CHAPTER 3: MAINTAINING INTERNATIONAL PEACE AND SECURITY: THE MANDATE OF THE UNITED NATIONS AND REGIONAL ORGANISATIONS

3.1   INTRODUCTION

It was concluded in the previous chapter that in order for the United Nations to maintain international peace and security, it should focus on the maintenance of human security, which is the foundation for, inter alia, sustainable development, individual security, state security and peace.   In this chapter the United Nations' mandate to maintain international peace and security as stipulated by the UN Charter will be discussed.   The relationship between regional organisations and the United Nations is explored with specific emphasis on peace-making, peacekeeping and peace-enforcing measures, and on the security architecture of the African Union.   The aim is to provide a comprehensive overview of measures which the United Nations and its organs (especially the UN Security Council) can take to enforce its decisions and resolutions with regard to maintaining international peace and security.   This chapter aims to address the research question "*What are the United Nations' and regional organisations', such as the African Union, mandates for maintaining international peace and security?"*   The chapter will start by examining the origins of the UN Charter and the need for collective security.

3.2   THE SEARCH FOR COLLECTIVE SECURITY FOLLOWING WORLD WARS I AND II

As a direct result of the human, economic and material calamities experienced during and after World War I and II (1914-1918 and 1939-1945 respectively), it was of utmost importance for world leaders, according to Chesterman *et al.* (2008:19), to design an international system that would prevent the recurrence of such calamities. Formally bringing World War I to an end, the League of Nations was the first attempt to design such an international system.   The League of Nations was established in 1919 under the Treaty of Versailles "to promote international cooperation and achieve

peace and security" (UN DPI, 2004:3). It aimed to preserve peace through arbitration, conciliation, and a system of collective security; and to promote improved economic and social living conditions worldwide (Fomerand, 2007:20). While the League of Nations was successful in dealing with minor conflicts in the 1920s it failed, however, to prevent World War II and was consequently officially dissolved on 18 April 1946 (Fomerand, 2007:24).

Subsequent to the failure of the League of Nations and the end of World War II, the United Nations was officially founded on 24 October 1945, upon the ratification of the UN Charter by the USA, the French Republic, the UK, the Republic of China, the USSR, and a majority of other signatories (UN DPI, 2004:3), as an all-purpose peace and security mechanism (Luck, 2008:64).

Gray (2008:86) paraphrases the United Nations' main aims as two-fold: firstly, to prohibit the unilateral use of force by states other than in self-defence, and secondly, to centralise the use of force under the control of the UN Security Council. The Charter reflected the basic philosophy of collective security, similar to the Covenant of the League of Nations (Stromberg, 2012[1963?]). There were, however, important differences between the Covenant and the UN Charter. Goodrich *et al.* (1969:11) point out that the UN Charter recognised the need for international cooperation in economic and social issues, and the need to safeguard basic human rights; and followed a political approach to enforce peace measures through collective action by the major states, instead of putting legal obligations on member states to keep the peace as the Covenant had done. Nonetheless, the United Nations formed a continuum with the League of Nations in general purpose, structure, and function; and many of the United Nations' principal organs and related agencies were adopted from similar structures in the League of Nations (EB, 2009). The establishment of the collective security regime, as provided under the UN Charter, constituted a major turning point in the management of international crises. Member states renounced the unilateral use of armed force except for the purposes of self-defence. The compensation for this prohibition is an institutional system that vests decision-making power on international peace and security in a political body that has limited membership and can adopt decisions that are binding on all member states of the

organisation (de Chazournes, 2005:1). The UN Charter therefore constitutes a collective security system (Sarooshi, 1999:1) and confers the collective responsibility to maintain international peace and security onto the UN Security Council (UN, 2009i). The Charter will be discussed in the following section and how it regulates the maintenance of international peace and security.

3.3   THE MANDATE OF THE UNITED NATIONS TO MAINTAIN INTERNATIONAL PEACE AND SECURITY

The UN Charter lays out the general framework for the United Nations' activities, its purposes, membership, structure, and arrangements for the maintenance of peace and security and international economic and social cooperation (Fomerand, 2007:43; UN DPI, 2004:3). As envisioned by its Charter, the United Nations consists of six principle organs (UN DPI, 2004:3):

i.   The UN General Assembly,

ii.   The UN Security Council,

iii.   The Economic and Social Council (ECOSOC),

iv.   The Trusteeship Council (which suspended operations in 1994),

v.   The International Court of Justice, and

vi.   The UN Secretariat.

The UN Charter also codifies the major principles of international relations, including the principles of sovereign equality of states; the prohibition of the use of force in international relations in any matter inconsistent with the purposes of the United Nations; and the obligation of states to fulfil international obligations (Fomerand, 2007:43; UN DPI, 2004:3). In total, the UN Charter consists of 19 Chapters and 111 Articles (UN DPI, 2004:3-4). Signed by 193 member states, it is the most widely

ratified treaty in the history of international relations (Chesterman *et al.*, 2008:4) and, as will be seen, the UN Charter binds all signatories by international law to comply with its provisions (UN DPI, 2004:3-4). The United Nations System and how the different principal organs and subsidiaries, such as the Agencies, Programmes and Funds, interact and are linked to one another are depicted in *Figure 3.1*. In this chapter, the workings in part of three of these principal organs, the UN General Assembly, the UN Security Council and the UN Secretariat, will be discussed.
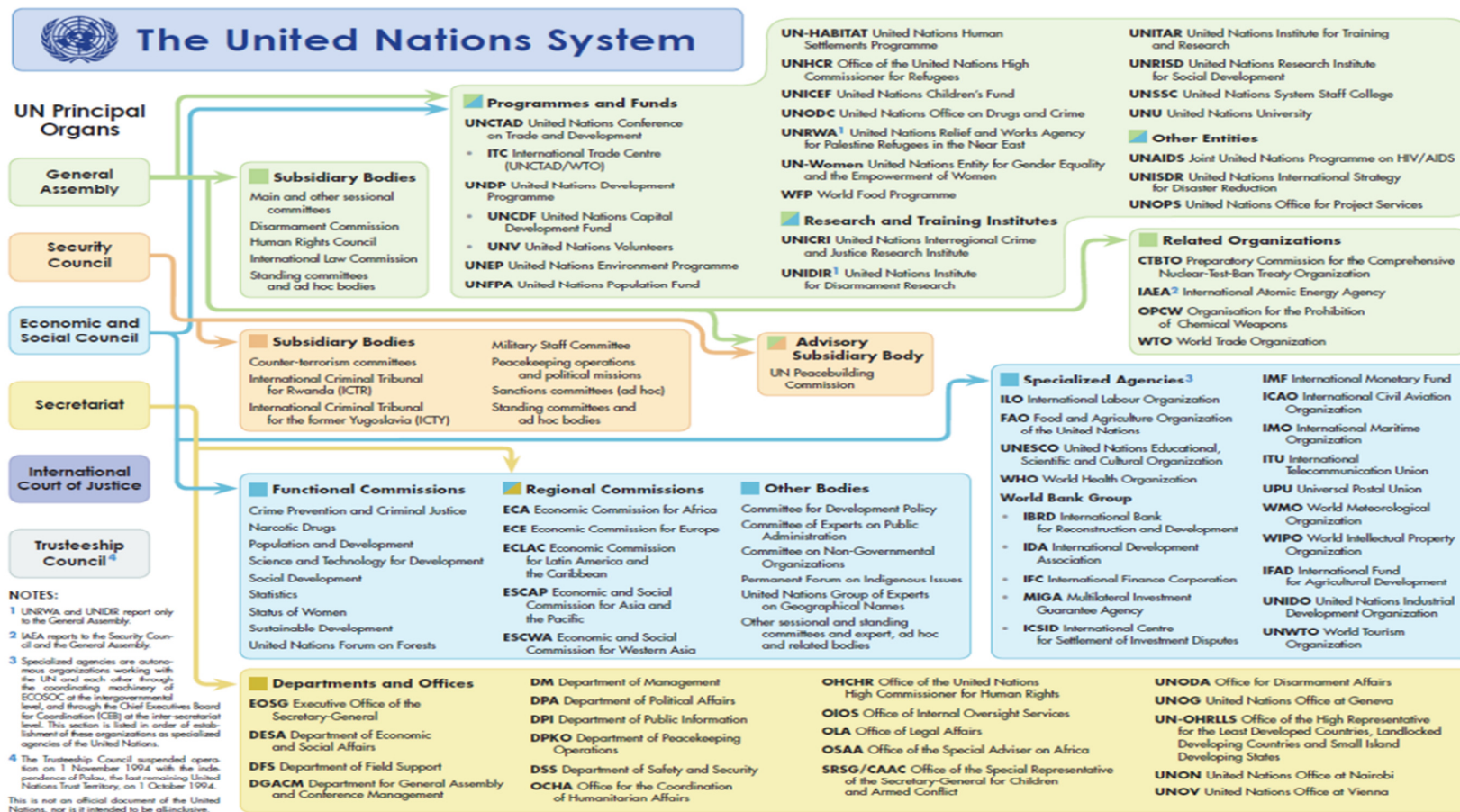
The United Nations System

UN Principal Organs

General Assembly

Security Council

Economic and Social Council

Secretariat

International Court of Justice

Trusteeship Council [4]

NOTES:

[1] UNRWA and UNIDIR report only to the General Assembly.

[2] IAEA reports to the Security Council and the General Assembly.

[3] Specialized agencies are autonomous organizations working with the UN and each other through the coordinating machinery of ECOSOC at the intergovernmental level, and through the Chief Executives Board for Coordination (CEB) at the inter-secretariat level. This section is listed in order of establishment of these organizations as specialized agencies of the United Nations.

[4] The Trusteeship Council suspended operation on 1 November 1994 with the independence of Palau, the last remaining United Nations Trust Territory, on 1 October 1994.

This is not an official document of the United Nations, nor is it intended to be all-inclusive.

Subsidiary Bodies

Main and other sessional committees

Disarmament Commission
Human Rights Council
International Law Commission
Standing committees and ad hoc bodies

Programmes and Funds

UNCTAD United Nations Conference on Trade and Development
- **ITC** International Trade Centre (UNCTAD/WTO)
UNDP United Nations Development Programme
- **UNCDF** United Nations Capital Development Fund
- **UNV** United Nations Volunteers
UNEP United Nations Environment Programme
UNFPA United Nations Population Fund

UN-HABITAT United Nations Human Settlements Programme
UNHCR Office of the United Nations High Commissioner for Refugees
UNICEF United Nations Children's Fund
UNODC United Nations Office on Drugs and Crime
UNRWA [1] United Nations Relief and Works Agency for Palestine Refugees in the Near East
UN-Women United Nations Entity for Gender Equality and the Empowerment of Women
WFP World Food Programme

Research and Training Institutes

UNICRI United Nations Interregional Crime and Justice Research Institute
UNIDIR [1] United Nations Institute for Disarmament Research

UNITAR United Nations Institute for Training and Research
UNRISD United Nations Research Institute for Social Development
UNSSC United Nations System Staff College
UNU United Nations University

Other Entities

UNAIDS Joint United Nations Programme on HIV/AIDS
UNISDR United Nations International Strategy for Disaster Reduction
UNOPS United Nations Office for Project Services

Subsidiary Bodies

Counter-terrorism committees
International Criminal Tribunal for Rwanda (ICTR)
International Criminal Tribunal for the former Yugoslavia (ICTY)

Military Staff Committee
Peacekeeping operations and political missions
Sanctions committees (ad hoc)
Standing committees and ad hoc bodies

Advisory Subsidiary Body

UN Peacebuilding Commission

Related Organizations

CTBTO Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization
IAEA [2] International Atomic Energy Agency
OPCW Organisation for the Prohibition of Chemical Weapons
WTO World Trade Organization

Functional Commissions

Crime Prevention and Criminal Justice
Narcotic Drugs
Population and Development
Science and Technology for Development
Social Development
Statistics
Status of Women
Sustainable Development
United Nations Forum on Forests

Regional Commissions

ECA Economic Commission for Africa
ECE Economic Commission for Europe
ECLAC Economic Commission for Latin America and the Caribbean
ESCAP Economic and Social Commission for Asia and the Pacific
ESCWA Economic and Social Commission for Western Asia

Other Bodies

Committee for Development Policy
Committee of Experts on Public Administration
Committee on Non-Governmental Organizations
Permanent Forum on Indigenous Issues
United Nations Group of Experts on Geographical Names
Other sessional and standing committees and expert, ad hoc and related bodies

Specialized Agencies [3]

ILO International Labour Organization
FAO Food and Agriculture Organization of the United Nations
UNESCO United Nations Educational, Scientific and Cultural Organization
WHO World Health Organization
World Bank Group
- **IBRD** International Bank for Reconstruction and Development
- **IDA** International Development Association
- **IFC** International Finance Corporation
- **MIGA** Multilateral Investment Guarantee Agency
- **ICSID** International Centre for Settlement of Investment Disputes

IMF International Monetary Fund
ICAO International Civil Aviation Organization
IMO International Maritime Organization
ITU International Telecommunication Union
UPU Universal Postal Union
WMO World Meteorological Organization
WIPO World Intellectual Property Organization
IFAD International Fund for Agricultural Development
UNIDO United Nations Industrial Development Organization
UNWTO World Tourism Organization

Departments and Offices

EOSG Executive Office of the Secretary-General
DESA Department of Economic and Social Affairs
DFS Department of Field Support
DGACM Department for General Assembly and Conference Management

DM Department of Management
DPA Department of Political Affairs
DPI Department of Public Information
DPKO Department of Peacekeeping Operations
DSS Department of Safety and Security
OCHA Office for the Coordination of Humanitarian Affairs

OHCHR Office of the United Nations High Commissioner for Human Rights
OIOS Office of Internal Oversight Services
OLA Office of Legal Affairs
OSAA Office of the Special Adviser on Africa
SRSG/CAAC Office of the Special Representative of the Secretary-General for Children and Armed Conflict

UNODA Office for Disarmament Affairs
UNOG United Nations Office at Geneva
UN-OHRLLS Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States
UNON United Nations Office at Nairobi
UNOV United Nations Office at Vienna

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Figure 3.1: The United Nations System (UN, 2009c).

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3.3.1 The authority and legitimacy of the UN Charter

The United Nations comprises a treaty-based system which requires states both to impose limits on their own right to resort to force, and to depend on a collective response for protection (Gray, 2008:86; Fomerand, 2007:Iv). Alvarez (2001:137-138) argues that parties to the treaty (i.e. the UN Charter) have in fact created a "third party" institution (i.e. the United Nations) to which the parties have delegated certain functions, and in so doing, have willingly accepted a structure of authority or legitimised power in the same fashion as a nation-state has accepted its constitution as the highest authority (Alvarez, 2001:137-138). Goodrich *et al.* (1969:11) support this and elaborate that while the Charter is clearly a treaty, it also acts as the constitution of the organisation and requires members to act in accordance with the its principles, so far as may be necessary for the maintenance of international peace and security. By being signatories to the treaty, member states have agreed, in Article 24 of the Charter, to confer on the UN Security Council primary responsibility for the maintenance of international peace and security (Sarooshi, 1999:1) and, in Article 25, have accepted an obligation to do the UN Security Council's bidding (Lowe *et al.*, 2008:5). The full text of Article 25 reads (UN, 2009i):

"The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter".

Furthermore, de Chazournes (2005:16) notes that Article 103 establishes the primacy of obligations arising from the Charter over all other conventional obligations "*in the event of a conflict between the obligations of the Members of the United Nations under the Charter and their obligations under any other international agreement.*" The United Nations, by means of the Charter, is therefore the primary custodian of collective legitimisation in global politics (Voeten, 2005:527) and continues to guide the practice of states and broader debate on critical issues such as the use of force (Chesterman *et al.*, 2008:20).

In the case of the "Aerial incident at Lockerbie" (Libyan Arab Jamahiriya vs. United Kingdom, 1992), the International Court of Justice (ICJ) ruled that obligations

resulting from UN Security Council decisions enjoy similar pre-eminence through an interpretation combining Article 103 with Article 25 of the UN Charter (de Chazournes, 2005:16). However, Saul (2005:142-143) cautions that UN Security Council resolutions do not create international law, but are normative obligations of member states under the UN Charter. The UN Security Council can thus be described as ''*a political organ having legal consequences*''. Malanczuk and Akehurst (1997:387) concur that the UN Security Council and UN General Assembly are not, and were never intended to be, judicial bodies. The following sections will elaborate on the relevant Articles of the Charter to gain an understanding of the obligations and responsibilities which the UN Charter puts on the United Nations to maintain international peace and security.

3.3.2   The responsibility to maintain international peace and security

The previous section pointed to the fact that, on the authority of the UN Charter, the United Nations is distinctly mandated to maintain international peace and security. This mandate is given in the first of the four purposes of the United Nations, in Article 1(1) of the UN Charter (UN, 2009d):

"To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace."

Yamashita (2007:567) summarises the purposes of Article 1 as: maintaining international peace and security, developing friendly relations among nations, and achieving international cooperation in economic, social, cultural, or humanitarian problems; which he roughly equates with the respective roles of the UN Security Council, the UN General Assembly and the Economic and Social Council of the United Nations. Consistent with this, Article 24(1) conveys the primary role and responsibility to maintain international peace and security on the UN Security

Council (UN, 2009i). Notwithstanding this, Lowe *et al.* (2008:5) argue that within the United Nations, the UN Security Council has primary, but not exclusive, responsibility for the maintenance of international peace and security. Under the "Uniting for Peace" resolution, adopted by the General Assembly in November 1950, the UN General Assembly may take action if the UN Security Council, because of a lack of unanimity among its permanent members, fails to act where there appears to be a threat to international peace, breach to the peace or act of aggression (UN DPI, 2008a:6). The UN General Assembly is empowered to consider the matter immediately and to make recommendations to members for collective measures, including, in the case of a breach of the peace or act of aggression, the use of armed forces when necessary to maintain international peace and security (UN DPI, 2008a:6).

Article 24(2) of the Charter states that the specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI: Pacific settlement of disputes; VII: Action with respect to threats to the peace, breaches of the peace, and acts of aggression; VIII: Regional arrangements; and XII: International trusteeship system (UN, 2009i). Heiskanen (2001:164) states that the corner stone of this responsibility is Chapter VII, in particular Article 43, which envisages the creation of an international military force operating under the Security Council, to deal with any "threats to the peace, breaches of the peace, and acts of aggression".

Chapter IV, V, VI, and VII of the Charter will be discussed in more detail in the following sections. Chapter IV sets out the composition of the UN General Assembly. Chapter V focuses on the UN Security Council; Chapter VI on the 'Pacific Settlement of Disputes'; and Chapter VII provides guidance in terms of 'Action with respect to threats to the peace, breached of the peace and acts of aggression'. Chapter VIII will be discussed under *section 3.4.1*, while Chapter XII will not be discussed as the Trusteeship Council suspended its operations when Palau attained independence in 1994, signalling the end of the United Nations' responsibility for the trust territories (Bodell, 2008a:543; Chesterman *et al.*, 2008:119). The UN General Assembly will be discussed next.

3.3.2.1 Chapter IV of the UN Charter: The UN General Assembly (Articles 9-22)

Article 9 of the UN Charter makes it clear that the UN General Assembly shall consist of all the members of the United Nations (UN, 2011a), and as of September 2011 it consisted of 193 Member States (UN, 2011b). Membership of the United Nations, in accordance with Article 4 of the UN Charter (UN, 2011c), "is open to all peace-loving States that accept the obligations contained in the United Nations Charter and, in the judgment of the Organisation, are able to carry out these obligations". Article 4 of the UN Charter (UN, 2011c) also mentions that states are admitted to membership of the United Nations by decision of the UN General Assembly upon the recommendation of the UN Security Council. Membership can be suspended (and reinstated) by the UN Security Council, according to Article 5 and 6 of the UN Charter (UN, 2011c), if any preventive or enforcement action was taken against a Member State by the UN Security Council; or by the UN General Assembly upon the recommendation of the UN Security Council if a UN member state has persistently violated the Principles contained in the UN Charter. These are two issues which have a direct impact on the maintenance of international peace and security, as is seen in *Chapter Six, section 6.2.2.1*, the UN General Assembly has much influence on the establishment of peace missions, such as UNAMID, through its budgeting process. The following section will elaborate on the voting rights of UN member states and budgetary matters as they pertain directly to the maintenance of international peace and security.

3.3.2.1.1 <u>Voting rights and budgetary matters in the UN General Assembly</u>

To understand the decision-making powers and processes of the UN General Assembly it is prudent to explain some of its procedures. The UN General Assembly, in line with Article 97 of the UN Charter, appoints the UN Secretary-General upon the recommendation of the UN Security Council, as the chief administrative officer of the United Nations (UN, 2011d). In addition, the UN General Assembly is the main deliberative, policymaking and representative organ of the United Nations and it provides a unique forum for multilateral discussion of the full spectrum of international issues covered by the Charter, states the United Nations (2011e). The

UN General Assembly meets in regular session intensively from September to December each year, and thereafter as required (UN, 2011e). Each country has one vote and decisions on important questions, such as those on peace and security, admission of new members and budgetary matters, require a two-thirds majority, while decisions on other questions are by simple majority (UN, 2011f). Article 19 of the UN Charter (UN, 2011g), however, states that "*A Member of the United Nations which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years*". The UN General Assembly may, nevertheless, permit such a UN member state to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member (UN, 2011g). As a result of the great number of questions it is called upon to consider, the UN General Assembly allocates items relevant to its work among its six Main Committees, which discuss them, seeking where possible to harmonise the various approaches of UN member states, and then present their recommendations to a plenary meeting of the UN General Assembly as draft resolutions and decisions for consideration (UN, 2011h). The Six Main Committees are, according to the United Nations (2011h):

a. First Committee (Disarmament and International Security Committee) is concerned with disarmament and related international security questions;

b. Second Committee (Economic and Financial Committee) is concerned with economic questions;

c. Third Committee (Social, Humanitarian and Cultural Committee) deals with social and humanitarian issues;

d. Fourth Committee (Special Political and Decolonisation Committee) deals with a variety of political subjects not dealt with by the First Committee, as well as with decolonisation;

e. Fifth Committee (Administrative and Budgetary Committee) deals with the administration and budgets of the United Nations; and

f. Sixth Committee (Legal Committee) deals with international legal matters.

The UN General Assembly (UN, 2011i) also has a subsidiary organ, the Advisory Committee on Administrative and Budgetary Questions (ACABQ), which:

a. Examines and reports on the budget submitted by the UN Secretary-General to the UN General Assembly;

b. Advises the UN General Assembly concerning any administrative and budgetary matters referred to it;

c. Examines on behalf of the UN General Assembly the administrative budgets of the specialised agencies and proposals for financial arrangements with such agencies; and

d. Considers and reports to the UN General Assembly on the auditors' reports on the accounts of the United Nations and of the specialised agencies. The programme of work of the Committee is determined by the requirements of the UN General Assembly and the other legislative bodies to which the Committee reports.

Article 17 (UN, 2011a) dictates that the UN General Assembly will approve the budget of the United Nations and the expenses shall be borne by the Member States as apportioned by the UN General Assembly. According to the United Nations Department of Peacekeeping Operations (UN DPKO, 2011), the UN General Assembly apportions peacekeeping expenses based on a special scale of assessments under a formula established by Member States themselves; this formula takes into account, among other things, the relative economic wealth of UN member states, with the five permanent members of the Security Council required to pay a larger share because of their special responsibility for the maintenance of international peace and

security. The Regular Budget cycle of the United Nations is for two years, and the biennial budget is approved by the UN General Assembly, in short, after review and endorsement (in different stages) by the ACABQ and the Fifth Committee (Fifth Committee, 2008:10-12). Budgets for peacekeeping missions, however, follow a different cycle, as explained next.

3.3.2.1.2   Peacekeeping budgets

Peacekeeping budgets are reviewed and approved by the UN General Assembly on an annual basis after a review of the budget and performance report by the ACABQ (Fifth Committee, 2008:2,24).   The UN DPKO (2011) explains that each peacekeeping operation has its own budget and account which includes operational costs such as transport and logistics and staff costs such as salaries.   The peacekeeping budget cycle runs from 1 July to 30 June which is rarely aligned with the UN Security Council mandate; however, budgets are prepared for 12 months based on of the most current mandate of the operation (UN DPKO, 2011). The UN DPKO (2011) notes the following actions which are needed for approval of the peacekeeping budget:

- The Secretary-General has to submit the budget proposal to the ACABQ which reviews the proposal and makes recommendations to the Fifth Committee for its review and approval. Ultimately, the budget is endorsed by the General Assembly as a whole.
- At the end of the financial cycle, each peacekeeping operation has to prepare and submit a performance report which shows the actual use of resources. This report is also considered and approved by the General Assembly, as explained below.

Regarding the start-up costs for a peacekeeping mission, which could be at any time during the normal cycle depending on the urgency of the mission, the Fifth Committee (2008:22) elaborates that the UN Secretary-General may request commitment authority of up to USD50 million for one mission from the ACABQ, provided that the total commitment authority granted by the ACABQ at any one time

must not exceed a cumulative amount of USD150 million, while for more than USD50 million, the commitment authority must be requested from the UN General Assembly. As is seen in *Chapter Six, section 6.2.2.1,* the UN Secretary-General used this commitment authority to set up the African Union/United Nations Mission in Darfur (UNAMID).

To extend the mandate and budget of a peacekeeping mission, the Fifth Committee (2008:24) notes that a financial mandate extension usually occurs just a few days before expiry of an existing mandate; this follows the UN Security Council's decision to continue the mission, and review and approval by the UN General Assembly of the performance reports (as highlighted by the Department of Peacekeeping Operations above) and the proposed budget. Performance reports are prepared for the preceding 12-month period because the United Nations follows a Results-Based Budgeting (RBB) system (Abraszewski *et al.*, 1999:1). Abraszewski *et al.* (1999:3) explain that RBB is a programme budget process in which: (a) programme formulation revolves around a set of predefined objectives and expected results; (b) expected results justify the resource requirements which are derived from and linked to outputs required to achieve such results; and (c) actual performance in achieving results is measured by objective performance indicators. Abraszewski *et al.,* (1999:3) subsequently derive from an internal briefing at the United Nations Secretariat that *"RBB is about formulating programme budgets that are driven by a number of desired results which are articulated at the outset of the budgetary process, and against which actual performance is measured at the end of a biennium".*

The above budget process delineates not only the symbiotic but also greatly dependent relationship between the UN Security Council and UN General Assembly with regard to peacekeeping operations: though the UN Security Council authorises it, the UN General Assembly 'pays' for the mission. The following section will provide a brief explanation of how peacekeeping missions get manpower support (military, police, and military experts) from UN member states.

3.3.2.1.3   <u>Peacekeeper contributions and reimbursement</u>

By 30 April 2011, military, police, and military expert contributions to United Nations peace operations were provided by 115 UN member states and amounted to a grand total of 99 382 personnel (UN, 2011j).   The reimbursement for these contributions is standardised.   The United Nations signs a Memorandum of Understanding (MOU) with each contributing Member State. The MOU is a negotiated, formal agreement between the United Nations and the troop/police contributing country that establishes the responsibility and standards for the provision of personnel, major equipment and self-sustainment support services for both the United Nations and the contributing country (UN, 2011j). The MOU contains details of the personnel, major equipment and self-sustainment services that the contributing country will provide and includes the standard reimbursement rates that will apply. As these standard rates have been predetermined by Member States, contributing countries are reimbursed equally for providing the same generic types of personnel, equipment or self-sustainment services (UN, 2011j).   Self-sustainment services are reimbursed by the United Nations on a per person/per month basis, payable from UN Headquarters (UNHQ) directly to the contributing countries (UN, 2011j).   Other functions of the UN General Assembly will be mentioned throughout the chapter. The relationship in terms of peace and security with the UN Security Council will be elaborated on in the following section.

3.3.2.2 Chapter V of the Charter: The UN Security Council (Articles 23-32)

The UN Security Council is the organ of the United Nations which is entitled to authorise the use of force in situations not involving self-defence (DFA, 2008). Chapter V, Article 23 sets out the composition of the UN Security Council, Articles 24 to 26 set out its functions and powers, Article 27 describes the voting rights of members, and Articles 28 to 32 provide the procedures to be followed in the UN Security Council (UN, 2009i).

According to the provisions in Article 23, the UN Security Council is to consist of fifteen UN Member States. The United States of America, the French Republic, the

United Kingdom of Great Britain and Northern Ireland, the People's Republic of China (until 1971, the 'Republic of China') and the Russian Federation (until 1991, the 'Union of Soviet Socialist Republics') hold permanent seats while the remaining ten elected members serve in a non-permanent capacity (UN, 2009i).   The South African Department of Foreign Affairs (DFA, 2008) explains that the UN General Assembly elects five non-permanent members to the UN Security Council each year on the basis of their contribution to the maintenance of international peace and security, equitable geographical distribution and bilateral relations between States. Africa has three non-permanent seats, Eastern Europe one, and Asia, Western Europe/others and Latin America/Caribbean two seats each. Elected members serve two-year terms on the UN Security Council and are not eligible for immediate re-election (DFA, 2008). By electing five non-permanent members to the UN Security Council each year for a two-year term, there are always 10 non-permanent members serving with the five permanent members.

Under the UN Charter, the functions and powers of the UN Security Council include the following (UN DPI, 2004:9; UN DPI, 2008a:8-9):

- To maintain international peace and security in accordance with the principles and purposes of the United Nations;
- To formulate plans for establishing a system to regulate armaments;
- To call upon parties to a dispute to settle it by peaceful means;
- To investigate any dispute or situations which might lead to international frictions, and to recommend methods of adjusting such disputes or the terms of settlement;
- To determine the existence of a threat to the peace or act of aggression and to recommend what actions to take;
- To call upon parties concerned to comply with such provisional measures as it deems necessary or desirable to prevent an aggression of the situation;
- To call on members of the United Nations to take measures not involving the use of armed force, such as sanctions, to give effect to the UN Security Council's decisions;

- To resort to, or authorise the use of, force to maintain or restore international peace and security;

- To encourage the peaceful settlement of local disputes through regional arrangements and to use such regional arrangements for enforcement action under its authority;

- To recommend to the UN General Assembly the appointment of the UN Secretary-General and, together with the UN General Assembly, to elect the Judges of the International Court of Justice;

- To request the ICJ to give an advisory opinion on any legal question; and

- To recommend to the UN General Assembly the admission of new members to the United Nations.

The functions and powers of the UN Security Council relating to international peace and security will become more evident as the next chapters of the Charter are discussed, starting with Chapter VI, Pacific Settlement of disputes.

3.3.2.3 Chapter VI of the Charter: the Pacific Settlement of Disputes (Articles 33-38)

The former UN Secretary-General, Kofi Annan, stated in 2003 that Chapter VI of the Charter stands at the heart of the United Nations system of collective security and noted that the majority of the UN Security Council's work continues to be carried out under Chapter VI (UNIS, 2007). Chapter VI empowers the UN Security Council to make various types of recommendations for the peaceful settlement of disputes, including providing the UN Security Council with certain powers of investigation into the cause(s) of the dispute (Malanczuk & Akehurst, 1997:386). According to the letter of the Charter, the circumstances in which the UN Security Council may recommend terms of settlement are different from the circumstances in which it may recommend procedures for settlement; but the circumstances in question are defined in very precise terms. In practice, however, the UN Security Council usually disregards these complexities and makes recommendations without citing any Articles of the UN Charter or bothering about the tortuous and imprecise distinctions made in Chapter VI (Malanczuk & Akehurst, 1997:386). Articles 33 to 37 deal with

disputes where their continuance is likely to endanger the maintenance of international peace and security, while Article 38 gives the UN Security Council the power to make recommendations on any dispute if all the parties so request (OLA, 1992:118,) and will be discussed next.

3.3.2.3.1 <u>International disputes</u>

The provision in Article 33 obligates member states to seek a solution for disputes by peaceful means and obligates the UN Security Council to determine whether or not the continuance of the dispute is likely to endanger international peace and security. Furthermore, the parties to the dispute must seek a solution "*by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice*" before bringing them to the UN Security Council as mandated in Article 37 of the Charter (Goodrich *et al*., 1969:259; UN, 2009e). Under Article 34 of the Charter, the UN Security Council has the responsibility to investigate any dispute which may endanger international peace and security (Goodrich *et al.*, 1969:259-260). Mani (2007:302-303) adds that international disputes are not restricted to those between states but are also applicable to those involving other entities, including international organisations, 'de facto regimes, ethnic communities enjoying a particular kind of status under international law, national liberation movements', and 'peoples who are holders of the right to self-determination'. The manner in which the United Nations responds to a dispute will be discussed next.

3.3.2.3.2 <u>Acting on an international dispute</u>

Before the United Nations can respond to settle a dispute, the dispute needs to be brought to them in accordance with the requirements of the Charter. According to Malanczuk and Akehurst (1997:386), a dispute may be brought to the Security Council by:

1. A member of the United Nations, whether or not it is a party to the dispute, according to Article 35(1) of the Charter;

2. By a state which is not a member of the United Nations, provided that it is a party to the dispute and "accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the Charter", according to Article 35(2) of the Charter;

3. By the General Assembly, which may 'call for the attention of the Security Council to situations which are likely to endanger international peace and security"; according to Article 11(2 and 3) and Article 11(2) of the Charter; and

4. By the UN Secretary-General, who "may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security", according to Article 99 of the Charter.

The UN Security Council, in performing its functions in the 'pacific settlement of disputes', may rely upon the application of some of the specific settlement measures enumerated in Article 33: "negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of choice" (UN, 2009e; Mani, 2007:304-307). In fact, when a complaint is brought to the UN Security Council, its first action is usually to recommend that the parties try to reach agreement by peaceful means and it may set forth principles for a peaceful settlement, unless when in some cases the UN Security Council itself undertakes investigation and mediation (UN DPI, 2008a:9). In addition to making recommendations to the parties for peaceful settlement as depicted in Article 38 of the Charter (UN, 2009e), the UN Security Council may also appoint special representatives and/or ask the good offices of the UN Secretary-General to undertake investigation and mediation. This may not always lead to a peaceful solution and more concrete steps may be necessary, such as the process of "peacemaking".

3.3.2.3.3   Peacemaking activities

When a dispute leads to fighting, the UN Security Council often issues directives to prevent further hostilities and may take measures under Chapter VII, rather than under Chapter VI, to enforce its decisions (UN DPI, 2008a:73). The reason for this, note Suterwalla (2000) and Reynolds (2007), is that the resolutions under Chapter VI are advisory rather than binding and have been operative only with the consent of all the parties involved. Traditionally, according to Suterwalla (2000), Chapter VI has not been interpreted to support collective intervention by member states in the affairs of another member states. Doyle and Sambanis (2007:324) explain that actions taken under Chapter VI fall under the United Nations category of 'peace-making', which are efforts designed to bring hostile parties to agreement through the peaceful settlement of their differences. These actions include military-to-military contacts, security assistance, shows of force and preventive deployments (UN DPKO, 2009a). Peace-making furthermore includes those measures taken, according to the UN DPKO (2008:17), to address conflicts in progress and usually involves diplomatic action to bring hostile parties to a negotiated agreement. It also covers the diplomatic activities conducted after the commencement of a conflict, and is aimed at establishing a cease-fire or a rapid peaceful settlement. These activities can include the provision of mediation, conciliation and such actions as diplomatic pressure, isolation or sanctions (ISS, 2000:41). Chapter VI peace efforts further extend to peace-restoration and conflict-mitigation operations, which, depending on the reality on the ground, can turn into a Chapter VII operation, for example in the event humanitarian convoys needing to be defended by force of arms, or exclusion zones needing to be enforced by air strikes from the military (UN DPKO, 2009a).

Peacekeeping operations also fall under Chapter VI, though it is sometimes not clearly distinguishable whether they should be authorised under Chapter VI or VII of the Charter. When there is such ambiguity such operations are sometimes referred to as Chapter VI-and-a-half peacekeeping (Lewis & Sewall, 1993:50-51). Nevertheless, according to the United Nations glossary of terms (1998), peacekeeping is described as "a hybrid politico-military activity aimed at conflict control, which involves a United Nations presence in the field (usually involving military and civilian

personnel), with the consent of the parties, to implement or to monitor the implementation of arrangements relating to the control of conflicts (cease-fires, separation of forces etc.), and their resolution (partial or comprehensive settlements) and/or to protect the delivery of humanitarian relief" (UN, 1998). UN DPKO (2008:18) typifies it as a technique designed to preserve the peace, however fragile, where fighting has been halted, and to assist in implementing agreements achieved by the peacemakers. Characteristically, a peacekeeping operation includes non-combat military operations undertaken by outside forces with the consent of all major belligerent parties and is designed to monitor and facilitate the implementation of an existing truce agreement in support of diplomatic efforts to reach a political settlement (UN, 1998).

Finally, it should be noted that Chapter VI links with Chapter VIII: "Regional Arrangements". According to Article 52(3) of Chapter VIII, the UN Security Council "*shall encourage the development of pacific settlement of local disputes*" through 'regional agreements' or by 'regional agencies' either on the initiative of the States concerned or by reference from the UN Security Council (UN, 2009f). Some states have accordingly taken the position to first try to solve a dispute through a regional agency before it is presented to the UN Security Council (OLA, 1992:118). Furthermore, Article 54 of Chapter VIII necessitates that regional organisations or States party to a dispute or situation must keep the UN Security Council informed of all mediation activities through the UN Secretary-General (OLA, 1992:118; UN, 2009f). As was said before, Chapter VI is at the heart of the United Nations' activities. Chapter VII, however, is the cornerstone of the United Nations' efforts to maintain international peace and security and will be discussed next.

3.3.2.4 Chapter VII of the Charter: Actions with respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression (Articles 39-51)

The previous section highlighted the fact that resolutions taken under Chapters VI are advisory rather than binding; consequently, military missions under Chapter VI would rest on consent by the state in question. Under Chapter VII, however, the UN Security Council may impose measures on states carrying obligatory legal force and

therefore does need not to depend on the consent of the states involved. To do this, the UN Security Council must determine that the situation constitutes a threat to or breach of the peace (Matheson, 2008:2).

The UN Security Council is empowered by Article 39 of Chapter VII to determine the existence of any threat to peace or act of aggression and to make recommendations, or decide what measures shall be taken to maintain or restore international peace and security (UN, 2009g). Lowe *et al.* (2008:35) and Suterwalla (2000) argue that the Charter sets no limits on the discretion of the UN Security Council to determine what constitutes a threat to international peace and security. Nevertheless, Yamashita (2007:551) and Gray (2008:86) point out that when the UN Security Council deals with issues of threats to international peace and security, it may first ask the parties to comply with provisional measures *"as it deems necessary or desirable"* as quoted from Article 40 of the Charter. When this does not lead to a peaceful resolution the UN Security Council is empowered to "*determine the existence of any threat to peace, breach of the peace, or act of aggression*", and on that basis can decide upon non-military steps such as economic sanctions and, as a last resort, "such actions by air, sea or land forces as may be necessary to maintain or restore international peace and security" (Yamashita, 2007:551; Gray, 2008:86). The remainder of this section will elaborate on what constitutes a threat to international peace and security, how this determination relates to international law and the use of force in self-defence, and what is meant by 'peace keeping' under Chapter VII of the Charter.

3.3.2.4.1   Threats to international peace and security

The United Nations' view of what constitutes a "threat to the peace" has evolved over the years. For instance, Article 2 (7) of the UN Charter (UN, 2009d) clearly withholds the United Nations from interfering in the internal matters of states:

"Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present

Charter; but this principle shall not prejudice the application of enforcement measures under Chapter Vll."

In 1992, the former UN Secretary-General, Boutros Boutros-Ghali, however, presented in his address to the Security Council "*An agenda for peace preventive diplomacy, peace-making and peacekeeping*" the contention that a threat to peace and international security can exist even if the conflict is limited to a state or a part of the State if the refugee flows triggered by these hostilities are likely to destabilise the region (Breitweiser, 2008:91). In 2004, the UN High-level Panel on Threats, Challenges and Change released a report (UN, 2004) which argues that there is a shared responsibility for the provision of global security, according to the International Development Committee (IDC, 2005:14). The report outlines firstly how prevention can enhance security; secondly, how, when prevention fails, force might then be used to enhance security; and thirdly, how the UN itself can be a more effective player in the provision of collective security (IDC, 2005:14). In relation to internal conflicts, the report of the High-level Panel concludes that "the principle of non-intervention in internal affairs cannot be used to protect genocidal acts or large-scale violations of international humanitarian law or large-scale ethnic cleansing" (IDC, 2005:14).

Most of the matters to which the UN Security Council turns its attention at present (such as peacekeeping, peace-building, genocide, terrorism, and weapons of mass destruction) are not mentioned in the UN Charter (Luck, 2008:62). De Chazournes (2005:16) notably refers to one of the conclusions of the meeting of the UN Security Council at the level of heads of state and government, on 31 January 1992, that "*The absence of war and military conflict amongst States does not in itself ensure international peace and security. The non-military sources of instability in the economic, social, humanitarian and ecological fields have become threats to peace and security.*" Yamashita (2007:564) and Malone (2007:120-121) explain that consensus in the UN Security Council on the 'threat to peace' concept has changed over the years: during the Cold War period, with the exception of the cases of Apartheid in South Africa and racism in Southern Rhodesia, the threat concept was restricted to the two categories of interstate wars and internationalised wars. The

concept expanded during the post-Cold War period to include massive human rights violations or humanitarian crises, international terrorism and Weapons-of-Mass-Destruction (WMD) proliferation, and intrastate conflicts which are feared to impinge on regional stability in terms of intensity, geographical coverage and human suffering. Farrall (2007:85) upholds that the UN Security Council tends to avoid articulating the precise nature of threats to international peace and security and discerns two broad categories: those with a clear international or transboundary dimension and those arising from an internal crisis (please see *Table 3.1* for the types of situations under which the UN Security Council has determined a threat to international peace and security leading to the application of sanctions).

Types of situations in which the Security Council has determined a threat to international peace and security	
Threats with a clear international or transboundary dimension	**Threats arising from an internal crisis**
• Where a state has a history of maintaining an aggressive foreign policy, combined with the potential to possess or to produce weapons of mass destruction. • Where a state or non-state entity has engaged in or provided support for acts of international terrorism. • Where two states have been engaged in international conflict. • Where states have undertaken acts of interference in the affairs of another state.	• Where a racist minority has prevented the majority from exercising its right to self-determination. • Where a government maintains a policy of Apartheid. • Where there is general civil war, with no entity in effective control of the apparatus of government. • Where power has been seized from a democratically elected government. • Where a government has been subject to or threatened by the use of military force by a rebel group. • Where there is a serious humanitarian crisis. • Where a government has used oppressive force against a minority, in violation of that minority's fundamental rights, including the right to self-determination.

Table 3.1: Situations under which the UN Security Council has determined a threat to international peace and security (According to, Farrall, 2007:86, 92)

Even though the circumstances under which the UN Security Council determines a threat to international peace and security can be distinguished, it is debatable whether the UN Security Council is guided by the requirements of international law, or breaches thereof, when making such a determination. The influence of international law on UN Security Council decisions under Chapter VII will be discussed next.

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3.3.2.4.2   Determining a threat to international peace and security and the rule of
            law

Measures under Chapter VII are not necessarily taken as a result of a law being broken. Simma (2002:705) confirms that measures taken under Chapter VII, including sanctions, primarily serve to enforce peace and may also be addressed to States that have neither violated international law nor threaten to do so. This is reflected in Article 1(1), according to Simma (2002:705), which requires observance of international law only for Security Council action in the area of dispute settlement, but not for measures of collective security. Farrall (2007:15) believes that owing to its political origins, the concept of the rule of law is conspicuously absent from the UN Charter. Farrall (2007:15-16) argues, therefore, that even though threats to international peace and security may take the form of violations of international law, these two concepts do not necessarily overlap. The implication is that the UN Security Council acts above the law and as a law unto itself, and does not necessarily respond to a violation of international law or even to a violation to the Charter (Farrall, 2007:16). Malanczuk and Akehurst (1997:387) clarify that although the UN Security Council and UN General Assembly do take legal factors into account, they also consider political factors; and political factors often overshadow legal considerations in their deliberations. Moreover, Malanczuk and Akehurst (1997:387) continue, members of the UN Security Council and the UN General Assembly are not always impartial as could be seen during the Cold War when members of an alliance tended to support one another, and small neutralist states tried to avoid giving offence to the two superpowers of the time (the USA and the USSR). Chapter VII of the Charter also deals with the issue of acts of self-defence, and these will be discussed next.

3.3.2.4.3   Self-defence

Article 51 of the Charter entitles states to defend themselves when attacked by an armed aggressor (UN, 2009g). Voeten (2005:530) makes the point that states routinely resort to expanded conceptions of self-defence to justify unilateral use of force. The UN Security Council Resolution 1373 adopted in September 2001, for example, affirmed the right of the United States to act forcefully in its self-defence

against terrorist activities and de facto legitimised the United States military action in Afghanistan that started in October 2001. Gray (2008:87), however, emphasises that the aim of Article 51 is rather to ensure that the UN Security Council is informed at all times of the use of force by states, and that it could then take action if necessary; and that a state's right to self-defence is only a temporary right until the UN Security Council has taken measures to maintain international peace and security. The UN Security Council has a whole range of measures at its disposal that could be taken to maintain international peace and security. These will be elaborated on in the next section.

3.3.2.4.4   Compliance with UN Security Council decisions

In taking action against threats to international peace and security, the UN Security Council may consider non-coercive measures (diplomacy) or coercive measures (sanctions or the use of force). The diplomatic options available to the UN Security Council include communicating with parties to a conflict situation through press statements or presidential statements, relying on the good offices of the UN Secretary-General, or deploying UN Security Council missions to conflict-afflicted or post-conflict areas (DFA, 2008). The UN Security Council can also, under Chapter VII, establish international tribunals to prosecute persons for serious violations of international humanitarian and human rights law, including acts of genocide (UN DPI, 2008a) and may work with regional organisations to further international peace and security. The UN Security Council acts on behalf of all UN Member States and its Chapter VII decisions are legally binding (DFA, 2008). In this regard, de Chazournes (2005:16) and Lowe *et al*. (2008:37) refer to the case of the "Aerial incident at Lockerbie" (Lybian Arab Jamahiriya vs. United Kingdom, 1992), where the ICJ ruled that obligations resulting from UN Security Council decisions enjoy similar pre-eminence to international law through an interpretation combining Article 103 with Article 25 of the UN Charter. Saul (2005:142-143), disagrees and cautions that UN Security Council resolutions do not create international law, but are normative obligations on member states under the UN Charter and instead, resolutions may assist in interpreting the UN Charter, provide evidence of general

principles of law, or reflect *opinio juris*, provided that their subject-matter is not restricted to particular circumstances.

The United Nations uses a wide array of compliance and enforcement processes to get states to honour their international commitments and the UN Security Council resolutions. Joyner (1997:14-16) distinguishes six categories of compliance measures which the United Nations use:

i. The reporting and supervisory procedures in a particular treaty or code of conduct. This includes providing periodic reports to the United Nations Organs in accordance with detailed guidelines; reviews by committees, accompanied by questions to the reporting states; or the investigation of complaints of violations brought under the protocols of the covenants.

ii. The facilitative measures taken by the United Nations to assist states in carrying out their obligations imposed by law or by specific decisions of the United Nations Organs, such as the use of armed peacekeeping forces to assist governments to comply with transborder truce and cease-fire agreements or to help maintain internal law and order.

iii. Invoking Article 6 of the UN Charter to directly penalise a law-breaking state by expelling it from the Organisation or preventing it from taking part in some of its activities.

iv. Taking non-military enforcement actions, i.e. sanctions, by the UN Security Council under Article 41 of Chapter VII of the UN Charter. Sanctions can only be applied if the UN Security Council has decided that a threat to the peace or an act of aggression has occurred, and its determination is considered to be discretionary and final.

v. Judicial enforcement which is employed in both international and national tribunals, of which the ICJ is the most significant. However, it is limited in

respect of binding adjudication to cases in which the parties have accepted the ICJ's jurisdiction.

vi.   Enforcing compliance through the use of armed force pursuant to Chapter VII of the UN Charter. This will be discussed next.

In the "Agenda for Peace"-report of the UN Secretary-General (UNSG, 2009), conflict prevention and peace-building are juxtaposed at the opposite ends of the conflict management spectrum, where 'preventive diplomacy' represents the first step or stage and 'peace-building' the last. According to this model, de Coning (2008:6) paraphrases the United Nations response to conflict initially to be to prevent conflict (preventive diplomacy); if that fails the next step is to make peace (peace-making) by gathering all the parties around the negotiation table; if a cease-fire or an agreement is reached, the United Nations could deploy a peacekeeping mission to monitor the cease-fire and to otherwise assist with the implementation of the agreement; and lastly, the United Nations will assist to rebuild the country with a specific focus on addressing the root causes of the conflict so as to ensure that the conflict does not occur again (peace-building).

Typically under Chapter VII of the Charter, however, 'peace-enforcement' operations are undertaken which are coercive in nature and are conducted when the consent of all parties has not been achieved or might be uncertain. They are designed to maintain or re-establish peace or to enforce the terms specified in the mandate (ISS, 2000:37). The Red Cross (2002) mentions that in the broader sense peace-enforcement operations are carried out by United Nations forces or by States, groups of States or regional organisations, either at the invitation of the State concerned or with the authorisation of the UN Security Council. These forces are given a combat mission and are authorised to use coercive measures for carrying out their mandate. The consent of the conflicting parties is not necessarily required. Global Security (2008), a United States-based military affairs think tank, describes peace-enforcement as entailing the use of armed force to separate combatants and to create a cease-fire that does not exist. Force may also be used to create other peaceful ends such as safe havens for victims of the hostilities. Global Security notes that the United Nations

uses the term to refer to forceful actions to keep a cease-fire from being violated or to reinstate a failed cease-fire.

This section provided an overview of the decisions which may be taken, and the powers that the UN Security Council has under Chapter VII of the Charter. It described the "threat to peace"-concept and outlined the measures which the United Nations in general, and the UN Security Council in particular, take to enforce their decisions, resolutions and international law. Chapter VII of the Charter relates to the connection between the UN Security Council and the member states in the maintenance of international peace and security, whereas Chapter VIII relates to the connection between the Security Council and a group of states, or regional organisations, as will be seen next.

3.4   THE MANDATE OF REGIONAL ORGANISATIONS TO ASSIST IN THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY

Apart from authorising individual states in terms of Article 42 and 48(1) of Chapter VII to enforce military measures, the UN Security Council may also utilise regional organisations for military purposes under Chapter VIII (De Wet, 2004:290) which deals with the relationship between regional organisations or agencies and the United Nations for the settlement of local disputes (UN, 2009f; Simma, 2002:812). The United Nations has increasingly been making use of this prospect; Sidhu (2007:222) notes that all of the ten ongoing peace operations launched after the end of the Cold War involved regional actors. This section will explore the extent and conditions under which the powers of the UN Security Council may be delegated to regional organisations, such as the African Union, according to Chapter VIII of the Charter; and also what is meant by the term "regional organisation or arrangement". Lastly, it will provide an overview of the African Union's security framework.

3.4.1　Chapter VIII. Regional Arrangements (Articles 52-54)

Article 52 of the UN Charter recognises the right of member states to establish regional arrangements or agencies for dealing with matters relating to international peace and security, subject to the limitations that the matters dealt with must be "appropriate for regional action", and that the arrangements and agencies and their activities must be "*consistent with the Purposes and Principles of the United Nations*" (Murphy, 1997:118). What is meant by regional arrangements or organisations under Chapter VIII should, however, be clarified. Simma (2002:821) explains that "regional dispute settlement" is not related to whether a state belongs to a specific geographical region but more so to whether the state is a member of the regional organisation. Simma (2002:823) concludes that Art. 52(1) provides for regional arrangements or organisations to be created for dealing with matters relating to the maintenance of international peace and security and is therefore different from collective (self-) defence alliances, such as NATO, the Warsaw Pact (defunct as of April1, 1991), the Western European Union (WEU) and Southeast Asia Treaty Organisation (SEATO). The distinct difference is that these organisations are aimed at self-defence and have outwardly-directed systems of collective defence and not mutual collective security systems directed inwards to their member states. In practice, Sidhu (2007:228) observes that the United Nations interacts with regional organisations regardless of whether or not mutual security systems are directed inwards, and notes interaction takes place when at least two of the following three criteria are met:

   i. The regional or subregional group mandates itself a role in conflict management within or among its member states (the Organisation of American States (OAS), the Organisation for Security and Cooperation in Europe (OSCE), the African Union, the Economic Community of West African States (ECOWAS), the European Union (EU), the Arab League, and to some extent Association of Southeast Asian Nations (ASEAN) fall in this category while the South Asian Association for Regional Cooperation (SAARC) does not); and/or

ii.   The group possesses or intends to endow itself with a peacekeeping capability (NATO, the EU, the Arab League, and the African Union meet this criterion, while ASEAN and SAARC do not); and/or

iii. The geographical scope of the regional organisation's mandate and activities does not extend beyond the perimeter of their membership.

According to Wallensteen and Heldt (2008:93), Article 52 determines that the United Nations should be the last resort when it comes to dealing with threats to international peace and security and that regional organisations and neighbouring states should be the first port of call - and only when such initiatives have failed - may they be referred to the United Nations. Murphy (1997:118) accordingly argues that Article 52 imposes an obligation on member states to make every effort to settle "local disputes" through such means before referring them to the UN Security Council, as well as on the UN Security Council to encourage the use of regional arrangements and agencies for the settlement of local disputes.

Article 53 (UN, 2009f) requires that the UN Security Council shall, where appropriate, utilise such regional arrangements or agencies for enforcement action under its authority, but that 'No enforcement actions shall be taken under regional arrangements or by regional agencies without the authorisation of the UN Security Council'. White (2002:142) and De Wet (2004:295) explain that Article 53 explicitly prohibits military action by regional organisations without United Nations authority though it does not preclude regional organisations or ad hoc alliances from taking collective defensive military action under Article 51 when a member state comes under attack and "*until the UN Security Council has taken measures necessary to maintain international peace and security*". Sarooshi (1999:249) adds that states neither receive any additional rights to use force nor are they relieved of their obligations to the United Nations by being a member of a regional arrangement, even if the arrangement possesses independent legal personality. Importantly, Sarooshi (1999:250) calls attention to the condition of delegation of powers set out in Article 53(1) that the operation has to remain under the "authority of the UN Security Council". In legal terms, Sarooshi (1999:250) continues, the authority of the UN

Security Council requires conditions to be imposed on the regional arrangement for there to be a lawful delegation of Chapter VII powers; they are: first, the specification of a clear objective for which the power is being delegated, second, the exercise of supervision over the use of the delegated powers, and third, the imposition of a reporting requirement. Under Article 54, the Security Council is to be kept fully informed of any regional activities for the maintenance of international peace and security (Murphy, 1997:119). De Wet (2004:290) concludes that whereas Article 53(1) should be understood as the clause facilitating enforcement action between the regional organisation and its members, Article 42 in conjunction with Article 48(2) in Chapter VII, on the other hand, enables the military utilisation of a regional organisation outside of its territory and/or against non-members, as well as the military utilisation of other organisations such as regional defence organisations.

De Wet (2004:290) concludes that whereas Article 53(1) should be understood as the clause facilitating enforcement action between the regional organisation and its members, Article 42 in conjunction with Article 48(2) in Chapter VII, on the other hand, enables the military utilisation of a regional organisation outside of its territory and/or against non-members, as well as the military utilisation of other organisations such as regional defence organisations. In 2005, the UN Security Council passed Resolution 1631, outlining concrete steps to enhance cooperation between the United Nations and regional organisations, notably African and sub-regional organisations (UNSC, 2005c). The next section will provide a chronology of decisions taken by the United Nations to enhance cooperation and capacity within regional organisations, particularly with the African Union, since 2005.

3.4.2 Enhancing United Nations-African Union cooperation: the framework for the ten-year capacity building programme for the African Union – a chronology of decisions taken by the United Nations

During the 2005 World Summit, the UN General Assembly adopted resolution 60/1 which inter alia, called for a stronger relationship between the United Nations and regional and sub-regional organisations (UNGA, 2005:37), noting in particular the importance of the African Union and the development and implementation of a ten-

year plan for capacity building with the African Union (UNGA, 2005:37). The UN Secretary-General envisioned the ten-year plan to be the overall strategic framework under which the United Nations system can enhance its various activities in Africa and its cooperation with the African Union (UNGA, 2006a:5). Subsequently, the United Nations and the African Union signed a formal agreement in Addis Ababa, Ethiopia, on 16 November 2009, entitled "*Enhancing United Nations- African Union cooperation: framework for the Ten-Year Capacity Building Programme for the African Union*". The declaration built on previous agreements between the United Nations and the OAU. It reflected the common commitment of the United Nations and the African Union to maintaining peace and human security, promoting human rights, conducting post-conflict reconstruction, and advancing Africa's development and regional integration. It also provided for a holistic framework for United Nations system-wide support for the capacity-building efforts of the African Union Commission and African sub-regional organisations (UNGA, 2006b; AU Observer Mission, 2009). Specifically, the areas for cooperation included institution-building, human resources development, youth unemployment, financial management, peace and security issues, political, legal, social, economic, cultural and human development, food security and environmental protection (UNGA, 2007a:2). Shortly thereafter, in January 2007, the African Union declared that the maintenance of international peace and security was the primary responsibility of the United Nations and called upon the United Nations to provide funding for peacekeeping operations undertaken by the African Union or under its authority (AU Observer Mission, 2006). In March 2007, the UN Security Council issued a resolution stating unequivocally that the UN Security Council continues to have primary responsibility for the maintenance of international peace and security but recognised the need to build capacities with regional organisations, particularly with the African Union, to improve collective effectiveness in the maintenance of international peace and security, as well as acknowledging that in some cases the African Union may be authorised to deal with collective security challenges on the African continent (UNSC, 2007b:2). The UN General Assembly adopted a resolution, entitled "*Cooperation between the United Nations and African Union*" on 5 October 2007, which urged the United Nations to, among other issues, encourage donor countries, in consultation with the African Union, to contribute to adequate funding, training and

logistical support for African peacekeeping efforts undertaken by the African Union and to provide assistance to the African Union in strengthening institutional and operational capacity of its African Union Peace and Security Council (AU PSC) and in coordinating with other international partners. The resolution also called for the implementation of the Ten-Year Capacity Building Programme as soon as possible (UNGA, 2007a:8).

In April 2008, the Secretary-General noted that the United Nations and the African Union had decided that the implementation of the Ten-Year Capacity Building Programme should begin with a focus on peace and security (UNSC, 2008a:9). Within the framework of the ten-year programme, the United Nations had also started to support the African Union in the establishment of the African Standby Force (ASF), which would undertake peacekeeping activities with a view to, in due course, handing them over to the United Nations (UNSC, 2008a:11,13). Furthermore, the UN Secretary-General asked the UN Security Council to consider defining the role that regional organisations play in the maintenance of international peace and security, in particular the prevention, management, and resolution of conflicts; and to assist the African Union to develop a comprehensive peace and security policy (UNSC, 2008a:20). Taking into account that UNAMID started operations on 31 December 2007 (UN DPKO, 2009b), it is surprising that it did not have policies and role-distinctions to guide the deployment of UNAMID. To offer a possible explanation for such a decision, Jones *et al.* (2009:28) believes that the African Union has taken on a new importance for the United Nations for two broad reasons: firstly to obtain political legitimacy on the continent, after a period when United Nations legitimacy was strained due to divisions over Iraq; and secondly, the willingness of the African Union to act, during a period when western states had shown modest will at best to act on the African continent, at least through the deployment of their own forces.

On 31 December 2008 the UN Secretary-General presented to the UN General Assembly and the UN Security Council the findings of the African Union-United Nations panel on the modalities for support to African Union operations. The panel reiterated the need to clarify the United Nations/African Union strategic relationship

and stressed that in defining the division of responsibility, it is important not to create the perception that the United Nations is subcontracting peacekeeping to the African Union (UNGA, 2008a:13). On the issue of funding and support to the African Union, the panel further suggested that United Nations contributions could be given to African Union peacekeeping missions for up to a period of 6 months from which time the operation would transition into a United Nations peace operation. This would enable the establishment of an African Union mission to United Nations standards and facilitate the transition process that would ultimately take place. Such an arrangement, the panel suggested, could benefit both the United Nations and the African Union, where the African Union, exercising its ability to respond quickly, would be providing an initial response to a longer-term United Nations commitment (UNGA, 2008a:18). Furthermore, in the long term it would be ideal to build the necessary institutional capacity within the African Union and have African Union member states increasing their own financial contribution to peacekeeping operations along with donor contributions (UNGA, 2008a:18). The UN Security Council subsequently acknowledged the importance of implementing the Ten-Year Capacity Building Programme for the African Union on peace and security, in particular the operationalisation of the ASF and the continental Early Warning System (UNSC, 2009a:2). The preceding chronology describes the importance that the United Nations puts on establishing ongoing relationships with regional organisations, such as the African Union. The next section will provide an overview of the African Union, its security framework and its mandate to work with the United Nations.

3.5   THE AFRICAN UNION

The African Union was established in 2002 as the direct successor to the OAU, a continental institution founded in 1963 and rooted in the period of Africa's decolonisation and independence from European colonialism (Keith, 2007:153; Genge, 2000:1). While the OAU focused mainly on securing the sovereignty of Africa's states as they emerged from colonial rule, it neglected to focus on human security or human rights, principles which were subsequently incorporated into the African Union (Keith, 2007:153-154). Furthermore, the OAU was considered to have fulfilled its mandate to liberate the continent from colonial rule but could not continue

to ensure economic integration of the African continent (Genge, 2000:6). Although the African Union was officially established on 9 July 2002, its Constitutive Act was ratified by the majority of member states of the OAU on 11 July 2000 in Lome, Togo (Genge, 2000:8). The Constitutive Act holds signatures of 53 African member states (AU, 2009a:15) with the following objectives as stated in Article 3 of the Constitutive Act (AU, 2009a:3):

a) To achieve greater unity and solidarity between the African countries and the peoples of Africa;

b) To defend the sovereignty, territorial integrity and independence of its member states;

c) To accelerate the political and socio-economic integration of the continent;

d) promote and defend African common positions on issues of interest to the continent and its peoples;

e) To encourage international cooperation, taking due account of the Charter of the United Nations and the Universal Declaration of Human Rights;

f) To promote peace, security, and stability on the continent;

g) To promote democratic principles and institutions, popular participation and good governance;

h) To promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments;

i) To establish the necessary conditions which enable the continent to play its rightful role in the global economy and in international negotiations;

j) To promote sustainable development at the economic, social and cultural levels as well as the integration of African economies;

k) To promote co-operation in all fields of human activity to raise the living standards of African peoples;

l) To coordinate and harmonise the policies between the existing and future Regional Economic Communities for the gradual attainment of the objectives of the Union;

m) To advance the development of the continent by promoting research in all fields, in particular in science and technology; and

n) To work with relevant international partners in the eradication of preventable diseases and the promotion of good health on the continent.

The aims of the African Union, as set out in Article 3 of its Constitutive Act, are in many ways similar to those of the OAU with a few additions to reflect the realities of the post-Cold War era (Akokpari, 2008:372). However, Akokpari (2008:372) highlights that the most remarkable addition to the African Union programme is the provision of Article 4(h) of the AU Constitutive Act, which sanctions intervention in the internal affairs of states. The non-interventionist posture of the OAU, continues Akokpari (2008:372), severely incapacitated it from dealing with human rights abuses, genocide and various challenges of governance in member states. The right of the African Union to intervene in states means that African governments could no longer hide behind the shield of 'sovereignty' or 'territorial integrity' to perpetuate internal aggression, overt or covert, against their citizens.

Article 5 of the Constitutive Act (AU, 2009a:3) presents the organs of the African Union (see *Figure 3.2*). Under Article 5 it may also establish other organs through a decision based on consensus, or if not, a two-thirds majority by the member states (Article 7 of the Constitutive Act (AU,2009a:4)). The organs are:

- The Assembly of the Union (the AU Assembly)
- The Executive Council
- The Pan-African Parliament
- The Court of Justice
- The Commission (AU General Secretariat)
- The Permanent Representative Committee
- The Specialised Technical Committees
- The Economic, Social and Cultural Council
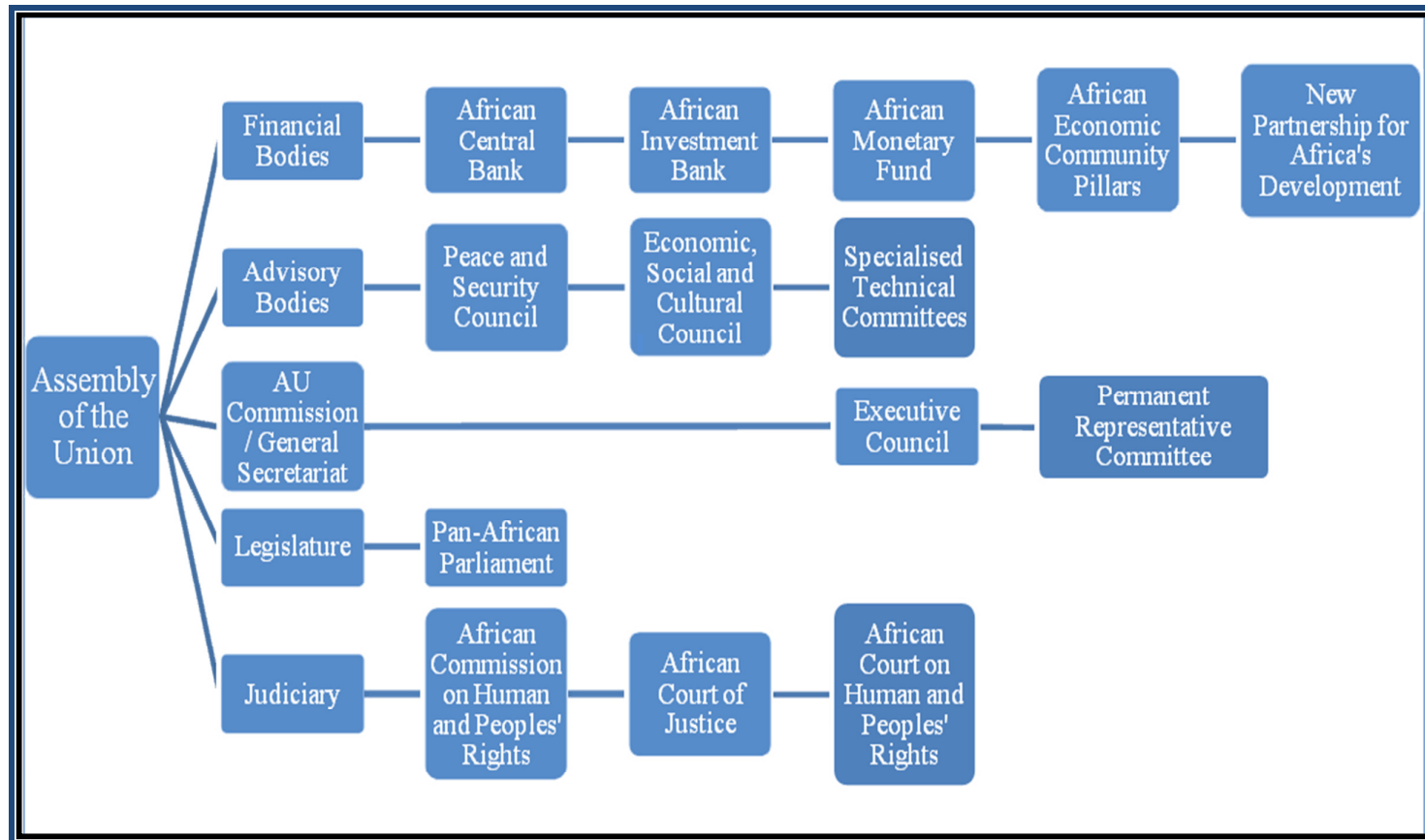- The Financial Institutions

Figure 3.2: The structure of the African Union (Badejo, 2008:40).

Badejo (2008:41) and the Institute of Security Studies (ISS, 2009a) describe the AU Assembly as the supreme operating unit or organ of the African Union which consists of the African heads of state and government or their representatives meeting together to debate and pass resolutions. The Executive Council is made up of the ministers of foreign affairs from the member countries, while the AU Commission is the administrative branch made up of 10 commissioners with the responsibility for a particular topic or topics of policy: peace and security; politics and government; energy; social affairs; science and technology; agriculture; industry and trade; economy; women, gender and development; budgeting; human resources and law. The AU Assembly appoints the chair of the AU Commission who is mainly responsible for carrying out the African Union's decisions and also coordinates the African Union as body (Badejo, 2008:42; ISS, 2009a). The African Union Permanent Representatives Committee (AU PRC) is composed of the Permanent Representatives to the Headquarters of the Union in Addis Ababa (usually the head of African states' diplomatic representative to Ethiopia) (ISS, 2009a). For the purposes of this chapter, more focus will now be given to the security architecture of the African Union.

3.5.1 The security architecture of the African Union

Udombana (2007:101) highlights that one of the key tasks of the African Union is to promote peace, security and stability in Africa which its Constitutive Act acknowledges as a prerequisite for the implementation of Africa's development and integration agenda. One of the African Union's organising principles is 'peaceful resolution of conflicts among Member States of the Union through such appropriate means as may be decided upon by the Assembly', and the AU PSC is the current 'appropriate means' by which the African Union attempts to resolve conflicts, concludes Udombana (2007:101). The African Union structures and mechanisms for peace and security revolve around the AU PSC, which was specifically created following the recognition that the African Union required more effective policy channels to address conflicts more proactively, confirm Okumu *et al.* (2004:18). The AU PSC replaced the historical OAU's conflict prevention mechanism (Okumu *et al.*, 2004:18). Mugumya (2007:52) notes that while historical efforts concentrated on conflict resolution, the new architecture provides for a holistic approach to the

promotion of peace and security in Africa. Akokpari (2008:374) concurs that under the African Union's new security paradigm, the conventional frontiers of security from the Cold War era have been expanded from ideologically-defined *state security* to *human security*. Akokpari (2008:374) adds that Africa's new security architecture recognises the shifts in the sources of insecurity, to include HIV/AIDS and diseases, internal displacement, poverty, famine, hunger and environmental degradation. Murithi and Nadinga-Muvumba (2008:10) mention that the notion of human security is implicit in the African Union's adoption of a people-oriented vision of peace and development, and encompasses economic, food, health, environmental, personal, community and political security. Murithi and Nadinga-Muvumba (2008:10) quote Hutchful who identifies a distinct tradition of an African human security concept in key African Union documents, such as the decision paper of the CSSDCA and its Common African Defence and Security Policy (CADSP) of 2004. The AU PSC and its support mechanisms will be discussed next.

3.5.1.1 The Peace and Security Council of the African Union

When the African Union was established, its security mechanisms were not yet laid out in detail. Makinda and Okumu (2008:87) point to Article 3(f) of the Constitutive Act which states the promotion of peace, security, and stability on the continent as one of the African Union objectives, but it does not establish the structure therefor. Makinda and Okumu (2008:87) note that under Article 5(2) of the Constitutive Act, the AU Assembly proceeded to adopt the "Protocol Relating to the Establishment of the Peace and Security Council of the African Union" (the AU PSC Protocol) which established the AU PSC and formulated the CADSP. The AU PSC Protocol was adopted at the 1st Ordinary Session of the Assembly of the African Union in Durban, South Africa, on 9 July 2002 (AU, 2002:28) and called for the establishment of mechanisms and structures to assist the AU PSC in its work (Makinda and Okumu, 2008:87). Akuffo (2010:76) notes that the AU PSC is made up of 15 members. Ten of the members are elected for a two-year term and five are elected for a three-year term to ensure continuity. According to Akuffo (2010:76) the African Union applies the principle of equitable regional representation and rotation in the election of the AU PSC members. Each member has a single vote and none of them has veto power

(Article 5 of the AU PSC Protocol). The decisions of the AU PSC are guided by the principle of consensus and when consensus cannot be reached, the AU PSC adopts its decisions on procedural matters by simple majority and decisions on all other matters by a two-thirds majority (Article 8(12) and (13) of the AU PSC Protocol).

In addition to the AU PSC Protocol, the peace and security architecture also includes the African Union Non-Aggression and Common Defence Pact (Common Defence Pact) adopted at the 4th Ordinary Session of the Assembly of the Union, held in Abuja, Nigeria in January 2005; the CADSP which was adopted at the 2nd Extraordinary Session of the Union, in Sirte, Libya, in February 2005; as well as other security instruments of the African Union, such as the Treaty establishing the African Nuclear Weapons Free-zone (the Pelindaba Treaty and the Convention for the Prevention and Combating of Terrorism (Mugumya, 2007:52). The AU PSC's main policy instrument is the CADSP which, explain Okumu *et al.* (2004:19), encompasses a much broader notion of human security to include good governance in the wider security sector, issues such as AIDS/HIV, and the prevention of the exploitation of natural resources.

Edmonds and Mills (2007:33) portray the AU PSC as a continental collective security commitment, bolstered by the Common Defence Pact aimed to promote cooperation between member states in areas of non-aggression and common defence; to promote peaceful co-existence in Africa; and to prevent conflicts of an inter-state or intra-state nature. The AU PSC itself is described as a standing decision-making organ for the prevention, management and resolution of conflicts; and a collective security and early warning arrangement to facilitate timely and efficient response to conflict and crisis situations in Africa with the following objectives (AU, 2009b; Aning, 2007:8):

- Anticipate and prevent conflicts;
- Promote and implement peace-building and post-conflict reconstruction activities;
- Coordinate and harmonise continental efforts in the prevention and combating of international terrorism;
- Develop a common defence policy for the Union; and

- Promote and encourage democratic practices, good governance and the rule of law, protect human rights and fundamental freedoms, and international humanitarian law.

Lastly, the AU PSC is also expected to promote close harmonisation, coordination, and cooperation between regional mechanisms and the union in the promotion and maintenance of peace, stability, and security in Africa (Aning, 2007:8). The AU PSC is a multi-level approach to security on the African continent and its supporting mechanisms will be elaborated on in the following section.

3.5.1.1.1   <u>Support structures of the AU PSC</u>

The AU PSC is to be supported by the ASF to deal with peace-support operations, the Panel of the Wise, the Continental Early Warning System (CEWS) which is based within the Conflict Management Division of the Peace and Security Department, and the Peace Fund which will garner the necessary resources for the promotion of peace and security, summarise Mugumya (2007:51), Edmonds and Mills (2007:33) and the ISS (2009a). The CEWS consists of an observation and monitoring centre as well as the observation and monitoring units of the Regional Mechanisms, and has the responsibility to anticipate and prevent conflicts, clarifies the African Union (2009b). De Coning (2008:6) describes the Panel of the Wise as an independent body made up of five prominent peacemakers with the authority to alert the AU PSC to emerging conflicts, provide advice to the African Union on conflict management initiatives, which could undertake preventative or peace-making initiatives of its own, and which will be supported by its own secretariat based in the Conflict Management Division of the Peace and Security Department. The African Union (2009) advises that the panel will consist of five highly respected African personalities from various segments of society who have contributed outstandingly to the cause of peace, security and development on the continent, and who will support the efforts of the AU PSC and the AU Chairperson in preventing conflicts.

The AU PSC is the strategic level decision-making body that mandates the ASF peace support missions within the framework of the Charter of the United Nations (ISS,

2009a). The AU PSC utilises the ASF to undertake peace support missions and interventions under African Union mandates pursuant to Article 4(h) and 4(j) of the Constitutive Act (AU, 2009). Udombana (2007:101) notes the ASF has a mandate to intervene in a member state in respect of grave circumstances or at the request of a member state in order to restore peace and security. Therefore, the ASF is central to the principle of collective security on the African continent and will be up made of five regional brigades of 3 000 to 4 000 troops (located in North, East (EASBRIG), West (WASBRIG), Central- and Southern Africa with its headquarters in Addis Ababa, Ethiopia), supported by early warning systems and with outside finance and support, projected to be ready in 2010 (Edmonds & Mills, 2007:21). Adebajo (2009:25) projects it will incorporate safety and security structures from members of the Regional Economic Communities (RECs) such as the Southern African Development Community (SADC), the Economic Community of West African States (ECOWAS), the Economic Community of Central African States (ECCAS), the Intergovernmental Authority on Development (IGAD) and the Arab Maghreb Union (AMU). The long term objective, note Edmonds and Mills (2007:33), would be to integrate Africa's defence forces into a Pan-African Stand-by Rapid Reaction Force composed of 15 000 troops by 2015.

Finally, the AU PSC would be assisted by the Chairperson of the AU Commission, who shall, under the AU PSC authority, deploy efforts and take all initiatives deemed appropriate to prevent, manage and resolve conflicts and a Military Staff Committee that would advise and assist the AU PSC in all questions relating to military and security requirements for the promotion and maintenance of peace and security in Africa (AU, 2009b). The Military Staff Committee is composed of the Chiefs of Defence Staff or their representatives, consisting of those countries serving on the AU PSC, and established in terms of Article 13 of the AU PSC Protocol (ISS, 2009a). The final section on the African Union will expand on the African Union's relationship with the United Nations on issues of international peace and security.

3.5.2 The relationship between the AU Peace and Security Council and the UN Security Council

Article 17 (1) of the AU PSC Protocol states that "the Peace and Security Council shall cooperate and work closely with the UN Security Council, which has the primary responsibility for the maintenance of international peace and security"(AU, 2002). Powel (2005:24) notes that the AU PSC Protocol acknowledges that the United Nations has primary responsibility for maintaining international peace and security, but also that the African Union has primary responsibility for peace, security and stability in Africa, thereby subtly staking its claim to the continent. Indeed, states Powel (2005:24), neither the Constitutive Act nor the AU PSC Protocol are clear on what will happen if the United Nations does not authorise intervention. Adebajo (2009:27) reveals that in order to avoid the UN Security Council blocking African Union peacekeeping interventions, both the African Union and ECOWAS have set up security mechanisms that controversially do not require prior United Nations authorisation for action. The regional bodies simply *inform* the United Nations after they have taken action. Such actions, argues Adebajo (2009:27), could eventually weaken the legitimacy of the United Nations in Africa as the body with primary responsibility for maintaining global peace and security. Theoretically, the African Union derives its primary responsibility for Africa's peace and security from its domestic legitimacy, that is, the legitimacy it has acquired from members' consent to legal instruments such as the Constitutive Act and the AU PSC Protocol, states Akuffo (2010:78). Aside from individual states, the incorporation of the RECs (as discussed in *section 3.5.1.1.1*) into the overall African security architecture demonstrates solidarity among sub-regional groups which, in turn, strengthens the African Union's political legitimacy and authority as the overarching implementer of Africa's peace and security policies (Akuffo, 2010:78). This epitomises Pan-Africanism, confirms Akuffo (2010:78).

Another untested point, according to Boukongou (2005:74-75), is between the United Nations' principle of non-interference in internal matters of a state ("*against the personality of a state or its political, economic and cultural elements*", as specified in UN Security Council Resolution 2625 (XXV) adopted on 24 October 1970), and

Articles 4(h) and (p) of the AU Constitutive Act which respectively state that the African Union has the right "*to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity*" and will "*condemn and reject unconstitutional changes of governments*". In this regard, Lebedev (2005:189) affirms that the AU PSC can recommend to the AU Assembly to take decisions to intervene in a member state in the case of war crimes, crimes against humanity and genocide, and, with the agreement of two-thirds of its members, may authorise the deployment of a peacekeeping force, even without the consent of the affected member state. Lebedev (2005:189) continues that where there is consent from the affected parties, the AU Assembly can authorise a peace-supporting force; in case of a new threat to peace and security, it can undertake peace-building and peace-consolidation actions; and may impose sanctions in the event where "non-constitutional change" of government takes place in a member state. While it is seemingly sound that the protection of human rights of citizens should prevail over state sovereignty, the problem still is that challenging the notion of sovereignty also amounts to questioning the cornerstones of the UN Charter in Articles 2(1), 2(4) and 2(7) that guarantee, inter alia, the territorial sovereignty of all member states and outlaw war (Kuwali, 2009:43-44). In this regard, Abass (2007:423) argues that the apparent empowerment of the African Union vis-à-vis enforcement action is seen as the first true blow to the constitutional framework of the international system established in 1945 predicated on the ultimate control of the use of force by the UN Security Council on their own. But what are the implications of these powers of the African Union? The following section will explore this question.

3.5.2.1 Conflict intervention by the African Union

The African Union provides for unprecedented powers of intervention in a Member State as an exception to the principle of state sovereignty while the normative status of the doctrine of humanitarian intervention is still a grey area and a contentious issue in international law, notes Kuwali (2009:43). In this sense, Williams (2006:180) says it appears that the international society is undergoing a period of normative turbulence in which sovereignty is being rendered increasingly conditional upon

states upholding certain standards of domestic conduct. In Africa, the most obvious outcome of this normative turbulence is Article 4(h) of the AU Constitutive Act, but in the Darfur crisis, however, the African Union showed no inclination to actually invoke this article, highlights Williams (2006:180). For example, in response to questions about why the African Union did not conduct humanitarian intervention in Darfur, certain AU Peace and Security Department (PSD) officials stated that Sudan is a member of the African Union and therefore it cannot go into Sudan without the country's consent', highlights Abass (2007:424). The PSD further noted that it was not possible for the African Union to intervene without a member's consent, under any circumstances, because such action would violate the 2005 AU Non-Aggression and Common Defence Pact, according to Abass (2007:424). Article 3(a) of that Pact states that:

State Parties undertake, pursuant to the provisions of the Constitutive Act, to resolve any differences by peaceful means, in order to avoid endangering peace and security; to refrain from the use of force or threat to use force in their relations with each other and in any manner whatsoever, incompatible with the United Nations Charter. Consequently, no consideration whatsoever, be it political, economic, military, religious or racial shall justify aggression (AU, 2005a:7).

Abass (2007:424) points out that Article 3(a) of the above Pact, apart from forbidding African states from using force against one another (which is the exact scope of Article 2(4) of the UN Charter), also forbids them to use force in respect of matters occurring within individual member states. Therefore, the African Union's right to intervene under Article 4(h) and (j) of the AU Constitutive Act, like the doctrine of humanitarian intervention, presupposes an exception to the general prohibition on the use of force in international relations, continues Kuwali (2009:43). For such intervention to have a genuinely humanitarian character, the intervening states must not act out of any element of self-interest and therefore the beneficiaries of intervention must not be nationals of the intervening state (Sunga 2006:44-45). This progressive mandate reflects the African Union's acknowledgement of the 'responsibility to protect' (R2P) – the universal notion that the international

community has a duty to intervene to protect a population from mass atrocity crimes if governments abdicate their sovereign responsibilities, concludes Kuwali (2009:43).

Echoing this, Boukongou (2005:74) remarks that all member states of the African Union are first members of the United Nations and that they first have to carry out their international commitments to the United Nations. Confirming this point, Abass (2007:425), notes that Article 3(a) of the 2005 AU Non-Aggression and Common Defence Pact seems to prohibit the African Union from conducting the kind of intervention the UN Charter similarly forbids the United Nations to make under Article 2(7) of the UN Charter, since the African Union cannot do collectively what its members cannot do individually. Ouedraogo (2006:33) validates that conflict resolution by the African Union is done with the authorisation of the United Nations and with the cooperation of sub-regional organisations and that the African Union does not carry sole responsibility for conflict resolution in Africa. This could be seen, mentions Ouedraogo (2006:33), during the African Union's involvement in West Africa in 2002 when the African Union in its decision Assembly/AU/Dec. 67 (IV) requested the UN Security Council to closely coordinate its efforts with the African Union while working through ECOWAS to carry out its peacekeeping efforts in Liberia, Sierra Leone and Cote d'Ivoire. The African Union (AU, 2009b), nonetheless, confirmed that while it was assuming the mandate of promoting and maintaining peace, security and stability in Africa, the AU PSC would work closely with the UN Security Council which has the primary responsibility for the maintenance of international peace and security.

In practice, however, at least one example illustrates that while the African Union was indeed willing to work closely with the UN Security Council, it was not necessarily willing to accept the decision of the UN Security Council without trying to sway such a decision through its members serving in the UN Security Council. For example, following the Libyan crisis in 2011, South Africa, which was at the time a non-permanent member of the UN Security Council, voted for a resolution on Libya mandating the use of "all necessary means" to protect civilians, including a no fly-zone, but then South Africa decried the military intervention that followed as being excessive, according to Christie (2011). Christie (2011) believes that three

developments changed South Africa's initial response: 1) The African Union released a statement rejecting any foreign military intervention in Libya, without commenting on the no-fly zone; 2) Lebanon called on the United Nations to enforce a no-fly zone and 3), under the principle of subsidiarity, the Arab League strongly opposed any foreign feet on Libyan soil, but still supported a no-fly zone over Libya. Similarly, due to colonialism being anathema to the African Union, it wanted any of its members serving on the UN Security Council to push every April for a resolution to renew MINURSO's mandate (Christie, 2011). MINURSO, mandated by the UN Security Council, is responsible for facilitating the transitional period for the preparation of a referendum in which the people of Western Sahara would choose between independence and integration with Morocco (UN, 2011k).

Adebajo (2009:26) believes that the UN Security Council has not done enough to strengthen the capacity of African regional organisations, and to collaborate effectively with them in operational matters, and it remains important to continue to have Western peacekeepers, which have both the equipment and resources to contribute to United Nations missions in Africa. Akokpari (2008:374) adds that the current crises in Darfur and Somalia clearly show that the African Union is still far from able to independently provide 'African solutions to African conflicts'. The African Union will thus continue to depend on external assistance for its peacekeeping requirements even after the ASF has been established. Envisioned by the African Union to have established a United States of Africa by 2017 (Cush, 2009:48), and taking into account the already-mentioned Pan-African Stand-by Rapid Reaction Force projected to be ready by 2015, the relationship between the UN Security Council and the African Union is bound to still evolve and transform.

3.6   CONCLUSION

The UN Charter constitutes a collective security system aiming to prevent the resurgence or recurrence of another world war. The UN Charter acts as a treaty and codifies the major principles of international relations while putting an obligation on signatories to the treaty to comply with its provisions. Article 1(1) of the UN Charter mandates the United Nations to maintain international peace and security and confers

the responsibility therefor onto the UN Security Council (Article 24(1)). Therefore, the UN Security Council is the only entity which can legitimately authorise the use of force by member states, not involving self-defence, although it is obligated to first encourage the settlement of disputes by peaceful means.

Furthermore, the UN Security Council has full discretion to determine what constitutes a breach to the peace, or threat to international peace and security, and does not necessarily take action when an international law or convention has been broken. Threats to international peace and security have changed since the inception of the United Nations in 1945, from a focus on war and military conflict, to include non-military sources of instability in the economic, social, humanitarian and ecological fields. This fits in with the focus on human security as described in Chapter Two.

To act on matters which threaten international peace and security, the UN Security Council can take action under either Chapter VI or VII of the Charter. Actions under Chapter VI include peacemaking and peacekeeping (which need the consent of the parties involved), and under Chapter VII, peace-enforcement (which can be taken without any consent from the parties involved). Under Chapter VIII of the UN Charter, the UN Security Council can also utilise regional organisations to assist with maintaining international peace and security. In this regard, regional organisations have a pivotal role to play and the UN Charter provides for disputes to be settled on a regional level before they are referred to the United Nations and subsequently to the UN Security Council. In the past decade, the United Nations has been looking to strengthen its relationships with regional organisations, especially with the African Union, in terms of maintaining international peace and security, and has, inter alia, committed to finding adequate funding, training, and logistical support for African peacekeeping efforts undertaken by the African Union. One example of peacekeeping cooperation between the two organisations is UNAMID. Shortly after the time that UNAMID commenced, however, the UN Secretary-General noted that it was uncertain as to the role which regional organisations should play in maintaining international peace and security, and called for this role to be defined.

The African Union is committed to promoting peace, security, and stability on the African continent. Its peace and security architecture revolves around its UN PSC which aims to cooperate and work closely with the UN Security Council, which it recognises as having primary responsibility for maintaining international peace and security. Nevertheless, the African Union has put in place mechanisms which could respond to security situations without first getting authorisation from the UN Security Council. More controversially, the AU's Constitutive Act allows for intervention in the domestic affairs of a state contrary to the principle of the United Nations. Since all members of the African Union are first members of the United Nations it would make any participation in such actions by a member state illegal.

There may be efforts to strengthen the ties between the United Nations and the African Union but it seems that the terms of the ties should be worked out first. In this case, a hybrid peacekeeping effort was established without clear policies and modalities. The next chapter will review the situation in Darfur and examine UNAMID in order to understand the reasons, albeit seemingly rushed, for the unique arrangement between the two organisations.