, to remove threats to international peace and security (UN Charter 1945, Article 1). Similarly, Article 4 of the UN Charter posits that states should refrain from using threats against any other states other than in circumstances where such force serves to advance the organisation's purposes. Chapter VII of the UN Charter outlines and demarcates the methods to be used and conditions under which the UNSC can violate the sovereignty of the state and thus intervene in the internal affairs of a state. Conventionally, the conditions threatening international peace and security have generally been regarded as war crimes, crimes against humanity, genocide, and aggression.

The 1998 Rome Statute of the International Criminal Court, a source of international law, principles, and norms, provides a broad definition of the four crimes listed above. It defines war crimes as crimes that occur during the war and are characterised by wilful killings, torture, and deportations, among others. Crimes against humanity are acts committed as part of a broad and systematic attack directed at any civilian population, including extermination, murder, enslavement, the crime of apartheid, and others. The crime of genocide is defined as acts of eliminating or terminating a national, ethnic, racial or religious group or the members thereof. Moreover, a crime of aggression relates to planning and executing an act of aggression using state military power in violation of the UN Charter (International Criminal Court 1998, 3-10).

On the African continent, the AU is the primary intergovernmental organisation complemented by eight regional economic communities (RECs) constituting sub-regional organisations focusing on regional integration for development, security, and peace. Similar to the UN, Article 4 (h) of the Constitutive Act of the AU confers on the AU the right to intervene in cases of "war crimes, genocide and crimes against humanity"

(AU 2000, Article 4). Fundamentally, this commitment by the AU signalled a significant shift from the non-intervention emphasis of its predecessor, the Organisation of African Unity (OAU), to a more active approach underpinned by a promise to intervene in cases of gross violations (Keller and Rothchild 1996, 37-44). Thus, the continental organisation shifted from a rigidly non-intervention/non-interference posture under the OAU's Charter towards a greater embrace of non-indifference to conflicts/violent political crises in Africa.

Moreover, the AU's shift to recognise the need to intervene in situations of extreme human rights violations is considered significant and has contributed to the popularisation of the principle of non-indifference (Tesfaye 2012; Gueli 2004, 135-137). Because the RECs were formally created through the 1991 Abuja Treaty adopted by the OAU (AU 1991), they essentially became subordinate structures, not parallel structures to the AU. They are therefore bound to the AU's non-indifference posture to conflicts/crises with humanitarian effects. However, this bind results in the implementation of the principle by different RECs, a subject that falls outside the focus of this book. In Southern Africa, the SADC is the AU's REC and was the primary actor in the conflict mediation intervention in Zimbabwe.

On the one hand, the sub-regional organisation does have stipulations as regards the conditions under which intervention could be undertaken. For example, the 2001 SADC Protocol on Politics, Defence and Security Cooperation (hereafter the Protocol of the Organ) asserts that SADC may intervene in circumstances where there is a 'significant intra-state conflict' that is characterised by large-scale violence against sections of SADC member state's population, military coup and in those where the conflict threatens regional peace and security (SADC 2001, Article 11). On the other, it also emphasises commitment to human rights principles, peaceful settlement of disputes, solidarity, and sovereign equality, amongst others. It considers these to be the core principles that (should) guide the interaction of SADC member states (SADC Treaty 1992, Article 4).

According to Schoeman and Muller (2009:178), "SADC ... is premised on the principle of sovereign equality and non-intervention, which indicates a preference for *the state* rather than *human* security". The implication is that the organisation was unlikely to enforce peace to protect human rights. Similarly, Söderbaum (2004:246) argues that "there are many instances whereby political leaders and regimes are using regional governance to promote rather than to reduce absolute state sovereignty and its legitimacy."

Regarding SADC, he points out that the leaders of various member states of the organisation have been able to project themselves as champions of the values of regionalism, thereby enabling them to increase the status of their undemocratic governments (Söderbaum 2004, 426-427). State sovereignty and regime security are regarded as sacrosanct, and any threat to this, both internal and external, is dealt with hastily. The outcomes are predetermined, preserving the prevailing regime and constituting the primary goal (Ayoob 1995, 191).

The Zimbabwe conflict was an internal conflict in nature and scope. However, it had the potential to spill out through refugees of conflict and, thus, undermine efforts to consolidate human rights and democratic culture in the region, threaten regional stability, and fuel sentiments of Afro-pessimism, amongst others. It also could generate a negative investment sentiment about the whole region and continent. It could thus affect economies and social development in the region. The conflict had its roots in post-independence political and economic governance challenges, exacerbated by the epochal land reform programme of the early 2000s (Mlambo 2014, 236-237; Adolfo 2009, 39-40). As a sub-regional organisation to which Zimbabwe was and remained a member, with interest in maintaining regional stability, peace, and security, SADC had a reason to be concerned about the conflict. For the large part of the 2000s, the Zimbabwe conflict developed and escalated and was characterised by politically motivated torture and killings, eventually culminating in formal SADC mediation in 2007 (Howard-Hassmann 2010, 899; SADC *Communiqué* 2007).

Zondi and Khaba (2014:2) argue that SADC's mediation intervention in Zimbabwe was motivated by the desire to "protect regional norms and stability." Indeed, the 1992 SADC Treaty expresses commitment to the principles of peace and security and the peaceful settlement of disputes (SADC Treaty 1992). In the Treaty, the principle of sovereign equality of member states is listed as the first principle, which indicates how fundamental this principle is to the organisation's members. Therefore, uncertainty prevailed regarding how SADC initiated and carried out conflict resolution intervention in Zimbabwe without upsetting the principle of sovereign equality.

Nevertheless, Cawthra (2010:30-31) argues that SADC's mediation approach in Zimbabwe was characterised by reliance on consensus and expression of solidarity with the ZANU-PF government. So it was about the region's political sentiments of solidarity and collective self-help. Similarly,

Hartmann (2013:5) contends that "close relationships ... between those governments that originate from the liberation movements, bear risks to the capacity for SADC to mediate", which was also at play during SADC's mediation in Zimbabwe. Badza (2010:10) also points out that in its *communiqués* regarding the Zimbabwe situation, SADC often commended the Zimbabwe Government for efforts in stabilising the country, arguing that this pacification approach was influenced by SADC's various state-centric protocols, such as the 2003 SADC Defence Pact which affirms the principles of sovereignty and non-intervention. Ndlovu-Gatsheni (2011:14) argues that SADC mediation intervention in Zimbabwe was fractured and undermined by Mugabe's anti-imperialist rhetoric, thus pointing to a firm assertion of the principle of national sovereignty by the Zimbabwe government as used to weaken non-indifference on the part of the SADC.

The SADC mediation in Zimbabwe first facilitated inter-party dialogue to reach a political settlement. Subsequently, it monitored the political settlement's implementation between 2008 and 2013. As previously pointed out, as president of South Africa, Mbeki was appointed SADC mediator. During mediation efforts to conclude a settlement outcome, he was often criticised for being soft on the ZANU-PF government because of his reluctance to shout at the parties (Mlambo and Raftopoulos 2010, 9). Conversely, his successor, President Jacob Zuma, was viewed as more stern with the ZANU-PF government because of his willingness to condemn human rights violations by the government (Cawthra 2010, 30).

4 Conclusion

The uncertainty regarding SADC's management of its mediation intervention in Zimbabwe is twofold. Firstly and conceptually, many still have ambiguity about how sovereignty and non-indifference co-exist as they imply mutual exclusivity. Secondly, and in light of the aforesaid, there is a question about how embracing these two conceptual extremes affected the intervention by SADC. The literature on SADC's mediation intervention in Zimbabwe needs to adequately address how the organisation managed the relationship between principles or norms of national sovereignty and non-indifference. Therefore, this book explores this aspect of the SADC conflict resolution intervention in Zimbabwe.

CHAPTER 2

SOVEREIGNTY, STATEHOOD AND INTERGOVERNMENTALISM

1 Introduction

This chapter aims to explore and examine the concepts of sovereignty (which encompasses non-intervention), non-indifference, intergovernmentalism and conflict mediation to understand how they will assist in analysing how SADC balances the apparent tension between the concepts of non-intervention and non-indifference during mediation interventions. The chapter provides an examination of the various ways of understanding the pertinent concepts (sovereignty, non-indifference, non-intervention, intergovernmental organisations, conflict, mediation, etc.), drawing as it is from scholarly works and official documentation of the United Nations (UN), the African Union (AU) and SADC on the meaning of these concepts, particularly sovereignty and non-indifference.

In terms of its structure, the chapter starts with an exploration of sovereignty and different types of state models, as well as the nature of the African state to establish its relationship with the concept of sovereignty. Secondly, it examines intergovernmentalism and the concept of norm and, by extension, the norm of non-indifference. Accordingly, this chapter extends the discussion on intergovernmentalism to its practical manifestation, at a more general level, through IGOs and their roles and functions. Fourth, conflict and conflict mediation are explored to establish their nature, meaning and scope equally. While there have been writings on the principle of sovereignty and, to a specific measure, the norm of non-indifference and the relationship of these concepts in the context of conflict mediation by an IGO needs to be addressed, at least in the context of Southern Africa.

2 Sovereignty and statehood

Conventionally, sovereignty is widely understood to emerge with the end of a succession of wars in Europe that culminated in the Westphalia Treaty in 1648 (Straumann 2008). The Westphalia Treaty, alternatively called the Peace of Westphalia, affirmed the territorial independence of European societies at the time and discouraged external interference and intervention, thereby giving birth to the idea of non-intervention in the domestic affairs of one state by another. The Thirty Years' War, which the Peace of Westphalia sought to end, was a religious war involving Protestant and Catholic polities in Europe (Gross 1984, 21). The treaty guaranteed equality amongst the European societies and protected smaller polities from more dominant ones (Gross 1984, 21-25). It subsequently became a form of international law that regulated the relations of different European polities, at the core of which were tolerance and respect for territorial independence. The treaty also recognised that the 'state', as demarcated by its territory, was sovereign and had the right to interact with other states based on equality (Osiander 2001, 261-262). Because of the above, sovereignty in the international system is considered rooted in the Peace of Westphalia.

Sovereignty is the exercise of authority within a given territory by the state. Independence from external power(s) and the exercise of final authority over a people living in such a territory are central to the definition of sovereignty. For Hansen and Stepputat (2006:5), sovereignty resides in the people or community because rulers derive political authority from the former. Philpott (2003) defines sovereignty as the "supreme authority within a territory". This distinctive quality resides with the state, and confers upon it certain privileges as a pre-eminent actor in the international system. According to Reed (1995:140-141), the concept of sovereignty has a dual nature in that it possesses two dimensions: (a) *de facto* sovereignty; and (b) *dejure* sovereignty. *De facto* sovereignty is confined to the domestic sphere and alludes to the state's ability to exercise control over all activities transpiring within its territorial jurisdiction. *De jure* sovereignty relates to the conception and interpretation of sovereignty within the international sphere and, in particular, the ability of the state to achieve external recognition as a sovereign state through international law.

By its nature, sovereignty has both internal and external dimensions. Regarding the former, sovereignty refers to a scenario whereby the state has exclusive political control at the domestic level. The government of the day is conferred with the right to give effect to the idea of the state as a central sovereign actor by exercising absolute control over legal and political

power. Werner and De Wilde (2001:288) also make a similar argument, positing that sovereignty entails the "exclusion of external actors from domestic authority structures". The nature of the state, in terms of the political system (i.e. democratic or dictatorial), is immaterial and has no bearing whatsoever on whether a state can be considered to possess sovereignty or otherwise. The most important elements concerning the criteria of sovereignty at the internal level are the notion of the state as a behemoth that overbears on and determines (all) important spheres of society and retains total control over political power. The state possesses autonomy and legitimacy to exercise this control: it is a monolithic entity (Litfin 1997,169).

External sovereignty pertains to the recognition of a state's internal sovereignty (absolute domestic political control) by other states, which necessarily culminates in an appreciation that other states have no right to interfere in the sovereign state's internal affairs. The state is considered sovereign because "it must answer to no higher authority in the international sphere (Glanville 2013, 80)". This dovetails with the earlier point about the state being a 'supreme authority in a given territory' in that it regards the state as a master of its fate, at least in principle. Reno (2001:197-203) uses the case of weak African states to illustrate how external sovereignty is derived. He argues that in states like Nigeria, Liberia, Congo, and Sierra Leone, warlords have risen to control certain territories and extract 'taxes' in areas of their influence. These states were generally weak and needed help to exercise effective control over their territories. Despite the weaknesses cited above, these states possessed external sovereignty in that the international system of states recognised their right to exist and conferred upon them the status of 'sovereign statehood'. Additionally, quasi-sovereign states, those states that lack substantive power, acquire recognition and validation of their sovereignty through admission and participation in international multilateral organisations.

Nevertheless, external interference remains a subject of contestation in international relations, as will be highlighted later. The argument in favour of external interference or intervention is premised on the thesis that globalisation has resulted in the state losing control over certain activities like domestic monetary policies and the mobility of capital in an increasingly interdependent world order (Krasner 2001, 234). Similarly, Goodman (1993:32) argues that the spread of democratic values has resulted in super and middle powers using notions of the promotion of democracy to intervene in the pursuit of national interests. This is the dark side of external intervention; it is prone to abuse. These developments have weakened

traditional notions of sovereignty, such as the prohibition of external interference.

Having already provided an overview of the notion of sovereignty as a distinctively state-related and associated phenomenon, it is necessary to provide an account of the two accepted forms of state, the empirical state and the understanding of the state as informed by the Montevideo Convention (juridical statehood).

2.1 Empirical statehood

The concept of empirical statehood in political science is omnipresent, with scholars often preoccupied with defining and dissecting the nature and scope of the empirical state. About Max Webber's examination of empirical statehood, Jackson and Rosberg (1982:2) argue that Webber's conceptualisation of the state centres on the idea of the state as the harbourer of absolute political power (and force) as means of demonstrating and practising its 'stateness'. The preceding alludes to the logical progression inherent in the concept of means – a progression that sees means translated into the pursuit of ends. For instance, in the case of territory, the state uses its force or monopoly over means of violence (when necessary) to defend, protect and enforce its territorial integrity, repelling invaders in a territorial war.

The empirical state also has a compelling government underlined by the existence of "centralised administrative and legislative organs" (Jackson and Rosberg 1982, 6). The administrative and legislative apparatuses are some of the conditions necessary for the empirical state to exercise control. Therefore, a distinction between the existence of these apparatuses and the ability to leverage them for the purpose of exercising effective control should be made. Indeed, a majority of states have centralised administrative and legislative organs. However, the contribution of these towards realising effective deployment of the control function of the state – the capacity to exercise control – is debatable. In addition, Gravingholt, Kreibaum and Ziaja (2012:6-7) contend that "state authority, state capacity and state legitimacy" are essential or fundamental elements of empirical statehood. State authority in this regard refers to the legal "control of violence by the state (2012:7)", a control based on constitutional and legal foundations. For example, it is a universal rule that the constitutions of nation-states confer the monopoly of violence upon the state. The state capacity alludes to the state's role as the provider of basic services to citizens. This aspect of empirical statehood revolves around the state's ability to dispense essential

services such as water, roads, schools, clinics, civilian security and economic opportunities in general. It is one of the primary motifs of the developmental state literature. The above connects with the notion of state legitimacy, as the ability of the state to deliver important services and goods impacts the citizens' acceptance of its authority and legitimacy. In equal measure, "an effective and responsive state ... facilitates the process of regulating intergroup exchange, thereby allowing manageable conflict to occur (Arlinghaus 1984, 100)". This speaks to the state's ability to prevent potential conflict through timeous intervention to mitigate or address issues that might lead to the emergence of conflict.

In the next section of the book, the examination of the concept of statehood is continued regarding the 1933 Montevideo Convention. The Montevideo Convention provides a formal and legalistic conceptualisation of statehood, outlining the criteria a state must meet or fulfil before it can be considered in international law.

2.2 The Montevideo Convention and juridical statehood

In December of 1933, leaders and representatives of different governments gathered in Montevideo, Uruguay, to deliberate on the rights and duties of states as actors in the inter-state system. The gathering happened under the auspices of the Pan-American Conferences and was officially named the 'Seventh International Conference of American States', having been preceded by six similar conferences. Covering the Americas in scope, the initiative was continental/regional in scope, as opposed to universal. The Montevideo Convention was championed by states that had recently gained independence from European colonial powers. The aim was to deliberate and agree on a set of standards or criteria of sovereignty to secure international recognition for former colony states. The Montevideo Convention was seminal to the statehood debate and immediately gained international prominence, with the Convention's criteria of statehood becoming a benchmark. It was during the Montevideo Convention that conditions necessary for a state to be considered a state were thrashed out. According to the Montevideo Convention, a state must meet the following conditions or prerequisites for it to be regarded as one: "(a) a permanent population; (b) a defined territory; (c) government and; (d) capacity to enter relations with other states" (Montevideo Convention 1933, Article 1). A political entity that meets the abovementioned terms and conditions is considered a person of international law. More significantly, Article 4 of the Montevideo Convention states that "the rights of each one [state] do not depend upon the power which it possesses to assure its exercise, but the

simple fact of its existence as a person under international law". Making observations on the Montevideo Convention criteria for statehood, Grants contends that "at the crux of the Montevideo criteria lay the concepts of effectiveness, population, and territoriality" (1999:416).

What is telling about Article 4 of the Montevideo Convention is that it regards all states as juridically equal before international law. By consequence, none shall dictate to the other on its affairs – thus giving effect to the concept of juridical statehood closely associated with national sovereignty. As such, the issue of 'effectiveness' becomes an afterthought; it is an accessory amongst a repertoire of more foundational concepts. By consequence, a juridical state is one recognised by means of international law as a state. Fundamentally, opposition against external interference in the internal affairs appears to be predicated on and influenced by the terms of Article 4. The Montevideo Convention deals with and is confined to juridical statehood, a state recognised as such in international law, regardless of material substance underpinning a generally accepted notion of state and statehood. The exploration of the nature of the postcolonial African state immediately brings to the fore the idea of a juridical state. Indeed, various scholars have offered perspectives on the juridical state. Jackson (1990:168-169) argues that juridical states lack empirical sovereignty, with their sovereignty not being internally derived through the ability to fulfil the ideal role of fully formed states but from the international system which recognises their existence.

These states are considered quasi-states and are distinguishable by possession of 'negative' sovereignty. Jackson's analysis focused on the decolonising African state. However, Axtmann (2004:263) counters that Jackson ignored an important factor – the fact that European powers demolished and destructed "many viable African polities in the course of the 19th century in pursuit of geopolitical aggrandisement and economic profit". Moreover, Axtmann contends that with the reorganisation and realignment of the inter-state system occasioned by the creation of the United Nations in 1945, the same European powers that had destroyed the African state model a century earlier spearheaded the formation of quasi-states in Africa. Therefore, the following section further explores the concept in the context of Africa.

2.3 The African state

There is a worldview (a dominant one) that implies that the history of Africa, particularly the African state, begins with the encounter between the continent's peoples and Europeans in the 19th century (Bonneuil 2000, 258-