

The SADC Mutual Defence Pact: si vis pacem, para bellum?

by
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Part One

Introduction

On Tuesday 26 August, at the closing ceremony of the 2003 Summit of the Southern African Development Community (SADC), the assembled Heads of State and Government signed an agreement establishing a mutual defence pact. Its new chairman, Tanzanian President Benjamin Mkapa, declared that "this will be our way to show our commitment to, and application of, the concept of African solutions to African problems". The pact will also help pave the way for the creation of a SADC brigade as part of the proposed African standby force, news reports said.¹ The purpose of this briefing paper is to examine the meaning of mutual defence pacts, the background to and provisions of the SADC pact, and challenges with implementation.

The many meanings of security...

It is important to distinguish between common, collaborative, and collective security on the one hand, and collective self-defence on the other. A common security approach emphasises that states in a given regional formation share common security concerns, often of a multidimensional nature, and together can address their security needs more effectively than alone or in opposition to each other (Cawthra, 2003). Mechanisms for security management cover not merely relations between states but also issues such as democratic practice, human rights, and even civil-military relations. The term common security is now widely used in regional groupings such as SADC and the AU (although in practise the security cooperation within both is better described as collaborative security, implying less systemic and comprehensive interaction). The United Nations personifies a global collective security system. Collective security allows both for the peaceful resolution of conflicts (chapter 6 of the UN Charter) and the use of military force by states or groups of states (chapter 7). Under collective self-defence, states make arrangements to protect each other from external aggression, and are not concerned with internal practices.

... and mutual defence pacts?

Mutual defence pacts are meant to regulate relations between states in the area of collective self-defence. The United Nations Charter of 1945, in Article 51, recognises individual or collective self-defence. Individual self-defence is the most straightforward implementation of the right of self-defence: in response to an armed attack, a state may invoke self-defence. The idea with collective self-defence is that when a country experiences an armed attack, two or more states can act together in supporting a victim country.² Armed attacks can be executed by state as well as non-state actors – such as terrorists or armed bands – using conventional or unconventional, sophisticated or primitive ordnance (Dinstein, 2001: 214, 166). There are several reasons for a country to come to the aid of another under attack. For superpowers, armed attacks initiated anywhere can be interpreted as a direct challenge to their vital interests. For minor powers, their overall security may be seen to be detrimentally

affected when one of them is invaded by a potent aggressor. They might act out of fear of a 'spillover' or 'knock-on' effect or even 'who is next?' – or in the belief that the danger of overwhelming force can only be averted by acting together. An apt example of collective self-defence is the military action taken by the American-led coalition against Iraq in support of Kuwait, with the full blessing of the Security Council. This example shows that any state may come to the aid of a state that has been illegally attacked.

Collective self-defence treaties can take various forms: mutual assistance treaties, military alliances and treaties of guarantee. Mutual assistance treaties are instruments whereby contracting parties proclaim that an armed attack against one of them will be regarded as an armed attack against all, pledging to help out each other in such circumstances. A treaty of mutual assistance may be either bilateral or multilateral in scope. The main benefit of such a treaty lies in the political sphere, for publication of the text serves notice on friends and foes alike as to the nature of the relationship uniting the contracting parties. There are problems however with such a treaty.

The problems with mutual self-defence...

The first is that states will be inclined to act – employ force – only if such conduct is in harmony with its vital interests as perceived at the time of action, rather than in the past (when the treaty was signed). Furthermore, there is the question of whether a single contracting party in a multilateral mutual assistance treaty is permitted to act on its own, offering assistance to the victim state, without waiting for an authoritative decision on behalf of the group. The treaty may require a group decision, which might take time to reach. This is of particular relevance to SADC. Observers have noted the organisation's inability to act in unison in the security arena, and have questioned the 'legality' of SADC military interventions in 1998 in Lesotho (South Africa and Botswana) and the DRC (Angola, Zimbabwe and Namibia).

Indeed, an acute practical problem in the field of mutual assistance is that, in the absence of prior coordination, it is immensely difficult for separate armed forces of sovereign states to act in unison against an aggressor, even if the political decision to resort to collective self-defence has been taken. This is why a peacetime military alliance becomes a natural extension of a mutual assistance arrangement. Such an alliance is motivated by the concept that 'if you want peace, prepare for war (*si vis pacem, para bellum*)'. A treaty of alliance goes beyond an abstract commitment for mutual assistance in the event of an armed attack. Parties actually undertake to start preparing their common defence right away. The hallmarks of a military alliance are the integration of the military high command, the amalgamation of staff planning, the unification of ordnance, the establishment of bases on foreign soil, the organisation of joint manoeuvres, and the exchange of intelligence data. The political decision whether or not to use force in support of a state subjected to an armed attack, is retained by each of the allied governments. But an integrated high command reduces the freedom of action of the individual states. Indeed, a sense of solidarity is reinforced by the presence of military units belonging to other members of the alliance within the territory of a country directly threatened by an armed attack.

It is not always easy to tell on the face of the text of a given document whether it is only a treaty of mutual assistance or the instrument of a military alliance. In the case of the 1949 North Atlantic Treaty, Article 5 lays down the principle of mutual assistance, Article 3 further sets forth that the parties will maintain and develop capacity to resist armed attack, and Article 9 provides for the creation of some central organs. These harmless clauses have brought into being the North Atlantic Treaty Organisation (NATO), which has evolved over the years into a sophisticated military alliance with a vast structure. And as Dinstein (2001) argues, far from being regarded as a post cold war anachronism, NATO is currently undergoing enlargement of membership, and has undertaken new missions exceeding the bounds of collective self-defence (such as its 1994-5 air strikes in Bosnia-Herzegovina, or in 1999 in Kosovo, Yugoslavia).

...and the legal requirements

There are a number of legal limitations of collective self-defence. The first is the primacy of the United Nations Charter. When a mutual assistance treaty or military alliance is formulated, it is commonly subordinated in no uncertain terms to the provisions of the Charter. Consequently, an agreement projecting complicity in aggression will be in violation of the UN Charter. Secondly, states do not have a right to employ force in collective self-defence, except in response to acts constituting an armed attack.³ Third, although contested in certain quarters, legal opinion holds that a state may not exercise the right of collective self-defence merely on the basis of its own assessment of the situation. The direct victim of an armed attack must first form and declare the view that it has been subjected to such an attack. Moreover, a request for help has to be made by the victim state. Finally, Article 51 of the UN Charter imposes on a state exercising the right of self-defence a duty of immediately reporting to the Security Council. In fact, in the case of collective self-defence, each state resorting to measures of self-defence has to submit such a report. In addition, Article 54 stipulates that when activities for the maintenance of international peace and security are undertaken by regional agencies under regional arrangements, the Security Council must be kept fully informed.

The politics of the SADC Mutual Defence Pact

The pact is an outcome of SADC's systematic adoption and operationalisation of a range of sophisticated security arrangements. The current security architecture has a long history, starting with the then Frontline States (FLS) alliance, a grouping opposed to colonialism and apartheid, working closely with the Southern African Development Coordination Conference (Omari, 1995). This arrangement was reconfigured in 1992 in anticipation of South Africa's liberation and inclusion in SADC, and from 1994 a new, widened security paradigm started to inform the thinking of senior decision-makers. Despite a series of setbacks, including the persistence of serious conflicts and genocide, politicians' reluctance to share state sovereignty in a regional setting, a continuing lack of human and financial resources, and interpersonal squabbles, broad acceptance emerged of the need for comprehensive cooperation in the areas of politics, defence and security cooperation.

Such an agreement – a protocol – was finally approved by SADC in 2001.⁴ It provides for the creation of the Organ on Politics, Defence and Security (OPDS), whose main function is to promote peace and security in the region.⁵ Although the idea of an Organ originated earlier, regional political dynamics and tensions prevented it from being operationalised until now (Nathan, 2002). Part of this process involved the activation (in 2002) of the Organ's Interstate Politics and Diplomacy Committee (ISPDC) to complement the work of the Interstate Defence and Security Committee (ISDSC) and the adoption (in 2003) of a Strategic Indicative Plan for the SADC Organ (SIPO) (Macaringue, 2002). One of the key objectives of the Organ is to 'conclude a Mutual Defence Pact to respond to external military threats'.⁶ This was done at the 2003 SADC Summit, although the Pact shall enter into force after its ratification by two thirds of the SADC member states.⁷ As noted earlier, the main benefit of such a treaty lies in the political sphere. Applied to the southern African situation, one has to recognise that the Pact did not originate in a vacuum and the reality is that it is the product or outcome of intense political dynamics. These dynamics refer to the contest in the region for political influence – or put differently, the contestation, primarily by Zimbabwe and Angola, of perceived South African regional dominance in the political sphere. The significance of the Pact can be seen to be a strengthening of the South Africa approach to regional affairs – in particular, the tendency to avoid military in favour of diplomatic intervention (mediation, negotiation, multilateral pressure, peacekeeping). As will be seen below, the Pact does not automatically bind contracting parties to participate in a military response to an armed attack. Quite to the contrary, it gives ample opportunity for the diplomatic instrument to be applied prior to a consideration of armed force as a last resort.

This is probably not what some SADC countries – known for their aggressive foreign military postures – had in mind.⁸

What are the key features of the SADC Mutual Defence Pact?

The Pact's objective is described – rather confusingly – in Article 2 as the 'operationalisation of the mechanisms of the Organ for mutual cooperation in defence and security matters'. It appears that some of the mechanisms of the Organ (such as the ISPDC, discussed above) or functions (such as conflict management) hardly need the Pact's existence or stamp of approval in order to function or be carried out. To illuminate the exact meaning of Article 2, it is instructive to note that the remainder of the text addresses conflict resolution, military preparedness, consultation, collective self-defence, collective action, non-interference, destabilisation, and defence cooperation. Many of these provisions are covered elsewhere in the SADC security architecture and appear superfluous or are repeated in the text of the Pact itself, making the document cumbersome.

Perhaps the key to understanding the Pact lies in Articles 6 and 9. Article 6 provides for collective self-defence and collective action, stating that 'an armed attack against a state party shall be considered a threat to regional peace and security and such an attack shall be met with immediate action'.⁹ It further stipulates that collective action shall be mandated by Summit, on recommendation of the Organ, and the AU and UN be kept informed of such activities.¹⁰ Article 6 has generated some controversy because in an earlier draft it bound state parties to the requirement of 'immediate collective action' in the case of an armed attack against a fellow state. Some SADC members objected to this requirement and after a series of consultations Article 6 was modified to include the rider: 'Each state party shall participate in such collective action in any manner it deems appropriate'.¹¹ This provides a useful escape clause for countries wanting for various reasons to avoid a military entanglement, or where the belief is that such action might compromise vital national security interests. It further opens the door for the application of a range of diplomatic instruments in addressing the crisis.

Article 9 provides for defence cooperation. Indeed, if the intention of SADC is to be able to carry out 'collective action' in response to an armed attack against a member, then clearly some measure of defence preparation and co-operation will be needed. The article therefore provides for cooperation and interaction in the areas of training, joint military exercises, exchange of military intelligence, and curiously for a collective self-defence agreement, joint research, development and production of military equipment.¹²

Finally, the Pact stipulates that coordination of the implementation of the Pact shall be the responsibility of the Secretariat of the SADC Organ (a structure not provided for in the Protocol on Politics, Defence and Security Cooperation). In reality, implementation will rest with the SADC Secretariat in Gaborone and will depend to a large extent on the willingness of member states to make it happen.

Part Two of this briefing will examine whether the Pact is an adequate and appropriate framework for confronting the challenges of peace and security in the region.

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Endnotes:

1. [Http://allafrica.com/stories/200308270674.html](http://allafrica.com/stories/200308270674.html), accessed 22 September 2003.

2. Dinstein (2001: 225) argues that collective self-defence may be exercised either spontaneously (an unplanned response to an armed attack

after it has become a reality) or premeditatedly (on the footing of a prior agreement contemplating a potential armed attack).

3. For instance, if A conducts a legitimate operation of extra-territorial law enforcement against hostile armed bands ensconced in the territory of B, this is an act of self-defence in which B has to acquiesce. Since A does not commit an armed attack against B, C cannot employ counter-force against A in reliance on collective self-defence. To be regarded as a defending state, C must first demonstrate that A is an attacking state. This is based on the findings of the International Court of Justice in the 1986 *Nicaragua* case.

4. Protocol on Politics, Defence and Security Cooperation, signed by SADC Heads of State or Government on 14 August 2001.

5. Article 2(1) of the Protocol.

6. Article 2(2)(h) of the Protocol. See also Articles 11(3)(e) and 11(4)(e).

7. Article 20 of the SADC Mutual Defence Pact.

8. The current Pact has been preceded by a very different 'Defence Protocol' signed by the governments of Angola, the DRC, Namibia and Zimbabwe on 9 April 1999. The reason for such an agreement was largely due to the need to give a firmer international legitimacy to the military intervention that these SADC Allies had undertaken in the DRC (Palotti, 2003). The current Pact does not allow military agreements that are in conflict with its 'spirit and provisions' and requires amendment where appropriate (Article 15 of the Pact).

9. Article 6(1) of the Pact.

10. Article 6(2) and (4) of the Pact.

11. Article 6(3) of the Pact.

12. Article 9(a) – (c) of the Pact.