

## **CHAPTER 6: THE AFRICAN UNION-UNITED NATIONS MISSION IN DARFUR (UNAMID)**

### **6.1 INTRODUCTION**

UNAMID is discussed and analysed in great detail in Chapter Six. This chapter, however, does not merely continue where Chapter Five left off, neither does it have the same chronological structure or schemata. While a timeline of key political events was provided in Chapter Five for the period from the beginning of the Darfur conflict in February 2003 until 31 December 2007, which was when UNAMID formally took over operations from AMIS, Chapter Six is structured to discuss and analyse UNAMID in a more thematic manner. The themes which will be discussed and analysed are: 1) UNAMID as a hybrid peacekeeping operation, including its unique elements and characteristics; 2) the extent to which UNAMID met its mandate, including key political events in the conflict; and 3) major external factors which impact(ed) on the Darfur conflict and UNAMID, such as the indictment of al-Bashir by the ICC and the southern Sudanese secession from the North. Through such a thematic-orientated focus, it is aimed in this chapter to meet in part the following research objectives of the study: *“To identify, impart and describe the unique elements and characteristics of a hybrid operation, such as UNAMID”,* and *“To determine whether or not a hybrid peace operation such as UNAMID is an optimal mechanism/alternative for the United Nations to maintain international peace and security”*. Both of these research objectives are further explored in Chapter Eight. Chapter Six is thus structured along the above three themes allowing for arguments and insight into the above two research objectives. Accordingly, the chapter begins with the first part (or theme) on UNAMID providing background information on its structure, finances and resources, as well as explanations of some of the unique elements of the mission, such as the African character it was obliged to have. The second part or theme of the chapter contains a chronological analysis of UNAMID’s performance year-by-year from January 2008 to June 2011, and includes political decisions, such as UN Security Council resolutions, which directed its

framework of operations. The third and final part/theme of the chapter covers major events that impacted on the Darfur conflict and/or UNAMID.

## **6.2 PART ONE: THE MEANING OF ‘HYBRID’ IN THE UNAMID CONTEXT**

The unique elements of UNAMID which made it a ‘hybrid’ peacekeeping mission according to the vision of the African Union and the United Nations form the main focus of the following section. UNAMID is not compared with other peacekeeping missions, but rather those characteristics which were insisted on primarily by the African Union to be included in its character, structure, and resources, are highlighted. Together with pointing out these characteristics, an analysis is provided on how each unique characteristic impacted on the performance of UNAMID. The objective to describe all the unique elements of UNAMID as a ‘hybrid’ operation will be fulfilled in Chapter Eight after incorporating the views of the respondents in the study. Some of the respondents also compared various elements of UNAMID with ‘regular’ peacekeeping missions. The most prominent part of the vision of the African Union and United Nations relating to the ‘hybrid’ idea was the unique ethnic character requirement which was highlighted in *Chapter Five, section 5.2.5.2.5.1*. This will be discussed in the next section.

### **6.2.1 The senior leadership of UNAMID and its required African character**

According to agreements reached between the African Union and the United Nations, the senior leadership had to be jointly appointed by the UN Secretary-General and the Chairperson of the African Union Commission (AU PSC, 2006b:2). For instance, with respect to the hybrid operation, the African Union Peace and Security Council (AU PSC, 2006b:1) decided that:

- i. the Special Representative of the mission had to be jointly appointed by the Chairperson of the Commission of the African Union and the UN Secretary-General;

- ii. the Force Commander, who had to be an African, had to be appointed by the Chairperson of the Commission of the African Union in consultation with the UN Secretary-General;
- iii. the Mission would benefit from United Nations backstopping, command and control structures and systems; and
- iv. the size of the force would be determined by the African Union and the United Nations, taking into account all relevant factors, the situation on the ground, and the requirements for it to effectively discharge its mandate.

All other civilian personnel for the operation would be hired, ‘after appropriate consultations between the African Union and the United Nations’, under United Nations contracts in accordance with established United Nations selection and recruitment guidelines, standards and procedures (UNSC, 2007j:27-28). Subsequently, on 8 May 2007, the UN Secretary-General and the Chairperson of the African Union Commission, announced the appointments of Rodolphe Adada of the Congo as the Joint African Union-United Nations Special Representative for Darfur, and the former Force Commander of AMIS, Martin Luther Agwai of Nigeria, as the new UNAMID Force Commander (AC, 2007:2-3; UN DPI, 2007h; UN Radio, 2007). Following these appointments, Mutref Siddig Ali, who headed negotiations with the African Union and the United Nations, announced on 17 June 2007, that the command and control of UNAMID would be entirely African (AC, 2007:2). These shared appointments were accepted by the GoS (AC, 2007:2-3). By mid-2011 the following Africans served, or had served, in the most senior positions in UNAMID, all of whom were jointly appointed by the UN Secretary-General Ban Ki-moon and the Chairperson of the African Union, Jean Ping:

- Rodolphe Adada left his position on 31 August 2009 (Sudan Tribune, 2009a) and Henry Anyidoho of Ghana was appointed Joint Special Representative *ad interim* (CPID, 2009a:7). Ibrahim Gambari of Nigeria was appointed as the Joint African Union-United Nations Special Representative for Darfur with effect from 1 January 2010 (DPI, 2010).

- Mohamed Yonis of Somalia was appointed on 4 September 2009 as one of the two Deputy Joint Special Representatives (Reliefweb, 2009) to assume responsibilities for Operations and Management (CPID, 2009a:7). Yonis succeeded Hocine Medili of Algeria (CPID, 2009a:7).
- On 13 May 2011, Aïchatou Mindaoudou Souleymane of Niger was appointed as the second Deputy Joint Special Representative and would have a Political portfolio (UN DPI, 2011a).
- Patrick Nyamvumba of Rwanda replaced Martin Luther Agwai on 1 September 2009 as the (military) Force Commander (UN, 2009h:1).
- Micheal Fryer of South Africa was appointed as UNAMID's Police Commissioner in the beginning of 2008, and was succeeded by James Oppong Boanuh of Ghana in August 2010 (UN, 2010f).

There were some implications for this 'African' character requirement. The African Union High-Level Panel on Darfur (AU PSC, 2009:43) argued in 2009 that the predominantly African character of the Mission enabled it to grapple with the complex political problems that Darfur represented, and given the suspicions that existed between the GoS and the United Nations, the African Union's role in mitigating that mistrust without compromising on basic principles allowed UNAMID to broker the Tripartite Agreement, which enabled the logistics and administration to function with the active cooperation of the GoS. The Tripartite Agreement was signed in 2007 between the GoS, the United Nations and the African Union to increase logistical support for UNAMID (China Embassy, 2007). On 31 March 2011, another Tripartite agreement was signed which aimed to lead to a Memorandum of Understanding which would allow radio broadcasts by UNAMID and the GoS to approve visas for military, police and civilian peacekeepers (Osman, 2011). Clearly, operating freely and unhindered in Darfur was a constant problem for UNAMID. This is confirmed by the statements of Rodolphe Adada to the Africa Synod (Adada, 2009), who remarked that "*the Sudanese Government only saw the international community (i.e. UNAMID) as a force whose goal was to overthrow the regime, but with the help of the African Union, it was possible to alleviate these suspicions*".

The African character therefore directly contributed to the successes of the civilian components of UNAMID, such as the Darfur-Darfur Dialogue and Consultation (DDDC) which was associated with the African Union (AU PSC, 2009:43). The DDDC was established through the Darfur Peace Agreement (DPA) as ‘an autonomous and non-politicised process, mandated to enable Darfurians to voice their opinions and views to achieve sustainable peace and reconciliation in Darfur’, according to the official DDDC website (DDDC, 2011). According to Kean and Wee (2010:124-125), who explain the origins of the DDDC, the African Union established the DPA Implementation Unit (DPAIU) in support of the implementation of the DPA, which was in turn charged to establish the DDDC and operationalise other entities outlined in the agreement, such as the Darfur Joint Assessment Mission (DJAM). Furthermore, in reporting equally to both the AU PSC and the UN Security Council, the UNAMID leadership was in an excellent position to obtain the maximum international political leverage and access (AU PSC, 2009:43). In contrast with the above, the African character requirement was seen by some as a tactic of the GoS to delay the deployment of UNAMID.

#### ***6.2.1.1 The ‘African character’-delaying tactic, and other bureaucratic obstacles***

Koos (2010:4) believes the deployment of troops was hampered by several delaying tactics of the GoS, such as delaying the formal approval to the United Nations, rejecting troops from South-East Asia, not allocating ground for the UNAMID bases, and restricting night patrols. Such obstruction by the GoS ensured that few additional troops were deployed following the transfer of authority from AMIS, and as a result, by April 2008, UNAMID was barely one third of its authorised strength (HRW, 2008). Weschler (2010:9) corroborates the notion that the GoS stalled on the deployment of UNAMID by means of an array of bureaucratic tactics, including blocking equipment at customs for months on end, and by refusing entry to entire national contingents using the “African character” clause as an excuse.

The GoS notably obstructed the deployment of UNAMID by refusing to approve the list of countries contributing troops provided by the United Nations and the African Union, imposing restrictions on UNAMID flights, delaying the release of UNAMID equipment from Port Sudan and failing to provide sufficient land for bases in Darfur

(Darfur Australia Network, 2008?:2). The GoS kept insisting that the peacekeeping force be composed primarily of troops from African countries, although there were no equivalent African troops ready to deploy (HRW, 2008), and while the UN Security Council expressly stated that should African troop and police-contributing countries be unable to meet the force requirements, offers from other contributing countries should be considered (UNSC, 2007i:27). Contrary to this, the UN Security Council at the same time provided the GoS with the final authority to approve the choice of troop contributing countries (UNSC, 2007i:27), which the GoS stalled in doing. This point is also consistent with what was concluded at the end of Chapter Five, that the GoS calculated that this would be an effective delaying tactic to hamper full deployment of UNAMID.

Furthermore, according to Human Rights Watch (HRW, 2008), the GoS used a series of bureaucratic obstructions to hamper the deployment of UNAMID, including delaying the allocation of land for bases and the arrival of critical equipment. Due to these obstructions and delaying tactics, Ferris (2008) mentions that UNAMID was largely seen as ineffective and excessively cautious - not only by the international community but also by the Internal Displaced Persons (IDPs). Ferris (2008) confirms that the lack of effectiveness of UNAMID was in part the result of a) the lack of commitment by the international community to provide the troops, helicopters and supporting materials to the peacekeepers (for instance, by September 2008, only 140 Bangladeshi police and a smattering of others had arrived in addition to the approximately 8 000 troops held over from AMIS)); and b) in part due to the intransigence of the GoS which had created delays and bureaucratic obstacles in the deployment of the peacekeepers. Even with the slow deployment and lack of support for the mission, the UN Secretary-General set out to develop a fully integrated hybrid peacekeeping structure in line with the requirements of Resolution 1769 (2007) and the report of the UN Secretary-General and the Chairperson of the African Union Commission of 5 June 2007 (S/2007/3074/Rev.1) (UNSC, 2007a:3; UNGA, 2007c:8). This envisaged and mandated structure will be discussed next, beginning with the management structure.

### 6.2.2 The layout of UNAMID and liaison

As a general note to this section, the figures and statistics in the following section are as of 1 January 2011. For the tables and figures, an explanation of the acronyms is provided in *Chapter One, section 1.2*. The UN Secretary-General (UNGA, 2007c:8) envisaged that UNAMID would have a single chain of command in keeping with the principles of UN peacekeeping, and that there would be unity of command and control. The principles of UN peacekeeping are discussed in *Chapter Three, section 3.3.2.4.4*. To comply with the UN Security Council 1769 (2007) decision, the UN Secretary-General proposed that the command and control structures and backstopping would be provided by the United Nations while the strategic directives to UNAMID would be issued by both the UN Under-Secretary-General for Peacekeeping Operations (USG DPKO) and the AU Commissioner for Peace and Security (UNGA, 2007c:8). To define the workings of UNAMID, the UN Secretary-General noted to the UN General Assembly (UNGA, 2007c:8) that the United Nations and the African Union would exchange letters on the legal terms of their partnership in Darfur and agree to the full application of administrative authorities and delegations in accordance and in compliance with United Nations rules, regulations and procedures.

The UN Secretary-General (UNGA, 2011a:5) explained that the unity of command and control and a single chain of command were enshrined in the reporting structure of UNAMID, whereby the Joint Special Representative of the Chairperson of the African Union Commission and of the UN Secretary-General had overall authority over UNAMID, oversaw the implementation of its mandate, and was responsible for the Mission's management and functioning. In this regard, the UN Secretary-General (UNGA, 2011a:5) noted:

- The Joint Special Representative would implement the strategic directives issued by the USG DPKO and the AU Commissioner for Peace and Security and report through them to the UN Secretary-General and the Chairperson of the African Union Commission, respectively.

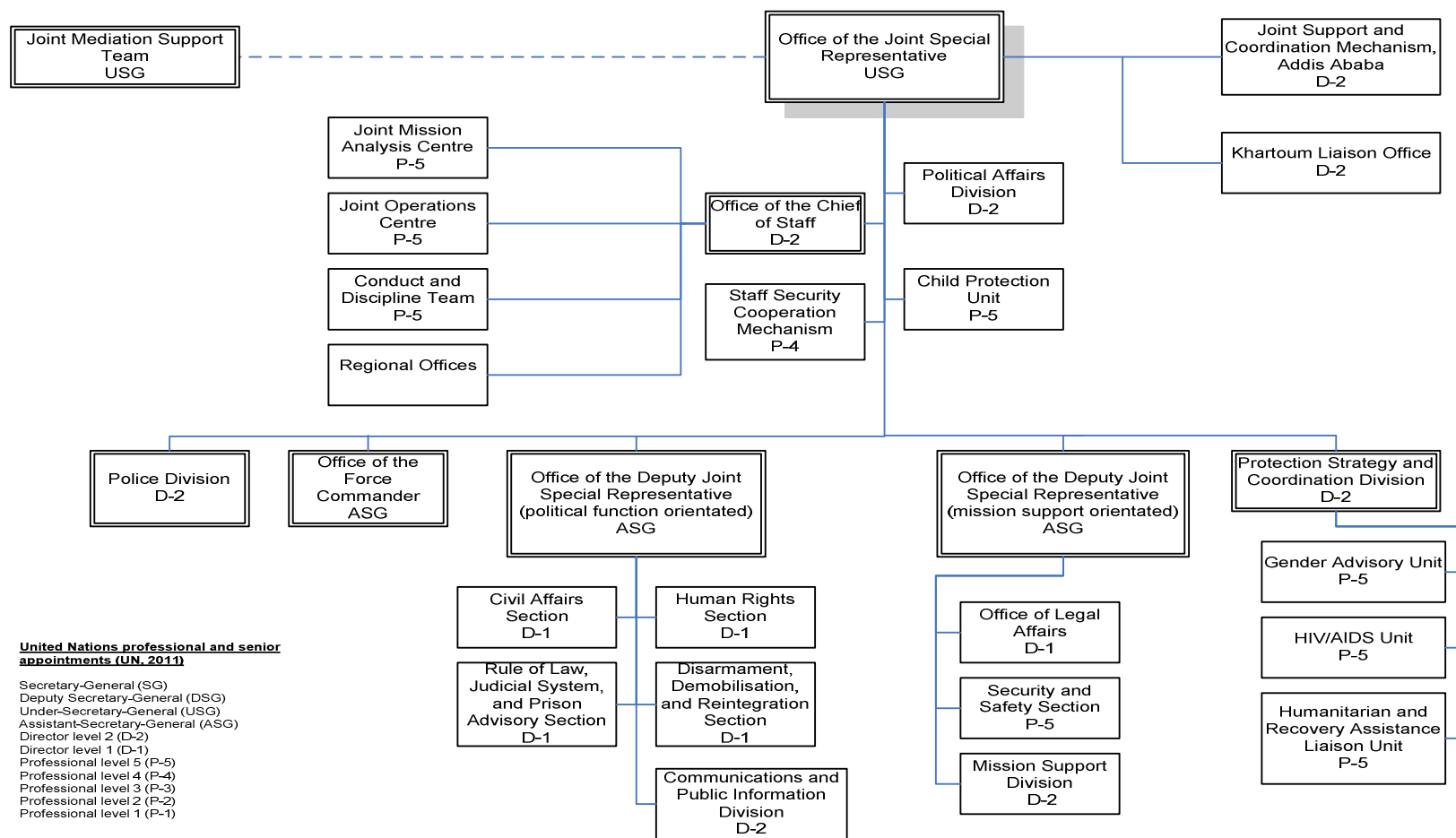
- The Force Commander and the Police Commissioner, both appointed by the African Union in consultation with the United Nations, report to the Joint Special Representative and exercise command and control over the military and police activities of the hybrid operation, respectively.
- By 2011, the structure also included two Deputy Joint Special Representatives, one to manage the political aspects of the Mission and one for Operations and Management (UNGA, 2011a:97).

The organisational layout of UNAMID (as of 2011) is depicted in *Figure 6.1*. Its planned structure changed from its initial conceptual construct in 2007/8 (UNGA, 2007c:86-90). By 2011 it included Substantive and Administrative offices, a Military and Police Structure, a Mission Support Division, Regional Offices and Outposts, and a section coordinating humanitarian operations with UNMIS (UNGA, 2011a:97-102). The Regional Offices and Outposts were located in Nyala (which included the logistics base), Al Fasher, El-Geneina, Zalingei, and included offices outside the areas of operations which were located in El-Obeid, Khartoum, Port Sudan, and in Entebbe, Uganda (UNGA, 2011a:99). The African Union and the United Nations also established a Joint Support and Coordination Mechanism (JSCM) based in Addis Ababa (MacKinnon *et al.*, 2009:53). The JSCM is staffed by a team of liaison officers tasked to backstop UNAMID with operational and planning support (MacKinnon *et al.*, 2009:53). The JSCM was conceived at the first ever working level meeting on the conceptualisation of UNAMID in Addis Ababa on 23 January 2007 (UN, 2009j). Subsequently the Joint Report of the United Nations Secretary-General and the Chairperson of the African Union Commission of June 2007 iterated that the JSCM would be established in Addis Ababa with a dedicated staff capacity to facilitate empowered liaison between UN DPKO and the AU PSC on matters relating to deployment operations of UNAMID (UN, 2009j). UNAMID also coordinated closely with the African Union and UN Joint Chief Mediator for Darfur (Djibril Bassole) as he pursued the political process to end the Darfur conflict. Standing liaison arrangements were established and maintained within the Joint Mediation Support Team working in the service of the Joint Chief Mediator (MacKinnon *et al.*, 2009:53). On 1 July 2010, UN General Assembly established the new UN Office to the African Union (UNOAU) in the Ethiopian capital Addis Ababa, where the



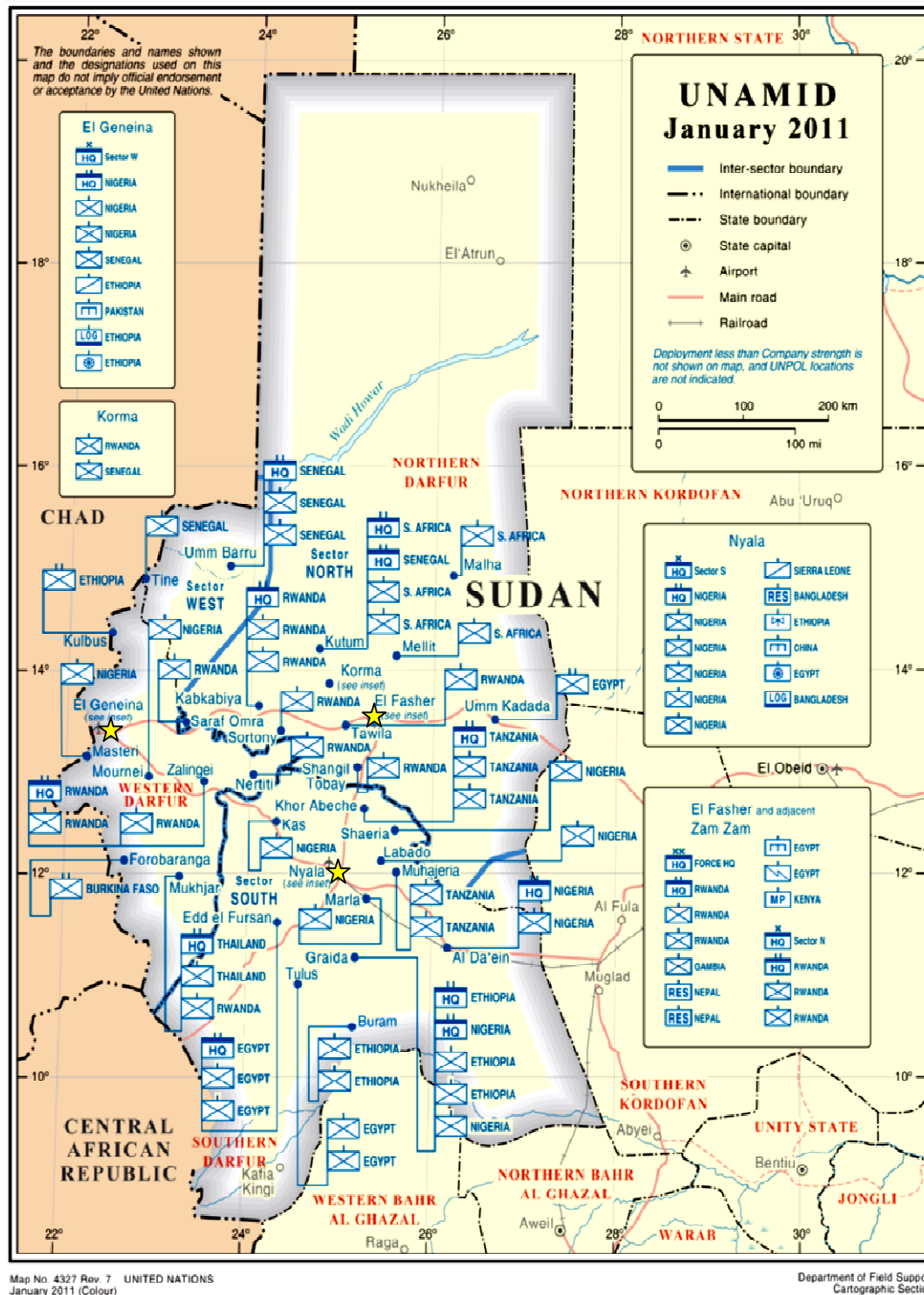
African Union has its headquarters (UN News, 2010). The office is headed by Zachary Muburi-Muita who had served as Kenya's Permanent Representative to the UN in New York since 2006 (UN News, 2010). As highlighted by the UN General Assembly (UNGA, 2011b:4), UNOAU integrated the former United Nations Liaison Office, the African Union Peacekeeping Support Team and the United Nations planning team for the AMISOM, as well as the support elements of the JSCM of UNAMID.

As for regional United Nations peacekeeping mission cooperation, in accordance with Security Council resolutions 1769 (2007) and 1590 (2005), a number of UNAMID activities were closely coordinated with UNMIS, and specifically the coordination of humanitarian operations (UNGA, 2011a:100). Its structure changed from the original conceptual construct due to redeployment of resources, such as the transfer of the Facilities Management Unit (145 posts) to the Engineering Section, establishment of new offices, such as the United Nations Office to the African Union, and reassignments of senior posts to supplement the work of other units (UNGA, 2011c:13-14). The structure as of April 2011 can be found in *Figure 6.1* below.



**Figure 6.1:** Organisational layout of UNAMID, as of January 2011 (UNGA, 2011a:97)

According to the UN Secretary-General (UNGA, 2011a:6), UNAMID was organised into three sectors covering the three Darfur States, with leadership and direction throughout the mission area provided from its headquarters in Al-Fasher. Accordingly, three regional offices, namely Al-Fasher (co-located with the mission headquarters), Nyala and El-Geneina, supervise and coordinate operations in Northern, Southern and Western Darfur respectively while a regional sub-office in Zalingei, which reports to the El Geneina regional office, coordinates activities in the Zalingei subsector (UNGA, 2011a:6). Notably, the Joint Support and Coordination Mechanism, staffed by both United Nations and African Union personnel, was located in Addis Ababa, Ethiopia, and was responsible for liaising between the United Nations Department of Peacekeeping Operations and the African Union Peace and Security Department on matters related to the deployment of UNAMID (UNGA, 2011c:7). UNAMID's military deployment is indicated in *Map 6.1* (UN DFS, 2011).



**Map 6.1:** Deployment of UNAMID in Darfur as of January 2011 (DFS, 2011) with the three regional offices, Al-Fasher, Nyala and El-Geneina highlighted.

The above has described the strategic layout and planning for UNAMID. The amount of financial resources which UNAMID actually had at its disposal, however, would dictate if the envisaged mandate could indeed be implemented. Financial and human resources are provided for by UN Member States and the process is explained in *Chapter Three, section 3.3.2.1.2*. In line with what was explained in Chapter Three, the following sections will elaborate on the resources of UNAMID from its inception to date (June 2011).

### ***6.2.2.1 Resources for UNAMID***

This section aims to follow the proposed and approved budget and human resources allocations for UNAMID year-by-year and puts the financial outlay in context with the other UN peacekeeping budgets. The argument which is proposed throughout much of the section is in line with that in *Chapter Three, section 3.3.2.1.2*, namely that a United Nations peacekeeping mission cannot achieve its political mandate without adequate resources being accorded by the UN General Assembly. The success of the political ideal is thus directly dependent on the resources it has in reality.

#### **6.2.2.1.1      Financial resources**

When the UN Security Council decided through Resolution 1706 (2006) to extend the mandate of UNMIS to Darfur and requested the UN Secretary-General to take the necessary steps to strengthen support to AMIS, through the ‘light’ support package deployment (as explained in *Chapter Five, sections 5.2.5.2.5 and 5.3.2*). The ACABQ advised the UN Secretary-General on 17 October 2007 to proceed with the deployment of the ‘light’ support package to AMIS through the redeployment of existing resources from UNMIS of up to USD 21.2 million (UNGA, 2007c:5). On 24 April 2007, the ACABQ advised the UN Secretary-General to proceed with the deployment of the ‘heavy’ support package to AMIS through the use and redeployment of the existing resources of UNMIS up to USD 68.6 million to 30 June 2007 (UNGA, 2007c:5). On 8 August 2007, the ACABQ approved a commitment authority for UNAMID not to exceed USD 50 million, to meet the cost of the most immediate and essential preparatory steps for the establishment of an operational

capacity and financial arrangements to reimburse AMIS troop-contributing countries for troop costs (UNGA, 2007c:5).

On 3 October 2007, the UN Secretary-General (UNGA, 2007c:3) presented to the UN General Assembly the proposed budget for the first year of UNAMID, for the period from 1 July 2007 to 30 June 2008, which amounted to USD 1 477 766 300. According to the UN Secretary-General, the mission was established (UNGA, 2007c:6) to:

- contribute to the restoration of necessary security conditions for the safe provision of humanitarian assistance;
- contribute to the protection of civilian populations under imminent threat of physical violence and prevent attacks against civilians;
- contribute to the promotion of, respect for, and protection of human rights and fundamental freedoms in Darfur;
- contribute to a secure environment for economic reconstruction and development, as well as the sustainable return of internally displaced persons and refugees to their homes;
- assist in the promotion of the rule of law in Darfur; monitor, observe compliance with and verify the implementation of various ceasefire agreements signed since 2004, as well as assist with the implementation of the DPA and any subsequent agreements;
- assist the political process in order to ensure that it is inclusive, and support the African Union-United Nations joint mediation efforts; and
- monitor and report on the security situation at the Sudan's borders with Chad and the Central African Republic (CAR).

The above is taken from the 'Report of the Secretary-General on Financing of the African Union-United Nations Hybrid Operation in Darfur for the period from 1 July 2007 to 30 June 2008 and not directly quoted from Resolution 1769 (2007). This is important as the above reflects the way the UN Secretary-General attempted to put the expected political accomplishments encapsulated in Resolution 1769 (2007) into concrete measurable achievements according to the RBB-principles. The implications

and need for the RBB-format are explained in *Chapter Three, section 3.3.2.1.2*. Both the ACABQ (UNGA, 2007d:5) and the UN General Assembly (UNGA, 2008b:3), however, noted with concern that the budget for UNAMID for the period from 1 July 2007 to 30 June 2008 was not submitted in the RBB-format. This was rectified in subsequent submissions. Nonetheless, the UN Secretary-General did group the expected accomplishments of the Mission into five components (UNGA, 2007c:6-7):

- i. Component 1: Peace process. The component on the peace process reflects support to the Joint Special Representative to assist with the implementation of the Darfur Peace Agreement and any subsequent agreements, as well as the efforts of the African Union and United Nations Special Envoys to make the peace inclusive and broaden the base of the Agreement.
- ii. Component 2: Security. The component on security encompasses establishing a stable and secure environment in Darfur, protecting civilians at risk and supporting the implementation of the security aspects of the Darfur Peace Agreement and any subsequent complementary agreements.
- iii. Component 3: Rule of law, governance and human rights. The component on the rule of law, governance and human rights reflects support to Sudanese national authorities to strengthen and reform the judicial and prison systems, including through strengthening customary law to ensure compliance with international standards.
- iv. Component 4: Humanitarian. The humanitarian component encompasses the effective provision of humanitarian assistance and full access to people in need. It incorporates the activities of the mission being carried out with the national authorities, the movements, United Nations agencies, funds and programmes, and local and international Non-Governmental Organisations (NGOs).
- v. Component 5: Support. The support component reflects the work of the Mission Support Division, the Security and Safety Section, the Conduct and Discipline Unit and the HIV/AIDS Unit.

These five components remained consistent throughout the subsequent years. An overview of the proposed and approved budget allocations and human resources for UNAMID for the subsequent financial years will be given in *Table 6.1*. All the figures and numbers given in the colour blue were proposed by the UN Security Council; the figures in black are the approved figures by the UN General Assembly. An interpretation of the figures follows the table.



| UNAMID Human Resources and Budget allocations (proposed and approved) |   |   |  |  |  |  |   |  |  |                                   |
|---|---|---|--|--|--|--|---|--|--|-----------------------------------|
| Budget Year   | 2007-8  |   | 2008-9   |  | 2009-10  |  | 2010-2011   |  | 2011-2012  |                                   |
| Type of staffing (military, police, civilian personnel)               | Proposed number of staff by the UN Secretary-General for 2007-8 (UNGA, 2007c:3) | Approved number of staff: 2007-8 (UNGA, 2008c:3 ) | Proposed number of staff by the UN Secretary-General for 2008-9 (UNGA, 2008c:3 ) | Approved number of staff: 2008-9 (UNGA, 2009a:4) | Proposed number of staff by the UN Secretary-General for 2009-10 (UNGA, 2009a:4) | Approved number of staff: 2009-10 (UNGA, 2010a:4 ) | Proposed number of staff by the UN Secretary-General for 2010-11 (UNGA, 2010a:4 ) | Approved number of staff: 2010-11(UNGA, 2011a:4) | Proposed number of staff by the UN Secretary-General for 2011-12 (UNGA, 2011a:4) | Approved number of staff: 2011-12 |
| Military observers  | 240   | 240   | 240  | 240  | 240  | 240  | 240   | 240  | 260  | N/A                               |
| Military contingents  | 19 315  | 19 315  | 19 315   | 19 315   | 19 315   | 19 315   | 19 315  | 19 315   | 19 295   | N/A                               |
| United Nations police   | 3 772   | 3 772   | 3 772  | 3 772  | 3 772  | 3 772  | 3 772   | 3 772  | 3 772  | N/A                               |
| Formed police units   | 2 660   | 2 660   | 2 660  | 2 660  | 2 660  | 2 660  | 2 660   | 2 660  | 2 660  | N/A                               |
| International staff   | 1 524   | 1 507   | 1 495  | 1 495  | 1 524  | 1 524  | 1 579   | 1 519  | 1 267  | N/A                               |
| National staff  | 3 425   | 3 415   | 3 415  | 3 415  | 3 423  | 3 423  | 3 365   | 3 344  | 3 366  | N/A                               |
| UN Volunteers   | 548   | 548   | 548  | 548  | 561  | 561  | 620   | 616  | 616  | N/A                               |
| GoS-provided personnel  | 6   | 6   | 6  | 6  | 6  | 6  | 6   | 6  | 6  | N/A                               |
| Temporary positions (international and national)                      | 85  | 99  | 99   | 99   | 38   | 38   | 38  | 38   | 37   | N/A                               |

|   |                                      |                                      |                                      |                                      |                               |        |        |        |        |     |
|---|--------------------------------------|--------------------------------------|--------------------------------------|--------------------------------------|-------------------------------|--------|--------|--------|--------|-----|
| Total number of staff (military, police, civilian personnel)  | 31 575                               | 31 562                               | 31 550                               | 31 550                               | 31 539                        | 31 539 | 31 571 | 31 510 | 31 279 | N/A |
| Total staffing budget (USD) (military, police, civilian personnel) proposed by the UN Secretary-General   | 410 972 200 (UNGA, 2007c:3)          | 945 631 200 (UNGA, 2008c:3)          | 1 096 908 000 (UNGA, 2009a:4)        | 1 152 668 000 (UNGA, 2010a:3 )       | 1 073 527 000 (UNGA, 2011a:3) |        |        |        |        |     |
| Total staffing budget (USD) (military, police, civilian personnel) approved by the UN General Assembly  | 392 602 700 (UNGA, 2008c:3)          | 829 376 700 (UNGA, 2009a:4)          | 981 050 000 (UNGA, 2010a:3 )         | 1 131 013 900 (UNGA, 2011a:3)        | N/A                           |        |        |        |        |     |
| Total budget (USD) for staffing (military, police, civilian personnel) and operational costs, proposed by the UN Secretary-General  | 1 477 766 300 (UNGA, 2007c:3)        | 1 699 710 000 (UNGA, 2008c:2 )       | 1 789 411 200 (UNGA, 2009a:4)        | 1 899 367 200 (UNGA, 2010a:4 )       | 1 708 748 400 (UNGA, 2011a:3) |        |        |        |        |     |
| UN General Assembly approved budget for staffing (Military, police, civilian personnel) and operational costs (USD)   | 1 275 653 700 (UNGA, 2008b:5)        | 1 499 710 000 (UNGA, 2009a:4)        | 1 598 942 200 (UNGA, 2009b:3)        | 1 808 127 500 (UNGA, 2010b:3)        | N/A                           |        |        |        |        |     |
| <b>TOTAL ALLOCATED FUNDS FOR UNAMID</b>   |                                      |                                      |                                      |                                      |                               |        |        |        |        |     |
| <i>UN General Assembly total approved budget (USD), including maintenance of operations (staffing and operational costs), contribution to the support account, and the UNLB</i> | <b>1 275 653 700 (UNGA, 2008b:5)</b> | <b>1 569 255 200 (UNGA, 2008c:3)</b> | <b>1 669 397 800 (UNGA, 2009b:3)</b> | <b>1 917 751 000 (UNGA, 2010b:3)</b> | <b>N/A</b>                    |        |        |        |        |     |

**Table 6.1:** UNAMID Human Resources and Budget allocations (proposed and approved)

It becomes evident from the figures in the above table, that UNAMID had a steady stream of money allocated to the mission, even though the mission was not fully staffed. Financial resources could thus never be cited as a reason for the success or failure of the Mission. It is very clear that the UN Secretary-General's budget proposals are certainly always cut by the UN General Assembly. Bearing this fact in mind, it is interesting to note that from the figures in *Table 6.1*, it becomes apparent that the budget of UNAMID nonetheless increased year on year, except for the proposed 2011-12 year. For the 2011-12 financial year, the UN Secretary-General proposed USD1 708 748 400, which is only 90% of his proposal (USD1 899 367 200) the year before (UNGA, 2010a:4; UNGA, 2011a:3) which, if the trend of cuts continues, may make the approved budget for UNAMID one of the lowest ever.

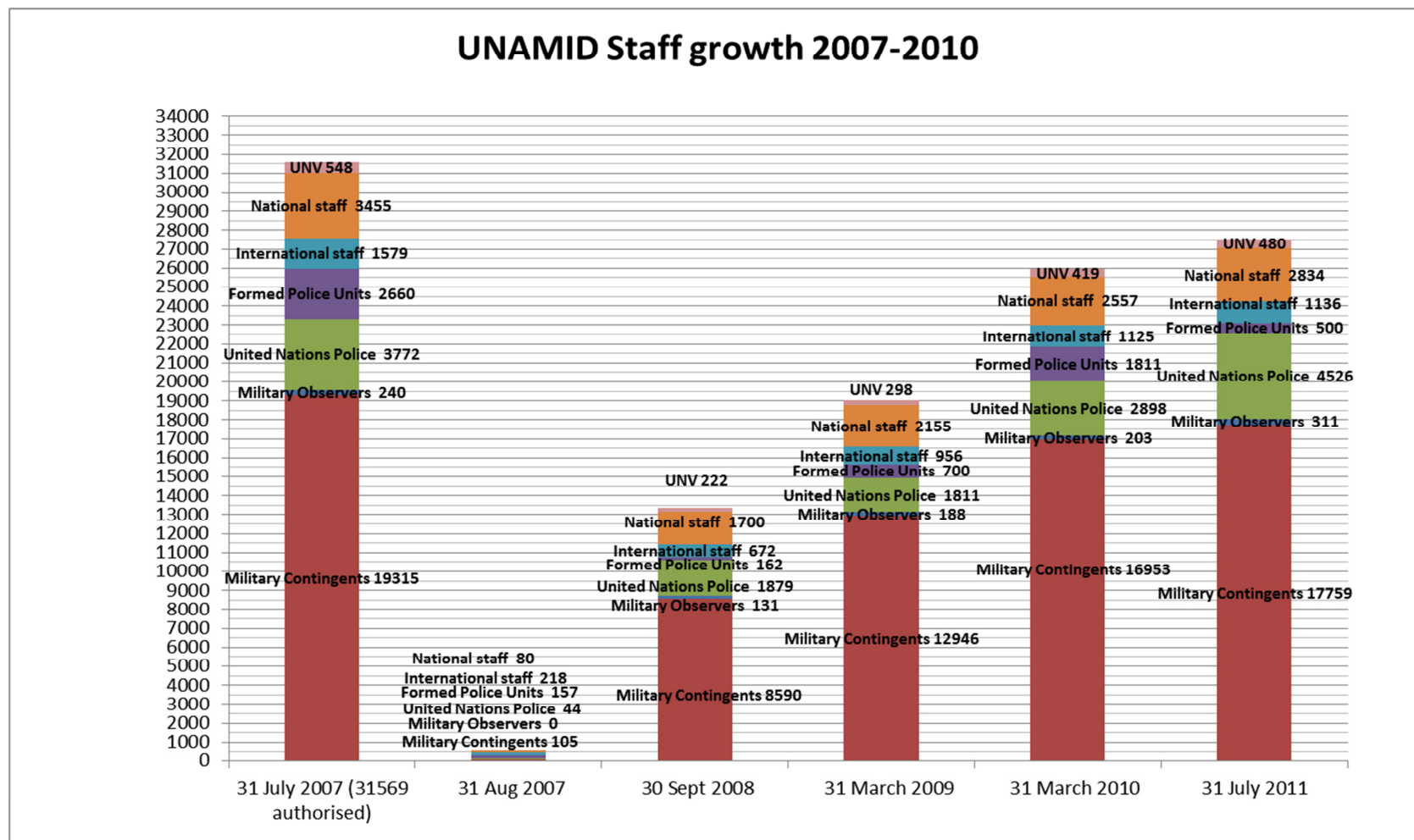
One reason for the relative proposed decrease for the 2011-12 period could be the fact that support activities at the mission will enter a maintenance phase, with key infrastructure such as office and living accommodations nearing completion (UNGA, 2011a:8). Another reason could be that pursuant to General Assembly resolution 65/248 on the 'harmonisation of conditions of service in the field', the UN Secretary-General (UNGA, 2011a:11) proposed the abolishment of 199 international staff and the proposed conversion of 55 Field Service posts to national General Service staff posts. In addition, the proposed national staffing structure reflected the abolishment of 32 national General Service staff posts in the Police Division and the Humanitarian and Recovery Assistance Liaison Unit (UNGA, 2011a:11). The ACABQ (UNGA, 2011c:10), however, was less impressed with some of the other reasons cited by the UN Secretary-General for cost cuts and mentioned that cost estimates for the 2011/12 period, according to the UN Secretary-General, reflected efficiency gains in the amount of USD 17 086 000 resulting from the reduction in the Operation's air fleet by two fixed-wing aircraft (one L-100 and one IL-76) and five helicopters (four MI-35 and one MI-8MTV). The ACABQ (UNGA, 2011c:10), pointed out, however, that neither the L-100 fixed-wing nor the four MI-35 helicopters had ever been deployed to the mission area and that, whereas the primary focus of the Control Centre was on planning the movement of personnel and cargo between missions in the region, the Operation's military helicopters were provided under specific letter of assist arrangements that precluded their use outside the mission area. In essence, this meant that at least some costs were cut due to the

inability to use the attached resources and not due to gains in efficiency of the operations. The human resources will be discussed next.

#### 6.2.2.1.2 Human resources (2007-2011)

The operations of UNAMID were directly dependent on the budget of the operation and the human resources attached to it. In this case, the operations could only have been positively affected because UNAMID has always had an operationally adequate approved budget. In this regard, the proposed budget (as given in *Table 6.1*) by the UN Secretary-General (UNGA, 2007c:3) for the period 2007-2008 provided for the deployment of 240 military observers, 19 315 military contingents, 3 772 United Nations police, 2 660 formed police units, 1 524 international staff, 3 425 national staff, 548 United Nations Volunteers (UNV), six government-provided personnel (UN Secretary-General, and 85 temporary international and national positions (UNGA, 2007c:3). These numbers changed slightly from one budget period to the next (compare *Table 6.1*).

Apart from the slow deployment of military and police staff, UNAMID was also very slow to attract and retain civilian staff. This is evident in *Figure 6.2*. The ACABQ (UNGA, 2011c:12) attributes this to the harsh living conditions and isolation in the mission area, as well as the volatile security situation in which UNAMID operated. Despite efforts to offer incentives for civilian staff members, as at January 2011, 242 candidates had declined offers and 416 had separated from service, resulting in an average turnover of 10 staff members per month since the inception of UNAMID (UNGA, 2011c:12-13). The overall trend is depicted in *Figure 6.2* (UNGA, 2007c:3,4; UNGA, 2008e:13; UNGA, 2009f:3; UNGA, 2010e:6; UN, 2011m).



**Figure 6.2:** UNAMID Staff growth 2007-2011

From *Figure 6.2*, it can be seen that it took several years to attain high staff level incumbency. By 31 August 2007, UNAMID had inherited the staff from AMIS and had only 604 staff members. By 30 June 2008, this figure grew to 10 812 staff members; by 31 March 2009 to 19 052 staff members, by 31 March 2010 to 25 961 staff members and, according to the United Nations (2011m), by 30 June 2011 UNAMID had a complement of 27 405 staff members, including a total of 22 947 uniformed personnel. By 2011, military personnel had been contributed by Bangladesh, Burkina Faso, Burundi, Cameroon, Canada, China, Ecuador, Egypt, Ethiopia, Gambia, Germany, Ghana, Guatemala, Indonesia, Jordan, Kenya, Lesotho, Malawi, Malaysia, Mali, Mongolia, Namibia, Nepal, Nigeria, Pakistan, Republic of Korea, Rwanda, Senegal, Sierra Leone, South Africa, Tanzania, Thailand, Togo, Uganda, Yemen, Zambia and Zimbabwe (UN, 2011m). Police personnel were contributed by Bangladesh, Burkina Faso, Burundi, Cameroon, Canada, Côte D'Ivoire, Egypt, Fiji, Gambia, Germany, Ghana, Indonesia, Jamaica, Jordan, Kyrgyzstan, Madagascar, Malawi, Malaysia, Namibia, Nepal, Niger, Nigeria, Norway, Pakistan, Palau, Philippines, Rwanda, Senegal, Sierra Leone, South Africa, Tajikistan, Tanzania, Togo, Turkey, Yemen, Zambia and Zimbabwe (UN, 2011m). To put this in perspective, by 30 April 2011, total military, police, and military experts contributions to United Nations peace operations had been provided by 115 member states and amounted to a grand total of 99 382 personnel. Included in this grand total were 14 669 police officers, 2 214 military experts and 82 499 military troops (UN, 2011j). African Union states contributed 34 348 (or 35%) military and police personnel out of the grand total (UN, 2011n). As a result, of the contributions made by the African Union member states by 30 April 2011, 19 482 (57%) military or police were in support of UNAMID (UN, 2011o).

Now that the character, layout, structure and resources of UNAMID have been discussed, a summary will be given of its unique hybrid elements.

### **6.2.3 Summary of the unique hybrid elements of UNAMID**

In the above sections, it was clearly pointed out that the major element associated with the 'hybrid' concept was the unique African character of the mission. This was evident and required in the senior leadership of UNAMID, the recruitment process of

staff, and the way in which troop and police contributions were chosen and accepted. The second element was the paradox of having a single command and control structure of the senior leadership of UNAMID, but with required reporting lines to both the United Nations and the African Union ‘in line with normal’ peacekeeping practices and standards. The direct result of these two elements was a delay in the recruitment of UNAMID civilian staff, and in getting consensus to deploy police and military manpower, culminating in the most expensive peacekeeping mission on the United Nations side. These difficulties experienced with this untried and untested ‘hybrid’ arrangement allowed a window of opportunity for the GoS to install delaying bureaucratic obstacles hampering the quick and full deployment of UNAMID.

It was also made clear in the previous sections that the ‘hybrid’ vision or aspect did not extend to any joint or shared funding between the United Nations and the African Union. It could be argued that even the African troop and police contributing countries are first and foremost members of the United Nations and secondly of the African Union, and therefore all troop and police contributions were also provided by the United Nations. To strengthen this point, peacekeeping missions, including UNAMID, were paid for by the UN General Assembly. So what did the African Union provide towards the hybrid aspect of UNAMID? It could be concluded that the African Union as an institution provided admission to an inaccessible sovereign area and a more soothing political relationship with a hostile government in dealing with which the United Nations had had a difficult time. The United Nations could not address the Darfur conflict on its own. Could UNAMID, however, make a difference and meet its objectives even with the support of the African Union? The next theme explored in part two of this chapter is the way in which UNAMID met its mandate.

### **6.3 PART TWO: MEETING ITS MANDATE**

The issue explored in this part is whether UNAMID as a hybrid mission was an optimal mechanism for the United Nations to address the situation in Darfur. At the end of *section 6.3*, UNAMID will be analysed through the lenses of its mandate, as put into practical achievements by the UN Secretary-General (see *section 6.2.2.1.1*). To come to any conclusions, an overview will first be provided of the performance of UNAMID since its inception to mid-2011. The overviews are given from year-to-

year and include the resolutions adopted by the UN Security Council pertaining to Darfur. This part of the chapter continues with the chronology of UNAMID provided in Chapter Five, but with a more specific focus on UNAMID. Other main political events associated with UNAMID and mentioned in Chapter Five, such as the Chad-Sudan conflict and al-Bashir's indictment, are discussed in *Part Three* of this chapter.

By 2008 the conflict in Darfur had become much more complicated than it had been in 2003, to the point that there were now several wars in Darfur: between Darfur rebel movements and the GoS, between the rebel movements themselves, a proxy war between Chad and Sudan in which the governments were supporting each other's rebel forces with civilians being caught in the middle, and localised conflicts over resources and land (Ferris, 2008). With the deployment of UNAMID, the people in Darfur were now looking at UNAMID for protection and to improve the security in the region (Darfur Consortium, 2008:1). By February 2008, senior UNAMID leadership members were fully deployed, and civil affairs, public information, human rights, gender, and humanitarian liaison units were established (Ramsbotham, 2008:730). So the stage was set and UNAMID just needed to perform.

### **6.3.1 UNAMID: the first year (2008)**

There was a dramatic deterioration in security in Western Darfur in February 2008, as the Sudan Armed Forces (SAF) and allied militia attacked the strongholds of the JEM and of SLM/A-Abdul Wahid (Ramsbotham, 2008:729). According to Ramsbotham (2008:729), these clashes, led by the SAF, resulted in the major displacement and loss of civilian life which was exacerbated by the presence of Chadian rebels in the area (see *Part Three, section 6.4.2*). As a direct result of the rebel conflicts, large numbers of attacks against humanitarian workers and their assets were launched in January and February 2008: 54 vehicles were hijacked; 14 humanitarian premises were attacked, with four humanitarian compounds destroyed and looted; and 18 WFP-contracted drivers went missing (Ramsbotham, 2008:729). By mid-2008 250 000 Darfurian refugees were living in 12 refugee camps in eastern Chad, while 185 000 Chadian IDPs had fled inter-communal clashes and cross-border raids by the Sudanese militia (Refugees International, 2008:1). By June 2008 concerns were raised that UNAMID



had failed to provide adequate protection for civilians in Darfur (Darfur Consortium, 2008:1).

Several attacks were also directly aimed at UNAMID in 2008. The United Nations Panel of Experts (UNSC, 2008c:17) reported that UNAMID faced the same logistical and operational challenges as AMIS and had been subjected to major armed attacks on its support convoys immediately following deployment in January 2008. The Darfur Australia Network (2008?:2) mentioned the GoS attacked a UNAMID convoy less than two weeks after its inauguration, while the UNAMID convoy did not return fire. UNAMID was also attacked on other occasions in 2008 resulting in the mission suffering major casualties, including another convoy attack in April 2008 and a major offensive in July 2008 (UNSC, 2008c:17). By all accounts, UNAMID appeared to be headed down a similar path to that of AMIS (UNSC, 2008c:17). It was, however, not only the GoS which confronted UNAMID, but also the rebel movements. For instance, on 30 June 2008 armed members of the Mini Minnawi faction of the SLM/A, held 38 UNAMID peacekeepers hostage at gunpoint for more than five hours, according to the UN News (2008b). After UNAMID reinforcements were sent to the UNAMID camp, the patrol group was finally released following negotiations between the mission and the leadership of the SLM/A (UN News, 2008b). In response, the military component of UNAMID strengthened its activities in the mission area, increased its visibility and conducted several hundred patrols throughout Darfur every month, and tripled the number of patrols and convoy escorts in Western Darfur (Ramsbotham, 2008:730). Ramsbotham (2008:730) points out that in addition, the UNAMID Force Commander increased his contact with the parties in conflict to facilitate UNAMID's movements, intent and capabilities, and also to build the parties' confidence in the impartiality of UNAMID. UNAMID continued to work with the GoS, JEM and SLM/A-Abdul Wahid to facilitate safe passage to secure locations for vulnerable civilians (Ramsbotham, 2008:730). By the end of 2008, 22 peacekeepers had been killed in Darfur due to direct acts of violence (UN DPI, 2010b:15). In 2008, the ICC issued a warrant of arrest for al-Bashir. This not only influenced the level of violence in Darfur but also the UN Security Council resolutions adopted in 2008. The indictment by the ICC of al-Bashir is discussed in *section 6.4.1*. The UN Security Council resolutions adopted in 2008 will be discussed next.

### ***6.3.1.1 UN Security Council resolutions in 2008 regarding Darfur/UNAMID***

Following the arrest warrants issued for al-Bashir, the GoS started to lobby the international community ahead of the UN General Assembly debates in September 2008, to support a deferment on the warrant (Africa Confidential, 2008a:9). For the GoS it was also important to get support of the international community before the 2009 local elections so that al-Bashir could be re-elected before the warrant came into force (Africa Confidential, 2008a:9). In 2008, the UN Security Council passed two resolutions pertaining to UNAMID and Darfur: Resolutions 1828 and 1841. Resolution 1828 came exactly one year after Resolution 1769 (2007) which authorised the deployment of UNAMID to protect its personnel, installations, and equipment, ensure the security and freedom of its own personnel and humanitarian workers, support the implementation of the DPA, prevent armed attacks, and protect civilians (UN DPI, 2007e, UNSC, 2008d:1; UNSC, 2007a:5). In the previous section it was pointed out that during 2008, UNAMID failed in protecting itself and curbing the violence in Darfur. In Resolution 1828, the UN Security Council (2008d:1,3) clearly indicated its disdain for the failure of UNAMID to achieve this, and also pointed out that, instead, the security and humanitarian situation in Darfur had further deteriorated over the time period. The two resolutions adopted in 2008 will be elaborated on next, highlighting the relationship between the al-Bashir indictment and UNAMID.

#### **6.3.1.1.1 UN Security Council Resolution 1828 (2008)**

On 31 July 2008, after extensive deliberation and with less than two hours left before the mandate of UNAMID was about to expire, the UN Security Council adopted Resolution 1828 by 14 votes in favour, with the United States abstaining, and extended its mandate for a further 12 months (UN DPI, 2008b). Even though the United States of America (USA) expressed strong support for the mandate extension, it abstained because it was of the opinion that the language of the resolution ‘would send the wrong message to al-Bashir and undermine efforts to bring him and others to justice’ (UN DPI, 2008b). Scheffer (2008) brings to light that the USA sought in vain to exclude language suggesting a link between the investigation of al-Bashir by the ICC and the renewal of the peacekeeping mandate in Darfur for another year. Despite

the efforts of the USA, Resolution 1828 included the preambular language to which the USA objected: “*Taking note of the African Union (AU) communiqué of the 142nd Peace and Security Council (PSC) Meeting dated 21 July (S/2008/481, annex), having in mind concerns raised by members of the Council regarding potential developments subsequent to the application by the Prosecutor of the International Criminal Court of 14 July 2008, and taking note of their intention to consider these matters further, ...*”. The implications of this language will be discussed next.

#### *6.3.1.1.1.1 Invoking Article 16 of the Rome Statute of the ICC*

The wording to which the USA objected was, according to Scheffer (2008), code language that suggested that the UN Security Council would consider acting consistent with Article 16 of the Rome Statute of the ICC to suspend the investigation of the ICC or prosecution of al-Bashir (and perhaps other Sudanese government officials and Janjaweed tribal leaders) for at least one year in the belief that such a decision would improve the chances for peace initiatives and full and safe deployment of UNAMID and humanitarian workers in Darfur. Article 16 of the Rome Statute stipulates (ICC, 2002:2): “*No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions*”. Therefore, argues Scheffer (2008), the USA was concerned that this language in Resolution 1828 could be used by the UN Security Council to delay taking a decision on the request by the Chief Prosecutor of the ICC to arrest al-Bashir on charges of genocide. Avni (2008) confirms that following the request by the Chief Prosecutor of the ICC for an arrest warrant for al-Bashir, diplomats to the United Nations were concerned that ‘one of Khartoum's allies’ might ask the Security Council to invoke a provision in the Rome Statute that allows deferring ICC cases for a year if they present a major security threat. Furthermore, Bah (2010:12) suggested there were also concerns that the indictment could complicate the evolving partnership between the UN Security Council and the AU PSC with negative consequences for the faltering peace process in Darfur as the decision to issue the arrest warrant split the two Councils, with the AU PSC making repeated requests to the UN Security Council to suspend the warrant by invoking

Article 16 of the Rome Statute. The African Union argued that attempts to prosecute al-Bashir would jeopardise important efforts to settle the conflict in Darfur and might put the search for peace in Darfur at risk, prolong the suffering of the people of Sudan and destabilise the country as well as the region (AU PSC, 2009:62). To the surprise of the AU PSC, their requests failed to elicit a positive response from the UN Security Council, noted Bah (2010:12).

Following the adoption of the resolution, Sudan made it known that they wholeheartedly supported the full deployment of UNAMID but asked that the UN Security Council remove “all impediments” to such deployment, including addressing the decision of the ICC’s Chief Prosecutor (UN DPI, 2008b). Taking the above into account, it could be concluded that the extension and support from the GoS for the deployment of UNAMID became necessary to divert the focus from the charges laid against al-Bashir. Also noteworthy, Resolution 1828 pointed out that the UN Secretary-General wanted to deploy 80% of UNAMID by 31 December 2008 and welcomed the appointment of Djibrill Yipènè Bassolé as Joint African Union/UN Chief Mediator (UNSC, 2008d:3). The second UN Security Council resolution adopted in 2008 will be discussed next.

#### 6.3.1.1.2 UN Security Council Resolution 1841 (2008)

Acting under the binding Chapter VII of the United Nations Charter, the UN Security Council unanimously adopted resolution 1841 (2008) on 15 October 2008, to extend for one year until 15 October 2009 the mandate of the Panel of Experts appointed through resolution 1591 (2005) to monitor the arms embargo in Darfur (UN DPI, 2008c). By the text, the UN Security Council requested the Panel to issue three reports during the year (UN DPI, 2008c), however, only one was released in 2008 (Security Council Committee, 2011c). In the resolution, the UN Security Council noted with concern the ongoing violence, impunity, and consequent deterioration of the humanitarian situation, especially the deteriorating security situation of civilians and humanitarian aid workers and lack of humanitarian access to populations in need (UNSC, 2008e:1). The UN Security Council (2008e:1) also reaffirmed the negotiating role of the African Union-United Nations Chief Mediator Djibril Bassolé. The fifth Report of the Panel of Experts will be discussed next.

*6.3.1.1.2.1 The fifth report of the Panel of Experts*

In the report of the Panel of Experts dated 11 November 2008, continued flagrant violations of the arms embargo by all parties in Darfur were just ‘noted’, allowing both the GoS and the Darfur armed groups to continue to conduct offensive military operations both inside and outside of Darfur (UNSC, 2008c:3). Furthermore, the Darfur rebels had further fragmented while insecurity continued to increase (UNSC, 2008c:3). With regard to the four individuals specified in UN Security Council Resolution 1672 (2006), the Panel suspected two individuals (Elhassan and Hilal) designated for travel and financial sanctions were in fact employed by the GoS and therefore earning an income (UNSC, 2008c:18-19). The Panel noted (UNSC, 2008c:18-19):

- a) Major-General Gaffar Mohamed Elhassan was serving in the SAF and was based in Khartoum but the GoS indicated that he did not have any tangible assets which could be frozen.
- b) Sheikh Musa Hilal was appointed by presidential decree as an adviser to the Federal Ministry on 16 January 2008 but the Panel could not confirm whether or not he had travelled outside of Sudan within the reporting period or whether his assets had been frozen by the GoS.
- c) The precise whereabouts of Adam Yacub Shant could not be established but it was believed that he continued to operate from Sheria, Southern Darfur.
- d) General Gibril Abdul Kareem Barey was living in N’Djamena and remained an active member of the National Movement for Redemption and Development in Chad.

Taking the afore-mentioned into account, the overview of the performance of UNAMID in 2008 is summarised next.

### ***6.3.1.2 Overview of the performance of UNAMID in 2008***

As early as April 2008, concerns were raised that UNAMID could be drawn into a protracted guerrilla war and become another belligerent in the Darfur conflict (FRIDE, 2008b:6). Other concerns were that the neutrality and impartiality of UNAMID were somewhat questionable and that it did not have the means to enforce peace, nor the political will to sustain robust engagement (FRIDE, 2008b:6). FRIDE (2008b:6) believed this also happened with AMIS: it was only concerned about protecting itself, not the population, which caused a crisis of confidence, and the population came to see the international force as just as threatening as any rebel group or government militia. Similarly, UNAMID was attacked on several occasions in 2008. In 2009, UNAMID focused much more on establishing a peace agreement as will be seen in the second year of the operations of UNAMID.

### **6.3.2 UNAMID: the second year (2009)**

The UN Security Council (2008d:1,3) underscored in Resolution 1828 (2008) that there could be no military solution to the conflict in Darfur and that an inclusive political settlement and the successful deployment of UNAMID were essential to establish peace. Peace efforts facilitated through the leadership of UNAMID were ongoing through 2009, as will be seen next.

#### ***6.3.2.1 Peace efforts in 2009***

Clashes between the SAF and SLA/AW continued in January 2009 in North Darfur, with some 18 civilians killed (Security Council Report, Inc., 2010). On 17 February 2009, the GoS and JEM sign a Goodwill Agreement in Doha, Qatar (HSBA, 2011b:4). The delegations of the GoS and the JEM met again in Doha from 27 May to 18 June 2009 to discuss the implementation of the Goodwill Agreement and Confidence-Building for the Settlement of the Problem in Darfur signed on 17 February 2009 under the auspices of the Joint African Union-United Nations Mediation and the Government of Qatar (UNSC, 2009b:1; Sudan Tribune, 2009b). The parties discussed ways to move the peace process forward, particularly with respect to exchange of prisoners, cessation of hostilities and a framework agreement

that would define the areas to be discussed during comprehensive negotiations (UNSC, 2009b:1). The Goodwill Agreement was not fully implemented by the parties, but by mid-November 2009, the AU-UN mediation made notable progress by bringing together a diverse group of Darfur civil society in Doha to arrive at a consensus on critical issues such as security arrangements, wealth-sharing and power-sharing (UN DPI, 2010b:32).

While the SLA/AW and other factions remained outside the peace talks throughout the year, efforts continued to have them agree upon a common platform in anticipation of joining the GNU/JEM talks (UN DPI, 2010b:33). The DPKO, however, believed that the Government of Libya and the US Special Envoy to Sudan complemented these efforts by working to reunify some of the smaller movements (UN DPI, 2010b:33). The African Union High Level Panel on Darfur (AUPD), headed by former South African President Thabo Mbeki, also made a significant contribution to international efforts to find a solution to the crisis in Darfur (UN DPI, 2010b:33). AUPD released a report on 8 October 2009 on its findings on Darfur and the conflict. This will be mentioned next.

#### 6.3.2.1.1 The African Union High Level Panel on Darfur

The AUPD called for a global political agreement between the GoS, armed movements, political parties and civil society organisations, internally displaced persons and refugees, native administrators and the nomads of Darfur to provide a lasting solution for the Darfur conflict (Akuffo, 2010:83). In contrast to the ICC, the AUPD argued for an integrated approach to justice and reconciliation and called for the establishment of a special criminal court on the events in Darfur, a hybrid criminal court constituted by Sudanese judges and other nationalities to hear ‘individuals who appear to bear responsibility for the gravest crimes committed during the Darfur conflict’, and reconciliation and truth mechanisms (Akuffo, 2010:83). Murithi *et al.* (2009:5) described the recommendation to establish a new hybrid court consisting of Sudanese judges and judges appointed by the African Union to ‘investigate, prosecute and adjudicate the war and other crimes committed during the Darfur conflict’, as ‘innovative’. This was perhaps an attempt to find a politically acceptable way to

circumvent the ICC's indictment of al-Bashir, the Sudanese President, on war crimes and crimes against humanity in Darfur (Murithi *et al.*, 2009:5).

For stability in Darfur, the AUPD report also highlighted the significance of the upcoming national elections and the Southern Sudan referendum due in 2011 (Murithi *et al.*, 2009:5). It also reflected and commented on the implementation of previous peace agreements, notably the DPA, the role of UNAMID and the African Union's previous efforts, through the AMIS I and AMIS II in attempting to lay the foundation for peace in Darfur (Murithi *et al.*, 2009:5.) The AUPD report acknowledged that Africa had an enormous stake in seeing to the restoration of peace in the Sudan and that the African Union needed to play a leadership role (Akuffo, 2010:83). The submission of the AUPD report and its call for the acceptance of the 'Sudanese people as the primary players in the determination of the future of their country, with all the others serving as supporters of Sudanese initiatives' is akin to the African slogan of an African solution for Africa's problems, mentions Akuffo (2010:83). On 29 October 2009, the AU PSC met at the level of Heads of State, in Abuja, Nigeria, and endorsed the AUPD report (Murithi *et al.*, 2009:5).

Despite efforts to resume peace negotiations between the conflicting parties, both the SLA/AW and JEM refused to engage in substantive discussions with the GoS. The UN Secretary-General (UNSC, 2009c:5), however, reported on 16 November that mediation continued with the armed groups and the GoS. In the meantime, efforts led by Libya, USA, and Egypt to facilitate unification of smaller movements (primarily splinter groups from SLA/AW and JEM) led to the creation of two coalitions of groups in Addis Ababa and Tripoli, but these groups could not resolve their leadership differences (UNSC, 2009c:5). In the context of this on-going violence and absence of a peace agreement, freedom of movement continued to be a serious concern for UNAMID and many of the Agencies in Darfur. This is discussed next.

#### **6.3.2.2 Obstruction to UNAMID and ongoing attacks**

The GoS continued to make it difficult for UNAMID to operate freely in Darfur. At least 42 incidents occurred in 2009 where a UNAMID patrol was denied passage by a GoS official, including incidents in which GoS officials specifically threatened the



safety of UNAMID staff and equipment (UNSC, 2009c:3). UNAMID was also frequently denied access to IDP camps by officials of the GoS (UNSC, 2009c:4). Although Government officials have frequently claimed the need to be informed of UNAMID movements, they still have denied access even when information was passed to the appropriate Government officials, and they often claimed ignorance of the mandate of UNAMID to conduct patrols through the area, despite the clear right to patrol provided for in the SOFA. UNAMID patrols were confronted with warning shots, guns pointed at convoys and low overflights by SAF military helicopters in a threatening manner (UNSC, 2009c:4). Between 1 July and 1 October 2009, the GoS issued 1 938 new entry visas. As at 28 October 2009, 56 visas were pending approval. This was a constructive development. However, efforts to secure visas for the personnel of a small group of troop and police-contributing countries remained unsuccessful, with some requests remaining outstanding for as long as 10 months (UNSC, 2009c:8).

By the end of 2009, UNAMID had acquired several civilian helicopters but it still needed 18 utility helicopters and six armed/attack choppers to carry out its mandated work (Agwai, 2009:6). Military helicopters were needed because they could be equipped with the firepower to strike back if they came under attack and could operate in hostile situations (Agwai, 2009:6). According to the UNAMID Force Commander, helicopters were important to any peacekeeping mission, but especially so in Darfur, where the often extreme weather conditions and the poor state of local roads meant helicopters could play a vital logistical role in transporting staff and cargo (Agwai, 2009:6). Unfortunately, only a few countries offered to provide the necessary helicopters to UNAMID, and only an offer from Ethiopia was likely to happen (Agwai, 2009:6). During 2009, UNAMID personnel were targeted by direct attacks on four occasions, resulting in the death of one peacekeeper (UNSC, 2009c:2). The African Union adds that the security situation for UNAMID and humanitarian personnel continued to be precarious and between July 2009 and July 2010, UNAMID peacekeepers were attacked on 28 occasions, resulting in 10 killed and 26 injured, while, on two occasions, UNAMID personnel were kidnapped (AU PSC, 2010:3). In March 2009, the GoS expelled 13 international NGOs and three national NGOs leaving those NGOs remaining struggling to fill the void, short on supplies, and unable to cope with the needs of civilians (National Model United

Nations, 2009:3). In addition, 54 United Nations personnel suffered incidents of banditry and criminality, while 53 vehicles were stolen from UNAMID and UN agencies (AU PSC, 2010:3). Women and girls remained victims of sexual and gender-based violence in Darfur and this, according to the National Model United Nations (2009:3) is the reason for the UN Security Council Resolution 1881 (2009) to call on the UN Secretary-General to develop a “comprehensive strategy” for protecting women and children. This resolution and the only other resolution pertaining to Darfur, Resolution 1891 (2009) will be discussed in the following sections.

### ***6.3.2.3 UN Security Council resolutions in 2009 regarding Darfur/UNAMID***

The UN Security Council passed two resolutions in 2009 pertaining to Darfur/UNAMID: Resolutions 1881 and 1891 (UN, 2009k).

#### **6.3.2.3.1      UN Security Council Resolution 1881 (2009)**

On 30 July 2009 the UN Security Council unanimously passed Resolution 1881 and extended the mandate of UNAMID by one year to 31 July 2010 (UN DPI, 2009a). Although the UN Security Council welcomed improvements in the cooperation of the GoS with UNAMID, they also called on the GoS to comply with the SOFA agreement (reached in 2008 with UNAMID) particularly on the provision of visas for mission personnel and flight and equipment clearances (UN DPI, 2009a). The NGO Committee on Disarmament, Peace and Security (2009) summarises key decisions taken by the UN Security Council in the resolution as follows:

- Affirmed the importance of the mandate of UNAMID to facilitate and protect humanitarian aid to Darfur.
- Called on member states to pledge needed troops and equipment.
- Called on all parties to remove all obstacles to the full deployment of UNAMID.
- Requested the UN Secretary-General to submit to the UN Security Council a workplan with credible goals for UNAMID and report to the UN Security Council every 90 days on progress.

- Demanded that all parties to the conflict in Darfur end attacks on civilians and humanitarian personnel, commit to a ceasefire and ensure humanitarian access to the region.
- Demanded that parties to the conflict immediately act to protect civilians, including women and children, from sexual violence and requested the UN Secretary-General develop a strategy to protect women and girls from sexual and gender based violence.

Security Council Report, Inc. (2010) also highlights that in resolution 1881, the UN Security Council asked the UN Secretary-General to submit a strategic work plan containing benchmarks for the implementation of the mandate of UNAMID and report on progress against these benchmarks, including the political process, on the humanitarian and security situation and on compliance by all parties with their international obligations. These benchmarks are discussed at the end of *section 6.3.5*. The second UN Security Council resolution adopted in 2009 will be discussed in the following section.

#### 6.3.2.3.2 UN Security Council Resolution 1891 (2009)

On 13 October 2009 the UN Security Council unanimously adopted Resolution 1891 (UN DPI, 2009b). The resolution extended until 15 October 2010 the mandate of the Panel of Experts that helped to monitor the arms embargo and sanctions on those who impeded peace in Sudan (UN DPI, 2009b). On 15 December 2009, the UN Secretary-General (UNSC, 2009d:1) announced a new panel consisting of four members (with a fifth to be proposed later):

- i. Panel Coordinator: Thomas Bifwoli (Kenya)
- ii. Abdelaziz Abdelaziz (United States of America)
- iii. Nils Holger Anders (Germany)
- iv. Bahlakoana Shelile (Lesotho)

On 29 October 2009 the sixth report of the Panel of Experts was released (UNSC, 2009e:1).

#### *6.3.2.3.2.1 The sixth report of the Panel of Experts*

In the report, the Panel of Experts (UNSC, 2009e:3-4) made it clear that almost all sides in the conflict had failed in their obligation to comply with UN Security Council sanctions and to cooperate with the monitoring efforts of the Panel. For instance, representatives of the GoS contended that there was no need to seek prior approval from the Committee established pursuant to Resolution 1591 (2005) in order to move military equipment and supplies into the Darfur region, as required by paragraph 7 of resolution 1591 (2005); while among the armed movements, the JEM was the most active violator of the arms embargo, and carried out repeated attacks throughout 2009 (UNSC, 2009e:3-4). The Panel also noted that much of the arms and ammunition identified in the Darfur region had been manufactured in China, and though the Panel sought with ‘particular interest’ the cooperation of the Government of China, not much progress was made in obtaining answers (UNSC, 2009e:4). Other events and considerations regarding 2009 are summarised next.

#### *6.3.2.4 Other events in and milestones achieved in 2009*

By the end of 2009, about two million people (a quarter of Darfur's total population) had been displaced and continued to rely on humanitarian aid agencies for their survival (AU PSC, 2010:3). Conflicting reports on the status of the conflict in Darfur emanated in 2009. For instance, both outgoing senior UNAMID leaders who left in 2009, Martin Luther Agwai, former UNAMID Force Commander, and Joint Special Representative Rodolphe Adada, noted on 27 August and 3 September respectively, that there was no longer a conflict in Darfur (Obat, 2009:3). Obat (2009:3), however, claimed that for the JEM, SLA-AW and other movements still actively pursuing armed conflict against the GoS, the war had not ended. Accordingly, the rebels continued to engage the SAF in fighting and a comprehensive agreement with the GoS was yet to be reached (Obat, 2009:3).

By the end of 2009, significant gains were made in the deployment of UNAMID military personnel, which included troops, staff officers, liaison officers and military observers. The mission's total uniformed personnel strength of 15 370, representing 53 countries, grew by 35% compared with the previous year and moved close to the authorised strength of 19 555 (UN DPI, 2010b:33). By the end of March 2009, UNAMID military deployment had reached 67% and national recruitment had reached 62% of its total authorised strength (CPID, 2009b:6). In a major initiative to unblock the supply routes from Khartoum to Al-Fasher, UNAMID managed to reduce the journey for supply convoys from Port Sudan to Al-Fasher from 11 days to four. This was largely due to increased cooperation with the Sudanese police who provided escorts in areas outside of Darfur, where the mission was not mandated to operate (UN DPI, 2010b:31-32). UNAMID reported several other achievements in 2009 which it attributed to its increased deployment of military personnel and assets, as well as significant improvements in the logistical supply chain (UN DPI, 2010b:31-32). These achievements included (UN DPI, 2010b:31-32):

- Greater dialogue between local Sudanese authorities and IDPs, providing round-the-clock security patrols at IDP camps, and contributing to a substantial reduction in the levels of violence and in the numbers of those affected by violence.
- In addition to more timely delivery of supplies, the mission received vehicles that were utilised to deliver water to the local population and building materials that enabled the construction of facilities for the mission and the people of Darfur alike.
- Enhancement of the capacity of the GoS and police to address human rights violations and inadequacies in the local judicial services, as well as the establishment of a UNAMID gender crimes special investigation unit to monitor and report on investigations of crimes committed against women and children.
- The mission also provided logistical support to programmes for children who had been associated with military activities, and funded more than 30 quick impact projects in agriculture, education, health, water and sanitation and women's empowerment.

Sudanese national elections were scheduled for April 2010 and UNAMID continued to support the UNMIS Electoral Affairs Division, principally through the provision of logistical support (UNSC, 2009c:6). For the coming two years, 2010 and 2011, Sudan faced two historic moments: the General Elections of 2010 and the Referendum on self-determination in Southern Sudan in 2011 (AU PSC, 2009:xiii). The General Elections, included in an overview of the third year of operations of UNAMID, will be discussed in the following section.

### **6.3.3 UNAMID: the third year (2010)**

In 2010 great emphasis was placed by UNAMID on peace efforts as will be seen in this section. Also in this section, the security situation and UN Security Council resolutions regarding Darfur will be discussed. It starts with one of the landmark events in Sudan in 2010: the Sudanese General elections.

#### ***6.3.3.1 The 2010 Sudanese General elections***

The national Sudanese political scene in early 2010 was dominated by preparations for Sudan's combined presidential, parliamentary and local elections, held from 11 to 15 April 2010 after a year-long delay (OCHA, 2011:10). Roque (2010:49-50) mentions that over 15 million registered Sudanese participated in electing the president of the Republic, the president of Southern Sudan, 25 governors and representatives for the National Assembly, the Southern Sudan Legislative Assembly and state assemblies (Roque, 2010:49-50). The complexities and logistical enormity of the task added to the difficulties of guaranteeing full and unhindered participation, as well as effective observation and monitoring of the process. Despite the confusion generated by such a complex electoral system, the technical failures and other logistical complications, the elections were held. Furthermore, they were pronounced to be credible by several observation missions, even if 'falling short of international standards' (Roque, 2010:51). The results of the national presidential race showed incumbent President al-Bashir received 68.2% of the more than six million votes cast during the five days of polling (Sudan Tribune, 2010b). Al-Bashir defeated eleven other presidential candidates, some of whom boycotted the elections before polling day (Sudan Tribune, 2010b). In the South, the incumbent President of the region,

Salva Kiir Mayardit, received 93% of the more than two million votes counted, defeating his only rival, Lam Akol Ajawin, who received only 7% (Sudan Tribune, 2010b). The greatest challenge to come following these elections was the 2011 referendum on the secession of South Sudan. This will be discussed in *section 6.4.3 South Sudan's secession*. With the GoS focused on the elections, the security situation in Darfur remained volatile mainly as a result of inter-communal conflicts.

#### **6.3.3.2 The security situation in Darfur and UNAMID**

The security situation in Darfur remained volatile throughout 2010, with the levels of violence substantially higher than in 2009, reported UN DPI (2011b:39). This was largely attributable to inter-communal clashes and to fighting between the SAF and SLA/AW in Jebel Marra, with JEM in Jebel Moon, and with SLA/MM in certain areas in North and South Darfur (UN DPI, 2011b:39). Attacks on peacekeepers, humanitarian workers and their assets continued in 2010. Despite precautions that included evacuation from insecure areas, 26 international peacekeepers and NGO workers were kidnapped in 2010, and as of 30 November 2010, four remained in captivity (OCHA, 2011:12). One released ICRC staff member had remained captive for 147 days (OCHA, 2011:12). In addition, ten peacekeepers were killed between July 2009 and July 2010; with July also marking the first expulsion of international personnel since the GoS decision in March 2009 to expel 13 international NGOs and dissolve 3 national NGOs (OCHA, 2011:12). The UN Secretary-General reported to the UN Security Council that humanitarian efforts remained impeded by insecurity and access restrictions (UNSC, 2011d:7). Overall, access was consistently limited in eastern Jebel Marra, intermittently limited in areas where there was fighting between SAF and armed movements, and limited by the need for armed escorts and remote programming in most other areas outside the main urban centres, owing to the risk of banditry (UNSC, 2011d:7).

The UN Security Council (2011d:16) admitted that in 2010, peacekeepers and humanitarian aid workers were increasingly the targets of kidnapping and carjacking. According to the UN Security Council (2011e:16), armed gangs attacked UNAMID peacekeepers on at least 10 separate occasions between January and July 2010, killing five and injuring 19 others. Seven international staff of UNAMID and international

Non-Government Organisations were kidnapped in three separate incidents during the same period; six of them were released after a total of 50 days in captivity and one was released after 105 days in captivity (UNSC, 2011e:16). Also, criminals and armed gangs hijacked more than 20 vehicles of UNAMID, other United Nations Agencies and international NGOs between January and July 2010 (UNSC, 2011e:16).

From late October 2010, UNAMID reported a build-up of SAF and JEM in South and North Darfur, with confrontations reported in these areas, as well as in Southern Kordofan, further undermining initiatives aimed at the peaceful resolution of the Darfur crisis (UN DPI, 2011b:39). The trend towards increased inter-tribal fighting in Darfur continued throughout 2010. Between November 2009 and October 2010, inter-tribal violence accounted for 908 deaths 43% of the total fatalities in Darfur over this 12-month period (OCHA, 2011:11). These incidents further restricted the movement of peacekeepers and humanitarian aid workers and, therefore, their ability to conduct their work (UNSC, 2011e:16). The mission's freedom of movement was impeded by the GoS and various rebel movements on 123 occasions during 2010 (UNSC, 2011d:7). The following section will elaborate on the efforts to bring the conflicting parties to the negotiation table.

#### ***6.3.3.3 Peace efforts for Darfur in 2010***

In February 2010, a new coalition of smaller rebels groups was formed: the Liberation and Justice Movement (LJM) (Kent-Brown *et al.*, 2010a:4). Also in February 2010, the GoS and the JEM signed a framework agreement in which the parties agreed in principle to a ceasefire, the release of prisoners of war, the participation of JEM in government, and compensation to Darfur refugees and displaced people (Dagne, 2011:13). The peace initiative was brokered by the government of Qatar, the United Nations/African Union Special Envoys, and the governments of Chad and Eritrea (Dagne, 2011:13). A number of other Darfur factions, however, rejected the agreement between JEM and the GoS while several other groups engaged in separate talks with the GoS (Dagne, 2011:13). Following the above agreement between the JEM and the GoS, in May 2010, the JEM withdrew from the peace process. Following the withdrawal, the peace process continued exclusively between the LJM and the GoS (Kent-Brown *et al.*, 2010a:4).



The LJM and the GoS signed a framework agreement in March 2010 and in July 2010 the two sides also signed a ceasefire agreement. This resulted in five committees being constituted for the five substantive subjects of negotiation identified in the March Agreement: wealth sharing; compensation and return of IDPs and refugees; security arrangements; power sharing and the administrative status of Darfur; and justice and reconciliation (Kent-Brown *et al.*, 2010a:4). With a view to enhancing the participation of civil society in the peace process, UNAMID and the Government of Qatar jointly organised a second conference of Darfur civil society representatives in Doha from 12 to 15 July 2010 (UNSC, 2010b:2). The conference was a follow-up to the first civil society conference held in Doha from 18 to 20 November 2009 (UNSC, 2010b:2). In preparation for the conference, UNAMID organised and held a series of preparatory workshops and forums across Darfur, in order to sensitise and mobilise civil society representatives (UNSC, 2010b:2).

On 17 September 2010 the GoS endorsed a new political and security strategy for Darfur (UNSC, 2010b:5). The new strategy reflected a change in focus for the GoS in five key areas: security, development, resettlement, reconciliation and negotiations (UNSC, 2010b:5). The strategy envisaged a reorientation and domestication of the peace process, with the creation of a mechanism through which to consult with Darfurian society and then feed the results into the ongoing African Union-United Nations mediation process, with the ultimate objective of negotiating a comprehensive and inclusive peace agreement to resolve the Darfur crisis (UNSC, 2010b:5). On the issue of security, the GoS recognised its primary responsibility to maintain stability and called for greater involvement by and coordination with UNAMID, especially on the protection of civilians and the facilitation of returns (UNSC, 2010b:5). The GoS also indicated its intention to shift the emphasis from continuing humanitarian assistance to development and supporting the return of IDPs (UNSC, 2010b:5). In this connection, it stated its desire to work in coordination with the humanitarian community and UNAMID to ensure that security and basic social services were available to returnees, as a means of promoting the safe, voluntary and orderly return of displaced persons (UNSC, 2010b:5).

In October 2010 the Joint Mediation Support Team, with the facilitation of UNAMID, re-convened talks between the GoS and the LJM, in Doha, Qatar, which

aimed to reach agreement among participants. In a separate series of initiatives throughout 2010, UNAMID's Joint Special Representative, Ibrahim Gambari, together with the Joint Chief Mediator, Djibrill Bassolé, maintained constant engagement with the leaders of both the JEM and the SLA-AW, in order to facilitate an inclusive process (UN DPI, 2011b:37-38). On 16 December the JEM delegation agreed to resume negotiations with the GoS on a ceasefire agreement. The decision of JEM to re-join the negotiations followed extensive consultations with the Joint Mediation Support Team (UNSC, 2011d:1). All through these negotiations the UN Security Council was kept informed of the progress and, as will be seen next, the UN Security Council passed two separate UN Security Council resolutions in support of the situation in Darfur.

#### ***6.3.3.4 UN Security Council resolutions in 2010 regarding Darfur/UNAMID***

In 2010 the UN Security Council passed two resolutions pertaining to Darfur: Resolutions 1935 and 1945. They are both discussed next.

##### ***6.3.3.4.1 UN Security Council Resolution 1935 (2010)***

On 30 July 2010 the UN Security Council extended the mandate of UNAMID for 12 months by unanimously adopting Resolution 1935 (UN DPI, 2010c). In the resolution, the UN Security Council expressed concern at the recent deterioration in security, including attacks by rebel groups, aerial bombardment by the GoS, increased inter-tribal fighting and attacks on humanitarian personnel; demanded that all parties immediately take all possible measures to protect civilians from sexual violence and create conditions conducive to the voluntary return of refugees and internally displaced persons; and condemned attacks on UNAMID (UN DPI, 2010c). The UN Security Council also urged the GoS to fully comply with the SOFA and without delay, particularly regarding flight and equipment clearances, and the removal of all obstacles preventing the use of UNAMID aerial assets in order to, *inter alia*, respond to armed threats and emergency medical evacuations as appropriate (UNSC, 2010c:3). The second resolution for 2010 will be elaborated on next.

#### 6.3.3.4.2 UN Security Council Resolution 1945 (2010)

On 14 October 2010, the UN Security Council adopted Resolution 1945 (14 in favour with one abstention from China) which extended the mandate of the Panel of Experts that monitors the arms embargo and sanctions on those who impede peace in Sudan, for one year, to end on 19 October 2011 (UN DPI, 2010d). According to the UN DPI (2010d), China abstained because they had serious doubts about the objectivity of the report presented by the Panel and requested the Panel to improve its methods and to conduct its work under the principles of objectivity and accountability. The Panel submitted its seventh report to the UN Security Council on 20 September 2010 but it was not publicly released until 8 March 2011 (UNSC, 2011e:1). The seventh report will be discussed in *section 6.3.4.1* as it was chronologically released in 2011. Other significant political and deployment milestones for UNAMID will be highlighted next.

#### **6.3.3.5 Other events and milestones achieved in 2010**

During 2010 the UN DPKO conducted a military capability study of the UNAMID Force which indicated that, while the rules of engagement and troop numbers were adequate to implement the mandate, the deployment and visibility of its military component should be increased throughout Darfur, in order to extend the mission's coverage and contribute to enhancing the levels of confidence among the local population and the parties (UNSC, 2011d:14). In this context, the draft study recommended a readjustment of headquarters staff, enhanced presence throughout the mission area, and the development of a headquarters-directed patrolling and information collection plan (UNSC, 2011d:14). In addition, shortfalls were identified in the contingency-owned equipment of some troop-contributing countries, including low serviceability of major equipment, which had a negative impact on operational capability (UNSC, 2011d:14).

Despite the slow deployment, as the year ended UNAMID had deployed more than 17 200 military peacekeepers, representing almost 90% of its authorised force and an increase of nearly 2 000 troops compared with the previous year. At the end of 2010 the number of UNAMID police officers was more than 2 800, or 75% of the

mandated strength, and 14 out of 19 Formed Police Units planned for Darfur were now on the ground (UN DPI, 2011b:40). Furthermore, among others issues relating to the GoS, there was progress in the issuance of visas for the mission's staff, and notable new senior appointments, including the arrival of the new Chief of Staff, whose visa had been granted 'after a long delay' (UN DPI, 2010e). For UNAMID, it was important for the GoS to sustain this progress so that rapid visa-processing for all nationalities became the norm (UN DPI, 2010e). Notwithstanding the progress with the issuance of visas, the GoS continued to impose severe restrictions on the activities of UNAMID, other United Nations agencies, and INGOs for reasons other than security concerns. For example, the GoS expelled, among others, the heads of office of the Office of the United Nations High Commissioner for Refugees (UNHCR) in El Geneina and Zalingei in August 2010, because, according to some reports, they were working to raise awareness about sexual and gender-based violence in Western Darfur (UNSC, 2011e:17). Sudan was also the focus of the international community as security deteriorated in Darfur and tensions increased between the North and South ahead of the January 2011 referendum, due to hesitation from some elements in the leadership of the north about holding the referendum as scheduled (Kent-Brown *et al.*, 2010b:14). The fourth year of operations of UNAMID will be discussed up to June 2011 (time of writing). The referendum is discussed in *section 6.4.3*.

#### **6.3.4 UNAMID: the fourth year (until June 2011)**

By the end of 2010 all the signs showed that the potential for escalating violence in the various parts of Sudan were very high (Kent-Brown *et al.*, 2010a:1). While the situation in Darfur showed increasing deterioration during the last few months in 2010, the North-South peace process entered a critical phase with the referendum date fast approaching (KentBrown *et al.*, 2010a:1). Apart from the rising anxiety surrounding the preparation for, and the timely holding of, the referendum, the three contested border areas of Abyei, South Kordofan and Blue Nile were potential major flash points (Kent-Brown *et al.*, 2010a:1). Additionally, in the North there were fears that the referendum in the South may lead to a reduction in oil revenue and open a Pandora's Box prompting other parts of Sudan to claim more rights, including self-determination and potentially triggering divisions in the NCP (Kent-Brown *et al.*, 2010a:1). Historically, Darfur had the strongest claim to separate statehood, having been incorporated into Sudan only in 1916. By the beginning of 2011 only a

small and radical minority had openly proposed that Darfur should secede from Sudan, but in the context of Southern secession, this number was sure to grow (Dersso, 2010:22).

In 2011 the African Union-United Nations joint mediation continued consultations with the GoS, armed movements and other Darfur stakeholders. On 29 January 2011 the leaders of the LJM and the JEM issued a joint statement reaffirming their commitment to the Doha negotiations and noting their intention to work together in reaching a comprehensive settlement to the conflict (UNSC, 2011c:1). On 22 February 2011 the joint mediation presented to the GoS, LJM and JEM a set of draft texts covering four areas on which there was broad agreement, namely wealth-sharing; compensation and the return of internally displaced persons and refugees; justice and reconciliation; and human rights and fundamental freedoms. All three parties had submitted to the mediation their positions on these texts, with no substantive disagreement (UNSC, 2011c:2). As was mentioned in *section 6.3.3.4.2*, the Panel of Experts' seventh report, even though submitted to the UNSC in September 2010, with its findings and recommendations, was released only on 8 March 2011 (UNSC, 2011e:1).

#### ***6.3.4.1 The seventh report by the Panel of Experts***

In the seventh report by the Panel of Experts, it was conceded that the arms embargo, which was intended to limit the ability of belligerents to engage in armed violence, remained without discernible impact and ammunition had continued to enter Darfur since 2005 (UNSC, 2011e:4). Moreover, regarding the targeted travel and financial sanctions imposed by the UN Security Council on four individuals, no concrete action by the GoS to implement those measures could be documented; rather, the GoS affirmed that it did not recognise, and disagreed with, the designation of two of the individuals, who, it argued, were unjustly subjected to the measures (UNSC, 2011e:5). Accordingly, the UN Security Council (2011b) issued UN Security Council Resolution 1982 (2011).

#### ***6.3.4.2 UN Security Council resolutions in 2011 regarding Darfur/UNAMID***

By June 2011 the UN Security Council had adopted only one UN Security Council resolution pertaining to Darfur. It will be discussed next.

##### ***6.3.4.2.1 UN Security Council Resolution 1982 (2011)***

On 17 May 2011 the UN Security Council unanimously adopted Resolution 1982 (2011) under Chapter VII of the United Nations Charter and extended the Panel of Experts until 19 February 2012 (UN DPI, 2011c). The Panel, which was originally appointed by the UN Secretary-General pursuant to Resolution 1591 (2005), had to provide a final report no later than 30 days prior to termination of its mandate in 2012 to the UN Security Council with its findings and recommendations.

#### ***6.3.4.3 Other events and milestones achieved in 2011***

As at 31 March 2011, the number of UNAMID military personnel was 17 912, representing 92% of the authorised strength of 19 555 (UNSC, 2011c:12). This included 17 430 troops, 260 staff officers, 53 liaison officers and 169 military observers (UNSC, 2011c:12). The strength of UNAMID police personnel stood at 2 922 representing 77% of the authorised strength of 3 772 (UNSC, 2011c:12). The Formed Police Unit personnel strength stood at 2 229 or 84% of the authorised strength of 2 660 (UNSC, 2011c:1). Despite the progress in issuing visas in 2010, the GoS began delaying the issuance of visas again. As at 31 March, 1 237 applications for visas were pending (UNSC, 2011c:13). Of these, 898 were for individual police officers and 157 for military staff officers and observers, the remainder for civilian personnel in various categories (UNSC, 2011c:13). Having discussed the operations of UNAMID in Darfur from its inception to June 2011, Part 2 of this chapter ends with an analysis of the extent to which UNAMID had managed to achieve its mandate.

### 6.3.5 UNAMID: meeting its mandate

The mandate of UNAMID was divided into five components relating to: the peace process in Darfur; security; rule of law; governance, human rights, and humanitarian assistance; and internal (self-)support (UNGA, 2007c:6-7). In 2009, the UN Secretary-General combined the five components into four benchmarks covering four priority areas discussed in the UNAMID workplan on mandate implementation (UNSC, 2009c:18). Each one of these benchmarks will be discussed to assess whether UNAMID had met its mandate or not.

#### 6.3.5.1 *The first benchmark: Obtaining a comprehensive political solution*

According to the UN Secretary-General (UNSC, 2009c:18), the first benchmark is defined as: *“Achievement of a comprehensive political solution to the conflict, through the implementation of the Darfur Peace Agreement and/or the conclusion of a subsequent comprehensive peace agreement that will ensure that Darfur is adequately represented and participating in the national political process.”*

By the end of 2010, the UN Secretary-General admitted that this particular benchmark had suffered a setback when relations between the signatory parties to the DPA, the GoS and SLM/MM, deteriorated significantly during the course of 2010 (UNSC, 2011d:12). The UN Secretary-General felt that given the lack of implementation of the DPA prior to this development, its effect on making progress against the benchmark was likely to be minor (UNSC, 2011d:12). By the end of 2010, progress had nonetheless been made towards agreement between other parties to the conflict, with the GoS and LJM moving closer to agreement; the JEM engaged in ceasefire negotiations; and information was disseminated on the outcome of the second civil society conference (UNSC, 2011d:12). The Joint Special Representative of UNAMID admitted that UNAMID was an unusual peacekeeping mission in that it was operating in the absence of an enforceable peace agreement (UNGA, 2011c:8). The UNAMID-supported Joint Mediation Support Team, however, played an active role in the peace process by, *inter alia*, building on the achievements of the civil society conferences held in Doha and continuing to expand consultations with

Darfurian civil society in order to promote an inclusive and comprehensive political solution to the conflict (UNGA, 2011c:8).

By 2011, in preparation for a breakthrough in the negotiations, UNAMID began preliminary consultations with the African Union High-level Implementation Panel regarding the launch of the Darfur Political Process, a dialogue designed to build consensus and to ensure the durability of a peace agreement (UNGA, 2011c:8). By April 2011, the UN Secretary-General felt that there was now broad agreement between the GoS, LJM and JEM on elements of a comprehensive peace consensus as they pertain to wealth-sharing, compensation and returns, justice and reconciliation, human rights and security arrangements (UNSC, 2011c:10). The UN Secretary-General underscored that cooperation between JEM and LJM, and between JEM and SLM/MM at the political level, had increased, as evidenced by the issuing of a joint coordination charter in the case of JEM and LJM, and a joint political statement by JEM and SLM/MM, raising the prospect of a more inclusive peace process (UNSC, 2011c:11). Ultimately, concluded the UN Secretary-General, securing the necessary buy-in of the Darfurian people for the implementation of any outcome document agreed to by the parties in Doha was essential and the necessary civil society consultations would continue in this regard (UNSC, 2011c:11). Clearly, civil society in Darfur wanted peace in Darfur more than the politicians. The progress of UNAMID on its self-imposed second benchmark will be discussed next.

#### ***6.3.5.2 The second benchmark: Ensuring a secure and stable environment***

The second benchmark of the mandate of UNAMID is described as: “*UNAMID to contribute to the restoration and upholding of a stable and secure environment throughout Darfur, in which civilians, in particular vulnerable groups, are protected and the displaced populations may choose to return to places of origin*” (UNSC, 2009c:19).

UNAMID was mandated to support the implementation of the DPA as well as protect its personnel and civilians ‘without prejudice to the responsibility of the Government of Sudan’ (UN DPI, 2007e). This specific clause is important to note, because, according to Cohen (2007:2), it weakened the protection mandate of UNAMID.



Cohen (2007:3) elaborates that in the negotiations leading up to the resolution, the GoS insisted that the protection of civilians was its responsibility and objected to UNAMID being authorised to seize and collect arms. As a result of this objection, Resolution 1769 provided only for UNAMID to be able to ‘monitor’ the presence of arms in Darfur (Cohen, 2007:3). These agreements certainly impacted on the ability of UNAMID, especially in the first two years following inception, to provide security. In 2008, the Darfur Consortium (2008:3) highlighted two major reasons for the failure of UNAMID to provide security:

- i. UNAMID lacked the resources and capacity to operate at full strength, and of the fewer than 10 000 uniformed personnel, most were from the ex-AMIS forces, and
- ii. UNAMID faced serious deployment and logistical challenges owing to the difficult terrain, the extreme remoteness of Darfur and a lack of basic equipment such as helicopters and armoured vehicles.

The GoS contributed greatly to the above-mentioned reasons for failure. According to the Darfur Consortium (2008:2) the GoS had effectively stalled deployment and the UN Security Council and the AU PSC allowed it to do so. The Darfur Consortium (2008:2) believed that while supporting the mission with their voice and votes at the United Nations, donor countries did not fulfil their pledges to support the mission. It furthermore seemed to the Darfur Consortium (2008:2) as if donor nations were allowing UNAMID to follow the same path as its predecessor, AMIS. Africa Confidential (2008a:9) quoted the UNAMID Force Commander who admitted that UNAMID had made little progress and expressed his frustration with the GoS for not allowing non-African troops into Sudan. The AU PSC (2009:43) also compared UNAMID with AMIS and noted that the former was not able to reach or surpass the operational capability of AMIS for many months, and like AMIS, UNAMID was:

- Vulnerable to attacks and reliant on the cooperation of the GoS for its essential logistics;
- Operating with a limited mandate and capacity in a situation in which there was no peace to keep.
- International promises of support were not forthcoming, and
- The international verdict on the Mission had already been written off as a failure (AU PSC, 2009:43).

The UN Department of Peacekeeping Operations (UN DPKO), however, had a different opinion. UN DPKO (UN DPI, 2011b:37) agreed that although the primary responsibility for protecting civilians lay with the GoS, UNAMID was tasked by the UN Security Council with making “full use of its mandate and capabilities, giving priority in decisions about the use of available capacity and resources to the protection of civilians across Darfur.” While protecting civilians remained at the heart of the mandate of UNAMID, it proved to be among its greatest challenges by the end of 2010, admitted UN DPKO (UN DPI, 2011b:37). By the end of 2010, the UN Secretary-General admitted that there was a degree of regression in this area, largely owing to fighting between SAF and movement forces (UNSC, 2011d:13). There was, nonetheless, a marked reduction in inter-communal clashes and a decrease in the number of incidents involving banditry by 2010 (UNSC, 2011d:13). By April 2011, the UN Secretary-General believed progress against this benchmark was mixed. The UN Secretary-General noted that no new ceasefires were reached and fighting between the GoS and rebel forces continued to the detriment of the civilian population (UNSC, 2011c:11). The incidence of inter-communal fighting remained low and the financial support received by UNAMID for the implementation of water projects designed to reduce community-based tension offered to go some way towards maintaining the status quo (UNSC, 2011c:11). Relations between the Sudan and Chad remained cordial, and the two countries continued to cooperate through a joint border security force (UNSC, 2011c:11). This had a correspondingly positive effect on security and stability in the region, particularly in Western Darfur, by preventing the movement of armed groups across the border (UNSC, 2011c:11). The relations between Chad and the GoS are discussed in *section 6.4.2*. On 16 March 2011 the mandate of the joint force was extended by six months by the Governments

of the Sudan and Chad. The third benchmark of mandate of UNAMID will be discussed next.

#### ***6.3.5.3 The third benchmark: Enhanced rule of law, governance and human rights in Darfur***

The UN Secretary-General (UNSC, 2009c:19) determined the third benchmark for the mandate of UNAMID as: *“UNAMID to contribute to the functioning of effective and efficient State institutions, including national and local authorities and security and justice institutions, to enforce and maintain the rule of law and govern on a non-discriminatory basis in accordance with international human rights standards and principles of good governance throughout Darfur.”*

UN Security Council resolution 1769 (2008) mandated UNAMID to contribute to efforts to promote and protect human rights in Darfur and assist in the implementation of the Darfur Peace Agreement and any subsequent agreements (UNGA, 2011d:3). The Office of the High Commissioner for Human Rights (OHCHR) is represented in the Sudan by the human rights sections of the two peacekeeping missions UNMIS and UNAMID (UNGA, 2011d:5). The human rights sections of both UNMIS and UNAMID carry out human rights monitoring, investigations, reporting, advocacy and protection activities (UNGA, 2011d:5). In 2010 the Human Rights Council (UNGA, 2010c:16) noted that the challenges facing justice and its administration remained unchanged for 2009-10. Access to justice was hampered by a weak presence of law enforcement and rule of law institutions, particularly outside the main urban centres of Darfur, according to the Human Rights Council (UNGA, 2010c:16). The Human Rights Council (UNGA, 2010c:16) concluded that the lack of government capacity, including acute shortages of police personnel, judges and prosecutors, coupled with the lack of material resources and training within the justice sector institutions, put the formal justice sector beyond the reach of a vast number of people. At the beginning of 2011, the UN Secretary-General reported that the human rights situation in Darfur remained a cause for concern, with an increase in alleged arbitrary arrests and detention and several reported incidents involving violations of the rights to freedom of opinion and expression (UNSC, 2011d:9). The Human Rights Council (UNGA, 2011d:9) noted that by 2011, the 1997 Emergency and Public Safety Act

continued to apply in Darfur, where a state of emergency remained in existence. This law granted wide discretionary powers of arrest and detention to the State governors of Darfur without any effective judicial review (UNGA, 2011d:9). Some of the activities to enforce and monitor the rule of law which UNAMID undertook during 2010 included conducting workshops on human rights and community policing, and human rights training for Government prison staff in El-Geneina and Zalingei (UNSC, 2011d:9). In 2010, UNAMID human rights officers delivered training to 200 military, 22 police and 67 civilian personnel in the mission (UNSC, 2011d:9).

Regarding access to governmental processes, UNAMID was refused entry to the Nyala Special Court in October by the judge, who stated that he would only allow UNAMID or other agencies to enter the court if they were involved in a case (UNSC, 2011d:10). UNAMID continued to be denied access to prisons and detention centres in Northern Darfur, including the SLA/MM-operated detention facility at Zam Zam and the one operated by the GoS in Mellit. Such restrictions prevented the independent monitoring of trials. In Mellit, the State prosecutor was absent and the judge had assumed the duties of prosecutor in the prosecutor's absence, raising serious concerns about the fairness of trials (UNSC, 2011d:10). By April 2011, the UN Secretary-General admitted that progress against this benchmark was limited. The UN Secretary-General noted the frequency of human rights violations, especially those associated with military conflict and arbitrary searches and detention, remained relatively high (UNSC, 2011c:11). Modest progress, nonetheless, was evident in the reduction in recorded incidents of banditry and criminality, perhaps as a result of the mission's adoption of a more robust posture in 2011 (UNSC, 2011c:11). Somewhat encouraging were the recent commitments by the collaboration between SLM/Free Will and SLM/Mother and the Northern Sudan Disarmament, Demobilisation and Reintegration Commission to release child soldiers and young adults, concluded the UN Secretary-General (UNSC, 2011c:11). The progress made by UNAMID on its fourth and final benchmark, which focused on the humanitarian situation in Darfur, will be discussed next.

#### **6.3.5.4 The fourth benchmark: Stabilising the humanitarian situation**

The UN Secretary-General (UNSC, 2009c:20) determined the fourth and final benchmark for the mandate of UNAMID as: *“UNAMID to contribute to a stabilised humanitarian situation in which the humanitarian community has free and unhindered access to populations in need of assistance, and which enables Darfurians to live in dignity, gradually reducing their reliance on humanitarian aid through gradually increasing engagement in sustainable livelihood activities; UNAMID to support the lead agencies with respect to internally displaced persons to allow them to integrate fully into a community of their choice, including through voluntary, safe, dignified and sustainable return.”*

Human displacement, mostly as a result of conflict, remained a defining issue of the crisis in Darfur. According to OCHA (2011:12), by 2010 up to 1.9 million people (comprising a quarter of Darfur’s total population) remained displaced from their homes, with many continuing to rely on aid agencies for their basic needs. Displacement trends in 2010 followed patterns observed in preceding years. As of 1 November 2010, an estimated 268 000 people were displaced in 2010, compared with about 175 000 people displaced in 2009 and around 300 000 displaced in 2007 and 2008 (OCHA, 2011:12). The African Union (AU PSC, 2010:3) presented more conservative figures, estimating the number of displaced people in 2010 at 116 000. According to UN DPKO (UN DPI, 2011b:37), UNAMID faced significant barriers to its work and among these were movement restrictions, the obstruction of humanitarian access, an unstable security situation on the ground and threats to the safety and security of UNAMID personnel. On too many occasions, underscored UN DPI (2011b:37), peacekeepers were hampered in their efforts to respond as effectively as they would have liked to incidents that resulted in civilian casualties or humanitarian aid being prevented from reaching those most in need.

Over the course of 2010, more than 1 300 civilians lost their lives to violence which could possibly have been prevented by UNAMID (UN DPI, 2011b:37). By the end of 2010, the UN Secretary-General interestingly assessed that overall there was neither progress nor regression against this benchmark (UNSC, 2011d:13). Progress, the UN Secretary-General stated, was affected by the clashes that took place between

SAF and the armed rebel movements, and the reluctance of the GoS to allow the mission and humanitarian agencies to access areas where military operations were under way (UNSC, 2011d:13). In addition, banditry contributed to limited deep-field access for humanitarian personnel (UNSC, 2011d:13). In areas reached by UNAMID and agencies, the humanitarian situation remained relatively stable (UNSC, 2011d:13). In general terms, the health and nutrition situation in most IDPs camps remained unchanged and stable (UNSC, 2011d:13). However, insecurity in parts of Southern Darfur caused the suspension or scaling down of humanitarian operations in some areas (UNSC, 2011d:13). By April 2011, the UN Secretary-General echoed his above view that neither major advancement nor regression had been made with regard to this benchmark. The UN Secretary-General noted no significant instances of IDP returns and expressed that in fact, the opposite was the case and that large numbers of existing IDPs were displaced once again by fighting (UNSC, 2011c:11). Despite that, and several restrictions on movement, the UN Secretary-General believed that overall progress had been made in terms of access: UNAMID and humanitarian workers were able to access most areas affected by fighting, as well as parts of the Jebel Marra (UNSC, 2011c:11). The mortality rate in Darfur, maintained the UN Secretary-General, remained stable (UNSC, 2011c:11).

Whether or not UNAMID met its mandate will be discussed in *Chapter Eight, section 8.2.3.1*. In order to come to such a conclusion, all factors had to be taken into account, including those which are discussed in Part Three of the chapter. Part Three, the final part in this chapter, explores those issues which had an external impact on the functioning or deployment of UNAMID and advertently on the history of the Darfur conflict.

#### **6.4 PART THREE: MAJOR EXTERNAL FACTORS WHICH IMPACTED ON THE DARFUR CONFLICT AND/OR UNAMID**

There were certain major, or macro, external factors which impacted on the Darfur conflict and UNAMID. Some of these factors were already present, or even contributed to the start of the conflict, as was discussed in detail in Chapters Four and Five. For instance, it was already evident in those chapters how the regional conflicts between Chad and the GoS, the North-South Sudanese conflict, the passing of the

OAU and the birth of the African Union, all played a role in the way the international community responded to the Darfur conflict. Four such major external factors have been identified throughout this study and will be discussed in Part 3: a) the indictment by the ICC of al-Bashir, b) Chadian/Darfur regional conflict, c) the secession of South Sudan, and d) the (lack of) support of certain permanent members of the UN Security Council for the GoS. Undoubtedly, new international events, such as the 2011 democratic uprising in the Middle East, as explained by Ignatius (2011), would have a profound impact on the Islamic Middle East/North Africa region, which includes Sudan. In this regard, new power plays and alliances between countries party to the Arab League and the African Union might change as a consequence. All these factors could still be explored in future studies to assess how they may trickle down to the political interplay and conflict in Darfur. These are anticipated major external influences which have not yet been studied. This part in the chapter, nonetheless, concludes the four external factors listed above which have been studied in the previous chapters. It starts with the allegations of genocide committed in Darfur and the indictment of al-Bashir by the ICC.

#### **6.4.1 The alleged genocide in Darfur and the indictment of al-Bashir by the ICC**

The events leading up to the indictment of al-Bashir started in 2004 with the allegations of genocide being committed in Darfur as first mentioned in *Chapter Five, section 5.2.1.1*. The UN Security Council then established a Commission of Inquiry to determine whether or not acts of genocide had occurred, as explained in *Chapter Five, section 5.2.2.3.3*. Although in January 2005 the UN Commission of Inquiry ultimately concluded that while the GoS “has not pursued a policy of genocide” (ICID, 2005:131), it was implicated in numerous war crimes and crimes against humanity, and suggested, nevertheless, that “in some instances individuals, including government officials, may commit acts with genocidal intent” (Amnesty International, 2007a; ICID, 2005:132). For further information on the findings of the International Commission of Inquiry on Darfur, see *Chapter Five, section 5.2.3*. The timeline of events following the findings of the UN Commission of Inquiry is as follows:

- On 31 March 2005, acting under Chapter VII of the UN Charter, the UN Security Council passed Resolution 1593 reflecting its decision to refer the situation prevailing in Darfur to the Prosecutor ICC (UN, 2005b). The referral of the investigation to the ICC by the UN Security Council is in line with the observations made in *Chapter Three, section 3.3.2.4.4*: the UN Security Council has the right to establish international tribunals to prosecute persons for serious violations of international humanitarian and human rights law, including acts of genocide. This was also sensible as it was established in *Chapter Three, section 3.3.2.4.2* that the UN Security Council does not (necessarily) enforce international law nor does it take action when international law is violated.
- On 6 June 2005 the ICC announced that it would launch a formal investigation into suspected war crimes in Sudan's Darfur region; it was expected to be the largest investigation handled by the court since it had been established in June 2002 (CBC News, 2008).
- On 29 June 2005 the Chief Prosecutor of the ICC ("the Prosecutor") submitted a first report to the UN Security Council informing it of the decision to open an investigation into the situation in Darfur (ICC, 2007a:1).
- On 13 December 2005 the Prosecutor (ICC, 2007a:1) submitted a second report to the UN Security Council, informing it that the Prosecution had selected a number of alleged criminal incidents for full investigation and that the establishment of an effective system for protection of victims and witnesses was a precondition to the conduction of investigation activities in Darfur.
- On 14 June 2006 the Prosecutor submitted a third report to the UN Security Council informing it that the Prosecution had selected several incidents for further investigation and analysis, but that the continuing insecurity in Darfur was prohibitive for effective investigations inside Darfur, particularly in light of the absence of a functioning and sustainable system for the protection of victims and witnesses (ICC, 2007a:2). As a result, the Prosecutor informed the UN Security Council that he would carry out his investigations from outside Darfur because of his office's inability to protect the witnesses (Article 1, 2009b).



- On 23 November 2006 the Prosecutor announced that he had enough evidence to prosecute on the Darfur dossier (Africa Confidential, 2006e:5).
- On 14 December 2006 the Prosecutor submitted a fourth report to the UN Security Council, providing it with an update on the situation in Darfur, and informing the members that he had nearly completed an investigation into some of the ‘worst crimes committed in Darfur’ (ICC, 2007a:2; Article 1, 2009b).
- On 27 February 2007 the Prosecutor filed an application for arrest warrants for the first two war crime suspects in Darfur; Sudan responded that the ICC had no jurisdiction and rejected the notion (Reuters, 2010; ICC, 2007b:2).
- On 27 April 2007 the ICC issued two warrants of arrest for Ahmad Haroun and Ali Kushayb (ICC, 2007b:1). The warrants referred to crimes (including crimes against humanity and war crimes) allegedly committed between August 2003 and March 2004, during several attacks allegedly carried out by the SAF and the Janjaweed on four West Darfur towns (Kodoom, Bindisi, Mukjar, Arawala) and surrounding areas (Amnesty International, 2007b:1; HRW, 2008; ICC, 2007c:5,6-9). Ahmad Haroun, who at the time was the Sudanese Minister of State for the Interior and in charge of the management of the “Darfur Security Desk”, was charged on 51 counts, including the murder of civilians, attacks on the civilian population, and rape (ICC, 2007b:5,6-8). Ali Kushayb, suspected to be one of the Janjaweed militia commanders who personally participated in the pillaging of towns and destruction of properties, and some of the attacks against civilians where they were killed, raped, tortured and subjected to other cruel treatments, was similarly charged on 51 counts (ICC, 2007c:5,6-9).
- On 14 July 2008 the Prosecutor accused al-Bashir of masterminding a campaign of genocide in Darfur and he subsequently became the first sitting head of state to be indicted by the ICC (Cutler, 2010). The charges which were filed against him, included three counts of genocide, five counts of crimes against humanity, war crimes, and two counts of murder (Maweni, 2008; Reuters, 2009; ICC, 2008a). The Prosecutor argued that al-Bashir masterminded and implemented a plan to destroy a substantial part of the Fur, Masalit and Zaghawa groups, on account of their ethnicity

(ICC, 2008a). According to the ‘Prosecutor’s Application for Warrant of Arrest under Article 58 of the Rome Statute’ (ICC, 2008b:1), it was not alleged that al-Bashir had physically or directly carried out any of the crimes, but as President of the Republic of Sudan, exercised both de jure and de facto authority, and committed these crimes through members of the state apparatus, namely the army and the Militia/Janjaweed. The Prosecutor maintained that al-Bashir bore criminal responsibility in relation to 10 counts of genocide, crimes against humanity and war crimes and asked the Pre-Trial Chamber (PTC) to issue a warrant of arrest (ICC, 2008a).

- On 4 March 2009, on the basis of evidence provided to it by the Prosecutor, the PTC granted the application in part and authorised the issue of the arrest warrant (Williams & Sherif, 2009:71-72). The ICC issued an arrest warrant for Al-Bashir on seven counts of war crimes and crimes against humanity, but stopped short of including a charge of genocide (Cutler, 2010). The Coalition for the International Criminal Court (CICC, 2007:1) made it clear that an indictment is a formal charge (or accusation) against an individual for having allegedly committed a serious criminal offence. The “arrest warrant” issued by the ICC is not a charging document, but merely seeks to ensure the presence of a person at the proceedings. As opposed to the International Criminal Tribunal for the former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR), which used the indictment procedure, the ICC required the PTC to confirm charges against the accused before formally charging him or her (CICC, 2007:1).
- On 3 February 2010 the ICC Judges reversed a decision that prosecutors had not provided sufficient evidence to add genocide to Al-Bashir's charge sheet, which already included seven counts of crimes against humanity and war crimes, including murder, extermination, torture and rape (Bouwknegt, 2010). In July 2010 the ICC Pre-Trial Chamber issued another arrest warrant against al-Bashir for the crime of genocide, a charge that the Pre-Trial Chamber had previously rejected for lack of prime facia evidence.

In issuing the warrant(s) of arrest, the PTC indicated that it was satisfied that there were reasonable grounds to believe that al-Bashir committed a crime within the

jurisdiction of the Court and that his arrest was necessary in order to secure his presence for trial, to preserve the integrity of the trial or investigation process from their interference and to prevent the commission of further or related crimes, explains Williams and Sherif (2009:71-72). At the request of the PTC, the arrest warrant was issued the same day, and transmitted, together with a request for cooperation, to the authorities in Sudan, all states party to the Rome Statute and all member states of the United Nations (Williams & Sherif, 2009:71-72). To understand the implications of the arrest warrant for Darfur and UNAMID, it is necessary to explain the workings of the ICC and the concepts of 'war crimes' and 'genocide'.

#### ***6.4.1.1 The International Criminal Court***

The ICC is a permanent independent judicial body created by the international community to prosecute crimes such as genocide, other crimes against humanity and war crimes (Amnesty International, 2011b). The ICC has jurisdiction over genocide, crimes against humanity and war crimes committed by nationals of a State Party or on the territory of a State Party on or after 1 July 2002, the date of entry into force of the Rome Statute (ICC, 2010). The ICC (2007a:3) makes it clear that unlike the ICJ which presides over disputes between nations, the ICC can prosecute criminal cases against individuals. The ICC is, nonetheless, a court of last resort and it will not act if a case is being investigated or prosecuted by a national judicial system unless the national proceedings are not genuine, for example if formal proceedings were undertaken solely to shield a person from criminal responsibility (ICC, 2007a:3). Besides the Darfur situation, which was referred to the Office of the Prosecutor by the UN Security Council, three countries, Uganda, the DRC and the Central African Republic (CAR), requested that the Court investigate crimes committed on their territory (ICC, 2007a:3).

Altogether, 110 states are party to the Rome Statute (including 30 African states). A further 38 states have signed the Statute but have not ratified the treaty, and 46 states are non-signatories (CICC, 2010). Sudan is neither a signatory nor a non-signatory to the Statute (CICC, 2010). Article 1 (2009b) argues that although the ICC officially only has jurisdiction over member states, this condition does not apply if the referral to the ICC is made by the UN Security Council as it was in this instance, because the

resolutions made by the UN are binding upon all states and therefore the judgement of the court applies to these countries. Indeed, the referral by the UN Security Council was the only way for the ICC to assume jurisdiction. In this regards, Resolution 1593 (2005) declared:

*“[the UN Security Council] Decides that the Government of Sudan and all other parties to the conflict in Darfur, shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor pursuant to this resolution and, while recognising that States not party to the Rome Statute have no obligation under the Statute, urges all States and concerned regional and other international organisations to cooperate fully” (UN, 2005b).*

Despite the above, Nagar (2009) maintains that, since Sudan had not ratified the ICC’s founding Rome Statute, it could be argued that the body cannot investigate war crimes in Sudan. However, Article 13b of the Rome Statute indicates that, in cases in which war crimes appear to have been committed, they can be referred to the prosecutor by the UN Security Council (Nagar, 2009) as in this particular case (Powell & Baranyi, 2005:3). Williams and Sherif (2009:73) also point out the request for an arrest warrant in respect of al-Bashir raised the issue of the immunity to be enjoyed by a head of state of a non-state party to the Rome Statute in proceedings before the ICC. As the President of Sudan, Williams and Sherif (2009:73) highlight, al-Bashir could invoke immunity from criminal processes in third states and possibly before international criminal tribunals. Although the request for the arrest warrant does not represent the first time a head of state or government has been the subject of proceedings before an international criminal tribunal, both President Milosevic and President Taylor were no longer serving heads of state when they were brought within the custody of the relevant tribunal (Williams & Sherif, 2009:73). Thus, the request was the first occasion on which an international criminal tribunal has been required to consider the immunity of an incumbent head of state, conclude Williams and Sherif (2009:73). The following section will surmise whether or not the crime of genocide is a justiciable offence under the Rome Statute of the ICC.

#### 6.4.1.1.1 War crimes and genocide in Darfur

The basic principles of international humanitarian law in terms of Common Article 3 of the 1949 Geneva Conventions are applicable to all situations of armed conflict and include, according to the Overseas Development Institute (ODI, 2004:2):

- Distinction: the duty to distinguish between military and civilian targets;
- Precaution: the duty to minimise incidental injury to civilians and damage to civilian property; and
- Proportionality: any such injury or damage must be proportionate to the concrete and direct military advantage anticipated.

The ODI (2004:2) makes it clear that the above principles provide basic safeguards for civilians in civil conflicts, including prohibiting violence to life and person and outrages upon personal dignity. In addition, the non-derogable provisions of the International Covenant on Civil and Political Rights (1966) apply, including the right to life. ODI (2004:2) concludes that whether or not the actions carried out in Darfur amounted to genocide depended on whether or not there is evidence of a policy of extermination that would show intent to destroy, in whole or in part, a national, ethnical or religious group. This argument is in line with the United Nations Convention on Genocide (UN, 2000b [1948]) which defines genocide as “*any of a number of acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group, and forcibly transferring children of the group to another group.*” In Darfur’s case, ethnic divisions had indeed figured prominently and the brutality and scale of the violence unleashed by the SAF and Janjaweed proxies had been seriously disproportionate to the threat level posed by Darfurian rebels to the government, and the vast bulk of deaths, destruction and displacement were due to the government and Janjaweed (Africa Action, 2007). A crisis in which soldiers and allied militias devastate entire

villages with the well-documented intent of eradicating targeted ethnic groups is more accurately called genocide than a civil war (Africa Action, 2007). In confirming this view of disproportionate aggression from the GoS, the UN Commission of Inquiry on Darfur (ICID, 2005:3) concluded in 2005 that:

*“...the Government of Sudan and the Janjaweed are responsible for serious violations of international human rights and humanitarian law amounting to crimes under international law. In particular, the Commission found that Government forces and militias conducted indiscriminate attacks, including killing of civilians, torture, enforced disappearances, destruction of villages, rape and other forms of sexual violence, pillaging and forced displacement, throughout Darfur. These acts were conducted on a widespread and systematic basis, and therefore may amount to crimes against humanity. The extensive destruction and displacement have resulted in a loss of livelihood and means of survival for countless women, men and children. In addition to the large scale attacks, many people have been arrested and detained, and many have been held incommunicado for prolonged periods and tortured. The vast majority of the victims of all of these violations have been from the Fur, Zaghawa, Massalit, Jebel, Aranga, and other so-called ‘African’ tribes.”*

The Convention on Genocide (UN, 2000b [1948]) also declares that there shall be no immunity to anyone committing genocide whether they are “*constitutionally responsible rulers, public officials or private individuals*”. Furthermore, the Convention on Genocide stipulates that persons charged with genocide shall be tried by a competent tribunal of the State in the territory in which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to the Contracting Parties (UN, 2000b [1948]). Interestingly, Huth and Valentino (2008:81) note that not all scholars studying genocide restrict their definitions to attempts to destroy ethnic or political groupings while others have abandoned the term genocide altogether to examine the broader approach to include the intentional killings of civilians. Some scholars have, however, proposed to use the term “democide” which is defined as the intentional government killing of an unarmed person or people (Huth and Valentino, 2008:81). Whether it is genocide or democide, Huth and Valentino (2008:80) argue that both of the terms imply “mass killings” of non-combatants.

“Mass killings” according to Huth and Valentino (2008:80) are, defined as the intentional killing of a massive number (greater than 50 000 over the due course of five years) during a war. Schabas (2008:384) explains that the definition for genocide was set by the ICJ in February 2007 concluding litigation regarding the former Federal Republic of Yugoslavia. In its ruling, the ICJ addressed a number of important interpretative problems with respect to provisions of the 1948 Convention for the Prevention and Punishment of the Crime of Genocide. It adopted a relatively conservative interpretation of the definition of the crime, and rejected the suggestion that ‘ethnic cleansing,’ ‘cultural genocide’ and forms of attack and persecution directed at ethnic groups, falling short of physical destruction, are comprised within the concept (Schabas, 2008:384). Now that the entity of the ICC has been explained as well as the concept of genocide, the reactions of the GoS and the African Union, which will be discussed next, should be better understood.

#### ***6.4.1.2 Reactions by the GoS to the indictments and the impact on UNAMID***

To oppose the arrest warrants, the GoS declared that it would not cooperate and instead would try Ali Kushayb in its own ‘special criminal court’ (Worth, 2007). Some Janjaweed leaders, concerned they may also be tried by the Government, started to switch allegiance to the rebels (Worth, 2007). In so doing, the GoS aimed to render the arrest warrants irrelevant because the ICC is not designed to infringe on national judicial systems and will only take a case if the national courts are shown to be unwilling or unable to try the cases themselves (CICC, 2007:4). Furthermore, the GoS, instead of fulfilling its obligations to hand Ahmed Haroun over to the court, appointed him as Minister of State for Humanitarian Affairs in Darfur, and the GoS in September 2007 paradoxically appointed Ahmad Haroun to co-chair a committee mandated to investigate human rights abuses (HRW, 2008). The second suspect, Ali Kushayb, was released from a Sudanese jail in October 2007, where he had been held on other charges (HRW, 2008). In December 2007 the Office of the Prosecutor (ICC, 2007d:1) reported to the UN Security Council that the GoS was not cooperating and had taken no steps to arrest and surrender Ahmad Haroun and Ali Kushayb. In fact, argued the Office of the Prosecutor (ICC, 2007d:1), Ahmad Haroun remained Minister

of State for Humanitarian Affairs and Ali Kushayb was reported to be moving about freely in Sudan.

The tension the arrest warrants created in Khartoum also influenced the planning process of UNAMID as the GoS feared that UNAMID would be used to carry out the arrests (Wiharta, 2008:108). As a result, al-Bashir rejected the deployment of the majority of the expanded UNAMID force as originally agreed to (Save Darfur, 2007). The indictment of al-Bashir prompted a similar response from the GoS. The GoS was defiant in the face of the warrant, presenting three main arguments consistently (Musila, 2009:24):

- That Sudan is not party to the Rome Statute of the ICC and that Sudan is not bound by its decisions;
- That the UN Security Council, an essentially undemocratic institution, cannot purport to subject Sudan to an institution it has not accepted; and
- That Sudan, as a sovereign nation, is in a position to address the situation in Darfur through its institutions, including the judiciary it claims is independent, able and competent.

Bechtold (2009:149) notes that al-Bashir ridiculed the ICC actions and set off on an extended tour of the three provinces in Darfur, where he was met with wild acclaim by mostly very large audiences. In addition, 16 NGOs were accused of political interference in Sudan's domestic affairs, especially in Darfur, and also of providing tainted evidence to the ICC, and were ordered to leave Sudan (Bechtold, 2009:149). By October 2008, however, still faced with the threat of an arrest warrant issued by the ICC, the Sudanese government stepped up its efforts to be seen as making progress on a new Darfur peace deal and launched the "People of Sudan Initiative", first announced by al-Bashir in July 2008, which was meant to be a new national effort to resolve the five-year-old conflict (The Economist, 2008). The forum, which concluded by the end of October 2008, was organised around seven themes: security, development, refugees, reconciliation, the foreign dimension of the conflict, information, and a possible solution (The Economist, 2008). The rebels, however, were not interested and only one rebel group attended, the former rebel Minni



Minnawi, and the talks were boycotted by SLM/AW, and the JEM (The Economist, 2008).

Al-Bashir repeatedly dismissed the allegations made by the ICC as political and part of a Western conspiracy aimed at hindering Sudan's first democratic elections in 24 years, which were due to be held in April 2010. As a result, the GoS refused to co-operate with the ICC and the arrest warrant did not affect his movements or his nomination for the presidential elections (Gray-Block, 2010). In fact, in March 2009, al-Bashir defied the arrest warrant and travelled to Eritrea, Egypt, Libya and to a League of Arab Nations meeting in Qatar (Bechtold, 2009:149). In June 2011, China invited al-Bashir for an official state visit (BBC, 2011a). China defended its decision by noting that it “had reserved its opinion” towards the ICC lawsuit against al-Bashir and that it was not a signatory to the treaty of the ICC (BBC, 2011a). For their part, the African Union and the League of Arab Nations condemned the issuance of the arrest warrant as prejudicial to peace efforts, arguing that the UN Security Council should deploy article 16 of the Rome Statute to suspend the ICC proceedings (Musila, 2009:24). As was explained in *section 6.3.1.1.1*, the African Union had indeed tried to invoke Article 16 of the Rome Statute to suspend the arrest warrant. The response of the African Union will be discussed next.

#### ***6.4.1.3 The African Union’s response to the indictment by the ICC***

Following the failed request by the AU PSC to the UN Security Council, (as explained in *section 6.3.1.3.1*) to “defer the process initiated by the ICC in accordance with Article 16 of the Rome Statute”, the UN Security Council adopted Resolution 1828 (2008) which did not include any wording to support the deferment. Though the issuance of the arrest warrant could not be stopped, in July 2009, however, relying on Article 98 (1) of the Rome Statute, the African Union Heads of State resolved that Member States would not cooperate with the ICC with respect to the arrest warrant issued against al-Bashir (AU PSC, 2009:43). Article 98 (1) prevents the ICC from requesting a State to arrest an individual if this would involve the requested State in breaching the diplomatic immunity of a person from a third State, unless the third State waives the immunity of the individual concerned (AU PSC, 2009:43).

According to Bah (2010:13), the establishment of an independent High-Level Panel on Darfur (the ‘AUPD’ discussed in *section 6.3.2.1.1*), on 21 July 2008 by the AUPSC following the issue of the arrest warrant for al-Bashir, was perhaps the most practical step the African Union took in facing up to the dilemma. The panel, consisting of well-known and accomplished Africans, was mandated to “*examine the situation in depth and submit recommendations to the Council on how best the issues of accountability and combating impunity on the one hand, and reconciliation and healing on the other, could be effectively and comprehensively addressed...*” (Bah, 2010:13). The panel was established against the backdrop of growing concern among African leaders about what they perceive as the abuse of the principle of universal jurisdiction (Bah, 2010:13). The eight member High-Level Panel headed by former South African President, Thabo Mbeki, also had two other former presidents: Pierre Buyoya (Burundi) and General Abdulsalami Abubakar (Nigeria). The other members were Rakiya Abdullahi Omar, Director of African Rights (Somalia); Tiéblé Dramé, former minister (Mali); Al-Hajji Mohammed, Special Envoy of former President Olusegun Obasanjo on the trial of suspects of war crimes and human rights violations in Darfur, (Nigeria); judge Florence Mumba (Zambia) and Ahmed Maher, former foreign minister (Egypt) (Bah, 2010:13). Moreno-Ocampo (2009:9) later pointed out that the report of the AUPD highlighted respect for the role of the ICC as an independent, judicial institution. In addition, the Panel challenged neither the warrants issued nor the ultimate role of the ICC Judges in its Darfur cases but proposed additional solutions including the creation of a hybrid court to complement the action of the ICC, to address those cases that the ICC would not deal with (Moreno-Ocampo, 2009:9).

Since then, in defiance of the ICC arrest warrant, al-Bashir also travelled to Chad and Kenya (Kent-Brown *et al.*, 2010a:5). Although both countries were parties to the ICC treaty and Kenya held the vice-presidency of the Assembly of States Parties, the authorities in the two countries failed to act on the arrest warrants. On 27 August 2010, the PTC of the ICC issued two decisions informing the UN Security Council and the Assembly of the States Parties to the Rome Statute about EL Bashir’s visit to these two countries. The African Union not only expressed its dismay about the additional arrest warrant but also defended the two countries, which it said had acted

in accordance with the July 2009 Decision of the African Union assembly not to enforce the arrest warrant (Kent-Brown *et al.*, 2010a:5).

Interestingly, al-Gaddafi of Libya has been a key protagonist in bringing the relationship between African governments and the ICC to such a low point with the African Union, by ordering non-cooperation in respect of the al-Bashir warrant, requesting UN Security Council deferrals of both the Darfur and the Kenya investigations, and attempting to amend one of the Rome Statute's most finely balanced political compromises (Article 16) (Du Plessis & Gevers, 2011:23). Perhaps it was not surprising that when the 2011 democratic uprising of the Middle East and North Africa occurred, and as reports of widespread attacks on civilians began in early February, the first concrete action taken by the UN Security Council in respect of the events was, for the second time ever, under the ICC's Rome Statute, to refer a matter to the ICC for possible prosecution. All three African non-permanent members of the UN Security Council – Gabon, Nigeria and South Africa supported the resolution targeting Libya, notwithstanding the ongoing tensions between African states and the ICC over its Darfur and Kenya investigations (Du Plessis & Gevers, 2011:22).

#### ***6.4.1.4 Final thoughts on the indictment and impact on UNAMID***

The Prosecutor (Moreno-Ocampo, 2009:8) holds the view that al-Bashir invoked the idea of the ICC having a bias against Africa as a result of the focus on Darfur. The Prosecutor (Moreno-Ocampo, 2009:8) also noted the response of the chairperson of the AU Commission, Mr Jean Ping, who stated that “Africa has become a laboratory to test the new international law” and that the ICC is focusing only on Africa; and the response of the then President of the African Union, al-Gaddafi, who stated that “the [ICC] court is against the countries colonised in the past and they want to re-colonise now. It is a practice of a new world terrorism that is not below the standard of the other terrorism.” These international actions only added to the suspicions that UNAMID was a western-led force aiming to overthrow the GoS. The GoS, therefore, did everything it could to hamper the success of military operations of Darfur. In fact, the threat of an indictment for war crimes of al-Bashir by the ICC did not diminish the GoS willingness to sponsor wars in neighbouring states (Africa Confidential,

2008b:12). Indeed, it was expected it would use its sponsorship of Chadian insurgents, then gathering along the Chad-Sudan border, to test the resolve of EUFOR in Chad and the Central African Republic (Africa Confidential, 2008b:12). This will be discussed next.

#### **6.4.2 The Chad/Sudan conflict**

The establishment of the 'European Union Forces in Chad and the Central African Republic' (EUFOR) and UNAMID (as explained in *Chapter Five, section 5.2.6.1.1: MINURCAT and EUFOR*) impacted on the security in the region. EUFOR, consisting of 37 000 people, was launched in January 2008 by the EU as part of a multifaceted international response to the humanitarian crisis and the spread of violence in Darfur (Wiharta, 2009:102). Deployment of the first troops, however, was immediately suspended after rebels in Chad launched a wave of attacks in and around the Chadian capital, N'Djamena (Wiharta, 2009:102). Bono (2011:36) explains that Chadian rebel groups perceived EUFOR as an attempt to militarily and financially reinforce President Déby of Chad. According to Bono (2011:37), its establishment resulted in new rebel attacks which contributed to a vicious circle of other military attacks and counterattacks. Bono (2011:36-37) describes a pre-emptive strike by the Chadian rebel groups backed by the GoS in January/February 2008 which allowed the rebels to reach N'Djamena, and besiege the main public buildings, including the presidential palace, where President Déby was consequently trapped. Nevertheless, the next day the rebels were forced to leave the capital and seek reinforcement from other rebel groups which were based in Sudan. In retaliation for the defeat of the Chadian rebels in February 2008, the GoS renewed its military efforts in Darfur and started to bomb civilians (Bono, 2011:37).

On 13 March 2008 the Presidents of Chad and Sudan signed the Dakar agreement, committing the two states to prevent cross border rebel attacks and to implement past accords which had failed (Bodell, 2009:544). In May 2008, however, President Déby supported a group of rebels, led by the JEM to launch an attack on Khartoum with the aim to overthrow the GoS (Bono, 2011:37). This attack was repelled by the SAF and caused substantial casualties among civilians. On 15 November 2008, a Sudanese MI-24 attack helicopter destroyed two vehicles of EUFOR during an attack on a long-

range patrol in eastern Chad. The EUFOR vehicles were near Birak on Chadian soil and the peacekeepers positively identified the aircraft involved as Sudanese military aircraft (UNSC, 2009e:32). The Mi-24, the first helicopter to enter service with the Russian Air Force as an assault transport and gunship, is manufactured by the Russian Federation (FAS, 2000). This is important to note as Russian military equipment was used in the Darfur region during the conflict.

On 18 January 2009 a new Chadian rebel coalition backed by the GoS was created with the formation of the Union des Forces de la Résistance/Union of the Forces of Resistance (UFR) (HSBA, 2010b:4). Another notable event took place on 15 March 2009 when EUFOR was replaced by MINURCAT (HSBA, 2010b:4). Though EUFOR's mandate ended the European Union remained fully engaged in Chad and the CAR. A number of EU Member States and third countries, including around 2 000 men remained on the ground with MINURCAT (Ireland, Austria, Finland, Poland, France, Albania, Croatia and Russia) (ESDP, 2009:3). In May 2009, two days after a new reconciliation agreement was signed between Chad and Sudan in Doha, the UFR launched a raid but was defeated by the Chadian army in Am Dam, south of Abéché (HSBA, 2010b:). On 10 October 2009 the undertaking for peace was reinforced by an official visit to Chad by al-Bashir's advisor on Darfur, after which the Chadian armed opposition groups moved some 200 kilometres away from the Chadian border into Sudan (UN DPI, 2010b:33). On 26 December 2009 the GoS and Chad agreed to enforce border controls on each other's armed movements and, within days, Darfur-based Chadian rebels moved away from the border, deep inside Darfur (HSBA, 2010b:4).

In January 2010 Chad asked the UN Security Council not to renew the mandate for MINURCAT, which was set to expire on 15 March 2010 (HSBA, 2011b:5). Providing some insight into his decision, in February 2010 President Déby visited Khartoum for talks with al-Bashir, and resumed their personal relationship they had before the insurgency, and committed to stop their proxy war (HSBA, 2010b:5). During the visit, President Déby reiterated his will to end MINURCAT, which he considered to be a 'failure' (HSBA, 2010b:5). Simultaneously, under Chadian pressure, in February 2010 the JEM signed a 'framework agreement' and ceasefire with the GoS in N'Djaména and soon thereafter, N'Djaména ordered JEM to move its

fighters out of Chad (HSBA, 2010b:5). This effectively ended the proxy war which ended President Déby's involvement in the Darfur conflict, as explained in *Chapter Four, section 4.3.2.3.2*. After difficult negotiations, Chad and MINURCAT reached an agreement on the force's withdrawal and in May 2010 the UN Security Council unanimously agreed to Chad's request through Resolution 1923 (2010) (HSBA, 2010b:5). Resolution 1923 (2010) directed the withdrawal of MINURCAT in two stages: its 3 300-man military component was reduced to 2 200 (1 900 in Chad, 300 in the Central African Republic) by mid-July 2010; after mid-October 2010, the remaining forces and the civilian component were gradually withdrawn. All personnel were planned to be gone by 31 December 2010. Notably, although the mandate for MINURCAT was renewed through Resolution 1923 (2010), it was without its main former focus which was the protection of civilians. The Chadian government claimed to aim to fulfil this function by itself (HSBA, 2010b:5). The third important major factor impacting on UNAMID and Darfur was the secession of South Sudan.

#### **6.4.3 South Sudan's secession**

As explained in *Chapter Four, section 4.2.2.2.6.1.5*, as a result of the CPA, the INC of Sudan provided for the possibility of South Sudan to become an independent state. The southern referendum on independence was scheduled to take place on 9 January 2011 (McDoom, 2010c). The referendum allowed people in South Sudan and in the Abyei district to vote; however, the plebiscite in Abyei was postponed indefinitely as the north and south disagreed on who should be eligible to vote in an area where conflicted loyalties and land disputes kept tensions high (Mathenge, 2011). The referendum took place only in Southern Sudan and people voted for either (SSRC, 2009:5):

- Confirmation of the unity of the Sudan by sustaining the system of governance established by the CPA and the Constitution, or
- Secession.

Southern Sudan voted overwhelmingly for independence with nearly 99% of the voters in the January referendum in favour of dividing Sudan into two states (BBC, 2011b). Al-Bashir confirmed he would accept the outcome of the vote (BBC, 2011b). The United States, the African Union, the European Union, the United Nations and others endorsed the result (Dagne, 2011:1). On 9 July 2011 South Sudan will officially declare independence and the new country reportedly will be named the Republic of Southern Sudan (Dagne, 2011:1).

The Abyei region remained contentious. At stake was the Diffra oil field in the north of the territory, Missiriya grazing land, and the livelihood and future of the Ngok Dinka, the residents of Abyei (HSBA 2011a:1). In February and early March 2011, GoS forces and their allies attacked several villages around Abyei and many residents fled the town of Abyei in early March 2011 (Dagne, 2011:1). In mid-March 2011 South Sudan suspended talks with the GoS over its alleged support of Southern rebels (Maxwell, 2011:6). In May 2011 the GoS took control over the Abyei region. The South Sudan government responded by insisting that the Abyei region must be allowed to go to a referendum to break the ongoing impasse that continues to displace residents (Mathenge, 2011). In addition to the talks on unsettled post-referendum issues such as sharing oil revenues, demarcating the border and resolving the Abyei situation, several other key initiatives have to be undertaken (Maxwell, 2011:6):

- South Sudan needs to reconcile with all militia groups to ensure a long-term peace settlement. This process must include a robust disarmament, demobilisation, and reintegration (DDR) programme aimed at integrating militia members into the SPLA.
- The North's meddling and support of Southern militias must be addressed.
- The South must start building the framework for a democratic society.

The referendums in South Sudan and Abyei could have important consequences for Darfur (Kent-Brown *et al.*, 2010a:4-5):

- Darfur may cease to become an international priority.
- The claim of some militant Darfurians to self-determination will likely increase. This is not unexpected: Darfur has historically the strongest claim to separate statehood, having been incorporated into Sudan only in 1916, even though only a small minority of radicals openly proposed that Darfur should secede from Sudan.
- It is possible that tension between Khartoum and Juba would play itself out in Darfur taking the form of a proxy war, a defining feature of the relationship of many countries in the region. This would particularly be the case if the SPLM established links with the Darfur rebels and extended support to them such as allowing them to operate from South Sudan (Kent-Brown *et al.*, 2010a:4-5).

Secession, however, meant Khartoum lost control of most of the Sudan's proven oil reserves, although the landlocked south is dependent on northern pipelines to carry its oil to Port Sudan on the Red Sea, notes Quinn (2010). In addition, Khabure (2011:5) draws attention to the complex economic implications of secession due to interdependencies between the north and south. Of Sudan's proven six billion barrels of oil reserves, 75% is found in the south and with the secession, the GoS lost 50% of its oil revenue (Khabure, 2011:5). Transportation of oil is done through a pipeline in the north (Port Sudan), and sale of oil is controlled by the north. Ninety-eight per cent of the revenue of the GoSS comes from oil revenue. The social issues are equally complex, argues Khabure (2011:5). There are 1.5 million southerners with their families living in the north, while six million northern nomads spend eight months in a year in southern Sudan in search of pastures and water for their livestock (Khabure, 2011:5). Large numbers of south Sudanese regularly travel to the north for medical treatment and there are a large number of northern traders in the south while Northern Sudan needs south Sudanese labour in the construction sector and other productive industries (Khabure, 2011:5).



Africa Confidential (2010:4-5) believes the GoS hopes the South will implode, allowing it to intervene militarily, if necessary, on grounds of ‘saving the nation from fragmentation’ and ‘saving the South from itself’. Similarly, the NCP has redefined the Darfur war as an intervention to save the nation from rebels, rather than the ethnic cleansing campaign that it itself launched, notes Africa Confidential (2010:4-5). Although the GoS knows international interest in the South is greater than in Darfur, it believes that it could get away with a war seen by outsiders (and many Northerners) as caused more by inter-Southern hostility, incompetence and corruption than by GoS strategy. Darfur, according to Africa Confidential (2010:4-5) disproves a common external assumption that the NCP signed the CPA because it was ‘tired of war’. Just as the South was a testing ground for its war in Darfur, so now is Darfur a testing ground for any future war in the South or elsewhere (Africa Confidential, 2010:4-5).

The final major external issue which impacted on both the Darfur conflict and UNAMID, is the support of certain permanent members of the UN Security Council for the GoS. This is quite evident through their support of the UN Security Council adoption of resolutions in support of UNAMID or other peace initiatives in Darfur. These issues will be discussed next followed by an analysis of possible motives of these Member States.

#### **6.4.4 Lack of support for international action in Darfur by some permanent members of the UN Security Council**

The UN Security Council adopted numerous resolutions relating to Darfur and has referred the conflict to the ICC, note Wing *et al.* (2008:91). However, due to the political manoeuvring of Sudan’s allies, including China and the Russian Federation, these resolutions failed to hold the GoS responsible for noncompliance or to identify it as a perpetrator of mass atrocities, highlight Wing *et al.* (2008:91). The Africa Confidential notes (2007:2) that the ‘permanent five’ (P-5) members of the UN Security Council, despite much posturing, have subordinated plans to protect Darfur’s civilians to their own national interests and strategies: China (oil and building contracts); Federation of Russia (arms deals), France (national interests in Chad and the Central African Republic); USA and Britain (‘intelligence cooperation’, pressure over Iraq, Israel-Palestine and Afghanistan, and sponsorship of both the 2005 CPA in

the South and the 2006 DPA). Jentleson (2007:23) shows that the Russian Federation was the seller of the military aircraft used to bomb villages in Darfur, while China had approximately USD3 billion invested in Sudan's oil sector and was awarded hundreds of millions of US dollars in additional contracts for the construction of pipelines and port facilities, and was the principal financier of a USD200 million hydro-electrical plant in Sudan. Saule (2004) firmly believes that the Russian Federation and China could be blamed for lack of action and the watering down of UN Security Council Resolutions as these two permanent UN Security Council members have gone to great lengths to protect their investments in Sudan, which include Beijing being Khartoum's main arms supplier since 1994 in return for oil concessions, and the Russian Federation providing MIG-29 fighters and establishing a T-72 tank factory in Khartoum.

Aning and Lecoutre (2008:43) indicated that with regard to the crisis in Darfur, China had officially supported the regime in Khartoum, offered diplomatic support, provided weaponry and insulated Khartoum from economic pressure and human rights accountability. At the UN Security Council, China's strategy has been to dilute the language of resolutions and frequently to abstain from voting (Aning & Lecoutre, 2008:43). Jentleson (2007:23) concurs that Russia and China were the main reason for limitations and weaknesses in UN Security Council decisions on Darfur. Saule (2004) believes the Russian Federation and China used the threat of their Security Council veto to block sanctions or a tougher stance on Sudan while Braud (2006:1) concluded that the Russian Federation and China were the main 'opponents' of a United Nations deployment in Darfur as these two governments had significant commercial interests in Sudan. The following table provides an overview of the voting pattern for the Permanent Five on UN Security Council resolutions pertaining to Darfur from 2004 to Jun 2011. Such a comparison, however, does not tell the entire story as many resolutions were indeed watered down (notably Resolutions 1547 and 1574) to include less 'aggressive' measures or language or never made it onto the UN Security Council's agenda. In this way there was no need to veto any resolutions. The following comparison also does not include the resolutions intended to create or only extend the mandates of the Panel of Experts or UNMIS an exception being Resolution 1945 (2010) from which China abstained due to the Panel of Experts

highlighting weapons of Chinese origin being used in Darfur contrary to UN Security Council sanctions.

| Resolution # | United Kingdom  | France    | USA        | Russian Federation | China      |
|--------------|---|-----------|------------|--------------------|------------|
| 1547 (2004)  | Resolution adopted unanimously (after language was toned down)  |           |            |                    |            |
| 1556 (2004)  | In favour   | In favour | In favour  | In favour          | Abstaining |
| 1564 (2004)  | In favour   | In favour | In favour  | Abstaining         | Abstaining |
| 1574 (2004)  | Resolution adopted unanimously (after language was toned down)  |           |            |                    |            |
| 1591 (2005)  | In favour   | In favour | In favour  | Abstaining         | Abstaining |
| 1593 (2005)  | In favour   | In favour | Abstaining | Abstaining         | Abstaining |
| 1672 (2006)  | In favour   | In favour | In favour  | Abstaining         | Abstaining |
| 1679 (2006)  | Resolution adopted unanimously but with “on-the-record” reservations from China   |           |            |                    |            |
| 1706 (2006)  | In favour   | In favour | In favour  | Abstaining         | Abstaining |
| 1769 (2007)  | Resolution adopted unanimously after the GoS provide their “unconditional support” for UNAMID before the resolution is tabled |           |            |                    |            |
| 1828 (2008)  | In favour   | In favour | Abstaining | In favour          | In favour  |
| 1881 (2009)  | Resolution adopted unanimously – extension of UNAMID’s mandate  |           |            |                    |            |
| 1935 (2010)  | Resolution adopted unanimously – extension of UNAMID’s mandate  |           |            |                    |            |
| 1945 (2010)  | In favour   | In favour | In favour  | In favour          | Abstaining |

**Table 6.2:** P-5 support of UN Security Council resolutions pertaining to Darfur

China’s support of the GoS may well be attributed to oil imports. Boswell (2010) explains that Sudan is sub-Saharan Africa’s third-biggest oil producer, with an output of 490 000 barrels a day. Abbas *et al.* (2010:27) make it clear that there are about 15 oil companies operating in Sudan, mainly from Asia and key players include China (China National Petroleum Company (CNPC)), India (the Oil and Natural Gas Corporation (ONGC)), and Malaysia (Petronas). Most of the oil is pumped in the south, and China is the main destination for exported Sudan crude (Boswell, 2010). In this regard, Africa Confidential (2006c:7) confirms that Sudan provided 7% of China’s oil imports by 2006. Boswell (2010) argues that China is concerned about its

multi-billion dollar worth of assets such as pipelines in the south when the south gains independence in 2011 and insecurity prevails. According to Boswell (2010), China used a comprehensive strategy to gain access to Sudan's oil sources, which is briefly explained below:

- i. it provided its state-owned oil companies with economic support and incentives to pursue investments in key overseas areas;
- ii. it pursued close political relations with potential host countries; coupled contracts for its oil companies with informal “package deals” that included the provision of soft loans, weapons trade or military training agreements, and political protection; and
- iii. it used its position in the UN Security Council to keep sanctions and other pressures off the table and to weaken resolutions.

In this way, Sudan's oil reserves allowed its government to pursue conflict without hindrance from the international community, concludes Boswell (2010). Large (2008:38-39) asserts, however, that though the ruling NCP under al-Bashir has derived substantial benefit from China's support since the early 1990s, the NCP has been ambivalent about its China policy and, wary of over-dependence on China, sought to limit China's influence while also pursuing the normalisation of relations with America. Large (2008:38-39) argues that China's position as a dominant economic partner and key international political patron renders its influence on ruling circles in Khartoum potentially significant. Overall, China is far more important to Sudan than vice versa, and a degree of influence on the NCP has been demonstrated, notably in its acceptance of UNAMID, concludes Large (2008:38-39).

In addition, the peace processes and accompanying oil revenues have made the GoS less reliant on the livestock revenue from Darfur that previously contributed much to Sudan's balance of payments, and thus there is much less economic dependence on Darfur, note Young *et al.* (2005:16). The bottom line is: Sudan's oil reserves made the country interesting to the rest of the world and influenced many countries, including China, Holland, France, Japan, and Germany, to forget about human rights

abuses in Sudan and form economic ties with the regime, as pointed out by Heleta (2007:8). Consistent with what was established through Chapters Four to Six, the nature of the conflict in Darfur cannot be studied in isolation. The Darfur crisis is intertwined with the needs and interests of the international community. These needs seem to be conflicting, on the one hand the international community felt empathy with the people in Darfur but due to selfish interests, on the other hand, the international community had difficulty addressing the conflict in Darfur. This will be put in perspective in the conclusion of the chapter.

## **6.5 CONCLUSION**

This chapter consisted of three parts, which focused on the hybrid aspect of UNAMID, the fulfilment of its mandate, and major external factors which impacted on the Darfur conflict and/or UNAMID respectively. In the first part it was concluded that the ‘hybrid’ aspect was not an equal arrangement or agreement to share resources or manpower. It was more a political arrangement, on the one hand, to augment the efforts of the United Nations to address the conflict in Darfur and, on the other hand, to share diplomatic expertise and accessibility between the two Organisations. This hybrid political arrangement was structurally built and based on existing United Nations peacekeeping practices and fully funded by the United Nations. Structurally, the ‘hybrid’ aspect was restricted to the African character of the mission, command and control lines, and the selection of the police and troop contributing countries.

In the second part, the progress made against the four benchmarks of the mandate of UNAMID was discussed to assess whether or not its mandate had been met. Regarding the first benchmark, ‘obtaining a comprehensive political solution’, UNAMID had not proceeded to obtain an all-inclusive peace agreement for the conflict. It was, however, steadily making progress bringing the rebels, civil society, and the GoS into talks in Doha, Qatar. Regarding the second benchmark, ‘ensuring a secure and stable environment’, UNAMID had not managed to secure a safe and secure environment for the people in Darfur, or for United Nations Agencies, Programmes and Funds and INGOs to operate freely and be allowed access to all parts of Darfur. The UN Secretary-General regarded progress against this benchmark

as “mixed”. Progress made against the third benchmark, ‘enhanced rule of law, governance and human rights’, was also mixed with UNAMID failing to ensure the rule of law and good governance in Darfur. Progress was made in engaging dialogue with the rebels and the release of child soldiers and reduced criminality. UNAMID reached a stale-mate with meeting the final benchmark, ‘stabilising the humanitarian situation’. Civilians continued to be killed in Darfur despite the presence of UNAMID and violence continued as a result of clashes among rebels and between rebels and the GoS. Furthermore, IDPs had not returned to their homesteads indicating that the humanitarian situation, though not worse than before UNAMID, had not improved. By mid-2011, it was clear that UNAMID had not yet met its mandate. The main reason cited by the United Nations for not meeting its mandate was the slow deployment of troops and police.

In the third part of the chapter, four major external factors which had a significant impact on the Darfur conflict and/or UNAMID were provided. The first major factor, the alleged genocide in Darfur and indictment of al-Bashir by the ICC, led to a major chasm in the relationship between the United Nations and the GoS, and also agitated the collaboration between the African Union and the UN Security Council. Al-Bashir did not trust the “Western” United Nations and believed that UNAMID was an attempt by the West to enforce regime change in Sudan. The indictment of al-Bashir was scrutinised by the African Union and those international powers in the UN Security Council which were not party to the Rome Statute, and ignored by some member states which allowed al-Bashir to visit them. The second major factor, the conflict between Chad and Sudan with the proxy war in Darfur, ended in 2010. The war played a significant destabilisation role in Darfur and led to the armament of numerous rebel groups in the region. MINURCAT which was intended to stabilise the region actually made things worse and ironically contributed to the peace agreement with the GoS when Chad asked for it to be closed down. MINURCAT was largely perceived to be a Western European operation to bring about regime change. The fourth major factor, the secession of South Sudan, had an impact by taking away the focus of the international community from the conflict in Darfur and making them tread with trepidation fearing that any reference to the Darfur conflict might impact on the Comprehensive Peace Agreement. In addition, apart from the fear of the GoS that they would lose a fortune in oil revenues, the GoS also feared

that the secession of South Sudan might lead to similar pressures from the rebels in Darfur to create an independent state. Mixing all of these factors was the fourth major factor - the lack of support for international action in Darfur by some members of the UN Security Council. It was clearly pointed out that the Russian Federation and China had national self-interests in Sudan and supported the GoS through UN Security Council resolutions by either not supporting them, or watering down any strong wording opposing the actions of the GoS in Darfur.

From the above, it is plain that UNAMID was not conceived by all to be a success. It was established as a better and more effective alternative to AMIS with more resources and a stronger mandate supposedly supported by all in the UN Security Council, reinforced by the African Union, and accepted by the GoS. Instead, it struggled for years to get more resources (apart from financial) than AMIS, it was not supported by all members in the UN Security Council, it was hampered by the added burden of bureaucracy associated with the African Union, distrusted by the GoS, and has as yet failed to meet its mandate. What UNAMID did manage to do was to provide an entry point for the international community (United Nations), through the association with the African Union, to be able to intervene with the consent of a distrusting UN member state in its internal affairs. The African Union needs to receive credit for the United Nations' ability to continue dialogue and negotiations between warring parties where it most probably would not have been able to do so. UNAMID is a case where two organisations needed to work together to succeed and where the overbearing character of either one over the other, would lead to the failure of the mission.

Chapter Six concludes the literature study into the different research objectives. In Chapter Seven the empirical investigation of the study will be described, including the research design and methodology. In Chapter Eight, the literature study will be brought in line with the empirical results and the thesis will be concluded.