The Issue of Implementation Enforcement: SADC's Power Mediation in Madagascar

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Abstract

This article argues that the international community is increasingly becoming involved in the domestic affairs of states and that this involvement can be described as part of international responsibility to promote peace and security. The role that an external party plays as a mediator in a transition or peace process is by definition a form of intervention. This article argues that this understanding of mediation should be broadened to include the responsibility to oversee the implementation (or enforcement) of the mediated agreement. The case of Madagascar (2009–2013) is used to investigate whether such enforcement is already accepted in practice and what some of the complications are. The article's conclusions acknowledge that such a view of the mediator's enforcement responsibility will be controversial, especially when mediation is used as a strategic instrument of power politics. In mediation, more attention is normally paid to its preparations and the negotiation process than to the implementation phase. Elections, as part of a transition process, create a critical tipping point for external enforcement, because after elections an external presence will be an unpopular idea for the national role players. Enforcement by actors who have sufficient power leverage is more viable than enforcement by mediators who have little power but a great deal of political or diplomatic authority (such as former presidents or senior diplomats). Implementation enforcement is more likely when it is motivated by interest-based considerations than by normative values. In conclusion, enforcement of agreement implementation is generally supported by the international community as a rhetorical exercise, but it is not yet embraced as a norm for international behaviour.

Keywords: Madagascar (2009–2013); SADC; power mediation; implementation enforcement; mediated agreements

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Introduction

The durability of peace or transition agreements is often criticised because their sustainability and ability to address the existential issues of a conflict or political crisis are in doubt. Uppsala University's Thomas Ohlson therefore raised the question: "Why do some peace accords last while others do not?" (Ohlson 1998, 7). For an explanation, he deferred to Licklider who had found that in the twentieth century only about 50 per cent of negotiated agreements after civil wars had not collapsed and had not caused a return to violence. Stedman (2002) also observed that 16 out of the 27 negotiated settlements of civil wars during the period 1900–1989 had not prevented a relapse into war (Ohlson 1998, 8). This indicates that only about half of all negotiated agreements were implemented in a sustainable manner. Ohlson's study was aimed at identifying the conditions that will ensure successful implementation of agreements. The conditions he identified did not include any reference to the role played by mediators in ensuring implementation of the agreements. In response to Ohlson's question, this article wants to suggest that the practice of mediation has reached the point where mediators—especially if they are the regional organisation of the state in conflict—have to take responsibility not only to intervene diplomatically and protect the local population by means of managing the negotiations, but also to ensure implementation of the negotiated agreement and even enforce it when necessary. From the outset it should be acknowledged that this suggestion is highly contentious and holds a myriad of implications.

Negotiations for peace-making purposes in the form of international or regional mediation have been used in several African states in the last decade. The Southern African Development Community (SADC), for example, has been responsible for it in Zimbabwe (2007–2013), Madagascar (2009–2013) and Lesotho (1998–2002, and also after 2014). On behalf of the African Union (AU), Kofi Annan's team mediated in Kenya in 2008 (Office of the AU Panel of Eminent African Personalities 2014) whereas the Intergovernmental Authority on Development (IGAD) mediated in the South Sudanese conflict from 2013 until 2018, and also took responsibility for the Comprehensive Peace Agreement (CPA) in 2005. Ohlson's (1998) question is applicable to these cases and also serves as one of the motivations for this article to investigate the conceptual implications of implementation responsibility. Moreover, the question is whether it is already practised by some mediators. The case of Madagascar was selected for the current study because it includes most of the elements required to test the assumptions: the conflict was political and it was mediated by the SADC; a mediated agreement and a roadmap were agreed upon to implement it; South Africa played the role of a regional power; and the International Contact Group established an international presence. The researcher is cognisant of the fact that one case study cannot

produce a conclusion about theoretical constructions; however, it can give credence to new suggestions.

The discussion will commence by asking what the international community's responsibility is in the cases of conflict and peace-making. In making suggestions about responsibility for enforcing implementation of negotiated agreements, this article borrows the concept of responsibility as used in a wide range of cases where international responsibility played a role. These cases are: the Nuremberg trial in 1946 where the assumption was made that the Allied forces had the responsibility to confront Germany by means of war; the international responsibility included in the Genocide Convention to prevent or stop genocide; the international responsibility to prevent nuclear proliferation; the responsibility to protect (R2P); and the African/international responsibility to intervene in "grave circumstances." The second part of the article looks at the question of why the responsibility to enforce should be considered. It includes a consideration of the tension between state sovereignty (or non-interference in domestic affairs) and international/regional involvement in assisting in the process of making and securing peace or agreeing on a political transition to democracy. The third part traces the role played by the SADC as a mediator in Madagascar after the mediated agreements had been finalised and the point was reached to implement them. The article concludes with a synthesis of how much implementation enforcement is already being undertaken and what the mitigating factors are.

The Principle of the International Community's Responsibility—Fact or Fiction

The concept of international responsibility to become involved in other states for altruistic reasons and not out of self-interest is relatively new. Such responsibility is presumably rather a value or a norm than a practice in international relations. It can be regarded as a by-product of the evolution of international institutions and supporting theories of liberal institutionalism and cooperation. Arguably, the most invasive form of involvement in other states is the process of regional integration, lately challenged in the Brexit debate.

The concept of responsibility has evolved over at least two periods. The concept first came to the fore during World War II mainly because of the violations of human rights. In response to these violations, both the Universal Declaration of Human Rights and the Convention on the Prevention and Punishment of the Crime of Genocide were concluded in 1948, and both elevated responses to violations of human rights to an international level. The 1945 Charter of the United Nations (UN) in itself is a commitment to international responsibility, especially to maintain peace and security (as set out in its preamble and article 1). Two more specific examples of intervention as

a collective responsibility are the binding authority of Security Council resolutions (article 48) and the intervening nature of Chapter VII.

During the second period, which was in the 1990s, responsibility centred on conflict and human rights. Very prominent was the failure of the international community to intervene effectively and prevent the Rwandan genocide in 1994 (Dallaire 2003) and the wars in the former Yugoslavia, especially in Bosnia-Herzegovina and Kosovo. All these atrocities occurred in the presence of peace-keepers who had insufficient powers. Escalation of international mediation in Angola/Namibia (1988–1990), Northern Ireland, East Timor, Venezuela, Tajikistan, Nagorno-Karabakh, Sri Lanka, the Democratic Republic of the Congo (DRC), Sudan, Burundi and Somalia bears testimony to an acceptance of international responsibility to intervene in the form of peace-making. Milestones of this period were the conclusion of the Rome Statute (1998) and the establishment of the International Criminal Court (2002) as an international legal instrument to prosecute perpetrators (ranging from national states to individual citizens) of serious human rights violations.

This article is premised on the assumption that over the last few decades international intervention has increasingly been accepted as the norm. Most prominently, interventions concerned human rights and humanitarian issues, followed by nuclear non-proliferation, climate change (such as the Paris Agreement in December 2015) and peace-keeping. At the same time, international intervention started to have a negative connotation as a result of the American intervention in the Middle East and North Africa, which was purportedly made out of a sense of responsibility to protect (R2P).

A form of international intervention that this article pays special attention to is international mediation, but specifically intervention by peaceful means. The next section deals with state sovereignty and with mediation as a form of intervention.

The general premise of mediation is that the protagonists should invite the mediator, yet in practice this does not always happen. Often an international or regional organisation insists on being accepted as the mediator and in some instances such insistence is part of self-interested diplomatic action. Examples are Richard Holbrooke's mediation between the Balkan republics at Dayton (1995) (Holbrooke 1999), former President Mandela's mediation in the Burundi peace process (2000) (Bentley and Southall 2005), and the SADC's mediation processes in Zimbabwe, Lesotho and Madagascar. Such examples suggest that "responsibility awareness" to intervene and be instrumental in peace-making does exist (but maybe self-interest was the motivation). Mediation as an act by the international community has reached the point where it is not contested as a principle. Therefore it is not the principle but its application that gives rise to problems; for example, its timing (Zartman 1989, 2008), its agenda, the participants (such as the

inclusion of rebels or terrorist organisations in the talks), the role of spoilers, and adherence to the mediated agreement. The responsibility of mediators is conventionally regarded as completed once the agreement has been accepted by all the parties. This responsibility does not include ensuring that the agreement is fully implemented, in other words, it excludes enforcing the agreement or guaranteeing the integrity of the agreement.

The question that arises is whether the responsibility of enforcement has been endorsed in the meantime by the practice of mediation, and, by implication, also by the international community.

Responsibility for Implementation Enforcement

In conceptual terms the international community's responsibility to promote peace and security and to prevent and resolve conflict is part of the UN's mandate, and in terms of its Charter's Chapter VIII this responsibility extends to include regional organisations. At this stage no state is seriously challenging this mandate or this responsibility, which includes peace-making, peace-keeping and peace-enforcement (see for example, the mandate of the UN mission to engage rebels like M23 to achieve stability in the DRC (MONUSCO n.d.)). This mandate/responsibility also includes R2P, according to pronouncements in a number of UN Secretary General's reports (e.g. International Coalition for the Responsibility to Protect n.d.). All of these points culminate in the conclusion that these responsibilities (amongst others) inform the international community's responsibility to assist with peace and security *negotiations* within or amongst states. The long list of international mediation efforts is evidence that this responsibility is generally accepted. More problematic, however, is ensuring adherence to a mediated agreement and securing cooperative participation in its *implementation*.

As a practice, third-party peace enforcement is arguably as well established as third-party mediation. Peace enforcement normally occurs through military means, whereas this article's focus is primarily on the enforcement of specific aspects of an agreement through diplomatic and political/civilian means.

Mukherjee's research on the role of third-party (mainly UN) enforcement to promote enduring peace concluded that democracy and proportional representation are more important than third-party intervention. The research found that in the short term such intervention can promote the likelihood of peace but that domestic institutions are more influential in sustaining peace in the long term (Mukherjee 2006, 428). This conclusion, however, does not address implementation of a peace agreement on its own, and this article does not intend to focus on how peace will be sustained once the agreement has been implemented.

The proposition presented here is that sustainable implementation of a peace agreement depends, amongst other factors, on its enforcement by the mediator as a representative of the international or regional community. Enforcement often encounters at least four uncertainties that will be illuminated later in a discussion of Madagascar. Some preliminary points can now be made about them.

The first uncertainty concerns the question of where and when the mediator's (and the international community's) responsibility ends. The organisation on whose behalf the mediators act normally determines when their mandate comes to an end. In practice, this is usually after the elections have been conducted in accordance with the agreement. Often, several aspects of the agreement are still outstanding after the election, but the need to return to these issues is overshadowed by the success of the elections and the formation of a new government. An example of such dynamics was an agreement reached between the African National Congress and the Inkatha Freedom Party in South Africa in 1994 about the latter's demand for international mediation (Kotzé 1996). Until today it has not been implemented.

The influence and leverage of a mediator normally start to decline after a peace agreement has been signed, whereas those of the main domestic parties start to increase, except if the agreement includes specific mechanisms for continued monitoring and enforcement of the agreement's implementation.

The second uncertainty relates to the distinction between enforcement and monitoring. Peace agreements seldom draw such a distinction and focus mainly on monitoring and dispute resolution. Currently, enforcement is understood as the actions taken by external actors associated with the mediators (such as the UN, AU or SADC) to ensure compliance with the agreement. By implication these actors also have the authority to take action against parties that do not comply with the agreement or ignore aspects of it. It would not be appropriate for the protagonists to exercise powers of enforcement themselves because of the risk that they can use it against their opponents for political ends—the classic problem of being "player" and "referee" at the same time. Monitoring, on the other hand, is normally conducted by a body consisting of all the protagonists, and sometimes also the mediator and witnesses to the agreement. They have the powers of observation and reporting to various bodies. Monitoring or oversight bodies were used in Zimbabwe (2008), Sudan (2005) and Lesotho (2017) but not in Madagascar.

The third uncertainty is whether all types of mediators will be able to enforce agreements. Individual mediators (e.g. former presidents such as Jimmy Carter or eminent persons such as Lakhdar Brahimi or Kofi Annan), churches or non-government organisations would not have the capacity necessary for enforcement. They can, however, recommend enforcement measures to powerful institutions. An example that

comes to mind is former President Mandela's recommendation to the UN Security Council in respect of his Burundian mediation process. Only mediators acting on behalf of institutions or states with power and authority will theoretically be able to enforce agreements.

The fourth uncertainty concerns a theoretical or conceptual dimension. When the protagonists in a conflict accept mediation as a peace-building mechanism, do they automatically authorise the mediator to be not only a witness of the agreement but also a guarantor and therefore implicitly responsible for its implementation? There can be different responses to this question. In the first place, the status of a mediator is sometimes explicitly stated in the agreement. For example, in Zimbabwe's Global Political Agreement (2008), the SADC mediator, former President Thabo Mbeki, was identified as the "guarantor" of the agreement. In the second place, in some agreements an international contact group is included (as was the case in Madagascar and the DRC). This group is normally responsible for the international community's presence in the negotiation process, not as a participant but as a vigilant observer and a contact point with organisations such as the UN, the European Union (EU) or the Francophonie. The contact group serves as a watchdog of both the negotiations and of the agreement implementation, and in some instances they intervene in stalemates and disputes. In these cases they take on more responsibilities than the mediator on behalf of the international community.

In the third place, the implementation of agreements is often linked to the termination of sanctions and the suspension of membership (such as in Zimbabwe and Madagascar, and in South Africa in the mid-1990s). At the same time, lack of progress with peace process negotiations or implementation can lead to new sanctions (for example, in South Sudan in 2015). Decisions about sanctions are normally made by the UN, EU, even AU, and major global powers. The responsibility relating to punitive measures therefore shifts from the mediator to major powers and they become directly or indirectly involved in the implementation and enforcement of agreements.

The fourth response concerns the role of the witnesses of agreements (normally international organisations and neighbouring states) in the implementation process. In 2005 in Sudan, the *Comprehensive Peace Agreement between the Government of the Republic of Sudan and the Sudan People's Liberation Movement/Sudan People's Liberation Army* (2005, xiv–xvi) was mediated by IGAD but thirteen witnesses were signatories to this agreement, namely, the UN, AU, EU, League of Arab States, IGAD Partners Forum, USA, Kenya, Uganda, Egypt, Italy, Netherlands, Norway and UK. An indication of the enforcing role witnesses can play is, for example, their statement on February 8, 2011 at the end of the transition period and after the independence referendum (United Nations Meetings Coverage and Press Releases 2011):

> We commend the CPA parties for the leadership they have demonstrated. We call on them to redouble their efforts to reach agreement on the outstanding CPA and post-referendum issues, with the facilitation of the African Union High-Level Implementation Panel. The status of Abyei must be resolved in a way that respects the rights and interests of affected populations. Popular consultations in the Blue Nile and Southern Kordofan states should also be conducted in a timely and inclusive manner. Finally, we urge the parties to continue to work together in the remaining months of the CPA to put in place arrangements on security, citizenship, international treaties, economics, and natural resources, which provide the basis for two stable, secure, and economically prosperous States living in peace with one another and their neighbours.

Stedman (2002) paid special attention to the implementation of peace agreements after civil wars and he identified two relevant factors. The first is that a third party's willingness to invest in the implementation of a peace agreement will depend on how important that peace is for its vital security interests. Secondly, peace agreements often involve the implementation of a wide spectrum of issues, but the implementers face resource restraints. Therefore, implementers have to determine which issues are the most important to implement.

Stedman (2002) made reference to Walter's identification of a security guarantee by a third party as one of the key variables to explain the successful implementation of a peace agreement. Such a guarantee would be any explicit or implicit promise by the third party to protect the adversaries during the implementation period.

Stedman also referred to research he and Rothchild had carried out and their identification of six recurring implementation problems. Three of them involve implementers, namely, the lack of coordination between mediators and implementers, the lack of coordination among implementing agencies, and the short time horizons and limited commitments of implementers (Stedman 2002, 3, 5–6, 8–9). This approach implicitly assumes that there is a distinction between mediators and implementers and that it is not possible to expect mediators to be responsible for or be involved in implementation.

How do these and other approaches inform us about the mediator's responsibility to implement agreements? It is almost self-evident that if mediators were selected purely on the basis of their professional mediation skills, they would be a disinterested party in the situation and would not have the capacity or the strategic interest to become responsible for the agreement implementation. Such a situation seldom arises, except where the personal foundations of eminent persons like Kofi Annan or Jimmy Carter are involved.

If a mediator has an interest in a peace process but does not have the capacity to serve as a guarantor in the implementation process (e.g. the Roman Catholic community of St. Egidio in Mozambique in 1992), it is unrealistic to expect the mediator to be directly involved in the implementation process. However, the mediator can be required to use their moral authority as a form of pressure.

If the mediator acts on behalf of an organisation or a strong state, then their role in implementing agreements should be considered more thoroughly. The case of Madagascar can provide some enlightenment in this respect, because the mediation process involved the SADC, South Africa, sometimes the AU, and, in the case of sanctions, also the EU and USA.

The point of departure is that mediators often act on behalf of a larger community. It is in such a community's interest not only to resolve the political situation to the benefit of the protagonists but also to promote peace and democracy in general. Mediation, when looked at from this point of view, therefore forms part of the evolution referred to earlier as regards the contemporary approach that emphasises the international community's responsibility in many respects.

Another matter for consideration is whether only the regions and states directly affected should actively support the implementation of peace processes, or whether the international community as a whole has the obligation to do so as part of its peace and security mandate. Universality manifests itself increasingly in a wide range of international focus areas. "Universal jurisdiction" as a legal principle (Philippe 2006), the universal "responsibility to protect," the global reach of the International Criminal Court, and the global agreement to arrest climate change are all examples of universality. The interpretation of the international obligation could be that the region or state directly involved or affected by the conflict should at least accept responsibility for ensuring sustainable peace and therefore for enforcing its implementation. But it would not exclude other states or organisations from being directly involved, as, for example, in the case of the witnesses of the Sudanese CPA.

As a general point, it would be counter-productive to expect mediators to be solely responsible for enforcement of an agreement, because it would overstretch the burden of mediation. Enforcement in non-military terms normally has a limited impact; enforcement's return on investments is unpredictable, and enforcement can even be an outright failure. To expect, as a general practice, states or international organisations to commit to an enforcement process that is similar to the seven-year military administration by the Americans of Japan after World War II or Paul Bremer III's administrative rule of Iraq in the 2000s (Bremer 2006) is inconceivable.

In the next section, the SADC's mediation in and management of the crisis in Madagascar is used as a case study to test some of the points made already and to determine whether and how a mediator could contribute in ensuring that an agreement (in this case the Roadmap) is implemented.

SADC and Madagascar

The SADC took direct responsibility for the mediation of the political crisis in Madagascar between 2009 and 2013. The regional organisation's practice is normally to appoint a mediator to act on its behalf in a crisis situation but the SADC has the Organ on Politics, Defence and Security Cooperation that consists of member states and is managed by a troika (composed of the incumbent, former and incoming chairpersons). The SADC Organ reports regularly to the AU Peace and Security Council and also updates the AU Commission, especially the Commissioner for Peace and Security.

The Malagasy crisis did not assume the form of a civil war or a conventional physical conflict but its genesis was an "unconstitutional change of government"[1] whereby President Marc Ravalomanana was pressurised by the military to resign in 2009 following a period of public demonstrations led by his political rival, Andry Rajoelina. After Ravalomanana's departure to South Africa, the military appointed Rajoelina as the transitional President of the High Transition Authority (HAT). The conflict can therefore be described as a political conflict characterised by polarisation between the new Rajoelina regime and the opposition movements of three former presidents (Ravalomanana, Ratsiraka and Zafy). The mediation that followed was greatly complicated by the fact that the SADC, the AU Commission Chairperson, the mediator, the EU, USA, France, China and other states took sides in this polarisation. It is important to note that the nature of the conflict was that of a political crisis and not a physical conflict because this had direct implications for the nature of the mediation and the agreement implementation.

Unilateralism as a Challenge to Implementation

The Malagasy mediation was unusual in the sense that it had to deal with three different agreements whereas most mediation processes are concerned with only one agreement. In 2009 the SADC appointed former Mozambican President Joaquim Chissano (assisted by his former Foreign Minister, Leonardo Simão) as its mediator. With his facilitation, Rajoelina and the three former presidents agreed on the Maputo Accords and the Addis Ababa Additional Act as a transition framework (i.e. the first agreement) at the end of 2009. The SADC's and Chissano's ability to enforce that agreement was immediately

1 See the *African Charter on Democracy, Elections and Governance* (African Union 2007) and the *Declaration on the Framework for an OAU Response to the Unconstitutional Changes of Government* (Organization of African Unity 2000).

tested, because the agreement framework gave Rajoelina sole responsibility to implement it. As a first step he issued a presidential decree on December 18, 2009 in which he dismissed the incumbent Prime Minister and replaced him with a military officer who was a loyalist. He also annulled his earlier decree in which the Maputo and Addis Ababa agreements were ratified. At the same time he unilaterally called for parliamentary elections in three months' time. This meant that Rajoelina directly challenged the mediated agreement and the SADC's authority as the mediator.

A double troika summit of the SADC mother body and the Organ in January 2010 rejected the "unilateral plan of the 'de facto' Government of Madagascar to 'reorganize' the transition and hold elections in March 2010, and urge[d] the international community to also reject it" (SADC 2010a). The SADC's weak diplomatic response can partly be ascribed to the leadership composition at that point. The power balance was as follows: The Organ troika was chaired by King Mswati III of Swaziland, whereas the main mediator (Chissano) was from Mozambique—both weak powers in Southern Africa. On the other hand, Rajoelina enjoyed the support of the Malagasy security services and the tacit support of France at that stage; therefore his own support base was more powerful than the SADC's leverage power.

Rajoelina took his unilateralism and defiance of the SADC a step further when in the middle of 2010 he launched an internal dialogue process of parties (i.e. the *Malgacho-Malgache*) which excluded the SADC mediators and the three opposition movements. The participants agreed on a new constitution that did not include any arrangements for a political transition. It was presented to a national referendum in November 2010 but boycotted by all the opposition groups and not endorsed by the international community. Three days after the referendum, an SADC Extraordinary Summit rejected the constitution and noted that "despite all the mediation attempts undertaken by SADC, agreements reached have been dishonoured and violated on a number of occasions, notably by the High Transition Authority (HAT)" (SADC 2010b). Ironically, this Constitution has never been revoked and continues to be the de facto Malagasy constitution until today.

A new initiative emerged when Chissano's mediation assistant, Leonardo Simão, sent a proposed roadmap in February 2011 to political parties for their approval. The document's origin has never been clarified but it resembled a French roadmap proposed earlier and included some aspects of the Maputo accords. Its paragraph 20, in particular, became a serious bone of contention. It stated: "Mr Marc Ravalomanana cannot return to Madagascar before a favourable political and security environment has been established" (my translation) (*Feuille de Route pour la Sortie de Crise à Madagascar* 2011). This "roadmap" was not the product of negotiations or mediation, and the three

main opposition movements rejected it. In reality, however, it became the second agreement after the Maputo and Addis Ababa agreements of 2009.

At an SADC Organ troika meeting in Zambia at the end of March 2011, the SADC was confronted by a situation that tested its coherence and mediation approach. It received a report from Chissano, the mediator, recommending that the summit should endorse the new roadmap and recommend it to the international community for acceptance. Paragraph 7 of the summit's communiqué, however, merely "*noted* the development of the roadmap" (my emphasis) and in the next paragraph recommended an extraordinary summit to consider the mediator's report (SADC 2011a). In contrast, the same summit *endorsed* the report by President Jacob Zuma, the SADC mediator in *Zimbabwe*. Chissano's mediation was therefore effectively in a stalemate: the SADC Organ and its mediating team (Chissano and Simão) maintained different sentiments about Rajoelina's unilateral initiatives, whereas the international community opposed them.

SADC's Assertive Response

Arguably one of the most forceful interventions by the SADC in the Malagasy transition was at the extraordinary summit in June 2011 in Johannesburg. The summit resolved that Rajoelina must "allow Malagasy people in exile for political reasons, to be allowed to return to the country unconditionally including Mr Marc Ravalomanana" and "to urgently develop and enact all outstanding Legal Instruments to ensure the political freedom of all Malagasy in the inclusive process leading to free, fair, and credible elections." The summit also urged the three main opposition movements to "initial the Roadmap as soon as these amendments had been effected" (SADC 2011b).

On September 17, 2011 the amended Roadmap was finally signed by all the Rajoelina-aligned political parties plus two of the three main opposition movements. From that point onwards it can be regarded as the *SADC* Roadmap and no longer the French or the Rajoelina Roadmap. It also constituted the third agreement in the mediation process. One of the weaknesses of this Roadmap was that it did not include an implementation framework. Therefore when South Africa assumed the position of Chairperson of the SADC Organ in August 2011, the Roadmap implementation became its most important priority. The Deputy Minister of International Relations and Cooperation, Marius Fransman, was appointed by President Zuma as his special envoy for this task. Fransman soon publicly sidelined Chissano as mediator and with the Malagasy parties finalised an implementation framework, the "Cadre de mise de oeuvre."

The dilemma discussed earlier about the relationship between mediation, agreement implementation and state sovereignty, came to the fore at this stage. The SADC (in the person of Fransman) was able to enforce acceptance of an implementation *framework* but it could not gain control over the implementation *process*. This process, which

included the appointment of the prime minister and ministers, remained in the hands of Rajoelina and the internal parties. Again, President Rajoelina did not comply with the agreed procedures. The opposition movements of Ravalomanana and Zafy therefore declared a dispute in terms of the SADC Roadmap and referred the matter to the organisation for resolution. The SADC never responded to this referral.

The Organ's chairperson rotates on a yearly basis and therefore, in August 2012, Tanzania replaced South Africa in this position. At the same time Mozambican President Guebuza became the SADC President. Tanzania and Mozambique did not have the same capacity and power leverage as South Africa to introduce enforcement measures and therefore it enabled the return of the mediators Chissano and Simão. However, before South Africa vacated its seat as the Organ Chairperson it convened the Organ together with Rajoelina and Ravalomanana, and presented them without prior consultation with a set of recommendations. These recommendations were immediately tabled and adopted by the SADC summit. They included an electoral timetable, the "neither/nor" (*ni-ni* in French) view that neither Ravalomanana nor Rajoelina should participate in the presidential elections, that Ravalomanana's return had to be based on a security assessment made by the SADC troika and the Malagasy security establishment, and that the transitional government had to immediately implement amnesty legislation (Samão 2012, 2–3).

This diplomatic moment was an explicit instance of prescription or agreement enforcement (by the SADC, or more specifically South Africa). In the end, the first two resolutions were implemented or enforced whereas the latter two failed to materialise. It was the last opportunity for South Africa to play a leading role in the mediation and thereafter it was mainly Tanzania that had to take the lead. Though the SADC (or South Africa) took an assertive stance, it again failed to include an implementation framework for these resolutions, and in a personal letter Ravalomanana reminded the Organ Chairperson, Tanzanian President Kikwete, of this shortcoming (Ravalomanana 2012):

> Since 2009, non-implementation, unilateral decisions or *bad faith* implementations undermined the original Maputo Accords and later the Roadmap. Any chance of success will depend on how assertive the SADC Organ will be in implementation enforcement and whether agreement will be reached on punitive measures against non-implementation or deviation from the letter and spirit of the Summit decisions.

Tanzania's main initiative was to convene an extraordinary summit on December 8, 2012 which reaffirmed most of the August 2012 summit resolutions. It also stated that legislation had to be developed to guarantee the privileges of former Malagasy presidents, presumably to placate Rajoelina and Ravalomanana and get them to accept the *ni-ni* resolution. Moreover, it insisted that the Malagasy authorities had to repeal the legislation, informed by the Constitution of 2010, which required all presidential

candidates to be resident in Madagascar for at least six months before an election (SADC 2012). This was another indication of the SADC's realisation that it had to take direct responsibility for prescribing the implementation process—in this case to facilitate the elections.

After the summit, Ravalomanana publicly accepted the *ni-ni* limitation and announced that he would not participate in the presidential elections. President Kikwete pressurised Rajoelina to do the same and on January 15, 2013 he made a similar public commitment. Thereafter the focus moved to the preparations for the presidential and parliamentary elections. In this phase, the SADC lost most of the influence it had had on the implementation process, and any expectation that it could play an enforcement role disappeared.

States are normally unwilling to abrogate their functions, even if the state in transition is very weak. This also applied to Madagascar. During this stage the International Contact Group on Madagascar (ICG-M) (in this article also referred to as the Group) emerged as a prominent body. Its leverage power and enforcement potential depended on the fact that it controlled the international response to Rajoelina's call for an end to European and American sanctions against Madagascar.

Compliance with the SADC transition framework was challenged by the nomination process of presidential candidates. Ravalomanana's wife, Lalao, and former President Ratsiraka were nominated. Rajoelina regarded it as a violation of the *ni-ni* arrangement, and therefore he was also nominated. The Special Electoral Court accepted all three nominations as valid but the international reaction was to criticise it severely. France condemned these nominations, and in May 2013 the SADC troika insisted that the three candidates withdraw their nominations, but it could not respond to the situation effectively.

The AU Peace and Security Council responded with the most forceful reaction. On May 16, 2013 the Council expressed "its deep concern on the decisions of the Special Electoral Court (CES) of Madagascar to validate the illegitimate candidatures," "regrets that Andry Rajoelina breached his solemn commitment not to stand for the presidential elections" and finally it "regrets the decision of the CES of Madagascar of 3 May 2013." The Council concluded that it "will not recognise the Malagasy authorities which would be elected in violation of the relevant AU and SADC decisions" (African Union Peace and Security Council 2013, 1).

The International Contact Group on Madagascar

At this point the ICG-M, which had been established in 2009, took the initiative in the absence of strong leadership by the SADC. It convened a consultative meeting (the

seventh one since its establishment) for June 26, 2013. The previous six meetings had been chaired by the AU Commissioner for Peace and Security and attended by the UN, AU, SADC, EU, the Indian Ocean Commission, the Common Market for Eastern and Southern Africa (COMESA), the Organisation international de la Francophonie (OIF), UN Security Council members (the P5 plus the three rotating African members) and other partners of Madagascar (Germany, Japan, Australia, Canada and Switzerland).

At the seventh meeting, the ICG-M demonstrated its willingness to exert pressure to resolve the Malagasy situation and it declared that the "Group recognised that the unfortunate decision of the CES has compromised its credibility. In this regard, the Group urged the Malagasy stakeholders to recompose and restructure the CES, in order to restore the credibility of this institution and ensure its independence and integrity." It also "encouraged" the Malagasy electoral commission (CENI-T) "in close collaboration with the United Nations, to decide on new dates for the elections, bearing in mind the need to recompose and restructure the CES, approve the new list of candidates and comply with the relevant laws of Madagascar" (ICG-M 2013a). These transition measures were all new, unilaterally prescribed by the ICG-M without any consultation with the Malagasy political players, and therefore a classic example of prescription or enforcement. It is noteworthy that the Group made no reference to the SADC as a mediator.

The ICG-M articulated its intention regarding enforcement even more clearly by indicating that it contemplated punitive measures. The Group stated that the international community would not recognise the elected Malagasy authorities if the affected candidates were not disqualified. The Group urged the international community "to exert political and diplomatic pressure on the illegal presidential candidates to withdraw their candidatures." Madagascar's international partners were also requested to freeze their material support for the electoral process. Finally, the Group "encouraged the international community to consider applying robust, targeted sanctions against all Malagasy stakeholders undermining the smooth running of the electoral process and the full implementation of the Roadmap" (ICG-M 2013a).

The crisis in the implementation of the transition and the immense international pressure prompted the Malagasy Cabinet to dissolve the CES and appoint a new one on August 9, 2013 with the clear understanding that the contentious presidential candidates had to be eliminated (Razafison 2013). This was a highly unusual step, a clear interference in domestic affairs, but prescribed by the ICG-M's seventh meeting. The AU Commission added its own weight to the pressure and undertook two missions to Madagascar during this period. The SADC was not involved at all in these power politics.

At its eighth consultative meeting on September 6, 2013, the ICG-M noted the restructuring of the CES, removal of the "illegal candidates" and adoption by the electoral commission, "jointly with representatives of the United Nations," of a revised electoral calendar (ICG-M 2013b). The space left for the Special Electoral Court to take decisions and for the electoral management process was clearly demarcated by the ICG-M. It is noteworthy that the electoral managerial aspects were delegated to the UN and not to the AU or the SADC. It is an indication of the international community's resolve that nothing would be allowed to interfere with the elections, irrespective of the existing agreements or constitutional tradition.

The use of sanctions was again employed in a classic "carrot-and-stick" approach. On the one hand, the Group "strongly warned all the Malagasy stakeholders who may be tempted to hinder the ongoing process and undermine the significant progress achieved to date" that the AU and SADC would impose sanctions against them. On the other hand, the Group endorsed the decision by the AU to lift sanctions against 109 targeted Malagasy personalities (ICG-M 2013b).

Only five days after the ICG-M meeting (which was also attended by the SADC Organ troika), the troika met and "commended the reformed Special Electoral Court for restoring the legality of the Presidential Candidates." An indication of this troika meeting's lack of involvement with Madagascar was that it paid more attention to the situation in the DRC and MONUSCO's Intervention Brigade than to Madagascar (SADC 2013, 2).

The Malagasy presidential and parliamentary elections were concluded on December 20, 2013, and with that the transition came to an end. Earlier, reference was made to the dilemma of components of a peace agreement still being outstanding after elections have been held and a new government has been established. The question that arises is whether mediators still have authority at this stage to insist on handling the implementation of the agreement seeing that a newly elected, legitimate government can claim sole sovereignty over all these matters.

In the case of Madagascar, outstanding matters at that stage included Ravalomanana's return from South Africa, the full implementation of the amnesty law, the conducting of local government elections, and a national reconciliation process. Three months after the national elections, the ICG-M met for the last time. However, the Group did not ignore the outstanding matters, and the meeting concluded the following (ICG-M 2014):

> Participants recalled the measures envisaged for the implementation of the outstanding aspects of the Roadmap to end the crisis in Madagascar, especially the continuation and completion of the reconciliation process, including the return of political exiles and compensation for victims of the political events of 2002 and 2009, and the organisation

> of local elections. They stressed the crucial importance of these provisions of the Roadmap and that of their diligent implementation.

National political considerations took precedence over these implementation priorities. Therefore Ravalomanana's return was never arranged by the SADC or the new government. He left South Africa unofficially of his own accord and on his arrival in Madagascar on October 13, 2014 he was arrested (*BBC News* 2014). Only seven months later, on May 2, 2015, his house arrest was lifted. In the same month the Malagasy parliament adopted a motion to impeach President Hery Rajaonarimampianina, which was later set aside by the High Constitutional Court. Earlier, in January 2015, the first government resigned amidst violent protests over its mismanagement of electricity supply (*News24* 2015). It is therefore not yet possible to conclude that the transition has been consolidated. The *ni-ni* arrangement did not apply to the December 2018 presidential election, and it resulted in a direct stand-off between Rajoelina and Ravalomanana (in which the former was victorious). His political future, in particular, will determine the long-term effects of the SADC mediation and the Roadmap.

Conclusion

The "responsibility to enforce" as a proposed concept can easily be criticised, as was the case with the R2P. External enforcement is usually associated with military intervention, which has the potential to justify manipulation of a state's domestic politics.

The "responsibility to *implement*" could be a less controversial option. It suggests an unbiased or neutral managerial facilitation of a peace agreement's implementation. At the same time it resembles the monitoring function discussed earlier, which does not include the power or authority to intervene when the implementation process is locked in stalemate or when a peace agreement is actively sabotaged by a spoiler.

The risks inherent in the concept "responsibility to enforce" are therefore acknowledged here. However, no obvious similar but more acceptable alternative presents itself at this stage. One of the concept's implications is that it reflects on the theory and practice of mediation—especially international mediation. Most of the attention on mediation is focused on the preparation and negotiation processes and scant attention is paid to the implementation phase. As a focus area, post-conflict reconstruction and development is indeed popular but neither aspect is specifically concerned with agreement implementation nor does it necessarily address the finalisation of a peace agreement. In the same manner, peace-keeping and peace-enforcement are mainly military activities, and not necessarily linked to the implementation of the peace agreement.

Agreement enforcement is used in this article strictly in non-military terms and as such it relies exclusively on peaceful political and diplomatic means. It does not mean that organisations such as the UN are unable to use military means to complement the mediator's enforcement actions. This distinction poses serious challenges, because it will be exceptionally difficult to separate the two in practice, especially when the mediation has been conducted on behalf of the UN.

The Malagasy case illuminates a number of problems relating to mediation and its implementation. It illustrates the difficulty of determining where mediation ends and where an agreement's implementation starts. The purpose of this discussion was partly to argue that such a distinction is not desirable and that implementation enforcement should be regarded as an extension of mediation. The conclusions that follow will, however, qualify this premise to some degree.

In the case of Madagascar the critical watershed moment for the SADC's influence in the implementation process was when the national elections took place. At this point a transfer of influence (or leverage) occurred from the SADC to the ICG-M. An election's significance in changing the nature of an implementation process still has to be explored further. An election emphasises national sovereignty and determines who will be the custodian of power and policy-making in future. Often the very essence of a civil war or political conflict is captured in this decision—it certainly applied to Madagascar and its presidential election. It remains uncertain whether that decision should be managed by national institutions or by the international or regional community (and mediators). In the case of Madagascar, the international community intervened by disqualifying some candidates and by threatening to impose sanctions.

The Malagasy case demonstrated that enforcement depends on power leverage and authority. Authority is not sufficient; the SADC had the authority to intervene but did not have sufficient power or leverage to change the parties' behaviour. Leverage depends on the politics of "carrots and sticks" and the potential to implement punitive measures like sanctions—sometimes known as "power mediation." The ICG-M possessed such power but the SADC did not and neither did South Africa.

Enforcement is limited by at least two other factors. Firstly, the role of national sovereignty is omnipresent, captured in the elusive status and role of a national constitution. Most successful transitions—including the transition in South Africa—depended on a constitutional and legislative dispensation to formalise negotiated agreements. In Madagascar, Rajoelina dissolved the national parliament but drafted a new constitution in conflict with the SADC agreements. Once a new constitution is implemented, the problem to contend with is what happens to the mediated agreement and also to the mediator's authority to insist on its implementation. The Malagasy case

presented this predicament as a limitation on enforcement but did not provide an unequivocal solution for dealing with the dilemma. The same predicament was experienced in Zimbabwe (2012–2013) and has since complicated resolving several outstanding aspects of the Sudanese CPA process, such as Abyei.

The second restricting factor is that, as the transition or implementation advances, the more difficult enforcement of an agreement becomes because more national sovereignty is claimed or restored. The most critical point appears to be at the time of elections. After a successful election, external enforcement will become exceptionally difficult.

Finally, although "implementation enforcement" is a controversial notion and its practicability is likely to be contested, it is not merely a theoretical proposition. Cases like Madagascar, Zimbabwe (2008–2013), Lesotho (2014–2017) and in earlier years also the Balkan states are examples where aspects of enforcement were implemented. Though not yet conclusively demonstrated, the Malagasy case suggests that enforcement of an agreement is possible when the stipulations of the agreement and the organisational or national interests of the enforcers (mediators or international organisations) coincide. By implication, states or other enforcement agents will enforce only the most essential issues in the agreement and those issues that are in their interest but they will not necessarily enforce the aspects that do not threaten the agreement's viability. Ravalomanana's return to Madagascar was therefore not regarded as essential for implementation of the Roadmap, because he had already been eliminated as a presidential candidate.

The concluding remarks suggest that implementation enforcement is more an interest-based consideration than a normative value. Citing the case of Madagascar, the discussion in this article presented evidence that enforcement is already embraced in rhetorical or formal-diplomatic terms but that it is not yet treated as a universal principle that has binding practical effects.

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