

DIFFICULT POLITICAL DIMENSION OF THE COTONOU AGREEMENT

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Introduction

The Cotonou Partnership Agreement, signed in June 2000, between the European Union and 78 African, Caribbean and Pacific (ACP) states, signals a strong support for the institutions and functioning of modern democratic states. Political dimension is one of the three pillars of the partnership, the other two being aid and trade. This was soon heralded as the most important innovation of the Cotonou Agreement (Vanheukelom *et al.* 2006).

Although the main goals of the agreement: poverty alleviation, promotion of sustainable development and the integration of the ACP states into the world economy, do not directly relate to the political dimension and the form and content of modern democracies, all activities conducted in order to achieve these goals can be linked to them. This linking, more than anything else, is economic. In accordance to the financial protocol of the agreement funding for the development activities is provided by the EU. Article 96 of the agreement allows withdrawing or redirecting these funds if the principles of human rights, democracy, rule of law or good governance are violated. (See Cotonou Partnership Agreement.)

Simultaneously, the concept of partnership in the title of the agreement points towards a mutually beneficial relationship between sovereign states. This makes the issue of sovereign agency within the agreement a complex one. If *de facto* authority in any of the ACP states is challenged by the economic pressure of the EU due to political reasons, then also the idea of partnership is challenged.

The aim of this paper is to look at the realization of partnership within the political dimension of the Cotonou Agreement. Although only title II (covering Articles 8-13) of the agreement is explicitly devoted to the political dimension, the focus of this paper is on the above mentioned Article 96.

I will overview the cases where Article 96 has been used between 2000 and 2006 and look at more in detail the case of Zimbabwe, which is the most longstanding case and where partnership is particularly contested, and discuss the influence of the Zimbabwe case to the use of Article 96.¹ Before going to Article 96, it is useful to clarify the notion of partnership and its interpretations, and the historical development of the political dimension of the Cotonou Agreement.

The concept of partnership

Partnership is a familiar concept not only in the corporate sector, but in international relations, too. It is used to describe the relationships between governments, NGOs, local authorities, research institutes, multilateral organizations and private companies. This is particularly so in the field of development cooperation, even though development cooperation entails highly differing power relations of donors and recipients (see Fowler 1998, 140). In this regard, the EU-ACP cooperation is not an exception. The concept of partnership is mentioned 52 times in the 100 Articles of the Cotonou Agreement and nine times in its Annexes and thus ranked before such issues as gender and sustainability (Raffer 2001, 3, 17).

Partnership has a long history in the EU-ACP cooperation stemming from the special connections between the European powers and their ex-colonies. The predecessors of the Cotonou Agreement, the Lomé Conventions (1975-2000), were internationally applauded as instigating a culture of partnership and dialogue. The ACP countries were entrusted with a role in the management of the development resources provided by the Europeans, while the European powers secured support from their ex-colonies in the context of the cold war rivalry (*ibid.*). The EU/EC, however, adopted a neutral stance with regard to political affairs in the ACP countries, let alone such cases as Idi Amin's Uganda.

The concept of partnership is not easily defined. Its first connotation is positive. Partnerships are not enforced relations. However, they are not entirely voluntary either. Although the initial decision to engage in cooperation might be voluntary, once that decision has been taken, it becomes an obligation to all parties or at least withdrawing from the cooperation would be costly. With regard to development cooperation, it also has to be noted that the possibilities of countries to choose whether they want to be donors or recipients of aid are very limited² - as is an alternative to remain outside such organizations as the World Bank and the United Nations, the most active generators of the partnership discourse. Solidarity movement influenced the concept of partnership in the 1970s and 1980s, but since 1990s the question more often has been about efficiency, sustainability and beneficiary participation in development cooperation (Lister 2000, 228). As far as the question is about development needs, partners are brought together by a certain kind of urgency: discourse of needs and urgency is typical in development cooperation documents, including the Cotonou Agreement and official papers related to it.

¹ The analysis is based on an evaluation study on coordination and coherence in the application of Article 96 commissioned by the government of the Netherlands (Laakso *et al.* 2007). This paper is also utilising a series of Discussion Papers by ECDPM published in August 2005 (Bradley 2005; Mackie & Zinke 2005; Mbangi 2005; Hazelzet 2005.)

² China, is a significant exception. It is a developing country receiving development aid, but also a donor - although an unconventional one in Africa in particular.

Partnership is expected to be mutually beneficial. Yet it is not necessarily based on equality. Consequently the notion of partnership can justify cooperation within unequal relations. An early example is the racist discourse in Southern Africa. The 1965 Rhodesian Unilateral Declaration of Independence (UDI) was ideologically founded on partnership between African and European populations as an alternative to majority rule. Godfrey Martin Huggins, Rhodesian Prime Minister before UDI and Ian Smith's era gave an infamous description to this partnership as one between "a horse and its rider". It is good to remember that UDI was unacceptable to the international community and instigated the first economic sanctions in the history of the UN.

Even though partnership is an unspecific and flexible concept with regard to the power relations and decision making structures, formal agreements define explicit responsibilities, rights and obligations. Partners have their own identity and are accountable to their own constituencies or stakeholders and they need to explain to these, what the costs and benefits of partnership arrangements are to them. In international relations this is where the issue of sovereignty bears importance.

With regard to comprehensive agreements like the Cotonou Agreement, costs and benefits might vary depending on the issue area in question, and the points of reference for different actors, even within one party of the agreement can diverge. There is no fixed or common understanding of even the key principles of the agreement, but dialogue and frequent reviews of the agreement are necessary for the cooperation to continue. The Cotonou Agreement, which lasts for 20 years, contains a clause allowing it to be revised every five years, known as the Mid-Term Reviews³. The first revision was made in 2005. Among other things this included new stipulations to the Article 96 as will be explained later.

Although the language of the Cotonou Agreement suggests that the question is about equal partners, its practical implementation might tell another story. Thus Article 96 defines when either party can invite the other party to formal consultations and instigate appropriate measures against it. In the letter of the agreement both parties are in the same position. However, in practice without exceptions the party using this instrument has been the EU while the "targeted" party has always been an ACP state.

It is not easy to state whether the partnership legitimises the existing unequal power relations or whether it strengthens the subordinate partners (see Lloyd & Rowan, 2005). This concerns the relationship between political dimension and poverty alleviation in particular. Without good governance and the democratic empowerment of the poor, alleviation of poverty is difficult. Yet inequality and poverty are not only problems within states, but also between states. Currently inequality grows more between than within nations, making the problem of poor nations at least as pressing as the problem of poor segments within nations. In 2005 the ten richest countries were 50 times richer than the ten poorest countries (Derviş 2006). Aid conditionality might promote democracy and poverty alleviation within developing countries, while their effect on the empowerment of poor states, and on ending international poverty, might be the opposite.

Furthermore different actors within the EU can have different perceptions of the partnership, which exposes the EU to various strategies of manipulation in a bargaining situation. This does not only relate to the negotiations between the EU and the ACP country in question, but involves also political and administrative fractions within the ACP country. For instance, in cases of *coups d'état*

³ Same five-year periods are followed in the financing that is available to the ACP states through the European Development Fund (EDF).

the EU has to choose with whom to negotiate – the interim coup leaders, the old government or the new one. Besides, ACP governments do not easily allow political fragments to benefit in the domestic power struggles by utilizing EU support. While the EU supports democracy and human rights by cooperating with civil society, governments of ACP countries going through a political crisis do not necessarily differentiate between civil society and their political opposition, sometimes not even between these and armed opposition.

The specific implications of partnership for the Article 96 cases can be approached by asking whether the invoking of Article 96 in a particular case is perceived as based on common understanding or whether it is seen as a unilateral decision by one party (the EU). In addition, we should ask whether both parties understand the use of Article 96 as beneficial for own interests and objectives. If unilaterally invoked and if benefiting only one party, partnership-rhetoric might indeed rather legitimise the subordinate position of the ACP countries than empower them.

Political dimension of ACP-EU partnership

ACP-EU relations were affected by the end of the cold war and a pressure to pay attention to human rights and democracy in early 1990. The Maastricht Treaty in 1992 introduced the Common Foreign and Security Policy, CFSP, to the EU external action. It was decided that a human rights clause would be included to all EU's agreements with third parties. Respect for human rights, democratic principles and rule of law were listed as essential elements of the Lomé Convention IV in 1995 providing a legal basis to withdraw funds from an ACP country that did not respect these elements (Article 336a). Previously EU aid had been suspended without a formal procedure or legal basis for a few ACP countries, as in, for instance, the Sudan in 1990. This state of affairs was criticised as lacking transparency. Article 336a resulted in some two dozen cases of aid withdrawal. For the EU, this reflected sensitivity to taxpayer concerns; for the ACP side, the question was about an erosion of the principle of partnership (Vanheukelom *et al.* 2006).

In 1996 the European Commission launched a broad-based consultation process to guide the negotiations of the successor agreement of the Lomé Convention. The results of this process were published in the so-called *Green paper* (European Commission 1996). According to it, the principle of partnership had “come up against a number of difficulties”. It had “proved hard to put initial intentions, based on the principle of equal partners, into practice” due to conditionality and the EU tendency to decide for recipients “like other donors.” (1996, 39.) Different perceptions between the ACP and the EU were making the management of the development resources of the EDF time-consuming and ineffective. (See Raffer 2001, 16, 17.) However, in spite of these critical notions, political conditionality became even stronger in the Cotonou Agreement.

In addition to incorporating the essential elements introduced in Lomé on human rights, rule of law and democratic principles, governance was added as a new “fundamental element” of the partnership in Article 9. Also EU's approach towards conflict prevention and security policy was specified. Article 11 commits the signatories to an integrated policy of peace-building, conflict prevention and conflict resolution, and to the development of appropriate instruments and activities. It emphasises the importance of being engaged with fragile or conflict affected partner countries. The EU has recognised elsewhere that isolating countries can lead to state failure, which in turn is related to several conflict risks, including that of terrorism. In the EU Security Strategy this is grasped with the notion of “preventive engagement” (Solana 2003, 2). The Communication on Governance and Development (European Commission 2003) further clarified the commitment to stay engaged in “difficult partnerships”. Following this line of reasoning would imply that the EU

respects the principle of partnership and remains a partner even with countries that are violating agreed principles. There is a potential tension between this approach and withdrawing aid after invoking Article 96.

Article 8 establishes the important principle of political dialogue. According to it the objective is “to exchange information, to foster mutual understanding, and to facilitate the establishment of agreed priorities and shared agendas” as well as “preventing situations arising in which one Party might deem it necessary to have recourse to the non-execution clause.” By stating that regular, comprehensive, balanced and ongoing dialogue should lead to “commitments on both sides” it builds on the presumed equality of the partners. Article 8 notes that dialogue is not strictly regulated: “The dialogue shall be conducted in a flexible manner. Dialogue shall be formal or informal according to the need, and conducted within and outside the institutional framework, in the appropriate format, and at the appropriate level including regional, sub-regional or national level.” This makes the actual use of the instrument quite complex. According to Vanheukelom *et al.* (2006, 2), during the negotiations ACP partners were concerned about the lack of clear guidance on how and when political dialogue on (perceived) violations of essential elements would transit from Article 8 into Article 96 consultations. ACP side also feared that this would increase conditionality and be implemented inconsistently.

As already noted Article 96 is placed outside the Political Dimension (Title II) in the Cotonou Agreement. Yet they are closely associated with it, since they can only be invoked when the essential and fundamental elements spelt out in Article 9 have been breached.

Article 96 (and Article 97) stipulates that if one party violates the essential elements (or the fundamental element in the case of Article 97), the concerned party after having sought to resolve their differences through the political dialogue called for in Article 8, may invite it to consultations. These consultations are to conduct an examination of the situation with a view to seeking a resolution acceptable to the parties. If no agreement is reached, the concerned party may take “appropriate measures” against the other party, which it deems is abusing the essential elements. “Appropriate measures” can be restricted to diplomatic steps or “smart sanctions”, but can also involve suspension or redirection of aid or the imposition of further conditions. The appropriate measures can include also positive measures like supporting free and fair electoral processes.

Understanding of Article 96

The study of James Mackie and Julia Zinke points at the different interpretations given to the nature of Article 96. While the EU wants to see the consultation procedure as an ultimate means for resolving differences through deepened discussions, the common perception is that of a “sanction article” not only on the ACP side but also in civil society. Because the provision has been invoked only by the EU in response to violations of the essential elements on the ACP side, and because there is no case of consultations which would have led to an agreement without appropriate measures following, Article 96 looks like an instrument of sanction to be used by the EU against ACP states (Mackie & Zinke 2005).

Article 96 is clearly designed as a measure of last resort. Formal consultations under Article 96 are foreseen only if the regular political dialogue between the parties, as envisaged in Article 8, fails to prevent a violation of human rights, democratic principles and the rule of law. However, Article 8 has not been used extensively or consistently by the EU and ACP states.

The EU and the ACP countries changed some parts of Article 96 during the 2005 mid-term review of the Cotonou Agreement. The ACP group proposed that the decision to start consultations should be a joint EU-ACP decision. The EU did not accept this, but agreed to add a provision for “intensified dialogue” under Article 8 before moving to Article 96: “All possible options for dialogue under Article 8” must be exhausted before Article 96 is invoked. Furthermore, this dialogue should be “systematic and formal” which diverges a bit from the tone in Article 8 covering also informal dialogue. It was also stipulated that representatives of the ACP Group and of the Joint Parliamentary Assembly may take part in the political dialogue. Exceptions to this requirement were “cases of special urgency” (like *coups d'état*) and cases where “there is persistent lack of compliance with commitments taken by one of the Parties during an earlier dialogue, or by a failure to engage in dialogue in good faith”. (Laakso *et al.* 2007, 30-31.)

The mid-term review also extended the timeframe for consultations from 60 to 120 days, which was seen more feasible. The idea of partnership was strengthened by a stipulation that the Joint Council (representing the EU and ACP countries) can lay down additional arrangements (with regard to the stages of the consultation, benchmarks and targets, for instance).

Decision to use Article 96

The Cotonou Agreement gives a rigid description of the process of invoking Article 96, allowing a purely administrative role for the EU Commission to propose consultations to the Council whenever a breach of an essential element occurs. However, in reality the Commission implements a case-by-case approach adjusting to the specific circumstances of each country and Member State's views and thus establishing a political role for itself. It is not eager to propose consultations if it is not clear that the Member States would support it (Laakso *et al.* 2007, 58). Côte d'Ivoire in 2004 has been the only case where the Council decided against the proposal of the Commission to start consultations. The reasons were related to the rapidly changing and very serious situation in Côte d'Ivoire and to the fact that the EU was involved in the UN peace process there. However, also the uncooperative attitude of the government eroded the usefulness of Article 96. The threat of civil war was acute and worrying for the EU not least due to the thousands of EU citizens living in the country. In such a situation it was seen that the EU had more leverage to influence the peace process in the country by maintaining its relations as normal as possible. (*Ibid.* 53)

There is no evidence of systematic bias or double standards, however. The influence of the ex-colonial powers is particularly interesting. After comparing EU reactions to almost 500 cases of human rights violations between 1989 and 2000 (mostly before the Cotonou Agreement), Hadewych Hazelzet concluded that former colonies in general were not shielded from sanctions, but became subject to harsher sanctions than countries that had not been colonies. Hazelzet found that the degree of human rights violations was a more powerful factor than the interests of the EU (in the form of a former colonial relationship with a Member State, or significant trade relations or strategic importance to the EU). As the level of human rights violations increased, the likelihood that the EU would suspend its cooperation increased, too. (Hazelzet 2005.)

However, the Hazelzet study also showed that there was variation among the ex-colonial relations. While former French and British colonies were no more or less likely to be sanctioned than countries that had not been colonies, the former colonies of smaller Member States experienced sanctions most often. Furthermore, the degree of sanctions applied varied, being softest in the case of the former colonies of France. Hazelzet concluded that those punished most harshly were not defended in the Council of the EU by their former colonizers, whereas France and, to a lesser

extent, Britain, made efforts to protect their former colonies (*ibid.*). Partnership, thus, seems to be affected by historical colonial links and the relative power of the EU Member State in question.

It is important to pay attention to situations where invoking Article 96 is not proposed in spite of severe and well-documented violations of the essential elements – a case in point is the EU election observation mission reports about flaws in the electoral process in Ethiopia noted by the European Parliament (2006). From a pragmatic point of view this is not surprising, as the commitment of the authorities of the ACP country concerned is one of the key factors determining the positive or negative outcome of a consultation procedure. (Mackie & Zinke 2006.) There is no willingness to use the instrument if prospects of its usefulness are low. As with aid conditionality in general, the problem, of course, is that its mechanical implementation means that EU development aid is most likely to be withheld from countries where such an action is least likely to have an impact on the government (Morrissey 2004). Governments that are violating human rights and democratic principles almost by definition do not feel accountable to their citizens or the international community. In such cases the EU approach instead might be on attempts to tailor the cooperation so that it could strengthen positive rather than negative development in the country in question. In this regard partnership, indeed, is a significant bargaining factor in the EU-ACP relations. Sometimes it undermines the consistency of the EU approach.

In the most unstable political situations like wars or fragile periods of peace negotiations or peace processes, Article 96 would probably not be very useful either. An example of this is the case of Sudan. “Silent diplomacy” instead of a consultation process that attracts public attention can be more effective. Furthermore in countries in conflict, the regular EU development cooperation has usually been decreased substantially due to reasons of insecurity or logistical difficulties. If only humanitarian aid is left, there is little with which to put pressure on the authorities of the ACP country in question. Member States might also consider other multilateral fora to be more appropriate than the Cotonou framework to undertake action. The EU can impose sanctions following UN Security Council resolutions or support UN-led peace processes, for instance. (Laakso *et al.* 2007, 37.)

As a consequence, in the framework of Article 96 the EU is quite patient towards continuing problems with regard to the essential elements, whereas sudden erosion of the situation is rapidly noted. When compared to all ACP states, it can be noted that the EU has used the instrument consistently in all *coup d'état* cases.

Overview of the cases where Article 96 has been invoked⁴

Until the end of 2006, Article 96 was invoked eleven times: with Zimbabwe, Fiji, Haiti, Ivory Coast, Guinea Bissau, Central African Republic, Togo, the Republic of Guinea, Mauritania and Liberia. In Liberia also Article 97 was referred to. The list confirms the findings of Hazelzet that the former colonial powers have not prevented their ex-colonies from being invited to consultations. Among the consultation countries, there have been former colonies of France, United Kingdom, Portugal and Germany as well as Liberia, which has had a historical link with the United States.

⁴ Detailed descriptions of all the ten cases and the consultation process are available in the “Appendices of the final report of the study on Coordination and coherence in the application of Article 96 of the Cotonou Partnership Agreement”, by Liisa Laakso, Timo Kivimäki and Maaria Seppänen, http://www.three-cs.net/resource_corner/ongoing_studies. See also Bradley 2006.

Consultation cases

Cases	Reason for invoking Article 96	Outcomes of consultations
Haiti (2000)	Violations of democratic principles, flawed electoral process in 2000	Relations normalised in 2005
Fiji (2000)	<i>Coup d'état</i> 2000	Relations normalised in 2004
Côte d'Ivoire (2001)	<i>Coup d'état</i> 2000 Civil war, violations of human rights (consultations not initiated, 2004)	Relations normalised in 2002
Liberia (2001)	Violation of democratic principles, human rights and rule of law and corruption 2001	Relations normalised in 2006
Zimbabwe (2002)	Violation democratic principles, human rights and the rule of law 2002	Measures applicable
Central African Republic (2003)	<i>Coup d'état</i> 2003	Relations normalised in 2005
Guinea Bissau (2003)	<i>Coup d'état</i> 2003	Measures applicable
Togo (2004)	Violation of democratic principles and human rights 2004	Relations normalised in 2005
Guinea (2004)	Violation of democratic principles 2004	Measures applicable
Mauritania (2005)	<i>Coup d'état</i> 2005	Measures applicable

Ex-colonial powers, however, have had an active role in the negotiations and have influenced the content of the appropriate measures, the timing of consultations and other actions the EU might take. United Kingdom (although not alone) was active in pressing the Commission to propose consultations with Zimbabwe in a speedy manner. France delayed the process in the case of Guinea. Portugal, in turn, pressed toward the decision to send an election observation mission to Guinea Bissau. The relative importance of ex-colonial powers stems not only from their material and/or cultural interests, but also from the practical fact that they have embassies in their former colonies while most EU Members States have not.

In half the cases the reason for invoking Article 96 has been a *coup d'état*. The other half consists of violations of democratic principles alone or combined with violations of human rights. The time span that has been needed before normalisation of relations has varied, but only in two cases this has happened already the following year. In the case of Haiti this took five years and in the case of Zimbabwe the process is lasting even longer.

With many countries one can ask why the EU did not start consultations before the *coup d'état*, when there was already information on violations of human rights and democratic principles. The Central African Republic, Guinea Bissau and Mauritania performed poorly with regard to human rights, democracy and rule of law already before the coup. The EU can easily be accused of applying Article 96 only when a violation of the essential elements of the Cotonou Agreement became too obvious, but ignoring continuous or slowly deteriorating violations of the principles. However, in these cases the EU had issued statements condemning the political situation and it had

also kept the door open for political dialogue. This means that Article 96 has usually been considered as an instrument of last resort instead of an instrument that could be used in order to prevent major constitutional crises. It is initiated in a reactive manner only after flagrant breaches of the essential elements have taken place. Zimbabwe is an exception in this regard, but also an example that has been particularly damaging for the ACP-EU partnership.

With regard to the outcomes of the consultations, one has to note that the list of commitments that the ACP country will have to comply with reflects the often complicated and gradually developed situations. While consultations are considered an instrument of last resort, they are - with good reasons - conducted in a comprehensive manner. If the process does not immediately lead to the aspired result, the end result is a long list of issues on which improvements are needed before appropriate measures (sanctions) can be lifted and relations normalised. Even in cases of clear cut *coup d'état* the background is usually marred by political, social and economic problems. Balancing between what is feasible and what is desirable before the relations can be normalised is not easy. Even though wanted by both parties, the exit is a delicate contest between sovereignty (for the ACP state) and credibility (for the EU).

Appropriate measures that are positive in nature, of course, are different in this regard. The possibility to normalize relations after a deep crisis or even *coup d'état* through the use of Article 96 have made it a window of opportunity for the ACP side. Increasingly there are cases where the ACP states have actively cooperated for the invoking of the Article.

Appropriate measures can also be monitoring in nature. Most important is election observation. All cases where Article 96 has been invoked have raised the issue of free and fair elections. In cases of *coup d'état*, holding democratic elections is a key for constitutional rule and normalisation of the relations with the EU. Without exception also the other cases (motivated by the "standard reason" of violations of democratic principles) have centred on electoral politics. Therefore one could expect that the EU election observation mission would be a rule rather than exception during the period between consultations and the lifting of the appropriate measures. This, however, is not the case.

Sometimes, however, election observation has played a role preceding the Article 96 process. In Zimbabwe, for instance, the EU initially wanted to send observers there, but in the end withdrew from the process due to conditions it could not accept. Guinea, in turn, is a case where the EU, before deciding to invoke Article 96, considered the possibility of election observation and sent a mission to the country to investigate the preparations of elections. In the end the government of Guinea did not invite the EU to observe its elections and the EU also concluded that conditions were not conducive to free and fair elections. Election observation is, of course, meaningless if the process can be judged to be not free and fair beforehand. In this respect it requires at least some respect for democratic principles.

Only the elections in Guinea Bissau (2005), Liberia (2005) and Mauritania (2006) have been observed by the EU between consultations and the lifting the sanctions. The fact that these are recent cases suggests that election observation is becoming an instrument to normalise the relations with the EU and an ACP country experiencing political crisis. Significantly, too, the EU sent election observers to Haiti and Fiji in 2005 after the normalisation of relations with these countries. Furthermore, it needs to be noted that the EU has used other positive measures to support the electoral process, including assistance given to domestic observers.

When putting the different Article 96 cases on a line running from June 2000 to the present day, one can observe a pause of more than 18 months. Between Zimbabwe in October 2001 and the Central African Republic in June 2003 not a single time was the Article invoked. The first two new cases after 2002, the Central African Republic and Guinea Bissau, were clear *coups d'état*. Besides, with one exception (that of Guinea) all of the post-Zimbabwe cases have been conducted in a positive atmosphere of cooperation: either at the ACP country's own initiative (Guinea Bissau, Togo and Mauritania) or with a de facto government eager to legitimise its unconstitutional regime by normalising relations with the EU (Central African Republic). This conclusion is further confirmed by the fact that while serious human rights violations and lack of rule of law were observed in 2004 in Côte d'Ivoire almost at the same time as the Togo case, the former, as noted above, was dropped without a decision to open consultations in the Council in spite of the Commission proposal. The latter, at the initiative of the Togo government, was pursued. Guinea is also a special case as there the EU actually used consultations to find a legal basis for the decision of one EU Member State (Germany) to block the planning of further development cooperation with the country. In that case the sanctions (or appropriate measures) actually preceded the decision to start consultations.

In order to understand the critical role played by Zimbabwe, it is useful to look at that case more in detail.

The case of Zimbabwe

EU-Zimbabwe relations started to deteriorate towards the end of 1990s along with growing economic problems and political tensions in the country, although the EU and Member States had supported human rights, elections and media as an important part of their development cooperation for a long time. After a majority of Zimbabwean voters rejected the government proposal for a new constitution in the 2000 referendum, the government started to support a campaign of forceful acquisition of the properties of white farmers. The EU expressed criticism and called the government to hold free and fair elections in May 2000. It also pressed the Zimbabwean government to accept EU observers. However, even before the EU Election Observation Mission (led by former Swedish minister Pierre Schori) entered the country, the EU criticized the campaign period as not enabling a free and fair election. Zimbabwean government reacted by ruling that certain European nationalities (including Swedes and British) were not allowed to participate in the observation mission. This was not acceptable for the EU, which then did not observe the elections.

The ruling party, ZANU(PF), won the elections and intimidation of the opposition continued ahead of the 2002 presidential elections - and so did the criticism of the EU. The EU Delegation and Member States' embassies in Harare started discussing the possibility of a dialogue under Article 8 in September 2000, with some Member States advocating a direct move to Article 96. The Commission provided the proposals for consensus and in February 2001 a request was made to the government of Zimbabwe to start an Article 8 political dialogue.

According to the EU, Zimbabwe did not live up "to its previously good reputation regarding the essential elements" (European Commission 2001, 2). Commissioner Poul Nielson and President Mugabe decided in Brussels in March to conduct a dialogue under Article 8. This would have been led by the Heads of Mission in Harare. Over the following few months, five meetings were held in Harare, but the only subject that was discussed was the agenda. At the end of June the Zimbabwean government pronounced itself ready to start the dialogue. The EU General Affairs Council noted the following aims:

- an end to political violence, and in particular an end to all official encouragement or acceptance of such violence,
- an invitation to the EU to support and observe coming elections and full access to that end;
- concrete action to protect the freedom of mass media;
- independence of the judiciary and respect for its decisions; and
- an end to illegal occupation of properties.

Member States took an active role in determining the critical approach of the EU. The UK, the Nordic countries, the Netherlands and Germany took a “hard line.” Sweden, which held the EU presidency in the first half of 2001 was particularly important. France, however, opposed invoking article 96. But, in resonance with its agreement with the UK in Saint Malo in 1998, which stipulated that both countries should respect each other’s Africa policy, it left the EU-Zimbabwe policy largely to the British. However, it needs to be noted that the tough UK approach hardly stemmed from its direct interests in the country: the British business in Zimbabwe has not benefited from the “smart sanction”. Yet, Zimbabwean perceptions of the lead role of its old colonial master were reflected in its eagerness to refer to the injustices of the colonial past. This, in turn, appeared to be something that neither the EU nor the British government were prepared to discuss within the Cotonou partnership.

In September 2001 a land reform conference was held in Abuja, Nigeria, involving a number of Commonwealth countries and the UNDP. The UK was the only EU Member State present. The UNDP drafted a proposal for the land reform program which was acceptable to the donor community. For a short while there was some optimism on the part of the UK in particular. However, Zimbabwe’s failure to start implementing the Abuja Agreement soon made the UK and the whole EU tougher again. The Commission started preparing a communication to the Council and Zimbabwean Minister of Foreign Affairs Mudenge visited Brussels as planned and met the EU Troika in October, but this did not help the situation. A few days later the General Affairs Council considered the Commission’s proposal and approved the opening of an Article 96 process. According to the Commission it was “hardly realistic to expect an early reversal of present policies” in Zimbabwe (European Commission 2001, 3). No effective dialogue had taken place within the Article 8 framework, and even though Article 8 enables civil society organizations to take part in the dialogue, they had had no role or were not even informed about the issue.

At least partial explanation for the haste of the EU was the forthcoming elections and its willingness to have an influence on the arrangements of the elections. The Council set a two-month time limit for Zimbabwe to progress on the above mentioned points before taking appropriate measures.

The Zimbabwean government argued that the real EU agenda was a regime change in Zimbabwe and that this was dictated by the UK, which already was conditioning its bilateral aid to Zimbabwe. For Zimbabwe the EU move was unilateral and a poor example of the spirit of partnership. This feeling was exacerbated by the inability of the EU to be represented in the first consultation meeting in 2001 by as high level delegation as was sent by the Zimbabweans. Zimbabwe sent five ministers to the consultations, led by the Minister of Foreign Affairs. The EU delegation did not include representatives at ministerial level, but was led by the Spanish Ambassador and Permanent Representative to the EU. For the Zimbabweans, the lower level of the EU delegation indicated a lack of respect, in spite of the EU’s explanation that it was the result of busy timetables and the length of time taken to reach an agreed date.

There were several issues where the EU wanted to see improvement. While a comprehensive approach as such was in coherence with the EU development policy, it turned into ambiguity when

used in conditioning aid and cooperation, not least since some of the issues had been tolerated in the past and in some issues the Zimbabwean performance had actually improved when compared to previous years. However, leaving some important issues out of the consultations would have signalled that the EU was not concerned about them and incoherent in that respect.

Zimbabwe referred to the partnership principle in the Cotonou Agreement, the need for a deeper EU appreciation of the problems Zimbabwe had with land reform and the urgent need to restore UK-Zimbabwe collaboration on the land reform program. The EU sought access for observers and the media to the elections in addition to a government plan on “its actions on all points covered by the discussion” within one week.

The EU was to review the situation at the General Affairs Council on 28 January. Zimbabwe sent the requested letter on 18 January. The EU subsequently noted that “essential elements” were not respected, and announced its intention to impose sanctions if

- Zimbabwe prevented the deployment of an EU observation mission, prevented this mission from operating, or prevented the international media from having free access to cover the election;
- there were a deterioration of the human rights’ situation or attacks on the opposition; or
- the election was assessed as not being free and fair.

Zimbabwe invited foreign observers and Pierre Schori’s EU observer team arrived in early February. The Zimbabweans, then, indicated that certain EU nationalities would not be acceptable. Schori was unable to remain in Zimbabwe and had to leave only a week after his arrival, just before the General Affairs Council meeting of 18 February 2002. The Commission and the Council secretariat were already preparing the papers for the passing of sanctions against Zimbabwe. The EU, thus, was not waiting for Zimbabwe’s response, even though the aim of the consultations had been to try to solve the problem. The General Affairs Council meeting resulted in an agreement to conclude the consultations and to adopt appropriate measures, since the human rights situation, electoral policy and rule of law in the country had not improved.

Zimbabwe argued that there was a dispute between Zimbabwe and the EU and wanted to invoke Article 98 of the Cotonou Agreement., which allows disputes between parties to be submitted to the Joint Council of Ministers for settlement. The question is about a standard stipulation in international agreements, which use in this surprised the EU. The dispute, however, was not solved through this mechanism either.

The General Affairs Council’s decision to impose “smart sanctions” against the high officials of the Zimbabwean Government (who were believed to be in a position to influence government decisions) was a unilateral CFSP measure. The sanctions consisted in travel restrictions and freezing the assets of “Cabinet Ministers, Politburo Secretaries, Deputy Ministers, Assistant Secretaries of the Politburo and the spouse of President Mugabe.” The EU also forbade the sale of arms to Zimbabwe, and the 9th EDF for the period 2002-2007 was not signed. Every year since 2002, the EU has decided to maintain the appropriate measures with minor changes such as the individuals listed on the travel ban, which now totals 127 people.

Aid has been directed towards social sectors and cooperation with civil society. Relief aid has continued. In some respects direct support to the people has exacerbated the difficult relations between the EU and the government, because the EU is viewed as seeking to influence the constituency of a government without involving it. The Zimbabwean government, in turn, seeking

to gain mileage from humanitarian support, has provided it through its own structures so that it would be viewed as government support to the people. This has irritated the EU.

Smart sanctions have made it difficult to conduct dialogue with Zimbabwe. Also the dialogue between the EU and Africa has been harmed by the EU-Zimbabwe dispute. Both Africans and Europeans agree that the Zimbabwe issue has brought unnecessary tension to their relations. The EU has tried to solve practical problems on a case-by-case basis. For instance, it agreed to move one EU-SADC meeting scheduled for Copenhagen to Maputo because of the travel ban. France, in turn, invited Mugabe to an Africa Summit in Paris, because it did not want to damage its relations with Africa over the Zimbabwe issue. On the other hand, a decision by the European Parliament not to allow two Zimbabwean ministers to access their buildings resulted in the last minute cancellation of the 4th Session of the ACP-EU Joint Parliamentary Assembly in 2002.

The government of Zimbabwe communicates to the public its view that the country is under illegal sanctions (because they are not endorsed by the United Nations). The common perception amongst Zimbabweans is that aid has decreased as a result of these sanctions. Although the Zimbabwean government recognizes that the EU and its Member States are investing in the social sector, it does not praise the EU for excluding humanitarian aid, aid benefiting the people and economic relations from the appropriate measures. The government's view is that the measures are negatively affecting the economy. The UK in particular bears the brunt of this. The smart sanctions have also divided the Zimbabwean civil society, including the churches and the opposition. Some believe that sanctions should be extended if they are to be really effective. Others believe that they are making things worse. Some argue that there is need for education of the citizens so that they know that the economic problems in Zimbabwe are not due to smart sanctions.

Nothing has formally prevented an Article 8 political dialogue from proceeding. However, little dialogue has occurred between the Member States and Zimbabwe. Formal contacts have been at the minimum level. Some of the ambassadors of the EU Member States are trying to promote dialogue with government ministers, but for many Europeans the current discourse of ZANU(PF) is anti-west, which makes dialogue difficult. The views of the Member States and the Commission differ to the extent that some Member States argue that any Article 8 discussions need to be initiated by Member States and such discussions have not been conducted, while other Member States are of the opinion that there had been such dialogue. Commission regards all of its interaction with the Zimbabwean government as dialogue referred to in Article 8, and has conducted preparatory discussions for the 10th EDF also in order to enhance political dialogue. Commissioner Louis Michel, for example, met with Zimbabwe's Ministers in Gaborone and again in Brussels in 2006 (during the ACP Ministers of Finance meeting).

The appropriate measures have been maintained much longer than was initially hoped and predicted among the Member States. As a preparation for an exit strategy, already in 2003 the EU set out benchmarks, according to which any positive moves on the side of the government of Zimbabwe could be assessed. The benchmarks are consistent with the initial concerns of the EU and are comprehensive. Although this is an internal EU decision, the benchmarks have been communicated to the Zimbabwean government. The Member States have discussed the feasibility of the benchmarks and it appears that for the Northern "hard liners" the question is one of principle and the EU has not been able to soften its approach in the fear of losing its credibility.

In spite of being officially behind the common EU policy, the Member States' opinions differed. This has become clearer as the Zimbabwean crisis has deepened. According to some EU commentators, the Member States are free to be strict or lenient in their interpretation of the

common decisions. As a result there is a Council position, which is very close to the UK position, a French position which is very different, a Commission position which is somewhere in between, and a critical position held by several Member States that simply are not comfortable with the current situation.

The Zimbabwean government-owned media has exploited opportunities to show that there are dissident voices in the EU: the new Swedish ambassador was quoted as saying that smart sanctions have hit the poor. A MEP was also quoted as saying that land reform was the real issue behind the sanctions. While some representatives of civil society (the labour unions, parts of the church and human rights groups) and the opposition see firm basis of the EU focus in the Cotonou Agreement, the view of some other representatives of the Zimbabwean civil society (including the private sector) is that it was primarily the acquisition of farms that irritated the UK, and that in spite of being comprised of Member States with different views the EU adopted the UK position.

The EU has attempted to coordinate its policies also with SADC. According to some representatives of EU Member States, this was a mistake. The SADC policy of non-interference has not allowed its Member States to openly interfere with Zimbabwe's internal dispute and for SADC the priority has been to avoid Zimbabwe's isolation. Many in Africa view Mugabe as a hero, and in addition to this, as the eldest incumbent president and a liberation war leader he is not somebody who could easily be advised by other African leaders.

Conclusions

Invoking Article 96 for Zimbabwe was a unilateral decision by the EU. The overall experience of the use of Article 96 there can be regarded negative in the sense that various stakeholders are frustrated. The situation is also affected by the EU's inability to form alliances with Zimbabwe's neighbouring countries and Zimbabwe having become a problem in the EU-Africa relations. The problems relate to the antagonistic and uncooperative attitude of the government towards the donor countries. The more difficult the situation has become, the more evident it is that also EU Member States hold different opinions about the usefulness of the sanctions. What maybe keeps the EU united is a shared fear that it would lose credibility if it changed its policy. The issue of credibility seems to prevent the EU from radically revising its strategy even when the results have been negative.

There is evidence of a learning process based on the experiences of the Zimbabwe case in the ACP-EU relations, which has strengthened the idea of partnership. This instigates a move from an emphasis on conditionality and sanctions towards positive measures normalizing the relations between the EU and an ACP state that is experiencing or has experienced political crisis. While the EU has become more careful or hesitant in invoking Article 96 after the case of Zimbabwe, the ACP countries, too, have learned to use the instrument to their advantage. This is shown especially by the cases of Guinea Bissau and Mauritania, whose reward has been an increase of aid in support for the democratic transition process. In other words, ACP countries have come to see the benefits of Article 96 as a "window of opportunity". The exception in this regard is the Republic of Guinea, where the government considered the consultations to be a sanction or at least inappropriate foreign interference in its internal affairs.

Normalization of relations is pivotal after an unconstitutional rupture like *coup d'état*, in particular. This view is illustrated by the cases of Fiji, Central African Republic, Togo as well as Guinea Bissau and Mauritania where the authorities of the ACP country concerned were cooperative. In

those cases, one could argue, invoking Article 96 is concomitant with the principle of partnership. A positive outcome has followed appropriate measures that at least to a certain extent have “empowered” the government and enabled it to present its own agenda. Invoking Article 96 has been sometimes the first international reaction giving *de facto* recognition for the new government (in spite of its illegal character). The EU obviously attempts to negotiate with a partner that has the most powerful position in the country. At the same time, however, it should not legitimize an interim or coup government. However, only in the case of Fiji the EU did not negotiate with the coup leaders or the interim government that was put in place by them.

For the EU an important motive for invoking Article 96 with an ACP country violating the principles of the Cotonou Agreement has become the assumption that the consultations and appropriate measures eventually imposed will have an impact on the situation. It is evident that the decision to invoke Article 96 is dependent upon the perceptions the EU has on the political will of the ACP country to respond to its concerns. This means that the EU is not consistent when applying the criteria of essential elements and the fundamental element of the Cotonou Agreement. A behaviour where the EU consciously avoids entering into a stalemate situation with “difficult partners” reflects the objective of “preventive engagement” mentioned in the EU Security Strategy. With difficult partners it is better to look for other ways of influencing human rights, democracy, rule of law and good governance than Article 96.

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