Flexible integration: a viable technique for the process of deeper integration in the Southern African Development Community (SADC)

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Abstract

Integration in the Southern African Development Community (SADC) is deepening to the extent that the organisation is being tasked with greater responsibilities. However, deeper integration is unlikely to occur within a framework of uniformity; hence, the process of deepening integration may demand flexibility. Flexibility is necessary because SADC member states are likely to differ in their views about the way forward, and how much of their national sovereignty they are willing to trade for the benefits of SADC membership. One example of a critical difference, as SADC prepares for the customs union, is the use of import tariffs. South Africa and Mauritius are increasingly using this as an instrument of industrial policy. On the other hand, poor countries such as Lesotho and Swaziland, are using it as a source of revenue. It is about time that SADC member states realise and accept that these differences will persist rather than wither away. Flexibility does not have to be read as a brake on integration. On the contrary, flexibility offers the most useful means of balancing different national interests, thereby allowing progress to be made in SADC as a whole. This paper seeks to draw lessons for flexible integration from the European Union (EU). Such an undertaking is considered relevant as SADC has made a laudable effort to follow the EU model of regional integration. Part 1 of this paper attempts to define flexible integration within the context of SADC regional integration and the experiences of the EU, while part 2 deals with the rationale for employing flexible integration in SADC. Part 3 discusses the challenges of flexibility and, finally, part 4 outlines ways in which SADC can make flexibility work.

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INTRODUCTION

The Southern African Development Community's (SADC) regional integration agenda, as embodied in the Regional Indicative Strategic Development Plan (RISDP), is a clear signal that the region is forging ahead with deeper integration. With the free trade area[1] (FTA) having been established in 2008, and the failed, but targeted, customs union[2] of 2010, the writing is on the wall: SADC as an organisation, and its member states as individuals, face greater responsibility from both an individual and a collective point of view. The contribution of every signatory to the SADC Treaty to deeper integration can never be over-emphasised. Accordingly, the success of the drive into deeper integration requires a collective effort from all member states. On the other hand, member states have to promote the SADC integration agenda among their national stakeholders. From this point of view, member states are bound to discover that their nationalistic objectives differ. Differences in economic development among member states already dictate that the pace of implementing the SADC-FTA and customs union be handled systematically. Naturally, regional integration occurs between states with different levels of economic development. This situation demands that SADC employs some flexibility, as deeper integration is unlikely to occur within a framework of uniformity. In this sense, flexibility becomes a tool that can be used to balance different national interests thereby facilitating the growth of the organisation in all spheres. By way of emphasis, flexibility can be used in all spheres, be they the political, economic, or social facets of the organisation. Moreover, flexibility has already been used successfully in the European Union (EU). However, some clear challenges to its use persist.

This paper will examine how flexibility can be used in the SADC context drawing lessons from the EU's integration model to which SADC ascribes. However, the functions of the EU and SADC differ, and these differences impact on various aspects of flexible integration. Thus, flexibility is a means of deepening the integration process.[3] This paper will not discuss the typology of flexibility, but will rather emphasise its general trends.

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1 Hereafter referred to as FTA. An FTA is a type of trade bloc made up of countries in an agreement to eliminate tariffs, quotas and preferences on most, if not all goods and services traded between them.

2 A customs union is FTA with a common external tariff.

3 Lamers 'Strengthening the hard core' in Gowan (ed) *The question of Europe* 1997 104–16. See also Tindermans 'European Union: Report to the European Council' (1976) Supplement 1/76 *Bulletin of the European Communities*.

DEFINING FLEXIBLE INTEGRATION

Flexibility can be defined as simply 'a capacity to adapt'. In this sense, flexible integration requires that SADC as an organisation be able to accommodate the diverse natures of its member states. With the exception of South Africa, the majority of SADC member states are among the poorest in the world.[4] On the other hand, member states are required to accept that deeper integration is unlikely to occur within a framework of uniformity. Rather, unity in diversity is envisaged. The occurrence of asymmetry between states may complicate integration. Member states may differ in their views on how deeper integration should affect national sovereignty. Differential treatment is necessary for participation in the scheme of regional integration. The question is: how flexible are member states in terms of their willingness to trade off the benefits of sovereignty against their autonomy? In this sense, harmonisation is bound to present challenges since weaker states may not have the capacity to participate in the development and implementation of standards. It can also not be taken for granted that all member states seeking or agreeing to flexibility do so in order to raise impediments to integration. Such contestations are bound to occur. However, flexibility will shape the integration process in a way that implies an acceptance that these differences are unavoidable. An example from EU shows that integration has always been differentiated rather than uniform. For example, derogations from certain policies have been allowed for member states with specific difficulties when applying certain directives.[5] Such derogations were always intended to be temporary and their application to be reasonable under the specific circumstances. This has already been experienced in SADC; for example, during the implementation of the SADC Protocol on Trade, a small number of SADC countries failed to ratify the Protocol as they were unprepared.[6] The same applies to the SADC-FTA, where Angola and the DRC did not join other member states in its implementation in 2008.[7] Therefore, the SADC Protocol on Trade as an instrument of the SADC Treaty accommodates an asymmetry that can be characterised as flexibility.

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4 See World Bank Income criteria . Available at: http://data.worldbank.org/about/country-classifications/country-and-lending-groups#Low_income. (last accessed 20 May 2011).

5 Warleigh 'Towards network democracy? The potential of flexible integration' in Farell *et al* (eds) *European integration in the 21st century* (2002) 101–18.

6 Bertelmann 'Trade integration in Southern Africa' 1998 *South African Journal of International Affairs* 47–51.

7 See SADC official website at: www.sadc.org, Pre-Summit Diplomatic Briefing 05/08/2008 (last accessed 20 June 2010).

The line of debate, in this paper, is that flexibility need not be viewed as a weakness that negatively affects integration. On the contrary, the argument is that, despite their diversity, member states are united for the common good and progress of the organisation. Flexibility enables reluctant member states to opt out of, rather than oppose, new SADC action that they would prefer not to accept. Accordingly, flexibility would serve to allow the coexistence of different degrees of national commitment to the integration process in different policy regimes, allowing the member states to participate systematically where they so choose. Flexibility allows member states to choose not to participate in particular policies no matter how they are made, and acts as a tool for diversity management – conditions which will ultimately increase the general momentum of the integration process. However, for SADC to derive maximum benefit from flexibility, the recognition of inherent problems within the organisation is crucial.

The discussion will further show that flexibility itself may in fact create additional difficulties – for example, at what level does reliance on flexibility produce negative results? Other issues in this regard relate to manageability, transparency, and accountability. It is prudent also to consider the legality of flexible integration within the SADC Treaty. Flexibility may mean deviating from and compromising on the rules governing integration, a situation that can have undesirable consequences.

RATIONALE FOR EMPLOYING FLEXIBLE INTEGRATION IN SADC

The benefits of using flexibility in the integration process for a regional organisation like SADC far outweigh the challenges. However, these challenges need to be noted, as in the case of the EU. In 2001, the European Commission issued the 'White Paper on European Governance' to address the challenges facing European integration arising from the lack of acceptance of the enlargement of the EU membership to twenty-seven.[8] Many European countries still value their past centuries of powerful national history, and it is not easy to accept that major political decisions, directly affecting the lives of their populations, can be taken jointly with other nations on the European level. They find it difficult to accept this 'intrusion' by European institutions into their national affairs. There is also mistrust of institutions and their policies. As will be indicated later, these sentiments can apply equally to SADC. For these reasons, flexibility can compromise the delicate integration environment. Accordingly, flexibility can be explained

[8] See European Commission *European Governance – White Paper* COM (2001) 428.

as a result of member states' determination to deepen integration in their own interests, ultimately bringing about the evolution of the Union. In this sense, flexibility does not constitute an integration model – rather, it is an instrument that can be used to achieve desired results. The discussion now shifts to a more practical aspect of flexibility: how the EU has managed to use flexibility in its integration process. This practical experience is directly relevant to SADC's own aspirations going forward.

FLEXIBILITY IN THE EU: WHAT LESSONS FOR SADC?

Before the changes brought about by the Lisbon Treaty, Wallace[9] portrayed the EU as a highly varied political system that involved five modes of policy-making, which ranged from the traditional 'community method' and its adaptations to empower the European Parliament (EP), to 'intensive transgovernmentalism', such as the common foreign and security policy (CFSP). The fact that the EU was made up of three pillars exemplified this variation. The first pillar, the European Community (EC), covered the bulk of EU legislation and saw the EU institutions enjoying their full range of powers. The second pillar was reserved for the CFSP; while the third dealt with matters relating to police and judicial cooperation in criminal matters. In pillars 2 and 3 respectively, the Council of Ministers dominated, with smaller and at times no official roles for the other EU institutions.

The EU's organisational system based on the three pillars was abolished when the Lisbon Treaty entered into force on 1 December 2009. At this point, the EU attained legal personality on the international arena and took over competencies previously exercised by the European Community. The law on the basis of which the European Communities and the Union functioned until that point – termed communal law – became EU law.[10] These changes within the EU show that policymaking requires flexible innovation. The function of directing the integration process had been exercised intergovernmentally rather than by the Commission. They also

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9 Wallace 'Flexibility: a tool of integration or a restraint on disintegration?' in Neunreither & Wiener (eds) *European integration after Amsterdam* (2000) 175–91.

10 Terminology has also changed. 'Community' has been replaced with the word 'union'. Therefore terms such as European Community, European communities, or community law are no longer used. Further amendments are to the title of the EEC Treaty to the European Community Treaty (EC Treaty). The EC Treaty was renamed TFEU. The Union has replaced and succeeded the Community (art 1 TEU). For more details on changes brought about by the Lisbon Treaty See: http://www.europejskiportal.eu/id06en html (last accessed 20 May 2011).

illustrate that integration is capable of being carried through, thereby filling a gap and helping to take the EU out of a period of relative stagnation.[11]

The above discussion raises questions regarding key weaknesses evident within the SADC institutions, with their emphasis on the lack of a proper institutional structure and framework. SADC does not have a parliament,[12] which means that the organisation is incapable of 'transgovernmentalism' and that the full range of powers given to EU institutions cannot be applied in the case of SADC under its current institutional framework.[13]

This, in turn, illustrates that flexibility cannot apply outside of a conducive environment. Thus, as integration deepens, the EU has become a very complex and differentiated system, in which policy decisions are made according to different rules and according to the issue at hand. Moreover, these rules are themselves capable of adaptation – for example, the co-decision process which gave the EP and Council of Ministers (CoM) roughly equal powers over legislation under the old pillar system.

In the EU, flexibility allows the integration process to move in accordance with the general will of the member states rather than the wishes of those inclined to participate.[14] For this reason, it can be an essential device for removing opposition. In the EU, for example, a single currency would never have been launched had the Maastricht Treaty not allowed the United Kingdom and Denmark to opt out of it.[15] Under the Protocol on Economic and Monetary Union, the UK was not ready to sign up to full economic and monetary union, being wary about agreeing to a single currency timetable. Accordingly, the UK would not be obliged or committed to move to the third stage of economic and monetary union without a separate decision to do so by its government and parliament.[16] Similarly, Denmark rejected entry into the single currency in a referendum held on 28 September 2000, by a fifty-

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11 Warleigh 'Introduction: institutions, institutionalism and decision making in the European Union' in Warleigh *Understanding European Union institutions* (2001) 3–21.

12 Karuuombe 'The role of parliament in regional integration – the missing link' 2008 *Monitoring Regional Integration in Southern Africa Yearbook* 1–28.

13 For a detailed discussion on the differences between the functioning of SADC and EU institutions See: Saurombe *Regionalisation through economic integration in SADC.* (unpublished LLD thesis, North West University, Portchefstroom. 2011 125–143.

14 De la Serre & Wallace 'Flexibility and enhanced cooperation in the European Union' 1997 *Notre Europe* (Research and Policy Papers No 2/1997 rev version).

15 See 'Britain wins opt-out from EU economic government' 18/06/2010 at: http://www.euractiv.com/en/priorities/Britain-wins-opt-out-on-economic-government-news-495370 (last accessed 14 January 2011).

16 Fairhurst *Law of the European Union* (8ed 2010) 16.

three to forty-six percent majority.[17] Furthermore, the Swedish opt-out was decided later on entry to the EU in 1995.[18] A further example was where the UK and Poland sought reassurances that the Charter of Fundamental Rights of the EU would not be indirectly incorporated into their national law.[19] Likewise, in order to secure the Czech Republic's signature to the Treaty of Lisbon, it was agreed that at the time of the conclusion of the next Accession Treaty, a new protocol would be added to the TEU to provide that Protocol No 30 would also apply to the Czech Republic.[20]

The problem for SADC comes when member states have decided not to opt out, but deliberately go along with other serious member states but fail to fulfil their obligations. Not all SADC member states who signed for the FTA have implemented it. A further question can be raised as to whether any SADC member states were ready to implement the customs union in 2010. Legal obligations arising out of the EU integration process are supported by judicial enforcement under article 265 TFU. Institutions may act unlawfully not only by exceeding or abusing their powers, but also by failing to carry out a duty imposed on them by the Treaty or some other provision having legal effect. In accordance with the provisions of the Treaty (art 232 TFEU), the Commission can take several member states to court for failing to comply with their legal obligations under EU law. Before resorting to the court, the Commission first requests information from the member state concerned and then, if necessary, formally requests it to comply with EU law. Around ninety-five percent of infringement cases are resolved before they reach the court.[21]

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17 *Ibid*.

18 See 'Swedish Parliament EU Information'. Swedish Parliament. 4 December 2009 at: http://www.eu-upplysningen.se/Amnesomraden/EMU/Sverige-och-EMU/ (last a ccessed 17 February 2011). See also: http://ec.europa.eu/economy_finance/euro/adoption/erm2/index_en.htm (last accessed 17 February 2011).

19 Article 1, Protocol 30. It provides that the Charter does not extend the ability of the Court of Justice of the EU, or any court or tribunal of Poland or of the United Kingdom, to find that the laws, regulations or administrative provisions, practices or action of Poland or of the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it reaffirms (*ie* the Charter)

20 Fairhurst n 16 above 28.

21 Formal complaints before the Court of Justice (art 258). Article 258 of the Treaty on the Functioning of the European Union (TFUE) gives the Commission the power to take legal action against a Member State that is not respecting its obligations under EU law.

This is the biggest challenge facing SADC if one considers the problems surrounding the full implementation of the FTA.[22] The impact of the FTA has not been fully experienced in the majority of SADC member states.[23] If integration in SADC moves deeper, it could be a challenge to manage the enlargement process successfully, as it would be difficult for new members to implement the full body of SADC law. In this case, the organisation may have to use flexibility in order to conserve some of its successes. An example from the EU shows that a new member may take several years to implement environmental legislation in its state.[24] This means that long derogations may be required in order to ensure that the relevant legislation is properly implemented after capacity has been built. On the other hand, SADC may have to come to terms with new demands and new considerations voiced by those states currently waiting to join. For example, in 2005 Rwanda failed the criteria set to join the regional block while Madagascar fulfilled the requirements.[25] The challenge can be further complicated by those who opt out of future policies, not because they cannot implement them, but because they choose not to do so.

Under flexibility, prospective member states can participate in the organisations' regimes for which they are ready, even before formally becoming members. For example, the participation of the Czech Republic, Poland and Hungary as members of the North Atlantic Treaty Organisation (NATO) as the EU's Rapid Reaction Force predates their membership of the EU.[26] Such a principle can be extended to other policy areas. In the case of SADC, this should have been the case for member states like the DRC, whose interest in SADC was to seek military help in stabilising the Laurent Kabila government which was under rebel attack.[27]

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22 Fundira 'Regional Integration', discussion on proposed Tripartite FTA' 2010 available at: http://www.tralac.org/cgi (last accessed 13 October 2010). See also Fundira 'The SADC FTA tariff-down schedule' available at: http://www.tralac.org/cgi-in/giga.cgi?cmd=cause_dir_news_item&cause_id=1694&news_id=76562&cat_id=1029 (last accessed 20 May 2011).

23 *Ibid*.

24 See art 155 EC Treaty. See also Hunter and Muylle European Community desk book: Environmental Law Institute 211.

25 See Konopo 'Madagascar Joins SADC while Rwanda fails' 17/08/2005 available at: www/mmegi.bw. (last accessed 20 May 2011).

26 See Schwarzer 'NATO and the Translantic Divide' (2003) available at: http://www.chilit.org/Papers%20by%20author/Schwarzer%2%20NATO%20AND%20THE%20TRANSATLANTIC%20DIVIDE htm (last accessed 20 January 2011).

27 See DRC Appeal for Zimbabwean Troops "New Zimbabwe.com" 27/05/2010 available at: http://www.newzimbabwe.com/news-2526-DRC%20appeals%20for%20Zim%20troops/news.aspx (last accessed 20 January 2011).

In the EU, flexibility has already served as a means of reconciling the various goals and views of member states on a given piece of legislation. Bailey[28] shows how environmental legislation allows member states to use different tools to meet the agreed common goal. In SADC, member states can use diverse national laws to meet a similar collective goal at regional level. A single piece of legislation at regional level can also be used to meet different objectives. In this sense, flexibility can be a means by which member states are able to agree on legislation despite significant differences of opinion. According to Stabb,[29] this approach serves as a way to find a compromise and avoid a log jam.

The strength of flexibility in the EU has given the union agenda the ability, in principle, to delegitimise or remove the need for cooperation by member states outside the EU structures. For example, in cross border cooperation, joint structures have been established at regional or local level at all borders inside the EU, including in the new member states and beyond.[30] Cross-border cooperation should not be seen primarily as national foreign policy issue, but rather as one of European domestic policy.[31] This allows for the improvement of EU efficiency.[32]

A parallel comparison with SADC shows that member states in many instances prefer bilateral cooperation outside of SADC structures.[33] Yet as long as such arrangements do not frustrate the main objectives of the Trade Protocol, this is not prohibited under the Treaty[34] – although such bilateral

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28 Bailey 'Flexibility, harmonisation and the single market in EU environmental policy: the packaging water directive' (1999) 37/4 *Journal of Common Market Studies* 549–71.

29 Stabb 'The 1996 Intergovernmental Conference and the management of flexible integration' (1997) 4/1 *Journal of European Public Policy* 37–55.

30 Gabbe *Legal status of cross border cooperation structures- past, present and prospects* (2006) (Association of European Borders Regions) 1–10.

31 *Ibid*.

32 Dewatripont *et al Flexible integration: towards a more effective and democratic Europe* (1995) (London Centre for Economic Research) 71.

33 See Roodt 'South Africa builds relations with Mozambique'. 2008 12/1 *African Sociological Review* The Spatial Development Initiatives (SDI) between South Africa and Mozambique are a case in point. These are the Maputo Corridor, the Beira Corridor, the Limpopo Valley, Zambezi Valley and Nacala Development Corridor. These are strategic corridors not only for the two countries but most of the landlocked countries of SADC. These include Zimbabwe, Malawi, Lesotho, Swaziland and Botswana available at: www.unbofm.mozambique.com (last accessed 21 May 2011).

34 Jakobeit, Hartzenberg & Charalambines 'Trade liberalisation and regional integration in SADC: policy synergies' 2005 *Trade Matters* available at: http://www.gtz.de/de/dokumente/en-epa-overlapping-memberships-2005.pdf (last accessed 25 May 2011)

cooperation at times undermines intra-SADC trade using the Trade Protocol. Accordingly, the EU experience can be beneficial to SADC if member states are allowed to opt out of policies they do not support and, by the same token, groups of member states who share common objectives are allowed to pursue them as a matter of joint policy, then there is little justification for pursuing such policies bi- or multi-laterally by other means. In highlighting how this will work, the Schengen accords are a key example.[35]

The Schengen accords are the backbone of the EU objectives on freedom of movement. They were set up outside of the Treaty as a result of opposition from certain member states, especially the UK, to giving this legislation the full force of EC law. However, since the incorporation of the accords into the Treaty at the Amsterdam Summit in 1997, there has been improved coherence and implementation of policy in that area which has enabled the EU to make progress in delivering one of its main provisions on citizenship.[36]

In line with the above discussion, the SADC Protocol on the Facilitation of Movement of Persons in Southern Africa is moving very slowly.[37] By April 2010 – five years after the adoption of the Protocol – only Botswana, Lesotho, Mozambique, South Africa, and Swaziland have ratified it. In terms of article 4, this number falls short of the nine required for the Protocol to enter into force. It is surprising that more resources are being channelled towards the *'*uni-visa*'* for tourists.[38] This visa will allow a tourist, *eg* from Europe, to be granted a single visa that will allow her to move freely within and between SADC countries. This is a privilege that SADC citizens do not enjoy. For example, the FIFA 2010 World Cup did not attract many tourists from the region. This was ironic if one considers that the tournament was touted as the 'African World Cup'.[39] In terms of attracting African tourists, the tournament did not live up to expectations, as shown by the poor

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35 The Schengen Accord (or Agreement or *Acquis*) effectively abolishes border controls for the vast majority of those travelling inside the Schengen area. By mid-2008 this comprised most of Europe.

36 Currently there are twenty-five European Schengen countries. For more details see: http://www.axa-schengen.com/en/schengen-countries. (last accessed 25 May 2011).

37 Karuuombe n 12 above at 6.

38 Mokaila 'SADC wants Uni-visa for Tourists (BOPA) 2006/08/07)' available at: *South African Migration Project (SAMP) – Queen's University* – http://www.queensu.ca/samp (last (last accessed 20 May 2011).

39 See generally, Kainja 'African football: a carbon copy of continent's own economy?' Available at: http://community.eldis.org/worldcup/.59d883c6/.59d9cac4 (last accessed 20 May 2011).

attendance from African and especially Southern African citizens.[40] In terms of article 7, every state party shall ensure that all relevant national laws, statutory rules, and regulations are in harmony with and promote the objectives of this Protocol. To this end, SADC shall, from time to time, produce model laws for consideration by member states. There is no adequate explanation as to why such an important Protocol has not yet been finalised. As regards flexibility, the European example of allowing member states willing to join, a common border policy for the free movement of persons can be adopted for SADC.

The EU has also used flexibility as a tool to democratise the region. Through flexibility and democratisation, the EU status is enshrined as an evolving political system with deep roots in its component member states. In this sense, flexibility rests on the principle of managed, but respected, diversity. More and less powerful member states have equal opportunity to dictate the way forward in an organisation that is flexible. Changes introduced under the Lisbon Treaty directly affected the balance of power between member states, in particular the number of seats allocated to each in the EP; the arrangements relating to the Presidency of Council formations; and the number of votes required for Council to take decisions by qualified majority. A minority of the member states in the Council is empowered to suspend the adoption of an Act by qualified majority.

South Africa is the most powerful economy in the SADC region[41] and is bound to compromise on certain issues if flexibility is applied in SADC. In this regard, with reference to the EU, some scholars argue that it is necessary to understand how and why powerful member states may choose to support flexibility as a means of ensuring their ability to assert leadership of the union.[42] This equally applies to SADC. According to Schmitter,[43] flexibility is clearly a deliberate strategy for ensuring the governability of the continent of Europe. The same is true of SADC; rigid nationalistic agendas are bound

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40 Muchabaiwa 'Free movement in SADC-delayed possibility' *Newsday* 22 June 2010 available at: http://www.newsday.co.zw/article/2010-06-22-free-movement-in-sadc-delayed-possibility (last accessed 10 November 2010).

41 Saurombe 'The role of South Africa in SADC regional integration: the making or braking of the organisation' (2010) 5 *Journal of international Commercial Law and Technology* 124–131.

42 Pederson 'The EU after Amsterdam: flexibility and functionalism in theoretical perspective' (2000) 9/2 *Current Politics and Economics of Europe* 199–214.

43 Schmitter 'The influence of the international context upon the choice of national institutions and policies in neo-democracies,' in Laurence Whitehead (ed) *The international dimensions of democratization* (1996) 26–54.

to do more harm than good within the region. As flexibility eschews a uniform outcome instead allowing member states to experiment with different forms of governance; it provides a vehicle by which governments can concentrate on what unites them rather than on what separates them. It also accepts that differences may exist between the views of the member states on the desirable end product of integration.

CHALLENGES RAISED BY FLEXIBILITY

Attention now turns to the problems associated with flexibility in integration generally. As has been the trend in this paper, comparison with the EU will bring a practical dimension to the discourse. In some instances, flexibility inspires hostility or great concern in observers and practitioners of European integration. Many of those committed to European integration as a process of state-building; continue to view flexibility as the antithesis of their objectives and, for that reason, one they must avoid at all costs. Dehaene[44] notes that it cannot be denied that flexibility poses problems of polity management which arise predominantly in the administrative and legal contexts.[45] The legal aspects under threat relate to the challenges to the supremacy of the law. In the case of the EU, the focus will be on EC law. In terms of a parallel comparison, SADC law will be equally under threat from flexibility. The normative issues are concerned with democracy, as flexibility tends to compromise issues of democracy when problems of reduced transparency and solidarity emerge. In an attempt to counter this problem, the principle of transparency has found its symbolic expression in article 1(2) of the Treaty on the European Union (TEU). European institutions are obliged to hold public hearings with representative associations and to communicate with civil society on a transparent and regular basis.

However, the biggest challenge facing flexibility could be the failure by the Union government or integration drivers to operationalise it sufficiently. In as much as it is an attractive tool, failure to apply it correctly may produce unfavourable results. However, it is submitted that were this to occur, it would not represent a failure of flexibility, but rather an incorrect approach to its application. To put this in practical terms, the EU shows that flexible

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44 Dehaene 'Report on the impact of the Treaty of Lisbon on the development of institutional balance of the European Union' European Parliament Committee on Constitutional Affairs, European Parliament 18 March 2009 available at: http://www.europarl.europa.eu /sides/get Doc.do?type= REPORT and reference=A 6-2009-0142&Language=EN (last accessed 25 May 2011).

45 The Lisbon Treaty contains a number of rules and obligations in respect of the rule of law and the principles political participation embodied in Article 11 EU.

integration processes are shaped by a practice of 'muddling through'; the avoidance of key decisions as often as possible; and response to immediate need rather than the elaboration of a detailed strategy for action over the medium to long term. In this 'muddle', key principles are often deliberately left ambiguous in order to accommodate different member states' views, or to allow for further development at a later and more propitious time. SADC is not immune to this, as the rush to implement the FTA in 2008 attests. While eight years of preparation since 2000 seemed sufficient, procrastination and non-commitment by member states meant that the reduction of tariffs on substantially all trade to reach the eighty-five per cent threshold was only possible as a result of the SACU members whose liberalisation of tariffs went beyond 100%.[46] The tariffs of other SADC members who are not part of SACU remain very high even after the launch of the FTA. Some scholars like Hansohm and Shilimela,[47] have observed that non-tariff barriers are actually on the rise in SADC.

One of the most apparent problems of flexibility is that it adds to the already daunting complexity of regional integration structures in an organisation like the EU or SADC. Being more integrated, the EU is characterised by the novelty of its institutional arrangements to the extent to which its policymaking process is inter-institutional, even if the member governments have always collectively retained key roles.[48] An example is the decision-making process within the EU's single institutional framework where the EP is empowered to different degrees. The relationship between the political and legal institutions is often blurred. The Court of Justice is able to exert significant influence not only over the course of integration, but also with the member states that are often ready to 'rein in' the court's influence. As SADC gears towards deeper integration, such scenarios will appear.

The legal influence of the SADC Tribunal and the political control of the Summit of Heads of State and Government will be interesting to watch. Already the case of *Campbell & Others v Zimbabwean Government*[49] has sent some undesirable signals of this kind of controversy. On 28 November 2008, the Tribunal ruled that seventy-eight white Zimbabwean farmers could keep their farms, because the Zimbabwean land reform programme had discriminated against them. The Zimbabwean government rejected this

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46 Saurombe n 13 above at 6.

47 Hansohm & Shilimela 'Monitoring economic integration in SADC' 2005' (2006) 2 *OPRISA Report* Botswana Institute of Development Policy Analysis 6.

48 Warleigh n 11 above at 6.

49 See *Mike Campbell and Others v Republic of Zimbabwe* SADC (T) Case 2/2007.

ruling, and since then no appropriate action has been taken to try to enforce it. The Tribunal referred its judgment to the Summit for sanctioning purposes but instead, the Tribunal was suspended pending a review of its mandate.[50] It is envisaged that the Tribunal will be called upon in the near future to decide on issues relating to regional integration, and if the Zimbabwean case is used as a precedent, member states may escape sanction-free from a breach of their obligations under the SADC Treaty.

Further, there have already been several breaches, for example, the charging of high tariffs on imports. This state of affairs was supposed to end by the time the FTA had been established in 2008. The FTA covers all goods except motor vehicles and parts, and clothing material. However, high tariffs on substantially all trade in goods are still reported in the region.[51] The Tribunal is the most relevant forum to address these issues because it has jurisdiction to hear matters affecting private citizens. The judgment that seeks a reversal of the Zimbabwe land reform programme has not been sanctioned by the Summit. Flexibility will thus complicate an already delicate situation and compromise the rule of law. The opposite can be said of the EU community law that is based on the rule of law. Monitoring closely the application of law is without doubt essential to enhance the visibility of the EU and its actions in the daily lives of citizens.[52]

Another problem is that of the relationship between those member states who decide to press ahead with a measure under flexibility and those who oppose it. Wessels[53] raises an issue apparent from the history of the relationship between the UK and the EU, namely the fact that not having participated at the start of the process has made the UK resentful of rules and legislation by which it is bound, but which it did not co-shape; instead, the UK was consigned to a long process of catch-up. The European Economic Community commenced with only six members that excluded the UK who only joined almost twenty years later with the first enlargement. This scenario is equally applicable to all other member states who joined in the subsequent enlargements resulting in the current membership of twenty-seven. Whether or not the British case is fully capable of translation to other,

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50 Saurombe n 46 above at 13.

51 Hansohm & Shilimela n 47 above at 13.

52 Fombad 'The enhancement of good governance in Botswana: a critical assessment of the Ombudsman Act 1995' (2001) 27 *Journal of Southern African Studies* 57.

53 Wessels 'Flexibility, differentiation and closer cooperation: the Amsterdam provisions in the light of the Tindemans Report' in Westlake (ed) *CFSP, 'defence and flexibility'* 1998 76–98.

perhaps more traditionally pro-integration member states, is an issue for further debate. However, there are justifiable concerns that a country which initially opts out may find it difficult later to join the vanguard group. It may have to rubber-stamp a raft of measures that it might have wished were cast very differently.

In SADC, South Africa may feel the same. Having joined SADC at an advanced stage meant that the key drivers of the organisation had their own objectives which did not necessarily correspond to what the newcomers expected. A notable example was the differences between President Mugabe of Zimbabwe and former South African President Mandela on the SADC Organ on Politics, Defence and Security. While South Africa argued that the SADC Treaty did not provide for a SADC Organ Summit that was separately constituted under a separate Chair and with a mandate separate from that of SADC, the position of Zimbabwe, the Chair of the Organ, was different. The Zimbabwean interpretation of the independence of the Organ essentially drew on paragraph 4.3.1 of the 1996 Gaborone Communiqué, which reads as follows: '[t]he SADC Organ on Politics, Defence and Security shall operate at the Summit level, and shall function independently of other SADC structures.'

On analysis, the South African position does not reject the concept of a SADC Chair and a Chair for the Organ – both at head-of-state level – but is rather concerned with the fact that the SADC Chair took clear precedence over the Chair of the Organ, as the Organ was part of SADC. In a legal opinion prepared for the Department of Foreign Affairs, the South African government law advisors warned that if the Organ were to deal with political matters, the SADC Summit would eventually play second fiddle. Its opinion was '... that the Chairpersonship of the Organ wields the most influential position in the region'.[54]

As both the Chair of the Organ and that of SADC were to rotate, the South African position cannot be seen as an 'attack' on Zimbabwe, but rather as a desire for a single, integrated regional cooperation mechanism. For its part, Zimbabwe argued that the Organ should not only function under a separate Chair, but that it should also operate on the same 'flexible and informal' basis as the Front Line States operated prior to the end of apartheid rule in

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[54] Holomisa 'Whither regional peace and security. The DRC after the war' 24–25 February 2000 available at: http://www.udm.org.za/docs/20000223_holb_doc_drc htm (last accessed 19 June 2012).

South Africa. This implied that the Organ would, in fact, operate parallel to SADC, but it would be a nominal part of the Community. It would also appear that neither the Zimbabweans nor the South Africans had, at that stage, adequately considered the establishment of an entirely separate structure dealing with political and security issues in the region.

In retrospect, these differences appear to draw, in no small measure, on the charged power relationships evident in the region following the presidency of Nelson Mandela in South Africa. They also reflected the fundamental differences in political values and practices between SADC member states. It would also become evident that, to some extent, officials were much more intransigent and radical in their interpretation of the communiqué; probably because they had little real idea of what had actually been agreed to in Botswana, or for that matter, at other Summits where no minutes were kept and officials were excluded from the most important deliberations. Under flexibility, situations like these can easily be resolved.

Flexibility is also challenged with regard to which kinds of policy require participants to be able to meet certain stipulated entrance requirements and those which do not. To join the EU, a state needs to fulfill economic and political conditions termed the Copenhagen criteria[55] which require a stable democratic government that respects the rule of law, and its corresponding freedoms and institutions. According to the Maastricht Treaty,[56] each current member state and the EP must agree to any enlargement.

There also remains a need to clarify who should be responsible for making decisions about which of the non-participants are able to join the vanguard. In SADC, the rushed acceptance of the DRC into the fold is a case in point. After the DRC joined, it became apparent that its membership had to be accompanied by various costly changes; for example, the request for immediate deployment of SADC forces in the civil war-torn country, as well as the extra operational costs at the SADC Secretariat of translating documents into French, since the DRC is a French-speaking country.[57]

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55 See Presidency Conclusions, Copenhagen European Council 1993, 7.Aiii available at: http://www.europarl.europa.eu/enlargement/ec/pdf/cop_en.pdf (last accessed 22 May 2011).

56 See 'The Maastricht Treaty' *Treaty on the European Union* eurotreaties.com. 1992-02-07 available at: http://www.eurotreaties.com/maastrichteu.pdf (last accessed 22 May 2011).

57 See generally 'Regional Peacekeeping Training Centre' available at: http://www.sadc.int/rptc/index/browse/page/421 (last accessed 25 May 2011).

Although this paper has not addressed the various models of flexibility,[58] it is important to mention a problem that may result from the choice of model of flexibility. Member states are bound to clash on which model to adopt. There are other cooperative regimes that bring competition to flexibility, but within the EU context, many supporters of flexibility argue that the primary benefit of closer cooperation has been its apparent de-legitimisation of extra-EU cooperation by the member states. Wessels[59] usefully and sympathetically sums up such thinking by writing that closer cooperation might build pressure for a return to the traditional community method that emphasises a stronger role for the EP *vis-à-vis* the Commission or the Council. The Lisbon Treaty stepped up the role played by the EP in the legislative and budgetary processes. However, it is also important to note that, for the first time, the European Council was formally recognised as an institution of the EU in its own right.[60] Closer cooperation will equally be resisted in SADC where, according to Mbeki, member states are still trying to safeguard their recently attained sovereignty.[61]

External policy and flexibility

Flexibility has the potential to undermine the Union's ability to capitalise on its growing powers by translating them into an effective voice on the world stage. This is because the issues of the international political economy in which the EU rather than the individual member states is active, requires it to speak with a single voice if it is to be effective. For example, Smith[62] argues that the internal complexity of the Union means that it is already sub-optimally effective as an international negotiator in that it must establish internal coalitions for each issue and these may prove unsustainable over time or across different issues. From SADC's perspective, the Zimbabwe crisis can be cited as an example where member states were forced to speak with one voice even in the face of serious disagreement. For example, President Khama of Botswana was compelled to boycott one of the Summits

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58 A number of models can be identified, for example: a la carte model, multi speed model and the concentric circle model. For further reading on flexibility models, see Cremona 'Flexible models: external policy and the European Economic Constitution' in De Burca & Scott (eds) *Constitutional change in the EU: from uniformity to flexibility?* (2000) 59–94.

59 Wessels n 53 above at 15.

60 Lenaerts & Van Nuffel *European Union Law* (2011) 261.

61 See Saurombe n 13 above at 6.

62 Smith 'Negotiating NEW Europes: the role of the European Union'. (2000) 7/5 *Journal of European Public Policy* 806–22.

in protest of SADC's continued support for President Mugabe in the face of disputed election results and human rights abuses.[63]

Grant[64] argues along similar lines, maintaining that while flexibility is permissible and necessary in the EU defence policy, and as several of the Union's member states are neutral, it is completely out of the question in EU foreign policy as the latter is simply not credible if certain member states adopt different positions. Dashwood[65] supports this viewpoint, arguing that an EU claiming to represent all member states, but in fact only representing a subgroup, would have little influence as third countries could simply exploit the difference between the positions of the member states. He also notes that as the EU can assume competence in areas of external policy if this is necessary to achieve the objectives of internal policy, it is possible that conflicts of interest might arise between different groupings of member states.[66] The Zimbabwean crisis cited above illustrates this in the SADC context where Zambia, under Mwanawasa, and Botswana, under Khama, rallied behind the Zimbabwean opposition Movement for Democratic Change party who appeared to have won the elections.[67] On the other hand, Mbeki, of South Africa and other frontline state conservatives, like Santos of Angola, denied that there was a crisis in Zimbabwe.[68]

Flexibility in the EU creates problems in identifying the Union's role in the world. Flexibility is primarily a tool for the advancement of internal

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63 Bule 'Is President Khama a democrat?' *The Monitor* 23 May 2011 avalable at: http://www mmegi.bw/index.php?sid=1&aid=1060&dir=2011/May/Monday23 (last accessed 25 May 2011).

64 Grant 'Where might enhanced cooperation be used? The case of Pillar II', paper delivered at Centre for European Reform/ESRC Seminar: *The Governance of an Enlarged EU: What Scope is there for Closer Cooperation?* 29 June 2000.

65 Dashwood *Reviewing Maastricht: issues for the 1996 Intergovernmental Conference* (1996) 254.

66 *Ibid*.

67 See generally Weidlich 'Zimbabwe is a sinking Titanic' *The Namibian* 23 March 2007 at: http://www.namibian.com na/index.php?id=28&tx_ttnews%5Btt_news%5D=37568&no_cache=1 (last accessed 12 June 2010). See also Ncube 'ZANU PF wins over Khama' *Financial Gazette* 18 November 2010 at: http://allafrica.com/stories/201011250501 html (last accessed 10 January 2011).

68 See generally Mckinley 'Commodifying oppressions': South African foreign policy towards Zimbabwe under Mbeki' available at: http://www.sarpn.org.za/documents/d0000263/P254_McKinley.pdf (last accessed 12 June 2012). See also Calland 'Betrayal of democracy' *Mail & Guardian* 14–19 March 2003 and Barrow 'Mbeki's dilemma over Zimbabwe' *The Guardian* 13 March 2001. Barrow argues that 'Mbeki has to be very careful not to criticize a leader in a neighbouring country who appears to be doing more to help rural black people'.

integration, a means by which the member states agree to disagree about their differences, but permit at least certain of their number to press ahead with an objective which they share as a group. This leads to a more differentiated system, even if that system is partially or even generally deepened. SADC has demonstrated a shared will on global issues, for example the demand for an African permanent seat on the United Nations Security Council, as well as adding to the voice of the developing world at the WTO Doha Round.[69]

Flexibility and the law

Sovereignty, although a critical constitutional component of modern international law is not an absolute entitlement; equality differential treatment demands that schemes of regional integration exist even in the face of material inequality. This differential treatment refers to instances where the principle of sovereign equality is sidelined to accommodate extraneous factors, such as divergences in levels of economic development or unequal capacities to tackle a given problem, constitutes one possible avenue to make international law more responsive to these new challenges and to foster substantive equality among states.[70] Therefore, flexibility is required within the law that governs regional integration.

The EU Treaties are the primary sources of EU law. These include the TEU and the Treaty on the Functioning of the European Union (TFEU) with the changes made under the Lisbon Treaty. Secondary legislation made under these EU Treaties includes regulations, directives, decisions and finally recommendations and opinions. Law is an important facet of integration. It is an instrument that binds the member states together in the Union; a force for integration which is objective and focused on the needs of the system rather than the interests of any member states. EU law is what allows the member states to establish common ways of working and ensures that the system they jointly create is both capable of oversight and able to ensure that they play by the same rules.

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69 See statement by the President of the Republic of Sierra Leone at the 65th Session of the United Nations General Assembly. 23/09/2010 available at: http://www.un.org/en/ga/65/meetings/generaldebate/Portals/1/statements/634208679782187500SLen.pdf (last accessed 12 January 2010). See also Jensen 'Africa demands special and differential treatment in Doha Round: an assessment and analysis' 2007 *Development Policy Review* 91–112.

70 For an in-depth discussion on the issue of equal differential treatment, see Cullet 'Differential treatment in international law: towards a new paradigm of inter-state relations (1999) *European Journal of International Law* 10/3 (1999) 549–582 available at: INK"http://ejil.oxfordjournals.org/content/10/3.toc" (last accessed 8 May 2012).

Flexibility is also at the heart of the EU legal system. The best example is the legislation derived from regulations and decisions.[71] Even though directives are binding upon each member state to which they are addressed as regards the result to be achieved, they leave the choice of form and method by which this will be realised to the national authorities of the member states.[72] Flexibility is clearly manifested in the nature of choices available in the EU decision-making system whereby consequence of the Union legal act depends upon its specific nature.[73] The same principles can be adopted in SADC.

The judgments of the ECJ have often been significant in shaping the direction of the integration process. EU law has direct effect in and supremacy over national law; this does not sit well with flexibility. Direct effect is the doctrine in terms of which EU law provides rights and duties which courts must protect, directly into member states' national law; in the case of conflict between EU and national law the 'doctrine of supremacy' applies and EU law will prevail as emphasised in the case of *Costa v ENEL*.[74] The SADC legal regime has not yet reached this point. Reference can be made to the disregard of the Tribunal ruling by the Zimbabwean government.[75]

The ECJ has created a solid legal order for the Union.[76] At certain stages in the integration process, it has arguably been the judgments of the ECJ which have set the pace, or at least sustained the Union in otherwise fairly fallow

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71 Besides Directives, the other forms of secondary legislation made under the EU Treaties are '(i) A Regulation: shall have general application. It shall be binding in its entirety and directly applicable in all Member States (Art 288, par 2 TFEU) (ii) A decision: Shall be binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only upon them (Art 288, par 4 TFEU) (iii) Recommendations and opinions: shall have no binding force (Art 288, par 5 TFEU).'

72 See art 288, par 2 TFEU. This is in stark contrast with regulations which are of general application and may have direct effect. Furthermore, only certain legislative issues are addressed by means of directives.

73 See generally Moravcsik 'In defence of the "democratic deficit": reassessing legitimacy in the European Union' *Journal of Common Market Studies* (2002) 40/4 604–605.

74 See Case 6/64. The Court of Justice stated that, by creating a Community (*ie* Union) of unlimited duration, having its own institutions, its legal capacity and capacity of representation on the international plane and more particularly, real powers stemming from a limitation of sovereignty or transfer of powers from the States of the Community, the member states have limited their sovereign rights, albeit with limited fields, and have thus created a body of law which binds both their nationals and themselves.

75 See *Campbell case* n 49 above at 14.

76 Hunt 'The European Court of Justice and the Court of First Instance' in Warleigh (ed) n 11 above at103–22.

periods, sometimes provoking opposing action by the Council.[77] Although it is unclear whether the court consciously considers itself activist in the integration process, or whether the ECJ judgments have simply had a system-shaping effect in the absence of a deliberate strategy to shape the wider integration process,[78] what is clear is that without the court's contribution, the integration process would be less advanced. For this reason, legal scholars have been suspicious of flexibility as it is likely to unravel the carefully constructed, relatively uniform legal order. The fear is that flexibility can undermine the idea that the law should be a catalyst to harmonisation. The same can be said of SADC – flexibility can compromise harmonisation. It can enshrine diversity instead of harmonisation, political choice rather than legal obligation.

Flexibility and democracy

It is possible to view flexibility as part of a more democratic international order, albeit one which gives no centrality to the process of regional integration understood as state building, rather than the defence of national sovereignty along communitarian lines. As a tool of policy-making, flexibility is as susceptible to manipulation as any other instrument. It is most criticised for its democratic credentials; it is all about allowing difference and results in inequalities. This presents a considerable challenge to the legal principle of non-discrimination between member states. As a consequence, flexibility takes the EU away from traditional views of a federal end product of integration with a uniform constitutional settlement, at least in the medium term. It also becomes more complicated as a system and thus less transparent. This means that a flexible, that is, even more differentiated system, may be less easy to hold accountable. The main problem will be to identify who is responsible for what. It may also decrease levels of popular participation as citizens who cannot understand the system are less likely to engage with it.[79] These are critical issues for the EU whose democratic legitimacy has been subject to sustained criticism since the signing of the Maastricht Treaty. This led to the reform of the Treaties under the Germany Presidency of the Council, resulting in the Lisbon Treaty.

On the SADC front, flexibility is likely compromise democracy. According to the Human Rights Watch 2008 Report, the position is more problematic,

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77 Taylor 'Functionalism and strategies for international integration' in Groom & Taylor *Theory and practice in international relations* (9ed 1975) 79–92.

78 Hunt n 76 above.

79 Ehlermann 'Differentiation, flexibility, closer cooperation: the new provisions of Amsterdam Treaty' (1998) 4/3 *European Law Journal* 246–70.

as within SADC democracy is not truly enshrined at national level where member states still struggle to hold free and fair elections.[80] The idea will be to get democracy going at national level and let it filter through into the region. In many instances, SADC itself has failed to monitor elections in the region, at times proclaiming elections free and fair despite clear violations having been committed.[81]

Democracy is essential for SADC, because it will give a deep sense of community where individuals identify with each other, and where they are likely to develop attributes of reciprocity and mutual trust – the conditions for minority acceptance of majority rule. In this sense, international organisations should not undermine either a nation or a state, as by doing so they will put democracy at risk. Furthermore, flexibility is in keeping with the views of certain actors from the sub-nation-state level, who seek to use the integration process as a means of articulating sub-national identities.[82] However, it does mean that the organisation can provide an arena for the resolution of tensions between state nationalism and 'stateless nations'.

In concluding the problems surrounding flexibility, it is worth mentioning that they also encompass policy, systemic, external coherence, legal, and democratic issues. Flexibility certainly undermines the case of those who see integration as a process of state building. However, changing flexibility for other options because it may give rise to challenges is no cure to the problem.

TOWARDS A BLUEPRINT FOR FLEXIBLE INTEGRATION IN SADC

The discussion in this paper has not presented SADC integration as an end product, but rather as a work in progress. Furthermore, flexibility can produce both desirable and undesirable results. Since flexibility itself is not rigid, the creation of a blueprint to facilitate its successfully operationalisation will optimise SADC integration. Such a blueprint is necessary if we are to understand how flexibility may be harnessed in a way

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80 Human Rights Watch 2008 'False dawn: the Zimbabwe power-sharing government's failure to deliver human rights improvements' at: http://www.hrw.org/en/reports/2009/08/31/false-dawn (last accessed 19 June 2012).

81 See Graham 'How firm the handshake? South Africa's use of quiet diplomacy in Zimbabwe from 1999–2006' (2006) 15/5 *African Security Review* 186.

82 Keeting 'Asymmetric government: multinational states in an integrating Europe' 1999 Publius 71–86. MacCormick *Questioning sovereignty: law, state and nation in the European Common Wealth* (1999) 176.

that adds to the prospects for deeper and more successful SADC integration. Such a blueprint is also necessary to inform the process of dialogue and evolution identified above, so that the informal use of flexibility in order to avoid decisions about its true implications and nature, a concern raised by Shaw,[83] is minimised.

Flexibility obliges member states to decide just how much SADC integration they wish to support and engage with; this blueprint may play a role in ensuring that such choices are explicit and will ensure that choice becomes the key principle of participation in the integration process. The SADC Treaty has already prescribed the number of ratifications by individual states required before a protocol can become law.[84] By implication, flexibility may negatively impact the ratification process, leaving proposed SADC protocols in danger of never achieving sufficient signatures. Those member states who prefer to opt out of large sections of integration projects, would be less reluctant to participate in the process as a whole, as they could tailor their participation to fit their needs. Furthermore, states outside of SADC seeking to join, but with longstanding problems of capacity, would have the opportunity of finding help.

CONCLUSION

There is no simple cure for the difficulties of integration and flexibility. However, in order to ensure that flexibility is reformed and maximally utilised, it is necessary to introduce a shift in the way it is often approached by both academics and practitioners. Flexibility is often considered a second-best solution by proponents of the integration process – a fall-back when all else fails.

What is needed is an articulation of flexibility which stresses how it can help deliver the main benefits of integration, while avoiding many of its most worrying features for defenders of national sovereignty. Indeed, making the most of flexibility requires both recognition of its problems and also the adoption of different ways of thinking about the objectives and aspirations of the organisation invoking it. A number of lessons that SADC can draw from the EU regime have been highlighted in this paper. As SADC follows the EU model of integration, these are relevant and indeed open to application in the SADC context. These flexibility lessons have much to

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83 Shaw 'The Treaty of Amsterdam: Challenges of Flexibility and Legitimacy' (1998) 4/1 European Law Journal 63–6.

84 See generally Karuuombe n 12 above at 6.

offer in the ongoing attempts to realise deeper integration in SADC. Flexibility recognises the realities prevailing in the organisation and helps to map out how member states can, in practice, shape the future from their points of view. There may be no more practical path to compromise among countries with diverse political, economic, and social orientations. Flexibility in SADC will definitely produce positive results within the current drive for deeper integration.