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The law of treaties in Africa: Exploring the Southern African development community mutual defence pact

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Abstract
Purpose: The article explores the structural and fundamental discussions connected with the law of treaties with a detailed orientation towards the Southern African Development Community Mutual Defence Pact (SADC MDP) of 2003 and the Vienna Convention on the Law of Treaties of 1969. The study was informed by the principle of *pacta sunt servanda*.
Research Methodology: The study employed a desktop research approach and a systematic review of a number of secondary sources on the law of treaties.
Results: It was established that the SADC MDP drafters were cognizant of the principles of international law the treaties in framing this sub-regional legal instrument. Some articles within the SADC MDP are ignorant of the political realities of the international system.
Limitations: The realism school of thought was used as the tool of analysis for this study in order to unravel the SADC MDP from a political perspective.
Contributions: This study sought to educate jurists, policymakers, and implementers of laws and policies in the 21st century.
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1. Introduction

Treaties are by far the supreme utensils for the regulation of inter-continental affairs. They may be established among states, international organizations, and other transnational relations actors. Treaties are the principal birthplace of international commandments. The essential standard of treaty law is the suggestion that accords are upon the parties to them and need to be executed in virtuous faith *(pacta sunt servanda*). The SADC MDP was signed in 2003 and came into force in 2008 for collective security in the SADC region. International agreements like the SADC MDP are unswerving and prescribed methods of international law conception. This study examined the law of the treaties in Africa against this backdrop with the major emphasis being on the pertinent issues of the SADC MDP. The study is significant in informing future research, policies, and international law that seeks to regulate or examine areas of international legal systems.

Validation Of The Study

Inquiries pertaining law of pacts in Africa are of paramount importance. This research may empower African treaty drafters with information crucial for the establishment of comprehensive treaties suitable for Africa, postcolonialism. Africa, a post colony, has a plethora of challenges regarding peace and security issues. There are conflicts in the DRC, CAR, Ethiopia (Tigray region), and Libya. Terrorist insurgencies in Nigeria (Boko Haram in the North East), Mozambique (Cabo Delgado), Sahel region, Eastern Africa (Al Shabab led attacks), and the surge in political protests in Eswatini, amongst others,

have been a cause for security concern. All these and future tensions need inclusive international legal tools necessary for intervention, collective security, and collective self-defence. This study sought to educate jurists, diplomats, policymakers, and implementers that contemporary laws and policies should not dilute the expected objectives of the continent in the framework of the AU Agenda 2063 and the UN Sustainable development goals, amongst other important international agreements. The objectives of the African continent are to see a united and peaceful continent that yields sustainable development, thus the need for strong international treaties.

2. Literature Review

The Concept Of Law Of The Treaty

Treaties are concluded by states in their interactions and are a defined mode of regulating their relations. To understand how international law and international relations work, one ought to acknowledge the significance of the treaty law and the law of the treaty in global politics. Evans (2010) noted that the decree of treaties is collated in the Vienna Convention on the Law of Treaties (VCLT) of 1969. The VCLT of 1969, Article 2(2) defines a treaty as a transnational arrangement established among states in transcribed custom and administered as international law. Thus the SADC MDC is a sub-regional agreement among SADC member states that is directed by sub-regional laws in order to maintain tranquility in the region. This study informs international legal system drafters in Africa to come up with laws and policies that relate to the demands of the current political dynamics on the continent.

There is a trivial (but hardly comprehended) metamorphosis regarding the law of treaties and treaty law. Treaty law compacts with the substance matter of treaties. That is, how treaties dialogue with certain concerns such as the rules of the aquatic, repatriation procedures, peace and security issues amongst others. The Law of Treaties transacts the means by which treaties emanate and how their regulation is synchronized. This study employed this concept in its analysis of the SADC MDP. Shaw (2008) pointed out that the Law of the Treaty is based on the following components and structure; formalities, consent, signing, ratification, reservation, enter into force, application of treaties, third states, amending and modifying, accord construal, unjustifiability, cessation and holdup of the maneuver of treaties, error, fraud, and corruption, coercion, *jus cogens*, substantial breach, impinging unfeasibility of enactment, essential conversion of circumstances, disagreement settlement amongst others. This study focused on some of the components above that are pertinent to this discussion.

The VCTL (1969) emphasizes that a pact should not be in specific formula nor must it compromise certain components. Should there be a dispute regarding the standing of the text as a treaty, an impartial assessment is used to evaluate the problem, taking into account its authentic expressions and exacting statuses in which it was completed. Subsequently, a treaty is a mode of fashioning obligatory onuses hence the need to craft legal instruments. Fitzmaurice M (2010) pointed out that there are some global acts that can adopt the practice of transnational arrangements but which were never projected to build lawful commitments, like the 1975 Final Act of the Conference on Security and Cooperation in Europe. These types of laws are called soft laws. This research sought to establish whether or not the SADC MDP is soft law and the clarity of its strength in resisting political pressures of this world.

A comparison between municipal law and international law regarding numerous approaches by which privileges and liabilities may be generated in international law is ingenuous. Aust (2007) noted that under municipal law legal interest may be created by contracts between dual or extra persons, by settlements under the stamp, or by virtue of legislature or jurisdictional pronouncements. International law is imperfect regarding the creation of rules in the international system. Fitzmaurice, M. and Elias, O. (2005) pointed out that practice depends on a ration of a state practice buttressed by *opinion juris* and is customary although not consistently an embryonic and well-timed manner. Thus, this exposes the weaknesses of international law. This means that when there is an encounter between SADC MDP and municipal law in a state party, municipal law will win over the SADC MDP.

A corpus of literature has concentrated on scrutinizing states' extraneous policy predilections by means of states' voting patterns in the United Nations General Assembly. Sweeney. K. J (2003) noted that

these procedures have been used to analyze expansive arrays of queries concerning topics such as inter-state conflict. Lupu Y (2006) pointed out that, states join certain collective treaties and not others because of pecuniary considerations, national politics, supremacy and cold war, civilization, and sub-region. Huntington S (1997) agrees with Lupu's assertion on civilization's influence on states' choices on whether or not to join universal treaties. Huntington S (1997) assumed that equally transnational cooperation and intercontinental conflict are molded by cultural dynamics, autonomously of trepidations over authority and economics. Kim and Russert (1996) agreed with Voeten E (2000) that several studies of United Nations General Assembly voting have found that natural factors are amongst the vital factors of state preference. The cited literature above focused on universal treaties while this research focused on a sub-regional treaty. This is vital for policy analyses and the establishment of future international law in Africa since the continent seeks to "silence the gun".

SADC MDP in the Context of Laws of The Treaty

The SADC MDP was signed in 2003 and came into potency in 2008. It declares that the concord will be laid open to authorization by the guarantor states in harmony with its corresponding constitutional processes. Angola is the only SADC Member state that is yet to sign and consent to the treaty. The other SADC member states are Botswana, Comoros, Democratic Republic of Congo, Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, South Africa, Seychelles, Tanzania, Zambia, and Zimbabwe. Ngoma N (2004) posited that a defence accord infers that two or more federations trust that their security necessities would be best served in a community of countries. It is also a signal that federations have come nearer in their correlation to the extent that they can delegate their safety needs to other associate states of the accord. Maeresera S and Uzodike O (2010) contend that a defence pact that proposes that the participant states should not attack each other militarily is usually called a non-aggression pact or security pact. It can vary from a non-aggression deal to a comprehensive companionship and joint effort security agreement. It can be a very precise military obligation for reciprocated protection against bellicosity or the defence of the independence or territorial integrity of partner states. It is instructive to note that some defence pacts are period restricted and can be given a rebirth when they expire. The inclusion of the article on signing, ratification, and entry into force on the SADC MPD is an indication of the respect for the law of treaties.

Some literature available seems to agree that the SADC MDP is rooted in the actions of some of the SADC member states in response to the DRC crisis in 1988. The 2003 MDP is ingrained in the 1998 combined military intercession by Zimbabwe, Namibia, and Angola in the DRC code-named, Operation Restore Sovereign Legitimacy in support of the then-president, Laurent Kabila. The three countries be sought comestibles of Article 51 of the UN Charter on shared self-defence, as well as doctrines of the Organisation of African Unity (OAU). The OAU Charter Article 2.2 (f), emphasizes the need for collaboration in the areas of peace. Commitment for cooperation could be demonstrated by signing and ratification of international arrangements to address the crisis in question. The SADC community demonstrated that by establishing the SADC MDP to address the peace and safekeeping issues in the region.

SADC acted in compliance with the ordinance of the summit held in Gaborone Botswana on the 26th of June 1996 and with the requirements of the SADC Protocol on Politics, Defence and Security as enshrined in its Organ of Politics, Defence and Security (OPDS). It required them to establish an MDP, devoting themselves to the main beliefs of the Charters of the United Nations, African Union, and Treaty of SADC; longing to exist in harmony with all peoples and governments. It also wishes to respect the sovereignty, territorial integrity, and independence of all states plus their objective to reinforce the pledges that are between them on the foundation of veneration for their self-rule and non-interference in their domestic interaction. They were certain that close teamwork in articles of defence would be good for the mutual gain of their peoples. Such commitment would bond their efforts towards a shared defence and the perpetuation of peace and stability. Crawford J (2008) averred that International law offers a set of systems that speak to the enormous collective action complications presented by the co-existence of virtually 200 autonomous states. It is because of the above that the sovereign member states of SADC agreed to conclude the MDP.

Some MDPs differ in wording to suit specific regional or sub-regional interests. For example, Article 5 of NATO states that armed attack against one or more of the parties shall be measured as an attack against them all. The SADC MDP Article 6 (1) says that any armed attack against a member party will be met with immediate collective action. One can argue that SADC avoided compromised language like "will be considered to be an attack against them all" and used "will be encountered with instantaneous mutual action" to avoid diluting the objectives of attaining peace through non-violent means. The authors' view is that it is the foundation upon which the SADC MDP was born that leads to such uniqueness in wording. The SADC MPD as an international law instrument offers a normative edifice for rule-based systems of international society.

Some of the numerous mutual defence pacts signed by countries across the globe are the Baltic Entente MDP (September 12, 1934) signed by Lithuania, Latvia, and Estonia for collective security, The Central Treaty Organization (CENTO) of the 1950s is an MDP and economic cooperation pact signed between Pakistan, Iraq, Turkey, with USA and UK as associate parties. There is also the Baghdad Mutual Defense Organization signed between Britain, Turkey, Iran, Iraq and Pakistan, and various others. However, the researchers found it interesting to study the SADC MDP pact because the member states have almost a similar history and are at the same level of development. The African continent is also not at peace considering that there are tensions in Chad, Ethiopia, Central African Republic (CAR), Democratic Republic of Congo (DRC), Libya, Mozambique, Nigeria, Somalia, and Swaziland amongst others.

It can be argued that the realist perspective always finds expression in issues of state relations. Despite cooperation being vital in international relations, national interests always define the making of a country's foreign policy. Chigora P (2008) averred that defence pacts can only be there when there is no clash of interests. This is also supported by Dinsten Y (2001) who assumed that the primary benefits that can be derived from adopting such pacts could be partisan in the wisdom that the publication of the agreement acts as a notification to associates and possible adversaries to dissuade any campaigns of hostility. A closer analysis indicates that national interest, which forms the basis of the realist school of thinking, defines foreign affairs of states and sometimes impacts negatively on collective security efforts. It is significant to scrutinize the most applicable articles of the MDP and try as much as possible to identify their strong points and limitations from a realist perspective. The pact recognizes the sovereignty of member states. By doing so the pact is a *sui generis* in nature because it recognizes the horizontality of the structure of the international system just like the UN's emphasis on the equality of the member states. The autonomous egalitarianism of states is a key code of the United Nations Charter.

3. Research Methodology

This is a systematic review study of secondary sources that speak to SADC MDP of 2003, VCLT of 1969. Through desktop research, the study reviewed the SADC MDP of 2003 document, the VCLT of 1969, international relations and international law-related books, magazines, journals articles, and websites, amongst other secondary sources. The merit of using secondary sources is that analyzing secondary documents offers a lot of more contextual meaning. However, the disadvantage is that the researchers were viewing the data purely through the lenses of the original authors of the documents.

4. Results And Discussions

Cross-Examining Pertinent Articles Of The Sadc Mdp

The SADC MDP generates a chain of international obligations fastening the member states to each other. This defence coalition can be in the form of a pact or a treaty to strengthen defence and security capabilities amongst parties. Maeresera Sand Uzodike O (2010) noted that a defense accord's phraseology might be greatly explicit or imprecise. Whether or not rivals of the country in question are recognized as internal, with or without outside patronage or mainly external, differs from pact to pact. Niewekerk A (2003) concluded that there are various forms of mutual defence pacts like a non-aggression pact, friendship and cooperation agreement, cooperation to protect the autonomy, independence, and national honor of state parties. The laws of the treaty stipulate that the objective and resolution of the agreement should be clear to avoid undermining the principle of effectiveness *(maxim*

magis valeat quam pereat) that is enshrined in the International Law Commission (ILC). Fitzmaurice, M, and Merkouris, P. (2020) noted that all rations of a treaty requisite objective to have importance and to be obligatory to prompt the envisioned connotation. Accordingly, any elucidation that purifies a version as ineffectual and worthless is inappropriate. That explains why it took long for SADC member states to conclude the SADC MDP to almost half a decade since the DRC conflict of 1998 to 2003.

It took long for the SADC MDP to be concluded because of the dispute in wording amongst drafters because they wanted to avoid complicated and disputing words similar to those in the NATO document. Article 5 of NATO of 1949 states that armed attack against one or more of the parties shall be considered an attack against them all and accordingly they settled for that. As such, if an armed attack crops up, every member state has a right to singular or shared self-defence as documented by, Article 51 of the UN Charter of 1945 that emphasizes that the member states may aid the one attacked or those attacked without delay as individuals and in concert with the other parties. Engelbrecht M (2009) commented that such actions deemed necessary comprise the use of fortified force to reinstate and uphold the sanctuary of the North Atlantic area. This conflict with the comestibles of the UNSC gives the Security Council powers to terminate all measures and such armed attacks when it feels there is a possibility that peace and security now prevails. Shaw M (2008) postulated that a spot-on clarification of a treaty in transnational law will devour to take keen on account wholly facets of the settlement, from words engaged to the intent of the countries and the ambitions of the exact document. The SADC member states should be commended for respecting the laws of the treaty by respecting the key principle of interpretation of the treaty that is the principle of effectiveness. The SADC MDP pact drafters should be applauded for incorporating the words a threat to regional security and avoided words like an attack against all. This is not vague, compared to the NATO phraseology, bearing in mind the political realities of the international system. It is because of national interest that some member states may not see the attack on another as an attack on all.

It is for this reason of compromised language adopted by NATO that a number of SADC members in fact argued that similar verbal complexities in the region would be too rigid and could promote non-democratic states to support despotic governments. For that reason, they adopted uncompromised language. Engelbrecht M (2009, p.1) gave a good analysis regarding this wording;
Article *6 of August 2002 draft concluded at the Maputo summit reads as follows "1. Armed attack against a state party shall be considered as a threat to regional peace and security and such shall be met with immediate collective action by state parties. 2. Collective action shall be mandated by the SADC Summit on the recommendation by the Organ (on politics, Defense, and Security). 3. Any such armed attack and measure are taken in thereto, shall immediately be reported to Peace and Security Council of the AU and the UNSC "Section 1 and 3 survived into the final text but section 2 still did cut the mustard. The signed version of Article 6 reads, "collective self-defense and collective action. 1. Any armed attack against the state party shall be met with immediate collective action. 2. Collective action shall be mandated by the summit on the recommendation of the Organ. 3. Each state party shall participate in such collective action in any manner it deems appropriate. 4. any such armed attack and measures are taken on response there shall immediately be reported to the Peace and Security Council of the AU and the UNSC".*

Article 31(1) of the VCLT of 1969 declares that an agreement shall be inferred in good faith in accord with the conventional gist to be set to the positions of the accord in their milieu and in light of its objective and purpose. This indicates that SADC member states were willing to cooperate which each other in an even environment. The statement above reflects how the sub-region tried to make sure that compromising language and wording is avoided in regard to the SADC MDP. The Pact created some international obligations, for example, article 6(3) which emphasizes the need to solve disputes by peaceful means, and Article 6(4) which emphasizes the need for military preparedness. Moradi, A. M, and Beigi, N. A. K. (2020) assume that The SADC members were mindful of the need to strategically manage the sub-regional instrument they were working on. The main benefit of strategic organizational management is to help the organization choose strategic ways or options through a more systematic, sensible, and logical approach and thus formulate better strategies. These international obligations were created to make sure that the SADC achieves its goal of a peaceful sub-region.

The concept of ratification is another crucial part of the law of treaties. Maeresera Sand Uzodike O (2010) contended that, in this repute, the level or degree of endorsement by SADC MDP affiliate states, principally in veneration of the numbers that have authorized and have not authorized the agreement, is mostly Germane. The advantage of waiting until state parties ratify the agreement (SADC MDP) into force, was that the delay between signature and ratification allows for the superfluous period for thoughtfulness, once the negotiations have been concluded. The VCLT of 1969 article 14 records that consent expresses a country's assent to be guaranteed by an accord where the treaty so delivers. Shaw (2003) noted that the guidelines connecting to ratification of a treaty fluctuate from state to state. The SADC MDP entered into force in 2008 after meeting the demands of the required number of states with only Angola the remaining state to sign and ratify. SADC MDP (2003) article 20 affirms that this pact will go into potency thirty (30) days after the pledge of the instrument of ratification by the third of the affiliate states. The VCLT (1969) article 13 provides that the assent of affiliations to be bound by a treaty instituted by instruments bartered amid them may be conveyed by that interchange when the apparatuses pronounce that their exchange will have that end product. The inclusion of Article 20 in the SADC MDP is the indication that the SADC drafters worked in harmony with the edict of treaties.

There seems to be a legal tension amid the code of non-intervention and collective security efforts in the SADC MDP and the provisions of The International Law Commission's Draft Declaration on the Rights and Duties of States (1949). Article 7.1 of the SADC MDP notes that state affiliates should reverence one another's national veracity and independence and, in exacting, discern the standard of non-interference in the internal undertakings of one another. The International Law Commission's Draft Declaration on the Rights and Duties of States' (1949), Article 1, states that the right to independence is the right to exercise freely, without dictation by any other State, all its legal powers, including the choice of its own form of government. Article 4 notes that states ought to desist from stimulating civic dissension in the zone of another state and to thwart the organization inside its territory of undertakings designed to ferment such civic strife. The norm of non-intervention has a negative impact on the collective security and collective defence efforts and at times non-intervention is a sign of the respect of sovereignty. How then do the SADC countries wish to collectively work together without interfering in the affairs of a member state? Crawford J (2008) suggested that public international law is institutionally deficient. The international agreements are sometimes contradictory thus defeating the agenda they intend to accomplish.

Article 1(2), of the SADCMDP terms armed attack as the use of soldierly force in defilement of autonomous state's independence. Ngoma N (2004) pointed out that the agreement campaigns for the fortification of the country to the conceivable marginalization of populaces who are eventually the very spur for supplementary safe environs. Maeresera & Uzodike (2010) argued that the safety of the nation is superlative cast-ironed first and notable by the security of the citizens. The conclusion of this study is that proper reference to security should be given to individuals rather than states, for all of humanity is the best path to tackle the problem of global insecurity. In the same vein, Machiavelli assumed that men arise from one ambition to another. First, they seek to secure themselves against the attack and they then attack. Thus, the issue of human security and traditional security is a debatable issue. It remains contestable which of the two should form the basis of the MDP's response to an attack. Thus, this limits the objectives of the law of treaties in international politics. However, the need for collective self-defence as defined in Article 1(2) of the SADC MDP, seems to acknowledge that peace and security can be achieved if states collectively work towards achieving that goal. Barack C. O and Munga G.B (2021) pointed out that, trust of competency levels is critical for the smooth coordination of sub-regional instruments. The aspiration to act jointly appears to be an admittance that the autonomous state is in the middle and elongated run unreachable and only endures to novelty its approach into the text as a signal that for the contemporaneous, the state remains to be a practical means of expressing governance matters.

In international politics, foreign relations are made as states pursue national interests. When national interests are under threat states may ignore bilateral and multilateral agreements of which they are in part. Article 22 of the SADC MDP states that any state affiliate may report a suspected break of the

agreement to the Chairperson of the Organ who will initiate an inquiry report thereon and proffer commendations to the Summit. A closer analysis, from a realistic perceptive, indicates that the article above lacks credibility in the international system. Machiavelli N advised that a prince never lacks the legitimacy to break his promise. States are unitary geographical entities without supreme authority to govern them. The skepticisms of international law come because of the incongruities amongst the power of countries, the convolution of modern-day military organisms, and the leeway of the inventiveness of international affairs. Khan (2021) urges that the notion of sovereignty, which is one of the most contentious conceptions in politics and international law, is intimately linked to the problematic concepts of state, government, and international affairs. This leaves Article 22 of the SADC MDP somehow very ineffective in practice.

Crawford J (2008) pointed out that in international relations there are things that manifestly need to be done collectively, there is no reason to stop the production of hydroelectricity if other states endure to do so. Article 3(1) of the SADC MDP pact offers for the settlement of the crisis in harmony with the doctrines of the UN Charter in order to enrich inclusive solidity. This is an indication that the sub-region is prepared to collectively work with the rest of the world to achieve peace and security. It shows that there is mutuality between SADC and the UN. There is a need to inform the sub-region structure about the action to be taken by international organizations like the UN and AU's Peace and Security Councils. This can create mutuality amongst SADC and other regional bodies. This mutuality may bring collective success in matters of peace and security. However, this can also dilute the sovereignty of SADC as a sub-region.

There are two articles that call for peaceful means of finding solutions to insecurity problems within the sub-region. Article 3(2) appeals for states in the sub-region to circumvent the risk or use of vehemence as a way of ending conflicts, just like NATO's article 4 which calls for consultation. The call for deliberations through the Organ for Politics Defense and Security Council (OPDSC). When a country is under menace from another state affiliate which it calls for a joint verification mission should preliminary consultations fall short to realize a peaceable declaration to the crisis? In this regard, Maeresera S and U. Ozodike O (2010) argued that a peaceable rather than a militant method is accentuated for resolving conflict engagements amid states in the sub-region. A query that can be asked in relation to the above declaration is what the sub-region would do if a deed of bellicosity is committed by an external country against an affiliate state. The power theories diverge from what the article above assumes Machiavelli N, believed that war can only be avoided to the advantage of others. Koskenniemi M (2005) assumed that a law that lacks remoteness from state comportment, willpower, or interest would aggregate to non-normative excuses, a sheer sociological explanation. The above narrative indicates that the dream of a peaceful environment in the international system is far from being realized because the state of nature has no room for morals and principles of international agreements like the SADC MDP.

In matters of security and defense, which consist of military attentiveness, collective action, and mutual self-defence and defense collaboration. Article 4, 6, and 9 clearly highlights the need for interdependence amongst states in the region. Article 4 states that in order to effectively achieve the objectives of this Pact, State Parties shall individually and collectively, by means of continuous cooperation and assistance, maintain and develop their individual and collective defence capacity to maintain peace, stability, and security. It is in these researchers' view that the emphasis of the pact is on the collective effort to bring peace. The SADC MDP Article 9 states that in order to realize the objective of this Pact, the State Parties shall cooperate in all defence matters and shall facilitate interaction among their armed forces, defence-related industries, and any other areas of mutual interests. However, it is these authors' contention that the SADC member states wanted to grant a close operational atmosphere and trustworthiness among members.

Article 6 is a much more important article because it offers texture to the correlations inside the sub-region and its rapport with the exterior structures. Ngoma N (2004) asserts that what is principally weighty in article 6(1) is the answer to any armed spasm on a country inside the sub-region. There tends to be a mutual sensitivity to what is going on in one country which has developed mutual dependency

with another. This shows how strong the relationship within this community paradigm is. This is vital in avoiding the defilement of common doctrines of international law in SADC. Criminalities against humankind, warfare delinquencies, and genocides should be met with an immediate response from member states. So, in crafting the SADC MPD made sure that they are compatible with the norms of common regulations (Jus Cogens).VCTC of 1969 article 53 provides that a treaty is annulled if, at the period of its conclusion, it clashes with the unconditional standard of universal international law. Shaw (2003) argues that a peremptory standard of all-purpose international law is a model recognized and renowned by the worldwide civic as a whole. Although the *jus cogens* are controversial in their content and process of conception, the inset of an article in relation to *jus cogens* in the SADC MDP underlines the basic principles underlying the SADCMDP.

The principle of non-inference is coded in Article 7 of the SADC MDP. Article 7 notes that the state conglomerates undertake to venerate each other's national integrity and autonomy and inexact, detect the code of non-interference in the in-house matters of each other. The principle of non-interference is also, in The International Law Commission's Draft Declaration on the Rights and Duties of States (1949), Article 3, commands states to desist from intervening in the internal or external matters of any other State. This seems to diverge from what the realists assume. Elman and Fendius (2001) argued that egotistical humanoid appetite for power or the necessity to amass the resources to be secure in this world is of the essence. These leave one to assume that a state can intervene in pursuit of national interest for survival. Koskenniemi M (2005) noted that a law that bases itself on doctrines that are unconnected to state comportment, will or safeties, is naive and incompetent of validating its own content in any dependable fashion. It is the writers 'understanding that the code of non-intervention is not valid in this anarchical world, in fact, what matters is the state and its interests.

The SADC MDP (2003) Article 3, shows that member states are ready to create a peaceful living environment. It should be noted that in the transnational organism countries are steered by the lucidity of the state interest customarily demarcated in the language of continued existence, safety, supremacy, and qualified aptitudes. Ngoma N (2004) saw it differently. For him, by authorization of the MDP, the countries visualize a sub-region in which the affiliates are so knotted that targeting one another militarily would be unimaginable. This research assumes that the relations can only be intertwined when there is a common interest amongst members the absence of which may result in the unsuccessful operations of peace and security sub-regional mechanisms.

Article 2 of the SADC MDP shows that the member states' objective in this Pact is to operationalize the contrivances of the SADC Organ for shared teamwork in defense and safekeeping matters. This shows that the sub-region members had already taken a step further to make sure that various institutional frameworks put in place achieve their goals through mutual cooperation. A closer analysis shows that, in the anarchical world, states may choose to ignore the objectives of the treaty to which they are signatories. Smith H.M (1986) argued that any deed that can be considered as imperative for the existence of the state brings with it a built-in rationalization. This again supports the realist idea that states are the prime thespians in the intercontinental system. The institutions that should enforce the treaty laws like the International Court of Justice have no compulsory jurisdiction, thus rendering the treaty law weak and irrelevant in the international system.

Nevertheless, SADC has shown that it can learn from other regional institutions. Article 5, which is about consultation, is not found in the SADC MDP only. Article 4 of NATO's emphasis on consultation also shows that SADC understands the nature and terrain of treaty law and has been learning from other institutions which were there before it. However, it can be averred that the international system is a self-help environment where there are no permanent enemies or friends but permanent interests. The big question is; consultation in whose interests? This leaves this research to conclude that the divergence of interests by state parties to the SADC MDP puts its credibility into serious question. Classical Realists believe that international politics can be branded as malevolent in that debauched things happen since the populaces making foreign policy are sometimes immoral. Despite the efforts by the SADC member states, the sub-region's institutional frameworks in the form of the MDP, SIPO, and others, are operating in a very harsh and uncertain environment.

Crawford J (2008) confirmed that the nonexistence of a parliament, with worldwide authority and the consensual foundation for jurisdictive interdependence, strengthens the voluntarist and supportive oddity of most international laws all the time. Article 13 notes that any disagreement amid the sub-regional affiliates rising from the versions of this Pact will be settled good-naturedly. Suppose there is no resolution, the problem will be transferred to the SADC Tribunal. This shows that the sub-regional members were ready to keep checks and balances and allow transparency in their settlements of disputes. However, realists assume that states are primary actors in an anarchical international system where there is no authority capable of regulating relations amongst them. A good example is what Zimbabwe did when the SADC Tribunal ruled in favor of Mike Campell (pvt) Ltd on the issue of land reform. Zimbabwe chose to ignore the ruling because it was a threat to Zimbabwe's national interests.

SADC should be commended for showing commitment to the promotion of transparency in its efforts to bring peace and security to the region. Article 22, which focuses on breach of contract, states that any State Party can echo a purported break of the Pact to the Chairperson of the Organ, who will organize an inquiry, report thereon, and make commendations to the Summit. This allows transparency and promotes the effectiveness of the MDP. Transparency builds trust and also makes members' will invested in the organization, thus enhancing its credibility in order to achieve its goal.

5. Conclusion

The law of the treaty, in particular, and international law, in general, have been put under serious acid test at the present, possibly to their destruction. Our contention is that, if destroyed, the world shall be a worse place to live in. Indeed, the SADC MDP is not without its flaws like any other collective security law. However, it can be concluded that if the pact is enhanced in letter and spirit, it is arguably SADC's panacea to the sub-region's myriad security concerns. The research recommends a revision of the SADC MDP to suit the political and legal landscape of SADC in the 21st century.

Limitations

The realism school of thought was used as the tool of analysis for this study. Khan, M. M. R, and Sultana, R. (2021) noted that when dealing with theories we must keep certain factors in mind, such as the predictive accuracy, scope, simplicity, and falsifiability of the theories. The research analyzed the SADC MDP from a political perspective without giving much attention to the legal implications of the treaty. This is a theoretical analysis of the SADC MDP document and not an analysis of how SADC members have dealt with collective security issues this far.

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