

THE OTHER SIDE OF 9/11

OBSTACLES AND CHALLENGES FACING SADC¹ COUNTRIES IN IMPLEMENTING UN SECURITY COUNCIL RESOLUTION 1373 (2001) RELATING TO TERRORISM.

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¹ "The Southern African Development Community" hereafter referred to as the SADC.

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ABSTRACT

This dissertation analyses the major obstacles and challenges that SADC countries are facing in the context of implementing UN Security Council Resolution 1373 relating to terrorism. It sets out to evaluate how successful efforts to strengthen legal and institutional mechanisms within SADC to combat terrorism have been. The dissertation will assess the impact that terrorism has on governance, legal, economic and political issues primarily within SADC and Kenya. What are the direct and indirect implications of Resolution 1373? Who has implemented and who has not? What have some of the problems, obstacles and challenges been in submitting CTC reports? How much international assistance and support is currently being given to member states of the SADC? What is the rate of international support? Answers to these questions will be based upon a research analysis. The main obstacle that SADC countries are facing regarding Resolution 1373 is the problems of inadequate resources to deal with terrorism coupled with capacity problems. The paper will argue why this is so.

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ABBREVIATIONS

AIDS	Acquired Immunodeficiency Syndrome
AU	African Union
COMESA	The Common Market for Eastern and Southern Africa
CTC	Counter Terrorism Committee
DRC	Democratic Republic of Congo
ECOWAS	Economic Community of West African States
EU	European Union
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GNP	Gross National Product
HIV	Human Immuno-deficiency virus
ICJ	International Court of Justice
IMF	International Monetary Fund
ITL	International Terrorism Law
NEPAD	New Partnership for Africa's Development
OAU	Organisation of Africa Union
SACU	South African Customs Union
SADC	Southern African Development Community
SADC OPDS	Southern Africa Development Community Organ of Politics, Defence and Security
SEC	Security Council
UN	United Nations
UNDP	United Nations Development Program

CHAPTER ONE Background

In writing this paper my purpose is to deal with Security Council Resolution 1373 (2001), which deals with the subject of terrorism². The paper will also outline the obstacles and challenges that SADC countries continue to face specifically in implementing Resolution 1373. The focal area will be Southern Africa, including the 14-member SADC³. A country by country analysis and perspective will be adopted in assessing the legislative and institutional capacity to combat terrorism and to cope with the threat of terrorism. Resolution 1373 is worthwhile as a deterrent but at what cost? Terrorism can hardly be called a new phenomenon on the international scene. The threat of transnational terrorism is a reality but state terrorism and the implementation of democratic principles pose greater challenges in Africa⁴.

The September 11 2001 terrorist attacks in New York, Pennsylvania and Washington DC significantly and fundamentally re-shaped issues relating to international politics, international relations, human security, terrorism and organised crime. 9/11 merely pushed 'terrorism' to the fore of the global agenda. Within two weeks of the tragic attacks, the UN Security Council at its 4385th meeting on September 28th 2001 adopted Resolution 1373 in terms of Chapter VII of the Charter of the United Nations. Resolution 1373 reaffirmed Resolutions 1269 (1999) and 1368 (2001), as well as the principle established by the UN General Assembly [Resolution 2625 (XXV) 1970], namely that 'every state has the duty to refrain from organising, instigating, assisting or participating in terrorist acts in another state or acquiescing in organising activities within its territory directed towards the commission of such acts'.⁵ Terrorism is clearly a threat to international peace and security, and the Security Council has made a firm commitment to fight it in every instance. A key event in the Security Council in 2001 was the adoption of Resolution 1373 in the wake of the September 11 attacks.

² UN Security Council Resolution 1373 will be referred as 'Resolution 1373' or 'The Resolution' in the rest of the dissertation

³ The Southern African Development Community Member States are Angola, Democratic Republic of Congo, Tanzania, Mozambique, Mauritius, Zambia, Zimbabwe, Botswana, Namibia, South Africa, Swaziland, Lesotho, Malawi and the Seychelles. Due to financial difficulties the Seychelles announced its intention to pull out of SADC in 2004.

⁴ Botha A, Political Dissent and Terrorism in Southern Africa, Paper No, Institute for Security Studies, August 2004 p 1

⁵ Other Security Council Resolutions relating to terrorism are, UN General Assembly [Resolution 2625 (XXV) 1970], Resolutions 1267 (1999) of 15 October 1999, 1333 (2000) of 19 December 2000, 1363 (2001) of 30 July 2001, 1377 (2001) of 12 November 2001, 1290 (2002) of 16 January 2002, 1452 (2002) of 20 December 2002, 1455 (2003) of 17 January 2003, 1456 of 20 January 2003 and 1530 (2004) of 11 March 2004

The terrorist attacks of 11 September 2001, those conducted in Bali, the 1998 Embassy bombings in Eastern Africa, the Madrid train bombings and more recently the school hostage taking in Russia all show that the scourge knows no boundaries. Every country or region is a vulnerable target of terrorism. All these events illustrate that terrorism is no longer an international problem, no country is immune to its consequences as the direct and indirect effects affect everyone, both citizens and governments. There are several debates about developing a definition on terrorism. For the purposes of this paper, international terrorism will be that defined in the preamble to Resolution 1373, which clearly sets out the reasons why the resolution was necessary.⁶ It has almost been three years since the adoption of the Resolution. I wish to examine in a comprehensive, up-to-date and practical way, the challenges and obstacles that SADC countries are facing since the adoption of the resolution.

Since the destruction of the Twin Towers in New York and the adoption of Resolution 1373, it has become widely accepted that terrorism is increasingly becoming a national, regional and international concern. Terrorism is a global threat and more so its consequences affect every aspect of the United Nations agenda. From development to peace, to human rights and the rule of law, by its very nature, terrorism is an assault on the fundamental principles of international law. The United Nations has long been active in the fight against international terrorism and the peaceful settlement of disputes upon which the United Nations is established. The UN has an indispensable role to play in providing the legal and organisational framework within which the international campaign against terrorism can unfold and so it has.⁷ The Organisation has thus developed a wide range of international legal agreements that enable the international community to take action to suppress terrorism.⁸ Three years on, has Resolution 1373 managed to achieve its intended goals and what are some of the implications, challenges and obstacles facing Southern African states in adhering to these new provisions of international law?

⁶ Terrorists try to achieve their goals through forming an atmosphere of despair, fear and destruction among the groups determined as targets. If the psychological consequences of methods of violent activity are more influential and effective than the physical destruction, it is explained as terrorism. Terrorists do not recognise morality or rules of war. In their view, nobody can be neutral, that is, a person should be in favour of them or stand on the opposite side as an enemy. Terrorism involves brutal, barbaric methods and weapons. It is considered to be right and just as a way to make claims. It is the best and only proven method for success. It also existed in the past; it achieves a fair revenge in the manner of an eye for an eye, for a tooth to tooth. If terrorism is not adopted, greater forces of evil are faced. For more information <<http://www.terror.gen.tr/english/whatisterrorism/characteristics.html>> Accessed on 20 July 2004.

⁷ Extracts from a speech presented by UN Secretary-General Kofi Annan at the UN Headquarters on 4 October 2002

⁸ For list of International Conventions on Terrorism to be ratified by UN Member States see list in Annex IV at the end of this dissertation or Resolution 1373 Article 3(d)

Mauritius and South Africa have done remarkably well in terms of implementing Resolution 1373 into their municipal law, whereas Malawi, Zambia and Lesotho on the other hand have not as yet done so. What has caused this trend? Why have Mauritius and South Africa managed to start ahead of the others? Globalisation has enormous benefits but poses great challenges⁹. Globalisation offers opportunities in the form of trade, foreign investment, finance, information and communication technologies. However, these opportunities do not outweigh the immense risks that globalisation poses. These risks include intense competition leading to de-industrialisation, increased exposure to the economic fluctuations in the world economy, capital flight and brain drain and the transfer of technology¹⁰. The process of globalisation has allowed people, the transfer of funds and capital to move more quickly and thus making terrorism easier.

Terrorism is not a new phenomenon, the United States Embassy bombings in Nairobi and Dar es Salaam, urban terrorism in Cape Town, the political and economic violence in the Middle East in Israel, the Gaza Strip, in Iraq and Afghanistan, the unrest in Zanzibar and Tanzania, the Madrid Train Bombings of March 2003 and the High School hijacking in Russia are all examples of its scourge. Despite the increase in terrorist activities since the Cold War, coupled with several international instruments to combat terrorism. Significant obstacles stand in the way of African countries.¹¹ State terrorism and the implementation of democratic principles present greater challenges. If a government is unable to observe democratic principles then it is difficult for it to deal with its municipal law and adhere fully to its international obligations.

There has not been enough research into terrorism in Africa, let alone reports or statistics, to provide relevant data. There is therefore not enough data to establish the differences or links, which exists in Africa and which would justify a consensus on different approaches for poorer countries of the South compared to developed countries in the North. The threat of international terrorism in Kenya and Tanzania was a reality whereas in Zambia the question of whether it is pertinent and of immense importance is another story as priorities differ from country to country.

⁹ Globalisation refers to the integration of goods markets through international trade and not to capital market integration.

¹⁰ Report commissioned by the UNDP 2004 pp 27-28

¹¹ Subramania A and Tamirisa N, "Is Africa Integrated in the Global Economy?" IMF Staff Papers, Vol 50, No 3, 2003 IMF p 352

This does not mean that terrorism and the threats that it poses is regarded as being unimportant to Zambia and to SADC's regional security, it simply means that African states and governments are faced with more imminent and direct threats on a daily basis and the cost of dealing with terrorism, especially now that it has emerged in a different form, severely detracts from motivation and the benefits to be obtained from dealing with more pressing issues. Such pressing issues include HIV and AIDS pandemic, malaria, civil wars and poverty.

CHAPTER TWO

Introduction - The Problem Question

In examining terrorism a two stream approach will be adopted. Firstly, the potential threat that terrorism poses to the global world order and secondly, the measures in place to counter act it. I must emphasise at the outset that the kind of threats that affect poorer states such as Malawi, Swaziland and Zambia are very different from those that affect the rich developed North.

Global counter terrorism measures are essential instruments in terms of achieving global standards. The counter terrorist mechanisms, proposals and agendas are relevant and constructive in addressing Africa's security challenges. However, terrorist threats in each country differs. The measures do not address the different developmental levels of countries in dealing with this problem. A more practical approach involving one approach for the former that is developed states and another for the latter developing states could be indicated. Many African countries priorities have been further pushed to the back of the global agenda because of the sudden increase in terrorist threats and activities.

The direct implication of Resolution 1373 is that all countries, especially poor countries in the third world may be forced to cut back on essential spending on poverty programs, HIV/AIDS programs, education and health programmes. Poorer states may also find themselves in a situation where they are unable financially and technically to implement the Resolution's mandatory measures and provisions, as the Swaziland and Zambian case studies will illustrate. The very fact that there are several conflicting viewpoints and opinions on 'the best way' to combat terrorism and its problems implies that the ways and measures to contain and combat terrorism will also differ. The major problem Resolution 1373 poses is that uniform time frames, standards and requirements are applied to all countries, given that states are at different developmental stages and have vast differences in capacity. Technical assistance is a way that can be used to achieve a uniform measure of standards.

States should also have legislation in place covering all aspects of the Resolution, and a process to sign, ratify and incorporate into domestic legislation the twelve (12) international conventions and protocols relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001).¹² States should also increase cooperation and fully implement the regional protocols relating to terrorism such as the OAU/AU Convention of the Prevention of Terrorism of 1999¹³.

Ambassador Curtis Ward was appointed in May 2002 to serve as an Expert Advisor to the UN's CTC.¹⁴ Ambassador Ward's role has included more than 100 bilateral discussions in New York and overseas involving political and technical work to assist states to meet the required counter-terrorism goals. He points out that while 170 countries had filed first reports in compliance with Resolution 1373 by 3rd September 2002, 12 African countries had not yet done so.¹⁵ The mandatory requirements of Resolution 1373 place an immense burden on all states, as states possess varying capacities to implement it. In the context of human security, ideological differences about priorities as to which obligations should be implemented first differ from one state to another. Certain problems are high priorities for some states but not for others.

The major obstacle is the lack of technical expertise. Technology is required above all, in surveillance and thus the solution does not consist in a mere policing but also involves issues of good governance and development. Thus, one can conclude that there is a dilemma between a lack of expertise and technical capacity on the one hand and the standard for the same that is required on the other hand¹⁶. There is nothing wrong with Resolution 1373 but there is agreement that not all states can reach the objective goals, as different resource and capacity levels are required¹⁷. Effective technical assistance for improving criminal justice systems and institutional frameworks are needed to deal with terrorism. A key question is whether or not the SADC countries have the capacity to improve these systems.

¹² See Resolution 1373 Paragraph 1 2 and 3. Also refer to International Conventions listed in Annex IV at the end of this dissertation

¹³ 'Organisation of African Unity' now referred to as the 'African Union'. Refer to Resolution 1373 Paragraph 3(e)

¹⁴ Abbreviated for the Counter Terrorism Committee

¹⁵ Paper Presented by Curtis A Ward, 'UN Security Council Resolution 1373 and the CTC', Stimson Centre, Washington DC, July 26 2004. pp 4-5

¹⁶ This statement is evidenced by country reports and research conducted into each of the SADC countries. These studies reveal that there is inconsistency and not enough time has been allowed for the process of discussion and implementation amongst citizens and relevant groups. Refer to seminar presentations at the 'SADC Seminar on Terrorism, Institute for Security Studies, September 2003. Available at <<http://www.iss.co.za>>

¹⁷ Botha A, 'Political Dissent and Terrorism in Southern Africa' August 2004, Institute for Security Studies, Paper 90 p 10

CHAPTER THREE
UN Security Council Resolution 1373¹⁸

Role of the Security Council

The member states of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the Charter.¹⁹ Only resolutions taken under Chapter VII are binding on members of the UN and if a state does not comply with an enforcement resolution, the Council may call upon members to apply non-military²⁰ or military sanctions²¹. Resolution 1373 is binding on all member states because it was adopted in terms of Chapter VII of the UN Charter.²² As the Security Council acts on behalf of all UN Members when it is carrying out its duties for the maintenance of international peace and security²³, it follows that UN Members should accept and carry out the Council's decisions in accordance with the Charter.²⁴ In order to ensure prompt and effective action by the UN, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security²⁵.

Under the UN Charter, the Security Council can authorise international action like the imposition of sanctions, the despatch of peacekeeping forces or the use of force. There are four chapters in the UN Charter relating to the Security Council: V relating to Composition, Functions and Procedure, VI On the Pacific Settlement of Disputes, VII On Threats to or breaches of the peace and acts of aggression and VIII On Regional Arrangements.²⁶ Five nations are permanent members of the Security Council; China, France, Russia, United Kingdom and the United States of America.²⁷ The permanent members reflect the post-war power structure when the Council was formed. The permanent members of this privileged group work alongside ten non-permanent member countries. Each member, permanent or otherwise, holds the presidency of the Council for a one-month period, on a rotating basis.²⁸

¹⁸ Text of Resolution 1373 is in Annex I to this dissertation.

¹⁹ Article (25) of the UN Charter

²⁰ Article 41 of the UN Charter

²¹ Article 42 of the UN Charter

²² Article (25) of the UN Charter

²³ Article 24(1) of the UN Charter

²⁴ Article 25 of the UN Charter

²⁵ Article 24 of the UN Charter

²⁶ The Security Council is the principle international organ dealing with international peace and security and has been involved in the fight against terrorism.

²⁷ Article (23)(1) of the UN Charter

²⁸ Article (23)(2) of the UN Charter

The non-permanent members of the Security Council are elected for two-year terms by member states of the United Nations in the General Assembly²⁹. Retiring members are not eligible for immediate re-election.³⁰ The current non-permanent members on the Security Council are; Algeria - until end of 2005, Angola - until end of 2004, Benin - until end of 2005, Brazil - until end of 2005, Chile - until end of 2004, Germany - until end of 2004, Pakistan - until end of 2004, Philippines - until end of 2005, Romania - until end of 2005 and Spain - until end of 2004.³¹

The 15 Member Council also has the power to enforce certain decisions through tribunals, embargoes and military force after all peaceful means of persuading delinquent member states have been exhausted.³² All five permanent members must cast a "concurring vote". Nine of the 15 votes in the Council are needed to pass a resolution. This means they can abstain or vote in favour, but if they vote against, the resolution fails.³³ Each member of the Security Council has one representative.³⁴ The Charter states that in the election of non-permanent members due regard shall be specially paid in the first instance to the contribution of Members of the United Nations to the maintenance of international peace and security and to the other purposes of the Organisation, and also to equitable geographical distribution.³⁵

There is an objective to achieve a regional balance, with five Asian or African members, two Latin American members, one east European, and two members from Western Europe or other regions making up the mix of non-permanent members.³⁶

²⁹ Article (23)(2) of the UN Charter

³⁰ Article (23)(2) of the UN Charter

³¹ See UN Security Council Website at <<http://www.un.org/Docs/sc/committees/1373/>> Accessed on 3 July 2004

³² Article (39) of the UN Charter. Under Chapter VII of the United Nations Charter, the Security Council shall determine the existence of any threat to the Peace, breach of the peace, act of aggression, and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42), concerning threats to international peace and security.

³³ Article (27)(3) of the UN Charter

³⁴ Article (23)(3) of the UN Charter

³⁵ Article (23)(1) of the UN Charter

³⁶ See UN Security Council Website at <http://www.un.org/Docs/sc/committees/1373/regional_action.html> Accessed on 3 July 2004

Main Features of Resolution 1373

Resolution 1373 contains nine paragraphs of which paragraphs 1-3 are divided into 18 sub-paragraphs. The Resolution stresses the use of financial systems to counter terrorism and applies international strategies to combat trans-national organised crime and terrorism. The Resolution decides also that all states shall prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens.³⁷ The Resolution calls upon all States to become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999.³⁸ The principal features of Resolution 1373 are the criminalisation of financing and other acts of support for terrorism, the freezing of accounts, the introduction of effective border controls and other measures to accelerate the exchange of operational information.³⁹ Important provision of the Resolution will now be generally described.⁴⁰

Resolution 1373 established a Counter-Terrorism Committee (hereafter referred to as CTC) consisting of all the fifteen (15) members of the Security Council to monitor the implementation of the Resolution by all states. The CTC also operates with a Chapter VII mandate under the UN Charter. The CTC is a unique body, created by the UN Security Council post- 9/11 and tasked with monitoring all states in establishing the mandatory measures of Resolution 1373 to prevent and suppress international terrorism. It is mandated with assisting member states in meeting the requirements set out in Resolution 1373.

³⁷ See Paragraph 2(d) of 1373

³⁸ See Resolution 1373 Paragraph 3(d)

³⁹ Cilliers J and Sturman K, 'Africa and Terrorism' Institute for Security Studies, Monograph No 74, July 2002, p 10

⁴⁰ Resolution 1373 imposes binding obligations on all States, with the aim of combating terrorism in all its forms and manifestations. The resolution requires Member States to, inter alia: Deny all forms of financial support for terrorist groups (operational paragraph 1a, b, c, d); Suppress the provision of safe haven, sustenance or support for terrorists; (operational paragraph 2a, c, d, g, 3f, g); Share information with other governments on any groups practising or planning terrorist acts (operational paragraph 2b, 3a, b, c); Co-operate with other governments in the investigation, detection, arrest and prosecution of those involved in such acts (operational paragraph 2b, f, 3a, b, c); Criminalize active and passive assistance for terrorism in domestic laws and bring violators of these laws to justice (operational paragraph 2e); Become party as soon as possible to the relevant international conventions and protocols relating to terrorism (Operational paragraph 3d).

The CTC calls upon all States to report to the Committee, no later than 90 days from the date of adoption of the resolution and thereafter, according to a timetable to be proposed by the Committee, on the steps they have taken to implement this resolution.⁴¹

Paragraph 1 and 2 of the resolution sets out the decisions. According to Resolution 1373, any act of international terrorism constitutes a threat to international peace and security. Operative paragraph 2(a) of Resolution 1373 requires states to "refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists organisations". States shall by virtue of paragraph 2(g) "prevent the movement of terrorists or terrorist groups by effective border controls and controls on the issuance of identity papers and travel documents".

Paragraph 3 of the resolution containing seven sub paragraphs calls upon States to find ways of intensifying and accelerating the exchange of operational information, cooperate particularly through bilateral and multilateral arrangements and to take appropriate measure in conformity with the relevant provisions of national and international law, including international standards of human rights.⁴²

In Paragraph 4 of the resolution, the Security Council goes further to note that there is a "close connection between international terrorism, transnational organised crimes, illicit drugs and money laundering. It therefore stresses the need to have a global response to these challenges in order to protect international security and peace.

Paragraph 6 of Resolution 1373 'decides to establish in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council, consisting of all the members of the Council, to monitor implementation of this resolution with the assistance of appropriate expertise...'⁴³

⁴¹ See Resolution 1373 Paragraph 6

⁴² See Resolution 1373 Paragraph 3(a) to (f)

⁴³ The CTC asks every State to take specific action to meet the requirements of the resolution based on the specific circumstances in each country. The CTC seeks to establish a basis for ongoing dialogue between the Security Council and all Member States on how best to raise national capacity against terrorism. See Paragraph 6 of Resolution 1373

The same paragraph also 'calls on all States to report to the Committee on the steps taken to implement the resolution'. States were to report to the Committee, no later than 90 days from the date of adoption of this resolution, 28 September 2001 and thereafter according to a timetable to be proposed by the CTC, on the steps they have taken to implement Resolution 1373.⁴⁴ States therefore had to submit their reports on or before 27 December 2001. This decision alone meant there was enormous pressure on states to comply and that capacity and expertise would be needed immediately to play a major role. The primary objective is for each State to ensure that it is complying with the measures set out in the resolution. The content should include details of how each Member State is implementing the paragraphs and sub-paragraphs of the resolution, which set out its obligations. These aspects need however to be considered so as to enable States to observe the same standard in reporting.

The Resolution also notes with concern the close connection between international terrorism and transnational organised crime, illicit drugs, money- laundering, illegal arms-trafficking and illegal movement of nuclear, chemical, biological and other potentially deadly materials⁴⁵. In this regard, paragraph 4 also emphasises the need to enhance coordination of efforts on national, sub-regional and international levels in order to strengthen a global response to this serious challenge and threat to international security".⁴⁶

It can therefore be argued that because of the connection between terrorism and transnational organised crime, the Resolution strongly encourages member States to ratify, sign and implement international conventions relating to organised crime. The United Nations Convention Against Transnational Organised Crime of 2000 is there to assist in preventing transnational organised crime on the grounds that such crimes assist international terrorism.⁴⁷

⁴⁴ See Paragraph 6 of Resolution 1373

⁴⁵ See Paragraph 4 of Resolution 1373

⁴⁶ See Paragraph 4 of Resolution 1373

⁴⁷ Cilliers J and Sturman K, 'Africa and Terrorism' Institute for Security Studies, Monograph No 74, July 2002, p 13

CHAPTER FOUR

African Approaches to The Problems of Terrorism

Terrorism and other issues

Whilst this paper cannot pretend to present detailed accounts of integration narratives or respond critically to the questions they raise, it is important to point out that these narratives remind us of the tasks involved in explaining the recent developments relating to Resolution 1373. One of the problems has to do with the problem of reaching a consensus as to an international accepted definition of terrorism as there is a whole range of questions that require definitional clarity. It is not my intention to discuss these issues here. Rather my aim as I indicated earlier, is to offer an assessment of SADC's role in an area that is of particular concern to the region and Africa in general.

It is generally agreed that African leaders and their governments stand united against the scourge of international terrorism. Why? Because it is in their best interest to do so. Development on the African Continent, based on the principles that guide the AU⁴⁸ and NEPAD⁴⁹ can only be achieved in conditions of peace and in a climate of political, social and economic stability. NEPAD is a holistic, comprehensive and integrated strategic framework for socioeconomic development of Africa. It is a programme of action that embraces initiatives on peace and security, democracy and political governance. Terrorism constitutes a threat to the fundamental rights and freedoms of humankind. Therefore it is imperative to protect human rights and individual liberties in conformity with the principles enshrined in international instruments, in particular the right to life⁵⁰.

⁴⁸ The African Union has long recognized the threats posed by terrorism. As early as July 1992, in Dakar, the AU Heads of State and Government had adopted a resolution [AHG/Res.213 (XXVIII)] aimed at enhancing cooperation and coordination between the African States, in order to better fight the phenomenon of extremism. In a more specific manner, they agreed not to allow any movement using religion, ethnic or other social or cultural differences to indulge in hostile activities against Member States as well as to refrain from lending any support to any group that could disrupt the stability and the territorial integrity of Member States by violent means. The AU Convention on the Prevention and Combating of Terrorism, which is intended to strengthen cooperation among Member States to prevent and combat terrorism, was adopted in 1999. It has been ratified by seventeen (17) Member States and came into force on 6 December 2002, of these only five (5) of the fourteen (14) SADC Member States are part of the seventeen (17). The Commission appeals to Member States to ratify and accede to this instrument. For further details and information please go to <<http://www.au.org>>

⁴⁹ The New Partnership for Africa's Development was born out of a combined initiative of five countries: Algeria, Egypt, Nigeria, Senegal and South Africa. It is designed as an African led, African owned and African managed initiative combined by an agreed set of principles to which the participating countries commit themselves. NEPAD was formally adopted in Lusaka on 11 July 2001. For further details go to <<http://www.nepad.org/en.html>>

⁵⁰ See relevant International Conventions on Terrorism referred to in Annex IV

The gap between international obligations and the capacity of certain states to implement them is continually widening. Poor developing states are expected to stretch their overstretched budgets and minimal resources to deal with the phenomenon of terrorism. The 191 Member States of the UN have international obligations under Resolution 1373 whether or not they have the resources to comply with the resolution. Although SADC has also engaged, to a limited extent, in norm-creation through the adoption of a number of conventions and protocols, these are of limited geographical provenance. As a norm-creating institution, SADC has a more limited reach and it does not have the same significance for the international law making process as the AU.⁵¹

African states increasingly have to pay a high price to protect their citizens, as well as the price to ensure the functioning of their institutions, as increasingly many African countries have been victims of terrorism. On August 7, 1998, two massive bombs exploded outside of the United States embassies in Dar es Salaam, Tanzania, and Nairobi, Kenya, killing 224 people, including 12 Americans and injuring 5,000. Responsibility was quickly traced to al Qaeda.⁵² Apart from the direct effects of terrorism experienced in the US Embassy bombings in Nairobi and Dar es Salaam, the killing of 224 people directly threatened by terrorism is incomparable to the tally of hostages to Africa's perennial terrors of war, hunger and disease. So why would countries like Mozambique, Tanzania and Kenya focus on terrorism when they are overwhelmed with the effects of drought, poverty, unemployment and HIV/AIDS? Part of the answer is that Resolution 1373 is mandatory and binding on all member States of the United Nations.

The events of September 11, 2001 set in motion a new paradigm for the international community to combat terrorism. It was not the first time that such a large-scale terrorist attack took place. However it was the circumstances and immediate effects of the attack that reshaped the international response, thus making this event different. Since then, African states pursued high-level regional and sub-regional talks aggressively to ensure adherence to the new international law specifically relating to terrorism.

⁵¹ Muluwa T, 'The Africa Union, SADC and NEPAD', 8 July 2004 p 3

⁵² Lyman P and Morrison S, 'The Terrorist Threat in Africa, Slaying the Hydra', Article in the Foreign Affairs, January/February 2004 <<http://www.foreignaffairs.org/20040101faessay83108/princeton-n-lyman-j-stephen-morrison/the-terrorist-threat-in-africa.html>> Accessed on 25th August 2004

A high level Inter-Governmental Meeting on Terrorism was held in Algiers in September 2002 where it was decided to formulate a convention within the framework of the African Union. As a result of Resolution 1373, member States were also increasingly encouraged to sign, ratify and implement all relevant international conventions if they had not already done so.⁵³ The African Union Convention on the Prevention and Combating of Terrorism was adopted in 1999. It has been ratified by seventeen (17) Member States and came into force on 6th December 2002, thirty (30) days after the deposit of the fifteen (15) instruments of ratification⁵⁴.

Africa is plagued by the twin phenomenon of low social and economic indicators coupled with weak states, and the immense burden of the incapacity to comply with its international obligations⁵⁵. One can therefore conclude that African states are faced with capacity problems both at the institutional level, as well as at the grassroots level⁵⁶. With the increasing globalisation and advancement of the developed world, it is becoming almost impossible for developing states to keep up with rapid increases in technology, competition and trade⁵⁷.

Within this context, the institutional and administrative shortcomings of governments, parliaments, judiciaries and the security sector in Africa need to be addressed if any progress on human security is to be achieved.⁵⁸ Africa is not immune from the global war on terrorism. The US Embassy bombing in Kenya in 1998 illustrates how the effects of terrorism know no boundaries or borders. The 'African experience' of terrorism is largely different, particularly on the issue of the level of priority to be given to the response. Whether or not a state has directly been affected by terrorism plays a vital role in determining its response. As a result, there are different reactions from governments and from citizens on how to deal with terrorism in relation to other national interests. There is a wide variety, not only of the official government positions, but also of grassroots reactions as well⁵⁹.

⁵³ There are 12 United Nations Conventions that would have a specific impact on the domestic counter terrorism legislation of states including those in Africa. For the complete list of SADC countries that are a party or have signed, ratified or acceded to the International Conventions See Annex IV.

⁵⁴ See Article 20(1) of the text of African Union Convention on the Prevention and Combating of Terrorism is in the Annex II to this dissertation.

⁵⁵ Sturman K, 'The AU Plan On Terrorism, Joining the global war or leading an African Battle?', *African Security Review* 99(4), 2002, Institute for Security Studies p 104

⁵⁶ *ibid* p 107

⁵⁷ Secretary General of the United Nations, Kofi Annan, 37th Summit address at the OAU/AU Meeting, Lusaka Zambia, July 2004

⁵⁸ Goucha M and Cilliers J, 'Peace, Human Security and Conflict Prevention in Africa', *South Africa*, July 2002 p 90

⁵⁹ Mandaza, I, 'Peace and Security, Regional Cooperation and Economic integration'. 1995 SAPEM Vol 8 No 7 pp 29-31

The situation is similar to the varied positions on how to address HIV/AIDS, poverty and hunger. The pursuit of democracy, economic and political transparency, the fight against poverty and unemployment, all pose more imminent threats than terrorism, especially in Sub-Saharan Africa. For instance the continued fighting in the Democratic Republic of Congo, the political turmoil in Zimbabwe and the scourge of HIV/AIDS are high priority areas on the SADC agenda⁶⁰. In Africa, the number of conflicts is overwhelming, as are the consequences for civilian populations. UN Secretary General Kofi Annan has warned that Africa is confronted with persistent conflicts and crises of governance and security that threaten to derail hopes for an African Union of peace and prosperity.⁶¹ Many obstacles stand in the way of Africa meeting its millennium development goals as stipulated by the 2004 UNDP Report. The Report pinpoints a variety of obstacles that stand in the way of Africa meeting its development goals in ensuring basic human rights for its citizens. These include the continuing lack of expertise and institutional capacity to deal with international legal obligations and the debt that entangles public expenditure and domestic growth.

For example significant resources are being diverted away from basic social services into debt repayment obligations. Zambia is one of the poorest countries in sub-Saharan Africa, with a severe health and social crisis⁶². The country has been badly hit by the depressed price of copper in world markets, its main export. Given this background, its debt service payments were projected to be: \$US 153m in 2001 (compared to \$US 136 million in 1999 and \$US 170 million in 2000), \$US 144m in 2002, \$US 146m in 2003, \$US 204m in 2004, \$US 194m in 2005, \$US 96m in 2006 and \$US 212m in 2007⁶³. Zambia currently spends just \$US 70 million on education and \$US 76 million on health⁶⁴. One in five adults has HIV and the life expectancy is now 30.3 years⁶⁵. Thirteen per cent of Zambian children are orphans.⁶⁶

⁶⁰ Southern African Development Community (SADC) See Chapter 5 for detailed information on SADC.

⁶¹ Kofi Annan UN Secretary, Speech at the 37th Summit of the Organisation of African Unity (OAU) in Lusaka Zambia in July 2001

⁶² The SADC Regional Human Development Report 2000 pp.24-25

⁶³ African Development Report, United Nations Development Report 2004. Also see Jubilee 2000 Coalition, International Movement Website at <<http://www.jubilee2000uk.org/jubilee2000/media/zambia081200.html>> Accessed on 6 July 2004

⁶⁴ *ibid*

⁶⁵ *ibid*

⁶⁶ *ibid*

Situation Analysis - Kenya and Tanzania

Tanzania

On 7th August 1998, a truck bomb detonated outside the United States Embassy in Dar es Salaam, Tanzania. The explosion caused major structural damage to the United States Embassy facility. The U.S. Government held Osama Bin Ladin and his terrorist organisation, the Al-Qaeda responsible. The Islamic Army for the Liberation of Moslem Holy Sites claimed responsibility. The ultimate target was the United States government, however far more locals were killed compared to foreign diplomats. Four years later in 2002, al Qaeda operatives struck again, killing 15 people in an Israeli-owned hotel near Mombasa, Kenya, and simultaneously firing missiles at an Israeli passenger jet taking off from Mombasa's airport. South Africa has seen the emergence of a violent Islamist group.

Khalfan Khumis Mohamed, a Tanzanian national, lived in South Africa from August 1998 to October 1999. He entered South Africa on the basis of a forged passport under another name and applied for refugee status. In October 1999, South African immigration officials and FBI agents arrested Mohamed in Cape Town. He admitted during interrogation that he had taken part in the bombing in Dar es Salaam. He was taken from South Africa to New York to face a criminal trial for the Dar es Salaam bombing. He expressed the wish to be extradited to the United States instead of Tanzania. Mohamed asked the South African Constitutional Court to order the South African government to request the United States to refrain from executing him⁶⁷. In the event, a United States jury sentenced Mohammed to life imprisonment.⁶⁸ I support the views expressed by Anton Katz's and his analysis of the Mohamed case⁶⁹. Katz points out the lesson that can be learned from the Mohamed case is that it illustrates the importance of state cooperation in the area of terrorism, but states must act lawfully as it is unlawful to utilise deportation procedures to effect an extradition. Similarly, states must ensure that they do not violate the rights of an individual even to bring alleged terrorists to justice, as would appear to have happened in the Mohamed saga.

⁶⁷ The Constitutional Court held that the surrender of Mohamed to the United States without obtaining an undertaking not to impose capital punishment was unconstitutional. For more details on the case, see, [S v Mohamed, 1997(2) SA 531; (1997) 1 All SA 493 (d)]

⁶⁸ Katz A, 'Terrorism and Its effect on Refugee and Extradition Law', Article, Institute for Security Studies, Monograph No 74, July 2002, Anton Katz Bsc LLB (UCT), LLM (Columbia), is a member of the Cape Town and New York Bars

⁶⁹ *ibid*

Kenya

On August 7 1998, a 500-pound bomb exploded at the rear entrance of the United States Embassy in Nairobi, Kenya, killing 291 and injuring 5019 people. 12 United States citizens, 32 Foreign Service Nationals and 247 Kenyan citizens were killed. About 5,000 Kenyans, six United States citizens including United States Ambassador Prudence Bushell, and 13 Foreign Service Nationals were injured. The United States Embassy building sustained extensive structural damage. The United States Government held Osama Bin Ladin responsible. The Islamic Army for the Liberation of Moslem Holy Sites claimed responsibility.⁷⁰ The United States eventually caught some perpetrators who were tried, convicted and are serving time in United States prisons. Both Embassy bombings did not attract an immediate international response in that there was no UN Security Council Resolution passed condemning the attacks compared to Resolution 1373, which was an immediate response to the events of September 11, 2001.

Kenya and Tanzania had already suffered the direct impact of terrorism in August 1998. Given this background, how are Kenya and Tanzania meeting their commitments in terms of Resolution 1373? The US Embassy bombings in Eastern Africa were a direct example of terrorism occurring in Africa, illustrating that it is not only an offshore problem that developed states have. Kenya and Tanzania could not effectively deal with the various aspects of terrorism with their existing legislative framework either before or after September 11, 2001. They acknowledge this in their reports to the terrorism committee.⁷¹ Kenya's report to the CTC dated 25th March 2003 noted that after 9/11, its existing legislative framework could not effectively deal with the various aspects of terrorism.⁷² The CTC reported that the capability of States to fight terrorism was encountering serious problems, both at the state and committee levels.⁷³ The CTC however does acknowledge the complexity of the legislation required and the areas of activity covered by Resolution 1373 and that national parliamentary procedures need to be complied with⁷⁴.

⁷⁰ Princeton N. Lyman and J. Stephen Morrison, Article 'The Terrorist Threat in Africa, Slaying the Hydra From Foreign Affairs', January/February 2004 <<http://www.foreignaffairs.org/20040101faessay83108/princeton-n-lyman-j-stephen-morrison/the-terrorist-threat-in-africa.html>> Accessed on 25th August 2004

⁷¹ CTC Report Submitted by Kenya, accessible online at <http://www.un.org/Docs/sc/committees/1373/country_reports.html>

⁷² See Report to Counter Terrorism Committee on available on the Website at <<http://www.un.org/Docs/sc/committees/1373>> Accessed on 25 March 2003

⁷³ *ibid*

⁷⁴ Ward, C, Paper Presentation 'UN Security Council Resolution 1373 and the Counter Terrorism Committee', Stimson Centre, Washington DC, pp 1-5 26 July 2004

Nevertheless, the CTC expects all States to produce reports, although it acknowledges that every state faces complexities from other high priorities on their political and economic agendas⁷⁵.

Challenges and Obstacles facing African countries

Ambassador Curtis Ward pointed out recently that while 170 countries had filed first reports in compliance with Resolution 1373 by 3rd September 2002, 12 African countries had not yet done so⁷⁶. As of June 30 2004, the CTC had received 512 reports from member states. Curtis also acknowledged that the mandatory requirements of Resolution 1373 placed an immense burden on all states and that states possessed varying capacities to implement them. Accordingly, states are obliged pursuant to Resolution 1373 to create a prescribed framework in their national and international measures to combat terrorism⁷⁷.

Member States are called upon to become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999.⁷⁸ Again, Resolution 1373 has made it mandatory and binding on all member states party to the United Nations to address terrorism, whether or not they have the technical capacity or resources to comply with the obligations set out within the resolution.

Political, economic and social developments have had a significant impact in the region. These pressures have resulted in SADC member States prioritising and co-ordinating critical sectors like defence and security, trade and investment at the highest political levels. Given the immense challenges and obstacles why would countries like Zambia, Malawi or Mozambique focus on terrorism when there are overwhelmed with the catastrophic effects of drought, HIV/AIDS and poverty?

⁷⁵ Follow up meeting to the UN, CTC Special Meeting on 6 March 2003 Hosted by the Organisation for Security and Cooperation in Europe (OSCE) in cooperation with the UN Office on Drugs and Crime (UNODC), 11-12 March 2004, Letter to the Security Council from the Chairman of the Counter Terrorism Committee, pp 1-6, 1 April 2004

⁷⁶ Curtis A Ward, UN Counter Terrorism Committee's (CTC) Expert Advisor on Technical Assistance and Liaison with Regional and International Organisation. Paper presented by Ward C, Chairman of the CTC, Stimson Center in Washington DC on July 26 2004.

⁷⁷ See Resolution 1373 Paragraph 6

⁷⁸ See Resolution 1373 Paragraph 3(d)

While there is certainly a burden on African countries to do so, it is also an opportunity for these countries to rally support for resources, technical expertise and assistance from the CTC to fulfil their national and international obligations⁷⁹. An international response involving all states is a big step towards global counterterrorist mechanisms and strategies. Whether it is practical or possible for African states to adequately and consistently implement these instruments is another issue. This point will be dealt with in later Chapters where recommendations to deal with this challenge will be suggested.

⁷⁹ See Paragraph 2(f) of Resolution 1373

CHAPTER FIVE

The SADC⁸⁰ Community - A Regional Perspective

I wish to analyse and assess the legislative and institutional capacity to cope with the threat of terrorism. In order to do this an outline of implementation obligations under Resolution 1373 will be used as a basis. The focal area is Southern Africa, including the 14 Member SADC⁸¹. All the SADC member states are bound by Resolution 1373 because it was adopted under Chapter VII of the UN Charter and also all SADC States are member States to the United Nations. The resolution is a global instrument to establish a 'global approach' to the problem of terrorism. By virtue of Paragraph 3(d) and 3(e) of Resolution 1373, The Security Council calls upon member States to;

...."Become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999,"and to "Increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001);"⁸²

This chapter isolates and analyses the fourteen SADC member-states obligations to counter terrorism in terms of Resolution 1373 and the OAU/AU Convention on the Prevention and Combating of Terrorism. Only one of the fourteen countries, namely South Africa has ratified the AU Convention, while Uganda has signed it. The non-SADC countries namely Algeria, Ethiopia, Ghana, Kenya, Nigeria, and Senegal have also ratified the Convention. The following SADC thirteen SADC countries have not ratified the Convention.⁸³In the SADC, there is a need for member countries to prioritise the issue of terrorism as well as to have the legislative and institutional capacity to cope with the threat to terrorism⁸⁴. In order to achieve these goals, the SADC countries must adopt, ratify and implement a variety of international instruments and measures but more especially the 12 Conventions specifically relating to terrorism.⁸⁵

⁸⁰ Southern African Development Community, hereafter known as SADC

⁸¹ The current Member States are Angola, Botswana, the Democratic Republic of Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, United Republic of Tanzania, Zambia and Zimbabwe. The SADC headquarters are situated in Gaborone, Botswana. The Seychelles announced its intention to pull out of the SADC in 2004.

⁸² See Paragraph 3(d) and 3(e) of Resolution 1373

⁸³ Hubschle A, 'Conceptualising Terrorism', Paper delivered at a seminar on 'Terrorism in Southern Africa', 18 September 2003, Pretoria, Institute for Security Studies.

⁸⁴ Mukelebai M, 'Combating Terrorism in the SADC Sub-Region', Paper Delivered at a seminar on 'Terrorism in Southern Africa', 18 September 2003, Institute for Security Studies.

⁸⁵ See Annex IV for a complete list of International Conventions on Terrorism and status of the SADC member States

Reports on the ratification and implementation of these conventions are regularly submitted to the CTC, to ensure that member states are achieving the goals and objectives as set out by the mandate of the CTC and Resolution 1373. The second focal area is to have the appropriate structures and administrative arrangements, which would continue to enable SADC countries to implement Resolution 1373. This chapter contains a snapshot of the activities of each SADC member State, from the adoption of the resolution to date. There are a number of key points to be borne in mind when looking at ITL⁸⁶. The first is its purpose and the second, its field of application. This chapter deals with the latter, the application. The primary responsibility for the implementation of Resolution 1373 rests with states. It is states, which are the objects of international law here and therefore obligated to observe the rules in the resolution.

Background to the establishment of the SADC Community

The Declaration and Treaty⁸⁷ establishing the SADC was signed at the Summit of Heads of State or Government on July 17, 1992, in Windhoek, Namibia thereby giving the organization its legal status.⁸⁸ SADC replaced the Southern African Development Coordination Conference⁸⁹ in existence since 1980. The SADCC⁹⁰ was formed as a coordinating conference following the adoption of the Lusaka Declaration on April 1 1980. The Community was a loose alliance of nine majority-ruled States in Southern Africa.⁹¹ Like COMESA⁹², CARICOM⁹³, ECOWAS⁹⁴ and the EU⁹⁵, SADC is a regional community or block of states, which have come together with objectives, goals and aims of political and economic cooperation.⁹⁶

⁸⁶ International Terrorism Law hereafter known as ITL

⁸⁷ The SADC Treaty is a legally binding and all-encompassing framework by which countries of the region shall coordinate, harmonise and rationalise their policies and strategies for sustainable development in all areas of human endeavour. For Relevant Extracts from the Text see Annex III at the end of this dissertation.

⁸⁸ See Article (2) of the SADC Treaty.

⁸⁹ Here after known as the SADCC

⁹⁰ ibid See Footnote 77

⁹¹ ibid See Footnote 86

⁹² The Common Market for Eastern and Southern Africa

⁹³ The Caribbean Community (CARICOM) provides dynamic leadership and service, in partnership with Community institutions and Groups, toward the attainment of a viable, internationally competitive and sustainable Community, with improved quality of life for all. For more information please go to <<http://www.caricom.org/>> Accessed on 30th August 2004.

⁹⁴ The Economic Community Of West African States (ECOWAS) is a regional group of sixteen countries, founded in 1975. For more information go to <<http://www.ecowas.int/>> Accessed on 30th August 2004.

⁹⁵ European Union

⁹⁶ For more information please go to <<http://www.sadc.int/index.php>>

Structure of the SADC

Each member state has the responsibility to coordinate one or more sectors on behalf of SADC⁹⁷. Over the years, the SADC has established institutions through which its business is conducted, from policy making to administration. The Summit is made up of Heads of State or Government; the Summit is the ultimate policy-making institution of SADC. It is responsible for overall policy direction and control of functions of the Community. Headed by a Chairman and Vice-Chairman, who are elected for an agreed period, the Summit meets at least once a year to review progress and operations of its subordinate institutions. The Chairman and the Vice-Chairman of Council are appointed by member States holding the Chairmanship and Vice-Chairmanship of SADC respectively. SADC has established Commissions and Sector Coordinating Units to guide and coordinate regional policies and programmes in specific areas.

The Sectors are allocated to individual member States to coordinate and provide regional leadership. Sectoral activities are supervised by Sectoral Committees of Ministers. The Minister representing the sector coordinating country chairs the Sectoral Committee of Ministers. Sectoral Commissions may be established and ratified by member States. Commissions are regional institutions, supported by all member States whereas Sector Coordinating Units are parts of national governments staffed mainly by civil servants of the sector coordinating country. Sectoral Committees and Commissions report to Council.⁹⁸

Objectives and Priorities

The priority intervention areas are divided in two main groups, namely those of a cross-sectoral nature and those related to specific areas of cooperation and integration. The ones that are relevant for my purposes are poverty eradication, the combating of the HIV and AIDS pandemic and development.

⁹⁷ See Article 12(22) of the SADC Treaty

⁹⁸ See Article on 'Trade, Industry, Finance and Investment (TIFI)'
<http://www.sadcreview.com/directorate_reports/report_tifi.htm> Accessed on 30th August 2004

These areas will form a basis for the analysis. They will be developed illustrating how much money is actually spent on related programs and projects, compared to how much money is needed. Further objectives are outlined in the SADC Protocol⁹⁹. The objectives of SADC are stated in Article 5 of the Treaty. For my purposes the ones that are important include:

- Achieve development and economic growth, alleviate poverty, enhance the standard and quality of life of the people of Southern Africa and support the socially disadvantaged through regional integration¹⁰⁰
- Reduce the incidence of HIV and AIDS infection among the most vulnerable groups in SADC.¹⁰¹
- Mitigate the socio-economic impact of HIV and AIDS.¹⁰²
- Review, develop and harmonise policies, strategies and legislation relating to HIV prevention, care and support, and treatment within SADC.¹⁰³
- Mobilise and co-ordinate resources for the HIV and AIDS multi-sectoral response for a multi-sectoral response to HIV and AIDS in the SADC region.¹⁰⁴

SADC's Response to Terrorism, Globalisation & other Influences

The table in annex V indicates the submission of reports to date by member states of the SADC and Kenya to the CTC. It also shows the implementing legislation adopted by these countries. The Status Report of the Interim Chairperson of the Commission on the status of AU Convention on the Prevention and Combating of Terrorism as at 17th June 2003 shows that six (6) SADC member countries and Kenya have some relevant measures in place to combat terrorism. The Countries that have 'signed and ratified' are, Angola, Kenya, Lesotho, Mauritius, Mozambique and South Africa. The Convention has only been 'signed' by five (5) SADC member States. They are, Botswana, Swaziland, the Democratic Republic of Congo, Namibia and Tanzania.

⁹⁹ See Article (1) and Article (2) of the SADC Protocol attached as Annex VI at the end of this Dissertation

¹⁰⁰ See Article (5)(1)(a) of the SADC Treaty attached as Annex III at the end of this Dissertation

¹⁰¹ See Article (5)(2)(e) of the SADC Treaty

¹⁰² *ibid*

¹⁰³ *ibid*

¹⁰⁴ *ibid*, for further information see Article on "The SADC Protocol and SADC Member Countries" at <<http://www.economist.com.na/facts/sadc/sadc.htm>> Accessed on 30th August 2004.

The SADC Protocol on Politics, Defence and Security Cooperation¹⁰⁵

The SADC Protocol on Politics, Defence and Security Cooperation (hereafter known as the Protocol) was signed in Blantyre, Malawi on 14 August 2001. The Protocol calls, among others, for a close co-operation on matters of politics, defence and security. The SADC member states aim to achieve solidarity to strengthening regional solidarity, peace and security, in order for the people of the region to live and work together in peace and harmony.¹⁰⁶ The Protocol is a subsidiary part of SADC and therefore it abides by the same principles as those of SADC, including the sovereign equality of all member states, the peaceful settlement of disputes, and the observance of human rights, democracy and the rule of law. Like the Organisation for Security and Co-operation in Europe (OSCE), the SADC Organ is potentially an organisation with a comprehensive approach to security and peace, based on military confidence, economic development, social justice, democracy, the rule of law and respect for human rights.

The subsequent establishment of the Organ on Politics, Defence and Security has given some effect to these ambitious intentions¹⁰⁷. As Anthoni van Nieuwkerk points out that there needs of clarification in the exact use and meaning attached to, collective security and collective defence to avoid the organ remaining an instrument in the hands of state elites who may use it to protect and advance their interests¹⁰⁸.

SADC member states also signed a Mutual Defence Pact in August 2003 to facilitate the interaction, joint operations, collective response within the capacities of each member state as well as building a strong foundation for one of the pillars of the defence and security of the continent.¹⁰⁹ The SADC region has remained wracked by high levels of conflict that included civil wars in the DRC and Angola, as well as violence and state repression in Zimbabwe and other countries.

¹⁰⁵ For full Protocol see Annex IV at the end of this dissertation

¹⁰⁶ See Preamble of the SADC PDSC. For full text of the Protocol, see Annex IV at the end of this dissertation.

¹⁰⁷ The main aim of the Organ is to harmonise common political values, systems and institutions and the promotion and defence of peace and security

¹⁰⁸ Van Nieuwkerk, A. 2000. 'Looking Ahead: Peace Building in Southern Africa' in Global Dialogue Volume 5.1 May 2000, IGD, Johannesburg p 5

¹⁰⁹ Van Schalkwyk, 'Challenges facing the newly restructured SADC OPDS' ISYP Conference 'Advancing Human Security' 15-17 July 2003, Halifax, Nova Scotia. p 2

The SADC region has identified the combating of poverty as an overarching priority¹¹⁰. The issue of funding presents another major challenge. SADC is financed by equal contributions and donations from member states¹¹¹. In order to operate, the SADC OPDS needs a sustainable source of revenue.¹¹² Accordingly, the 1992 SADC Treaty contains broad goals for achieving development and economic growth, alleviation of poverty, enhancement of the standard and quality of life of the people of Southern Africa and support for the socially disadvantaged groups through regional integration¹¹³. In recognition of the magnitude of the problem and in line with the commitments that Member States have made under the Millennium Development Goals and NEPAD, the region has adopted poverty eradication as its main goal¹¹⁴.

HIV and AIDS continue to be the greatest public health and developmental challenge in the region¹¹⁵. The levels of prevalence and the incidence of HIV and AIDS in most Member States continue to increase¹¹⁶. This is in spite of several measures that have been put in place to address the pandemic. This calls for a radical scaling up of innovative responses at both regional and national levels. Terrorism is important but given this short background, where does it fall as a matter of priorities?

In recognition of the serious threat that HIV and AIDS continue to pose to development of the region and its integration agenda, SADC has revised and strengthened its Multi-sectoral HIV and AIDS Strategic Framework and Programme of Action 2003-2007¹¹⁷. HIV/AIDS, Malaria, Tuberculosis continue to undermine Africa's development, adversely impacting on the provision of health services and food security, human security and agricultural productivity particularly in Sub-Saharan Africa, which has been mostly affected by the epidemic.

¹¹⁰ See Article on 'Trade, Industry, Finance and Investment (TIFI)'
<http://www.sadcreview.com/directorate_reports/report_tifi.htm> Accessed on 30th August 2004

¹¹¹ Article 28(1) of the SADC Treaty

¹¹² Van Schalkwyk, 'Challenges facing the newly restructured SADC OPDS' ISYP Conference 'Advancing Human Security' 15-17 July 2003, Halifax, Nova Scotia. p 2

¹¹³ See Article (5) of the SADC Treaty.

¹¹⁴ *ibid* Footnote 107

¹¹⁵ Morrison S and Hulburt H, 'Botswana's Strategy to Combat HIV/AIDS Lessons for Africa and Presidents Bush Emergency Plan for AIDS Relief, A Conference Report of the Centre for Strategic and International Studies (CSIS) Task Force on HIV/AIDS, January 2004. Report Obtainable from writer. Pp 1-38

¹¹⁶ *ibid*

¹¹⁷ *ibid*

Implementation of the Resolution in the selected individual countries – In General

Article 2 (b) of the OAU/AU Convention on the Prevention and Combating of Terrorism¹¹⁸, called upon states “as a matter of priority to sign and ratify the international instruments listed in the Annexure.”¹¹⁹ In assessing national implementation of the Algiers Convention, an analysis of country reports to the CTC coupled with the measures taken or that are currently in place demonstrates how far SADC countries and Kenya have gone in terms of adhering to Resolution 1373.

The Institute for Security Studies¹²⁰ (a research based NGO on Human Security based in South Africa) conducted an applied research project on ‘Combating Terrorism in the SADC Region’. The broad based objectives were to assess the present and future threat of terrorism in SADC and to examine the existing legislation relating to terrorism with a view to identify legislative and institutional needs. Independent researchers in each of the SADC member states conducted research and submitted their findings. Anneli Botha, Senior Researcher at the Institute produced a comprehensive report on these findings¹²¹. The Reports received by the Institute reveal that at present, Angola, Botswana, Democratic Republic of Congo, Malawi, Mozambique, Seychelles, Swaziland, Zimbabwe have not done so well in terms of enacting the legislation required by Resolution 1373. However Lesotho, Mauritius, Namibia, South Africa, Tanzania and Zambia have taken relevant measures to do so¹²².

¹¹⁸ Also known as the Algiers Convention

¹¹⁹ See Footnote in Chapter 4 for list of all relevant International Conventions of Terrorism.

¹²⁰ The Institute for Security Studies was established in 1991 as a non-profit trust in terms of Section 6(1) of the Trust Property Control Act, of 1998. The ISS is an independent policy research institute that aims to enhance human security in Africa through applied research services and the dissemination of information. These issues include civil-military relations, peacekeeping, peace support operations, confidence-building measures and peace-building, regional security co-operation, disarmament and arms control, policing and crime prevention, human security concerns, including population movements and ecological issues.

¹²¹ The Institute for Security Studies is an NGO focusing on the Human Security Debate. Programs include, Corruption, Terrorism, Money Laundering and Organised Crime. The report submitted to the Portfolio Committee on Safety and Security on South Africa’s Anti-Terrorism Bill recommends legislative changes to assist with the harmonising of legislation relating to terrorism in the SADC region. For full report contact Anneli Botha, Senior Researcher at the Institute for Security Studies on her e-mail address at anneli@issct.org.za.

¹²² Many states are not yet party to the twelve major legal instruments or are not yet implementing them

Implementation in selected countries

Kenya

Kenya is not a SADC Member state. However it is important because of the 1998 United States Embassy attacks. Kenya has ratified the twelve UN Counter-Terrorism Conventions. It is still in the process of implementing appropriate domestic legislation on terrorism related issues. In early May 2003, the Government proposed a new law, The Suppression of Terrorism Bill 2003, provides for stiff penalties against persons or organisations involving in acts of terrorism. Despite Kenya's direct experiences of terrorism it received a stiff reaction from individuals and organizations who feared that the Bill might be a threat to basic human rights.¹²³ At the time of publication of this dissertation, South Africa's Anti-Terrorism Bill had not yet been enacted by Parliament.

South Africa

The Protection of Constitutional Democracy Against Terrorist and Related Activities Bill still has to be adopted.¹²⁴ The process of drafting the Bill began in 1995 and took at least four drafts to arrive at the current version. Although government adopted a transparent approach in allowing public comment and allowing access to discussions of the Parliamentary Monitoring Group - Safety And Security Portfolio Committee all four versions of the Bill were met with suspicion, particularly because of concern about infringement of basic human rights¹²⁵.

Once accepted, the Bill will give effect to nine of the twelve UN Counter-terrorism Conventions and the OAU/AU Convention on the Prevention and Combating of Terrorism; provide measures to prevent and combat the financing of terrorism (read with the Financial Intelligence Centre Act, 2001); and will make provision for investigative measures in respect of terrorism. The Bill was clearly created to address terrorism from a South African perspective but also to ensure that South Africa is in line with its international obligations¹²⁶.

¹²³ Anneli Botha, 'ASDR AHSI-APRM Project on Peacekeeping and Security, Commitments in Respect of Terrorism' (2004) p 3

¹²⁴ See Extracts of the Protection of Constitutional Democracy Against Terrorist and Related Bill in Annex VII at the end of this Dissertation

¹²⁵ *ibid* Footnote 120 p 8

¹²⁶ See footnote 21.

CHAPTER SIX

Economic, Political and Legal Problems for SADC countries in Implementing Resolution

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The main problem within SADC arguably relates to the absence of integrated systems, processes and methods to deal with human rights issues and the advancement of democracy and good governance¹²⁷. The SADC displays an enormous diversity of populations, political systems and levels of economic and social development. Despite this variety, common features include problems of poverty, underdevelopment, the HIV/AIDS pandemic, massive food shortages, social inequalities and political instability.¹²⁸

Resolution 1373 was created to deal with terrorist activity and in response several SADC countries have made some attempt to implement it. It would seem that terrorism is no longer a foreign problem. Its impact can be wider and it may involve a wider number of participating criminals. There is a gap between the resources and skills necessary to counteract the wide range and increased threats of terrorism and those, which are actually available for this purpose, especially in Africa.

Economics

The 2002 Sentnet Surveillance Study revealed that Botswana's HIV prevalence rate, estimated in 2002 was 35.4%, mainly people aged 15 to 49 years¹²⁹. Botswana began a program of free Antiretroviral (ARV) treatment, which has grown to be the largest program of its kind in Sub-Saharan Africa. Botswana's political leadership acknowledged that more than 38% of its adults were HIV Positive. The government rapidly increased funding from under \$US 5 million annually in 1999 to more than \$US 69 million in 2002 and a substantial increase in 2003 to over \$ US 110 million.¹³⁰

¹²⁷ SADC Regional Human Development Report, 'Challenges and Opportunities for Regional Integration, 2000 p 25

¹²⁸ United Nations Office on Drugs and Crime, UNODC Regional Office for Southern Africa Report, 2003 p 3

¹²⁹ Morrison S and Huriburt H, Botswana's Strategy to combat HIV/AIDS Lessons for Africa Relief, A Conference Report of the CSIC Task Force, January 2004, p 11

¹³⁰ *ibid* p 8

Botswana now spends \$US 100 million of its resources annually on its National HIV/AIDS response¹³¹. Yet even with this outlay, Botswana continues to have the highest rate of HIV/AIDS prevalence in the world posing even greater challenges. The demand far exceeds resources, the resource gap being financial and technical (infrastructure and expertise). Coupled with a human resources gap there is also a skill gap. The challenges of the response to HIV/AIDS go well beyond available money and include shortages in human resources, government capacity and physical infrastructure¹³².

The HIV/AIDS project has a higher economic priority, so where does that leave terrorism? President of the World Bank, James Wofensohn has pointed out on numerous occasions that 'AIDS is not just a health or developmental issue, but one affecting the peace and security of people in Africa.¹³³ HIV/AIDS is a major disaster in the SADC region. Botswana, Zimbabwe and South Africa have the highest rates of HIV/AIDS infection rates among the 15-49 year old age group¹³⁴. The implications for Sub-Saharan as well as the rest of African countries are ominous. The epidemic is reversing progress in human capital formation by affecting individuals at ages when they are most industrious and productive. HIV/AIDS is undermining education and hence the potential to expand skills as quickly as needed¹³⁵.

The direct costs of the pandemic are the huge medical expenses necessary to care for AIDS patients. The demands on the health care sectors in SADC for treatments of AIDS-related illnesses will continue to overstretch already-inadequate healthcare budgets in the most Africa countries. Botswana is being forced to import white-collar skills as a result of the impact of AIDS on the supply of trained workers. While the situation Botswana would be more or less mirrored by the experience of most other SADC member states, it would appear that Botswana's efforts have not been fruitless in that it has actually succeeded in reducing the rate of HIV infection.¹³⁶ The HIV/AIDS pandemic presents great challenges for SADC countries. It is high on the agenda of SADC and cannot be ignored with or without resource incapacity. It is a high priority.

¹³¹ *ibid* Footnote 126 p 12

¹³² *ibid* Footnote 124 p 26

¹³³ Pharaoh R and Schonteich, AIDS, Security and Governance in Southern Africa, Exploring Africa, Institute for Security Studies, Paper No 65, January 2003 p 2

¹³⁴ *ibid* Footnote 129

¹³⁵ African Development Report, 'Africa in the World bank, Fostering Good Governance in Africa and Economic and Social Statistics on Africa', African Development Bank 2001 p 37

¹³⁶ *ibid* Footnote 126 p 12

Politics

For many African experts, academics and practitioners, 'the war on terrorism' sounds like a new "Democratization wing", a new concept imposed on African countries from overseas, misunderstanding of which could lead their countries into a new cycle of political and socio-economic instability.¹³⁷ Angola's President Eduardo dos Santos points out at the SADC Summit meeting held in Malawi in 2002 that SADC countries cannot overcome poverty, illness, illiteracy and the scourge of war until the conflicts in the region are resolved. Indeed it is highly probable that African governments will allocate more resources to defence to enhance homeland security while the struggle against poverty and AIDS should remain high priority areas.

Anneli Botha, Senior Researcher at the Institute for Security Studies, (a research based NGO in South Africa) states that;

"Although terrorism theoretically presents a dire threat to national, regional and international stability, researchers are confronted by inconsistencies into [sic] the study of terrorism and the potential threat that it poses. To begin with there is a lack of research on terrorism in Africa in contrast to the rest of the world, manifested in the lack of availability of statistics and figures? Insufficient information on the magnitude of terrorism in Africa has led to both a lack of understanding of the issue and a lack of measures to address it." ...¹³⁸

The condition of sub-Saharan politics is particularly worrying in the region. For leaders in power, the war on terrorism especially after 9/11, presents an unexpected opportunity to fight their opponents 'legally' by accusing them of terrorism or of favouring terrorism. The continued political violence that is occurring in Zimbabwe and the civil war in the Democratic Republic of Congo are two examples.¹³⁹ The SADC Council of Ministers, which met in Malawi in January 2002, recommended that the late Jonas Savimbi and his UNITA rebels be added to the list of international terrorist organisations.¹⁴⁰

¹³⁷ Salami Y, Conference Paper, 'Socio-economic consequences of the war on terrorism in Africa - Advancing Human Security, Journal of Science and World Affairs Halifax, Nova Scotia July 15-17 2003

¹³⁸ Botha A, Terrorism in Africa p 3 (2003)

¹³⁹ See Article by Gema Martin-Munoz, "Arab states, Islamism and the West. Accessible at <<http://www.opendemocracy.net/debates/article.jsp?id=5&debatedId=57&articleId=419>> Accessed on 20 Dec 2002 p 5.

¹⁴⁰ See News Article, SADC Adopts Declaration on Terrorism and Calls for Savimbi's inclusion on International Terrorist

In Swaziland, the opposition demanded an end to the twenty seven year ban on political parties and the State of Emergency and called for the creation of an interim government. In April 2001 Mario Masuku, President of the outlawed People's United Democratic Movement was arrested and charged with sedition under the Political Order Act after allegedly uttering seditious statements at an unauthorised rally in Mbabane, the capital of Swaziland.¹⁴¹ Whether or not these events are indeed defensible is another question. An important point to mention is that some governments within the region may attempt to curb legitimate political dissent and activities by classifying them as terrorist, which would not be envisaged by Resolution 1373. Perhaps the most serious problem that the SADC region face is the dire lack of resources to meet the challenges presented by escalating regional conflicts.

Legal Issues

(i) Inadequate Legal and Institutional Infrastructure

From an African point of view the continent is clearly unable to deal with its security interests without outside assistance. Dr. Susan Rice, the US Assistant Secretary of State for African Affairs from 1997-2001, was asked to share her thoughts on Africa's role in the global anti-terror campaign at the Global Development Briefing in December 2001. Her remarks focus particularly on boosting investment to improve border controls and intelligence collection. She also emphasises the need to strengthen law enforcement by building effective judicial institutions in Africa, which presents a great challenge.¹⁴²

SADC countries indeed acknowledge that immigration, customs, police and intelligence departments should coordinate efforts to monitor the movement of people within the southern African region. It is encouraging and indeed important that SADC countries themselves, acknowledge the challenges that lie ahead and are prepared to find African solutions to the problems that they face.

List, Angola Mission to the UN, 25 February 2002

¹⁴¹ Botha A, Political Dissent and Terrorism in Southern Africa pp 10-11, August 2004

¹⁴² See Article on 'Countering Terrorism in Africa', Rice Susan Accessed on 3 September 2004 at <<http://www.pambazuka.org/newsletter.php?id=4860>>

This is evident by President Eduardo dos Santos of Angola's address to the SADC Meeting in Malawi in 2002 where he states that, "we must further strengthen the democratic nature and quality of our governments, modernise our economies and make a greater commitment to the training of new generations".¹⁴³

Of greater importance is the fact that many of the participant countries of SADC do not have integrated systems, processes and methods to deal with the issues of terrorism, human rights, the advancement of democracy and good governance¹⁴⁴. Some SADC member countries such as Swaziland and Zimbabwe are perceived to be non-democratic, while others, such as Angola and Mozambique, are in slow transition from a state of devastating civil war¹⁴⁵. Countries, such as Zambia and Zimbabwe, have been accused of being undemocratic in election-related practices, while some see South Africa drifting towards one-party dominance in the absence of an effective political opposition to the African National Congress.¹⁴⁶

The countries under review are classified into three categories: countries that implemented specific counter-terrorism legislation; countries that are in the process of drafting specific counter-terrorism legislation, making use of existing legislation, often the Penal Code on terrorism and countries that exclusively make use of their Penal Codes. Different countries have different approaches to the implementation of Resolution 1373, depending on whether the domestic law is based on civil or common law system.¹⁴⁷ These difference need to be addressed and harmonised to mobilise resources. Julio Hhelder De Moura Lucas a foreign representative of Angola fully endorsed the work of the Counter-Terrorism Committee in the fight against terrorism. The fact that 48 States were late in submitting their reports, however, showed the degree to which assistance was needed in the financial, technical and human resource areas of the effort. In border control, smuggling and other challenges, developing countries required a long-term focus on such assistance, so they could wage an effective combat against terrorism.

¹⁴³ *ibid* Footnote 137

¹⁴⁴ SADC Regional Human Development Report, 'Challenges and Opportunities for Regional Integration, 2000 p 25

¹⁴⁵ Zimbabwe has shifted from relative economic progress to endemic economic deterioration and political instability.

¹⁴⁶ When the Zambian democracy was turned into a hybrid regime, the surrounding countries exerted no pressure on the government to reverse these moves. Angola, Mozambique (until recently) and the DRC have had their own internal civil war problems which tended to spill over into neighbouring countries

¹⁴⁷ Goodman I, "The Draft Anti-Terrorism Bill" *Responsa Meridiana*, 2002 p 17

Julio Hhelder De Moura Lucas welcomed a more proactive approach to such assistance. He said that the sharing of information with regional and sub regional organizations was particularly important. The African Union had been a pioneer in a regional approach to fighting terrorism and helping to apply standards and best practices.¹⁴⁸

Proposed Implementation in South Africa

In mid-2000, the South African Law Commission released a draft Anti-Terrorism Bill. The Bill seeks to integrate the country's numerous pieces of anti-terrorism legislation into one comprehensive law that addresses the issue of terrorism on a broad basis. The Bill may not become law because it fails to comply with various aspects of the South African Bill of Rights¹⁴⁹. Some exceptions within the Bill regarding the extradition process may become obstacles to the suppression of terrorism. One specific problem is establishing terrorism as an extraditable offence to facilitate extradition.

It is insufficient to establish terrorism merely as a non-political offence as credible intelligence must be shared so that preventive action can be taken instead¹⁵⁰. Fadl Nacerodien, the representative of South Africa said the United Nations had made great strides in the global fight against terrorism. A comprehensive approach was needed, however, that took into account conflict situations, poverty, human rights abuses and foreign occupation that prompted irrational acts of violence. He emphasised that terrorism must, in addition, be combated globally and with full respect to international law and civil liberties to avoid singling out certain cultures, religions or countries. Despite these considerations South Africa remains fully committed to the struggle against terrorism and to cooperate closely with SADC countries and the CTC.¹⁵¹

¹⁴⁸ See Report, 'Security Council Calls on the Counter-Terrorism Committee to help increase means available to states to combat terrorism, Committee Chair Briefs Council, Organization for Security and Co-operation in Europe Secretariat, 6 September 2002

¹⁴⁹ See Annex VII for extracts from the Anti-Terrorism Bill. The Bill is also available online at <<http://www.pmg.org.za/bills/020902terrorbill.htm>>

¹⁵⁰ Section 35 Chapter 3 of the Bill. See Annex VII for Extracts

¹⁵¹ See Article 'Chair Briefs Council Security Council Calls on Counter Terrorism Committee to Help Increase Means Available to Combat Terrorism Committee, Organization for Security and Co-operation in Europe Secretariat, 6 September 2002. Some 30 Speakers Addressed Terrorist Threats to Peace and Security

The Bill proposes that anyone who commits a 'terrorist act' (including outside of South Africa) commits an offence and will be liable, upon conviction, to life imprisonment¹⁵². The Bill's definition of terrorist act is broad and includes any act which does or may endanger the life, physical integrity or freedom of any person, or causes or may cause damage to property, and is calculated to:

- Intimidate, coerce or induce any government, persons or the general public;
- Disrupt any public service, the delivery of any essential service to the public or to create a public emergency, or
- Create unrest or general insurrection in any state¹⁵³.

The Bill seeks to criminalise the actions of those who provide material support in respect of terrorist activities. For example, anyone who provides material, logistical or organisational support, knowing or intending that such support will be used in the commission of an offence in terms of the Bill, is deemed to have committed a criminal offence¹⁵⁴. The same would apply to anyone who participates in the activities of a terrorist organisation¹⁵⁵. On conviction for such an offence, a penalty of up to 10 years imprisonment, without the option of a fine, is proposed¹⁵⁶.

Moreover, anyone who conceals a person knowing that that person intends to commit or has committed an offence in terms of the Bill, also commits an offence¹⁵⁷. The proposed penalty for concealing such a person is the penalty for the offence that that person intended to commit or has committed¹⁵⁸. The Bill proposes that any person who is a member of a 'terrorist organisation' commits an offence through such membership and would be liable, on conviction, to imprisonment for up to five years without the option of a fine¹⁵⁹. The Bill defines a terrorist organisation broadly as 'an organisation, which has carried out, is carrying out or plans carrying out terrorist acts¹⁶⁰. To secure a conviction under this provision the state would not have to prove that an accused knew that he was a member of a terrorist organisation.

¹⁵² See Section 2(2)(1) of the Terrorist and Activities Bill

¹⁵³ See Section 3 of the Terrorist and Activities Bill

¹⁵⁴ See Section 2(1) of the Terrorist and Activities Bill

¹⁵⁵ See Section 2(d)(iii) of the Terrorist and Activities Bill

¹⁵⁶ See Section 18(a)(i)(ii)(iii) of the Terrorist and Activities Bill

¹⁵⁷ See Section 2(a) of the Terrorist and Activities Bill

¹⁵⁸ See Section 18 of the Terrorist and Activities Bill

¹⁵⁹ See Section 18(iii) of the Terrorist and Activities Bill

¹⁶⁰ See Section 3(1)(2) of the Terrorist and Activities Bill

The state would merely have to prove membership of a terrorist organisation¹⁶¹. The concern has been raised that the creation of such a membership offence could result in the prosecution of a member of a particular organisation even though such a person is unaware that the organisation is regarded as a terrorist organisation¹⁶². Instead of passing a codifying Terrorism Bill, Botswana has introduced necessary amendments to existing legislation. Given the absence of any terrorist activity, it appears that Botswana's approach is adequate, i.e. prevention rather than prosecution.¹⁶³

Zambia has no legislation that directly recognises terrorism as a distinct unlawful act that attracts criminal sanctions. The Political will to address terrorism in the Zambian Penal Law regarding the investigation, prosecution and punishment of terrorism has not been translated into legislative action. However the various forms of violence commonly associated with terrorism such as homicide, assault against a person, causing harm using biological or chemical substances, sabotage, hostage taking, kidnapping and bombing including conspiracies to commit these offences are criminalised under the Penal Code Chapter 87 of the Laws of Zambia.¹⁶⁴

(ii) Supervening impossibility of performance?

The Vienna Convention on the Law of Treaties (1969) came into force in 1980. By implication it applies only to written treaties and only those concluded after it came into force.¹⁶⁵ The Convention only applies to treaties between states.¹⁶⁶ It does not regulate agreements between states and international organisations or agreements between international organisations. These agreements continue to be governed by customary law.¹⁶⁷ The Charter of the UN is a treaty between member state containing obligations for them. The Charter gives the Security Council its authority to pass resolutions under Chapter VII, which bind member states. UN Member state obligations to observe Chapter VII resolutions are therefore treaty obligations. Resolution 1373 is such a resolution.

¹⁶¹ Ong Yen Nee, International Response to Terrorism: The Limits and Possibilities of Legal Control of Terrorism by Regional Arrangement, <http://www.mindef.gov.sg/safti/pointer/back/journals/2002/Vol28_4/5.htm>

¹⁶² *ibid*

¹⁶³ Goodman I, "The Draft Anti-Terrorism Bill" *Responsa Meridiana*, 2002 p17

¹⁶⁴ Mukelebai, M, 'Stumbling Blocks in Prosecuting Transnational Terrorist Cases: The Zambian Experience, September 2003, Institute for Security Studies Seminar Paper

¹⁶⁵ See Article 4 of the Vienna Convention on the Law of Treaties (1969), Attached as Annex VIII

¹⁶⁶ See Article 3 of the Vienna Convention on the Law of Treaties (1969), Attached as Annex VIII

¹⁶⁷ See Article 2(1)(a) of the Vienna Convention on the Law of Treaties (1969), Attached as Annex VIII

Impossibility of performance may however terminate or suspend obligations according to Article 61 of the Vienna Convention (which would also be declaratory of customary law). The question may here be posed whether implementation obligations are possible where there is a lack of resources. If the resources are not adequate, the question of the postponement of obligations to implement Resolution 1373 until SADC countries have enough resources to deal with terrorism also arises.

According to Article 61 of the Vienna Convention, the destruction or disappearance of an object that was essential to carry out a treaty gives a ground for ending the parties' relationship, because further performance of the treaty is impossible. In these circumstances, can it be argued that the scarce resources available to a SADC country have to be spent on 'essential' priorities for that country, for example poverty eradication, health and basic development? The available resources have therefore been depleted so that the object (the resources), have disappeared within the meaning of Article 61. Termination of the obligation to implement could therefore be theoretically argued. However it is more likely that the obligation would be suspended until such a time as there are available resources. One cannot assume that resources will never to be available! It is however likely that the suspension could endure for a very long time.

In the *Gabcikovo-Nagymaros Dam Project (1997)*¹⁶⁸, the International Court of Justice held that a party relying upon this ground had to meet the precise terms of Article 61. The Court left open the question whether the term 'object' in Article 61 could also embrace the disappearance of a legal regime in international law. However, the Court did hold that financial impossibility was not a ground for terminating a treaty but it could exclude a breach or wrongfulness¹⁶⁹. This it is submitted, means that compliance with the obligation is suspended and would remain suspended until financial feasibility is restored. The case therefore supports the above submission that a SADC country's obligation to implement Resolution 1373 may be suspended due to lack of available resources.

¹⁶⁸ Implicitly, the judgement accepted that the conditions to be satisfied here were more rigid than those to be fulfilled in the context of force majeure under the law of state responsibility. *Gabcikovo-Nagymaros Dam Project (1998)*, 1998) 37 ILM 162.

¹⁶⁹ See Paragraph 102-103 of the *Gabcikovo-Nagymaros Dam Project (1998)* 37 ILM 162

CHAPTER 7

CONCLUSIONS

The main aim in discussing Resolution 1373 is to explore and to analyze the different ways that African countries (primarily SADC countries) have responded to the current "global war on terrorism. The main focus has been on human security, governance issues, politics and economics, poverty eradication, development and the scourge of HIV/AIDS, on all of which there is a multiplicity of voices and positions.

Terrorism cannot be combated without sacrificing financial resources, possibly jeopardising citizen's civil liberties and the rule of law.¹⁷⁰ The value of a holistic approach I believe will yield better results. Paul Wilkinson states that, "the primary objective of a counter terrorist strategy must be the protection and maintenance of liberal democracy and the rule of law. It cannot be sufficiently stressed that this aim overrides in importance, even the objective of eliminating terrorism and political violence as such".¹⁷¹

Finally given that African states (and in particular SADC states) have essential priorities, which demand scarce resources, they may be in a situation where it is impossible for them to implement Resolution 1373. In this case financial impossibility, could suspend their implementing obligations until such time as the necessary resources are at hand. Of course these arguments would have to be applied to each country individually, as financial impossibility could vary from country to country.

¹⁷⁰ Schonteich M, 'South Africa's Arsenal of Terrorism Legislation, Institute for Security Studies, African Security Review, Vol 9, 2000 p 40

¹⁷¹ Wilkinson P, 'Terrorism and the Liberal State', Macmillan Education, London, 1986, pp 125-126

ANNEXES

Annex I: UN Security Council Resolution 1373

Security Council Resolution 1373 Adopted by the Security Council at its 4385th Meeting, on 28 September 2001

Distr.
GENERAL

S/RES/1373(2001)
28 September 2001

Original: ENGLISH

The Security Council,

Reaffirming its resolutions 1269 (1999) of 19 October 1999 and 1368 (2001) of 12 September 2001,

Reaffirming also its unequivocal condemnation of the terrorist attacks which took place in New York, Washington, D.C. and Pennsylvania on 11 September 2001, and expressing its determination to prevent all such acts,

Reaffirming further that such acts, like any act of international terrorism, constitute a threat to international peace and security,

Reaffirming the inherent right of individual or collective self-defence as recognized by the Charter of the United Nations as reiterated in resolution 1368 (2001),

Reaffirming the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts,

Deeply concerned by the increase, in various regions of the world, of acts of terrorism motivated by intolerance or extremism,

Calling on States to work together urgently to prevent and suppress terrorist acts, including through increased cooperation and full implementation of the relevant international conventions relating to terrorism,

Recognizing the need for States to complement international cooperation by taking additional measures to prevent and suppress, in their territories through all lawful means, the financing and preparation of any acts of terrorism,

Reaffirming the principle established by the General Assembly in its declaration of October 1970 (resolution 2625 (XXV)) and reiterated by the Security Council in its resolution 1189 (1998) of 13 August 1998, namely that every State has the duty to refrain from organizing, instigating, assisting or participating in terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts,

Acting under Chapter VII of the Charter of the United Nations,

1. *Decides* that all States shall:
 - (a) Prevent and suppress the financing of terrorist acts;
 - (b) Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;
 - (c) Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;
 - (d) Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons;
2. *Decides also* that all States shall:
 - (a) Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists;
 - (b) Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information;
 - (c) Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens;
 - (d) Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens;
 - (e) Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts;
 - (f) Afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts,

including assistance in obtaining evidence in their possession necessary for the proceedings;

- (g) Prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents;

3. **Calls** upon all States to:

- (a) Find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communications technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups;
- (b) Exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts;
- (c) Cooperate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts;
- (d) Become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999;
- (e) Increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001);
- (f) Take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts;
- (g) Ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists;

4. **Notes** with concern the close connection between international terrorism and transnational organized crime, illicit drugs, money-laundering, illegal arms-trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials, and in this regard *emphasizes* the need to enhance coordination of efforts on national, sub regional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security;

5. **Declares** that acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations and that knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations;
6. **Decides** to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council, consisting of all the members of the Council, to monitor implementation of this resolution, with the assistance of appropriate expertise, and *calls upon* all States to report to the Committee, no later than 90 days from the date of adoption of this resolution and thereafter according to a timetable to be proposed by the Committee, on the steps they have taken to implement this resolution;
7. **Directs** the Committee to delineate its tasks, submit a work programme within 30 days of the adoption of this resolution, and to consider the support it requires, in consultation with the Secretary-General;
8. **Expresses** its determination to take all necessary steps in order to ensure the full implementation of this resolution, in accordance with its responsibilities under the Charter;
9. **Decides** to remain seized of this matter

**Security Council
4845th Meeting (AM)**

Annex II: AU Convention on the Prevention & Combating of Terrorism of 6 December 2002

OAU CONVENTION ON THE PREVENTION AND COMBATING OF TERRORISM

The Member States of the Organization of African Unity:

Considering the purposes and principles enshrined in the Charter of the Organization of African Unity, in particular its clauses relating to the security, stability, development of friendly relations and cooperation among its Member States;

Recalling the provisions of the Declaration on the Code of Conduct for Inter-African Relations, adopted by the Thirtieth Ordinary Session of the Assembly of Heads of State and Government of the Organization of African Unity, held in Tunisia, Tunisia, from 13 to 15 June, 1994;

Aware of the need to promote human and moral values based on tolerance and rejection of all forms of terrorism irrespective of their motivations;

Believing in the principles of international law, the provisions of the Charters of the Organization of Africa Unity and of the United Nations and the latter's relevant resolutions on measures aimed at combating international terrorism and, in particular, resolution 49/60 of the General Assembly of 9 December, 1994 together with the annexed Declaration on Measures to Eliminate International Terrorism as well as resolution 51/210 of the General Assembly of 17 December, 1996 and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, annexed thereto;

Deeply concerned over the scope and seriousness of the phenomenon of terrorism and the dangers it poses to the stability and security of States;

Desirous of strengthening cooperation among Member States in order to forestall and combat terrorism;

Reaffirming the legitimate right of peoples for self-determination and independence pursuant to the principles of international law and the provisions of the Charters of the Organization of African United Nations as well as the African Charter on Human and People's Rights;

Concerned that the lives of innocent women and children are most adversely affected by terrorism;

Convinced that terrorism constitutes a serious violation of human rights and, in particular, the rights to physical integrity, life, freedom and security, and impedes socio-economic development through destabilization of States;

Convinced further that terrorism cannot be justified under any circumstances and, consequently, should be combated in all its forms and manifestations, including those in which States are involved directly or indirectly, without regard to its origin, causes and objectives.

Aware of the growing links between terrorism and organized crime, including the illicit traffic of arms, drugs and money laundering;

Determined to eliminate terrorism in all its forms and manifestations;

HAVE AGREED AS FOLLOWS:

PART 1

SCOPE OF APPLICATION

Article 1

For the purposes of this Convention:

1. "Convention" means the OAU Convention on the Prevention and Combating of Terrorism.
1. "State Party" means any Member State of the Organization of African Unity which has ratified or acceded to this Convention and has deposited its instrument of ratification or accession with the Secretary General of the Organization of African Unity.
1. "Terrorist act" means:
 - a) Any act which is a violation of the criminal laws of a State Party and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, any number or group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to
 - I. Intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act, or to adopt or abandon a particular standpoint, or to act according to certain principles; or
 - I. Disrupt any public service, the delivery of any essential service to the public or to create a public emergency; or
 - I. Create general insurrection in a State.
 - a) Any promotion, sponsoring, contribution to, command, aid, incitement, encouragement, attempt, threat, conspiracy, organizing, or procurement of any person, with the intent to commit any act referred to in paragraph (a) (i) to (iii).

Article 2

States Parties undertake to:

- (a) Review their national laws and establish criminal offences for terrorist acts as defined in this Convention and make such acts punishable by appropriate penalties that take into account the grave nature of such offences;

- (a) Consider, as a matter of priority, the signing or ratification of, or accession to, the international instruments listed in the Annexure, which they have not yet signed, ratified or acceded to; and
- (a) Implement the actions, including enactment of legislation and the establishment as criminal offences of certain acts as required in terms of the international instruments referred to in paragraph (b) and that States have ratified and acceded to and make such acts punishable by appropriate penalties which take into account the grave nature of those offences;
- (a) Notify the Secretary General of the OAU of all the legislative measures it has taken and the penalties imposed on terrorist acts within one year of its ratification of, or accession to, the Convention.

Article 3

1. Notwithstanding the provisions of Article 1, the struggle waged by peoples in accordance with the principles of international law for their liberation or self-determination, including armed struggle against colonialism, occupation, aggression and domination by foreign forces shall not be considered as terrorist acts.
2. Political, philosophical, ideological, racial, ethnic, religious or other motives shall not be a justifiable defence against a terrorist act.

PART II AREAS OF COOPERATION

Article 4

1. State Parties undertake to refrain from any acts aimed at organizing, supporting, financing, committing or inciting to commit terrorist acts, or providing havens for terrorists, directly or indirectly, including the provision of weapons and their stockpiling in their countries and the issuing of visas and travel documents.
2. States Parties shall adopt any legitimate measures aimed at preventing and combating terrorists acts in accordance with the provisions of this Convention and their respective national legislation, in particular, they shall do the following:
 - (a) Prevent their territories from being used as a base for the planning, organization or execution of terrorists acts or for the participation or collaboration in these acts in any form whatsoever;
 - (a) Develop and strengthen methods of monitoring and detecting plans or activities aimed at the illegal cross-border transportation, importation, export, stockpiling and use of arms, ammunition and explosives and other materials and means of committing terrorist acts;

- (a) Develop and strengthen methods of controlling and monitoring land, sea and air borders and customs and immigration check points in order to pre-empt any infiltration by individuals or groups involved in the planning, organization and execution of terrorist acts;
- (a) Strengthen the protection and security of persons, diplomatic and consular missions, premises or regional and international organizations accredited to a State Party, in accordance with the relevant conventions and rules of international law;
- (a) Promote the exchange of information and expertise on terrorist acts and establish data bases for the collection and analysis of information and data on terrorist elements, groups, movements and organizations;
- (a) Take all necessary measures to prevent the establishment of terrorist support networks in any form whatsoever;
- (a) Ascertain, when granting asylum, that the asylum seeker is not involved in any terrorist act;
- (a) Arrest the perpetrators of terrorist acts and try them in accordance with national legislation, or extradite them in accordance with the provisions of this Convention or extradition treaties concluded between the requesting State and the requested State and, in the absence of a treaty, consider facilitating the extradition of persons suspected of having committed terrorist acts; and
- (a) Establish effective co-operation between relevant domestic security officials and services and the citizens of the States Parties in a bid to enhance public awareness of the scourge of terrorist acts and the need to combat such acts, by providing guarantees and incentives that will encourage the population to give information on terrorist acts or other acts which may help to uncover such acts and arrest their perpetrators.

Article 5

States Parties shall co-operate among themselves in preventing and combating terrorist acts in conformity with national legislation and procedures of each State in the following areas:

1. States Parties undertake to strengthen the exchange of information among them regarding:
 - (a) Acts and crimes committed by terrorist groups, their leaders and elements, their headquarters and training camps, their means and sources of funding and acquisition of arms, the types or arms, ammunition and explosives used, and other means in their possession;

- (a) The communication and propaganda methods and techniques used by the terrorist groups, the behaviour of these groups, the movement of the leaders and elements, as well as their travel documents.
2. States Parties undertake to exchange any information that leads to:
 - (a) The arrest of any person charged with a terrorist act against the interest of a State Party or against its nationals, or attempted to commit such an act or participated in it as an accomplice or an instigator;
 - (a) The seizure and confiscation of any type of arms, ammunition, explosives, devices or funds or other instrumentalities of crime used to commit a terrorist act or intended for that purpose.
 3. State Parties undertake to respect the confidentiality of the information exchanged among them and not to provide such information to another State that is not party to this Convention, or to a third State Party, without the prior consent of the State from where such information originated.
 4. States Parties undertake to promote co-operation among themselves and to help each other with regard to procedures relating to the investigation and arrest of persons suspected of, charged with or convicted of terrorist acts, in conformity with the national law of each State.
 5. States Parties shall co-operate among themselves in conducting and exchanging studies and researches on how to combat terrorist acts and to exchange expertise relating to control of terrorist acts.
 6. State Parties shall co-operate among themselves, where possible, in providing any available technical assistance in drawing up programmes or organizing, where necessary and for the benefit of their personnel, joint training courses involving one or several States Parties in the area of control of terrorist acts, in order to improve their scientific, technical and operational capacities to prevent and combat such acts.

PART III STATE JURISDICTION

Article 6

1. Each State Party has jurisdiction over terrorist acts as defined in Article 1 when:
 - (a) The act is committed in the territory of that State and the perpetrator of the act is arrested in its territory or outside it if this punishable by its national law;
 - (a) The act is committed on board a vessel or a ship flying the flag of that State or an aircraft which is registered under the laws of that State at the time the offence is committed; or
 - (a) The act is committed by a national or a group or nationals of that State.

2. A State Party may also establish its jurisdiction over any such offence when:
 - (a) The act is committed against a national of that State; or
 - (a) The act is committed against a State or government facility of that State abroad, including an embassy or other diplomatic or consular premises, and any other property, of that State;
 - (a) The act is committed by a stateless person who has his or her habitual residence in the territory of that State; or
 - (a) The act is committed on board an aircraft which is operated by any carrier of that State; and
 - (a) The act is committed against the security of the State Party.
3. Upon ratifying or acceding to this Convention, each State Party shall notify the Secretary General of the Organization of African Unity of the jurisdiction it has established in accordance with paragraph 2 under its national law. Should any change take place, the State Party concerned shall immediately notify the Secretary General?
4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the acts set forth in Article 1 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties which have established their jurisdiction in accordance with paragraphs 1 or 2.

Article 7

1. Upon receiving information that a person who has committed or who is alleged to have committed any terrorist act as defined in Article 1 may be present in its territory, the State Party concerned shall take such measures as may be necessary under its national law to investigate the facts contained in the information.
2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its national law so as to ensure that person's presence for the purpose of prosecution.
3. Any person against whom the measures referred to in paragraph 2 are being taken shall be entitled to:
 - (a) Communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled, to protect that person's rights or, if that person is a stateless person, the State in whose territory that person habitually resides;
 - (a) Be visited by a representative of that State;

- (a) Be assisted by a lawyer of his or her choice;
 - (a) Be informed of his or her rights under sub-paragraphs (a), (b) and (c).
4. The rights referred to in paragraph 3 shall be exercised in conformity with the national law of the State in whose territory the offender or alleged offender is present; subject to the provision that the said laws must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 are intended.

PART IV
EXTRADITION
Article 8

1. Subject to the provision of paragraphs 2 and 3 of this article, the States Parties shall undertake to extradite any person charged with or convicted of any terrorist act carried out on the territory of another State Party and whose extradition is requested by one of the States Parties in conformity with the rules and conditions provided for in this Convention or under extradition agreements between the States Parties and within the limits of their national laws.
2. Any State Party may, at the time of the deposit of its instrument of ratification or accession, transmit to the Secretary General of the OAU the grounds on which extradition may not be granted and shall at the same time indicate the legal basis in its national legislation or international conventions to which it is a party which excludes such extradition. The Secretary General shall forward these grounds to the State Parties.
3. Extradition shall not be granted if final judgement has been passed by a component authority of the requested State upon the person in respect of the terrorist act or acts for which extradition is requested. Extradition may also be refused if the competent authority of the requested State has decided either not to institute or terminate proceedings in respect of the same act or acts.
4. A State Party in whose territory an alleged offender is present shall be obliged, whether or not the offence was committed in its territory, to submit the case without undue delay to its component authorities for the purpose of prosecution if it does not extradite that person.

Article 9

Each State Party undertakes to include as an extraditable offence any terrorist act as defined in Article 1, in any extradition treaty existing between any of the State Parties before or after the entry into force of this Convention.

Article 10

Exchange of extradition requests between the States Parties to this Convention shall be affected directly either through diplomatic channels or other appropriate organs in the concerned States.

Article 11

Extradition requests shall be in writing, and shall be accompanied in particular by the following:

- (a) An original or authenticated copy of the sentence, warrant of arrest or any order or other judicial decision made, in accordance with the procedures laid down in the laws of the requesting State;
- (a) A statement describing the offences for which extradition is being requested, indicating the date and place of its commission, the offence committed, any convictions made and a copy of the provisions of the applicable law; and
- (a) As comprehensive a description as possible of the wanted person together with any other information which may assist in establishing the person's identity and nationality.

Article 12

In urgent cases, the competent authority of the State making the extradition may, in writing, request that the State seized of the extradition request arrest the person in question provisionally. Such provisional arrest shall be for a reasonable period in accordance with the national law of the requested State.

Article 13

1. Where a State Party receives several extradition requests from different States Parties in respect of the same suspect and for the same or different terrorist acts, it shall decide on these requests having regard to all the prevailing circumstances, particularly the possibility of subsequent extradition, the respective dates of receipt of the requests, and the degree of seriousness of the crime.
2. Upon agreeing to extradite, States Parties shall seize and transmit all funds and related materials purportedly used in the commission of the terrorist act to the requesting State as well as relevant incriminating evidence.
3. Such funds, incriminating evidence and related materials, upon confirmation of their use in the terrorist act by the requested State, shall be transmitted to the requesting State even if, for reasons of death or escape of the accused, the extradition in question cannot take place.
4. The provisions in paragraphs 1, 2 and 3 of this Article shall not affect the rights of any of the States Parties or bona fide third Parties regarding the materials or revenues mentioned above.

PART V
EXTRA-TERRITORIAL INVESTIGATIONS (COMMISSION ROGATOIRE) AND MUTUAL LEGAL ASSISTANCE
Article 14

1. Any State Party may, while recognizing the sovereign rights of States Parties in matters or criminal investigation, request any other State Party to carry out, with its assistance and cooperation, on the latter's territory, criminal investigations related to any judicial proceedings concerning alleged terrorist acts and, in particular:
 - (a) The examination of witnesses and transcripts of statements made as evidence;
 - (a) The opening of judicial information;
 - (a) The initiation of investigation processes;
 - (a) The collection of documents and recordings or, in their absence, authenticated copies thereof;
 - (a) Conducting inspections and tracing of assets for evidentiary purposes;
 - (a) Executing searches and seizures; and
 - (a) Service of judicial documents.

Article 15

A commission rogatoire may be refused:

- (a) Where each of the States Parties has to execute a commission rogatoire relating to the same terrorist acts;
- (a) If that request may affect efforts to expose crimes, impede investigations or the indictment of the accused in the country requesting the commission rogatoire; or
- (a) If the execution of the request would affect the sovereignty of the requested State, its security or public order.

Article 16

The extra-territorial investigation (commission rogatoire) shall be executed in compliance with the provisions of national laws of the requested State. The request for an extra-territorial investigation (commission rogatoire) relating to a terrorist act shall not be rejected on the grounds of the principle of confidentiality of bank operations or financial institutions, where applicable.

Article 17

The States Parties shall extend to each other the best possible mutual police and judicial assistance for any investigation, criminal prosecution or extradition proceedings relating to the terrorist acts as set forth in this Convention.

Article 18

The States Parties undertake to develop, if necessary, especially by concluding bilateral and multilateral agreements and arrangements, mutual legal assistance procedures aimed at facilitating and speeding up investigations and collecting evidence, as well as cooperation between law enforcement agencies in order to detect and prevent terrorist acts.

PART VI
FINAL PROVISIONS
Article 19

1. This Convention shall be open to signature, ratification or accession by the Member States of the Organization of African Unity.
2. The instruments of ratification or accession to the present Convention shall be deposited with the Secretary General of Organization of African Unity.
3. The Secretary General of the Organization of African Unity shall inform Member States of the Organization of the deposit of each instrument of ratification or accession.
4. No State Party may enter a reservation, which is incompatible with the object and purposes of this Convention.
5. No State Party may withdraw from this Convention except on the basis of a written request addressed to the Secretary General of the Organization of African Unity. The withdrawal shall take effect six months after the date of receipt of the written request by the Secretary General of the Organization of African Unity.

Article 20

1. This Convention shall enter into force thirty days after the deposit of the fifteenth instrument of ratification with the Secretary General of the Organization of African Unity.
2. For each of the States that shall ratify or accede to this Convention shall enter into force thirty days after the date of the deposit by that State Party of its instrument of ratification or accession.

Article 21

1. Special protocols or agreements may, if necessary, supplement the provisions of this Convention.
2. This Convention may be amended if a State Party makes a written request to that effect to the Secretary General of the Organization of African Unity. The Assembly of Heads of State and Government may only consider the proposed amendment after all the States Parties have been duly informed of it at least three months in advance.
3. The amendment shall be approved by a simple majority of the State Parties. It shall come into force for each State, which has accepted it in accordance with its constitutional procedures three months after the Secretary General has received notice of the acceptance.

Article 22

1. Nothing in this Convention shall be interpreted as derogating from the general principles of international law, in particular the principles of international humanitarian law, as well as the African Charter on Human and Peoples' Rights.
2. Any dispute that may arise between the States Parties regarding the interpretation or application of this Convention shall be amicably settled by direct agreement between them. Failing such settlement, any one of the State Parties may refer the dispute to the International Court of Justice in conformity with the Statute of the Court or by arbitration by other States Parties to this Convention.

Article 23

The original of this Convention, of which the Arabic, English, French and Portuguese texts are equally authentic, shall be deposited with the Secretary General of the Organization of African Unity.

ANNEX LIST OF INTERNATIONAL INSTRUMENTS

- (a) Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft of 1963;
- (a) Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 1971 and the Protocol thereto of 1984;
- (a) New York Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents of 1973;
- (a) International Convention against the Taking of Hostages of 1979;

- (a) Convention on the Physical Protection of Nuclear Material of 1979;
- (a) United Nations Convention on the Law of the Sea of 1982;
- (a) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 1988;
- (a) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf of 1988;
- (a) Convention for the Suppression of Unlawful Acts against Maritime Navigation of 1988;
- (a) Convention on the Marking of Plastic Explosives of 1991;
- (a) International Convention for the Suppression of Terrorist Explosive Bombs of 1997;
- (a) Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction of 1997.

Annex III: The SADC Declaration and Treaty, 1999 (Selected Articles (4,5,12,21,22))

DECLARATION AND TREATY OF SADC July 17, 1992, Windhoek, Namibia

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PREAMBLE

WE, the Heads of State or Government of:

The People's Republic of Angola
 The Republic of Botswana
 The Kingdom of Lesotho
 The Republic of Malawi
 The Republic of Mozambique
 The Republic of Namibia
 The Kingdom of Swaziland
 The United Republic of Tanzania
 The Republic of Zambia
 The Republic of Zimbabwe

HAVING REGARD to the objectives set forth in "Southern Africa: Toward Economic Liberation - A Declaration by the Governments of Independent States of Southern Africa, made at Lusaka, on the 1st April, 1980";

IN PURSUANCE of the principles of "Towards a Southern African Development Community - A Declaration made by the Heads of State or Government of Southern Africa at Windhoek, in August, 1992," which affirms our commitment to establish a Development Community in the Region;

DETERMINED to ensure, through common action, the progress and well being of the people of Southern Africa;

CONSCIOUS of our duty to promote the interdependence and integration of our national economies for the harmonious, balanced and equitable development of the Region;

CONVINCED of the need to mobilise our own and international resources to promote the implementation of national, interstate and regional policies, programmes and projects within the framework for economic integration;

DEDICATED to secure, by concerted action, international understanding, support and co-operation;

MINDFUL of the need to involve the people of the Region centrally in the process of development and integration, particularly through the guarantee of democratic rights, observance of human rights and the rule of law;

RECOGNISING that, in an increasingly interdependent world, mutual understanding, good neighbourliness, and meaningful co-operation among the countries of the Region are indispensable to the realisation of these ideals;

TAKING INTO ACCOUNT the Lagos Plan of Action and the Final Act of Lagos of April 1980, and the Treaty establishing the African Economic Community signed at Abuja, on the 3rd of June, 1991;

BEARING IN MIND the principles of international law governing relation between States;

Have decided to establish an international organisation to be known as the Southern African Development Community (SADC), and hereby agree as follows:

ARTICLE 4 PRINCIPLES

SADC and its Member States shall act in accordance with the following principles:

- a) Sovereign equality of all Member States;
- b) Solidarity, peace and security;
- c) Human rights, democracy, and the rule of law;
- d) Equity, balance and mutual benefit;
- e) Peaceful settlement of disputes.

ARTICLE 5 OBJECTIVES

1. The objectives of SADC shall be to:

- a) Achieve development and economic growth, alleviate poverty, enhance the standard and quality of life of the people of Southern Africa and support the socially disadvantaged through regional integration;
- b) Evolve common political values, systems and institutions;
- c) Promote and defend peace and security;
- d) Promote self-sustaining development on the basis of collective self-reliance, and the interdependence of Member States;
- e) Achieve complementarity between national and regional strategies and programmes;
- f) Promote and maximise productive employment and utilisation of resources of the Region;
- g) Achieve sustainable utilisation of natural resources and effective protection of the environment;
- h) Strengthen and consolidate the long-standing historical, social and cultural affinities and links among the people of the Region.

2. In order to achieve the objectives set out in paragraph 1 of this Article, SADC shall:

- a) Harmonise political and socio-economic policies and plans of Member States;
- b) Encourage the people of the Region and their institutions to take initiatives to develop economic, social and cultural ties across the Region, and to participate fully in the implementation of the programmes and projects of SADC;
- c) Create appropriate institutions and mechanisms for the mobilisation of requisite resources for the implementation of programmes and operations of SADC and its Institutions;
- d) Develop policies aimed at the progressive elimination of obstacles to the free movement of capital and labour, goods and services, and of the people of the Region generally, among Member States;
- e) Promote the development of human resources;
- f) Promote the development, transfer and mastery of technology;
- g) Improve economic management and performance through regional co-operation;
- h) Promote the coordination and harmonisation of the international relations of Member States;
- i) Secure international understanding, co-operation and support, and mobilise the inflow of public and private resources into the Region;
- j) Develop such other activities as Member States may decide in furtherance of the objectives of this Treaty.

ARTICLE 12 COMMISSIONS

1. Commissions shall be constituted to guide and coordinate co-operation and integration policies and programmes in designated sectoral areas.
2. The composition, powers, functions, procedures and other matters related to each Commission shall be prescribed by an appropriate protocol approved by the Summit.
3. The Commissions shall work closely with the Secretariat.
4. Commissions shall be responsible and report to the Council.

ARTICLE 21
AREAS OF CO-OPERATION

1. Member States shall cooperate in all areas necessary to foster regional development and integration on the basis of balance, equity and mutual benefit.
2. Member States shall, through appropriate institutions of SADC, coordinate, rationalise and harmonise their overall macro-economic and sectoral policies and strategies, programmes and projects in the areas of co-operation.
3. In accordance with the provisions of this Treaty, Member States agree to co-operate in the areas of:
 - a) Food security, land and agriculture;
 - b) Infrastructure and services;
 - c) Industry, trade, investment and finance;
 - d) Human resources development, science and technology;
 - e) Natural resources and environment;
 - f) Social welfare, information and culture; and
 - g) Politics, diplomacy, international relations, peace and security.
4. Additional areas of co-operation may be decided upon by the Council.

ARTICLE 22
PROTOCOLS

1. Member States shall conclude such Protocols as may be necessary in each area of co-operation, which shall spell out the objectives and scope of, and institutional mechanisms for, co-operation and integration.
2. Each Protocol shall be approved by the Summit on the recommendation of the Council, and shall thereafter become an integral part of this Treaty.
3. Each Protocol shall be subject to signature and ratification by the parties thereto.

IN WITNESS WHEREOF, WE, the Heads of State or Government have signed this Treaty.

DONE AT Windhoek, on 17th Day of August 1992 in two (2) original texts in the English and Portuguese languages, both texts being equally authentic.

Annex IV: Status of Conventions Relevant to Terrorism in SADC and Kenya

STATUS OF CONVENTIONS RELEVANT TO TERRORISM IN SADC AND KENYA¹⁷³

Summaries of the multilateral treaties deposited with the Secretary-General

1. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, New York, 14 December 1973

The Convention applies to the crimes of direct involvement or complicity in the murder, kidnapping, or attack, whether actual, attempted or threatened, on the person, official premises, private accommodation or means of transport of diplomatic agents and other "internationally protected persons". Internationally protected persons are defined as Heads of State or Government, Ministers for Foreign Affairs, State officials and representatives of international organizations entitled to special protection in a foreign State, and their families.

States Parties have obligations to establish their jurisdiction over the offences described, make the offences punishable by appropriate penalties, take alleged offenders into custody, prosecute or extradite alleged offenders, cooperate in preventive measures, and exchange information and evidence needed in related criminal proceedings. The offences referred to in the Convention are deemed to be extraditable offences between States Parties under existing extradition treaties, and under the Convention itself.

CLOSED for Signature

2. International Convention against the Taking of Hostages, New York, 17 December 1979

The Convention applies to the offence of direct involvement or complicity in the seizure or detention of, and threat to kill, injure or continue to detain a hostage, whether actual or attempted, in order to compel a State, an international intergovernmental organization, a person or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage.

Each State Party is required to make this offence punishable by appropriate penalties. Where hostages are held in the territory of a State Party, the State Party is obligated to take all measures it considers appropriate to ease the situation of the hostages and secure their release. After the release of the hostages, States Parties are obligated to facilitate the departure of the hostages. Each State Party is obligated to take such actions as may be necessary to establish jurisdiction over the offence of taking of hostages.

States Parties have obligations to establish their jurisdiction over the offences described, make the offences punishable by appropriate penalties, take alleged offenders into custody, prosecute or extradite alleged offenders, cooperate in preventive measures, and exchange information and evidence needed in related criminal proceedings. The offences referred to in the Convention are

¹⁷³ <http://untreaty.un.org/English/tersumen.htm#1>

deemed to be extraditable offences between States Parties under existing extradition treaties, and under the Convention itself.

CLOSED for Signature

3. International Convention for the Suppression of Terrorist Bombings, New York, 15 December 1997

The Convention applies to the offence of the intentional and unlawful delivery, placement, discharge or detonation of an explosive or other lethal device, whether attempted or actual, in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility, with the intent to cause death or serious bodily injury, or extensive destruction likely to or actually resulting in major economic loss. Any person also commits an offence if that person participates as an accomplice in any of these acts, organizes others to commit them or in any other way contributes to their commission. The Convention does not apply where an act of this nature does not involve any international elements as defined by the Convention.

States Parties are required to establish jurisdiction over and make punishable, under their domestic laws, the offences described, to extradite or submit for prosecution persons accused of committing or aiding in the commission of the offences, and to assist each other in connection with criminal proceedings under the Convention. The offences referred to in the Convention are deemed to be extraditable offences between States Parties under existing extradition treaties, and under the Convention itself.

CLOSED for Signature

4. International Convention for the Suppression of the Financing of Terrorism, New York, 9 December 1999

The Convention applies to the offence of direct involvement or complicity in the intentional and unlawful provision or collection of funds, whether attempted or actual, with the intention or knowledge that any part of the funds may be used to carry out any of the offences described in the Conventions listed in the Annex, or an act intended to cause death or serious bodily injury to any person not actively involved in armed conflict in order to intimidate a population, or to compel a government or an international organization to do or abstain from doing any act. The provision or collection of funds in this manner is an offence whether or not the funds are actually used to carry out the proscribed acts. The Convention does not apply where an act of this nature does not involve any international elements as defined by the Convention.

The Convention requires each State Party to take appropriate measures, in accordance with its domestic legal principles, for the detection and freezing, seizure or forfeiture of any funds used or allocated for the purposes of committing the offences described. The offences referred to in the Convention are deemed to be extraditable offences and States Parties have obligations to establish their jurisdiction over the offences described, make the offences punishable by appropriate penalties, take alleged offenders into custody, prosecute or extradite alleged offenders, cooperate in preventive measures and countermeasures, and exchange information and evidence needed in related criminal proceedings. The offences referred to in the Convention are deemed to

be extraditable offences between States Parties under existing extradition treaties, and under the Convention itself.

OPEN for Signature until 31 December 2001

Summaries of the multilateral treaties deposited with other depositaries

5. Convention on Offences and Certain Other Acts Committed on Board Aircraft, Tokyo, 14 September 1963 (*)

The Convention applies to offences and other acts prejudicial to good order and discipline on board an aircraft, committed while the aircraft is in flight or on the surface of the high seas or of any other area outside the territory of any State. It does not apply to State aircraft, for example, aircraft used in military, customs and police services. The purpose of the Tokyo Convention is to protect the safety of the aircraft and of the persons or property thereon and to maintain good order and discipline on board. The aircraft commander, members of the crew and, in specific circumstances, even passengers on board, are empowered to prevent the commission of such acts and to disembark the person concerned. The aircraft commander may also disembark the offender or, if the offence is serious, deliver him to the competent authorities of a Contracting State when the aircraft lands. The Convention protects the aircraft commander and any crew member or passenger assisting him in imposing the measures he finds necessary from any proceedings in respect of actions taken by them.

The State of registration of the aircraft is competent to exercise jurisdiction over offences and acts committed on board. Each Contracting State is obliged to take the necessary measures to establish its jurisdiction as the State of registration. The Convention does not eliminate existing or future jurisdiction in States other than the State of registration. A Contracting State which is not the State of registration may not interfere with an aircraft in flight in order to exercise its criminal jurisdiction over an offence committed on board except in certain cases, for instance, the offence has been effected in the territory of the State overflown, the offence has been committed by or against a national or permanent resident of that State, and the offence is against the security of that State.

6. Convention for the Suppression of Unlawful Seizure of Aircraft, The Hague, 16 December 1970 (*)

The Convention defines the act of unlawful seizure of aircraft, and the Contracting States have undertaken to make such an offence punishable by severe penalties. Under the provisions of The Hague Convention a State is obliged, whether or not it is the State of registration, to take such measures as may be necessary to establish its jurisdiction over the offence in the case where the alleged offender is present in its territory and it does not extradite him. If there is no extradition treaty between the States concerned and the offender is in the territory of a Contracting State and that State refuses to extradite the offender, then it must submit the case to its competent authorities for the purpose of prosecution under its criminal law.

The Convention requires any Contracting State in which the aircraft or its passengers or crew are present to facilitate the continuation of the journey of the passengers and crew as soon as possible and to return the aircraft and its cargo to the persons lawfully entitled to possession without delay.

7. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Montreal, 23 September 1971 (*)

The Convention deals with acts other than those covered by the Tokyo and The Hague Conventions. The Montreal Convention defines a wide spectrum of unlawful acts against the safety of civil aviation and the Contracting States have undertaken to make these offences punishable by severe penalties. The Convention contains detailed provisions on jurisdiction, custody, prosecution and extradition of the alleged offender similar to those of The Hague Convention. Like the Tokyo and The Hague Conventions, the Montreal Convention does not apply to aircraft used in military, customs or police services. This Convention attempts to establish a form of universal jurisdiction over the offender, as provided in Article 5(1) of the Convention. The scope of the Convention is primarily determined in terms of the "international element" provided in Article 1, sub-paragraphs 1(a), (b), (c), (d) and (e). The Convention applies, irrespective of whether the aircraft is engaged in international or domestic flight, only as provided in Article 4(2) of the Convention, namely, if:

- a. The place of take-off or landing, actual or intended, of the aircraft is situated outside the territory of the State of registration of the aircraft; or
- b. The offence is committed in the territory of a State other than the State of registration of the aircraft.

In the case of air navigation facilities mentioned in Article 1, sub-paragraph 1(d), the Convention applies only if the facilities destroyed, damaged, or interfered with are used in international air navigation.

8. Convention on the Physical Protection of Nuclear Material, Vienna, 3 March 1980 ()**

The Physical Protection Convention has a twofold objective: it establishes levels of physical protection required to be applied to nuclear material used for peaceful purposes while in international nuclear transport and it also provides for measures against unlawful acts with respect to such material while in international nuclear transport as well as in domestic use, storage and transport.

Although the levels of physical protection prescribed in the Convention are required to be applied only to nuclear material used for peaceful purposes while in international nuclear transport, other provisions of the Convention (e.g., the requirements that relate to making specified acts punishable offences under national law, to establishing jurisdiction over those offences and to prosecuting or extraditing alleged offenders) apply also to nuclear material used for peaceful purposes while in domestic use, storage and transport. Accordingly, States Parties to the Convention are obliged to make punishable under their national law the intentional commission of offences with respect to nuclear material as listed in its Article 7, in particular, intentional commission of: acts without lawful authority dealing with nuclear material causing or likely to cause death or serious injury or damage to any person or property; theft or robbery of nuclear material; embezzlement or fraudulent

obtaining of nuclear material; demands for nuclear material by any form of intimidation; threats to use nuclear material to cause death or serious injury or damage to any person or property; or threats to steal nuclear material to compel a person, international organization or State to do or refrain from doing any act. The Convention also contains specific rules on jurisdiction and extradition.

9. Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Montreal, 24 February 1988 (*)

The Protocol adds to the definition of "offence" given in the Montreal Convention of 1971 unlawful and intentional acts of violence against persons at an airport serving international civil aviation which cause or are likely to cause serious injury or death and such acts which destroy or seriously damage the facilities of such an airport or aircraft not in service located thereon or disrupt the services of the airport; the qualifying element of these offences is the fact that such an act endangers or is likely to endanger safety at that airport. These offences are punishable by severe penalties, and Contracting States are obliged to establish jurisdiction over the offences not only in the case where the offence was committed in their territory but also in the case where the alleged offender is present in their territory and they do not extradite him to the State where the offence took place.

10. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, Rome, 10 March 1988

The Convention applies to the offences of direct involvement or complicity in the intentional and unlawful threatened, attempted or actual endangerment of the safe navigation of a ship by the commission of any of the following acts: seizure of or exercise of control over a ship by any form of intimidation; violence against a person on board a ship; destruction of a ship or the causing of damage to a ship or to its cargo; placement on a ship of a device or substance which is likely to destroy or cause damage to that ship or its cargo; destruction of, serious damaging of, or interference with maritime navigational facilities; knowing communication of false information; injury to or murder of any person in connection with any of the preceding acts. The Convention applies to ships navigating or scheduled to navigate into, through or from waters beyond the outer limit of the territorial sea of a single State, or the lateral limits of its territorial sea with adjacent States, or when the alleged offender is found in the territory of a State Party.

The Convention does not apply to warships, ships owned or operated by a State when being used as a naval auxiliary or for customs or police purposes or ships that have been withdrawn from navigation or laid up.

The offences referred to in the Convention are deemed to be extraditable offences and States-parties have obligations to establish their jurisdiction over the offences described, make the offences punishable by appropriate penalties, take alleged offenders into custody, prosecute or extradite alleged offenders, cooperate in preventative measures, and exchange information and evidence needed in related criminal proceedings.

11. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, Rome, 10 March 1988

The Protocol applies to the offences described in the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation when committed in relation to a "fixed platform", defined as an artificial island, installation or structure permanently attached to the sea-bed for the purpose of exploration or exploitation of resources or for other economic purposes.

States-parties have obligations in relation to establishing their jurisdiction over the offences described, making the offences punishable by appropriate penalties, taking alleged offenders into custody and prosecuting or extraditing them.

12. Convention on the Marking of Plastic Explosives for the Purpose of Detection, Montreal, 1 March 1991 (*)

The Convention requires each State Party to prohibit and prevent the manufacture in its territory of unmarked plastic explosives. Plastic explosives will be marked by introducing during the manufacturing process any one of the detection agents defined in the Technical Annex to the Convention. The Convention also requires each State Party to prohibit and prevent the movement into or out of its territory of unmarked explosives and to exercise strict and effective control over the possession of any existing stocks of unmarked explosives. Stocks of plastic explosives not held by authorities performing military and police functions are to be destroyed or consumed for purposes not inconsistent with the objectives of the Convention, marked or rendered permanently ineffective, within a period of three years from the entry into force of the Convention in respect of the State concerned.

The Convention also establishes an International Explosives Technical Commission, experts in the field of manufacture or detection of, or research in, explosives. The Commission will evaluate technical developments relating to the manufacture, marking and detection of explosives, report its findings, through the Council of ICAO, to all States Parties and international organizations concerned, and propose amendments to the Technical Annex to the Convention, as required.

(*) Summary courtesy of ICAO

(**) Summary courtesy of IAEA

1. OAU/IAU CONVENTION ON THE PREVENTION AND COMBATING OF TERRORISM, ALGIERS, 14 JULY 1999¹⁷⁴

Entry into force: Convention entered into force on 6 December 2002.
Status: 178 Parties.
Depository: United Nations 23 July 2003

State	Date of Signature	Ratification	Date Deposited
Angola	26 August 1999	20 August 1999	17 Dec 2001
Botswana	14 July 1999	-	-
DRC	9 September 1999	-	-
Lesotho	14 July 1999	6 March 2002	14 March 2002
Kenya	10 December 2001	28 Nov 2001	10 Dec 2001
Malawi	-	23 June 2003	4 July 2003
Mauritius	-	27 Jan 2003	21 Feb 2003
Mozambique	14 July 1999	21 October 2002	3 January 2003
Namibia	14 July 1999	-	-
Seychelles	9 July 2003	17 July 2003	5 August 2003
South Africa	14 July 1999	7 Nov 2002	18 Nov 2002
Swaziland	14 July 1999	-	-
Tanzania	14 July 1999	3 Sept 2003	23 Sept 2003
Zambia	-	-	-
Zimbabwe	-	-	-

2. CONVENTION ON OFFENCES AND CERTAIN OTHER ACTS COMMITTED ON BOARD AIRCRAFT SIGNED AT TOKYO ON 14 SEPTEMBER 1963¹⁷⁵

Entry into force: Convention entered into force on 4 December 1969.
Status: 178 Parties.

State	Ratification, accession or succession	Effective date
Angola	24 February 1998	25 May 1998
Botswana	16 January 1979	16 April 1979
DRC	20 July 1977	18 October 1977
Lesotho	28 April 1972	27 July 1972
Kenya	22 June 1970	20 September 1970
Malawi (1)	28 December 1972	28 March 1973
Mauritius	5 April 1983	4 July 1983
Mozambique (2)	6 January 2003	6 April 2003
Namibia	-	-
Seychelles	4 January 1979	4 April 1979
South Africa (1)	26 May 1972	24 August 1972
Swaziland	15 November 1999	13 February 2000
Tanzania	-	-
Zambia	14 September 1971	13 December 1971
Zimbabwe	8 March 1989	6 June 1989

¹⁷⁴ http://www.africa-union.org/Official_documents/Treaties accessed on 3 September 2004

¹⁷⁵ See Full text of treaty accessible at <http://www.icao.int/icao/en/leb/Tokyo.htm>

(1) Reservation: Does not consider itself bound by Article 24, paragraph 1, of the Convention

(2) The instrument of accession by Mozambique contained the following declaration in accordance with article 24, paragraph 2 of the Convention: "The Republic of Mozambique does not consider itself bound by the provisions of Article 24, paragraph 1 of the Convention. In this connection, the Republic of Mozambique states that, in each individual case, the consent of all Parties to such a dispute is necessary for the submission of the dispute to arbitration or to the International Court of Justice."

**3. CONVENTION FOR THE SUPPRESSION OF UNLAWFUL SEIZURE OF AIRCRAFT,
SIGNED AT THE HAGUE ON 16 DECEMBER 1970¹⁷⁶**

Entry into force: The Convention entered into force on 14 October 1971.

Status: 177 Parties

State	Signature	Ratification, accession or succession
Angola	-	12 March 1998
Botswana	-	28 December 1978
DRC	-	6 July 1977
Lesotho	-	27 July 1978
Kenya	-	11 January 1977
Malawi (1)	-	21 December 1972
Mauritius	-	25 April 1983
Mozambique (1)	-	16 January 2003
Namibia	-	-
Seychelles	-	29 December 1978
South Africa (1)	16 December 1970	30 May 1972
Swaziland	-	27 December 1999
Tanzania	-	-
Zambia	-	3 March 1987
Zimbabwe	-	6 February 1989

(1) Reservation made with respect to paragraph 1 of Article 12 of the Convention

¹⁷⁶ <http://www.icao.int/icao/en/leb/Hague.htm>

4. CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF CIVIL AVIATION SIGNED AT MONTREAL ON 23 SEPTEMBER 1971¹⁷⁷

Entry into force:	The Convention entered into force on 26 January 1973.	
Status:	180 Parties.	
State	Signature	Ratification, accession or succession
Angola	-	12 March 1998
Botswana	12 October 1972	28 December 1978
DRC	-	6 July 1977
Lesotho	-	27 July 1978
Kenya	-	11 January 1977
Malawi (1)	-	21 December 1972
Mauritius	-	25 April 1983
Mozambique (1)	-	16 January 2003
Namibia	-	-
Seychelles	-	29 December 1978
South Africa (1)	23 September 1971	30 May 1972
Swaziland	-	27 December 1999
Tanzania	-	-
Zambia	-	3 March 1987
Zimbabwe	-	6 February 1989

(1) Reservation made with respect to paragraph 1 of Article 14 of the Convention.

5. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 14 December 1973¹⁷⁸.

Entry into force:	20 February 1977, in accordance with article 17 (1).	
Registration:	20 February 1977, No. 15410.	
Status:	Signatories: 25, Parties: 146.	
State	Signature	Ratification, accession or succession
Angola	-	-
Botswana	-	25 Oct 2000 a
DRC	-	25 Jul 1977 a
Lesotho	-	-
Kenya	-	16 Nov 2001 a
Malawi	-	14 Mar 1977 a
Mauritius	-	24 Sep 2003 a
Mozambique	-	14 Jan 2003 a
Namibia	-	-
Seychelles	-	29 May 1980 a
South Africa	-	23 Sep 2003 a
Swaziland	-	4 Apr 2003 a
Tanzania	-	-
Zambia	-	-
Zimbabwe	-	-

¹⁷⁷ <http://www.icao.int/icao/en/leb/Mtl71.htm>

¹⁷⁸ http://untreaty.un.org/ENGLISH/Status/Chapter_xviii/treaty7.asp Accessed on 1st September 2004

6. International Convention against the taking of hostages, New York, 17 December 1979¹⁷⁹

Entry into force: 3 June 1983, in accordance with article 18(1).
Registration: 3 June 1983, No. 21931.
Status: Signatories: 39, Parties: 138.

The Convention was adopted by resolution 34/1461 of the General Assembly of the United Nations dated 17 December 1979. It was opened for signature from 18 December 1979 to 31 December 1980

State	Signature	Ratification, accession or succession
Angola	-	-
Botswana	-	8 Dec 2000 a
DRC	2 July 1980	-
Lesotho	17 April 1980	5 Nov 1980
Kenya	-	18 Dec 1981 a
Malawi	-	17 March 1986 a
Mauritius	18 June 1980	17 Oct 1980
Mozambique (1)	-	14 Jan 2003 a
Namibia	-	-
Seychelles	-	12 Nov 2003 a
South Africa	-	23 Sept 2003 a
Swaziland	-	4 April 2003 a
Tanzania	-	-
Zambia	-	-
Zimbabwe	-	-

(1) Mozambique

Declaration: "... with the following declaration in accordance with its article 16, paragraph 2: "The Republic of Mozambique does not consider itself bound by the provisions of article 16 paragraph 1 of the Convention. In this connection, the Republic of Mozambique states that, in each individual case, the consent of all Parties to such a dispute is necessary for the submission of the dispute to arbitration or to [the] International Court of Justice." Furthermore, the Republic of Mozambique declares that: "The Republic of Mozambique, in accordance with its Constitution and domestic laws, can not extradite Mozambique citizens. Therefore, Mozambique citizens will be tried and sentenced in national courts."

¹⁷⁹ See full text of the treaty accessible at http://untreaty.un.org/ENGLISH/Status/Chapter_xviii/treaty5.asp

7. **PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS OF VIOLENCE AT AIRPORTS SERVING INTERNATIONAL CIVIL AVIATION, SUPPLEMENTARY TO THE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF CIVIL AVIATION, DONE AT MONTREAL ON 23 SEPTEMBER 1971 SIGNED AT MONTREAL ON 24 FEBRUARY 1988¹⁸⁰**

Entry into force: The Protocol entered into force on 6 August 1989.

Status: 148 Parties.

State	Signature	Ratification, accession or succession	Effective Date
Angola	-	-	-
Botswana	-	15 August 1994	6 March 1992
DRC	24 Feb 1988	-	-
Lesotho	-	-	-
Kenya	-	5 October 1995	4 Nov 1995
Malawi	24 Feb 1988	-	-
Mauritius	28 June 1989	17 August 1989	16 Sept 1989
Mozambique	-	16 January 2003	15 Feb 2003
Namibia	-	-	-
Seychelles	-	21 May 2004	20 June 2004
South Africa	-	21 September 1998	21 Oct 1998
Swaziland	-	-	-
Tanzania	-	-	-
Zambia	-	-	-
Zimbabwe	-	-	-

8. **CONVENTION ON THE MARKING OF PLASTIC EXPLOSIVES FOR THE PURPOSE OF DETECTION DONE AT MONTREAL ON 1 MARCH 1991¹⁸¹**

Entry into force: The Convention entered into force on 21 June 1998.

Status: 109 Parties

State	Signature	Ratification, accession or succession	Effective Date
Angola	-	-	-
Botswana (2)	-	19 September 200 (a)	18 Nov 2000
DRC	-	-	-
Lesotho	-	-	-
Kenya (1)	-	22 October 2002 (a)	21/Dec 2002
Malawi	-	-	-
Mauritius	1 March 1991	-	-
Mozambique	-	-	-
Namibia	-	-	-
Seychelles (2)	-	14 August 2003 (a)	13 Oct 2003
South Africa (1)	-	1 December 1999 (a)	30 Jan 2000
Swaziland (2)	-	13 May 2003 (a)	12 July 2003
Tanzania	-	-	-
Zambia (2)	-	31 May 1995 (a)	21 June 1998
Zimbabwe	-	-	-

¹⁸⁰ <http://www.icao.int/icao/en/leb/Via.htm>

¹⁸¹ <http://www.icao.int/icao/en/leb/MEX.htm>

(1) Declaration, in accordance with Article XIII, paragraph 2, of the Convention, that it is a producer State.

(2) Declaration, in accordance with Article XIII, paragraph 2, of the Convention, that it is not a producer State.

9. International Convention for the Suppression of Terrorist Bombings New York, 15 December 1997¹⁸²

Entry into force: 23 May 2001, in accordance with article 22 which reads as follows: "1. This Convention shall enter into force on the thirtieth day following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations. 2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification, acceptance, approval or accession. 2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification, acceptance, approval or accession."

Registration: 23 May 2001, No. 37517.

Status: Signatories: 58, Parties: 123.

State	Ratification, accession or succession	Effective date
Angola	-	-
Botswana	8 Sep 2000 a	-
DRC	-	-
Lesotho	12 Nov 2001 a	-
Kenya	16 Nov 2001 a	-
Malawi	11 August 2003 a	-
Mauritius	24 January 2003 a	-
Mozambique (1)	14 January 2003 a	-
Namibia	-	-
Seychelles	22 August 2003 a	-
South Africa	21 Dec 1999 (Signatory)	1 May 2003
Swaziland	4 April 2003 a	-
Tanzania	-	-
Zambia	-	-
Zimbabwe	-	-

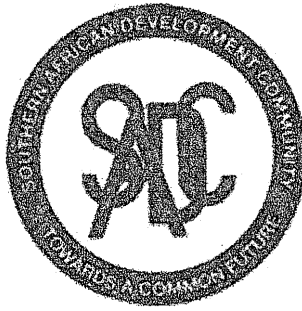
¹⁸² http://untreaty.un.org/ENGLISH/Status/Chapter_xviii/treaty9.asp

Mozambique

(1) Declaration: "... with the following declaration in accordance with its article 20, paragraph 2: "The Republic of Mozambique does not consider itself bound by the provisions of article 20 paragraph 1 of the Convention. In this connection, the Republic of Mozambique states that, in each individual case, the consent of all Parties to such a dispute is necessary for the submission of the dispute to arbitration or to the International Court of Justice". Furthermore, the Republic of Mozambique declares that: "The Republic of Mozambique, in accordance with its Constitution and domestic laws, may not and will not extradite Mozambique citizens. Therefore, Mozambique citizens will be tried and sentenced in national courts".

Annex V: UN Counter Terrorism Committee: Reports from Member States (Extracts)

	SUBMISSION OF CTC REPORTS	PROPOSED LEGISLATION AND OTHER RELEVANT DOCUMENTS
Angola	25 Jan 2002	-
Botswana	27 Dec 2001	-
DRC	24 Jan 2002	-
Lesotho	19 June 2002 19 Mar 2002	National Security Services Act Stock Theft Act
Kenya	31 July 2002	-
Malawi	18 Mar 2002	-
Mauritius	27 Dec 2001 1 Aug 2002 10 Mar 2003 27 Feb 2004	The Prevention of Terrorism (Denial of Bail) Act 2002; The Constitution of Mauritius Act 2002; The Prevention of Terrorism Regulations 2002; The Prevention of Terrorism Regulations 2002; The Dangerous Drugs Act 2000; Civil Aviation (Hijacking and other Offences) Act 1985; Continental Shelf Act 1982; Fire Arms Bill 2002 Financial Intelligence and Anti Money Laundering Act The Constitution Amendment Bill
Mozambique	9 Jan 2002	-
Namibia	10 Jan 2002 25 April 2003 20 Feb 2004	Financial Intelligence Centre Bill Money Laundering Namibia Financial Bill Anti Terrorism Activities Bill
Seychelles	17 April 2003 30 Dec 2003	-
South Africa	8 Jan 2002 19 July 2002 6 March 2003 2 March 2004	Financial Intelligence Diplomatic Immunities Protection of Constitutional Democracy Against Terrorist and Related Activities Bill 2003
Swaziland	17 April 2003	-
Tanzania	17 July 2002	The Prevention of Terrorism Act 2002
Zambia	20 June 2003	Tokyo Convention Explosives Penal Code Mutual Assistance. Immigration Deportation Firearms
Zimbabwe	28 April 2003 1 Aug 2002	-



PROTOCOL ON POLITICS, DEFENCE AND SECURITY **CO-OPERATION**

PREAMBLE

We, the Heads of State or Government of:

**The Republic of Angola
The Republic of Botswana
The Democratic Republic of Congo
The Kingdom of Lesotho
The Republic of Malawi
The Republic of Mauritius
The Republic of Mozambique
The Republic of Namibia
The Republic of Seychelles
The Republic of South Africa
The Kingdom of Swaziland
The United Republic of Tanzania
The Republic of Zambia
The Republic of Zimbabwe**

TAKING COGNISANCE of the decision of SADC to create the ORGAN on Politics, Defence and Security Co-operation which appears in the Gaborone Communiqué of 28th June 1996;

NOTING Article 9 of the Treaty which establishes the Organ;

BEARING IN MIND that Chapter VIII of the UN Charter recognizes the role of regional arrangements in dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action;

RECOGNISING AND RE-AFFIRMING the principles of strict respect for sovereignty, sovereign equality, territorial integrity, political independence, good neighbourliness, interdependence, non-aggression and non-interference in internal affairs of other States;

RECALLING the 1964 resolution of the Assembly of Heads of State and Government of the Organisation of African Unity, declaring that all Member States pledge to respect the borders existing on their achievement of national independence;

FURTHER REAFFIRMING the primary responsibility of the United Nations Security Council in the maintenance of international peace and security, and the role of the Central Organ of the Organisation of African Unity Mechanism for Conflict Prevention, Management and Resolution;

CONVINCED that peace, security and strong political relations are critical factors in creating a conducive environment for regional co-operation and integration;

CONVINCED FURTHER that the Organ constitutes an appropriate institutional framework by which Member States could co-ordinate policies and activities in the area of politics, defence and security;

DETERMINED to achieve solidarity, peace and security in the Region through close cooperation on matters of politics, defence and security;

DESIROUS TO ENSURE that close cooperation on matters of politics, defence and security shall at all times promote the peaceful settlement of disputes by negotiation, conciliation, mediation or arbitration;

ACTING in pursuance of Article 10A of the Treaty;

HEREBY AGREE AS FOLLOWS:

ARTICLE 1

DEFINITIONS

1. In this Protocol terms and expressions defined in Article 1 of the Treaty shall bear the same meaning unless the context otherwise requires.

2. In this Protocol, unless the context otherwise requires:

"Chairperson" means the Chairperson of the Organ;

"ISDSC" means the Inter-State Defence and Security Committee;

"ISPDC" means the Inter-State Politics and Diplomacy Committee.

"Signatory" means a Member State which signs this Protocol;

"State Party" means a Member State that has ratified or acceded to this Protocol.

ARTICLE 2

OBJECTIVES

1. The general objective of the Organ shall be to promote peace and security in the Region.

2. The specific objectives of the Organ shall be to:

a) protect the people and safeguard the development of the Region against instability arising from the breakdown of law and order, intra-state conflict, inter-state conflict and aggression;

b) promote political co-operation among State Parties and the evolution of common political values and institutions;

c) develop common foreign policy approaches on issues of mutual concern and advance such policy collectively in international fora;

d) promote regional co-ordination and co-operation on matters related to security and defence and establish appropriate mechanisms to this end;

e) prevent, contain and resolve inter-and intra-state conflict by peaceful means;

f) consider enforcement action in accordance with international law and as a matter of last resort where peaceful means have failed;

g) promote the development of democratic institutions and practices within the territories of State Parties and encourage the observance of universal human rights as provided for in the Charters and Conventions of the Organisation of African Unity and United Nations respectively;

h) consider the development of a collective security capacity and conclude a Mutual Defence Pact to respond to external military threats;

i) develop close co-operation between the police and state security services of State Parties in order to address :

(i) cross border crime; and

(ii) promote a community based approach to domestic security;

j) observe, and encourage State Parties to implement, United Nations, African Union and other international conventions and treaties on arms control, disarmament and peaceful relations between states;

k) develop peacekeeping capacity of national defence forces and co-ordinate the participation of State Parties in international and regional peacekeeping operations; and

l) enhance regional capacity in respect of disaster management and co-ordination of international humanitarian assistance.

ARTICLE 3

STRUCTURES

1. The Organ shall be an institution of SADC and shall report to the Summit.

2. The Organ shall have the following structures:

a) the Chairperson of the Organ;

b) the Troika;

c) a Ministerial Committee;

d) an Inter-State Politics and Diplomacy Committee (ISPDC);

e) an Inter-State Defence and Security Committee (ISDSC); and

f) such other sub-structures as may be established by any of the ministerial committees.

3. The Troika shall consist of;

(a) the Chairperson of the Organ;

**(b) the Incoming Chairperson who shall be the Deputy Chairperson of the Organ;
and**

(c) the Outgoing Chairperson.

ARTICLE 4

CHAIRPERSON OF THE ORGAN

1. The Summit shall elect a Chairperson and a Deputy Chairperson of the Organ on the basis of rotation from among the members of the Summit except that the Chairperson and the Deputy Chairperson of the Summit shall not simultaneously be the Chairperson of the Organ.

2. The term of office of the Chairperson and Deputy Chairperson of the Organ shall be one year respectively.

3. The Chairperson of the Organ shall consult with the Troika of SADC and report to the Summit.

4. The Chairperson, in consultation with the Troika of SADC, shall be responsible for the overall policy direction and the achievement of the objectives of the Organ.

5. The Chairperson may request reports from any ministerial committee of the Organ on any matter which is within the competence of the committee

6. The Chairperson may request any ministerial committee of the Organ to consider any matter, which is within the competence of the committee.

7. The Chairperson may request the Chairperson of SADC to table for discussion any matter that requires consideration by the Summit.

ARTICLE 5

MINISTERIAL COMMITTEE

1. The Ministerial Committee shall comprise the ministers responsible for foreign affairs, defence, public security and state security from each of the State Parties.

2. The Committee shall be responsible for the co-ordination of the work of the Organ and its structures.

3. The Committee shall report to the Chairperson.

4. The Committee shall be chaired by a Minister from the same country as the Chairperson for a period of one year on a rotation basis.

5. The Chairperson of the Committee shall convene at least one meeting on an annual basis.

6. The Chairperson of the Committee may when necessary convene other meetings of the Ministerial Committee at a request of either ISPDC or ISDSC.

7. The Committee may refer any relevant matter to, and may request reports from, ISPDC and ISDSC.

ARTICLE 6

INTER-STATE POLITICS AND DIPLOMACY COMMITTEE

1. ISPDC shall comprise the ministers responsible for foreign affairs from each of the State Parties.

2. ISPDC shall perform such functions as may be necessary to achieve the objectives of the Organ relating to politics and diplomacy.

3. ISPDC shall report to the Ministerial Committee without prejudice to its obligation to report regularly to the Chairperson.

4. ISPDC shall be chaired by a Minister from the same country as the Chairperson for a period of one year and on a rotation basis.

5. The Chairperson of ISPDC shall convene at least one meeting on an annual basis.

6. The Chairperson of ISPDC may convene such other meetings as he or she deems necessary or as requested by another Minister serving on ISPDC.

7. ISPDC may establish such sub-structures as it deems necessary to perform its functions.

ARTICLE 7

INTER-STATE DEFENCE AND SECURITY COMMITTEE

1. ISDSC shall comprise the ministers responsible for defence, ministers responsible for public security and ministers responsible for state security from each of the State Parties.

2. ISDSC shall perform such functions as may be necessary to achieve the objectives of the Organ relating to defence and security, and shall assume the objectives and functions of the existing Inter-State Defence and Security Committee.

3. ISDSC shall report to the Ministerial Committee without prejudice to its obligation to report regularly to the Chairperson.

4. ISDSC shall be chaired by a Minister from the same country as the Chairperson for a period of one year and on a rotating basis.

5. The Chairperson of ISDSC shall convene at least one meeting on an annual basis.

6. The Chairperson of ISDSC may convene such other meetings as he or she deems necessary or as requested by another minister serving on ISDSC.

7. ISDSC shall retain the Defence, State Security and Public Security Sub-Committees and other subordinate structures of the existing Inter-State Defence and Security Committee.

8. ISDSC may establish such other structures as it deems necessary to perform its functions.

ARTICLE 8

COMMITTEE PROCEDURES

The following provisions shall apply to the ministerial committees of the Organ:

- a) the quorum for all meetings shall be two-thirds of the State Parties;**
- b) the ministerial committees shall determine their own rules of procedure; and**
- c) decisions shall be taken by consensus.**

ARTICLE 9

SECRETARIAT

The SADC Secretariat shall provide secretariat services to the Organ.

ARTICLE 10

CO-OPERATION WITH NON - STATE PARTIES AND INTERNATIONAL ORGANISATIONS

1. In recognition of the fact that political, defence and security matters transcend national and regional boundaries, co-operation agreement on these matters between State Parties and non- State Parties, and between State Parties and organisations, other than SADC, shall be accepted provided that such agreements shall not:

- a) be inconsistent with the objectives and other provisions of the Treaty and this Protocol;**
- b) impose obligations upon a State Party that is not a party to such cooperation agreement, and**
- c) impede a State Party from fulfilling its obligations under the Treaty and this Protocol.**

2. Any agreement between the Organ and a non-State Party, or between the Organ and an international organisation, shall be subject to approval by the Summit.

ARTICLE 11

CONFLICT PREVENTION, MANAGEMENT AND RESOLUTION

1. Obligation of the Organ under International Law

a) In accordance with the Charter of the United Nations, State Parties shall refrain from the threat or use of force against the territorial integrity or political independence of any state, other than for the legitimate purpose of individual or collective self-defence against an armed attack.

b) State Parties shall manage and seek to resolve any dispute between two or more of them by peaceful means.

c) The Organ shall seek to manage and resolve inter- and intra-state conflict by peaceful means.

d) The Organ shall seek to ensure that the State Parties adhere to and enforce all sanctions and arms embargoes imposed on any party by the United Nations Security Council.

2. Jurisdiction of the Organ

a) The Organ may seek to resolve any significant inter-state conflict between State Parties or between a State Party and non- State Party and a 'significant inter-state conflict' shall include:

(i) a conflict over territorial boundaries or natural resources;

(ii) a conflict in which an act of aggression or other form of military force has occurred or been threatened; and

(iii) a conflict which threatens peace and security in the Region or in the territory of a State Party which is not a party to the conflict.

b) The Organ may seek to resolve any significant intra-state conflict within the territory of a State Party and a 'significant intra-state conflict' shall include:

(i) large-scale violence between sections of the population or between the state and sections of the population, including genocide, ethnic cleansing and gross violation of human rights;

(ii) a military coup or other threat to the legitimate authority of a State;

(iii) a condition of civil war or insurgency; and

(iv) a conflict which threatens peace and security in the Region or in the territory of another State Party.

(c) In consultation with the United Nations Security Council and the Central Organ of the Organisation of African Unity Mechanism for Conflict Prevention, Management and Resolution, the Organ may offer to mediate in a significant inter- or intra-state conflict that occurs outside the Region.

3. Methods

a) The methods employed by the Organ to prevent, manage and resolve conflict by peaceful means shall include preventive diplomacy, negotiations, conciliation, mediation, good offices, arbitration and adjudication by an international tribunal.

b) The Organ shall establish an early warning system in order to facilitate timeous action to prevent the outbreak and escalation of conflict.

c) Where peaceful means of resolving a conflict are unsuccessful, the Chairperson acting on the advice of the Ministerial Committee may recommend to the Summit that enforcement action be taken against one or more of the disputant parties.

d) The Summit shall resort to enforcement action only as a matter of last resort and, in accordance with Article 53 of the United Nations Charter, only with the authorization of the United Nations Security Council.

e) External military threats to the Region shall be addressed through collective security arrangements to be agreed upon in a Mutual Defence Pact among the State Parties.

4. Procedures

a) In respect of both inter- and intra-state conflict, the Organ shall seek to obtain the consent of the disputant parties to its peacemaking efforts.

b) The Chairperson, in consultation with the other members of the Troika, may table any significant conflict for discussion in the Organ.

c) Any State Party may request the Chairperson to table any significant conflict for discussion in the Organ and in consultation with the other members of the Troika of the Organ, the Chairperson shall meet such request expeditiously.

d) The Organ shall respond to a request by a State Party to mediate in a conflict within the territory of that State and the Organ shall endeavour by diplomatic means to obtain such request where it is not forthcoming.

e) The exercise of the right of individual or collective self-defence shall be immediately reported to the United Nations Security Council and to the Central Organ of the Organisation of African Unity Mechanism for Conflict Prevention, Management and Resolution.

ARTICLE 12

CONFIDENTIALITY OF INFORMATION

1. The State Parties undertake not to disclose any classified information, obtained under this Protocol or as a result of their participation in the Organ, other than to members of their own staff to whom such disclosure is essential for purposes of giving effect to this Protocol or any decision taken by the Organ.

2. State Parties shall ensure that the staff referred to in paragraph 1 of this Article shall at all times maintain strict secrecy.

3. State Parties further undertake not to use any classified information obtained during any multilateral co-operation between them to the detriment of any Member State.

4. A State Party shall remain bound by the requirement of confidentiality under this Article even after it withdraws from the Organ.

ARTICLE 13

SETTLEMENT OF DISPUTES

Any dispute arising between two or more State Parties from the interpretation or application of this Protocol which cannot be settled amicably shall be referred to the Tribunal.

ARTICLE 14

WITHDRAWAL

A signatory may withdraw from this Protocol upon the expiration of twelve (12) months from the date of giving written notice to that effect to the Chairperson of the Organ. Such Signatory shall cease to enjoy all rights and benefits under this Protocol upon the withdrawal becoming effective.

ARTICLE 15

RELATIONSHIP WITH OTHER INTERNATIONAL AGREEMENTS

1. This Protocol in no way detracts from the rights and obligations of State Parties under the Charters of the United Nations and the Organisation of African Unity.

2. This Protocol in no way detracts from the responsibility of the United Nations Security Council to maintain international peace and security.

3. This Protocol shall not derogate from existing agreements between a State Party and another State Party or a non-State Party and an international organisation, other than SADC, provided that such agreements are consistent with the principles and objectives of this Protocol.

4. Where an existing agreement is inconsistent with the principles and objectives of this Protocol, the Member State shall take steps to amend the agreement accordingly.

ARTICLE 16

SIGNATURE

This Protocol shall be signed by duly authorized representatives of the Member States.

ARTICLE 17

RATIFICATION

This Protocol shall be subject to ratification by the Signatories in accordance with their respective constitutional procedures.

ARTICLE 18

ACCESSION

This Protocol shall remain open for accession by any Member State.

ARTICLE 19

AMENDMENTS

- 1. Any State Party may propose an amendment to this Protocol.**
- 2. Proposals for amendments to this Protocol shall be made to the Chairperson who shall duly notify all State Parties of the proposed amendments at least three (3) months in advance of the amendments being considered by the Ministerial Committee and the Chairperson shall advise the Chairperson of Summit of the recommendation of the Committee.**
- 3. An amendment to this Protocol shall be adopted by a decision of three-quarters of the State Parties.**

ARTICLE 20

ENTRY INTO FORCE

This Protocol shall enter into force thirty (30) days after the deposit of the instruments of ratification by two-thirds of the State Parties.

ARTICLE 21

DEPOSITARY

1. The original texts of this Protocol shall be deposited with the Executive Secretary who shall transmit certified copies to all Member States.

2. The Executive Secretary shall register this Protocol with the Secretariat of the United Nations and the Organisation of African Unity.

IN WITNESS WHEREOF, WE, the Heads of State or Government, or duly authorised representatives, of SADC Member States, have signed this Protocol.

Done at Blantyre, on the 14th day of August 2001 in three (3) languages English, French and Portuguese, all texts being equally authentic.

REPUBLIC OF ANGOLA

**REPUBLIC OF BOTSWANA
DEMOCRATIC REPUBLIC OF CONGO**

**KINGDOM OF LESOTHO
REPUBLIC OF MALAWI**

**REPUBLIC OF MAURITIUS
REPUBLIC OF MOZAMBIQUE**

**REPUBLIC OF NAMIBIA
REPUBLIC OF SEYCHELLES**

**REPUBLIC OF SOUTH AFRICA
KINGDOM OF SWAZILAND**

**UNITED REPUBLIC OF TANZANIA
REPUBLIC OF ZAMBIA**

REPUBLIC OF ZIMBABWE

Annex VII: Protection of Constitutional Democracy Against Terrorist and Related Activities Bill, 2003 Selected Extracts (pp 1-5)

REPUBLIC OF SOUTH AFRICA

**PROTECTION OF
CONSTITUTIONAL DEMOCRACY
AGAINST TERRORIST AND
RELATED ACTIVITIES BILL**

*(As presented by the Portfolio Committee on Safety and Security (National Assembly), after
consideration of Anti-Terrorism Bill [B 12 — 2003])*

(MINISTER FOR SAFETY AND SECURITY)

[B 12B—2003 Reprint]

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BILL

To provide for measures to prevent and combat terrorist and related activities; to provide for an offence of terrorism and other offences associated or connected with terrorist activities; to provide for Convention offences; to give effect to international instruments dealing with terrorist and related activities; to provide for a mechanism to comply with United Nations Security Council Resolutions, which are binding on member States, in respect of terrorist and related activities; to provide for measures to prevent and combat the financing of terrorist and related activities; to provide for investigative measures in respect of terrorist and related activities; and to provide for matters connected therewith.

PREAMBLE

WHEREAS the Republic of South Africa is a constitutional democracy where fundamental human rights, such as the right to life and free political activity, are constitutionally enshrined;

AND WHEREAS terrorist and related activities, in whichever form, are intended to achieve political and other aims in a violent or otherwise unconstitutional manner, and thereby undermine democratic rights and values and the Constitution;

AND WHEREAS terrorist and related activities are an international problem, which can only be effectively addressed by means of international co-operation;

AND WHEREAS the Government of the Republic of South Africa has committed itself in international fora such as the United Nations, the African Union and the Non-Aligned Movement, to the prevention and combating of terrorist and related activities;

AND WHEREAS the United Nations Security Council Resolution 1373/2001, which is binding on all Member States of the United Nations, as well as the *Convention for the Prevention and Combating of Terrorism*, adopted by the Organisation of African Unity, requires Member States to become Party to instruments, dealing with terrorist and related activities, as soon as possible;

AND WHEREAS the Republic of South Africa has already become Party to the following instruments of the United Nations:

- (a) The *Convention on Offences and Certain Other Acts Committed on Board Aircraft*, signed at Tokyo on 14 September 1963. The Republic became a Party thereto, by accession on 26 May 1972;
- (b) the *Convention for the Suppression of Unlawful Seizure of Aircraft*, signed at The Hague on 16 December 1970. The Republic became a Party thereto by ratification on 30 May 1972;
- (c) the *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*, concluded at Montreal on 23 September 1971. The Republic became a Party thereto by ratification on 30 May 1972;
- (d) the *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents*, adopted by the General

- Assembly of the United Nations on 14 December 1973. The Republic became a Party thereto by accession on 23 September 2003;
- (e) the *International Convention Against the Taking of Hostages*, adopted by the General Assembly of the United Nations on 17 December 1979. The Republic became a Party thereto by accession on 23 September 2003;
 - (f) the *Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation*, adopted at Montreal on 24 February 1988. The Republic became a Party thereto by accession on 21 September 1988;
 - (g) the *Convention on the Marking of Plastic Explosives for the Purpose of Detection*, signed at Montreal on 1 March 1991. The Republic became a Party thereto by accession on 1 December 1999;
 - (h) the *International Convention for the Suppression of Terrorist Bombings*, adopted by the General Assembly of the United Nations on 15 December 1997. The Republic became a Party thereto by ratification on 1 May 2003; and
 - (i) the *International Convention on the Suppression of the Financing of Terrorism*, adopted by the United Nations General Assembly on 9 December 1999. The Republic became a Party thereto by ratification on 1 May 2003;

AND WHEREAS the Republic of South Africa desires to become a Party to the following remaining instruments of the United Nations, not yet ratified or acceded to by the Republic:

- (a) *The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation*, adopted at Rome on 10 March 1988;
- (b) the *Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms on the Continental Shelf*, adopted at Rome on 10 March 1988; and
- (c) the *Convention on the Physical Protection of Nuclear Material*, adopted at Vienna on 26 October 1979, and signed on behalf of the Republic on 18 May 1981;

AND WHEREAS the Republic of South Africa has become a Party by ratification, on 7 November 2002, to the *Convention on the Prevention and Combating of Terrorism*, adopted by the Organisation of African Unity at Algiers on 14 July 1999;

AND WHEREAS the United Nations Security Council from time to time passes resolutions under Chapter VII of the United Nations Charter, requiring Member States to combat terrorist and related activities, including taking effective measures to prevent and combat the financing of terrorist and related activities, and the freezing of funds, assets or economic resources of persons who commit terrorist and related activities;

AND WHEREAS our national laws do not meet all the international requirements relating to the prevention and combating of terrorist and related activities;

AND WHEREAS international law, and in particular international humanitarian law, including the purposes and principles of the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the said Charter recognizes acts committed during a struggle waged by peoples, including any action during an armed struggle, in the exercise or furtherance of their legitimate right to national liberation, self-determination and independence against colonialism, or occupation or aggression or domination by alien or foreign forces, as being excluded from terrorist activities;

AND REALISING the importance to enact appropriate domestic legislation necessary to implement the provisions of relevant international instruments dealing with terrorist and related activities, to ensure that the jurisdiction of the courts of the Republic of South Africa enables them to bring to trial the perpetrators of terrorist and related activities; and to co-operate with and provide support and assistance to other States and relevant international and regional organisations to that end;

AND MINDFUL that the Republic, has since 1994, become a legitimate member of the community of nations and is committed to bringing to justice persons who commit such terrorist and related activities; and to carrying out its obligations in terms of the international instruments dealing with terrorist and related activities,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa.
as follows:—

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SCHEDULE

CHAPTER 1

DEFINITIONS AND INTERPRETATION

Definitions

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| 1. (1) | In this Act, unless the context indicates otherwise — | 25 |
| (i) | “ appropriate government body ”, with reference to section 15, means an appropriate government body as defined in section 1 of the International Co-operation in Criminal Matters Act, 1996 (Act No. 75 of 1996); | |
| (ii) | “ Convention offence ” means— | |
| (a) | an offence, created in fulfilment of the Republic’s international obligations in terms of instruments dealing with terrorist and related activities, referred to in Part 2 of Chapter 2; | 30 |
| (b) | an offence referred to in section 56(1)(h) of the Nuclear Energy Act, 1999 (Act No. 46 of 1999); or | |
| (c) | an offence referred to in section 2(1) or (2) of the Civil Aviation Offences Act, 1972 (Act No.10 of 1972); | 35 |
| (iii) | “ Director of Public Prosecutions ” means a Director of Public Prosecutions appointed under section 13(1) of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998); | |
| (iv) | “ entity ”, with reference to sections 3, 4, and 14 (in so far as it relates to the aforementioned sections), 22, 23 and 25, means a natural person, or a group of two or more natural persons (whether acting in the furtherance of a common purpose or conspiracy or not), or a syndicate, gang, agency, trust, partnership, fund or other unincorporated association or organisation, or any incorporated association or organisation or other legal person, and includes, where | 40 |
| | | 45 |

Annex VIII: Vienna Convention of the Law of Treaties of 1969

VIENNA CONVENTION ON THE LAW OF TREATIES, Vienna, 23 May 1969

Article 60**Termination or suspension of the operation of a treaty as a consequence of its breach**

1. A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part.
2. A material breach of a multilateral treaty by one of the parties entitles:
 - a) The other parties by unanimous agreement to suspend the operation of the treaty in whole or in part or to terminate it either:
 - i. In the relations between themselves and the defaulting State, or
 - ii. As between all the parties;
 - b) A party specially affected by the breach to invoke it as a ground for suspending the operation of the treaty in whole or in part in the relations between itself and the defaulting State;
 - c) Any party other than the defaulting State to invoke the breach as a ground for suspending the operation of the treaty in whole or in part with respect to itself if the treaty is of such a character that a material breach of its provisions by one party radically changes the position of every party with respect to the further performance of its obligations under the treaty.
3. A material breach of a treaty, for the purposes of this article, consists in:
 - a. A repudiation of the treaty not sanctioned by the present Convention; or
 - b. The violation of a provision essential to the accomplishment of the object or purpose of the treaty.
4. The foregoing paragraphs are without prejudice to any provision in the treaty applicable in the event of a breach.
5. Paragraphs 1 to 3 do not apply to provisions relating to the protection of the human person contained in treaties of a humanitarian character, in particular to provisions prohibiting any form of reprisals against persons protected by such treaties.

Article 61**Supervening impossibility of performance**

1. A party may invoke the impossibility of performing a treaty as a ground for terminating or withdrawing from it if the impossibility results from the permanent disappearance or destruction of an object indispensable for the execution of the treaty. If the impossibility is temporary, it may be invoked only as a ground for suspending the operation of the treaty.

2. Impossibility of performance may not be invoked by a party as a ground for terminating, withdrawing from or suspending the operation of a treaty if the impossibility is the result of a breach by that party either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

Article 62
Fundamental change of circumstances

1. A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless:

- a. The existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and
- b. The effect of the change is radically to transform the extent of obligations still to be performed under the treaty.

2. A fundamental change of circumstances may not be invoked as a ground for terminating or withdrawing from a treaty:

- a. If the treaty establishes a boundary; or
- b. If the fundamental change is the result of a breach by the party invoking it either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

3. If, under the foregoing paragraphs, a party may invoke a fundamental change of circumstances as a ground for terminating or withdrawing from a treaty it may also invoke the change as a ground for suspending the operation of the treaty.

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