Mobilising Resources for Regional Integration in Southern Africa: Towards a SADC Capacity-Building Fund

Steven Georgala and
Arne Tostensen

R 1996: 5

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Summary

Two fundamental problems have been figuring on the agenda of SADC since 190: donor dependency and institutional structure. While not divorcing the broader issue of institutional structure from that of donor dependency, this report is preoccupied with the latter. After reviewing the institutional evolution of SADC from its inception as a 'conference' to a 'community', the report proposes that a Capacity-Building Fund be established as a mechanism for mobilising resources regionally. Its capitalisation is envisaged to emanate from a variety of sources, including voluntary contributions from member states and donors, private sector contributions and levies on transactions within the region. It is proposed that the Fund be set up as a separate legal person to be managed by a Board of Governors, yet linked to SADC as an organisation. A draft constitution of the Fund is included in the report.

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Acknowledgements

This consultancy was commissioned by the SADC Secretariat on the basis of the terms of reference as set out in appendix 2 to this report. In the course of completing the task the consultants have drawn on their previous experiences in Southern Africa and insights garnered from studies of regional affairs as well as legal knowledge related to the establishment and operation of trusts and foundations. In addition, many people and institutions in the region and elsewhere have been consulted (see appendix 1). Sincere gratitude is due to all those who shared their views and generously allotted time when called upon. Finally, SADC Secretariat staff deserve thanks for facilitating the consultants' work on the report and offering comments on a previous draft. It is hoped that the end result as contained in this report does justice to the proposals advanced. However, responsibility for the analysis, conclusions and recommendations rests solely with the authors.

Executive Summary

1. Two fundamental problems have been figuring persistently on the agenda of SADC since its inception as a 'conference' in 1980: donor dependency and institutional structure. Much thought and soul-searching discussion have gone into attempts to grapple with these issues. Yet, the problems remain basically unresolved. This report constitutes yet another attempt at finding a solution, albeit partial, to these twin problems. The question of setting up a capacity-building fund cannot be divorced from the broader issue of institutional structure.

2. When SADCC was formed in 1980 a decentralised institutional structure was adopted with a view to avoiding top-heavy bureaucratisation with high overhead costs; mobilising Member States and ensuring their direct and active involvement in the organisation's affairs by allocating sectoral responsibilities to them; and creating a high profile to promote and maintain visibility throughout the region through the activities of the Sector Coordinating Units (SCUs).

3. The founders of SADCC deliberately opted for consensus in decision-making. The cost of this operational modality, however, has been relative slowness of progress. Faced with the challenges of the 1990's it was increasingly felt that, while the original institutional framework had been appropriate for the 1980's, it would be inadequate for the future. On 17 August 1992 the Summit adopted a Treaty establishing the Southern Africa Development Community intended to transform the organisation from a loose assemblage of like-minded states into a firmer and better instrument for regional integration. The ambitious objectives of the Treaty were not matched by fundamental changes in the institutional framework of the Community to equip the organisation with the necessary instruments to meet the new challenges. The mode of operation of the new SADC was not transformed.

4. The most serious shortcoming of the Treaty in terms of institutional provisions is the glaring omission of reference to the SCUs. As a matter of formality it is correct that the SCUs are strictly speaking not part of the institutional framework of SADC. Formally they are not regional institutions but *national* entities integrated into the state apparatus of the country holding responsibility for the sector concerned. Even though the SCUs are technically national units, they are critical to the functioning of SADC, of which they are a vital part organically, if not legally. The SCUs form the backbone of SADC, without which the decentralised mode of operation would not work. On account of their operational importance it is disturbing that the SCUs were neglected in the Treaty.

5. However, the Treaty laid the basis for continued evolution of the institutional framework, e.g. the upgrading of SCUs to commission status. Nevertheless, in recognition of the likelihood that SCUs would continue to perform important functions for a considerable time to come, a saving provision was included. Pending significant changes in SADC's mode of operation, therefore, the institutional impediments of the past are likely to continue hampering progress. The old framework may have served the organisation well in the first decade but new and tougher challenges of deepening integration will require new and more effective instruments.

6. The problem of inter-organisational rivalry between PTA and SADC has compounded the institutional question for some time. Overlapping mandates and membership have been cause for concern that efforts are being duplicated and meagre resources wasted. The two summits of the respective organisations in August and December 1994 failed to resolve the conflict. The fact that a workable *modus operandi* has not been reached does not allay the concerns of the donor community.

7. The desire to prevent the swelling of SADC's bureaucracy to unmanageable levels has evolved into a *bureaucratic leanness axiom* to the point of creating bottlenecks in the organisation which hamper progress with regard to the new agenda. The policy of keeping bureaucracy (i.e. number of staff) to a bare minimum has been implemented too scrupulously. It may be surmised from various documents that shortage of qualified staff and capacity are factors which seriously impede progress. There is a case for judicious expansion of the bureaucracy of SADC institutions, including both the Secretariat and the SCUs.

8. Expanding the capacity of an institution can be done in three ways: (a) increasing the total working time available to complete the assignments at hand, i.e. increasing the staff complement through new recruitment; (b) enhancing the efficiency of existing staff by various means without increasing the number of staff, i.e. making more economical use of available resources and deploying staff more rationally; and (c) combining staff expansion, i.e. option (a), and taking efficiency measures, i.e. option (b). This would be the most effective option and is the recommended one.

9. The Capacity-Building Fund is intended to have a dual function. First, it is designed to enhance institutional capacities for regional integration by way of a number of interventions and support measures. Second, once capacities have been expanded, the Fund would - for an initial period - provide recurrent expenditure support.

10. The critical hurdle in establishing a capacity-building fund is likely to be its capitalisation. Potential sources include: (a) revenue generated through activities such as football matches, pop concerts, lotteries, hotel bed levy etc.; (b) voluntary

contributions from civil society in Southern Africa; (c) voluntary contributions from SADC Member States; (b) assessed contributions from SADC Member States, either on a flat rate basis or according to a specified formula of differentiation; (d) voluntary contributions from the donor community, both bilateral and multilateral agencies; (e) voluntary contributions from the private sector in Southern Africa, principally from individual companies; (f) voluntary contributions from the private sector in other parts of the world, principally from individual companies; (g) temporary levy on trade transactions within the Southern African Customs Union for a fixed term or up to a targeted volume.

11. Whereas all of the potential sources may be tapped, the most effective and fastest way to capitalise the Fund to the level required would be to impose a small levy on trade transactions within the Southern African Customs Union (SACU). This arrangement would be temporary and last only until the targeted amount has been reached. The greatest attraction of this option is its practicability in that the functioning administrative machinery for collecting the levy is in place. The main reservation is that only a minority of SADC's Member States would thus capitalise the Fund, whereas all of them would benefit from its operations.

12. The report outlines a number of expenditure and management assumptions, on the basis of which an attempt is made at quantifying the resources which will be required to be committed to the Fund in order for it to constitute a viable source of financial support. On the basis of these assumptions the required capital base of the Fund is estimated to be within the range of US$ 4.4 mill. to US$ 16.7 mill.

13. It is recognised that there is an absolute need for the Fund to be established within the framework of the Treaty and the existing Protocols to the Treaty. None of the provisions of the Treaty and its Protocols are considered to be adequate to provide for the establishment of a discrete and effective constitution for the Fund without being supplemented by new provisions in the form of a Protocol to the Treaty. It is recommended, therefore, that a new Protocol be adopted which establishes the Fund as an Institution of SADC. The provisions of the Protocol would need to be in harmony with the existing provisions which relate to the management of the resources of SADC.

14. In order to maintain adequate flexibility in the conduct of the affairs of the Fund as these may evolve, it is suggested that the Protocol establishing the Fund should not embody the constitution of the Fund. It is recommended that the Protocol authorise the Council of Ministers to adopt the detailed constitution and that, once adopted, the said constitution be amendable only by the Council. It is recommended that the consultative process which the Secretariat has adopted as the procedure for the formulation of protocols be abbreviated to that which is necessary in order to finalise the draft Protocol and for the Protocol to be submitted directly to the Council of Ministers. This suggestion is motivated by the

understanding that the Protocol in question relates to an administrative matter and is not relevant to a specific area of cooperation.

15. It is proposed that the Fund be managed by a Board of Governors which would comprise up to ten members. Although the Executive Secretary of SADC could, *ex officio*, be a member of the Board of Governors, it is recommended that the members of the Board of Governors be drawn from outside of the SADC Secretariat. The members of the Board of Governors should have sufficient financial acumen and stature in the financial community to ensure that the Fund would be run in accordance with its constitution. The Board of Governors would play a supervisory role.

16. It is proposed further that the Fund be managed by an independent financial institution selected by the Board of Governors pursuant to a tender procedure. This institution should be selected on the basis of its financial acumen and stature in the international investment community. The institution so selected would enter into an investment management agreement with the Fund pursuant to which its services and remuneration would be specified in detail. It is recommended that the Fund appoint a second financial institution, which meets predetermined credit rating requirements, as the custodian of the Fund's assets.

17. The investment manager would be required to invest the assets of the Fund in accordance with the restrictions imposed in the constitution and with a view to achieving the investment objectives set out therein. The investment manager would, furthermore, make quarterly presentations to the Board of Governors and support these presentations by detailed financial reports which would be made available to the SADC Executive Secretary and all Member States.

18. It is proposed that the investment objectives of the Fund be formulated in such a manner as would limit the risk to which the assets are put. The constitution of the Fund should establish detailed investment restrictions which would limit the risk to which the assets of the Fund would be exposed. The constitution of the Fund should prescribe the accounting treatment of the assets of the Fund and specify the nature of the reports which are required to be presented to the supervisory Board of Governors. It is essential that the Fund be subject to audit by independent auditors, and in this regard it is recommended that the auditors be different to those which audit the accounts of SADC. The Fund will have no employees nor should the SADC Secretariat fulfil any functions in relation to the administration of its assets or of its accounting.

19. A draft constitution for the Fund is included in the report.

20. A draft Protocol establishing the Fund as an Institution of SADC is appended.

1. SADC's Institutional Framework

Two fundamental problems have been figuring persistently on the agenda of SADC since its inception as a 'conference' in 1980: donor dependency and institutional structure. Much thought and soul-searching discussion have gone into attempts to grapple with these issues, not only by officials of the organisation but also more broadly by civil society and academic analysts in the region and beyond. A number of studies, reports and memoranda have been produced in search of solutions. Yet, little progress has been made and the problems remain basically unresolved. This report constitutes yet another attempt at finding a solution, albeit partial, to these twin problems. Although a capacity-building fund is meant to address, in some measure, the donor dependency problem through the creation of a vehicle for intra-regional resource mobilisation, donor support for its capitalisation should not be ruled out entirely. Even so, regardless of sources of capitalisation, the principal function of such a fund would be to address the serious problem of institutional capacity. In turn, capacity is related to the institutional set-up of SADC in general, its efficiency and lines of authority. In this sense the establishment of a capacity-building fund goes to the core of SADC's institutional problem. In fact, the question of setting up a capacity-building fund cannot be divorced from the broader issue of institutional structure. Hence the need for an initial discussion of the institutions of SADC.

1.1 A Retrospective Review

When SADCC was formed in 1980 a decentralised institutional structure was adopted, whose underlying rationale may be summarised in three main points.[1]

(a) Avoiding top-heavy bureaucratisation with high overhead costs. The risk of Member States accumulating arrears to cover institutional costs could thus be averted or minimised. In this respect the experiences from the East African Community (EAC) had undoubtedly acted as a deterrent;
(b) Mobilising Member States and ensuring their direct and active involvement in the organisation's affairs by allocating sectoral responsibilities to them. A highly centralised structure might demobilise or pacify member states in that they might be tempted to refer responsibilities to central bodies which would be seen to be acting on behalf of the entire organisation;

[1] These points emanate from official documents and interviews with SADC(C) officials.

(c) Creating a high profile to promote and maintain visibility throughout the region through the activities of the Sector Coordinating Units (SCUs). This would be politically important, not least in the initial stages.

It may be said of this approach to regional collaboration that it was singularly 'functionalist' and bottom-up, as opposed to a top-down supra-national mode of operation.[2] It became the hallmark of the erstwhile SADCC, which has continued to distinguish it from previous and contemporary regional ventures. Consonant with the initial pragmatic and non-bureaucratic spirit, no truly supra-national institutions have been created to date, not even after the transformation of the 'conference' into a community.

The concept of supra-nationality is equivocal because its usage has not been consistent.[3] International organisations between states, i.e. intergovernmental organisations, may be grouped into four broad categories:

(a) Intergovernmental organisations with purely consultative or advisory functions. They are not mandated to take decisions which are binding on their member states;
(b) Intergovernmental organisations which may take decisions which are binding on their member states, but only in so far as such decisions are based on consensus or unanimity among the membership. SADC falls into this category;
(c) Intergovernmental organisations whose supra-national authority is based on the *voluntary* ceding of sovereignty by member states in specified fields as laid down in a formal agreement with proper status in terms of international law. The enforcement of decisions is only considered legitimate if the member states concerned have expressly authorised it beforehand, e.g. in the membership terms, the use of certain means of enforcement;
(d) Federations which are unions of states in which the control of the external relations of all the member states has been permanently surrendered to a

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[2] The term 'functionalist' refers to one strand of thinking within the theory of integration, espoused particularly by Ernst B. Haas, *Beyond the Nation-State: Functionalism and International Organisations*, (Stanford: Stanford University Press, 1964) and by David Mitrany, 'The Prospects of Integration: Federal or Functional', in *Journal of Common Market Studies*, vol. IV, no. 2, 1963. Its main tenet is that regional integration is more likely to succeed if approached pragmatically in 'functional' areas on a step-by-step basis so as to weave gradually a web of integrative relations between states. The 'bottom-up approach' refers to the way in which project proposals are processed within the organisation, from the national level to the Council of Ministers for approval and inclusion in the Programme of Action. It does not imply that SADC(C) activities have necessarily been generated by popular grassroots initiatives.

[3] This section draws on Jon Hovi, 'Overnasjonalitet' ['Supra-nationality'], in *Internasjonal Politikk*, vol. 49, no. 1, 1991, pp. 5-17. See also C. Parry et al. (eds.), *Encyclopedic Dictionary of International Law*, (New York: Oceana Publications, 1986) and B. Sen, *A Diplomat's Handbook of International Law and Practice*, (The Hague: Martinus Nijhoff Publishers, 1979).

central governing body so that the only state which exists for international purposes is the state formed by such a union.

An intergovernmental organisation may thus be called supra-national in the full sense of the term only if it satisfies the following criteria:

(i) The member states have *ceded sovereignty* in limited and specified fields to a higher organisational body so that authority is conferred on that body to make decisions and implement them on behalf of the constituent member states;
(ii) The ceding of sovereignty has been made on a *voluntary* basis;
(iii) The ceding of sovereignty is *irrevocable* in the short term so as to make it impossible for a member state to restore decision-making authority to its own national organs with immediate effect;
(iv) The ceding of sovereignty is *limited* in the sense that the member states will retain their international status as independent actors in other fields of activity.

If an intergovernmental organisation satisfies the above criteria it will have the following properties in terms of decision-making:

(i) Authority and capability to make decisions binding on member states;
(ii) Authority and capability to make decisions binding on members states even against the will of reluctant or resisting member states;
(iii) Possession of adequate means to enforce decisions even in the face of opposition or reluctance by certain member states;
(iv) A minimum of financial autonomy as a basis for enforcement of decisions;
(v) Legal restrictions on immediate withdrawal from the organisation by member states.

The international community has to date not seen a single intergovernmental organisation which satisfies all these criteria as a fully-fledged supra-national entity. But in real international politics it is often a question of degrees. The Security Council of the United Nations appears to conform to most of the criteria, but not all. It falls short in terms of financial autonomy; the veto right of the permanent members also introduces limitations on its authority to function as a supra-national actor. The European Union has also gone some way towards becoming a supra-national body but not yet as far as the Security Council. Controversy still surrounds the Maastricht Treaty and most analysts find its implementation schedule unrealistic.

In an increasingly interdependent world the notion of national sovereignty needs to be re-examined.[4] The assumption hardly holds true any longer that the nation-state exercises sovereign control over its own fate, subject only to compromises it must make and limits imposed upon it by actors, agencies and forces operating within its territorial boundaries. The dynamics of the world economy, the rapid growth of transnational links and major changes to the nature of international law encroaches in a fundamental way upon the sovereignty of any nation-state. But this applies *a fortiori* to nation-states of the Third World whose vulnerability to global processes are more pronounced. As a result, the question of formal ceding of sovereignty in terms of intergovernmental agreements is reduced in real importance, even though it remains important symbolically.

Notwithstanding the definitions and formalities of supra-national organisations, the real politics of international relations determine, in the last instance, the workability of such organisations. History has shown that supra-national federations have broken up because strains have been allowed to build up over a number of years to a point where one or more sub-federal entities have found it intolerable to remain a member state. Such strains frequently have to do with the allocation of costs and benefits. Some poorer or less endowed member states may perceive that intra-federal exploitation has become built into the decision-making structures to their detriment, whereas richer member states may feel they are not getting their fair share of the cake relative to their contribution. In most cases equity issues have been at the root of disruption and put in question the very legitimacy of the arrangement.

Historically, bureaucratic institutions with some supra-national powers have tended to swell in size and become expensive, and have thus imposed a financial burden on the member states. In the developing world many countries have thus accumulated arrears which, in turn, have constrained the effectiveness and manoeuvrability of the organisation to which they ought to owe allegiance. Such situations may have arisen simply due to the inability to pay membership fees or any other assessment levied on the member states.

But arrears may also have developed by design on the part of certain member states because they feel that their supra-national bodies have become forces in their own right, quasi-independent of the common will of the member states. Accumulation of arrears may in such cases be interpreted in political terms as some form of protest or at least as an indication of unease or waning commitment. Research on institutional behaviour suggests that institutions may develop a self-interest in their own survival and preservation. But no institutions operate in a political and economic vacuum as far as strategic direction is concerned; generally

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[4] See David Held, 'Democracy, the Nation-State and the Global System', in *Economy and Society*, vol. 20, no. 2, 1991, pp. 138-172.

it is the stronger member states of regional organisations which manage to assert their interests through such supra-national bodies not bound by consensus in their decision-making procedures.[5]

In contradistinction to supra-national models the original SADCC opted for consensus in decision-making in its initial phase. A fine distinction may be drawn between *consensus* and *unanimity.* On occasion SADC(C) has pushed ahead by coaxing and cajoling, even when some Member States may have had reservations or apprehensions about the direction in which the organisation was going. In operational terms, i.e. in terms of approval and implementation of projects, which has been the core activity, it would be very difficult for one member state to slow down progress, as long as the countries directly involved were keen, and there was general support for the programme in question. The consensus principle means that every effort is being made to bring all Member States along, even the wavering and reluctant ones. It is not quite the same as unanimity which normally implies that a vote is taken. It would be correct to say, then, that SADC(C) organs have taken decisions to date which have had a variable degree of active support by Member States, although never directly opposed by any of them. Having said that, however, any lack of commitment and enthusiasm on the part of particular Member States would, of course, adversely affect the rate of progress in implementing decisions pertaining to the sector coordinated by the very same Member State.

Flowing from the consensus principle the direction of activities and the tempo of progress has thus been based on the lowest common denominator. In operational terms one may say that the slowest and least willing Member State has had a disproportionate influence on the direction and tempo of the organisation - virtually a veto right, albeit not in a formalised sense. The selection of this option in 1980 was a conscious choice in recognition of the heterogeneity of the Member States. Rather than being an instrument for coalescing disparate interests into a powerful force for rapid change, supra-national institutions have often - unless safeguard mechanisms have been build into their machinery to ensure equity in the distribution of cost and benefits - proved to be developing into the opposite: a divisive mechanism. The founders of SADCC deliberately preferred a consensus model to a vanguard supra-national structure which, by moving too far ahead too fast, might threaten to disrupt the entire cooperative venture. Consequently, relative slowness of progress has been the cost of the operational modality opted for.

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[5] See, *inter alia*, the survey article by Constantine V. Vaitsos, 'Crisis in Regional Economic Cooperation (Integration) among Developing Countries: A Survey', in *World Development*, vol. 6, no. 6, 1978, pp. 719-769.

The benefits of such a decentralised and 'functionalist' approach may be discerned in the achievements under the Programme of Action, and in the fact that SADCC in its 'conference' era was a viable and dynamic organisation. In view of past experiences in regional cooperation elsewhere that is no mean accomplishment. Organisational cohesion today is one of the main benefits of this institutional approach. The middle-of-the-road approach adopted has arguably averted the creation of new or the reinforcement of existing regional disparities. The politics of the organisation has ensured that the reaping of net benefits from regional collaboration has been distributed with reasonable equity among the Member States.

The bulk of the work under SADC auspices takes place in the SCUs (and in the two commissions SATCC and SACCAR) in conjunction with the formulation, amendment and implementation of the Programme of Action. They have responsibility for liaison and consultation with both Member States and the donor community, as well as for providing leadership, policy analysis and technical services to advance the sectoral programme in question. They convene and service the Sectoral Committees, and organise, as required, *ad hoc* sectoral consultative single-purpose meetings with donors. An important task is the preparation of a sectoral strategy to provide guidance for project selection and prioritisation. Moreover, they are actively involved in project identification, screening, appraisal and design in close consultation with the member state(s) where projects are physically located. They may also, on request, assist Member States in negotiations with donors on financing etc.

After a decade's experience with the above institutional framework and faced with the challenges of the 1990's it was increasingly felt that, while the original institutional framework had been appropriate for the 1980's, it would probably be inadequate for the future. After thorough preparation by a formalisation committee of eminent persons and careful deliberation by all decision-making organs of the organisation, it was decided to opt for a community.

1.2 Creating the Southern African Development Community

On 17 August 1992 the Summit meeting of SADCC adopted three important documents intended to transform the organisation from a fairly loose assemblage of like-minded states into a firmer and better instrument for regional integration. These documents include:

(a) *Towards the Southern African Development Community. A Declaration by the Heads of State or Government of Southern African States*;
(b) *Treaty of the Southern African Development Community*;
(c) *Protocol to the Treaty Establishing the Southern African Development Community on Immunities and Privileges.*

This formalisation into a community by way of a Treaty represented no doubt a step in the right direction. But, quite apart from the many merits of formalisation, this fact did not in itself address adequately either the problem of donor dependency or that of institutional structure.

To be true, some mention of donor dependency was made in the Windhoek Declaration. Despite its commitment to regional integration and mobilisation of the region's own resources to that end, the Declaration concedes that "... Southern Africa is still a developing region which will continue to need the support of the international community to realise its plans and aspirations."[6] Similar sentiments were expressed in the preamble to the Treaty and in its article 5. The major objective of dependency reduction contained in the Lusaka Declaration of 1980 had been dropped.[7] Anyhow, it was perhaps not to be expected that donor dependence be highlighted in formal documents of this nature.

The Treaty was adopted at a time when the global and regional environments were changing fundamentally. The collapse of the Soviet system had put an end to the cold war, with major consequences for Southern Africa. With the imminent transition to majority rule in South Africa, prospects for regional peace and development were greatly enhanced. Policies of economic and political liberalisation were increasingly taking hold throughout the region, laying a better foundation for cooperation at a higher level.

These changes were reflected in the increasingly ambitious objectives of the Treaty, i.e. regional integration in its fullest sense. However, the new enlarged and ambitious agenda was not matched by fundamental changes in the institutional framework of the Community, equipping the organisation with the necessary instruments to meet the new challenges. The mode of operation of the new SADC was not transformed.

The Tribunal is an institutional novelty, however. The loose nature of SADCC based on consensus decisions across the board did not require a mechanism for adjudication upon conflicts. Such conflicts were unlikely to arise. That situation has since changed. Although the principle of consensus decision-making is still upheld, the very formalisation of the organisation in terms of the Treaty and increased stress on enforcement of *binding* decisions may cause conflicts to emerge with respect to the interpretation of legal provisions and concomitant decisions by organs of the organisation. Hence the need for a Tribunal.

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6 Southern African Development Community, *Declaration, Treaty and Protocol of the Southern African Development Community*, Gaborone: SADC Secretariat, not dated, p. 10.

7 Reduction of dependence on apartheid South Africa is, of course, no longer relevant. But reduction of extra-regional dependence is indeed a serious problem still.

Disputes which cannot be settled amicably may be referred to the Tribunal for adjudication. Evidently the intention is not to set up a standing Tribunal as a permament institution. It would rather function on an *ad hoc* basis, as and when required. The specifics of its composition, powers, functions and procedures were to be prescribed in a separate protocol adopted by the Summit.

The Summit and the Council may request advisory opinions from the Tribunal.[8] But the rulings in disputes referred to the Tribunal shall be *final and binding*.[9] There is no recourse to appeal. The establishment of a Tribunal testifies to the increased preoccupation with enforcement of decisions in furtherance of the goals of the organisation.

Another mechanism of enforcement is contained in Article 33 on sanctions.[10] The inclusion of a provision like this suggests that the signatories do not find it inconceivable that some among them may find binding decisions difficult to comply with, even when they are based on consensus at the outset. The complexity and new agenda of deepening regional integration in post-apartheid Southern Africa underscores the need for compliance. The sanctions mechanism thus represents the 'stick' of the organisation, while its mode of operation is generally informed by consensus and goodwill. A Treaty involves legal obligations, and failure to fulfil them will provoke sanctions by the other members represented in the Summit.

There are two types of failure to meet obligations. One is the case when a Member State is persistently inactive in furthering the cause of the organisation for no acceptable reason, including failure to pay assessed contributions to joint activities. The other one is more serious, i.e. when a member state wilfully implements policies which undermine or run counter to the principles and objectives of the organisation.

The kind of sanctions that may be imposed are not specified in the Treaty. It shall be determined by the Summit on a case-by-case basis. Presumably suspension of membership will be within the range of sanctions that may be applied in extreme cases, though unlikely in the context of the real politics of regional affairs. The political cost would probably be too high.

The most serious shortcoming of the Treaty in terms of institutional provisions is the glaring omission of reference to the SCUs.[11] As a matter of formality it is correct, of course, that the SCUs are strictly speaking not part of the institutional

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[8] Article 16, subsection 4 of the Treaty, p. 16.

[9] Article 16, subsection 5 of the Treaty, p. 16.

[10] Article 33 of the Treaty, p. 24.

[11] Article 9 of the Treaty, p. 10.