MEDIATION ARGUMENTS

Mediation Arguments no. 4

A CLASH OF NORMS AND STRATEGIES IN MADAGASCAR: MEDIATION AND THE AU POLICY ON UNCONSTITUTIONAL CHANGE OF GOVERNMENT

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April 2013

A Clash of Norms and Strategies in Madagascar: Mediation and the AU Policy on Unconstitutional Change of Government

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The AU and African sub-regional bodies usually respond to coups by undertaking mediation to restore constitutional order. But there is a fundamental contradiction between this strategy and the AU policy on unconstitutional change of government. The policy bans coup-makers from running for election, obliging them to surrender power permanently. The ban is peremptory, coercive and exclusionary, whereas mediation is consensual, cooperative and inclusive. This paper discusses the mediation efforts that followed the Madagascar coup in 2009 and shows that this contradiction impeded peacemaking and could not be reconciled by the mediator; indeed, the AU and SADC ultimately ignored the ban on the grounds that it was unfeasible and retarded the attainment of a stable settlement. The paper concludes that mediation and the AU prohibition on coup legitimation were normatively and strategically incompatible. This poses an acute dilemma: in response to coups, African organizations may have to choose between prioritizing either peace and stability or the principle of democratic transfer of power.

Introduction

In 2012, shortly after her election as Chair of the AU Commission, Nkosazana Dlamini-Zuma was asked whether the organization had 'the backbone to deal with wayward members when they do wrong' (SABC 2012). Her response was that the AU did not tolerate coups and had introduced measures to sanction and deter coup-makers. This, she said, was a big step forward for democracy in Africa. The magnitude of the problem of African coups is evident in the following statistics: from 1956 to 2001 there were 80 successful coups, 108 failed coup attempts and 139 reported coup plots (McGowan 2003). The problem has hardly diminished over the past decade. Since 2001, coups have toppled governments in the Central African Republic (2003), Guinea (2008), Guinea-Bissau (2003 and 2012), Madagascar (2009), Mali (2012), Mauritania (2005 and 2008), Niger (2010), Sao Tome and Principe (2003) and Togo (2005). These events constitute a serious setback to democracy and a grave threat to peace and stability (AU 2009a).

A number of high level documents reject coups and other unconstitutional changes of government, including the Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government (known as the Lomé Declaration), approved by the OAU heads of state in 2000; the AU's Constitutive Act of 2000; and the African Charter on Democracy, Elections and Governance (hereafter 'the Addis Charter'), adopted by the AU heads of state in 2007.

The AU's Constitutive Act states that governments that gain power by unconstitutional means shall be suspended from the AU and sanctions shall be imposed on them (AU 2000, arts 30 & 7(g)). The Addis Charter covers both unconstitutional seizure of power and unconstitutional retention of power. It defines 'unconstitutional change of government' to encompass the replacement of a democratically elected government through a coup, intervention by mercenaries or action by rebels; the refusal by a government to relinquish power to the winning party or candidate after elections; and any amendment of the constitution that infringes the principles of democratic transfer of power (AU 2007, art. 23). The Charter prohibits coup legitimation through elections, stipulating that the perpetrators of unconstitutional actions may not stand in elections held to restore democracy or occupy any position of responsibility in the political institutions of their state (AU 2007, art. 25(4)).

The academic literature on this policy focuses on its historical evolution and varying application, observing that the AU usually invokes the policy when a coup takes place but frequently turns a blind eye to unconstitutional conduct by the governments of member states (e.g. Williams 2007; Omorogbe 2011). The literature is concerned in particular with the tension between the AU's emerging and contested norm of democratic governance and the historically entrenched OAU norms of respect for sovereignty and non-interference in the domestic affairs of states.

This paper has a different focus. I explore the tension between the AU policy on unconstitutional change of government and the strategy of mediation, which the organization invariably undertakes in order to restore constitutional order (Ping 2010). I examine the complications that can arise when an African regional body reacts to a coup by embarking on mediation while simultaneously demanding, in accordance with the policy, that the coup-makers give up power permanently.

I discuss these complications with reference to the 2009 coup in Madagascar, which led to mediation by the UN, the AU and SADC. In summary, SADC's demand that the coup-makers relinquish power permanently constituted a significant impediment to peacemaking: it generated friction between the mediating bodies, aroused antagonism between the mediators and the Malagasy regime and intensified the regime's resistance to a negotiated resolution of the crisis. The demand was ignored at the outset by the UN and the AU, and abandoned at a later stage by SADC, on the grounds that enforcing the ban on coup legitimation was unfeasible and would retard the attainment of an inclusive and stable settlement.

I argue that the complications in the Madagascar mediation were due to contradictions between the AU policy on unconstitutional change of government and the goal, logic and character of mediation. International mediation can be said to have the following defining features: it is a non-violent process of managing or resolving a conflict, whereby a third party helps the disputants, with their consent, to reach mutually satisfactory agreements (e.g. Fisher 2001, 4; Bercovitch 2009, 343–6; UN 2012a). The purpose is not to enable one of the disputants to win but rather to forge a settlement that is endorsed by all sides; to this end, mediation must be made acceptable to the adversaries, who must in turn cooperate with the mediator (Zartman & Touval 2007, 437–8).

In some instances the AU policy is inimical to mediation so defined. Mediation aims to broker an accord that satisfies all the protagonists but the AU policy envisages a win-lose outcome with the culpable party giving up power. Mediation is a consensual venture but the AU policy seeks compliance under duress. Mediation entails a third party's efforts to assist the disputants but the AU

policy calls on third parties to take coercive action. Mediators must build cooperative relations with the conflict parties but the AU policy induces an adversarial relationship between the peacemaker and the targeted party. And mediators must be flexible and responsive to different situations and actors but the AU policy is peremptory and not meant to be adapted from case to case.

It is very difficult for a mediating body to reconcile these contradictions. The findings and analysis of this paper consequently highlight an acute dilemma in relation to African coups. On the one hand, the demand that the coup-makers give up power permanently may be an insurmountable obstacle to resolving the conflict through mediation. On the other, disregarding the ban on coup legitimation reduces the deterrent value of the AU policy, undermines the principle of democratic transfer of power and establishes a bad precedent. The dilemma is acute because it pits two sets of 'good' norms against each other and because jettisoning either set of norms in favour of the other may do great harm. The paper concludes that mediation and the AU proscription of coup legitimation may be strategically and normatively incompatible.

In the sections that follow I describe the mediation efforts and the intractability of the Malagasy crisis; analyse the stance of the UN, the AU and SADC with respect to the AU policy on unconstitutional change of government; and draw on the UN Secretary-General's Guidance for Effective Mediation (UN 2012a) as a conceptual framework and set of international norms to explain why mediation and the AU ban on coup legitimation were antithetical in Madagascar. To gain insight into the decisions and actions of the Madagascar mediators, I interviewed a member of the SADC Secretariat, a UN official, a southern African diplomat and an AU official, all of them familiar with the intricacies of the case.[1]

Evolution of the Madagascar mediation

Since independence from France in 1960, Madagascar has been wracked by political instability. There have been several bouts of violent protest, periods of military rule, flawed elections and a pervasive informal system of government based on neo-patrimonial networks (Marcus 2004). In March 2009 Madagascar was plunged into a new crisis when Andry Rajoelina, Mayor of the capital city Antananarivo, ousted President Marc Ravalomanana by unconstitutional means. After taking office in 2002, Ravalomanana had entrenched a system of patronage and misused his authority to benefit his business interests. Popular anger at the growing corruption and authoritarianism boiled over when the government shut down a television station owned by Rajoelina, who mobilized tens of thousands of people in street protests. After clashes with the security services left over 100 people dead, a group of soldiers refused to continue suppressing the demonstrations. On 16 March 2009 soldiers allied to Rajoelina compelled Ravalomanana to resign and flee the country. With the backing of the military, Rajoelina formed the High Transitional Authority (*Haute Autorité de la Transition,* hereafter 'HAT'), which became the de facto government. He announced plans for a 24-month transition period that would include drafting a new constitution, followed by elections.[2]

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[1]   Interviews with SADC official, Pretoria, October 2012; UN official, New York, November 2012; southern African diplomat, Pretoria, October 2012; and AU official, Addis Ababa, February 2013. The respondents asked for their identities to be withheld. Because of the sensitivity of the case, a senior member of the SADC mediation team declined to be interviewed.

[2]   On the structural and proximate causes of the coup, see Cawthra (2010).

The coup was condemned by the AU, SADC, the EU and other international actors. The AU Peace and Security Council (PSC) defined the situation as an unconstitutional change of government and suspended Madagascar's participation in the organization (AU 2009b). The SADC Summit of heads of state similarly suspended Madagascar, declaring that Rajoelina's appointment as President violated the country's constitution, democratic principles and the SADC Treaty (SADC 2009a). The Summit called on the international community to refrain from recognizing the appointment. It demanded that constitutional rule be restored at once, that Rajoelina vacate the presidency as a matter of urgency and that Ravalomanana be reinstated unconditionally. It threatened to use force if these demands were not met.

Over the next three years a number of international and domestic mediation initiatives were launched. The peace process was wracked by unseemly competition between the UN, the AU and SADC over the leadership of the mediation and by rancorous normative and strategic disagreements between these organizations (Gavigan 2010; ICG 2010; Lanz & Gasser 2013). The disagreements and competition impaired the quality, coherence and credibility of external peacemaking in Madagascar. The UN kicked off the international mediation in April 2009, convening talks in Antananarivo. In the absence of clearly delineated political parties in Madagascar, it organized the negotiations on the basis of representation from four *mouvances* (political movements), headed respectively by Rajoelina, Ravalomanana and two former Malagasy presidents, Didier Ratsiraka and Albert Zafy. The talks were unsuccessful. The parties were unwilling to conclude agreements and the international bodies were sorely divided. While the UN and the AU pushed for inclusive negotiations without preconditions, SADC insisted on Ravalomanana's reinstatement and warned that it might use force to achieve this. France, the former colonial power, backed the UN mediation but was also manoeuvring to ensure Rajoelina's political survival (Cawthra 2010, 16–17).

In order to promote multilateral cooperation, the AU set up an International Contact Group (ICG) that included the UN, the EU, SADC, the *Organisation Internationale de la Francophonie* and other external actors. At the first meeting of the ICG, the AU replaced the UN as the lead mediating body. Overriding the objections of its mediators on the ground, the UN consented to this because it did not regard the Malagasy crisis as a priority and, as a matter of general policy, it endorsed the AU's responsibility for African peacemaking (interview, UN official, 2012). In May 2009 the AU facilitated a second round of inter-party talks in Antananarivo but the main divisive issues of Ravalomanana's safe return to the country and Rajoelina's role during the transition could not be resolved.

In June 2009 the SADC Summit changed its approach from combative to mediatory. The reorientation was triggered by the assumption of the rotating Summit Chair by South Africa, whose foreign policy favours negotiations over the threat and use of force in international conflict resolution (Nathan 2005). In addition, it was evident that the Summit's militarist posture was not helping to resolve the crisis and had prevented SADC from playing a central role in the external mediation initiatives (interview, SADC official, 2012). Since Madagascar was a member of SADC, the Summit wanted SADC to oversee the talks. It appointed former President Joaquim Chissano of Mozambique, assisted by a team of mediators, to 'lead and coordinate the all-party dialogue in Madagascar' (SADC 2009b).

The AU was opposed to SADC taking the reins of the mediation but was not able to block this move as Chissano was the most senior of the international envoys deployed to work on the

conflict (interview, SADC official, 2012). The awkward compromise was that the SADC mediator would lead an International Joint Mediation Team 'under the auspices of the AU' (e.g. AU 2009c). Chissano quickly organized all-party talks in Maputo. On 9 August 2009 the *mouvances* agreed on an amnesty and power-sharing framework for the resumption of constitutional normalcy. The Maputo accord deviated significantly from SADC's formal position, which required Rajoelina and the HAT to relinquish power immediately. Instead, an interim inclusive government and other inclusive institutions would be formed to oversee a 15-month transitional period, a constitutional referendum and elections (*Accord Politique de Maputo* 2009). The posts in the transitional structures would be divided between the four *mouvances*, with the details to be fixed at a later round of negotiations.

In October the AU convened follow-up talks in Antananarivo, at the end of which it reported that the parties had agreed that Rajoelina would remain President during the transition. This prompted *The Economist* (2009) to remark that 'coups, it seems, can still pay'. Ravalomanana, still in exile in South Africa, had not participated in the talks and he promptly rejected the deal, saying that the appointment of Rajoelina as head of the transitional authority had been imposed on the parties by the AU mediators (allAfrica.com 2009). For the next month there was much wrangling over the assignment of interim posts. In November the *mouvance* leaders met at the AU's headquarters in Ethiopia and signed the Additional Act of Addis Ababa. They agreed on the appointment of a consensus Prime Minister and decided that Rajoelina would remain President during the transition, serving with 'co-presidents' selected by Ravalomanana and Zafy. Most of the 450 interim positions were distributed among the parties but the mediators erred in closing the talks prematurely with four ministries left unallocated (interview, UN official, 2012). The AU concluded mistakenly that the mediation team had completed its mission and that the international actors should henceforth focus on monitoring the implementation of the agreements (AU 2010a, paras 8–9)

Once the parties had returned to Madagascar the agreements broke down. Rajoelina bridled at the co-presidency arrangement and the *mouvances* were unable to settle the outstanding ministerial appointments. When the UN envoy, Tiébilé Dramé, travelled to Antananarivo to help the parties resolve these issues, the AU objected and sent a démarche to the UN Secretary-General demanding his recall (interview, UN official, 2012). The opposition parties then asked for further talks outside Madagascar. Chissano ignored the AU and invited them back to Maputo in December. Rajoelina refused to attend the meeting and Chissano made the fateful decision to go ahead without him. Rajoelina was furious. He ended the HAT's participation in the mediation, renounced the Maputo and Addis accords and proclaimed that the HAT would organize elections in 2010. The SADC Summit deplored these moves and rejected 'any attempt to use democratic means, institutions and processes to legitimize Governments that came to power through unconstitutional means' (SADC 2010a).

For most of 2010 Rajoelina kept the AU and SADC mediators at bay. The HAT had no inclination to abandon power and no confidence in the SADC mediation, which it considered to be biased against it (ICG 2010). SADC believed that Rajoelina's intransigence in the face of international pressure was also due to the support he enjoyed from France (interview, SADC official, 2012). As an alternative to the Maputo plan, Rajoelina tried to engineer a transition to elections through a domestic process of negotiations facilitated by civil society groups.[3] As a result of this unilateral course of action, the AU imposed sanctions on him and other members of the HAT (AU 2010b). More telling were the effects

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[3]   In April 2010 there was an inept mediation effort in Pretoria initiated by South Africa and France (ICG 2010).

of the withdrawal of donor aid after the coup. Hoping to end the international isolation, Rajoelina announced that he would not stand in the presidential election. Notwithstanding this concession the HAT remained implacably opposed to Ravalomanana's return to Madagascar. In August 2010 the former President was tried and convicted in absentia of murder and accessory to murder for the presidential guard's killing of demonstrators during the street protests in February 2009.[4]

The domestic transition process lacked the credibility to end Madagascar's international isolation and by December 2010 Rajoelina was willing to re-engage the SADC mediators. The following month Chissano's mediation team presented the parties with the Roadmap for Ending the Crisis in Madagascar (SADC Mediation Team 2011). The Roadmap envisaged elections under UN supervision, entitled Rajoelina to remain the transitional President and appoint a consensual Prime Minister, required the Prime Minister to form an inclusive government of national unity, and provided for other transitional structures. The members of the transitional structures could run in the legislative and presidential elections if they left office 60 days before the vote. Ravalomanana was barred from returning to Madagascar until the post-election government determined that a favourable political and security climate existed. The Roadmap promised that if the HAT honoured its commitments under the plan, the international community would recognize the transitional President and the government of national unity, supply financial and technical aid for the transition and ease sanctions.

Rajoelina declared that he accepted Chissano's Roadmap, established a new 'national unity' government and withdrew his undertaking that he would not contest elections (Larbuisson 2011). The opposition *mouvances*, on the other hand, rejected the Roadmap because they had not been adequately consulted and because it gave Rajoelina too much power during the transition, permitted him to stand for election and legitimized the coup (*Mouvance Ravalomanana* 2011). The Roadmap was also criticized by Madagascar's broadest civil society coalition and highest councils of religious and traditional leaders (Christie 2011).

The SADC heads of state, for their part, were astonished and perturbed by the Roadmap's reversal of their stand on the respective statuses of Rajoelina and Ravalomanana, letting the coup-maker compete in the election and denying this opportunity to the ousted President. The Summit refused to ratify the Roadmap and convened a consultation with the Malagasy parties at SADC's headquarters in Gaborone (SADC 2011a). This decision amounted to a vote of no confidence in Chissano (interview, SADC official, 2012). After the consultation the heads of state amended and approved the Roadmap, replacing the ban on Ravalomanana's homecoming with a provision urging the HAT to allow the unconditional return of the ousted President and other Malagasy politicians in exile (SADC 2011b). The Summit then shifted the responsibility for the mediation from Chissano to the Troika of the SADC Organ on Politics, Defence and Security Cooperation (SADC 2011c).[5] The Troika mediators held further talks in Antananarivo and on 17 September 2011 ten of the eleven parties designated by SADC as the 'political stakeholders' signed the revised Roadmap (SADC 2011d).[6]

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[4]   The international community regards the trial as politically motivated and illegitimate (Amnesty International 2011; Ploch & Cook 2012).
[5]   The term 'Troika' refers to the current, previous and forthcoming Chairs of SADC's security body.
[6]   Former President Ratsiraka refused to sign the document.

After the Roadmap had been signed there was progress towards implementation, with the adoption of an electoral timetable, appointment of a consensus Prime Minister and formation of transitional institutions. The thorny issue of Ravalomanana's homecoming remained unresolved, however. In January 2012 he attempted to fly back to the island but was turned away when Madagascar closed its air space to the plane. The Troika repeated SADC's demand for the enactment of amnesty legislation (SADC 2012a). In April 2012 the Malagasy parliament duly passed an amnesty law but the legislation excluded amnesty for 'serious violations of human rights and fundamental freedoms', which were defined to include murder and therefore covered Ravalomanana's conviction for this offence (Ploch & Cook 2012, 3). In May the Ravalomanana *mouvance* suspended its participation in the transitional mechanisms, citing the amnesty law as one of the reasons for this (*Mouvance Ravalomanana* 2012).

The Troika mediation team, led by Marius Fransman, South African Deputy Minister of Foreign Affairs, was unable to break the impasse. In diplomatic circles there was growing support for the 'neither-nor' solution, in terms of which Ravalomanana and Rajoelina would agree that neither of them would enter the presidential race (Ploch & Cook 2012, 2). First proposed by France in 2010, this option became increasingly attractive as the UN-supervised elections, scheduled for May 2013, drew close. If Rajoelina contested the ballot and his rival was blocked from doing so, the international community would be hard pressed to recognize the elections as legitimate and thereby open the door to the resumption of desperately needed humanitarian aid. Although the neither-nor pact would be patently unfair to Ravalomanana, the UN and other international actors deemed it a feasible deadlock-breaking deal in the interests of peace and stability (interview, UN official, 2012). This reasoning gained weight with the leaking of a confidential UN report, which observed that 'the potential for violence [during the elections] would probably be highest if the two principal political actors, Presidents Rajoelina and Ravalomanana, were both candidates' (*Africa Confidential* 2012, 6).

At the end of 2012, after one-on-one talks between Rajoelina and Ravalomanana had failed to achieve a breakthrough, the SADC heads of state adopted the neither-nor solution (SADC 2012b). The Chair of the Organ, President Jakaya Kikwete of Tanzania, was mandated to pursue the matter with the two protagonists. Both Ravalomanana and Rajoelina consented to the proposal (Abdallah 2012). They were subsequently reported to be planning to use proxies to run on their behalf in 2013 and Rajoelina stated that he would contest the presidential election in 2018 (AFP 2013a, 2013b). At the time of writing (March 2013), the situation was tense and fluid. Three years after the suspension of external aid, Madagascar was becoming ever more fragile, with critical deterioration in governance, security, employment, health, education and public service delivery (World Bank 2012).

Analysis of the Madagascar mediation

This section analyses the incompatibility of the Madagascar mediation efforts with the demand that Rajoelina and the HAT should give up power. It explores the complications caused by SADC's position and distinguishes between the approaches taken by SADC, the UN and the AU.

The UN was the first of the international actors to embark on mediation and its officials felt certain that a condemnatory attitude would inhibit progress. The UN Secretary-General's public response to the coup appealed for a peaceful and consensual transition through democratic means, without condemning Rajoelina in the manner of the AU and SADC (UN 2009). According to a UN staff member involved in the mediation, the organization had to be sensitive to the AU policy on unconstitutional change of government but was not itself bound by the policy and this meant it had more flexibility as a peacemaker than the AU and SADC (Lanz & Gasser 2013). Patrick Gavigan (2010), who served on the UN mediation team for Madagascar, observes that SADC's threat of force and demand for Ravalomanana's reinstatement were not conducive to mediation, leaving Rajoelina and the HAT convinced that SADC favoured the ousted President. The UN, by contrast, 'called for a negotiated return to a democratic order, a process-centred approach which helped conserve the organization's credibility as a mediator' (Gavigan 2010, 11).

Like the UN, the AU did not consider mediation to be compatible with a demand that Rajoelina should step down or refrain from contesting elections. Unlike the UN, however, the AU has a formal commitment to reject coup legitimation through elections. Yet it did not insist that Rajoelina be precluded from running for president. On the contrary, during the negotiations in 2009 the Chair of the AU Commission, Jean Ping, told the *mouvance* leaders that the ban on coup legitimation could be overridden by an agreement between them (US Government 2009a). The AU's proposal was that Rajoelina, Ravalomanana and the other former presidents should all be free to contest elections (AFP 2009).

The anomaly of the AU's stance was conspicuous. In a report on Madagascar presented to the PSC in 2010, Ping drew attention to a policy resolution on unconstitutional change of government, adopted just two weeks earlier by the AU Assembly of Heads of State and Government, which reinforced the applicable sanctions and stressed that the 'authors of such change' could not participate in elections held to re-establish constitutional order (AU 2010a, para. 24). Despite this affirmation of the Addis Charter, and despite noting that the Ravalomanana camp had objected strongly to Rajoelina entering the elections, Ping referred to the matter as one of the 'outstanding issues' that required a 'consensual solution' to be found by the parties with the help of the mediators (AU 2010a, para. 6).

In December 2011 the PSC applauded the formation of the transitional structures laid out in the SADC Roadmap (AU 2011). It went so far as to express its willingness, upon receiving a report from SADC confirming satisfactory progress in implementing the plan, to lift the sanctions and invite the government of national unity to represent the country at the AU. This position exemplifies the tension between mediation and the AU policy on unconstitutional change of government. On the one hand, the position was consistent with the logic of mediation: the PSC affirmed 'good behaviour' by the parties, offered a substantial incentive for continued cooperation and aimed to build confidence in negotiations as the means of ending the crisis. On the other hand, the PSC's position violated

AU policy: the 2010 resolution of the AU Assembly calls on states and international bodies to refrain from recognizing the de facto authorities after an unconstitutional change of government (AU 2010c, art. 6(i)(c)); the Constitutive Act bars regimes that come to power unconstitutionally from participating in the activities of the AU (AU 2000, art. 30); and the Addis Charter provides that sanctions will be lifted 'once the situation that led to the suspension is resolved' (AU 2007, art. 26). Prior to the holding of free and fair elections in Madagascar, the government of national unity had not come to power constitutionally and the situation that led to the suspension had not been resolved.

Why did the PSC endorse Rajoelina as the transitional President and, contrary to the Charter's ban on coup legitimation, permit him to run for election? The primary reason seems to have been the Council's resolve to prioritize peace and stability and its pragmatic assessment of how best to achieve this (interview, AU official, 2013). The Malagasy military had indicated that it would not accept anyone other than Rajoelina as the transitional President and would resist attempts to replace him (Cawthra 2010, 18). Moreover, the PSC feared that Ravalomanana's return to Madagascar would provoke violence. In this precarious situation, it decided that the short-term imperative was to prevent a slide into civil war and the medium-term goal was to forge a smooth passage to constitutional normalcy. To these ends, the main strategies were mediation and putting pressure on Rajoelina and the HAT through sanctions. The aim of the pressure was to ensure an acceptable transition to credible elections rather than to remove Rajoelina. The PSC's compromises regarding the Addis Charter can thus be interpreted as the 'price of peace' and as reflecting an awareness that the strict application of the Charter was inimical to a mediated solution. It is also possible that the PSC's position was influenced by a lack of sympathy for Ravalomanana given his authoritarian and corrupt practices (interview, AU official, 2013).

In contrast to the AU, SADC responded to the coup by asserting the AU policy on unconstitutional change of government. It demanded that Rajoelina step down and that Ravalomanana be reinstated unconditionally. At the outset it did not foresee these demands being realized through mediation. Instead, its strategy was to threaten force. This hardline stance damaged the UN and AU mediation endeavours in three ways. First, it gave false comfort to Ravalomanana, emboldening him and discouraging him from engaging in negotiations with the Rajoelina camp (Lanz & Gasser 2013). Second, it reinforced Rajoelina's intransigence, enabling him to strengthen his domestic status by mobilizing popular support in defence of sovereignty against external intervention (Cawthra 2010, 20). Third, as noted earlier, it impeded the international community's efforts to tackle the crisis in a unified manner, with SADC pressing for an unqualified return to the status quo ante while the UN and AU mediators promoted an inclusive transition to elections (Gavigan 2010; ICG 2010; Lanz & Gasser 2013).

When SADC took charge of the mediation, its tough posture militated against progress. Since it had stipulated that Rajoelina must step down and warned that force might be used to dislodge the HAT, SADC was perceived by the Malagasy authorities as biased against them (Gavigan 2010; ICG 2010). Rajoelina saw Chissano as an enforcer and not a mediator and he argued that SADC, having suspended Madagascar, was not the right entity to lead the peacemaking (interview, UN official, 2012). It was therefore difficult for Chissano to win the regime's trust and cooperation. It was difficult for him, too, to build public support for the mediation since the pro-HAT media in Madagascar regularly vilified him (ICG 2010, 3). The relationship became even more acrimonious when SADC lobbied successfully to block Rajoelina from addressing the UN General

Assembly in September 2010. The pro-HAT media lambasted the SADC countries, calling them 'evil', 'stupid' and 'savage', and the Malagasy Prime Minister decried the lobbying as 'scandalous' and 'seditious' (US Government 2009b). Rajoelina threatened to boycott the mediation and deny visas to officials from SADC states (Cawthra 2010, 20). While SADC's actions upheld the AU norm of non-recognition of coup-makers, they ran counter to the norm of mediation non-partisanship and further damaged the organization's standing as the mediator for Madagascar.

Unlike the UN and the AU, SADC initially failed to appreciate the tension between mediation and the demand that one of the parties must surrender power permanently. Before it dropped this demand as unattainable and counter-productive, the Summit's stance was contradictory. It called for a consensual decision-making process owned by the Malagasy parties and facilitated by the SADC mediator, and at the same time it prescribed substantive aspects of the outcome of that process. This contradiction contributed to the Roadmap fiasco. Chissano appears to have misinterpreted his mandate from the Summit, regarding it as purely procedural rather than as having both procedural and substantive components. An alternative view is that Chissano deliberately ignored the substantive mandate because he considered it too prescriptive, inflexible and out of touch with political and security dynamics in Madagascar (interview, southern African diplomat, 2012).

In any event, Chissano made a serious mistake in asking the parties to sign the Roadmap before he had solicited the Summit's approval for the deviations from its position. The Summit was then unable to revise the document discreetly and its rebuff of Chissano unavoidably became public knowledge, damaging his authority in the eyes of the parties. SADC itself looked inept, out of touch and at loggerheads with its own mediator (Christie 2011). Moreover, the Summit was put in the embarrassing position of having to alter an agreement that the HAT had already accepted. Chissano's further mistake was to have requested the Summit to ratify a plan that had been rejected by the three opposition *mouvances*. Without their consent, and especially that of the Ravalomanana camp, the Roadmap was assuredly not a viable blueprint.

It is not clear why Chissano's Roadmap disadvantaged Ravalomanana and favoured Rajoelina and the HAT. This was very surprising: the bias was a reversal of Chissano's attitude at the start of the mediation; it was at odds with the judgement of the AU (2010a) and SADC (2010b) that the HAT had defied them and violated the agreements brokered by them; and it was in conflict with the AU policy on unconstitutional change of government. Diplomats and officials offer two possible reasons for the bias (interviews with southern African diplomat, 2012, UN official, 2012 and SADC official, 2012). First, the Chissano team had been influenced by France, which was ill-disposed towards Ravalomanana because he had tried to reduce French political and commercial influence in the former colony. The second explanation is that Chissano, having failed to soften the HAT's intransigence, became resigned to the post-coup order as the path of least resistance. The perception among a number of diplomats was that he had capitulated to the HAT (Larbuisson 2011, 6). More specifically, he had come to accept that Ravalomanana's return would not be countenanced by the military and that the mediation team would not obtain Rajoelina's cooperation if it clung firmly to the AU policy. Like the AU, Chissano concluded that the quest for peace and elections should prevail over the Addis Charter.

The same logic underlay the SADC Summit's decision in 2012 to adopt the neither-nor solution. Unable to persuade the HAT and the military to allow Ravalomanana to contest the election, the heads of state backed down. They hoped that a deal that also kept Rajoelina from running for office

would save face for both Ravalomanana and SADC. They motivated the deal in terms of avoiding violence before and during the elections (Abdallah 2012). As the Seychelles President James Michel put it, the Summit 'recognised the risk of violence and instability in relation to the eventual return of former President Ravalomanana' and the neither-nor arrangement offered 'the best route towards ensuring peaceful elections' (*Seychelles Nation* 2012a). Sensitive to the concern that the Summit had compromised democratic principles, Michel added that SADC had a responsibility to protect not only these principles but also the lives of the people of member states (*Seychelles Nation* 2012b). This motivation was somewhat disingenuous. The problem was not simply 'the risk of violence and instability' – more accurately, it was the refusal of the HAT and the military to give an undertaking that they would ensure Ravalomanana's safety and the danger that they themselves might instigate violence to thwart his election campaign.

The dichotomy between the Summit's facilitative procedural approach and its prescriptive enforcement approach reflected the long-standing schism between pacific and militarist camps in SADC. The pacific camp, which historically has comprised Botswana, Mozambique, South Africa and Tanzania, regards diplomacy as the primary method of resolving regional conflict, whereas the militarist camp, comprising Angola, Namibia and Zimbabwe, favours collective use of force (Nathan 2012). In the first decade after SADC's establishment in 1992, this division led to fractious disputes between the two camps and bedevilled the formation of the Organ. The significance of the disputes was exposed dramatically in 1998 when, in response to the outbreak of rebellion in the Democratic Republic of Congo, the militarist countries sent troops to support President Laurent Kabila while the pacific countries sought to broker negotiations between Kabila and the rebels (Nathan 2012). As the two camps worked at cross-purposes and exchanged insults, the rift became so severe that it gave rise to the notion of 'two SADCs' (Williams 2000, 97).

SADC's reaction to the Madagascar coup looked like a minor reprise of the DRC imbroglio. Its threat of force emanated from the Organ Troika, which was headed at the time by King Mswati of Swaziland (SADC 2009c). Mswati's predilection for a militarist course of action was shared by President Robert Mugabe of Zimbabwe. In early June 2009, when Mugabe became Chair of the Common Market for Eastern and Southern Africa (Comesa), the trade association issued a statement supporting SADC's efforts to restore constitutional order in Madagascar 'by examining all options including the possibility of military intervention' (Comesa 2009). Later in June South Africa, the dominant anti-militarist member of SADC, took the rotating Chair of the Summit and prompted the organization to embark on mediation. This peacemaking strategy thereafter sat uncomfortably alongside the militarist posture.

Activists and analysts pointed out that Mswati and Mugabe, hardly democrats in their own countries, were being hypocritical in condemning the Madagascar coup on democratic grounds (Swaziland Commentary 2009; Cawthra 2010). The real concern of these leaders was more likely to have been the prospect of being similarly overthrown by their people or army. After Ravalomanana had been toppled, Mswati expressly warned army personnel in Swaziland not to emulate the Malagasy soldiers who had participated in the 'dethroning' of their country's President (Magagula 2009). The motivation of Mswati and Mugabe was thus regime protection rather than democracy protection. This was arguably true of SADC as a whole. In contrast to the Addis Charter, which promotes democratic norms by rejecting both unconstitutional seizure of power and unconstitutional retention of power, SADC has tended to downplay or ignore the latter, most notably in Swaziland and Zimbabwe (Nathan 2012).

Normative and strategic incompatibility

In this section I argue that international mediation and the AU ban on coup legitimation were incompatible in Madagascar because their respective objectives and orientation were *inherently* antithetical. This argument is motivated with reference to the UN Secretary-General's Guidance for Effective Mediation (UN 2012a), which was endorsed by the UN General Assembly in 2012 and can consequently be regarded as a set of international norms on mediation (UN 2012b). The main differences and contradictions between mediation and the ban are summarized in Table 1.

Table 1: Contradictions and differences between mediation and the AU ban on coup legitimation

	Mediation in context of coup	AU ban on coup legitimation
Goals	Peace and stability; resolution of constitutional crisis; democracy	Prevention or resolution of constitutional crisis; democracy
Main objective	Negotiated settlement agreed to by disputants	Coup-makers surrender power permanently
Overall orientation	Consensual and cooperative	Prescriptive, coercive and adversarial
Benefit to disputants	Mutually satisfactory deal	No benefit to coup-makers
Inclusivity of settlement	Includes major disputants	Excludes coup-makers
Ownership	Ownership of process and outcome lie with the disputants	External bodies prescribe key aspects of process and outcome
Role of third party	Helps disputants reach agreement; facilitates dialogue and negotiations	Condemns and applies coercive measures against the coup-makers
Third party relations with disputants	Seeks cooperative relations with all disputants	Adversarial relations with coup-makers
Third party bias	Avoids taking sides	Biased against coup-makers
Relations between disputants	Shift from adversarial to cooperative relations	Relations remain adversarial
Flexibility	Adaptive and responsive to circumstances	Peremptory; no flexibility
Risk	May compromise democratic principles and AU policy on coups; may thereby weaken deterrence of coups	May fail to achieve stability and resolve the constitutional crisis; may thereby fail to establish democracy

The objective of mediation is to assist adversaries to prevent, manage or resolve a conflict by helping them to develop mutually acceptable agreements (UN 2012a, 4). The process is voluntary, dependent on the consent of the parties, and the mediator must therefore strive to win their trust and cooperation, build their confidence in negotiations and shift their relationship from belligerence to collaborative problem-solving (UN 2012a, 4–9). By contrast, the objective of the AU policy on unconstitutional change of government is to get the culpable party to surrender power permanently. Since that party may have nothing to gain and much to lose by complying, the policy anticipates resort to sanctions and other coercive measures. It thus engenders an antagonistic relationship between the sanctioning organization and the targeted party. A mediator deployed by that organization will be hard pressed to secure the targeted party's cooperation.

The UN Guidance asserts that mediator impartiality is essential to gaining and retaining the confidence of the protagonists; accordingly, mediators must avoid perceptions of bias and any association with punitive measures applied to a conflict party by other actors (UN 2012a, 10). Mediators cannot do this, however, when they are appointed by an organization that adheres strictly to the AU policy on unconstitutional change of government. Instead, they are inescapably associated with condemnation and punishment of one of the parties and they are thus bound to be seen as biased. In the academic literature there is no consensus on the question of mediator bias, with some scholars claiming that bias can be beneficial while others insist on impartiality (e.g. Kleiboer 1996). The Madagascar mediation provides evidence of the harmful effects of bias. SADC's stand against the coup-makers was justified in terms of democratic norms but it jeopardized the peacemaking effort in several ways, provoking public hostility towards Chissano, causing the HAT to withhold cooperation from him, reducing Ravalomanana's interest in negotiations and creating discord between SADC and the UN and AU.

The Guidance maintains that in intra-state conflict the principles of inclusivity and national ownership are vital means of ensuring the legitimacy of mediation, the sustainability of a negotiated settlement and the durability of peace (UN 2012a, 11–15). Inclusivity means including all the conflict parties in the negotiations, as those who are left out might seek to thwart the process and its outcome (UN 2012a, 11). Consequently, mediators should design inclusive processes, promote the value of broad participation and minimize preconditions for participation (UN 2012a, 11–13). As noted earlier, the AU placed a premium on inclusivity in the Madagascar negotiations, transitional government and elections (e.g. AU 2010a). Yet the organization's policy on unconstitutional change of government moves in the opposite direction, blocking the culpable individuals and groups from participating in elections to restore the democratic order and from holding any position of responsibility in the political institutions of their state. Aside from the threat their exclusion might pose to the long-term stability of the country, a mediator cannot pursue inclusive and exclusive strategies simultaneously.

In terms of the norm of national ownership, the mediation process and resultant agreements must be shaped primarily by domestic actors and not external actors since it is the former who have to implement and abide by the agreements (Nathan 2006). To uphold this principle, the mediator should 'protect the mediation process from the undue influence of other external actors, especially with regard to unrealistic external deadlines or incompatible agendas' (UN 2012a, 14–15). The SADC Summit seemingly embraced the principle when it appointed Chissano, professing that the 'ownership of the political dialogue' must lie with 'the Malagasy people through their main political structures and representatives' (SADC 2009b). Yet by adhering to the Addis Charter, the heads

of state attempted to impose a solution and effectively withheld ownership from the parties. In drafting the Roadmap, Chissano bypassed what he perceived to be the Summit's 'incompatible agenda' but this proved to be untenable, putting him in conflict with SADC, the body to which he was accountable.

The Guidance eschews a formulaic or mechanical approach to mediation, stressing that mediators must be flexible and adaptive (UN 2012a, 6). The ban on coup legitimation, on the other hand, allows no room for flexibility. There is a pre-ordained outcome. The timing and other details of the return to constitutional rule may be negotiated but the stipulation that the culpable party must relinquish power permanently is not negotiable and it is therefore not open to mediation. In the light of the Arab Spring uprisings and the experience of African coups over the past few years, some officials in the AU Commission are concerned that the policy on unconstitutional change of government is indeed too rigid: designed as a formal, declaratory deterrent, it is not a useful guide to action in all circumstances (interview, AU official, 2013).

Although the Guidance offers considerable policy support for the contention that the prohibition on coup legitimation is incompatible with mediation, there is one potential countervailing assertion. The Secretary-General's report states that mediation takes place within normative and legal frameworks and that mediators must work in accordance with the applicable rules of international law, most prominently global and regional conventions, international humanitarian law, human rights and refugee laws and international criminal law (UN 2012a, 16). A mediator's strict compliance with certain of these instruments, such as the AU policy on unconstitutional change of government, could contradict the report's emphasis on flexibility, impartiality, inclusivity, national ownership and consent by the parties. The Guidance is aware of the potential contradiction but leaves it unresolved, merely fudging the issue by advising mediators to 'balance the need to adhere to international norms without overtly taking on an advocacy role' (UN 2012a, 17). In the Madagascar case, as we have seen, the AU policy ban on coup legitimation was ignored at the outset by the AU mediators and jettisoned at a later stage by SADC because it was inimical to fruitful negotiations and an inclusive and stable settlement.

In the above discussion I looked at the ban on coup legitimation from the perspective of mediation. Considering the matter from the perspective of democracy throws into sharp relief the dilemma confronting the AU and sub-regional bodies such as SADC in the event of a coup. The ban is much more than an attempt to protect incumbent governments against coups – it is a cardinal element of the AU's broader mission to promote constitutionalism and democratic transfer of power. As such, it is one of the primary manifestations of the organization's seismic shift from a posture of non-intervention in the domestic affairs of member states to a 'doctrine of non-indifference' (Williams 2007). The strength of the AU's policy commitment to reject coups and other unconstitutional changes of government is evident in the inclusion of this issue in the Constitutive Act (AU 2000) and in the repeated assertion and reinforcement of the policy (AU 2002, 2007, 2009a, 2010c). These policy reinforcements reflect the persistence and gravity of the problem of unconstitutional transfer of power.

The prohibition on coup legitimation seeks to deter coups by imposing career-limiting costs on the coup-makers, prohibiting them from retaining power through elections. Contravening the ban in a particular instance is not merely a one-off compromise of democratic values – it discredits the AU, establishes a bad precedent, dilutes the deterrent value of the policy and reduces the

organization's leverage in future instances. These concerns are directly relevant to Madagascar. During the negotiations after the coup, Rajoelina argued forcefully that the mediators should follow the precedent set recently by the AU when it accepted coup legitimation in Mauritania (interview, UN official, 2012).[7] In the Madagascar mediation the AU and SADC did in fact drop the ban and they were criticized for being soft on coup-makers and failing to uphold democratic principles (e.g. *The Economist* 2009; *Mouvance Ravalomanana* 2011; Saunderson-Meyer 2011).

Judging from their statements and decisions, the AU and SADC would probably respond to this criticism by insisting that their highest priority was to prevent an escalation of the crisis and forestall further violence. Adhering firmly to the Addis Charter would have been counter-productive in this regard as it would have prolonged the crisis and had a destabilizing effect in the long term. The only prospect of stability lay in inclusive processes and institutions. This is not to say that the mediators sacrificed democracy on the altar of peace. Rather, peace was a necessary condition for elections leading to the reinstallation of democracy. Without peace and stability, there could be no legitimate elections and hence no return to constitutional order.

It is also relevant that the mediators were constrained by the internal and external balance of power. At the domestic level, the HAT's intransigence was bolstered by the armed forces and by the diplomatic support it enjoyed from France, and Ravalomanana was unable to mount a serious challenge to the regime. At the international level, the mediating bodies struggled to maintain a united front, the UN Security Council did not apply pressure and the leverage of the AU and SADC was limited. However desirable the ban on coup legitimation might have been in principle, its enforcement was not possible in practice.

The factors that determine the trajectory and outcome of mediation are not confined to the balance of power but also include the mediator's decisions and strategies (Kleiboer 1996). It is therefore worth recapping the mediation problems that impeded progress. First, the changes in the leadership of the mediation resulted in breakdowns in continuity, momentum and cohesion: in 2009 the AU pushed the UN mediation aside and then SADC wrested control from the AU; a South African deputy minister replaced Chissano as the SADC mediator when Pretoria assumed the Chair of the Organ in 2011; and when Tanzania took the Organ Chair a year later, it brought Chissano back into the picture. Second, the coherence of external peacemaking was further undermined by the lack of unity within and between the mediating bodies. The SADC states had divergent conceptions of how to deal with the coup; Chissano deviated so radically from the Summit's position that he was effectively fired; placing the SADC mediation 'under the auspices of the AU' created uncertainty about the locus of decision-making; and the UN, the AU and SADC differed on the critical issue of coup legitimation. Moreover, relations between the three organizations were often unsettled by fractious personal relationships among envoys and officials (interview, UN official, 2012).

Third, the mediators made several major errors. They ended the negotiations in Addis Ababa in November 2009 prematurely, before the parties had finalized appointments to the interim government. After the Addis negotiations the AU closed the mediation in the mistaken belief that a settlement had been reached. When Chissano reopened the mediation in Maputo in December 2009 he made the unwise decision to go ahead with the talks in the absence of Rajoelina.

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[7] In 2008 the AU suspended the membership of Mauritania after a coup led by General Mohamed Ould Aziz. A year later the AU accepted the results of elections won by Aziz and reinstated the country's membership (Omorogbe 2011, 142–6).

In 2010 Chissano presented his draft Roadmap to the parties for their approval without having obtained the Summit's consent to the departures from its position, and he asked the heads of state to ratify the draft Roadmap even though it had been rejected by the opposition parties.

Fourth, the potential for progress was reduced by Chissano's bias, initially against Rajoelina and subsequently against Ravalomanana. The bias was a significant source of tension between SADC and the UN and AU as well as between the mediator and the disfavoured party. Fifth, the AU and SADC mediation endeavours were insufficiently professional, lacking a well-considered plan, adequate resources, the requisite technical expertise and a permanent presence in Madagascar (interview, UN official, 2012). There is no way of telling how the mediation would have panned out in the absence of the problems outlined above but there is no doubt that they compromised the credibility and efficacy of peacemaking.

Conclusion

In the international efforts to end the Madagascar crisis, the Addis Charter's ban on coup legitimation was inconsistent with mediation. The UN and the AU held this view from the start. The UN deliberately avoided threats and demands that would impair its credibility and effectiveness as a mediator. The AU PSC and mediators ignored the ban because they deemed it inimical to an inclusive and stable settlement. SADC, on the other hand, reacted to the coup by invoking the ban and threatening to use force against the HAT. When the Summit changed tack and embarked on mediation, it retained its substantive demands, abiding by the AU policy. The Roadmap designed by the SADC mediator Chissano flouted these demands, however. The Summit itself backed down when it ratified the revised Roadmap, which permitted coup legitimation. Before the heads of state yielded, their insistence that Rajoelina should leave office and refrain from contesting elections impeded progress in peacemaking: it heightened the HAT's resistance to mediation, contributed to the debacle resulting from Chissano's Roadmap and generated acute tension between SADC and the UN and AU mediators.

At a more general level, these complications can be attributed to tension between the respective objectives and core features of mediation and the AU policy ban on coup legitimation (see Table 1). While the details might differ from case to case, there is a fundamental contradiction between a strategy that is consensual, cooperative and inclusive and one that is peremptory, coercive and exclusionary. Mediation and the prohibition on coup legitimation are thus likely to be strategically and normatively incompatible. They are both based on 'good' norms and they are both legitimate courses of action, but it can be dysfunctional for an international organization to follow both courses at the same time, playing simultaneously the roles of judge, 'bad cop' enforcer and 'good cop' mediator. The main policy implication here is that African multilateral organizations may have to choose one of the strategies (as the UN and the AU did in Madagascar) rather than resort to both of them at the same time (as SADC initially did). Whether mediation or the enforcement of the ban is the better strategy cannot be determined on the basis of a single case and may well depend on the circumstances.

Treated as a hypothesis, the conclusion of this paper regarding incompatibility could be tested through research on other coups and unconstitutional changes of government in Africa. Comparative research would shed light on the choices made by African organizations in these situations and could contribute to theorizing about norms and power as determinants of the trajectory and outcome of mediation. The research would also highlight the relevance of the coup-makers' objectives. The contradictions and dilemmas discussed in this paper would presumably be most troublesome where the coup-makers are intent on holding power and may be less challenging where the coup-makers' objectives are amenable to mediation.

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